

Rights & European Division

From Tony Beeton
7 October 1997



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PS/SECRETARY OF STATE (L&B)

cc PS/PUS (L&B)

PS/Mr Semple

Mr Thomas

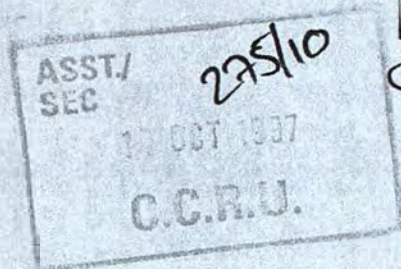
Mr Steele

Mr Bell

Mr Stephens

Ms Wheldon, HO*

(*without attachments)



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BLOODY SUNDAY

... I attach a copy of a paper by the Cabinet Office recording the conclusions of an ad hoc group of officials on the submissions from the Irish Government and the relatives of the Bloody Sunday victims. There is also an annex which is a fairly detailed account of the various allegations and the work done through the summer to investigate them which was prepared here with an input from the MoD. The Cabinet Office paper invites Departments to consider how the matter should be pursued further.

2. The paper records the conclusion of the group that on the evidence provided we have found nothing to substantiate the belief that the Widgery Inquiry Team was biased or behaved improperly. My own view - not universally accepted on the ad hoc group - is that we have equally not been able to dismiss entirely all the allegations made about the Inquiry's procedures. I should emphasise that this is not to say that I have concluded that there definitely were procedural flaws, simply that there are in some cases incomplete records and in others allegations which could not be dealt with properly without speaking to those involved (not possible in all cases given 25 years has passed, although the Tribunal's Secretary - about whom specific allegations are made in the Irish submission - is alive).

3. With regard to the material presented the paper records the conclusion that, with one exception, we have concluded that nothing constitutes new evidence which on its own would justify re-opening the findings of the Inquiry. Again that drafting does reflect, albeit allusively, our argument that taken together the new material could justify further investigation (whether that would mean formally "re-opening the findings of the Inquiry" is another question).

4. The exception is the statement by [redacted] The group as a whole had no doubts that were [redacted] statement authentic, and were he to stick by it, then

RESTRICTED - POLICY

Widgery's conclusions would have to be revised (although there would be no fault attached to Widgery in those circumstances). The difficulty arises from the fact that the 'statement' as presented by the Irish is in the form of an unsigned, undated, unwitnessed typescript. However, for the reasons set out in the paper and the annex, the group felt that further steps to follow up this trail would have to be taken and the paper presents the various alternatives which might be pursued for dealing with his story. I am clear that of the alternatives suggested in the paper the third, an independent reviewer, is the most credible way of addressing [REDACTED] and the other allegations with a realistic prospect of achieving closure.

5. It would be helpful at this stage to discuss the issues raised in the paper with Dr Mowlam and to reach a decision on her preferred way forward. Cabinet Office have asked Departments to seek Ministers' views by the end of the coming weekend if possible.

signed

Tony Beeton

THE NEW MATERIAL PRESENTED TO THE GOVERNMENT

1. Eleven items of supposed new material were in the dossier presented to the then Secretary of State for Northern Ireland, Sir Patrick Mayhew, at a meeting on 14 February with John Hume MP and some relatives of the victims of Bloody Sunday. These include eye-witness testimonies, medical notes, statements of soldiers, sound recordings of Army and RUC radio messages, video of Channel 4 News reports and *Eyewitness Bloody Sunday* - the book by Don Mullan published earlier this year (this is the same as the material presented to the Court in the Judicial review application).
2. The assessment presented by the Irish Government run to 148 pages and is intended to be a comprehensive "deconstruction" of the Widgery Tribunal. It assesses Widgery's findings against various items of alleged new evidence: the book by Don Mullan; a study by Professor Dermot Walsh of the University of Limerick, which includes an analysis of recently released statements made by soldiers; *Channel 4 News* and *Sunday Business Post* reports which contain interviews with soldiers; and the results of searches through the Irish Government's own files.
3. Officials from the NIO and MOD have spent several months comparing the alleged new material with what was already known to the Government. The NIO has examined in-depth its own files, the comprehensive set of files held by the Treasury Solicitor's Department, and files held by the Public Records Offices in both London and Northern Ireland. These have provided much useful material. The MOD have carried out a detailed analysis of the radio traffic and have compared the statements made by the soldiers immediately following the shootings with those made to the Treasury Solicitors.

Summary of Allegations

4. The allegations fall into two main areas:
 - That the conduct of the Widgery Tribunal was flawed or misleading; and
 - That certain crucial evidence was not submitted or was ignored, and that evidence that was submitted was misinterpreted.
5. The main specific allegations that the material includes, and officials' findings in response; are as follows:

Manner

That the Widgery Tribunal was informed by ulterior political motive from its inception

Lord Widgery set out clearly at the beginning of the Tribunal his terms of reference and these were discussed in detail at the beginning of the Tribunal. There is no evidence that no findings were influenced by political consideration

That the Secretary to the Tribunal, Bill Smith, exerted prejudicial evidence in favour of the army

There is a letter on the Treasury Solicitors files in which Bill Smith makes a rebuttal of the allegation that he, in some way, altered the conclusions of the Tribunal

That Lord Widgery, on the advice of civil servants, read only a small number of the 700 witness statements gathered by the NCCL

Widgery makes reference to these statements and notes that they were received when the inquiry was at an advanced stage and that they were considered in so far as they contained any new material

Evidence

That statements made by soldiers at the time were subsequently changed to cover up illegal acts

Given the supposed statement made by [REDACTED] it is difficult to refute this allegation entirely at this stage. We will know more when we have managed to find out whether he is make the statement again in this jurisdiction. Other soldiers changed their statements slightly under cross-examination but this in several cases was fully aired in the oral hearings of the Tribunal so cannot be classed as new evidence

That the eye-witness statements demonstrate that people were shot from the city walls

The statements do not demonstrate this conclusively and it does not concur with the Army logs of the day

That recordings of RUC and Army radio traffic made by James Porter - an amateur radio operator - show soldiers on the walls (other than members of the parachute Regiment) coming under fire, returning fire and saying that they had hit targets

The taped extracts of radio traffic intercepted from one RUC and one Army insecure radio net do not add any conclusive information not already available through material submitted to Widgery on the question of shooting from the walls. The fact that troops in vantage points *near* the walls engaged targets - all described in contemporaneous official records as legitimate - was set out for the Tribunal and commented on by the Tribunal. There is therefore no dispute on this point

That, although Porter presented the recordings to the Widgery Tribunal, they were refused as evidence because Lord Widgery considered them to have been made illegally

We have found no knowledge that Widgery knew of the existence of the tapes. If he had known about them, he would have known that they were not necessarily inadmissible

The angle of the entry wounds of three of those killed must clearly have been shot from the city walls

The evidence used in this analysis is the same as that used by the Coroner and the Home Office Pathologist who both concluded that the men were shot while crouching or bending and that this was consistent with having been shot from only slightly above

That the medical evidence from a local GP, Dr. Raymond McClean, who gave medical aid on the day and attended the post-mortems - as an observer - suggests that three were killed by shots from the city walls

Again this is based on an *interpretation* of inconclusive medical evidence

Analysis of the Material

Audio recordings of military and RUC radio traffic

6. The taped extracts of radio traffic intercepted from one RUC and one Army insecure radio net - seemingly the Bde insecure net - do *not* add any conclusive information not already available through material submitted to Widgery on the question of shooting from the walls. The fact that the Tribunal was already aware that soldiers fired from positions near the city walls is covered below.

7. It is clear from the transcripts that 1 Para took the initiative in asking permission to launch a 'scoop up' of rioters. Further the direct use of one sub-unit (Bravo 3) for the 'scoop up' appears to have been the initial intention, rather than using two as actually occurred: Bravo 5 (support Company) which penetrated deep into the Rossville Road. Further, through the message from the Command station 'Zero', it is clear that Zero expected a short, sharp 'scoop up'; this fits with the extract from the 8 Bde Log seen by Widgery that there was out to be a 'running battle' down Rossville Street.

8. Widgery, who is alleged to have possessed, but to have refused to use these tapes/transcripts because they were 'improperly obtained', states that the orders for the 1 Para operation were given on the secure radio net to avoid the timing of the operation becoming known to eavesdroppers. However the intercepted net - clearly *not* the secure net - *does* discuss the impending operation and would have alerted a hostile listener both to the general timing and route of the operation.

9. Apart from Porter's own claim, we have so far been unable to find any clear evidence that Widgery personally knew of the tapes or had listened to them. There is an original statement made by Porter in the TSD¹ files, in which he states that he passed the tapes to John Hume MP² and asked him to present them to Widgery. Porter claims in his statement that he never made transcripts of the tapes and has never seen the final versions that were eventually presented to the TSD. In the Napier papers³ there are

¹ Treasury Solicitors Department

² John Hume SDLP MP at the time of Bloody Sunday

³ Christopher Napier was the lawyer representing some of the families. He has deposited all of his papers in the Public Records Office in Northern Ireland D.3907 series.

copies of the police and Army radio traffic transcripts (which also match with the ones presented to Sir Patrick Mayhew).

Firing from the walls

10. The fact that troops in vantage points *near* the walls engaged targets - all described in contemporary official records as legitimate - *was* set out for the Tribunal and indeed commented on by the Tribunal. Therefore there is no dispute on this point and the alleged comments by a former soldier (R. Anglian), cited in the Irish authorities' submission, that shots were fired 'from near the walls' is not a matter of contention, or of significance. The problem in this area lies in the assessment as to *what targets such fire engaged*. It is clear from MoD officials' consideration of the matter that certain of the Army positions/OPs on, or near, the walls did have sight of parts, if not all, of the Rossville Flats-Glenfada Park area. The Irish authorities' submission is primarily based, it seems, on the forensic evidence in relation to angles of fire that hit three of the casualties in the Rossville Barricade area. The submission is further supported by the very general claims made by contributors to the NICRA⁴ statements. Further, citing Mullan, it dismisses claims by the soldiers that bullets hit the walls and that shooting from the walls was against identified lawful targets elsewhere.

11. Turning to the NICRA material, we can only say that the contemporary official evidence - excluding soldiers' statements - but based primarily on the intercepted extracts of the 'radio nets' provides *nothing* to support allegations of firing from OP positions into the Rossville Flats-Glenfada Park area, or at the crowd around 'Free Derry Corner'. The locations at which fire is recorded as having been directed by troops in OP/Sniper posts in buildings or on high ground did not include these areas.

12. As compared to Mullan's⁵ simple dismissal of the subject, the question of terrorist gunfire hitting the walls rests on the contemporary intercepted radio logs and the written contemporary evidence - even excluding the soldiers' formal statements.

Post mortems and the statement by Robert J Breglio

13. Much of the new material focuses on McDaid, Young and Nash and the angles of entry wounds. The evidence from Robert J Breglio⁶ concludes that the angles and trajectories of Nash, Young and McDaid's wounds would be consistent with firing from the city walls.

14. Initial studies from TSD files by officials shows that the information on which Breglio is basing his claims is already contained in the post mortem reports. The relevant details include the following:

Michael McDaid

PM Report - Pathologist John Press:

⁴ Northern Ireland Civil Rights Association

⁵ Don Mullan. Journalist, author of "Eyewitness Bloody Sunday", compiler and editor of the booklet "The Breglio Report" and eyewitness on Bloody Sunday

⁶ An independent ballistics consultant from the USA

"Wound extended downwards at about 45 degrees to the horizontal plane, with an inclination backwards of about 30 degrees and a deviation of about 25 degrees to the right"

Coroner's Opinion

"High velocity bullet - nothing to indicate firing at close range. If he were erect at the time he was shot then the bullet must have come from above, to his left and slightly in front of him"

John Pius Young

PM Report - Pathologist John Press:

"Wound extended downwards at an angle of about 45 degrees to the horizontal and backward at an angle of about 40 degrees with a slight deviation of about 10 - 15 degrees to the right"

Coroner's Opinion

"High velocity bullet not at close range. If he were erect at the time he was shot then the bullet must have come from above and slightly in front of him"

William Nash

PM Report - Pathologist John Press:

"Bullet path backwards at an angle of 45 degrees to the horizontal and an inclination backwards of 40 degrees but no deviation to right or left"

Coroner's Opinion

"If he were erect at the time he was shot then the bullet must have come from in front and slightly above him"

15. The report⁷, on all those killed, by Professor Keith Simpson⁸ (based on the post mortem findings and the forensic information supplied by the DIFS⁹) concluded that:

"Four had been facing the direction of fire. Two, Young and McDaid being shot in the face, Nash in the chest and Kelly in the abdomen, all four bent forward as in "ducking down" into the line of fire"

16. The language and detail in the coroner's reports are identical to that in Breglio's report. It is possible to conclude, on the basis of information available, that Widgery

⁷ TSD parcel 4

⁸ Professor Keith Simpson, Head of the Department of Forensic Science, Guys Hospital, and ex-Home Office pathologist representing the Ministry of Defence

⁹ Department of Industrial and Forensic Science (now known as the Forensic Science Agency for Northern Ireland)

arrived at one explanation of events and Breglio another. It is therefore a matter of *interpretation*; there is no dispute about the facts.

Eyewitness Statements

17. Part of a recurring theme in the material handed over by the relatives is the significant number of eyewitness statements that claim that just after Bernadette Devlin began her speech shots were fired from the city walls into the crowd. There are also a number of statements made of snipers being based on the roof of the GPO building (it has not been possible to establish this yet through existing known records - although references to Army snipers were made in the soldiers statements to the RMP¹⁰). In the Army statements there are the references made to who shot first - this is also covered in-depth in the Walsh document¹¹. This is still a matter for conjecture. All of the Army statements which make reference to shots being fired claim that the Army were fired on first. The eyewitness statements contradict this.

Irish Assessment of Widgery

18. The Irish submission examines each of the Widgery Tribunal's conclusions and says that they cannot readily be matched with the accounts and findings in Widgery's own report. Beyond this, it goes on to say that the new material has completely and fatally undermined the Widgery report. It describes Widgery's findings and conclusions as "inadequate, inaccurate, unfair, wholly unwarranted and fully misleading", and concludes that the most appropriate and convincing redress would be a new report, based on a new independent inquiry.

19. In the conclusion of the Irish Assessment there is a suggestion that "the Widgery Inquiry was informed by ulterior political motivation from its inception" and that it was a "startlingly inaccurate and partisan version of events" and finally that it was "wilfully flawed". Much of the source material is based on second and third hand reports. The Irish dossier has relied heavily on a report by Professor Walsh of the University of Limerick and Don Mullan's interpretation of the 700 eyewitness statements.

20. The Irish Government have now passed on the source material which was the foundation for their assessment, consisting of 101 eyewitness statements, an extract from [REDACTED] newspaper interview, a note by Jane Winter and the Walsh Report. The Walsh report is based on the material currently available in the Public Records Offices. It analyses the forensic reports, eyewitness and Army statements. It discusses at length the procedures of the Tribunal and makes allegations about political interference from HMG. On the whole, Walsh offers his own interpretation of the material available and draws conclusions based on this.

The Lewis allegations

21. The Irish Assessment is based largely on the same material as was handed over to Sir Patrick Mayhew in February. Perhaps the most significant *additional* material in the Irish dossier are the extracts from a lengthy statement made by a named former soldier, [REDACTED] to a journalist who forwarded the material to the Irish Government. [REDACTED] allegations are summarised in paragraph 32 of the dossier and were reported

¹⁰ Royal Military Police

¹¹ The Walsh Report is covered in the section on the Irish Assessment

briefly in the press in March. At that time his identity was kept secret and it was impossible to judge whether he had served in 1 PARA or whether there was any truth in what he said. MOD officials have now checked his name with Army records, and a [REDACTED] did serve in 1 PARA at that time. Other details in his statement strongly suggest that he was in the platoon that opened fire in Glenfada Park. His most serious allegations (that soldiers fired on unarmed civilians) relate to that shooting, which Widgery singled out for particular criticism. The [REDACTED] Statement says, for example:

[REDACTED]
and myself then leapt the wall, turned right and ran down Kells Walk into Glenfada Park, a small triangular car park within the complex of flats. A group of 40 civilians were there running in an effort to get away. [REDACTED] fired from the hip at a range of 20 yards. The bullet passed through one man and into another and they both fell, one dead and one wounded. He then moved forward and fired again, killing the wounded man. They lay sprawled together half on the pavement and half in the gutter. [REDACTED] shot another man at the entrance of the Park who also fell on the pavement. A fourth man was killed by either [REDACTED]. I must point out that this whole incident in Glenfada Park occurred in fleeting seconds and I can no longer recall the order of fire or who fell first but I do remember that when we first appeared darkened faces, sweat and aggression, brandishing rifles, the crowd stopped immediately in their tracks, turned to face us and raised their hands. This is the way they were standing when they were shot."

22. A fair amount of what [REDACTED] says tallies with the eyewitness evidence of local people which is contained in the Mullan book and by eyewitness statements in the 1991 Channel 4 documentary "Bloody Sunday". This material is genuinely new and was not available to Widgery. [REDACTED] also alleges that the Army used doctored bullets (dum dums).

Soldiers' Statements

23. The allegations made by [REDACTED] directly challenge the veracity of the statements made by the soldiers he accompanied on 30 January. [REDACTED] statement alleges that these soldiers not only committed unlawful shootings but did so as a result of premeditated decisions. At the very least he claims that they lied to the authorities and to the Tribunal. Further, he implicates the investigating authorities in a conspiracy to conceal the truth.

24. There are suggestions in the Irish assessment that the statements made by soldiers at the time of the incident were altered prior to the soldiers appearing before the Tribunal. There are indeed inconsistencies between the statements made by individual soldiers at different times between the incidents of 30 January and the Tribunal's hearings. The inconsistencies were known to the British authorities, including TSD. The key point here is how far, if at all, these inconsistencies indicate any improper or deliberate attempts at concealment by the soldiers themselves or by the authorities of acts by the soldiers or the security forces in general.

25. Of those statements for which the comparison is complete, the statements as finally made to the Tribunal have a mixed effect on the evidence as put to the Tribunal. Although in some degree the soldiers' statements to TSD and in evidence to the Tribunal are more detailed in setting out the soldiers' grounds for opening fire, the soldiers' lack of clarity and recollection of events is more noticeable in the latter statements.

26. Several inconsistencies in soldiers' statements were brought out in the Tribunal hearing. For example, an inconsistency in "Soldier F's" testimony to the Tribunal and one which strengthened the case for his actions, when compared to his earlier statements to the RMP/SIB, was noted by the Counsel for the MOD who drew attention to it in his cross-examination thus seriously weakening "F's" credibility and laying him open to hostile cross-examination by Counsel for the Families.

Allegations Against the Inquiry Secretary

27. The Irish assessment also makes specific allegations against the Secretary to the Inquiry, Bill Smith¹², saying that he exerted prejudicial influence on Widgery in favour of the Army. Against this, officials have uncovered on a TSD file a letter from Bill Smith to Basil Hall¹³, dated 13 June 1972, following a request from Napier to see the draft Report of the Tribunal - and apparently after allegations by Napier (not on record) that the original draft and the final draft had been substantially altered. The letter contains a full rebuttal of this allegation.

Chemical analysis of lead particles on Young, Nash and McDaid

28. Widgery concluded in his report that Young and Nash had chemical traces consistent with handling or firing weapons. The Channel 4 documentary "Bloody Sunday" carries an interview with consultant forensic scientist Dr Keith Borer, who presented a test that proved that a person firing a weapon could positively transfer particles directly onto another person. This is backed up by a letter written at the time of the Tribunal by a Dr S S Krishnan and published in the NCCL book "Justice Denied". One of the eyewitness interviewed in the documentary, Ivan Young¹⁴, states that he saw soldiers - who were carrying weapons - move the bodies of the dead to the mortuary at Altnagelvin hospital, which he believes could have transferred the residue onto the bodies, in particular Young and Nash.

Northern Ireland Office

¹² A former NIO civil servant (now retired)

¹³ Treasury Solicitors Department

¹⁴ SDLP MP at the time of Bloody Sunday