

PATRICK FINUCANE INQUIRY

HELD AT BRADFORD COURT CENTRE, BELFAST

ON WEDNESDAY, 16TH SEPTEMBER 2026

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1 THE INQUIRY RESUMED ON WEDNESDAY, 16TH SEPTEMBER 2026
2 AS FOLLOWS:

3
4 CHAIR: Thank you, please be seated. Good morning,
5 Mr. Hill. Good morning, everyone. We continue with
6 the Inquiry's counsel's opening. Thank you.

10:32

7
8 ADDRESS BY MR. HILL:

9
10 MR. HILL: Thank you, Sir. I am going to begin today
11 by discussing the role of Brian Nelson in the murder of
12 Patrick Finucane. The two questions I will address
13 this morning can be put simply; what did Brian Nelson
14 do? And what did he tell his FRU handlers?
15 Unfortunately the answers to those questions are far
16 from straightforward. Nelson's actions are obscured by
17 half-truths, by evasions and his role must be
18 reconstructed from fragments of often unsatisfactory
19 evidence.

10:33

10:33

20
21 We are largely reliant on the report of the de Silva
22 review for our sources. I will not repeat the detail
23 that is contained in the review, but will outline the
24 main documents concerned, and Sir Desmond's principal
25 findings, and the reasons for his findings. But these
26 are, of course, Sir, matters that this Inquiry will
27 consider again and on which you will come to your own
28 conclusions.

10:33

10:33

1 Beginning then with the question of what Brian Nelson
2 did.

3
4 Sir Desmond has published some of the intelligence
5 reports that, if accurate, show Nelson's own accounts 10:34
6 of his actions in the days after the murders. So what
7 he was telling FRU. The first contact that he made
8 after the murder was on the morning of 13th February,
9 the Monday. This was recorded in a telephone contact
10 form by FRU. And if we could bring up that document, 10:34
11 please, it's document 1, page 519. The document is, in
12 effect, a transcript and you can see that it begins
13 with a discussion with S, the source saying:

14
15 "It's Brian." 10:34

16
17 H for handler responding and there's a discussion about
18 a car. And then about halfway down the page Nelson
19 says:

20 10:35
21 "It was ours, this morning."

22
23 The handler says:

24
25 "Was it?" 10:35

26
27 Nelson:

28
29 "Yes."

1 Handler:

2
3 "OK, thanks."

4
5 And then Nelson says:

10:35

6
7 "See you tomorrow."

8
9 If we could go on to the next page of this document,
10 please. This is a comment that is made by the handler; 10:35

11
12 "6137."

13
14 That's the code name for Brian Nelson:

15 10:35

16 "6137 is referencing to the shooting of Pat Finucane at
17 19:32 hours on Sunday 12th February 1989. Two men, one
18 armed with a handgun kicked down the door and shot
19 Finucane dead. Geraldine Finucane also received
20 injuries. The car had been hijacked from..." 10:35

21
22 The address is redacted, the Crumlin Road.

23
24 As foreshadowed in that contact note, Nelson went on to
25 meet his FRU handlers the following day. So this is 10:36
26 now Tuesday, 14th February. We have a contact form
27 from that meeting. Could we have, please, same
28 document, electronic page 521? We can see at the top
29 there is additional information "6137," so that's

1 Nelson:

2
3 "CF Contact Form dated 14th February 1989."

4
5 Now, a lot of this is redacted but what it does 10:36
6 contain, if we could go to page 523, please,
7 paragraph 9. This is an account of what Nelson told
8 his handlers about the targeting of Patrick Finucane.
9 It's not apparent from the unredacted sections of the
10 document here, we know from the de Silva report that 10:36
11 what Nelson is describing here took place on 7th
12 February. So, the previous Tuesday prior to the murder
13 of Patrick Finucane. What Nelson says or is recorded
14 as saying to his handler is this:

15
16 "6137 was leaving his house at 14:30 hours when he met 10:37
17 L/28 and Ken Barrett approaching. L/28 asked 6137 for
18 the photograph of Pat McGeown leaving court after the
19 charges against him were dropped. L/28 added that
20 McGeown was with Pat Finucane in the photograph. 6137 10:37
21 said he would go to the int cell..." [sic]

22
23 So that's the intelligence cell, the intelligence dump
24 that we were referring to yesterday.

25
26 "...and collect it. L/28 told 6137 that he would be at 10:37
27 the [the name is redacted] Community centre. 6137
28 collected the photograph which had appeared in the
29 parody of APRN and took it to L/28."

1
2 "Source comment", so this is a comment which is
3 attributed to Nelson:
4

5 "At this stage I had been led to believe that L/28 was 10:38
6 interested in Pat McGeown."
7

8 Some context to that, Sir, if we could leave this up
9 just for the moment, please. Pat McGeown was a client
10 of Patrick Finucane who had previously been targeted by 10:38
11 the UDA as they believed he was a member of the
12 Provisional IRA. Mr. McGeown was arrested in March
13 1988 on suspicion of involvement in the murders of
14 Corporals David Howes and Derek Wood in West Belfast.
15 In November 1988 the charges were dropped at a court 10:38
16 hearing and he was photographed leaving the hearing
17 with his lawyer, Patrick Finucane. The photograph
18 appeared in a loyalist publication that was a parody of
19 the Republican paper, An Phoblacht/Republican News, and
20 that is the reference to APRN there. 10:39
21

22 If we could go on please, to page 524 from this same
23 document, so this is the contact form of 14th February.
24 From paragraphs 13 onwards we have an account of what
25 Nelson told his handlers about the murder of Pat 10:39
26 Finucane, two days previously. It reads as follows:
27

28 "During the evening of Sunday 12th February 1989,
29 6137..." [sic]

1
2 So Nelson:

3
4 "...was listening to the RUC radio network on the
5 scanner and he heard there had been a fatal shooting 10:39
6 at...", [The address is redacted.] "6137 checked the
7 Belfast street directory and noted that Pat Finucane
8 lived at that address. 6137 attempted to telephone
9 L/28 but he was not at home. 6137 telephoned L/41 and
10 told him what had happened." 10:40

11
12 "At 10:20 hours on Monday 13th February 1989, 6137
13 telephoned handler and reported that the UDA/UFF had
14 carried out the murder." [Sic]

15 10:40
16 I pause there to say, Sir, that takes us back to the
17 first document that we looked at, the telephone contact
18 from 13th February. Handler comment:

19
20 "6137 had not been told that the UDA/UFF were 10:40
21 responsible and he had made the assumption because L/28
22 had asked for the photograph of Pat McGeown with Pat
23 Finucane. 6137 was made aware of his faltering."

24
25 I will come back to that point later. There's a second 10:41
26 comment which just ties the detail of the murder of
27 Patrick Finucane to what Nelson is saying here. Moving
28 to paragraph 15:
29

1 "6137 visited L/28 at home at 10:30 hours on Monday,
2 13th February 1989. 6137 asked L/28 if the UFF had
3 carried out the attack on Finucane. L/28 denied this.
4 6137 commented that it was a good operation and that
5 Finucane was part of a hierarchy of the Provisional 10:41
6 IRA. L/28 asked 6137 if he had any evidence of this.
7 6137 said that it was difficult to get that sort of
8 evidence. L/28 then admitted that the UFF had carried
9 out the murder but warned 6137 to keep it to himself."
10 [Sic] 10:42

11
12 "L/28 told 6137 that he was not told about the
13 operation because he did not need to know. The
14 operation was a simple one with no complications. L/28
15 admitted having obtained a photograph of Finucane..." 10:42

16
17 If we could go on to the next page, please.

18
19 "... by devious means, from 6137. 6137 said that he
20 had heard about the murder on the scanner and had also 10:42
21 heard that the Finucane family refused permission for
22 the RUC to use the telephone in the house. L/28 said
23 that they had spent weeks planning the operation and it
24 had been L/20 who had suggested they attack Finucane.
25 This came about when Tucker Lyttle told them they could 10:42
26 not target T/21." [Sic]

27
28 "Handler Comment: 6137 Contact Form dated 26th
29 November 1988 reported the targeting of T/21 should

cease." [Sic]

I will come back to this question of $\tau/21$.

"L/28 asked 6137 if it had been he who said that Finucane had been the man to attack and to forget Gerry Adams. 6137 said that he had not made this comment. L/28 said that he would be annoyed if the UFF were not allowed to claim the attack. He added that Tucker Lyttle had known nothing about the operation. L/28 explained that he had been in..." [sic]

The name is redacted.

"...club at the time of the attack and Lyttle arrived as soon as he heard about the shooting. Lyttle was very nervous and chomped his way through a glass of ice cubes that L/28 had had for himself." [Sic]

I pause there, Sir, to note that takes us back to what we were discussing yesterday about Lyttle's role and what he was said to have known and not known about the attack.

The Contact Form goes on to note a number of others who L/28 met on that day and Nelson is recorded as saying:

"I think that those with L/28 were involved in the attack."

1
2 The essence of Nelson's account, then, is that he had
3 been tricked by L/28 into providing a photograph of
4 Patrick Finucane when he had thought that he was being
5 asked for material about Pat McGeown.

10:44

6
7 On his version of events, he was not involved in the
8 planning of a murder and indeed he was deliberately
9 kept out of knowledge of the planning of the murder.
10 He said that he didn't hear about it until he just
11 happened to be listening to the police radio that
12 night.

10:44

13
14 Nelson gave a similar account in his first statement to
15 the Stevens investigation in 1990 and this contained an
16 important additional detail. In that account, Nelson
17 said that about six to eight weeks before the murder,
18 so around the turn of the year, L/28 had said to him:

10:44

19
20 "I would really love to get that bastard Finucane."

10:45

21
22 L/28 asked Nelson to find out the location of
23 Patrick Finucane's office and anything else that he
24 could obtain. Nelson said that he didn't do anything
25 in response, there is a quotation from the statement
26 which is:

10:45

27
28 "I don't know what it was, maybe instinct, but I felt
29 there was something wrong, possibly it was too hot."

1
2 Around two weeks before the murder, Nelson checked with
3 L/28 whether he still needed Patrick Finucane's office
4 details but L/28 told him that it had been, "taken care
5 of." So, again, Nelson denying any active involvement 10:45
6 in the targeting of Patrick Finucane but in this
7 account saying that he had been told six to eight weeks
8 beforehand and that L/28 was interested in targeting
9 Patrick Finucane.

10 10:46
11 Nelson drew up a journal which we will consider in more
12 detail in the written document, and the account that he
13 gave in his journal was broadly consistent with that in
14 his 1990 statement, with or one or two slight
15 differences. 10:46

16
17 Nelson was interviewed again in 1993 by the Stevens
18 investigations, but at that stage he took a very
19 different approach and was no longer cooperating. He
20 claimed that when the Stevens 1 investigators asked him 10:46
21 about Patrick Finucane, when he gave that answer that I
22 have just gone through, he didn't actually remember who
23 Patrick Finucane was. Sir Desmond, perhaps
24 unsurprisingly, found that to be highly implausible.
25 When he was re-interviewed Nelson responded to 10:46
26 questions by saying:

27
28 "On the advice of my solicitor, I have nothing to say."
29

1 Sir Desmond examined why Nelson may have changed his
2 story and he found that by the time of the third
3 interview, and I quote:

4
5 "The Army had consciously and comprehensively bought
6 Nelson's silence by linking it to the continuing care
7 and support of his family."

10:47

8
9 And the detail for why Sir Desmond came to that
10 conclusion is set out very fully in the de Silva
11 report.

10:47

12
13 Sir Desmond went on to consider other evidence that he
14 had of Nelson's involvement in the planning of
15 Patrick Finucane's murder. This included evidence
16 given by Kenneth Barrett who, as we heard yesterday,
17 was the only man who has been convicted of the murder.

10:47

18
19 Barrett said to BBC Panorama journalists in 2001 and to
20 the Stevens 3 Inquiry in 2002 and 2006 that Nelson did
21 hand over a photograph of Patrick Finucane taken from a
22 newspaper showing Patrick Finucane and Pat McGeown.
23 But Barrett's evidence was that Nelson did this knowing
24 that Patrick Finucane was the target. He was not
25 tricked on Barrett's version.

10:47

10:48

26
27 Sir Desmond also referred to Security Service
28 intelligence that was received in late February 1989.
29 The source was assessed to be reliable and that source

1 said that Nelson had, "undoubtedly", "...been involved
2 in a recce", a reconnaissance, "...of the Finucane
3 family home before the murder." Sir Desmond was
4 particularly struck by the use of the word
5 "undoubtedly" noting that it was rare that intelligence 10:48
6 would contain such an unequivocal statement.

7
8 That account of Nelson being involved in some form of
9 reconnaissance has some corroboration from an interview
10 that Tommy 'Tucker' Lyttle contacted with John Ware in 10:49
11 1993 or 1994. And we discussed those interview notes
12 yesterday. Mr. Ware reports that Lyttle told him that
13 Nelson had driven L/28 to Patrick Finucane's house a
14 couple of weeks before the shooting.

15 10:49
16 Having considered all of this evidence and indeed more,
17 Sir Desmond was satisfied that Nelson had consciously
18 provided a photograph of Patrick Finucane to L/28 and
19 that he was not tricked into doing so. His reasons for
20 this were; first, that Nelson himself had accepted that 10:49
21 he knew of L/28's interest in Patrick Finucane six to
22 eight weeks before the murder and he had provided L/28
23 and Kenneth Barrett with a photograph which did show
24 Patrick Finucane albeit with Pat McGeown.

25 10:50
26 Second, Nelson had at least eight other photographs of
27 Pat McGeown in his intelligence dump and he had two P
28 cards which included photographs Mr. McGeown's face.
29 If we could have, please, electronic page 551 of the

1 same document, document 1. We've heard P cards
2 mentioned before. This is an example of one. And we
3 can see that is a photograph of Patrick McGeown and
4 this was a card which was compiled, it's believed, by
5 Nelson. It's got Mr. McGeown's name. Originally it 10:50
6 was written "date of birth not known" but then a date
7 has been added. It was written "in jail", as indeed
8 Mr. McGeown had been but that had been crossed out to
9 indicate he was no longer in jail and then there was
10 brief details about what he was suspected to be. Some 10:51
11 details about his car registration number. And then at
12 the bottom we can see the words:

13
14 "Possible subject is in hiding 12/88."

15
16 So from December 1988, the suspicion that Patrick
17 McGeown may be in hiding.

18
19 Now, what Sir Desmond said, if we could just leave this
20 up for a moment, what Sir Desmond said is that if Pat 10:51
21 McGeown was the truly intended target, then he would
22 have expected Brian Nelson to have provided this 'P'
23 card or the other 'P' card that they had on McGeown,
24 and he would have expected him to have provided one of
25 the other eight photographs that they had of Patrick 10:52
26 McGeown which showed him on his own and showed him
27 clearly. Also, he would have expected Nelson to have
28 passed on that information that it's possible that the
29 subject is in hiding, which, of course, would be highly

1 relevant to anybody who was targeting Patrick McGeown.

2
3 significantly -- we can take that down now, thank you.
4 significantly, while the intelligence dump held eight
5 photographs of Patrick McGeown in addition to the one 10:52
6 that was provided to L/28 and Kenneth Barrett, the only
7 photograph that Nelson had of Patrick Finucane was the
8 one that he gave to L/28 and to Kenneth Barrett and
9 Sir Desmond found that to be an important detail.

10 10:53
11 A third reason why Sir Desmond came to his conclusion
12 is that Nelson knew by February 1989 that a rival
13 paramilitary group, the Ulster Volunteer Force or UVF,
14 were targeting Patrick McGeown and he knew that because
15 he had provided a 'P' card to the UVF. Sir Desmond 10:53
16 thought that again, if Pat McGeown was the real target
17 then Nelson would have told L/28 about the UVF's
18 interest. There's no evidence that he did so. And
19 Nelson didn't claim to have done so.

20 10:53
21 Finally, Sir Desmond noted the inconsistencies in
22 Nelson's different accounts, and he was unconvinced
23 about aspects of Nelson's behaviour and actions after
24 the murder, and that detail is set out both in our
25 written opening and in the de Silva report. 10:53
26

27 So, Sir Desmond concluded that not only did Nelson hand
28 over the photograph and do so knowingly, he found he
29 also undertook some form of reconnaissance of the

1 Finucane family home. In Sir Desmond's views, and I
2 quote:

3
4 "FRU agent Brian Nelson played a direct and important
5 role in the conspiracy that led to Patrick Finucane's
6 murder on 12th February 1989."

10:54

7
8 Before I move on to the question of what Nelson told
9 his handlers, I will speak briefly about the
10 significance of the cessation of the targeting of T/21
11 which we saw in that Contact Form. T/21 was a Catholic
12 priest, and Nelson had expressed reservations about his
13 being targeted by the UDA. At the end of November
14 1988, the intelligence suggests that a decision was
15 taken to cease targeting T/21 and that seems to be
16 because L/28 had learned that the RUC knew of the
17 targeting and the potential operation against T/21, and
18 one of the reasons the RUC know of that information was
19 because they had obtained it via FRU from Brian Nelson.

10:54

10:55

20
21 There is a Contact Form from 17th November 1988, where
22 one handler said to Brian Nelson in response to
23 Nelson's concerns about targeting T/21 :

10:55

24
25 "Why did he not suggest someone from the Provisional
26 Sinn Féin or Provisional IRA hierarchy?"

10:55

27
28 An alternative target.
29

1 "There is no publicly available evidence that this led
2 Nelson to suggest Mr. Finucane or anyone else was a
3 target but it may have made him more amenable to
4 working on an alternative target to T/21."

10:56

5
6 In his eyes a more legitimate target.

7
8 Nelson was also worried about his personal safety as a
9 result of the cessation of targeting T/21. He was
10 concerned that might be linked back to him because it
11 was a relatively small group that knew of the potential
12 operation against T/21.

10:56

13
14 A few months earlier, Nelson had been subject to a
15 brutal interrogation including an assault with a cattle
16 prod because there had been concerns about his possible
17 links to the Provisional IRA. There is a Contact Form
18 from November 1988 that recorded that Nelson had,
19 quotes:

10:56

20
21 "Visions of another interrogation as he believed that
22 suspicion would fall on him for telling the RUC of the
23 targeting of T/21."

10:56

24
25 Sir Desmond, as we will see, thinks that this concern
26 that Nelson had for his own safety is a significant
27 factor to consider when assessing what it was that he
28 did and did not tell his FRU handlers.

10:57

1 Now, turning to that question. The evidence of FRU
2 witnesses both to the Stevens investigation and to de
3 Silva was that Nelson gave FRU no prior notice of the
4 plot to murder Patrick Finucane. The CO of FRU at the
5 time told Stevens investigators in 1995, quotes:

10:57

6
7 "FRU had no prior knowledge of the threat to the life
8 of Patrick Finucane. We did not know of the threat
9 because Brian Nelson did not tell us."

10:57

10
11 And Brian Nelson's principal handler at the time gave
12 similar evidence as well. Those accounts are supported
13 by the absence of any reference to the UDA's targeting
14 of Patrick Finucane in FRU contact forms or telephone
15 contact forms as seen by the de Silva Review. There's
16 nothing in the intelligence record prior to the murder.

10:58

17
18 Now, there are three principal sources that suggest the
19 contrary. The first is the evidence of Nelson himself.
20 In that witness statement that he gave to the first
21 Stevens investigation in January 1990, Nelson said,
22 quotes:

10:58

23
24 "I would like to state here that all information
25 concerning the Finucane affair I passed on to military
26 intelligence through my handlers."

10:58

27
28 Important to note there that that is in the same
29 statement in which Nelson is himself saying that he

1 didn't know in advance beyond the tip-off that he got
2 from L/28 that he was interested in Patrick Finucane,
3 six to eight weeks before.
4

5 The second source that suggests that perhaps Nelson did 10:58
6 say something to FRU is a possible interpretation of
7 that first telephone Contact Form that we looked at
8 earlier from 13th February. "It was ours, this
9 morning." Now Mr. Justice Cory in his report thought
10 that this was significant and he said, quotes: 10:59

11
12 "From this cryptic comment, the handler was able to
13 divine with apparent certainty that Nelson was
14 referring to the murder of Patrick Finucane the night
15 before. This might suggest that the handler did have 10:59
16 some background information and that the telephone call
17 of the 13th was not the first time that the
18 Patrick Finucane case was discussed."
19

20 The third source to state or imply that FRU knew, in 10:59
21 advance, of the plot to kill Patrick Finucane is an
22 account given by Ian Hurst, a former FRU soldier who
23 has written under the pseudonym Martin Ingram.
24 Mr. Hurst was an agent handler working in the FRU's
25 West Detachment, so not the detachment that ran Brian 11:00
26 Nelson but another one. He gave evidence to the
27 Stevens 3 investigators in 2000 of being told about
28 FRU's prior knowledge on three occasions in
29 conversations in social settings with FRU colleagues.

1 He also said that he was told that Contact Forms had
2 been or would be doctored.

3
4 Sir Desmond analysed all of this evidence and other
5 evidence as well and he came down firmly on the side of 11:00
6 the FRU witnesses. The main reason that he did so was
7 because of information contained in contact forms
8 produced after the murder which, in his view, showed
9 that FRU recorded and accepted that Nelson -- sorry,
10 FRU recorded and accepted Nelson's denial of 11:00
11 involvement in the murder. And we can look at some of
12 those now.

13
14 If we could go back, please, to document 1, electronic
15 page 521. This is from the Contact Form from the 14th 11:01
16 February, so the same document we looked at earlier.
17 This is a section regular in Contact Forms, "Case
18 development." So this is comments from the handler
19 about the way the Nelson case is developing.

20
21 what the handler wrote is this:

22
23 "It is hoped to steer 6137 [Nelson] In a different
24 direction to that which he is heading. Hopefully 6137
25 will be able to become more active within the team of 11:01
26 operators headed by L/28. Currently, 6137 seems to be
27 left out of major operations only finding out about
28 them after the event. 6137 was unaware of the
29 targeting of Patrick Finucane and L/28 wanted it kept

1 that way. It would appear that 6137 is not strong
2 enough to force himself into the scene and tends to let
3 himself be pushed around. 6137 is reluctant to become
4 too closely involved in anything that might complicate
5 life for himself or his family."

11:02

6
7 "It is recommended that the OC east DET FRU should have
8 a boss meet with 6137 and suggest options to him from a
9 higher level."

11:02

10
11 "6137 telephoned this office on Monday 12th
12 February..." [sic]

13
14 That should be the 13th:

11:02

15
16 "...at 10:20 hours claiming that the shooting of Pat
17 Finucane was carried out by the UFF. Handler realised
18 from the meeting with 6137 that he was not told who had
19 committed the murder until after telephoning handler.
20 Up until that point he only assumed, although rightly,
21 that it was the UFF. 6137 has been told that he should
22 only report facts and not what he thinks are the
23 facts."

11:02

24
25 So, that, Sir, is an account which indicates, if taken
26 at face value, that the handler had accepted Nelson's
27 story that he was not involved in the plot to murder
28 Patrick Finucane. Not only the handler accepted it,
29 but he or she had recorded it in the Contact Form, and

11:03

1 it was the basis of a way of developing the
2 relationship with Nelson going forward that they
3 intended to pursue. A "boss meet" is a tactic used by
4 intelligence agencies when an agent's performance
5 needed to be significantly improved. So it's a
6 dressing down from on high.

11:03

7
8 A further Contact Form, dated 7th April, shows a
9 similar state of affairs. If we could have a look at
10 that, please, at page 536 of the same document. It's
11 paragraph 8. The Contact Form says:

11:03

12
13 "6137 has always maintained that he is a close friend
14 of L/28 and that L/28 trusts 6137. Handler believes
15 this to an extent but there is still operational
16 matters which L/28 does not discuss with 6137. One
17 example which springs to mind was the shooting of Pat
18 Finucane which 6137 knew nothing about, even though he
19 supplied a photograph."

11:04

20
21 So, again, on the face of it, it seems that the FRU
22 handler is accepting Nelson's account.

11:04

23
24 Thank you, you can take that down.

25
26 Sir Desmond's conclusion was that the FRU documentary
27 record on the Contact Forms were, and I quote:

11:04

28
29 "Exceptionally detailed contemporaneous documents

1 recording a wealth of intelligence passed by Nelson to
2 his handlers. Sir Desmond found no evidence that the
3 Contact Forms had been doctored and, indeed, to the
4 contrary he said that the contact forms that he had
5 seen contained so much material that was highly
6 damaging to FRU that he said it seemed inconceivable
7 that there had been a conspiracy to doctor them."

11:05

8
9 Sir Desmond went on to consider other aspects of the
10 evidence pointing to and away from FRU being told by
11 Nelson in advance of the murder of Patrick Finucane. I
12 won't go through that detail now. It is contained both
13 in our written document and in the de Silva report
14 itself. In essence, Sir Desmond found that Nelson was
15 under considerable pressures at the time. That there
16 were pressures which pushed in different directions.
17 Pressures from the UDA to him to improve the
18 intelligence he was providing; pressures from FRU to
19 improve the intelligence that he was giving to them and
20 there was, also, his fear that if another operation was
21 compromised then fingers may be pointed towards him and
22 there may be another interrogation and that, in effect,
23 meant torture, potentially death. So, all of these
24 pressures were operating in different ways on Nelson.

11:05

11:05

11:06

25
26 Sir Desmond didn't place much credibility on Nelson's
27 own statements, which he considered were self-serving.
28 And he didn't place any weight on Mr. Hurst's evidence
29 because he was left, as he put it, in significant doubt

11:06

1 about whether Mr. Hurst was in any position to know
2 what was being said by Nelson to FRU in advance of the
3 murder.

4
5 Finally on the interpretation of the Contact Form on 11:06
6 13th February, Sir Desmond respectfully disagreed with
7 Justice Cory's analysis and he said that he wasn't
8 surprised that the handler was able to link what Nelson
9 said to the murder of Patrick Finucane given that the
10 murder of Patrick Finucane was the dominant story in 11:07
11 the news that morning.

12
13 Sir Desmond's conclusion, then, was, and I quote:

14
15 "I am firmly of the view that in this instance Nelson 11:07
16 withheld critical information from his handlers."

17
18 However, for the reasons that I discussed yesterday,
19 Sir Desmond stressed that this finding did not absolve
20 FRU from all criticism and all responsibility for 11:07
21 Patrick Finucane's murder.

22
23 If we could have, please, document 1, electronic
24 page 418. What Sir Desmond said was this:

25 11:07
26 "The very nature of Nelson's re-recruitment from
27 Germany and his subsequent handling leads me to the
28 conclusion that by 1989 Nelson was, to all intents and
29 purposes, a direct State employee. The FRU must,

1 therefore, bear a degree of responsibility for whatever
2 targeting activity Nelson carried out in his dual role
3 as a UDA intelligence officer and a FRU agent during
4 this period, whether or not in a specific case he
5 shared with his handlers the full state of his 11:08
6 knowledge. As A/05...", that's the CO FRU, "...
7 himself put it at Nelson's trial:

8
9 'Whatever Nelson may or may not have done throughout
10 his time with the UDA since 1987, he would not have 11:08
11 done it had we in FRU not reinstated him in the UDA in
12 the first place'."

13
14 That, Sir, is all I say about the role of Brian Nelson
15 in the murder of Patrick Finucane. We turn now to 11:08
16 Mr. Jamieson and a discussion of the Security Service.
17 CHAIR: Thank you, Mr. Hill.

18
19 ADDRESS BY MR JAMIESON:

20 11:09
21 MR. JAMIESON: Sir, may I say good morning to you, to
22 your assessors, to the Finucane family and to all of
23 our Core Participants. As Mr. Hill has just
24 foreshadowed, my function now is to address you on the
25 role of the Security Service, or as they are more 11:09
26 commonly known, MI5, in these matters.

27
28 Now, a brief overview of M15's history and evolving
29 role in Northern Ireland was given yesterday by

1 Mr. Hill. I won't repeat those. We will set out more
2 detail in writing.

3
4 The purpose of this section, however, is to address
5 four key questions or four key issues and to summarise 11:09
6 for you, and for the Core Participants, what is
7 currently in the public domain on those topics and they
8 are as follows:

9
10 Firstly, MI5's supervisory role in relation to the 11:10
11 Force Research Unit or FRU. Secondly, MI5's
12 involvement with and access to Brian Nelson. Thirdly,
13 the propaganda campaign that was run by the Security
14 Service in Northern Ireland in the late 1980s. And,
15 fourthly, and finally, the intelligence that MI5 11:10
16 obtained in the December of 1988 that there was a
17 threat to Patrick Finucane's life.

18
19 I will address each of those in turn, Sir. We're due
20 to have a break at around 11:45 and if it is convenient 11:10
21 to you I will find an appropriate moment for that.

22 CHAIR: Thank you.

23 MR. JAMIESON: But at the outset may I please stress
24 something that has been said already; that in preparing
25 this summary of these topics, access has only been had 11:11
26 to the available open public material and there has
27 been no consideration of any closed or secret material.
28 Sir, that is a matter of deliberate choice. As I stand
29 here, I do not yet have any idea what that material may

1 or may not say and so no inference as to its content
2 can be taken from the opening that I now give.

3
4 That, Sir, as you know well, is the work to come.

5
6 Firstly, then, MI5's supervisory role in relation to
7 the FRU. 11:11

8
9 Sir Desmond de Silva received a 1986 FRU Directive that
10 described the hierarchy between MI5 and the FRU in the 11:11
11 following terms:

12
13 "The overall direction for source coverage within the
14 province, is the possibility of the DCI, who exercises
15 this responsibility through the various intelligence 11:12
16 committees. Within the Northern Ireland headquarters,
17 the Assistant Secretary Political...", the ASP, "...who
18 is DCI's representative is to be kept informed of the
19 status of current sources on a regular basis. In
20 addition, he is the Security Service's representative 11:12
21 responsible for the maintenance and the safekeeping of
22 all FRU source files."

23
24 In relation to those files, the FRU source files,
25 Sir Desmond also noted that technically those files 11:12
26 were generally described in the evidence he received as
27 being the property of the Security Service.

28
29 Sir Desmond was also provided with evidence that a

1 Security Service secretary was stationed within the FRU
2 and tasked with looking after those files. Now, it's
3 important that I note, in fairness, that Sir Desmond
4 concluded that the secretary role was one that was
5 merely administrative on the evidence that was 11:13
6 available to him. He quoted an October 1990 statement
7 that the DCI had made to the Stevens 1 investigation in
8 these terms:

9
10 "The Security Service secretary in FRU has no executive 11:13
11 function. This officer's duties relate purely to the
12 maintenance of the files."

13
14 However, the role of that MI5 secretary was also
15 considered by the Operation Kenova investigation into 11:13
16 the notorious PIRA member and FRU agent notoriously
17 code named 'Stakeknife.' Kenova reported that at least
18 until 1986 one of the tasks that that secretary has was
19 to transcribe the audio cassette recordings of each
20 meeting between FRU agents and their handlers. The 11:13
21 Inquiry will want to review this issue to consider
22 whether it applies to the issues that we are
23 considering, and, if so, what additional awareness MI5
24 may have gained through the function of that secretary.

25 11:14
26 More substantively, the de Silva Review identified that
27 whilst there was agreement between MI5 and Army
28 witnesses that MI5 had the formal supervisory role,
29 there was a stark difference of opinion as to what

1 extent, in reality, MI5 had developed awareness of the
2 detail of FRU's operational work.

3
4 The CO FRU, the commanding officer of FRU, who, as we
5 know has been anonymised as A/05 by de Silva, had said 11:14
6 unequivocally that:

7
8 "There was close monitoring and support of all of our
9 work by the Security Service."

10 11:14
11 He relied upon particular features to ground that
12 contention, including the monthly briefing that was
13 given by A/05 to the DCI, also attended by the ASP.
14 I'm just going to pause at this stage to apologise for
15 all of the acronyms but I trust that they are becoming 11:15
16 reasonably familiar by now.

17
18 That briefing included all major case development
19 points.

20 11:15
21 Secondly, the attendance of the ASP at A/05's regular
22 briefings to the Commander of Land Forces. And the
23 evidence, thirdly, of the FRU Operations Officer,
24 effectively the second in command, that the ASP and
25 deputy ASP had, and I quote: 11:15

26
27 "Continuous and full access to all intelligence
28 reports, including Contact Forms and MISRs."
29

1 That was the Army position.

2
3 In contrast, and as set out earlier, the position of
4 both MI5 individual witnesses and the Service at large
5 was to challenge A/05's position and to assert that 11:15
6 whatever the formal hierarchy, in reality MI5 had only
7 had limited knowledge of the detail of FRU's
8 operations.

9
10 I'm going to pause at this moment in the rehearsal of 11:16
11 what is known from the de Silva Review to go back to
12 Stakeknife and to Operation Kenova because this was an
13 issue which featured in prominence in that
14 investigation as well.

15 11:16
16 In that case the issue was the extent to which MI5 had
17 awareness and understanding of the operational
18 activities of another FRU agent, Stakeknife, and I
19 raise it because late in the life of that
20 investigation, and after the interim report had already 11:16
21 been completed, it emerged that MI5 had been in
22 possession of an important tranche of disclosure which
23 had not hitherto been provided to the Kenova
24 investigators. Those investigators evaluated the
25 circumstances in which that disclosure came to be 11:17
26 provided and its contents and recorded those
27 conclusions in the final report.

28
29 In short summary, the effect of that late disclosed

1 material was to cause the Kenova investigation to
2 entirely reverse its conclusions about the extent to
3 which MI5 had had knowledge of Stakeknife and his
4 activities. I'll illustrate that, if I may, by just
5 quoting two short passages. The follow appeared in the 11:17
6 interim report:

7
8 "During the Troubles, MI5 advised and assisted the FRU
9 generally, was copied into its intelligence and even
10 conducted a supportive review of its handling of 11:17
11 Stakeknife in particular. However, MI5 was not
12 responsible for how Stakeknife was targeted or run and
13 could not sensibly be criticised for the conduct or
14 operation of the FRU or any of its agents."

15 11:18
16 "Indeed, MI5 came on to Kenova's radar in a largely
17 tangential way."

18
19 whereas in the final report, when that was published,
20 the conclusions on the issue were expressed as follows: 11:18
21

22 "Whilst it is correct to say that FRU, rather than MI5
23 or the RUC Special Branch, was ultimately responsible
24 for the recruitment and operation of Stakeknife, and
25 there is no evidence of him being co-handled by 11:18
26 multiple forces, MI5's knowledge was not limited. On
27 the contrary, the further MI5 material, [the late
28 disclosure], demonstrates that it had a much greater
29 awareness and involvement in the running of Stakeknife

1 throughout the entirety of his operation as an agent
2 than previously thought." [Sic]

3
4 And then Kenova go on to list the factors that sit
5 behind that conclusion:

11:19

6
7 "In this regard, the main representatives of MI5 in
8 Northern Ireland and the principal security adviser to
9 the Secretary of State was the DCI. He was personally
10 briefed by the FRU commanding officer every four to six 11:19
11 weeks on all of the FRU's most significant cases, one
12 of which was Stakeknife."

13
14 I'll pause to observe another of which was Brian
15 Nelson.

11:19

16
17 "The DCI was also supported by the ASP, the Deputy ASP.
18 They ensured routine, day-to-day liaison between MI5
19 and the Army and provided security advice to FRU in
20 respect of its agent handling. MI5 administrative 11:19
21 staff also provided support to the ASP and maintained
22 the filing system within the FRU. The role of the
23 Deputy ASP was to ask questions and give feedback on
24 FRU reporting and, where possible, advise on future
25 taskings, especially at the strategic level. Having 11:20
26 access to the FRU intelligence output also enabled the
27 Deputy ASP to direct material to the appropriate
28 branches within MI5."

1 "It is also significant that former FRU personnel,
2 including those who were handlers of Stakeknife took up
3 roles in MI5 after leaving the military including
4 fulfilling the roles of the ASP and the Deputy ASP."
5 [Sic]

11:20

6
7 There are further matters that are set out but for
8 brevity I will not read them now. But it is obvious, I
9 hope, from the recitation of those factors the role of
10 the DCI, the Deputy ASP, the daily contact, the
11 periodic briefings, those are the same factors that de
12 Silva, Sir Desmond, was evaluating in his review.

11:20

13
14 whilst Kenova's conclusions were made in the context of
15 Stakeknife and the particular FRU arrangements for the
16 handling of that agent, the Inquiry will have to
17 closely consider those factors for ourselves.

11:21

18
19 In respect of Stakeknife, it is striking that the late
20 disclosed MI5 material caused the Kenova investigation
21 to reverse, entirely, its earlier view that MI5's role
22 had been limited and to finally conclude that the
23 service had a:

11:21

24
25 "Much greater awareness and involvement in the running
26 of that agent." [Sic]

11:21

27
28 In that light, one of this Inquiry's tasks will be to
29 scrutinise the extent and sufficiency of the closed

1 disclosure of which it will be provided and to form its
2 own conclusion about the extent of MI5's awareness and
3 involvement with Brian Nelson and any other relevant
4 agents in relation to the murder of Patrick Finucane.

11:22

6 To fulfil that task properly, the Inquiry will want to
7 develop an understanding of what went wrong with
8 disclosure in Kenova, why the late disclosed material
9 was considered so significant and whether there may,
10 similarly, have been missed or overlooked material in
11 the disclosure that was provided to the de Silva
12 Review. In due course the Inquiry will require clear
13 assurance that it has been provided proper disclosure
14 by the Security Service in this case.

11:22

15
16 I move to the second of my topics which is Brian Nelson
17 and I will not repeat the detail that you've heard just
18 now from Mr. Hill and, indeed, yesterday, as to the
19 specific details of his antecedents, recruitment and
20 activities. But it's important, given the centrality
21 or the potential centrality of his role, that I also
22 set out what is currently publicly known about the
23 specific involvement of MI5 in his case and that is the
24 focus and limitation of this section of the opening.

11:22

11:22

25
26 So on this topic, there is currently no publicly
27 available material that would support a contention that
28 MI5 had a role in Nelson's initial recruitment as an
29 agent by FRU in 1984. However, as with other FRU

11:23

1 agents the fruits of his intelligence would,
2 presumably, thereafter, have been made available to MI5
3 at least through the distribution of the MISRs that
4 contain the anonymised source protected substance of
5 the information he provided, if not through the raw 11:23
6 contact sheets themselves.

7
8 As to MI5's involvement in the event of that first
9 period of recruitment, British/Irish Rights Watch, as
10 they then were, published a report, created a report 11:24
11 known as "Deadly Intelligence" which was quoted by de
12 Silva in his review in this way, that report contained
13 the contention that the FRU had allowed Brian Nelson to
14 be centrally involved in loyalist acquisition of
15 illegal weapons from South Africa, and then these 11:24
16 words:

17
18 "An operation of which MI5 also had knowledge."
19

20 End quote. In investigating that issue, de Silva 11:24
21 concluded that there was no doubt that Brian Nelson had
22 visited South Africa in 1985 to discuss the shipment of
23 arms to the UDA and that security service documents
24 show that MI5 had been fully aware of that trip to
25 South Africa and his discussions with the arms dealer 11:24
26 there. However, again, it's important that I note in
27 fairness, that having considered the material
28 Sir Desmond rejected the contention that MI5 had
29 facilitated the proposed arms importation or that they

1 wanted it to occur. Together with other factors he
2 concluded that the MI5 documents he had seen indicated
3 a clear intention on behalf of MI5 to frustrate that
4 proposed arms importation and demonstrated a desire to
5 intercept the weapons.

11:25

6
7 Perhaps more importantly for our current purposes the
8 review does record that MI5 were able themselves to
9 task Brian Nelson via the FRU to answer a series of
10 detailed operational questions regarding the proposed
11 arrangements for the shipment. And that is a matter,
12 the inferences from which, we will be keen to consider.

11:25

13
14 By the time FRU sought to re-recruit Nelson in 1987,
15 MI5 are said to have been rivals in that exercise.
16 Impressed with Nelson's level of access and by the
17 quality of his intelligence and keen to recruit him for
18 themselves.

11:26

19
20 The Security Service internal note not published but
21 seen by the de Silva Review and dated 15th January
22 1986, recorded that Nelson could provide MI5 with,
23 quotes:

11:26

24
25 "Top level access to the UDA",

11:26

26
27 And that his intelligence was particularly important at
28 that time given the, quotes:

1 "Increasing political links between unionists and
2 paramilitaries."

3
4 That note was apparently followed a week later from
5 another from the head of what was then MI5's F Branch 11:26
6 suggesting that the ASP should take soundings of the
7 FRU to establish their willingness to hand over Nelson.

8
9 Now, as was set out yesterday, and we shall detail in
10 writing, despite those efforts ultimately MI5 was 11:27
11 unable to persuade FRU to give up Nelson and he was
12 re-recruited as an agent for the Army. But the Inquiry
13 will want to reflect upon, if MI5 had been so keen to
14 recruit Nelson for themselves, what would their
15 approach be to the information that subsequently 11:27
16 emanated from him. What level of attention did they
17 pay to it?

18
19 On the face of it, it would seem unlikely that anything
20 other than the keenest interest would be paid. 11:27
21 Certainly, that was the effect of A/05's statement to
22 Stevens 3. In that statement A/05 was unequivocal as
23 to the nature and extent of MI5's access to Nelson's
24 intelligence and its provision to the senior MI5
25 officers. He said this: 11:28

26
27 "The ASP or the Deputy ASP always accompanied me when I
28 went once a month to Stormont to brief the DCI on FRU
29 casework. I also recall that the ASP sat in on my

1 regular briefings to the COF. Sadly both the ASP and
2 the DCI are now dead but I must stress that they knew
3 about Nelson's activities including the intelligence
4 records..." which we know otherwise is the intelligence
5 dump, "...because I personally briefed them."

11:28

6
7 "Those briefings were said to include regular updates
8 on Brian Nelson's reporting including his current
9 access and activities as well as the major case
10 development points. There was never an occasion when
11 concern was expressed about Nelson's activities." [Sic]

11:29

12
13 Now, as I've already mentioned and I repeat again, the
14 Security Service have challenged A/05's evidence.
15 while the DCI accepted in his accounts that he did
16 receive briefings from A/05 he said that in those
17 briefings, between 15 and 20 cases would be covered in
18 the course of an hour with the focus being on the
19 product of intelligence and not, quotes, "handling
20 details."

11:29

11:29

21
22 In submissions to the de Silva Review, MI5 stated that
23 it did not agree with the account given by A/05 that I
24 have quoted and said that, quotes:

11:29

25
26 "To state that the Security Service had a supervisory
27 role suggests that the ASP was able to exercise a
28 degree of command and control over the commanding
29 officer of FRU. That was simply not the case." [Sic]

1
2 The de Silva Review tested these competing accounts
3 against the evidence that it obtained on the specific
4 operations and the records to which it was provided
5 access, of which, obviously, the Inquiry is yet to see 11:30
6 any. Among the review's findings were the following:
7

8 That Contact Forms were not routinely copied to MI5 in
9 Northern Ireland. However, the DCI accepted that the
10 ASP and the Deputy ASP could ask to see the files 11:30
11 if they wished to and the Deputy ASP stated that she
12 might have seen the contact forms although she could
13 not remember.
14

15 MI5 were provided with CFS relating to those efforts 11:30
16 that I've mentioned in relation to acquiring arms from
17 overseas, a matter on which the Security Service had an
18 operational interest.
19

20 Thirdly, that the Security Service through the ASP were 11:31
21 aware of Nelson's intelligence about a potential
22 involvement in a plot to murder Gerry Adams in 1987.
23 De Silva's view was that MI5 documents show
24 considerable concerns were being expressed about the
25 Nelson case at that time and that there was some 11:31
26 discussion about whether or not MI5 should take over
27 the handling of Nelson in 1987. The records indicated
28 an intention to provide guidance to FRU, though one
29 memo expressed doubts over whether, quotes:

1
2 "A whole series of briefings would have the slightest
3 effect." [Sic]
4

5 The Security Service also received its own intelligence 11:32
6 about Nelson's role as intelligence officer for the UDA
7 shortly after his return to Belfast. One of MI5's
8 assessment was that Nelson would be principally
9 involved in the targeting of leading Republicans in
10 Belfast. Another noted that he was intelligent and 11:32
11 effective and should make a significant contribution to
12 the UDA's military capabilities.
13

14 Most significantly, perhaps, de Silva also received
15 evidence that on 27th June 1988, so a little more than 11:32
16 six months before Patrick Finucane was to be tragically
17 murdered, a Security Service officer met directly with
18 Brian Nelson to debrief him, along with the Officer
19 Commanding the East DET FRU and two individuals who
20 were called 'handlers'. This meeting is recorded by de 11:33
21 Silva to be MI5's direct engagement with Brian Nelson
22 before the murder.
23

24 The MI5 notes of that meeting were seen by Sir Desmond
25 in the preparation for his review but have not been 11:33
26 made public. They are said to show, and again I say
27 this in fairness, that the MI5 officer debriefed Nelson
28 at length but concentrated on strategic broad issues
29 relating to the UDA and its future direction. That was

1 the focus of the meeting. However, when the officer
2 reported his conclusions from the meeting to what had
3 by then become MI5's G8 department, he provided the
4 following assessment and I will quote this in full:

11:33

5
6 "Since May 1987, FRU have clearly managed to establish
7 control over the case and there no longer appears to be
8 any pressing need for us to take over, to volunteer to
9 take over running of the case."

11:34

10
11 which as you will recall was an issue in relation to
12 the plot against Gerry Adams.

13
14 "In addition, FRU admitted that 6137, [That is,
15 Nelson], was not completely frank and honest since he
16 takes his UDA intelligence role seriously. Does not
17 necessarily pass FRU all details of 'justifiable'..."

11:34

18
19 That was a word in quotes.

11:34

20
21 "...justifiable actions and to an extent he may attempt
22 to use his agent role to gain intelligence from FRU.
23 This confirms DHSB's comments that Nelson has sometimes
24 been caught out by RUC information which contradicts
25 his own." [Sic]

11:35

26
27 The significance of this material in this passage is it
28 is MI5's own assessment of Nelson, his motivations and
29 his actions at that time. The de Silva Review noted

1 the contradiction within it and found it was surprising
2 that the MI5 officer had concluded that FRU had gained
3 control over Nelson in the light of that other
4 evaluation. He considered that points made about
5 Nelson's commitment to his UDA role, that he was not
6 being frank and honest, that he would withhold details
7 of justifiable actions and seek to gain intelligence
8 himself from FRU, should have been a cause for serious
9 concern within MI5, particularly given the Security
10 Service's previous anxiety about Nelson's role in the
11 Gerry Adams case.

11:35

11:35

12
13 Sir Desmond's overarching conclusions about MI5's
14 awareness of Nelson's activities were as follows:

11:36

15
16 Firstly, MI5 were undoubtedly aware that Nelson was
17 targeting Republicans, in quotes:

18
19 "But there is no evidence to suggest that MI5 officers
20 had necessarily read the Contact Forms that would have
21 demonstrated Nelson's enthusiasm for attacking such
22 individuals." [Sic]

11:36

23
24 Secondly, on the two occasions in which MI5 became
25 actively involved in the exploitation of Nelson, its
26 officers did seek to frustrate UDA plans to commit
27 criminal offences.

11:36

28
29 Thirdly, he accepted that MI5, quote:

1
2 "Did not have an executive role in the handling of
3 Nelson." [Sic]
4

5 Fourthly, he agreed with an earlier conclusion of 11:36
6 Justice Cory, that there was an absence of evidence to
7 reveal any collusive acts on the part of MI5.
8

9 However, fifthly, perhaps in parallel to what we've
10 just heard about the FRU, he concluded that MI5, quote: 11:37
11

12 "Failed to carry out its advisory and coordinating
13 duties adequately in the Nelson case." [Sic]
14

15 Now, those were serious conclusions to draw. But the 11:37
16 Inquiry will have to consider whether even they go far
17 enough in the light of the evidence that was available
18 that I have just summarised. Obviously, all of this
19 comes with the caveat that the Inquiry is yet to
20 receive and consider the evidence for itself and is in 11:37
21 no position at this stage to come to any final
22 conclusions. But the following features do seem to
23 flow from the evidence that was summarised by
24 Sir Desmond:
25

26 Firstly, by no later than the June of 1988 and the 11:38
27 debrief of Brian Nelson, MI5 was aware and had assessed
28 that Nelson was engaged in the collation and provision
29 of targeting information in support of conspiracies to

1 murder Republicans.

2
3 Secondly, the MI5 internal assessment of Nelson is that
4 where he considered that such targeting was, quote,
5 "justifiable", he displayed a lack of candour and 11:38
6 honesty towards his handlers in an effort to ensure
7 those attacks took place. He did so by, firstly,
8 deliberately not providing FRU with the details of the
9 proposed actions that he considered justified, and
10 secondly, in seeking to obtain his own actionable 11:38
11 intelligence from the FRU inferentially for deployment
12 by the UDA.

13
14 In the light of that assessment, it's not immediately
15 clear why the de Silva Review considered the proof that 11:39
16 individual Contact Forms had been read by MI5 officers
17 was necessary to establish awareness of Nelson's
18 enthusiasm for attacking individuals. That inference
19 might be said to arise from the facts that are
20 summarised. 11:39

21
22 Fourthly, whilst MI5 had actively involved themselves
23 on the two occasions to frustrate UDA offending linked
24 to Nelson, they did not subsequently repeat that action
25 despite their awareness that Nelson's other serious 11:39
26 criminal activities were ongoing.

27
28 Now, I repeat what I've said already; all of that is a
29 reflection, no more and no less, of what has already

1 been made public. The existence and extent of MI5's
2 awareness of Nelson's enthusiasm for targeting what he
3 considered to be a legitimate republican target, are
4 obviously matters of the utmost importance for this
5 Inquiry to consider. They are also given particular
6 focus when considered in the context of the next topic
7 that I will discuss which is MI5's propaganda campaign
8 in Northern Ireland. Sir, with your leave, would that
9 be a convenient moment for a break?

11:40

10 CHAIR: I think so. How long have you got to go,
11 Mr. Jamieson?

11:40

12 MR. JAMIESON: About 30 minutes.

13 CHAIR: I'll break now until five to 12. Thank you.

14
15 THE INQUIRY ADJOURNED BRIEFLY AND CONTINUED AS FOLLOWS:

11:41

16
17 CHAIR: Thank you everyone. Yes, Mr. Jamieson.

18 MR. JAMIESON: Thanks, Sir. If I turn to the third of
19 my four my topics and that is the Security Service's
20 propaganda campaign.

11:58

21
22 Now, neither the Stevens Investigations I to III nor
23 Justice Cory's report contained any reference to the
24 existence of a Security Service propaganda campaign in
25 Northern Ireland. The first public acknowledgement
26 that there had been such a campaign and its relevance
27 to the murder of Patrick Finucane came in the de Silva
28 Review. In that light, it is important that I say at
29 the outset of this section that Sir Desmond concluded

11:58

1 unequivocally that there had been such a campaign
2 deployed by the Security Service in Northern Ireland in
3 the 1980s to, and I quote, "contest and counter
4 Republican propaganda," and most significantly that
5 that campaign, quote, "came to include Patrick Finucane 11:59
6 within its scope prior to his murder."

7
8 It's also important that I reiterate, now, that in none
9 of the many different investigations that there have
10 been into the murder of Patrick Finucane has there ever 11:59
11 been any evidence produced suggesting that he had in
12 fact been a member of the Provisional IRA or any other
13 Republican paramilitary organisation. If there is a
14 persistence to such rumour and innuendo, despite that
15 lack of evidence, the fact that the Security Service 12:00
16 deployed a propaganda campaign to disseminate that
17 information must be considered.

18
19 The de Silva Review contains almost no detail about the
20 content or technical details of the campaign and of the 12:00
21 particular information that was released about
22 Patrick Finucane and others like him. That was a
23 deliberate choice. Sir Desmond concluded that for
24 reasons of sensitivity he was unable to publish that
25 detail. Once this Inquiry is in possession of the 12:00
26 relevant material, we will want to reconsider afresh
27 the extent to which safe public disclosure of that
28 detail can now be made. More than a decade has passed
29 since Sir Desmond's review and by virtue of the

1 statutory nature of this Inquiry, Sir, your Inquiry, in
2 these circumstances you know that you have an important
3 duty to balance claims to sensitivity against the
4 powerful countervailing public interest in frank
5 disclosure and State accountability. And we will be 12:01
6 scrutinising that issue carefully.

7
8 The origins of the MI5 campaign were set out in the de
9 Silva Review. Propaganda in the war of information is
10 a common aspect of almost any entrenched armed 12:01
11 conflict. It was given particular focus by the IRA in
12 the training and induction manual known as 'The Green
13 Book.' That was understood to contain detailed
14 propaganda technique guidance that was designed to
15 achieve the aim of sustaining a war and gaining support 12:02
16 for its ends by national and international propaganda
17 and publicity campaigns.

18
19 Contemporaneous and subsequent accounts from
20 Provisional IRA members have confirmed the importance 12:02
21 that they ascribed to the propaganda war. The de Silva
22 Review recorded that it had seen evidence from the
23 Security Service to the effect that MI5 considered PIRA
24 ran a dedicated propaganda unit and it is clear by the
25 beginning of the 1980s that there was widespread 12:02
26 consensus, both within the Security Services and the
27 paramilitary organisations, that the Provisional IRA
28 was winning the information war.

1 Although the source and the substance of the material
2 that was considered by Sir Desmond has not been
3 revealed, he recorded that there was, quote:

4
5 "A widespread feeling across the Security forces and 12:03
6 the UK Government that such propaganda needed to be
7 countered."

8
9 That conclusion is said to have been founded upon,
10 quote: 12:03

11
12 "A range of internal government documents outlining the
13 discussions of the need for what was seen as counter
14 action."

15 12:03
16 As to the precise campaign that was undertaken, a note
17 from an intelligence officer seen by the Review, not
18 disclosed nor dated but said to have been early and
19 held in the MI5 archives, had proposed a sustained and
20 structured propaganda war should be fought against the 12:03
21 terrorists groups in Northern Ireland, both Republican
22 and loyalists on a number of bases. However,
23 Sir Desmond concluded that that structured approach was
24 not taken forward and, instead, what followed was a,
25 quote: 12:04

26
27 "Comparatively limited set of initiatives that were
28 deployed." [Sic]
29

1 Those were said to be focused on propaganda directed
2 against the Provisional IRA and, quote:

3
4 "Involved the dissemination of information within the
5 broader loyalist community in a bid to counter
6 Republican propaganda." [Sic]

12:04

7
8 It is also significant and important that I record that
9 these initiatives were said by Sir Desmond to have been
10 undertaken by MI5 independently and without reference
11 to the Northern Ireland Office or to wider government,
12 although you will have noted the passage that I cited a
13 moment ago that said that these concerns about the
14 information could be lost were being voiced in wider
15 government.

12:04

12:05

16
17 Now, the language used in the review to describe the
18 precise actions taken by the Security Service is
19 presumably deliberately opaque. It does not lend
20 itself to accurate summary and for that reason, if
21 you'll excuse me, I will quote a couple of the relevant
22 paragraphs now in full.

12:05

23
24 Sir Desmond said this:

25
26 "The Security Service used a variety of methods and
27 conduits through which to disseminate the propaganda.
28 The nature of the propaganda being disseminated varied.
29 Some of it involved for example, highlighting the

12:05

1 damaging effect of Provisional IRA murders and attacks.
2 In other instances, the propaganda was targeted more
3 directly at discrediting specific Provisional IRA
4 figures."

5
6 "Security officers later referred to the dissemination
7 of information within the loyalist community in such a
8 way that it would be likely to become known by PIRA
9 figures as having the potential to 'make an impact on
10 the Republican targets.' However, whilst the focus of
11 the propaganda was aimed at the Provisional IRA, it is
12 also clear that the initiatives were not particularly
13 focused or controlled. The initiatives certainly came
14 to include, within their scope, individuals who were
15 not members of terrorist organisations but prominent
16 figures in the broader nationalist and Republican
17 communities."

18
19 The meaning of the final sentence of those paragraphs
20 seem to be that, although perhaps not originally
21 intended, the Security Service came to be engaged in
22 the spreading of disinformation within the loyalist
23 community about individuals who were not terrorists,
24 but who were simply individuals of prominence. If
25 accurate, those factors have obvious relevance to the
26 case of Patrick Finucane.

27
28 Turning to his case, in particular, again the relevant
29 paragraphs of de Silva are difficult to summarise and

1 perhaps warrant quoting in full.

2
3 Sir Desmond recorded that:

4
5 "I have established that in the late 1980s, prior to 12:07
6 his murder, the MI5 propaganda initiatives encompassed
7 the dissemination of information referring to
8 Patrick Finucane within the loyalist community. I
9 should note that he was not the focus of the propaganda
10 initiatives, the thrust of the propaganda rumours and 12:07
11 innuendo was aimed at the Republican movement and
12 specific Provisional IRA players, including individuals
13 who would have been represented by Patrick Finucane.
14 However, as a result of his work in defending these
15 individuals, it is clear that Mr. Finucane came to be 12:07
16 included within the scope of the propaganda."

17
18 "The information relating to Patrick Finucane that was
19 being circulated effectively involved fanning the
20 rumours and speculation linking him to the IRA. The 12:08
21 effect of the propaganda would certainly have been, in
22 my view, to associate Patrick Finucane with the
23 activities of his clients. I have found no evidence
24 that the Security Service circulated Patrick Finucane's
25 personal details, nor that they proposed that any 12:08
26 individual or group attack him. In line with the
27 broader objectives for the initiatives, the propagandas
28 against Patrick Finucane appears to have been designed
29 to discredit and 'unnerve him' rather than to incite

1 loyalists or anyone else to target him. However, even
2 if the propaganda was not intended to incite loyalists
3 in that respect, I must consider the question of
4 whether it could have legitimised him as a target for
5 loyalist paramilitaries." [Sic]

12:09

6
7 End quote.

8
9 The Inquiry will have to consider the import of these
10 paragraphs, the material that underpinned them and
11 whether the inferences that the de Silva Review drew
12 are sufficient in the light of that material and the
13 facts that it establishes. When some of the hesitancy
14 and caveats of what I have quoted is stripped away,
15 those paragraphs of the review amount to a finding of
16 fact that prior to Patrick Finucane's murder by
17 loyalist paramilitaries, MI5 had disseminated rumours
18 and innuendo that had fanned existing false speculation
19 that Patrick Finucane was a member of the Provisional
20 IRA and that those matters could, in Sir Desmond's
21 words, have legitimised him as a target for loyalist
22 paramilitaries.

12:09

12:09

12:09

23
24 Before I go further, it is fair to highlight that the
25 de Silva Review's conclusion was that the rumours
26 linking Patrick Finucane to the IRA could not have
27 begun by MI5 in this propaganda campaign. That is
28 because MI5 was in possession of information that
29 suggested that as early as 1981, he had been a target

12:10

1 for murder discussed by the UDA. And that was at a
2 time long before this propaganda campaign had been
3 commenced. Nevertheless, the review concluded the
4 impact of the propaganda campaign on the already
5 circulating rumours was as follows, and again, I quote 12:10
6 from the Review:

7
8 "By the end of 1988, UDA members had certainly become
9 aware of the MI5 propaganda rumours linking
10 Patrick Finucane to the IRA. I am sure that members of 12:10
11 West Belfast UDA and specifically one of the key
12 ringleaders of the murder, L/28, became aware of the
13 rumours being circulated. Although it is clear that
14 the UDA would already have believed Mr. Finucane to be
15 associated with the Provisional IRA, the rumours being 12:11
16 disseminated could certainly have served to further
17 reinforce the UDA's views about him in this regard."
18 [Sic]

19
20 And then this: 12:11

21
22 "I am also sure that the Security Service were aware of
23 the facts that the propaganda was reaching loyalist
24 paramilitaries. Indeed, as I have already outlined,
25 the subsequent records with respect to the propaganda 12:11
26 initiatives demonstrate that Security Service personnel
27 later became concerned that the circulation of such
28 information in this way was 'treading on dangerous
29 ground.'" [Sic]

1
2 Sir Desmond concluded this section by saying:

3
4 "I am satisfied that the dissemination of this
5 propaganda could have served to further legitimise 12:12
6 Patrick Finucane as a target for loyalist
7 paramilitaries. Whilst the aim of these initiatives
8 was to unnerve people such as he, rather than to incite
9 loyalists to attack them, the fact that the propaganda
10 could have had such an effect was, in my view, a 12:12
11 consequence that should have been foreseeable to the
12 Security Service at that time." [Sic]

13
14 Now, those conclusions about foreseeability and the
15 effect that this propaganda was having to legitimise 12:12
16 Mr. Finucane as a target will have to be considered by
17 this Inquiry alongside the information in the previous
18 section that I opened about MI5's knowledge of Brian
19 Nelson and whether or not they were aware that he was
20 willing to facilitate attacks on individuals that he 12:12
21 considered, in his words, to be legitimate. Those are
22 all matters that will need to be considered.

23
24 From the Inquiry's interim standpoint of considering
25 only the open conclusions of the de Silva Review, it 12:13
26 does not appear to require the wisdom of hindsight to
27 appreciate that the more MI5 propaganda painted
28 Patrick Finucane as a Provisional IRA associate and
29 legitimate target, the more likely he was to be

1 targeted by loyalists paramilitaries, including Nelson.
2 In the course of its investigations, the Inquiry will
3 have to consider closely whether MI5 appreciated this
4 linkage and, if they did, what inferences arise from
5 it.

12:13

6
7 As mentioned briefly in the passages that I have cited
8 so far, the final point under this section is that the
9 de Silva Review reported that the underlying MI5
10 documents it was provided with recorded that there was
11 considerable unease amongst some Security Service
12 officers with regards to the nature of the propaganda
13 and the proposals that were then being considered to
14 expand the initiatives yet further.

12:14

15
16 whilst the review contained a number of quotations from
17 individuals and documents in which those concerns were
18 expressed, it is important that I make clear that none
19 of those quotations have been given precise or even
20 rough dates. In that light, it is not currently
21 possible to say whether those expressions of concern
22 were being raised within MI5 before Patrick Finucane
23 was murdered and so were within the contemplation of
24 that agency running those disinformation campaigns
25 before he was killed, or whether they were voiced only
26 subsequently and perhaps defensively with the benefit
27 of hindsight in reaction to the outrage.

12:14

12:14

12:14

28
29 As with all outstanding matters identified in this open

1 review of the available material, the question of
2 whether those internal concerns were raised before the
3 murder will be an important aspect for us to consider
4 and, if at all possible, to make public.

5
6 If such concerns were being raised within MI5 before
7 the murder, the Inquiry will have to focus upon whether
8 or not any effort was made thereafter to rein in the
9 propaganda, to mitigate its impact or to otherwise
10 delegitimise Patrick Finucane in the eyes of Brian
11 Nelson or indeed any other loyalist paramilitary. If
12 there is no evidence of such an effort, the Inquiry
13 will have to consider what, if any, inferences it is
14 appropriate to draw from those facts.

15
16 The final of my four topics is the 1988 threat
17 intelligence. I've mentioned briefly that as early as
18 1981 MI5 came into possession of information that
19 suggested that Patrick Finucane may be a target for
20 loyalist paramilitaries. Here I focus on the handling
21 by the Security Service of threat intelligence it
22 received in the December of 1988, that is seven weeks
23 before Patrick Finucane was to be murdered. The
24 existence and nature of that material was made public
25 by Sir Justice Cory in his 2004 Collusion Inquiry
26 report and was then further explored and evaluated in
27 the de Silva Review.

28
29 In 2004, Justice Cory made public that an agent

1 reported to MI5 that a meeting of UDA military
2 commanders was to have taken place in December.
3 According to the source, the purpose of the meeting was
4 to discuss plans to kill the three solicitors who have
5 represented Republicans at recent hearings. These 12:17
6 solicitors were identified as Target O, Target H and
7 the shoot-to-kill solicitor in Armagh.

8
9 Justice Cory did not publish the date nor the content
10 of that intelligence, but he did observe that he had 12:17
11 seen no documents indicating that this intelligence had
12 been passed to the RUC Special Branch, or that any
13 active protective intervention had been contemplated or
14 deployed to protect either Patrick Finucane or the
15 other two solicitors. He considered those conclusions 12:17
16 of such significance that in his view that even by
17 themselves they may have warranted a public inquiry.

18
19 The de Silva Review was then able to go further on the
20 issue and was able to publish a redacted version of the 12:17
21 relevant Security Service telegram and I'm going to ask
22 that that comes up on the screen now, please, Sir.
23 It's page 707 of document 1.

24
25 If we just look at this in a zoomed out version. This 12:18
26 is the document that was published by the de Silva
27 Review. The capitalised text is a heading that was
28 added by that review. It is an MI5 telegram of
29 snippets which was dated 19th December 1988. And you

1 can see that it is heavily redacted, its distribution
2 is redacted as indeed is much of its content. If we
3 just zoom in, please, or highlight paragraph 3. The
4 date again is redacted but, and indeed the individual:

12:19

5
6 "[Redacted] was to have held a meeting of the military
7 commanders on [redacted] December to discuss plans to
8 kill the three solicitors who have represented
9 Republicans at recent hearings. These were Paddy
10 McGrory, [previously anonymised as Target O], Oliver
11 Kelly, [previously anonymised as Target H], and the
12 'shoot to kill' solicitor in Armagh."

12:19

13
14 Thank you, that can come down.

12:19

15
16 Now, the first two solicitors who are listed in that
17 intelligence are mentioned by name. The third,
18 Patrick Finucane, is described only with reference to
19 his work, the shoot-to-kill solicitor in Armagh. An
20 important question for this Inquiry to consider would
21 be whether MI5 understood at the time that this was a
22 reference to him. And that question assumes particular
23 importance since in 2004, in their representations to
24 Justice Cory, MI5 denied that they had that awareness
25 and contend that it was, quote:

12:20

12:20

26
27 "By no means clear that the service had identified the
28 shoot-to-kill solicitor as having been Patrick Finucane
29 prior to his murder." [Sic]

1
2 However, the accuracy of that standpoint is in apparent
3 conflict with the material that was subsequently
4 received and considered by the de Silva Review. The
5 review also published two further MI5 documents which 12:20
6 were each dated shortly after the murder. And, again,
7 please may we have on screen document 1, page 708? As
8 this comes up I will tell you that this is a, as you
9 can see from the caption at the top, an NIIR threat to
10 solicitors dated 17th February, so five days after the 12:21
11 death, the murder. And if we may, again, zoom in on, I
12 think it's paragraph 1, certainly the large paragraph
13 in the middle of the document. That's the one. It is
14 the same intelligence or a reflection of the same
15 intelligence that was contained in the December 12:21
16 document. But, Sir, as you read the final sentence you
17 can see that the three solicitors are named as Paddy
18 McGrory, Oliver Kelly and at this point Mr. Finucane's
19 name has simply been substituted for what was
20 previously a description. That is unsurprising in the 12:22
21 light of the second document which is a note to file of
22 the same date. Please may we have on the screen
23 document 1, page 710. Again, as that comes up I will
24 tell you that this was a note that was produced by an
25 MI5 officer in the assessments group that you heard 12:22
26 about yesterday. We may just be having some technical
27 difficulties.

28
29 It's not a problem. What I can do is I can, there we

1 go. So, it is a note to file. The date on the
2 document itself is redacted but is given in the caption
3 at the top. And if we could just zoom in on the bottom
4 half of the page. You can see there at paragraph 5
5 it's a reference to that same December 1988 meeting at 12:23
6 which the murder of the solicitors was discussed and
7 the information obtained by MI5 at the time and I'll
8 pick it up if the middle of the paragraph it says this:

9
10 "Amongst these however, was a proposal to 'kill' the 12:23
11 three solicitors who had represented Republicans at
12 recent hearings. These were Paddy McGrory, Oliver
13 Kelly and the 'shoot to kill' solicitor in Armagh. The
14 latter is a clear reference to Finucane."

15 12:24
16 So, that was the assessment of MI5. That can come
17 down. Thank you. It's right to note, and I'll do so
18 now, that those two documents that I've just shown you
19 came five days after the murder and would themselves
20 have been drafted with the benefit of hindsight and 12:24
21 those documents by themselves perhaps cannot be a
22 complete answer for that reason, to the question of
23 whether or not MI5 knew that the shoot-to-kill
24 solicitor from Armagh was Patrick Finucane before he
25 was killed. However, those documents don't stand in a 12:24
26 vacuum. The de Silva Review also reported extracts
27 from MI5 witness who was interviewed by the review and
28 who he anonymised as G/07. That witness accepted that
29 the reference in the December intelligence ahead of

1 time to the shoot-to-kill solicitor would have been
2 sufficient to make it clear to those who were reading
3 it that it was highly likely that the UDA's plans
4 related to Patrick Finucane in and of itself. But
5 again, that document didn't sit alone nor that
6 evidence, because what de Silva also did helpfully in
7 his review was to contextualise the media reporting of
8 the time in relation to Mr. Finucane and his caseload.

12:25

10 He reported that in November 1988 there had been
11 widespread press reporting of the fact that
12 Mr. Finucane was representing Eleanor McKerr at the
13 inquest into the death of Gervaise McKerr and two other
14 men who were shot by the RUC in County Armagh in 1982.
15 The inquest for that death was itself also being held
16 in Craigavon in County Armagh at the time.

12:25

12:25

18 Those inquest proceedings were high profile and
19 controversial as they concerned allegations that those
20 1982 shootings had been the result of a State shoot to
21 kill policy. On 16th November, so a couple of weeks
22 before that intelligence had been obtained, the Daily
23 Telegraph had explicitly referred to the case in its
24 reporting as 'the shoot to kill inquest.' Also, in a
25 high profile judgment of the Court of Appeal on 20th
26 December 1988, which was the day after that Security
27 Service telegram published by de Silva was issued, the
28 Court of Appeal had ruled that police officers,
29 witnesses in that inquest, were compellable witnesses;

12:26

12:26

1 they could be forced to attend and give evidence.
2 Patrick Finucane had been centrally involved both in
3 the inquest and in those ancillary litigation
4 proceedings before the Court of Appeal. The Belfast
5 Telegraph of 15th November 1988 had gone so far as to 12:27
6 publish his photograph in the newspaper, together with
7 its reporting of the inquest proceedings.

8
9 Taking all of that material together, de Silva
10 concluded that those features meant that he was, quote: 12:27

11
12 "Satisfied that Security Service should have known at
13 the time that the shoot to kill solicitor reference
14 related to Patrick Finucane." [Sic]

15 12:27
16 End quote. We will have to go further and consider not
17 just the issue of whether or not MI5 should have had
18 that knowledge, but whether, as a question of fact,
19 they did have that awareness before he was murdered.

20 12:27
21 The second issue that arises in relation to the threat
22 intelligence is what, if anything, MI5 did with it
23 before Mr. Finucane was murdered. Justice Cory
24 reported that he had seen, quote:

25 12:28
26 "No documents indicating that this information was
27 passed on to the RUC Special Branch or that any active
28 intervention was contemplated." [Sic]
29

1 He contrasted that position with other material he had
2 seen at earlier stages which showed internal MI5
3 discussion of those threats against Mr. Finucane.
4

5 The de Silva Review considered this issue of the threat 12:28
6 intelligence against the propaganda campaign that I
7 have just summarised for you. His conclusions in
8 relation to the interrelation of those two topics bear
9 repetition.

10 12:28
11 The obligation on the Security Service to deal
12 appropriately with this threat intelligence was
13 particularly acute because the threat postdated the
14 dissemination of propaganda relating to
15 Patrick Finucane, which had identified Mr. Finucane 12:29
16 with the activities of his clients and could have
17 served to legitimise him as a target for
18 paramilitaries.

19
20 De Silva's view was that by distributing that 12:29
21 propaganda, a further considerable obligation had been
22 placed on MI5 to act on any threat intelligence that
23 they subsequently received in relation to
24 Patrick Finucane. These were obviously conclusions of
25 the utmost seriousness to draw. However, as before, 12:29
26 what is currently absent from the analysis is any
27 aggregation of the information also known to MI5 ahead
28 of time about the motivations and actions of the FRU
29 agent, Brian Nelson, and his willingness to prosecute

1 attacks against what he saw as legitimate targets.

2
3 Once the evidence is available, the Inquiry will want
4 to consider those three features together; MI5's access
5 to Nelson, the propaganda campaign, and the threat 12:30
6 intelligence it received, and draw such inferences and
7 conclusions as seem appropriate once the totality of
8 that information is known.

9
10 De Silva went on to consider, as Justice Cory had done 12:30
11 before him, whether he had been provided with any
12 evidence that allowed him to answer the question of
13 whether MI5 had shared the threat intelligence with the
14 RUC or whether they had otherwise taken steps to
15 mitigate the threat against Mr. Finucane. On the issue 12:30
16 of taking steps to -- and in fact, a further question
17 of whether or not they had sought to augment their
18 understanding by seeking further intelligence.

19
20 On that issue, it's important that I record, in 12:30
21 fairness, de Silva's conclusion where he said, and
22 again I quote:

23
24 "That he had been able to examine material outlining
25 the background to the Security Service's agent report 12:31
26 in December 1988 and he, [Sir Desmond] was satisfied
27 that there was a good reason why the service were
28 unable to receive any further intelligence on the
29 outcome of the meeting of the UDA military commanders."

1 [sic]

2
3 The Inquiry will have to consider that material and
4 test that conclusion in due course, together with
5 Sir Desmond's other suggestion that consideration could 12:31
6 have been given to tasking Brian Nelson to obtain
7 further information on that UDA meeting.

8
9 In relation to the issue of whether or not MI5 had
10 warned the RUC of the intelligence so that executive 12:31
11 protective action could have been considered, like
12 Justice Cory, the de Silva review recorded that it had
13 seen no document, no record to indicate that the 1988
14 threat intelligence had ever been passed.

15 12:32
16 To complete the issue, de Silva went on to evaluate the
17 possibility that even if there wasn't a record, had the
18 information been passed verbally or might it have been?
19 In pursuit of that question, he summarised an internal
20 note that had been produced by the then DCI in 1999. 12:32
21 Sorry, produced for the then DCI in 1999 in which the
22 MI5 Director had recorded, quote:

23
24 "The head of the service's agent running section in
25 Northern Ireland who was the agent's case officer..." 12:32
26 [sic]

27
28 That is the agent for the December 1988 intelligence.
29

1 "...was in regular contact with HSB over the case and
2 believes that the intelligence would have been
3 discussed with the RUC as a matter of routine." [Sic]
4

5 Secondly, in a statement to Stevens 3 investigation, 12:32
6 2004, the then head of MI5's agent running section
7 Northern Ireland had said:
8

9 "To the best of my belief, based on normal practice I
10 would have arranged to discuss the matters raised by 12:33
11 the agent with officers in RUC Headquarters." [Sic]
12

13 And, finally, that anonymised MI5 witness who had given
14 evidence to the review had said in oral evidence:
15

16 "I find it inconceivable that nothing was done on the 12:33
17 back of this intelligence, why there is no record of
18 it. I find that very surprising." [Sic]
19

20 Sir Desmond evaluated the pieces of explanations 12:33
21 against the fact that he had been provided with no
22 written records of dissemination of this information
23 and that's no record from either within the MI5
24 material or, indeed, within the RUC archives that the
25 threat information had ever been passed. That was 12:33
26 significant because G/07's account to the Review
27 acknowledged that the procedure was that even if such
28 information was passed verbally, it should be followed
29 up in writing. He said it in these words:

1
2 "If the threat was immediate the information would be
3 passed in a telephone call and then followed up in
4 writing, otherwise it would have been sent as soon as
5 reasonably feasible in report form." [Sic]

12:34

6
7 Sir Desmond's final conclusion was that the December
8 1988 threat intelligence amounted to a potentially
9 serious threat to the life of Patrick Finucane. In the
10 intervening two months between the threat and
11 Mr. Finucane's murder, Sir Desmond's conclusion was
12 that, quote:

12:34

13
14 "No steps had been taken to warn him that his life was
15 in danger or otherwise to protect him." [Sic]

12:34

16
17 Sir Desmond's view of that was unequivocal:

18
19 "...the responsibility for the failure to act on the
20 December 1988 threat intelligence lies with the
21 Security Service. Had the Service properly pursued
22 this intelligence with the RUC, I believe that there
23 would be a documentary record demonstrating this."

12:35

24
25 Sir, of course, as with all other matters that I have
26 discussed and my colleagues have elsewhere in this
27 opening, the Inquiry will use its powers to obtain full
28 disclosure of the relevant material, scrutinise that
29 underlying evidence and come to its own conclusions on

12:35

1 these matters. Thank you very much.

2 CHAIR: Thank you, Mr. Jamieson. Mr. Mills.

3
4 ADDRESS BY MR. MILLS:

5
6 MR. MILLS: Sir, we now turn to the comments of Douglas
7 Hogg MP. On 17th January 1989, during a debate of the
8 House of Commons Standing Committee B about the
9 Prevention of Terrorism (Temporary Provisions) Bill,
10 Douglas Hogg, the Paramilitary Under-Secretary of State
11 of the Home Office made the following statement:

12:35

12:36

12
13 "I have to state as a fact, but with great regret, that
14 there are, in Northern Ireland, a number of solicitors
15 who are unduly sympathetic to the cause of the IRA. I
16 repeat, that there are in the province a number of
17 solicitors who are unduly sympathetic to the cause of
18 the IRA. One has to bear that in mind." [Sic]

12:36

19
20 Mr. Hogg's statement was immediately challenged by
21 other MPs on the Committee, most notably by Seamus
22 Mallon MP, the Deputy leader of the SDLP, who would go
23 on to become the Deputy First Minister of Northern
24 Ireland. He responded first with this:

12:36

25
26 "That is a remarkable statement for a minister to make
27 about members of a profession who have borne much of
28 the heat in a traumatic and abnormal situation. Such
29 words should not be said without the courage to support

12:37

1 them." [Sic]

2
3 Mr. Mallon then asked Mr. Hogg to provide specific
4 support for his statement. In response, Mr. Hogg
5 described himself as having three choices in relation 12:37
6 to the statement he had just made:

7
8 "First, I could choose not to make that fact plain to
9 the Committee. Second, I could put it in the terms
10 that I have used and make the general statement that 12:37
11 there are a number of solicitors in Northern Ireland
12 known to be sympathetic to one or other terrorist
13 organisation. The third possibility is for me to say
14 that Mr. So-and-so is known to be a solicitor
15 sympathetic to the cause of the IRA." [Sic] 12:38
16

17 He continued with this:

18
19 "Would it be right for me to withhold from the
20 Committee my belief, based on advice, that there are a 12:38
21 number of solicitors in Northern Ireland known to be
22 sympathetic to one or other terrorist organisation?
23 That is true and it is relevant to what we are
24 discussing. It seems to me plain that if I believe
25 that to be true I should state it. I do believe it to 12:38
26 be true and I state it." [Sic]

27
28 As to whether he would name the solicitors in question,
29 Mr. Hogg said this:

1
2 "I shall not identify specific instances, specific
3 individuals or specific cases." [Sic]
4

5 He went on to say:

12:39

6
7 "I thought very carefully about the matter and the
8 conclusion that I came to was that it was right that I
9 should make the statement in the form that I have."
10 [Sic]

12:39

11
12 The Committee's discussion about the statement made by
13 Mr. Hogg lasted an hour. During that time, he repeated
14 it on more than half a dozen occasions. Mo Mowlam MP,
15 who would go on to become the Secretary of State for
16 Northern Ireland in 1997, observed that Mr. Hogg had
17 referred interchangeably to his knowledge and his
18 belief about the truth of the statement he had made.
19

12:39

20 In response to her observation Mr. Hogg said this:

12:39

21
22 "It is true that the majority of solicitors in Northern
23 Ireland are honourable people acting with courage in
24 difficult circumstances. It is also true that there
25 are a number, a small number of solicitors who are
26 unduly sympathetic to the cause of the IRA. A small
27 number, but a number. I am asked how I state that. I
28 do so on advice. Does that mean that I know or I
29 believe? That is a nice question. I am advised as a

12:40

1 minister that those are the facts. I believe them to
2 be true and I state them as facts on advice that I have
3 received." [Sic]

4
5 He later clarified:

12:40

6
7 "The mere fact that someone represents terrorists or
8 chooses to do so frequently does not automatically or
9 necessarily bring that person within the description
10 that I have used." [Sic]

12:40

11
12 Speaking at the conclusion of this discussion, Seamus
13 Mallon said this:

14
15 "If I were a solicitor in the North of Ireland and read 12:41
16 these Committee proceedings my reaction would be 'with
17 friends like that who needs enemies?' I have no doubt
18 that there are lawyers walking the streets or driving
19 on the roads of the North of Ireland who have become
20 targets for the assassins' bullets as a result of the 12:41
21 statement that has been made tonight. That shows the
22 seriousness of the matter. The Minister should not be
23 allowed to make such an accusation without
24 substantiating it. Following his statement, people's
25 lives are in grave danger. People who have brought 12:41
26 cases to the European Court against this legislation
27 will be suspected. People accused of IRA membership
28 and other activities will be suspected. We have thrown
29 a blanket over many lawyers in the north of Ireland and

1 it will be on the head of this Minister and Government
2 if the assassin's bullet decide to do by lead what this
3 Minister has by word." [Sic]

4
5 Less than four weeks later, Patrick Finucane was
6 murdered. The following day, Mr. Hogg issued a
7 statement:

12:42

8
9 "This is a tragic and wicked killing. I very much hope
10 that those responsible will be brought before the
11 courts as soon as possible. As to the identity of
12 those responsible or the circumstances in which the
13 murder has taken place, that is a matter for the RUC."
14 [Sic]

12:42

15
16 On the same day, the Irish Taoiseach, Charles Haughey,
17 issued a statement which Sir Desmond de Silva would
18 later consider implicitly linked Mr. Hogg's comments to
19 the murder of Patrick Finucane, and I quote:

12:42

20
21 "The need for the greatest care to be given to any
22 statement which might have tragic consequences in
23 Northern Ireland has once again been underlined and I
24 expect that this aspect will be urgently and fully
25 considered."

12:43

12:43

26
27 Prior to the debate on 17th January, Mr. Hogg received
28 briefing from the RUC, the Metropolitan Police and the
29 Home Office. Mr. Hogg received a briefing from the RUC

1 on 24th November 1988. That day he travelled to
2 Belfast. His itinerary included a meeting with Sir
3 John Herman, Chief Constable of the RUC; Blair Wallace,
4 Senior Assistant Chief Constable; Assistant Chief
5 Constable Wilf Monaghan, and the Assistant Chief
6 Constable responsible for the RUC Special Branch,
7 albeit that, as it transpired, the deputy head of
8 Special Branch, Assistant Chief Constable Brian
9 Fitzsimons attended in his place.

12:43

10
11 The meeting was to discuss the prevention of terrorist
12 legislation, including its financial aspects. A note
13 of the meeting and the points to be followed up
14 thereafter was prepared by Mr. Hogg's Private
15 Secretary. It included the following paragraph:

12:44

16
17 "The RUC referred to the difficulties caused by the
18 half dozen or so solicitors who are effectively in the
19 pockets of terrorists, and who would make good use of
20 their right to insist on access to documents."

12:44

21
22 "This was put rather nicely, I thought, by the argument
23 that such solicitors are defending the organisation,
24 rather than the individual. Again, illustrative
25 examples were promised which I should be grateful if
26 you would pursue." [Sic]

12:44

27
28 Elsewhere the note recorded that Mr. Hogg sought such
29 illustrative examples for, quote:

1
2 "His use in defending the Government's position in the
3 House." [Sic]

4
5 In a note written on the same day as the meeting with 12:45
6 Mr. Hogg, Sir John Herman wrote this:

7
8 "SACC Wallace was present at the meeting and he and ACC
9 Monaghan, also present, can now take the matters
10 forward as agreed in our discussions." [Sic] 12:45

11
12 ACC wallace told Sir Desmond de Silva that he and ACC
13 Monaghan and Fitzsimons were not admitted to the
14 meeting with Mr. Hogg until half an hour after it
15 started. This means that for the first half an hour 12:45
16 the RUC was only represented by Sir John Herman. ACC
17 wallace also told Sir Desmond that he left the meeting
18 before its conclusion. He said that when he was
19 present at the meeting he did not hear anyone make any
20 reference to solicitors. 12:46

21
22 Four days after the meeting on 28th November, SACC
23 wallace instructed the head of the RUC Special Branch:

24
25 "To prepare family connections to PIRA of solicitors 1, 12:46
26 Oliver Kelly, 2, Patrick Finucane." [Sic]

27
28 This came with a direction that no sensitive material
29 was to be included.

1
2 These documents were prepared during the course of
3 December 1988 and provided to SACC wallace on 6th
4 January 1989. On 11th January they were sent by the
5 RUC to the Northern Ireland Office and by the 13th they 12:46
6 were in the possession of the Home Office.

7
8 Please can we go up to document 1, page 722. This is
9 the RUC's note on Patrick Finucane. It comprises two
10 pages. The first page classified as "Confidential" 12:47
11 listed, as we can see, relatives with PIRA connections.
12 We read:

13
14 "Father: Patrick, (house used early 1980s for PIRA
15 meetings). 12:47

16
17 Mother: Kathleen (attended H block demos in London).
18

19 Brothers:
20

21 John James, deceased. On record since December 1971 as
22 a member of PIRA. Died as a result of an accident
23 whilst travelling in a stolen car. Subject had a
24 paramilitary style funeral.
25

26 Seamus: PIRA connections since 1972. On 7th September
27 1977 sentenced to 14 years for possession with intent.
28 Released on 5th June 1986. Currently highly active.
29

1 Martin: PIRA connections since early 1977. Currently
2 a member of the anti-extradition committee and speaking
3 on behalf of brother Dermot.

4
5 Dermot, traced PIRA since early 1978. Whilst serving 12:48
6 an 18 year sentence re possession, he took part in a
7 mass break out from Maze Prison on September 25 1983.
8 On 23rd November 1987, recaptured in County Longford.
9 Extradition proceedings in process.

10
11 Sister: October 1987, association Sinn Féin member in 12:48
12 south." [Sic]

13
14 On the second page, we find a purported personal
15 history of Patrick Finucane: 12:48

16
17 "Subject originates from a staunchly Republican family
18 of which two brothers, namely Séamus and Dermot, have
19 served periods of imprisonment due to terrorist
20 offences. He is a partner in the firm Madden & 12:49
21 Finucane Solicitors, Belfast and is a member of the
22 Association of Socialist Lawyers being also elected to
23 the Executive Committee of the Northern Ireland Civil
24 Rights Association in September 1980."

25
26 "Finucane also became joint treasurer of the 'Smash
27 Hblock Committee' during 1980 and regularly visited the
28 hunger strikers, i.e. Bobby Sands, etc., giving legal
29 advice and whilst doing so associated closely with 12:49

1 Gerry Adams, President of Sinn Féin."

2
3 "In 1984 he was reported as being on a two week tour of
4 the USA sponsored by the Irish Northern Aid Committee,
5 NORaid, and the National Lawyers Guild speaking against 12:49
6 the Supergrass system under the auspices of "Concerned
7 Community Organisations."

8
9 "On his return his activities have continued in the
10 same vein. During May/June 1985 he was a speaker at 12:50
11 the International Conference of Jurists for Ireland in
12 Paris and since then Finucane has continued to support
13 the Republican cause using his expertise in an advisory
14 capacity and associating closely with PIRA/PSF
15 personnel." [Sic] 12:50

16
17 Sir Desmond de Silva reached two conclusions about the
18 contents of this note. First, the note represents
19 further evidence of the extent to which the RUC had
20 formed the opinion that Patrick Finucane was a 12:50
21 subversive threat rather than a lawyer carrying out his
22 professional duties.

23
24 Second, that there was nothing in the note that could
25 substantiate the serious allegation made by the RUC to 12:51
26 Douglas Hogg that there were, quote:

27
28 "A half dozen or so solicitors who are effectively in
29 the pockets of terrorists." [Sic]

1
2 In this respect, Sir Desmond agreed with Justice Cory's
3 conclusion that there was:

4
5 "Nothing in the document that indicates that 12:51
6 Patrick Finucane was a terrorist or that he belonged to
7 a terrorist organisation." [Sic]

8
9 Sir Desmond went on to consider whether the RUC had
10 intended for Mr. Hogg to make public the comments about 12:51
11 solicitors made during the meeting on 24th November.
12 In their response to the Stevens investigation team,
13 Mr. Hogg and Sir John Herman adopted opposing
14 positions. Mr. Hogg, for his part, described the idea
15 that he would be provided with information by the RUC 12:52
16 in connection with a bill for which he was responsible
17 and not use it in the House of Commons as bizarre.

18
19 Sir John, on the other hand, maintained that he
20 personally asked Mr. Hogg not to tell MPs or Parliament 12:52
21 about the problem of solicitors who may have involved
22 themselves in terrorism.

23
24 Sir Desmond was satisfied on the basis of the documents
25 he reviewed that it was understood by all concerned 12:52
26 that Mr. Hogg wished to refer to the issue of
27 solicitors in Northern Ireland during the course of the
28 debates in the House of Commons. He reached this view
29 for three reasons.

1
2 First, the Home Office note of the meeting on 24th
3 November referred to Mr. Hogg seeking illustrative
4 examples to be supplied for his use in defending the
5 Government's position in the House and that a request
6 was made, quote:

12:53

7
8 "To ensure that suitable illustrations are included in
9 Mr. Hogg's briefing for Committee stage." [Sic]

12:53

10
11 Second, the Home Office also recorded in relation to
12 one topic, albeit not the topic of solicitors, that Sir
13 John was, "happy to be quoted."

14
15 Third, the instruction by SACC Wallace to the head of
16 the RUC Special Branch on 28th November to prepare a
17 document setting out the family connections to PIRA
18 directed that no sensitive material was to be included.
19 On the basis that Mr. Hogg was in fact cleared to
20 receive sensitive material, Sir Desmond was satisfied
21 that this direction demonstrated that the RUC was aware
22 of Mr. Hogg's intention to publicly disclose the
23 information he was provided.

12:53

12:53

24
25 On 8th December 1988 Mr. Hogg met with the Special
26 Branch of the Metropolitan Police Service. His Private
27 Secretary's notes of that meeting recorded, quote:

12:54

28
29 "Care was needed to ensure that solicitors sympathetic

1 to a terrorist cause were not able to frustrate an
2 investigation." [Sic]

3
4 Mr. Hogg told Sir Desmond de Silva that in preparation
5 for the Committee session, he would have, quote:

12:54

6
7 "Received extensive advice and information from Home
8 Office officials and that he would hold meetings before
9 a Committee session at which, 'What was I to say in the
10 debate would be the subject of discussion and advice.'" [Sic]
11

12:54

12
13 Sir Desmond reviewed Mr. Hogg's Private Secretary's
14 note of the briefing he received from Home Office
15 officials on 16th January 1989, the day before the
16 debate. He found that that note made no reference to
17 the briefing he had received from the RUC or to the
18 role of solicitors in Northern Ireland.

12:55

19
20 Sir Desmond also reviewed and published the speaking
21 note prepared for Mr. Hogg by Home Office officials
22 resisting amendments to Clauses 17 and 18 of the
23 Prevention of Terrorism Bill. Those amendments sought
24 to provide solicitors with a defence in the event that
25 they either made a disclosure to a client that was
26 likely to prejudice a terrorist investigation in order
27 to take instructions or provide legal advice, or
28 refused to disclose information about acts of terrorism
29 on the grounds of legal professional privilege. This

12:55

12:55

1 speaking note also made no reference to the briefing
2 Mr. Hogg had received from the RUC on 24th November, or
3 the information the RUC subsequently provided to him.
4

5 For these reasons, Sir Desmond concluded that Mr. Hogg 12:56
6 had not based his comments about solicitors in Northern
7 Ireland on advice he had received from Home Office
8 officials.
9

10 Sir Desmond de Silva recognised that it has been 12:56
11 alleged that Mr. Hogg's comments prompted the UDA to
12 murder Patrick Finucane. Sir Desmond considered this
13 allegation and reached the following conclusions.
14

15 First, there are grounds for believing that Mr. Hogg's 12:56
16 comments, albeit unwittingly, further increased the
17 vulnerability of prominent solicitors in Northern
18 Ireland who represented Republican suspects.
19

20 Second, there is evidence to suggest that the UDA did 12:57
21 consider and discuss Mr. Hogg's comments about
22 solicitors. Sir Desmond read, but he did not publish,
23 Security Service intelligence which recorded that
24 Thomas Lyttle had raised Mr. Hogg's comments with
25 another UDA member the week before Patrick Finucane's 12:57
26 murder.
27

28 Third, however, Sir Desmond found that it was clear
29 that the UDA were already conspiring to murder

1 Patrick Finucane before Mr. Hogg's comments were made
2 on 17th January. He, therefore, accepted the position
3 that had been conveyed to the British-Irish Rights
4 Watch by UDA sources, namely, that Mr. Hogg's comments
5 did not precipitate the murder of Patrick Finucane.

12:57

6
7 Fourth, and finally, Sir Desmond found that there was
8 no evidence whatsoever to suggest that Mr. Hogg was
9 aware of any threat to kill Patrick Finucane or indeed
10 any other solicitor in Northern Ireland. He concluded
11 that there was no basis for any suggestion that
12 Mr. Hogg intended his comments to provide a form of
13 political legitimacy to what was being planned by the
14 UDA.

12:58

15
16 In respect of the basis of the remarks ultimately made
17 by Mr. Hogg, Sir Desmond was satisfied of two things;
18 First, that they were made as a direct result of the
19 briefing note sent to him by the RUC following the
20 meeting on 24th November setting out the family
21 connections to PIRA of Patrick Finucane and Oliver
22 Kelly.

12:58

23
24 Second, that the contents of that document did not
25 substantiate the claim made by the RUC during that
26 meeting that there existed, quote:

12:58

27
28 "Half dozen or so solicitors who are effectively in the
29 pockets of terrorists." [Sic]

1
2 In the overview report produced by the Stevens 3
3 investigation, Lord Stevens addressed the comments made
4 by Mr. Hogg as follows:

5
6 "To the extent that they were based on information
7 passed by the RUC, they were not justifiable and the
8 Inquiry concludes that the Minister was compromised."
9 [Sic]

10
11 Sir Desmond, for his part, agreed with the conclusion
12 that Mr. Hogg had been compromised by the RUC. He
13 found that the RUC's briefing of him reflected its
14 desire to discredit a small number of solicitors
15 representing Republican paramilitaries and that the RUC
16 intended that Mr. Hogg put into the public domain their
17 view that such solicitors were too close to those they
18 represented.

19
20 Next, Sir, we turn to the question of whether there is
21 evidence of prior knowledge within government.

22
23 Sir Desmond de Silva addressed the suggestion that
24 Government ministers may have been involved in
25 directing or sanctioning collusive activity during the
26 Troubles. He observed that no evidence to support
27 these allegations arose during the investigative work
28 of Lord Stevens or Justice Cory. His consideration of
29 this subject involved the examination of several

1 thousand pages of documents comprising memos between
2 civil servants in the Northern Ireland Office,
3 briefings provided in preparation for regular meetings
4 on security policy led by the Secretary of State for
5 Northern Ireland, Security Service intelligence
6 assessments provided to ministers, reports from the
7 Joint Intelligence Committee in London and, finally,
8 communications between the Prime Minister and Cabinet
9 ministers.

13:01

10
11 Having considered that material, he set out the ways in
12 which ministers were briefed on intelligence matters.
13 This was through receipt of Northern Ireland
14 intelligence reports from the Security Service
15 Assessments Group, monthly security policy meetings
16 involving the Director and Coordinator of Intelligence,
17 the Chief Constable of the RUC and the General Officer
18 Commanding Northern Ireland, informal ad hoc advice
19 provided by senior security advisers and briefings in
20 connection with the approval of warrants under the
21 statutory framework in place at the time.

13:01

13:01

13:01

22
23 Sir Desmond found that briefings provided to ministers
24 were at the strategic level rather than at the
25 operational. This distinction was described to him in
26 a number of submissions to his Review as meaning that
27 ministers would not be briefed on operational decisions
28 regarding, for example, the handling of agents, the
29 exploitation of intelligence or whether to act on

13:02

1 threat intelligence. But, would instead receive
2 briefings related to the intelligence product supplied
3 by the Security Forces. As such, he found ministerial
4 approval for the handling of agents was not sought.

13:02

6 This description is consistent with that provided by
7 Martin Ingram, the pseudonym of Ian Hurst, a former FRU
8 soldier to the historian Ian S Wood, who said that
9 intelligence material would be presented to ministers
10 in much shortened form with the salient points
11 explained but without explanation of how the
12 information contained therein had been acquired.

13:03

14 Sir Desmond was unequivocal in concluding that, based
15 on the material in his possession, there was no
16 evidence whatsoever to suggest that Government
17 ministers either sought to direct any of the
18 intelligence agencies to assist the UDA in any way, or
19 sought to collude in a policy of using loyalist
20 paramilitaries to carry out extrajudicial killings of
21 Republicans.

13:03

13:03

22
23 Sir Desmond also found no evidence to suggest that
24 ministers were briefed on Brian Nelson's activities as
25 an FRU agent prior to his arrest. Further, he
26 concluded that a briefing provided by the Chief of the
27 General Staff and others to the Secretary of State for
28 Defence, Tom King MP, on 26th September 1990 suggested
29 that even he had no background knowledge of Nelson's

13:03

1 activities. This was significant, in Sir Desmond's
2 view, because Tom King had been the Secretary of State
3 for Northern Ireland from September 1985 to July 1989
4 during most of Nelson's time as an FRU agent and during
5 that time would have been regularly briefed on Northern 13:04
6 Ireland intelligence matters.

7
8 The briefing notes from the September 1990 meeting
9 included the following sentences:

10
11 "A note of the pre-meeting without the Secretary of
12 State present, recorded that the Army had been asked to
13 hand over Nelson's intelligence dump to the Stevens
14 inquiry." [Sic]

15
16 which they did. It then said, quote:

17
18 "Chief of the General Staff agreed that we would repeat
19 this background to the Secretary of State for Defence
20 so that he understood the references in the Attorney 13:05
21 General's letter to the intelligence dump held by
22 Nelson and the delay in handing it over to the Stevens
23 inquiry." [Sic]

24
25 A note of the meeting which then took place with the 13:05
26 Secretary of State recorded this:

27
28 "He was briefed on the value of FRU and was
29 particularly interested in two annexes produced by ACOS

1 G2, one giving the achievement of Nelson as an agent
2 and the second giving a flavour of the achievements of
3 FRU over the past few years." [Sic]
4

5 Sir Desmond de Silva found that there was no evidence 13:05
6 to suggest that ministers had any fore knowledge of the
7 plan to kill Patrick Finucane. Further, he found that
8 there was no evidence that ministers were subsequently
9 provided with any intelligence briefing suggesting that
10 the intelligence agencies had fore knowledge of a 13:06
11 threat to Patrick Finucane's life.
12

13 In his book, "Neither Confirm Nor Deny British
14 Intelligence, Lawless Agent Running and the Suppression
15 of Truth," BBC Panorama journalist John Ware wrote that 13:06
16 a review conducted in 2012 by Detective Chief Inspector
17 Phil James, the senior investigating officer within the
18 Stevens 3 investigation team, of all cabinet minutes
19 from 1988 to 1991 established that neither
20 Patrick Finucane nor his murder were ever mentioned. 13:06
21

22 Against this, is the statement made by Geraldine
23 Finucane to the BBC Spotlight documentary "The
24 Troubles: A Secret History," broadcast in 2019 in
25 which she recalled that Justice Cory told her that he 13:06
26 had seen papers marked, "for Cabinet eyes only", which
27 involved, quote:
28

29 "...the collusion and killing of my husband."

1 In addition to his consideration of the specific
2 questions of ministerial knowledge of Nelson's activity
3 and the threat to Patrick Finucane, Sir Desmond also
4 examined the broader approach of government to loyalist
5 paramilitaries and agent handling. He found that 13:07
6 government security policy during the late 1980s was
7 driven by the need to tackle the PIRA and that loyalist
8 paramilitary violence was viewed as a largely reactive
9 phenomenon to Republican atrocities.

10
11 In reaching this finding he cited the memoirs of
12 Margaret Thatcher in which she wrote, quote:

13
14 "The IRA are the core of the terrorist problem. Their
15 counterparts on the Protestant side would probably 13:07
16 disappear if the IRA could be beaten." [Sic]

17
18 Although Sir Desmond concluded that security meetings
19 during the late 1980s were dominated by discussions
20 about how to tackle the PIRA and Republican violence, 13:08
21 he also found that there nevertheless existed a desire
22 to tackle and reduce the threat from loyalists in the
23 same manner.

24
25 He went on to consider whether the government's 13:08
26 decision not to proscribe the UDA as a terrorist
27 organisation until August 1992 could be criticised. He
28 found that the UDA, in the late 1980s, was for all
29 intents and purposes a terrorist group. However, he

1 concluded that it was difficult to criticise the
2 government for failing to proscribe the UDA until 1992.
3 In reaching this conclusion, he was mindful of the fact
4 that proscription could have served to strengthen the
5 militaristic elements within both loyalism and
6 republicanism at a time when steps were being taken to
7 engage with representatives of paramilitary groups.

13:09

9 Finally, Sir, as was set out yesterday, Sir Desmond was
10 highly critical of the Government's approach to agent
11 handling in Northern Ireland. He found that the
12 Government was fully aware of the unacceptable fact
13 that there was no adequate framework in place for agent
14 handling in the late 1980s.

13:09

15
16 Sir, I wonder whether that might be our lunch break.

17 CHAIR: Yes, how long have you got to go, Mr. Mills?

18 MR. MILLS: That section is finished.

19 CHAIR: How long will your final section take?

20 MR. MILLS: Ms. Millar will follow in Section 3 and
21 then I take over.

13:09

22 CHAIR: Good. Excellent. Thank you very much. We'll
23 break now until five to two. Thank you.

24
25 THE INQUIRY ADJOURNED FOR LUNCH AND CONTINUED AS
26 FOLLOWS:

13:10

27
28 CHAIR: Thank you, everyone. Ms. Millar.

29

1 ADDRESS BY MS. MILLAR:

2
3 MS. MILLAR: Thank you, Sir. This session deals with
4 the initial RUC investigation into the murder of
5 Patrick Finucane, including the recruitment of Kenneth 13:56
6 Barrett as a Special Branch agent in 1991.

7
8 Sir Desmond's analysis built on the finding of the
9 European Courts of Human Rights in 2003 to which
10 Mr. Hill referred yesterday that the UK had breached 13:56
11 its procedural obligations under Article 2 of the
12 Convention by failing to carry out an adequate official
13 investigation into the murder.

14
15 In its judgment, the Court provided a high level 13:56
16 summary of the steps taken as part of the initial RUC
17 investigation; namely, that after Mr. Finucane's
18 murder, steps were taken to secure evidence at the
19 scene. Mr. Finucane's house was cordoned off by the
20 RUC and a forensic examination of the scene conducted 13:56
21 by experts. Photographs were taken and maps prepared.
22 A crime scene officer examined the car believed to have
23 been used by those responsible for the shooting and
24 which had been found abandoned.

25
26 On 13th February 1989, a consultant in pathology
27 conducted a post-mortem examination. A major incident
28 room was set up at the Antrim Road Police Station.
29

1 On 4th July 1989 a gun was found during a police search
2 in the Shankill area of Belfast. It proved to be one
3 of the weapons used to murder Mr. Finucane and had been
4 stolen by a Colour Sergeant of the UDR in 1987 and sold
5 subsequently to Kenneth Barrett.

13:57

6
7 In April 1990, three people were convicted of
8 possession of the gun and of membership of the banned
9 paramilitary organisation the UFF. However, they could
10 not be linked to Mr. Finucane's murder.

13:57

11
12 In or around September 1990, the police found firearms
13 in the attic of William Stobie's flat. He was arrested
14 but a decision was taken on 16th January 1991 not to
15 prosecute him in connection with the Finucane case on
16 the grounds that there was insufficient evidence. In
17 addition, a decision was made not to proceed with the
18 two firearms charges against him. The prosecution
19 adduced no evidence and he was acquitted.

13:58

20
21 So turning back to Sir Desmond's review. After he had
22 conducted a wider examination of the original RUC
23 investigation, he made the following findings which
24 will be explored in further detail:

13:58

25
26 First, he noted that the investigation lacked the
27 requisite independence.

13:58

28
29 Second, the investigation did not examine the question

1 of collusion. There was, for example, no follow-up
2 action taken by investigators in response to two
3 credible intelligence reports that RUC officers had
4 been congratulating loyalists held in custody for the
5 UDA having carried out the murder.

13:59

6
7 Third, highly relevant intelligence was withheld from
8 the CID murder investigation team. This undoubtedly
9 had a significant impact in preventing attempts to
10 bring Patrick Finucane's murderers to justice. In
11 particular, key UDA suspects, including L/20, L/28 and
12 Kenneth Barrett were not investigated or arrested until
13 more than ten years after the murder.

13:59

14
15 Fourth, the CID team did not exploit some of the
16 intelligence it had received.

13:59

17
18 And, fifth, the RUC's failure to ensure an adequate
19 investigation was particularly significant when
20 considered alongside the wider inadequacy of the action
21 taken by the authorities against the West Belfast UDA
22 prior to the murder. That was an issue which we
23 discussed yesterday. And the decision by Special
24 Branch to recruit Kenneth Barrett after he admitted his
25 involvement in the murder.

13:59

14:00

26
27 Taking each of these issues in turn. And turning first
28 to the independence and effectiveness of the
29 investigation.

1
2 In 1994, Geraldine Finucane applied to the European
3 Court of Human Rights for a declaration that the UK
4 Government had failed to carry out a proper
5 investigation into her husband's death and for an order 14:00
6 requiring the Government to conduct a full public
7 inquiry into its circumstances.

8
9 On 1st July 2003, the Court made a unanimous finding
10 that the UK Government had breached its procedural 14:00
11 obligations under Article 2. In reaching this
12 conclusion the Court discussed a number of general
13 principles and their application to the investigations
14 that followed the murder.

15 14:00
16 In relation to the initial RUC investigation
17 specifically the Court noted that the investigative
18 procedures conducted by the police lacked independence
19 and that raised serious doubts as to the thoroughness
20 or effectiveness with which the possibility of 14:01
21 collusion was considered.

22
23 In particular, RUC officers suspected of issuing
24 threats against Patrick Finucane were under the
25 responsibility of the Chief Constable of the RUC, who 14:01
26 played a role in the process of instituting any
27 disciplinary or criminal proceedings. And although it
28 was apparent that a gun believed to have been used in
29 the murder had come into the hands of loyalists via a

1 member of the UDR, the officer leading the
2 investigation stated that none of the 14 people
3 interviewed had any connection with the Security
4 Forces.

5
6 Sir Desmond considered that the findings made by the
7 European Court of Human Rights in relation to the
8 independence of the investigation were particularly
9 pertinent in view of the wider allegations relating to
10 contact between RUC officers and loyalists in
11 Castlereagh. This included alleged comments made by
12 RUC officers recorded in two FRU Contact Forms in
13 respect of which Brian Nelson was recorded as the
14 source.

15
16 Could we have document 1 at page 534 on screen please?
17 This is the first Contact Form which is dated 9th March
18 1989 and at paragraph 12 we can see that it records:

19
20 "L27 told 6137..."

21
22 which is Nelson's code name,

23
24 "...and a number of others, 'That the RUC had told
25 Tucker Lyttle that the attacks on Pat Finucane and
26 Gerard Slane had been the best hits the UDA had had in
27 a long time. The RUC also said that the Provisional
28 IRA was were so incensed by these successes that they
29 had men on the Shankill ready to shoot on sight members

1 of the UDA/UVF."

2
3 This report was passed to Special Branch by the FRU but
4 there is no evidence of any follow-up action by the
5 RUC.

14:03

6
7 If we could stay on document 1 and move to page 539,
8 this is going to be the second FRU Contact Form. This
9 is dated 29th November 1989. And it records at
10 paragraph 18:

14:03

11
12 "At 13:00 hours L/22, L/43 and L/05 came into HQ
13 Shankill. All appeared pleased to be out of RUC
14 Castlereagh. L/22 stated that they had been closely
15 questioned, albeit in a friendly fashion, concerning
16 the murder of Pat Finucane. L/22 said the RUC
17 congratulated them on a fine job but said it should not
18 have been done in a such a fashion, i.e. in front of
19 Finucane's wife and children."

14:03

20
21 Thank you.

14:04

22
23 Sir Desmond noted that this was particularly concerning
24 as the interviews were carried out by members of the
25 RUC, CID Murder Investigation Team and although there
26 was no corroboration for this report, Sir Desmond
27 commented that it was difficult to conceive of a reason
28 why L/22, referred to in the Contact Form, would invent
29 such an elaborate account.

14:04

1
2 He was also unable to find any record of the FRU having
3 passed this information to Special Branch and
4 significantly, that this omission would, in itself,
5 have prevented any follow-up action to identify the RUC 14:04
6 officers allegedly responsible.

7
8 whilst noting that the reported comments in the contact
9 forms could not be corroborated, Sir Desmond noted that
10 alongside his conclusion as to discussions between 14:04
11 officers and loyalists in custody about
12 Patrick Finucane, they were potentially part of a
13 pattern.

14
15 When the European Court of Human Rights examined the 14:05
16 case in 2003 it was not apparent to what extent there
17 had been enquiries into possible collusion but having
18 examined the case in detail, it was clear to
19 Sir Desmond that the CID investigation did not examine
20 this as a possibility. 14:05

21
22 However, Detective Superintendent Alan Simpson, the SIO
23 leading the Inquiry into the murder, explained in his
24 statement to the Stevens 3 investigation that the
25 allegation of collusion was an issue that prevailed at 14:05
26 the time of the initial investigation. And I quote:

27
28 "The allegation of collusion between the Security
29 Forces in general and loyalist paramilitary groups was

1 one that prevailed at the time of my investigation.
2 However, in light of what I knew regarding Finucane,
3 there was no possibility of me pursuing that allegation
4 as a Senior Investigating Officer on a murder enquiry,
5 although I did not actually seek permission to
6 investigate the issue of collusion."

14:05

7
8 "These allegations also related to other murders but,
9 again, it was not in my remit to sanction an
10 investigation of that nature. It would have been a
11 matter for HQ CID authorities to instigate such a broad
12 sweeping allegation as they crossed divisional and
13 regional boundaries."

14:06

14
15 In his 2003 review and recommendations, Sir John
16 Stevens concluded that crucial information was withheld
17 from the SIO, Detective Superintendent Alan Simpson,
18 that the withholding of evidence was evidence of
19 collusion and that in the future the SIO on murder
20 investigations should receive:

14:06

21
22 "Full cooperation and relevant intelligence from
23 Special Branch."

24
25 Turning then to the withholding of intelligence from
26 the CID Murder Investigation Team in this case.

14:06

27
28 Sir Desmond considered the approach of Special Branch
29 to the murder investigation against the background of

1 what he referred to as the longstanding strains in the
2 relationship between the Special Branch and CID during
3 the Troubles. In the context of the investigation into
4 the murder of Patrick Finucane, the key issues included
5 comments made by Detective Superintendent Simpson with 14:07
6 regard to Special Branch withholding intelligence and
7 comments he made about the Assistant Chief Constable
8 responsible for the RUC CID.

9
10 And then the documentary evidence in relation to the 14:07
11 withholding of intelligence. So, considering each of
12 these in turn:

13
14 Firstly, the comments made by Detective Superintendent
15 Simpson. 14:07

16
17 Referring back to Detective Superintendent Simpson's
18 account to the Stevens team can we please have
19 document 1 at 648 on screen please? And starting where
20 the highlight starts. He described his relationship as 14:08
21 a CID officer with Special Branch in the following way,
22 and I'm going to quote from this at some length because
23 I think it's a useful overview. He said:

24
25 "It must be stressed that Special Branch controlled 14:08
26 this relationship and that CID officers of whatever
27 rank were unable to force their hand in any way.
28 Briefly, the role of Special Branch was the countering
29 of terrorist activity and to this end they collected

1 all intelligence and handled a large number of
2 informants. As the SIO on this clearly terrorist
3 related murder investigation I was never given a
4 briefing by Special Branch or ever passed any relevant
5 files. The strategic direction of the Finucane murder 14:08
6 investigation was, therefore, planned in the absence of
7 any input from Special Branch in relation to the
8 victim, possible suspects or..."

9
10 And if we could just go down the page please: 14:09

11
12 "... motives for shooting. In particular, I was never
13 informed that Patrick Finucane had a [Special Branch]
14 file; never made aware of the existence of William
15 Stobie and his knowledge around the movements of the 14:09
16 murder weapons; never made aware of the existence of
17 Brian Nelson who also passed information to the Army
18 with regard to Finucane. All or any of the above, even
19 in the most guarded of terms, would have made an
20 enormous difference to the direction of the Finucane 14:09
21 investigation and its eventual outcome."

22
23 If we could move over the page then, please, to the
24 second paragraph. That's at page 649. Sorry. So just
25 the following page to the one we were looking at a 14:09
26 moment ago. Thank you. So its second paragraph it
27 says, he goes on to say:

28
29 "All aspects of CID criminal investigation were,

1 however, subject to [Special Branch] sanction. This
2 was in order to protect any operation that [Special
3 Branch] might have had in relation to addresses or
4 subjects. This would impact on an enquiry, including a
5 murder, when an address needed searching or someone 14:10
6 needed arresting. All intelligence was checked through
7 the [Special Branch] source unit and the CID regulated
8 by their decision on any matter. In this regard there
9 was no appeal and [Special Branch] would never tell you
10 why an address could not be searched or a suspect 14:10
11 arrested. In the past I've had personal experience of
12 [Special Branch] entering a serious crime scene before
13 my being allowed to enter and conduct my search for
14 evidential material and I was not told the reason for
15 [Special Branch] involvement. In relation to our 14:11
16 working relationship with [Special Branch] I would go
17 as far as to say that any attempt by me or my
18 colleagues to overturn a decision by [Special Branch]
19 would result in a negative response."

20
21 Thank you, that can come down.

22
23 However, the most serious allegation made by
24 Superintendent Simpson was made in his book "Duplicity
25 and Deception." This was omitted from his statement to 14:11
26 the Stevens team but related to comments made by
27 Wilfred Monahan, the Assistant Chief Constable
28 responsible for CID. In this respect Detective
29 Superintendent Simpson noted:

1
2 "Much to my surprise on the morning of Tuesday, 14th
3 February, two days after the killing of Finucane, I
4 received a phone call from RUC Headquarters informing
5 me that Assistant Chief Constable Wilfred Monaghan in 14:12
6 over all charge of the CID in Northern Ireland was to
7 pay me a visit in the Antrim Road incident room. This
8 was unusual and I regarded this as something of a minor
9 State visit. Altogether his visit lasted about 20
10 minutes and then I saw him back down to his car. 14:12
11 Before he opened the door of the vehicle he paused
12 briefly, turned to me and said, 'Alan, if I were you I
13 would not get too deeply involved in this one.'"
14

15 And although ACC Monahan was deceased by the time of 14:12
16 the de Silva Review and unable to respond to the
17 allegation, Sir Desmond still sought to examine the
18 allegation that Detective Superintendent Simpson had
19 effectively been warned off. In this respect he
20 considered it was difficult to conceive a reason why 14:12
21 Detective Superintendent Alan Simpson would invent and
22 publish such an account. He also pointed to what he
23 referred to as a coincidence in timing, namely, that on
24 the day of his visit at 9:30, Detective Superintendent
25 Simpson had commissioned his team to produce 14:13
26 intelligence briefs on 13 UDA personalities. The names
27 included Kenneth Barrett and several others
28 subsequently linked to the murder. One particular
29 entry, however, stood out and that was the entry of

1 Brian Nelson. This was significant as it was the first
2 and only time that the name of Brian Nelson featured in
3 the CID investigation.

4
5 Detective Superintendent Simpson noted that AC Monaghan 14:13
6 was briefed on the morning of 14th February. There is
7 no record to indicate the detail of the briefing or to
8 indicate whether Brian Nelson was ever specifically
9 mentioned.

10
11 Sir Desmond noted that ACC Monaghan was certainly aware
12 of Nelson's role by September 1989, though he could not
13 be sure that he was aware of Nelson in February of that
14 year.

15
16 As a result, the most Sir Desmond could do was point to
17 the coincidence in timing. No explanation had been or
18 could have been offered to explain the comments to
19 Detective Superintendent Simpson and the exact meaning
20 behind them could only be the subject of speculation. 14:14

21
22 Moving on then to the documentary evidence considered
23 by Sir Desmond in relation to the withholding of
24 intelligence.

25
26 In 1999, the RUC conducted a CID-led C Department
27 review concerning the passage of intelligence in the
28 case of Patrick Finucane which included a summary of
29 various Special Branch SB50 documents produced after

1 the murder. They link specific individuals with the
2 crime. Six of these SB50 documents included
3 observations to the effect that CID had been informed
4 of the intelligence contained on the document.
5 However, Sir Desmond noted that there were issues in 14:15
6 relation to at least four of the six SB50s.

7
8 In respect of one, which related to intelligence from
9 William Stobie, he noted that it was possible that CID
10 team was only informed nine months after the date 14:15
11 actually recorded on the SB50. And in relation to
12 three others, they were produced by an officer who
13 appeared to have failed to record intelligence received
14 in late February 1989, linking Brian Nelson to
15 Patrick Finucane's murder. As a result, Sir Desmond 14:15
16 considered that comments recording that the CID had
17 been informed must be treated with caution.

18
19 Sir Desmond also reviewed the original murder
20 investigation files which he considered to be an 14:15
21 accurate record of the information passed by Special
22 Branch to the CID. The file recorded three messages
23 having been passed by Special Branch to the CID during
24 the investigation and these contained information which
25 was that on 13th February 1989, the UFF had claimed 14:16
26 responsibility for the murder.

27
28 Second, on 17th February 1989, one of Stobie's handlers
29 passed intelligence that L/25, L/33 and L/20 had been

1 seen together on the morning of 13th February.

2
3 And then on 16th November 1989 more than nine months
4 after the murder, a summary of personalities seen by
5 William Stobie on 11th February 1989 was passed to the 14:16
6 CID.

7
8 Sir Desmond considered that it was significant that
9 this was in stark contrast to what he called the
10 reliable and highly significant intelligence regarding 14:17
11 the murder in the possession of Special Branch by the
12 end of February 1989. In summary this included:

13
14 First, intelligence provided by William Stobie both
15 before and after the murder linking a number of key UDA 14:17
16 figures to the attack.

17
18 Second, the names of seven individuals Brian Nelson
19 believed to have been involved.

20
21 Third, reliable intelligence linking L/28, L/20 and
22 Kenneth Barrett to the attack, including an indication
23 that Barrett may have been one of the gunmen. 14:17

24
25 Fourth, further reliable intelligence indicating that 14:17
26 L/28 and L/20 were involved in the murder.

27
28 And fifth, Security Service intelligence indicating
29 that Brian Nelson had undoubtedly carried out

1 reconnaissance in relation to Patrick Finucane's home.

2
3 So given that the most potentially useful lead passed
4 to CID, namely, the naming of L/20, L/33 and L/25, was
5 expressed only in the form of a sighting of the three 14:18
6 men together, it was not difficult to understand why
7 the CID team would have not thought of this as
8 compelling information linking them to the murder.

9
10 This is in stark contrast with the intelligence which 14:18
11 was in Special Branch's possession, namely, that they
12 were aware of the identities of the key UDA figures
13 believed to be responsible for the attacks within four
14 days of Patrick Finucane's murder.

15 14:18
16 This instance of intelligence being withheld from CID
17 was not an isolated incident. Sir Desmond pointed to
18 three further illustrations of the withholding of
19 intelligence by Special Branch which was relevant to
20 this case. 14:18

21
22 First, that it was undoubtedly true that Detective
23 Superintendent Simpson was not informed at any stage of
24 the agent roles played by William Stobie and Brian
25 Nelson. Sir Desmond noted that the effect of this 14:19
26 withholding was to prevent the proper investigation of
27 the role of agents in the murder. In his view, the
28 need to protect sources could not justify the
29 withholding of critical intelligence from the CID and

1 that there were no ongoing Special Branch operations at
2 the time which could justify the withholding of
3 intelligence on the ground that CID action could cause
4 disruption to a wider intelligence-led project.

5
6 This failure was compounded by the fact that there was
7 no evidence to suggest that the intelligence that Brian
8 Nelson had conducted reconnaissance prior to the murder
9 was ever pursued with the FRU or to indicate that
10 Special Branch shared this intelligence with the CID.

11
12 Second, in 1998, RUC Special Branch Detective Constable
13 R/22 admitted for the first time that he had received
14 intelligence from an RUC agent implicating L/03 in
15 Mr. Finucane's murder. A subsequent RUC investigation
16 established that R/22 had probably received this
17 information in 1994, four years earlier, while the
18 agent was staying at his home.

19
20 The agent claimed that he had also told a Special
21 Branch officer in 1989 that L/03 was linked to the
22 murder although there are no records to corroborate his
23 claim.

24
25 Third, as Mr. Hill referred to yesterday, Special
26 Branch failed to pass on either at all or in a timely
27 manner, intelligence from William Stobie on 15th
28 February 1989 that he was asked to collect a 9mm
29 Browning pistol from L/20's house. This was despite

1 the fact that the RUC had received forensic
2 confirmation very shortly after Patrick Finucane's
3 murder that one of the weapons used in the attack was a
4 Browning pistol.

14:21

5
6 Sir Desmond considered that this intelligence was
7 potentially highly significant as it presented the RUC
8 with what should have been a valuable opportunity to
9 recover the murder weapon and to arrest one of the UDA
10 figures who may have been involved in
11 Patrick Finucane's murder.

14:21

12
13 And while such an operation would not have been without
14 difficulties and risks, there was no evidence of the
15 possibility of exploiting this intelligence was even
16 considered by the Special Branch. Sir Desmond
17 concluded that the withholding of this critical
18 intelligence by the Special Branch from the CID was
19 unjustified.

14:21

20
21 So despite the withholding of intelligence by Special
22 Branch from the CID, Sir Desmond considered that it was
23 also clear that CID failed to exploit their own
24 intelligence and it's to that issue which I now turn
25 briefly.

14:21

14:21

26
27 while the quantity of intelligence received by the CID
28 was not of the same quality as that received by Special
29 Branch, the CID team did know on 13th February 1989

1 that the 9mm Browning used in the murder of
2 Patrick Finucane had previously been used in the
3 attempted murder of T/16 on 20th September 1988. That
4 L/33 and L/20 were believed to have been involved in
5 the shooting of T/16. Sir Desmond noted that while
6 Special Branch did not pass on information that L/20
7 was likely storing the murder weapon in his home on
8 15th February, had the CID acted on the potential link
9 between L/20 and Patrick Finucane's murder, they may
10 conceivably have had the opportunity to recover the
11 murder weapon.

14:22

14:22

12
13 In addition, on 17th February, 1989, the CID received
14 the information referred to above that L/20 had been
15 seen with other loyalists on the morning of 13th
16 February 1989. A CID source also provided intelligence
17 on 12th May 1989 that L/20 had been amongst a loyalist
18 group and was seen in a celebratory mood on 12th
19 February 1989. Despite this, L/20 was never arrested
20 by the CID team investigating the murder.

14:23

14:23

21
22 So moving on then to a separate but related issue,
23 namely, the recruitment of Kenneth Barrett.

24
25 The RUC's failure to ensure an adequate investigation
26 was particularly significant when considered in light
27 of the decision by Special Branch to recruit Kenneth
28 Barrett as an agent after he admitted his involvement
29 in the murder when speaking to RUC officers on 3rd

14:23

1 October 1991. A brief summary of the circumstances in
2 which the admission was made is as follows:

3
4 On 1st October 1991, Detective Sergeant Johnston
5 'Jonty' Brown of the RUC CID who, at one stage, was 14:24
6 attached to the murder squad investigating the
7 Patrick Finucane murder, received a telephone call from
8 a man who eventually identified himself as Kenneth
9 Barrett and wished to arrange a meeting. DS Brown
10 recognised Barrett's name as that of a loyalist gunman 14:24
11 whom he had encountered in the past. At 11:43 p.m. DS
12 Brown and Detective Constable Trevor McIlwrath visited
13 Barrett at his home. In a meeting that lasted about an
14 hour Barrett claimed to be the military commander of
15 the UFF in West Belfast, expressed his disillusionment 14:24
16 with the UDA and volunteered to become an informant for
17 financial reward.

18
19 On 3rd October at 9:05 p.m -- I beg your pardon. On
20 10th October at 9:05 p.m. another meeting took place 14:25
21 with Barrett in a Special Branch vehicle in which
22 conversations were covertly recorded. The RUC officers
23 present in the vehicle were DS Brown, DC McIlwrath and
24 DC R/06 of Special Branch. During the course of this
25 meeting, DS Brown asked Barrett directly who murdered 14:25
26 Patrick Finucane. Barrett's reply was "hypothetically,
27 me."

28
29 In addition, during the course of the ensuing

1 conversation, Barrett provided the officers with
2 considerable detail about the circumstances of the
3 murder of Mr. Finucane that was found to closely match
4 aspects of the offence revealed by the police inquiries
5 and the examination of the crime scene.

14:25

6
7 The cumulative effect of the details supplied by
8 Barrett left DS Brown in no doubt whatsoever that he
9 had been party to the murder of Patrick Finucane. And
10 that meeting was actually on 3rd October 1991.

14:26

11
12 It is of note that Barrett's account did not represent
13 an admission made under caution and this is a point
14 acknowledged by DS Brown in his book "Into the Dark."
15 DS Brown said:

14:26

16
17 "The problem we now had was that nothing that Barrett
18 had said to us was admissible evidence against him. It
19 could only be used to corroborate other evidence. It
20 was not admissible against him in a court of law."

14:26

21
22 There is a difference of opinion between Special Branch
23 and the CID over the significance of the admission. DS
24 Brown considered that Kenneth Barrett should have been
25 pursued as a suspect in the murder rather than treated
26 as a potential informant. In his book, he noted:

14:26

27
28 "Barrett was now no longer in my sights as a potential
29 informant. He was now a self-confessed murderer. Our

1 rules governing the handling of informants meant that
2 Barrett's confession ruled him out as far as ever
3 becoming a Police informant or agent. It was one thing
4 to suspect him of murder, it was a totally different
5 matter to have evidence of his involvement in it. I
6 fully intended to convict him of that brutal murder."

14:27

7
8 Similarly, DC McIlwrath made the following comment in
9 his statement to the Stevens 3 investigation:

10
11 "At this time I believed we could have been talking to
12 one of the murderers of Mr. Finucane. I believe that
13 Barrett had the ability to be a coldblooded killer."

14:27

14
15 By contrast, the documentary record suggested that
16 Special Branch took a very different view. A Special
17 Branch report sent by R/06, one of the officers to whom
18 Kenneth Barrett made his admission, clearly showed that
19 Special Branch wanted to recruit Barrett as an agent.
20 In respect of the admission, R/06 noted:

14:27

21
22 "At no time did the source admit to any involvement in
23 murders by the UDA or any other incidents. When
24 talking about such incidents the word the source used
25 when placing himself in a scenario was 'hypothetically
26 talking'."

14:28

27
28 Significantly, DS Brown explained that R/06 told him on
29 3rd October that Special Branch already knew that

1 Barrett murdered Patrick Finucane but that he should
2 not pursue this lead.

3
4 Sir Desmond noted that it was true that Special Branch
5 had known for several years that Barrett was linked to 14:28
6 this murder.

7
8 At a further meeting between Barrett, DS Brown,
9 DC McIlwrath and R/06 on 10th October 1991, DS Brown
10 recalled that he was repeatedly instructed by R/06 not 14:28
11 to bring up the subject of the murder of
12 Patrick Finucane. The subject arose only once when he
13 asked Barrett whether L/05 had been involved. Could we
14 have document 1 back up on screen, please, at page 451?
15 Thank you very much. This is the transcript of the 14:29
16 recorded conversation. McIlwrath says:

17
18 "I was surprised to hear that he [L/05] Wasn't involved
19 in Finucane because I thought he was one of the trigger
20 men." 14:29

21
22 Barrett responds:

23
24 "No:

25
26 DS Brown says:

27
28 "Has he got no balls or what?"
29

1 Barrett responds:
2
3 "I think he's got balls for talking about it, you
4 know."
5 14:29
6 DS Brown says:
7
8 "Aye."
9
10 Barrett says: 14:29
11
12 "But that's as far as it goes. He's not a trigger
13 man."
14
15 R/06 then interjects and says: 14:29
16
17 "See those..., see those two IDs on the police you gave
18 us last week?"
19
20 And Barrett says: "Mhmm." 14:30
21
22 R/06 goes on to say:
23
24 "Those two policemen, can you update us on that any
25 further?" 14:30
26
27 Thank you. Sir Desmond noted that R/06's apparent
28 interjection after the murder of Patrick Finucane could
29 lend credence to DS Brown's suggestion that Special

1 Branch did not want the subject to be raised.

2
3 DS Brown's subsequent account of his dealings with
4 Special Branch included allegations of personal threats
5 being made against him and claims that Special Branch 14:30
6 used Barrett as a way of removing him from his
7 position.

8
9 R/06's contemporaneous notes in turn accuse DS Brown of
10 having inappropriate dealings with Barrett though these 14:30
11 allegations could not be substantiated, Sir Desmond
12 considered.

13
14 As DS Brown declined to pursue those allegations when
15 considered by the Stevens 3 team, Sir Desmond 14:31
16 considered that it was difficult to resolve these
17 conflicting statements between DS Brown and R/06.

18
19 Despite this, DS Brown did continue to pursue the
20 investigation of the murder of Patrick Finucane to the 14:31
21 dismay of the Special Branch. This was confirmed by
22 Special Branch records.

23
24 In a report from R/06 to a Detective Inspector in the
25 Special Branch dated March 1992, R/06 outlined concerns 14:31
26 that DS Brown continued to press Barrett and other UDA
27 members for information and confirmed that Special
28 Branch wanted to sideline DS Brown and take over the
29 sole handling of Barrett as an agent. The Special

1 Branch note concluded with a comment that:

2
3 "Source instructed not to terminate relationship with
4 D/Sergeant Brown at present but to keep him on the long
5 finger."
6

14:32

7 In his book, DS Brown reflected on how the tension in
8 the relationship between Special Branch and CID as a
9 consequence of the Walker Reforms and the primacy of
10 intelligence and Special Branch. This was referred to
11 briefly by Mr. Hill yesterday. In particular, DS Brown
12 described an interaction with Barrett on 2nd November
13 1991 and provided these thoughts. I quote:

14:32

14
15 "Sam, [which was a pseudonym used by DS Brown for a
16 Special Branch officer], says I am not to speak to you
17 two. He hates you Jonty, he says you're going to put
18 me in jail for the Finucane murder. I wasted no time."
19

14:32

20 This is DS Brown speaking:

14:32

21
22 "Two could play at that game. I was determined if
23 there was going to be a fight for credibility then the
24 CID were going to come out on top. The problem was I
25 could not exclude Sam in the same manner that he could
26 exclude me. The Walker guidelines were clear and
27 non-negotiable but yet so often in the past when the
28 Walker recommendations came down on our side the
29 Special Branch agenda had still taken precedence over

14:32

1 important CID operations. On those rare occasions, the
2 Special Branch had successfully argued that the
3 directives of the Walker report were intended to be
4 mere guidelines. My CID authorities would not have
5 dared argue with that."

14:33

6
7 Similarly, the clear view of DCC Stalker was that
8 Special Branch had too much power over CID when it came
9 to deciding the investigative order of affairs for a
10 police inquiry into a serious terrorist incident. In
11 the Operation Kenova Interim Report it was noted that
12 at the time this was considered to be the best
13 operating model and it was easy to criticise in
14 hindsight. However, adopting an approach that gave
15 intelligence primacy to its recipients and those
16 handling agents without any inspection, oversight or
17 mechanisms, was, in Jon Boutcher's view, a serious
18 failing.

14:33

14:34

19
20 In his conclusion, Sir Desmond found that Special
21 Branch took a conscious decision at Special Branch
22 Superintendent level to recruit Barrett as an agent
23 rather than to bring him to justice for his role in
24 Patrick Finucane's murder. And it was possible that
25 knowledge of Barrett's admission and recruitment
26 extended further up the RUC hierarchy. He also found
27 that DS Brown could not fairly be blamed for not having
28 pursued the investigation of Barrett. Indeed, to
29 Special Branch's displeasure DS Brown did continue to

14:34

14:34

1 pursue the potential case against Barrett and others
2 for at least several months following the October 1991
3 admission.

4
5 A final issue that I will consider briefly in this 14:35
6 section relates to Barrett's recruitment and was the
7 disappearance of a recording made of a meeting on 3rd
8 October 1991 which was the one in which Barrett had
9 made the admission.

10 14:35
11 Evidence from both DS Brown and R/06 confirmed that a
12 tape recording had been made of the meeting on 3rd
13 October. However, when two tape recordings, supposedly
14 of the meeting on 3rd October and the meeting on 10th
15 October, were provided to the Stevens team, the second 14:35
16 was a copy of the first. They were both recordings of
17 the 10th October meeting.

18
19 The DS who provided the copies to the Stevens team said
20 they were both handed to him by R/06. The Stevens team 14:35
21 subsequently commissioned the Metropolitan Police to
22 analyse whether the 10th October conversation had been
23 taped over that on 3rd October. The analysis confirmed
24 that it had not been tampered with and must, therefore,
25 have been a separate tape recording to that recorded on 14:36
26 3rd October.

27
28 DS Brown considered that the 10th October meeting was
29 staged as part of the conspiracy to remove any trace of

1 Barrett's earlier admission and he pointed to Barrett's
2 apparent frustration at having been asked the same
3 questions twice during the meeting. However, having
4 considered a transcript of the 10th October meeting,
5 Sir Desmond was unpersuaded by this suggestion. He
6 observed that it was actually R/06, not Barrett, who
7 flagged the same ground had been covered before and
8 that DS Brown did not appear to have taken a backseat
9 with regard to the questioning of Barrett.

14:36

10
11 Despite dismissing that specific theory, Sir Desmond
12 found force in DS Brown's general allegation that the
13 disappearance of the tape resulted from an active
14 decision by Special Branch officers to get rid of the
15 recording of the admission on 3rd October. Sir Desmond
16 was satisfied that this was a deliberate act designed
17 to thwart the RUC CID in its investigation. And that
18 was on the basis that it must have been apparent to
19 Special Branch officers that the recording was highly
20 significant as it included a prima facie admission to
21 the very high profile murder and what would have
22 recorded Barrett's significant comments that an RUC
23 source had provided the UDA with intelligence on
24 Patrick Finucane.

14:36

14:37

14:37

25
26 Its content was much more significant than the
27 recording on 10th October which was maintained and
28 provided to the Stevens 3 investigation.
29

14:37

1 Thank you, Sir, that concludes this section and I'll
2 now hand back over to Mr. Mills.

3 CHAIR: Yes, thank you, Ms. Millar.
4

5 ADDRESS BY MR. MILLS:

14:38

6
7 MR. MILLS: Sir, we now turn to the obstruction of the
8 Stevens 1 investigation.
9

10 Sir Desmond de Silva was in no doubt that the Stevens 1
11 investigation was seriously obstructed by the failure
12 of both the RUC Special Branch and the Force Research
13 Unit to provide highly relevant material. He
14 identified six critical aspects of the obstruction:
15

14:38

16 First, the instructions allegedly given by the Chief
17 Constable of the RUC in relation to the provision of
18 intelligence information. It is accepted by all
19 involved that the Chief Constable, Sir Hugh Annesley,
20 had directed that the Deputy Head of Special Branch,
21 ACC Fitzsimons, would act as the point of reference for
22 all intelligence matters arising during the Stevens 1
23 investigation. However, the General Officer Commanding
24 Northern Ireland, General Sir John Waters, said in
25 briefings in 1989 and 1990 to the Chief of the General
26 Staff and the Secretary of State for Defence that the
27 Chief Constable had given instructions that the Stevens
28 1 investigation team was to have no access to
29 intelligence material or the units involved in

14:38

14:39

14:39

1 gathering it without prior clearance from the RUC
2 Special Branch. General Waters maintained this
3 position in his written submissions to the de Silva
4 Review. That said, in his own submissions to the de
5 Silva Review, Sir Hugh Annesley emphatically denied
6 that he ever instructed the Army to deny the Stevens
7 investigation access to intelligence material.

14:40

8
9 Sir Desmond found that he was unable to completely
10 resolve this conflict because the veracity of the
11 contested instruction hinged on what had been said
12 during an unminuted conversation on 26th September
13 1989.

14:40

14
15 Notwithstanding this, Sir Desmond reached the view that
16 he was unable to rely on General Water's claim that the
17 Chief Constable had issued the instruction. In
18 reaching this view, Sir Desmond gave two reasons;
19 first, having appointed Lord Stevens and promised him
20 full cooperation in public and in private, it would
21 have been:

14:40

14:40

22
23 "Extraordinarily reckless for the Chief Constable to
24 have instructed that the Stevens investigation team
25 would have no access to intelligence information."

14:40

26
27 Second, Sir Desmond considered it instructive that when
28 General Watters wrote to the Chief Constable on 25th
29 May 1990, that being almost eight months after their

1 unminuted conversation, he wrote that the instruction
2 had been made not by the Chief Constable Sir Hugh, but
3 by the Deputy Head of Special Branch.
4

5 The second aspect of the obstruction concerns the 14:41
6 briefings provided by the Army and the RUC Special
7 Branch to the Stevens 1 investigation team.
8

9 On 24th September 1989, members of the Stevens 1
10 investigation team attended a briefing by the Army at 14:41
11 Army Headquarters in Lisburn. During that briefing one
12 of the investigating officers asked whether the Army
13 ran agents in Northern Ireland. In response, the Chief
14 of the Army's G2 Intelligence Section explained that
15 the role of the Army in Northern Ireland was: 14:42
16

17 "Primarily to assist and support" the RUC and, as such,
18 the Army "did not use informants."
19

20 Sir Desmond considered this briefing to be, his word, 14:42
21 "extraordinary." Although he accepted that the Chief
22 of the G2 Intelligence Section was acting under the
23 instructions of senior officers when making this
24 statement, he did not accept that those senior officers
25 could justify their position that they were acting 14:42
26 under instructions based on the advice of the RUC
27 Special Branch.
28

29 Further, Sir Desmond found that the Army's claim that

1 the RUC Special Branch told them not to reference the
2 Army's covert intelligence matters in the briefing was
3 unsubstantiated. This deception, in Sir Desmond's
4 view, amounted to the conscious obstruction of a
5 criminal investigation.

14:43

6
7 Three days later, on 27th September, a briefing paper
8 was provided by the RUC Special Branch to the Stevens 1
9 investigation team. The briefing was titled:

10
11 "Involvement of Ulster Defence Regiment personnel in
12 subversive/terrorist organisations."

14:43

13
14 It set out the RUC Special Branch's analysis of the
15 extent to which UDR personnel had been involved with
16 loyalist paramilitary organisations. However, no
17 briefing was provided to the Stevens 1 investigation
18 team regarding the involvement of RUC personnel with
19 loyalist paramilitary organisations. This caused
20 Sir Desmond to express "grave reservations" about the
21 briefing provided by the RUC Special Branch to the
22 Stevens investigation.

14:43

14:43

23
24 The third aspect, Sir, the FRU's seizure and
25 withholding of Brian Nelson's intelligence dump.

14:44

26
27 On 22nd September 1989, two days before the Army
28 provided its briefing to the Stevens 1 investigation,
29 A/05, the commanding officer of the FRU from December

1 1986 to March 1990, ordered the FRU to seize Brian
2 Nelson's intelligence dump. That intelligence dump
3 contained what Sir Desmond de Silva would describe as
4 "vital evidence" to the Stevens investigation. An
5 index produced on the day it was seized recorded that 14:44
6 it included maps and street plans, photographs of
7 people, vehicles associated with people, names,
8 addresses and dates of birth, personality cards which
9 contained details of persons of potential interest to
10 loyalist terrorists and photographs of Sinn Féin 14:45
11 members.

12
13 A Contact Form produced on that day recorded that the
14 rationale for this action was to enhance Nelson's
15 personal security. On the same day, the RUC Source 14:45
16 Unit's Daily Intelligence Book recorded:

17
18 "All material has been removed from the UDA
19 intelligence cell and is now in possession of FRU for
20 research." 14:45

21
22 On the basis of this entry, Sir Desmond was in no doubt
23 that the RUC Source Unit was aware that FRU was in
24 possession of Nelson's intelligence dump. However, Sir
25 Desmond found that there was no documentary evidence 14:46
26 that this information was passed by the RUC's Source
27 Unit to the Deputy Head of Special Branch. A/05, for
28 his part, claimed that he had personally informed ACC
29 Fitzsimons that FRU was in possession of the

1 intelligence dump on 22nd September but this was denied
2 by ACC Fitzsimons.

3
4 On 12th January 1990, Brian Nelson was arrested by the
5 Stevens Investigation Team. The investigation team was 14:46
6 provided with the intelligence dump four days later on
7 16th January, almost four months after it had been
8 seized by FRU. Lord Stevens would describe the number
9 of documents contained within it as colossal.

10 14:46
11 During that four month period, Thomas Lyttle had
12 instructed Nelson to share with BBC journalist
13 John Ware, his intelligence dump in order to evidence
14 the scale of the Security Forces leaks to the UDA.
15 According to Mr. Ware this led to Nelson routinely 14:47
16 requesting that FRU return his intelligence dump to him
17 so that he could satisfy Lyttle's instruction.

18
19 The fourth aspect of the obstruction, the withholding
20 of the file of military intelligence source reports, or 14:47
21 MISRs, relevant to the Stevens investigation.

22
23 On or around 29th September 1989, at the request of ACC
24 Fitzsimons, A/05 provided a file to him which contained
25 a file of 42 MISRs outlining Nelson's reporting of a 14:47
26 series of RUC and UDR leaks during the period 1987 to
27 '89. This file was not provided to the Stevens
28 Investigation Team until 17th October 1990 over a year
29 after it was created.

1
2 In his statement to the Stevens investigation, ACC
3 Fitzsimons explained that when he received the file he
4 perceived the sensitivity of the documents and had:

5
6 "...major grounds for concern should any use be made of
7 these in terms of source protection."
8

9 The fifth aspect; the withholding by the RUC Special
10 Branch of the compendium of Security Force leaks.
11

12 On 11th October 1989 the Security Service's head of
13 assessment group provided ACC Fitzsimons with a file it
14 had compiled on Security Force leaks to paramilitaries.
15 The following day, the Security service legal adviser
16 gave clearance for the file to be provided to the
17 Stevens investigation. However, the RUC Special Branch
18 never shared the file with, or provided a brief about
19 its content to any of the Stevens Investigations.
20

21 The sixth aspect; the tip-offs to UDA members of
22 pending arrests.
23

24 The Stevens Investigation Team planned to conduct a
25 series of arrests of loyalist paramilitary figures,
26 including Brian Nelson and Thomas Lyttle on 8th January
27 1990. On 6th January, this information was leaked to
28 the UDA. John Ware has written that the source of this
29 leak came from the RUC Special Branch.

1
2 Sir Desmond addressed the allegation that Nelson was
3 subsequently told by his FRU handlers to leave Northern
4 Ireland. He found that the documentary evidence was
5 unclear. Indeed, he cited an occasion when a Contact 14:49
6 Form recorded his handlers telling him not to leave.
7

8 Lord Stevens told the de Silva Review that he received
9 information about Nelson's tip-off from John Ware. In
10 his memoir, "Neither Confirm Nor Deny," Lord Stevens 14:50
11 wrote that he saw Mr. Ware and his producer on an
12 evening flight to Belfast on 7th January. He claims
13 they said they had, "come for the arrests." Because of
14 their presence, Lord Stevens wrote the arrests were
15 postponed. For his part, Mr. Ware disputes this. His 14:50
16 recollection is that he and his producer deliberately
17 avoided the Stevens Investigation Team because they did
18 not want to reveal their plans to film the arrests.
19

20 Finally, Sir, there is the matter of the fire at the 14:51
21 premises of the Stevens Investigation.
22

23 On 10th January 1990, the night before the rescheduled
24 date of the arrest operation, a fire broke out in
25 Seapark, the secure compound where the Stevens 14:51
26 Investigation was based. The overview and
27 recommendations report published in 2003 by the Stevens
28 Investigation addressed this incident in the
29 following way:

1
2 "The night before the new operation, my incident room
3 was destroyed by fire. This incident, in my opinion,
4 has never been adequately investigated and I believe it
5 was a deliberate act of arson."

14:51

6
7 Sir Desmond's view was that:

8
9 "Given the timing of the fire, I have no reason to
10 doubt Sir John Stevens's conclusion in this regard
11 though I note that the original CID investigation into
12 the incident concluded that the fire was not caused by
13 an act of arson."

14:52

14
15 The RUC CID investigation was carried out by Detective
16 Superintendent Alan Simpson as you have heard, one of
17 the detectives who investigated Patrick Finucane's
18 murder. His report which was submitted within nine
19 days found that:

14:52

20
21 "In all probability, the fire had been caused
22 accidentally, perhaps even by the careless disposal of
23 a lighted cigarette end."

14:52

24
25 In his book, "Duplicity and Deception: Policing the
26 Twilight Zone of the Troubles," Alan Simpson gives a
27 detailed account of the work of his investigation. His
28 team, which included two forensic scientists
29 specialising in investigating fires and a third

14:52

1 scientist who was the head of the RUC's Fire Department
2 found no evidence of an incendiary device, or of a fire
3 accelerant at the Seapark office.
4

5 The conclusion reached by Alan Simpson and his team was 14:53
6 disputed by Lord Stevens, who, in his memoire described
7 Mr. Simpson's investigation as having been:

8
9 "Perfunctory and disproven by the Stevens Investigation
10 Team's own enquiries". 14:53
11

12 This is a characterisation which Mr. Simpson rejects.
13

14 Lord Stevens recalled that on the night of the fire he
15 sent for the head of the RUC Special Branch and ACC 14:53
16 Monaghan. Just before midnight, the two men arrived at
17 the scene. In his memoire Lord Stevens writes:

18
19 "Both men came round and both said we think we know who
20 did this. That was the first time I heard of a unit 14:54
21 called the FRU and the first time I heard the name of a
22 certain Colonel. It was whispered in my ear, I will
23 not say by whom, that he and the Force Research Unit
24 were directly responsible for the fire."
25

26 In his submission to the de Silva Review, A/05
27 described this allegation as:
28

29 "A quite astonishing accusation made without evidence

1 and done deliberately to create suspicion against us."

2
3 For his part, Alan Simpson expresses doubt in strong
4 terms about the truth of the allegation made by Lord
5 Stevens.

14:54

6
7 ultimately, Sir Desmond concluded that there exists no
8 evidence whatsoever to connect the FRU or indeed any
9 individual or organisation to the fire. It remains
10 unexplained.

14:55

11
12 Next, Sir, the decision to prosecute Brian Nelson:

13
14 In July 1990, the Stevens Investigation Team submitted
15 its case against Brian Nelson to the Director of Public
16 Prosecutions Northern Ireland. The decision to
17 prosecute Nelson was ultimately one for the DPP,
18 subject only to the power of direction held by the
19 Attorney General, Sir Patrick Mayhew QC, MP.

14:55

20
21 Under what is known as the Shawcross Convention, the
22 Attorney, in deciding whether to authorise a
23 prosecution, has a duty to acquaint himself with all
24 the relevant facts in order to determine whether
25 prosecution is in the public interest. The process for
26 so doing may include consulting with Government
27 colleagues, but there is no obligation to do so.
28 whatever is said by those colleagues, the
29 responsibility for the decision ultimately rests with

14:55

14:55

1 the Attorney and he is not to be put under pressure
2 during the consultation process.

3
4 On 21st September 1990, the Attorney wrote to the
5 Secretary of State for Defence, Tom King MP, to inform 14:56
6 him that the DPP was considering the evidence against
7 Nelson. The Secretary of State for Defence received
8 written advice from his officials on 26th September
9 which set out:

10
11 "The complicated public interest issues" associated
12 with "...disclosures that might arise if Nelson were to
13 appear as a witness or be prosecuted."

14
15 The following day, a meeting took place between the 14:56
16 Home Secretary, David Waddington MP, the Attorney, the
17 Secretary of State for defence and other relevant
18 ministers. The note of the meeting recorded the
19 Secretary of State for Defence's view that Brian
20 Nelson:

21
22 "Should not go near the courts."

23
24 But that:

25
26 "If Nelson had gone beyond the limit he could not be
27 protected from penalties."

28
29 The Secretary of State for Defence followed this

1 meeting with a letter to the Attorney on 3rd October.
2 It was copied to the Prime Minister, John Major MP, the
3 Home Secretary, the Secretary of State for Northern
4 Ireland Peter Brooke MP, the Director General of the
5 Security Service, Sir Patrick Walker and the Cabinet
6 Secretary, Sir Robin Butler. In the letter, the
7 Secretary of State for Defence said he remained:

14:57

8
9 "Extremely concerned about the prospect of Nelson's
10 prosecution."

14:57

11
12 He went on to express his belief that:

13
14 "It would be extremely serious if Nelson were to
15 disclose in public what he knows about the handling of
16 agents in Northern Ireland."

14:57

17
18 Before concluding:

19
20 "There is likely to be a compelling case in the public
21 interest for preventing his prosecution if doing so is
22 the only way to avoid public disclosure."

14:58

23
24 In the letter, the Secretary of State for Defence
25 responded to the Attorney General's prior request for
26 the Ministry of Defence's assessment of Nelson as an
27 agent. He described him as:

14:58

28
29 "The best source any agency had in the loyalist

1 paramilitary groups."

2
3 And annexed to the letter set out:

4
5 "Some significant items provided by Nelson."

14:58

6
7 This had been provided to the Secretary of State for
8 Defence by FRU. Sir Desmond de Silva did not publish
9 this annex but he described its contents as presenting:

10
11 "A highly misleading and factually inaccurate outline
12 of Nelson's supposed role in saving the lives of those
13 he targeted for murder."

14:58

14
15 On 12th October 1990, the Secretary of State for
16 Northern Ireland wrote to the Attorney General setting
17 out his view that:

14:59

18
19 "The consequences for our intelligence operations of a
20 decision to prosecute will be grave."

14:59

21
22 On 22nd February 1991, the DPP reached his preliminary
23 conclusions on the evidential test with respect to
24 Brian Nelson. He considered there was sufficient
25 evidence to prosecute Nelson for the murders of Terence
26 McDaid and Gerard Slane. He also concluded that there
27 was sufficient evidence to prosecute Nelson in relation
28 to the murder of Patrick Finucane by charging him with
29 the offence of aiding and abetting the possession of a

14:59

1 document likely to be of use to terrorists. The
2 document in question was the photograph taken of
3 Patrick Finucane and Patrick McGeown which Nelson gave
4 to Ken Barrett five days before the murder.

15:00

5
6 On 11th March 1991, the Attorney wrote to the Secretary
7 of State for Defence to inform him of the DPP's
8 decision. The Attorney set out that the DPP had
9 proceeded on the basis that Nelson's anticipated
10 defence, namely, that his purpose was to frustrate the 15:00
11 commission of the offences in question, would be
12 available to him in law. For his part, the Attorney
13 emphasised that the extent of the defences available to
14 informants in these circumstances remained uncertain.
15 Nevertheless, the Attorney said that Nelson's 15:00
16 representatives could be expected to seek disclosure of
17 sensitive material which may be relevant to his
18 defence.

19
20 Although the Attorney noted that the DPP did not 15:01
21 consider that there was sufficient evidence to
22 prosecute any member of the Security Forces in
23 connection with Nelson's activities, he expressed that
24 he was:

15:01

25
26 "Much troubled by the relationship between the Army and
27 Nelson."

28
29 The first response to the Attorney General's letter

1 came from the Cabinet Secretary who sent a minute to
2 the Prime Minister on 15th March 1991. Please can we
3 have on screen, document 1, page 760? At the bottom of
4 paragraph 2 we find an explanation of the purpose of
5 the Cabinet Secretary's minute,

15:01

6
7 "To provide the Prime Minister with:

8
9 "...an assessment of the damage to our intelligence
10 interests which would accrue from proceeding against
11 Nelson on murder charges."

15:02

12
13 At paragraph 3 we find this:

14
15 "It seems inevitable, as the Attorney General's minute
16 concedes, that the personnel, records and activities of
17 the Army Intelligence Unit which ran Nelson would be
18 exposed in court. There can be no guarantee that these
19 proceedings would be held in camera. This unit, though
20 it can be criticised for the way this case was run, has
21 conducted and is conducting other highly successful
22 agent operations which have saved lives. Moreover, the
23 unit, which has a new commanding officer, has a
24 particularly important role to play at the present time
25 in seeking intelligence on the border, where its
26 resources can be deployed with armed support in a way
27 that the RUC cannot. As you are aware, the [General
28 Officer Commanding Northern Ireland] is particularly
29 concerned about the dearth of intelligence in this area

15:02

15:02

15:03

1 and the risk that this presents to British troops. The
2 intelligence coordinator, recognising its potential,
3 has in fact recommended reinforcement of the unit.
4 Given the nature of the charges and the implication
5 that would be drawn from the Army's involvement with 15:03
6 Nelson, it seems virtually certain that the unit
7 concerned (the only one of its kind) would suffer a
8 severe setback and might even have to be disbanded."
9

10 Moving down to paragraph 5 we find this: 15:03
11

12 "On top of all this, there must be doubt as to whether
13 the evidence stemming from the Stevens Inquiry, on
14 which the prosecution would be based, would be
15 admissible and, therefore, some doubt as to whether the 15:04
16 case would succeed, given the very murky nature of the
17 world in which Nelson operated and the role that he
18 played. These, however, are basically issues for the
19 legal authorities."
20

21 Over the page at paragraph 6 the Cabinet Secretary 15:04
22 finished with this:
23

24 "This is a very difficult case because the
25 considerations are by no means all one way. The 15:04
26 potential charges against Nelson are as serious as they
27 could be, and there are grave political risks in not
28 prosecuting him, perhaps particularly so in the
29 atmosphere created by the Birmingham Six case [...].

1 the best way of persuading the Attorney not to
2 authorise prosecution, if that is what you and your
3 colleagues decide to try to do, may be to lead him to
4 the conclusion that, while the damage a prosecution
5 would do to the intelligence effort is certain, the 15:05
6 prospects of a successful prosecution are much less
7 so."

8
9 In Sir Desmond de Silva's view, the overall tenor of
10 this minute suggests that the Cabinet Secretary did not 15:05
11 think Nelson should be prosecuted.

12
13 On 18th March, the Secretary of State for Northern
14 Ireland responded to the Attorney General. He
15 concluded: 15:05

16
17 "The balance of the public interest in terms of my
18 responsibilities is against prosecution."

19
20 He reached that view on the basis that: 15:05

21
22 "The difference in terms of public confidence between
23 prosecution, successful or otherwise, and a decision
24 not to prosecute seems to me uncertain. The damage to
25 the intelligence effort against terrorism of a decision 15:06
26 to prosecute, however it turns out, would be both
27 certain and very heavy indeed."

28
29 Sir, I wonder whether that might be a moment for our

1 afternoon break.

2 CHAIR: Certainly, yes. We'll break now until twenty
3 past three. Thank you all.

4
5 THE INQUIRY ADJOURNED BRIEFLY AND CONTINUED AS FOLLOWS:

15:06

6
7 CHAIR: Thank you, everyone. Mr. Mills.

8 MR. MILLS: Sir, on 19th March 1991, the Secretary of
9 State for Defence responded to the Attorney General
10 setting out his strong belief that it would not be in
11 the public interest to prosecute Nelson for any of the
12 charges.

15:23

13
14 The Secretary of State for Defence expressed the view
15 that there was no reason to believe that Nelson:

15:23

16
17 "Will not use all he knows to defend himself",

18
19 And that:

20
21 "His information would, if it came into the public
22 domain, severely damage the effectiveness of our
23 intelligence organisation in the fight against
24 terrorism in Northern Ireland."

15:23

25
26 The letter went on to refer to the Attorney's inability
27 to predict how a court would treat the nature of
28 Nelson's role as an agent before observing this:

15:23

1 "A verdict of not guilty would not justify having put
2 the entire intelligence system in Northern Ireland
3 under a microscope in public."
4

5 The letter stressed the action taken by the Security 15:24
6 Forces as a result of Nelson's intelligence, it said as
7 follows:
8

9 "The Defence will well be able to justify the claim
10 that Nelson saved life. During his time as a UDA 15:24
11 intelligence officer, he provided his handlers with
12 more than 700 threat warnings against a total of some
13 217 individuals. All these warnings were passed to the
14 RUC Special Branch Resource Unit to prevent any harm
15 coming to the intended victims." 15:24
16

17 Sir Desmond de Silva concluded that this letter
18 represented yet another occasion when the Attorney was
19 being presented with inaccurate information about
20 Nelson's activities as an agent. 15:24
21

22 Also, on 19th March, the Prime Minister's Private
23 Secretary, Sir Charles Pole provided a briefing to the
24 Prime Minister. Please can we go to document 1,
25 page 765. We find at the bottom of the first page, 15:25
26 this, Sir:
27

28 "The DPP[NI] has reached the preliminary conclusion
29 that there are sufficient grounds to warrant

1 prosecution on two murder charges and four charges of
2 conspiracy to commit murder. Against this; it is far
3 from certain a prosecution would succeed; it would
4 certainly lead to disclosure of sensitive material;
5 It would also result in the public exposure of the 15:25
6 procedures, techniques and personnel of the Army agent
7 running unit in Northern Ireland, which plays a crucial
8 role in the fight against terrorism."

9
10 "Nelson himself would argue, and his Army handlers 15:26
11 support this, that he has saved a large number of lives
12 by his activities (he is said to have provided over 700
13 threat warnings against 217 individuals)."

14
15 The minute continues: 15:26

16
17 "The dilemma faced can be summed up thus; There will be
18 grave damage to public confidence in the administration
19 of justice in Northern Ireland if it becomes clear that
20 a charge of murder has been withdrawn on public 15:26
21 interest grounds. Equally, grave damage will be done
22 to the capability of the Security Forces and to our
23 intelligence-gathering activity if the prosecution is
24 mounted."

25 15:26
26 "Several of your colleagues have put their views in
27 writing. The Defence Secretary argues strongly, indeed
28 ferociously, that the prosecution would be against the
29 public interest. He believes that real and serious

1 damage would be done to the fight against terrorism.
2 The Northern Ireland Secretary also opines that the
3 public interest in defeating terrorism and in the
4 preservation of life from terrorist action has to be of
5 the first importance. He points out that the 15:27
6 difference in terms of public confidence between
7 prosecution and a decision not to prosecute is
8 uncertain, while the damage to the intelligence effort
9 against terrorism of a decision to prosecute is certain
10 and very heavy indeed. The Cabinet Secretary reports 15:27
11 the view of the Security Service that the damage to
12 intelligence work from a decision to prosecute would be
13 very grave indeed."

14
15 "You will reach your own judgement. I would only add 15:27
16 that this is a very murky world we are dealing with.
17 People are operating at great and constant risk to
18 their lives. You have to use the material to hand.
19 The old adage that it takes a thief to catch a thief."

20 15:28
21 "You need to exercise care in summing up the meeting.
22 The Attorney listens to the arguments and reaches his
23 own view. He cannot be directed. But I doubt you will
24 have great difficulty in summarising the views of your
25 colleagues, perhaps emphasising the point that the 15:28
26 prospects for a successful prosecution look uncertain
27 while the damage to the intelligence effort looks very
28 certain indeed."

1 On 24th April, the Attorney General met with the Chief
2 Constable of the RUC, Sir Hugh Annesley. Prior to this
3 meeting, the Chief Constable had received a letter from
4 Lord Stevens which set out that action was taken by the
5 RUC Special Branch upon receipt of information provided 15:28
6 by Nelson:

7
8 "In only two cases to protect the potential victims of
9 Protestant loyalist assassination."

10
11 The Stevens Investigation Team had made the Attorney
12 aware of this figure, who had, in turn, notified the
13 Secretary of State for Defence of its contrast with the
14 information in his letter to the Attorney General.

15
16 Notwithstanding the Chief Constable's assessment that
17 the Stevens Investigation Team's figure was the correct
18 one, the Chief Constable argued against the prosecution
19 of Nelson at his meeting with the Attorney. Also, on
20 24th April, the Attorney had a meeting with the 15:29
21 Director General of the Security Service at which the
22 Director General expressed his view that prosecution
23 would damage the morale of agents.

24
25 The following day, the Attorney wrote to the Secretary 15:29
26 of State for Defence copying the Prime Minister, the
27 Home Secretary, now Kenneth Baker MP, the Foreign
28 Security, Douglas Hurd MP, the Secretary of State for
29 Northern Ireland and the Cabinet Secretary. In that

1 letter the Attorney set out his view that the public
2 interest required prosecution. In offering his
3 reasons, he cited his discussions with Lord Stevens,
4 I quote:

5
6 "As Mr. Stevens has said to me the case goes to the
7 core of what he was asked to investigate. It reveals
8 that Nelson, an Army agent, deliberately distributed
9 documents identifying PIRA suspects, not just to the
10 UDA but to other loyalist paramilitary organisations in 15:30
11 circumstances in which he could not possibly monitor,
12 let alone exercise any control over, the use to which
13 they might be put. It reveals also that Nelson
14 furthered to the point of fruition the murderous
15 criminality which the Army are in the province to 15:31
16 forestall."

17
18 The Secretary of State for Defence responded on 29th
19 April setting out that his view remained against
20 prosecution. On 1st May the Foreign Secretary 15:31
21 responded expressing that he was in favour of
22 prosecution.

23
24 On the evening of 1st May, the Prime Minister chaired a
25 meeting to discuss the public interest arguments that 15:31
26 applied to the Nelson prosecution. In attendance were
27 the Home Secretary, the Secretary of State for Defence,
28 the Secretary of State for Northern Ireland, the
29 Attorney General, the Solicitor General, the Cabinet

1 Secretary, and the chair of the Joint Intelligence
2 Committee, Sir Percy Cradock. In advance of that
3 meeting the Cabinet Secretary had written a second
4 minute to the Prime Minister providing an analysis of
5 the Attorney's letter of 25th April. In that minute,
6 the Cabinet Secretary wrote this:

15:32

7
8 "The real argument against prosecution is that it will
9 do far greater and more lasting harm to intelligence
10 operations in Northern Ireland on which the struggle
11 against terrorism so crucially depends, than the good
12 that could possibly be done by prosecution."

15:32

13
14 He went on to say this:

15
16 "You and your colleagues could only let the Attorney
17 know that you strike the balance of public interest
18 differently from him while accepting that the decision
19 is one which he must ultimately take."

15:32

20
21 Please can we go to document 1, page 804? This is the
22 note of the meeting chaired by the Prime Minister on
23 1st May. Picking up halfway down the page, Sir, we
24 find this:

15:32

25
26 "The Secretary of State for Northern Ireland said the
27 merits and demerits of Nelson as an agent were not the
28 real issues. These were the threats to the gathering
29 of intelligence and the threats to witnesses from the

15:33

1 process of law which would result from a prosecution."

2
3 "Intelligence was provided by a number of agencies that
4 was heavily dependent on human sources. He was
5 particularly concerned that such sources would be 15:33
6 directly threatened as a result of a prosecution."
7

8 we find a list:

9
10 "I. In the course of his evidence, Nelson might reveal 15:33
11 identities.
12

13 Iii. Agent running techniques could be exposed.
14

15 Iv methods of surveillance, interception and 15:33
16 eavesdropping could be inadvertently revealed in reply
17 by witnesses.
18

19 V. The working methods of the RUC and Security Service
20 could be revealed as their methods were similar to 15:33
21 those used by the Army whose work was principally under
22 scrutiny.
23

24 Vi. Although Nelson was a loyalist, information of
25 interest to PIRA could be revealed as similar methods 15:34
26 were used against both groups of terrorists.
27

28 Vii. The loyalists would gain an appreciation of just
29 how much the Security Services knew about their

activities."

On the next page, halfway down we find this:

"The Secretary of State for Northern Ireland concluded that the public interest arguments pointed strongly in the direction of not seeking a prosecution." 15:34

"The Secretary of State for Defence said that much of the work of the Army was simply holding the ring by guarding and patrolling. The most effective positive weapon in the fight against terrorism was intelligence. He thought the odds against a prosecution being carried through to a conclusion were high but if a trial were aborted part of the way through, the Government would suffer the worst of both worlds." 15:34 15:35

Towards the bottom of the page we find that:

"The Secretary of State for Defence also concluded that the public interest was very much against a prosecution." 15:35

On the next page, in the last paragraph, we find the Prime Minister's contribution: 15:35

"The Prime Minister said he was very torn. His instinct was that where a charge could be brought with a reasonable prospect of success, it should be brought.

1 But he felt that some of the considerations put forward
2 by the Northern Ireland Secretary were impressive and
3 were a considerable advance on what he had heard
4 before."

5
6 The following day, Sir, the Attorney General wrote to
7 the Secretary of State for Defence copying the Prime
8 Minister and those involved in the discussions,
9 confirming that he had reported the views expressed in
10 the meeting to the DPP, and that the DPP had concluded 15:35
11 that Nelson should be prosecuted. 15:36

12
13 In the de Silva report, Sir Desmond concluded that the
14 DPP and the Attorney deserved significant credit for
15 pursuing the prosecution of Nelson despite the 15:36
16 significant political pressure they faced. Sir Desmond
17 expressed concern that had the views of the Secretary
18 of State for Defence and the Secretary of State for
19 Northern Ireland prevailed:

20
21 "An individual who actively promoted and facilitated 15:36
22 terrorist attacks would have escaped justice."
23

24 Sir Desmond also expressed concern that the Secretary
25 of State for Defence was provided with highly 15:37
26 misleading advice about FRU's handing of Nelson which
27 was subsequently sent by the Secretary of State to the
28 Attorney General and the DPP.
29

1 For his own part, the Secretary of State for Defence
2 told the Attorney that he was:

3
4 "Very concerned that you believe that the information
5 coming to me has not been accurate." 15:37

6
7 And he appears to have been determined to pursue the
8 matter.

9
10 On 17th January 1992, the Attorney held a meeting with 15:37
11 the DPP and prosecuting counsel in the Nelson case,
12 Brian Kerr QC. At that meeting the DPP recorded that
13 Nelson's representatives had made an approach to
14 discuss a plea and that he was bound to consider this.

15 15:37
16 On 22nd January 1992, Nelson pleaded guilty to 20
17 offences. This included five charges of conspiracy to
18 murder but it did not include the two charges of murder
19 which he had originally been charged with. Nor did it,
20 Sir, include the charge related to the murder of 15:38
21 Patrick Finucane.

22
23 The guilty pleas offered by Nelson were acceptable to
24 the prosecution such that all other charges were not
25 proceeded with. Brian Kerr QC explained to the Court 15:38
26 that the prosecution's decision had been based:

27
28 "Solely on an evaluation of the factors likely to
29 effect the outcome of the case and the demands of

1 justice after a scrupulous assessment of possible
2 evidential difficulties for the prosecution and a
3 rigorous examination of the requirements of justice."
4

5 On the basis of the material before him, Sir Desmond 15:38
6 concluded that this decision must have been made on
7 evidential grounds rather than public interest grounds
8 because the DPP and the Attorney had hitherto concluded
9 that prosecuting Nelson was in the public interest.

10 15:39
11 On 29th January 1992, A/05 was called as a defence
12 witness at Nelson's sentencing hearing. He was first
13 questioned by Nelson's counsel, Desmond Boal QC and
14 then subject to cross-examination by Brian Kerr QC.
15 During his evidence, A/05 referred to the very same 15:39
16 figures which had been raised by the Secretary of State
17 for Defence during the Shawcross exercise and disputed
18 by the Stevens Investigation Team. I quote:

19
20 "We produced on Brian Nelson's information something 15:39
21 like 730 reports concerning threats to 217 separate
22 individuals. Threats to the life of individuals. In
23 all cases, these were passed on for action. Of the 217
24 of interest, that of the 217 personalities that were
25 named in his reports or our reports, five of them died. 15:40
26 One at the hands of the Security Forces in Gibraltar,
27 one from natural causes and three at the hands of
28 Protestant paramilitaries."
29

1 when Desmond Boal QC suggested to him that a number of
2 people owed their lives to Nelson, A/05 replied with
3 this:

4
5 "There was a lot of potentially lifesaving information 15:40
6 that he gave and lives were saved."

7
8 He went on, Nelson:

9
10 "...did produce a tremendous amount of information 15:40
11 referring to their plans and their targets for
12 assassination and this was, of course, of lifesaving
13 potential'."

14
15 In his report, Justice Cory described the evidence 15:41
16 given by A/05 as misleading. He found that:

17
18 "The statement that Nelson's actions were responsible
19 for saving close to 217 lives was based on a highly
20 dubious numerical analysis that cannot be supported on 15:41
21 any basis."

22
23 Sir Desmond de Silva, therefore, considered whether the
24 evidence given by A/05 had in fact misled the
25 sentencing judge, Lord Justice Kelly. Sir Desmond 15:41
26 found that it had not been misleading for three
27 reasons; first, having carried out his own analysis of
28 the Contact Forms and MISRs produced by FRU during
29 Nelson's time as an agent which named individuals who

1 could have been potentially under threat from the UDA,
2 Sir Desmond concluded that the figures provided by A/05
3 had what he called a reasonable numerical basis.

4
5 Second, Sir Desmond considered that A/05 chose his 15:42
6 words with care by referring only to the potential
7 value of Nelson's intelligence. In so doing Sir
8 Desmond believed that A/05 was cognisant of the
9 distinction between on the one hand Nelson's provision
10 of potentially lifesaving intelligence, and on the 15:42
11 other, whether the RUC had exploited this information
12 to protect individuals.

13
14 Third, Sir Desmond found that Lord Justice Kelly was
15 equally alert to this distinction. In his sentencing 15:42
16 remarks, he said he gave:

17
18 "Considerable weight to the fact that Nelson passed on
19 what was possibly lifesaving information in respect of
20 217 threatened individuals." 15:43

21
22 Sir Desmond concluded that Lord Justice Kelly was not
23 misled by A/05's evidence on this matter.

24
25 Further, he concluded that the fact that the RUC had 15:43
26 generally disregarded this information was not material
27 to the question of Nelson's culpability. A point, Sir,
28 which had been acknowledged by the Attorney General
29 during the Shawcross exercise.

1
2 Sir, that concludes this section. I now hand over to
3 Mr. Hill.

4 CHAIR: Thank you, Mr. Mills.

5
6 ADDRESS BY MR. HILL:

7
8 MR. HILL: Sir, just a few short closing comments from
9 me.

10
11 It will be apparent from the last two days that much is
12 known about the murder of Patrick Finucane and that
13 much has been published, that is so both for facts and
14 for opinions.

15
16 We have sought to provide an overview of some of that
17 evidence, we acknowledge not all. More detail will
18 follow in our written opening statement, including on
19 some topics that, for reasons of time, we have not
20 covered during these oral presentations.

21
22 We repeat the critical points that these opening
23 statements are based solely on publicly-available
24 material and they are intended to describe and not to
25 evaluate that which we have discussed. Evaluation can
26 only take place once the closed material has been
27 considered and the Inquiry's conclusions are, in any
28 event, for you and not for us.

1 Our approach has been to look at each of the groups and
2 agencies involved in Patrick Finucane's death; the UDA,
3 Special Branch and the RUC, FRU and the Army, the
4 Security Service and the UK Government. We have sought
5 to understand what the published material shows about 15:45
6 the role and potential culpabilities of each of those
7 groups and organisations. We did so as it is necessary
8 to start somewhere and to adopt some form of framework
9 to try to organise the mass of information that is
10 available. That is what we have done but we 15:45
11 acknowledge the limitations of that approach.

12
13 As I discussed yesterday, we will not understand the
14 murder of Patrick Finucane unless we understand the
15 interactions between those groups and organisations; 15:45
16 how information flowed, the frictions and the tensions
17 involved, and the oversight or lack of oversight that
18 governed those relationships. We must not work in
19 silos.

20 15:46
21 Further, these groups and agencies are not monoliths.
22 They are a collections of individuals with different
23 roles, different knowledge, and different motivations.
24 The picture is a complex one, we seek to make it
25 comprehensible but without obscuring important detail. 15:46
26

27 The purpose of our oral and written openings is
28 threefold: First, we hope that this opening has helped
29 the public to understand some of the facts concerning

1 Patrick Finucane's murder. Nothing we have said is new
2 in the sense that all of it has been published before.

3
4 However, you may feel, Sir, that the stark facts and
5 the principal findings made by Sir Desmond are, indeed, 15:47
6 shocking, even when recounted today. They raise the
7 possibility that State agents and agencies were
8 involved in the murder of a solicitor, a murder that
9 took place in his home, in front of his wife and his
10 children. Sir Desmond found, and the Government of the 15:47
11 day accepted, that the murder of Patrick Finucane
12 involved State collusion. Others have suggested it was
13 State direction. These are the most serious of
14 allegations in a democratic society governed by the
15 rule of law. 15:47

16
17 The second purpose of the opening was to help fulfil
18 the Inquiry's Terms of Reference. We are required to
19 ensure that there is no unnecessary duplication of the
20 investigative work which has already been undertaken. 15:48
21 To achieve this, we must first examine what that
22 investigative work shows and the opening reflects our
23 consideration of that matter, at least in respect of
24 published findings.

25 15:48
26 Third, and linked to that second purpose, the opening
27 is intended to set out the evidential foundation on
28 which this Inquiry can build. To that end, it would be
29 helpful to understand in due course the extent to which

1 the facts underpinning the de Silva report are accepted
2 by the Core Participants. Where they are accepted,
3 there will be no need to repeat the work undertaken to
4 establish facts. The Inquiry can instead focus further
5 investigation on those matters on which there is no 15:49
6 consensus or where there is an absence or an
7 insufficiency of evidence.

8
9 We emphasise that accepting the factual findings of a
10 de Silva Review does not mean accepting the conclusions 15:49
11 that Sir Desmond reached. As we have said in our
12 opening statement in June of this year, we acknowledge
13 that people can look at the same evidence in good faith
14 and come to different views. Core Participants can and
15 will address you in due course on the findings that 15:49
16 they invite you to make. You will come to your own
17 conclusions based on those submissions and on all the
18 evidence.

19
20 We also stress, Sir, that adopting facts found in the 15:49
21 de Silva report as a foundation does not constrain this
22 Inquiry to building only in the boundaries set by
23 Sir Desmond. The Inquiry will develop, under your
24 direction, in its own way, covering such matters as you
25 consider relevant to its scope. It will do so in a way 15:50
26 that is as transparent as the law allows. We will seek
27 to make public as much of the evidential material as we
28 can.

1 The work of the de Silva Review had its limitations,
2 not least because of the way in which it was
3 constituted. Sir Desmond did not have the powers that
4 you have in this public inquiry, such as the power to
5 compel a person or an organisation to provide evidence. 15:50
6 Nor did he have the benefits of the perspectives and
7 knowledge brought by Core Participants. You have these
8 advantages, Sir, and we anticipate that they will allow
9 you to consider evidence and submissions beyond those
10 seen by Sir Desmond. You are not bound by 15:51
11 Sir Desmond's conclusions and we have highlighted
12 criticisms made of them, in particular the perceived
13 lack of analysis of the rationale and motivations
14 behind some of the acts described. One of the
15 challenges for this Inquiry will be to seek to answer 15:51
16 the question not just of how Patrick Finucane was
17 murdered, but also why.

18
19 It is a formidable task ahead of us but through the
20 extensive work of previous investigations, the work of 15:51
21 journalists, academic and jurists and because of a
22 campaign led by Patrick Finucane's family we start from
23 a strong evidential base and we invite all to work with
24 us in building on that.

25
26 Thank you, Sir. 15:52

27 CHAIR: Thank you, Mr. Hill. That concludes Counsel to
28 the Inquiry's opening statement and my thanks go to
29 Mr. Hill and to Mr. Jamieson, Ms. Townshend, Mr. Mills

1 and Ms. Millar for the narrative that they've
2 presented.

3
4 The narrative, of course, has all of the limitations to
5 which counsel has referred, but in this session the 15:52
6 narrative has identified questions that remain
7 unaddressed or unsettled by the de Silva report and the
8 previous reviews and that was an important purpose of
9 this session, to begin identifying the issues which
10 this Inquiry needs to address and this session has 15:53
11 begun to do that and set out the evidential foundation
12 from which we start.

13
14 In closing, as I said I would, I now turn, briefly, to
15 the Inquiry's work in the coming months. 15:53
16

17 My team has started to gather evidence which will, of
18 course, be crucial to the discharge of my obligations
19 under the Inquiry's Terms of Reference. We're building
20 the infrastructure to allow us to receive, hold and 15:53
21 scrutinise this material, work which must be done with
22 consideration, carefully, systematically and with
23 sensitivity to any obligations of confidentiality there
24 may be.

25 15:54
26 As Mr. Hill explained during his address to the Inquiry
27 at the preliminary hearing in June, until the Inquiry
28 can receive and work on documents on its own systems
29 capable of dealing with and processing all of the

1 material that we may recover, progress will be slow no
2 matter how hard the Inquiry team works. I hope that
3 appropriate facilities with all the functions that we
4 need will be available shortly. We're doing our best
5 to ensure that that is the case and I'll provide
6 updates on this work as appropriate and as I can.

15:54

7
8 The Solicitor to the Inquiry will very shortly issue
9 instructions to all Core Participants to request that
10 they submit their opening statements at a hearing to
11 start in November. I expect that hearing to last two
12 or three weeks.

15:55

13
14 As I said at the opening of this session, and as
15 Mr. Hill has said in his closing just, that hearing
16 will afford Core Participants the opportunity to set
17 out their positions and to respond to any of the points
18 arising from counsel to the Inquiry's opening
19 statement. I will encourage them, if they are able and
20 if they wish to do so, to indicate which parts of the
21 narrative described over the past two days they accept,
22 and which parts they do not.

15:55

15:55

23
24 Following the Core Participants' opening statements I
25 intend to hold hearings next in February 2027 at which
26 I will invite the Finucane family and others to provide
27 evidence about who Patrick Finucane was and the impact
28 of his murder.

15:56

1 Following that, there will be a programme of evidential
2 hearings at which witnesses will give evidence and be
3 examined upon that evidence. That programme will be
4 dependent upon, amongst other things, the availability
5 of the facilities to which I've referred, and the rate 15:56
6 at which disclosure of documents is made.

7
8 Further details will be issued by the Inquiry about
9 those proposed hearings and other matters concerning
10 the progress of the Inquiry in due course. 15:57

11
12 Until then, this marks the end of the current hearing
13 and I will, therefore, draw matters to a close. With
14 repeated thanks to Counsel to the Inquiry who have
15 borne the burden of this hearing, thank you all very 15:57
16 much.

17
18 THE INQUIRY WAS THEN ADJOURNED TO A DATE TO BE
19 CONFIRMED.