



## Analysis

### Perfidious Albion: Cover-up and collusion in Northern Ireland

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**The British government's dealings in Ireland have long been characterised by cover-ups, deceit and perfidiousness. This includes collaboration between British security forces and loyalist paramilitaries, the obstruction of legal investigations, the refusal to hold public enquiries, and the introduction of a new form of intelligence-led policing which, in many cases, allowed informers to act with impunity.**

#### Introduction

In 1989 Pat Finucane, a prominent and successful lawyer, was shot dead in front of his wife and children. They have long campaigned for a full-scale public inquiry into his murder amid allegations of collusion between his Ulster Defence Association (UDA) paramilitary killers and British security services. [1] In early October 2011, 22 years after the murder, the Finucane family was called to Downing Street to meet the Prime Minister, David Cameron, in the expectation that he was going to announce that he had agreed to a full public inquiry. Instead, he informed them that there would be only a review of the papers by a senior QC. Pat Finucane's wife, Geraldine, was furious declaring that: "It was clear within minutes that we had been lured to Downing Street under false pretences by a disreputable government led by a dishonourable man." She continued: "My family and I have been humiliated publicly and misled privately." She emphasised that at no time were they told that an alternative to an inquiry was also under consideration. [2] It was yet another example of deceit and perfidiousness which has long characterised the British establishment's dealings in Ireland.

From the start of the troubles, cover-ups had been a central characteristic of the British state's role in Northern Ireland. Bloody Sunday was a typical example. Thirteen innocent people were gunned down by the British Army on the streets of Derry following an anti-internment march on 30 January 1972. Edward Heath, the British Prime Minister, quickly announced the setting up of a Tribunal under the powerful 1922 Tribunal of Inquiries Act. Determining the structure of the Tribunal, however, was no easy matter. The selection of the right judge, with a nod and wink from his old public school cronies in politics and the civil service, could guarantee the right outcome and so it was for 'security reasons' that the Tribunal was held in the mainly Protestant market town of Coleraine. It was obvious it was going to be a whitewash. The utter disdain shown to the witnesses from Derry by the English public school lawyers permeated the proceedings. The 96-page whitewashed report was indeed 'justice impaired.' [3]

Collusion between loyalist paramilitaries and the army in the 1970s was also covered up or kept secret. Recently, the Pat Finucane Centre discovered documents in the Public Records Office which suggest that by the late 1970s the Ulster Defence Regiment (UDR, a volunteer British Army infantry regiment) was heavily infiltrated by the Ulster Volunteer Force (UVF) and that UDR units perpetuated fraud to fund the UVF. None of this was made public. However, papers marked for “UK eyes only” showed that 70 UDR soldiers had UVF links and were known to be involved in paramilitary activities, including a member of the notorious Shankill Butchers gang. Minutes of a meeting at British Army HQ in Lisburn in 1978 stated that:

*It would be desirable to avoid mention of the security investigation into UDR soldiers’ possible involvement with paramilitary organisations. [4]*

### **A new secret security strategy**

By the late 1970s, the Royal Ulster Constabulary (RUC) had been modernised and had adopted many of the structures and practices of police forces in England and Wales. [5] The legal basis of policing was the prevention and detection of crime. In the early 1980s, however, policing in Northern Ireland was fundamentally changed. The collection and collation of intelligence now took priority with far-reaching consequences. Within the RUC this change gave supremacy to Special Branch (SB), which could now decide who should or should not see particular intelligence, who should or should not be arrested and whether or not criminal investigations should or should not be carried out. [6] Informers, whatever they did, from murder to exhortation, became the backbone of the new policing strategy and were to be protected at any cost.

What was so extraordinary about this fundamental change in policing was that it was never announced in a Green or White paper, let alone debated in Parliament. It was devised and implemented in secret, by the secret service. Parliament and the general public never knew of such a crucial change in the form of policing until some twenty years later when the blueprint for the reform was revealed in a UTV programme, *Policing the Police*, in April 2001. However, the reforms, which subverted the normal democratic process, must have been discussed at the highest level in the Northern Ireland Office and, in particular, in the Joint Intelligence Committee – the intelligence steering group at the heart of government in the Cabinet Office, which Mrs Thatcher chaired at the time. All subsequent Prime Ministers and Secretaries of State for Northern Ireland would also have been aware of this fundamental change in policing.

The blueprint was drawn up by Sir Patrick Walker, who at the time was believed to be second in command of the Security Services (MI5) in Northern Ireland. He later went on to become Deputy Director (1987-1988) and subsequently Director (1988-1992) of the whole organisation. MI5 was, therefore, centrally involved in developing the new policy and determining its own role within it. Thus an organisation whose very existence was denied at the time – it was eight years later when the then Conservative government confirmed its presence as part of the British state – not Parliament, was responsible for the fundamental reform of policing in Northern Ireland. Although Special Branch was given the lead role, MI5, having devised the strategy, played a significant role behind the scenes. They pulled the strings.

In 2009, an authorised history of MI5 was published under the title *The Defence of the Realm*. [7] It is an uncritical, bland 1032 page history of the organisation. There are 122 pages of endnotes, a significant proportion of which are made up of the vague reference ‘Security Service Archive.’ There

are page reference errors, which hardly instil confidence in the scholarship. One simply notes: "See above p. 000." Unsurprisingly, there is no mention whatsoever of the most important change in the history of policing on these islands.

The instructions to implement the recommendations of the Walker Report were circulated to senior officers in the RUC by Assistant Chief Constable (ACC) J.A. Whiteside. The circular emphasised that the needs of the intelligence community were paramount. All existing agents, sources and informants had to be declared and detailed instructions on the handling of these individuals were contained in an attached appendix. All decisions on planned arrests had to be cleared with Special Branch "to ensure that no agents of either the RUC or the Army were involved." The decision to charge an agent required that "the balance of advantage had been carefully weighed." [8] Crucially, interviews with suspects were no longer to be for the sole purpose of the detection and prosecution of crime, but also for the collection of intelligence. Even after an admission had been obtained, Criminal Investigations Department (CID) Officers had to be aware that they may be able to gain other valuable intelligence and they should liaise with Special Branch Officers to exploit these opportunities. If desirable, Special Branch should be given the opportunity to question the person. Once charges had been preferred, the circular recommended that "a reasonable period" should elapse between charge and court appearance so that Special Branch could question the person for intelligence purposes. In short, the interviewing of suspects was being turned into an opportunity to 'turn' suspects and recruit informers.

It is now apparent that the reform of the police was part of a wider, more deadly security strategy that had been devised at the very highest echelons of government and included fundamental changes in the Army and the way it collected, collated and disseminated intelligence. Until 1977, each battalion ran its own agents who were then passed on after the four month tour of duty. This practice was stopped and brigades became responsible. [9] A short time later in 1980 all intelligence gathering was centralised in what was euphemistically called the Force Research Unit (FRU), based in the Northern Ireland Headquarters in Lisburn (HQNI). It was tasked with the responsibility of looking after all recruits from all the various units of the armed forces. It trained them to go under cover in Northern Ireland.

At the centre of this new intelligence-led security strategy were agents and informers – 'Covert Human Intelligence Sources' (CHISs) as they are now called under the Regulation of Investigatory Powers Act (RIPA) 2000. Agents are typically members of the security services specially recruited to infiltrate paramilitary organisations and informers are existing or potential members of paramilitary organisations who are blackmailed, bribed or otherwise encouraged to provide information to the security forces.

Until the introduction of RIPA in 2000 there was no clear legal basis for intelligence-led policing. The Home Office guidelines on the use of informers were considered inappropriate in the context of Northern Ireland. In effect, there was no rule of law in Northern Ireland. Moreover, senior personnel knew that this new strategy had approval at the highest level and that their decisions would not be questioned. Special Branch quickly became a 'force within a force' and the FRU a clandestine unit at the heart of the Army.

To be successful, CHISs must commit a wide range of criminal activities from robberies to murder. Some will act as an *agent provocateur* and encourage others to commit murder. There will always be a tension between the prevention and detection of crime and turning a blind eye to serious crimes in

order to protect highly valuable informers. More importantly, in the sectarian and antinomian context of Northern Ireland, it was a short step from intelligence gathering to using CHISs to prosecute the war against republicans by directing and encouraging loyalists to carry out assassinations of republicans.

### **The security intelligence strategy in operation**

One of the first inquiries to shed light on the new form of intelligence-led policing was the Stalker Inquiry. Stalker was asked in May 1984 to investigate six deaths at the hands of the RUC in three separate incidents in 1982. Before he had completed his investigation he was removed from the inquiry and suspended from his post in the Greater Manchester Police (GMP) on suspicion of associating with known criminals in Manchester. He was later cleared and reinstated but retired within a few months. In his book on the affair, he gives his impression of RUC Special Branch after investigating two of the incidents:

*The Special Branch targeted the suspected terrorist, they briefed the officers, and after the shootings they removed the men, cars and guns for a private de-briefing before CID officers were allowed any access to these crucial matters. They provided the cover stories, and they decided at what point the CID were to be allowed to commence the official investigation of what had occurred. The Special Branch interpreted the information and decided what was, or was not, evidence...I had never experienced, nor had any of my team, such an influence over an entire police force by one small section. [10]*

He describes at length the way in which Special Branch and MI5 gave him the run-around and refused to give him vital information. He had discovered that in one of the incidents, in which two people had been shot in a hayshed, the building had been bugged by MI5. He had requested access to the tape and the file of the informant who had been involved in this and one of the other incidents. Some six months after first requesting the tape, he was told that it no longer existed, but he could have the transcript provided he signed a secrecy form. He refused. Special Branch and MI5 were not going to allow an independent police investigator access to crucial information. The protection of their informer took precedence over accountability and transparency. Stalker's persistence had dire personal consequences. He was subsequently removed from the inquiry on carefully circulated falsehoods into his alleged 'criminal associations' in Manchester, which were then secretly investigated not by an outside force but by a team within the Greater Manchester police. Deceit, once again, was everywhere.

### **The Stevens Inquiries**

Following the murder of Pat Finucane on 12 April 1989, there were continuing allegations of collaboration between the security forces and loyalist paramilitaries. In May, following a letter from the Director of Public Prosecutions to the Chief Constable of the RUC, John Stevens was asked to reinvestigate the murder of Pat Finucane and allegations of collusion. It was the first of three inquiries he conducted stretching over more than 14 years. In a summary of his work in 2003 he concluded:

*My Enquiries have highlighted collusion, the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, and the extreme of agents being involved in murder. These serious acts and omissions have meant that people have been killed or seriously injured...*

Stevens, like Stalker, was obstructed by the security services throughout his investigations, a practice that became more intense as he progressed. He considered the numerous obstructions to be “cultural in nature and widespread within parts of the Army and the RUC.” [11] There was a clear security breach before the arrest of army agent Brian Nelson for his involvement in the murder of Pat Finucane and the arrest had to be aborted. [12] The night before the second attempt to arrest him, the investigation team’s incident room in the secure compound at the RUC’s Carrickfergus site was subject to an arson attack. [13] The main team had left at 9pm but four members returned unexpectedly 25 minutes later to find the room alight. Neither the smoke alarm nor the heat sensors had gone off and the telephone lines had been cut. They made an attempt to tackle the fire but found that there was no water in the fire protection system. It was suspected that a covert method of entry (CME) unit of FRU was responsible. [14]

Access to information from both the police and the army was a continuing problem. Stevens was told that certain documents did not exist only for his team to find them at a later date. [15] Crucially, they were not informed of the ‘intelligence dump’ in the possession of Brian Nelson. [16] The continual concealment of documents from the team slowed up the investigation and led to a number of witnesses having to be interviewed on multiple occasions. As a result of these experiences, Stevens investigated whether the concealment of documents was sanctioned and at what level. As yet, there has been no information released into the public domain as to his conclusions on this vitally important public issue.

### **The Cory Inquiries**

As part of the attempts to consolidate the 1998 Good Friday Agreement, talks were held at Weston Park in August 2001. Following the talks, the UK and Irish governments issued a joint statement which acknowledged that certain cases, in which there were “serious allegations of security force collusion,” remained a source of grave concern. In May 2002, the British government appointed Peter Cory, a retired Canadian judge, to examine allegations of collusion in relation to the deaths of Patrick Finucane, Robert Hamill, Rosemary Nelson and Billy Wright, two RUC officers, Breen and Buchanan and Justice Gibson and his wife. The government promised that should Cory recommend a public inquiry into a particular death, it would be held. Following his investigations, Cory recommended five inquiries.

The Cory Inquiries provide more evidence of the way in which the new security intelligence strategy was working to undermine the rule of law in Northern Ireland. Agents were to be protected at any cost through a culture of concealment. No independent outside investigation into the behaviour and activities of any of the branches of the security services were to be given access to intelligence documents, as first experienced by Stalker and Stevens.

In his investigation into the murder of Pat Finucane, Cory came across evidence of meetings which had taken place between senior officials, the General Officer Commanding Northern Ireland and the Chief Constable at which access to intelligence was discussed. These took place before Stevens had even arrived in Northern Ireland. Cory quotes one document as noting the decision that: “The CC (Chief Constable) had decided that the Stevens Inquiry would have no access to intelligence documents or information, nor the units supplying them.” Cory commented:

*The wilful concealment of pertinent evidence, and the failure to cooperate with the Stevens Inquiry, can be seen as further evidence of the unfortunate attitude that then persisted*

*within RUC SB and FRU. Namely, that they were not bound by the law and were above and beyond its reach. These documents reveal that government agencies (the Army and RUC) were prepared to participate jointly in collusive acts in order to protect their perceived interests. Ultimately the relevance and significance of this matter should be left for the consideration of those who may be called upon to preside at a public inquiry. [17]*

Apart from the concealment of documents, Cory concluded that there was *prima facie* evidence of collusion in relation to a number of specific aspects of the murder and its investigation. The FRU failed to warn Finucane of the threat to his life, passed on information to Nelson, failed to constrain Nelson's criminal activities and presented on oath misleading evidence at his trial. The Security Service failed to suggest to RUC SB that it should warn Finucane. The RUC SB failed to take action on known threats, failed to follow up leads on the gun used in the murder, failed to record FRU information in the Intelligence and Threat Books and took a sectarian position in the reporting of threats and withheld information from investigating officers. [18]

Cory also produced detailed reports into the killing of Rosemary Nelson, [19], Robert Hamill [20] and Billy Wright. [21] Inquiries into each of these cases, as recommended by Cory, have now been held. The Nelson and Wright inquiries have been published. The Hamill inquiry, however, will not be published until legal proceedings are finished. The Nelson and Wright inquiries provide further insight into the intelligence-led security strategy and the culture that was created. They make sombre reading for anyone who believes in democracy and the rule of law.

#### **Inquiries arising from Cory: A: The Nelson Inquiry**

The Nelson Inquiry, which investigated the circumstances surrounding the murder of solicitor Rosemary Nelson, in Lurgan on 15 March 1999, took a much narrower definition of collusion than that used by Cory. It found "no evidence of any act by or within any of the state agencies we have examined (the Royal Ulster Constabulary (RUC), the Northern Ireland Office (NIO), the Army or the Security Service) which directly facilitated Rosemary Nelson's murder." [22] It went on to say that it could not exclude the possibility that there was "a rogue member or members of the RUC or the Army in some way assisting the murderers to target Rosemary Nelson." However, the detailed analysis of all the available evidence by the inquiry revealed yet again a culture of concealment combined with an attitude that key organs of the state in Northern Ireland were above the law and not answerable to an independent judicial inquiry. Assistant Chief Constable Colin Port, who was brought in by the RUC to head up the Murder Investigation Team (MIT), chillingly told the inquiry:

*At the time of this investigation Special Branch was a separate entity in Northern Ireland. They had a very close relationship with the Security Service and the military. Their approach was completely new to me and very different from my experiences of working with Special Branch in other parts of the UK at that time...I had been used to being supplied with the whole intelligence picture, whereas in Northern Ireland I soon learned that this was not the case. Special Branch decided on whether material was relevant to a murder investigation. In the rest of the UK, the Senior Intelligence Officer [SIO] was given the whole intelligence picture; an Intelligence Cell working directly for the SIO was tasked by the SIO to produce intelligence and information. In Northern Ireland it was very different. Whilst the SIO ran the investigation, the intelligence was provided by Special Branch. They only provided summaries of the intelligence product. The SIO needs to understand the provenance and reliability of intelligence. In other parts of the UK this can be easily achieved through the Intelligence Cell.*

*However, it was more difficult in Northern Ireland. Special Branch in Northern Ireland acted like the Intelligence Cell. They were the holders of the intelligence and in this respect were all powerful. [23]*

The Inquiry revealed that it received only “sanitised scripts” from Special Branch (SB) and reported that “the original notes or contact sheets on which the intelligence had first been recorded were routinely destroyed for security purposes.” [24] As a result the Inquiry admits that they “were unable to test the source or to examine the original notes from which the sanitised script was prepared.” [25] It went on to say that: “We would, however, have expected to see some evidence of analysis and evaluation of the material contained in the reports. No such evidence was disclosed to us.” [26] Here is an independent judicial inquiry recording that it received only “sanitised scripts” and all it says about this disgraceful state of affairs is that it would have expected to see “some evidence of analysis and evaluation of the material.” [27]

The routine destruction of crucial information appears to have been a carefully constructed policy so that agents would be protected at all costs notwithstanding the wider implications for the administration of justice and the rule of law in Northern Ireland. Giving evidence to the Wright Inquiry, one senior Police Service of Northern Ireland (PSNI) officer, former ACC Sam Kinkaid, described the culture within Special Branch as that of “plausible deniability,” which he described as:

*...a practice or culture that existed in an organisation where the members did not keep records, so there was no audit trail. Nothing could be traced back, so that if they were challenged they denied it, and that denial, being based on no documentation, would become ‘plausible deniability’...it [the system] didn’t give proper audit trails and proper dissemination, and at times it would appear that it allowed people at a later date to have amnesia, in the sense that they couldn’t remember because there was no data on the system. [28]*

The Nelson Inquiry also heard that telephone transcripts made by the RUC were routinely destroyed and police officers were allowed to similarly dispose of their personal journals when they retired. [29] Moreover, a number of items of intelligence were withheld from the murder investigation team. One crucial item was related to the telephone used to make the claim of responsibility for the murder. This would have permitted extensive enquiries in an attempt to identify the caller. But it was withheld. The Inquiry concluded “We strongly suspect that SB feared that it might have compromised the identity of a source. However, in our opinion this piece of information was so crucial to the investigation that the failure to disclose it was wholly unjustified.” [30] Another vital piece of information which was withheld from the Inquiry concerned Operation Fagotto – a Special Branch operation close to the house of Rosemary Nelson on the evening before she was blown up by a car bomb. The Murder Investigation Team (MIT) was not told of the operation until three days after her murder. [31]

Also involved in Operation Fagotto was a Headquarters Mobile Support Unit (HMSU) – a specialist unit attached to Special Branch and trained in firepower, speed and aggression. These units had been involved in two of the killings investigated by Stalker. It was assumed by the MIT that the Unit had remained in Portadown but this was not the case. It was in fact in Lurgan on the night before the murder. Where it was deployed remains unknown. As the MIT assumed that the Unit was in Portadown on the night in question members of the team were never interviewed. This only came to

light when the notebooks from these officers were eventually disclosed in January 2010 – six months after the Inquiry had concluded its public hearings. [32]

Two further damning revelations were included in the Nelson Inquiry report. The first concerned a letter which Jane Winter, head of British Irish Rights Watch, wrote to Mo Mowlam, the then Secretary of State for Northern Ireland, which among other matters recorded that threats had been made to the life of Rosemary Nelson by police officers. The NIO forwarded the letter and the attachments to the RUC but neither the NIO nor the RUC took any action in respect of it. Further letters were sent from other concerned individuals and groups but nothing was done. The Inquiry concluded with the damning statement: “In our view, neither the NIO nor the RUC dealt with the NGOs’ concerns thoughtfully and effectively, with the result that no action was taken to safeguard Rosemary Nelson.” [33]

The other damning revelation was that the Public Prosecution Service failed to disclose to the defence in the murder trial of Colin Duffy, whom Rosemary Nelson represented, that it had paid a key witness to the murder £2,000 to start a new life in Scotland. [34] It turned out to be far from a new life as he was later charged with UVF offences and the deal was revealed. From all the available evidence, it appears that criminal justice agencies conspired against the fair and impartial administration of justice in Northern Ireland.

## **B: The Wright Inquiry**

In the Wright inquiry, which investigated the circumstances of the murder of Billy Wright in the Maze Prison on 27 December 1997, once again there was a long list of failures concerning the production of records for the inquiry. The PSNI failed to produce comprehensive documentation for the period under investigation. [35] It failed to provide the inquiry with either paper or electronic manuals detailing the way informers were managed or the names of key informants and their payments. According to the Inquiry this was “most unfortunate.” [36] It failed to produce logs of the Tasking and Coordinator Group which had responsibility for coordinating all security operations in the region. [37] It failed to produce any significant hard copy intelligence files from SB for 1997. Oddly, the inquiry only found this “puzzling” given “the enormous number of hard copy files which were then in existence.” [38] Crucially, it failed to produce a police file on the murder of Wright.

The inquiry considered at some length the PSNI’s policy on the review, retention and destruction of SB Records. There appears to have been no clear policy and witnesses gave conflicting views of their understanding of the current rules and procedures. Incredibly, it was revealed that there was no procedure in place which stipulated what should happen to day books and journals. [39] The inquiry concluded meekly that: “there are grounds for criticising the PSNI for the non-existence or non-production of hard copy records and for the lack of adequate and effective systems for information management, dissemination and retention.” [40] It then added what appears to be an afterthought:

*...this could on occasion have amounted to deliberate malpractice, in that it involved the destruction of audit trails and the concealment of evidence which might have been damaging to the reputation of the RUC. (emphasis added) [41]*

No reference is made in the report to the Walker reforms in 1981. If the Inquiry had studied these it would have seen that there was nothing “occasional” about these so-called “malpractices.” These practices were central to the reforms introduced by Walker in order to protect informers. They involved the systematic and regular destruction of audit trails and the concealment of evidence.



They were policies that damaged the RUC's reputation and are now damaging the reputation of the PSNI.

The Northern Ireland Prison Service (NIPS) fared no better in terms of its review, retention and destruction of documents. After the report by Judge Cory, and after the Billy Wright Inquiry had been announced, the NIPS incinerated all the Prisoner Security Files for HMP Maze for the entire period of the Troubles. No records were kept of what was destroyed or the event itself. The inquiry described this event in somewhat stronger language as "scandalous" [42] and said that it was a "highly unsatisfactory position." [43] It was far more than "scandalous" and "unsatisfactory". It showed yet again the complete disdain for the rule of law held by those in power in Northern Ireland. It reflected a belief that they were above the law and under no circumstances would their actions be thoroughly reviewed by an independent judicial inquiry.

The Wright Inquiry was also critical of communication between Special Branch and CID. This was a problem that existed since the introduction of the Walker recommendations but nothing appears to have been done to improve it. The inquiry commented laconically: "It would be natural to assume that these two arms of the RUC would have wished to work in the closest and most constructive partnership, but this appears not to have been the case in 1997." [44] And indeed for the previous 17 years.

The inquiry concluded that the handling by the RUC of the various threats to the life of Billy Wright between October 1996 and June 1997 did constitute, both individually and cumulatively, wrongful acts or omissions and that these facilitated his death. [45] However, as it considered that the essence of collusion is "an agreement or arrangement between individuals or organisations, including government departments, to achieve an unlawful or improper purpose," [46] it concluded that while it was critical of certain individuals and institutions or state agencies, some of whose actions did, in its opinion, facilitate Wright's death, it was not persuaded "that in any instance there was evidence of collusive acts or collusive conduct." [47]

This was an extraordinary conclusion in the light of the Walker reforms which were clearly "an agreement or arrangement" between government departments at the highest level of the state "to achieve an unlawful" purpose, namely changing the legal basis of policing in Northern Ireland from the prevention and detection of crime to the protection of informers involved in murder and other serious crimes. Moreover, there was a clear policy, which must have been approved at the highest level of government, that important intelligence should be withheld, if it had not already been destroyed, from any police or judicial inquiry.

### **Ombudsman's reports**

The Police Ombudsman for Northern Ireland's office was set up in 1998 and has powers to investigate complaints against the police and carry out investigations if it is considered in the public interest. A number of the Ombudsman's reports shed further light on the workings of the intelligence-led security strategy and, in particular, the Walker reforms. Two will be considered here. First an investigation into matters relating to the Omagh Bombing on 15 August 1998 in which 29 people and two unborn children died and some 250 people were injured, some of them seriously. [48] The Ombudsman started the investigation following a newspaper article in which an army agent, Kevin Fulton, claimed that he had told the police about an impending bomb attack. Second,

an investigation into a complaint made by Mr McCord into the murder of his son on 9 November 1997. [49]

The Omagh Report revealed yet again the central role of Special Branch in policing Northern Ireland and its culture of secrecy. By 2001 it still did not have in place policies and procedures for the management and dissemination of intelligence to the rest of the force. [50] Some police officers gave inconsistent accounts to the investigators, others refused to talk or make statements. At senior level, the Ombudsman described the response as “defensive and at times uncooperative.” [51] Crucially, Special Branch withheld “significant intelligence” from both the Senior Investigation Officer into the bombings and the Reviewing officer [52] and failed to inform those investigators of a computer system where intelligence, vital to the investigation, was held. [53]

Raymond McCord Junior was murdered by loyalists. Following preliminary inquiries the Ombudsman widened her investigation to embrace seven lines of enquiry. At the heart of her investigation were her concerns about the informant management processes. In March 2003, she alerted the Chief Constable to her concerns. In her investigation, she discovered intelligence linking one police informer to 10 murders and other intelligence linking him and other informers to at least 10 attempted murders. In addition, informers were linked to a wide range of other serious crimes. “Informer One” had been recruited through a “long standing relationship with a police officer.” He had started working for Special Branch in 1999 and had been paid over £79,000. Her main findings were devastating and are listed in Table 1 (see below).

Her report also highlighted the ineffectiveness of the oversight of powers under RIPA. A Surveillance Commissioner is required to inspect the level of police compliance with the requirements of the Act. According to the Ombudsman, previous inspections by the Surveillance Commissioner in Northern Ireland had not identified any significant non-compliance by the PSNI. In his February 2003 report, he concluded that: “Overall there continues to be a high level of compliance with the legislation and codes of practice.” [55] Only after a further investigation prompted by the Ombudsman’s concerns did he conclude that the rules had not been complied with. This level of oversight does not inspire confidence in the system.

The widespread belief that the Special Branch was above the law and answerable to no-one was once again revealed in the response to the Ombudsman’s investigation. When asked to help her in her enquiries, a number of very senior retired officers did not consider it their duty to assist and refused to do so. They included two retired Assistant Chief Constables, seven Detective Chief Superintendents and two Detective Superintendents. [56] Other serving officers, while assisting the investigation, gave contradictory, evasive and even dishonest replies to questions, showing contempt for the law. [57] The Ombudsman noted:

*Most of these senior officers have not given any explanation of their roles, and have not made themselves accountable. They have portrayed themselves as victims rather than public servants, as though the public desire for an explanation of what happened during the period under investigation was unjustified. Their refusal to co-operate is indicative of disregard for the members of families of murder victims from both sides of the community. In addition to this, their refusal to co-operate has had the effect of lengthening the investigation, and of depriving the public of their understanding of what happened. [58]*

There appears to have been no change in the culture described by Stalker, despite reform of the RUC in 2001.

## Conclusions

The picture which emerges from these police and judicial inquiries should cause widespread concern in any democracy. The picture from investigative journalists and disgruntled agents and informers who have survived the conflict is even more disturbing. It is alleged that the lives of numerous people were sacrificed in both communities in order to protect informers. [59] Some have gone much further and suggested that the security forces directed the killings, principally of republicans through their agents and informers. Nicholas Davies, a one-time Foreign Editor of the Daily Mirror newspaper, in *Ten-Thirty-Three: The Inside Story of Britain's Secret Killing Machine in Northern Ireland*, published in 1999, [60] describes how the security services used loyalist gunmen to target and kill republicans. In his second book, *Dead Men Talking: Collusion, Cover-up and Murder in Northern Ireland's Dirty War* he describes how MI5 and RUC SB worked together to direct both loyalist and Provisional IRA gunmen to commit murder. He makes the specific allegation that MI5 officers in London were responsible for organising Pat Finucane's death. [61] It is impossible from the outside to assess these allegations. But what makes them particularly disturbing is that much of the detail first revealed in *Ten-Thirty-Three* in 1999 has been confirmed in the various police and judicial inquiries.

The refusal to hold a full scale public inquiry into Pat Finucane's murder goes to the very heart of democracy and the rule of law. No country can have any confidence in government if state agencies appear to be above the law and suspected of serious crimes of commission, omission and collusion. Successive governments have refused to grant an inquiry no doubt because they fear that it would reveal too much of the secret state in Northern Ireland and could lead to the prosecution of individuals at the very highest level.

In 2005, the powerful 1922 Tribunal of Inquiries Act was abolished and replaced by the Inquiries Act, which reduces substantially the independence of an inquiry and also provides the Minister with the power to determine what aspects should be held in public and what should or should not be revealed. Cynically, the change could be seen as a way to grant an inquiry which could then be tightly controlled. But an inquiry under these new rules no longer appears to be acceptable to the current government, further confirming that there is much to hide.

Numerous reasons have been put forward as to why it would be wrong to hold an inquiry. It has been suggested that it would be too costly. But it is impossible to put a cost on having a robust, transparent and democratic system where no-one is above the law. Others have suggested that singling out the Finucane case creates a hierarchy among the thousands of other people who have lost their lives. This is a fair criticism, but the Finucane case is likely to reveal most about the extent of collusion particularly if the focus of the inquiry is on the operation of the intelligence-led strategy rather than focused narrowly on one case. It therefore goes beyond the interests and needs of the victims in Northern Ireland. It is in the interests of everyone in the United Kingdom to hold those in power to account.

Cory in his report on the murder of Pat Finucane spelt out the consequences of not upholding the commitment at Weston Park to hold an inquiry. He wrote:

...the failure to hold a public inquiry as quickly as it is reasonably possible to do so could be seen as a denial of that agreement, which appears to have been an important and integral part of the peace process. The failure to do so could be seen as a cynical breach of faith which could have unfortunate consequences for the peace accord. [62]

The consequences, however, of renegeing on the commitment go well beyond the peace accord. It suggests that politicians and senior public servants can connive with the secret services in developing illegal security strategies, that the police and army can act beyond the rule of law, that agents of the state can commit murder with impunity and that at the heart of British democracy there is unaccountable security apparatus. To rephrase Lord Denning's reason for refusing the appeal of Birmingham Six: "This is such an appalling vista that every sensible person would say, that 'It cannot be right that there is no public inquiry'."

**Table 1: Police Ombudsman's findings in the McCord Investigation [54]**

- \* Failure to arrest informants for crimes to which those informants had allegedly confessed, or to treat such persons as suspects for crime
- \*The concealment of intelligence indicating that on a number of occasions up to three informants had been involved in a murder and other serious crime
- \* Arresting informants suspected of murder, then subjecting them to lengthy sham interviews at which they were not challenged about their alleged crime, and releasing them without charge
- \* Creating interview notes which were deliberately misleading; failing to record and maintain original interview notes and failing to record notes of meetings with informants
- \* Not recording in any investigation papers the fact that an informant was suspected of a crime despite the fact that he had been arrested and interviewed for that crime
- \* Not informing the Director of Public Prosecutions that an informant was a suspect in a crime in respect of which an investigation file was submitted to the Director
- \* Withholding from police colleagues intelligence, including the names of alleged suspects, which could have been used to prevent or detect crime
- \* An instance of blocking searches of a police informant's home and of other locations including an alleged UVF arms dump
- \* Providing at least four misleading and inaccurate documents for possible consideration by the Court in relation to four separate incidents and the cases resulting from them, where those documents had the effect of protecting an informant
- \* Finding munitions at an informant's home and doing nothing about that matter
- \* Withholding information about the location to which a group of murder suspects had allegedly fled after a murder
- \* Giving instructions to junior officers that records should not be completed, and that there should be no record of the incident concerned

- \* Ensuring the absence of any official record linking a UVF informant to possession of explosives which may, and were thought according to a Special Branch officer's private records, to have been used in a particular crime
- \* Cancelling the "wanted" status of murder suspects "because of lack of resources" and doing nothing further about those suspects
- \* Destroying or losing forensic exhibits such as metal bars
- \* Continuing to employ as informants people suspected of involvement in the most serious crime, without assessing the attendant risks or their suitability as informants
- \* Not adopting or complying with the United Kingdom Home Office Guidelines on matters relating to informant handling, and not complying with the Regulation of Investigatory Powers Act when it came into force in 2000

### Endnotes

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28. Cory (2004c) para 5.141.

29. Cory (2004a) para 2.10.
30. Ibid. para 31.30.
31. Ibid. Para 34.1.
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This article was first published in Statewatch journal volume 22 no 4, January 2013

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