



# DEADLY INTELLIGENCE

STATE INVOLVEMENT IN LOYALIST  
MURDER IN NORTHERN IRELAND

## SUMMARY

British Irish  
RIGHTS WATCH

FEBRUARY 1999

On 12<sup>th</sup> February 1999, the tenth anniversary of the murder of Belfast solicitor Patrick Finucane, British Irish RIGHTS WATCH will deliver a confidential report to the British and Irish governments and to the United Nations' Special Rapporteur on Independence of Judges and Lawyers.

The report concerns the activities of British military intelligence and its agent Brian Nelson. It is based on years of research by British Irish RIGHTS WATCH and others. Much of the information it contains is in the public domain, but some of it is not, and for that reason the report itself cannot be published.

In summary, the report alleges that, through its secret Force Research Unit (FRU), a branch of army intelligence, the state sought out loyalist Brian Nelson and infiltrated him into the Ulster Defence Association, which carried out its campaign of murder under the flag of convenience of the Ulster Freedom Fighters (UFF). FRU used Nelson to enhance the loyalists' intelligence on people it was targeting for murder, and that intelligence rapidly spread throughout other loyalist paramilitary groups.

The report examines in depth the murders of three innocent victims of this deadly enterprise: Patrick Finucane, Terence McDaid, and Gerard Slane.

The United Nations' Special Rapporteur has called for an independent public inquiry into the murder of Patrick Finucane. The British government has refused to hold such an inquiry unless new evidence comes to light. The report reveals information that, if the data we have seen is authentic, constitutes shocking evidence that:

- members of the RUC suggested that the UDA kill Patrick Finucane
- the RUC sent a report to Douglas Hogg which prompted his remark in Parliament that some solicitors were "unduly sympathetic to the cause of the IRA"
- Nelson was actively involved in the murder
- FRU misled the Stevens Inquiry and the Crown Court about its knowledge of and involvement in the murder
- a "P" [personality] card used by Nelson to summarise information about potential UDA victims was withheld from the Stevens Inquiry into collusion and has been withheld from lawyers acting for Patrick Finucane's widow
- RUC Special Branch had detailed information about the plot to murder Patrick Finucane but did nothing to prevent it or to protect him.

This is all information which, if true, would constitute new evidence.

Terence McDaid was killed when he was mistaken for one of his brothers. The report suggests that it may have been wrong information from FRU's handlers that led to his death. The Ministry of Defence have paid compensation to his family.

Nelson kept his handlers informed about the UFF conspiracy to murder Gerard Slane, but the report indicates that FRU did nothing to protect him. The Ministry of Defence have also compensated his family.

The alleged role played by FRU, and possibly by elements within the RUC, in these three murders and many others meant that UFF assassins were not brought to book. They literally got away with murder.

The report also examines the significant role played by Nelson in procuring weapons from South Africa for three loyalist Groups, the UFF, the Ulster Volunteer Force and Ulster Resistance. Both FRU and MI5 were fully aware of Nelson's involvement. After the shipment of weapons was received, loyalists' capacity for murder more than doubled.

The report also discusses evidence that indicates that FRU misled the Stevens Inquiry. British Irish RIGHTS WATCH has examined documents which, if authentic, show that

- FRU impounded Nelson's intelligence material within a week of the Stevens team's arrival in Belfast
- FRU did not hand over these materials to Stevens until ten days after Nelson's arrest three months later
- FRU did not hand over its own materials to Stevens for another six months or more
- the Stevens team found evidence that the materials had been tampered with
- not all the relevant documents were passed to Stevens.

FRU's activities appear to have gone beyond isolated acts of collusion. Before the late 1980s, loyalist murders were often wholly sectarian and apparently random. After 1988 their capacity for murder increased dramatically and their targeting of victims became very much more precise. There seems very little doubt that FRU played a systematic role in this. If so, they broke every rule in the book and committed some very serious crimes.

British Irish RIGHTS WATCH considers that all the deaths and other crimes in which FRU was allegedly involved merit proper scrutiny by a public inquiry. The organisation believes that the British government will be able to tell from the report whether the documents on which these allegations are based are genuine, because if so they have the originals in their possession. If they are authentic, then only a public inquiry can allay the matters of burning public interest that they raise.

The materials on which the report is based strongly suggest that agents of the state have been involved, directly and indirectly, in the murder of its citizens, in contravention of domestic law and all international human rights standards. British Irish RIGHTS WATCH calls on the British government without further delay or prevarication to set up an independent public inquiry with full judicial powers to investigate the matters raised in the report. In particular, such an inquiry must:

- determine whether the activities of the Force Research Unit, especially their infiltration of Brian Nelson into the UDA, had as their aim the assassination of any individual
- make an informed assessment based on all the available evidence, whether currently in the public domain or not, of the damage caused by those activities, both in terms of lives lost and otherwise
- determine how much knowledge and oversight of those activities was had by the army, the intelligence service, the police, the Northern Ireland Office and the government.

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## 1. INTRODUCTION

- 1.1 British Irish RIGHTS WATCH is an independent non-governmental organisation (NGO) that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.
- 1.2 In 1990 we began to research the murder of Belfast solicitor Patrick Finucane, gunned down at his home by the Ulster Freedom Fighters on 12<sup>th</sup> February 1989. Patrick Finucane had been repeatedly threatened before his death<sup>1</sup>, which followed very shortly after a government minister, Douglas Hogg MP, had made remarks in Parliament linking certain solicitors with the IRA<sup>2</sup>. There was immediate speculation that there had been official collusion in this shocking murder. By 1990, press reports were beginning to emerge that government agent Brian Nelson, arrested in January 1990, had been involved<sup>3</sup>.
- 1.3 Allegations of collusion were being investigated by a team of British police officers led by John Stevens, at that time Assistant Chief Constable of Cambridgeshire Constabulary<sup>4</sup>. His investigation, which began in September 1989, led to the arrest and trial of Brian Nelson. After the broadcasting of a BBC TV *Panorama* programme<sup>5</sup> which alleged that Nelson had been involved in a number of murders for which he had not stood trial, including that of Patrick Finucane, and that he had purchased South African weapons on behalf of loyalists in Northern Ireland, Stevens was asked to carry out a further investigation. Neither of his reports has been published, although a summary of his first report is available<sup>6</sup>.
- 1.4 Gradually over the years more information has come to light, thanks in no small measure to the investigative journalism of *Panorama*'s John Ware and Geoffrey Seed and to the interest taken in the Finucane case by international NGOs such as the Lawyers Committee for Human Rights, Amnesty International and Human Rights Watch. British Irish RIGHTS WATCH has made annual reports to the United Nations' Special Rapporteur on the Independence of Judges and Lawyers chronicling these developments and the related problem of attempts to intimidate defence lawyers in Northern Ireland. In 1997 the distinguished Malaysian lawyer Dato' Param Cumaraswamy made the first-ever official visit by the United Nations to the United Kingdom to investigate our allegations. He delivered his report to the United

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<sup>1</sup> Please see paragraph 11.2 below

<sup>2</sup> Please see paragraph 11.11 below

<sup>3</sup> *Loyalist 'was at centre of lethal web'* by David McKittrick, *The Independent*, 28.5.1990

<sup>4</sup> Stevens is now Deputy Commissioner of the Metropolitan Police in London

<sup>5</sup> On 8.6.1992

<sup>6</sup> Please see paragraphs 12.3 and 18.3 below

Nations Commission on Human Rights in April 1998.

- 1.5 The Special Rapporteur's report is extremely critical of RUC practices and emergency laws. He concluded that "... the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference" with lawyers<sup>7</sup>. He found that intimidation and harassment of defence lawyers in Northern Ireland was "consistent and systematic". He has called for an independent judicial inquiry into the murder of Patrick Finucane, saying,

"So long as this murder is unresolved, many of the community will continue to lack confidence in the ability of the Government to dispense justice in a fair and equitable manner."

When the Special Rapporteur presented his report to the Commission on Human Rights at the United Nations in Geneva on 1<sup>st</sup> April 1998, he said concerning the murder of Patrick Finucane:

"... I am convinced that there are compelling reasons for an independent judicial inquiry... The doubt which needs to be cleared, is whether there was security forces collusion in the murder. That seems to be the outstanding issue and only a judicial inquiry could resolve this."

The Special Rapporteur concluded his address to the Commission with these words:

"I am quite conscious of the fact that the ongoing peace talks in Northern Ireland are at a crucial stage. It is within this context that I concluded and made these recommendations in my report with the conviction that respect for the rule of law and human rights with greater confidence in public institutions showing transparency and accountability will enhance the prospects for a lasting peaceful settlement of the conflict."

- 1.6 The United Kingdom government's response to the report was intensely disappointing. They denied that the murder of Patrick Finucane raised any "matter of urgent public importance" sufficient to justify a public inquiry, and declined to open such an inquiry unless new evidence comes to light, saying that there had already been an inquiry into the murder. There is, though, a world of difference between a police investigation – the only inquiry there has been to date – and a public inquiry, which has a much wider scope, would enable the participation of all interested parties, and would publish its findings. Since the UK government is in possession of all the evidence relating to the murder, has been refusing to make it public, and has an obvious interest in suppressing the truth, its response is cynical and self-serving.

- 1.7 In contrast to the response of the UK government, that of the Irish government was far more positive. In a statement delivered to the Human Rights Commission on 2<sup>nd</sup> April 1998, the Irish Ambassador, Anne Anderson, said:

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<sup>7</sup> *Report on the mission of the Special Rapporteur on the Independence of Judges and Lawyers to the United Kingdom of Great Britain and Northern Ireland, United Nations, E/CN.4/1998/39/Add.4, paragraph 90*

"... My Government continues to have serious concerns about the circumstances surrounding the killing of Mr Pat Finucane and reports of the intimidation of other defence lawyers in Northern Ireland. We thank the Special Rapporteur for his detailed observations and his specific recommendations which deserve very close attention. The issues addressed in his report have, of course, been previously discussed between the Irish and British Governments within the framework of the Anglo-Irish Intergovernmental Conference. My Government believes that the Special Rapporteur's work will be of considerable assistance in addressing the need to build confidence in the administration of justice on the part of both traditions in Northern Ireland. We urge all concerned to accept it in this spirit and we thank Mr Cumaraswamy for his contribution."

David Andrews, the Irish Minister for Foreign Affairs, put out a press release on 1<sup>st</sup> April 1998 expressing very similar sentiments.

- 1.8 British Irish RIGHTS WATCH continued to research the Finucane murder and allegations of collusion in Northern Ireland, in the hope of uncovering sufficient new evidence to persuade the UK government to hold a public inquiry. This report is the fruit of that research, which has involved the scrutiny of every document we have been able to find that is in the public domain, including trial transcripts, inquest depositions, books, reports, articles, television documentaries and news coverage, *Hansard*, and so on. We have also recently had access to a large volume of documentation, amounting to some 10,000 pages, that is not currently in the public domain. These documents include copies of what appear to be army intelligence reports known as Contact Forms and MISRs<sup>8</sup>, a journal written by Brian Nelson, statements made to the police, reports sent to the DPP, and other material. Wherever possible in this report we have sourced these documents openly. However, some of the material we have examined cannot be disclosed by us without infringing confidentiality. The documents we have seen appear to us to be authentic. However, because they are not in the public domain, and because we have named many individuals in this report, we have decided not to publish our report but to deliver it in confidence to only three recipients: the British and Irish governments and the Special Rapporteur on the Independence of Judges and Lawyers. We believe this to be a responsible course of action, and we further believe that the British government will be able to tell from our report whether the documents we have seen are genuine. If they are, then only a public inquiry can allay the concerns that they raise.
- 1.9 We had long suspected that the murder of Patrick Finucane was the product not of an isolated act of collusion, but of a systematic strategy. This report describes that strategy. In a nutshell, it appears that, through its secret Force Research Unit (FRU), a branch of army intelligence, the state sought out loyalist Brian Nelson and infiltrated

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<sup>8</sup> Please see section 2 below

him into the Ulster Defence Association, which carried out its campaign of murder under the flag of convenience of the Ulster Freedom Fighters. FRU helped Nelson to enhance the loyalists' intelligence on people it was targeting for murder, and that intelligence rapidly spread throughout other loyalist paramilitary groups.

- 1.10 According to the material we have studied, the bizarre rationale behind FRU's strategy appears to have been to ensure that loyalist murder gangs focussed on the "right" targets, i.e. active republicans, rather than innocent Catholics, and, by making sure that FRU handlers knew who was being targeted, to save lives by warning targets and protecting them. Apart from the fact that this meant that government-paid agents had inevitably to engage in illegal activity, the theory behind the strategy was incapable of being delivered in practice. FRU's intervention did not save lives, it cost the lives of many people, all of whom, whatever their allegiances or activities may have been, were murdered. If the documents we have seen are authentic, FRU's actions amounted to state murder by proxy. In this report we examine in detail three of those deaths: those of Terence McDaid, Gerard Slane, and Patrick Finucane, none of whom was a terrorist. We have chosen to highlight these three cases because they demonstrate very clearly the consequences of the illegal and ill-conceived strategy that appears to have been behind FRU and its activities. However, we consider that all the deaths and other crimes in which FRU was allegedly involved, directly and indirectly, merit proper scrutiny by a public inquiry.
- 1.11 In the case of Patrick Finucane, we also draw attention to the role allegedly played in his death by members of the RUC, who incited his murder in a number of ways. Douglas Hogg's remarks in Parliament seem to have been inspired by an RUC report<sup>9</sup>. It also appears that, quite independently of any information that Nelson may have passed on about the attack, RUC Special Branch had detailed advance knowledge of the plot<sup>10</sup>.
- 1.12 FRU's activities did not stop at enhancing loyalists' intelligence about potential murder victims. They also allowed Brian Nelson to be centrally involved in loyalists' acquisition of illegal weapons from South Africa, an operation of which MI5 also had knowledge. The combination of the widespread dissemination of enhanced intelligence throughout the loyalist factions and the arrival of the arms from South Africa enabled the loyalists to double their capacity for lethal force, long after Nelson had been tried and imprisoned.
- 1.13 In the rest of this report, we set out the information that underlies all these serious allegations. We believe that this report makes an unanswerable case for a public inquiry into the matters we raise. The

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<sup>9</sup> Please see paragraph 11.9 below

<sup>10</sup> Please see paragraph 11.28 below

material we have researched strongly suggests that agents of the state have been involved, directly and indirectly, in the murder of its citizens, in contravention of domestic law and all international human rights standards. That such alleged activities took place in the context of a bitter sectarian conflict would be no excuse. Governments are expected to operate to higher standards than those adopted by paramilitaries. If they fail to do so, then democracy itself is at risk.

## 2. THE FORCE RESEARCH UNIT

- 2.1 On 8<sup>th</sup> April 1998 Kevin McNamara MP received a reply to the following written Parliamentary Question:

"To ask the Secretary of State for Defence

(1) how many officers and soldiers were attached to the Force Research Unit;

(2) what was the annual cost of

(a) the Force Research Unit and

(b) its replacement

in each year of their operation."<sup>11</sup>

Minister of State Dr Reid replied:

"I am withholding this information under exemption 1 of the Code of Practice on Access to Government Information."

Thus the government indirectly acknowledged the existence of the Force Research Unit.

- 2.2 The intelligence services in Northern Ireland – army intelligence, the RUC Special Branch, and MI5 – were heavily dependent upon recruiting informers among the paramilitary organisations, both republican and loyalist. Loyalists regarded themselves in many ways as being on the same side as the security forces and the intelligence services, and collusion was widespread. Many leading loyalists were also prime intelligence sources for the security forces. In this sense, they were double agents. However, the duality of their role made them difficult to control from the point of view of the intelligence services, who also sought to infiltrate their own locally-recruited agents into the paramilitary organisations.

- 2.3 The Force Research Unit (Northern Ireland) (FRU), formed in 1982, was<sup>12</sup> a unit within the British army Intelligence Corps. Membership was open to E2 or "extra-regimentally employed" personnel. The FRU was unique to Northern Ireland.

"The secret role of the FRU is to obtain intelligence from secretly penetrating terrorist organisations in Northern Ireland by recruiting and running agents and informers."<sup>13</sup>

- 2.4 FRU was under the command of an Intelligence Corps lieutenant colonel, whose staff included an Operations Officer (major), an Intelligence Officer (captain), an MI5 advisor, an RSM (regimental sergeant major) and support personnel (clerks, transport etc). In other words, it had much the same structure as many army units. The FRU had seven detachments:

East Det, based at Holywood Barracks

West Det, at Ebrington Barracks, Derry

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<sup>11</sup> PQs 37814 and 37813, *Hansard*, 8.4.1998

<sup>12</sup> The FRU no longer exists; although its functions continue under another guise, as the government indirectly acknowledged in its response to Kevin McNamara

<sup>13</sup> Voluntary statement by Colonel Kerr, believed to be the officer commanding FRU from December 1986 to March 1989 or 1990

North Det , at Antrim  
South Det , at Bessbrook Mill  
St Angelo Det, at Omagh/Fermanagh  
Aughnacloy Det , at Aughnacloy  
Central Det, at Lisburn (FRU HQ).

Each detachment was commanded by a lieutenant or captain, who was assisted by a Field Source Controller, who had 8 or 10 handlers (whose ranks varied from sergeant to WO2), a clerk and a collator. FRU was tasked through G2 (intelligence and security) at army headquarters in Lisburn (HQNI). FRU employed some 50 handlers and ran some 100 agents and informers<sup>14</sup>. It therefore represented a significant commitment in terms of cost and personnel by the army and, presumably, the government.

- 2.5 Telephone calls from agents were recorded by handlers on Telephone Contact Forms (TCFs). Personal meetings were tape-recorded and then noted on a Contact Form (CF), after which the tape was erased. The CF comprised the following sections:

CF1 - details of handlers, meeting places, routes to and from contact point, and other administrative details

CF2 - diary of agent's events and activities since the last meeting plus details of any intelligence of use to the security forces. This section included the following headings:

BACKGROUND - the reason for the meeting

FINANCE - details of payments to agents and associated financial matters

WELFARE - matters relating to the agent's personal welfare

SECURITY - the agent's personal security and that of the meeting

MOTIVATION - the agent's motivation for providing the information

CASE DEVELOPMENT - how FRU intended to develop the agent or particular aspects of his role

ACCESS - the agent's access to sources

TASKING - tasks set for the agent by FRU

CF3 - details of debriefing of agent by handler, i.e. advice, instructions etc.

Contact Forms were secret. One copy of each form was made and sent to FRU HQ in Lisburn.

- 2.6 A Military Intelligence Source Report (MISR - pronounced miser) was compiled from the CFs and TCFs. MISRs were passed to the RUC Special Branch (SB) Source Unit (SU). They contained information requiring police action. Prior to May 1988, MISRs were typed. After that they were computerised.

- 2.7 High grade intelligence was not included on MISRs, but was put on a secret MISR supplement. These were distributed to a limited group of

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<sup>14</sup> *Revealed: how the Army set up Ulster Murders*, by John Ware and Geoff Seed, *Sunday Telegraph*, 29.3.1998

addressees on a strict "need to know" basis. The SBSU was included in this group, but MISRs were very watered down and contained much less information than CFs.

- 2.8 Most of the information that has come to light about the way that FRU operated has done so because of the arrest and trial of one of its agents, Brian Nelson, who was infiltrated by FRU into the loyalist Ulster Defence Association, where he became the senior intelligence officer. We understand that Nelson was for a time FRU's only agent among the loyalists, although other branches of the security services had many such informers. FRU's other agents, however, appear to have been deployed amongst the republican paramilitary groups.

### 3. NELSON'S HISTORY PRIOR TO 1987

- 3.1 Brian Nelson joined the Black Watch Regiment of the British army in October 1965. According to his sisters<sup>15</sup>, he was first recruited by army intelligence while serving with the Black Watch. Officially, he went absent without leave in the late 1960s and was medically discharged in 1970<sup>16</sup>, but he may have remained in the army until 1974<sup>17</sup>.
- 3.2 In 1972 Nelson joined the Ulster Defence Association (UDA)<sup>18</sup>. The UDA was the largest loyalist paramilitary organisation, and was legal when Nelson joined<sup>19</sup>. It was formed in 1971. Murders attributed to the illegal Ulster Freedom Fighters (UFF) were in fact organised and carried out by the UDA.
- 3.3 On 18.2.1974, Nelson was convicted on two counts of carrying a firearm with intent to commit an indictable offence, possession of a firearm and ammunition with intent, two counts of intimidation, and assault<sup>20</sup>. These charges arose out of the kidnapping in March 1973 of Gerald Higgins, a Catholic. Mr Higgins was abducted and taken to a UDA club in Wilton Street, off the Shankill Road, where he was subjected to electric shocks and other forms of torture. He died prematurely-not long after this ordeal. Nelson and two other UDA members were sentenced to seven years<sup>21</sup>.
- 3.4 Nelson was released from prison in 1977, and again became involved with the UDA. At his trial the Crown claimed that he had "offered his services to military intelligence" in 1983<sup>22</sup>. According to Crown Counsel, Brian Kerr QC (now a High Court Judge)<sup>23</sup>:  
"From 1983 onward, while he was in Northern Ireland, he was in regular communication with military contacts known as handlers. And in the course of such contacts he provided information to his handlers of his activities and the activities of others within the UDA." However, according to Nelson himself, army intelligence asked him to become re-involved with the UDA<sup>24</sup>.
- 3.5 In 1985, Nelson was appointed as the UDA's Intelligence Officer in its West Belfast Brigade<sup>25</sup>. At that time, the UDA's Intelligence was virtually non-existent. Nelson says that 100 index cards on republican suspects

<sup>15</sup> UTV News report 12.10.1990

<sup>16</sup> *Panorama* transcript, 8.6.1992, p.2

<sup>17</sup> See *The Red Hand: Protestant Paramilitaries in Northern Ireland*, Steve Bruce, Oxford University Press, 1992, p.263

<sup>18</sup> *R v Brian Nelson*, transcript (hereinafter: Transcript), 22.1.1992, p.12

<sup>19</sup> The UDA became a proscribed organisation on 10.8.1992

<sup>20</sup> Transcript, 29.1.1992, p.70

<sup>21</sup> See *The Red Hand: Protestant Paramilitaries in Northern Ireland*, Steve Bruce, Oxford University Press, 1992, p.263

<sup>22</sup> Transcript, 22.1.1992, p.12

<sup>23</sup> *Ibid*:

<sup>24</sup> Nelson's journal, p.1

<sup>25</sup> Nelson's journal, p.4

"mysteriously" appeared at the Shankill Road office one morning "ostensibly" for his use, and he spent some time trying to update them<sup>26</sup>. In April 1985 John McMichael, then the officer commanding the South Belfast Brigade of the UDA, started to revamp the UDA's intelligence. A computer was installed at the UDA's Gawn Street HQ and information was entered on it and cross-checked. Nelson then received instructions from Gawn Street on how to organise his own intelligence, including purchasing his own computer<sup>27</sup>. At first, West Belfast's computer was housed at the UDA's Shankill Road offices, but Nelson persuaded Tommy "Tucker" Lytle, West Belfast's commander, to let him take it home. After that he was able to share information with military intelligence<sup>28</sup>.

- 3.6 On 25.10.1985, Nelson left Northern Ireland and went to live in Neutrabling near Regensburg in Bavaria<sup>29</sup>, Germany, where he had served with the Black Watch.

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<sup>26</sup> *Ibid*, p.16

<sup>27</sup> *Ibid*, p.17

<sup>28</sup> *Ibid*, p.18

<sup>29</sup> *Ibid*, p.15 and p.38

#### 4. SOUTH AFRICA

- 4.1 In 1985 Dick Wright, formerly from Portadown and by then an agent of Armscor<sup>30</sup> living in South Africa, visited Belfast. He met a senior leader of the loyalist UDA<sup>31</sup> and offered to supply the loyalists with weapons worth at least a quarter of a million pounds. However, he indicated that missile parts or plans would constitute an acceptable alternative exchange<sup>32</sup>.
- 4.2 In response to this offer, UDA leader Andy Tyrie sent Brian Nelson to South Africa to investigate further<sup>33</sup>. Within the UDA, Nelson's involvement was under the supervision of John McMichael. Nelson was to travel to South Africa to find out what was on offer, what it would cost and what transportation arrangements needed to be made<sup>34</sup>. Nelson told his handlers about the project. His handler "Mick" told him that permission for him to be involved had gone "all the way to Maggie [Thatcher]". Nelson believed this to be an exaggeration.<sup>35</sup> However, it was reported that Nelson's trip was authorised by the Ministry of Defence and by an un-named UK government minister<sup>36</sup>.
- 4.3 Nelson spent two weeks in South Africa in June 1985<sup>37</sup>, where he met Charles Simpson<sup>38</sup>, a member of the South African Defence Forces (SADF) who was also believed to be an MI5 agent<sup>39</sup>. Simpson, like Wright, was originally from Northern Ireland, where he had loyalist connections and had been a member of the loyalist organisation Tara<sup>40</sup>. Simpson took Nelson to a gunsmiths in a shopping arcade in central Durban, where he met a Mr Millar. What was on offer was an initial purchase of small arms to the value of £100,000. The consignment would include:

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<sup>30</sup> The South African state-owned arms company

<sup>31</sup> Thought to have been Andy Tyrie

<sup>32</sup> *The Independent*, 29.10.1991

<sup>33</sup> Nelson's journal, p.19

<sup>34</sup> *Ibid*, p.20

<sup>35</sup> *Ibid*, p.21

<sup>36</sup> *Sunday World*, 30.12.1990; *Irish News*, 10.2.1992

<sup>37</sup> According to a report in the *Sunday Tribune* on 12.1.1992, Nelson travelled to South Africa via London over the weekend of 7th and 8th June 1985.

<sup>38</sup> Full name: Samuel Charles Simpson, according to BBC TV programme in the *Spotlight* series, entitled *Spies, Stings and Double Crosses*, transmitted 18.2.1993.

<sup>39</sup> Confidential source, Ware and Seed

<sup>40</sup> According to *The Kincora Scandal*, by Chris Moore, Mercier Press 1996, Simpson worked for William McGrath, leader of the hard line loyalist group Tara, which had close links with Ulster Resistance, another loyalist group closely linked to the Unionist establishment in Northern Ireland, and with the UK intelligence service MI5. Simpson was sent to Rhodesia by Tara in 1976 to make links with Ian Smith's regime. In 1980 he emigrated to South Africa, where he joined the police, later joining the SADF. According to Nelson's journal, p. 29, prior to leaving Armagh Simpson had been an active member of Colonel Bush's Down Orange Welfare organisation. Nelson also records, at p.24, Simpson's espousal of the doomsday philosophy promulgated by Tara.

- the assault rifles then used by the SADF
- Standa sub machine guns, a Czech design manufactured under licence at Millar's Durban factory
- Browning Star 9mm automatic pistols
- Striker automatic shotguns, designed for bush warfare, and measuring 30" from muzzle to butt, which used a 12-round magazine
- tons of explosives
- RPG launchers including Square Head rounds
- mines
- other sundry items.<sup>41</sup>

During the second week of his stay, Simpson told Nelson that someone in the South African Bureau of Information wanted to know if Nelson could get hold of a Blowpipe from Shorts munitions company based in Belfast<sup>42</sup>. The South Africans were prepared to supply weapons in return for information about or parts of missiles being developed by Shorts so that they could copy them for their own use and for sale in their extensive arms trade. However it was to be paid for, a deal was struck to supply the weapons.

- 4.4 According to Nelson, the night before he left, Simpson gave him some money for Simpson's wife in Belfast and various other items. Nelson's handler "Mick" met him at Heathrow, having cleared Nelson through customs and passport control. Someone from MI5 took Nelson's suitcase away for two hours to examine the things given to him by Simpson. Nelson also gave Mick the detailed diary he had kept while in South Africa, in contravention of FRU rules. Mick accompanied Nelson back to Belfast. In 1987 Nelson's handler "Ronnie" told him that it had been decided to let the first consignment of weapons enter Northern Ireland untouched in order to protect Nelson's cover.<sup>43</sup>
- 4.5 About a month after Nelson returned to Belfast, he asked Tucker Lyttle what was happening about the weapons. Lyttle said other UDA brigades were reluctant to come up with their share of the money. West Belfast UDA could go it alone but it would clean them out financially.<sup>44</sup>
- 4.6 A CF dated 18.7.1985 says:
- "6137 [Nelson] is one of only four known people who are aware of the proposed UDA arms deal with South Africa. As the original organiser of the arms deal and because of his successful trip to South Africa, during which he impressed his UDA superiors, he will most likely be involved in the completion of the arms deal."

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<sup>41</sup> Nelson's journal, p.28

<sup>42</sup> Ibid, p.29

<sup>43</sup> Ibid, pp.30 - 31

<sup>44</sup> Ibid, p.32

- 4.7 However, journalist Chris Moore, in his book *The Kincora Scandal*<sup>45</sup>, paints a different picture. He says that the South Africans were unsure about Nelson from the outset. They had him checked out by another Tara member now living in South Africa (whom he identifies only by the pseudonym Billy and whom he says was recruited to Tara at the same time as Charles Simpson) and kept Nelson under constant surveillance while he was in South Africa and on his return trip to London. They realised that he was a double agent also acting for British intelligence, and broke off the arms deal. However, another deal was done later with Ulster Resistance, resulting in the shipment referred to below. A report in the *Irish News*<sup>46</sup> suggests that such a deal may have been done by Roy Metcalfe, a member of Ulster Resistance who was murdered in 1989, as was fellow member Thomas Gibson<sup>47</sup>.
- 4.8 In June 1987 a bank robbery took place in Portadown, which netted £325,000<sup>48</sup> and which was organised by the UDA, the Ulster Volunteer Force (UVF) and Ulster Resistance<sup>49</sup>.
- 4.9 Final arrangements for a shipment of weapons were completed in December 1987. The arms were dispatched in crates marked as containing ceramic tiles at the end of December 1987 by Joseph Fawzi, a Lebanese intermediary employed by an American arms dealer, Douglas Bernhardt, who was working for the South Africans<sup>50</sup>. Dick Wright had previously worked for Bernhardt's London gun dealership, Field Arms.
- 4.10 The shipment is thought to have consisted of:
- 200 AK47 automatic rifles
  - 90 Browning pistols
  - c. 500 fragmentation grenades
  - 30,000 rounds of ammunition
  - 12 RPG7 rocket launchers.
- 4.11 The shipment was reported to have cost the loyalists £150,000, which was lodged in a Swiss Bank<sup>51</sup>.
- 4.12 It was landed in Northern Ireland in late December 1987 or early January 1988. Many of the weapons were of Czech manufacture, and had been captured from the PLO by the Israelis, who then sold

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<sup>45</sup> Mercla Press, 1996

<sup>46</sup> 30.10.1991

<sup>47</sup> Metcalfe was said in the same article to have been believed to be a close friend of one of the three loyalists arrested in Paris in April 1989 – please see paragraph 4.16 below. The article also said that Ulster Resistance had claimed that Metcalfe and Gibson, who were both killed by the IRA within 9 days of each other in 1989, had been "set up by British intelligence"

<sup>48</sup> Nelson says £250,000 in his journal at p.32

<sup>49</sup> *The Independent*, 24.4.1989 – David McKillick's source for this information was Alan Wright, a founder member of Ulster Resistance

<sup>50</sup> *The Independent*, 29.10.1991

<sup>51</sup> *The Independent*, 24.4.1989

them to Armscor<sup>52</sup>. The shipment was shared out between the three loyalist groups who had organised the Portadown robbery: the UDA, the UVF, and Ulster Resistance. The UDA lost almost its entire portion when cars driven by David Payne and two others were stopped by the police outside Portadown shortly after the share-out in January 1988 and the boots of two of the cars were found to be full of weapons<sup>53</sup>. 61 Kalashnikov rifles, Browning pistols, fragmentation grenades and assorted ammunition were recovered<sup>54</sup>. The UVF lost about half its share about a month later when police raided an arms dump in North Belfast<sup>55</sup>.

- 4.13 The involvement of MI5 agent Charlie Simpson and FRU's approval of Nelson's trip to South Africa amounts to unofficial sanctions-busting on the part of UK government agencies.
- 4.14 Relatives for Justice, an NGO that represents the relatives of those killed by the security forces in Northern Ireland, has documented many deaths that occurred in Northern Ireland between 1990 and 1994 in their report, *Collusion 1990-1994*. In the three years from 1985 to 1987, loyalists were responsible for 34 out of the total of 213 conflict-related deaths (16%). From 1988, when the arms shipment arrived in Northern Ireland, to 1994, they were responsible for 224 out of 595 deaths (38%). In other words, their capacity for killing more than doubled.<sup>56</sup> We believe that many of these deaths may have been caused by weapons from this shipment.
- 4.15 Two other incidents concerning South African operatives suggest that other shipments may also have been made to loyalists by the apartheid regime<sup>57</sup>.
- 4.16 In April 1989, three members of the loyalist group Ulster Resistance - Noel Little<sup>58</sup>, Samuel Quinn and James King - were arrested in Paris together with arms dealer Douglas Bernhardt and South African embassy official Daniel Storm. The three loyalists were in possession of

<sup>52</sup> *Irish News*, 26.4.1989

<sup>53</sup> *Sunday Tribune*, 9.2.1992

<sup>54</sup> *Irish News*, 30.10.1991

<sup>55</sup> *Sunday Tribune*, 12.1.1992

<sup>56</sup> Figures computed from those published in *Bear in Mind these Dead ... An Index of Deaths from the Conflict in Ireland 1969 - 1993* by Malcolm Sutton, published by Beyond the Pale Publications, 1994, Appendix, p.206

<sup>57</sup> On 25.6.1989, the *Sunday World* reported rumours that a large shipment of arms from South Africa was due to arrive in Northern Ireland within the next two months, following a weekend visit to Northern Ireland loyalists by South African representatives. The recipient of the shipment was claimed to be Ulster Resistance. It was also alleged that some South African weapons had already arrived in Northern Ireland having been shipped to a European port and delivered to Northern Ireland in a container lorry via Britain.

<sup>58</sup> Surname is spelled Little or Lytle in different newspaper reports. David Payne, arrested with the UDA's share of the arms shipment in January 1988, had Noel Little's telephone number written on his hand at the time of his arrest, according to the *Irish News* of 30.10.1991.

parts of a dummy Blowpipe missile stolen from Newtownards Barracks, where Quinn served in the Territorial Army.<sup>59</sup> It is believed that they were negotiating another arms shipment to replace the arms lost when the first shipment was intercepted.

- 4.17 Daniel Storm claimed diplomatic immunity and was deported to South Africa. Bernhardt and the three loyalists were each fined and received suspended sentences. Subsequently a number of South African diplomats and other embassy staff were expelled from France and from the UK<sup>60</sup> because of alleged collaboration with loyalists.
- 4.18 In April 1992, Pamela Du Randt<sup>61</sup>, a captain in the South African Intelligence Service and Leon Flores, a former policeman also employed by the South African Intelligence Service, met three loyalists in London. The meeting was arranged by South African Defence Force/MI5 agent Charles Simpson. According to newspaper reports<sup>62</sup>, an internal SADF inquiry found that two of the three loyalists were members of the RUC. It would appear that the RUC was involved in carrying out surveillance on Dirk Coetzee, a South African former policeman turned whistleblower then living in London. Flores is said to have paid Simpson £2,000 for services rendered by the RUC<sup>63</sup>. Following the London meeting, Flores and Du Randt travelled to Hillsborough in Northern Ireland, where further payment in the form of Semtex explosives, weapons, night vision equipment and electronic eavesdropping devices was discussed in return for the continued surveillance of Coetzee<sup>64</sup>. The two South Africans were arrested as they were boarding their return flight to South Africa from London and held by British police for five days before being deported. Upon their return, Flores was de-briefed by SAIS and a tape-recording of this de-briefing was made.<sup>65</sup>

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<sup>59</sup> *The Independent*, 29.10.1991

<sup>60</sup> Those expelled by the UK were Staff Sergeant Mark Brunwer, First Secretary Jan Castelyn, and Elienne Fourie.

<sup>61</sup> According to *The Independent* of 12.11.1992, Du Randt worked closely with General Christoffel van der Westhuizen, chief of South African Military Intelligence.

<sup>62</sup> *The Independent*, 12.11.1992; *Irish News*, 12.11.1992

<sup>63</sup> An article in *The Independent* of 12.11.1992 suggested that Colonel Eugene de Kock of the security police supplied this sum of money.

<sup>64</sup> We understand that support for these allegations is to be found in the records of the inquest on the murder of South African lawyer Bheki Mlangeni in February 1991 - *Irish Times*, 12.11.1992; *Irish Independent*, 14.11.1992. Also, two lawyers working for the firm of Bell Dewar and Hall, Johannesburg, Brian Currin and Greg Nott, have interviewed Flores and have tape-recordings of his admissions.

<sup>65</sup> Extracts from this tape were included in the BBC TV programme in the *Spotlight* series, entitled *Spies, Stings and Double Crosses*, transmitted 18.2.1993.

5. NELSON'S RETURN FROM GERMANY AND HIS ROLE 1987 - 1990
  - 5.1 On 14.9.1986 John Bingham was shot dead by the IRA at his home in Ballysillan, Belfast. Bingham was a leading member of the UVF and allegedly had also been working for FRU<sup>66</sup>.
  - 5.2 At about the same time, army intelligence was coming under pressure from the then Secretary of State for Northern Ireland, Tom King, to come up with better intelligence<sup>67</sup>, following a series of embarrassing press stories and thefts of weapons from army barracks. The loss of Bingham, a key source, was keenly felt.
  - 5.3 FRU informed MI5 that they wanted to re-recruit Nelson, and representatives of both agencies met him at Heathrow airport. MI5 were strongly opposed to re-recruiting Nelson; they considered that Special Branch already had sufficient agents infiltrated among the loyalists. However, FRU's interests managed to over-rule those of MI5.<sup>68</sup> Special Branch were also against the plan. The fact that FRU won the argument places a question mark over the policy of police primacy in Northern Ireland, and suggests that FRU had political backing, presumably from Tom King.
  - 5.4 The officer commanding the FRU from December 1986 until March 1989 or 1990<sup>69</sup>, who according to documents we have seen was Colonel Gordon Kerr, referred to at Nelson's trial as Colonel J, told the court:
 

"...In January 1987 we were reviewing our current agent coverage of the Loyalist paramilitaries and we identified a gap in our coverage of the Loyalist paramilitaries and we examined the case of Brian Nelson and decided that we would try and re-recruit him... I first had to consult with the security service, but having done that and gained permission to go ahead with the recruitment, or the re-recruitment, we then initiated the procedures and brought him back from Germany and continued with the case from then on... We discussed the matter with him and explained to him our aims, our aims being that we wished to infiltrate him into the Loyalist paramilitaries in order to gain inside knowledge of their workings and in order to prevent or at the very least limit their murderous activities..."<sup>70</sup>

Thus Nelson came back to Northern Ireland at the FRU's behest, for the specific purpose of infiltrating him into the loyalist paramilitaries.

<sup>66</sup> There is some support for this contention in *Stone Cold* by Martin Dillon, Arrow, 1992, p. 212

<sup>67</sup> *Panorama* transcript, 8.6.1992, p.4

<sup>68</sup> *Ibid*, p. 5

<sup>69</sup> Colonel Kerr's statement says March 1989, but this may have been an error, as he delivered a report to the Stevens team in September 1989 and also briefed senior army officers and MI5 about it - please see paragraph 15.2; he also appears to have been around at the time of Nelson's arrest in January 1990

<sup>70</sup> Transcript, 29.1.1992, pp.1 - 2

- 5.5 BBC journalist John Ware has published an article<sup>71</sup> alleging that the CFs examined by John Stevens during his first inquiry into collusion prove that Brian Nelson was infiltrated into the Ulster Defence Association by army intelligence specifically for the purpose of helping the UDA to target IRA suspects, thus implicating the army in loyalist assassinations. The CFs record Brian Nelson's weekly meetings with his army handlers. A CF dated 3<sup>rd</sup> May 1988 reads:
- "6137 (Nelson's code number) wants the UDA only to attack legitimate targets and not innocent Catholics. Since 6137 took up his position as intelligence officer, the targeting has developed and is now more professional."
- Interviewed by Vincent McFadden, John Stevens' deputy, Gordon Kerr confirmed that he had recruited Nelson to
- "persuade the UDA to centralise their targeting through Nelson and to concentrate on known PIRA activities."
- Another CF, dated 6<sup>th</sup> February 1989, less than a week before Patrick Finucane was murdered, reads:
- "6137 initiates most of the targeting. Of late 6137 has been more organised and he is currently running an operation against selected republican targets."
- 5.6 John Ware says that Stevens found a "wealth" of detailed intelligence in the files he examined, but only summaries were passed to RUC Special Branch, whose role should have included warning potential victims. Ware alleges that these summaries had been "deliberately diluted". He also says that the failure to keep the RUC fully informed contravened a directive issued by the army's Commander Land Forces in 1986. We understand that the Stevens team was unable to substantiate Colonel Kerr's claim that Nelson's work had saved numerous lives.
- 5.7 Nelson's method of assisting the UDA to target its victims included compiling personality, or P cards, which recorded the target's address, associates, identification details and a photograph. When a target was selected for assassination the P card<sup>72</sup> was passed by Nelson to the murder squad. The P cards were stored in a suitcase in a safe house under the control of his army handlers.<sup>73</sup>
- 5.8 The information collected by Nelson was widely disseminated within the UDA. In September 1987 Nelson used his P cards to give the UDA's ruling Inner Council a briefing on republican targets. The briefing took place at the Mayo Street Social Club, which was UDA controlled. He used around 100 P cards and a leaked security force photomontage of suspected republicans for the briefing. The following attended the briefing: Andy Tyrie, chair of the UDA; John McMichael, the

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<sup>71</sup> *Time to come clean over the army's role in the "Dirty War"*; New Statesman, 24.4.1998

<sup>72</sup> Or, perhaps a photocopy of the P card or a print-out of information stored on Nelson's computer

<sup>73</sup> Ibid

commander of the UDA's South Belfast brigade; Billy Elliott, East Belfast; Tucker Lyttle, West Belfast; and Davy Payne, North Belfast. The inner Council asked Nelson to brief brigade intelligence officers also. This meeting took place two weeks later and he passed each intelligence officer a set of photocopies of the P cards. Present were: Joe English, South East Antrim; Tom Reid, North Belfast; Sammy McCormick, East Belfast; Tosh Lyttle, West Belfast. Nelson's FRU handler "Martin" knew about the briefing and about Nelson's passing on of the P cards to brigade intelligence officers.<sup>74</sup> A CF dated October 1987 suggests that FRU had intended to provide an escort for Nelson while he was taking his P cards to and from the briefing, although it is not known whether this actually happened. At Nelson's trial, Crown Counsel Brian Kerr QC told the court that counts 27 and 28 of the indictment referred to Nelson's passing copies of his P card system to five UDA members on 26.10.1987<sup>75</sup>. A CF of that date names the recipients as Winkie Dodds, James Spence, Matt Kincaid, Alex Bunting and Alan Snoddy.

- 5.9 There is also evidence that Nelson was passing material to contacts in the UVF. A CF dated 2.5.1985 states that Nelson had passed information to UVF man Lawrence Clifford. Another CF dated March 1988 says that Nelson had again passed 20 photographs of targets to Clifford. On 8.8.1989 Nelson gave a large number of photographs of alleged republicans to another UVF man, Jackie Anderson. He also gave Anderson photographs of two men on 2.10.1988<sup>76</sup>.
- 5.10 Nelson's information also found its way to another loyalist paramilitary group, the Red Hand Commandos, via Tucker Lyttle's son Tosh<sup>77</sup>.
- 5.11 Thus Nelson's lethal information was widely available to loyalist killers of all the major factions. At his trial, Nelson's defence lawyer, Desmond Boal QC, said in his plea in mitigation:  
"He has been not just of service but of enormous service to the community. The extent of that service can perhaps only partially be judged by the fact that since in fact he was incarcerated the level of killings have increased significantly..."<sup>78</sup>  
Another explanation for the increase in loyalist violence in the early 1990s may have been the influx of South African weapons and Nelson's other work in improving the loyalists' intelligence and disseminating it throughout the loyalist world<sup>79</sup>.

<sup>74</sup> Nelson's journal, pp. 65D, E and F

<sup>75</sup> Transcript, 22.1.1992, p.22

<sup>76</sup> See paragraph 11.25 below

<sup>77</sup> Nelson's journal, p.125

<sup>78</sup> Transcript, 29.1.1992, p.68

<sup>79</sup> Please see paragraph 4.14 above

6. FRU ENHANCEMENT AND PROTECTION OF NELSON'S INTELLIGENCE STORE

- 6.1 In 1987 Nelson was appointed as the Senior Intelligence Officer of the UDA. He found that the UDA's central intelligence store was badly out of date. He reported this to his FRU handlers, who arranged to collect it from him on 14.10.1987 and help him to update it:

"... at 8 02 pm on this date handlers Sgt Callan and WO2 Ferraby driving a blue Sierra and silver Hyundai Stellar respectively accompanied Nelson in his car to a debrief on a layby on Upper Hightown Road, GR31 10 7937. The purpose of the meet, which took only three minutes, was for Nelson to hand over photographs of various targets in Eire and also the bulk of the UDA's targetting file for the FRU office to copy and evaluate. The two FRU cars convoyed Nelson's car to give him protection while the files were in his vehicle. Nelson quickly transferred a large grip containing the photographs and the files into the handler's boot. The UDA targetting files consisted of:

- a. Approximately 500 A4 RUC statements concerning the arrest of William 'Twister' McQuiston in 1986 from RUC Knock
- b. Various Garda reports on National personalities
- c. Various military maps of Belfast
- d. Various P card files BRITISH ARMY
- e. Various UDA computer printout on National personalities
- f. PIRA orbats, origin unknown
- g. P cards, origin unknown
- j. Handwritten note to UDA by unknown person
- k. Nick numbers, use and origin unknown
- l. List of RUC statements concerning arrest of 'Twister' McQuiston
- m. Driving licence of Paul McGivern
- n. UDA briefing paper
- o. 40 CDO RM brief on joining IRA
- p. Photographs of Military ops room or int cell walls
- q. One BRITISH ARMY Northern Ireland AIDE MEMORIE [sic]<sup>80</sup>

Files a, b and c were loaned to the RUC Source Unit for evaluation. It is believed that the list of documents is not exhaustive and that other documents may have been taken by FRU.<sup>81</sup>

- 6.2 Colonel Kerr told the court at Nelson's trial<sup>82</sup>

"... once he had managed to gain the confidence of his associates over the first few weeks and months he was given charge of a large amount of material that was already in the UDA hands... He brought it to us, we studied it, photocopied it where necessary for reporting, passed parts of it to the RUC that was relevant for their comment and then generally, for security reasons

<sup>80</sup> Contact Form, 14.10.1987

<sup>81</sup> Ibid

<sup>82</sup> Transcript, 29.1.1992, p. 8

obviously for his security and gave it back to him and he took them to where he would have them."

- 6.3 Nelson's journal<sup>83</sup> says that FRU went further than that. They weeded out large amounts of out-of-date information and returned to him a much more streamlined and effective intelligence store. Nelson also implies that his handlers passed him better security force photo montages than his UDA colleagues were able to obtain:  
"Montages given to me were in the majority already in the possession of the UDA, however they were more up-to-date and of superior quality."<sup>84</sup>
- 6.4 In 1987 Nelson rented a flat at 4J Forthriver Crescent in the Glencairn area of Belfast from Gordon Mahaffey to use as a safe house for the UDA's intelligence store<sup>85</sup>. FRU knew all about this and told RUC Special Branch to add it to their "protected address" list, to stop it being searched<sup>86</sup>. When Nelson moved the store into the safe house, FRU provided an escort, consisting of two cars, plus a helicopter to monitor the operation<sup>87</sup>.
- 6.5 FRU not only had a copy of everything in the original UDA intelligence store that they enhanced for Nelson, they also received copies of all the new intelligence collated by Nelson:  
"Throughout my tenure as IO [Intelligence officer] it would be fair to say that an innumerable amount of information concerning personalities within Republican organisations, in the form of photo-montages and written details concerning within these organisations, was passed on to me, through my capacity as IO. In all instances all such information was dueily [sic] photocopied by my Handlers and returned to me."<sup>88</sup>

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<sup>83</sup> p.62

<sup>84</sup> *Panorama* transcript, 8.6.1992, p.6. See also Nelson's Journal, p. 87, where there is some suggestion that one of his FRU handlers gave him photomontages.

<sup>85</sup> We understand that a report on Mahaffey was sent to the DPP on 22.3.1990

<sup>86</sup> Transcript, 29.1.1992, pp. 10-11

<sup>87</sup> Nelson's journal, pp.65H and 65I

<sup>88</sup> *Ibid*, p.64

## 7. THE EXTENT OF COLLUSION BETWEEN MEMBERS OF THE SECURITY FORCES AND LOYALISTS

7.1 The ordinary meaning of the word "collusion" is a conspiracy for improper purposes. In the context of Northern Ireland, the term has come to embrace a number of illegal activities on the part of members of the security forces (the police, the army and the intelligence services) and policies or practices on the part of the state. These include:

- conspiring with paramilitaries to carry out assassinations;
- taking part in such assassinations;
- collecting information on those targeted by paramilitaries and passing it over to paramilitaries;
- passing legitimately collected official information to paramilitaries for illegitimate purposes;
- failing to prevent paramilitary assassinations;
- providing weapons to paramilitaries;
- assisting in the commission of such killings, for example, by lifting road blocks;
- failing to investigate such killings rigorously;
- failing to prosecute those responsible for such killings;
- failing to prosecute or otherwise discipline those members of the security forces involved in collusion;
- using Public Interest Immunity Certificates and claims at trials and inquests to withhold information concerning alleged collusion;
- refusing to make public the findings of the limited number of official investigations into collusion;
- allowing members of the security forces to carry out illegal acts, whether in conspiracy with paramilitaries or not, with impunity and hindering official investigation of those acts.

Many of these activities, policies and practices have been described and criticised by international human rights groups over a period of several years<sup>89</sup>.

7.2 Collusion is a very difficult thing to measure because of its illegal and clandestine nature. Throughout the conflict in Northern Ireland there have been many allegations of collusion between the United Kingdom security forces and loyalist paramilitaries. The overwhelmingly Protestant make up of the security forces, the identity of interests between many members of the security forces and loyalist paramilitaries, and the fact that members of those forces have on

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<sup>89</sup> See, for example, successive editions of *United Kingdom Human Rights Concerns*, Amnesty International; *Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane*, Lawyers Committee for Human Rights, New York, February 1993; *Political Killings in Northern Ireland, 1994*, Amnesty International; *At the Crossroads: Human Rights and the Northern Ireland Peace Process, Ending the Emergency, Judges and Lawyers*, Lawyers Committee for Human Rights, New York, December 1996; *To Serve Without Favour: Policing, Human Rights, and Accountability in Northern Ireland*, 1997, Human Rights Watch/Helsinki, New York; and the forthcoming report by the Association of the Bar of New York

occasion been proved to have also belonged to loyalist paramilitary groups concurrently<sup>90</sup>, have fuelled these allegations.

- 7.3 The extraordinary saga of the Stalker Inquiry displayed many features of apparent collusion. In 1982, six men were killed by a special RUC unit within a period of 7 weeks. These killings led to allegations of a shoot-to-kill policy, especially after it emerged at the trial of three RUC officers charged with the murder of one of the victims<sup>91</sup> that they had been instructed by their superiors to withhold information concerning the planning of the operation from detectives investigating the killings. John Stalker, a senior English police officer, was called in to investigate all six deaths. He was removed from the inquiry after his professional integrity as a police officer was called into question, only to be reinstated subsequently with no stain on his character<sup>92</sup>. Stalker was replaced by another senior policeman, Colin Sampson. The Stalker/Sampson report was never published. In 1988, Sir Patrick Mayhew, then the Attorney-General<sup>93</sup>, announced that, although their report disclosed evidence of a conspiracy on the part of certain police officers to pervert the course of justice, he had decided that it would not be proper to institute any criminal proceedings "in the public interest". In September 1994, the Coroner finally abandoned all attempts to hold an inquest on the six deceased because the government refused to disclose the contents of the report. The Coroner wanted to call members of the Stalker team as witnesses, and issued a subpoena for a copy of the inquiry report so that they could refresh their memories. The Secretary of State signed a Public Interest Immunity Certificate protecting the report from disclosure and the High Court upheld the certificate and granted an application by the Chief Constable to have the subpoena set aside. There are many uncomfortable echoes of the Stalker Inquiry to be found in those carried out by John Stevens, described in sections 12 and 18 below.
- 7.4 There have been persistent allegations of systematic collusion in the so-called "murder triangle" in Counties Armagh, Tyrone, and Down, where a series of murders over many years, mostly attributed to the mid-Ulster brigade of the UVF, have gone unprosecuted. One of the best known of these is the murder of Samuel Marshall, who was murdered on 7.3.1990 just after signing to his bail at Lurgan RUC station. Two other men escaped injury in the attack, which was claimed by the UVF. The fact that the bail arrangements were not reported in the press or in open court, and should therefore have been known only to the victims, their lawyers and the RUC, gives rise to suspicion that the murderers were tipped off. The presence of a red Maestro car

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<sup>90</sup> See, for example, *The Ulster Defence Regiment: An Instrument of Peace?* Chris Ryder, Mandarin, revised edition 1992, chapter 5, *The 'Bad Apples'*.

<sup>91</sup> *R v Montgomery & Ors*

<sup>92</sup> The business man, Kevin Taylor, who was used in the attempt to taint John Stalker spent many years trying to clear his own name. He eventually sued the police for malicious prosecution and was awarded damages of around £1 million.

<sup>93</sup> He later became Secretary of State for Northern Ireland

belonging to the security forces in the vicinity of the attack is also suspicious. No inquest has been held to date into the murder, nearly eight years after the event.

- 7.5 Members of the security forces have been found guilty of murders attributed to loyalist groups. For example, on 25.10.1982 Peter Corrigan, a Sinn Féin member, was shot from a passing car while walking on the street on the Drumbreda estate, Armagh. In 1984 Geoffrey Edwards, a serving UDR soldier, was convicted of the murder, which was attributed to the Protestant Action Force. Edwards also pleaded guilty to 18 other charges, including 6 attempted murders. Martin Love, a Catholic, was shot by the UFF on 7.4.1985 while walking along Factory Row in Enniskillen. Private Robert Kenny of the UDR and Mark Trotter, a mechanic in the British army, were convicted of his murder.<sup>94</sup>
- 7.6 Study of Brian Nelson's activities sheds considerable light on the extent to which collusion was rife in Northern Ireland. Nelson claimed to have received "an innumerable amount" of information about suspected IRA members in his capacity as the UDA's intelligence officer, passed to him by other UDA members.
- "Without this flow of information it would not have been possible to sustain the level of intelligence that was reached within the UDA. This information which found its way into the hands of the UDA came from all sections of the security forces, although it is my belief that from the nature and format of such documentation, the main culprits in this respect were members of the UDR."<sup>95</sup>
- 7.7 It was not only photomontages and written information that was being supplied to the loyalists by members of the security forces. In October 1987 the UDA started targeting Conway Mill in west Belfast because they believed Martin McGuinness attended regular meetings there. Nelson said that he needed a nightsight for carrying out observation after dark. An army Starlight nightsight was provided, but it needed a new battery. A battery was also obtained from a UDR soldier.<sup>96</sup>
- 7.8 According to Brian Nelson, members of the security forces allegedly also actively colluded with loyalists in setting people up to be murdered. For example:
- Nelson goes into considerable detail about the role allegedly played by RUC officer Paul Ross in targeting Harold Maynes for murder. According to Nelson, Ross claimed to be passing on information on behalf of a group of RUC officers based at Lisnasharragh barracks.<sup>97</sup> The UFF made a determined attempt to murder Maynes<sup>98</sup>.

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<sup>94</sup> *Irish News*, 19.9.1998

<sup>95</sup> Nelson's journal, p.64

<sup>96</sup> *Ibid*, pp.119 - 120

<sup>97</sup> *Ibid*, pp.131 - 132

<sup>98</sup> The attempt was frustrated by FRU, one of the very few occasions when Nelson's activities can be said to have saved a life, although according to

- Nelson claims that UDA man Sammy McCormick told him that an RUC officer had encouraged the UDA to target Sean O'Hara, who had been seen at Sinn Féin rallies and in the company of Gerry Adams<sup>99</sup>.
- Nelson says that "police circles" named Brian Gillen to the UDA as being involved in the murder of Corporals Howes and Woods<sup>100</sup>.
- Nelson says that UDA man Matt Kincaid was told by a UDR soldier where Joseph O'Donnell, another UDA target, was working<sup>101</sup>.
- Nelson alleges that a soldier tipped off UFF man Winkie Dodds about Sean Cahill, a nephew of former IRA leader Joe Cahill<sup>102</sup>.
- Nelson asserts that two UDR men actively colluded in the murder of Loughlin Maginn<sup>103</sup>.
- Nelson claims that the leaked security force photographs that came into his possession which carried the highest security classification came from RUC sources<sup>104</sup>.

7.9 However, FRU's activities appear to have gone beyond collusion. Indeed, the term "collusion", which suggests isolated acts of co-operation between rogue members of the security forces and primarily loyalist paramilitaries, would be a misnomer. The pattern of killings by the UDA/UFF and the UVF during the late 1980s until the ceasefire of 1994 was markedly different from that which preceded it. Before the late 1980s, loyalist murders were often wholly sectarian with many victims chosen apparently at random, the sole rationale being that they were, or were likely to be, Catholics. From 1988 to 1994, their capacity for murder more than doubled, partly as a result of the injection of South African arms into their arsenal<sup>105</sup>. Moreover, their targeting of victims became very much more precise, including many more known republicans<sup>106</sup>. A high proportion of these killings followed a pattern in which all or some of the following elements appeared:

- harassment of the victim by members of the security forces before the murder
- accurate intelligence about the victim's identity, address, workplace, and/or daily routine on the part of the loyalists
- an uncanny ability for the perpetrators to arrive at and depart from the scene of the murder without being apprehended by the

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Nelson his handler "Mags" had argued for the murder bid to go ahead unhindered in order to protect his cover – see Nelson's Journal, p.152

<sup>99</sup> Nelson's Journal, p.74

<sup>100</sup> Confidential source, Ware and Seed

<sup>101</sup> Ibid, p.164

<sup>102</sup> Ibid, p.165

<sup>103</sup> Ibid, p.167. Nelson is right. In March 1992 UFF man Edward Jones and UDR soldiers Andrew Smith and Andrew Browne were convicted of aiding and abetting the murder of Loughlin Maginn – *Irish News*, 24.9.1998

<sup>104</sup> Nelson interview with John Ware, 18.4.1991

<sup>105</sup> Please see paragraph 4.14 above

<sup>106</sup> Although it is doubtful whether many of these were active republicans. Many of the victims were former prisoners or internees, whose details would have been on record, rather than members of IRA/INLA Active Service Units, who tended to be on the run

security forces, despite in some cases the presence of security cameras or the proximity of the attack to a police station or army base or checkpoint

- no-one ever being charged with the murder.

The pattern of killings suggest a far greater degree of direction and co-ordination between those sections of the security forces charged with collecting information and those sections capable of organising safe passage for loyalist killers than can be explained by random acts of collusion.

- 7.10 There seems very little doubt that FRU played a key – if not the central – role in assisting loyalists to tighten up their targeting of victims. If so, they broke every rule in the book and committed some of the most serious crimes, including conspiracy to murder, collecting and providing information likely to be of use to terrorists, and directing terrorism. No matter what the rationale for such acts, no democratic government that subscribes to international human rights treaties could condone such acts.

## 8. THE EXTENT OF NELSON'S INVOLVEMENT IN LOYALIST VIOLENCE

- 8.1 FRU files and Nelson's own journal show that he was involved in 15 murders, 15 attempted murders and 62 conspiracies to murder<sup>107</sup>. Our own research suggests that this figure of 92 instances may be an underestimate. His involvement in these ranged from checking information on the Electoral Register, checking on victims' cars, following and watching victims, and providing photographs and addresses, to briefing the assassins. In many instances he himself proposed candidates for murder, either on his own initiative or in response to a vague request from one of the killers for a "good" target.
- 8.2 The stated rationale for FRU's infiltration of Nelson into the UDA was:  
"... in order we can save life, that we can prevent attacks taking place, that we can prevent assassinations that we can make arrests, that we can get recoveries of weapons and explosives..."<sup>108</sup>  
At Nelson's trial Colonel Kerr stated that between 1985 and 1990 730 MISRs were produced concerning threats to 217 people. Kerr said that only five of these had died, one on Gibraltar<sup>109</sup>, one of natural causes, and three of them – Gerard Slane, Brendan Davison and James Craig – at the hands of the loyalists<sup>110</sup>. This benevolent view is immediately contradicted by the five counts of conspiracy to murder for which Nelson was tried, involving Alex Maskey, Terence McDaid, James Morgan, Patrick Monaghan, and Brian Gillen. Terence McDaid was killed and the fact that the other four escaped death cannot be credited to Nelson. Nelson was never tried for the majority of cases in which he was implicated. The picture that emerges is not one of Nelson saving lives but of his active participation in numerous loyalist attacks.
- 8.3 Colonel Kerr gave the court the impression that Nelson's involvement in loyalist attacks had gone beyond the life-saving role envisaged by FRU, that he had crossed the line over which agents must not stray. However, Nelson claims that his handlers at E Det FRU actively assisted him in targeting potential victims. For example:
- in the summer of 1987 a senior handler referred to by Nelson as "the Boss" put it to Nelson that the UDA should start a bombing campaign in the Republic of Ireland. He suggested they consider bombing the oil terminal outside Cork. The Boss explained that a campaign against economic targets would put the Irish government under pressure to reconsider its extradition policy.<sup>111</sup>

<sup>107</sup> *Assassination by Proxy*, by John Ware and Geoff Seed, *Sunday Telegraph* 29.3.1998

<sup>108</sup> Kerr's testimony, Transcript, 29.1.1992, p. 6

<sup>109</sup> This was Daniel McCann

<sup>110</sup> Kerr's testimony, Transcript, 29.1.1992, p.14

<sup>111</sup> Nelson's journal, p.65B. At the trial of Tucker-Lyttie, Tosh Lyttie, Eric McKee, Winkle Dodds, and Matt Kincaid in June 1991, the court was told that the FRU documents handed over to the Stevens team included details of a loyalist reconnaissance mission to the Republic for the purpose of pinpointing

- In mid August 1987 Tucker Lytle asked Nelson for information about David Clinton, who was suspected of targeting John McMichael. When Nelson told his handler "Martin" about this, the handler told Nelson that the address he had for Clinton was wrong, and that Clinton had moved to Downpatrick. Nelson could not think of a way to explain this knowledge to the UDA so he set up a spurious watch on Clinton's former home in Belfast.<sup>112</sup> Although Clinton escaped targeting by the UDA, "Martin" was potentially setting him up for murder by telling Nelson where Clinton lived.
- In the autumn of 1987, McMichael asked Nelson to assist in targeting republican Anto Murray. This involved Nelson carrying out observation on the strongly nationalist Twinbrook estate, where Murray lived. When "Martin" heard that Nelson needed to photograph the house, he told him not to worry going back there, the army would provide a photograph. At his next de-briefing, Nelson was allowed to trace a photograph of the house, but made such a poor fist of it that Martin traced it himself. Nelson used the tracing to draw a plan for the UDA. Martin also gave Nelson information about Murray's wife.<sup>113</sup>
- Nelson also claims that FRU gave him the address of Brian Gillen, another republican who was being targeted by the UDA<sup>114</sup>.
- A CF shows that when Nelson saw what he thought was Alex Maskey's car outside the Gregory restaurant on 17.7.1988 he telephoned his handlers to check the car's ownership. They said that they would find out, and when he telephoned them back a few minutes later they told him, "You're right about the car."<sup>115</sup>

8.4 We believe that by infiltrating Nelson into the UDA, by helping to enhance his intelligence store, and by actively assisting him to target people FRU materially assisted the UDA to sharpen up its ability to target victims for assassination. We believe that, far from having as its aim the saving of life, the aim was to direct loyalist violence against republican targets – it was, in effect a policy of shoot-to-kill by proxy. If we are right, such a policy of deliberate collusion could never be condoned in any circumstances. Its unacceptability is underscored by the fact that some of those who died were innocent victims even within the policy's own terms. Below we examine in detail three of those deaths: Terence McDaid, Gerard Slane, and Patrick Finucane.

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bombing targets – *Irish News*, 21.6.1991

<sup>112</sup> Nelson's journal, pp.70 - 71

<sup>113</sup> *Ibid*, pp.83 - 85

<sup>114</sup> Nelson interviews with John Ware, 18.4.1991 and 13.6.1991

<sup>115</sup> Confidential source, Ware and Seed

9. THE MURDER OF TERENCE McDAID

9.1 At Brian Nelson's trial, Crown Counsel Brian Kerr QC gave the following description of the murder of Terence McDaid:

"...In May 1988 Terence McDaid, then a thirty-one year old married man, lived with his wife and children at 4 Newington Street in Belfast. For some four weeks before the 10th of May 1988 it had been customary for Mrs McDaid to take her children swimming at Maysfield Leisure Centre on Tuesday evenings. Her husband picked them up after the swim, and it was customary for Terence's parents to visit at 4 Newington Street. The 10th of May was a Tuesday, the 10th of May 1988, and the grandparents arrived at the home at approximately 9:10 pm. Terence McDaid and his wife had not arrived home, but some five minutes later they arrived and all of the family, children, parents and grandparents entered the home. The children were taken to bed at approximately 9:55 or 10:00 pm, and the grandparents and parents then sat by the fire talking. Some five minutes later this quiet domestic scene was shattered by the bursting open of the living room door, and two men, one at least of whom was armed, forced their way into the living room, and making Terence McDaid their target they discharged seven bullets into his head and trunk causing his almost immediate death. At seven minutes past ten an ambulance was summoned and arrived at the scene at 10:12 pm. One of the ambulance men believed that he could elicit a slight radial pulse, but at 10:25 pm life was pronounced extinct. This horrific murder my Lord, was made the more tragic and ghastly by reason of the fact that Terence McDaid was not the intended victim of the gunman. It is now clear that they had intended to murder his brother Declan."<sup>116</sup>

9.2 Detective Chief Inspector Lagan was the CID officer in charge of the murder investigation. He told the inquest that a red Ford Cortina taxi, registration number EIB 1343, was hijacked in Ainsworth Avenue, in a loyalist area, at 9:40 pm on the night of the murder by two men, one of whom was armed with a shotgun. Neighbours said that the car used by the murderers was of the same description as the hijacked taxi, and DCI Lagan said he was satisfied that it was the same car. The car was later found abandoned in Hopewell Place, another loyalist area, at around midnight.<sup>117</sup>

9.3 He also told the Coroner, John Leckey, that at least seven shots were fired at Terence McDaid from two different handguns<sup>118</sup>, neither of which had any previous history known to the RUC. One of them was a .38 Special Revolver. Terence McDaid had no paramilitary connections, and no organisation had claimed responsibility for the

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<sup>116</sup> Transcript, 22.1.1992, pp.8 - 9

<sup>117</sup> Deposition of Kieran Lagan, 11.1.1989

<sup>118</sup> It is not clear why Brian Kerr told the court that "at least one" of the assassins was armed.

murder, although the perpetrators were obviously loyalists.<sup>119</sup>

9.4 Neighbours reported that there was an army foot patrol in Newington Street on the night of the murder, and an army roadblock across the bottom of the street. Such an army presence in the street was very unusual. The soldiers left 10 to 15 minutes before the shooting. The effect of their presence was that everyone stayed indoors. When the soldiers left, the murderers had a clear run to the McDaid's house. We believe that there is no record of any army patrol in Newington Street on the night of the murder. One line of enquiry that should be pursued is to establish whether the soldiers the neighbours say they saw were from FRU.

9.5 Nelson has said <sup>120</sup> that the murder was carried out by Winkie Dodds and Johnny Adair, and that Jackie Thompson drove the car.

9.6 Brian Kerr QC gave the court this account of Nelson's involvement in the murder:

"Now the evidence against the accused in relation to the 35th Count, to which he has pleaded guilty, is that in the latter part of 1987 the accused provided an index card giving details of Declan McDaid to two UDA men known as Hugh and Reid. Now nothing came of that relay of information, but sometime later within the first few months of 1988, Nelson was approached by a man known as Winkie Dodds. And Dodds asked Nelson for a target in the West Belfast area. My Lord, Nelson knew that Dodds was a killer, but despite that he gave Dodds the name of Declan McDaid. At Dodds' request he set about obtaining what information he could on Declan McDaid. He conducted surveillance and saw McDaid on several occasions. He ascertained or discovered that he spent a lot of time at 4 Newington Street. He reported to Dodds that he was sure that Declan McDaid was staying at Newington and he subsequently checked the Electoral Register which confirmed that a McDaid was staying at that address<sup>121</sup>. Finally he gave Dodds an index card with a photograph of Declan McDaid and within a couple of days to one week, Terence McDaid was shot dead at 4 Newington Street in the manner that I have described."<sup>122</sup>

9.7 Despite Nelson's considerable involvement in the murder, the prosecution accepted his plea of guilty of conspiracy to murder, rather than pressing a charge of murder, in the following terms:

"My Lord, in the case of the murder of Terence McDaid... the information which the accused gave his handler was not as complete as it could or ought to have been. Nevertheless, it must

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<sup>119</sup> Deposition of Kieran Lagan, 11.1.1989

<sup>120</sup> In interviews with John Ware

<sup>121</sup> According to Maura McDaid, there was no McDaid registered at that address at that time; if she is right, it could be that Nelson was using the Electoral Register as a smokescreen for information he had obtained by other means, possibly from his FRU handlers

<sup>122</sup> Transcript, 22.1.1992, pp.13-14

be accepted that he communicated to his handler on no fewer than five occasions that Declan McDaid had been targeted by the UDA. Those five occasions proceeded [sic] the murder of Terence McDaid and it is clear, and was clear to the Crown from the evidence available to it, that his reaction after discovering that Terence McDaid had been murdered, that he had no intention whatever that harm should befall Mr Terence McDaid. Again, all of those factors were very carefully considered and it was concluded after, if I may respectfully so say, my Lord, a careful, painstaking and scrupulously conducted review that it was proper that the plea to conspiring to murder Declan McDaid should be accepted and in the interests of justice should be satisfied by that course."<sup>123</sup>

- 9.8 BBC journalists John Ware and Geoffrey Seed give a chilling account of FRU's reaction to the gratuitous murder of Terence McDaid:  
 "Nelson had called his British Army handler as soon as he knew that the wrong man had been shot. Terence McDaid was innocent, yet Nelson's handler was neither angry nor upset about his murder. Indeed, the handler seems not even to have been alarmed. His reaction was simply to placate Nelson by telling him that Terence McDaid had been 'traced as Provisional IRA'. The clear implication was that this consideration justified his death. Nelson's handler even reported that he was quite 'content'. In fact, the 'reassurance' that the handler gave Nelson was totally bogus. Terence McDaid had no connection at all with the Provisional IRA or any other terrorist group."<sup>124</sup>
- 9.9 Nelson says that about a week before Terence McDaid was murdered his handler told him that Adrian McDaid, another brother of Terence's, lived in Newington Street, not Pacific Avenue, where Nelson had been carrying out surveillance<sup>125</sup>. This is significant for two reasons. First, the McDaid family are of the view that Adrian, not Declan, McDaid may have been the true target. Secondly, it appears that it was FRU who were responsible for the assassins going to the wrong address.
- 9.10 A CF and MISR dated 1.12.1987 show Nelson reporting an imminent threat to Declan McDaid's life. In a further CF and MISR dated 19.4.1998 Nelson reported that Declan McDaid was being targeted; Nelson told the Stevens team that he warned FRU of the murder plan about a week before it happened, but there does not appear to be a CF or MISR to confirm this.
- 9.11 Maura McDaid sued the Ministry of Defence over her husband's death. The case was settled on terms endorsed. The Ministry paid her £50,000.

<sup>123</sup> Ibid, pp.29 - 30

<sup>124</sup> *Assassination by Proxy*, by John Ware and Geoff Seed, *Sunday Telegraph* 29.3.1998

<sup>125</sup> Nelson interview with John Ware, July 1991

## 10. THE MURDER OF GERARD SLANE

### 10.1 Brian Kerr QC gave this account of the murder of Gerard Slane:

"...on the 22nd of September 1988 Gerard Slane, a twenty five year old married man, returned to his home at 11 Waterville Street, Belfast. He lived there with his wife and three children, and went to bed at approximately 1:30 am. In the course of the night he and his wife were disturbed on a number occasions by children coming into the bed and by his wife's belief that someone was tampering with her car. But his wife had gone back to sleep when sometime between 4:15 am and 4:30 am the house was broken open. Armed and masked men entered the home and in a vain attempt to repel them, Gerard Slane threw a step-ladder downstairs at the invaders. But they were not repelled, and they shot him four times in the head causing his instantaneous death."<sup>126</sup>

### 10.2 The Slane family say that their home was raided by the army a few weeks before the murder, and that they went over the house very thoroughly. They also say that an army foot patrol of four soldiers was in their street an hour before the shooting, taking an interest in their new car. Mrs Slane saw one of the soldiers using his radio; she thought he was checking on the car's registration number. The family alleges that the house search was carried out for the purposes of mapping its layout on behalf of the murderers, and that the foot patrol was there to clear the way for the killers and check that they had the right house by checking on the car. They say that they were never warned that Gerard Slane was being targeted. The family was harassed by soldiers after the death.<sup>127</sup>

### 10.3 Brian Kerr QC gave the court the following description of Nelson's involvement in the murder:

"If I may turn now my Lord to outline the evidence in relation to the charges numbered eight to ten on the indictment, which arise out of the murder of Gerard Slane. My Lord on the 7th of September 1988 one William Quee was murdered outside a shop on Oldpark Road, Belfast. Several persons were believed to have witnessed the killing. The accused Nelson and another UDA, so called officer, Thomas Lyttle Jnr, compiled a section of photographs of suspected members of the organisations known as the Irish National Liberal [sic] Army and the Irish Peoples' Liberal [sic] Organisation. The accused collected one of the avowed witnesses and showed her the photographs. She picked out two photographs, one of whom was of Gerard Slane. On enquiry from another UDA member, Eric McKee, Nelson provided Slane's address and subsequently provided Slane's file card, as it has been described, to James Spence, another member of the UDA, in the knowledge that Spence would arrange for the killing of Slane. He also checked Slane's address in the Electoral Register. He obtained the

<sup>126</sup> Transcript, 22.1.1992, p.10

<sup>127</sup> Interview with the Slane family by John Ware and Geoffrey Seed

photograph of Slane and he gave it to Spence, and he advised Thomas Lyttle Jnr (known as Tosh Lyttle) on how to carry out a reconnaissance of where Slane lived."<sup>128</sup>

- 10.4 William Quee was a UDA man. His murder was claimed by the IPLO. Gerard Slane's family insist that he was not an IPLO member. The UFF claimed responsibility for his murder, asserting that it was in retaliation for Quee's killing.
- 10.5 Nelson told the Stevens team that he kept his handlers informed of the threat to Gerard Slane, and the truth of this is borne out by the Contact Forms. They show that Nelson did indeed inform his handler on 12<sup>th</sup> September 1988. The next day, a MISR was issued<sup>129</sup> which said that Gerard Slane and two other men were suspected of Quee's murder and were being targeted by the UDA. The MISR gave the addresses of the other two men, but did not include Gerard Slane's address, even though it was known to FRU. Nelson also reported on the threat to Gerard Slane on 21<sup>st</sup> September, the day before he was killed. Another MISR<sup>130</sup> was sent out on 23<sup>rd</sup> September warning of three attacks on IPLO members, but by then Gerard Slane was already dead.
- 10.6 The fact that Nelson had kept his handlers fully informed was acknowledged by the prosecution when Nelson came to trial. Brian Kerr QC told the court:
- "In the case of the Slane murder which occurred, my Lord, on the 22nd September of 1988, the accused had told his handler on the 12th September that Slane had been clearly targeted by UDA killers. A witness to the murder of Kee [Quee] had purported to identify him, his address had been confirmed and the UDA were keen to retaliate for the murder of Kee [sic] and all that was passed by the accused to his handler, and of crucial importance, as I'm sure your Lordship will accept, on the 21st September, the very day before the murder, Nelson again gave a considerable amount of information to his handler about the further planning of that murder. It is clear from the evidence which was available to the prosecution that Nelson was considerably surprised by the timing of the murder. He had left for a holiday just before it occurred and was not in fact in the country at the time of its commission. The nexus, therefore, between the conduct of Nelson and the murder was likely, to put it at its lowest, to be a highly contentious issue on trial. And taking those factors into account, and having regard, my Lord, to the accused's plea of guilty to the other counts on the indictment which relate to this incident, it was concluded that it would be correct to accept the plea and not to proceed with the original charge and that conclusion, my Lord, again I emphasise, was taken on the basis that it properly reflected his criminal

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<sup>128</sup> Transcript, 22.1.1992, p.14

<sup>129</sup> MISR D417090

<sup>130</sup> MISR D417448

responsibility and that the requirements of justice would be satisfied by taking that course."<sup>131</sup>

- 10.7 On 6<sup>th</sup> October 1988 Nelson told his handlers that he had been asked by UDA/UFF man Eric McKee to write a statement on behalf of the UFF claiming the Slane murder for the UDA's magazine, *Ulster*, and also to provide a photograph for inclusion in the magazine. On 11<sup>th</sup> October Nelson reported that he had written the statement, which had been edited by Tucker Lytle. The CF contains a photocopy of the original, unedited statement. Nelson also provided a photograph of Gerard Slane and of his brother Sean, which had come from a leaked RUC photomontage of alleged IPLO suspects. Gerard Slane's wife Teresa and Sean Slane both expressed publicly their anger that both men were included in the photomontage and that it had been leaked to the UDA<sup>132</sup>.
- 10.8 Although Nelson was heavily involved in the murder of Gerard Slane, it would appear that FRU knew all about it some time in advance. No attempt seems to have been made to prevent the murder. FRU's MISRs seem to have been lacking in detail, and the Special Branch appears to have done nothing in response to them. A question must remain as to why Gerard Slane's murder could not have been averted.
- 10.9 Teresa Slane sued the Ministry of Defence over her husband's death. The case was settled on terms endorsed. The Ministry paid her £50,000.

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<sup>131</sup> Transcript, 22.1.1992, pp.28 - 29

<sup>132</sup> BBC TV *Newsnight*, 12.10.1989

## 11. THE MURDER OF PATRICK FINUCANE

- 11.1 The murder of Patrick Finucane has many elements in common with those of Terence McDaid and Gerard Slane. There is, though, one crucial aspect that makes it potentially different from all the other murders in which the FRU and Nelson were involved. On the basis of the material we have examined, we believe that Patrick Finucane's murder was procured by members of the RUC.
- 11.2 Before his death, Patrick Finucane received a number of death threats from RUC officers, mainly delivered via his clients. In May 1987 a group of 14 solicitors in Northern Ireland issued a public statement from the offices of the firm of Patrick Fahy & Co in Omagh alleging that their clients had reported regular abuse of the solicitors by members of the RUC, who had not acted upon complaints made to them by the solicitors concerned. Patrick Finucane's name appeared in the list of solicitors subscribing to this statement.<sup>133</sup>
- 11.3 John Stalker, writing of his experiences of trying to investigate allegations of a shoot-to-kill policy in Northern Ireland<sup>134</sup>, reported that in 1984 or 1985 an RUC sergeant said to him of a lawyer who must have been Patrick Finucane<sup>135</sup>,  
"The solicitor is an IRA man - any man who represents IRA men is worse than an IRA man. His brother is an IRA man also and I have to say that I believe a senior policeman of your rank should not be seen speaking to the likes of either of them. My colleagues have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors."  
John Stalker professed himself surprised at the sergeant's "studied vehemence".
- 11.4 Amnesty International reported that a client of Patrick Finucane's had "said that his lawyer, Patrick Finucane, would be killed"<sup>136</sup> a year before the murder took place. That client was Brian Gillen<sup>137</sup>, suspected by the RUC of being a leading IRA man in Belfast, who suffered severe ill-treatment in RUC custody for which he later received compensation. Brian Gillen told the American Lawyers Committee for Human Rights that after Patrick Finucane filed a petition for habeas corpus on his behalf, police officers told him that, "It would be better if he [Patrick Finucane] were dead than defending the likes of you," and that they threatened to give details concerning the solicitor and his client to loyalist paramilitaries<sup>138</sup>.

<sup>133</sup> *Irish Times*, 27.5.1987; *Irish News*, 27.5.1987

<sup>134</sup> *Stalker*, by John Stalker, Penguin, 1988, p. 49

<sup>135</sup> Identified by his client's name and case

<sup>136</sup> *United Kingdom Human Rights Concerns*, Amnesty International, June 1991, p. 56

<sup>137</sup> Brian Gillen was also targeted by Nelson

<sup>138</sup> *Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane*, Lawyers Committee for

- 11.5 Occasional threats had been made against Patrick Finucane since the late 1970s. After the Gillen case the incidence of threats escalated. Clients reported abuse of Patrick Finucane by police officers during interrogations at holding centres, particularly Castlereagh. Several former clients of Patrick Finucane told the Lawyers Committee about death threats made against him by police officers. He also received threatening telephone calls at his home.
- 11.6 On 5<sup>th</sup> January 1989, five weeks before his death, one of Patrick Finucane's clients alleged that an RUC officer  
 "... informed me that my solicitor was working for the IRA, and would meet his end also ... He asked me to give Mr Finucane a message from him ... He told me to tell him he is a thug in a suit, a person trying to let on he is doing his job, and that he, like every other fenian [Catholic] bastard, would meet his end."  
 On 7<sup>th</sup> January, another client was told,  
 "Fucking Finucane's getting took out [murdered]."<sup>139</sup>
- 11.7 The solicitor's widow, Geraldine Finucane, knew that the RUC had been making death threats against her husband for some time before his death. She attempted to make a statement to that effect at his inquest, but was prevented from doing so by the Coroner. In the absence of a police prosecution, the Coroner's Inquest is the only available public forum for investigating a murder. However, her attempts to read out her statement were ruled irrelevant by the Coroner, John Leckey, who was constrained by the rigid rules on inquests in Northern Ireland, which do not allow the inquisition to extend beyond the identity of the deceased and how, when and where he died.
- 11.8 What Geraldine Finucane did not know at the time was that the RUC had taken active steps to put their threats into effect. John Ware has reported on an interview he conducted with Tommy "Tucker" Lyttle, head of the UDA at the time of the murder, shortly before Lyttle's death. Lyttle alleged that the impetus for the murder came not from Nelson or the UDA, but from the RUC:  
 "Lyttle also confirmed that the original idea to murder Patrick Finucane came from two RUC detectives. While a prominent UDA gunman was being held in Castlereagh, an officer entered the interrogation room and said to his colleague: 'Have you put it to him yet?' They then suggested that the UDA shoot Finucane. Lyttle said that he was so astonished at this suggestion that he informed a regular contact in the RUC Special Branch: 'I told him: "What the hell is going on in Castlereagh? Why is Finucane being pushed?"' The officer said that it would be 'a bad blow for the Provos [the IRA] to have Finucane removed.' Did that amount to approval that he should be shot? 'Put it this way,' said Lyttle, 'He didn't discourage

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Human Rights, New York, 1993, p. 49

<sup>139</sup> Source: Instructions taken by Madden & Finucane, solicitors

the idea that he should be shot."<sup>140</sup>

The prominent UDA man was Matt Kinkaid. The names of the two police officers who allegedly put the murder proposition to him are thought to be Bennett and Miller, and they are thought to have been based at Grosvenor Rd RUC station. It is believed that Kincaid was arrested in December 1988.<sup>141</sup>

- 11.9 However, the RUC were not leaving anything to chance. They sent a secret report to England saying that some republican and loyalist lawyers had been compromised. Early in January Douglas Hogg MP, then Parliamentary Under-Secretary of State for the Home Department, went over to Belfast and was briefed by three senior police officers. Hogg was told in the strictest confidence that there was concern over two or three lawyers. Patrick Finucane was mentioned as having been suspected of helping smuggle a weapon into Crumlin Road jail. The RUC said there was "grave concern" over Finucane.
- 11.10 There is some evidence to suggest that the RUC had been targeting Patrick Finucane and various other lawyers for some time. In 1984 Tony Gifford QC (now Lord Gifford) interviewed supergrass Robert Lean for many hours. Lean gave him a graphic description of how the RUC drew up numerous statements for him to sign implicating others in criminal activity. Gifford wrote:
- "There were some particularly alarming disclosures, e.g., that the police asked Lean to sign a statement headed 'top secret' and implicating five well-known solicitors, saying 'we know they feed information to the IRA; we just want it in case we need it.'"<sup>142</sup>
- We understand that one of the solicitors was Patrick Finucane. It is possible that this document was in the file prepared for Douglas Hogg.
- 11.11 On 17.1.1989 Hogg said in a Committee stage debate on the Prevention of Terrorism (Temporary Provisions) Bill:
- "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."
- Although challenged, he failed to substantiate this allegation, although he repeated it several times in similar language, saying only:
- "...I state it on the basis of advice that I have received, guidance that I have been given by people who are dealing with these matters, and I shall not expand on it further."
- Statements made in Parliament are privileged and cannot be made the subject of legal action. Speaking in reply, Seamus Mallon MP said:
- "I have no doubt that there are lawyers walking the streets or

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<sup>140</sup> *Time to come clean over the army's role in the "Dirty War"*, New Statesman, 24.4.1998

<sup>141</sup> According to documents we have seen, it is alleged that as well as Patrick Finucane, two other lawyers, Paddy McGrory and Oliver Kelly, were also mentioned

<sup>142</sup> *Supergrasses: The use of accomplice evidence in Northern Ireland*, by Tony Gifford QC, The Cobden Trust, 1984, p. 28

driving on the roads of the North of Ireland who have become targets for assassins' bullets as a result of the statement that has been made tonight ... Following [this] statement, people's lives are in grave danger. People who have brought cases against the European Court of Human Rights will be suspected. People accused of IRA membership and other activities will be suspected." Commenting on this episode, the American Lawyers Committee for Human Rights said:

"Hogg's remarks caused a public outcry, especially from within Northern Ireland's legal community. Mrs Finucane told us that her husband was especially shocked. Not only could he not understand why a government minister would make so irresponsible a statement, he also began to take the threats against him as more than interrogation devices. After Finucane's murder, another outcry against Hogg arose that included calls for his resignation, but these went unheeded. Hogg has since moved on to another post. To date, neither he nor the government has issued an apology for his remarks save for feeble expressions of regret at Finucane's killing. Hogg also refused to meet with our delegation to discuss his remarks."<sup>143</sup>

UDA sources deny that Hogg's remarks precipitated the murder, saying that they were already acting on the suggestion made to Matt Kincaid by RUC officers<sup>144</sup>.

- 11.12 Patrick Finucane was murdered at around 7:25 pm on Sunday 12th February 1989 - less than 4 weeks after Hogg's statement in Parliament - by two masked assassins who broke into his home and shot him in front of his wife, who was herself injured, probably by a ricochet bullet, and their three children, aged 8, 12 and 17. He was shot two or three times in the chest and stomach and while he was lying helpless on the floor around 12 further shots were fired into his head and neck at close range. At the inquest into his death pathologist Dr Jack Crane said that Patrick Finucane was struck by 14 bullets to the head, neck and trunk. At least one of the bullets fired into Patrick Finucane's head was fired from a range of 15 inches. During the attack, Geraldine Finucane managed to activate a panic alarm behind the kitchen door. Police and neighbours arrived within minutes of the incident, but by then Patrick Finucane was dead.
- 11.13 The inquest took place on 6.9.1990. Forensic evidence showed that the victim had been hit at least 11 times by a 9mm Browning automatic pistol and twice by a .38 Special revolver<sup>145</sup>. Detective Superintendent Simpson, who was in charge of the murder investigation, gave evidence that the Browning pistol was one of 13 weapons stolen from Palace army barracks in August 1987 by a

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<sup>143</sup> *Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane*, Lawyers Committee for Human Rights, New York, February 1993, p.52

<sup>144</sup> John Ware's Interview with Tucker Lytle

<sup>145</sup> In fact, this weapon is believed to have been a .357 Magnum revolver, which was never recovered

member of the Ulster Defence Regiment<sup>146</sup> who was subsequently jailed for the theft. These weapons found their way after the robbery into the hands of three members of the UFF<sup>147</sup> who were convicted of possession of the weapons and UFF membership, but the police were satisfied that they were not in possession of the pistol at the time of Patrick Finucane's murder.

- 11.14 The Inquest heard evidence that the murderers used a red Ford Sierra car, registration number VIA 2985, which was hijacked from taxi driver William Reid by three men shortly before the murder. They told Reid that his car was needed "for the cause". They seemed nervous and prone to panic. One man drove the car away while the other two held Reid hostage. The car was found abandoned later that evening. DS Simpson told the inquest:

"I believe that the persons who hijacked the taxi were not the same as the persons who shot Mr Finucane. Those persons displayed coolness and did not panic."

He further told the Coroner:

"His murder was unusual both for its ferocity and the fact that he was struck by all 14 shots fired ... The murder was carried out with precision by persons who I believe must have murdered before."

According to neighbours, police roadblocks in place up to an hour before the murder in close proximity to Patrick Finucane's home were removed, thus affording the murderers unfettered access to and escape from the house.

- 11.15 According to evidence given at the inquest by DS Simpson, fourteen people were interviewed by the police in connection with the murder. He testified:

"We are reasonably certain that the main perpetrators of the murder were among these suspects but no evidence is presently available to sustain a charge of murder, but enquiries are ongoing ... None of these 14 persons I interviewed in connection with Mr Finucane's death had any connection with the security forces."

- 11.16 The day after the murder, 13.2.1989, a man telephoned the press with the following statement:

"The UFF claim responsibility for the execution of Patrick Finucane, the PIRA [Provisional Irish Republican Army] Officer, not the solicitor. While Provos continue to execute Loyalists, and members of the security forces who share their lunch with them, then there will be the inevitable retaliation."

However, at the inquest, DS Simpson completely rejected the UFF's allegations, stating:

"The police refute the claim that Mr Finucane was a member of the PIRA. He was just another law-abiding citizen going about his professional duties in a professional manner."

<sup>146</sup> Eric McKee told Nelson that a UDR sergeant called Fletcher approached UDA man Spence in the UDA-owned Woodvale Working Men's Club, Ohio Street, and offered him the weapons for cash. Nelson's journal, p. 68

<sup>147</sup> William Barr, Francis Arbuthnot and David Anderson

Patrick Finucane's wife and professional colleagues can confirm from their own knowledge that, although members of his family had paramilitary connections, Patrick Finucane himself had none, and that such was his dedication and professionalism that he would have defended the legal rights of those who murdered him. Patrick Finucane was an able, effective and innovative lawyer who represented clients from both sides of the conflict in Northern Ireland. He was involved in a number of high profile legal cases arising from the conflict, including cases taken against the United Kingdom at the European Commission and Court of Human Rights, and they believe that it was because of his work on these cases that he was targeted for murder.

- 11.17 The murder was carried out by the UFF with the active participation of Brian Nelson. On 15.1.1990 Brian Nelson made a statement under caution to the Stevens inquiry. He said that 6 to 8 weeks prior to the shooting Eric McKee, commander of the UFF's West Belfast Brigade, told him, "I would really love to get that bastard Finucane." McKee asked Nelson to find out where Patrick Finucane's office was and for any other information he could get. McKee said, "I have been told by someone that if I want to get someone really big, get Finucane. He is the brains behind the PIRA. Forget about [Gerry] Adams."
- 11.18 Brian Nelson said that he did not gather any information on Patrick Finucane, but about two weeks prior to the shooting he asked McKee if he still needed the information. McKee said, "No, Brian, I've got all that taken care of."
- 11.19 About one week before the murder McKee asked Nelson in the presence of Ken Barratt for a large (i.e. not montage) photograph of Patrick McGeown. A large photo of Patrick McGeown leaving Crumlin Road courthouse with Patrick Finucane had appeared in *An Phobscrap*<sup>148</sup>, a spoof newspaper produced by Samuel Duddy. Nelson had a copy of the newspaper in his Forthriver Crescent intelligence store, which he gave to McKee, who said, "That's fine, Brian." McKee had been waiting in a car with Ken Barratt, another UFF man, outside the house. McKee gave the newspaper to Barratt and said, "Will that do you, Ken?" Barratt replied it would be fine.
- 11.20 Nelson told the Stevens team that he told his handlers all of this. He said he first heard of the murder while scanning police radio broadcasts.
- 11.21 Nelson told Stevens that he rang his handler the morning after the murder and then drove to McKee's house. After initial prevarication, McKee admitted knowledge of the murder. He said, "... Brian, we did it. It went perfect. Everybody got away safe, and the guns away as well." McKee said he was in Ohlo Street (a UDA/UFF club) waiting for

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<sup>148</sup> A pun on *An Phoblacht*, also known as *Republican News*, Sinn Féin's newspaper

the boys to return from the murder. He then described Tucker Lyttle's reaction on hearing the news. Later that morning, Nelson drove McKee to UDA HQ in Gawn Street, having confirmed in the meantime with his handler that it was 'one of ours'. McKee went into the HQ, and came out a short while later to confirm that he had inner Council permission to 'claim' the murder on behalf of the UFF. The UDA Inner Council used the UFF to claim the murder to divert attention from UDA involvement.

- 11.22 About a week later, Nelson stated that McKee asked him to draw up a statement on behalf of the UFF about the murder for publication in the *Ulster* magazine, the mouthpiece of the UDA published by Samuel Duddy. McKee and Nelson discussed the wording of the statement, and McKee ended by saying, "Do that, and see what other muck you can rake up." Nelson typed the statement, making one duplicate. McKee and Tucker Lyttle both approved it. Lyttle said, "That's OK, get it across to Duddy." Tosh Lyttle and Nelson delivered it to Duddy at All Print Graphics, where *Ulster* was printed. It was headed "Statement by the UFF" and did appear in the magazine. Nelson made a further statement on 7.2.1990 in which he referred to giving the statement claiming the murder to Duddy.
- 11.23 As well as naming McKee, Nelson said that he believed Ken Barratt was one of the gunmen and William "Winkie" Dodds was also involved.
- 11.24 Brian Nelson compiled a P card on Patrick Finucane. A Contact Form dated 2.3.1989 records a report from Nelson to his handler that Patrick Finucane met Gerry Adams at the Beechlawn Hotel in the week prior to his assassination. The contact form says that this information was recorded on "Finucane's personality card". However, when the Stevens team received Nelson's suitcase, it did not contain a personality card on Patrick Finucane. John Ware says<sup>149</sup>:  
 "This suggests that either it had been removed by Nelson's handlers to conceal their role in – or knowledge of – Finucane's murder; or Nelson himself had already handed it over to the assassins... The simple fact that Nelson had compiled a 'P' card on Finucane indicates that the army knows more than it is saying."  
 According to John Ware, this P card has not been disclosed to lawyers acting for Geraldine Finucane in her civil claim for damages against Brian Nelson and the Ministry of Defence:  
 "The Crown Solicitor's office in Belfast has stated there is no evidence that the army or Nelson were involved. In a sworn affidavit the Crown claims to have disclosed to Finucane's widow's lawyers all relevant and material documents in their 'possession, custody or power'. Such few disclosures as there have been include a heavily blanked out extract from one of the secret contact forms seized by military intelligence... However, her lawyers are 'convinced that full and proper discovery has not been

<sup>149</sup> *Time to come clean over the army's role in the "Dirty War"*, New Statesman, 24.4.1998

made'. And they are right... the Crown has failed to disclose at least one contact form which suggests that Nelson had a much more active role in the murder and that his army handlers must have known. Dated 2 March 1989, the document reveals that Nelson had compiled a 'P' card on Finucane."<sup>150</sup>  
 It would appear that efforts are still being made to conceal the existence of the P card.

- 11.25 Nelson denied to Stevens that he was involved in the murder of Patrick Finucane. However, a prominent UDA source told John Ware and Geoffrey Seed that Nelson targeted Patrick Finucane 3 or 4 months before the shooting, following him from his office to a hotel in Dunmurry. According to Tucker Lyttle, a couple of weeks before the shooting, Nelson drove McKee round to Patrick Finucane's house<sup>151</sup>. Nelson's story about the photograph depicting both Patrick Finucane and Pat McGeown is unconvincing.

A CF dated 6.10.1988 says:

"JACKIE ANDERSON visited 6137 at 1600 hrs on SUN 2 OCT 88. ANDERSON asked 6137 what he knew about BRENDAN SHANNON and PAT McGEOWN...6137 gave ANDERSON the personality cards and photographs for SHANNON and McGEOWN."

Jackie Anderson was a UVF man. He was a friend of Nelson's; they had worked together in Germany<sup>152</sup>. It seems unlikely that, having given McGeown's P card to the UVF in October, Nelson would not have been concerned when asked for a photograph of McGeown by the UVF the following February. It seems certain that he would have warned his handlers that two rival groups of loyalists were after the same target, yet there appears to be no mention of this in the CFs, even though both requests are reported on CFs (although the UVF request is only mentioned on 14.2.1989, two days after Patrick Finucane was murdered). It appears much more likely that Nelson knew perfectly well that the picture the UVF were after was one of Patrick Finucane. Another partial CF dated 10.1.1989 says:

"After visiting McKee during the afternoon of WED 4 JAN 89, 6137 went to see Winky Dodds. 6137 told Dodds he did not find a photograph of ..."

The rest of this CF is missing. It may be that it was Patrick Finucane's photograph that Nelson could not find, which might explain why he resorted to the photograph in *An Phobcraip*. If, indeed, there is any truth in this story.

- 11.26 Nelson was not charged with the murder of Patrick Finucane, yet information concerning his murder was canvassed by Desmond Boal QC, in the following exchange<sup>153</sup>:

"Boal: On one occasion, as an example of the sort of information that you're talking about, do you recall one occasion in

<sup>150</sup> Ibid

<sup>151</sup> John Ware's interview with Tucker Lyttle

<sup>152</sup> Nelson's journal, p. 130

<sup>153</sup> Ibid, pp. 2B-29

which you were told by him that he had been asked by a named person, a known killer, to provide him with a photograph and that photograph contained two people?

Kerr: Yes.

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

Kerr: That's correct, yes.

Boal: Would you explain that to the Court?

Kerr: To the best of my memory, my Lord, there was paramilitaries wanted to retaliate for a murder of one of their own, I can't remember all the details, I'm afraid. And they said they were interested in a particular person and they said to Brian Nelson did he have a photograph of that particular person.

Boal: Coming out of the courthouse?

Kerr: Coming out ... well they asked him for a photograph and he said yes, he did. He produced a photograph of this particular individual coming out of the courthouse and showed it to them and then he reported that to us and we had every reason to believe, as he did, that that was the target they were aiming to assassinate.

Boal: But in the event it turned out to be the other person?

Kerr: Indeed, it was, yes."

This passage clearly refers to the photograph showing Patrick Finucane coming out of the courthouse with his client Pat McGeown. It is puzzling that this photograph was referred to even though the trial did not concern the murder of Patrick Finucane or the targeting of Pat McGeown. It is even more surprising that no charges were brought against Nelson in relation to either Patrick Finucane or Pat McGeown, given the evidence in FRU CFs that Nelson had handed over a P card on Pat McGeown, and given Nelson's own admissions of targeting Patrick Finucane.

- 11.27 Pat McGeown was a Sinn Féin councillor and had been one of the IRA hunger-strikers, so he was very well known. On 4.5.1988 he was arrested for the murder of two army corporals, Derek Wood and Robert Howes. The two soldiers were brutally murdered by the IRA after they drove their car into the funeral cortège of Kevin Brady on 19.3.1988. Kevin Brady had been murdered by loyalist Michael Stone, who opened fire on mourners at the funeral three days earlier of the three IRA members killed by the SAS on Gibraltar. When Corporals Howes and Wood drove into the cortège, the crowd panicked, believing themselves to be under attack from loyalists. They attacked the soldiers and bundled them into Casement Park, a local sportsground, where they were beaten again. They were then driven in a black taxi to a vacant lot in Penny Lane, where they were shot by IRA men. These horrific events were filmed by several media cameras<sup>154</sup> and by an army helicopter flying overhead, whose film

<sup>154</sup> The media were not allowed into Casement Park, so only filmed the early minutes

became known as the "heli-teli" pictures. Afterwards, RUC officers spent many hours watching the available film and trying to identify those who had assaulted the soldiers.<sup>155</sup> Pat McGeown was arrested some six or seven weeks after the murders, on the strength of heli-teli evidence. Several RUC officers claimed to be able to identify him.<sup>156</sup> On 17.11.1988, Pat McGeown and two others appeared at Belfast Magistrates' Court for the Preliminary Enquiry. After watching an hour-long edited version of film footage purporting to show Pat McGeown's involvement in the murders, Resident Magistrate Basil McIvor held that there was no *prima facie* case against McGeown and acquitted him.<sup>157</sup> McGeown's lawyer was Patrick Finucane. He had acted as advocate during the hearing<sup>158</sup>, and he had convinced the magistrate that Pat McGeown could not be identified on the blurred heli-teli pictures. He and Pat McGeown were photographed as they left the courthouse; it was this photograph that appeared in *An Phobscraip* and that was referred to at Nelson's trial. There was considerable publicity about the acquittal. The RUC officers who had been ready to identify Pat McGeown must have felt that Patrick Finucane had helped his client to escape justice. The corporals' army colleagues may have felt the same. It has been alleged that Corporals Howes and Wood worked for FRU<sup>159</sup>. If that is true, then FRU had a very potent motive for regarding Patrick Finucane as a problem.

- 11.28 The Lawyers Committee for Human Rights have twice sent missions to Northern Ireland to investigate, among other things, the murder of Patrick Finucane<sup>160</sup>. During their first mission in the early autumn of 1992, they interviewed a wide variety of informants concerning the murder. They reported:

"Two independent sources told us that the RUC also had a double agent in the UDA. They stated that they had learned from loyalist sources that in late December 1988 or early January 1989 Brian Nelson came to a UFF meeting and passed a file on Finucane to R. Those present took the transfer of this file to mean that Finucane would be killed. A week later the double agent alerted his handlers in the RUC Special Branch who were stationed at Castlereagh. About two weeks later R came to the agent and asked him for weapons, including a Browning. At his next meeting

<sup>155</sup> *The Casement Trials*, Committee on the Administration of Justice, April 1992; *Stone Cold*, Martin Dillon, Arrow, 1992

<sup>156</sup> Patrick Finucane's file on Pat McGeown's case. McGeown was arrested on the basis of one RUC Officer. Only after his arrest and charge did four other RUC officers claim to be able to identify him

<sup>157</sup> *The Newsletter*, 18.11.1988

<sup>158</sup> He also appeared on Pat McGeown's behalf at previous bail hearings and attended him while he was held at Castlereagh

<sup>159</sup> *Stone Cold*, Martin Dillon, Arrow, 1992, pp.201 - 202 and 231

<sup>160</sup> *Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane*, Lawyers Committee for Human Rights, New York, February 1993; *At the Crossroads: Human Rights and the Northern Ireland Peace Process*, Lawyers Committee for Human Rights, New York, December 1996

with his handlers, the agent told them of R's request and that he would be supplying the weapons in the next few days. In both instances, the agent gave the information to his handlers on the assumption that they would do something to prevent the murder from taking place."<sup>161</sup>

We believe that R was McKee. We understand that the Lawyers Committee was also told that when the double agent handed over the weapons on 12.2.1989, he informed his Special Branch handlers that the Finucane murder was imminent.

11.29 This suggests that, regardless of whether Nelson told FRU about the threat to Patrick Finucane's life, and regardless of whether FRU passed on that information to Special Branch, Special Branch had its own source of very detailed information about the plot. Patrick Finucane, though, was never warned that he was being targeted.

11.30 It also suggests that Nelson passed a file – or, perhaps, a P card – to McKee some weeks before the murder.

11.31 The sequence of events that emerges from this analysis of the murder of Patrick Finucane paints a very disturbing picture. Against the background of hostility towards him and threats against his life from RUC officers over several years, which intensified in the year before his death, a sharp sequence emerged in the two or three months prior to his murder.

- on 17.11.1988 Patrick McGeown was acquitted of involvement in the murder of Corporals Howes and Wood, and photographed coming out of the courthouse with Patrick Finucane; it is alleged that the two soldiers were members of FRU
- in December 1988, it is believed, Matt Kincaid is allegedly encouraged by RUC officers to murder Patrick Finucane, and told that he is "the brains behind the IRA"
- in late December 1988 or early January 1989 Nelson hands McKee a file on Patrick Finucane, according to the Lawyers Committee for Human Rights' informant; allegedly, Special Branch is informed
- sometime prior to early January 1989 the RUC send a file to London saying that some solicitors cannot be trusted
- in early January 1989 Douglas Hogg visits Northern Ireland and is briefed by the RUC; Patrick Finucane is named as an untrustworthy lawyer
- at some time in mid January 1989 McKee asks a UFF colleague for weapons; Special Branch is allegedly informed
- on 17.1.1989 Hogg remarks in Parliament that some solicitors "are unduly sympathetic to the cause of the IRA"
- on 12.2.1989 the UFF collect the weapons; Special Branch is allegedly informed the murder is imminent
- later on 12.2.1989 Patrick Finucane is murdered.

If this information is true, or even partially true, it raises very serious questions. It is vital to establish precisely what FRU's knowledge of and

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<sup>161</sup> *Human Rights and Legal Defense in Northern Ireland*, p.55

involvement in the murder was, and also what role if any was played by the RUC.

## 12. THE FIRST STEVENS INQUIRY

- 12.1 On 25.8.1989 Catholic Loughlin Maginn, aged 28, was murdered at his home by the UFF. The UFF justified his murder by claiming that he was a member of the IRA and that they had obtained this information from RUC files. The information came from Nelson<sup>162</sup>. The Maginn family absolutely refuted this claim, and revealed that Loughlin Maginn had been harassed and threatened by the security forces before his death. In response, the UDA released to journalist Chris Moore a confidential security file listing alleged IRA members in the County Down area, which included Loughlin Maginn's name. The file had been leaked by a UDR soldier from Ballykinler army camp.<sup>163</sup> This led to the arrest of several UDA men. The UDA retaliated by sending to journalists scores of documents leaked by the security forces in a bid to prove that their violence was only targeted on known republicans, claiming that the security forces were frustrated by the difficulty of bringing republicans to book. This irrefutable evidence of collusion provoked an outcry, and the Irish government demanded action. On 14.9.1989 John Stevens, the Deputy Chief Constable for Cambridgeshire was appointed by RUC Chief Constable Hugh Annesley to investigate claims of collusion.

- 12.2 John Stevens' terms of reference were as follows:

"TERMS OF REFERENCE  
RECEIVED FROM CHIEF CONSTABLE ROYAL ULSTER CONSTABULARY  
DATED 20TH SEPTEMBER 1989

ALLEGED LEAKS OF INFORMATION  
BY THE SECURITY FORCES IN NORTHERN IRELAND

I refer to my request on 14th September to the Chief Constable of Cambridgeshire that you should be appointed to investigate the above.

Following briefings given to you by myself and other senior officers of the Royal Ulster Constabulary on 15th and 16th September, you should please regard your terms of reference as follows:-

- (1) To investigate the alleged leak of information to Loyalist terrorist groups as disclosed by the television reporter, Mr Chris Moore, and allegedly associated with the murder of Mr John Anthony Loughlin Maginn.
- (2) To investigate the alleged disappearance of confidential material from Ballykinler Army Camp on or about 1st September, 1989.
- (3) To investigate the disappearance of photographs of alleged

<sup>162</sup> *Panorama* transcript, 8.6.1992, p.13

<sup>163</sup> *UVF*, Jim Cusack and Henry McDonald, Poolbeg, 1997, p.262

PIRA terrorists from Dunmurry Police Station on or around 11th August.

(4) In consultation with me, to investigate any associated matters directly relevant to the above that come to light in the course of your enquiry.

(5) To make relevant recommendations regarding these aspects.

Your report should, in due course, be submitted directly to me and, should you require, I shall be available for advice as necessary.

I confirm that you will receive total support from all levels within the Royal Ulster Constabulary during the course of your investigation."

12.3 The Stevens team took written statements from 1,900 witnesses, followed 2,000 lines of investigation and spent 2,000 hours interviewing people in custody. They recovered 2,600 documents, most of which originated from the security forces<sup>164</sup>. In May 1990 a summary of his report was published, which confirmed that collusion had occurred.

At paragraph 27 of the summary report, he said:

"It is clear that official information, originally produced by the Royal Ulster Constabulary, the Army and the Prison Service, has passed, illicitly, into the hands of the loyalist paramilitary groups.

Documents and information from documents, have been traced to the possession of these paramilitaries. They have been used by them to enhance their own intelligence systems and as an aid to the targeting of persons suspected of being Republican terrorists."

However, at paragraph 41 he concluded:

"... the detailed analysis of the Security Force documents recovered during the Enquiry and the evidence secured, makes it clear that the passing of information to paramilitaries by Security Force members has been restricted to a small number of individuals. It is neither widespread nor institutionalised."

12.4 As a result of his inquiry, 94 people were arrested, of whom 59 people were charged or reported to the Director of Public Prosecutions, resulting in 47 prosecutions and 183 convictions for separate offences. 32 UDA people were charged with 153 offences, 146 of which resulted in convictions. 11 UDR people were charged with 15 offences, all of which led to convictions. In addition to these 43 people, three others were charged with involvement in Loughlin Maginn's murder and, of course, Brian Nelson was charged<sup>165</sup>.

12.5 Although many of the documents leaked to the loyalists originated from police files, not a single police officer was charged. At

<sup>164</sup> *The RUC 1922 - 1997 A Force Under Fire*, by Chris Ryder, Mandarin, 1997, p. 287

<sup>165</sup> Analysis by British Irish RIGHTS WATCH based on information provided by the UK government to the defence in the extradition trial of Kevin Barry Artt in San Francisco in 1996 and other materials

paragraph 38 of the summary report, Stevens said:

"Much speculation has been reported in the media concerning the so-called 'failure' of the Enquiry to charge any Royal Ulster Constabulary officers with offences relating to collusion. No evidence has been discovered to substantiate any such charges. During the enquiries into the disappearance of the photo-montages from Dunmurry Police Station, two hundred and thirteen Royal Ulster Constabulary officers were interviewed by the Enquiry team. Throughout the whole investigation, police officers have been questioned whenever it has been necessary."

All this seems to say is that RUC officers were interviewed but no evidence emerged. It does not explain how RUC documents came to be leaked. Stevens did submit reports to the DPP on two RUC officers, but the DPP decided not to proceed against them for lack of evidence<sup>166</sup>.

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<sup>166</sup> *The RUC 1922 - 1997 A Force Under Fire*, by Chris Ryder, Mandarin, 1997, p. 287

13. FRU'S FEARS THAT NELSON WOULD BE ARRESTED

13.1 During August and September 1989, the FRU became increasingly worried that Nelson, referred to by his agent number 6137, would be arrested by the Stevens Inquiry. A CF dated 30.8.1989 says:

"...6137 was briefed on resistance to interrogation and the correct procedure to follow should he be arrested during the next reporting period. The need for utmost secrecy regarding work for this office was pointed out to him and was speedily digested."

13.2 On 19.9.1989, another CF reported:

"Once 6137 had imparted his information he was once again given an in depth resistance to interrogation brief by his handler, just in case he should be arrested by the RUC, due to his involvement within the current security leak crisis... There is a strong likelihood that the source may be arrested during RUC investigations into the recent security leaks. 6137 is almost expecting this and was given an in depth briefing on what action to take on being arrested."

13.3 On 22.9.1989 FRU decided to take no further risks, and impounded Nelson's intelligence store. The CF for that date recorded:

"He was told to say absolutely nothing to any interrogators no matter what the threat and he was assured that if arrested his handler would be informed, if not before then soon afterwards and would be able to obtain release."

#### 14. NELSON'S ARREST

- 14.1 In fact, Nelson was not arrested until January 1990, after the Stevens team had found his fingerprints on several leaked security force documents. On 10.1.1990 he fled to Liverpool in England, having apparently been tipped off that his arrest was imminent. A TCF recorded him telephoning his handlers from the ferry. He feared that the UDA would kill him unless he could get their intelligence store back from the FRU. His handlers persuaded him to return to Northern Ireland, assuring him that the documents would be returned and he could carry on as usual, but he was arrested on 12.1.1990.<sup>167</sup>
- 14.2 On the night of 10.1.1990, the day Nelson fled to England, John Stevens' office in the Police Authority's offices at Seapark, Carrickfergus, was damaged by fire. The fire was officially attributed to a cigarette disposed of carelessly by one of the Stevens team. We have reason to believe that the fire was not accidental.
- 14.3 Once in custody, Nelson did not follow his handlers' advice to resist interrogation, say nothing, and keep his work for FRU secret. Instead, he began to talk to the Stevens team. On 15.1.1990 Nelson made a statement under caution.

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<sup>167</sup> *Panorama* transcript, 8.6.1992, pp. 14 - 15

15. PROVISION BY FRU OF MATERIALS TO STEVENS

- 15.1 On 22.9.1989, a week after Stevens was called in, Nelson's intelligence store was removed by East Det FRU on Colonel Kerr's orders. The Special Branch was consulted and informed. A collator from East Det FRU listed all the contents of the store. According to Kerr, the Chief Constable ordered that the Stevens team were to be given no access to FRU intelligence unless Special Branch ordered its disclosure.<sup>168</sup> At the trial of Tucker Lytle, Winkie Dodds and Matt Kincaid, it emerged that FRU passed over 1,100 documents to the Stevens team<sup>169</sup>.
- 15.2 During the weekend following FRU's retrieval of Nelson's store<sup>170</sup>, Colonel Kerr put together a compilation of material showing security force leaks to loyalists during the period 1987 to 1989. This report was passed to Special Branch. Colonel Kerr also showed it to the General Officer Commanding, the Commander Land Forces and MI5.<sup>171</sup> This appears to have been a cynical pretence of co-operation with the Stevens Inquiry while actually withholding vital information.
- 15.3 Nelson's store was finally handed to the Stevens team on 25.1.1990, ten days after Nelson had made his statement.<sup>172</sup> It should be remembered that FRU did not need to take Nelson's store into safekeeping in order to find out what was in it - they already had a copy of all its contents<sup>173</sup>. At the trial of Lytle et al, we understand that Soldier Z, a FRU member, testified that he only delivered what he had been instructed to pass on to the Stevens team<sup>174</sup>. He also said that he had handed photocopies of all Nelson's documents to the RUC while FRU retained the originals<sup>175</sup>. This suggests that both FRU and the RUC may have withheld vital evidence from Stevens for several months.
- 15.4 At paragraph 10.24 above the evidence that there was a P card on Patrick Finucane is described. This P card was not delivered to Stevens and a CF referring to its existence was withheld from lawyers acting for Geraldine Finucane, as was a reference in Nelson's statement to Stevens which would have led to the discovery of the existence of the P card. The FRU had sole custody of Nelson's intelligence store from 22.9.1989 until 25.1.1990. They also had ten days between Nelson's making a statement to the Stevens team on 15.1.1990 and their handing over the intelligence store to Stevens. FRU were informed that Nelson was under arrest. Desmond Boal QC, who defended Nelson at his trial, gave this graphic description of the sequence of events:

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<sup>168</sup> Colonel Kerr's statement

<sup>169</sup> *Irish News*, 26.6.1991

<sup>170</sup> Colonel Kerr's statement puts this exercise in 1990, but it must in fact have been in 1989

<sup>171</sup> Colonel Kerr's statement

<sup>172</sup> Colonel Kerr's statement

<sup>173</sup> Please see paragraph 6.5 above

<sup>174</sup> We understand that Soldier Z's evidence is available in transcript, but have been unable to obtain a copy to date

<sup>175</sup> *Irish News*, 26.6.1991

"... he [Nelson] says: 'I don't want to say anything at all'. Then obviously he thinks twice about it and gives the telephone number of his handler to the police. They go away, and they come back and say yes, we've spoken to your handler we now confirm that you are who you say you are. From then on that man talked freely and incessantly. There was never a stop in the flow of information that was coming from him."<sup>176</sup>

There is a strong possibility that the FRU had access to a copy of Nelson's statement and that they used those ten days to remove from Nelson's intelligence store everything that did not have to be included in light of his statement. Alternatively, FRU had ample opportunity to weed the store in the three months prior to Nelson's arrest, and may have put some items back in light of the statement.

- 15.5 FRU's own documents relating to Nelson were not delivered to Stevens until around August 1990, after the DPP had issued a seizure warrant for them. When they arrived, it is alleged that they were subjected to ESDA testing, which showed that most pages had been altered<sup>177</sup>. FRU said they had done this to make the work of the Stevens inquiry easier. Be that as it may, they had seven or eight months to clean up their own documents.
- 15.6 FRU's CFs do not appear to make any mention of Patrick Finucane until after his death on 12.12.89. We understand that only three FRU documents have been released to Geraldine Finucane's lawyers: one TCF, one MISR and one CF. The documents are dated 13. and 14.2.1989, i.e. after the murder.
- 15.7 The impression given by this very limited disclosure is that the FRU were in complete ignorance of the plan to murder Patrick Finucane and that they found out about it by the means of two telephone calls from Nelson and a meeting with him on 14.2.1989. Nelson's account of what he knew is strikingly consistent with what he told Stevens in January 1990. All of this might be taken as supporting the Ministry of Defence's case that Nelson kept them in the dark about the murder were it not for the existence of the P card and the efforts to hide its existence. A further matter to be taken into account when assessing the veracity of their account is the fact that originally they denied that Nelson was their agent, despite Colonel Kerr's clear acknowledgement to the contrary at Nelson's trial<sup>178</sup>, only amending their pleadings in the civil case on this point on 11.10.1995.

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<sup>176</sup> Transcript, 29.1.1992, p.66. We understand that FRU was alerted to Nelson's arrest in advance by Special Branch

<sup>177</sup> *Panorama* transcript, 8.6.1992, p.15

<sup>178</sup> Transcript, 29.1.1992, pp. 5 and 20, when Kerr said:

"I think that it is worthwhile saying there's absolutely no doubt in my mind that Brian Nelson was not loyal to the UDA, Brian Nelson was loyal to the Army."

## 16. NELSON'S TRIAL

- 16.1 Nelson originally stood indicted on 34 counts, including four counts of conspiracy to murder Alex Maskey, James Morgan, Patrick Monaghan and Brian Gillen, and two of aiding and abetting the murders of Gerard Slane and Terence McDaid. However, when he appeared in court on 22.1.1990 Crown Counsel, John Creaney QC, added a 35<sup>th</sup> count, that of conspiracy to murder Terence McDaid, and requested that Nelson be re-arraigned on all counts. During the process of re-arraignment, Nelson pleaded not guilty to two counts, as follows:

1. Aiding and abetting the murder of Terence McDaid
  2. Collecting information about Declan McDaid (visual sightings)
- Mr Creaney then instructed the Clerk of the Court not to put 12 of the charges, as follows:
3. Collecting information about Declan McDaid (Electoral Register)
  4. Aiding and abetting another to collect information re Declan McDaid
  6. Collecting information about Alex Maskey
  7. Aiding and abetting the murder of Gerard Slane
  12. Collecting information about James Morgan (Electoral Register)
  13. Ditto (his address)
  14. Aiding and abetting another to collect information re James Morgan
  16. Collecting information about Patrick Monaghan (visual sightings)
  17. Ditto (his address)
  18. Aiding and abetting another to collect information re Patrick Monaghan
  20. Collecting information about a public house
  21. Aiding and abetting another to collect information re Brian Gillen (photo)
  23. Possession of sub-machine gun in suspicious circumstances.<sup>179</sup>

Nelson pleaded guilty to the rest of the counts as each was put to him. Mr Creaney then requested the court to allow all those charges to which Nelson had not pleaded guilty – i.e. the two to which he pleaded not guilty and the twelve that were not put – to remain on the books of the court but not to be proceeded with without the court's permission.

- 16.2 Most of the counts that were left on the books were relatively minor, with the exception of the 7<sup>th</sup> count of aiding and abetting the murder of Gerard Slane and the 23<sup>rd</sup> count of possession of a sub-machine gun.
- 16.3 In this manner, a deal was struck which meant that a trial which was expected to have lasted for many days if not weeks was over in two short days. Since the only matters before the court were ones to which Nelson had pleaded guilty, there was no need to prove the facts on

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<sup>179</sup> Transcript, 22.1.1992, p. 1 - 8

each of the remaining twenty counts. For the rest of the morning, Crown Counsel Brian Kerr QC gave the briefest of outlines of the charges remaining against Nelson, no part of which was contested by the defence. The court then adjourned until 29.1.1992, and sat in the morning to hear Colonel Kerr's "evidence", which was in effect a plea in mitigation, through which Colonel Kerr was taken by Desmond Boal QC, acting for the defence. The trial judge, Lord Justice Kelly, gave his judgment on 3.2.1992. It ran to just over four pages. The gist of his judgment was that undercover operations are a legitimate means of detecting crime and bringing criminals to justice, but that undercover agents must act within the law. If they do not, they can expect to be prosecuted. However, he accepted much of the mitigation pleaded on Nelson's behalf and sentenced him to ten years on the five counts of conspiracy to murder, three years on eleven counts of possession of documents likely to be useful to terrorists, four years on three counts of collecting information, and six years on one count of possession of firearms with intent, all sentences to run concurrently. This was surely one of the most lenient sentences ever handed down in the Diplock court.

- 16.4 Apart from the brevity of the trial, the paucity of information about the specific counts, and the leniency of the sentence, the trial was chiefly remarkable for what emerged in Colonel Kerr's evidence. Although he never referred to FRU by name, his evidence disclosed:
- a) that the FRU had deliberately recruited Nelson<sup>180</sup>
  - b) in order to infiltrate him into the loyalist paramilitaries<sup>181</sup>
  - c) that he was on FRU's payroll<sup>182</sup>
  - d) that FRU was responsible for passing information learned by Nelson on to the RUC<sup>183</sup>
  - e) that Nelson's identity was known to senior Special Branch officers at RUC Regional and HQ levels and to two senior members of MI5<sup>184</sup>
  - f) that Home Office guidelines on the use of agents were not followed by FRU and were regarded as inappropriate<sup>185</sup>
  - g) that FRU had helped to improve Nelson's intelligence store<sup>186</sup>
  - h) that thereafter FRU had access to all Nelson's documents<sup>187</sup>
  - i) that FRU escorted Nelson when he moved the store to the safe house<sup>188</sup>
  - j) and told Special Branch about the safe house to protect it from being searched<sup>189</sup>
  - k) that FRU handlers met Nelson weekly and were also in touch with

<sup>180</sup> Transcript, 29.1.1992, p. 1

<sup>181</sup> Ibid, p.2

<sup>182</sup> Ibid, pp. 3 and 4

<sup>183</sup> Ibid, p. 5

<sup>184</sup> Ibid, p.5

<sup>185</sup> Ibid, pp. 6 - 7

<sup>186</sup> Ibid, pp. 8 - 9

<sup>187</sup> Ibid, p. 10

<sup>188</sup> Ibid, p. 11

<sup>189</sup> Ibid, p. 11

him by telephone<sup>190</sup>

- i) FRU considered Nelson to be "a very important agent; intelligence supplied by him was reported to senior officers in RUC Special Branch and the Chief Constable, the highest levels of the military command in Northern Ireland, the Special Branch of the Irish police service, and the Secretary of State for Northern Ireland"<sup>191</sup>.

16.5 Brian Kerr QC led the case for the Crown at Nelson's trial. He normally appeared as senior Crown Counsel in civil rather than criminal cases and was usually instructed by the Attorney-General when the latter had reason to appear in a case. John Creaney QC, who was normally instructed by the DPP, played a very minor role in the trial. Brian Kerr's appearance raises the question of whether the Attorney-General took over this prosecution, and if so why. It also raises the issue of the level at which it was agreed to drop so many of the charges against Nelson.

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<sup>190</sup> Ibid, p. 13

<sup>191</sup> Ibid, pp. 22 – 24. Tom King, by then Secretary of State for defence, apparently in a bid to influence the decision whether to prosecute Nelson, wrote to the DPP saying that Nelson had been a very valuable agent.

## 17. FAILURE TO BRING THE UFF TO BOOK

- 17.1 In June 1996, Tucker Lyttle, Tosh Lyttle, Winkle Dodds, Matt Kincaid and Eric McKee stood trial on charges arising out of the Stevens inquiry. Between them, they faced 51 separate counts of possession of documents likely to be of use to terrorists, recording such information, planning acts of violence, and conspiracy to collect information. Tucker Lyttle alone was charged with issuing death threats against witnesses in a racketeering trial with intent to pervert the course of justice.<sup>192</sup> None of them was charged with murder or conspiracy to murder. On 3<sup>rd</sup> July 1991 Tucker Lyttle was sentenced to 7 years for possession of documents likely to be of use to terrorists<sup>193</sup>. Eric McKee and Winkle Dodds were each sentenced to 6 years, Tosh Lyttle to 5 years, and Matt Kincaid to 4 years<sup>194</sup>.
- 17.2 In October 1990 charges against Sam Duddy and four other UDA/UFF members were dropped when it was decided not to use Nelson as a prosecution witness<sup>195</sup>. The other four men were James Spence, Joe English, Sammy McCormick and Billy Elliott<sup>196</sup>.
- 17.3 A telling exchange between Desmond Boal QC, defending Nelson, and the trial judge, Lord Justice Kelly, sheds light not only on the failure of the authorities to bring the UFF to book, but also on the true nature of FRU's Nelson project:
- "Kelly: I have been asking myself that question all morning, what did he [Nelson] achieve at the end of the day? Of course he did, and I take the point immediately, save lives<sup>197</sup>, but I think the intention really of the Colonel [Kerr] was to, that he would try to bring down the organisation. Were any of these men prosecuted at all?
- Boal: Yes.
- Kelly: For acts of conspiracy to murder or attempted murder? I dealt with some of them I recall.
- Boal: Not I think for...
- Kelly: But only on charges of collecting information.
- Boal: I think that's right.
- Kelly: But were any of them dealt with for more serious charges?
- Boal: Not that I know of, my Lord, which is another irony of course. The basis of your Lordship's question, the inference might be it's because of Nelson that they haven't in fact been brought to book. That I can tell the Court is not so. Nelson, may I say quite clearly, has never been asked to give evidence against these people."

<sup>192</sup> *Irish News*, 21.6.1991

<sup>193</sup> *Northern Ireland A Political Directory 1969 - 1993*, W D Flackes and Sydney Elliott, Blackstaff Press, revised edition 1994, p. 314

<sup>194</sup> *Newsletter*, 4.7.1991

<sup>195</sup> *The Red Hand: Protestant Paramilitaries in Northern Ireland*, Steve Bruce, Oxford University Press, 1992, p.264

<sup>196</sup> *Irish News*, 11.10.1990

<sup>197</sup> In fact, there is little evidence to support this contention

- 17.4 A deal had been done over Nelson's own trial. As a result, a limited and in many respects misleading picture of FRU's strategy had been disclosed. If Nelson was used as a supergrass, other more damaging details might emerge, especially if Nelson found himself being accused of involvement in other crimes for which he had not been tried.
- 17.5 Our research shows that at least 39 loyalists apart from Nelson can be identified from the information that would be before a public inquiry. These individuals were involved in at least 12 murders, 11 attempted murders, 18 conspiracies to murder, 51 other cases of targeting, one kidnapping, one wounding and one punishment shooting. We do not suggest that the material available is sufficient to ground a prosecution in each case, but we are concerned that Nelson's role and the reluctance of the authorities to use him as a prosecution witness for fear of what he might expose about FRU's operations meant that it was inevitable that this appalling catalogue of crime would go unremedied.

## 18. THE SECOND STEVENS INQUIRY

- 18.1 After Nelson's conviction, journalists John Ware and Geoffrey Seed made a *Panorama* programme about his role, "The Dirty War", transmitted by BBC television on 8.6.1992. In the programme extracts from Nelson's journal were broadcast, in which he admitted to involvement in a number of other murders, including that of Patrick Finucane. The programme alleged that Nelson had also targeted another lawyer, Paddy McGrory<sup>198</sup>. The transcript of the programme was referred to the Director of Public Prosecutions, who asked John Stevens to investigate these allegations. Stevens completed his enquiries in January 1995, and submitted his final report to the DPP of Northern Ireland on 24.1.1995. On 17.2.1995 the DPP issued a direction of no prosecution to the Chief Constable of the RUC. It is not known why he reached this decision, which seems extraordinary in the face of Brian Nelson's allegedly self-confessed part in the murders.
- 18.2 However, it was not in fact the *Panorama* programme that led to Stevens' second inquiry. Geraldine Finucane, Patrick Finucane's widow, had initiated a civil claim for damages against the Ministry of Defence and Brian Nelson personally in respect of her husband's murder. It was Nelson's threat to spill the beans about FRU's knowledge of this murder and other illegal activities by FRU that prompted the further police investigation.
- 18.3 Not even a summary of Stevens' second report has ever been published. We believe that his inquiries focussed on the extent to which Nelson's handlers and other members of the security forces may have been implicated in murder and other illegal acts. Respected journalist and commentator Tim Pat Coogan, in his book *The Troubles*<sup>199</sup> says that he understands that Stevens' second report, "... squarely implicate[s] four named members of the RUC as being involved in sectarian killings".
- 18.4 We also believe that one of the reasons that the DPP was not able to prosecute anyone on the basis of the report was the refusal of members of FRU and others to co-operate with his inquiries. If we are right about this, this is a compelling argument for holding a public inquiry into the issues raised in our report.

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<sup>198</sup> Paddy McGrory, now deceased, had represented that relatives of the three IRA members shot on Gibraltar by the SAS

<sup>199</sup> Hutchinson, 1995, p.264

19. GOVERNMENT ENDORSEMENT OF THE WORK OF FRU

- 19.1 At least 74 honours and awards have been made to FRU members in recognition of their work.
- 19.2 One of Nelson's handlers, Sgt Margaret "Mags" Jones was awarded the British Empire Medal in the Northern Ireland Gallantry Awards in 1990<sup>200</sup>.
- 19.3 Colonel Gordon Kerr was awarded the Military OBE in the Northern Ireland Gallantry Awards in 1991<sup>201</sup>.

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<sup>200</sup> *Northern Ireland Awards, The Times, 7.11.1990*

<sup>201</sup> *Northern Ireland Gallantry Awards, The Times, 14.5.1991*

## 20. CONCLUSION

- 21.1 The picture painted by the Crown during Nelson's prosecution was that of an agent who was out of control and who crossed the fine line beyond what is acceptable behaviour on the part of the clandestine services by "going native" among the loyalists among whom he had his roots.
- 21.2 However, this portrayal should be viewed with caution. It would appear that both the inquiries carried out by the Stevens team were misled by FRU, both in relation to Nelson's role and to their own. It suited the authorities for Nelson to be seen as a maverick, and no doubt it would suit them equally if FRU were seen to be an aberration. On the other hand, FRU was an integral unit within the Intelligence Corps, with detailed and clear lines of reporting within the army and clear links with MI5 and Special Branch. FRU's intelligence was reported to and relied upon by government ministers.
- 21.3 The other intelligence services operating in Northern Ireland, Special Branch and MI5, however, had numerous informers among the loyalist factions. As we have seen, it would appear that Special Branch knew all about the plot to murder Patrick Finucane, regardless of any input from FRU.
- 21.4 It seems to us unlikely that FRU was operating in isolation from the rest of the intelligence services in Northern Ireland. It also seems unlikely that such a sensitive operation, which potentially – and actually, as it turned out – put many lives at risk, could be mounted without the knowledge or approval of those commanding the military intervention in Northern Ireland and their political masters.
- 21.5 If the picture that emerges from this report is true, then the UK government has been in serious breach of its obligations under domestic law and international human rights law. In particular, they have failed to uphold the right to life under Article 2 of the European Convention on Human Rights and they have failed to observe the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. They have allowed a number of murders to take place with the active participation of an army employee, Brian Nelson. Although Nelson's superiors or others, such as Special Branch, knew of some or all of these assassination plots, nothing was done to protect the victims or prevent their deaths. Reports by English police officer John Stevens concerning the deaths have been suppressed, and so far the government has refused to implement a recommendation by the United Nations for a public inquiry into one of the deaths, that of Patrick Finucane.
- 21.6 We are not alone in our disquiet. The following functionaries and non-governmental organisations have all expressed concern about the murder of Patrick Finucane:
- the Irish government;

- the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy;
- Dr Claire Palley, UK nominee on the United Nations Commission on Human Rights;
- Peter Burns, Rapporteur on the UK for the Committee Against Torture;
- the Standing Advisory Commission on Human Rights, which advises the UK government on human rights in Northern Ireland;
- Viscount Colville of Culross QC, in his capacity as independent scrutineer of UK emergency laws;
- Sir Louis Blom-Cooper QC, Independent Commissioner for the Holding Centres;
- Amnesty International;
- the International Commission of Jurists;
- the International Federation of Human Rights;
- the Committee on the Administration of Justice;
- Liberty;
- the Law Society of England and Wales;
- the Bar of England & Wales Human Rights Committee;
- the General Council of the Bar of Ireland;
- the Haldane Society;
- Norwegian Helsinki Committee;
- BBC journalist John Ware;
- the American Bar Association;
- the Lawyers Committee on Human Rights;
- Human Rights Watch (formerly Helsinki Watch);
- the National Association of Criminal Defense Lawyers, USA;
- the International League for Human Rights;
- the Lawyers Alliance, USA;
- the Brehon Law Society, USA;
- the International Association of Democratic Lawyers, and
- the Association of the Bar of the City of New York.

The American State Department has also raised the murder in consecutive years in its country reports to the Senate on human rights in the UK.

21.7 In this report we have set out in good faith what we believe to be the facts of an extremely sinister situation. It is the culmination of painstaking research on our part and by others over a period of several years. There is, though, one body that knows for certain the truth of what happened, and that is the UK government. We call on them without further delay or prevarication to set up an independent public inquiry with full judicial powers to investigate the matters raised in this report. In particular, such an inquiry must:

- determine whether the activities of the Force Research Unit, especially their infiltration of Brian Nelson into the UDA, had as their aim the assassination of any individual
- make an informed assessment based on all the available evidence, whether currently in the public domain or not, of the damage caused by those activities, both in terms of lives lost and otherwise

- determine how much knowledge and oversight of those activities was had by the army, the intelligence service, the police, the Northern Ireland Office and the government.

21.8 On 29.1.1988 the UK government announced a second inquiry into the events of Bloody Sunday. In his opening statement the Prime Minister said:

"Bloody Sunday was different because, where the state's own authorities are concerned, we must be as sure as we can of the truth, precisely because we pride ourselves on our democracy and respect for the law, and on the professionalism and dedication of our security forces."

Those principles apply even more forcefully to the matters raised in this report.

FEBRUARY 1999

## CHRONOLOGY

- Oct 1965 Nelson joins Black Watch Regiment
- 1971 Ulster Defence Association (UDA) formed
- 1972 Nelson joins the UDA
- 8 Feb 1974 Nelson convicted on charges arising out of kidnapping of Gerald Higgins
- 1977 Nelson released from prison
- 1982 Force Research Unit (FRU) formed
- 1983 Nelson began work for FRU
- 1985 Nelson appointed Intelligence Officer of West Belfast brigade UDA
- Dick Wright visits Northern Ireland and meets UDA
- Andy Tyrie asks Nelson to broker South African arms deal
- 8 - 22 Jun 1985 Nelson visits South Africa
- 18 Jul 1985 CF confirms FRU knew about South African arms deal
- 25 Oct 1985 Nelson goes to live in Germany
- 14 Sep 1986 John Bingham shot dead by IRA
- Dec 1986 Colonel Gordon Kerr takes over command of FRU
- late 1986/early 1987 FRU decides to re-recruit Nelson
- 6 May 1987 Nelson returns from Germany
- Jun 1987 Bank robbery in Portadown by UDA, UVF and Ulster Resistance
- summer 1987 Nelson appointed Senior Intelligence Officer UDA
- Sep 1987 Nelson gives briefing to UDA Inner Council
- 14 Oct 1987 FRU assists Nelson to update UDA intelligence store
- Oct 1987 Nelson briefs brigade Intelligence Officers and gives them P cards
- late 1987? Nelson moves intelligence store to safe house
- Dec 1987/Jan 1988 South African arms shipment arrives in Northern Ireland
- Jan 1988 Part of arms shipment recovered by security forces
- 19 Mar 1988 Corporals Howes and Wood murdered by IRA at Kevin Brady's funeral
- 4 May 1988 Patrick McGeown arrested for the murder of the two Corporals
- 10 May 1988 Murder of Terence McDaid
- 22 Sep 1988 Murder of Gerard Slane
- 17 Nov 1988 Case against Patrick McGeown dismissed
- Dec? 1988 Matt Kincaid arrested and held in Castlereagh
- late 1988/early 1989 Nelson hands file on Patrick Finucane to Eric McKee
- RUC sends Douglas Hogg report on Northern Ireland solicitors
- mid Jan 1989 McKee asks UFF quartermaster for weapons
- 17 Jan 1989 Hogg tells Parliament some solicitors in Northern Ireland are unduly sympathetic to the IRA
- 12 Feb 1989 McKee collects weapons
- Murder of Patrick Finucane
- Apr 1989 3 Ulster Resistance men arrested in Paris trying to sell arms secrets to South Africans
- 25 Aug 1989 Murder of Loughlin Maginn

14 Sep 1989 John Stevens appointed to investigate allegations of collusion  
 22 Sep 1989 FRU impounds Nelson's intelligence store  
 10 Jan 1990 Nelson flees to England  
 Fire in Stevens' office  
 12 Jan 1990 Nelson returns to Northern Ireland and is arrested  
 Tucker Lyttle arrested  
 15 Jan 1990 Nelson makes a statement under caution  
 25 Jan 1990 FRU hands over Nelson's intelligence store to Stevens  
 Mar 1990 Colonel Kerr leaves FRU  
 May 1990 Summary of Stevens' first report published  
 Aug? 1990 FRU hands over its own papers to Stevens  
 3 Jul 1991 Tucker Lyttle, Matt Kinkaid and Winkie Dodds convicted  
 May 1991 Coloner Kerr is awarded the Military OBE  
 Apr 1992 2 South Africans meet 3 loyalists in London re arms deal  
 22 Jan 1992 Nelson stands trial  
 29 Jan 1992 Nelson is convicted and sentenced to 10 years  
 8 Jun 1992 *Panorama* programme broadcast  
 summer 1992 DPP asks Stevens for a second report  
 24 Jan 1995 Stevens sends second report to DPP  
 17 Feb 1995 DPP directs no prosecutions  
 1 Apr 1998 Publication of report by United Nations Special Rapporteur  
 on the Independence of Judges and Lawyers  
 British government refuses to hold public inquiry into the  
 murder of Patrick Finucane

