

*Return to an Address of the Honourable the House of Commons
dated 1st April 2004
for the*

**Cory
Collusion Inquiry
Report**

Patrick Finucane

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Foreword

I was asked by the Government of the United Kingdom to investigate allegations of collusion by members of the security forces in the context of the deaths of Patrick Finucane, Robert Hamill, Rosemary Nelson and Billy Wright and to report with recommendations for any further action. These four reports are the product of my investigation.

It is important that I should make clear what I have taken my task to involve. My task was not to make final determinations of fact or attributions of responsibility. I had the preliminary role of assessing whether there is a case to be answered as to possible collusion, in a wide sense, by members of the security forces in these deaths such as to warrant further and more detailed inquiry. It necessarily follows from this role that my findings are provisional only, and cannot be taken to be final determinations of any matter. It is right that this point should be emphasised at the outset, in fairness to the individuals referred to in the reports.

The nature of the task which I undertook was reflected in the nature of my investigation in each case. My investigations took the straightforward form of scrutiny of the documentary evidence which exists in relation to each of these cases. Given the preliminary and provisional nature of the task assigned to me, and the desirability of arriving at recommendations expeditiously, it was not necessary or appropriate for me to hear any oral evidence from the individuals referred to in my reports. Obviously, before any final findings of fact or determinations of responsibility could be made, it would be necessary for individuals to have an opportunity of answering any potential criticisms which might be made of them.

For the reasons which I have given in my reports, I have found that in each of the four cases the documentary evidence indicates that there are matters of concern which would warrant further and more detailed inquiry.

Patrick Finucane

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Preface

- 1.1 The terms of reference pertaining to this inquiry are precise and clear. I have no power to subpoena witnesses or compel the production of documents. It follows that I cannot make findings of fact based on the examination and cross examination of witnesses.
- 1.2 My task is to review all the relevant papers pertaining to each case including the records of earlier investigations. In addition I may interview anyone I think can assist in the examination of the relevant documents. The aim of the process is to determine whether there is sufficient evidence of collusion between state security forces and those responsible for the murder of Patrick Finucane to warrant a public inquiry
- 1.3 I was told that the Patrick Finucane case, as a result of earlier investigations, had very likely generated the largest number of documents. As a result, I started with that case and have now completed my examination of all relevant material. I have read thousands of pages of documents emanating from a broad range of sources. Most of these documents have already been gathered together in one place and were being held in safekeeping by the investigating teams that worked on the Stevens I, II and III Inquiries. However, I have also reviewed documents in the possession of other state agencies. I have been assured by these agencies that they have furnished me with any and all information that might bear on the issues I am examining. On the strength of those assurances, I am satisfied that my review has been as comprehensive as possible.
- 1.4 At the outset I would like to thank Sir John Stevens, who cooperated in an exemplary manner. He arranged to make available to me not only all the documents collected in the Stevens inquiries but all the documents collected in the ongoing investigations up to the present time. I would as well like to thank all members of the Stevens team and particularly Chief Superintendent Vince McFadden. They were extremely patient in answering all my inquiries and explaining the significance of various sets of initials and short forms. While I am indebted to Sir John Stevens and his team for providing me with unfettered access to the raw material that I needed to discharge my mandate,

I should stress that all of the inferences and conclusions stated in this report are mine alone.

- 1.5 I am as well grateful for the thoughtful briefs submitted by various organisations and the families of the victims. I appreciate the time and effort they expended to prepare and submit their briefs.
- 1.6 I could not have completed this review without the tireless efforts of my two counsel James O'Reilly and Renee Pomerance. They have been of invaluable assistance. They gave up a great deal to assist me in this inquiry. They have worked very long hours carefully, diligently and cheerfully. They certainly maintained the highest and best traditions of the bar and have set a high standard for all those who in the future undertake the role of commission counsel.
- 1.7 In the office Mr Paul Stockton and his secretary Claire Gray have worked hard to make sure the work of the office flowed smoothly. For their accomplishments and their cheerful good company I am extremely grateful
- 1.8 Although the work on the Patrick Finucane case is now completed it should not be made public until the study of all six cases has been finished. This is I believe in the best interest of all the families and the fairest manner of proceeding. Indeed the study of all the cases may reveal a common thread or connection that should be considered.
- 1.9 The inquiry is limited in its powers and its scope. It cannot make wide and sweeping recommendations that might alleviate, ameliorate or perhaps even cure the cruel troubles and problems that beset the people of Northern Ireland. Yet I think that in a small way it may advance the peace process.

A. Introduction

- 1.10 Patrick Finucane and his wife Geraldine were the parents of three children. He was a solicitor practising in Belfast. Like many in the legal profession he appeared in high profile cases that were often controversial. He acted frequently for those who were alleged to be members of the Irish Republican Army (IRA) or the Provisional Irish

Republican Army (PIRA) when they were charged with terrorist offences. Yet he also acted for Protestants in similar situations. There can be little doubt that it was his role as a solicitor that led to his murder.

1.11 A few weeks prior to his murder, the Home Office Minister, Mr Douglas Hogg, stated in Parliament that “some lawyers are unduly sympathetic to the cause of the IRA.” Statements were also made by an ex-Chief Constable of the Royal Ulster Constabulary (RUC) belittling the integrity of Patrick Finucane and implying that senior police officers had briefed Mr Hogg before he made his statement which was, in effect, confirmation of the police view of Mr Finucane.

1.12 Yet there is nothing in the RUC files which indicates that Patrick Finucane was a member of PIRA, the IRA or the INLA. It is apparent that two of his brothers were members of Republican organizations but a man cannot be held responsible for the criminal acts of his brothers. If this were not so, history would have held Abel as guilty as his murderous brother Cain.

1.13 Nor should a lawyer be judged by the client he represents. Those untrained in the law all too often identify lawyers with their clients and consider them to be a party to the offence. Those who have studied law are aware that it is often the role, and indeed the duty, of counsel to act for an unpopular client. This must be the rule. Otherwise, unpopular but innocent individuals, who because of suspicious circumstances desperately need the services of able counsel, would be without representation. With regard to Patrick Finucane, it is significant that, at the Inquest, the Senior Police Officer investigating his murder aptly described him in these words:—

“We have no evidence to suggest that Patrick Finucane was a member of PIRA”. The presiding coroner confirmed that: “The police refute the claim that Mr Finucane was a member of PIRA. He was just another law-abiding citizen going about his professional duties in a professional manner. He was well known both inside and outside the legal profession. He was regarded in police circles as very professional and he discharged his duties with vigour and professionalism”.

1.14 As a result of the cowardly and horrifying actions of Patrick Finucane's murderers, his wife Geraldine was deprived of the love and companionship of a good husband, his children of his care and guidance and Northern Ireland of his courage and skill as a lawyer.

B. The Murder

i. Events at Patrick Finucane's home

1.15 On the evening of 12 February 1989, Patrick Finucane, his wife Geraldine and their three children were having dinner in the kitchen. Around 7.25pm Geraldine heard a noise coming from the front door. Her husband jumped up from the table and she jumped up behind him. He opened the kitchen door and as they both looked down the hall, she saw one figure walking towards them. The intruder was masked and she believed that he held a gun in his left hand, although she was not sure about this. The man was dressed in black and he seemed to be wearing black gauntlets which covered his arms. He had a green combat jacket which was tied at the waist. She didn't see anyone else. She moved behind her husband to hit the alarm button which was located behind the kitchen door. As she did that, she could see her husband closing the kitchen door. Then the shooting started and it was very fast at first. She landed up against the dining room door, her hands over her head. She said there were more shots, very slow and deliberate. When the shots stopped, her husband was lying on the floor on his back and the man had left. She went to the hall but there was no one there. She had been shot in the ankle probably as a result of a ricocheting bullet. Despite her wound and the trauma of this horrifying event she had the presence of mind to call for the police.

1.16 The autopsy report confirmed that Patrick Finucane was a 39 year old male. He had been shot six times in the head, three times in the neck and three times in the torso. Any of the wounds to the head, the neck, or the torso would have been fatal. Two weapons were used in the killing and more will be said later with regard to them.

1.17 The Patrick Finucane house had an alarm system. The security company's log indicated that the alarm had been pressed at 7.30pm. It was a silent alarm which

would register only at the security company who in turn would notify the police. Mrs Finucane's call to the police was also recorded at 7.30pm.

- 1.18 The police responded promptly to the call, and were on the scene by 7.35pm. A senior officer had arrived and taken charge by 7.40pm. Arrangements were made for Mrs Finucane to be taken to hospital to be treated for her wound. The police photographers and fingerprint experts were very quickly on the scene. A weapons expert determined that the two weapons used in the murder were a 9mm calibre self-loading pistol and a .38 or .357 magnum.

ii. The taxi driver's statement

- 1.19 The police (the Crime Branch of the RUC – Criminal Investigation Division (CID)) very quickly located the abandoned taxi which had been hijacked to bring the killers to and from the scene of the crime. It was a red Sierra owned by Mr U. On the night of the murder Mr U was driving his car for [a taxi company – name redacted]¹. He received a call about 7 o'clock to pick up a fare at [house number redacted] Benview Drive. There a man got into his car and asked to go to Forthriver Road near the dock centre. Mr U drove to the Forthriver Road near the dock and dropped off his fare. He then did a u-turn and pulled onto the left side of the road to see if any cars were coming before he moved off. Just before he made the turn he called his dispatcher to advise that he was free and he had been given another address to go to on the Forthriver Way. As he checked his mirror, the front door of the cab was opened. An arm, pointing a gun, appeared in the window, followed by a masked head. Mr U, with some presence of mind, said he already had a fare but the gunman said "You're going with us". The gunman got into the passenger seat and two other persons also wearing masks climbed into the back. The man in the front seat gave him directions. Eventually he was told to stop and get out of the car. Two men got out and one man then got in the driver's seat, stalled the car, started it again and drove away.
- 1.20 Mr U was taken by the other two men up a grassy bank and then down a lane close to the flats. It was apparently very dark there. One of the men told him he was to stay

¹ Statement, dated 12 February 1989

there for ten or fifteen minutes and that what had happened was for “the cause”. After about fifteen minutes one of the men said to the other “let’s go”. They told the taxi driver to stay for another five minutes and they walked away toward Forthriver Road. After about five minutes the taxi driver also walked towards Forthriver Road. He saw another [taxi – company name redacted] coming and he waved it down. The driver radioed in to advise that he had picked up Mr U and was taking him to the police station.

- 1.21 Mr U advised the police that all three men in his cab were wearing black hoods with the eyes and mouth cut out. They were all wearing green camouflage three-quarter length jackets. He said that the three men appeared to be well-built, about 5’10” or 11” and there didn’t appear to be much difference in their build.

iii. The neighbour’s statement

- 1.22 On 12 February 1989, around 7.30pm, one of Patrick Finucane’s neighbours² was in her home when she heard what sounded like a number of bangs. She looked out of her front window and saw a man getting into a car almost outside Patrick Finucane’s house directly across from hers. She astutely noted the number of the car as [registration redacted]. Although she wasn’t sure of the colour of the car, she thought that it was red. The man she saw getting into the car she described as being about 6 feet tall with a broad build. His hair appeared to be long and she got the impression he may have had a moustache. Another man got into the passenger side of the car. She noted that the car did not manage a clean departure. Rather it appeared to hesitate or slow down before it left Fortwilliam Drive. She said that the car had been facing towards the city on the same side of the road as the Finucane house.

- 1.23 Later on the evening of the shooting, the abandoned taxi was found adjacent to [house number redacted] Woodvale Road. An officer went to the scene, took measurements and produced a sketch map showing the position of the red Sierra in relation to the Finucane home. Police identification officers also examined the car. They could not find any fingerprints. Material was taken from the seats of the vehicle for forensic

² Statement of 13 February 1989

examination. The police noted that the taxi driver's change was still in place and this appeared to confirm that robbery was not a motive in the hijacking of the cab. It is unfortunate that the material taken from the taxicab was not preserved after the initial examination.

- 1.24 It can be seen that the initial investigation was carried out promptly and efficiently. However, it must be pointed out that there were some very disturbing statements made by the Senior Investigating Officer Detective Superintendent H on 13 February 2002. He indicated that important information was withheld from him. For example he was never told of the role or work of Brian Nelson, the agent for the Force Research Unit (FRU) of the Army. Nor was he told of the role or work of William Stobie, an agent for the Special Branch (SB) of the Royal Ulster Constabulary (RUC). Both men possessed information relevant to the investigation of the Finucane murder. Officer H stated that, had he known of either of those men, it would have led him to undertake further investigations which would have been extremely helpful to him.
- 1.25 There can be little doubt that there was very little cooperation either between Army intelligence (FRU) and Special Branch intelligence or between RUC Special Branch and RUC CID officers. Further, the Special Branch of the RUC was controlling the situation. Quite simply, they did not make available material implicating their agents to the Senior Investigating Officer and his team.
- 1.26 It is also important to remember the heavy workload that this officer then carried. The Patrick Finucane killing was the seventeenth murder investigation in which he was the senior officer. It is an indication of the tenor of the times and an example of the seemingly endless acts of senseless violence the community endured.

The prevalence of violence in Northern Ireland

1.27 Northern Ireland was a very violent society for some years both prior and subsequent to 1989. Acts of violence seemed to be the norm. The IRA or more often the PIRA committed many violent crimes, including bombings, shootings, arson and attempted killings. The Loyalist terrorist organisations were equally violent. There seems to have been an endless chain of one act of violence requiring a reply from the other side. The statistics reveal that between 1966 and 2001, thousands of people were killed by Republican and Loyalist organisations.

1.28 The following statistics are quoted from the book “Lost Lives” by McKittrick, Kelters, Feeney and Thornton.³

Overall Deaths by Year

1966	3	1970	29	1980	86	1990	84	2000	19
1967	0	1971	180	1981	118	1991	102	2001	4
1968	0	1972	497	1982	112	1992	91		
1969	19	1973	263	1983	87	1993	90		
		1974	304	1984	71	1994	69		
		1975	267	1985	59	1995	9		
		1976	307	1985	66	1996	22		
		1977	116	1987	106	1997	22		
		1978	88	1988	105	1998	57		
		1979	125	1989	81	1999	7		

TOTAL : 3665

³David McKittrick, Seamus Kelters, Brian Feeney and Chris Thornton “Lost Lives: The stories of men, women and children who died as a result of the Northern Ireland Troubles” (Mainstream Publishing Company (Edinburgh) Ltd: 2001 Edition) at pp 1496-97

Responsibility for Deaths

Republicans	2148
Loyalists	1071
All Security Forces	365
Other	81
TOTAL	3665

The Government intelligence network

- 1.29 It is the duty of any Government to protect its citizens from criminal acts of violence. That protection should extend to all citizens whatever their colour or creed. In order to provide that protection within the United Kingdom, the Government, in the best of good faith, set up systems of reconnaissance and intelligence gathering undoubtedly because it was thought that it was only by these means that the security of citizens could be assured. As a result of the emergency situation which existed in Northern Ireland, there was a need for Governmental agencies whether Army or Police to gather information. Thus it should come as no surprise that the RUC and the Army employed agents in order to gather information that would assist them in their efforts to combat violence and save lives. Ideally those systems of intelligence would be required to abide by specific guidelines that would set out the limits of permitted intrusiveness and the requisite degree of control of agents. If agents are not adequately controlled and prohibited from committing criminal acts they will increase, not decrease, the level of homicidal violence.
- 1.30 In light of the existing scale of violence, it is evident that the Government of the United Kingdom had to take steps to protect its citizens. However, apart from the necessary exceptions that must exist during times of war, it is the paramount duty of any Government to establish and maintain the rule of law and to ensure that no one is above the law. This is a fundamental and requisite principle of democratic Government. Accordingly, the need to gather intelligence cannot justify providing a mantle of protection to those who are parties to murder.
- 1.31 At the time of the Finucane murder, the Army conducted its intelligence operations through the FRU, which was established in 1982. The name of the unit was changed in 1991, though, for purposes of this report, the unit will consistently be referred to as FRU. According to one soldier working in FRU, the mandate of the unit was “to save life, protect people and property, and defeat terrorists”⁴. One of the chief means used to attain these goals was the gathering of information from agents who had successfully infiltrated paramilitary organizations. The Commanding Officer FRU

⁴ Statement of Soldier “Z”, OC East Detachment FRU from November 1987-September 1990, made 10 December 1990

(CO FRU) exercised authority over the unit, although he reported to others in the chain of military command.

- 1.32 The RUC, through its Special Branch (SB), occupied a superior position in the intelligence network. SB ran its own agents and also collected intelligence from external agencies, such as FRU. SB was responsible for disseminating incoming intelligence to appropriate agencies. More importantly, it was also responsible for determining what, if any, action should be taken as a result of information received. Within Northern Ireland, the RUC SB assumed a degree of primacy in matters of intelligence. According to Officer I, who was the Deputy Head of SB between September, 1987 and December, 1989: “The RUC SB, consistent with HMG policy in Northern Ireland, did take the lead in exploitation and or the use of all intelligence from whatever source”.⁵ If incoming intelligence was determined to be sufficiently important, it was recorded in the SB “Intelligence Book”. A separate volume, the SB “Threats Book” identified persons whose lives were in jeopardy, and recorded any action taken to respond to or divert the threat. The Head of Special Branch (HSB) maintained general authority over the unit, with assistance from Regional Heads situated in Belfast (Castlereagh), the South (Armagh) and the North (Londonderry). Special Branch was sometimes referred to as “E” Department. Since 2001, law enforcement responsibilities in Northern Ireland have been carried out by the Police Service of Northern Ireland (PSNI).
- 1.33 Finally, the Security Service (SS) discharged several important functions within the intelligence community. Like FRU and SB, SS collected intelligence directly through its own agents. It also exercised a supervisory role aimed at coordinating the intelligence efforts of the various agencies working within the region. The Director and Coordinator of Intelligence (DCI) stationed at Stormont, had ultimate responsibility for policy, direction and coordination of intelligence work undertaken within Northern Ireland. Under the authority of the DCI, representatives of the Security Service worked with both FRU and RUC SB. However, the Security Service representatives did not, as a general rule, become involved in the day-to-day intelligence operations of those agencies.

⁵ Statement of Officer I, dated 16 January 1990

1.34 Before dealing with these agencies in greater detail it may be helpful to set out my definition of collusion as it relates to the actions of these agencies.

Definition of collusion

- 1.35 How should collusion be defined? Synonyms that are frequently given for the verb to collude include: to conspire; to connive; to collaborate; to plot; and to scheme.
- 1.36 The verb connive is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take no notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way; to let something ride; see for example the Oxford Compact Thesaurus Second Edition 2001.
- 1.37 Similarly the Webster dictionary defines the verb collude in this way: to connive with another: conspire, plot.
- 1.38 It defines the verb connive
1. to pretend ignorance or unawareness of something one ought morally, or officially or legally to oppose;
to fail to take action against a known wrongdoing or misbehaviour – usually used with connive at the violation of a law.
 2.
 - (a) to be indulgent, tolerant or secretly in favour or sympathy;
 - (b) wink at youthful follies;
 - (c) to cooperate secretly: to have a secret understanding.
- 1.39 In the narrower context how should collusion be defined for the purposes of this inquiry? At the outset it should be recognised that members of the public must have confidence in the actions of Governmental agencies, particularly those of the army and the police force. There cannot be public confidence in Government agencies that are guilty of collusion or connivance in serious crimes. Because of the necessity for public confidence in the army and police, the definition of collusion must be reasonably broad when it is applied to actions of these agencies. This is to say that army and police forces must not act collusively by ignoring or turning a blind eye to

the wrongful acts of their servants or agents or supplying information to assist them in their wrongful acts or encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in these important agencies.

- 1.40 In determining whether there are indications of state collusion in the murder of Patrick Finucane, it is important to look at the issue from two perspectives. First, it must be seen whether the documents indicate that the action or inaction of Government agencies might have directly contributed to the killing of Patrick Finucane by the Ulster Defence Association (UDA). Secondly it is necessary to examine collusive acts which may have indirectly contributed to the killing, by generally facilitating the terrorist activities of the UDA. That is, the evidence may reveal a pattern of behaviour by a Government agency that comes within the definition of collusion. This evidence may add to and form part of the cumulative effect which emerges from a reading of the documents. Both perspectives will be considered in determining whether the evidence indicates that there have been acts of collusion by Government agencies.

The Force Research Unit (FRU)

1.41 At the outset it may be helpful to describe in very simple terms the documents used by Army (ie FRU) personnel to record, comment upon and inform RUC SB and Security Service of the activities of agents and the information acquired from them. The one that will be most frequently referred to is a Contact Form (CF). This was used whenever an Agent met his Army handler or handlers. It recorded the information provided by the agent together with the handler's comments. If the Agent telephoned his handlers, the conversation was recorded on a Telephone Contact Form (TCF). The information the Army considered most pertinent and useful was then set out in a document entitled Military Intelligence Source Report (MISR). Copies of MISRs were sent to RUC (SB). There were, as well, daily meetings involving members of FRU and RUC Special Branch. At that time the content of CFs and TCFs might be discussed.

A. Nature of CFs and TCFs and Source Reports

1.42 In the Army (FRU), CFs and TCFs constituted the complete daily or weekly records of the intelligence gathered from agents. Within RUC SB, Source Reports were used to record this information. These documents are akin to the daily or weekly business records of commercial companies that are routinely used as evidence of the business conducted by those companies. CFs, TCFs and Source Reports report the state of intelligence gathering in FRU and RUC SB at any particular time.

1.43 These are current records which would not be kept if they were not considered to be important or significant. They can, I believe, be relied upon as an indication of the intelligence gathered from agents and thus the knowledge of FRU and RUC SB at any particular time. They are a significant part of the material I must work with in reaching my conclusions.

1.44 Similarly gaps, omissions, or deviations from the ordinary pattern of intelligence gathering activities may become significant in drawing inferences from the written material.

B. Brian Nelson

i. Recruitment and re-recruitment

1.45 In 1985 Brian Nelson walked in off the street to offer his services to the Army as an agent. He had previously served in the British Army. He had once been convicted of a terrorist offence. Nevertheless he was accepted and started to work as an agent for the FRU. At this time he was a member of the UDA and acting as an Intelligence Officer for that organisation in West Belfast.

1.46 There are two worrisome aspects of Nelson's first tour of duty as an agent in 1985-86. First, Nelson reported that he had, of his own volition, provided intelligence not to the UDA but to the Ulster Volunteer Force (UVF)⁶. He stated if anything was to be done about "these two people (possible targets) UVF would do it". The second involved his work in the targeting and shooting of Target D on 27 September 1985. Nelson advised his handlers that he was required by an executive of the UDA to provide a target from among the Sinn Fein councillors⁷. Nelson also stated that he was told the final choice was his. As it turned out, Loyalist H (a high-ranking UDA member) may have given the name of Target D, a member of Sinn Fein, to Nelson⁸. In any event, Target D was clearly identified as a UDA target⁹. According to later reports, UDA members were told that they were going to have to start acting on the targeting information and specifically on Target D as one of the three Sinn Fein members targeted.¹⁰

1.47 Despite these numerous references to the targeting of Target D, no warning was given to him. He was shot at his home on 27 September 1985. Although he was seriously wounded, Target D survived the attack. The extent of Nelson's involvement in the targeting of Target D may well have made him a party to the attempted murder.

⁶ CF 2 May 1985

⁷ CF 1 August 1985

⁸ CF 8 August 1985

⁹ MISR 8 August 1985

¹⁰ CF 16 August 1985; CF 29 August 1985; MISR 13 September 1985; CF 19 September 1985; MISR 19 September 1985

- 1.48 In 1986 Nelson left Northern Ireland to go to Germany with his family. His aim was to break his links both with the paramilitary organisations and with FRU.
- 1.49 Despite his earlier questionable activities, the Army (FRU) took steps to bring Brian Nelson back as an agent in 1987. It was hoped that he would acquire the position of intelligence officer for UDA/Ulster Freedom Fighters (UFF). Army personnel went to Germany and spoke to Nelson. He was told that a house would be provided for him and that he would receive an income of £200 per week for his services as an agent. Eventually the terms were agreed upon and Nelson returned to Northern Ireland.
- 1.50 There was controversy surrounding his re-engagement from the beginning. It is the Army's position that he was engaged with the knowledge and approval of the Security Service. However Security Service states that it did not approve of Nelson's re-recruitment and, in fact, voiced its disapproval. There are also differences between these two agencies as to the payment of Nelson. The Army was of the view that the agents were paid for by the Security Service whereas that branch of Government has always taken the position that Army agents were paid by the Army. Despite the position of the Security Service that it objected to the rehiring of Nelson it appears from certain documents that the Security Service would conditionally approve his hiring if Nelson obtained the position of Intelligence Officer for UDA.¹¹
- 1.51 It was not long after his return that Nelson did indeed gain the position of intelligence officer for the UDA in Belfast. His responsibilities gradually increased until he had a significant role to play as an intelligence officer for the entire province.
- 1.52 It will be necessary to review in some detail the work undertaken by Nelson in order to demonstrate the trust and confidence placed in him by the Army, the breadth of his role as an intelligence officer, and the extent of his activities that could be classified as criminal.

¹¹ "Loose minutes" prepared by a Security Service officer with the role of ASP (Assistant Secretary Political), dated 19 February 1987; 2 March 1987

ii. South African arms transaction

- 1.53 The Army appears to have at least encouraged Nelson in his attempt to purchase arms in South Africa for the UDA. Nelson certainly went to South Africa in 1985 to meet an arms dealer. His expenses were paid by FRU. The Army appears to have been committed to facilitating Nelson's acquisition of weapons, with the intention that they would be intercepted at some point en route to Northern Ireland.¹²
- 1.54 Whether the transaction was consummated remains an open question, although, in September 1985, Nelson reported to his handlers that the deal fell through due to the inability of the UDA to raise the necessary funds for the purchase.¹³ The evidence with regard to the completion of the arms transaction is frail and contradictory. In any event, it is not necessary to go into any great detail with regard to the result. I mention the proposed transaction simply as an indication of the trust that had been reposed in Nelson by FRU.

iii. Nelson as UDA intelligence officer

(a) Creation and dissemination of "P" Cards

- 1.55 Before reviewing Nelson's targeting activities it will be helpful to consider some of the projects he undertook in his role as an Intelligence Officer in the UDA.
- 1.56 Brian Nelson gave several statements under caution following his arrest in 1990. Among other things, Nelson spoke at length about the creation, use, and dissemination of what came to be known as "P" cards or "personality cards". These cards served as the primary source material for the UDA. They were used to facilitate the targeting of individuals that were marked for attack. During the period that he was the Senior Intelligence Officer, Nelson collected, augmented and maintained a vast collection of "P" cards which, together with other material, comprised Nelson's "intelligence (or intell) dump".

¹² CF 24 July 1985

¹³ CF 5 September 1985; CF 27 September 1985

- 1.57 Nelson became involved in the creation and dissemination of “P” cards following his re-recruitment in 1987. As the Senior Intelligence Officer, it was Nelson’s responsibility to build up an efficient intelligence network that would allow the organisation to target known Republicans for possible attack.¹⁴ Upon his return from Germany, the UDA provided him with a large cardboard egg box containing documents and photomontages relating to known PIRA, INLA and Sinn Fein personalities. This raw material served as the starting point for Nelson. He acquired hundreds of blank index cards and then collated and organised the intelligence data. One card was assigned to each individual. Nelson would record personal details including physical descriptions, addresses, and any other pertinent facts. If a photograph was available from a montage or other source, he would staple it to the card. Later, information concerning these targets was recorded in the UDA computer.
- 1.58 Over time, old “P” cards were updated and new cards were created. Ultimately, the collection became “an index system of intelligence on all Republican personalities.”¹⁵ To maintain the system, Nelson relied upon various items of information, including radio transmissions, electoral registers and Republican newspapers. However, his primary source material consisted of photo montages and handwritten information acquired from either the Military or the RUC. In his 1990 statement, Nelson estimated that approximately 90% of the material he worked with had come from the Ulster Defence Regiment (UDR).
- 1.59 “P” cards were freely disseminated within the UDA. Nelson would provide the cards to UDA officials who were inquiring about specific targets. On various occasions, Nelson provided a large quantity of cards to persons involved in the planning and execution of attacks on UDA targets. For example, Nelson reported that, in the summer of 1989, Loyalist J asked for “P” cards on all Sinn Fein members in Belfast. On another occasion, Nelson provided 40 “P” cards to Loyalist B, including one pertaining to Target G. There can be little doubt that the information contained on the “P” cards, including the photo montages, was of considerable value to those who planned “close quarter attacks” (CQAs).

¹⁴ This is confirmed by CF 7 September 1987 item 6.

¹⁵ Statements of Brian Nelson, 1990

1.60 Nelson's statements regarding the creation and dissemination of "P" cards are confirmed in several respects by the CFs maintained by FRU.¹⁶ In his statement, Nelson asserted that Military Intelligence was advised whenever he received montages or other intelligence information. According to Nelson, FRU kept photocopies of his "P" cards, and knew that these documents were being turned over to other members of the UDA. From the CFs it can be seen that Nelson's handlers were well aware of all his activities pertaining to the personality cards.

iv. Targeting

1.61 After Nelson's re-recruitment there is no doubt that FRU understood that he was targeting individuals for the UDA and that this was his prime function. In February 1989, (just six days before Patrick Finucane's murder), Nelson's handler noted that "Nelson initiates most of the targeting, although it is often unclear when the targeting has been completed and an attack is to take place. Of late, Nelson has been more organised and he is currently running an operation against selected Republican personalities".¹⁷

1.62 It is unnecessary to list all the instances in which Nelson was involved in targeting various persons. However, it is helpful to look at some of the incidents that occurred either prior to the murder of Patrick Finucane or shortly thereafter.

(a) The murder of Terence McDaid

1.63 In September 1987 Nelson was targeting Declan McDaid.¹⁸ Various CFs recorded during September, November and December 1987 confirm that the UDA was targeting Declan McDaid and preparing to murder him.¹⁹

¹⁶ CF 14 September 1987; CF 26 October 1987; CF 31 March 1988; CF 23 May 1988; CF 27 July 1988

¹⁷ CF 6 February 1989

¹⁸ CF 23 September 1987

¹⁹ CF 25 September 1987; CF 29 September 1987; TCF 27 November 1987; CF 1 December 1987; MISR 1 December 1987

- 1.64 The documentation in Nelson's possession showed the address of Declan McDaid to be [address redacted]. Documents indicate that, in the spring of 1988 Nelson, (with a UDA colleague Loyalist F) carried out a reconnaissance at that address.²⁰
- 1.65 Nelson later went to the library and apparently got the address of [address redacted] for a Maura McDaid. He then wrote [address redacted] on the index card pertaining to Declan McDaid. He also noted that Declan was possibly staying at that address. The [address redacted] address was, however, that of Terence McDaid, Declan's brother. Thus, Nelson inadvertently began to target Terence as a result of the error in the address. Nelson then gave the particulars of the home address of Terence McDaid to Loyalist F of the UFF with the result that the hit team sent to assassinate Declan McDaid killed Terence on 10 May 1988.
- 1.66 Nelson was later charged with the murder of Terence McDaid. In 1990 he entered a plea of guilty to conspiracy to murder Declan McDaid and received a sentence of 10 years' imprisonment. (See Appendix 2) Although Declan McDaid was known to be a target as early as September 1987, he was never given any warning by the RUC and certainly his brother Terence received no warning.

(b) The shooting of Target E and the targeting of Target F

- 1.67 Nelson reported in August 1987 that Target F was to be hit soon.²¹ He was carrying out surveillance on Target F with Loyalist J and reported that there was a high degree of activity on this target.²²
- 1.68 Later Loyalist F apparently took over the targeting of both [name redacted] brothers, Target E and Target F, and asked Nelson for all his information on them.²³
- 1.69 On 2 June 1988, Loyalist J told Nelson to concentrate his efforts on Target E. Later that month Nelson reported that Loyalist K was also looking for the [name redacted-

²⁰ CF 19 April 1988; MISR 19 April 1988

²¹ MISR 4 August 1987

²² MISR 18 August 1987

²³ CF 26 October 1987

Targets E and F] brothers.²⁴ Nelson made enquiries and traced the [name redacted – Targets E and F] to a building site where they worked.²⁵ Target E was shot at his home on 17 August 1988. Fortunately he survived the attack.²⁶

1.70 Nelson advised his handlers that his brother-in-law Loyalist A, of the UVF, was involved in the shooting. Nelson had previously given Loyalist A 20 intelligence documents. Of these he could recall the names of only four persons.²⁷ Nelson also reported that he had moved an Ulster Volunteer Force (UVF) weapon for Loyalist A, just before Target E was shot.²⁸ A report reveals that the gun used to shoot Target E was the same weapon that was used to kill Terence McDaid, another of those Nelson targeted.²⁹

1.71 Nelson reported to his handlers that the UFF were to have attacked Target E on 24 August 1988 while wearing a postman's uniform but were "beaten to it" by the UVF.³⁰

1.72 There was no warning given to Target E or his brother Target F although they were reported as being targeted by Nelson from 4 May 1987 through June of 1988. Indeed, many of the CFs and MISRs specifically referred to Target F and Target E as "long standing targets for the UDA."

(c) The targeting and shooting of Target C

1.73 In Nelson's first term as an agent for FRU, there is a clear indication that Target C was being targeted by the UDA.³¹ Nearly two years later, Nelson reported that:-

(a) currently UDA in Belfast are targeting the following Republicans with a view to assassination:

²⁴ CF 24 June 1988

²⁵ CF 30 June 1988

²⁶ TCF 18 August 1988

²⁷ CF 23 March 1988

²⁸ CF 16 August 1988

²⁹ TCF 18 August 1988

³⁰ CF 23 August 1988

³¹ MISR 29 August 1985

1. [name redacted]
2. [name redacted]

(b) the UDA are also targeting the following vehicle:

[registration redacted]³²

- 1.74 The CF containing that information indicates that this license number was that of a blue Ford Granada belonging to Target C³³ [address redacted]. From this information it could reasonably be inferred that Target C was the target. It may or may not be a matter of any significance that this page is missing from HQ NI CF. On 22 May 1987 Target C was shot at his home by the UDA/UFF. Fortunately he survived.³⁴
- 1.75 The Army's position was that the warning of individuals was the exclusive responsibility of the RUC Special Branch. No warning was given to Target C even though the RUC SB would have been informed through a MISR that he was being targeted by the UDA. Nelson continued to target Target C and reported seeing him at [a hotel – name redacted] in July 1988. Nelson entered a plea of guilty to conspiracy to murder Target C at his trial in January 1990. (See Appendix 2)

(d) The conspiracy to murder Target G

- 1.76 Target G was extensively targeted by Nelson on behalf of the UDA. He also carried out extensive observations on Target G's home. This is confirmed by a number of CFs and TCFs³⁵. While plans were formulated, and the UDA was reported by Nelson to be "keen to see Target G shot"³⁶ no attacks were carried out.
- 1.77 The extent of Nelson's targeting in this matter amounted to a criminal act. He was charged with conspiracy to murder Target G in 1990. He entered a plea of guilty and

³² CF 18 May 1987

³³ CF 18 May 1987

³⁴ CF 29 May 1987; CF 15 December 1987; MISR 21 January 1988

³⁵ CF 12 August 1987; MISR 12 August 1987; CF 13 August 1987; TCF 26 January 1988; CF 4 February 1988; CF 17 February 1988; CF 3 March 1988; MISR 4 March 1988; CF 9 March 1988; CF 12 April 1988; CF 26 October 1988

³⁶ CF 15 August 1987

was sentenced to 10 years in prison. He was also charged with collecting information likely to be of use to terrorists in planning or carrying out an act of violence. On this charge he was sentenced to four years imprisonment to be served concurrently with his other sentences. (See Appendix 2)

- 1.78 There does not appear to have been any prior warning given to Target G despite the reports of the extensive surveillance of Target G's home carried out by Nelson.³⁷

(e) The shooting of Target B

- 1.79 In November 1987, Nelson informed his handlers that he had shown Loyalist F a list of Sinn Fein members and from it Loyalist F had picked the names of Target A and Target B.³⁸ Later CFs reveal that Nelson also prepared personality cards on both of these people and gave them to Loyalist F.

- 1.80 On 7 December 1987 Target B was shot at his home and seriously injured.³⁹ The following day when Loyalist H met Nelson he was in possession of the "P" cards for Target A and Target B. He tore up the Target B intelligence card and handed Nelson the card pertaining to Target A.⁴⁰ The fact that the UDA had these "P" cards' was recorded in a MISR which would, in the ordinary course, have been sent to RUC SB.⁴¹

- 1.81 No prior warning was given to Target B.

(f) The targeting of Target S

- 1.82 In a statement given in January 1990, Nelson indicated that in February 1988 he was at the UDA headquarters checking photographs of targeted individuals against Kelly's Directory for current addresses when he was joined by Loyalist J and Loyalist F. Loyalist J referred to the photographs as being "good stuff" and said "we want to get

³⁷ CF 17 February 1988

³⁸ CF 24 November 1987; MISR 24 November 1987

³⁹ CF 10 December 1987

⁴⁰ CF 10 December 1987

⁴¹ MISR 10 December 1987

into it right away”. After looking at the photographs, Loyalist F said “I’ll take this one” referring to a picture of Target S. In his statement, Nelson went on to say that he completed the P Card on Target S. Nelson told his handlers that, on 1 March 1988, while at the UDA headquarters in Shankill, Loyalist F showed an interest in Pacific Avenue, particularly the address of Target S.⁴² He told Nelson he was concentrating his efforts on this street.

1.83 On 12 March 1988 two masked men burst into the home of Target S at [address redacted] and terrorised the family. Fortunately, Target S was away at that time. According to Nelson, it was the Loyalist F team that had attempted to shoot Target S.⁴³

1.84 There was no warning given to Target S that he was being targeted.

(g) The attempted murder of Target L

1.85 The material reviewed reveals that the case of Target L represents the only instance where the work of Nelson and the cooperative efforts of FRU and RUC SB actually saved the life of a targeted Catholic. During the period from 6 April 1988 to 11 January 1990, handlers prepared at least 33 CFs and TCFs outlining the targeting of Target L. During this same period, 28 MISRs or MISR supplements were prepared. The FRU was alerted by Nelson that an attack was scheduled to take place on the morning of 20 May 1988.⁴⁴ It appears that FRU may in turn have alerted RUC SB.⁴⁵ Arrangements were made for a strong Army and police presence to be at the proposed crime site. As a result, that murder attempt was aborted. However, Target L remained a target of the UDA for some time thereafter and continued to be the subject of persistent surveillance and operational planning. It is significant that Nelson’s handlers were of the opinion that the reason the attempt on the life of Target L had to be aborted was because he (Nelson) had managed to get himself involved by driving the lead car.⁴⁶

⁴² CF 3 March 1988; MISR 3 March 1988

⁴³ CF 18 March 1988; MISR 18 March 1988

⁴⁴ CF 11 May 1988; CF 16 May 1988; CF 19 May 1988; TCF 20 May 1988, 7.20hrs; CF 23 May 1988

⁴⁵ Report dated 20 May 1988. sent by East Det FRU to TCG Belfast, Source Unit

⁴⁶ TCF 20 May 1988, 7.10hrs; TCF 20 May 1988, 9.20hrs

1.86 Notwithstanding the aborted attack and prolonged targeting by the UDA, Target L was never warned that his life was in danger.

(h) The attempted murder of Target R

1.87 Nelson reported to his handlers that, in April 1988, he and Loyalist F carried out a reconnaissance of the home of Target R at [address redacted].⁴⁷ Nelson followed this up by preparing an intelligence targeting document. He also stated that, on 15 September 1988, Loyalist F had asked him who was of interest at [address redacted] and that he gave Loyalist F the name of Target R. Nelson confirmed the details that he had given to Loyalist F after checking his intelligence material. On 16 September 1988, gunmen broke down the door of [address redacted] and fired six shots into a bedroom which was occupied at the time by the [name redacted] family. The family had barricaded themselves in the bedroom with a wardrobe across the door. Nelson twice called his handlers with regard to the attempted hit on Target R stating “it was ours this morning.”⁴⁸ Loyalist F admitted his responsibility for the attack to Nelson and provided him with the details.⁴⁹

1.88 No warning had been given to Target R that he had been targeted.

(i) The murder of Gerard Slane

1.89 Nelson reported that, in September 1988, he and Loyalist I showed photographs of Irish Peoples Liberation Organisation (IPLA) members to persons who stated that they had witnessed the murder of a UDA member named Loyalist L. These people identified Gerard Slane as the gunman.⁵⁰

⁴⁷ CF 19 April 1988; MISR 19 April 1988

⁴⁸ TCF 20 September 1988

⁴⁹ CF 21 September 1988

- 1.90 Shortly thereafter, Nelson met Loyalist K and Loyalist I while they were discussing possible targets to focus upon. Nelson suggested Gerard Slane and produced photographs of him from his intelligence material. He gave them Slane's address as [address redacted]. Nelson also checked the electoral rolls for Slane's address.⁵¹
- 1.91 On 23 September 1988 two gunmen murdered Gerard Slane at his home. The next day, Nelson telephoned from Scotland where he was on holiday to tell his handlers of the attack.⁵² According to his reports, Nelson was asked by Loyalist J to write a statement claiming that the recent assassinations were carried out by the UFF.⁵³ This statement, together with photographs, would be printed in the Ulster magazine.
- 1.92 In 1990 Nelson entered a plea of guilty to collecting information likely to be of use to a terrorist, namely, identifying a person as being involved in the murder of Loyalist L. He was sentenced to four years imprisonment which was served concurrently with his other sentences. (See Appendix 2)
- 1.93 No warning was given to Gerard Slane or his family that he was being targeted.

(j) The attempted murder of Target M

- 1.94 On 6 October 1988, Nelson received information pertaining to some Republicans, including Target M. A MISR noted that Target M was being targeted by the UDA and that the UDA mistakenly believed his address to be 16 [street name redacted].⁵⁴ The handler was aware of the error, noting that "the most recent address for Target M is 10 [street name redacted] not 16 although the electoral register does not confirm this."⁵⁵ Nelson was involved in various targeting activities pertaining to Target M. On 18 October 1988, Nelson picked up Loyalist H and went to the reference library to check the electoral roll to confirm details relating to Target M. Loyalist K asked Nelson to check [street name redacted] for Target M's car. Nelson reported that he was unable to get into [street name redacted] because the cul de sac was blocked off.

⁵⁰ CF 12 September 1988

⁵¹ CF 21 September 1988

⁵² TCF 24 September 1988

⁵³ CF 16 October 1988

⁵⁴ MISR 20 October 1988

Loyalist K was then to take on Target M as his target.⁵⁶ In November 1988, Nelson carried out a reconnaissance of [street name redacted]. He could not find number 16. Nevertheless he reported back to Loyalist K, setting out Target M's details and his photograph. Target M's correct address was ascertained when Loyalist K and Loyalist M carried out their own reconnaissance and observed that number 10 had a security door.⁵⁷ Later, gunmen entered 10 [street name redacted] and held an 18 year-old boy at gunpoint while the house was searched. Fortunately, Target M was not at home.⁵⁸

- 1.95 Nelson entered a plea of guilty in January 1990 to conspiracy to murder Target M. (See Appendix 2) Once again, no warning was given to Target M that he was being targeted.

(k) The attempted murder of Target N

- 1.96 At about the same time that Nelson was targeting Target M, he was also targeting Target N. On 18 October 1988, Nelson and Loyalist H went to the library to check voters registers for Target N and one other target to confirm their addresses.⁵⁹ These details were given to Loyalist J who said he would give them to Loyalist F. It was also suggested that the two targets should be attacked at the same time as they lived close together. On 7 November 1988, Nelson reported that he had called on Loyalist F the previous week and had given him Target N's address and photograph. Nelson also informed his handlers that Loyalist F said that he would deal with Target N.⁶⁰ A series of MISRs which, like all other MISRs, would have been sent to RUC Special Branch, detailed the UDA targeting of Target N, including the fact that the UDA had a photograph of him.⁶¹

- 1.97 On 14 November 1988, Nelson telephoned his handlers to give details of an attack on Target N which had occurred two and a half hours earlier. At 8.30 in the morning gunmen kicked in the Target Ns' front door and found only Target N's wife and

⁵⁵ CF 26 October 1988

⁵⁶ CF 26 October 1988

⁵⁷ CF 7 November 1988; MISR 10 November 1988

⁵⁸ CF 9 November 1988

⁵⁹ CF 26 October 1988

⁶⁰ CF 7 November 1988

⁶¹ MISR 22 October 1988; MISR 1 November 1988; MISR 11 November 1988

children at home. The UDA blamed Nelson for Target N's absence.⁶² Nelson's statement of January 1990 confirms his targeting of Target N and his identification of the house.

- 1.98 In January 1990, Nelson entered a plea of guilty to conspiring to murder Target N and, once again, was sentenced to 10 years to be served concurrently with the other sentences. (See Appendix 2) No warning had been given to Target N that he was being targeted.

(I) The attempted murder of Target P

- 1.99 The UDA began targeting Target P as a Sinn Fein activist in the autumn of 1987.⁶³ The following spring, Nelson reported an aborted attack on Target P which had been disrupted by the presence of a crowd.⁶⁴ No further action was taken regarding Target P until nearly a year later when the UDA decided to target a number of Sinn Fein members. In November 1988 Nelson reported that he had been asked to target a Priest, Father [name redacted], and that he was unhappy about this. His handler's response may be significant. Nelson was asked "why he did not suggest someone from Provisional Sinn Fein (PSF) or PIRA hierarchy."⁶⁵ Two months later, Loyalist J asked Nelson for all the information he had on Sinn Fein members in Belfast. Nelson gave him 14 of his intelligence (ie "P") cards. For 10 of these he recorded the names, but he told his handlers that he could not recall the names of the other four.⁶⁶

- 1.100 On 17 January 1989, gunmen burst into the home of Target P but found only Mrs P at home.⁶⁷ Nelson went to the UDA headquarters the following morning at which time Target P's "P" Card was returned to Nelson. This was one of the four cards which Nelson had failed to identify by name. It was eventually recovered from his intelligence dump.

⁶² CF 17 November 1988

⁶³ TCF 28 October 1987; MISR 28 October 1987

⁶⁴ CF 23 March 1988; MISR 23 March 1988

⁶⁵ CF 17 November 1988

⁶⁶ CF 10 January 1989

⁶⁷ CF 25 January 1989

1.101 Notwithstanding the extensive information about the targeting of Target P, both prior to the attempted murder and after, no warning was given to Target P.⁶⁸

1.102 In all the foregoing cases, the targeting occurred before the murder of Patrick Finucane. I would, however, like to make reference to one person who was targeted both before and after Patrick Finucane's death: Target O.

(m) The targeting of Target O, Solicitor

1.103 In a CF dated July 1988, under the heading "Forged Insurance Cover Notes –Loyalist E" Nelson is reported to have received three handwritten pages of targeting material.⁶⁹ One of them related to the targeting of Target O. An Appendix to the CF contains the actual targeting material. It provides: "Target O (Sos) spends a lot of time in [Bar name redacted] Antrim Road in the company of [name redacted], Solicitor (Sos). NB every Sunday Target O visits the [Bar name redacted] always some music. Parks the car (Merc) out on the road ie unprotected, he is always with his son (also Sos)." This material appears to indicate that Target O was the prime target of the UDA, although it is not presented in that way in the CF. Indeed, the text of the CF does not mention Target O by name.

1.104 Various additional references to the targeting of Target O can be found in CFs dated shortly after Patrick Finucane's murder. Just five days after the Finucane murder a "Source (other than Nelson) stated that Loyalist G, Loyalist J, and Loyalist K were overheard in the [Bar name redacted] saying that Target H and Target O would be next on the list". A handwritten note on the CF records the acronym "PIRA" next to Target H's name, and a handwritten note next to Target O's name reads "PIRA/INLA Solicitor."⁷⁰ It is reasonable to presume that these notes were placed on the document by FRU personnel. According to a different CF, another agent had reported that it was members of Loyalist H's battalion who had carried out the murder of Patrick Finucane on 12 February 1989. The same source went on to state that the UDA had been targeting Patrick Finucane for some time and that Target H (handwritten note

⁶⁸ CF 14 November 1989; TCF 23 November 1989

⁶⁹ CF 10 July 1988

⁷⁰ CF 17 February 1989

“PIRA”) was also being targeted by the UDA.⁷¹ Yet another agent confirmed this, stating: “They are planning to shoot three solicitors: Pat Finucane (recently murdered), Target H (SP632) and Target O (SP1998).”⁷² Another Report dated 21 February 1989, from one of the same agents stated that Patrick Finucane had been told by Target O prior to his death that he was being targeted by Loyalist paramilitaries.

1.105 Despite all these source reports, the SB’s Threats book contained only one reference to the targeting of Target O. Significantly, it did not appear until October 1989 some eight months after the warning was received. Even then it was decided that no further action was to be taken. Thus within days of Patrick Finucane’s murder there was evidence to suggest that other solicitors were also targets, yet nothing was apparently done to prevent further loss of life. Target O was never warned by FRU or RUC SB, although an officer involved in the Stevens I Inquiry did warn him after the team obtained the information referred to above.

1.106 Against this background it is now appropriate to consider the evidence pertaining to the targeting of Patrick Finucane.

v. The targeting and murder of Patrick Finucane
(a) FRU Documentation

1.107 The first reference to the murder of Patrick Finucane in the FRU documents is contained in a TCF of a telephone conversation between Nelson and his handler recorded at 10.20 on the morning of 13 February 1989.⁷³ This, of course, is the morning following the shooting of Patrick Finucane. In that very brief telephone conversation, which only lasted a minute, Nelson referred to a car he had purchased with the help of FRU and then went on to say this:

⁷¹ CF 16 February 1989

⁷² CF 17 February 1989

⁷³ TCF 13 February 1989

S(Source): It was ours this morning
H(Handler): Was it?
S: Yes
H: Ok thanks
S: See you tomorrow
H: Ok bye
S: Bye

The handler recorded the following on the TCF.

- a. Vengeful Check:
[registration redacted] blue CITROEN BX [Company name and address redacted], Belfast
One sighting in FALLS
- b. Comment: “Nelson is referring to the shooting of Pat Finucane at 1932 hrs on Sun 12 Feb 89. Two men, one armed with a handgun, kicked down the door of [house number redacted] Fortwilliam Drive and shot Patrick Finucane. Geraldine Finucane also received injuries. A car had been hijacked from [taxi company name redacted], Crumlin Road.”
- c. OC’s Comment: Passed to Source Unit before it was claimed on DOWNTOWN RADIO. [emphasis in original]

1.108 Although Nelson stated only that “it was one of ours this morning” the handler clearly understood that he was referring to the shooting of Patrick Finucane the evening before. Further the Officer Commanding commented that this was passed to the Source Unit before it was claimed on Downtown radio. If this is the first reference made by Nelson to FRU regarding Patrick Finucane, it raises the question as to how the handlers knew that the reference was to him, as opposed to another UDA target. One might also ask why the CO appeared to be anxious to show that this information was received before the murder was made public on radio. These questions become even more worrisome when the statement of Brian Nelson of 15 January 1990 is considered.

1.109 Before reviewing that statement it may be helpful to refer to some events that preceded and followed Patrick Finucane's murder. In the Autumn of 1988, the UDA had decided to target Father [name redacted].⁷⁴ Nelson was unhappy about this and so was the leadership of the UDA who later decided against murdering him. When Nelson's handlers learned of the UDA's interest in Father [name redacted] and Nelson's concerns, they proposed to Nelson that he suggest targeting someone from the PSF or PIRA hierarchy.⁷⁵ This is indeed the course that the UDA followed.

1.110 There is nothing to indicate that Patrick Finucane was associated with either the PSF or PIRA hierarchy. However, the documents do suggest that FRU and the UDA may have perceived him as being affiliated with PIRA. The following references to Patrick Finucane appear in FRU documents "Patrick Finucane, RC, 21 Mar 49(D) PIRA P2327". "PIRA" indicates that FRU associated Patrick Finucane with the Provisional wing of the IRA. "P2327" is a file reference number, indicating that FRU had a file on Patrick Finucane or a "P" card, or both. Neither such a file nor such a "P" card would appear to exist now. However, Nelson's handlers refer twice to a "P" card on Patrick Finucane in CFs prepared after his death. In both instances, the handler was dealing with information relating to a meeting believed to have taken place between Patrick Finucane and Gerry Adams the week before the murder. On 2 March 1989, the handler stated:

"The information regarding the meeting at the [hotel name redacted] Hotel was on Patrick Finucane's personality card. It is not known from whom the information originated."⁷⁶

1.111 A week later, in a similar context, the handler wrote that "Nelson reports that this information came from Loyalist J after the assassination and was on Patrick Finucane's personality card."⁷⁷ These entries do not indicate who prepared or possessed this "P" card. One of Nelson's handlers was questioned about the meaning of these references in 1993 by the Stevens team, specifically, whether the "P" card

⁷⁴ CF 17 November 1988

⁷⁵ See footnote 74

⁷⁶ CF 2 March 1989

⁷⁷ CF 9 March 1989

was Nelson's or FRU's. The handler stated "I cannot from the way that sentence is written be sure what it means."⁷⁸ Nelson denied having a "P" card on Patrick Finucane in his intelligence dump.⁷⁹ In any event, whether or not FRU ever possessed a "P" card on Patrick Finucane, it is clear from other evidence, including file references, that he was perceived by FRU to have PIRA connections.

1.112 It appears from FRU documents that, in the period just before Patrick Finucane's murder, Nelson was under pressure both from his UDA contacts and his FRU handlers to come up with better intelligence. This may be relevant when considering what actions Nelson would likely have taken in relation to any information he had about Patrick Finucane in the month of January 1989.

1.113 Nelson's handlers were growing concerned that he was not earning his salary and that little useful information was coming from him. The CF of 10 January 1989 stated:

"The time has come for Nelson to be hit with the facts. At the next meeting, handler will challenge Nelson to explain what he does with the spare £887 he has each month. Nelson will also be asked to tell handlers what he believes he does for this office and his motivation for doing it. Handler will explain what Nelson has done for the office, the last information to be exploited was an attempt on Target L's life which had to be aborted because Nelson managed to get himself involved.

If possible, and handler feels it is, Nelson will be directed towards another aspect of UDA matters such as finance or racketeering."⁸⁰

1.114 That same month, Nelson was also under pressure from the UDA. He was blamed for inadequate intelligence in some of the planned operations; for example, he gave no indication that Target P might not be at home at the time of a planned hit.⁸¹ He was also blamed for some errors in targeting, particularly pertaining to Terence McDaid.⁸²

⁷⁸ Statement of 9 December 1993, Incident S825 0210020P88998, Doc.S512J

⁷⁹ Statement of 19 April 1993

⁸⁰ CF 10 January 1989

⁸¹ CF 25 January 1989

⁸² See above at paragraphs 1.63-1.66.

Nelson apparently defended himself well, claiming that he did not have sufficient resources for proper targeting. At that point, he was given the task of targeting PIRA's Special Active Service Unit (SASU) in a scheme labelled "Operation Snowball."⁸³

1.115 Just a week before Patrick Finucane's murder, it would appear that Nelson had re-established his reputation with the UDA and his handler seemed pleased to note that "Nelson initiates most of the targeting, although it is often unclear when the targeting has been completed and an attack is to take place. Of late, Nelson has been more organised and he is currently running an operation against selected Republican personalities."⁸⁴ The latter is probably a reference to Operation Snowball.

1.116 The foregoing events should be taken into account when considering firstly, what Brian Nelson may have known about the targeting of Patrick Finucane in advance of the murder and secondly, what he may have told his handlers about it.

(b) Nelson's 1990 statement

1.117 While there is scant information about the targeting and murder of Patrick Finucane in FRU's records, Nelson's later statements to the Stevens team, made under caution, must be reviewed and considered carefully in light of their contents.

1.118 In Nelson's statement of 15 January 1990, he said that about 6-8 weeks prior to the Patrick Finucane murder he was alone with Loyalist J in a car. At this time Loyalist J said to him "I would really love to get that bastard Finucane". Nelson purported to say "who are you talking about" and Loyalist J replied "Pat Finucane the solicitor." Loyalist J went on to ask Nelson to find out where his office was and anything else that he could with regard to him. Loyalist J stated "I have been told by someone" (he did not say who), "that if I want to get someone really big, get Finucane, he is the brains behind PIRA. Forget about Adams".

⁸³ CF 25 January 1989

⁸⁴ CF 6 February 1989

1.119 Nelson related that two weeks before the murder, he was once again alone with Loyalist J in the car. Nelson asked him “did he still need the whereabouts of Patrick Finucane’s office?” The response was “No Brian I’ve got all that taken care of.” Nelson stated that he did not do any intelligence gathering on Patrick Finucane. However, he insisted that he passed on to his handlers all the information he had concerning the Finucane affair.

1.120 He went on to say that he knew Patrick Finucane was a very high profile solicitor whose work was mainly with Republicans. He said that he did not have any intelligence on Patrick Finucane but he did have a photograph of him that had been published in a spoof magazine titled An Phobcrap. He stated that a week before the murder, Loyalist J asked him if he had a photograph of Target I. He asked for a large picture, not the usual small montage-size photograph. Nelson replied that he had such a picture and could get it right away. Based on Loyalist J’s request, he felt sure that Loyalist J was looking for the photograph of Target I and Patrick Finucane that had appeared on the cover of An Phobcrap.

1.121 Together with Loyalist D and Loyalist J, he left the UDA headquarters on Shankill Road and went to his intelligence dump. Loyalist D was a member of the military section of the Woodvale Defence Association -----
----- . Nelson said that it was common knowledge that a large photograph of Target I and Patrick Finucane leaving the court house on the Crumlin Road together had been recently published in An Phobcrap. Indeed, the first issue of the magazine had just been published in December 1988. Nelson had actually contributed to the publication by supplying six small photographs that appeared just beneath the picture of Target I and Patrick Finucane.⁸⁵ Nelson stated that he collected the magazine, returned to the car and gave it to Loyalist J, who said it was fine. Loyalist J handed the magazine to Loyalist D. Loyalist D also observed that the photograph would “do fine”.

1.122 Nelson stated that he heard nothing more until the night of the murder when he was listening to his radio scanner on the police frequency. About 8pm, he heard the

⁸⁵ CF 12 December 1988

controller sending a car to a street in the Antrim Road area where reports of shots had been made and a person had been shot. He stated that he immediately checked the address in his Kelly's Directory and saw that the name listed at that address was Patrick Finucane, solicitor. He said that he should have known what was to happen and that he knew he would get in trouble with his handlers over his action in turning over the photograph of Patrick Finucane with Target I.

1.123 He said that he phoned his handler the next morning who asked him "who was it then" and he stated that he replied: "I know who it was I am just going to get confirmation now". It may be significant that this conversation does not appear in a TCF, as one would ordinarily expect. Nelson then drove to Loyalist J's house. Loyalist J first denied being involved, then claimed credit for the murder. He said "we were involved" and that Patrick Finucane was "their top man." According to Nelson, Loyalist J also conceded that he had obtained the photograph of Patrick Finucane from Nelson by devious means.⁸⁶ Nelson then phoned his handler and, as indicated in the TCF set out above, confirmed that "it was ours." Nelson went on to say that he later drew up the report for the Ulster magazine in which the UDA claimed responsibility for the murder of Patrick Finucane. That report echoed the words Nelson has attributed to Loyalist J; namely, that Patrick Finucane was the brains behind the IRA. It also made reference to the Republican activities of Patrick Finucane's brothers.

(c) Nelson's 1993 statement

1.124 In April 1993 Nelson gave a further statement.⁸⁷ In it, he confirmed that he had advised his handlers 6-8 weeks before the murder of his discussions with Loyalist J. However, at this time, he said that he did not know Patrick Finucane by name but just as a lawyer. This is clearly contrary to his 1990 statement. When confronted with the fact that there was no reference to that conversation with his handlers in the Army records, he replied that this may have been because his handler was waiting for the name of the target before putting the information in a report.

⁸⁶ CF 14 February 1989

⁸⁷ Statement dated 19 April 1993

(d) The document recovered at Stormont

- 1.125 The weight to be attached to Nelson's statement can only be determined at a hearing where the evidence of Nelson and the contrary evidence of his handlers could be tested by examination and cross examination in a public forum.
- 1.126 It is not for me to undertake the weighing of evidence. It is sufficient to find that there is evidence of collusion which warrants the holding of a public inquiry. Nelson's statements in 1993 and particularly in 1990 constitute such evidence. However there is also evidence in another document which could be found to support Nelson's 1990 statement.
- 1.127 The Stevens III investigation has continued and is still continuing. Sir John Stevens and his team have made available to me every newly discovered document that appeared to have any possible relevance to this Inquiry. I most appreciate this exemplary cooperation which continues to be of great assistance to me.
- 1.128 On 10 October 2002, the investigations carried out at Stormont led to the recovery of a document containing 171 typed pages. It is in a form that resembles the first draft of a book or article. There can be little doubt that it was prepared by Brian Nelson. There is no indication anywhere in the document that it was prepared for a solicitor in preparation for any legal proceedings. After reading this document I cannot see how it could be considered to be a privileged document.
- 1.129 Nelson refers to many instances when he carried out surveillance of targeted individuals. He has, as well, a short section pertaining to Patrick Finucane. It is set out below just as it appears in the document:

“Some two months before the actual shoot took place I was asked by Loyalist J to see what I could dig up on Finucane. At this time I informed my Handlers that Loyalist J was showing interest in this solicitor. A few weeks later I enquired from Loyalist J if he still wanted to check on him stating that I had been busy with other things. I was told by Loyalist J that he had found out what he needed to know. Some more time passed and during which Finucane

had been photographed leaving Crumlin Road Court in the company of Target I, a well known member of PIRA. This photograph was used in a spoof copy of the APRN which was produced by Loyalist E. On the Thursday prior to the murder of Finucane I was asked by Loyalist J if I had any copies of this spoof APRN. Loyalist J had asked me this in my car in the company of Loyalist D as we were on our way to Glencairn. In asking this Loyalist J had said to me they had got onto the whereabouts of Target I. Parking the car on the road I then went to [name redacted]'s flat and returned to the car with what Loyalist J required. On giving him the copy he in turn handed it to Loyalist D who after looking at the photograph folded it and put it into the inside pocket of the brown leather bomber type jacket that he was wearing. Finucane was murdered that coming Sunday. I received a considerable amount of deserved flak over this murder.”

- 1.130 It can be seen that this section is very similar to the statement Nelson made on 15 January 1990.
- 1.131 At the end of the document there appears what Nelson describes as a “brief resume of persons and places I was involved with or because of my position with the UDA from 1984-1990”. Number 38 in the list of 54 people and places is Patrick Finucane, with the word murder beside it. There are relatively few places named. Beside almost every name there is a word. Conspiracy appears in (34), Attempted Murder in (2), Murder in (8) and Robbery in (1).
- 1.132 This is a document clearly against his interest which must have been compiled by Nelson in 1990 or later.
- 1.133 It tends to support his 1990 statement. The questions it raises can only be answered in a public inquiry, where witnesses testify and their testimony is tested by cross examination.

(e) Do the documents support the inference that FRU had prior knowledge of the targeting of Patrick Finucane?

1.134 If, as Nelson states, Patrick Finucane was being targeted by the UDA and he so advised his handlers then that, in itself, would be evidence of collusion. This follows since if Nelson reported the targeting of Patrick Finucane to his handlers and FRU did nothing, that would be evidence that FRU turned a blind eye to information which indicated that Patrick Finucane's life was in danger. This would meet the test of collusion I have set out earlier.

1.135 A number of questions arise from the statements and what is contained in the CFs and TCFs. Firstly a query arises concerning the picture that Nelson allegedly obtained of Target I. Some would think it of considerable significance that, in his intelligence dump, Nelson had several good pictures of Target I alone including one full head and shoulders photograph taken from a magazine. Although there were 18 items either referring to, or depicting Target I by himself, there was only one picture of Patrick Finucane in his intelligence dump and that was the one taken with Target I on the steps of the courthouse.⁸⁸

1.136 It is clear that Nelson was aware of the significance of Patrick Finucane and his role as a lawyer. He thought of him as a very hot target. Some might wonder why, when asked for a picture of Target I, he supplied the only photo he had of Patrick Finucane. Further, if Nelson was aware of the significance of Patrick Finucane, would he not have given that information to his handlers? If he had given that information to his handlers, it would explain why his handlers were aware of who he was talking about in his very brief telephone call on the morning of 13 February 1989. Moreover, the exchange with Loyalist J that is said to have taken place 6-8 weeks before the murder is precisely the type of communication that Nelson forwarded to his handlers on a regular basis.

⁸⁸ Statement of [name redacted] dated 12 November 1990

- 1.137 In assessing the possibility of collusion, it is obviously important to know whether Nelson was aware that Patrick Finucane was being targeted by the UDA, and whether he passed that information on to his FRU handlers. The documentary evidence I have reviewed is not clear on these issues, rather it is contradictory.
- 1.138 Yet it would appear that FRU had a file on Patrick Finucane and that FRU associated Patrick Finucane with PIRA. This is confirmed by other references, such as in the radio logs made at the time of the murder.⁸⁹ It is not known what might have been contained in that file or whether the information related to the targeting of Patrick Finucane. Similarly, it is unclear whether there existed a “P” card on Patrick Finucane and, if so, when it was created and by whom.
- 1.139 Other information contained in FRU records seems to confirm Nelson’s statements that his handlers were aware of the Finucane targeting prior to the murder. In a CF dated 14 February 1989, the handler recorded Nelson’s account of his conversation with Loyalist J the morning after the murder.⁹⁰ Loyalist J admitted UFF responsibility for the killing and, according to Nelson, stated that he had indeed obtained the photograph of Patrick Finucane by devious means, ie, by requesting a large photograph of Target I which he knew would also contain Patrick Finucane’s image. Whatever one might think of Nelson’s statement concerning the photograph, it is significant that, two days after Patrick Finucane’s murder, FRU were aware that Nelson had been involved, perhaps unwittingly, in the targeting of Patrick Finucane.
- 1.140 Under those circumstances questions arise as to why nothing more was said about this in the CFs and TCFs. One might have expected the handler to question Nelson as to why he did not mention Loyalist J’s request sooner. It would have alerted FRU to the UDA’s expressed interest in targeting Target I and, possibly, might have raised concern about Patrick Finucane. This is especially so in light of the handler’s concern, expressed just a month prior to the killing, that Nelson was not doing enough for his salary.⁹¹ If the handler was informed about a potential target after that target had been hit, would Nelson not have been rebuked for his failure to pass along such vital

⁸⁹ See section entitled “Documentary Evidence Relating to Attitude”

⁹⁰ CF 14 February 1989

⁹¹ Paragraph 1.113, above

information? In the CFs there are several examples of handlers expressing their displeasure with Nelson for one thing or another.⁹² There is no reason to think that they would not have been critical of his conduct in relation to the Finucane murder, had they been seriously concerned.

1.141 These circumstances should be considered when assessing Nelson's 1990 and 1993 statements. In the former statement, he said that he was aware of the targeting of Patrick Finucane and passed on that information to his handlers. In the latter, he said he was aware that a solicitor was being targeted but he did not know that it was Patrick Finucane.

1.142 There are two CFs in which handlers assert in their comments that Nelson did not know about the targeting of Patrick Finucane in advance.⁹³ However, these comments must be viewed in light of all the other circumstances. While I need not come to any definitive conclusion on the matter, it does seem reasonable to infer both that Nelson would have been aware of the targeting of Patrick Finucane and that he would have given that information to his handlers. Prior to the Finucane murder, Nelson was being pressured by the UDA to provide better targetting information. It seems plausible, therefore, that Loyalist J would have included Nelson in the planned attack on Patrick Finucane and, as Nelson said in 1990, asked for information about the location of his office.

1.143 In late January 1989, Nelson was asked to coordinate a major operation against PIRA personalities (Operation Snowball). Even his handler remarked a week before Patrick Finucane's death that Nelson "initiates most of the targeting." It would seem incongruous, then, for Nelson not to have known of such a high-profile target. For what it is worth, Loyalist D, who Nelson says was with Loyalist J at the time the photograph was turned over, corroborates in most respects the version of events related by Nelson in his 1990 statement.

⁹² CF 4 January 1989; 5 January 1989; 10 January 1989; 25 February 1987; 24 November 1987; 3 May 1988; 19 July 1988; 6 December 1989

⁹³ CF 14 February 1989; CF 17 April 1989

- 1.144 There is one matter on which Loyalist D contradicts Nelson. Loyalist D told a journalist with the BBC Panorama programme that Loyalist J had specifically requested a photograph of Patrick Finucane, not Target I. According to Loyalist D, Nelson clearly knew that it was Patrick Finucane who was being targeted when he gave Loyalist J the photograph of Patrick Finucane and Target I.⁹⁴
- 1.145 If Nelson was aware that Patrick Finucane was being targeted, it does seem more likely that he would have passed that information on to his handlers, particularly when he knew that FRU was looking for more from him. If he had failed to pass on information of which he was aware or, as, he claims in his 1993 statement, he was vague about the identity of a target, the handlers would be disappointed with the quality of the intelligence they were getting. Yet no such indication of disappointment appears in the FRU documents.
- 1.146 In short the documents raise serious and perplexing questions regarding the extent to which FRU had advance knowledge of the targeting of Patrick Finucane. The inference could certainly be drawn from them that they had advance knowledge of the targeting. However these questions can only be satisfactorily answered by a public inquiry. The documentary evidence certainly indicates that such an inquiry should be held.

vi. Nelson's criminal acts

- 1.147 Throughout Nelson's tenure as a FRU agent, Home Office Guidelines clearly stipulated that all intelligence gathering operations were to be carried out in accordance with the laws of the land, and that neither agents nor their handlers were to become involved in criminal activity.
- 1.148 It is apparent from the CFs and TCFs that FRU was aware of Nelson's illegal activities. Nelson admitted that he committed crimes during his tenure as an agent for FRU. On 22 January 1992, he entered guilty pleas to no less than 20 terrorist related offences, including 5 counts of conspiracy to commit murder. On 3 February 1992, he was sentenced to serve a total term of 10 years imprisonment.

⁹⁴ Statement of Loyalist D to BBC Journalist, [name redacted].

- 1.149 Soldier “J”, the CO of FRU, testified on Nelson’s behalf at his trial seeking to mitigate the sentence that might be imposed.⁹⁵ During his testimony, Soldier “J” referred to the Home Office Guidelines that prohibited agents from engaging in criminal acts. He testified that these guidelines were both “inappropriate” and impossible to abide by in Northern Ireland because of the proliferation of terrorist activity in the region and the essential need for agents to maintain their cover. According to him, the reality was that an agent who has infiltrated a murderous organisation “is bound to get himself involved in some degree of criminality”. This view was shared, to some extent, by the Officer who was then in charge of RUC Special Branch, though, in his statement, he suggested that it was Special Branch policy to restrict agent involvement in terrorist crimes to a peripheral role.⁹⁶
- 1.150 Brian Nelson was at the centre of many of the criminal operations either attempted or carried out by the UDA. It is apparent from the CFs (and confirmed by the later guilty pleas) that Nelson played an active role in the targeting of individuals, sometimes on his own initiative. While his complicity in potentially serious and violent crimes was well known by his handlers, FRU did very little to restrict his activities. As an agent, he supplied a steady stream of information to the army. This information demonstrated the nature and extent of Nelson’s criminal acts, which were permitted to continue unrestrained. On occasion, Nelson was criticised by his handlers for becoming too openly involved in a targeting operation. However, the documents reveal that, very often, the concern was, not with the illegality of Nelson’s actions, but rather the fear that he might get caught and thereby compromise his security.⁹⁷
- 1.151 Other documents leave the impression that intelligence gathering was sometimes seen as an end in itself. There is a reference to Nelson obtaining a Limpet mine from the UVF in exchange for his provision of targeting information to Loyalist A.⁹⁸ The handler commented: “If this is successful, it will enhance Nelson’s standing with Loyalist J, particularly if the UVF carry out an attack on one of the targets for which he provided information”. An earlier CF stated that Nelson never knew precisely

⁹⁵ Testimony of Soldier “J” dated 29 January 1992

⁹⁶ Statement of Officer I dated 16 January 1990

⁹⁷ CF dated 24 November 1987; CF dated 6 December 1989; CF dated 3 May 1988; CF 10 January 1989

⁹⁸ CF dated 7 April 1989

when the UDA hit team would strike a victim based on targeting information he had provided.⁹⁹ The handler went on to state that: “It is hoped that these arrangements will continue as it leaves Nelson virtually above suspicion if a job goes wrong.” While some CFs do stress the need to intervene and prevent attacks, these entries suggest that the objective of saving lives was sometimes overtaken by other priorities. For example, Nelson’s acquisition of a higher standing within the UDA, and his avoidance of police detection were considered by FRU to be highly important objectives.¹⁰⁰

1.152 The army considered Nelson to be an important agent. It was aware of his very serious criminal activities but did nothing to restrain them. His intelligence was shared throughout the intelligence community, including RUC SB and Security Service. Indeed, according to the CO FRU, (Soldier J), Nelson figured prominently in the monthly briefings he gave to the GOC, CLF and DCI. However it cannot be determined from the documents if RUC SB or Security Service were aware of his criminal activity.

vii. Information passed to Nelson by his handlers

1.153 While it was the role of handlers to receive information from agents, policy for good reason, dictated that handlers were not to supply their agents with information. For instance, if a handler turned over information that facilitated the targeting operations of a terrorist organization, he or she would run the risk of becoming an accomplice in those activities.

1.154 Each of the various handlers who were responsible for “running” Brian Nelson insisted, in their statements, that they never furnished Nelson with any intelligence data relating to targeting operations of the UDA. Similarly, they denied that they ever updated intelligence information that was already in Nelson’s possession. Yet, in a statement given in 1993, Nelson asserted that one of his handlers had gone through his “intelligence dump”, “weeding out” any material that was out of date. Whether or not this occurred can only be determined at a hearing.

⁹⁹ CF 30 April 1987

¹⁰⁰ Footnotes 97 to 99 above

- 1.155 More significantly, the CFs and TCFs that were routinely maintained by FRU confirm that handlers did, on occasion, furnish information that was specifically requested by Nelson. For example, according to a TCF, one of Nelson's handlers carried out a vehicle registration check on a car thought to be used by Target C and reported the result to Nelson by telephone.¹⁰¹ A similar incident was recorded in a TCF, in which a handler, in response to a question from Nelson, provided information about two vehicles that had been seen outside Target L's residence.¹⁰² This occurred once again, when a handler disclosed to Nelson that two vehicles he had asked about were registered to Republicans.¹⁰³ This CF explicitly acknowledged that Nelson had been given the results of vehicle checks in the past. The handler was concerned, but only to the extent that this information had been transmitted by telephone, a procedure that involved inherent security risks.
- 1.156 Other CFs disclose worrisome actions taken by handlers in their dealings with Nelson. Nelson told his handler that he was having difficulty taking photographs of a UDA target's residence because of its location.¹⁰⁴ The handler went so far as to conduct a personal reconnaissance and identified areas from which photo surveillance could be successfully carried out. This information was to be conveyed to Nelson at his next debriefing so that he could produce a useful targeting package and thereby "impress" high ranking UDA officials.
- 1.157 Subsequent CFs recorded in June and August of 1989, reveal something of a change in attitude, with handlers reporting their adamant refusal to answer any questions posed by Nelson. Yet, it is apparent that Nelson persisted in making such inquiries. Thus an inference could be drawn that his efforts to obtain information from his handlers were not always fruitless.
- 1.158 What is the significance of Nelson's handler providing him with information and how can it be relevant to collusive acts? The answer is that:-

¹⁰¹ TCF dated 17 July 1988

¹⁰² TCF dated 12 August 1988

¹⁰³ CF dated 15 August 1988

¹⁰⁴ CF dated 12 April 1989

- a. the handlers were aware that Nelson was doing a lot of targeting;
- b. the handlers were aware, or should have been aware, that Nelson occasionally committed crimes in the course of his targeting.
- c. the handlers were aware, or ought to have been aware, that they were not supposed to provide him with information;
- d. the handlers were aware, or ought to have been aware, that the information they provided was to be used in targeting activities.

1.159 To the extent that the passing of information to Nelson by his handlers assisted him in his targeting activities, it constitutes a collusive act. How can these collusive acts relate to the Finucane murder? The answer to this question is twofold. First it indicates a pattern of conduct on the part of FRU handlers that should be taken into consideration. Second, if for example a public inquiry heard and accepted evidence that was similar to William Stobie's statement to Journalist A¹⁰⁵ that Nelson was "intelligence" and present at a meeting planning the Finucane murder, then the passing of information to him would become direct and telling evidence of collusion.

1.160 Even if the handlers did not furnish any information relating specifically to Patrick Finucane, this breach of policy is relevant in that it could be taken to reveal either tacit encouragement, or even active facilitation of UDA operations and the targeting that so often led to murder.

viii. Nelson's reputation as an agent

1.161 From the handlers' comments set out in the Army's records it is apparent that they were pleased that Nelson was working as an intelligence officer for the UDA. In fact, at about the time of the Finucane murder, they were anxious to have Nelson rise higher and have an even greater influence in the UDA.¹⁰⁶

¹⁰⁵ Paragraph 1.196

¹⁰⁶ Handler comments on CF 6 February 1989

1.162 There can be no question that FRU thought that, overall, Nelson was an extremely good agent.¹⁰⁷ Why else would they have gone to all the trouble of re-recruiting him in 1987 after his somewhat disturbing career with FRU in 1985 and 1986? Enthusiastic confirmation of his high standing with FRU can be seen in the testimony that his Commanding Officer provided at Nelson's trial. He stated that Nelson "was a very important agent of some standing" and that his "product and his reporting was passed through the Intelligence Community at a high level."¹⁰⁸ Representatives of the Security Service appeared to agree that Nelson was a valued agent who provided useful and reliable information.¹⁰⁹ This opinion is to be contrasted with that of intelligence gatherers at RUC Special Branch.

1.163 There, at least one of the officers, Officer C, former DCI in charge of the Special Branch Source Unit, considered most Army sources to be "rubbish and of a poor standard."¹¹⁰ This opinion is reflected in the fact that there are very few references to intelligence obtained from Nelson in the SB Intelligence Book and no reference whatsoever to Nelson's intelligence in their Threat Book. This will become significant later, when considering the collusive acts of RUC SB.

ix. Some troubling aspects of the evidence given at the trial of Nelson

1.164 At the trial of Brian Nelson, the Commanding Officer of FRU testified on his behalf.¹¹¹ He stated that it was the role of Nelson to provide information concerning persons who were targeted by paramilitaries. He said that between 1985 and 1990 "we produced on Brian Nelson's information something like 730 reports concerning threats to 217 separate individuals". The threats were "to the life of individuals". He further claimed that only three of the 217 individuals were, in fact, killed by paramilitaries, leaving the impression that the remainder were saved by Nelson's actions. He stated that Nelson produced "a tremendous amount of information referring to their plans and their targets for assassination and this was of course of life saving potential."

¹⁰⁷ Source Record, dated January 1987, which sets out a general evaluation of Nelson and characterizes him to be "totally reliable".

¹⁰⁸ Testimony of Soldier "J", 29 January 1992

¹⁰⁹ Report dated 11 July 1988, discussing a meeting between Security Service and Nelson in July 1988

¹¹⁰ Statement dated 30 January 2001

¹¹¹ Testimony of Soldier "J", 29 January 1992

1.165 In a later statement,¹¹² this officer said that his testimony was based upon a report prepared and given to him by a soldier. When the report is reviewed, it can be seen that it is a very frail structure that can give little or no support to the testimony of the CO of FRU. For example, the soldier who compiled the report said that he took every name that was mentioned in MISRs arising out of information provided by Nelson, whether or not a specific threat was mentioned and whether or not that person had been the subject of a planned attack.¹¹³ This was not a sound approach. The report goes so far as to set out the names of high ranking UDA officials, such as Loyalist H and Loyalist J, amongst those whose lives were supposedly saved by Nelson. Further, the CO would have been aware of the many occasions when warnings were not provided to persons who had been targeted by the UDA or UFF.¹¹⁴

1.166 Some might think that the testimony of the CO of FRU (Soldier J) was, at the very least, misleading. In fact, on further scrutiny, it becomes even more questionable. During a chance meeting shortly after his testimony, Soldier J told Chief Superintendent McFadden, of the Stevens Inquiry team, that he had made a “script” of his evidence and it was approved by others in authority. He later denied making such a comment.¹¹⁵ If he did make that comment one might wonder why a script was necessary and whether it indicates that something less than the truth was to be stated. In addition, it raises questions as to who prepared the script and who checked and approved it. Fundamentally, the question is why was a script even considered or mentioned? If the “script” remark was not made, why did the witness, a high ranking officer, give evidence without checking in any way the accuracy or reliability of the report upon which he relied. According to the soldier who prepared the document, the CO FRU did not want details; only the numbers.¹¹⁶

1.167 Following the trial of Nelson, the same Commanding Officer wrote a report dated 20 May 1992 regarding a visit he made to Nelson while he was in prison.¹¹⁷ In it he stated “...we then talked a little about the Stevens interview technique and how he had been under the impression he was helping them to “clean up the UDA” rather than

¹¹² statement of Soldier “J”, dated 2 August 1993

¹¹³ Statement of Soldier HH, dated 27 August 1993

¹¹⁴ Paragraphs 1.63 to 1.105 above

¹¹⁵ Statement, dated 2 August 1993

¹¹⁶ Statement of Soldier “HH” , dated 27 August 1993

¹¹⁷ Report dated 20 May 1992 sent by CO FRU to CO TSG NI

talking himself into the dock. *I summarised the position by gently reminding him that if he had obeyed the advice of his handler he would never have spoken to the Inquiry Team, would not have divulged his role, and would not have been prosecuted. He countered by saying that we should not have removed the “int dump” from him because it put him and his family under pressure from the UDA. He had talked therefore, in order to relieve the pressure.”* [emphasis added]

1.168 Soldier “J” continued: *“It was not a very convincing excuse, but it indicated to me that he had really collapsed under the weight of his situation and once he started talking he could not stop. In fact he had been presented with a perfectly good cover story for the UDA ie he would tell his colleagues that he had destroyed the dump because he did not want it found by the Stevens Inquiry.”*

1.169 The Army’s attitude is further revealed by the contents of a letter from [name redacted] GOC, 06 Headquarters Northern Ireland to the former CO of FRU dated 13 February 1992

“Dear [first name redacted] (handwritten)¹¹⁸

We have not met but I cannot let your most sensible and effective contribution in Court on 29 January go without congratulating you most warmly. Not only did you more than honour your commitment to Nelson, but you also served the Army’s and I judge national interests, extremely well.

I feel sure that your evidence had a beneficial effect on the length of Nelson’s sentence, and the official reaction has been to promote a long and overdue focus upon the constraints and contradictions inherent in the agent running system. This will assist us in shaping the way forward positively. Above all, your comments were institutional, rather than individual, thereby leaving the existing critically important personal relationships in Northern Ireland undamaged.

¹¹⁸ Letter of [name redacted], dated 13 February 1992

I know that you are aware that ACOS G2 and his staff are working to find the best solution for Nelson's future after he has completed his sentence; you can be well satisfied that you have made a major contribution both to Nelson's personal situation and morale and to the future of the [named unit].

Signed (in hand)

Yours sincerely

[name redacted]

1.170 Some might well wonder whether it served "national interests" to grossly exaggerate the life-saving actions of Nelson. I find it difficult to believe that this comment would have been made if the inaccuracies in the report upon which the evidence of the witness was based had been known to the author of this letter.

1.171 The evidence given at Nelson's trial by the former CO of FRU, together with his subsequent letter, raise troubling questions, not only as to his conduct but as to the likelihood of collusion by FRU. It reflects a pattern of conduct and an attitude that is consistent with acts of collusion taking place. Whether or not acts of collusion did take place can only be determined at a public inquiry. Certainly this is a further basis for holding a public inquiry which may provide answers to these questions.

The Security Service

- 1.172 At the time of the Finucane murder, the Security Service discharged a number of important functions within the Northern Ireland intelligence network. It provided overall direction for and coordinated intelligence initiatives carried out by other agencies, such as FRU and RUC SB. The Security Service did not play an active role in the day-to-day operations of these agencies, though it did act in a supervisory capacity. In any event it is clear that it was aware of all FRU activities and had access to all FRU documentation. The material that I have reviewed does not reveal any collusive acts of the Security Service in carrying out their supervisory role.
- 1.173 However, documents pertaining to other work undertaken by the Security Service must be considered. It ran its own agents in Northern Ireland. These agents would report to their handlers and provide information on matters of interest, including the targeting operations of paramilitary organizations. Documents reveal that the Security Service was informed on three separate occasions by its agents that the UDA had plans to kill Patrick Finucane.
- 1.174 In August 1981,¹¹⁹ several years before the murder, a Security Service agent reported that the UDA was “keen” to carry out assassinations of a number of individuals. According to the Security source: “one target stood out above the others. This was Patrick Finucane, a solicitor with strong republican connections who was closely involved with Bobby Sands at the time of the latter’s election campaign”. The source further believed that action would be taken against these targets soon. It was reported that a loyalist gunman was prepared to carry out the execution -----
----- . The Security Service quickly alerted the Head of RUC SB of this threat and a meeting of various officials from both agencies was held. Minutes of the meeting indicate that, while the threat was perceived to be both “very real and imminent”, it was decided that no action would be taken because intervention would compromise the security of the agent.¹²⁰ It is true that the operational decision not to warn Patrick Finucane was taken by RUC SB. However in documents very recently made available to me, it is apparent that all

¹¹⁹ The following is based on a Security Service Report, dated 24 August 1981

¹²⁰ Report dated 24 August 1981

parties agreed to comply with this decision. Indeed, the decision was referred to by an officer of the joint Security Service/Secret Intelligence Service as “courageous”. No attack, or attempted attack, was carried out by the UDA at this time.

1.175 In June 1985 a report from an agent indicated that a leading loyalist paramilitary was interested in Patrick Finucane as a priority target. The comment on this report was that the information was to be treated as sensitive. Mr Finucane was referred to as a well known Republican solicitor.¹²¹ This information may have been passed by word of mouth to RUC SB. However, there is certainly no documentation to confirm that any such action took place.

1.176 Much closer to the time of the murder, an agent reported that a meeting of UDA military commanders was to have taken place in December. According to the source, the purpose of the meeting was to “discuss plans to kill the three solicitors who have represented republicans at recent hearings”. These solicitors were identified as “Target O, Target H, and the ‘shoot to kill’ solicitor in Armagh”.¹²² In a later document, the Security Service confirmed that it was aware that the “shoot to kill” solicitor was Patrick Finucane.¹²³ It might be argued the report of December 1988 did not, itself, make it crystal clear that the “shoot to kill” solicitor was Patrick Finucane. However, it must be remembered that the Security Service was an intelligence agency of some standing that had operated in Northern Ireland for many years prior to the shooting of Patrick Finucane. A reasonable person could well consider that such an agency did indeed, know that Patrick Finucane was the “shoot to kill” solicitor at the time the report came in. This information, received just 2 months before the murder, did not apparently trigger any action on the part of the Security Service. Unlike the earlier threat received in 1981 there are no documents indicating that this information, or that contained in the June 1985 report, was passed on to RUC SB, or that any active intervention was contemplated. Patrick Finucane was shot in his home several weeks later.

¹²¹ Report dated 19 June 1985; Report dated 20 June 1985

¹²² Report dated 19 December 1988

¹²³ Report dated 17 February 1989. This reference was based on the fact that Patrick Finucane had represented the family of [name redacted] at an inquest into the shooting of him and others by the RUC.

1.177 Following the Finucane murder, the Security Service observed that two other solicitors had also been targeted. On one Security Service document,¹²⁴ the Liaison Staff commented that the UDA might be deterred from mounting further attacks for fear of provoking retaliation. However, it was also noted that firm plans might still exist relating to Target O and Target H and that “the possibility of attacks against them remains”. Notwithstanding this acknowledgement, no steps were taken to warn either individual that his life might be in danger. This document, dated 17 February 1989, had been given to the RUC SB. It is difficult to determine, but it may well be that a warning was, in fact, given to Target H.

1.178 In 1981, the Security Service was apparently prepared to forego warning Patrick Finucane that he was in imminent and serious danger in order to protect the identity of its agent. This is an indication that both the Security Service and RUC SB saw agent security as taking precedence over the need to warn a targeted individual that his life was at risk. Further, the apparent failure of the Security Service either in June 1985 or in December 1988 to suggest that Patrick Finucane be warned is, I believe, significant. These are factors that must be taken into account. They are worrisome and might well be sufficient in themselves to warrant a Public inquiry. In any event, they must be taken into account in considering the overall or cumulative effect of all the relevant documents. That cumulative effect leads to a conclusion that a public inquiry should be held to examine the issues raised in this case.

¹²⁴ Report dated 17 February 1989

The Royal Ulster Constabulary Special Branch (RUC SB)

A. The role of the police generally

- 1.179 No society can exist without police. It is the police that provide protection to the community from violence, from criminal acts and from breaches of regulatory offences. Without the police chaos triumphs over order and might is always right.
- 1.180 The role of the police requires great physical courage, absolute integrity, patience, sensitivity, understanding, and firm discipline both from the individual officer and from the police force as a unit. To perform their duties in today's society police officers must be both intelligent and highly trained. The police must serve and protect all within their community without regard to the colour of their skin, their religion or country of origin. They must act without preference or bias.
- 1.181 The role of the police in a democratic society is of the highest importance. They must exercise all the highest attributes of a police force operating in the most despotic countries. Yet the police in a democracy must go much further. They must recognise that they are subject to the rule of law and always operate within and under the rule of law, no matter how difficult and how frustrating that may be. The police must serve and protect their community but always in a manner that complies with the law. They must protect their community and enforce its laws fairly and without discrimination. Prejudices must be set aside and personal preferences rejected. It is an extremely difficult role. Yet the work of the police is of fundamental importance to their community and country. It is the police who must serve as the role model for all, standing as examples of disciplined courage and fairness. Good police officers deserve the support, recognition and admiration of their community.
- 1.182 An unbiased observer reviewing the work of the RUC around the time of the Finucane murder might decide that, although the Royal Ulster Constabulary always displayed great courage in its work, it failed on occasion to meet the very high standards of impartiality and fairness required of any police force, but particularly of a Northern Ireland police force.

C. William Stobie

i. Background

1.185 It is necessary to consider the activities of another agent who had knowledge of UDA targets, including Patrick Finucane. That agent was William Stobie, who worked for the RUC SB.

1.186 William Stobie served in the British Army from July 1969 to July 1975, and in the Territorial Army from 17 November 1983 to March 1985. Between 1979 and 1987 he had a number of convictions for driving infractions and relatively minor summary offences. In 1987 he was sentenced to two years' imprisonment (suspended) for possession of firearms, ammunition and explosives. In November of the same year he was implicated in the murder of Brian Adam Lambert. He was arrested, interviewed and then released. He was re-arrested for further interviews in connection with that murder in February 1988. At that time Special Branch recruited him as an agent. He was given the pseudonym Sam and the telephone number of his handlers. Detective Constable (DC) [name redacted – Officer D] was the senior handler and the two officers who appeared to do most of the direct work as handlers were DC [name redacted – Officer A] and DC [name redacted – Officer E]. Their immediate supervisor was DC [name redacted – Officer F] who was designated to oversee the handling of Stobie.

ii. Handling of weapons for the UDA

1.187 At the time he was recruited as an agent Stobie was occupying the position of Quartermaster for the UDA. In that role he stored weapons, maintained and delivered them and collected them after they had been used. These weapons played a significant and deadly role in events which I must review. As a result it is worth setting out some of Stobie's handlers' reports pertaining to them:

19 April 1988	[name redacted] has a 9mm pistol to use for weapons training
24 May 1988	S (Stobie) reports that he has been asked to sort out rounds of ammunition to fit a .38 revolver – also that Loyalist C has a .38

revolver, a Heckler and Koch (subsequently referred to as H&K) pistol and a sub machine gun in his possession

31 May 1988 Loyalist K may be taking possession of the H&K pistol
Also believes that Loyalist K, [name redacted], [name redacted] and [name redacted] were responsible for the murder of McDaid
Reports that he may be required to take weapon training imminently

6 June 1988 He is to be given weapons training on handguns and sub machine guns, when safe houses are arranged as venues

26 July 1988 He has possession of a 9mm H&K pistol, a Sterling sub machine gun and some ammunition on behalf of Loyalist G
Two weeks before the kneecapping of [name redacted], which took place on 7 July 1988, S supplied [name redacted] with the H&K pistol at the request of Loyalist G. It was returned after the shooting
S is briefed to ring in if the weapons are supplied to anyone else.

22 August 1988 S is asked by handlers for an update on weapons he has in his control. He reports that they are as before

14 September 1988 S provides information on command structure of "A" Company UDA and informs handlers that the UDA in the Highfield area of Belfast are actively targeting INLA/IPLO members in West Belfast with a view to carrying out murder attempts in the near future

2 November 1988 S confirms that he still has the Sterling sub machine gun and 9mm H&K pistol in his possession, along with a Smith and Wesson .38 revolver

9 November 1988 A UDR soldier, [name redacted], is supplying Loyalist G with photographs of Republican suspects

23 November 1988 [name redacted] has provided him with a 9mm Browning pistol to look after and repair. The gun was stolen from the UDR Palace Barracks. *This information appears to have been provided in answer to a question asked by handlers but it is*

not recorded on the debriefing form which appears to be a partial photocopy

7 December 1988 Loyalist G has asked him to check and clean several weapons

30 January 1989 S provides names of 12 UDA members at a meeting of 23 January 1989.
He has been given a 9mm Browning pistol to look after by Loyalist C.
He still has the weapons previously mentioned

7 February 1989 Loyalist G has been supplied with the 9mm H&K pistol.
Loyalist K has asked for a 9mm Browning pistol as well
He has said it is for a hit on a top PIRA man for either 9 or 10 February [emphasis added]
Told by handlers to delay handing over the 9mm until handlers have been informed

9 February 1989 Stobie telephones source unit office with the message “Tell them the parcel was not delivered tonight, ask the boys to ring me at midnight” *(The form is endorsed to indicate that DC [name redacted – Officer E] was informed of this, but the officer has no corresponding recollection.)*
It should be noted that in a statement to the journalist [name redacted – Journalist A] Stobie claims that he twice informed SB by telephone of an imminent murder prior to Patrick Finucane being killed. The message recorded on 9 February is the only one for which a formal record can be found. The Intel book does record a second call, in a different handwriting, although there is no content disclosed.

12 February 1989 Patrick Finucane is murdered

14 February 1989 Handlers try unsuccessfully to contact S

15 February 1989 S reports that he has been told to collect a 9mm Browning pistol from Loyalist K at 9pm and hide it.
It must be noted that this information, obtained just 3 days following the murder, was never passed along to the Senior Investigating Officer (SIO) on the Patrick Finucane case.

Further there does not appear to have been a serious effort made to retrieve the weapon to examine and test it.

Debrief report also reads: "In respect of the 9mm Browning request by Loyalist K no further contact was made with source regarding same" (*This would appear to be a reference to the Browning requested by Loyalist K on 7 February. According to DC [name redacted – Officer E], this notation would indicate that Loyalist K had not made any further contact with Stobie concerning acquisition of that weapon.*)

- 15 February 1989 (A second document pertaining to the same date as above)
S provides information about two meetings held on the day of Patrick Finucane's murder, the first at approximately 1pm and the second at approximately 8pm. He names those who attended.
- 13 April 1989 S asked by Loyalist G to divulge the whereabouts of the weapons under his control. He has refused and still has possession of them
- 20 April 1989 S confirms that weapons have been checked and relocated. He also reports that [name redacted] is holding some UDA weapons
- 3 May 1989 Loyalist G and others have asked him to have a 9mm pistol available for a meeting at [address redacted] that afternoon. A uniformed police presence was apparently arranged to prevent handover. (S later reports that Loyalist G did, in fact, collect the pistol from him and is also believed to have a sub machine gun and a second handgun)
- 26 October 1989 Loyalist G has asked him for a 9mm Browning pistol, H&K pistol and a sub machine gun to be made available for an attack on the police on Sunday evening (this was later called off)
S confirms that he has access to 6 firearms:
- 2 sub machine guns
 - 2 9mm Automatic Pistols
 - 1 Heckler and Koch pistol and

1 shotgun

He names the householders who are storing them for him.

1.188 It can be seen that Stobie controlled, stored, maintained, and supplied weapons for attacks on targets and collected them after they were used. He played an important role in the UDA and RUC SB was well aware of it. RUC SB also knew that Stobie had been asked by a senior UDA official to pick up and hide a 9mm Browning pistol just 3 days after the murder of Patrick Finucane. Yet, there is no indication that the RUC took any steps whatsoever to recover that weapon.

iii. Stobie's statement to [Journalist A]

1.189 On 6 June, 1990, a journalist, Journalist A, received a telephone call from a man who advised him that he had information with regard to the activities of Special Branch. This man turned out to be Stobie, who told him that Special Branch had put his life in danger; that they had betrayed him and that he wanted someone to know his side of the situation. He told Journalist A that local Loyalist paramilitaries knew that he had been in the Army and that his military experience could be of great use to them. He had been approached in a pub to join the UDA and he had agreed.

1.190 He went on to say that, because of his British Army training in weapons, he had been asked to look after guns and ammunition, to hide them and to make sure that they were in working order at all times. He had kept weapons and ammunition at his flat and in safe places. He stated that, four months after joining the UDA, his flat had been raided by the police and they had found a sub-machine gun, a .38 revolver and some bomb-making equipment. He had not been in the flat when it was raided because he had gone on the run. Looking back, he felt that it was obvious the Special Branch had been tipped off by an informer about his involvement in the UDA. He realised that the intelligence within the UDA was leaking "like a sieve". After four days, he gave himself up to the police and was confined in Castlereagh.

1.191 He went on to tell Journalist A that he had been asked to work for the Special Branch and that he had agreed to do so. He said he kept a low profile after he got out on bail

but he still kept weapons and ammunition for the UDA, moving them when it was necessary.

- 1.192 He met his handlers on a weekly basis, beginning the first week after he was released on bail. He said that he had been given 35 pounds a week at every “meet”. He stated that his code name was Sam and that he had been given a telephone number to call to arrange the meetings. He stated that there came a time when he stopped ringing his handlers and he had not called them for about a year.
- 1.193 The first “big job” he had been involved in was a shooting in Highfield Estate. He said that he and others involved had been told that everybody working on the Estate were “Provos”. He had supplied the guns for the attack and had driven one of the cars to the site but not the lead car. He also admitted that he had driven the getaway car. He related that the man who was murdered was Brian Adam Lambert and that he was, in fact, a Protestant, not a Provo. Stobie said he was sickened by the murder. He stated that for the first time he realised that the UDA was unprofessional. He admitted that he had driven the getaway car and that he had supplied the gun used in the murder. He remembered that the crime had taken place the day after Remembrance Day and that the man who had disposed of the weapon after the murder was arrested by the police.
- 1.194 There followed a UVF killing of a “Provo” named Brendan Davidson. Stobie had been arrested and again taken to Castlereagh for questioning. After two days he was released. His handlers contacted him a few days later and the weekly meetings with his handlers started again. While he had been arrested by the CID, he had not been charged. He told the journalist that the CID did not know who was working for Special Branch. He had been told by SB to tell the CID if he was arrested that he was working “for us”. He said the SB would come in and take him out of CID interviews. This had happened twice and he said that all records had been scrapped and the interview statements destroyed. He told Journalist A that he had once seen an angry exchange between Special Branch and CID.
- 1.195 He said that the “biggest sweat of all” came at the time of the Finucane murder. He confirmed that at this time that he was “well in” with a person called Loyalist H and,

as well, with the local commander in Forthriver, who was Loyalist G. He told the journalist that he would receive a call to bring “a certain piece to a certain place at a certain time” and he never knew who it was for or who was the target.

- 1.196 However, he said there had been some discussion at a meeting in the [club – name redacted] about targets and that Patrick Finucane’s name had come up again and again. When the subject came up a third time the discussion was much more detailed. He said that “recce” reports were discussed concerning Patrick Finucane’s house and that intelligence (Nelson) indicated that he would know when would be the best time for a clean job.
- 1.197 He stated that it was decided that the best guns for the job would be a 9mm Heckler Koch and a Browning Pistol. He said that, at this meeting no other details were fixed and it was just a “talk through”.
- 1.198 He stated that, some time later, he got a call from Loyalist H who asked him to bring a Heckler and Koch which was to be cleaned and prepared and a Browning Pistol to the [club – name redacted] at 5pm. He brought the guns down and handed them over to the local commander in the back room.
- 1.199 He said that he finished his half pint at the club, went home, and then immediately rang Special Branch. He said that he told them that he had handed over a Heckler and Koch and a Browning to a named individual, who he later identified as Loyalist G. He further advised that the target was almost certainly Patrick Finucane. Moreover he stated that he had told them (SB) that an arrangement was made to collect the gun at noon the following day at a specific address in the Shankill Road area. He said that during the evening he could not relax or sleep a wink because he was sure that “SB or DMSU would intercept and there would be blood on his hands”. He could not believe it when he heard that Patrick Finucane was dead.
- 1.200 He told Journalist A that, the day after the shooting of Patrick Finucane, he went to pick up the guns. He said that the local commander (Loyalist G) was in the house and was delighted with the results of the night’s work. Stobie said that he took the guns back to his house and “stashed them”. He reported that he had five handguns

including the Heckler and Koch, two SMG, one shotgun and 257 rounds of ammunition including a magazine. He said that he had then decided to “talk no more with SB”. It was his opinion that they were killers. He said that they knew Patrick Finucane was “away for his tea” and did nothing about it. He stated that, after this, he saw to it that there was no comeback and no contact.

1.201 Stobie related that, after a period of about six months, Special Branch contacted him. By then he had moved but was still living in the Glencairn Forthriver area. He described the technique of Special Branch. He said they might stop him two or three times and ask him who stayed in the club last night before they would ask for a meeting.

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1.208 According to Journalist A, Stobie reported that when he reached Loyalist G's street there was a big crowd outside the door. He found out that Loyalist G had already been "lifted" (picked up by the police) and when he got back to his flat it too had been raided by the CID. He said the police had found a SMG and a 9mm Browning and ammunition in his loft. -----

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Other evidence relating to weapons

A. Colour Sergeant X

- 1.235 Colour Sergeant X stole weapons belonging to the Ulster Defence Regiment and sold them to Loyalist D of the UDA. The documents I have reviewed pertaining to the theft and sale of these weapons do not reveal acts of collusion. Rather they disclose that Colour Sergeant X was a man all too fond of alcohol, a loner, who was deeply in debt and beset with family problems. It appears that he acted on impulse rather than as part of an effort to advance the cause of Loyalist paramilitaries or to target any particular victim. Nonetheless the weapons he stole were used in some of the shootings I have described including the murder of Patrick Finucane. It is reasonable to assume that as the access to weapons by both sides is curtailed the level of deadly violence will decrease. A public inquiry may be interested in exploring the security of weapons belonging, at one time, to the UDR. It is for that reason that I refer to the events surrounding the theft and sale of weapons from the Palace Barracks and the history of the weapons taken from Malone Barracks.
- 1.236 Colour Sergeant X joined the regular Army in February 1965. He served with the Royal Ulster Rifles and was discharged in April 1971. On 29 November 1971 he enlisted in the UDR 10th Regiment "C" Company Girdwood Park Barracks.
- 1.237 In 1971 he was a vigilante in the Woodvale Defence Association. As well, throughout 1972 he was a member of the UDA. He wore the combat jacket and bush hat uniform of the UDA and took part in three UDA "show of strength" marches around Woodvale Park, Shankill Road and the Grove areas. He was often recognised by fellow UDR soldiers when he took part in marches and carried out his vigilante duties. Colour Sergeant X told officers in the UDR that he ceased his activities in the UDA in mid-1972 when the organisation became more militant and active. He did, however, continue to contribute his 20p per week to the UDA until sometime in 1973.

1.238 Colour Sergeant X stated that on 9 February 1973 he was attacked by two men while he was on his way to duty at Girdwood Park Barracks. They took from him his privately held and licensed Personal Protection Weapon (PPW) which was a 9mm Browning. This Browning was never recovered.

1.239 Colour Sergeant X witnessed a bank robbery on 18 November 1974. He said that he recognised one of the men involved. As a result he applied for and was issued a PPW (a 22 Walther) by the Ulster Defence Regiment. This weapon was stolen from him by two men in a UDA club called the [club name redacted], on 10 January 1976. He was asked why he was drinking in a UDA Club He responded that he had been drinking earlier in another pub, the [pub name redacted]. He went home but felt depressed because he had been living alone since the death of his brother [name redacted] who was killed in a bomb explosion at the [pub name redacted] in April 1975. He then went out for another drink at the [club name redacted] which was fairly close to his home and the only place he knew to be open at that hour. It was, he knew, contrary to the orders of the UDR to take a personal weapon into a public house. He was aware that the definition of “public house” included restaurants, clubs, hotels and other similar establishments. Colour Sergeant X acknowledged that he should have known better than to take the weapon into the [club name redacted].

1.240 Colour Sergeant X, as a weapons instructor, had access to weapons. On Tuesday 24 August 1987 he stole from his unit the following:

- 11 - 9mm pistols
- 19 - 9mm pistol magazines
- 2 - 1.77 air rifles
- 2 - LMG light machine guns (7.62 calibre)
- 2 - signal pistols
- 17 - LUT sights
- 1 - .38 revolver with 25 rounds of ammunition

1.241 He placed these weapons in a regimental vehicle and left the barracks with them. There is a bizarre aspect to the theft. He had forgotten to close the rear of the vehicle and the weapons were about to fall out. He was warned of the situation by the guard

on duty at the gate as he left the barracks. He stopped to remedy the problem and then continued on his way. He sold the weapons to Loyalist D (of the UDA) for £3,000. The weapons were valued at some £7,700. Two days later, Colour Sergeant X was arrested in Ireland and returned to Northern Ireland. He was charged and at his trial entered pleas of guilty to theft (for which he was sentenced to four years), possession with intent to endanger life (for which he was sentenced to five years) and possession of a .38 revolver with intent to endanger life (for which he was sentenced to three years). The sentences were to be served concurrently. Some of the weapons he had stolen were used to deadly effect in a number of close quarter attacks.

1.242 Some might wonder if the Ulster Defence Regiment (UDR) provided adequate security for the weapons and whether Colour Sergeant X was an appropriate recruit for the UDR. Even though membership in the UDA was not proscribed at that time, he did belong to that organisation. It is obvious that he drank heavily, and had a propensity for losing his personal weapons. All of these factors should have been taken into consideration when he was placed in charge of security and distribution of weapons. There can be no doubt that his theft and sale of the weapons had tragic consequences.

1.243 These include the following:

1. Browning BL67A4931

This is the Browning pistol that was used to murder Patrick Finucane on 12 February 1989.

Prior to that time, on 20 September 1988, the same pistol was used in the attempted murder of a member of the [name redacted] family

This firearm was recovered on 4 July 1989 at [house number redacted], Bellevue Street, Belfast.

2. Browning BL79A21468

Prior to its recovery, this weapon was used in three shootings specifically:

- a. the attempted murder of [name redacted] and [name redacted] on 23 March 1992;
- b. the attempted murder of PC [name redacted] on 2 April 1992; and

- c. the punishment shootings of [name redacted] and [name redacted] on 25 April 1992.

This Browning was recovered on 18 June 1992 from Finaghy Road, Belfast.

3. Browning BL78A14443

This pistol was used in 14 separate episodes of shooting prior to its recovery in May 1992.

- a. the punishment shooting of [name redacted] on 20 January 1990
- b. the attempted murder of [name redacted] on 22 February 1990;
- c. the shooting at HMP Crumlin Road on 16 May 1990;
- d. the attempted murder of an RUC officer at Boundary Way, Shankill Road, Belfast on 25 May 1990
- e. the attempted murder of Prison Officers on Agnes Street, Belfast on 1 June 1990;
- f. the attempted murder of [name redacted] on 7 June 1990;
- g. spent casings from this weapon were recovered on the Crumlin Road on 4 July 1990;
- h. the attempted murder of [name redacted] on 5 July 1990;
- i. spent casings were found from this weapon in the [club name redacted] on 1 August 1990;
- j. the punishment shooting of [name redacted] at the [building name redacted] on 13 August 1990;
- k. the murder of S. Rafferty on 27 January 1991;
- l. the punishment shooting of [name redacted] on 2 March 1991;
- m. the punishment shooting of [name redacted] on 7 March 1991 and
- n. the attempted murder of [name redacted] on 10 March 1992.

This Browning was recovered on 2 May 1992 from [house number redacted] Bray Street, Belfast.

4. Browning BL79A22675

Prior to its recovery, this weapon was used in:

- a. the attempted murder of 9 youths on 8 November 1987; and
- b. the attempted murder of [name redacted] on 11 November 1987.

The weapon was recovered on 11 November 1987, the date of the [name redacted] attack.

B. History/use of weapons stolen from Malone Barracks

1.244 On 31 January 1989, 4 weapons were stolen from the Malone Barracks, Windsor Park, Belfast. A description of the weapons and their history is set out below.

- 1. -----

----- used in two murders – the murder of Aidan Wallace on 12 December 1991, and the murder of Magee and four others on 5 February 1992. This weapon was ultimately recovered on 6 May 1992, from an address on Ballyskeagh Road, Lambeg.

- 2. A second weapon is a Browning L9A1 Pistol serial number BL79A21358. This weapon was used in a great many shooting incidents:-
 - a. the attempted murder of [name redacted] on 17 January 1991;
 - b. the punishment shooting of [name redacted] on 7 April 1991;
 - c. the punishment shooting of [name redacted] on 26 June 1991;
 - d. the attempted murder of security forces and shooting at Crumlin Road Belfast, both on 15 July 1991;
 - e. attempted murder of [name redacted](constable) on 12 December 1991;

- f. attempted murder of [name redacted] on 20 February 1992;
- g. punishment shooting of [name redacted] on 5 March 1992
- h. attempted murder of [name redacted] on 22 March 1992;
- i. shooting incident at Springfield Parade, Belfast on 6 April 1992;
- j. attempted murder of [name redacted] on 3 June 1992;
- k. attempted murder of [name redacted] on 28 July 1992
- l. attempted murder at [house numbers redacted], Distillery Walk, Belfast on 31 July 1992;
- m. fired bullet found in car park in College Court, Queen Street, Belfast on 6 August 1992;
- n. attempted murder of [name redacted] on 3 September 1992;
- o. attempted murder of [name redacted] and one other on 1 October 1992.

This weapon was recovered on 3 November 1992 from [house number redacted] Forfar Street, Belfast.

- 3. The third weapon is an SA80 self-loading rifle UE88A79686 Susat Sight 077745.

It would appear that this weapon was not used in any known shootings before its recovery on 15 May 1992 from [house number redacted], Lawnbrook Avenue, Belfast.

- 4. The fourth weapon is an SA80 self-loading rifle 080375 Susat Sight 077810. It would appear that this weapon has not been used in any known shootings or other incidents. However, it has not yet been recovered.

Documentary evidence relating to attitude

A. RUC Special Branch

1.245 Some of the documents I have reviewed seem to reveal an unfortunate attitude that was shared by some members of RUC Special Branch in 1988 and 1989. This attitude may well have influenced the actions of the unit, and the way it approached its police duties. This is very troublesome because RUC Special Branch played such a vital role within the large Northern Ireland intelligence network. It was not only responsible for gathering intelligence from various sources; it was the agency that had the primary responsibility for acting upon that intelligence. It was the duty of Special Branch to intervene in situations where individuals were targeted by terrorist organisations, either by issuing timely warnings or taking steps to deter or disrupt the anticipated violence. Officer G, a DI working in the Source Unit of Special Branch, stated that: “Anything of an urgent or life threatening nature would be brought to the attention of the Head of Special Branch”. According to Officer G, this was dictated, in part, by Force Order Part 1, no.33/86 which provided that: “when a member of the RUC or RUC reserve learns of a threat to the life of any individual person, details of the threat will be passed forthwith to the local Special Branch.”

i. Discounting FRU intelligence

1.246 It was the duty of Special Branch to protect all individuals, whatever their religious or political affiliation. In this it failed. The documents indicate that in some instances Special Branch failed to take any steps to prevent actual or planned attacks on persons targeted by Loyalist terrorist groups. This was so, even though the details of several of these targeting operations were known for some time. Examples of this were reviewed earlier.

1.247 In particular, Brian Nelson provided a wealth of information about UDA activities to his handlers at FRU. A good deal of information was recorded in MISRs which, as a matter of course, were transmitted to Special Branch. Nelson was a prolific agent

whose information was often proven to be correct by subsequent events. It is therefore difficult to understand why Special Branch paid virtually no attention to his intelligence reports. Nelson consistently identified persons who were threatened, attacked or were the subject of attempted attacks by the UDA. Yet, there is only an occasional reference to Nelson in the Intelligence book and none at all in the Threats Book. Indeed, it was exceedingly rare for the Threats book to record any targeting carried out by the UDA. This is very different from the numerous entries documenting PIRA threats and the steps taken by SB to counter Republican terrorist activities.

- 1.248 The Threats book raises questions with regard to the attitude of the RUC as it relates to identifying the perceived enemy and the conduct of their police work. In it, there are over 100 references to PIRA or INLA targeting and threats made by them. Yet there are only some 12 references to Loyalist targeting or threats. Although it was the evidence of Superintendent B of Special Branch that the Threats book was maintained primarily to guard prominent individuals and public officials there do seem to be clear instances where people such as taxi drivers are referred to as being targeted.
- 1.249 Various persons within the unit gave statements indicating that SB would only record or act upon intelligence that was perceived to be of sufficient quality and importance. According to DCI [name redacted – Officer C]: “It follows therefore that there was some intelligence that was not considered suitable to be recorded in the book”.
- 1.250 This attitude may well have had the effect of screening out much of the information FRU transmitted to SB. The prevailing attitude within SB seems to have been that FRU intelligence was an inferior product. As noted earlier one officer, DCI Officer C, went so far as to describe it as “rubbish”, explaining that this was why it was not generally recorded in the Intelligence or Threats books.¹³⁷
- 1.251 The Deputy ASP that worked in the FRU between March 1988 and March 1990 confirmed that: “[RUC] always gave less credence to FRU sources” and that the relationship between FRU and RUC was “not harmonious”, but rather, one of “mutual tolerance”. Other individuals, such as Soldier “CC”, expressed similar concerns over

¹³⁷ Statement of 30 January 2001

the lack of co-ordination between FRU and SB. Structures and procedures were in place to coordinate the efforts of the various intelligence agencies working independently of each other within the region. However, it appears that the existing tension between FRU and Special Branch led to breakdowns in communication. Undoubtedly the troubled relationship between FRU and SB was an exacerbating factor. However it does not explain the disproportionate attention given by SB to PIRA, as compared to UDA threats.

ii. Importance attributed to PIRA threats

1.252 It appears that SB perceived threats made by Republican terrorist organizations to be more dangerous and deserving of attention than those made by Loyalist terrorist groups. Items recorded in the Intelligence and Threats books were predominantly concerned with threats issued by PIRA and other Republican organisations. These threats were often acted upon and warnings issued to those who were targeted, even when the information was relatively vague. By way of contrast, there was a scarcity of references to UDA/UFF targeting in these books, although the information flowed in on a regular basis from Nelson and other agents, including SB agents. On those rare occasions that UDA threats were recorded, they did not generally result in any preventative measures. The one exception occurred in 1990 when a Catholic taxi driver was warned of a pending UDA assassination attempt¹³⁸ Generally, however, UDA threats appear to have been ignored. This discrepancy in the treatment of PIRA and UDA targets may be indicative of a selective, perhaps subconscious, bias on the part of the Special Branch. It may well be that only a portion of the population was receiving effective protection against the threat of terrorist violence.

1.253 Earlier references have been made to several known targets who were neither warned nor protected by Special Branch. For now, it will suffice to highlight two examples. First a UDA threat to the solicitor Target O was recorded in the Threats book, but not until nine months after it had first been reported by agents. There was no indication that the threat was anything but genuine and one would have thought that, in the wake of Patrick Finucane's murder, it would merit serious attention and prompt action. Yet,

¹³⁸ Page 183 of the Threats Book, entry no. 68/90

it was the decision of the Deputy Head of Special Branch (DHSB) to take no further action in the matter.

1.254 Similarly a much earlier document records the failure of SB to act on a threat made on Patrick Finucane's life in 1981, when the Security Service learned that a loyalist gunman was intent on killing Patrick Finucane in his home. At a meeting held with officials from SB, various courses of action were discussed, but were rejected. On the question of issuing a warning, it was thought that "it was very unlikely that Patrick Finucane could be trusted to keep his own counsel if warned that he was a target". Those present wished to preserve, at all costs, the security of the agent who had furnished the intelligence.

1.255 It is true that these incidents were mentioned earlier. Yet they are worth repeating because they illustrate so clearly the manner in which RUC SB treated threats issued by the UDA. The failure to issue warnings to persons who were targeted for murder may, itself, constitute collusive conduct.

iii. The association of lawyers with their clients who were PIRA members

1.256 Documents reveal the extent to which Special Branch believed that solicitors representing members of PIRA were, themselves, either members of the organization, or "Republican Sympathisers". This view may have affected SB's perception of Patrick Finucane, as well as Target H and Target O. It may be significant that SB chose to maintain a personal file on Patrick Finucane, who appears to have been a law abiding citizen. The file contained various documents including source reports, news clippings and correspondence. What is most striking is that Patrick Finucane is repeatedly identified as a "Republican sympathiser"; "an extreme Republican sympathiser [who] represents PIRA members who face terrorist charges"; and an individual who "comes from a staunchly republican family". These descriptions permeate the file, and are seen on documents dating back to 1979. The file records various activities that were legitimately undertaken by Patrick Finucane in his capacity as a citizen, a lawyer and a supporter of human rights. He is implicitly criticized for taking a "keen interest in the welfare of PIRA prisoners" during the

hunger strikes, and for being a member of organisations such as the Northern Ireland Civil Rights Association.

1.257 The attitude of Special Branch toward the work of solicitors in general, and Patrick Finucane in particular, is also evident in the briefing given to MP Douglas Hogg. This led to his comments in the House of Commons on 17 January 1989. He then spoke opposing a proposed amendment to a Bill which would allow solicitors access to information concerning terrorist investigations in certain limited circumstances. During the debates, Mr. Hogg relying upon the briefing he had received from SB asserted: “I have to state as a fact, but with great regret, that there are in Northern Ireland, a number of solicitors who are unduly sympathetic to the cause of the IRA...”.

1.258 In statements made some years later,¹³⁹ Mr Hogg indicated that his comments in the House had been based on advice received from senior police officials, including a briefing by the Special Branch in November 1988. This briefing was attended by the Chief Constable and Deputy Chief Constable of the RUC, as well as other senior officers. According to Mr Hogg, the message conveyed was that there were a half dozen or so solicitors who were “effectively in the pockets of terrorists” and that such solicitors were “defending the organisation rather than the individual”.

1.259 When Mr Hogg asked for a concrete example, Special Branch sent him documents identifying Patrick Finucane. The documents, sent out on 6 January 1989, claimed that Patrick Finucane came from a “staunchly Republican family, of which 2 brothers, namely [name redacted] and [name redacted] have served portions of imprisonment due to terrorist offences”. It also stated that: “Finucane has continued to support the Republican cause using his expertise in an advisory capacity and associating closely with PIRA/PSF personnel”. An attachment set out an analysis of Patrick Finucane’s “Relatives with PIRA connections”.¹⁴⁰ Yet there is nothing in the document that indicates that Patrick Finucane was a terrorist or that he belonged to a terrorist organization. From a review of the documents it could be inferred that RUC SB tended to identify a solicitor with his clients.

¹³⁹Statements dated 28 September 2000; 29 November 2000

¹⁴⁰ Document on Patrick Finucane, SB 20836, from Special Branch file

B. FRU

- 1.260 Within FRU, there also existed attitudes which led to breaches of policies governing agent handling. These have already been discussed. For example, FRU appeared to countenance the commission of crimes by its agents, perhaps perceiving this to be a necessary evil in the fight against terrorism. In the case of Brian Nelson, FRU did little, if anything, to control his activities, although his handlers were well aware of his criminal acts. Secondly, FRU's primary concern appeared to be agent security. This is, of course, a laudable and important goal, essential to maintaining an efficient intelligence network. The Government must take steps to protect the life and safety of those engaged in the dangerous work of intelligence gathering. However, in the case of FRU, agent security was sometimes emphasised to the exclusion of other overriding objectives, such as preventing attacks on persons targeted by the UDA.
- 1.261 It appears from the CFs that Nelson's involvement in violent activities was of concern to his handlers only to the extent that this exposed him to the risk of apprehension by the police. In addition, Nelson often requested and received information from his handlers. This was another example of conduct that flouted recognised policy. Taken together, these examples could be seen to symbolize a more general attitude toward intelligence gathering in Northern Ireland, namely, that FRU considered the normal rules – including the rule of law – to be suspended and the gathering of intelligence to be an end that was capable of justifying questionable means. Indeed, this attitude was essentially confirmed by the CO FRU, when he gave his testimony at Brian Nelson's trial.
- 1.262 Nelson's handlers were aware of his participation in the extortion of "protection money" from two of Ulster's largest building firms, and the subsequent intimidation of witnesses. Between 28 November 1989 and 19 December 1989, the UDA conducted extensive reconnaissance on certain individuals, hoping to prevent them from testifying with regard to the extortion. Nelson played a key role in this reconnaissance work.¹⁴¹ Nelson was also directly involved in sending threatening

¹⁴¹ CF 27 March 1989; CF 10 July 1989; CF 18 July 1989; CF 1 August 1989; CF 11 September 1989; CF 19 September 1989; CF 4 October 1989; CF 16 November 1989

letters, referred to as “Christmas cards”, to the Crown Court witnesses.¹⁴² All indications are that Nelson was a party to these criminal actions. His handlers counselled Nelson on the destruction of evidence that linked him to the threatening letters. His handlers appear to have overstepped acceptable boundaries in this matter. They were fully aware of Nelson’s targeting activities; they encouraged and, on one occasion, even conducted some of the reconnaissance.¹⁴³

1.263 It must be emphasised that FRU did not appear to be affected by the same selective bias that governed the RUC Special Branch. Threats made by the UDA were routinely recorded in CFs and were often passed on for action to the SB, through MISRs or verbal briefings. Unfortunately, the army did appear to share SB’s view of solicitors, in particular, Patrick Finucane.

1.264 Significantly, military vehicle and radio logs from the night of the murder refer to Patrick Finucane as “Republican lawyer”, “Republican solicitor”, “leading Republican solicitor” and “a leading member of Republican movement”. Another log entry uses the phrase “Republican movement” immediately following Patrick Finucane’s name.¹⁴⁴ Thus it appears that both military and police intelligence fundamentally misconstrued the role of solicitors and failed to draw the essential distinction that exists between lawyers’ professional obligations, on the one hand, and their personal alliances, on the other.

C. Obstructions placed in the path of the Stevens Inquiries: whether they reveal an attitude and course of conduct that should be taken into account in determining whether they were acts of collusions

1.265 Finally, something should be said of the actions taken by RUC SB and FRU to impede the conduct of formal enquiries undertaken by Sir John A Stevens. In September 1989, the Chief Constable of the RUC requested that Sir John Stevens, currently Chief Commissioner for the Metropolitan Police, conduct an inquiry into

¹⁴² TCF 16 December 1989; TCF 18 December 1989

¹⁴³ CF 12 April 1989; CF 27 April 1989; CF 21 August 1989; TCF 18 December 1989

¹⁴⁴ (Vehicle log 12.2.89 time 1934; Vehicle log 12.2.89 time 2037; Report “Significant Incidents” no 944/89; Military Log 12.2.89; Military Log 12.2.89 entry no. 13 time 2037).

“allegations of collusion between members of the security forces and loyalist paramilitaries”.¹⁴⁵ The Inquiry’s terms of reference, as set out by the Chief Constable, contemplated a review of several public sector agencies, including the Royal Ulster Constabulary and the British Army. The inquiry team began its work on 15 September 1989. The final report¹⁴⁶ of the “Stevens I Inquiry” was submitted to the Chief Constable on 5 April 1990. This Report resulted in the arrest and prosecution of several individuals and contained a number of recommendations.

1.266 Subsequently, in accordance with a Directive from the DPP (Northern Ireland), dated 1 April 1993, Sir John Stevens undertook a second Inquiry into allegations relating specifically to “Brian Nelson and the security forces/services”.¹⁴⁷ The “Stevens II” report was submitted on 18 March 1994. Since that time, Sir John Stevens has undertaken a third Inquiry into, among other things, the circumstances surrounding the murder of Patrick Finucane. The “Stevens III Inquiry” commenced in March 1999 and its work is continuing at the present time.

1.267 The mandate of the various Stevens Inquiries has been to determine the truth in matters of vital importance to the people of Northern Ireland. The public has a very real interest in ensuring that state security forces and their agents function within the law. Moreover, it is equally important that those in Government be made aware of any deficiencies or improprieties on the part of agencies that are charged with the duty of maintaining law and order. In this context it was disturbing to learn that RUC SB and FRU seem to have taken active and deliberate steps to obstruct the progress of the Stevens Inquiry from the time of its inception.

1.268 Perhaps the most significant obstacle placed in the path of the Stevens team was the concealment of Nelson’s “intelligence dump”. The evidence indicates that FRU took possession of Nelson’s intelligence material as early as September 1989. Yet, this material was not turned over to the Inquiry team until some months later, after Brian Nelson’s arrest and interrogation in January 1990. The terms of reference for the Stevens I Inquiry were well known to FRU and RUC SB and the evidentiary

¹⁴⁵ At that time, Sir John A Stevens held the rank of Deputy Chief Constable of Cambridgeshire

¹⁴⁶ The Report of the Deputy Chief Constable of Cambridgeshire John Stevens, into allegations of collusion between members of the Security Forces and Loyalist Paramilitaries, 5 April 1990

¹⁴⁷ At that time, Sir John Stevens held the rank of Chief Constable, Northumbria Police

significance of Nelson's "P" cards" must have been obvious to all in authority. These documents were of vital importance to the matters under investigation, and were clearly of tremendous assistance to the Stevens Inquiry once they were obtained.

1.269 I have reviewed a document which would appear to lend strong support to the allegation that RUC SB and FRU consciously set out to withhold pertinent information from the Stevens Inquiries. It sets out the minutes of various meetings attended by senior officials, including the former GOC NI (General Officer Commanding, Northern Ireland). This document confirms that the GOC NI had discussed the Stevens Inquiry with the Chief Constable of the RUC before the Inquiry team even arrived in the province.¹⁴⁸ The document states that: "The CC (Chief Constable) had decided that the Stevens Inquiry would have no access to intelligence documents or information, nor the units supplying them". The document also asserts that, in delaying delivery of Nelson's intelligence dump, the Army was acting "under the instructions of the RUC throughout". Ultimately, in January 1990 following Nelson's arrest, it was determined that it was becoming "increasingly difficult to keep the Stevens Inquiry away from intelligence information". It was only then that the dump was turned over.

1.270 The wilful concealment of pertinent evidence, and the failure to cooperate with the Stevens Inquiry, can be seen as further evidence of the unfortunate attitude that then persisted within RUC SB and FRU. Namely, that they were not bound by the law and were above and beyond its reach. These documents reveal that Government agencies (the Army and RUC) were prepared to participate jointly in collusive acts in order to protect their perceived interests. Ultimately the relevance and significance of this matter should be left for the consideration of those who may be called upon to preside at a public inquiry.

¹⁴⁸ Document no. E2/8621-G2(CI), dated September 1990

Collusion

A. Definition

1.271 Although the definition of the term “Collusion” was set out earlier in this report it may be helpful to repeat the definition.

1.272 How should collusion be defined? Synonyms that are frequently given for the verb to collude are these: to conspire; to connive; to collaborate; to plot; and to scheme. The verb “connive” is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take no notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way; to let something ride; see for example the Oxford Compact Thesaurus Second Edition 2001.

1.273 Similarly the Webster dictionary defines the verb collude in this way: to connive with another: conspire, plot.

It defines the verb connive as follows:

1. to pretend ignorance or unawareness of something one ought morally, or officially or legally to oppose;
to fail to take action against a known wrongdoing or misbehaviour – usually used with connive at the violation of a law.
2. (a) to be indulgent, tolerant or secretly in favour or sympathy;
(b) wink at youthful follies;
(c) to cooperate secretly: to have a secret understanding.

1.274 In the narrower context how should collusion be defined for the purposes of this inquiry? At the outset it should be recognised that members of the public must have confidence in the actions of Governmental agencies, particularly those of the Army and the police force. There cannot be public confidence in Government agencies that

are guilty of collusion in serious crimes. Because of the necessity for public confidence in the Army, the Police, and Security Services the definition of collusion must be reasonably broad when it is applied to actions of these agencies. This is to say that Army and police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in these important agencies.

1.275 In determining whether there are indications of state collusion in the murder of Patrick Finucane, it is important to look at the issue from two perspectives. First, it must be seen whether the documents indicate that the action or inaction of Government agencies might have directly contributed to the killing of Patrick Finucane by the UDA. Secondly it is necessary to examine collusive acts which may have indirectly contributed to the killing, by generally facilitating the terrorist activities of the UDA. That is, the evidence may reveal a pattern of behaviour by a Government agency that comes within the definition of collusion. This evidence may add to and form part of the cumulative effect which emerges from a reading of the documents. Both perspectives will be considered in determining whether the evidence indicates that there have been acts of collusion by Government agencies.

B. Instances where the documentary evidence does not establish collusion

1.276 Before reviewing those state actions that do, in my view, constitute collusion, it may be helpful to refer to two other matters which have been brought to my attention. Quite simply, the documentary evidence that I have reviewed does not support either of the allegations.

i. Vehicle check point and search operation

1.277 In February 1999, the group British Irish Rights Watch alleged that the termination and removal of vehicle check points in the vicinity of the Finucane home prior to the murder was a collusive action taken to facilitate the murder.¹⁴⁹ Among the documents

¹⁴⁹ A similar allegation has been advanced in a written brief submitted to this Inquiry

I have reviewed is a statement taken from Soldier BBB on 21 June 2000. He stated that, in direct response to this allegation, he conducted a careful review of all army logs pertaining to vehicle check points and garage searches in the neighbourhood of the Finucane home on the day of the shooting. Vehicle searches were generally carried out in the daytime and suspended when it became dark. This general rule was adhered to on 12 February 1989. The army had received information that mortar bombs might be hidden in the area close to the Finucane home. As a result, a search of nearby garages was carried out, but when nothing was found, the search was called off.

1.278 There is no evidence in the documents that the suspension of either the garage searches or the vehicle searches close to the Finucane home was a sinister or collusive act.

1.279 However, in the Panorama program “Licence to Kill: Part I”, broadcast 11 July 2002, Loyalist D is reported to have stated that an RUC policeman, who had earlier encouraged him to shoot Patrick Finucane, called him to say that the road block had been taken down.

1.280 The question of whether such a call was made, by whom, its contents, and the surrounding circumstances is something that a public inquiry might wish to explore.

ii. Was there an RUC officer in the [company name redacted] taxi?

1.281 In a written submission to this inquiry, a suggestion was made that there was evidence that an officer from the RUC was a member of the group that hijacked the [company name redacted] taxi a short time before the murder. There is no documentary evidence or statement which supports this allegation. Whether a public inquiry should nonetheless wish to explore this question is not a matter for me to comment upon.

C. Summary of collusive acts

1.282 Bearing in mind the definition of collusion, it may be helpful to set out in summary form those state actions which could be deemed collusive. Like all condensations it

suffers from the effects of compression and displays all the symptoms of a case of the bends. It should only be considered in the context of the relevant sections of the complete report.

i. FRU

1.283 The following matters are relevant in considering whether FRU engaged in collusive acts:

a. Did FRU have advance knowledge that Patrick Finucane was being targeted by the UDA?

1.284 The documents clearly raise questions as to whether or not FRU knew, in advance, that the UDA was planning to target and kill Patrick Finucane. There are conflicts in the documentary evidence that can only be resolved at a public hearing. On the one hand, Brian Nelson insists in his 1990 statement, and his written account recovered from Stormont, that he told his handlers about the events leading up to the murder on 12 February 1989. While Nelson recanted certain statements in 1993, he nonetheless maintained that he had told his handlers about UDA plans to kill a PIRA solicitor. On the other hand, the handlers, in their statements, deny that Nelson told them about Patrick Finucane before the shooting on 12 February 1989. Moreover, there are no CFs or TCFs recording any such information prior to 13 February 1989. The resolution of this conflict requires findings of credibility, which I am not in a position to make. I do, however, note the following matters which may lend support to Nelson's assertions:

- i. On 13 February 1989, the morning after the murder, Nelson telephoned his handler and said: "It was ours this morning". From this cryptic comment, the handler was able to divine, with apparent certainty, that Nelson was referring to the murder of Patrick Finucane the night before. This might suggest that the handler did have some background information, and that the telephone call on the 13th was not the first time the Patrick Finucane case was discussed.

- ii. The conversation that Nelson is said to have had with Loyalist J 6-8 weeks before the murder, in which Loyalist J identified Patrick Finucane as a target and asked Nelson to obtain information, is the very sort of conversation that was routinely reported by Nelson to his handlers.
- iii. Just 6 days before the murder, Nelson's handlers were aware that he was "initiating most of the targeting" for the UDA. There is every reason to believe that Nelson would have been aware of the plot to murder Patrick Finucane and that he may have had some involvement in it. I note that William Stobie, an SB agent, told a journalist that Nelson was present at a meeting where the details of the assassination were discussed.
- iv. At a time prior to the Patrick Finucane murder, Nelson was under considerable pressure from the UDA to provide reliable targeting information. He was being criticized for operations that had gone awry, and therefore had an incentive to mount a targeting campaign that had a reasonable prospect of success.
- v. Nelson was also, at this time, under pressure from his FRU handlers, who had become increasingly dissatisfied with his intelligence information. As a result, Nelson had an incentive to report the targeting of Patrick Finucane to his handlers, particularly because he was aware that Patrick Finucane was a "hot target".
- vi. Following the murder, Nelson did report to his handlers that he had provided the photograph of Patrick Finucane and Target I to Loyalist J. In his statements, Nelson asserted his belief that he would get into trouble with his handlers for his role in the Patrick Finucane affair. Yet, there are no CFs or TCFs that record any criticism of Nelson by his handlers. It could be inferred that, if Nelson had, in fact, failed to report the targeting of Patrick Finucane in a timely fashion, this would have generated some adverse comment by FRU.

1.285 If Nelson is correct in stating that he told his handlers that Patrick Finucane was a target, and no steps were taken by FRU to either warn Patrick Finucane or otherwise intervene, then that would be capable of constituting a collusive act. This follows, as it would mean that FRU had turned a blind eye to the threat against Patrick Finucane, notwithstanding that the information came from someone that they considered to be an outstanding agent. Only a public inquiry can determine whether this occurred. The evidence I have seen warrants the holding of a public inquiry on this issue.

b. Passing of information to Nelson by handlers

1.286 The CFs and TCFs – the records kept in the usual and ordinary course of the business of FRU – leave little doubt that, on occasion, handlers provided information to Nelson that facilitated his targeting activities. While there is no indication that handlers provided information that specifically pertained to Patrick Finucane, this breach of policy is significant, as it demonstrates a general pattern of behaviour on the part of Nelson’s handlers that could be considered collusive. They were aware that Nelson was a central player within the UDA, and that he had considerable influence in directing targeting operations. They were also aware that Nelson often played a direct and active role in reconnaissance missions. The provision of information to Nelson in these circumstances may be seen as evidence of collusive behaviour that had the potential to facilitate the deadly operations planned by the UDA.

c. Failure to restrain Nelson’s criminal activities

1.287 There can be no doubt that Nelson, by his own admission, committed criminal acts. He entered pleas of guilty to 20 terrorist related crimes, including five separate instances of conspiracy to murder. Even more importantly, the CFs and TCFs reveal that the army handlers were aware, or at the very least, most certainly ought to have been aware, of the criminal acts of Nelson. Little or no effort was taken to prohibit or discourage Nelson from committing criminal acts. It is apparent from some of the CFs that the handlers were more concerned with Nelson’s security, and avoiding police detection, than they were with stopping his criminal activity. The documents I have examined disclose that Army handlers and their superiors turned a blind eye to

the criminal acts of Nelson. In doing this they established a pattern of behaviour that could be characterized as collusive.

d. Evidence given at Nelson's trial

1.288 The evidence given by the CO FRU, (Soldier "J"), at Nelson's trial could only be described as misleading. The statement that Nelson's actions were responsible for saving close to 217 lives was based on a highly dubious numerical analysis that cannot be supported on any basis. The troubling evidence given at Nelson's trial, coupled with FRU's knowledge of his criminal activities, is part of the cumulative picture that should be examined in determining whether FRU acted collusively in the murder of Patrick Finucane.

e. FRU collusion

1.289 The documents either in themselves or taken cumulatively can be taken to indicate that FRU committed acts of collusion. Further, there is strong if, in some instances, conflicting documentary evidence that FRU committed collusive acts. Only a public inquiry can resolve the conflict.

ii. The Security Service

1.290 Much of the work of the Security Service is not relevant to my inquiry. However, the agent operations that the Security Service ran in Northern Ireland did give rise to conduct that appears to fall within the definition of collusion.

a. In 1981, the Security Service was aware that the UDA had plans to kill Patrick Finucane and that the threat was both very real and very imminent. After consultation with Security Service officers from the Joint Security Service/SIS section present, RUC SB decided to take no steps to intervene or halt the attack.

b. In 1985, the Security Service was aware that a leading loyalist paramilitary considered Patrick Finucane to be a priority target.

- c. In December 1988, just seven weeks before the murder, the Security Service received information from an agent that there were plans afoot to kill various targets, and that the UDA had singled out Patrick Finucane for special attention. Once again, no action was taken to warn Patrick Finucane or to intervene in any way.

1.291 The apparent failure of the Security Service to suggest to RUC SB that action should be taken on these threats might, itself, be capable of constituting collusive action. At the very least, these matters add to the cumulative pattern of conduct demonstrated by the relevant Government agencies and should be considered in the context of a public inquiry.

iii. RUC Special Branch

1.292 In my view, the following conduct of the RUC SB is directly relevant to the question of collusion:

- a. **Failure to Act on Known Threats:** In 1981, no action had been taken in connection with a direct threat against Patrick Finucane. Rather, the protection of agent security was seen as more important than saving the life of a person who faced a serious and imminent threat. Similarly through its agent, William Stobie, RUC SB was aware that, just 5 days before the Finucane murder, a top UDA official had asked Stobie to provide a 9 mm Browning pistol for a “hit on a top PIRA man”. This information was not apparently pursued.
- b. **Failure to Follow up on the Browning Pistol:** Just three days after the murder, Stobie reported that he had been asked by the same UDA official to pick up and hide a 9mm Browning. No steps were taken to recover or trace this weapon, although there was every reason to believe that it was the firearm used to kill Patrick Finucane.

information concerning the role of Nelson in FRU, and the role of Stobie in RUC SB, did much to frustrate his investigation. RUC SB knew, or certainly ought to have known, that this information was necessary if a proper investigation of the murder were to be conducted. This too could be found to be a collusive act.

Conclusion

1.293 Some of the acts summarized above are, in and of themselves, capable of constituting acts of collusion. Further, the documents and statements I have referred to in this review have a cumulative effect. Considered together, they clearly indicate to me that there is strong evidence that collusive acts were committed by the Army (FRU), the RUC SB and the Security Service. I am satisfied that there is a need for a public inquiry.

The basic requirements for a public inquiry

1.294 When I speak of a public inquiry, I take that term to encompass certain essential characteristics. They would include the following:-

An independent commissioner or panel of commissioners.

The tribunal should have full power to subpoena witnesses and documents together with all the powers usually exercised by a commissioner in a public inquiry.

The tribunal should select its own counsel who should have all the powers usually associated with counsel appointed to act for a commission or tribunal of public inquiry.

The tribunal should also be empowered to engage investigators who might be police officers or retired police officers to carry out such investigative or other tasks as may be deemed essential to the work of the tribunal.

The hearings, to the extent possible, should be held in public.

The findings and recommendations of the Commissioners should be in writing and made public.

The importance and necessity of holding a public inquiry in this case

- 1.295 During the Weston Park negotiations, which were an integral part of the implementation of the Good Friday Accord, six cases were selected to be reviewed to determine whether a public inquiry should be held with regard to any of them.
- 1.296 The Finucane case was specifically chosen as one of the six cases to be reviewed to determine if there was sufficient evidence of collusion to warrant the directing of a public inquiry. In light of this provision in the original agreement, the failure to hold a public inquiry as quickly as it is reasonably possible to do so could be seen as a denial of that agreement, which appears to have been an important and integral part of the peace process. The failure to do so could be seen as a cynical breach of faith which could have unfortunate consequences for the peace accord.
- 1.297 Further, if as I have found, there is evidence which could be found to constitute collusion then the community at large would, undoubtedly, like to see the issue resolved quickly. This is essential if the public confidence in the police, the army and the administration of justice is to be restored. In this case only a public inquiry will suffice. Without public scrutiny doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection throughout the Northern Ireland community.
- 1.298 The Attorney General has the difficult and onerous official duty to consider and decide whether prosecutions will have to be brought in light of the further evidence which has been brought to light. If it is determined that prosecutions are to proceed then the public inquiry would in all probability have to be postponed, since it is extremely difficult to hold a public inquiry at the same time as a prosecution. This would be a bitter disappointment to the Finucane family and a large segment of the community. It is a difficult decision that only the Attorney General can make. If the evidence makes it apparent that an individual has committed an offence then as a rule there should be a prosecution. Society must be assured that those who commit a crime will be prosecuted and if found guilty punished.

- 1.299 If criminal prosecutions are to proceed the practical effect might be to delay the public inquiry for at least two years. The Finucane family will be devastated. A large part of the Northern Ireland community will be frustrated. Myths and misconceptions will proliferate and hopes of peace and understanding will be eroded. This may be one of the rare situations where a public inquiry will be of greater benefit to a community than prosecutions. If, for example, the person to be prosecuted is a member of the military then military discipline resulting in loss of rank and benefits may be a far greater punishment and have a far greater deterrent effect than a prosecution.
- 1.300 If this public inquiry is to proceed and if it is to achieve the benefits of determining the flaws in the system and suggesting the required remedy, and if it is to restore public confidence in the army, the police and the judicial system, it should be held as quickly as possible.
- 1.301 There are other factors that will have to be considered. For example it cannot be forgotten that Patrick Finucane was murdered over 14 years ago. Important potential witnesses such as Brian Nelson and William Stobie have died or been murdered. Memories are fading fast. In light of my finding that there is sufficient evidence of collusion to warrant a public inquiry the community might prefer a public inquiry over a prosecution even if it means that some witnesses must receive exemption from prosecution. The difficult decision to be made by the Attorney General will require a careful and sensitive balancing of all the relevant factors .
- 1.302 Concerns may be raised regarding the costs and time involved in holding public inquiries. My response to that is threefold:
1. If public confidence is to be restored in public institutions then in some circumstances such as those presented in this case a public inquiry is the only means of achieving that goal.
 2. The original agreement contemplated that a public inquiry would be held if the requisite conditions had been met. That there is evidence which could

constitute collusion has been established in this inquiry. Thus, in this case, the requisite condition has been met.

3. Time and costs can be reasonably controlled. For example, a maximum allowance could be set for counsel appearing for every party granted standing. That maximum amount should only be varied in extraordinary circumstances duly approved by a court on special application.

Counsel and the Commissioner or Commissioners could undertake to devote their full time to the inquiry until it is completed.

If the Commissioner found that the actions of a counsel were unnecessarily and improperly delaying the proceedings the costs of that delay could be assessed against that counsel or his or her client.

- 1.303 These are simply suggestions for controlling the unnecessary expenditure of public funds. Obviously there are many variations that could be played upon the important theme of cost reduction of public inquiries. If implemented, they could reduce the burden on the public purse and lead to greater harmony and fewer discordant notes in the inquiry process.
- 1.304 The Good Friday Accord and the Weston Park Agreement, which set out the selected cases as an integral part of the Accord, must have been taken by both Governments to be a significant step in the peace process. Six cases were chosen and the Agreement was negotiated and entered into on the basis that, if evidence which could constitute collusion was found, a public inquiry would be held. In those cases where such evidence has been found, the holding of a public inquiry as quickly as is reasonably possible is a small price to pay for a lasting peace.
- 1.305 At the time of the Agreement, the parties would have had in mind a public inquiry as that term was known in 2001. Yet all reasonable people would agree that an inquiry should proceed as expeditiously and economically as possible. They are not designed, and should not be considered, as a means of enriching the legal profession. No

reasonable person could object to strictures being placed on the inquiry to ensure these goals. These strictures would benefit all.

Supplement to the report on the murder of Patrick Finucane

Introduction

1.306 The Report on the murder of Patrick Finucane was completed early in December and delivered to the Canadian High Commission for safe keeping.

1.307 When that was done I understood that I had received all the pertinent documents in the hands of Government agencies. It was only then that I was advised by the Ministry of Defence (MOD) that they had many additional documents pertaining to Patrick Finucane that I had not seen. When the documents were reviewed it became apparent that they could not vary the Report. However they did confirm and strengthen my conclusions. In fairness to those who would conduct the public inquiry I thought it necessary to make a brief reference to them. That reference is made by means of this Supplemental Report. It is done in this way because I did not wish to delay the pressing work to be done on the other cases.

Additional matters relating to the testimony of Soldier “J” at Brian Nelson’s trial

1.308 The report referred in some detail to the testimony given by Soldier “J”, the Commanding Officer of FRU, at Brian Nelson’s trial.¹⁵⁰ He testified that Brian Nelson had provided 730 reports concerning threats to 217 individuals and that, as an agent working for FRU he was responsible for saving 214 lives. The report indicated that there were questions to be considered concerning the veracity and reliability of the “statistics” cited by Soldier “J”. The new documents, produced by the Ministry of Defence raise issues that might be explored at a public inquiry.

1.309 First, there is the question of whether or not Soldier “J” was testifying from a “script”. The report notes that a senior police officer alleged that Soldier “J” told him that he had been testifying from a script that had been approved by others in authority. Soldier “J” later denied this allegation. However, certain documents appear to support

¹⁵⁰ Main Report paragraphs 1.164-1.171

the inference that Soldier “J” may well have been reciting something from a prepared text. In November 1990 when the first Stevens Inquiry was underway, a senior Government official asked for information that might be used to persuade the Attorney General that Brian Nelson should not be prosecuted for crimes he committed while he was a FRU agent.¹⁵¹ A document was prepared that described Nelson’s life saving activities in virtually the same language that was used by Soldier “J” at Nelson’s trial.¹⁵² This language also appeared in a letter written by the Secretary of State for Defence to the Attorney General, in which he urged the Attorney not to prosecute Nelson.¹⁵³ Whether or not this constituted a “script”, it would appear that Soldier “J’s” testimony describing Nelson’s life saving activities – had been both approved and used by others in authority who wished to shield Brian Nelson from criminal prosecution.¹⁵⁴

1.310 This material appears to contradict Soldier “J’s” statement that his testimony was “purely my own effort based on consultations with my own lawyer and Nelson’s defence counsel”.¹⁵⁵ It raises the possibility that senior officials may have had some role in determining what Soldier “J” would say at Nelson’s trial. This becomes particularly troubling since it appears that, by the time of the trial in 1992, senior officials were well aware that the statistics referred to in Soldier “J’s” testimony were inaccurate and could not realistically be sustained. In a letter sent to the Secretary of State for Defence on 25 April 1991, the Attorney General pointed out that the evidence in the possession of the DPP and others indicated that Nelson’s intelligence had actually resulted in only two lives being saved and that “The Chief Constable of the RUC agrees with this conclusion.”¹⁵⁶

¹⁵¹ Loose minute from [name redacted] GS Sec 2 to MO 1, ACOS G2, SO1 Legal dated 6 November 1990

¹⁵² This document, which is dated 27 November 1990, is not attributed to any specific author

¹⁵³ Letter from the Secretary of State for Defence to the Attorney General, dated 19 March 1991

¹⁵⁴ Indeed, many officials wrote to the Attorney General and the DPP in an effort to prevent the Nelson prosecution. The reasons given concerned issues that would arise if Brian Nelson testified in a public forum. Letter of Lieutenant General [name redacted] to [name redacted], DPP dated 16 May 1990. Another MOD document, dated 4 March 1992 entitled “Brian Nelson: History and Trial” asserted that in addition to the MOD, the Security Service and the RUC agreed that it was not in the public interest to prosecute Nelson, given the “likely damage that would result from a trial.” Ultimately, however, the Attorney General determined that the public interest required a prosecution.

¹⁵⁵ Statement of Soldier “J” dated 2 October 1993

¹⁵⁶ Letter from the Attorney General to the Secretary of State for Defence, dated 25 April 1991

1.311 Correspondence from and within the Ministry of Defence in 1991 confirms that senior officials were aware that the FRU statement about Nelson's threats and warnings sat "uneasily" alongside the comments of RUC Special Branch.¹⁵⁷ In other words, whatever the basis for the initial calculation, it was made known to the Army in 1991 that Nelson had not been responsible for saving more than 200 lives. I have not seen any documents to indicate that this information was passed on to Soldier "J". However a public inquiry would wish to explore whether as CO of FRU he would have received this information and whether he was or ought to have been advised before he testified as to the significant errors in the statistics he quoted. This material further supports the conclusion that the evidence given at Nelson's trial is part of the cumulative picture that should be examined in determining whether FRU acted collusively in the murder of Patrick Finucane.

¹⁵⁷ Letter of 20 March 1991 from [name redacted], Private Secretary, MOD to [name redacted], Legal secretary to the Law Officers; letter from [name redacted], MOD "exclusive" to [name redacted] GS Sec 2, setting out a draft reply to the Attorney General's letter of 25 April 1991

APPENDIX A
GLOSSARY OF TERMS

Appendix A

ACOS	Assistant Chief of Staff
ASP	Assistant Secretary Political
CC	Chief Constable
CF	Contact Form
CID	Criminal Investigation Division
CLF	Commander Land Forces
CO	Commanding Officer
CQAs	Close quarter attacks
DC	Detective Constable
DCI	Detective Chief Inspector
DCI	Director and Controller of Intelligence
DHSB	Deputy Head of Special Branch
DI	Detective Inspector
DPP	Director of Public Prosecutions
DS	Detective Sergeant
FRU	Force Research Unit
GOC NI	General Officer Commanding Northern Ireland
H&K	Heckler & Koch
HMG	Her Majesty's Government
HSB	Head of Special Branch
INLA	Irish National Liberation Army
Intell	Intelligence dump
IPLO	Irish Peoples Liberation Organisation
IRA	Irish Republican Army
MISR	Military Intelligence Source Report
"P" cards	Personality Cards
PIRA	Provisional Irish Republican Army
PPW	Personal Protection Weapon
Provo	Provisional
PSF	Provisional Sein Fein

PSNI	Police Service of Northern Ireland
RUC	Royal Ulster Constabulary
SASU	Special Active Service Unit
SB	Special Branch
SMG	Sub machine gun
Sos	Solicitors
SS	Security Services
TCF	Telephone Contact Form
TCGs	Tasking and Co-ordination Groups
UDA	Ulster Defence Association
UDR	Ulster Defence Regiment
UFF	Ulster Freedom Fighters
UVF	Ulster Volunteer Force
WERC	Weapons and Explosives Research Centre

APPENDIX B

**BRIAN NELSON
SCHEDULE OF CONVICTIONS AND
SENTENCES**

Appendix B

NELSON : Schedule of convictions and sentences

On 22 January 1992, Brian Nelson pleaded guilty to 20 charges arising from his involvement in terrorist activities, including 5 counts of conspiracy to murder.¹⁵⁸ He was sentenced to serve a total of 10 years imprisonment on 3 February 1992. The offences are as follows:-

Conspiracy to commit murder

1. Conspiracy to murder Target C

Date of Offence: 17 July 1988

Sentence: 10 years imprisonment

2. Conspiracy to murder Target N

Date of Offence: between 31 March 1988 and 15 November 1988

Sentence: 10 years imprisonment, concurrent

3. Conspiracy to murder Target M

Date of Offence: between 31 March 1988 and 10 November 1988

Sentence: 10 years imprisonment, concurrent

4. Conspiracy to murder Target T.

Date of Offence: between 11 June 1989 and 25 June 1989

Sentence: 10 years imprisonment, concurrent

5. Conspiracy to murder Declan McDaid

¹⁵⁸ Various other charges, to which he pleaded not guilty, were marked "left on file; not to be proceeded on without leave of the Court"

Date of Offence: between 31 August 1987 and 11 May 1988

Sentence: 10 years imprisonment, concurrent

Collection of terrorist information

6. Collection of information likely to be useful to terrorists in planning or carrying out an act of violence, namely, he participated in ascertaining the identity of persons involved in the murder of Loyalist L.¹⁵⁹

Date of Offence: between 7 September 1988 and 24 September 1988

Sentence: 4 years imprisonment, concurrent

7. Collection of information likely to be useful to terrorists in planning or carrying out an act of violence, namely, he checked the electoral register in relation to the place of residence of Gerard Slane.

Date of Offence: between 7 September 1988 and 24 September 1988

Sentence: 4 years imprisonment, concurrent

Aiding, abetting, counselling and procuring others to possess or collect terrorist information

8. Aiding, abetting, counselling and procuring another individual to possess a document containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, a card relating to Gerard Slane.

Date of Offence: between 7 September 1988 and 24 September 1988

Sentence: 3 years imprisonment, concurrent

9. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorist in planning or carrying out an

¹⁵⁹ Note: this relates to the murder of Gerard Slane

act of violence, namely, “40 or thereabouts index cards containing particulars of potential targets.”

Date of Offence: between 30 April 1988 and 1 July 1988

Sentence: 3 years imprisonment, concurrent

10. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “a quantity of cards containing details and photographs of suspected INLA and IPLO members”.

Date of Offence: between 30 June 1988 and 12 January 1990

Sentence: 3 years imprisonment, concurrent

11. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “photocopy montages and typewritten particulars of certain persons.”

Date of Offence: between 31 May 1989 and 1 September 1989

Sentence: 3 years imprisonment, concurrent

12. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “a quantity of UDA intelligence documents.”

Date of Offence: between 30 April 1987 and 27 October 1987

Sentence: 3 years imprisonment, concurrent

13. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “a quantity of UDA intelligence documents.”

Date of Offence: between 30 April 1987 and 27 October 1987

Sentence: 3 years imprisonment, concurrent

14. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “a quantity of copies of photographs of Republican personalities.”

Date of Offence: 8 August 1989

Sentence: 3 years imprisonment, concurrent

15. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “a quantity of copies of photographs of Republican personalities.”

Date of Offence: 9 August 1989

Sentence: 3 years imprisonment. Concurrent

16. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “a quantity of photographs of certain persons.”

Date of Offence: 22 March 1988

Sentence: 3 years imprisonment, concurrent

17. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “photograph of [name redacted].”

Date of Offence: between 21 March 1988 and 27 March 1988

Sentence: 3 years imprisonment, concurrent

18. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an

act of violence, namely, checking on the locations of Target G's house and [florists – name redacted].

Date of Offence: 3 April 1989

Sentence: 4 years imprisonment, concurrent

19. Aiding, abetting, counselling and procuring another individual to possess documents containing information likely to be useful to terrorists in planning or carrying out an act of violence, namely, “photograph of [name redacted].”

Date of Offence: 4 April 1989

Sentence: 3 years imprisonment, concurrent

Possession of a firearm with intent

20. Possession of a firearm, namely a sub- machine gun, with intent by means thereof to endanger life or cause serious injury to property or to enable any other person by means thereof to endanger life or cause serious injury to property.

Date of Offence: 17 June 1989

Sentence: 6 years imprisonment, concurrent