RECENT DEVELOPMENTS IN THE INVESTIGATION OF THE MURDER OF HUMAN RIGHTS ATTORNEY PATRICK FINUCANE

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

OF THE

COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

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WEDNESDAY, MAY 15, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order. Good morning to everyone.

I would like to extend a special welcome to our witnesses and everyone joining us here today. I do see many old and close friends in the room today, and I want to welcome you to this hearing.

Our purpose today is to assess progress on the unfulfilled British commitment, a broken commitment, unless the British Government reverses its current course, in the Pat Finucane collusion case and how this affects the peace process in Northern Ireland.

In connection with the Good Friday Agreement, the British Government promised to conduct public inquiries into the Finucane and three other cases where government collusion in a paramilitary murder was suspected.

Subsequently, the British Government backtracked in regard to the Finucane case, the 1989 murder of human rights lawyer Patrick Finucane. The British backtracking came despite the recommendation to hold an inquiry, which again the British Government agreed to abide by, of the internationally respected jurist and former Canadian Supreme Court Justice Peter Cory in 2004.

At this point, I would like to thank Judge Cory again, who testified about his recommendation at a congressional hearing that I chaired in May 2004. That is now 9 years ago, and we are still trying to get the British Government to live up to its commitment.

The Finucane family has testified at many hearings. Geraldine, Patrick's widow, and his son, John-Michael Finucane, who is testifying today, first testified before Congress on this in 1997 in a hearing before this subcommittee, so that is now 16 years ago. And, of course, there have been many others. And all of these witnesses advocates and experts have advocated a full, independent, and pub-

lic judicial inquiry into the police collusion with Loyalist paramilitaries responsible for brutally murdering Patrick Finucane.

Over these years, the dedicated human rights activists and experts have established much of what has happened, and after facts have been established, the British Government has acknowledged many of them. In 2011, the British Government admitted that it did collude in the Finucane murder and apologized for it.

Much of the credit for this admission goes to the many of you who have done the work, the hard work, on all the reports that documented collusion until it was pointless for the British Government to continue denying it.

So that is progress. But the work is not done because the British Government has reserved one final yet massive injustice. It continues to protect those responsible for the murder of Patrick Finucane. Prime Minister Cameron told the Finucane family that the government would not conduct the promised public inquiry into the collusion.

The deliberate decision not to proceed with the public inquiry is a glaring public breach of faith. It is the source of enormous frustration to Patrick Finucane's family and friends. It resonates throughout Northern Ireland, calling into question the British Government's commitment to peace, reconciliation, and, above all, justice. This is particularly sad because the British Government has taken so many other positive truly honorable steps, many of them more painful for large sectors of the British public and public opinion, such as the Bloody Sunday Inquiry, released in 2010. To call of that into question by reneging on the promised Finucane inquiry is a tragedy. It is a preventable tragedy, however.

Most recently, in December 2012, Sir Desmond de Silva released a new report on collusion in the Finucane murder, really a review of existing case files rather than a gathering of new evidence that the promised inquiry would produce. The de Silva report detailed what Prime Minister Cameron admitted were shocking levels of state collusion. Let me repeat that: The de Silva report detailed what Prime Minister Cameron admitted were shocking levels of state collusion in the murder, including that it was RUC officers who proposed the killing of Finucane, passed information to his killers, obstructed the investigation, and that British domestic security and intelligence knew of the murder threats months before the actual crime, yet took no steps to protect him.

It is admirable that the Prime Minister has admitted collusion and apologized for it, but it is really too much to admit a government crime and then say it will not be investigated, particularly when the government has undertaken a commitment to do so.

The question asks itself: After so many positive steps, is the British Government really going to diminish the good it has done since 1998 in order to protect the identity of people who share responsibility for a brutal murder?

At this moment, I would like to say that I will be asking Members of Congress to sign a letter to the Prime Minister urging him to conduct the promised inquiry. Many Members of Congress have repeatedly called for this, including the passage of two of my congressional resolutions, H. Res. 740 in the 109th Congress and H. Con. Res. 20 in the 110th Congress.

I now would like to yield to my friend, Mr. Weber, for any comments that he might have.

Mr. WEBER. Thank you, Mr. Chairman.

I appreciate your holding this hearing. In the interest of time, I am going to limit my remarks and say let's get going. Thank you.

Mr. SMITH. I would like to yield to my friend and colleague, Richard Neal.

Mr. NEAL. Thank you, Mr. Chairman. Thank you for using your committee assignment to keep this issue in front of the American people. I have, as you know, for decades pursued many of these cases, a reminder today of how we have been vindicated in many of these instances: Guilford, Birmingham, Joe Doherty, the deportees, and, of course, Bloody Sunday.

For those that question the efforts that many of us have made over these years, I would remind all of a conversation I had with those families when Prime Minister Cameron took to the floor of Commons and apologized for what had happened on Bloody Sunday. I talked to those families within hours of that apology. The joy that overcame them, the tears with which they greeted me on the phone, indicating that but for America's interest many of those cases perhaps would not have been brought to light, those families knew full well that none of their loved ones had been involved in triggering the events of Bloody Sunday, as was the case with the other examples I have already noted.

I have known the Finucane family for a long, long period of time, and Geraldine Finucane deserves the full inquiry that was once promised by the British Government. I have spoken with various British Prime Ministers, Secretaries of State and other senior officials for many years. A full inquiry would bring about justice. And let me also say so do the families of Rosemary Nelson, Raymond McCord, Robert Hamill, and Billy Wright.

We note today that there has been great progress, as I heard from you on the way in. Various British Prime Ministers have certainly changed the tone of the conversation over these years, and indeed, we should all be very grateful. But much of the incentive came from the American people, who demanded that these inquiries be fully accepted and introduced.

But the Finucane family deserves more than an apology. They deserve the full and independent inquiry that was promised earlier by Prime Minister Blair and what we thought was going to be a position adopted by Prime Minister Cameron. Recent evidence indicates that this inquiry is needed now more than ever. Prime Minister Cameron and many of his advisers have recently disclosed correspondence that certainly makes clear what should be taking place. Jeremy Heywood has described the killing as "far worse than anything alleged in Iraq or Afghanistan."

And I have offered a letter that I know my colleagues will sign urging Prime Minister Cameron to hold a full inquiry that was once promised.

We know there was collusion in this case. Now we have to find out who was responsible. The changes that we have all had a chance to witness in these "it will never happen moments" have been extraordinary, but much of that impetus has come from Members of the United States Congress as we have pursued these in-

quiries. These were sectarian, brutal assassinations, and in particular, the Finucane case is in my mind one of the most egregious, largely because of the manner in which it was undertaken, in full view of his family on a quiet day, when all security forces and members of the RUC at the time were removed so that this assassination could take place.

And I appreciate the fact, Mr. Chairman, that you have used again your committee assignment to keep this matter in full view of the American people.

I am currently co-chairing a get-together at the Ways and Means Select Committee on Revenue, so I departed there to get over here.

And I did want to thank two of my friends here from the Finucane family and General Cullen, who has been a great, great advocate on our behalf all of these years.

Thank you very much, Mr. Chairman.

Mr. SMITH. Mr. Neal, thank you very much for joining us. I thank you for your fine work over these many years.

Mr. Crowley.

Mr. CROWLEY. Thank you, Chairman Smith, for holding this hearing. You have been a stalwart wall and someone who has not let rhetoric get in the way of justice on so many issues, but particularly on this particular issue. I have had my own experience, many years of following this case, in particular. I know it is also an issue that Mr. Neal has dedicated a great deal of time to as well. So this has been very, very bipartisan.

What happened to the Finucane family is something that never should have happened. It wasn't right then, and it is not right to cover up what took place now. The fact is we are here today because of unfulfilled promises by the British Government. The British Government committed to a full and independent inquiry into cases of collusion, but that promise was not and has not been kept. This is a problem for many people, including those of us who supported wholeheartedly the Good Friday Agreement.

I am very much a believer in the Agreement. I have praised all parties for taking risks to make that agreement a reality, and that included and does include the British Government. That was a landmark agreement because it was one that has worked, and I want to do everything possible to protect the agreement and keep the peace.

I believe there can be no turning back from the Good Friday Agreement, although there are many who would like to do just that. Part of that, however, is honoring the commitments of Good Friday as well as the follow-up agreements at Weston Park and elsewhere. When the British Government committed at Weston Park to carry out a full inquiry, we believed that they meant it. They shouldn't back away from it now.

I don't have real questions today for the panel. I am here for the Finucane family, and I am here in the search of justice. I agree that Prime Minister Cameron needs to call for a thorough, full, and independent inquiry into the murder of Patrick Finucane. Nothing short of that will be acceptable to people who are seeking justice in the North of Ireland and, quite frankly, around the world.

So, Mr. Chairman, once again, thank you for your dedication to this particular issue, and to the ranking member as well, thank you for inviting me to be here. Thank you.

Mr. SMITH. Mr. Crowley, thank you very much for your statement, for your leadership over these many years.

As you pointed out, this is an issue on which there is total bipartisanship and agreement that this is a matter of justice, and justice delayed is justice denied, but my deepest concern is justice delayed in perpetuity is an outrage.

Ms. Bass.

Ms. BASS. Thank you, Chairman Smith, for holding today's hearing on the recent developments in the murder of human rights lawyer Patrick Finucane.

I understand that you and a number of our colleagues have continued to advocate for greater accountability and a sincere public apology in the days and years after Mr. Finucane's death. I hope that today's hearing increases awareness among our colleagues and leads to a truthful accounting of that fatal evening.

To Mr. Finucane, let me over my deep appreciation to your commitment to participate in this hearing and to your tireless efforts to keep the memory of your father alive and in the public eye. Your courage and strength are apparent, and you make your family and the memory of father proud.

I yield back my time.

Mr. SMITH. Thank you, Ms. Bass.

I would like to now introduce our two very distinguished witnesses. First, we will hear from Michael Finucane, the son of Patrick Finucane. Michael was there, along was his mom and two siblings, and I would note parenthetically, we all know his mom Geraldine was wounded in that horrific attack when assassins entered the Finucane home and took his father's life.

Today Michael is a solicitor in Dublin with his own legal practice. He has been deeply involved in the Finucane family's efforts to secure the full independent public judicial inquiry that was promised in 2001 by the British Government.

We are grateful for your presence here today, Michael, to tell us about where we are in the quest for justice in your father's case, which of course has a direct impact on the quest for peace and reconciliation in Northern Ireland.

We will then hear from Brigadier General, retired, Jim Cullen of the U.S. Army Judge Advocate's General Corps.

In addition to his military career and career in private law practice, Mr. Cullen has been involved for many years with human rights groups focusing on Northern Ireland, including the Brehon Law Society of New York of which he served as the first president.

Welcome to you, General.

Mr. Finucane.

STATEMENT OF MR. MICHAEL FINUCANE, SON OF SLAIN HUMAN RIGHTS ATTORNEY PATRICK FINUCANE

Mr. FINUCANE. Thank you very much, Mr. Chairman.

I would like to offer my sincerest thanks to you and to all members of the committee and Members of Congress who have supported my family this many years. I have submitted a longer state-

ment, which I ask be read into the record, but I am going to make a shorter statement for the purposes of this hearing.

As is now a matter of public record throughout the world, Pat Finucane, my father, was a lawyer practicing in Northern Ireland during the period of civil conflict. He specialized in criminal defense law and developed particular expertise in defending people charged with offenses under the emergency laws. As a result of his innovative approach to his work and the successes that flowed from it, he became a target for Loyalist paramilitary elements who perceived him as partisan and an enemy of the British State. This much has been known for some time as a result of incidents that took place during Pat's lifetime and some of the evidence that has been revealed since his murder.

We now know that this perception of Pat Finucane as being sympathetic to his client's beliefs and even that he engaged in unlawful activity on their behalf was fostered actively by the British Security Service, MI5, encouraged by the Royal Ulster Constabulary's Special Branch and known about by the British Army's undercover unit, the Force Research Unit. These agencies of state sought to besmirch Pat's name and professional reputation, to encourage support for the claim that he was a member of the Provisional IRA or working on their behalf and to encourage the notion that he should be assassinated.

We know beyond any doubt that all of these agencies were aware that Pat's life was in serious danger on at least three occasions before he was murdered, but they decide not to warn him. We know this and much else besides as a result of the review recently conducted by Sir Desmond de Silva, Q.C., who was appointed by the British Government in 2011. It is this review that provides the impetus for this hearing, although the work of de Silva is not what was originally promised.

A comprehensive mechanism was promised by the British Government to investigate the case of Pat Finucane, but it has not yet been delivered. The case was supposed to be the subject of a public judicial inquiry, but the British Government has declined to establish one, despite agreeing to do so during negotiations as part of the Northern Ireland peace process in 2001.

In the 24 years since the murder, my family and I have campaigned relentlessly for a public judicial inquiry into the circumstances. In the earliest years, we were met with denial and refusal by the government and were told that accusations of collusion between the state and Loyalist paramilitaries in the murder were without foundation.

For example, in January 1993, the Northern Ireland Office went so far as to write in response to a draft report prepared by the U.S. Lawyers Committee for Human Rights that their analysis "scarcely justifies your conclusion that there is sufficient evidence of the Security Forces' prior knowledge of the murder plot and encouragement of it to justify an independent public inquiry." They went on to say, "The shortcomings of the draft report are such that in its present form it is not capable of being constructively amended." The RUC responded similarly by saying, "A particularly serious disservice is done to the agencies responsible for the administration of justice and law enforcement."

It is now clear that these responses from the various agencies, police, intelligence, government, and army, were nothing less than blatant lies. The State was clearly culpable in the murder of Pat Finucane. Documentary evidence exists to prove this. The State simply could not afford to admit to its involvement in a crime as heinous as the murder of one of its own citizens who was at the same time an officer of its own courts.

We now know this so definitively, partly as a result of the review carried out by Sir Desmond de Silva and the material he caused to be published and the work of many others. It is clear now that the British State agencies knew Pat Finucane was a target for many years before he was killed but decided not to do anything to warn or protect him.

Although Pat was murdered in 1989, his life had clearly been in serious danger as far back as 1981. Various agencies were aware of the threat, including the police, the intelligence services and British Army Intelligence. Documents have been published to reveal meetings took place to discuss the threat against his life and an official decision was taken not to warn him that a murder attempt was imminent on more than one occasion because it would have exposed an informant to an unacceptable level of risk.

These are just some of the facts behind the murder of Pat Finucane. Until now, they have not come to light. But the strength of suspicion over the case, a suspicion that was proven to be completely justified, despite official denials, demands a comprehensive response.

In the absence of any other appropriate mechanism, a public judicial inquiry became the demand my family made. It was resisted for many years until, in 2001, during peace negotiations the British and Irish Governments agreed to establish an inquiry into the case if an independent judge of international standing recommended that there should be one. That judge was former Justice of the Supreme Court of Canada Peter Cory. He recommended a public inquiry in 2004, following the publication of a lengthy and comprehensive report. Thus began a long process of delay and further denial by the government, as faced with the honoring of their promise of an inquiry they welched.

Much time passed, but then, in 2011, a decision was taken by the current government as the manner in which Britain would finally address the case of Patrick Finucane. It would not be through the mechanism of a public inquiry, despite the earlier promise so hold one. Instead, a review of the papers in the case would take place and a government-appointed lawyer would be installed to scrutinize official documents and produce a report. My family would not be permitted and was not permitted to see any of these documents prior to publication nor would we be allowed to hear witnesses called to give evidence or ask any questions. In short, we would be allowed to do nothing more than accept the findings of the reviewer without be able to assess any of the evidence for ourselves.

My family was invited to 10 Downing Street in October 2011 to be told that this review process was to be established. We had been in discussions, which we had entered into in good faith, with the government for over a year prior to this visit. When we were invited by the Prime Minister to come to Downing Street we expected

to be told that the commitment given previously would be honored and that a public judicial inquiry would be established without further delay.

We had always known that the promises of the government should not be regarded as gospel. However, we dared to believe in the possibility that with the onset of peace in Ireland, the British Government might make good on its commitment. Not only were we proved wrong in this, we were forced to endure a process of public embarrassment that was cruel and unnecessary.

It has been long believed that the issue of British State collusion with Loyalist paramilitaries was a deep-rooted and officially sanctioned policy of selecting targets based on their degree of opposition to the state. The more troublesome the individual, the more likely the state was to deploy its killers by proxy to erase the problem.

If the report of de Silva has any value at all, it is to be found in the extent to which it confirms beyond any doubt that this was the approach of the British State in Northern Ireland, certainly throughout the 1980s and possibly beyond. A lawyer like Pat Finucane, who was much too effective at his job for the State's liking, would make himself a target for reprisal. The extent of collusion was therefore such that the State could kill anyone it wanted to with complete and absolute deniability. This was the policy of collusion, a modern Irish holocaust. The one question that has not yet been answered is, how much perished as a result of it? Certainly, Pat Finucane was not the only victim.

Perhaps the most succinct description of the case to emerge in recent years was contained in a letter written by a senior British Security Advisor to the current Prime Minister David Cameron. This has only just been made public as a result of court proceedings, and it was written July 2011. The advisor said, "Even by Northern Ireland standards, the facts are grisly. Moreover, in terms of allegations of British State 'collusion' with Loyalist paramilitaries, this is the big one . . . exhaustive previous examinations have laid bare some uncomfortable truths. Paid agents were directly involved in the killing, including the only man ever convicted of involvement in it . . . of Lord [John] Stevens' conclusions paint a picture of a system of agent running by the RUC's Special Branch and the [British] Army's Force Research Unit that was out of control." He went on to say, "Some of the evidence available only internally could be read to suggest that within government at a high level this systematic problem with Loyalist agents was known, but nothing was done about it. It's also potentially the case that credible suspicions of agent involvement in Mr. Finucane's murder were made known at senior levels after it and nothing was done; the agents remained in place." He concluded in a follow-up letter by saying, "This was an awful case and as bad as it gets and was far worse than any post-9/11 allegation."

This is the summary of a security advisor from within the British establishment. The contents of his letters were not public until a recent court hearing in Belfast brought them to light. We have had to resort to litigation against the government in order to force them to reveal information of this nature and to establish the public inquiry we were promised. We should not have to do this. We should be reading the material in the context of a public inquiry, the one

that was promised in 2001 and the one that has been required since 1989.

On behalf of my family, Mr. Chairman, I ask for the support of this committee, the support of the House and all of Congress, to use its influence and to persuade the British Government to honor its longstanding promise to establish a public judicial inquiry into the murder of Patrick Finucane.

Thank you very much.

[The prepared statement of Mr. Finucane follows:]

HOUSE OF REPRESENTATIVES - COMMITTEE ON FOREIGN AFFAIRS

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
GLOBAL HUMAN RIGHTS AND INTERNATIONAL ORGANIZATIONS

Recent Developments in the investigation of the murder of Human Rights Attorney Patrick Finucane

Testimony of Michael Finucane, Wednesday, 15th May 2013

Mr. Chairman, Members of the Foreign Relations Committee, distinguished Guests, Ladies and Gentlemen...

On behalf of my entire family, I would like to thank this Committee for its invitation to testify today about the case of my late father, Patrick Finucane. As is now a matter of public record throughout the world, Patrick Finucane was a lawyer practising in Northern Ireland during the period of civil conflict that extended throughout 1968-1994. He specialised in the criminal defence law and developed particular expertise in defending people charged with offences under emergency laws introduced by the British Government during the conflict. As a result of his innovative approach to his work and the successes that flowed from it, he became a target for Loyalist paramilitary elements who perceived him as partisan and an enemy of the British State. This much has been known for some time, as a result of certain incidents that took place during Pat's lifetime and some of the evidence that has been revealed since his murder.

The significance of the circumstances surrounding his murder in February 1989 remain as prominent as ever but the investigation of them has not been progressed by the British Government in anything like the manner required.

We now know that the perception of Pat Finucane as being sympathetic to his clients' beliefs and even that he engaged in unlawful activity on their behalf was fostered actively by the British Security Service (MI5) encouraged by the Royal Ulster Constabulary Special Branch (RUC SB) and the British Army's undercover bureau, the Force Research Unit (FRU). These agencies of the State sought to besmirch Pat's name and professional reputation, to encourage support for the claim that he was a member of the Provisional IRA or working on their behalf. What is more, we now know, beyond any doubt, that all of these agencies were aware that Pat Finucane's life was in serious danger on at least three occasions before he was murdered but that they decided not to warn him.

We know this and much else besides as a result of the review conducted by Sir Desmond de Silva QC who was appointed by the British Government to review the case in 2011. It is this review that provides the impetus for this hearing although the work of De Silva is not what was originally promised in this case. A comprehensive mechanism was promised by the British Government to investigate the case of Pat Finucane but it has not been delivered. The case was supposed to have been the subject of a public judicial inquiry but the British Government has declined to establish one, despite agreeing to do so during negotiations as part of the NI Peace Process, in 2001.

From the time Pat Finucane was murdered in 1989, suspicions abounded that the State might have had a hand in his murder. These concerns began initially as a result of threats made against Pat by RUC detectives in police holding centres during the 1980s. The threats were relayed by clients of Pat's law practice who would say, with increasing regularity that the men conducting the interviews were denigrating and threatening him. Initially, Pat regarded such remarks as an interrogation technique and while inappropriate, they were not to be taken seriously. However, this view changed shortly before his death.

During a debate in the British parliament in January 1989, a junior government minister, Douglas Hogg, stated that ***"... there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA."*** His statement was challenged immediately by another MP, Seamus Mallon, who recognised it for the inflammatory accusation it was. It visibly affected those on the ground also. In its aftermath, Pat considered arming himself in an attempt to heighten his personal security although he ultimately decided against it. Within three weeks of the remarks made by Hogg, Loyalist gunmen burst into our home and shot my father dead in front of my mother, my brother, my sister and myself.

In the twenty four years since the murder, my family and I have campaigned relentlessly for a public judicial inquiry into the circumstances. In the earliest years, we were met with denial and refusal by the British Government and were told that accusations of collusion between the State and Loyalist paramilitaries in the murder were without foundation.

In January 1993, the Northern Ireland Office wrote, in response to a draft report prepared by the US Lawyers Committee for Human Rights, that their analysis ***"scarcely justifies your conclusion that there is 'sufficient evidence of the security forces' prior knowledge of the murder plot and encouragement of it', to justify an independent public inquiry."*** The Royal Ulster Constabulary, responded by saying, ***"[t]he shortcomings of the draft report are such...that...in its present form it is not capable of being constructively amended... A particularly serious disservice is done to the agencies responsible for the administration of justice and law enforcement..."*** [1]

Similar sentiments of denial and obfuscation have characterized virtually every official response to the murder of Pat Finucane, including that of Prime Minister Tony Blair, who wrote, following a meeting with my family in 2001, that he was ***"not convinced a public inquiry would reveal anything new."***

[1] Human Rights and Legal Defense in Northern Ireland, Lawyers Committee for Human Rights (New York, 1993) Appendices A & B

It is now clear that these responses from various State agencies – police, army, intelligence and Government – were nothing less than blatant lies. The State was clearly culpable in the murder of Pat Finucane. It simply could not afford to admit to its involvement in a crime as heinous as the murder of one of its own citizens who was, at the same time, an officer of its own courts.

We know this now, definitively, as a result of the review carried out by Sir Desmond de Silva QC and the material he published. It is clear now that British State agencies knew Pat Finucane was a target for murder many years before he was killed but decided not to do anything to warn or protect him. Although Pat Finucane was murdered in 1989, his life had clearly been in serious danger as early as 1981. Various state agencies were aware of the threat. They even held a meeting to discuss the threat, in late August 1981, but nothing was done to warn him of the imminent danger he was in. On the contrary, a decision was taken not to warn him because, ***"[i]t was agreed that it was very unlikely that Finucane could be trusted to keep his own counsel";*** the consequent risks to an intelligence source providing the authorities with information would be "enormous". As a result, the authorities decided not to warn my father that his life was in immediate danger. The decision was taken, ultimately, by the head of RUC SB and was described as ***"entirely pragmatic, but ... obviously a difficult and courageous one for him to make since ... he was ultimately responsible for law and order."***[2] These events were repeated several times over the period 1981-1988 before my father's eventual assassination in early 1989.

These are the facts behind the murder of Pat Finucane. Until now, they have not come to light but the strength of suspicion over the case – suspicion that was prove to be completely justified, despite official denials – demands a comprehensive response. In the absence of any other appropriate mechanism, a public judicial inquiry became the demand made by my family. It was resisted for

[2] Report of the Patrick Finucane Review, Sir Desmond de Silva QC (TSO, London, 2012) at pp.307 - 309

many years until, in 2001, the British and Irish Governments agreed to establish an inquiry into the case if an independent judge of international standing recommended there should be one. That judge was former justice of the Supreme Court of Canada, Peter Cory, and he recommended a public inquiry in 2004, following the publication of a comprehensive report. Thus began a long process of delay and denial by the British Government as, faced with the honouring of their promise of an inquiry, they welshed on the commitment.

The undertaking to establish an inquiry in the case of Pat Finucane was one given by the British Government during negotiations between the Northern Ireland political parties and the British / Irish Governments at Weston Park in 2001. These negotiations were a follow-on from the principal agreement reached in 1998 in Belfast, where the structures for establishing a post-conflict society were mapped out initially. It was realised, however, that certain cases required particular attention. One of these was the murder of Patrick Finucane. Allegations of British State involvement had become too serious to ignore further and this led to the agreement for an independent assessment and the appointment of the independent judge.

After the report, it should have led to the establishment of a public judicial inquiry. Instead, there has been to a prolonged period of obstruction and delay, where the British Government has, among other things, changed its domestic law in relation to public inquiries in order to provide for ministerial control of the information that will be made public.

This step was unprecedented in the history of British law. It has prompted widespread condemnation from not only Judge Cory, who reviewed the case of Pat Finucane and others, but also senior British judges who stated they would refuse to participate in an inquiry where a politician stood behind their backs controlling their every move. Nonetheless, the British Government insisted that this was the only way in which an inquiry could proceed.

Despite wanting to see the establishment of a public inquiry, my family could not agree to participate in such a loaded exercise. We declined to involve ourselves in an inquiry that could be so easily manipulated and was so obviously designed to circumvent the truth. For their part, the British Government stopped all preparations for an inquiry, citing the non-cooperation of my family as the reason for doing so. Then, in 2011, a decision was taken as to the manner in which the British Government would finally address the case of Patrick Finucane.

It would not be through the mechanism of a public inquiry despite the earlier promise to hold one. Instead, a review of the case would take place, with a government-appointed lawyer installed to scrutinise official documents associated with the case and produce a report. My family would not be permitted to see any of the documents nor would we be allowed to hear witnesses called to give evidence or ask them any questions. In short, we would be allowed to do nothing more than accept the findings of the reviewer, without being able to assess any of the evidence for ourselves.

My family was invited to 10 Downing Street in October 2011 to be told that this review process was to be established. We had been in discussions with the British Government for over a year prior to this visit. When we were invited by the Prime Minister to come to Downing Street, we expected that to be told that the commitment given previously by the Government would be honoured and that a public judicial inquiry would be established without any further delay. As is now a matter of record, this did not happen. We left Downing Street feeling deceived and humiliated, which is exactly what had happened. The Prime Minister of the UK Government told us, in essence, that he would not fulfil the commitment given and that he was going back on the promise made by his predecessor.

We had always known that the promises of the British Government should not be regarded as gospel. However, we dared to believe in the possibility that with the onset of peace in Ireland, the British Government might make good on its

commitment. Not only were we proved wrong in this, we were forced to endure a process of public embarrassment that was cruel and unnecessary.

The review conducted by Desmond De Silva reveals a great deal of information for the first time but it is nowhere near being a complete answer. It is based on a reading of documents without any questioning of their authors. Indeed, only eleven witnesses were spoken to by De Silva and twelve written submissions were received. No former politicians were interviewed, nor were a number of key intelligence personnel, including the former head of military intelligence in Northern Ireland, who was in charge at the time of my father's murder.

As if this was not bad enough, on the day the De Silva report was published, Tom King, now Lord King, led the public response on behalf of the Government. He was Secretary of State for Northern Ireland in 1989 when my father was murdered. Not surprisingly, he rejected calls for a public inquiry, claiming the matter had now been fully investigated.

It is difficult to conceive of someone with a greater conflict of interest than the former Secretary for Northern Ireland in 1989. The dangerous suspicion that lingers around his defence of the government's position is that those responsible for the policy of collusion remain in positions of significant influence and will continue to get away with it. As a key witness at any potential inquiry held, Lord King's rejections of the calls for an inquiry merely add insult to injury. As a notorious figure in a British political scandal from the 1960s once put it, "well he would, wouldn't he."

It has been long-believed that the issue of British State collusion with Loyalist paramilitaries was a deep-rooted, officially sanctioned policy of selecting targets based on their degree of opposition to the State. The more troublesome the individual, the more likely the State was to deploy its killers-by-proxy to erase the 'problem'. If the report of De Silva has any value at all, it is to be found in the

extent to which it confirms, beyond any doubt, that this was the approach of the State in Northern Ireland throughout the 1980s and possibly beyond. Certainly, a lawyer like Pat Finucane who was much too effective at his job would make himself a target for State reprisal. The extent of collusion was therefore such that the British State could kill anyone it wanted to with complete and absolute deniability. This was British State collusion: a modern holocaust for Northern Ireland. The one question that has not yet been answered is, how many perished as a result of it? Certainly, Pat Finucane was not the only victim.

Perhaps the most succinct description of the case of Pat Finucane to emerge in recent years is contained in a letter written by a senior British security advisor, Ciarán Martin, to the current Prime Minister, David Cameron. He said:

"Even by Northern Ireland standards the facts are grisly. Moreover, in terms of allegations of British state 'collusion' with loyalist paramilitaries, this is the big one... whilst we know of no evidence of direction or advance knowledge of the murder by ministers, security chiefs or officials, exhaustive previous examinations have laid bare some uncomfortable truths. Paid state agents were directly involved in the killing, including the only man ever convicted of involvement in it... Lord (John) Steven's conclusions paint a picture of a system of agent running by the RUC's Special Branch and the Army's Force Research Unit that was out of control."

In relation to senior government involvement in efforts to cover up collusion in the solicitor's murder, he went on, ***"[s]ome of the evidence available only internally could be read to suggest that within government at a high level this systematic problem with Loyalist agents was known, but nothing was done about it. It's also potentially the case that credible suspicions of agent involvement in Mr. Finucane's murder were made known at senior levels after it and that nothing was done; the agents remained in place.***

These two points essentially aren't public." In a follow up letter, Mr Martin said: ***"... this was an awful case and as bad as it gets and was far worse than any post 9/11 allegation."***[3]

The contents of this letter were not public until a recent court hearing in Belfast brought them to light. My family has had to resort to litigation against the British Government in order to force them to reveal information of this nature. We should not have to do this. We should be reading this material in the context of a public inquiry, the one that was promised in 2001 and the one that has been required since 1989.

On behalf of my family, I ask for the support of this Committee, the support of the House and Congress to persuade the British Government to honour its long standing promise to establish a public judicial inquiry into the murder of Pat Finucane.

Thank you very much."

Michael Finucane
Washington D.C.
Wednesday, 15th May 2013

[3] Correspondence of Ciarán Martin, reported in The Detail, 23 April 2013 : http://www.thedetail.tv/issues/195/finucane-case/judge-orders-downing-street-to-hand-over-finucane-documents

Mr. SMITH. Mr. Finucane, thank you very much for your extraordinary work over these many years on behalf of your father and that of your entire family. Not only are you seeking justice for an individual brutally slain, assassinated right in front of your own eyes, but this is also a very important symbol for peace, reconciliation, and, above all, justice. You have done an incredible credit to your father's memory and your other family members as well for keeping this front and center before the world. So thank you so much.

General Cullen.

STATEMENT OF BRIGADIER GENERAL JAMES P. CULLEN, USA, RETIRED, HUMAN RIGHTS ATTORNEY

General CULLEN. Thank you, Chairman Smith and also members of the subcommittee, for this opportunity to appear before you today. My name is Jim Cullen. As the chairman mentioned, I am a retired Brigadier General of the U.S. Army Judge Advocate General's Corps and last served as Chief Judge IMA of the U.S. Army Court of Criminal Appeals.

I first met Pat Finucane when he came to the United States to serve as an expert witness in a political asylum case, and I just wanted to mention today my interaction with one of the men involved in the murder of Pat Finucane.

An interested group in New York put an ad in the Belfast Telegraph, the main Unionist newspaper, offering a reward for information about Pat's murder. To my surprise and their surprise, we received a call within a day after the reward notice was posted. And we arranged to meet the following weekend in a hotel outside of Dundalk near the border in Northern Ireland with the person who was represented to be part of the team that killed Pat.

When we met, the person who called me introduced me to William Stobie, otherwise known as Billy. There was a preliminary discussion about the confidentiality of the meeting and the terms of the reward, and I explained to them that we were not after information about the Loyalist killers themselves. We had fairly good indications about who they were. Rather, we had received information from the UK that the murder had been commissioned by two upper level officers in the Police Special Branch, and it was information about them that we sought.

Mr. Stobie went on to speak to me for about 2 hours. He very credibly said at the outset that he would not have been trusted with information about the Special Branch, even though he knew that the terms of our reward offer was dependent upon that information. He explained that he had been recruited by the UDA, one of the Loyalist death squads, to be their armorer and quartermaster in a section of Belfast.

He had served in the British Army for about 6 years and he had been trained as an armorer, that is a person who is trained to fix light weapons. He had run up a debt in a Loyalist drinking club, and they gave him a choice: He could either become their armorer and safeguard and store their weapons, and the other alternative wasn't so pleasant.

Now, not long after he was recruited by the UDA, he participated in the murder in 1987 of an innocent young Protestant student,

Brian Lambert, who was mistaken for a Catholic. Soon after that murder, he was approached by the Special Branch and recruited to be their agent with the understanding that nothing would happen to him for Brian Lambert's murder. A co-actor in the murder was prosecuted.

Stobie was told about 2 years later, on or about February 6, 1989, to have two pistols ready to deliver for an operation the following Sunday. He said the UDA told him that the target was a "top Provo" living in north Belfast, but he was not told the identity of the target.

He said he called his Special Branch handlers the very same day and related what he had been instructed to do by the UDA, including the location of where he was to deliver the weapons the following Sunday morning. He later contacted his Special Branch handlers in the week following, he thinks on Wednesday, and they confirmed that he was to go ahead as instructed by the UDA.

The following Sunday morning, he went to a Loyalist drinking club quite early in the morning, and as he pulled up, he noticed parked across the street from the entrance to the drinking club an unmarked car, in which sat one of his handlers, and there was another man in the car whom he didn't recognize. He went into the club and turned over two pistols to the hit team near the exit of the club. He emerged from the club, went to his car. He was followed out by the hit team. He waited until they left, and he followed them out. And then he noticed something quite strange. Instead of the unmarked police vehicle following the hit squad, they made a U-turn and went in the opposite direction.

He went home. And then he had the radio on later that evening, and he heard about the murder of Pat Finucane. He knew immediately who had been the target for the operation for which he had been instructed to provide the weapons.

Stobie was contacted by the UDA on the following Tuesday after the murder, and he was told to dispose of the weapons in accordance with some instructions he was given. He picked up the two weapons where they had been left for him. He called the Special Branch and told his handlers that he had the hot Browning, he misidentified it as a Heckler 9 millimeter, which was the principal weapon used in the murder.

The Special Branch told him to follow the UDA's instructions, and they sent an unmarked Land Rover to meet him. He and the Special Branch man drove to the Ardoyne area and were followed by a helicopter—he didn't know whether it was army or police helicopter—who were watching the vehicle as it proceeded. When they arrived, Stobie gave the weapons to a man he called David Anderson.

Stobie told me that he realized the UDA began to suspect he was an informer, and then, in 1992, he was shot several times. Inconveniently for the UDA, the Special Branch and the army, he survived. He was visited in the hospital by a UDA boss who told him it had all been a mistake. Well, Stobie had sufficient street smarts to know that it hadn't been a mistake, and he decided he needed to acquire an unconventional life insurance policy. So he approached a newspaper reporter, told him his story with the expectation that the reporter wouldn't say anything. But after he told

his story, this particular reporter told him he had just accepted a position as the chief press officer of the Northern Ireland office. So Stobie then realized he needed a backup insurance policy, and he went to a second reporter, again related the story with the understanding that nothing was to be disclosed unless Stobie gave permission or unless something happened to Stobie.

He then let it be known to some of his UDA acquaintances that he had made "arrangements" in case anything happened to him, and he thought he would be okay. It was that second reporter who contacted me in response to the reward notice.

Thereafter, the police planted two pistols in his mother's home. He realized that he was, to use his term, being stitched up or framed to get him out of the way. He also realized that if that effort wasn't successful, he was likely to again be a target because Lord Stevens had begun his third inquiry in May 1999, and Stobie quite rightly figured that the Special Branch, the army intelligence unit known as the FRU, and the UDA saw him as a weak link. He did have a drinking problem, and they figured if an investigation began, he might talk. So Lord Stevens did confirm in his 2003 report that he did identify Stobie as a person of interest very early on in his investigation.

Stobie saw our reward as an opportunity for him, his wife and his mother to start a new life in Canada, and that is why he wanted to talk to us. When I told him we could only pay the reward if we had the information about the Special Branch handlers, I suggested to him that if he knew somebody else who was involved who would have that knowledge, we would pay the reward. We didn't care how they whacked it up among themselves. I gave him $2,000. I gave it to his attorney in his presence as a good faith demonstration that we were prepared to pay the money, as we were.

Stobie was later arrested as a result of evidence gathered by the Stevens inquiry, but the case against him collapsed in November 2001 when a key witness, that first reporter, claimed that he couldn't testify because of problems in his own mental state. And I can just imagine what those problems were.

Then on December 12, 2001, Stobie was murdered by the UDA. They were successful this time. And this was after he had made it known that he would be willing to testify in an inquiry into Pat Finucane's murder. He stated that he would not name the Loyalists involved, but he was prepared to name the police handlers or at least their code names because he didn't know even the real name of his own handler.

In a statement made by a masked paramilitary after his killing, it was claimed by the paramilitary, "Billy Stobie could have stayed on the Shankhill and been left alone had he not spoken out on Ulster television and backed the public inquiry into Pat Finucane's killing." Clearly, it was the Police Special Branch and the Army Force Research Unit who were really worried about the possible impact of Stobie's disclosures. The prior knowledge of the Special Branch and the FRU about the murder together with the unquestioned coordination of those two branches, because you cannot run multiple intelligence operations in the same theater without having coordination at the top—there is going to be turf wars; there are going to be issues over who controls what intelligence assets. So we

know that the head of Special Branch and the head of Military Intelligence in Northern Ireland were members of a so-called Task Coordinating Group. They in turn reported to the Joint Intelligence Committee in London. These kind of operations just didn't happen by some cowboy being out of control. It was coordinated.

Today, we are faced with the situation in which faceless securocrats and their political protectors have successfully neutered of the rule of law in Northern Ireland and have sadly intimidated the current political leadership in the UK.

Thank you, Mr. Chairman and members of committee.

[The prepared statement of General Cullen follows:]

James P. Cullen

Testimony on May 15, 2013
Before the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations

Concerning

The Murder of Human Rights Attorney, Patrick Finucane

Good morning and thank you for this opportunity to testify before this Subcommittee.

My name is Jim Cullen. I am a lawyer admitted to practice in New York, and I am a retired brigadier general in the U.S. Army Judge Advocate General's Corps. My last assignment was Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. I was also the first president of the Brehon Law Society of New York, and I met Pat Finucane when he came to the United States to serve as an expert witness in a political asylum case.

I would like to describe today my interaction with one of those who participated in Pat Finucane's murder.

An interested group in New York placed an ad in the Belfast Telegraph, a Unionist newspaper, offering a $100,000 reward for information concerning the murder of Pat Finucane. The ad gave my name and number as the contact person for the reward.

To our surprise, I received a call very shortly after the ad appeared. The caller said he represented an individual who was involved in Pat's murder. We arranged to meet the following Saturday in a hotel outside of Dundalk, near the border.

When we met, the representative introduced me to William Stobie, who was accompanied by his lawyer and his girlfriend. There was a preliminary discussion about the confidentiality of the meeting and the terms of the reward. I advised Mr. Stobie and the others present the reward was conditioned on obtaining some specific information. We were fairly sure of the identity of the gunmen who killed Pat, but it was not they in whom we were interested. We had heard indirectly from sources in the UK that the murder had been commissioned by two upper mid-level police Special Branch officers. It was information about the solicitation of the murder by the Special Branch officials that we sought.

Mr. Stobie went on to speak to me for over two hours. He very credibly said at the outset that he would not have been trusted with the information about Special Branch's role in commissioning the murder, even though he knew by then the reward depended on this information.

He explained he had been recruited by the UDA to be their armorer and quarter master for North Belfast. Stobie told me he had served in the British Army for six years and had been trained in communications and as an armorer. He had run up a debt in a Loyalist drinking club and when he could not pay the debt, he was given the option of working off the debt instead of the usual severe beating. Not long after his recruitment by the UDA and his participation in the murder in 1987 of an innocent young Protestant student, Brian Lambert, who was mistaken for a Catholic, Stobie was approached by the Special Branch and recruited as their agent. He was never prosecuted for the Lambert murder as a result of his agreement to serve as an agent, even though he was arrested and his co-actor in the murder was prosecuted.

Stobie was told by the UDA on or about February 6, 1989 to have two pistols ready for delivery for an operation the following Sunday. He said the UDA told him the target was a "top Provo" living in North Belfast but he was not told the identity of the target. He said he called his Special Branch handlers that day and passed along the information, including the location of where he was instructed to deliver the weapons on the following Sunday. He said he contacted his Special Branch handlers later in the week to confirm what he was to do the following Sunday. He was told by Special Branch to proceed as directed by the UDA, and that the regular police would have a roadblock set up. On the following Sunday morning he delivered two pistols to a Loyalist drinking club. As he arrived, he noticed one of his Special Branch handlers with another man in an unmarked vehicle parked across the street from the entry to the club. He assumed they were ready to follow the gunmen to whom he was to turn over the weapons. He turned over the weapons near the exit of the club and then left, followed by the death squad members. Stobie got into his car and let the others drive away first. He noticed that the Special Branch members turned and went in the opposite direction to the hit team. He was listening to the radio that evening when he heard about the murder of Pat Finucane. He realized then who was the target of the death squad, and that the murder had been allowed to proceed by the Special Branch.

Stobie was contacted by the UDA on Tuesday after the murder, and told he was to dispose of the murder weapons as directed. Stobie picked up the weapons where they were left. He called Special Branch and told his handlers that he had the "hot" Browning (misidentified as a Heckler) 9 MM pistol used in the murder. Special Branch told him to follow the UDA's directions, and sent an unmarked Land Rover to meet him. He and the Special Branch man drove to the Ardoyne area and were followed by a

helicopter watching from above. When they arrived, Stobie gave the "hot" weapon to a man he called David Anderson.

Stobie told me he was suspected by the UDA of acting as an informer, and they later tried to murder him in 1992. After he was shot several times but inconveniently failed to die, a UDA leader visited him in the hospital and told him he was shot by mistake. Stobie had sufficient street smarts to realize this was a lie and decided he needed an unconventional life insurance policy. He turned first to one reporter and told his story, only to learn that this reporter had earlier agreed to accept a senior governmental press officer position. Stobie then approached a second reporter and told this individual his story on condition that the reporter could not reveal the story unless Stobie gave him permission or something happened to Stobie. He thereafter hinted to UDA acquaintances that he had made "arrangements" in case there was any repetition of the 1992 attempt on his life.

The second reporter with whom Stobie made his arrangement spotted our reward notice and contacted me.

Stobie feared that if the authorities were unsuccessful in sending him to jail, after they had planted two unrelated weapons in his mother's house, he would again become a target. He realized he was considered a weak link by the security services when Lord Stevens began his third investigation in May 1999 into collusion among the Loyalist death squads, the Special Branch and the infamous military intelligence unit called the Force Research Unit ("FRU") for whom Brian Nelson, the key FRU operative who targeted Pat Finucane, had worked. Lord Stevens confirmed in his 2003 report that he did identify Stobie as a person of interest early in his investigation.

Stobie wanted our reward to start a new life in Canada for himself, his girlfriend and his mother.

When I told him we would only pay the full reward upon obtaining information about the names of the upper mid-level Special Branch officers who commissioned Pat's murder, I suggested that he should consider if there were others who might possess that information and would want to share in the reward in any manner they arranged among themselves. I did give his attorney Two Thousand Dollars in Stobie's presence as a good faith deposit.

Stobie was later arrested as a result of evidence gathered by the Stevens Inquiry but the case against him collapsed in November 2001 when a key witness, the reporter to whom he first turned, refused to testify on account of his mental state.

And then, on December 12, 2001, Stobie was murdered by the UDA outside his home after he made it known that he would be willing to testify into an inquiry into Pat Finucane's murder, stating that he would not name Loyalists but would name their police handlers. In a statement made by a masked paramilitary after his killing, it was claimed "Billy Stobie could have stayed on the Shankill and been left alone had he not spoken out on Ulster Television and backed the public inquiry [into the Finucane killing]."

Clearly it was the police Special Branch and the FRU who were really worried about the impact of Stobie's disclosures. The prior knowledge of the Special Branch and the FRU about the murder, together with coordination of Special Branch and FRU activities at the very top of their command chains, make clear the extent of the governmental collusion in Pat Finucane's murder. The refusal by the British government to convene a credible independent inquiry into Pat Finucane's murder ensures there will be no accountability for those who orchestrated and sanctioned the murder of Pat Finucane. Faceless securocrats and their political protectors have successfully neutered the rule of law in Northern Ireland and have sadly intimidated the current political leadership of the UK.

Mr. SMITH. General, thank you very much for your very extensive work and testimony today. It is greatly appreciated by this subcommittee.

I have a couple of questions I would like to start off with. You know, there is no statute of limitation, as we all know, on murder cases. Even in cases of Medgar Evers' murder and the Birmingham girls that were firebombed, causing four girls to lose their lives, they were reopened, retried years later due to continued investigation. I would note parenthetically that Evers was murdered in front of his family in a way that is very similar to and parallel to Patrick Finucane's murder.

So this, it seems to me, is a very disturbing bit of unfinished business. The public inquiry certainly would bring a great deal of scrutiny and light to something that has suffered nothing but shadows and an occasional breakthrough. And it does beg the question as to why the coverup? Who are they protecting, as I think all of us are concerned about?

My question to both of you would be in Judge Cory's report on Patrick Finucane's murder, he asserted that without public scrutiny, this is a quote, "doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection throughout the Northern Ireland community." Do you agree with his assessment, and is this ongoing coverup harming the British Government's credibility?

Mr. FINUCANE. Yes, I would agree with the assessment. Judge Cory concluded, as he did and others who have looked at the case, reached the conclusion that not only was the murder of my father as a result of the work that he was doing and the successes that he had, but also it was meant as a warning to other lawyers that if they attempted to replicate his successes or employ the same techniques or seek the same successes in the courts that he sought and achieved, then they might meet the same fate.

Not only did it represent an attack on the rule of law and the position of lawyers as defenders of their clients, but it also compromised the ability of people to achieve their right to an effective legal defense because lawyers had to now consider, defense lawyers for the first time now had to consider whether they would be putting themselves and their families at risk by accepting work that was politically unpopular.

My father was prepared to do this. My mother I think said it best in the immediate aftermath of the murder that Pat was a professional to such an extent that he would have represented the people who shot him, so fervently did he believe in the rule of law and the value of maintaining a commitment to the rule of law, even in the face of civil conflict. So I think the murder definitely had that dimension to it at the time.

The ongoing effect of the killing, the surrounding circumstances, the evidence that has come to light and the broken promise given by the British Government at Weston Park is to elevate the case to a highly iconic status that is capable of being abused as a propaganda tool by people who might seek to continue the conflict. I do believe and fear that that is a risk.

And it is also damaging to the British Government, because quite simply, they didn't keep their word, and if a government is seen

as not being capable of keeping its word or acting honorably, then it doesn't deserve to be a government.

It is clear from some of the information that has come to light as a result of the recent litigation in Belfast that the decision not to hold a public inquiry by the Cameron administration was one hotly debated within the Civil Service. So even within the British establishment, the danger of going back on their word, of breaking the commitment, of welching on the promise given in Weston Park, was recognized and understood, and many British civil servants, including the Cabinet Secretary at the time, argued against it and expressed a lot of surprise that the Prime Minister was going down this road.

Mr. SMITH. General?

General CULLEN. One of the surprises to me after witnessing that the Prime Minister went ahead in publicly addressing the Saville Inquiry—and I had occasion to speak to the Secretary of State of Northern Ireland about our experience with the My Lai Massacre, in which I represented the chaplain in the Peers Commission inquiry after the massacre, and how it was necessary to redeem ourselves as an institution, and I am talking military at that time. We had to reveal what went wrong, withhold nothing, and then entrust the American people to place their trust back in us again by coming clean on what went wrong and trying to make the institutional fixes.

I suggested to them, and I am not suggesting for a moment that my input played any role in the Secretary of State's view, but they did take that approach with the Saville Inquiry and the Prime Minister was applauded in the Guild Hall Square of Derry when he made the announcement acknowledging responsibility.

I thought that he was heading toward that same kind of a conclusion in having an inquiry. I had suspected for years that there was deliberate delay until Mrs. Thatcher passed away or was not able to appear before an inquiry because it was her practice on occasion to sit in on the Joint Intelligence Committee, which had overall supervisory responsibility for the work of the Task Coordinating Group that ran things in Northern Ireland. That was a group made up of senior military and police officials.

But I realize now that I was wrong in my assessment. I don't think it was Mrs. Thatcher at all. I think it was the security people at the top end, MI5 and MI6, and the remnants of Special Branch that continue in the police today who, for whatever means that were at their disposal, whether it was some version of Mr. Hoover's infamous private file cabinet or for some other reason, were able to effectively block what I think Mr. Cameron was prepared to do but couldn't do.

Mr. SMITH. Thank you.

Mr. Finucane, in your written testimony, you say the review conducted by Desmond de Silva reveals a great of information for the first time, but it is nowhere near being a complete answer. It is based on a reading of documents without any questioning of the authors. Indeed, only 11 witnesses were spoken to by de Silva, and 12 written submissions were received. No former politicians were interviewed, nor were a number of key intelligence personnel, in-

cluding the former head of military intelligence in Northern Ireland, who was in charge at the time of your father's murder.

Then you point out, as if this is not bad enough, on the day that the de Silva report was published, Tom King, now Lord King, led the public response on behalf of the government. He was the Secretary of State for Northern Ireland in 1989 when your father was murdered.

You go on to say, not surprisingly, he rejected calls for a public inquiry, claiming that the matter had now been fully investigated. It is difficult to conceive, you go on to say, of someone with greater conflict of interest than the former Secretary for Northern Ireland in 1989. The dangerous suspicion that lingers around his defense of the government's position is that those responsible for the policy of collusion remain in positions of significant influence and will continue to get away with it. As a key witness at any potential inquiry held, Lord King's rejections of the calls for an inquiry merely add insult to injury.

That is a very, very powerful statement. I know after the de Silva report, there were some in the Labor Party who suggested that there ought to be a public inquiry. Mind you, between 2003 and 2010, during both the Blair and Brown governments, they refused a public inquiry, but they may be seeing things a bit differently. I am wondering if you might want to further elaborate on that statement, because it doesn't get any more powerful than that, and your thought as to whether or not there might be a reevaluation going on in the House of Commons.

Mr. FINUCANE. The position of the opposition in the House of Commons led by Ed Miliband is that an inquiry will be established if they are returned to government. The difficulty that arose when Labor was in power between 2003 and 2010 was the enactment of legislation that limited the manner in which inquiries would be carried out. Ministers would have control over the information that appeared before the inquiry and in public, and that control would be an absolute discretion, not subject to input from any of the parties, and would limit the ability of the inquiry to explore important issues publicly.

Mr. SMITH. If I could interrupt, so are the Labor MPs suggesting that law would not be applicable in this case? I, too, read that law and thought it was unconscionable that the ability to veto information from becoming public would lay in the hands of the very people who would have the potential conflict of interest.

Mr. FINUCANE. Well, that was indeed the fear. However, since the passing of that law, the Inquiries Act of 2005, and a precedent has developed since in relation to a case that arose from circumstances in Iraq where the Inquiries Act was not implemented in full for that particular inquiry in the case of a man called Baha Mousa who was killed by British soldiers, but instead the decision as to what material would be withheld and what material would be disclosed was left to the inquiry chairperson and only the chairperson, and that allowed an opportunity for representations to be made in public and some measure of debate to be had as to what information the public would see. It would not be taking place in a minister's office in the way originally envisaged under the terms of the act.

That precedent was the one we wanted the government to follow. That was the one we were discussing with them for about a year between 2010 and 2011, when the Cameron-Clegg administration took part. We expected when we went to Downing Street to be told that this precedent was going to be followed because, if for no other reason, we were not asking for something to be created for our case; we were simply asking them to give us the same as they had given somebody else. But that obviously was refused.

The position of the opposition, as I say, is that they will establish an inquiry; they will live up to the promise of Weston Park. But until that happens, we have to endure this U-turn by the Cameron administration. And as if that wasn't bad enough, on the day the de Silva report was released, I had to experience walking past Tom King in the BBC in London as he went into one studio saying I am satisfied no inquiry is necessary now, the matter has been fully investigated, and I went into another studio saying, well, it hasn't been investigated, and the man in the studio next door is someone I would really like to ask a few questions of.

This is just another example of how much damage is being done to the government's credibility as a result of both its decision and its choice of spokesperson. I can't think of anything more insulting than the person who was in charge at the time, who was getting briefings from the Force Research, Unit, who met some of the people in charge, who was aware of the extent of intelligence available to the State, and yet is able to get away without having to answer for his actions while in office.

He said that he would have been available to the de Silva review if they had asked to speak to him, but it appears they did not. In fact, they didn't ask to speak to any politicians. And it seems to me that is a glaring void in the process that de Silva was asked to undertake and underlines the need for a public inquiry, because there are people who should be spoken to and should be questioned, who simply have not been up until now. And we really have to start doing that before more time passes and those people become unavailable.

Mr. SMITH. You referenced the impact that your father's assassination had on other defense attorneys. I would just note that, on September 29, 1998, 15 years ago, a little under 15 years ago, sitting right where you sit, and where General Cullen sits, we had Rosemary Nelson tell her story, especially the death threats that she had received from the RUC, and within a year, 6 months really, she had been assassinated with collusion all over the place. So killing defense attorneys, human rights defenders like your father, had an impact. I am sure there are many attorneys who thought they might do this very noble work, who decided to take a different path because of what had happened to your dad and then what happened to Rosemary Nelson.

So this committee, I can assure you, will stay focused until and when the British Government does the right thing, as they have promised to do, and that is to conduct a public inquiry, and they do need to hold people who allegedly have committed collusion to account in a proceeding that will bring justice, even at this late date.

I would like to yield to vice chairman of the subcommittee, Mr. Weber.

Mr. WEBER. Thank you, Mr. Chairman.

To you, Michael, and to your mom, I want to say my deepest condolences.

Of course, I am newly elected, so I am kind of getting up to speed here. And so a lot of the things you are discussing and you are testifying to I am not as knowledgeable about as our chairman here, who has done a fine job of keeping up and trying to keep the pressure on.

But I have got some questions, so bear with me, if you will. And let me see if I can get some answers.

You talked about the agreement, was it the West Park—the Weston Park——

Mr. FINUCANE. Weston Park.

Mr. WEBER. Weston Park. Tell me who made the agreement and—tell me about that.

Mr. FINUCANE. The original Belfast peace agreement that set out the broad structures to be put in place post-conflict were agreed in 1998 and somewhat famously concluded on Good Friday, 1998. And but this was a framework document. It did not go into detail in a number of key areas. At that time, there were a number of quite fundamental structures of state and government under discussion, including reform of the police, the implementation of a new legislative assembly, and structures of local government.

The Good Friday Agreement provided a blueprint for how that would be put together. But, like most blueprints, it was very broad in scope. And it became clear that further negotiations would be required several years later as difficulties were encountered.

Mr. WEBER. Who was in power during that time?

Mr. FINUCANE. At that time, Tony Blair's government was in Britain. And Bertie Ahern was the Prime Minister in Dublin. And the subsequent—the negotiations subsequent to the Belfast agreement of 1998 were—took place in a location called Weston Park, and they happened in 2001. And a number of issues were discussed, including policing, local justice issues, the legislative assembly that would be set up, and so forth.

Mr. WEBER. Including the assassination of your father.

Mr. FINUCANE. Yes. And certain cases had become particularly prominent because of either suspicions of state collusion or failures of investigation by the police, allegations of police or army involvement, and so on and so forth.

Mr. WEBER. Well, let me spring from that if I could maybe to General Cullen.

And, again, I am just trying to come up to speed and catching these names and these events. You are describing a situation where there is an informant who was ultimately murdered. I think you said he had a drinking problem. So the collusion that Michael is describing by government at the highest levels here, there is going to be a circle, I am assuming, somebody has come in and put together a potential list of those who had knowledge or who were somehow either complicit or involved. How wide is that circle? Is it ten people? Five people? A hundred people?

General CULLEN. I think the collusion that is probably several hundreds of people. I would say a good part of the Special Branch organization were involved. Certainly, the military intelligence unit who was rebranded from time to time, but at this particular point in history was innocuously called the Force Research Unit. I think they were all involved. And the question is, how far up the political chain to whom those people reported did it go? That is one of the unanswered questions.

Mr. WEBER. Well, and my question is, so if there were several hundred back then, because of attrition or, you know, mortality or whatever, somehow that circle has narrowed.

General CULLEN. It has narrowed through death, retirement. We don't know how far it has been narrowed. The RUC, for example, the police were both downsized and rebranded. Now, the hope was, and we have gone through this in our own history, after a conflict, we have a reduction in force or a RIF. And we use those occasions, certainly post-Vietnam, to eliminate people who are not at the highest level of the ratings. So you get rid of a lot of problems that way. We were told that the government simply would not do that. They offered significant cash packages to people in the police if they wanted to retire in order to reduce the number down. But, unfortunately, what happened I think is some of the more capable and ambitious people saw lives beyond the police. They could take this cash package and go do what private enterprises want. Some of the bad apples I think stayed.

Mr. WEBER. Well, I think you used the term "remnants" in some of your earlier remarks.

General CULLEN. Yes.

Mr. WEBER. Well, so how many—without giving me names, how many—if you could interview five or ten people, do you have a short list?

General CULLEN. Oh, I would have a short list, certainly, Congressman.

Mr. WEBER. Okay. And how short is that short list?

General CULLEN. Of the people still around, I would say it is probably 5 to 10 very, very key people who were in prime positions of authority then.

Mr. WEBER. Okay. So working—and you made the comments that you I think helped in the My Lai Massacre; you represented the chaplain, I think.

General CULLEN. The division chaplain, that is right.

Mr. WEBER. Well, the division chaplain. Okay. And you made the comment that said you felt at the time, for the American public, what needed to be done was all the truth needed to be out as to what went wrong.

General CULLEN. Precisely.

Mr. WEBER. And so for the American public to finally feel at peace, I guess—I don't want to put words in your mouth—but to accept and to feel like progress was being made, justice was served, that you had to come clean, so to speak.

General CULLEN. Exactly.

Mr. WEBER. What impetus does the British Government have at this point to come clean?

General CULLEN. I think the—the biggest thing that drives or should drive any government is to gain or to regain the confidence of its people and especially any disenfranchised elements in its society. That would describe a significant portion of Northern Ireland, who, during the course of the conflict, realized that the justice system was not administered fairly. The police system did not protect people in an equitable manner.

There has been huge progress made since that time. And certainly even in the worst days of the conflict, there were heros in the police. A sergeant, Detective Sergeant Johnson Brown, who was one of the ones who did key work in investigating the murder of Pat Finucane, said at one point he feared far more the Special Branch, his own police people in the political branch, than he ever feared the IRA. And he acquired a key confession at one point that the Special Branch then tampered with, removing a part of the tape on which that confession was kept. So there were—the ordinary people——

Mr. WEBER. I am assuming he is not still around.

General CULLEN. He is retired now, sir. And his partner had a mental breakdown because of the threats and the stress which he was under. He has recovered, I understand. But there were wonderful people like that who at least allowed ordinary folks to say, hey, there are some good cops there who want to do their job.

Mr. WEBER. Right.

General CULLEN. But then they were painfully aware, as ordinary people were painfully aware, there were cops who didn't want to do their job.

Mr. WEBER. So as a committee, as the House of Representatives, what can we do? This is probably not the right term, to tighten the screws, to bring a heightened awareness to help, what can we do from across the big pond to help make that a bit more of a—I don't know what the right word is—a priority? What do you think we can do?

General CULLEN. You have a tremendous moral voice, Congressman. You are listened to across the water. And what you in effect can do is empower the politicians who want to do the right thing, who want to regain the confidence of the people in England, in Northern Ireland, in all parts of the UK, to say to the securocrats, who are resisting a public inquiry, you must hold this public inquiry. One of the problems Michael just spoke about is there is always a danger that those who didn't want to sign onto this peace agreement, who for their own reasons would want to see this collapse, on both sides, take oxygen from the failure to have this public inquiry. We have to cut off that oxygen.

Mr. WEBER. One final question, Mr. Chairman, then I yield back, and thank you for your indulgence.

Is there a window of time closing? Because obviously with mortality rates and attrition, whatever, 1 year? 3 years? 5 years? I mean, the sooner the better, obviously. The chairman said it, eloquently justice delayed is justice denied. What kind of a time frame are we on?

General CULLEN. That is a tough question. I would say anybody in my age range who would have been around at that time is looking at his own mortality tables, and you begin to wonder. Stobie

was murdered; Brian Nelson, a key actor, died under very mysterious circumstances. Other people have disappeared. The time is taking its toll on the justice system. And we may get to a point where even if the government were under a new government or this government in the UK decided to do the right thing, it may be too late.

Mr. WEBER. Thank you Mr. Chairman. I yield back.

Mr. FINUCANE. Could I just add one thing? Mr. Weber asked what could Congress do. By making this an issue that continues to be of concern to Congress and perhaps communicating that where you can but particularly to the White House, the continued contact that takes place between the administration here and that in Britain and the notion that Pat Finucane is always going to be a subject of conversation until the issue is resolved is the greatest moral force you can bring to bear, perhaps starting with a letter that the chairman is circulating for Members' consideration and signature.

And then why not the G8 summit? That is happening in Northern Ireland in the very short future. It may not be an issue that touches on every world leader's agenda, but certainly the British and Irish—or the British and American premiers will be there. It should be a conversation happening between the President and the Prime Minister because it is important, and it is an unresolved issue. And amidst all the problems that people are trying to sort out in Northern Ireland in 2013, problems with unemployment and so on and so forth, they have got this historical problem, a hangover from the bad old days, that is not going away but could be made to go away if the British Government would simply do what it promised to do.

So I think that is a real practical step that Congress can take. And it may yield great fruit.

Mr. WEBER. Thank you very much.

Mr. Chairman, I yield back.

Mr. SMITH. Thank you very much, Mr. Vice Chairman.

I think Mr. Weber makes a very good point about, you know, this could lead to a cold case, and by design, it could lead to a cold case. All the more reason why we need to continue our vigilance and our very energetic efforts so that it does not happen. But eventually, the truth does come out, over time. But it ought to come out in a way that is actionable, particularly with potential prosecutions, and certainly public inquiry will finally lay out the information.

So can you tell me, Michael, more about the ongoing litigation in which you and your family are seeking a court order to the British Government requiring it to conduct the inquiry it committed to in 2001? Where is the litigation now and how is that proceeding?

Mr. FINUCANE. Proceedings were instituted after the decision of the British to appoint Desmond de Silva.

Mr. SMITH. In what court, what venue?

Mr. FINUCANE. In the Belfast High Court.

The case essentially seeks an order of certiorari quashing the decision by the government not to hold an inquiry and an order of mandamus requiring them to establish one.

The proceedings were instituted not long after de Silva was appointed to carry out his review. We initially gave some consideration to seeking a restraining order to stop de Silva from carrying

out his work. But it was felt that de Silva might conceivably disclose material that could be helpful even though the process could never satisfy the requirements of a public examination. So the main proceedings have simply continued, and there has been the usual back and forth that you find in litigation between the government and our lawyers. But most recently, some interim hearings have taken place, where we have sought discovery of documents relating to the case, including previously classified intelligence documents dealing with the—dealing with the murder at the time itself. And a lot of those were revealed. Some of them were already public in one form or another, so they were collated during the course of the proceedings. But the government sought to withhold certain internal communications between security advisers and the Prime Minister. And the letter that I referred to in my testimony came to light only in April of this year. And the contents of it and the expressions of serious concern about the circumstances of the case and its comparison with events that have transpired post-9/11 and to Iraq and Afghanistan and how it compares on the scale with those.

The hearing took place in April. The judge hearing the case decided he would review the documents himself. And so the government was ordered to supply whatever it wanted to hold back so that the judge would review them and make his decision. As I understand it, he has received those documents, and we are awaiting a date for his ruling.

After that, it will proceed to a full hearing on the merits, where we hope we will achieve the orders that we are seeking.

Mr. SMITH. Without objection, the testimony of Jane Winter, Former Director of British Irish Rights Watch will be made part of the record. Your full statements as well will be made part of the record. A submission from the Government of the Republic of Ireland will also be made part of the record. And they do in their testimony say quite emphatically, "The Irish Government will continue to seek a public inquiry into the murder of Pat Finucane as committed to in the agreements."

In her statement, Jane Winter points out that "the de Silva report missed three crucial aspects in the case. One, he has misunderstood the guidance available on agent handling and its adverse impact on the detection and prevention of a crime. He has omitted to investigate the fact that British Army intelligence tampered with evidence, and he underplays the role of the intelligence service in the case." Would either of you like to comment on that?

Mr. FINUCANE. I think in general terms de Silva is unsatisfactory because he lays too much blame at the door of defunct organizations, like the RUC, or individuals who are dead or no longer available. And that is—that is very unsatisfactory and, in our view, inaccurate. There are—there are people he could have spoken to but didn't. And there are conclusions that could have been reached, but he chose not to do so, even within the terms of his very limited mandate. And I think the extent to which he was prepared to conclude that something didn't happen because he could not see clear evidence of it is very unsatisfactory and glosses over the obvious technique of putting together various pieces of evidence and forming a reasonable conclusion based on them.

And he also chose to reject the evidence of some people who were involved in the intelligence services who said they saw documents and additional materials that were no longer in existence, but they were quite clear did exist at one time, including targeting information and information about my father's personal habits that was gained as a result of surveillance, surveillance which we suspect was carried out either by the police or the army. And the unwillingness to reach those conclusions and frustration with the process itself, that it is not public, that you can't ask questions of the people involved, that you can't assess all of the evidence and all of the documents for yourself, leaves de Silva in a very unsatisfactory condition insofar as the mechanism is concerned. And it is something of a starting point, but I don't really think it can be seen as anything more than that, and it is certainly not a finished exercise.

Mr. SMITH. Jane Winter makes the point in her statement that the report, the only real value it has, in her opinion, is that it confirms collusion, vindicates Patrick Finucane, and it in itself makes a compelling case for a public inquiry. One of the findings in the de Silva report that she amplifies in her statement is that he has confirmed that 85 percent of the UDA's intelligence came from security forces. She also points out that he has shed light on the briefings given to a government minister prior to the murder; 85 percent of intelligence coming from security forces. If that isn't damning, I don't know what is.

General.

General CULLEN. Well, it goes back to the point I was making before: When you have intelligence operations from different entities in the same theater, you have to have coordination at the top. And given the 85 percent number, which I read also, it did confirm to me that it was more than simple idle chat at the top; there was active coordination in not only Pat Finucane's murder but in the murder of other innocent people.

Mr. SMITH. We have one final question, and then if you would like to make any concluding remarks.

What effect do you think the inquiry, according to the terms committed to in 2001, would have on the peace process in Northern Ireland?

Mr. FINUCANE. I think—I think the final establishment of an effective, comprehensive, public judicial inquiry would address what has become the last great historical issue for the British Government in the Northern Ireland conflict, certainly the most substantial one remaining unaddressed. And there has been a great deal of improvement in investigative mechanisms locally. Inquests have been improved in terms of their capacity to examine killings in Northern Ireland. And there are controversial cases that have not been resolved. There are still campaigns by interest groups and relatives for a proper examination of the deaths of their loved ones. But they don't have to go for a public inquiry anymore because the domestic mechanisms, the local mechanisms have been improved and strengthened.

We are left with a public inquiry because so many state agencies are involved that no other mechanism seems capable of addressing the issues. And we are becoming, if you like, somewhat isolated in that category because we are the last remnants of the cases I high-

lighted at Weston Park that required a public tribunal of inquiry type of mechanism. And that is really not good.

This hearing, I know, is receiving a lot of attention in Ireland and Britain. It is an issue that when matters come to light it dominates the news headlines. When we were in London in 2012 for the release of the de Silva report and were in the House of Commons, the case was front page news. Anyone saying this has gone away or this is becoming less important or the people feel less strongly about it is clearly wrong. And that has to erode confidence in the rule of law in Ireland. And what obviously—well, perhaps not obviously, but I do believe the opposite is true. If the British can finally grasp the nettle in this one case, in the case of Pat Finucane above all others and really come clean and explain what went on and make the witnesses available and reveal the documents and just get it in all gone in one go finally, I think the boost to confidence would be immeasurable. Because I think the feeling of people on the ground is quite simple: They can't bring themselves to admit it, even now. And it is hard to argue with that when you see the evidence in the case and the broken commitments. And I really think the commitments need to be lived up to. And I think the benefits, the potential benefits are very real, and they are there for all to see.

General CULLEN. We had tragic examples in our own country back in the 1960s, where civil rights workers were murdered, and there was often collusion by local policemen. But we had the FBI. We had Federal courts. We had this Congress to investigate and set things straight and say that there is a rule of law and it is going to apply to everyone. That is not the case in Northern Ireland while there is a refusal of the government to have this promised inquiry. We are ultimately talking about a government who colluded in the murder of one of its own citizens and now refuses to reveal the extent of that collusion, who sanctioned it from above. Until there is a willingness to address this in a credible way, I am afraid there will not be the restoration of confidence in the rule of law and in the government itself. And it will give dissident factions on all sides an opportunity to say, how can you trust this government? If you have got connections with the top, you can do anything you want. There is no accountability. That is unsafe for any government. We don't want to see that happen.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you.

This committee, as you know, walks point on human rights. It is vested with the responsibility for the Foreign Affairs Committee and, by extension, the full House of Representatives to bring the light and scrutiny to human rights abuses anywhere and everywhere they occur and to hopefully craft legislation that meets the needs of those who are victimized.

I can assure you, both of you, and, Michael, you as a son who has carried on your father's tradition as a solicitor and has done so with great class and courage, that we will not rest until the public inquiry occurs, and we well do all within the—and I say this in a bipartisan way because there are people on both sides of the aisle who feel as passionately as I do, that justice delayed is justice denied, as I said earlier, and there needs to be a public inquiry and

it needs to be done now. And we will keep bringing our voice as a committee and individually as an individual Members of Congress to bear until that day occurs.

If you would like to make any final—although what you just said was a wonderful concluding statement—but if you have anything further you would like to say before we conclude.

Mr. FINUCANE. No. Other than to thank you again, Chairman, and the committee members for your time and your support, I don't have anything further to add.

Mr. SMITH. Thank you.

General CULLEN. I would just like to join in Michael's thanks for your hospitality and your willingness to hear us today.

Mr. SMITH. Thank you so much. The hearing is adjourned, and we will be convening momentarily to proceed to a markup of three pieces of legislation. But this hearing is adjourned.

[Whereupon, at 11:26 a.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
Christopher H. Smith (R-NJ), Chairman

May 13, 2013

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held by the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations in Room 2172 of the Rayburn House Office Building (and available live on the Committee website at www.foreignaffairs.house.gov):

DATE: Wednesday, May 15, 2013

TIME: 10:00 a.m.

SUBJECT: Recent Developments in the Investigation of the Murder of Human Rights Attorney Patrick Finucane

WITNESSES: Mr. Michael Finucane
Son of slain human rights attorney Patrick Finucane

Brigadier General James P. Cullen, USA, Retired
Human rights attorney

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Africa, Global Health, Global Human Rights, and International Organizations* HEARING

Day *Wednesday* Date *May 15, 2013* Room *2172 Rayburn HOB*

Starting Time *10:00 a.m.* Ending Time *11:26 a.m.*

Recesses [ ] (____to____) (____to____) (____to____) (____to____) (____to____) (____to____)

Presiding Member(s)

Rep. Chris Smith

Check all of the following that apply:

Open Session [✓]
Executive (closed) Session [ ]
Televised [✓]

Electronically Recorded (taped) [✓]
Stenographic Record [✓]

TITLE OF HEARING:

Recent Developments in the Investigation of the Murder of Human Rights Attorney Patrick Finucane

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Karen Bass, Rep. Randy Weber

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not members of full committee.)*

Rep. Richard Neal, Rep. Joseph Crowley

HEARING WITNESSES: Same as meeting notice attached? Yes [✓] No [ ]
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Analysis of the Report of the Patrick Finucane Review carried out by Sir Desmond de Silva, submitted by Chairman Smith
Briefing on the Patrick Finucane case by Jane Winter, submitted by Chairman Smith
Statement on the publication of the de Silva Report by the Government of Ireland, submitted by Chairman Smith

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *11:26 a.m.*

Gregory B. Simpkins
Subcommittee Staff Director

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

SUBMISSION TO THE SUBCOMMITTEE OF THE COMMITTEE ON FOREIGN AFFAIRS ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

by Jane Winter, former Director of British Irish RIGHTS WATCH

15th May 2013

Executive summary

Despite a forthright, if belated admission, by Prime Minister David Cameron that there was collusion in the 1989 murder of Patrick Finucane, Geraldine Finucane and the whole of the Finucane family have had a very long battle for justice which is not over yet. That battle is detailed in Appendix A to this submission.

This submission analyses the report of the Patrick Finucane Review, carried out at the request of the Prime Minister by Sir Desmond de Silva QC.

It will address the following points:

- there was no need for the de Silva Report
  - there is a compelling case for a full, judicial, independent public inquiry
  - such an inquiry has been endorsed by the US Congress, by President Obama, by the Irish government and the United Nations, among many others
  - the UK government has already held six lengthy and costly investigations and yet there remain unanswered questions
  - successive UK governments have broken the guarantee of an inquiry included in the 2001 Weston Park agreement
- the report is not human rights-compliant
  - the European Court of Human Rights has already ruled that there has been no effective investigation into the murder
  - the de Silva Report fails to meet the criteria laid down by the Court for such an investigation
- there are some serious flaws in the report
  - Sir Desmond was not required or empowered to make recommendations
  - he nonetheless reaches the conclusion that there was no "over-arching conspiracy", thus misunderstanding the nature of collusion which the UK government admits took place
  - he has missed three crucial aspects of the case: he has misunderstood the guidance available on agent-handling and its adverse impact on the detection and prevention of crime; he has omitted to investigate the fact that British army intelligence tampered with evidence; and he underplays the role of the intelligence service in the case
  - crucially, he absolves successive government of responsibility for both the murder and the subsequent cover-up, in the teeth of the evidence
- nevertheless, the report adds to our knowledge of the murder of Patrick Finucane
  - he has put into the public domain important details about the failure to warn Patrick Finucane of threats to his life
  - he has confirmed that 85% of the UDA's[1] intelligence came from the security forces
  - he has clarified the role of some of those loyalists involved in the murder
  - he has added to what was already known about one of the murder weapons
  - he has shed light on the briefings given to a government minister prior to the murder
  - however, the only real value in his report is that it confirms collusion, vindicates Patrick Finucane, and in itself makes a compelling case for a public inquiry.

Introduction

I thank this honourable Subcommittee for accepting this submission, which I humbly request be read into the record of your proceedings. I especially thank the Chairman, Representative Chris Smith, for his enduring interest in and support for human rights in Northern Ireland and in Patrick Finucane's case in particular. I have worked with the family and lawyers of the murdered lawyer Patrick Finucane since 1990.

[1] The Ulster Defence Association, the loyalist group that carried out the murder

Despite a forthright, if belated admission, by Prime Minister David Cameron that there was collusion in the 1989 murder of Patrick Finucane, Geraldine Finucane and the whole of the Finucane family have had a very long battle for justice which is not over yet. That battle is detailed in Appendix A to this submission. She, her family, and her lawyers are to be commended for their courage and determination to expose the truth about Patrick Finucane's death and their dedication in seeking justice in his name.

In summary, this submission will address the following points:

- there was no need for the de Silva Report;
- the report is not human rights-compliant;
- there are some serious flaws in the report;
- nevertheless, the report adds to our knowledge of the murder of Patrick Finucane.

THE DE SILVA REPORT WAS UNNECESSARY

From the moment it became apparent that Patrick Finucane's murder was not simply an attack by loyalist paramilitaries but that it involved collusion on the part of the army (in particular, the Force Research Unit, or FRU), the police and the intelligence service (MI5), the Finucanes have been calling for a public inquiry. They were quite right to do so. For the state to be involved in the murder of a lawyer, especially in a developed democracy such as the United Kingdom, is exceptionally serious and is a matter of public interest and concern.

Every single individual and body that has considered Patrick Finucane's case – and they are legion – has concluded that only a public inquiry will meet the case. The Unites States Congress, the Irish Government, and the United Nations have all called for a public inquiry and President Obama, during his first candidacy, made a similar call.

The British government itself has instigated no less than six investigations into the murder: three by Lord Stevens; the internal Langdon report, commissioned by then Secretary of State Mo Mowlam in response to BIRW's 1999 report *Deadly Intelligence*; one by Judge Cory; and now the de Silva Report. Many millions of pounds of public money have been spent and many years wasted by successive governments in depriving the Finucanes of the public inquiry they so patently deserve, on the grounds that public inquiries are costly and time-consuming! In the 23 years that I have worked on the Finucane case I have come to the conclusion that there has been no public inquiry because, despite all that is now known about the Finucane murder, there remains something so shameful that governments are determined to hide it at any cost. Although I cannot by definition know what is being kept secret, it is my considered opinion that the most likely matter that remains undisclosed is the level at which there was prior knowledge of the murder and explicit or implicit sanction of it by those in authority.

Crucially, the de Silva Report overlooks the fact that the British government undertook, as part of the Weston Park Agreement reached with the Irish government in 2001, to submit Patrick Finucane's case, among others to the independent scrutiny of a judge of international standing (who turned out to be Judge Cory), and, if he recommended a public inquiry, to instigate one.[2] Successive governments have broken this promise, although it has been honoured in all the other cases – indeed, the lengthy and expensive public inquiry into the deaths in Ireland of RUC officers Buchanan and Breen is still on-going, showing the Irish government's faithful commitment to the Agreement. It is also significant that during the judicial review proceedings brought by Geraldine Finucane advice to the Prime Minister from the Cabinet Secretary was disclosed which said, "Surely you are not going to ignore the International Agreement?" Instead of the public inquiry recommended by Judge Cory, and endorsed by the American and Irish governments and the United Nations, the Finucane family have been given lies, delay and anguish for 24 years.

The de Silva Report was unnecessary because the case for a public inquiry is so plain – and was so before he wrote his report – and because, although he has placed some new information in the public domain, it amounts to very little in itself and it is certain that a public inquiry would subject even more information to public scrutiny.

Furthermore, the de Silva process has significantly added to the delay in obtaining a public inquiry.

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[2] Weston Park Agreement, 2001, paragraph 19

THE DE SILVA REPORT WAS NOT HUMAN RIGHTS-COMPLIANT

As long ago as 2003 the European Court of Human Rights ruled that Patrick Finucane's murder had not received an effective investigation, which the Court has ruled is an integral procedural right deriving from the right to life, as conferred by Article 2 of the European Convention on Human Rights.

The European Court of Human Rights has distilled the following element in such an investigation:

- where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof rests on the authorities to provide a satisfactory and convincing explanation[3]
- ARTICLE 2covers unintentional as well as intentional deprivation of life[4]
- the investigation must be capable of determining whether use of force was justified[5]
- it must lead to the identification and punishment of those responsible[6]
- sufficient public scrutiny is required to secure accountability[7]
- the legitimate interest of the next of kin is to be protected by their involvement[8]
- the payment of damages alone are not enough to meet the requirement for an effective investigation[9]
- reasons are to be given for any non-prosecution of perpetrators[10]
- civil proceedings, criminal trials and inquests are not adequate to provide an effective investigation[11]
- deprivations of life must be subjected to the most careful scrutiny, taking into consideration all the surrounding circumstances[12]
- the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident[13]
- there must be an effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility[14]
- a prompt response is essential [15]
- the authorities must act of their own motion, once the matter has come to their attention; they cannot leave it to the initiative of the next of kin[16]
- the persons responsible for and carrying out the investigation must be independent from those implicated in the events[17].

This investigative duty was summarised by Lord Bingham in the House of Lords case in Amin:

> "To ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost a relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."[18]

Without examining each of these elements in turn, it is evident that the Patrick Finucane Review did not meet the criteria for an effective investigation. It has not led to the identification and punishment of those responsible for the murder. There has been no public scrutiny. The Finucane family were not involved in the process, and were not allowed to examine the documents seen by de Silva or to examine any witnesses.

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3 Jordan v the United Kingdom (2001) 37 EHRR 52, paragraph 103
4 Ibid, paragraph 104
5 Ibid, paragraph 107
6 Ibid, paragraph 115
7 Ibid, paragraph 109
8 Ibid
9 Ibid, paragraph 115
10 Ibid, paragraph 123
11 Ibid, paragraphs 141,120 and 128
12 Ibid, paragraph 103
13 Ibid, paragraph 107
14 Ibid, paragraph 105
15 Ibid, paragraph 108
16 Ibid, paragraph 105
17 Ibid, paragraph 106
18 R (Amin) v Secretary of State for the Home Department [2004] 1 AC 653

If follows that, by no stretch of the imagination, can the de Silva Report be said to provide an adequate substitute for a public inquiry.

Although the de Silva Report purports to deal with many issues that a public inquiry might consider, it has not been able to provide the satisfactory and convincing explanation required by Article 2, because the process by which the report was produced was not transparent.

It is a further matter of concern that, despite the fact that the Patrick Finucane Review drew, as its terms of reference recognised, on a "extensive investigations that have already taken place" – including the three Stevens investigations, Judge Cory's investigation, and an adjudication by the European Court of Human Rights – new evidence came to light which has not been available to any of these previous investigations. For instance, de Silva says:

> "However, although the volume of material already collated by Sir John [now Lord] Stevens was enormous, I decided at the outset of my Review that it was important to conduct a far more wide-ranging process than a straightforward examination of the available evidence gathered by the criminal investigations. I have, therefore, sought and received new documentary material from all the organisations cited in my Terms of Reference and a number of Government Departments. That material has included new and significant information that was not available to Sir John Stevens or Justice Cory."[19]

Later he says:

> "The European Court of Human Rights found in 2003 that the UK Government had breached its procedural obligations under Article 2 of the ECHR by failing to carry out an adequate official investigation into the murder. Additional material that was not available to the Court further highlights the importance of this finding."[20]

As his terms of reference promised, de Silva was told:

> "The Review will have full access to the Stevens archive and all Government papers, including any Ministry of Defence, Security Service, Home Office, Cabinet Office or Northern Ireland Office files that you believe are relevant."

However, similar promises were made to his predecessors. John [now Lord] Stevens, was told in the terms of reference for his first investigation:

> "I confirm that you will receive total support from all levels within the Royal Ulster Constabulary during the course of your investigation."[21]

A similar promise was made in relation to his third investigation:

> "In this matter you will have unlimited access to all intelligence and information available to and all files held by the RUC."[22]

Judge Cory was also told:

> "The two Governments are keen to see rapid progress. To this end, we shall make the relevant material available to you as soon as possible. It is the Governments' policy that public servants should co-operate fully and provide full access to all the papers."[23]

Sir Desmond has published 329 pages of previously secret documents, many of them heavily redacted, in Volume 2 of his report, but he inherited from Stevens alone "12,000 witness statements, 32,000 documents and, in all, over a million pages of material"[24]. What has been disclosed is therefore a tiny fraction of what is available.

Given that Judge Cory saw papers never seen by Lord Stevens, and Sir Desmond has seen papers seen by neither of them nor the European Court of Human Rights, the question arises as to how the public can have confidence that any reviewer, including Sir Desmond, has seen all that is relevant. Furthermore, since the public has never seen the vast majority of the available material, how can it be confident that the state has given the satisfactory and convincing explanation required of it by Article 2?

THERE ARE SERIOUS FLAWS IN THE DE SILVA REPORT

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19 *The Report of the Patrick Finucane Review*, Volume 1,HMSO, HC 802, December 2012,[hereafter: Report], *Executive Summary and Principle* Conclusions [hereafter: Report Summary], paragraph 7

20 Summary, paragraph 92

21 Terms of reference, Stevens 1

22 Terms of reference, Stevens 3

23 Judge Cory's letter of appointment, June 2002

24 Report Summary, paragraph 6

One of the most obvious flaws in the de Silva Report is that he makes no recommendations. This, however, is not his fault. His terms of reference did not require or empower him to do so. It is difficult to escape the conclusion that, given some of Sir Desmond's findings, and taking his good faith for granted, had he been able to do so, he would have recommended a public inquiry.

Even though he was not invited to make recommendations, Sir Desmond does come to conclusions, and they are not always correct. In particular, his conclusion that,

> "My Review of the evidence relating to Patrick Finucane's case has left me in no doubt that agents of the State were involved in carrying out serious violations of human rights up to and including murder. However, despite the different strands of involvement by elements of the State, I am satisfied that they were not linked to an over-arching State conspiracy to murder Patrick Finucane."[25]

It would appear, then, that Sir Desmond's definition of state collusion goes beyond collusive acts, however many of them there may have been, on the part of agents of the state to require "an over-arching State conspiracy".

It is submitted that this is a flawed approach. If any agent of the state engaged in unlawful or improper activity which contributed in any way to Patrick Finucane's murder, then as a matter of human rights law the state must bear responsibility and must be held to account. The term "collusion" is merely a shorthand for such activity, and whether an action is unlawful or improper is a matter of fact. It would be a mistake to import into the consideration of what part was played by the state in Patrick Finucane's murder the notions of motivation or conspiracy, notwithstanding the fact that a future public inquiry may indeed come to findings of conspiracy.

The de Silva Report also misses three crucial pieces of information. First, he maintains that the RUC [the Royal Ulster Constabulary, or Northern Ireland police] had no adequate guidance on handling agents and informers.

The only guidance available, according to the Report, was the Home Office Consolidated Circular to the Police on Crime and Kindred Matters, which was re-issued in 1986 but was essentially unchanged since 1969. This guidance was not followed in Northern Ireland because the RUC regarded it as inadequate for dealing with terrorist crime.[26]

Something which Sir Desmond inexplicably omits to mention is the Walker Report. In 1980 the then Chief Constable of the RUC, John (later Sir John) Hermon, commissioned a report[27] on the interchange of intelligence between Special Branch[28] and CID, the ordinary criminal investigative branch of the RUC. The report was written by Patrick Walker, a senior MI5 intelligence officer in Northern Ireland who later became the head of MI5[29]. In reality, it is likely that, with the consent and co-operation of the Chief Constable, MI5 was the driving force behind an initiative to streamline and control intelligence-gathering and agents within the RUC. The Walker Report's recommendations were implemented with effect from 1st March 1981. The report laid down the following arrangements:

- CID must share all it knew about agents with Special Branch[30]
- no RUC or army agents could be arrested in a pre-planned arrest without Special Branch approval[31]
- CID could not recruit anyone as an agent without involving Special Branch at an early stage[32]
- all agents were to be handled by Special Branch, or where that was impossible, jointly by CID and Special Branch[33]
- CID officers were encouraged to regard interviews of suspects as opportunities for gathering intelligence, if necessary prolonging the interviews for this purpose, and to involve Special Branch in

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25 Ibid, paragraph 116
26 Ibid, paragraph 4.15
27 Confidential RUC memorandum [hereafter RUC memo], reference C352/70, 23 February 1981
28 The equivalent of the FBI
29 *Secret Service Told RUC that it Could Put Spying on Terrorists Ahead of Solving Crime*, by Richard Norton-Taylor and Nick Hopkins, *Guardian*, 14 June 2001
30 RUC memo, paragraphs 1 and 7
31 Ibid, paragraph 3
32 Ibid, paragraph 4
33 Ibid, Appendix C, paragraph 6

interviews where intelligence was likely to be gathered[34]

- Special Branch briefings for CID could withhold information in order to protect intelligence sources[35].

These guidelines effectively gave Special Branch supremacy over CID. The effects on policing in Northern Ireland were devastating. Gathering and controlling intelligence took priority over the detection and prevention of crime, instead of being put at the service of these functions. The need to recruit, and then keep in place, informants meant that some agents were allowed to participate in crimes without being prosecuted, while other criminals were also granted de facto impunity in order not to blow agents' cover.

Sir Desmond makes much of the fact that the RUC were pressing for guidance on agent-handling throughout the 1980s. However, Assistant Chief Constable Blair Wallace in a note to the Chief Constable dated 27th June 1989 gave a cogent picture of the reality of the situation:

> "This is a very 'hot potato' as far as the NIO are concerned. Their mainland colleagues wash their hands of the matter as it does not particularly concern them at the moment, and the legal people seem to be reticent, to say the least, to become involved in formulating a system, despite the fact that what actually goes on is known or assumed by many. Legally they are not being asked to condone the commission of a crime any more so than in the present Guidelines. The requirement is for recognition that informants on terrorist activities must be involved in criminality otherwise they would not be useful informants."[36]

While Sir Desmond suggests that guidance was necessary to demarcate the line between responsible intelligence-gathering and illegality, the RUC appeared to be more concerned, as was FRU, that its officers should not be prosecuted for the crimes of their informants, or, indeed, their own crimes.

Secondly, while Sir Desmond correctly concludes that Brian Nelson, who was infiltrated by FRU (army intelligence) into the UDA[37], was a state agent, he completely misunderstands the role played by Nelson's masters in FRU in covering up his part in the Finucane murder, for which he never stood trial. Sir Desmond concludes:

> "The very nature of Nelson's re-recruitment from Germany and his subsequent handling leads me to the conclusion that by 1989 Nelson was, to all intents and purposes, a direct State employee. The FRU must, therefore, bear a degree of responsibility for whatever targeting activity Nelson carried out in his dual role as a UDA Intelligence Officer and a FRU agent during this period, whether or not in a specific case he shared with his handlers the full state of his knowledge. As A/05 [Lt Col Gordon Kerr, the officer in charge of FRU in 1989] himself put it at Nelson's trial:
>
> > '... whatever [Nelson] may or may not have done throughout his time with the UDA since 1987, he would not have done it had we in FRU not reinstated him in the UDA in the first place.'"[38]

As might be expected, the limitations of an on-paper review are apparent. Sir Desmond has not penetrated to the heart or realised the significance of the chronology here. FRU's own documents relating to Nelson were not delivered to Stevens until around August 1990, after the Director of Public Prosecutions had issued a seizure warrant for them. At the trial of Tucker Lyttle, Winkie Dodds and Matt Kincaid[39], it emerged that FRU passed over 1,100 documents to the Stevens team[40]. When they arrived, it is alleged that they were subjected to ESDA testing, which showed that most pages had been altered[41]. FRU said they had done this to make the work of the Stevens investigation easier. Be that as it may, they had seven or eight months to clean up their own documents.

Ian Hurst, a former FRU intelligence officer, has claimed that he witnessed a quantity of documents being removed from FRU HQ in late 1989 and that FRU scrutinised its records very closely to see if they could be altered. Sir Desmond finds Hurst to be a witness who exaggerates and lacks credibility.[42] In particular, he dismisses a claim that Hurst made to the Lawyers Committee on Human Rights:

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34 RUC memo, paragraph 4 – interviews solely for the purpose of intelligence gathering were in breach of Article 5 of the European Convention on Human Rights

35 Ibid, paragraph 10

36 Report, paragraph 4.50

37 The loyalist paramilitary group, the Ulster Defence Association

38 Report, paragraph 21.215

39 UDA men who were tried for other crimes as a result of the third Stevens investigation

40 *NI Court Told of Man's Role as Spy, Irish News*, 26 June 1991

41 *The Dirty War*, BBC TV *Panorama*, broadcast 8 June 1992, transcript, p. 27

42 Report, paragraphs 21.198 – 204

> "When speaking to the Lawyers Committee for Human Rights he said that there had been three attempts to kill Patrick Finucane within the space of six months. Two of these attempts were supposedly prevented, whilst the third resulted in Patrick Finucane's death. Hurst apparently told the Committee that he had seen FRU CFs [Contacts Forms] outlining the first two murder plans. Having conducted an extensive review of the available evidence, I am satisfied that there is simply no substance to these claims."[43]

Sir Desmond chose not to interview Ian Hurst[44]. Had he done so, he might have come to the conclusion that missing FRU Contact Forms (CFs), and in particular the missing P (personality) Card that Nelson compiled on Patrick Finucane for targeting purposes, together with the fact that so many alterations had been made to those CFs ultimately disclosed to Stevens, had less to do with Hurst's credibility and more to do with FRU's having airbrushed Patrick Finucane from its records.

Thirdly, the de Silva Report underestimates the role of MI5. It makes no mention of the fact that each FRU Detachment (unit) included an MI5 liaison officer. It does disclose that CO FRU Directive 1/88, dated 1st July 1988 and entitled "Perestroika", re-organised FRU so that it became an independent unit within army intelligence and its agent case files were moved to FRU HQ from the office of MI5's Assistant Secretary Political (ASP).[45] This suggests that MI5 and FRU had much closer links than has previously been admitted. Shockingly, the report also reveals that MI5 conducted a propaganda campaign against Patrick Finucane and two other lawyers in the late 1980s.[46]

Finally, and this is perhaps the greatest failing of the de Silva Report, he absolves the politicians of all responsibility for not only the murder, but the aftermath and the cover-up. Sir Desmond devotes just 33 paragraphs to his consideration of ministerial responsibility, and comes to the following conclusion:

> "In relation to the specific issues I have considered in this chapter, there is no evidence that Ministers sought to direct the security forces to take a relaxed or permissive approach to loyalist paramilitaries; Ministers do not appear to have been aware of Brian Nelson's targeting activities prior to September 1990; and there is no evidence that Ministers had any foreknowledge of the murder of Patrick Finucane, nor that Ministers were subsequently provided with any intelligence briefing suggesting that the intelligence agencies had foreknowledge of a threat to Mr Finucane's life."[47]

In relation to Brian Nelson's activities, the Report says:

> "The problem evident from the material on this issue is not that Government Ministers were directing Nelson's activities but rather the opposite - it seems Ministers had very little awareness of, or influence over, the nature of FRU operations in relation to agents such as Nelson. The system appears to have facilitated political deniability in relation to such operations, rather than creating mechanisms for an appropriate level of political oversight. A note sent by the Director of the T Branch of the Security Service [MI5] to the Director General (DG) on 14 March 1991 referred to this very problem. Looking ahead to a potential trial of Nelson, the Director of T Branch forecast that the proceedings could lead to:
>
> > 'Exposure of FRU behaviour and procedures which demonstrate a lack of legal and political responsibility, and management control.'"[48]

Sir Desmond appears to completely forget that in 1988 Home Office Minister Douglas Hogg MP was directly briefed by the Chief Constable and other senior RUC officers that named solicitors, including Patrick Finucane, "were in the pockets of terrorists".[49] While that briefing did not mention agents or their activities, it does shed light on the level of specificity which briefings to government Ministers could descend. Sir Desmond also appears to forget that, just days before the murder, Hogg told a Parliamentary Committee:

> "I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA."[50]

Sir Desmond also fails to make the connection between these matters and his own finding that Ken Barrett, the only person to be convicted of the Finucane murder, was incited by RUC officers to murder him.[51]

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43 Ibid, paragraph 21.201
44 Information of Ian Hurst
45 Report, paragraph 3.19
46 Ibid, Chapter 15
47 Ibid, paragraph 25.33
48 Ibid, paragraph 25.25
49 Ibid, paragraph 14.9
50 *Hansard*, Standing Committee B debate, 17 January 1989, column 508
51 Report, paragraph 19.126

Another issue of governmental responsibility which the de Silva Report overlooks is the fact that the British government has broken the Weston Park Agreement reached with the Irish government in 2001.

Whatever version of the truth is correct – government ministers either know what was going on or they did not – reveals an undeniable dereliction of duty on the part of politicians.

THE DE SILVA REPORT DOES ADD TO OUR KNOWLEDGE OF THE FINUCANE MURDER

Despite the fact that the whole de Silva exercise was unnecessary it is fair to say that it, like all its predecessor investigations, it has added to the sum total of knowledge surrounding Patrick Finucane's murder.

In particular, it has revealed the details of three occasions over the ten years prior to the murder on which MI5 had credible intelligence that Patrick Finucane was being targeted, yet nothing was done to warn or protect him. However, Sir Desmond is of the opinion that,

> "Although the handling of threat intelligence relating to Patrick Finucane in 1981 and 1985 raises very real concerns, it could not be said to have contributed to his murder in 1989."[52]

This is a highly contentious conclusion. In the first place, the complete absence of any duty of care in relation to the earlier threats, or to recognise that Patrick Finucane had been a UDA target for almost a decade by the time of his murder, together with the MI5 propaganda campaign against Patrick Finucane in the late 1980s, obviously contributed to the failure to protect him in 1989. Secondly, it is possible, although unlikely, that Patrick Finucane might have abandoned dangerous defence work if he knew the level of threat it entailed. Thirdly, he might very well have taken greater steps to protect himself (the outer of two front doors to his house was open on the night of the murder).

One very worrying fact that the Report has put into the public domain is that MI5 conducted a detailed assessment in 1985 which found that 85% of the UDA's "intelligence" (information that enabled them to target people for murder) came from the security forces. Sir Desmond is of the view that the same situation would have pertained in 1989, at the time of Patrick Finucane's murder.[53]

The Report also gives more or new information about the role played by individual UDA men (although their names are redacted) in the murder; the theft of the weapon used in the murder; and the briefings given to Douglas Hogg.

However, as has been pointed out, only a fraction of the information available has ever been disclosed to the Finucane family or their legal team, who were completely excluded from the de Silva process. The only mechanism whereby all that information can be subjected to proper and anxious scrutiny would be a public inquiry.

The only real value in the de Silva Report is that it unequivocally and authoritatively confirms what has been known all along, which is that there was official collusion in the murder of Patrick Finucane and that Patrick Finucane was not a member of the IRA but simply an effective lawyer doing his job well. Perhaps the best that can be said for the de Silva report is that it makes a very compelling case for a public inquiry.

May 2013

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52 Ibid, paragraph 16.59

53 Ibid, paragraph 11.111

PATRICK FINUCANE: THE FIGHT FOR JUSTICE

1. British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW take no position on the eventual constitutional outcome of the conflict.

2. This briefing chronicles the long struggle for justice in the case of Patrick Finucane, a Belfast lawyer who was a victim of state collusion.

3. Patrick Finucane opened his legal firm with his partner Peter Madden in 1979. For the next decade he was involved in some of the most controversial legal cases arising out of the Northern Ireland conflict: the hunger strikes, shoot-to-kill, ill-treatment in police custody, the broadcasting ban, and prolonged detention without production before a court. Like other colleagues who defended those accused of acts of terrorism, he was hated by the police, who regularly issued death threats against him. In May 1987 Patrick Finucane was one of a group of defence lawyers who issued a statement complaining about abuse by RUC officers.

4. Early in January 1989 Douglas Hogg MP, then Parliamentary Under-Secretary of State for the Home Department, went over to Belfast and was briefed by the Chief Constable, Sir John Hermon, and two other senior police officers, Blair Wallace and Michael McAtamney. Hogg was told that there was concern over two or three lawyers. The RUC said there was "grave concern" over Patrick Finucane. On 17th January, 1989 Hogg said in a Committee stage debate on the Prevention of Terrorism (Temporary Provisions) Bill:

   > "I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA."

   Although challenged, he failed to substantiate this allegation, although he repeated it several times in similar language, saying only:

   > "...I state it on the basis of advice that I have received, guidance that I have been given by people who are dealing with these matters, and I shall not expand on it further."

   Statements made in Parliament are privileged and cannot be made the subject of legal action. Speaking in reply, Seamus Mallon MP said:

   > "I have no doubt that there are lawyers walking the streets or driving on the roads of the North of Ireland who have become targets for assassins' bullets as a result of the statement that has been made tonight ... Following [this] statement, people's lives are in grave danger. People who have brought cases against [sic] the European Court of Human Rights will be suspected. People accused of IRA membership and other activities will be suspected."

5. On 12th February 1989 two armed men burst into the Finucane home and shot Patrick Finucane 14 times in front of his wife and three children. His wife Geraldine was injured in the foot by a ricochet bullet.

6. Patrick Finucane was murdered by members of loyalist paramilitary group, the UDA. However, the UDA had been infiltrated by the Force Research Unit (FRU), a secret British military intelligence unit. Over the years it has emerged that Patrick Finucane was just one of many people set up for murder by the UDA by FRU agent Brian Nelson, who acted as the UDA's intelligence officer. It has also transpired that one of the weapons used to kill Patrick Finucane was stolen from the British army's Palace Barracks in 1987 and was supplied to the murderers by William Stobie, an RUC Special Branch agent who kept his handlers informed of his movements throughout the run-up to the murder.

7. For many years the British government denied that collusion existed and that there had been collusion in Patrick Finucane's death. However, in September 1989 they were forced to appoint John (now Lord) Stevens to investigate allegations of collusion after loyalists plastered police photomontages of IRA

suspects over the walls of Belfast's streets in an attempt to prove that they were not just targeting innocent Catholics, such as Loughlin Maginn, whom they killed in August 1989. Stevens' first investigation uncovered the activities of FRU and Brian Nelson, and led to Nelson standing trial for murder (but not that of Patrick Finucane) and other crimes. He was sentenced to only 10 years' imprisonment, of which he served only five. Despite these developments, and the fact that during his investigation Stevens' office was the target of a deliberate arson attack by military intelligence, the first Stevens investigation found that collusion was "neither widespread nor institutionalised", a finding that he was later to revise.

8. On 13 September 1990 William Stobie was arrested after weapons were found at his home. He confessed to supplying the weapons used to kill Patrick Finucane, but was not charged with that offence. Other charges of possession of weapons were dropped after he threatened to make public what he knew of the Finucane murder.

9. On 3 October 1991 an RUC officer called Jonty Brown tape recorded a UDA man and Special Branch informer, Ken Barrett, confessing to having been involved in Patrick Finucane's murder. A week later, Special Branch taped a second conversation with Barrett, which repeated the first conversation but left out any mention of Patrick Finucane.

10. In the summer of 1992, Stevens was recalled to conduct a second investigation, after the transmission of a BBC *Panorama* documentary made by journalist John Ware exposed the existence of FRU and the activities of Brian Nelson. This investigation focused on the legality of FRU's operations, but did not lead to any prosecutions. As with Stevens One, Stevens Two did not specifically investigate Patrick Finucane's murder.

11. On 2 October 1995, the Northern Ireland Forensic Science Laboratory unaccountably returned to the army one of the weapons used to murder Patrick Finucane, the Browning pistol stolen from Palace Barracks. This weapon was used for several years subsequently and reconditioned more than once, to the point where it was robbed of any evidential value.

12. In 1997, following yearly reports from British Irish RIGHTS WATCH (BIRW) concerning the murder of Patrick Finucane and attempted intimidation of other defence lawyers, the United Nations' Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, made an unprecedented visit to the United Kingdom. His report was published on 1 April 1998. He found that intimidation and harassment of defence lawyers in Northern Ireland was "consistent and systematic" and he called for an independent judicial inquiry into the murder of Patrick Finucane.

13. On 12 February 1999, the tenth anniversary of Patrick Finucane's murder, BIRW delivered a confidential report, *Deadly Intelligence*, to the UK government detailing the considerable amount of information, much of it the subject of official secrecy, then available concerning not only his murder but also the illegal activities of the FRU. The only honourable response to this report would have been the establishment of the independent public inquiry recommended by the UN, but instead Stevens was called back for the third time, this time with instructions to investigate Patrick Finucane's murder. Attempts were made to obstruct this investigation. For example, the police tried to palm off the reconstructed second Ken Barrett tape on Stevens, a ploy which almost succeeded until Jonty Brown pointed out that the second tape contained reference to a murder which had taken place during the week that separated the first tape from the second.

14. Stevens Three led to the prosecution of William Stobie for aiding and abetting the murder of Patrick Finucane. This trial collapsed when a key witness, journalist Neil Mullholland, was found unfit to testify. On 4 December 2001 Stobie appeared in a UTV documentary, *Justice on Trial*, about the Finucane murder. On 12 December Stobie was murdered.

15. Stevens Three also led to the arrest of Ken Barrett, the only person ever to be charged with Patrick Finucane's murder. Stevens also sent 24 other files to the Director of Prosecutions.

16. In August 2001 the British and Irish government signed the Weston Park Agreement, a document which contained a number of confidence-building measures designed to shore up the 1998 Good Friday peace agreement which had brought the Northern Ireland conflict to an end. One of those measures was the appointment of an international judicial figure to carry out a behind-closed-doors enquiry into whether collusion had taken place in six cases, including that of Patrick Finucane. If this judge recommended a public inquiry into any of the cases, the governments undertook to hold one. In May 2002, after much prevarication on the part of the British government, former Canadian Supreme Court judge Peter Cory was appointed to conduct this enquiry.

17. Before Judge Cory could complete his work, a summary of the Stevens Three report was published in April 2003. Stevens found that Patrick Finucane's murder could have been prevented and that the RUC investigation should have led to the detection and early arrest of the perpetrators. He also found that, "Collusion is evidenced in many ways. This ranges from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder." None of the three Stevens reports has ever been published.

18. On 1 July 2003, the European Court of Human Rights delivered its judgment in a case lodged on behalf of Geraldine Finucane in July 1994 by Madden & Finucane. The Court held unanimously that there had been "a failure to provide a prompt and effective investigation into the allegations of collusion by security personnel".

19. On 7 October 2003, Judge Cory provided his six reports, four to the UK government and two to the Irish government. He recommended public inquiries in five out of the six cases, including, inevitably, that of Patrick Finucane. While the Irish government published their two reports in December, the UK waited until the following April to publish theirs, all of them heavily redacted, with the Finucane report most heavily of all. On 1 April 2004 the UK government announced public inquiries into three of the four cases, but said that an inquiry into the case of Patrick Finucane must await the outcome of prosecutions.

20. Ken Barrett was convicted of the murder on 16 September 2004. Under the terms of the Good Friday Agreement he served only two years in jail. He did not testify in his own defence, so no new information emerged from his brief trial. On 23 September 2004 the UK announced that, before it could hold an inquiry into Patrick Finucane's case, it would be necessary to change the law.

21. It was in April of the following year that the Inquiries Act 2005 was passed. It effectively took public inquiries out of the control of the independent judiciary and gave that control to government ministers. However, no inquiry in Patrick Finucane's murder was established, even under the new law.

22. On 8 March 2006 the Irish Dáil passed a unanimous motion calling for independent inquiry as agreed at Weston Park. Similar resolutions were later passed by the American Senate and House of Representatives.

23. On 25 June 2007, over four years after the Stevens Three summary report was published, the DPP finally announced that he would not be prosecuting any member of the security forces for any offence.

24. The UK government had run out of excuses for not holding a public inquiry, but it continued to delay and prevaricate. Finally, under pressure from Madden & Finucane, on 27 April 2010 government lawyers issued a draft Restriction Notice under the Inquiries Act 2005 which was so draconian that it was completely unacceptable. Not only would the Finucane family be denied sight of many crucial documents, but they would not even know which documents they were being denied.

25. Then on 8 November 2010, following a General Election earlier that year which resulted in a change of administration, the new Secretary of State for Northern Ireland, Owen Paterson MP, asked to meet Geraldine Finucane. He informed her that the new government would not be bound by the previous administration's approach, and that they would be looking at the case afresh.

26. Three days later, Paterson issued a written statement in the House of Commons saying that he was conducting a two month consultation over whether it remained in the public interest to hold a public inquiry into the Finucane case.

27. Under the previous administration, discussions had taken place between the Finucane family's legal team and government lawyers. At the family's instigation, these talks began again, and centred on whether it would be possible to conduct a meaningful inquiry under the Inquiries Act 2005. On 28 January 2011, the government's lawyers put forward three possible models for inquiries, including an example of an inquiry held under the inquiries Act. This was the Baha Mousa Inquiry into the murder by British soldiers of an Iraqi hotel receptionist. As part of that inquiry, the Ministry of Defence entered into a protocol with the inquiry whereby all matters which under the Act could be dealt with by the Secretary of State were instead to be deal with by the independent Chair. On 10 March 2011 Madden & Finucane made submissions to the consultation exercise, the deadline for which had been extended, indicating that the Baha Mousa Inquiry would be an appropriate model to follow in Patrick Finucane's case.

28. Nothing further was heard from the government until September 2011, when Owen Paterson's office contacted Madden & Finucane to arrange a meeting at 10 Downing Street. This was the first time that David Cameron MP, the Prime Minister had become involved in the process. The meeting took place on 11 October 2011 and was attended by both David Cameron and Owen Paterson. Geraldine Finucane and five other members of the Finucane family were also present as was the family's solicitor, Peter Madden, and Jane Winter, Director of BIRW. The Prime Minister opened the meeting by apologising for Patrick Finucane's murder on behalf of the whole of the British government and acknowledging that collusion had taken place. This was the first admission after over 22 years that collusion had been involved. However, the Prime Minister went on to offer not the Baha Mousa style inquiry that everyone had been expecting, but an on paper, behind-closed-doors review by Sir Desmond de Silva QC, to report by December 2012. It rapidly became evident that the family would play no part in this review, would not be able to scrutinise the documents seen by Sir Desmond, and would not have the opportunity to examine any witnesses. It was equally clear that this review was not intended to be a prelude to a public inquiry, but a substitute for one, and that the review would go ahead whether the family wanted it or not. This process fell so far short of the family's most basic requirements that Geraldine Finucane brought the meeting to an end after just 30 minutes.

29. The family found it difficult to understand why they had been brought to London only to be delivered such a devastating blow. On 17 October 2011 they met the Tánaiste of the Irish government, Eamon Gilmore TD, who said that they had been equally surprised by this flagrant breach of the Weston Park Agreement. Like the family and their lawyers, the Irish government had also been told by the UK government that they expected the family to be pleased with the outcome of the meeting on 11 October. The Tánaiste pledged the Irish government's full support for the family's quest for a public inquiry.

30. On 10 December 2012 Sir Desmond de Silva QC's report was published. For the first time, an authoritative government-commissioned report acknowledged that there had been widespread official collusion in the murder of Patrick Finucane. However, the report was not human rights-complaint and raised more questions than it answered. Sir Desmond was not required or empowered to make recommendations, but his report nevertheless mad e a cogent case for a public inquiry.

30. The family's legal team has now launched a judicial review to challenge the failure to provide an independent, judicial, public inquiry into the murder of Patrick Finucane.

May 2013

Statement on the publication of the De Silva Report into the murder of Pat Finucane

Twenty three years ago, Pat Finucane was brutally murdered by loyalist paramilitaries in front of his wife Geraldine and his three children Michael, Catherine and John.

Since then, Geraldine has campaigned tirelessly for the truth about her husband's murder. Along the way she has had to endure the frustration of seeing evidence destroyed, justice obstructed and her husband's reputation impugned.

Though a very private person, she has taken on a public role and has played that role with dignity and integrity. With quiet determination she has focussed not only on the two men who broke into their house that Sunday evening to murder her husband but also on those behind them who orchestrated the murder.

Officials from the Irish Embassy assisted Geraldine Finucane and her family in London today as they heard Prime Minister Cameron acknowledge the extent of collusion by the British security forces in her husband's murder and apologise to her and her family.

Pat Finucane was one of over three and a half thousand people to die during the Troubles in Northern Ireland.

But his murder stands out from most other cases in one particular and important respect. It was one of a number of cases which gave rise to allegations of collusion by the security forces in each jurisdiction and which therefore had profound implications for public confidence and, consequently, for the wider peace process.

It was not the only such case. The murder of Chief Superintendent Harry Breen and Superintendent Bob Buchanan, Lord Justice and Lady Gibson, Robert Hamill, Rosemary Nelson and Billy Wright all gave rise to concerns about collusion.

It was because of their wider implications for confidence that these cases were a particular concern for the British and Irish governments at Weston Park in 2001. Arising from those discussions the two governments agreed to appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of these cases and, in the

event that a Public Inquiry was recommended in any case, to implement that recommendation.

Following a thorough investigation of these allegations, Judge Peter Cory recommended a public inquiry into five of the six cases. On foot of his recommendation, the Smithwick Tribunal was established by resolutions of Dáil and Seanad Eireann in 2005 and is continuing its work.

Prime Minister David Cameron has shown commendable determination to get to the truth behind what happened in the past and, in doing so, to hold the state to the highest account and judge its officers by the highest standards.

I believe that his apology to Mrs Finucane this afternoon continues the process of healing that the Prime Minister set in train so memorably with his statement to Parliament on publication of the Saville Report into Bloody Sunday in June 2010.

This report published today is a lengthy one and bears close reading and serious study. The picture revealed to parliament today by Prime Minister Cameron is, as he has said, truly shocking. Let me say that I respect the frankness and honesty with which he has today confronted grievous failures by the British Army, the RUC and Government ministries. This is not an easy task for the leader of a country which takes great pride in its security forces and its civil service.

He acknowledged the systematic leaking by the security services to the UDA and paramilitary groups; failure by the RUC to act on threat intelligence; of involvement by paid agents of the state in the murder of Pat Finucane; systematic failure to investigate and arrest West Belfast UDA agents involved in the murder; systematic attempts by police and army to disrupt and thwart investigations; and the deliberate misleading of Government ministers by officials.

It is a matter of public record that the Irish government disagreed strongly with the decision by the British government last year to conduct a review rather than an inquiry into the murder of Pat Finucane and, indeed, with the lack of consultation in advance of that decision.

Our disagreement was born of a belief that public confidence is best served by a public inquiry where the process of getting to the truth is open to scrutiny and the findings placed beyond doubt. In that, we were mindful of Judge Cory's concern that where doubts persist, myths and misconceptions might only proliferate.

I believe we can build on the progress made today. I believe the work undertaken by Desmond Da Silva QC can facilitate this, helping ensure that an inquiry need not be lengthy, open-ended and inordinately expensive.

Confidence is fundamental to the Northern Ireland peace process. As we have seen in recent days, significant challenges have yet to be tackled. We can only tackle these successfully when we do so together. Close partnership between the British and Irish Governments throughout the process has been critical to sustaining confidence and supporting progress. That partnership, visible and collaborative is needed today, perhaps more so than at any time in the recent past.

Occasions arise where we disagree but we do so respectfully. This is one such occasion. While we study the report carefully, we will continue to set out why we believe that the agreements matter and that public confidence is best served by a public inquiry. The Irish Government will continue therefore to seek a public inquiry into the murder of Pat Finucane as committed to in the agreements.

And we will continue to ensure that we work closely with the British government in supporting the Executive and Assembly as it seeks to address the difficult and polarising debate about flags.

Over three and a half thousand people died during the troubles. Every man, woman and child who died left behind relatives and friends who mourn the loss of their loved ones to this day. I have met many such relatives. I know the pain they endure, the accommodation they have been asked to make for peace.

The great majority of victims in the troubles were murdered by republican and loyalist paramilitary groups. We should not lose sight of that. But there is no hierarchy of loss or of grief.

No acknowledgment or apology by those responsible for the loss can undo the wrong that was done to them. On a day when the murder of Pat Finucane has been recalled so vividly for Geraldine, Michael, Catherine and John, we should be mindful too of the many thousands of relatives across Ireland, North and South, who grieve the loss of a loved one. As President Higgins has noted, none have done more to bring about the benefits we have all gained from the peace process.

But as I have said, certain cases raised specific concerns about collusion and therefore about confidence in the administration of justice. The murder of Pat Finucane was one of those cases.

The Government's view in favour of an inquiry is underpinned by an all-party motion of this House, agreed in 2006, which recalled the agreement under Weston Park; took note of Judge Cory's findings on collusion; commended the Finucane family for their courageous campaign and called for the immediate establishment of a full, independent, public judicial inquiry into the murder of Pat Finucane, as recommended by Judge Cory, which would enjoy the full co-operation of the family and the wider community throughout Ireland and abroad.

The government will continue to set out the case for an inquiry, mindful of the progress that has been made today and mindful too of the responsibilities that both governments share in support of the peace process.

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