TOM LANTOS HUMAN RIGHTS COMMISSION

UNITED STATES CONGRESS

Tuesday, 19 November 2024, Washington DC

STATEMENT OF MICHAEL FINUCANE

"Mr. Chairman, Members of the Commission, my fellow speakers, ladies and gentlemen:

My name is Michael Finucane. I am the eldest son of Patrick Finucane, the Belfast solicitor murdered by Loyalist paramilitaries in 1989. My family and I have campaigned since his murder for an independent public inquiry into the circumstances surrounding my father's killing. As my mother, Geraldine, has just testified, this has been a long and difficult journey for all the family, but we have persevered. It would seem that now, at long last, an inquiry is imminent.

We began our campaign for an independent inquiry into the murder of my father almost immediately after his murder in 1989 because of the highly suspicious and controversial circumstances surrounding the killing. Pat Finucane had been the subject of threats from Royal Ulster Constabulary (RUC) officers for many years before his death, as well as experiencing hostility and obstruction throughout his legal practice. Shortly before his death, an allegation was made by a British government minister in the UK House of Commons that there were, **"in Northern Ireland, a number of solicitors unduly sympathetic to the cause of the IRA."** This was believed at the time to be a statement that increased the likelihood of targeting defence lawyers already working under very difficult circumstances in Belfast and elsewhere. It was made only three weeks before my father was murdered.

The reason my family campaigned for a public statutory inquiry into my father's murder is because there was no other mechanism that was capable of establishing and exposing publicly all of the circumstances surrounding this killing. It has been described, as the House has heard already, as one of the most shocking events in over thirty years of conflict. And yet, to date, it remains unresolved.

The history of the modern conflict in the North of Ireland is littered with examples of unresolved murders. While many killings by paramilitaries were investigated and persons prosecuted, the consistent experience of people whose relatives were killed by the RUC, British military personnel and, in many cases, Loyalist paramilitaries, was of little or no investigation and minimal accountability. Not only has this been a feature of the Pat Finucane case, but it was also a recurring feature of many other cases in which my father was retained as a lawyer on behalf of bereaved relatives.

On 27 February 2019, the UK Supreme Court gave judgment in the case of Geraldine Finucane v. United Kingdom – the culmination of litigation that had been commenced in the High Court in Belfast, in 2011[1]. The judgment began by recording the highly controversial nature of the murder of Pat Finucane and went on to cite an extract from a report prepared by a British government lawyer, Sir Desmond DeSilva, in 2012:

> **"I am left in significant doubt as to whether Patrick Finucane would have been murdered by the UDA in February 1989 had it not been for the different strands of involvement by elements of the state. The significance is not so much ... that the murder could have been prevented, though I entirely concur with this finding. The real importance, in my view, is that a series of positive actions by employees of the state actively furthered and facilitated his murder and that, in the aftermath of the murder, there was a relentless attempt to defeat the ends of justice…. 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."[2]**

Although the conclusions of the DeSilva Review were forceful and carried great impact, the limited investigation process left many questions unanswered. Many aspects were not pursued to a conclusion and key witness were not questioned. Ironically, this was exactly the type of problem faced by my father during his lifetime in difficult and sensitive cases, one of which led to profound changes in the law many years after his death

In November 1982, three men were shot and killed by a specially trained unit of the RUC while travelling on a road in a rural area near Lurgan, County Armagh. None were armed, one man was

[1] [2019] UKSC 7

[2] *De Silva Review*, Paras. 115-116 (De Silva, Desmond, London, December 2012)

shot in the back, and the case generated great controversy. Although it did lead to a prosecution of the officers involved – the only one of its kind – they were acquitted at trial, despite evidence of perjury and manipulated testimony. The acquittal was highly controversial in itself, not least because of the comments of the trial judge, who stated the following:

> **"As far as the three deceased men who unhappily forfeited their lives are concerned, they died, not because they were victims of murder, but because knowing that two of them were wanted by the police on a charge of multiple murder and many other crimes, they decided not to stop when confronted by the police and to risk all in an attempt to escape. It was a gamble which failed. There is just one final observation which I would like to make. … I want to make clear that having heard the entire Crown case exposed in open court I regard each of the accused as absolutely blameless in this matter. I consider that in fairness to them that finding also ought to be recorded together with my commendation for their courage and determination in bringing the three deceased men to justice, in this case to the final court of justice."**

The efforts by my father in that case, on behalf of the relatives of one of the deceased men, Gervaise McKerr, would ultimately lead to proceedings before the European Court of Human Rights in 2001. One of the driving factors was that none of the police officers responsible for, or involved in, the shootings of all three men, were obliged to appear at the inquest into the deaths, where lawyers acting for the relatives would be able to question them. Instead, they could rely on pre-prepared, written statements. This was challenged successfully by my father during his lifetime in the Northern Ireland Court of Appeal but later overturned by the UK House of Lords in 1990. This took the case, eventually, to the European Court in Strasbourg and a ruling that would alter the landscape of investigation into fatal incidents in a profound and radical way.

Four cases were decided by the European Court of Human Rights in 2001: McKerr, Jordan, Kelly and Shanaghan[3]. All of them were challenges to the way in which investigations were conducted, including the gathering of evidence, interviewing of witnesses, presentation of findings and final amenability to public scrutiny. The Court examined the practices and procedures in all of the cases and heard from lawyers for the deceased and the UK government.

[3] McKerr v. UK (2002) 34 EHRR 553; Jordan v. UK (2003) 37 EHRR 52; Kelly & Ors v. UK [2001] ECHR 40; Shanaghan v. UK, 04 May 2001 (Application No. 37715/97)

The cases were ground-breaking and had the potential to set a huge precedent for all forms of investigation into the future where the State was responsible or implicated in a death.

Two of the four cases, *McKerr* and *Jordan*, were presented by my father's lawfirm, Madden & Finucane. Although the Jordan case dated from 1996, the McKerr application was the very same case that my father had begun in 1982, and it had continued through many layers of court proceedings for 19 years before reaching Europe.

The quartet of cases that were determined in 2001 delivered a seismic shift in the way investigations would be conducted going forward. The European Court was highly critical of the manner in which the investigations in the four cases had been conducted and particularly the way the relatives of the deceased had been forced to fight for every scrap of information they had obtained and to be included properly in public hearings. In future, investigations would have to conform to five minimum standards in order to be human-rights compliant and if they did not, a violation of Article 2 of the European Convention would follow. Investigations had to be **(1) Reasonably prompt (2) Verifiably Independent (3) Effective in the way they operated (4) Public and amenable to public scrutiny (5) Ensure involvement of next-of-kin and family.**

These rulings did away with the practice of the police investigating the police with impunity. Officers would have to appear and give evidence and be available for cross-examination. Documents and forensic reports would have to be made available promptly. Public hearings would have to take place and, above all, the investigations had to be capable, at least, of reaching meaningful and effective conclusions. No longer would those responsible be immune from prosecution or redress. Impunity was at an end, at least as far as the system was concerned. A new legal landscape had been created and it would not be long before all agencies of the State realised that they would have to alter their practices or risk being found in violation by the courts.

During the course of its ruling on our case in 2019, the UK Supreme Court stated the following:

> **In deciding whether an article 2 compliant inquiry into Mr Finucane's death has taken place, it is important to start with a clear understanding of the limits of … de Silva's review. His was not an in-depth, probing investigation with all the tools that would normally be available to someone tasked with uncovering the truth of what had actually happened…** [he] **did not have power to compel the attendance of witnesses. Those who**

> **did meet him were not subject to testing … as to the veracity and accuracy of their evidence. A potentially critical witness was excused attendance …. All of these features attest to the shortcomings of** [the] **review as an effective article 2 compliant inquiry…**
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> [T]**he tentative and qualified way in which he has felt it necessary to express many of his critical findings bear witness to the inability of his review to deliver an article 2 compliant inquiry. It is therefore unsurprising that on 17 May 2011, in a memorandum prepared by the Northern Ireland Office, it was accepted that …** [it] **would not be article 2 compliant.** [The Crown] **… claimed that …. if the review … was taken with what had gone before, it did fulfil the requirements of article 2. For the reasons that I have given, I do not accept that submission."**[4]

In 1982 and even in 1989, the phrase "article 2 compliant inquiry", had not yet come into being. But the foundations for it had been laid by the very man whose murder would, one day, be fully investigated because of it. This is perhaps one of the greatest ironies of the life and work of Pat Finucane. The efforts and innovations of his lifetime would be the very thing that ensured the circumstances behind his murder would not remain hidden. What happened to him has been described as, 'life lost for the law'. I think it is more apt to say, 'a life given for truth'. It is a high price, indeed.

Pat Finucane began an important challenge to the system in which he worked so as to expose how it was depriving people of truth and covering up wrongdoing. It did not matter to him that it would be very difficult to achieve or that it would take a long time. He was determined and he was resolute, something that appears to be a family trait! The truth has been a long time coming but my father would, I think, have wanted us to stay the course. I believe we have done so.

I thank this Commission for its time today and the opportunity to speak and be heard."

[4] Finucane v. UK, ibid., note 1, para. 134