

Beyond Collusion

The U.K. Security Forces
and the Murder
of Patrick Finucane



LAWYERS COMMITTEE
FOR HUMAN RIGHTS

Beyond C o l l u s i o n

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About Us

Lawyers Committee for Human Rights

Since 1978, the Lawyers Committee for Human Rights has worked in the U.S. and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; promote fair economic practices by creating safeguards for workers' rights; and help build a strong international system of justice and accountability for the worst human rights crimes.

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ACRONYMS

BBC	British Broadcasting Corporation
BIRW	British Irish Rights Watch
CAJ	Committee on the Administration of Justice
CID	Criminal Investigations Division
CME	Covert Means of Entry
DPP	Director of Public Prosecutions
EPA	Emergency Provisions Act
ECHR	European Convention on Human Rights
ESDA	Electrostatic Detection Apparatus
FRU	Force Research Unit
ICCPR	International Covenant on Civil and Political Rights
JSGNI	Joint Support Group Northern Ireland
IRA	Irish Republican Army
KPPS	Key Persons Protection Scheme
LVF	Loyalist Volunteer Force
MI5	U.K. intelligence service responsible for domestic security
MoD	Ministry of Defence
NIO	Northern Ireland Office
PIRA	Provisional Irish Republican Army
PSN	Police Service of Northern Ireland
PTA	Prevention of Terrorism Act
RUC	Royal Ulster Constabulary
SAS	Special Air Service
SDLP	Social Democratic and Labour Party
SIW	Special Intelligence Wing
SSUs	Special Support Units
TCGs	Tasking and Coordination Groups
UDA	Ulster Defense Association
UDR	Ulster Defense Regiment
UFF	Ulster Freedom Fighters
UTV	Ulster Television

PREFACE

This is the second edition of *Beyond Collusion*, a report which examines allegations of state involvement in the murder of Patrick Finucane, a prominent Belfast human rights lawyer who was killed on February 12, 1989. This report pieces together the evidence of state involvement that has emerged gradually in the 14 years since the murder. In compiling this report, we seek to help persuade the U.K. government, by the weight of evidence, to finally carry out a public inquiry into the Finucane case.

Over the last 11 years, the Lawyers Committee has conducted a series of missions to examine the human rights situation in Northern Ireland. Based on those missions and extensive outside research, we published two previous reports on Northern Ireland, the first in 1993 and the second in 1996. Both of these reports considered unfolding allegations of state involvement in Finucane's murder. Our first report, *Human Rights and Legal Defense in Northern Ireland*, also looked into allegations that members of the security forces had systematically harassed and intimidated defense lawyers. Our second report, *At the Crossroads: Human Rights and the Northern Ireland Peace Process*, examined two main issues in addition to the Finucane murder. The first was the continued reliance on emergency legislation by both the United Kingdom and Republic of Ireland. The second was the role of the judiciary in implementing the emergency law framework and in facilitating the transition to the rule of ordinary law.

Much of the evidence discussed in this report is based on information gathered during fact-finding missions to Northern Ireland in June 2001 and February 2002, as well as on a series of follow-up interviews. The members of the June 2001 delegation were Michael Posner, Executive Director of the Lawyers Committee; Martin Flaherty, Professor at Fordham Law School; and Meg Satterthwaite, former Furman Fellow at the Lawyers Committee, who also conducted a preliminary fact-finding mission. The follow-up interviews were conducted by Fiona Doherty, Senior Associate at the Lawyers Committee. The members of the February 2002 delegation were Fiona Doherty and Elisa Massimino, Director of our Washington, D.C. office. The report also draws on information gathered during our previous missions to Northern Ireland as well as on the extensive work of other human rights groups and journalists on the Finucane case. The report was written by Fiona Doherty, with the assistance of Meg Satterthwaite.

BEYOND COLLUSION

We would like to thank the many staff members and friends of the Lawyers Committee who participated in our previous missions to Northern Ireland. Our report would not have been possible without the assistance of local human rights organizations. In particular, we are grateful to Jane Winter of British Irish Rights Watch, who provided us with invaluable assistance, as she has done for many years. We also note our long-standing debt to the Committee on the Administration of Justice, especially Martin O'Brien, Paul Mageean, Maggie Beirne, and Liz McAleer. We also gratefully acknowledge the assistance of Fionnuala Ní Aoláin and Martin Flaherty. Finally, we would like to express our gratitude to the family of Patrick Finucane.

Lawyers Committee for Human Rights
New York, New York
February 12, 2003

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Patrick Finucane was a high-profile solicitor in Northern Ireland in the late 1970s and 1980s. He was well known for his work in representing people arrested under the emergency or anti-terrorism laws and for his use of litigation to challenge the legal framework in which the U.K. security forces operated. On the evening of February 12, 1989, masked gunmen broke into Finucane's home and shot him 14 times in front of his wife and three children. The next day, the Ulster Freedom Fighters (UFF) claimed responsibility for the killing. The UFF is a cover name used by the Ulster Defense Association (UDA), the largest loyalist paramilitary group in Northern Ireland.

Over the last 14 years, there have been persistent reports that members of the U.K. security forces were involved in the Finucane murder. The U.K. government has firmly resisted calls to establish a public inquiry into the killing, however, claiming that this could prejudice ongoing criminal investigations. In addition to the investigation by Northern Ireland's Royal Ulster Constabulary (RUC), there have been three separate police investigations led by Sir John Stevens, the current Commissioner of the Metropolitan Police in London. The findings of the first two Stevens investigations have remained largely classified and the third, established in 1999, is still ongoing. Despite the many official investigations, no one has ever been successfully prosecuted for Patrick Finucane's murder.

Over the last 11 years, the Lawyers Committee has conducted a series of missions to Northern Ireland to investigate reports of official collusion in the murder. The evidence that has emerged over this period extends far beyond isolated acts of collusion by individual members of the security forces and implicates the very foundations of the government's security policy in Northern Ireland. The evidence strongly suggests that units within both the British Army and the RUC were involved at an institutional level in the murder and subsequent cover up. This report provides a comprehensive account of the Finucane case on the 14th anniversary of his murder.

The Army's Force Research Unit and Brian Nelson

The Force Research Unit (FRU) was a covert unit of the British Army that infiltrated agents into republican and loyalist paramilitary

groups in Northern Ireland. FRU officers, operating as “handlers,” debriefed and counseled these agents. Documents recording the contacts between FRU agents and their handlers have revealed that the purpose of the FRU, at least with respect to loyalist paramilitary groups, was to redirect the killing power of loyalist paramilitaries away from random sectarian killings and toward “legitimate” republican targets.

In 1987, the FRU recruited Brian Nelson to infiltrate the intelligence structure of the UDA. With the active assistance and resources of the FRU, Nelson soon brought new professionalism to the UDA’s information-gathering system. According to multiple sources, Brian Nelson prepared targeting information on Patrick Finucane with the knowledge of his FRU handlers. FRU documents pertaining to Nelson were withheld from the Stevens investigations and were subsequently found to have been altered. On the night before Stevens planned to arrest Nelson as part of his first investigation, Nelson fled to England and Stevens’s offices were destroyed by a fire. According to an FRU whistleblower, that fire was set by members of the British Army.

The Stevens team did eventually arrest Nelson. After pleading guilty to 20 crimes, he was sentenced to ten years in prison. Since then, reports have emerged claiming that MI5, the U.K.’s domestic intelligence agency, had received daily access to FRU files and had been aware of its illegal activities all the time. In addition, according to a 1998 government affidavit, the FRU continued to operate in the wake of Nelson’s arrest, adopting a new name, the “Joint Support Group Northern Ireland” (JSGNI).

RUC Special Branch and William Stobie

Another intelligence agency implicated in the Finucane murder is Special Branch, the intelligence wing of the RUC. Like the FRU, Special Branch ran agents in Northern Ireland’s paramilitary organizations. At the time of the Finucane murder, William Stobie was simultaneously an agent for Special Branch and a quartermaster for the UDA in West Belfast. As quartermaster, Stobie was responsible for supplying weapons for UDA missions in his area.

In September 1990, William Stobie was detained for seven days and repeatedly interrogated by officers of the RUC’s Criminal

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Investigations Division (CID). Stobie admitted that several days before Patrick Finucane's murder, a UDA superior had instructed him to supply guns for an operation. Stobie also admitted that he had retrieved the weapons after the murder. During the interrogation, Stobie explained that he was an agent for Special Branch. He insisted that he had kept his handlers fully informed of developments as they arose and that Special Branch had known the names of the UDA members involved. Despite his admissions, the Director of Public Prosecutions (DPP) decided on January 16, 1991, not to charge Stobie in connection with Finucane's murder.

Martin Ingram's Allegations

The Lawyers Committee conducted a series of interviews with a former FRU officer, who spoke to us under the pseudonym "Martin Ingram." According to Ingram, there were three separate UDA plans to assassinate Patrick Finucane. The first two plans were thwarted, but the third succeeded. Ingram claimed that both the FRU and Special Branch knew that the UDA was targeting Patrick Finucane. He said that they also knew, prior to the killing, that there had already been two attempts on his life. Despite this, Finucane was not warned of the dangers that he faced.

Ingram told the Lawyers Committee that he did not know whether the FRU had advance knowledge of the third plan. He explained that although Brian Nelson was responsible for gathering intelligence for UDA killing teams, he would not necessarily have known the date and time of impending attacks. Martin Ingram believed that Special Branch must have had advance knowledge of the third attack, however, given its own sources within the UDA in West Belfast. Ingram told us that Special Branch should have been electronically monitoring the weapons under William Stobie's control. He also told us that he knew with "cast iron certainty" that the leader of the UDA in West Belfast was working for Special Branch at the time of Finucane's murder. This UDA leader, Tommy "Tucker" Lyttle, was in charge of both Nelson and Stobie. Ingram claimed that it was Lyttle who instructed Nelson to compile targeting information on Finucane.

The Possible Instigation of the Murder by RUC Officers

The allegations concerning Lyttle are highly significant in the

context of reports that RUC officers actively procured Finucane's murder. In 1992, a source found reliable by the Lawyers Committee informed us that three weeks before the killing, RUC officers told three prominent UDA men under police detention that the UDA should target Patrick Finucane. In 1995, BBC journalist John Ware published an article detailing a similar scenario. Ware had interviewed Tucker Lyttle before his death in October 1995. Lyttle confirmed that two RUC detectives had originally suggested murdering Finucane. Lyttle told Ware that when this was relayed to him, he was so astonished that he asked a "regular contact" in Special Branch why Finucane was being pushed. Lyttle claimed that this contact had not in any way discouraged the idea that Finucane should be shot.

The Prosecution and Subsequent Murder of William Stobie

In 1999, a few months after Stevens began his third investigation, William Stobie was charged with the murder of Patrick Finucane. In his defense, Stobie claimed that he had not known that Finucane was the target before the murder. He also claimed that he had given his Special Branch handlers enough information to prevent the killing (and in the aftermath to apprehend the killers and retrieve the murder weapons). He also claimed that given his 1990 admissions, the DPP had long possessed the information on which the charges were based. After extensive delays, the DPP ultimately did not offer any evidence in the case, and Stobie was found not guilty on November 26, 2001. The next day, Stobie called for a public inquiry into the murder of Patrick Finucane.

Two weeks later, William Stobie was ambushed and killed outside his home, in an attack attributed to the UDA. The U.K. government knew that Stobie was at risk from the UDA, but failed to protect him. Stobie had repeatedly applied for government protection after his role as a government agent was exposed in 1999. Working in conjunction with Stobie's solicitor, the Lawyers Committee had raised Stobie's need for official protection with many U.K. officials. Although Stobie had requested only modest security measures, the government denied his applications. As this report goes to press, nobody has been charged with his murder.

Cover Up: Special Branch and the Story of Johnston Brown

In late 2000, news surfaced that Special Branch had blocked attempts by fellow RUC officers to prosecute one of the two gunmen in the Finucane murder. These allegations were made by CID officer Johnston Brown. Brown claimed that on October 3, 1991, a prominent loyalist had confessed to being one of the two gunmen in the murder. Instead of pursuing a prosecution, however, Special Branch decided to recruit the loyalist as an informer.

In interviews with the Lawyers Committee in early 2002, Brown explained that he had vigorously opposed Special Branch's decision not to pursue the prosecution. As a result, he and his partner were harassed and threatened by Special Branch officers. In November 1991, for example, he learned that Special Branch officers had tipped off the loyalist about Brown's desire to prosecute him, a move that placed Brown's life in immediate danger. In April 1999, Brown told the Stevens III team about the 1991 confession. A Special Branch officer later threatened to have guns planted in his home. Brown told the Lawyers Committee that he still felt very much under threat from Special Branch.

The *Panorama* Revelations

In January 2002, journalists publicly identified the loyalist who confessed to the killing as Ken Barrett. Threatening graffiti had begun to appear around Belfast, accusing Barrett of being a police informer and explicitly linking him to Johnston Brown. Barrett fled Northern Ireland, reportedly afraid for his life. Several months later, the BBC's *Panorama* program broadcast a documentary on collusion, which contained excerpts of interviews with Barrett. Barrett did not know he was being recorded and talked freely about the murder, discussing his own role and the roles of the Army and the RUC. He claimed, for example, that an RUC Special Branch officer had worked to convince him that Finucane was a "legitimate target." The same Special Branch officer reportedly assisted the UDA murder gang on the night of the killing. Barrett also claimed that Brian Nelson had personally supplied him with the targeting material on Finucane—handing him a picture of Finucane six days before the murder and then driving him past Finucane's house.

The *Panorama* documentary also broadcast interviews with officers from the Stevens I and II investigations. These officers confirmed that Army officials had tried to mislead them and obstruct their investigations. They also reported that they had conclusively established that the FRU had been using Nelson to direct UDA targeting—long before Stevens was called in for the third time.

The “International Judge” Investigation

Following negotiations on the Northern Ireland peace process in July 2001, the U.K. and Irish governments announced that they would jointly appoint “a judge of international standing from outside both jurisdictions to undertake a thorough investigation of collusion” in the murder of Patrick Finucane, as well as in five other prominent cases. The governments revealed that in all six cases, the international judge would be asked to review all the papers, interview “anyone who can help,” and report back with recommendations (which could include the establishment of a public inquiry).

The Lawyers Committee was deeply unsatisfied with the governments’ proposal. How was one judge—with limited powers—to review the papers and interview witnesses in all six of these complicated cases? In addition to promptness considerations, we were dismayed by the government’s continuing failure to establish an open and accountable investigation in accordance with its obligations under international law. In relation to the Finucane case, we could not understand the purpose of establishing yet another “private” investigation, something that the government had been repeatedly criticized for in the past with respect to the Stevens investigations.

Despite such criticisms, the Honorable Peter Cory was appointed as the international judge on May 29, 2002 and took up his post in August 2002. Judge Cory is a retired Justice of the Supreme Court of Canada. While we recognize his credentials, we remain skeptical that he will have the access or authority needed to uncover the truth.

RECOMMENDATIONS

I. Establish a Public Inquiry into Patrick Finucane's Murder

The Lawyers Committee believes that the official investigations into Finucane's murder have not satisfied the requirements of international law. Under Article 2 of the European Convention on Human Rights, the investigation must be carried out independently from the members of the security forces implicated in the killing. Despite this, all three Stevens investigations were instigated by the RUC and report back to the RUC (now called the Police Service of Northern Ireland).¹ Article 2 also requires that the investigation have a sufficient element of public scrutiny to secure practical accountability. Article 6 of the International Covenant on Civil and Political Rights also requires an open and accountable investigation. The investigations have remained largely classified, however.

Given the deficiencies of the official investigations to date, we believe that the U.K. must immediately establish a public inquiry into the Finucane case. Indeed, as the government delays, critical evidence has disappeared and witnesses are afraid for their lives. On December 12, 2001, William Stobie was murdered shortly after he called for a public inquiry into the killing. The government had refused his applications for protection.

The long list of those who have supported the call for a public inquiry includes the Irish government, the U.S. House of Representatives, the Northern Ireland Human Rights Commission, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, and the U.N. Special Representative of the Secretary General on Human Rights Defenders. The Lawyers Committee believes that a public inquiry into the Finucane case should be conducted by an independent tribunal operating with the powers of the High Court.

¹ On November 4, 2001, the RUC's name was changed to the Police Service of Northern Ireland (PSNI). The third Stevens investigation will report to the Chief Constable of the PSNI.

II. Commit to the Accountability and Reform of the Security Services

A central element of the 1998 Good Friday agreement was the transformation of the RUC into a police service built around notions of accountability and human rights. These two themes—accountability and respect for human rights—were building blocks for the September 1999 report of the Independent Commission on Policing, chaired by Chris Patten (the “Patten Commission”). As the government has taken steps to implement police reform, no issue has emerged as more important to the success of that effort than creating a visible sense of accountability. In particular, there continues to be a widely held perception that police officers and other members of the security forces who acted outside the law have not and will not be held accountable for their actions. That perception is particularly stark in relation to the members of intelligence units.

No case better illustrates this problem than the murder of Patrick Finucane. Since Finucane was gunned down in his home, the evidence of security force involvement in the murder and subsequent cover up has continued to swell. Despite this, the record demonstrates a decided lack of political will to get at and make public the full truth about what happened. This failure to publicly uncover the truth undercuts the government’s commitment to fundamental principles of democratic accountability.

The government can demonstrate a renewed commitment to these principles by establishing an independent review of intelligence agencies—including RUC Special Branch, FRU/JSGNI, and MI5. The review should have the power to ensure that the operating procedures of intelligence agencies comply with the United Kingdom’s obligations under international human rights law.

Chapter 1

PORTRAIT OF AN ADVOCATE AT RISK

I. INTRODUCTION

When Patrick Finucane began practicing law in the mid-1970s, the U.K. government was shifting strategies in its conflict against the Irish Republican Army (IRA).² Recognizing that hostilities were likely to continue for a long time, the government de-emphasized its military campaign and opened up a new front against the IRA that became known as criminalization.³ Under the new policy, paramilitaries were to be brought before the criminal justice system and punished as ordinary criminals. With the shift in strategy, the government intended not only to place paramilitaries firmly behind bars, but to influence public perceptions of the very nature of the conflict.⁴ The government hoped to delegitimize the IRA's self-proclaimed "war of liberation"—a war which actively targeted members of the security services⁵—and recast the conflict as a battle between state forces of law and order and rogue elements sowing anarchy through terrorism. In this battle, IRA suspects were to be portrayed as dangerous criminals rather than the freedom fighters they claimed to be.

Alongside criminalization, the government introduced a new security policy for Northern Ireland. This policy, one of police primacy, is frequently referred to as Ulsterization. With Ulsterization, the Royal Ulster Constabulary (RUC), Northern Ireland's almost

² The term "IRA" is used in this report to describe what is actually the "Provisional IRA." In December 1969, the IRA split between the Provisional IRA and the Official IRA. After the Official IRA declared a cease-fire in 1972, the term "IRA" came to be used for the Provisional IRA.

³ For a discussion of the dual policies of criminalization and police primacy, see John McGarry & Brendan O'Leary, *Policing Northern Ireland: Proposals for a New Start* (Belfast: Blackstaff Press, 1999), at 36-38; and Fionnuala Ní Aoláin, *The Politics of Force: Conflict Management and State Violence in Northern Ireland* (Belfast: Blackstaff Press, 2000), at 44-56.

⁴ See Peter Taylor, *Brits: The War Against the IRA* (London: Bloomsburg Publishing, 2001), at 197.

⁵ Between 1966 and 1999, 302 police officers and 709 soldiers were killed by paramilitaries (primarily by the IRA) and thousands more were injured. Republican paramilitaries also targeted other government officials. Four judges and a prosecutor have been murdered, for example.

entirely Protestant police force, replaced the British Army as the lead agency in the government's efforts to combat paramilitary violence.⁶ The RUC had primary responsibility for arresting and interrogating paramilitary suspects and for gathering the evidence necessary to secure convictions.⁷

To shore up its twin policies of criminalization and Ulsterization, the U.K. government expanded the RUC and diluted the protections afforded defendants accused of paramilitary offenses.⁸ Although paramilitaries were to be presented as "ordinary criminals," they were not to be tried under the ordinary criminal law. Two main emergency laws, the Emergency Provisions Act (EPA), and the Prevention of Terrorism Act (PTA), formed the backbone of a system designed to garner convictions based on readily admissible confessions obtained through extended periods of detention and interrogation. Under the EPA, for example, defendants charged with "scheduled" offenses—crimes specified in the statute⁹—were tried in special "Diplock" courts before a single judge and no jury.¹⁰ The EPA also authorized the police to conduct searches and seizures without warrants and to

⁶ See Taylor, *supra* note 4, at 197. Recent reports suggest that in reality, MI5 was directing RUC Special Branch, the division of the RUC responsible for intelligence gathering and security matters. MI5 is the U.K. intelligence force responsible for domestic security. See, e.g., *Insight: Policing the Police* (UTV television broadcast, May 1, 2001) [hereinafter *Insight: Policing the Police*] (transcript on file with the Lawyers Committee) (In the broadcast, a "senior source" remarked that "Special Branch ran the RUC, but it was MI5 pulling their strings behind the scenes."); Richard Norton-Taylor and Nick Hopkins, "Security Service Told RUC That It Could Put Spying on Terrorists Ahead of Solving Crimes," *The Guardian*, June 14, 2001.

⁷ Although the RUC had lead responsibility, the Army continued to play an important role in intelligence gathering, surveillance, and in arresting paramilitary suspects. Under Section 19(1) of the Emergency Provisions Act, a soldier had the power to arrest without a warrant and detain any person whom he or she had "reasonable grounds to suspect is committing, has committed or is about to commit any offense." This power of arrest was not confined to offenses related to the conflict. See Lawyers Committee for Human Rights, *At the Crossroads: Human Rights and the Northern Ireland Peace Process*, (New York: Lawyers Committee for Human Rights, 1996) [hereinafter *At the Crossroads*], at 10.

⁸ See McGarry & O'Leary, *supra* note 3, at 37 (explaining that the RUC was expanded significantly once the policies of criminalization and police primacy were put in place).

⁹ These offenses were listed in Schedule 1 of the EPA.

¹⁰ These non-jury courts were established in 1973 on the recommendation of a Commission appointed by the U.K. government "to consider legal procedures to deal with terrorist activities in Northern Ireland." The Commission, which was

stop and question individuals about their identity and recent movements. Under the PTA, the government could detain and interrogate individuals for up to seven days without charge. These powers were to facilitate intelligence gathering as well as to collect evidence for prosecutions.

To preserve this system, the U.K. government was forced to derogate from some of its international human rights obligations.¹¹ The government entered derogations under Article 15 of the European Convention on Human Rights (ECHR) and Article 4 of the International Covenant on Civil and Political Rights (ICCPR).¹² The government decided to derogate from its obligations after the European Court of Human Rights found that the U.K. had violated the European Convention by detaining a suspected IRA member without charge for a period of four days and six hours.¹³ The government justified its derogations by citing “campaigns of organized terrorism connected with the affairs of Northern Ireland.”¹⁴

This dilution of due process rights for individuals charged with scheduled offenses rendered the involvement of defense counsel essential for the protection of those rights that remained. The height-

chaired by Lord Diplock, recommended that those charged with scheduled offenses should be tried in non-jury courts as a means of avoiding both jury nullification and the intimidation of jurors by paramilitaries. The Commission’s report was presented to Parliament in December 1972.

¹¹ For an extended discussion of the U.K.’s use of emergency laws in Northern Ireland, see *At the Crossroads*, *supra* note 7, at 3-56.

¹² The U.K. derogated from both the ICCPR and ECHR on December 23, 1988. This was not the first time that the U.K. had derogated from the ICCPR and ECHR. See Lawyers Committee for Human Rights, *Human Rights and Legal Defense in Northern Ireland*, (New York: Lawyers Committee for Human Rights, 1993) [hereinafter *Human Rights and Legal Defense*], at 17.

¹³ See *Brogan and Others v. the United Kingdom*, Eur. Ct. H.R., Series A no 145-B (November 29, 1988).

¹⁴ Although the Good Friday Peace Agreement was ratified in 1998, the U.K. government did not withdraw its derogations from the ICCPR and ECHR until February 26, 2001. The government withdrew its derogations only after enacting the Terrorism Act 2000, which came into effect on February 18, 2001. Under this new law, the police can detain any person they suspect of terrorism for up to 48 hours without charge; the detention can then be extended for a further five days with judicial authorization. Furthermore, the Act widens the definition of terrorism and places much of the PTA and EPA on permanent footing across the whole of the U.K. In a special section relating only to Northern Ireland, the Act retains measures such as the non-jury Diplock courts and lower standards for the admissibility of confessions.

ened importance of criminal defense attorneys also made them vulnerable, however. In the context of the time, any obstacles to obtaining convictions—even those required by due process—were suspect. All too often, the fundamental distinction between lawyer and client was lost, and the attorney was seen as an impediment to justice rather than its crucial guarantor.¹⁵

Patrick Finucane was part of a small community of attorneys in Northern Ireland willing to represent those arrested under the emergency law regime. His success in a number of high-profile cases helped reveal the limits of the criminalization policy. Many resented this success, assuming that if Finucane could obtain acquittals of terrorist suspects, then either the legal system was not working, or there was something suspect in the provision of a rigorous defense.

II. PATRICK FINUCANE’S LAW PRACTICE

Patrick Finucane grew up in the heavily Catholic nationalist neighborhood of the Falls Road, Belfast and attended university at Trinity College Dublin. In 1979, he joined Peter Madden to form Madden & Finucane, a law firm engaged in a broad range of civil and criminal work. Although Finucane took on a wide variety of civil and criminal cases, he became well known for his work representing people arrested under the emergency laws. Finucane often represented individuals accused of involvement with the IRA and other republican groups.¹⁶ However, his practice included work on behalf of both Protestants and Catholics. He did not use religion or politics as a basis for representation. Indeed, as his wife Geraldine told the Lawyers Committee in a 1992 interview, “Pat would have represented the people who shot him.”¹⁷

On December 18, 2001, the U.K. government reinstated its derogation from the ECHR following the enactment of a new emergency law, the Anti-Terrorism, Crime, and Security Act 2001, which was passed in response to the September 11, 2001 attacks in the United States. This Act grants the government extended powers to arrest and detain foreign nationals whom the Secretary of State certifies as being risks to national security or suspected “international terrorists.”

¹⁵ This violated the United Nations Basic Principles on the Role of Lawyers. Under Principle 18, “Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”

¹⁶ There has never been any evidence that Finucane was involved in any illegal IRA or republican activity. See *infra* notes 38-40 and accompanying text.

¹⁷ Geraldine Finucane, interview by the Lawyers Committee for Human Rights, August 30, 1992.

In addition to assisting individuals arrested under the emergency laws, Finucane used litigation to challenge the legal framework in which the security forces operated. This work, along with several high-profile criminal defense cases, made Finucane a thorn in the side of the authorities.

Some of Finucane's high-profile cases included:

- **Hunger Strikes (1981)**—Finucane represented Bobby Sands, the first IRA hunger striker to die in the Maze Prison during a protest calling for political status for persons convicted of paramilitary activity.
- **Compensation Claims**—Finucane was a pioneer in successfully using civil claims for assault and false imprisonment against the police. Such claims quickly became part of the legal landscape in Northern Ireland.
- **Habeas Corpus (1988)**—Finucane brought the first successful habeas corpus petition in which the detention of an individual under the emergency laws was held to be unlawful because of police mistreatment.
- **Casement Park Trials (1988)**—Patrick Finucane successfully represented Patrick McGeown, who was charged with murder and other crimes stemming from the killing of two plainclothes British soldiers. The two soldiers were killed after driving into the funeral cortege of a person killed by loyalists three days earlier. All charges against McGeown were dropped at the preliminary inquiry into the case in the magistrate's court.
- **Inquests (1988)**—Less than two months before his death, Finucane won a judgment in Northern Ireland's Court of Appeal holding that members of the security services suspected of being involved in a killing could be compelled to give evidence at the coroner's inquest. This judgment was overturned in the House of Lords in March 1989.
- **Prisoner Rights (1989)**—Only a month before his death, Finucane succeeded in challenging the conditions in which republican and loyalist prisoners were held in solitary confinement. These prisoners were denied privileges such as reading materials and adequate bedding.

- **Derogation (1989)**—Less than two weeks before he was murdered, Finucane filed two applications with the European Commission on Human Rights challenging the legality of the U.K.’s derogation from the European Convention on Human Rights.

In taking such cases, Patrick Finucane was acting in accordance with the United Nations Basic Principles on the Role of Lawyers. Principle 14 states:

Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

III. SETTING THE SCENE FOR MURDER

A. Introduction

Patrick Finucane was the target of various forms of threats and intimidation before his death. Much of this abuse stemmed from official sources, particularly from officers of the Royal Ulster Constabulary. Finucane was not the only defense lawyer to report such abuse. During our 1992 mission to Northern Ireland, the Lawyers Committee interviewed other solicitors who told us that they too had been harassed and threatened by members of the security forces.¹⁸ Such abuse violates the U.N. Basic Principles on the Role of Lawyers.¹⁹ Under Principle 16, for example, governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.” Principle 18 makes clear that “lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”

¹⁸ See *Human Rights and Legal Defense*, *supra* note 12, at 24-41.

¹⁹ For an extensive discussion of international legal safeguards for the protection of defense lawyers and the violation of these safeguards in Northern Ireland, see Martin Flaherty, “Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland,” 7 *Harvard Human Rights Journal* 87 (1994). See also Martin

B. Harassment and Intimidation of Patrick Finucane

RUC officers allegedly made derogatory comments about Patrick Finucane for years before his murder. Finucane's former clients confirm this abuse, as do his own notes of meetings with clients at the special detention centers. In addition to calling Finucane names, many of the remarks accused him of membership in the IRA.²⁰ Initially, Patrick Finucane saw such comments as an interrogation device aimed at pressuring detainees to talk by discrediting their legal representative. As the comments became more frequent, however, Finucane began to understand that the abuse was directed personally at him.

The prevalence of this abuse is suggested by an encounter described by John Stalker, the former Deputy Chief Constable of the Greater Manchester Police. In the mid-1980s, Stalker led an independent investigation into the alleged "shoot to kill" deaths of six men in 1982. All six men were killed by RUC officers. In his 1988 book about that investigation, Stalker recounts a conversation he had in 1984 or 1985 with an RUC sergeant who castigated him for even talking with Finucane:

The sergeant came up to me and said, "May I speak with you Mr. Stalker?" "Do you know who that was you were speaking to?" I replied, "Yes—it was Martin McCauley²¹ and his solicitor." The sergeant said, "The solicitor is an IRA man—any man who represents the IRA is an IRA man. . . I have to say that I believe that a senior policeman of your rank should not be seen speaking to the likes of [him]. My colleagues have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors."²²

Flaherty, "Interrogation, Legal Advice, and Human Rights in Northern Ireland," 27 *Columbia Human Rights Law Review* 1 (1995).

²⁰ According to Finucane's clients, typical remarks included: (1) Finucane is "a fucking scum bastard" and (2) Finucane is "an IRA man in a suit; another Provie on the payroll." In our 1993 report, we compiled a list of such remarks. See *Human Rights and Legal Defense*, *supra* note 12, at 47.

²¹ Martin McCauley survived one of the RUC shooting incidents under investigation by Stalker. McCauley was seriously wounded in the incident, and his friend Michael Tighe was killed.

²² John Stalker, *Stalker* (London: Harrap, 1988), at 49.

C. Death Threats

Patrick Finucane received many death threats during his career. These threats began in the 1970s but escalated dramatically in the year before his death. Some of the threats were delivered directly to Finucane, through phone calls to his home.²³ Others were relayed through his clients. Over the years, many of Finucane's clients reported that police officers had threatened the solicitor during interviews at the special detention centers.

Patrick McGeown, one of Finucane's clients, reported that he was stopped by a joint patrol of the RUC and British Army in 1988, shortly after Finucane secured his release from the Crumlin Road Jail. An RUC officer pulled him aside and said, "Don't think you got away with that. We intend to make sure you won't be about too long." The officer added, "And your mate, Pat, we'll fix him too."²⁴ This threat took on new significance in December 1988 when a loyalist paramilitary group produced a magazine with articles threatening to kill McGeown and Finucane. The magazine displayed a photograph of McGeown with a beard. In 1992, McGeown told us that when he saw the photograph, he realized that it must have come from an official source. He said that the only time he was other than clean-shaven was when he was in prison.²⁵

Brian Gillen, another of Finucane's clients, told us that after Finucane filed a habeas petition on his behalf, his RUC interrogators remarked, "[I]t would be better if he were dead than defending the likes of you." The officers added, "We can give them [detained loyalist paramilitaries] his details along with yours." In early 1989, the threats became more insistent. One client reported that the police asked for details about Finucane and told him, "Finucane is an IRA man. He's a dead man. He'll be dead within three months." Another was informed that "like every other Fenian bastard, he would meet his end." A month before he was killed, RUC officers allegedly told another of Finucane's clients, "Fucking Finucane's getting took out."²⁶

²³ See *Human Rights and Legal Defense*, *supra* note 12, at 49.

²⁴ Patrick McGeown, interview by the Lawyers Committee for Human Rights, September 3, 1992.

²⁵ *Id.*

²⁶ Seamus Finucane, Brian Austin, and Patrick McDade, interview by the

D. Official Statements

In the context of these threats, an official statement made on the floor of Parliament in early 1989 significantly increased Patrick Finucane's vulnerability. Douglas Hogg MP, then Parliamentary Under-Secretary of State for the Home Office, made the now infamous statement during a debate over the Prevention of Terrorism (Temporary Provisions) Bill. On January 17, 1989, Hogg said:

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. — [Interruption.] I repeat that there are in the Province a number of solicitors who are unduly sympathetic to the cause of the IRA. One has to bear that in mind.²⁷

Seamus Mallon,²⁸ a Member of Parliament from the moderate nationalist Social Democratic & Labour Party (SDLP), immediately rose to challenge Hogg:

That is a remarkable statement for a Minister to make about members of a profession who have borne much of the heat in a traumatic and abnormal situation. Such words should not be said without the courage to support them. I find it appalling that the Minister should make such an accusation with such emphasis, and without, it seems, the intention of substantiating it.²⁹

Hogg merely reiterated his allegations, however. He claimed, "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."³⁰

Lawyers Committee for Human Rights, August 31, 1992; Brian Gillen, interview by the Lawyers Committee for Human Rights, September 1, 1992.

²⁷ *Hansard*, House of Commons, Standing Committee B., January 17, 1989, at col. 508.

²⁸ In December 1999, Seamus Mallon became the first Deputy First Minister of the Northern Ireland Assembly, following the devolution of power from Westminster to Northern Ireland.

²⁹ *Hansard*, *supra* note 27, at col. 509.

³⁰ *Id.*, at col. 511.

In response, Mallon warned:

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 the Minister's statement, people's lives are in grave danger. People who have brought cases to the European Court against this legislation will be suspected. People accused of IRA membership and other activities will be suspected. We have thrown a blanket over many lawyers in the North of Ireland, and it will be on the head of this Minister and Government if the assassin's bullet decides to do, by lead, what this Minister has done by word.³¹

Hogg's statement created an instant uproar in Northern Ireland, particularly among Northern Ireland's legal community. As Mallon had emphasized, the statement seemed to buttress claims that defense solicitors were IRA members and therefore "legitimate" targets. Finucane was murdered less than a month after Hogg made his remarks.

No one within the government or the police has ever explained the basis for Hogg's allegations. As a junior minister, Hogg would have been privy to briefings from the RUC and MI5, and it has long been known that he met with RUC officers during a visit to Belfast in January 1989.³² Sir John Hermon, RUC Chief Constable at the time of Finucane's murder, told the *Daily Telegraph* in 1999 that Hogg's statement was "based on fact."³³ On June 13, 2001, the *Guardian* reported that in an interview with detectives, Hogg had adamantly denied knowing anything about the loyalist plot to shoot Finucane, although "he conceded that he had been briefed by the RUC about the activities of solicitors in Belfast who allegedly had republican sympathies."³⁴ Although this admission was a significant step toward

³¹ *Id.*

³² Hogg refused to meet with a Lawyers Committee's delegation to discuss his remarks.

³³ Toby Harnden, "Murdered Solicitor 'Had Aided the IRA,'" *The Daily Telegraph*, May 10, 1999. Hermon also said that there was no evidence of RUC collusion in Finucane's murder. *See id.*

³⁴ Nick Hopkins and Richard Norton-Taylor, "Police Talk to Ex-Minister Hogg

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uncovering the basis for Hogg's statement, the specifics of this briefing remain shrouded in secrecy.

The Lawyers Committee believes that Hogg's statement undercut the government's commitment to international legal principles protecting defense lawyers. In particular, it violates the fundamental proscription against identifying lawyers "with their clients or their clients' causes as a result of discharging their functions."³⁵ Despite this, neither Hogg nor the U.K. government has ever issued an apology for the statement.

about Ulster Killing," *The Guardian*, June 13, 2001.

³⁵ U.N. Basic Principles on the Role of Lawyers, Principle 18.

Chapter 2

THE MURDER AND THE OFFICIAL INVESTIGATIONS

I. THE MURDER

On Sunday, February 12, 1989, Patrick Finucane, his wife, Geraldine, and their three children aged 9, 13, and 17, were eating dinner and watching television in the kitchen of their home in North Belfast. At approximately 7:25 p.m., a loud noise burst from the front door. Finucane and his wife jumped up from the table, and Finucane opened the glass fire door leading to the front hall. Two masked figures dressed in black with camouflage jackets were advancing down the hall with guns drawn. Mrs. Finucane, who was standing just behind her husband, tried to activate a panic alarm behind the kitchen door. According to Finucane's eldest son, his father's last act was to throw himself up against the glass door. Two or three shots shattered the glass and hit Finucane in the chest and stomach, leaving him lying face up on the floor. The gunmen entered the kitchen and shot Finucane at close range in the head and neck about a dozen more times. At some point, Mrs. Finucane was wounded in the ankle, probably by a ricocheting bullet. The children were unharmed physically but witnessed the entire incident.

Police and neighbors arrived within minutes of the shooting, but Patrick Finucane was already dead. On Monday, February 13, 1989, a man delivered the following statement to the press by telephone:

The UFF [Ulster Freedom Fighters] claim responsibility for the execution of Pat Finucane, the PIRA [Provisional Irish Republican Army] Officer, not the solicitor. While Provos continue to execute Loyalists and members of the security forces who share their lunch with them, then there will be inevitable retaliation.

The UFF is a cover name used by the Ulster Defense Association (UDA), Northern Ireland's largest loyalist paramilitary group.³⁶ The

³⁶ The UFF is also sometimes described as the militant wing of the UDA. The loyalist prisoners convicted in connection with offenses claimed by the UFF have always gone to the UDA wings of prisons. See Frank Connolly, "UDA Works Under Many Cover Names," *The Sunday Business Post*, January 20, 2002.

UDA has used this cover name since 1973 to claim responsibility for sectarian killings.³⁷

Contrary to the UDA/UFF's assertion, there has never been any evidence that Patrick Finucane was a member of the IRA. Indeed, the RUC officer in charge of the murder investigation made clear: "The Police refute the claim that Mr. Finucane was a member of the PIRA. He was just a law-abiding citizen going about his professional duties in a professional manner."³⁸ Sir Ronnie Flanagan, who served as Chief Constable from 1996 to 2002, re-emphasized this fact after the March 15, 1999 murder of Rosemary Nelson, the second Northern Ireland human rights lawyer to be killed in ten years.³⁹ Flanagan made clear that Nelson and Finucane were both "highly professional solicitors doing nothing more than their professional best to represent the interests of their clients."⁴⁰

The investigations after the murder revealed that the gunmen arrived in a taxi stolen in the loyalist Forthriver area.⁴¹ Taxi driver William Reid reported that three men had hijacked his taxi, telling him that it was needed "for the cause."⁴² Reid also reported that the men had seemed highly nervous. The car was discovered abandoned on the evening of the murder.

For some time leading up to the murder, police roadblocks had been in place close to the Finucane home.⁴³ The roadblocks were

³⁷ The UDA was formed in 1971 from a number of loyalist vigilante groups, but was not actually proscribed until 1992, despite the well-known link between the UDA and UFF. See Conflict Archive on the Internet (CAIN), available at <http://www.cain.ulst.ac.uk/> (accessed January 30, 2003). Beginning in 1998, the UDA has also used the cover name Red Hand Defenders (RHD) to claim sectarian killings.

³⁸ This statement was made at the Finucane inquest, which is discussed in the next section.

³⁹ For a discussion of the Nelson murder, see Elisa Massimino, "Paying the Ultimate Price for Human Rights: The Life and Death of Rosemary Nelson," 27 *ABA Human Rights Magazine* 4 (Fall 2000), available at <http://www.lchr.org/> (accessed January 31, 2002).

⁴⁰ *The Sunday People*, April 11, 1999.

⁴¹ See *The Daily Telegraph*, February 13, 1989.

⁴² See Testimony of Michael Finucane, U.S. House of Representatives, International Operations and Human Rights Subcommittee of the House International Relations Committee, June 24, 1997.

⁴³ *Id.*

removed about an hour before the murder.⁴⁴ Whether or not this was a coincidence, it made the murderers' job much easier, as they were able to approach the house unobstructed and escaped without hindrance.⁴⁵

II. THE CORONER'S INQUEST

Coroner John Leckey conducted the inquest into the murder of Patrick Finucane in September 1990. At the inquest, Dr. Jack Crane testified that Finucane was struck by 14 bullets to the head, neck, and trunk. At least one of the bullets that hit Finucane's head was fired from a range of 15 inches. At least 11 of the bullets were fired from a 9mm Browning automatic pistol and two were from a .38 special revolver or .375 magnum.⁴⁶

Detective Superintendent Alan Simpson, the officer in charge of the initial RUC investigation, testified that the Browning was one of 13 weapons stolen from Palace Army Barracks in August 1987 by a member of the Army's Ulster Defense Regiment (UDR).⁴⁷ Detective Superintendent Simpson also testified that Finucane's murder was "unusual both for its ferocity and the fact that he was struck by all 14 shots fired." Simpson told the court that the murder was carried out with such precision that he believed the killers must have murdered before. Indeed, Simpson surmised that the reportedly "nervous" men who hijacked the taxi were not the assassins. At the inquest, Simpson also revealed that the police had interviewed 14 people in connection with the murder. He said that none of the 14 interviewed had any connection with the security forces.⁴⁸

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See John Ware, "Letter to the Editor of the *NewsLetter*," *The Belfast NewsLetter*, June 29, 2002, at 11 (full transcript on file with the Lawyers Committee; excerpt published in the *Belfast NewsLetter* on June 29, 2002). Ware notes that Brian Thompson, the Senior Scientific Officer at the Northern Ireland Forensic Laboratory, had not been sure whether the second gun was a .38 special revolver or a .375 magnum; the shells suggested it could have been either. *Id.*

⁴⁷ The UDR was a locally recruited regiment of the British Army. It was merged with the Royal Irish Rangers in July 1992. This UDR member was later jailed for theft.

⁴⁸ Both the British Army and the RUC had agents within the UDA who were involved in the Finucane murder. See Chapters 3 & 4. Detective Superintendent Simpson was never told about these agents. See Chapter 7; Liam Clarke, "Police

Inquests are public hearings in Northern Ireland. Because of the lack of other public investigative procedures, the inquest has become the most popular legal forum for attempts to challenge the conduct of the security forces in controversial killings.⁴⁹ At Patrick Finucane's inquest, for example, his widow, Geraldine, attempted to submit a statement concerning threats made to her husband at Castlereagh Detention Centre. The RUC's counsel objected, and the coroner excluded the document on grounds of irrelevance.⁵⁰

The inquest system in Northern Ireland has been criticized for its narrow focus and limited powers. The coroner can determine only the identity of the deceased, the time, place, and method of death. He or she may not look into the broader circumstances of the death or determine who was responsible. Indeed, coroners in Northern Ireland cannot compel the attendance of any person suspected of causing the death.⁵¹ Further, unlike the inquest system in place in England, neither juries nor coroners may reach verdicts such as "unlawful killing." Until very recently, legal aid was not available to the family and they were denied all access to statements and documents until just before the relevant witness testified. In addition, the government often issues Public Interest Immunity Certificates to prevent the disclosure of information and documents it deems important to "national security."⁵²

In a series of decisions issued on May 4, 2001, the European Court of Human Rights found that there were serious flaws in inquest

Informer Claims He Killed Lawyer in His Home," *The Sunday Times*, January 13, 2002.

⁴⁹ See *Shanaghan v. the United Kingdom*, Eur. Ct. H.R., Application no. 37715/97, at para. 114 (May 4, 2001).

⁵⁰ The coroner did allow the head of the investigation to be questioned about the threats, however. See *Human Rights and Legal Defense*, *supra* note 12, at 61.

⁵¹ In cases involving the use of lethal force by the security forces, this rule meant that the police officers or soldiers concerned did not attend the inquest. See, e.g., *McKerr v. the United Kingdom*, Eur. Ct. H.R., Application no. 30054/96, at para. 144 (May 4, 2001). In response to this and other recent judgments of the European Court of Human Rights, the U.K. government has announced that it will compel security force members involved in fatal shootings to appear at inquests. See David McKittrick, "Security Forces Will Be Made to Testify at Inquests," *The Independent*, January 30, 2002.

⁵² The law of public interest immunity applies to both documentary evidence and oral testimony.

proceedings in Northern Ireland.⁵³ While the Court made clear that its decisions were based on the application of the inquest procedures to the particular facts of the cases, the holdings strongly suggest that the flaws in the Finucane inquest violated Article 2 of the European Convention on Human Rights.⁵⁴ Specifically, the Court criticized the coroner's inability to compel the attendance of particular witnesses, the refusal to address serious and legitimate concerns of the family (such as collusion in the murder), and the proscription of a verdict or findings "which could play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed"—all elements present in the Finucane inquest.⁵⁵

III. THE INITIAL RUC INVESTIGATION

Information about the initial police investigation into the murder of Patrick Finucane is limited and comes mostly from the RUC's testimony at the 1990 inquest. The RUC refused to talk to the Lawyers Committee about its investigation during our first fact-finding mission into the murder in 1992. At the inquest, the RUC testified that it had interviewed 14 suspects and were "reasonably sure that the main perpetrators of the murder were among these suspects," despite the fact that "no evidence is presently available to sustain a charge of murder." On July 4, 1989, three men were arrested for possessing the Browning pistol used to kill Finucane; all three

⁵³ See *Jordan v. the United Kingdom*, Eur. Ct. H.R., Application no. 24746/94 (May 4, 2001); *Kelly and Others v. the United Kingdom*, Eur. Ct. H.R., Application no. 30054/96 (May 4, 2001); *McKerr*, *supra* note 51; *Shanaghan*, *supra* note 49. See also Amnesty International, *United Kingdom: Landmark Judgements on Killings in Northern Ireland* (May 4, 2001). Partly in response to these judgments, the U.K. Home Office has established an independent review of the coronial service in England, Wales, and Northern Ireland. The review is concerned only with future policies and does not have the authority to reopen past cases. The review is to be completed by March 2003, but the government is not obligated to implement its recommendations. Information about the review is available at <http://www.coroner-review.org.uk/> (accessed January 20, 2003).

⁵⁴ See, e.g., *Shanaghan*, *supra* note 49, at paras. 110 and 122 ("Whether an inquest fails to address necessary factual issues will depend on the particular circumstances of the case. . . [in the *Shanaghan* case,] the Court finds that the proceedings for investigating the use of lethal force . . . have been shown in this case to disclose the following shortcoming: the scope of examination of the inquest excluded the concerns of collusion by security force personnel in the targeting and killing. . .").

⁵⁵ See *Jordan*, *supra* note 53, at para. 142; *Shanaghan*, *supra* note 49, at para. 111.

were convicted and sentenced to imprisonment in a young offenders' center. The RUC reported at the time that none of these three men was involved in the murder. In our 1993 report, the Lawyers Committee noted, "[I]t is not apparent why, given the RUC's extraordinary powers of interrogation, it has been unable to tie the weapons to an assassin."⁵⁶ Indeed, at the time of that report, the police had made no effort to conduct certain basic and obvious investigative tasks, such as interviewing Geraldine Finucane, Peter Madden, or any of Finucane's clients.

Fourteen years after the murder, the police still have not tied the weapons to the gunmen—at least not publicly—and the RUC's failure to bring the perpetrators to justice soon after the killing must be viewed in the context of new information. This information, which is discussed in Chapters 3-7, suggests at least prior knowledge, if not active involvement by members of the security forces in Finucane's murder. The Lawyers Committee believes that this information must be brought before a full, independent public inquiry.

IV. THE STEVENS INVESTIGATIONS

A. Introduction

In the 14 years since Patrick Finucane was murdered, the U.K. government has resisted calls to establish a public inquiry into the killing. As described in detail in the final chapter, a public inquiry is an investigation by an independent tribunal with full judicial powers. Among the most important attributes of such an inquiry are its transparency to the public and its independence from the security forces implicated in the killing. These are both basic elements of accountability under Article 2 of the European Convention on Human Rights, as emphasized by the European Court of Human Rights in its May 4, 2001, judgments on Northern Ireland.⁵⁷ The ultimate goal of such an inquiry would be to publicly uncover the truth about Finucane's killing.

⁵⁶ See *Human Rights and Legal Defense in Northern Ireland*, *supra* note 12, at 59.

⁵⁷ See, e.g., *Shanaghan*, *supra* note 49, at para. 92 (noting that the investigation must "have a sufficient element of public scrutiny to secure practical accountability"); *Kelly*, *supra* note 53, at 95 (explaining that for an investigation to be effective, the persons responsible for the investigation must be independent from those implicated in the events). Furthermore, under Article 6 of the International

The government has repeatedly justified its refusal to establish a public inquiry in Finucane's case by claiming that a public inquiry could jeopardize on-going criminal investigations.⁵⁸ These investigations, three in number, have all been headed by Sir John Stevens, the current Commissioner of the Metropolitan Police in London. As this report goes to press, the third Stevens investigation drags on. The third Stevens investigation, like the first two, has so far failed to bring anyone to justice for the Finucane murder.

B. Stevens I

The first Stevens investigation was not, in fact, established to investigate the murder of Patrick Finucane. It was created to examine allegations of collusion following the August 1989 killing of Loughlin Maginn by the Ulster Freedom Fighters (UFF), the same UDA cover name used to claim the Finucane murder. The UFF claimed that Maginn, a 28 year-old Catholic, was a member of the IRA. When Maginn's family challenged this, the UFF told the press they were certain Maginn was an IRA man because they had seen RUC intelligence to this effect. The paramilitaries sought to prove their claims by showing journalists documents they had obtained from sources in the security services. Instead of assuaging public opinion, the evidence of these leaks created a furor, and the Irish government demanded action.

Covenant on Civil and Political Rights, the state has a "clear duty" to provide open and accountable investigations for the family of the deceased. See *Bleir v. Uruguay*, U.N. Human Rights Comm., Doc. A/37/40 at 30 (1982). See also *Velásquez Rodríguez Case*, Inter-Am. Ct. H.R., at para. 174, 1988 (noting the duty to carry out a "serious investigation" of violations).

⁵⁸ In 1999, Amnesty International commissioned a legal opinion on the question of whether there is a conflict between a public inquiry and an ongoing criminal investigation under U.K. law. The opinion was prepared by three barristers specializing in human rights law—Robert Owen QC, Ben Emmerson, and Tim Otty. They concluded that an inquiry in the Finucane case would not prejudice the criminal investigation and noted that in other cases the U.K. government had established a public inquiry while still pursuing a criminal investigation. When the government established an inquiry into the Stephen Lawrence case, for example, the London Metropolitan Police were still publicly proclaiming that they hoped to criminally prosecute those responsible for his murder. See Amnesty International, "In Re the Murder of Patrick Finucane and the Case for a Public Inquiry: Joint Opinion for Amnesty International," October 29, 1999, at 26-29.

BEYOND COLLUSION

Then RUC Chief Constable Hugh Annesley invited John Stevens, at the time Deputy Chief Constable of the Cambridgeshire Police, to examine charges of collusion between members of the security forces and loyalist paramilitaries. Stevens finished his investigation in May 1990, producing a classified report, a public summary, and recommendations for preventing future leaks. In the public summary, Stevens made clear that there had been instances of collusion between members of the security forces and loyalist paramilitaries. Stevens concluded at the time, however, that such collusion was “restricted to a small number of members of the security forces” and was “neither widespread nor institutionalised.”⁵⁹

The first Stevens investigation resulted in the arrest of 94 people, the charging or recommended charging of 59, the prosecution of 47, and a total of 183 convictions for separate offenses.⁶⁰ Many of those prosecuted were charged with offenses such as “the possession of documents likely to be of use to terrorists.” Many of these were classified documents, such as photo-montages of republican suspects, that were leaked from security force intelligence files. The Lawyers Committee understands that there were approximately 2,000 leaked documents in all.⁶¹

Most of those charged in connection with Stevens I, however, were the loyalists who had received the leaked documents, as opposed to the members of the security forces who had actually passed them on.⁶² Strikingly, not one of the prosecutions was of an RUC officer, despite the fact that some of the leaked material was from police files. Stevens reported that he had not uncovered evidence that would “substantiate” charges of police collusion.⁶³ In recent years however, information has emerged suggesting that Stevens did recommend charges against two police officers, but the

⁵⁹ John Stevens, *Summary Report*, May 17, 1990, at para. 41.

⁶⁰ See British Irish Rights Watch, “Finucane Murder Summary,” November 1998.

⁶¹ Not all of these documents were originals. Stevens reported that he recovered many photocopies of the same item. See Stevens, *supra* note 59, at para. 4.

⁶² See John Ware and Geoffrey Seed, “Ulster Trial Seen As Army’s Watergate,” *The Independent* January 9, 1992; Edward Gorman, “Loyalists Say They Were Scapegoats in Stevens Enquiry,” *The Times*, October 11, 1990.

⁶³ Stevens, *supra* note 59, at para. 38.

Director of Public Prosecutions determined that there was insufficient evidence to sustain the charges.⁶⁴

The Stevens I investigation did not result in any prosecutions for the murder of Patrick Finucane. Stevens told the Lawyers Committee in 1992 that limited time, resources, and terms of reference prevented his team from tracking down every lead in the Finucane case. He indicated that anything that was uncovered would probably have been turned over to the RUC. The public summary of the investigation did not even mention Patrick Finucane.

C. Stevens II

In the year or two following the first Stevens investigation, there was silence concerning Finucane's murder on the part of the authorities. In the years since, we have learned that much was happening under cover of that silence. It took the pioneering work of investigative journalists from the BBC's *Panorama* program, however, to break the silence and force the government into action. On June 8, 1992, the *Panorama* team aired its findings in a television documentary entitled "The Dirty War."⁶⁵

"The Dirty War" exposed the existence and activities of a British Army operative who worked as the chief intelligence officer for the Ulster Defense Association from 1987 until 1990. This operative, named Brian Nelson, was arrested in January 1990 as a result of the first Stevens investigation.⁶⁶ Nelson was indicted on 35 counts of conspiracy to murder, aiding and abetting murder, and lesser offenses.⁶⁷ On January 22, 1990, Nelson pleaded guilty to 20 counts in all, including five counts of conspiracy to murder. He also pleaded not guilty to two counts of aiding and abetting murder. The remaining

⁶⁴ Chris Ryder, *The RUC, 1922-1997: A Force Under Fire* (London: Mandarin, 1997), at 287.

⁶⁵ See *Panorama: The Dirty War* (BBC television broadcast, June 8, 1992) (transcript on file with the Lawyers Committee).

⁶⁶ Nelson had previously served as the intelligence officer for the UDA's West Belfast Brigade in 1985. At the time, he was also an informer for the Army. For a discussion of Nelson's role as an FRU operative from 1987-1990, see Chapter 3.

⁶⁷ See British Irish Rights Watch, *Justice Delayed: Alleged State Collusion in the Murder of Patrick Finucane and Others* (1999) [hereinafter *Justice Delayed*], at para. 8.3.

13 counts were simply left on the books.⁶⁸ The court later sentenced Nelson to ten years in prison on the five counts of conspiracy to murder. He received lesser sentences on the remaining 15 counts that ran concurrently with the ten year sentence.

Not one of the 35 counts against Brian Nelson related to the murder of Patrick Finucane. While some elements of Nelson's story emerged during his 1990 trial, it was not until Nelson agreed to discuss his activities with BBC investigative journalists John Ware and Geoffrey Seed that the extent of Nelson's involvement in the Finucane murder began to emerge. The *Panorama* program alleged that Nelson had warned the British Army that Patrick Finucane was being considered as a target by the UDA in late 1988. The program also indicated that Army intelligence played an active role in assisting Nelson's UDA activities by confirming key facts, updating intelligence files, and providing photographs of UDA targets.

The Director of Public Prosecutions (DPP) requested a transcript of the *Panorama* program and wrote to RUC Chief Constable Annesley to ask if the Finucane case should be further investigated. The Lawyers Committee has learned from a credible source that the DPP did not invoke his statutory powers to require a follow-up investigation. Shortly thereafter, the Chief Constable called John Stevens back to conduct a second investigation. Stevens completed his second investigation in 1995, and sent a total of three reports to the DPP. Neither the terms of reference for the second investigation, nor the reports arising from the investigation, have ever been made public.

The second Stevens investigation produced few, if any results. Unlike the first report, the follow-up did not lead to any reforms or prosecutions. Stevens spoke to a delegation from the Lawyers Committee during a 1995 mission to Northern Ireland. He stressed that he had conducted a thorough investigation into Nelson's activities, including those relating to the Finucane murder, though he added that he could not discuss specific findings. He explained that he was not at liberty to say whether he had recommended charges against anyone for the murder, since he was bound by the Official Secrets Act.⁶⁹ He did indicate, however, that he knew "absolutely"

⁶⁸ *Id.*

⁶⁹ The Official Secrets Act provides criminal penalties for unauthorized disclosure of information by current and former government employees. *See* Article 19 &

who Finucane's killers were.⁷⁰

The exact terms of reference of the first two Stevens investigations are unclear. Over the years, various representatives of the U.K. government have given conflicting accounts of the extent to which these investigations concerned Finucane's murder. On April 16, 1999, for example, Doug Henderson MP, a junior Minister in the Ministry of Defence, gave the following answer to a Parliamentary Question about the Finucane case: "The murder of Patrick Finucane was investigated both by the RUC and subsequently by the investigation team led by Sir John Stevens, then Deputy Chief Constable of Cambridgeshire."⁷¹ Meanwhile, a week later, Stevens told Peter Madden, Finucane's former law partner, that the first two investigations "primarily related to the activities of the so-called 'double agent' Brian Nelson. At no time was I given the authority by either the Chief Constable of the RUC or the Director of Public Prosecutions to investigate the murder of Patrick Finucane."⁷² The differing accounts illustrate the U.K. government's contradictory stance in arguing that a public inquiry is not required (because the murder has been investigated fully), while also justifying a third investigation led by Stevens (because the first two investigations were not focused on the murder).

D. Stevens III

On February 12, 1999, the tenth anniversary of Patrick Finucane's murder, the London-based human rights organization

Liberty, Secrets, Spies and Whistleblowers: Freedom of Expression and National Security in the United Kingdom (2000), at Chapter 3, available at <http://www.article19.org/docimages/791.htm> (accessed January 30, 2003).

⁷⁰ See *At the Crossroads*, *supra* note 7, at 110.

⁷¹ Similar statements were made in different contexts. In a letter to British Irish Rights Watch on January 17, 1995, Stevens wrote: "With regard to the murder of Patrick FINUCANE, I can confirm that this matter was fully investigated during the initial and subsequent inquiry and the results included in both reports." In a letter to Finucane's son, John, dated January 28, 1998, Prime Minister Tony Blair wrote, "The circumstances surrounding your father's murder were fully investigated again by Mr. John Stevens following allegations of Brian Nelson's involvement." On April 6, 1999, the U.K. government told the U.N. Commission on Human Rights that the Finucane case was "considered not only by the criminal investigation into the murder but also in great detail by John Stevens as part of his wider inquiry into allegations of collusion between security forces and terrorists." See *Justice Delayed*, *supra* note 67, at 15.

⁷² Letter from Sir John Stevens to Peter Madden, April 23, 1999.

British Irish Rights Watch (BIRW), presented a new report on the Finucane case to the U.K. and Irish governments. This confidential report, “Deadly Intelligence,” contained detailed evidence concerning the extent of official collusion in the killing. Because it includes extensive information about named individuals, “Deadly Intelligence” is not publicly available.

Two months after BIRW delivered its report to the governments, Stevens was called back for a third investigation. There is some controversy concerning whether the DPP or the RUC Chief Constable was responsible for the decision to recall Stevens. The Lawyers Committee has learned from two credible sources that RUC Chief Constable Sir Ronnie Flanagan ultimately made that decision.⁷³ Stevens was instructed to deliver his third report directly to the Chief Constable, who would have the authority to determine whether to make the report public (in whole or in part).

Upon his re-appointment, Stevens set up a new investigative team comprised originally of detectives from the Organised Crime Group, New Scotland Yard and the Northumbria Police; and augmented by one police executive who was on the original Stevens investigation.⁷⁴ In the years since, the team has fluctuated in number depending on the immediate focus of the investigation. No RUC officer was appointed to the team. Several months after Stevens began the third investigation, he was appointed as the Commissioner of the London Metropolitan Police.⁷⁵ Although Stevens continued to lead the third investigation, Hugh Orde, a Deputy Assistant Commissioner of the Metropolitan Police, assumed day-to-day control of operations in December 1999—until in a dramatic twist, he, himself, took over from Flanagan as the new Chief Constable in Northern Ireland in September 2002.

The terms of reference for the current Stevens investigation are: “to investigate on behalf of the Director of Public Prosecutions (Northern Ireland) the document produced by British Irish Rights Watch but also to review the investigation of the murder of Mr.

⁷³ There are also reports that Flanagan’s decision was heavily influenced by Mo Mowlam, then Secretary of State for Northern Ireland.

⁷⁴ Letter from Stevens to Madden, *supra* note 72.

⁷⁵ See “Finucane Inquiry Head Lands Top Met Job,” BBC News, August 26, 1999.

Patrick Finucane in its entirety. You may absorb into your investigation any matter elicited during its progress which appears to you to be linked or otherwise connected to it.” The team was said to be beginning the investigation into the Finucane murder from scratch, not relying on the RUC’s early investigative efforts.⁷⁶

Soon after the third Stevens investigation began, members of Patrick Finucane’s family, including his widow Geraldine, stated publicly that they would not cooperate with the investigation. The family considered the third investigation a charade, an attempt to stall their long-standing campaign for a full independent public inquiry into the murder.⁷⁷ Family members emphasized that Stevens III was yet another investigation instigated by the RUC and reporting to the RUC.⁷⁸ The family’s lack of confidence in the third investigation was compounded by the continued (and continuing) secrecy surrounding the past two Stevens investigations and the fact that Stevens had not attempted to contact members of the Finucane family during those investigations.

In the almost four years since the third investigation began, the Stevens team has arrested approximately 50 individuals. Some of these arrests have resulted in recommendations to the Director of Public Prosecutions that suspects be prosecuted for various crimes, including weapons possession and the possession of documents likely to be of use to terrorists.⁷⁹ So far, no one has been successfully prosecuted in relation to Patrick Finucane’s murder.

One of the arrests made by the Stevens III team did lead to a murder charge, however. On June 23, 1999, William Stobie, an agent for RUC Special Branch, was charged with the murder of Patrick Finucane. As discussed in Chapter 5, the charges were later commuted to aiding and abetting the murder, and then after long delays even these charges collapsed. Evidence has emerged in the last

⁷⁶ Letter from Stevens to Madden, *supra* note 72.

⁷⁷ See Press Release by the Finucane family, October 11, 1999; Martin Finucane and Peter Madden, interview by the Lawyers Committee for Human Rights, November 16, 1999.

⁷⁸ See Finucane Press Release, *supra* note 77.

⁷⁹ Although the Lawyers Committee asked how many of the recommended charges had been acted on by the DPP, neither the Stevens Team nor the DPP supplied us with this information.

BEYOND COLLUSION

few years suggesting that Stobie was but one player in a much larger system of collusion, and that the Finucane case is only one of a large group of cases in which the intelligence forces overstepped the bounds of law and surrendered basic respect for human rights.

Chapter 3

INSTITUTIONALIZED COLLUSION: INTRODUCING AGENTS BRIAN NELSON AND WILLIAM STOBIE

I. INTRODUCTION

A. Institutionalized Collusion

The term collusion conjures up images of an isolated officer or group of officers slipping files to members of paramilitary groups. According to many sources, what was actually at work in Northern Ireland was much more entrenched. A complex web of intelligence units infiltrated agents deep within paramilitary organizations. These agents operated actively as republican and loyalist paramilitaries, while reporting back to their government handlers. In this context, collusion is an institutionalized phenomenon, one that wears away the boundary between paramilitary and government. The consequences of institutionalized collusion take many forms, such as the failure to prevent an impending murder, the suggestion of one target instead of another, or the hint that a law-abiding, but troublesome human rights activist might actually be the hired hand of the IRA.

To make sense of institutionalized collusion, it is important to understand the security apparatus that was in place at the time of the Finucane murder. Drawing on interviews and on information that has become public in recent years, we present a brief sketch below. The picture remains incomplete because the U.K. government will not divulge the workings of all the various units in place in Northern Ireland in the 1980s and 1990s. Until this information is made public, we cannot know the true scope of institutionalized collusion in cases like Patrick Finucane's.

B. TCGs: Coordination between the Security Forces

From the onset of the Troubles,⁸⁰ the British Army and the RUC have had overlapping responsibilities when it comes to fighting paramilitary violence. Each created specialized units for specific types of

⁸⁰ The "Troubles" is a euphemism used by people in Northern Ireland for the period of conflict that began in 1968 with the advent of the Catholic civil rights movement.

covert operations. These units included the RUC's Special Branch and Special Support Units (SSUs), and the Army's 14th Intelligence Company ("Reconnaissance Unit"), Special Air Service (SAS), and the Force Research Unit (FRU). This was all in addition to MI5, the U.K. intelligence service responsible for domestic security. With overlapping jurisdictions and a proliferation of specialized units, coordinating efforts was undoubtedly difficult. To enhance cooperation between the units, the U.K. government set up integrated intelligence centers called Tasking and Coordination Groups (TCGs).⁸¹

Because of the government's underlying policy of police primacy, the TCGs were under the control of RUC Special Branch, the division of the police responsible for intelligence gathering.⁸² In interviews with the Lawyers Committee, Martin Ingram, a former member of the Army's Force Research Unit, gave an account of the ways in which intelligence was passed from the FRU to RUC Special Branch.⁸³ Ingram told us that the FRU would pass information to the appropriate regional head of Special Branch, who was ultimately responsible for deciding what needed to be done as a result of this information.⁸⁴ A TCG, which was staffed with members of the various intelligence units, would then implement (or coordinate the implementation of) this decision.⁸⁵

The precise methods and extent to which these various units shared information via the TCGs remains unclear due to their secrecy, however. While it is not possible to reconstruct the workings

⁸¹ Ní Aoláin, *supra* note 3, at 59.

⁸² See generally Mark Urban, *Big Boys' Rules: The SAS and the Secret Struggle Against the IRA* (London: Faber & Faber, 1992), at 95 (explaining that the TCGs were commanded by the regional heads of Special Branch); Taylor, *supra* note 4, at 242 (explaining that the TCGs were under the control of the RUC).

⁸³ Martin Ingram, interview by the Lawyers Committee for Human Rights, January 11, 2002. "Martin Ingram" is a pseudonym. See Chapter 4 for a discussion of Martin Ingram and his allegations concerning the involvement of the FRU and Special Branch in the Finucane murder.

⁸⁴ Ingram told us that when the information had come from an Army agent, the Army would have some say in how the information was to be exploited. Ingram said that this was primarily to ensure that the agent was not compromised.

⁸⁵ See also Urban, *supra* note 82, at 95 (explaining that during operations, the TCGs were staffed with as many as 20-30 intelligence officers from different units); Taylor, *supra* note 4, at 242 (explaining that at the critical stage of an operation, a TCG would be packed with representatives from Special Branch, military intelligence, MI5, SAS, and other units).

of all of the units that were in play at the time of Patrick Finucane's murder, sufficient information has emerged to demonstrate that both the FRU and Special Branch had agents within the Ulster Defense Association, the loyalist paramilitary organization that carried out the assassination of Patrick Finucane.

II. BRIAN NELSON AND THE BRITISH ARMY

A. The Force Research Unit

The existence of the Army's Force Research Unit first came to light during the 1992 trial of Brian Nelson, the undercover Army operative arrested as a result of the first Stevens investigation. During the trial and through information that later emerged, it became clear that the FRU operated by infiltrating agents into both republican and loyalist paramilitary organizations in Northern Ireland.⁸⁶ Once inside, FRU agents were assigned to FRU officers who served as handlers, debriefing and counseling the agents. According to media accounts, there were about 100 agents handled by 50 officers during the unit's most active period.⁸⁷ At Nelson's trial, Lt. Colonel Gordon Kerr, the head of the FRU, said that there were no guidelines for the undercover agents' activities.⁸⁸

According to journalists who have examined documents recording the contacts between FRU agents and their handlers, the FRU's purpose—at least with respect to loyalist paramilitary organizations—was to refocus the killing power of loyalist paramilitaries away from random sectarian murders and toward “legitimate” republican targets.⁸⁹ British Irish Rights Watch has investigated the FRU

⁸⁶ See *Justice Delayed*, *supra* note 67; Rob Lewis, *Fishers of Men* (London: Hodder & Stoughton, 1999); Nicholas Davies, *Ten-Thirty-Three* (London: Mainstream Publishing, 1999).

⁸⁷ John Ware and Geoff Seed, “Army Set Up Ulster Murders,” *The Sunday Telegraph*, March 22, 1998 [hereinafter “Army Set Up Ulster Murders”]. Many of these agents were reportedly British soldiers with Irish Catholic backgrounds who were asked by the FRU to leave the army and join the IRA. *Id.*

⁸⁸ Colonel J Statement During Trial of Brian Nelson, January 29, 1992, available at <http://www.serve.com/pfc/reginaVnelson/ntboalcol.html>. At Nelson's trial, Colonel Kerr was referred to as Colonel J because of “the highly sensitive nature of the witness and his present and past activity.”

⁸⁹ “Army Set Up Ulster Murders,” *supra* note 87.

extensively and summarized its concerns about the unit in these terms:

FRU's activities appear to have gone beyond isolated acts of collusion. Before the late 1980s, loyalist murders were often wholly sectarian and apparently random. After 1988 their capacity for murder increased dramatically and their targeting of victims became very much more precise. There seems very little doubt that FRU played a systematic role in this.⁹⁰

Despite the illegal nature of these activities, the FRU was far from a renegade unit. MI5 reportedly had daily access to the FRU's files and was fully aware of its activities.⁹¹ Ed Moloney, a prominent Northern Ireland journalist,⁹² has also reported that the work of FRU agents was "routinely passed along to the very highest levels of the British government up to and including the present British Prime Minister Tony Blair."⁹³ Moloney claimed that "every week the FRU submits a report of its activities to the Joint Intelligence Committee which reports directly to Ten Downing Street."⁹⁴

A source with close contacts in the intelligence services told the Lawyers Committee that the FRU's filing system required the archiving of two copies of each document. Copies that left the unit were recorded, making it extremely unlikely for documents to be lost. This information indicates that if regular procedures were followed in the Finucane case, the FRU's involvement should have been documented.

B. Brian Nelson's Background and FRU Role

Brian Nelson came from the predominantly Protestant Shankill

⁹⁰ *Justice Delayed*, *supra* note 67, at para. 1.2.

⁹¹ See, e.g., "Army Set Up Ulster Murders," *supra* note 87 (reporting that Colonel Kerr told the Stevens I investigation that MI5 had "full, unimpeded" access to FRU files and that Brian Nelson's case was "carefully monitored" by MI5); Rosie Cowan and Nick Hopkins, "MI5 'Knew of Collusion' in Finucane Killing," *The Guardian*, June 24, 2002. See also Chris Thornton, "Finucane: MI5 Link Probed," *The Belfast Telegraph*, January 22, 2003 (explaining that the Stevens III team had widened its probe to include MI5 operations).

⁹² For a discussion of Moloney and his reporting on the Finucane case, see *infra* notes 156-164 and accompanying text.

⁹³ Ed Moloney, "Stevens Knows Names of Finucane Killers," *The Sunday Tribune*, September 19, 1999.

⁹⁴ *Id.*

Road area of West Belfast. The Lawyers Committee understands that Nelson joined the Black Watch Regiment of the British Army in 1965 and joined the Ulster Defense Association in 1972, the year after it was formed. In 1974, Nelson was convicted of assault, intimidation, and related firearms offenses in connection with the UDA kidnapping and torture of Gerald Higgins, a Catholic man, in March 1973. Sometime after Nelson was released from prison, he again became active in the UDA. In 1983, he “offered his services” to British Army intelligence.⁹⁵ In 1985, while still an informer for the British Army, Nelson became the intelligence officer of the West Belfast Brigade of the UDA. Later that same year, however, Nelson left Northern Ireland and moved to Germany, apparently to begin a new life.

In 1987, the Army recruited Brian Nelson from Germany and brought him back to Northern Ireland to serve as an FRU agent and rejoin the UDA.⁹⁶ The Army paid for the deposit on Nelson’s car and home, paid him a weekly salary, and set him up as a taxi driver.⁹⁷ Specifically, the Army wanted to infiltrate Nelson back into the UDA’s intelligence structure. Given his past experience, Nelson soon regained his position as intelligence officer for the West Belfast Brigade. As intelligence officer, he was in charge of maintaining intelligence stores and targeting UDA victims.

With the active assistance and resources of the FRU, Nelson brought new order and professionalism to the UDA’s information-gathering system. Indeed, Nelson became so adept that he quickly assumed the role of chief intelligence officer for the UDA as a whole.⁹⁸ With FRU assistance, he introduced a system in which all relevant details about a possible UDA target were recorded on a “personality” card, or “P-Card.”⁹⁹ When an assassination was planned, Nelson would hand the P-Card to the murder team.¹⁰⁰ Furthermore, the FRU reportedly purchased two computers—one

⁹⁵ Transcript of *R v. Brian Nelson* (statement of Crown Counsel Brian Kerr).

⁹⁶ *Id.*

⁹⁷ Peter Taylor, “Dark Side of the War,” BBC News, May 31, 2000.

⁹⁸ John Ware, “Fear ‘Junkie’ Who Marked Men for Death,” *The Independent*, June 9, 1992. Nelson also shared intelligence information with other loyalist paramilitary groups. See, e.g., Taylor, *supra* note 97 and related discussion in Chapter 7.

⁹⁹ “Army Set Up Ulster Murders,” *supra* note 87.

¹⁰⁰ *Id.*

for the FRU and the other for Nelson—so that they could share intelligence information more easily by uploading and downloading FRU and UDA materials.¹⁰¹

The records of Nelson's meetings with his handlers reveal that this system was part of a concentrated FRU strategy to ensure that "proper targeting of Provisional IRA members takes place prior to any shooting."¹⁰² One such contact form, dated May 3, 1988, states: "6137 [Nelson's code number] wants the UDA only to attack legitimate targets and not innocent Catholics. Since 6137 took up his position as intelligence officer, the targeting has developed and is now more professional."¹⁰³

C. Nelson/FRU Involvement in the Finucane Murder

Theoretically, Nelson was supposed to supply his FRU handlers in advance with information about loyalist operations, especially planned killings. The FRU was then to share its information with the RUC's Tasking and Coordination Group.¹⁰⁴ At that point, it was the RUC's responsibility to determine what action should be taken to prevent the operation or protect the target.¹⁰⁵ With respect to the Finucane murder, controversy has surrounded Nelson's activities and whether he properly reported them to his handlers, and if the handlers were informed, whether they reported the information to the RUC.

Finucane was one of the most prominent UDA victims during Nelson's time with the UDA. Suspicions of Nelson's involvement in the murder arose as early as the coroner's inquest in September 1990.¹⁰⁶ The extent of his involvement became more apparent following the investigative work done by BBC *Panorama* journalists John Ware and Geoffrey Seed.¹⁰⁷ The program relied in part on a

¹⁰¹ See "Exposed: Captain Who Aided Hitmen," *The Sunday Herald*, December 3, 2000.

¹⁰² "Army Set Up Ulster Murders," *supra* note 87 (quoting an FRU contact form).

¹⁰³ John Ware, "Time to Come Clean Over the Army's Role in the 'Dirty War,'" *New Statesman*, April 24, 1998, [hereinafter "Time to Come Clean"], at 16.

¹⁰⁴ Ingram, interview, *supra* note 83. See also Taylor, *supra* note 97.

¹⁰⁵ *Id.*

¹⁰⁶ See Testimony of Michael Finucane, *supra* note 42.

¹⁰⁷ See *supra* notes 65-68 and accompanying text.

journal Nelson had kept that came into the possession of the documentary's writers. The material developed by *Panorama* indicated that the British Army knew that Finucane was in danger as early as December 1988. Nelson had written in his journal that “[s]ome two months before the actual shooting I was asked by ‘R’ [later identified as a leading UDA assassin] to see what I could dig up on Finucane. At the time I informed my handlers that ‘R’ was showing interest in the solicitor.”

According to Nelson's statement to the first Stevens investigation, he passed the photograph of Finucane to “R” on the Thursday before the killing.¹⁰⁸ The photograph, from a newspaper, showed Finucane and his client Patrick McGeown leaving the Crumlin Road Courthouse.¹⁰⁹ Nelson claimed that he did not compile any information on Finucane and did not know that he was the target.¹¹⁰ Instead, he said he thought the UDA wanted McGeown targeted.¹¹¹ He also claimed that the first he knew of Finucane's death was when he heard it on a radio he used to scan RUC messages.¹¹²

Much doubt has been cast on this account of Nelson's role in the murder. Nelson reportedly had 36 individual photographs of McGeown, who was well-known as both a Sinn Féin councilor and a former IRA hunger-striker.¹¹³ Nelson had only one photograph of Finucane, however, the one taken with McGeown.¹¹⁴ If McGeown were truly the target, it seems unlikely that Nelson would have selected this joint photograph out of the pile—especially as it provided a relatively poor picture of McGeown.¹¹⁵ Furthermore, John Ware, who has examined Nelson's journal and FRU documents, revealed that not only had Nelson commented on the UDA's interest in Finucane in a journal entry in 1988, he had also compiled a P-Card

¹⁰⁸ “Time to Come Clean,” *supra* note 103, at 16-17.

¹⁰⁹ *Id.*, at 17.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See *Panorama: A License to Murder*, Part I, at 16 (BBC television broadcast, June 19, 2002 and June 23, 2002) (transcript on file with the Lawyers Committee).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

on Finucane.¹¹⁶ One additional piece of evidence rounds out the picture: Nelson's UDA Brigadier, Tommy "Tucker" Lyttle, told Ware that Nelson had located Finucane's house by following him home from his office.¹¹⁷ One of Nelson's FRU handlers reportedly accompanied him on this mission.¹¹⁸

In a 1998 article, John Ware suggested that the failure to prevent Finucane's murder was not tied to Nelson's failure to inform his FRU handlers, but may have been due to the FRU's failure to pass on sufficient information to the RUC concerning the plot. Ware reported that Stevens had found a "wealth" of detailed intelligence in FRU files, but only summaries were passed to RUC Special Branch to warn potential victims.¹¹⁹ According to Ware, Special Branch officers had given statements to the first Stevens investigation claiming that the FRU summaries had been "worthless because they were so bland." Ware concluded that these summaries had been deliberately diluted, possibly to prevent the RUC from scuttling a planned assassination.¹²⁰ As discussed later in this chapter, however, the RUC had its own sources deep within the UDA's West Belfast Brigade.

D. Nelson and the Stevens I Investigation

Evidence certainly suggests that the FRU believed it had something to hide from those investigating collusion in Northern Ireland. Within a week of the announcement of the first Stevens investigation, Nelson's intelligence store was taken to Army headquarters and locked away, reportedly in an attempt to prevent Stevens from discovering it.¹²¹ FRU documents relating to Nelson were not delivered to

¹¹⁶ "Time to Come Clean," *supra* note 103, at 17 (quoting an FRU contact form that refers to "Finucane's personality card.")

¹¹⁷ *Id.* At the time of Finucane's murder, Lyttle was the leader (the Brigadier) of the UDA's West Belfast Brigade. Ware interviewed Lyttle shortly before his death in October 1995. *See infra* notes 200-202 and accompanying text.

¹¹⁸ *See Insight: Justice on Trial* (UTV television broadcast December 4, 2001) [hereinafter: *Insight: Justice on Trial*] (transcript on file with the Lawyers Committee), at 7.

¹¹⁹ "Time to Come Clean," *supra* note 103, at 17.

¹²⁰ As discussed in Chapter 4, however, an FRU whistleblower claims that the FRU did pass on detailed information concerning the threat to Finucane. *See infra* notes 190-191 and accompanying text.

¹²¹ "Time to Come Clean," *supra* note 103, at 17.

Stevens until around August 1990, after the Director of Public Prosecutions served a warrant for their production.¹²² At that point the documents were tested with an electrostatic detection apparatus; the ESDA testing reportedly showed that most of the pages had been altered.¹²³ Furthermore, the Stevens team apparently did not find a “personality” card on Patrick Finucane among Nelson’s documents.¹²⁴ The P-Card may have been missing because Nelson’s FRU handlers removed it before surrendering it to Stevens, or it may have been passed on to the UDA murder team and thus was no longer in Nelson’s possession at the time the FRU took possession of the document store.

Two other pieces of evidence suggest that the FRU sought to withhold evidence from the Stevens investigation. Stevens had been planning to arrest Brian Nelson at dawn on January 11, 1990; his investigators had discovered Nelson’s fingerprints on security force documents leaked to the UDA and seized during police raids.¹²⁵ On the evening of January 10, 1990, Nelson suddenly and conveniently fled to England.¹²⁶ Second, that very same night a mysterious fire devastated Stevens’s offices and would have gutted the investigation as well had the team not stored backup copies of key documents in a computer system in England. When members of his team discovered the fire on the night of January 10th (three hours before the planned arrest of Nelson), they also discovered that the telephone lines were dead and the fire alarms were not working.¹²⁷ In short, the circumstances were highly suspicious, all the more so given that the team’s offices were inside an RUC complex that was under round-the-clock armed guard.¹²⁸

The RUC launched an internal investigation of the incident. Incredibly, the investigators simply ignored the strange circumstances

¹²² *Id.* at 15; “Army Set Up Ulster Murders,” *supra* note 87.

¹²³ See *Panorama: The Dirty War*, *supra* note 65, at 13.

¹²⁴ See “Time to Come Clean,” *supra* note 103, at 17.

¹²⁵ See “Army Set Up Ulster Murders,” *supra* note 87.

¹²⁶ *Id.* There is speculation that the FRU was tipped off about the impending arrest by a member of the RUC, and that the FRU told Nelson in time for him to flee. See *Justice Delayed*, *supra* note 67, at para. 2.3.

¹²⁷ See, e.g., “Army Set Up Ulster Murders,” *supra* note 87 (describing the circumstances of the fire).

¹²⁸ *Id.*

of the fire and concluded that it had been sparked by a carelessly discarded cigarette. Stevens and his fellow officers completely dismissed the RUC's findings, calling the investigation a "travesty and a disgrace."¹²⁹ At first privately and later publicly, the Stevens officers made clear that they believed the fire was deliberately set.¹³⁰ An FRU whistle-blower, meanwhile, has alleged that the British Army deployed a "covert methods of entry" unit to set the fire.¹³¹ This whistleblower claims that the FRU started the fire to give themselves "a little bit of time to construct an alternative cover story."¹³²

E. Nelson's 1990 Guilty Pleas and Sentence

The Stevens I team eventually arrested Brian Nelson. Although his handlers had reportedly instructed him not to disclose that he was an FRU agent while under arrest,¹³³ he gave a lengthy statement to Stevens about his involvement in the FRU and the UDA. He was subsequently indicted on 35 counts. None of these charges related to the murder of Patrick Finucane. On January 22, 1990, Nelson pleaded guilty to five counts of conspiracy to murder as well as 15 other counts. In exchange for these pleas, the prosecution announced that it would not proceed with the remaining charges, including two counts of aiding and abetting murder.¹³⁴ Following an extensive plea in mitigation from Lt. Colonel Kerr, the head of the FRU, Nelson received an unusually lenient ten-year sentence on the five counts of conspiracy to murder, and lesser concurrent sentences on the remaining 15 counts.

¹²⁹ *Id.*

¹³⁰ *Id.*; see also John Ware, "Censored," *The Sunday Times*, May 14, 2000; *Panorama: A License to Murder*, Part I, *supra* note 113, at 21.

¹³¹ Martin Ingram, interviews by the Lawyers Committee for Human Rights, January 11, 2002 and February 1, 2002. See generally Richard Norton-Taylor, "Evidence of the Clandestine Activities of Military Intelligence in Northern Ireland is Being Suppressed," *The Guardian*, April 10, 2000 (recounting Ingram's allegations about the fire). Furthermore, Ingram told the Lawyers Committee that the Special Intelligence Wing (SIW) of the Army had deployed the "Covert Means of Entry" (CME) unit to cover up for the FRU. He said that both the FRU and CME fall underneath the SIW.

¹³² See Norton-Taylor, *supra* note 131.

¹³³ See "Army Set Up Ulster Murders," *supra* note 87 (claiming that within a week of Stevens's arrival in Northern Ireland, one of Nelson's handlers had noted in a contact form that Nelson had been "reminded at some length that, should he be arrested, he must make absolutely no mention of his work for this office.")

¹³⁴ See David McKittrick, "Former Military Agent in Ulster Admits Murder

According to press reports, Stevens wanted to use Nelson as a witness in the prosecution of other UDA members, but was ultimately overruled.¹³⁵ The decision not to use Nelson as a witness was made after a series of high-level meetings involving the RUC, the British Army, and the Director of Public Prosecutions.¹³⁶ Apparently, the RUC and the Army strongly opposed plans to use Nelson as a witness because he could have been cross-examined about his role as an FRU agent.¹³⁷ Following the decision not to use him as a witness, the DPP dropped charges against five of the UDA members investigated by Stevens.¹³⁸

F. Stevens III

Brian Nelson served five years in prison. He was released in 1996 and given a new identity outside of Northern Ireland.¹³⁹ He has not spoken publicly about his experiences, and it is not clear whether the Army continued to pay him after his conviction. In March 2001, the *Sunday Herald* reported that the Army had given Nelson more than £200,000 to restart his life upon his release from prison.¹⁴⁰

In March 2001, reports also appeared in the press that the Stevens III team had re-interviewed Nelson.¹⁴¹ Apparently, he did not supply any new information about the role of the FRU in the Finucane murder. On March 14, 2001, Ulster Television (UTV) reported that Brian Nelson had been informed that he would not face charges in the murder of Patrick Finucane stemming from the third Stevens investigation.¹⁴²

Plots," *The Independent*, January 23, 1992.

¹³⁵ See David McKittrick, "Ulster 'Supergrass' Gagged by DPP," *The Independent*, October 11, 1990.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See, e.g., *id.* (listing the five as Billy Elliot, Joseph English, Sammy Duddy, Samuel McCormack, and James Spence).

¹³⁹ See U.S. Department of State, Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices 1996—the United Kingdom," January 30, 1997; Taylor, *supra* note 4, at 294.

¹⁴⁰ See Neil Mackey, "Infamous Terrorist was Army Plant," *The Sunday Herald*, March 4, 2001.

¹⁴¹ See "Nelson Will Not Face Charges," UTV Internet, March 14, 2001; see also Rosie Cowan, "No Charge for Agent in Finucane Murder," *The Guardian*, March 15, 2001.

¹⁴² *Id.*

G. Brigadier Leakey's Affidavit

It has become clear, however, that the information that emerged during Nelson's prosecution was merely the opening chapter of a much deeper story. In early 1998, the U.K. Ministry of Defense (MoD) sought an *ex parte* injunction in the London High Court against a former FRU handler whom they believed intended to publish information about his Army experiences.¹⁴³ This former handler had participated in the re-recruitment of Nelson from Germany and had then served as one of his primary handlers for approximately six months.

In support of its case for an injunction, the government submitted an affidavit by Brigadier Arundell David Leakey, then the MoD's Director of Military Operations.¹⁴⁴ Leakey had been the Director of Military Operations since July 1997. As such, Leakey reported to the head of the British Army on all matters relating to military operations in Northern Ireland, including operations involving the acquisition of covert intelligence. Information about the 1998 affidavit emerged publicly for the first time in April 2002.¹⁴⁵

The Lawyers Committee has seen a copy of Brigadier Leakey's affidavit. Much of the document centers on Nelson's former handler's knowledge of his activities within the FRU. Leakey makes clear that by pleading guilty in 1990, Nelson had "prevented the disclosure of large quantities of highly sensitive information."¹⁴⁶ Indeed, Leakey explained:

[A]lthough some information about Brian Nelson and his activities emerged at his trial, there remains a very substantial quantity of highly sensitive information which has not hitherto been in the public domain the disclosure of which would be highly damaging.¹⁴⁷

¹⁴³ See Ed Moloney and Lin Solomon, "Brigadier's Affidavit Suggests Official Resistance to Finucane Inquiry," *The Sunday Tribune*, April 14, 2002.

¹⁴⁴ Affidavit of Arundell David Leakey in the High Court of Justice, Queen's Bench Division, Sworn February 1998.

¹⁴⁵ See Moloney and Solomon, *supra* note 143.

¹⁴⁶ Affidavit of David Leakey, *supra* note 144, at 4.

¹⁴⁷ *Id.* at 11.

The Army sought the injunction out of concern that Nelson's former handler was now poised to reveal some of this damaging material.

On February 23, 1998, the High Court issued an injunction against the former handler and his suspected co-author, preventing them from continuing work on the book. On December 10, 1998, the injunction was amended to prevent the disclosure of information without the express prior written consent of the MoD. An approved version of the book, entitled *Ten-Thirty-Three*, was eventually published in July 1999, but as explained in the next chapter, the MoD was to seek many similar injunctions in the years to come.

Leakey's affidavit contained a further, highly significant revelation. Until April 2002, it had not been clear what had happened to the FRU after Nelson's arrest.¹⁴⁸ Leakey's affidavit revealed that the FRU was still in operation—at least as of February 1998. Leakey told the High Court that the unit “is now known as the Joint Support Group Northern Ireland” (JSGNI).¹⁴⁹ He went on to explain, “The existence of the unit is known by reason of Nelson's trial but its methods of operation remain a closely guarded secret and have not changed to any significant extent since [Nelson's former handler] served in the unit.”¹⁵⁰ That the JSGNI/FRU was still using the same methods of operation more than ten years later is alarming to say the least. The very fact that Nelson pleaded guilty to 20 crimes should have made clear that the FRU's operating procedures were in serious need of reform.

H. Conclusion

The Lawyers Committee believes that Brian Nelson's role as an FRU agent must be thoroughly examined in a public inquiry into Patrick Finucane's killing. In particular, a public inquiry must explore whether Nelson targeted Finucane for murder and what precisely

¹⁴⁸ In 2000, for example, the *Sunday Herald* reported that the FRU had changed its name to the Force Reconnaissance Unit in 1991 and that it was still operating in Northern Ireland. See “Exposed: Captain Who Aided Hitmen,” *supra* note 101. In 2001, the internet site Cryptome reported that the FRU is now called the Joint Collection Unit (Northern Ireland), and that it works directly with MI5. See “Enquiry: The Killing Years in Northern Ireland,” February 3, 2001, available at <http://cryptome.org/> (accessed December 15, 2002).

¹⁴⁹ Affidavit of David Leakey, *supra* note 144, at 3.

¹⁵⁰ *Id.*

Nelson passed on to his handlers.¹⁵¹ A public inquiry must also determine whether the Army set the fire in Stevens's offices and otherwise attempted to thwart his investigations. And finally, a public inquiry must establish whether the FRU/JSGNI is still in existence and if so, what rules of conduct govern its operations.

III. WILLIAM STOBIE AND THE RUC

A. Special Branch

The Special Branch of the RUC is the division of the police responsible for intelligence gathering and security policing in Northern Ireland. Its work has centered on the use of agents and informers within republican and loyalist paramilitary organizations. During John Stalker's investigation of "shoot to kill" allegations in the mid-1980s, he famously described RUC Special Branch as a "force within a force."¹⁵² This description has had great resonance over the years.¹⁵³ Special Branch is a unit so secretive that even other RUC officers do not know about its activities. The enigmatic character of Special Branch has made it difficult to unearth the true nature and extent of its involvement in the Finucane murder. Since our first mission to Northern Ireland in 1992, however, the Lawyers Committee has been gravely concerned about Special Branch's role in the murder.

B. William Stobie's Background and Special Branch Role

1. Introduction

In 1992, the Lawyers Committee received information from two independent sources that Special Branch had a double agent oper-

¹⁵¹ We return to these questions in the next chapter in the context of Martin Ingram's allegations about FRU involvement in the murder.

¹⁵² See Ed Moloney, "Special Branch Resistance to Patten May be Reason for Leaked Report," *The Sunday Tribune*, December 8, 2001; CAIN, "Abstracts of Organisations," *supra* note 37.

¹⁵³ See, e.g., The Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland*, September 1999, at para. 12.10, available at <http://www.belfast.org.uk/report.htm> (accessed January 30, 2003).

ating within the UDA.¹⁵⁴ In our 1993 report, we revealed that in the weeks before Patrick Finucane’s murder, this double agent had allegedly passed critical information to his Special Branch handlers in the expectation that they would do something to prevent the murder.¹⁵⁵ Although we did not report his name at the time, William Stobie’s name has since come into the open. Stobie was an informer within the UDA from approximately 1987 through 1990. He served as a UDA quartermaster in West Belfast. As quartermaster, Stobie supplied weapons for UDA missions in his area.

2. Ed Moloney and the Story of William Stobie

Details about William Stobie’s life as a double agent—and his involvement in the Finucane murder—emerged publicly in 1999 as a result of an article by Ed Moloney, a journalist for the *Sunday Tribune*.¹⁵⁶ Beginning in the fall of 1990, Moloney conducted a series of interviews with Stobie on the condition that he would not publish the story until Stobie granted him permission.¹⁵⁷ On June 27, 1999, with Stobie’s permission, Moloney published the account.¹⁵⁸ This section is based on that version of events.

Moloney reported that Stobie joined the UDA in the early 1970s. Stobie also served part-time in the British Army’s Ulster Defense Regiment (UDR) until he was precluded from further UDR service by a 1987 arms offense conviction. Special Branch recruited Stobie as an informer after he was arrested for the November 9, 1987 murder of Adam Lambert, a Protestant youth mistaken for a Catholic. According to Moloney’s article, Stobie had provided the weapons for the killing as well as the getaway van. Stobie told Moloney that

¹⁵⁴ See *Human Rights and Legal Defense*, *supra* note 12, at 55.

¹⁵⁵ *Id.*

¹⁵⁶ See Ed Moloney, “The Informer,” *The Sunday Tribune*, June 6, 1999.

¹⁵⁷ Stobie spoke with Moloney shortly after he was released from Castlereagh Detention Center in September 1990. He had been detained at Castlereagh and interrogated about his involvement in the UDA and his role in the Finucane murder (among other matters). See *infra* notes 169-181 and accompanying text. In the article, Moloney explained that Stobie spoke to him because he feared that his life was in danger and wanted to make sure that his story became public if anything happened to him.

¹⁵⁸ Moloney’s account was published a few days after Stobie was charged with the murder of Patrick Finucane. Stobie was charged with Finucane’s murder on June 23, 1999. See Chapter 5.

although the RUC did not have enough evidence to convict him, Special Branch used the opportunity to pressure him into become an informer. After resisting for some time, Stobie agreed. He was initially offered £20 a week with bonuses for good information.

On the Monday or Tuesday before the Finucane murder, Stobie was summoned by his “UDA commander”¹⁵⁹ and told to provide guns for “an operation.” Stobie brought along a Heckler & Koch, which holds nine rounds. The commander told him the Heckler & Koch was not sufficient, and said he also needed a Browning 9mm, which holds 13 bullets, because, as he told Stobie, “This is for a special job; we’re going to hit a top Provie.”¹⁶⁰ Stobie phoned Special Branch and informed his handlers of this. According to what Stobie told Moloney, the RUC would have been very familiar with this UDA commander and his killing teams—which included “well known characters like McK, S, GK, KL and WD.”

Stobie told Moloney that on the Sunday afternoon of the murder, he delivered the guns to the UDA assassination team at the Highfield Glasgow Rangers Supporters Club. He watched as three of the individuals got into a van and he realized that the operation was beginning. When Stobie got home at about 7:00 or 7:30 p.m.,¹⁶¹ he called Special Branch to tell them what he had just witnessed. According to what Stobie told Moloney, at no time prior to or during the course of the murder did Special Branch make any effort to investigate his information or attempt to thwart events once they were in motion. He also told Moloney that Special Branch never attempted to attach a bugging device to the weapons, which would have enabled them to track the killers’ movements. Stobie later complained about Special Branch’s inaction. When he asked why Special Branch had done nothing to prevent the hit, he was told that they did not have

¹⁵⁹ This UDA commander was not UDA Brigadier Tommy “Tucker” Lyttle, who is discussed later in this report. As Brigadier, Lyttle led the UDA’s West Belfast Brigade at the time of Finucane’s murder. The UDA commander discussed here was Lyttle’s subordinate.

¹⁶⁰ Provie refers to a member of the Provisional IRA. *See supra* note 2.

¹⁶¹ According to a confidential source interviewed by the Lawyers Committee in 1992, Stobie handed the guns over at 5 p.m. and spent only a few minutes at the Club. This source informed us that Stobie had called his handlers immediately to tell them that the guns had been delivered. According to this source, Stobie used the phrase “the TEA is on the loose,” when he called his handlers to warn them that the operation was beginning.

time to get things organized and that “anyway [Finucane] was just an IRA man.”

According to Stobie, the RUC also did nothing to apprehend the UDA killers on their way back from Finucane’s home. This meant that critical forensic and ballistics information was lost. The killers delivered the guns without incident to a safe house in loyalist North Belfast.

On the Tuesday after the murder, Stobie picked up two guns from the safe house. The next day, he said he delivered the Browning pistol, the principal murder weapon, to his UDA commander. Stobie told Moloney that he had kept his Special Branch handlers fully informed of these developments. He had called his handlers both before and after the commander picked up the gun. He told Moloney that he believed that Special Branch had mounted a surveillance operation and had watched the commander bring the pistol to another safe house in North Belfast. The commander was not arrested, however.

In July 1989, three young men were charged with possession of the Browning pistol. At the inquest into Finucane’s killing, the RUC reported that none of these men was involved in the murder. Once recovered, the pistol was supposed to remain in the custody of the Northern Ireland Forensic Laboratory, but there is a deeply troubling postscript to the story of the murder weapon. The Forensic Laboratory inexplicably transferred the Browning to the British Army in 1995.¹⁶² Incredibly, the Army did not preserve the weapon. According to news reports in October 2001, the Army replaced the barrel and slide of the pistol, the two parts of the gun that leave evidentiary marks on the slug and shell of bullets.¹⁶³ The Army had thereby removed (and presumably destroyed) critical evidence in one of the most controversial murders in Northern Ireland’s history, a controversy with the Army firmly at its center. The Stevens III team has carried out an investigation into the dismantling of the murder weapon.¹⁶⁴

¹⁶² See “Parts of Gun Removed,” *The Belfast NewsLetter*, October 17, 2001; “Finucane Murder Gun Tampered With,” *North Belfast News*, October 13, 2001.

¹⁶³ See Chris Thornton, “Finucane Gun Was Dismantled,” *The Belfast Telegraph*, October 16, 2001; *Insight: Justice on Trial*, *supra* note 118.

¹⁶⁴ See Thornton, *supra* note 163.

3. Stobie's 1989 Arrest and 1990 Trial on Gun Charges

According to Moloney's article, Stobie had no contact with Special Branch until six months after Finucane's murder, when he was stopped at a roadblock and told to bring in all his hidden weapons for inspection. Stobie took them to Knocknagoney RUC station, where they were kept for two weeks. Sometime after the weapons were returned, around early November 1989, Stobie was asked to supply two guns for another UDA operation. The gunmen returned to complain that the weapons had not worked. Stobie inspected the guns and realized that the firing pins had been filed down, which could only have been performed by Special Branch. His commander then called for the suspect guns so that the UDA could hold an internal investigation. In distress, Stobie called Special Branch, which arranged to have a patrol car trail him as he made his way to the UDA commander's house. This gave Stobie an excuse to throw the weapons over a wall and thus avoid the commander's discovery of the faulty firing pins, which would have blown his cover.

When Stobie returned to his apartment, he found police searching the apartment for guns. Stobie was not concerned since he did not keep weapons at home. Nevertheless, the police found a Browning pistol and a homemade Sterling machine gun in the roof space of his apartment. Stobie told Moloney that these were planted by Special Branch. Stobie was arrested and arraigned for gun possession.

Furthermore, according to Moloney, on October 1, 1990, the day Stobie's trial began, he told his lawyers to let the prosecution know that if the case continued he would take the stand and reveal that Special Branch had sufficient information to prevent the Finucane murder. Minutes later, RUC Detective Constable Cormack disclosed while testifying that Stobie had a prior record, a mistake which resulted in a mistrial. Many commentators believe that this mistake—a mistake so obvious to seasoned detectives like Cormack that it appears *prima facie* suspicious—was the government's way of ensuring Stobie did not reveal what he knew about the Finucane murder. A new trial was scheduled for December 4, 1990, but was later adjourned.

On January 23, 1991, the Crown announced that it would not be offering any evidence against Stobie on the firearms possession charge. On the prosecution's recommendation, the judge entered a

verdict of not guilty in Stobie’s favor.¹⁶⁵ This was highly unusual, given the legal context of weapons-possession cases in Northern Ireland. In Northern Ireland, when weapons are found on a defendant’s property, the burden of proof shifts to the defendant.¹⁶⁶ Stobie, in other words, had to persuade the court of his innocence. Needless to say, the vast majority of defendants are found guilty in such cases.¹⁶⁷ And given that Stobie’s defense was the standard line “someone else planted those guns,”¹⁶⁸ the DPP’s decision to drop the case raises many questions.

C. The RUC Interrogation of Stobie in Castlereagh in September 1990

1. Introduction

It subsequently emerged that the RUC had arrested and interrogated William Stobie in September 1990, approximately two weeks before his trial began. Stobie was arrested on September 13, 1990, and held for seven days at Castlereagh Detention Centre. During that time, officers from the RUC’s Criminal Investigations Division (CID) interviewed Stobie 32 times for a total of 47 hours and 15 minutes.¹⁶⁹

¹⁶⁵ In 1999, the Crown offered explanations as to why Stobie was not prosecuted for the arms charges in 1991. The Crown claimed that at Stobie’s original arms charges trial, they were not aware that he was an informer. After the mistrial, and at the start of the re-trial, Stobie’s legal advisors informed Senior Crown Counsel Jeffrey Foote, QC, of this fact. This was communicated to the DPP, which then asked for further information from the police. After examining the “reasonable possibilities,” the DPP decided “at the highest level” not to proceed and withdrew the charges. *See* Committee on the Administration of Justice, “Additional Submission to the Criminal Justice Review,” October 1999.

¹⁶⁶ *See, e.g., Justice Delayed, supra* note 67, at 28.

¹⁶⁷ *Id.*

¹⁶⁸ While being interviewed after his arrest on the gun charges, for example, the following exchange occurred between Stobie and an RUC officer:

Q: Do you expect us to believe that someone has planted these guns and left these guns behind in your house?

A: Yes.

Q: Do you not think that is ridiculous?

A: I don’t think it is ridiculous.

¹⁶⁹ These officers were all from the CID, Belfast Region. Three of these officers were Detective Constables, one was a Detective Inspector, and one was a Detective Superintendent.

Five separate CID officers were involved in Stobie's interrogation; they conducted the interviews in teams of two. The Lawyers Committee for Human Rights has seen copies of the interrogation notes prepared by each of the five officers.

The officers' notes reveal that William Stobie made a series of admissions during his seven-day detention in Castlereagh in September 1990. He admitted that he was a quartermaster for the UDA and that his job was to store the weapons and supply them to UDA members as needed.¹⁷⁰ Stobie told the officers that he currently had access to six or seven weapons.¹⁷¹ He named the three people who provided him with safe houses to store the weapons.¹⁷² Stobie also told the CID officers that he had been an agent for RUC's Special Branch for the previous three years.¹⁷³

2. The Finucane Murder

Over the course of the seven days, the CID officers interrogated Stobie repeatedly about Patrick Finucane's murder. In most respects, Stobie's admissions in relation to his role in the killing mirrored the account he gave Moloney shortly after his release from Castlereagh. During the Castlereagh interrogation, Stobie denied many times that he had advance knowledge that Finucane was the intended target.¹⁷⁴ He did admit, however, that four or five days before the murder, he had been asked to supply a 9mm pistol. On the Wednesday evening before the murder, he had delivered a Heckler & Koch pistol outside the Highfield Rangers Support Club.¹⁷⁵ Later that night, he was told that the Heckler & Koch was too small—that the target was a high-level IRA man—and that he was to get a 9mm Browning. And as he later told Moloney, Stobie insisted that he had kept his Special Branch handlers fully informed of these developments as they arose.

In one important respect, however, Stobie's account at Castlereagh was different than the account he gave Moloney. He told

¹⁷⁰ Notes of Officer 1, at 11.

¹⁷¹ Notes of Officer 2, at 4.

¹⁷² Notes of Officer 1, at 31.

¹⁷³ *Id.*, at 2.

¹⁷⁴ At one point in the interviews, however, Stobie said that he "didn't know" if he had known that Finucane would be the target. *Id.*, at 15.

¹⁷⁵ Finucane was murdered on the evening of Sunday, February 12, 1989.

Moloney that he had supplied the murder weapons on the Sunday afternoon of the murder. At Castlereagh, he said that on February 9, 1989 (the Thursday before the murder), Special Branch instructed him not to deliver the Browning before contacting his handlers.¹⁷⁶ Stobie told his Castlereagh interrogators that he had contacted his handlers later that day and told them that the “parcel had not been delivered.”¹⁷⁷ Indeed, during the interviews at Castlereagh, Stobie insisted that he had never handed over the Browning. He was confronted with the fact that Special Branch records revealed that he had received a 9mm Browning pistol for safekeeping in January 1989. Stobie admitted this but said he did not know what had happened to that Browning. The interviewers suggested that Stobie had indeed delivered the Browning, but had failed to inform Special Branch.

As he had subsequently told Moloney, however, Stobie repeatedly insisted that he had passed on all of the information he knew to his Special Branch handlers—both before and after Finucane was killed. These handlers knew several days before the murder that the UDA was planning to hit a high level target, and they knew the names of the UDA people involved. Stobie also told his interrogators at Castlereagh that he had informed Special Branch what he thought the UDA’s movements would be, where he believed they would “do the shoot from.”¹⁷⁸ Stobie also claimed that he had kept his handlers apprised of the movements of the weapons after the killing. He said that a couple of days after the murder, he had picked up the Heckler & Koch¹⁷⁹ and the Browning. The next day, he was instructed to bring the Browning to the Glencairn Community Centre. Stobie reported that he had immediately phoned his Special Branch handlers to inform them of this. In addition, he had called his handlers after he delivered the Browning. Again, this corresponds with the account he gave Moloney a few days later.

¹⁷⁶ Notes of Officer 1, at 21.

¹⁷⁷ *Id.*, at 22.

¹⁷⁸ *Id.*, at 16.

¹⁷⁹ This is confusing. Stobie told Moloney (and implies to his Castlereagh interrogators) that the Heckler & Koch he picked up was one of the murder weapons. The Heckler & Koch is a 9mm pistol, but the forensic evidence revealed that Finucane had been shot by a Browning 9mm pistol (the principal murder weapon) and a .38 special revolver or .375 magnum. The Lawyers Committee is not in a position to know whether the UDA killers also brought a Heckler & Koch to the murder scene (or who supplied the revolver/magnum). The officers at Castlereagh do not mention a revolver or a magnum in their interrogations.

At one point during his detention, Stobie asked his interrogators why the Special Branch had not reacted on the Finucane murder. The officers replied that Stobie had only told Special Branch that the target was a top IRA man. Stobie commented that he believed that “they should have reacted to the guns.”¹⁸⁰ Interview notes for the next day recount the following comments from Stobie:

Stated that he thought he was being left to fry. Said that he meant that they (Special Branch) had obviously fell out with him and he was going to have to take the rap for it. Stated that he had given them all the information he could and he never held back on anything. Remained adamant that he had not known that FINUCANE was the target before the shooting took place.¹⁸¹

3. Contradictions: The Browning and Stobie’s Knowledge of the Target

Although Stobie told his interrogators at Castlereagh that he never delivered the Browning pistol to Finucane’s killers, both Ed Moloney and a confidential source we interviewed in 1992 reported that Stobie did hand over the murder weapons on the day that Finucane was killed (and subsequently informed his handlers of this). Furthermore, Stobie told both Moloney and the officers at Castlereagh that he did not know that Finucane, specifically, was to be killed. In this respect, Stobie’s story is different from the account the Lawyers Committee received from a confidential source in 1992. This source told us that Stobie had learned Finucane was a target in late December 1988 or early January 1989 and had informed his handlers of this a week later. The Lawyers Committee is not in a position to resolve these contradictions in William Stobie’s story. They are essential questions for a public inquiry into Patrick Finucane’s murder.

D. The Failure to Charge Stobie and Other Named Individuals in 1990

What is clear at this point is that William Stobie could have been charged with a long list of offenses following his seven-day detention

¹⁸⁰ Notes of Officer 3, at 22.

¹⁸¹ *Id.*, at 26.

at Castlereagh from September 13-19, 1990. Even if the DPP had not charged Stobie directly with Finucane's murder, he could have been charged with conspiracy to murder, aiding and abetting murder, and various related firearms offenses.¹⁸² Indeed, at many points during the 1990 interrogation, Stobie made clear that he thought he would be charged in connection with Finucane's murder.¹⁸³

On January 16, 1991, however, the DPP decided not to charge Stobie for his role in the killing.¹⁸⁴ The DPP made this decision seven days before recommending that Stobie be found not guilty of the 1990 arms charges (and three months after Stobie had threatened to take the stand in that case and reveal that Special Branch had enough information to prevent the murder). As discussed in Chapter 5, however, the DPP would decide to charge Stobie with Finucane's murder almost nine years later.

Furthermore, the DPP did not charge any of the individuals Stobie named during the 1990 interrogation with Finucane's murder. Although these names had been redacted in the copies seen by the Lawyers Committee, it is clear Stobie told the CID officers the names of: (1) the person who asked him to provide the Heckler & Koch; (2) the person to whom he delivered the Heckler & Koch; (3) the person who subsequently told him to provide a Browning because the target was a top IRA man; (4) the person who had given him a Browning for safekeeping in January 1989; (5) the person who told him to collect the guns after the murder; (6) the person who stored the guns after the murder; and (7) the person to whom he delivered the Browning the next day.¹⁸⁵ The Lawyers Committee is not in a position to know whether the RUC followed up on this information or whether the DPP ever considered prosecuting the people that Stobie named. This is another matter for a public inquiry.

¹⁸² Joe Rice, interview by the Lawyers Committee for Human Rights, January 9, 2002.

¹⁸³ Notes of Officer 3, at 29 (Stobie saying that he believed he would be charged); Notes of Officer 1, at 24 (Stobie saying that the notes of one of the interviews were "bad enough to send me away for life 20 times over").

¹⁸⁴ See "Additional Submission to the Criminal Justice Review," *supra* note 165, at 5 (citing letter from P. Atchinson, Department of the DPP, to CAJ, August 18, 1999).

¹⁸⁵ Stobie also reveals the names of Adam Lambert's killers. See *supra* notes 156-159 and accompanying text.

E. Conclusion

Clearly, this section raises many questions that must be considered in a public inquiry. Chief among these is the question of what precisely Stobie knew before the murder and what he passed on to his handlers. Did these handlers know, for example, that named UDA members were actively planning a murder, but failed to place them under surveillance? A public inquiry must also consider the DPP's decision not to prosecute Stobie in connection with Finucane's murder in early 1991, as well as the DPP's belated decision not to present evidence against Stobie on the weapons charges. In addition, a public inquiry must consider Stobie's allegations that Special Branch set him up. Did Special Branch plant those weapons in Stobie's loft? And did Special Branch file down the firing pins without first informing Stobie, thereby putting him in danger?

These are only some of the questions concerning William Stobie that must be answered by a public inquiry. Unfortunately, Stobie himself cannot provide any additional information. As we discuss in Chapter 5, he was murdered on December 12, 2001, shortly after the prosecution against him in the Finucane case collapsed.

Chapter 4

MARTIN INGRAM'S ALLEGATIONS AND THE POSSIBLE INSTIGATION OF THE MURDER BY RUC OFFICERS

I. MARTIN INGRAM'S ALLEGATIONS

A. Introduction

In 2001-2002, the Lawyers Committee conducted a series of interviews with a former member of the British Army's Force Research Unit, who spoke to us under the pseudonym "Martin Ingram."¹⁸⁶ Over the last few years, Ingram has become well known in the press for his disclosure of previously secret information about the security forces. Because of his revelations about security force wrongdoing, he has been the target of considerable harassment and threats.¹⁸⁷

Martin Ingram worked for the FRU in Derry/Londonderry and Enniskillen throughout the 1980s and early 1990s. He worked first as an information collator and then as a recruiter and handler of agents. Although Ingram was not personally involved in the handling of Brian Nelson, he knew Nelson's handlers well. Some of Ingram's revelations are discussed above, including the allegation that the Army set the fire that destroyed documents in the first Stevens investigation. Ingram also provided us with information about the workings of the TCGs, as discussed in the introduction to Chapter 3.

In our interviews with Martin Ingram, he also revealed an entirely new layer of allegations about security force involvement in Finucane's murder. These allegations implicate both the FRU and RUC Special Branch. The Lawyers Committee is not in a position to verify the information provided by Martin Ingram, but we believe his allegations must be fully investigated in a public inquiry into Finucane's murder. Martin Ingram has also called for a public inquiry into the killing.

¹⁸⁶ Although we are not in a position to assess the *bona fides* of the individual we spoke to called Martin Ingram, we were told by multiple sources that we know to be credible that Ingram is indeed who he claims to be. One of these individuals has seen Ingram's Army discharge papers.

¹⁸⁷ See *infra* notes 203-212 and accompanying text.

B. Three Plans, the FRU, and Special Branch

According to Martin Ingram, there were three separate UDA/UFF plans to assassinate Patrick Finucane. He told the Lawyers Committee that all three plans were formulated within six months of one other. Using a method that Ingram said was common, the first attempt was foiled through the deliberate flooding of the area with troops.¹⁸⁸ When the gunmen saw the troops, they aborted their mission. The second attempt was also disrupted or prevented, though Ingram did not know how. The third attempt, on February 12, 1989, resulted in Patrick Finucane's death.¹⁸⁹

While Ingram did not have first-hand knowledge of these events, he told the Lawyers Committee that he has seen FRU contact forms in which the first two plans to murder Patrick Finucane were discussed. Ingram also claimed that the FRU knew early on that the UDA was targeting Finucane.¹⁹⁰ He told us that Brian Nelson had informed his FRU handlers that his UDA boss, Tommy "Tucker" Lyttle, had asked him to gather targeting information on Finucane. According to Ingram, this information from Nelson was passed up the FRU chain of command.

Martin Ingram did not know if Brian Nelson's FRU handlers had advance knowledge of the third and final attempt on Patrick Finucane's life. He explained that although Nelson's job was to gather information for killing teams, he would not necessarily have known the precise date and time of impending attacks. Ingram emphasized that questions about whether Nelson had advance knowledge of the third attack (and whether he passed on this information to his handlers) were critical matters for a public inquiry.

However, what the FRU definitely knew, according to Ingram, was that the UDA was actively targeting Finucane. Furthermore,

¹⁸⁸ Ingram explained that these troops would have been a mixture of "ordinary troops," the kind of troops that set up checkpoints and "no one knows precisely why they are there." He also said that FRU members would have been attached to these troops, but put in green uniform as opposed to civilian dress.

¹⁸⁹ Ingram told the Lawyers Committee that he believes that the justification that would be advanced for allowing the third attempt to proceed would be "source protection," the protection of agents working for the security forces.

¹⁹⁰ Ingram explained that the threat to Patrick Finucane was "ongoing." He said that Nelson's handlers received information about the threat to Finucane over a long period—certainly in the year before Finucane's death.

according to Ingram, the FRU knew that the UDA had made two attempts on his life. Despite this, the British Army never warned Finucane of the imminent dangers that he faced.

Martin Ingram also talked to the Lawyers Committee about Special Branch's involvement in Finucane's murder. According to Ingram, the FRU definitely passed documents to Special Branch revealing that Tucker Lyttle had asked Nelson to prepare targeting information on Patrick Finucane. Ingram said he had seen FRU documents that confirm this. Ingram also told us that he had seen FRU documents that demonstrate that the FRU shared its information about the first two attempts on Patrick Finucane's life with Special Branch.

These revelations clearly go against journalist John Ware's conclusions (described in the last chapter) that the FRU had purposefully withheld critical information from Special Branch about the impending murder.¹⁹¹ Ware's theory was based on information that RUC Special Branch officers had given statements to the first Stevens team claiming that the FRU information was worthless because it was so bland. Clearly, the statements from these Special Branch officers must be re-examined in light of Martin Ingram's allegations. And ultimately, the question about what information the FRU passed to Special Branch must be resolved by a public inquiry.

C. Special Branch and the Third Attempt

Martin Ingram told the Lawyers Committee that he believes Special Branch must have had advance knowledge of the third attempt on Patrick Finucane's life. He emphasized that this advance knowledge may not have risen to a high level within Special Branch, but he believes that officers within Special Branch made a conscious decision not to prevent the murder the third time around. Ingram explained that given Special Branch's own eyes and ears within the West Belfast UDA, they would have been in a much better position to interpret the information passed along by the FRU. He claims that Special Branch was in a much better position to know time and dates.

¹⁹¹ See "Army Set Up Ulster Murders," *supra* note 87.

1. William Stobie

Ingram emphasized that William Stobie was an important agent for Special Branch. He said that although the UDA's West Belfast Brigade would have had several quartermasters at any one time, Stobie was a "primary quartermaster." He was charged with supplying weapons for UDA assassination teams, which meant that he was in a position of great trust; members of the assassination teams would want to be absolutely sure of their weapons before they were sent out on missions. According to Ingram, paramilitary quartermasters like Stobie are very difficult to recruit as security force agents. For this reason, Ingram believes that Stobie was not a quartermaster when initially recruited by Special Branch, but was later encouraged by his handlers to take up that position.

According to Martin Ingram, the quartermaster and the intelligence officer are ideal agents from the perspective of the security forces. The intelligence officer lets the security forces know who is being targeted, and the quartermaster allows them to monitor the movement of weapons. Ingram told us that the quartermaster is extremely important, because the security forces can electronically tag the weapons under his or her control. Ingram said that once the weapons are tagged, they cannot be moved without the knowledge of the security forces.

In interviews with the Lawyers Committee, Ingram claimed that this tagging of weapons was an invaluable tool in the prevention of paramilitary murders. He told us that if Stobie had been an Army agent, the weapons under his control would have been immediately tagged and emphasized that he could not contemplate a scenario in which Special Branch would not have done the same. Ingram said that it would have been "utterly unprofessional and unthinkable" for Special Branch not to have done so; the whole point of recruiting or infiltrating a quartermaster is the ability to monitor the weapons under his control.¹⁹² He said that tagging the weapons means that the security forces can tell when an operation is beginning and monitor it as it unfolds. Ingram told us that if Special Branch had failed to tag Stobie's weapons, that failure must be thoroughly investigated.

¹⁹² Martin Ingram also told us that the security forces can modify the weapons so that they are less lethal. Ingram said that this is what happened in a UDA attempt to assassinate Gerry Adams. The bullets were not lethal because the charge inside

Whether or not Special Branch tagged Stobie's weapons is ultimately a matter for a public inquiry. This issue must be considered in light of other questions about whether Stobie actually supplied the Browning and the other weapon used to kill Finucane. It must also be considered in light of Martin Ingram's allegations that there were three attempts to murder Finucane. How did the security forces know enough to stop the first two attempts, but could not stop the third?

And even if Stobie did not supply the weapons used in the murder, he consistently maintained that he had given Special Branch enough information to prevent the murder and apprehend the killers. He claimed that he had warned Special Branch in advance that the UDA intended to kill a top IRA man and that Special Branch knew the names of the UDA members involved in the operation. What even William Stobie did not know at the time, however, was that the Special Branch had another window into the West Belfast UDA. According to Martin Ingram, Tommy "Tucker" Lyttle was also working for Special Branch.

2. Tommy "Tucker" Lyttle

Ingram informed us that Tucker Lyttle was an informer for Special Branch throughout most of the 1980s. As previously mentioned, Lyttle was the UDA Brigadier in West Belfast at the time of Finucane's murder.¹⁹³ As such, he was in charge of both Brian Nelson and William Stobie. Lyttle was removed from this position in a hard-line coup sometime in 1989, the same year that Finucane was murdered.¹⁹⁴

Late in 1989, Lyttle also faced charges in connection with the first Stevens investigation.¹⁹⁵ He faced 12 charges in all. Most of these charges related to possessing and recording documents and information likely to be of use to terrorists, but he was also charged with intimidating potential witnesses in a racketeering trial.¹⁹⁶ He

the weapon was reduced. Ingram said that this was done in response to information provided by Brian Nelson.

¹⁹³ Lyttle was one of the UDA's four Belfast Brigadiers. The UDA divided control of Belfast into four areas—North, South, East, and West—for the purposes of both sectarian and (ordinary) criminal activity.

¹⁹⁴ See Henry McDonald, "Race Crimes Ignored as Met Exploited Combat-18's Links with Ulster Loyalists," *The Observer*, April 5, 1998.

¹⁹⁵ See John Lyttle, "In the Name of My Father," *The Independent*, March 30, 1996.

¹⁹⁶ See *id.* (noting that Lyttle reportedly wrote a letter to witnesses, asking "Do

stood trial in June 1991 and was convicted of possessing documents likely to be of use to terrorists. The Lawyers Committee understands that these were primarily leaked security force files. Tucker Lyttle was sentenced to seven years in prison. In October 1995, shortly after he was released from prison, Lyttle died of a heart attack.

Although many journalists have reported that Lyttle was a Special Branch agent,¹⁹⁷ the Lawyers Committee has never seen any concrete confirmation of this. Ingram told us that he knew “with cast iron certainty” that Lyttle was working for Special Branch. He said, however, that Lyttle was not a professional agent in the same sense that William Stobie and Brian Nelson were agents for Special Branch and for the FRU respectively. Lyttle would not necessarily have received formal training from Special Branch on how to avoid detection and other matters. Instead, Lyttle was an informer; he was a paid police source. In addition to receiving money, Lyttle passed information to Special Branch in exchange for being allowed to carry out criminal activities.

The Lawyers Committee believes that the scope and nature of Lyttle’s connections with Special Branch must be fully explored by a public inquiry. And clearly, if Lyttle was a regular informer for Special Branch throughout “most of the 1980s,” the implications extend well beyond the Patrick Finucane case (and beyond the scope of this report). The implications may also extend beyond Special Branch. In 1995, Tucker Lyttle’s son, then a columnist for the *Independent*, wrote that after his father was convicted of possessing “classified security force intelligence files,” he had remarked with a laugh, “Fucking MI5—they set it up, got cornered, and ran.”¹⁹⁸

In relation to Patrick Finucane’s murder, Martin Ingram told us that he did not know whether Lyttle had talked to his Special Branch

you want to spend the rest of your lives looking over your shoulders?”). *See also Justice Delayed*, *supra* note 67, at 25.

¹⁹⁷ *See, e.g.*, McDonald, *supra* note 194 (reporting that the RUC lost its prize loyalist informant when Lyttle was replaced as UDA commander during a 1989 coup); “Finucane: More Questions for Undercover Unit,” BBC News, June 15, 2001 (reporting that loyalists believe that Tommy Lyttle was working for the police); *Insight: Justice on Trial*, *supra* note 118, at 3 (reporting that Lyttle was an RUC Special Branch agent while he served as the leader of the “most active” UDA unit); Ware, *supra* note 46, at 19 (noting that “without any question Lyttle was himself a registered police agent”).

¹⁹⁸ Lyttle, *supra* note 195.

contacts about the planned assassination. He emphasized that this was another matter for a public inquiry to resolve. According to Ingram, however, both the FRU and Special Branch knew that Lyttle had instructed his intelligence officer, Brian Nelson, to compile targeting information on Finucane. Even if Lyttle had not approached his Special Branch contacts about this directly, it seems that they could have approached him. As explained in the next section, however, it seems that certain RUC officers may have taken on a much more active role.

II. THE POSSIBLE INSTIGATION OF THE MURDER BY RUC OFFICERS

In 1992, a source found reliable by the Lawyers Committee informed us that shortly before the murder, police officers had urged UDA members to target Patrick Finucane. This source, who maintained loyalist contacts, told us that about three weeks before the murder, two or three mid-level RUC officers intruded upon the questioning of three separate UDA men detained at Castlereagh Detention Centre. The UDA detainees were members of a squad of approximately a dozen assassins known as the “military men.” These detainees operated in the same area as FRU agent Brian Nelson.

The officers allegedly asked the detectives interrogating each detainee, “Did you tell them about the treble?” By “treble” they meant Finucane and fellow defense solicitors P.J. McGrory and Oliver Kelly.¹⁹⁹ At this point, the officers and the detectives are said to have told the UDA men to forget about indiscriminate sectarian killings and concentrate on the three solicitors as the “brains behind the IRA.” A journalist emphasized to the Lawyers Committee that this account was based on extremely reliable authority. According to another journalist, the suggestion of targeting Finucane was made by the RUC at Castlereagh because the “military men” were often detained there and because the RUC could ensure no records were made of what went on.

The Lawyers Committee first revealed these allegations in its 1993 report, *Human Rights and Legal Defense in Northern Ireland*. In the years since, BBC journalist John Ware has published informa-

¹⁹⁹ See *infra* note 258.

tion detailing a similar scenario.²⁰⁰ Ware had interviewed Tucker Lyttle shortly before his death in October 1995. In this interview, Lyttle “confirmed that the original idea to murder Pat Finucane [had come] from two RUC detectives.”²⁰¹ In 1998, Ware published the following account of his conversation with Lyttle about what precisely had happened:

While a prominent UDA gunman was being held in Castlereagh, an officer entered the interrogation room and said to his colleague: “Have you put it to him yet?” They then suggested that the UDA shoot Finucane. Lyttle said he was so astonished at this suggestion that he informed a regular contact in the RUC Special Branch: “I told him: What the hell is going on in Castlereagh? Why is Finucane being pushed?”

The officer said that it would be a “bad blow for the Provos to have Finucane removed.” Did that amount to approval that he should be shot? “Put it this way,” said Lyttle, “He didn’t discourage the idea that he should be shot.”²⁰²

Clearly, a public inquiry must fully explore these allegations. They must be investigated alongside claims that Tucker Lyttle was working for Special Branch. The approval (tacit or otherwise) given to Lyttle by his “Special Branch contact” would have a completely different significance if it was given by a handler to a regular, paid informer than if it was given by an officer with no official relationship to a like-minded but unofficial contact within the UDA. It is imperative that the full extent of the RUC’s involvement in the murder be explored.

III. OFFICIAL ATTEMPTS TO SILENCE INGRAM AND CENSOR THE PRESS

In the past, the U.K. government has been utterly unwilling to confront the questions raised by the Finucane case—and in particular the allegations made by Martin Ingram. Indeed, the government has taken extraordinary steps to silence this whistle-blower, as well as

²⁰⁰ “Time to Come Clean,” *supra* note 103, at 17.

²⁰¹ *Id.*

²⁰² *Id.*

anyone reporting on his allegations or on the activities of the FRU more generally.

On December 17, 1999, a person alleged to be Martin Ingram was arrested in Wales by members of the Metropolitan Police acting at the request of the U.K. Ministry of Defence.²⁰³ After being questioned about possible breaches of the Official Secrets Act, he was released on bail on December 18, 1999.²⁰⁴ The charges against this person were not dropped until November 30, 2000. Furthermore, in March 2000, a High Court in London ordered a person alleged to be Martin Ingram to relinquish ownership of his memoirs and deliver them to the MoD.²⁰⁵

After reporting on revelations made by Ingram, the *Sunday Times* faced an injunction action in the London High Court filed by the MoD on November 25, 1999. The High Court granted the injunction, prohibiting the *Sunday Times* from reporting any more allegations based on information from Martin Ingram. The Secretary of State argued that Ingram owed “a duty of confidence/secretcy to the crown.”²⁰⁶ The initial injunction was so broad as to prohibit the paper from reporting on the injunction or repeating the information it had already reported. The injunction was relaxed on these points on November 26, 1999, and two days later, the paper called for a public inquiry into the case. The paper believed it was reporting on issues of public interest by exposing criminal acts. The government, on the other hand, threatened to arrest Liam Clarke, the *Sunday Times* journalist reporting on Ingram’s allegations, under the Official Secrets Act.²⁰⁷

Ulster Television (UTV) also fought—and lost—a battle over an injunction for its reporting on the FRU. On April 19, 2001, UTV informed the D Notice Committee²⁰⁸ that it planned to broadcast an

²⁰³ See *Justice Delayed*, *supra* note 67, para. 2.5.

²⁰⁴ *Id.*

²⁰⁵ See Ed Moloney, “British Government Seeking to Prevent Publication of Agent’s Memoirs,” *The Sunday Tribune*, April 2, 2000.

²⁰⁶ See *Justice Delayed*, *supra* note 67, at para. 2.4.

²⁰⁷ See Vincent Kearney, “Police Question Sunday Times Journalist,” *The Sunday Times*, July 23, 2000; “The Army’s Skeletons,” *The Sunday Times*, September 10, 2000.

²⁰⁸ The D Notice Committee is a voluntary system of self-regulation by the

Insight program about the FRU called “Following Orders.” The D Committee consulted the MoD about the program. On April 24, a few hours before the program was scheduled to air, the MoD applied for an injunction against UTV in an *ex parte* hearing at the Northern Ireland High Court. The MoD obtained an interim order preventing the airing of the program and the broadcast of “any information which identifies or which might lead to the identification of any former member or any former informant or any former agent of the Force Research Unit.” Under the terms of the injunction, UTV is required to notify the MoD 24 hours in advance of airing any program that contains information about the FRU, and the station must allow the Ministry to view any program in advance of broadcast.

The interim order was later upheld at a hearing on May 8, 2001. The government argued that revelations by former FRU agents might put the lives of other agents at risk. Although the Lawyers Committee has not seen the UTV program, we certainly acknowledge that this is an important issue for consideration. The concern of human rights groups, however, has been that the U.K. government has used such arguments categorically in an attempt to block damaging revelations about the FRU.²⁰⁹

IV. INGRAM AND THE STEVENS III TEAM

Martin Ingram has given a lengthy statement to the Stevens III team about FRU and Special Branch involvement in Patrick Finucane’s murder. He also helped the Stevens III team locate thousands of secret FRU-originated documents. These documents included computer-generated receipts, which were created each time an Army document was passed to Special Branch.²¹⁰ Ingram told us he had been surprised and disappointed to learn that the previous two Stevens investigations had not uncovered these documents. He

media. The D Committee consists of representatives from the media and from the armed services. Its stated purpose is to aid the media in identifying subjects that would endanger the national defense if discussed publicly.

²⁰⁹ See, e.g., Committee on the Administration of Justice, “Submission to the United Nations Human Rights Committee” (June 2001), at 20-21.

²¹⁰ Ingram’s allegations concerning these Army documents are also discussed in Liam Clarke, “Secret Army Files Handed Over to Stevens Inquiry,” *The Sunday Times*, August 13, 2000.

said that the past Stevens teams had neglected to request the classified registry documents that would have identified which documents they were entitled to as part of their investigations.

While Martin Ingram was assisting the Stevens III team, a former FRU member began harassing him by e-mailing his personal details to U.K. newspapers. This former FRU member sent e-mails to newspapers under the signature "Friends of the FRU"; the e-mails claimed to reveal Ingram's real name and address.²¹¹ The Stevens III team arrested a former FRU member in connection with these e-mails and charged him with intimidating a witness. The charges were later dropped, however, on the recommendation of the Crown Prosecution Service in London.²¹²

Martin Ingram has since withdrawn his cooperation from the Stevens III investigation. In interviews with the Lawyers Committee, he explained that this was partly because he believed that the Stevens III team had not been doing enough to protect him. He told us that the primary reason behind his withdrawal, however, was a decision of the Stevens III team to give early assurances to Brian Nelson. Ingram told us that when members of the Stevens III team re-interviewed Nelson, they had informed him that he would not be charged in connection with their investigation. Ingram told us that in his opinion, that decision was made much too prematurely. He also reported that he had explicitly informed Sir John Stevens that he would no longer cooperate with the investigation for that reason.

V. CONCLUSION

Martin Ingram's allegations raise many unsettling issues that must be answered by a public inquiry. Indeed, we can only begin to suggest such issues in this report, as each question leads to a stream of others. At base, however, there is one fundamental question that must be answered. If Brian Nelson, William Stobie, and Tucker Lyttle were all working for the security forces, how was the UDA's West Belfast Brigade anything other than an extension of the U.K. government? This question clearly has implications that extend far beyond the Finucane case.

²¹¹ See Ed Moloney, "Witness Withdrawal Raises Questions About Stevens Inquiry," *The Sunday Tribune*, December 24, 2000.

²¹² *Id.*

Chapter 5

THE PROSECUTION AND MURDER OF WILLIAM STOBIE

I. THE PROSECUTION OF WILLIAM STOBIE

A. Stobie's 1999 Arrest and Charging

A few months after Sir John Stevens began his third investigation, William Stobie's role as a government agent was publicly unmasked. Stobie was arrested on June 22, 1999, and charged with the murder of Patrick Finucane the next day. At his arraignment, Stobie's lawyer suggested that the RUC and the Director of Public Prosecutions had possessed the information on which the charge was based for some time. Stobie's response to the charge was read out in Belfast Magistrates Court:

Not guilty of the charge that you have put to me tonight. At the time I was a police informer for Special Branch. On the night of the death of Patrick Finucane I informed Special Branch on two occasions by telephone of a person who was to be shot. I did not know at the time [the identity] of the person who was to be shot.

At Stobie's bail hearing, it was revealed that the basis for his arrest was a statement made on June 3, 1999, by Neil Mulholland, a former reporter for the *Sunday Life*, to the Stevens III team. In that statement, Mulholland revealed that in 1990, Stobie had told him—just as he had told Ed Moloney—the details of his involvement in the Finucane murder in case he went to prison and died there. It also emerged that Mulholland had been interviewed in early September 1990 by the RUC, but had refused to sign a statement or hand over the notes of his interviews of Stobie.

The government has maintained there was insufficient evidence against Stobie in 1990 to warrant prosecution, principally because Mulholland refused to put his verbal account into written form. The Lawyers Committee is convinced that this contention is without merit. The government did not need Mulholland's statement to prosecute Stobie—in 1990 or in 1999. As discussed in Chapter 3, William Stobie had made significant admissions about his role in the Finucane murder during his detention at Castlereagh in September 1990. That

Stobie had made these admissions was not revealed publicly until nine years later, however.

The existence of Stobie's 1990 confessions emerged during the trial of journalist Ed Moloney in late August 1999. The story of the DPP's prosecution of Moloney is discussed in detail in the next section. At the beginning of Moloney's case, the prosecution told both the judge and Moloney's lawyers that Stobie had made no admissions about Finucane's murder when questioned by the RUC at Castlereagh in 1990.²¹³ Later in the trial, Detective Inspector Rick Turner, a member of the Stevens III team, acknowledged on cross-examination that Stobie had indeed made admissions about his role in Finucane's murder during the 1990 interrogation.²¹⁴ When asked why Stobie had not been prosecuted as a result of these admissions, Turner replied that it was not for him to "judge" or to "pass comment."²¹⁵

The plain fact is that despite Mulholland's allegations to the police in 1990 and Stobie's Castlereagh confessions, the DPP decided not to prosecute Stobie in connection with Finucane's murder until 1999.²¹⁶ The DPP has not provided a satisfactory explanation for this decision.

B. The Related Prosecution of Journalist Ed Moloney

Shortly after Ed Moloney's article detailing Stobie's role in the Finucane murder was published in June 1999, he was asked by police officers working on the Stevens III investigation to make a statement and surrender the notes of his 1990 interview with Stobie. When Moloney made clear that he would not surrender the notes, police officers returned with a court order.²¹⁷ Moloney refused to comply with the order and applied to have it quashed. Arguing that the government already had sufficient evidence against Stobie without his notes, Moloney sought discovery of the RUC's interview records

²¹³ See Steven McCaffery, "New Finucane Cover-Up Claims in Moloney Case," *The Irish News*, September 24, 1999.

²¹⁴ See *id.*; see also Ed Moloney, "How the Edifice of RUC Lies Crumbled," *The Sunday Tribune*, October 31, 1999.

²¹⁵ See Suzanne Breen, "Journalist Challenges Order on Interview Notes," *The Irish Times*, September 24, 1999.

²¹⁶ At Stobie's 1999 bail hearing the prosecution stated that the decision not to prosecute Stobie in 1990 in connection with the murder was made at "the highest level."

²¹⁷ The court order was obtained after the Stevens team applied to Belfast

from the 1990 interrogation of Stobie at Castlereagh. Moloney had interviewed Stobie for the first time shortly after his release from Castlereagh and was aware of the interrogation.

Moloney's case came to trial on August 23, 1999. Despite the fact that Detective Inspector Turner subsequently acknowledged the existence of Stobie's 1990 admissions on the stand, Moloney was never allowed access to those records.²¹⁸ On September 2, 1999, Judge Harte ruled that Moloney must comply with the court order to surrender his own notes. Judge Harte found that Moloney's agreement with Stobie not to divulge the contents of the 1990 interview unless and until Stobie gave permission was not justified, because Stobie had forfeited his confidentiality rights by agreeing to have his name and information about his crimes published. Furthermore, the judge found that the public interest in the freedom of the press was outweighed by the value of Moloney's notes. Moloney was given seven days to surrender the documents. Moloney appealed this decision and renewed his application for discovery of the interview records from Stobie's 1990 interrogation. On October 27, 1999, the order against Moloney was quashed by the High Court.

The Lawyers Committee believes that given Stobie's Castlereagh admissions, the Stevens III team never needed Moloney's notes. The prosecution of a journalist in circumstances like these amounts to an interference with the freedom of the press and could have a chilling effect on journalists working in Northern Ireland.

C. Eventual Collapse of the Government's Case Against Stobie

In August 2000, the charge against William Stobie in the Finucane case was commuted from murder to aiding and abetting.²¹⁹ Preparations for trial began. The prosecution's main witness was to be Neil Mulholland. Then, on March 31, 2001, it emerged that Neil Mulholland was refusing to testify due to his failing health. He was

County Court for an order under paragraph 3 of Schedule 7 of the Prevention of Terrorism (Temporary Provisions) Act 1989. Following an *ex parte* hearing, an order was granted compelling Moloney to hand over his notes.

²¹⁸ Stobie's lawyers did eventually get the notes, however. At Stobie's bail hearing on October 5, 1999, Stobie's attorneys revealed that there were 122 typed pages of interview notes.

²¹⁹ In May 2000, the DPP announced that it had also decided to charge

suffering from manic-depression.

On April 24, 2001, a hearing was called in Stobie's case to consider Neil Mulholland's potential withdrawal as a witness. Medical reports were requested and the case was adjourned until May 18th. At the May hearing, the prosecution announced that after reviewing the medical evidence it had decided to apply for an order compelling Neil Mulholland to appear as a witness. This procedure would require an application and a hearing. The Lawyers Committee learned from a credible source that an *ex parte* hearing was held on June 29, 2001, and that all of the parties in the matter—including Neil Mulholland and his physician—had obtained legal counsel.

The Lawyers Committee believes that Neil Mulholland was simply not well. The Director of Public Prosecutions should not have attempted to compel his testimony in these circumstances, particularly considering that his testimony was not necessary. William Stobie had made significant admissions about his role in the Finucane murder and had given no indication that he would disavow those admissions on the stand.

On November 26, 2001, Mulholland's counsel applied to Lord Chief Justice Sir Robert Carswell, who was presiding over the case, to excuse him from giving evidence. The Lord Chief Justice replied that the decision was the DPP's to make. At that point, the DPP finally acknowledged that given his poor health, Mulholland was incapable of testifying in the case. Rather than proceeding on the basis of Stobie's confession, however, the DPP then informed the court that he would not be offering any evidence at all against Stobie. The judge, accordingly, entered a formal verdict of not guilty in Stobie's favor.²²⁰

William Stobie with the November 9, 1987, murder of Adam Lambert. The 19-year-old Protestant was mistaken for a Catholic and murdered by the UDA at the building site where he worked in North Belfast. Stobie told Moloney that he had provided the weapons for the murder as well as the getaway van. Stobie also told Moloney that the RUC arrested him in connection with Lambert's murder in 1987 and—although they could not prove the charges—used the opportunity to begin recruiting him as an informer. During the September 1990 Castlereagh interrogation, however, Stobie denied that he had supplied the weapons and insisted that he had given the killers a lift inadvertently. The Lawyers Committee is not in a position to resolve these contradictions. The DPP's decision to charge Stobie in 2000 with Lambert's murder raises many questions, however, about the efficacy of the RUC's original 1987 investigation—and whether the RUC effectively sacrificed a prosecution in order to recruit an informer.

The DPP's handling of the two and a half year prosecution of William Stobie supports claims that the government was simply using the prosecution as a means of staving off calls for a public inquiry into Finucane's murder. First, the DPP should have charged Stobie in 1990, not 1999. Second, his office greatly delayed proceedings by pursuing a witness who was too sick to testify and unnecessary for its case. Third, the DPP completely abandoned the prosecution after finally acknowledging that this witness could not be forced to testify, despite the fact that Stobie's own admissions in Castlereagh could have been used against him.

II. STOBIE'S CALL FOR A PUBLIC INQUIRY AND APPEARANCE ON UTV

The day after the case against him collapsed, William Stobie called for a public inquiry into the murder of Patrick Finucane.²²¹ Stobie reemphasized that he had informed his Special Branch handlers that there was to be a murder and had let them know when the weapons were to be moved.²²² He said that he had done everything by the book, but was being used as a scapegoat. Concerning the charges against him, he stated:

Neil Mulholland and myself were pawns in a much bigger and deadlier game. They knew I was innocent and that Neil Mulholland was in no fit state to give evidence but they pushed on regardless.

This was never about getting to the real truth about these killings. It was a PR exercise to make it look as if something was being done when in actual fact nothing was being done.

This has cost the taxpayer millions of pounds and they knew it was a smokescreen all along. This was all about avoiding having to set up an independent inquiry; it was as simple and as cynical as that. . . I back that call for an inquiry and

²²⁰ See "Finucane Murder Case Collapses," *The Guardian*, November 26, 2001. The charge against Stobie for the murder of Adam Lambert collapsed at the same time. The court also entered a not guilty verdict on this charge. *Id.*

²²¹ See Barry McCaffrey, "Stobie Backs Inquiry," *The Irish News*, November 27, 2001. Stobie also called for an inquiry into the murder of Adam Lambert.

²²² *Id.*

with this case now at an end I can see no reason why that cannot happen immediately.²²³

On December 4, 2001, Ulster Television broadcast a documentary on the Finucane case called “Justice on Trial.”²²⁴ William Stobie appeared in the documentary. Although Stobie did not repeat his call for a public inquiry on television, he did talk about his role as a double agent at the time of Patrick Finucane’s murder. He described his efforts to warn Special Branch of the UDA’s plans to hit a high level target. He also recounted Special Branch’s failure to act on that information and its subsequent failure to arrest Finucane’s murderers.

III. THE MURDER OF WILLIAM STOBIE

One week later, William Stobie was dead. He was ambushed outside his North Belfast home at 6 a.m. on December 12, 2001, and shot several times at close range. The Red Hand Defenders claimed responsibility for the murder, asserting that the former UDA quartermaster was killed for “crimes against the loyalist community.” The Red Hand Defenders is a cover name used by the UDA.

This was not the first time that the UDA had targeted William Stobie. In 1994, Stobie was shot and badly wounded. Johnny Adair, the former commander of the UDA’s “C” Company, reportedly led the team that shot him.²²⁵ According to journalist Ed Moloney, Adair had since given Stobie his word that no harm would come to him as long as he did not publicly reveal the names of the UDA gunmen who murdered Patrick Finucane.²²⁶ Although Stobie had not gone public with those names, there is little doubt that the UDA was involved in his death. Indeed, John White, the longtime chair of the UDA’s recently disbanded political wing, had this to say about Stobie’s murder:

Mr. Stobie knew death was the penalty for becoming an informer when he joined the UDA. Going on television and making a broadcast about his involvement would have

²²³ *Id.*

²²⁴ See *Insight: Justice on Trial*, *supra* note 118.

²²⁵ See, e.g., Ed Moloney, “Adair Gave Personal Guarantee to Stobie,” *The Sunday Tribune*, December 16, 2001 (reporting that Adair shot Stobie).

²²⁶ *Id.*

created a lot of anger. He also supported an inquiry into the killing of Pat Finucane. Most people within loyalism see this as republicanism taking advantage of the death of Pat Finucane to undermine the credibility of the RUC and Northern Ireland as an entity in itself.²²⁷

Given that the UDA had long known of Stobie's role as an informer, it seems that the immediate cause of Stobie's murder was his call for a public inquiry in the Finucane case and his willingness to speak publicly about his own role in the murder. The UDA feared not only that the names of Finucane's UDA killers would become public but that a public inquiry would damage the RUC and thereby weaken the constitutional structure of Northern Ireland.

Indeed, it is not difficult to see that the RUC had much to gain from Stobie's murder. Stobie would have been a critical witness in any public inquiry examining Special Branch collusion in the Finucane murder. Now a public inquiry will also have to consider whether the UDA acted alone in targeting William Stobie. A future public inquiry will also have to examine the failure of the U.K. government to protect Stobie.

IV. THE U.K. GOVERNMENT'S FAILURE TO PROTECT STOBIE

The Lawyers Committee interviewed William Stobie on November 18, 1999. At that time, he had been charged with Finucane's murder but was out on bail. He told us that on October 29, 1999, his car had been burned outside his home and that he was afraid for his safety. Following this meeting, Joe Rice, Stobie's solicitor, immediately sought protection for his client under the Key Persons Protection Scheme (KPPS), an official protection scheme for people who are under threat.²²⁸ We understand that Rice submitted applications for Stobie's inclusion in the KPPS to the Northern Ireland Office (NIO), then RUC Chief Constable Sir Ronnie

²²⁷ See Suzanne Breen, "Murder an Attempt to End 'Search for Truth,'" *The Irish Times*, December 13, 2001.

²²⁸ Under the KPPS, people under threat are given a wide range of assistance, including physical security measures for their homes. The level of assistance provided depends on the assessment of the threat.

Flanagan, and the subdivisional commander at the Tennent Street RUC Station, Stobie's local police station. Rice also made a direct appeal at the KPPS offices.

On November 18, 1999, the Lawyers Committee raised the issue of Stobie's personal safety and his need for official protection in a meeting with Adam Ingram, then Minister of State at the NIO. We echoed these concerns in a November 19, 1999, meeting with Chief Constable Flanagan. On December 23, 1999, we wrote to Lord Williams of Mostyn, QC, then U.K. Attorney General, reiterating our concerns. In this letter, we wrote:

Given Mr. Stobie's concerns and the threat against his life, the LCHR requests that your office take all appropriate measures to ensure Mr. Stobie's safety, and to work with the Northern Ireland Secretary of State and the RUC to guarantee same. Mr. Stobie's trial will not take place until sometime next year, and his precarious situation necessitates your full and immediate attention.²²⁹

We received a reply from the Attorney General's Chambers, dated January 4, 2000, in which Lord Williams assured us that he had forwarded the concerns we expressed to "the appropriate authority."

The government did not accept William Stobie into the KPPS, however. Apparently, the government had refused to accept Stobie into the scheme, saying only that if Stobie was concerned about his safety he could return to prison.²³⁰ Before being released on bail, Stobie had been held in a protected, segregated unit in prison. His solicitor told the government that Stobie did not want to leave his family and return to this segregated unit. Although he was afraid for his safety, he did not know if there was an immediate threat to his life. Given that the government had publicly unveiled his identity (thereby putting him at risk), Stobie believed that it should provide him with protection. And as Stobie's solicitor later stressed to the Lawyers Committee, Stobie was seeking only moderate protective measures. He lived in a small apartment, and it would not have cost the government very much to put the necessary protective measures

²²⁹ Letter from Lawyers Committee to Lord Williams of Mostyn, QC, December 23, 1999.

²³⁰ Joe Rice, interview by the Lawyers Committee for Human Rights, May 17, 2001; Rice, interview, *supra* note 182.

in place.²³¹ The hope was also that the very existence of such measures would help to deter any potential attacks.

On March 13, 2000, officers from the RUC's Tennent Street Station informed Stobie that his life was under threat from loyalist paramilitaries. Upon learning of this, the Lawyers Committee wrote to then Secretary of State Peter Mandelson and to Attorney General Lord Williams reiterating our concerns about Stobie's personal safety and urging the government once again to provide him with protection. We recounted our earlier efforts in this regard, as well as Rice's efforts to secure official protection for his client under the KPPS. We copied each of these letters to Adam Ingram, Chief Constable Flanagan, and Brendan Downey, the Director of the KPPS.

The Attorney General replied to our letter on April 4, 2000. He emphasized that the KPPS was the responsibility of the Secretary of State for Northern Ireland. He stated that there was nothing he could do to assist us, as we had already copied the letter we sent him to Adam Ingram.

On April 18, 2000, John McKervill, Private Secretary to Peter Mandelson, responded to our letter on the Secretary of State's behalf. In this letter, McKervill informed us that the Secretary of State had asked Chief Constable Flanagan to prepare a report on the nature of the threat against Stobie in order to assess whether Stobie was eligible for the KPPS. McKervill also promised that once ministers had studied the relevant information, including the Chief Constable's report, he would write to us again. Although we never heard back from McKervill, the Lawyers Committee understands that the government never accepted William Stobie into the KPPS.

On November 28, 2001, two days after the case against Stobie collapsed, his solicitor again wrote to the NIO, requesting that Stobie's KPPS application be reconsidered.²³² Several days later, on December 2, 2001, Stobie received another visit from police officers from the Tennent Street Station warning him of a threat against his life. On December 3, 2001, Stobie's solicitor wrote once again to the NIO, requesting urgent action in light of the information revealed by

²³¹ Rice, interview, *supra* note 182.

²³² *Id.* This entire paragraph is based on the Lawyers Committee's January 9, 2002 interview of Joe Rice.

the police. By December 12, 2001, the day that Stobie was murdered, the NIO had not responded to or even acknowledged these two letters. Stobie's solicitor has informed the Lawyers Committee that he issued proceedings on behalf of Stobie's next of kin against the NIO and Chief Constable Flanagan for their failure to protect Stobie.²³³

The Lawyers Committee is deeply concerned by the U.K. government's failure to protect William Stobie. The Special Branch of the RUC set out to recruit Stobie as an agent. The government clearly knew that Stobie was at serious risk from the UDA. He was at risk both because he had been a Special Branch agent, and because he was a potential witness for the government in any future prosecutions of UDA members involved in the killing. Despite this, the government did not take adequate steps to protect him. That the government repeatedly failed to protect Stobie is all the more troubling given his revelations about Special Branch involvement in the murder of Patrick Finucane.

If the U.K. government was indeed committed to establishing the truth in the Finucane case, it seems clear it would have taken all necessary steps to protect this key whistleblower. Instead, the government never even admitted William Stobie into the Key Persons Protection Scheme. In a letter to the Lawyers Committee dated April 18, 2000, the NIO explained that persons eligible for the KPPS are "those whose death or injury by terrorist attack could damage or seriously undermine the democratic framework of Government in Northern Ireland, the effective administration of Government and/or the criminal justice system, or the maintenance of law and order." The Lawyers Committee believes that Stobie fell squarely within these requirements from the first time that he applied for the scheme. Indeed, the fact that his death now seems a bit too convenient for the government is all the more reason for him to have been included in the scheme.

²³³ Joe Rice also informed the Lawyers Committee that two days after Stobie's death, he met with Hugh Orde, the officer who was in charge of the day to day running of the Stevens investigation. Orde informed Rice at that meeting that after Stobie's trial collapsed on November 26, 2001, he had personally ordered an assessment of the risk against Stobie—believing that "a fresh risk assessment" was merited. Rice told the Lawyers Committee that this risk assessment would have been carried

Chapter 6

RUC SPECIAL BRANCH AND THE STORY OF JOHNSTON BROWN

I. INTRODUCTION

In late 2000, news surfaced that RUC Special Branch had blocked attempts by fellow RUC officers to prosecute one of the two gunmen in the Finucane murder.²³⁴ These allegations were made by Johnston Brown, an officer with the RUC's Criminal Investigations Division (CID). Brown subsequently retired from the RUC in April 2001 because of continuing threats and harassment from Special Branch officers. Before his retirement, Brown had served with the RUC for 28 years. The Lawyers Committee conducted a series of interviews with Brown in early 2002, and we recount his story below. As a preliminary matter, however, we discuss a confidential government report that came to light around the same time. This report deepened concerns about the role and powers of Special Branch.

II. THE WALKER REPORT

In May 2001, Ulster Television (UTV) revealed the existence of a confidential memorandum governing the exchange of intelligence between RUC Special Branch and the CID.²³⁵ This report, which took effect on February 23, 1981, is known as the Walker report.²³⁶ It was authored by Patrick Walker, who was allegedly second in command of MI5 in Northern Ireland in the early 1980s.²³⁷

The Walker report gives Special Branch primacy over the CID and emphasizes above all the recruitment and sheltering of Special Branch and Army agents. The report instructs CID officers that “all proposals to effect planned arrests must be cleared with Regional

out by Stobie's local police officers at the Tennent Street Station. Rice does not know if this risk assessment was ever completed. Rice, interview, *supra* note 182.

²³⁴ See Liam Clarke, “RUC Held Back Finucane Murder Confession to Protect Informants,” *The Sunday Times*, October 15, 2000.

²³⁵ See *Insight: Policing the Police*, *supra* note 6.

²³⁶ The Walker report is available on-line at www.serve.com/pfc/policing/walker1.html (accessed January 30, 2003).

²³⁷ See Norton-Taylor and Hopkins, *supra* note 6.

Special Branch to ensure that no agents of either the RUC or Army are involved.” The report also makes clear that CID officers must at all times “be alert to the possibility of recruiting as agents the individuals whom they are interviewing.” If such an opportunity arises, the CID officer must “ensure that information provided by the person so recruited is handled in such a way that his value as an agent is not put at risk at an early stage.” Furthermore, the report instructs CID officers that if they intend to charge someone whom they believe might have “intelligence of value,” they should arrange it so that a “reasonable period” will elapse between charging and court appearance so that Special Branch has an opportunity to question the person concerned.

This emphasis on covert policing came at a huge cost. In giving Special Branch so much power, the Walker report fostered a police culture in which the constant quest for intelligence completely trumped concerns about bringing agents (and potential agents) to justice. Loaded down by Special Branch, the RUC was no longer a police force in any normal sense. The corrupting influence of this transformation—and its further consequences for the Finucane case—are highlighted in the next section.

III. THE STORY OF JOHNSTON BROWN

A. The Confession and the RUC’s Decision Not to Pursue a Prosecution

1. The October 3, 1991, Confession

In May 2001, Johnston Brown was interviewed for “Policing the Police,” an episode of UTV’s *Insight* series.²³⁸ Brown had retired from the RUC the month before. In this program, Brown affirmed that a prominent loyalist had confessed almost ten years earlier to being one of the two gunmen who murdered Patrick Finucane. This

²³⁸ See *Insight: Policing the Police*, *supra* note 6. Brown told the Lawyers Committee that he decided to appear on the program in the hopes that going public would help to protect him from Special Branch threats, as well as encourage other RUC officers to come forward. Other RUC officers did talk to the *Insight* producers about their concerns about Special Branch, but reportedly would not appear on the program because of fears of reprisal.

man, who was already known to Brown, telephoned him on October 1, 1991, and requested a meeting. The man told Brown that he needed gambling money and was prepared to give the RUC information if they would pay him in return. Brown set up a meeting for October 3, 1991, and following RUC procedure, informed Special Branch of this. A Special Branch officer accompanied Brown and his CID partner, Trevor McIlwrath, to the meeting.²³⁹ The meeting was held in a car fitted with a secret recording device. Once in the car, Brown said that the loyalist made the following confession:

He explained how he'd stood over Mr. Finucane and had emptied this gun into Mr. Finucane's face. And he wasn't just admitting the murder, he was boasting and gloating over the fact that he'd murdered this man. And he'd related how the bullets had gone into the floor and then because of the heavy stone floor, they were actually coming up past him and he had almost shot himself in error.²⁴⁰

Brown emphasized to the Lawyers Committee that he had been deeply disturbed by how readily the loyalist had described his involvement in the murder to the three police officers. Brown told us that it was as if the man had expected them to be pleased with him.

After hearing the confession, Brown and McIlwrath returned immediately to the Finucane murder files to determine whether their notes of the loyalist's confession matched the facts of the case. They discovered that the loyalist had conveyed certain key details that had not been released to the public. He had known, for example, that Patrick Finucane was holding a fork when he died.²⁴¹ Brown and McIlwrath were convinced that the confession was credible. The confession itself was inadmissible, however, as it had been given without warnings and was secretly recorded. Nevertheless, Brown and his partner were determined to bring the individual to justice. They set up another meeting for October 10, 1991.

²³⁹ McIlwrath's identity was not publicly revealed until December 2001. On December 13, 2001, McIlwrath spoke publicly about his involvement in the case for the first time. He reportedly affirmed that everything Brown said about the incident was true. See David Gordon, "Stobie Saved My Life—Ex-RUC Man," *The Belfast Telegraph*, December 13, 2001.

²⁴⁰ See *Insight: Policing the Police*, *supra* note 6, at 7.

²⁴¹ See *Insight: Justice on Trial*, *supra* note 118, at 13.

2. The Decision to Recruit the Loyalist as an Informer

In interviews with the Lawyers Committee, Johnston Brown emphasized that he and his partner had conceived of the meeting on October 10th as an opportunity to follow up on the confession. They intended to get admissible evidence in order to charge the man with Finucane's murder. The same Special Branch officer accompanied Brown and McIllwrath to the October 10th meeting, however. In the car on the way to the meeting, this officer instructed the two CID officers repeatedly that they were to remain quiet during the interview. The officer explained that decisions had been made at a high level about how to proceed and that they were not to say anything. They were explicitly not to mention the Finucane murder or bring up the confession the week before.

After they picked up the loyalist, the Special Branch officer took out a list of pre-prepared questions.²⁴² He started going down the list. With the exception of the Finucane case, the questions covered exactly the same ground as the meeting on October 3rd. Indeed, the loyalist kept complaining that the questions had been asked at the earlier meeting. As instructed, Brown and McIllwrath did not take an active role in the questioning.

Johnston Brown told the Lawyers Committee that at the time, he had not realized that Special Branch had decided not to follow up on the confession. Brown had assumed that headquarters knew something he did not and that for some reason it made more sense to wait before moving against the loyalist. In meeting after meeting with the man, however, no mention was made of the Finucane murder. Brown told us that by the fifth or sixth such meeting, it had become abundantly clear to him that Special Branch had decided not to pursue a prosecution. Instead, they had decided to use the loyalist as an informer.

In interviews with the Lawyers Committee, Johnston Brown said that as soon as he had realized this, he had vigorously questioned "both the morality and legality" of that decision. In response, Special Branch officers told Brown and his partner that the decision not to pursue the prosecution had been made at a high level. They also told him repeatedly that there was nothing new in the confession. They said that Special Branch had already known that this man was one of

²⁴² See *Insight: Policing the Police*, *supra* note 6, at 9.

the two gunmen in the Finucane murder. Brown was not dissuaded, however. He emphasized to us that it was one thing to suspect someone in the murder, but another thing entirely when that person actually confessed. He considered it the duty of both CID and Special Branch to follow up on the confession.²⁴³ Accordingly, he continued to argue with Special Branch as well as with his own CID superior officers about the decision not to pursue the prosecution. He said that he had made his disgust with that decision widely known.

3. Threats and Intimidation

Johnston Brown told the Lawyers Committee that he learned in November 1991 that Special Branch had tipped the loyalist off about Brown's desire to prosecute him. Special Branch officers had warned the loyalist not to talk to Brown about the Finucane murder and specifically warned him that Brown wanted to put him in jail for life for the killing. Brown received this information from the loyalist himself, who called Brown and requested a private meeting. He then questioned Brown about the information that Special Branch had given him. Brown succeeded in convincing the loyalist that the allegation was not true and ultimately managed to regain his trust. Brown later told the Lawyers Committee, "He could easily have killed me."

Johnston Brown also told us that around the same time, Special Branch officers began harassing both him and his partner. He told us that he and his partner faced constant maligning, undermining, and unfounded allegations from Special Branch officers. He said that his partner suffered a nervous breakdown as a result.

The Lawyers Committee has learned independently from a credible source that the Stevens III team recommended charges against one of the Special Branch officers who allegedly stopped Brown's investigation into the Finucane murder. However, the Director of Public Prosecutions decided against referring charges.

²⁴³ Indeed, Brown told the Lawyers Committee that at the time, he considered no case more important for the RUC's credibility. He emphasized that no death or victim is more significant than any other, but in terms of the RUC's credibility—in terms of "republican propaganda"—he considered this the most important case for the RUC to solve.

4. Special Branch Efforts to Have Brown Removed from the Investigation

Brown also told us that in March 1992, the loyalist who had confessed to killing Finucane called him to warn him that Special Branch officers were trying to get Brown moved out of the Belfast region. He told Brown that Special Branch officers had informed him that Brown was stepping on a lot of toes in relation to the Finucane case and that they intended to fabricate a loyalist threat against him to get him out of Belfast. According to Brown, the loyalist warned him of this, saying, "If Special Branch would do this to a fellow police officer, imagine what they would do to me." Brown informed his CID superiors of the warning, and they waited to see what would happen.

Three days later, Special Branch informed one of Brown's CID superiors that Brown had been dropping the names of loyalist informers on the Shankill Road and that there was a loyalist threat against him. In interviews with the Lawyers Committee, Brown said that when the loyalist's warning was revealed, the Special Branch officers involved did not know how to respond. Brown told us that these officers had not expected the loyalist who confessed to be more loyal to Brown than to them, especially in light of the information that they had passed to him. Ultimately, the RUC pulled both Brown and the Special Branch officers from all involvement with the loyalist. The man kept trying to call Brown, but he was told not to accept the calls. Brown never received any follow-up information from Special Branch on the supposed loyalist threat against him, and there was no investigation of the allegations that he had dropped the names of informers on the Shankill. Brown requested such an investigation, but was informed by a CID superior that Special Branch had acknowledged that the allegations were concocted. Although Brown and his partner were removed from this case, they continued to do the same kind of police work in the Shankill Road area of West Belfast.²⁴⁴

5. William Stobie and the Anonymous Letter to the UDA

Furthermore, Johnston Brown informed the Lawyers Committee that an anonymous letter was sent to UDA/UFF head-

²⁴⁴ Brown emphasized to the Lawyers Committee that not all officers from Special Branch were involved in such activity. He told us that he has tremendous regard for the Special Branch officer that he and his partner worked with on the Shankill after this incident.

quarters in West Belfast in early 1994.²⁴⁵ This anonymous letter falsely accused Brown of relaying information about loyalists to republicans. The letter was intercepted by William Stobie, who happened to be working at the UDA headquarters at the time. Stobie passed the letter to an RUC detective who passed it to Brown. At the time, Brown did not know William Stobie.

Clearly, except for this good fortune, the letter would have placed Brown in great danger. Indeed, Brown credits Stobie with saving his life. Brown told the Lawyers Committee that he still does not know who sent the letter to the UDA. He told us that “there is speculation that it emanated from Special Branch.” He believes that the source of the letter is one of the issues that must be examined by a public inquiry.

B. Brown’s Statement to the Stevens III team

In April 1999, Brown gave a voluntary statement to the Stevens III team about the loyalist’s 1991 confession. After Brown finished preparing his six-page statement, officers on the Stevens team warned him not to sign it before considering very carefully that he was under oath. Brown later explained that as soon as he finished signing the statement, the atmosphere in the room changed completely. The officers started treating him as though he was a police suspect. When Brown asked what was wrong, they told him that they had received a copy of the October 3, 1991, tape from Special Branch. The officers told Brown that this tape did contain a conversation between him, the alleged confessor, and the Special Branch officer. They said that the tape did not contain any confession, however.

Thoroughly shocked, Brown asked if the tape could have been altered. The Stevens team explained that New Scotland Yard had already checked the tape for tampering and found it to be intact. Brown was then allowed to listen to the tape. He immediately recognized the conversation as the one held on October 10th, not October 3rd. He heard the loyalist complaining, for example, about the repetitive nature of the questions. He also noted that at the beginning of

²⁴⁵ The existence of this letter (and Stobie’s role in intercepting it) was revealed in an article in the *Belfast Telegraph* the day after Stobie’s murder. See Gordon, *supra* note 239.

the conversation, the loyalist had asked him about two murders that had occurred on the Shankill Road that evening. After checking the 1991 records, Brown demonstrated that the murders under discussion had occurred on October 10, 1991, proving that the tape could not have been made on October 3, 1991.

Apparently, the RUC had given the Stevens III team the October 10th tape, but labeled it as the tape made on October 3rd. Taken aback, the officers on the Stevens team realized their mistake. They told Brown that Special Branch had verified the tape as the one made on October 3rd. In interviews with the Lawyers Committee, Brown explained that the English officers on the Stevens III team had not discovered this previously, because they could not understand the heavy Northern Ireland accents on the tape.

Furthermore, in the wake of these revelations, Special Branch could not locate the tape actually made on October 3, 1991. This tape had apparently been lost. The Stevens III team has reportedly discovered a written Special Branch “source report,” however, which confirms that the loyalist admitted to Finucane’s murder on October 3, 1991.²⁴⁶

Brown explained to the Lawyers Committee that he is now absolutely convinced that Special Branch had decided to rid themselves of the confession in the week between the meeting on October 3, 1991, and the meeting on October 10, 1991. He told us that at the time of the October 10th meeting, he could not understand why the Special Branch officer who accompanied them had insisted on covering the same topics on October 10th as they had covered on October 3rd (with the exception of the Finucane case). He now believes that Special Branch did this purposefully, so that the conversation on October 10th would dovetail with his and his partner’s notes of the October 3rd conversation, with the exception of the confession.

C. Subsequent Threats Against Brown

Johnston Brown told the Lawyers Committee that after he gave his statement to the Stevens III team, a Special Branch officer cornered him in the hall of a police station and threatened to have him thrown in jail. Brown replied, “I would have to have done some-

²⁴⁶ See Clarke, *supra* note 48.

thing wrong first.” The Special Branch officer warned Brown to think about it. He then asked very pointedly: “What if they find some LVF guns in your loft. Are they your guns? Are they your son’s? Just think about it.”²⁴⁷ Brown told us that his son was only 15 at the time. He also informed us that this particular officer was still working for Special Branch.

Johnston Brown told us that he still very much feels under threat from Special Branch, even though he has retired from the RUC and is currently in the Key Persons Protection Program. He believes that there are officers in Special Branch who would encourage loyalists to kill him. This is complicated by the fact that Brown was the RUC officer who gathered the evidence used to imprison Johnny Adair, the former leader of the UDA/UFF in West Belfast, in early 1995. Adair was sentenced to 16 years in prison but was let out on license in September 1999 under the early-release provisions of the Good Friday Agreement. Brown told the Lawyers Committee that the UDA planted an incendiary device in his home in October 2000, which he attributed to its possible belief that Brown was gathering evidence against Adair again. Brown does not believe that this bombing was tied to Special Branch, but he is very worried that Special Branch might push the UDA to target him again. His fears were further compounded by the December 12, 2001, murder of William Stobie.

D. William Stobie’s Special Branch Handlers

In interviews with the Lawyers Committee, Brown also told us that he knows William Stobie’s Special Branch handlers. He told us that the Special Branch officer who accompanied him and his partner on October 3, 1991, and October 10, 1991, was one of Stobie’s handlers. Furthermore, Brown told us that this Special Branch officer was one of the people who stopped his investigation into Patrick Finucane’s murder.

Clearly, these allegations have deepened our conviction that Stobie’s handlers must be thoroughly investigated. These new allegations must be carefully evaluated in light of the possibility that Stobie’s handlers could have prevented the murder but chose not to act.

²⁴⁷ The LVF is the Loyalist Volunteer Force, a hard-line loyalist paramilitary organization formed in 1996.

E. Conclusion

The Lawyers Committee believes that Johnston Brown's story must be fully examined in a public inquiry into Patrick Finucane's murder. A public inquiry must determine who precisely made the decision not to pursue the prosecution.²⁴⁸ A public inquiry must also determine which Special Branch officers decided to warn the man who confessed of Johnston Brown's desire to prosecute him, a decision placing Brown in immediate danger. A public inquiry must also investigate the origins of the anonymous letter sent to UDA headquarters in early 1994. In addition, a public inquiry must consider Special Branch's handling of the two tapes. What happened to the October 3, 1991 tape? How could Special Branch have certified the tape made on October 10th as the tape made on October 3rd? A public inquiry must also investigate Brown's claims that Special Branch officers harassed and threatened both him and his partner, Trevor McIllwrath, and tried to get Brown moved out of Belfast by fabricating a loyalist threat against him. Furthermore, all of these issues must be considered in light of the other questions about Special Branch's involvement in the Finucane murder. Were there other repeat players, in addition to the Special Branch agent who handled William Stobie?²⁴⁹

²⁴⁸ *Id.*

²⁴⁹ Concerns about the operation of Special Branch were underscored by the report of Nuala O'Loan, the Police Ombudsman for Northern Ireland, on the investigation of the August 15, 1998, Real IRA bombing in Omagh. In this report, issued on December 12, 2001, O'Loan concluded that Special Branch had failed to relay important information to both police officers in Omagh before the attack and the CID investigation team after the bombing. O'Loan recommended that there be a review of the role and function of Special Branch with a view to ensuring that in the future that there are clear procedures for the dissemination of intelligence between Special Branch and other parts of the police service. She also recommended that Special Branch be fully and professionally amalgamated into the rest of the police service. In large part, O'Loan's recommendations echoed the November 1999 recommendations of the Independent Commission on Policing (the "Patten Commission") on enhancing the sharing of resources and information between Special Branch and the CID.

In February 2002, the Northern Ireland Policing Board asked Dan Crompton, Her Majesty's Inspector of Constabulary, to review Special Branch procedures in light of O'Loan's report. On November 6, 2002, Crompton submitted his own report to the Policing Board, making 11 recommendations to improve intelligence-sharing and transparency within the Police Service of Northern Ireland (PSNI), the new name for the RUC. These recommendations included establishing joint training courses between CID and Special Branch officers and requiring regular and proactive consultation sessions between the two divisions. Both the Policing Board and Hugh Orde,

Chapter 7

PANORAMA REVELATIONS

I. INTRODUCTION

Johnston Brown did not reveal the name of the loyalist who had confessed to the murder on UTV's May 2001 *Insight* program, and was similarly careful to ensure that the name remained confidential in our interviews with him. The name did not remain secret for long, however. In January 2002, just before the first edition of this report was published, journalists began identifying the man as Ken Barrett.²⁵⁰

In June 2002, Brown publicly confirmed that Ken Barrett was indeed the person who had confessed to the murder in 1991. Brown's disclosure was broadcast in "A License to Murder," a new BBC documentary on collusion between the security services and loyalist paramilitaries.²⁵¹ The documentary included interviews with Ken Barrett himself, as well as with detectives from the Stevens I and II investigations. In addition, the BBC interviewed Detective Superintendent Alan Simpson, the CID officer in charge of the original RUC murder investigation.

II. KEN BARRETT

A. Background

Barrett's public profile had been raised shortly after William Stobie's murder on December 12, 2001. After the murder, threatening graffiti began to appear in the loyalist housing estate where

the new Chief Constable, announced that they fully accepted Crompton's proposals. See Policing Board, "Policing Board Backs Recommendations on Special Branch," November 6, 2002, available at <http://www.nipolicingboard.org.uk/> (accessed January 29, 2003). In his December 2002 report, however, Tom Constantine, the Oversight Commissioner on police reform, noted that there was still insufficient progress in the area of Special Branch amalgamation into the rest of the PSNI. See Office of the Oversight Commissioner, *Overseeing the Proposed Revisions for the Policing Service of Northern Ireland*, December 12, 2002, at 51, available at <http://www.oversight-commissioner.org/> (accessed January 29, 2003).

²⁵⁰ See, e.g., Clarke, *supra* note 48 (revealing the name as Ken Barrett).

²⁵¹ See *Panorama: A License to Murder*, Part I, *supra* note 113; *Panorama: A License to Murder*, Part II (BBC television broadcast, June 23, 2002) (transcript on

both Stobie and Barrett lived. On December 16th, Barrett fled to England, apparently afraid for his life.²⁵² More graffiti appeared around Belfast the next day, accusing Barrett of being an informer and explicitly linking him to Johnston Brown. The messages included “Ken Barrett Tout!” and “Ken Barrett, Jaunty Brown, True Love,” surrounded in a heart.²⁵³

The UDA was reportedly angry with Barrett, suspecting he had been talking to journalists from the BBC’s *Panorama* program.²⁵⁴ As discussed in Chapter 2, *Panorama* initially exposed Brian Nelson’s links to the Finucane murder in 1992, prompting the Stevens II investigation. Since then, *Panorama* journalist John Ware had continued to actively follow the Finucane case.

Panorama had indeed contacted Ken Barrett not many months earlier. He eventually agreed to talk to them and met Ware a total of 12 times—both before and after he fled Northern Ireland. During these meetings, Barrett freely admitted that he had been a member of the murder gang that killed Patrick Finucane. He also revealed extensive new information about his own role in the murder, as well as the roles of the RUC and the Army.

What Barrett did not know, however, was that *Panorama* was surreptitiously recording these interviews on film. Barrett did not realize that *Panorama* was preparing a documentary, which was in large part about him and his involvement in the UDA. He had no idea that his admissions would later be broadcast throughout the United Kingdom and the Republic of Ireland.

B. The RUC

Barrett told Ware that a UDA godfather, whom he identified as Jim Spence, first suggested to him that the UDA kill Patrick Finucane.²⁵⁵ Barrett claimed that he reacted initially with shock. As

file with the Lawyers Committee).

²⁵² See Louise McCall, “Loyalist Flees Amid Fears for His Safety,” *The Irish Independent*, December 19, 2001; *Panorama: A License to Murder*, Part II, *supra* note 251, at 18.

²⁵³ *Panorama: A License to Murder*, Part II, *supra* note 251, at 18 and accompanying visuals.

²⁵⁴ *Id.*

²⁵⁵ See *Panorama: A License to Murder*, Part II, *supra* note 251, at 10.

recorded by *Panorama*, Barrett said he told Spence:

Look, wait till I tell you, Jim. You can't start whacking fucking solicitors, here. You'll bring the peelers [police] down on us like a bag of fucking shite. . . . We'll have no guns, like. They'll raid everywhere. They'll take the fucking place apart if you start hitting these people. Because they'll know who it came from. They'll know who's involved, right away.²⁵⁶

But according to Barrett, he subsequently discovered that it was RUC officers who were *pushing* the UDA to murder Finucane. He said that UDA members—detained for interrogation under the emergency laws—reported upon release that the police officers interviewing them had urged them to target Finucane.²⁵⁷ This echoes the accounts, discussed in Chapter 4, of former UDA Brigadier Tucker Lyttle and a confidential source the Lawyers Committee interviewed in 1992.²⁵⁸ According to Barrett, young UDA members, who had never heard of Finucane, would come out of interrogation sessions saying that the RUC wanted him dead:

Young fellers, you know. They'd have come out and said to us [what] they said about Finucane; they say this and they say

According to Ware, secret Army records also indicate that Spence was the first person within the UDA to suggest Finucane as a target. *See id*; *see also* Ware, *supra* note 46, at 16.

²⁵⁶ *See Panorama: A License to Murder*, Part II, *supra* note 251, at 10.

²⁵⁷ *See Panorama: A License to Murder*, Part I, *supra* note 113, at 12.

²⁵⁸ This confidential source told the Lawyers Committee that approximately three weeks before Finucane's murder, a number of RUC detectives had urged UDA detainees to target three defense lawyers, Finucane, Patrick McGrory, and Oliver Kelly, as "the brains behind the IRA." On August 2, 2002, the *Guardian* published an article by John Ware, which revealed further information about the threat to McGrory and Kelly—neither of whom was ultimately harmed. According to Ware, three days after Finucane's murder, RUC Special Branch received a report from one of their UFF informants, stating that the UFF leaders who had organized Finucane's murder intended to target McGrory and Kelly next. Special Branch never warned McGrory or Kelly about this. Furthermore, according to Ware, FRU agent Brian Nelson received a targeting document on McGrory from a UFF colleague in July 1989. The document described McGrory's routines, noting, for example, that he went to the Kitchen Bar every Sunday and that his car was parked "unprotected" nearby. According to Ware, the Stevens III team has recovered this targeting document and has established that Nelson passed it to his FRU handlers. Nelson's handlers failed to record any details of the threat in their contact forms, however, and McGrory was never warned. *See* John Ware, "Plot to Kill Belfast Lawyers Revealed," *The Guardian*, August 2, 2002.

²⁵⁹ *See Panorama: A License to Murder*, Part I, *supra* note 113, at 12.

that. And they must have said it, because kids wouldn't come out and say, "they said it about Finucane," because why would [kids] mention Finucane. You understand what I mean? Finucane wouldn't have been a name in their heads.²⁵⁹

Ware asked Barrett whether Finucane would have been targeted anyway, without the involvement of the police. Barrett insisted that he would not. According to Barrett, solicitors were generally off limits, because Catholic lawyers often represented loyalist as well as republican paramilitaries:

Solicitors were kind of way taboo, you know what I mean? Like, we used a lot of Roman Catholic solicitors ourselves. They were kind of like taboo at the time, like. You didn't touch [them], like. Do you understand me? Because they came in and seen us and all, like. . . . They acted for us like anybody else.²⁶⁰

According to Barrett, "Finucane would have been alive today if the peelers [police] hadn't interfered."²⁶¹

Barrett was soon to have his own encounter with a police officer—a meeting that would apparently convince him that Finucane was a legitimate target. Barrett told Ware that Spence had asked him to meet this Special Branch officer, with whom Spence was in close contact.²⁶² The officer claimed that Finucane was an IRA man. More specifically, he told Barrett that Finucane dealt in finances for the IRA and that the IRA would have a lot of trouble replacing him.²⁶³ The officer told Barrett that Finucane was "a thorn in everybody's side" and would "have to go." According to Barrett, the officer was adamant that Finucane be targeted: "That's the one he wanted. They didn't want any fucking about. They didn't want to wait for months. They wanted it done."²⁶⁴

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² See *Panorama: A License to Murder*, Part II, *supra* note 251, at 16.

²⁶³ See *Panorama: A License to Murder*, Part I, *supra* note 113, at 13; John Ware, "All Our Research Wanting to See Finucane Dead Points to Police," *The Belfast NewsLetter*, June 29, 2002.

²⁶⁴ *Panorama: A License to Murder*, Part I, *supra* note 113, at 13.

Barrett also told Ware that this officer actively assisted the UDA murder gang in its preparations. He said the officer informed the UDA that Finucane never went anywhere without his car, and warned them not to go into his house if his car was not parked outside. He reminded them that they would only get one opportunity to catch him off-guard.²⁶⁵ According to Barrett, the officer also called Spence on the night of the murder to give him the “all clear.”²⁶⁶ As mentioned in Chapter 2, there had been a security force roadblock near Finucane’s house on the evening of the murder. The officer was letting the UDA know that the roadblock had been removed and that the area around Finucane’s house was now free of any security presence.²⁶⁷ After Spence relayed the message, Barrett and the other members of the murder gang set off immediately for Finucane’s house.²⁶⁸

Furthermore, according to Barrett, the officer’s assistance continued after the murder. In the summer of 1999, the Stevens III team decided to arrest Barrett and Spence and question them about the murder. Barrett revealed that the officer had tipped them both off.²⁶⁹ He said that Spence told him to call the officer, who would let him know “the ins and outs” of the Stevens team’s plans.²⁷⁰

In his discussions with Ware, Barrett also touched on one particular aspect of the case that had confounded forensic scientists—the issue of the second murder weapon. Although they could identify it as a handgun, they could not conclusively establish whether it had been a .38 special revolver or a .375 magnum. The shells apparently suggested that it could have been either.²⁷¹ Ware asked Barrett about the second weapon, without revealing any of these details. According to Ware, Barrett resolved the forensic mystery out of the blue, explaining that it had been a .38 special with magnum rounds.²⁷²

²⁶⁵ See *id.*, at 14.

²⁶⁶ *Id.*, at 15.

²⁶⁷ *Id.*, at 14-15; *Panorama: A License to Murder*, Part II, *supra* note 251, at 16.

²⁶⁸ See *Panorama: A License to Murder*, Part I, *supra* note 113, at 15; *Panorama: A License to Murder*, Part II, *supra* note 251, at 16; Ware, *supra* note 46, at 22.

²⁶⁹ See *Panorama: A License to Murder*, Part II, *supra* note 251, at 16.

²⁷⁰ *Id.*, at 17.

²⁷¹ Ware, *supra* note 46, at 11.

²⁷² *Id.*

C. The Army

In his meetings with Ware, Barrett also divulged new information about Brian Nelson's role in the murder. As detailed in earlier chapters, Nelson was an undercover Army agent, who was infiltrated into the UDA and became its chief intelligence officer. According to Barrett, Nelson supplied him with the targeting information on Finucane, as well as other UDA victims.

Barrett told Ware that he had met Brian Nelson on Belfast's Shankill Road six days before Finucane's murder. Because Barrett did not know what Finucane looked like, Nelson provided him with a picture.²⁷³ Barrett confirmed that the picture was from a newspaper and showed both Finucane and his client Patrick McGeown coming out of a court building.

Nelson had apparently acknowledged that he passed this photograph to Ken Barrett in his statement to the first Stevens investigation.²⁷⁴ He reportedly also identified Barrett as one of the gunmen in the murder.²⁷⁵ In his statement to Stevens I, however, Nelson claimed that he believed that McGeown, rather than Finucane, was to be the target. As discussed in Chapter 3, this claim has been widely discredited.²⁷⁶

In his conversations with Ware, Barrett insists that Nelson was fully aware that Finucane was to be the target. Indeed, Barrett said that after handing over the picture, Nelson personally drove Barrett up to North Belfast to show him Finucane's house. Barrett told Ware, "Brian knew what he was fucking doing. Brian took me up to the fucking place, you know what I mean. Brian showed me it the once and that's all I had to see."²⁷⁷

At the time, of course, Barrett did not know that Nelson was an undercover Army agent. In talking with Ware years later, he is adamant that Nelson and the Army knew the full implications of what they were doing—not only in the Finucane case but in all the cases in

²⁷³ *Panorama: A License to Murder*, Part I, *supra* note 113, at 14.

²⁷⁴ Ware, *supra* note 46, at 8.

²⁷⁵ *Id.*

²⁷⁶ See *supra* notes 113-118 and accompanying text.

²⁷⁷ *Panorama: A License to Murder*, Part I, *supra* note 113, at 14.

which Nelson had been involved:

[Nelson] knew what the score was. I mean if we asked him details on a Republican, he knew it wasn't to send him fucking postcards. Like, I mean, they're not passing us documentation to sit in the house and read it.²⁷⁸

According to *Panorama*, Army records reveal that the FRU was more concerned about Brian Nelson getting caught than about the fact that he was helping to set up assassinations. One such record, written by one of Nelson's handlers, noted that Nelson had been warned that "we cannot help him if he is caught by the RUC."²⁷⁹ To the Army's dismay, however, Nelson was eventually caught—not by the RUC but by the Stevens I investigation.

As the next section makes clear, the Army did what it could to prevent that from happening. But once Nelson was caught, the FRU could not prevent him from going to jail. They did all that they could, however, to cover up and distort what had actually been going on.

III. THE STEVENS DETECTIVES

A. Deception by the Army

In interviews with *Panorama*, detectives from the Stevens I investigation talked publicly for the first time about the Army's efforts to mislead them. Detective Constable Sarah Bynum revealed, for example, that soon after arriving in Northern Ireland, she had asked the Army if it had ever run agents in paramilitary groups. In response, Army officials had categorically denied running any such agents, saying that the Army left all intelligence gathering to the RUC.²⁸⁰ It was only after arresting Nelson that the Stevens I team discovered this was a complete lie.

According to Nicholas Benwell, a Detective Sergeant with the Stevens I and II investigations, this was only the first of several deceptions by the Army.²⁸¹ In an interview with *Panorama*, Benwell

²⁷⁸ *Id.*, at 3.

²⁷⁹ *Id.*, at 5.

²⁸⁰ *Id.*, at 19.

²⁸¹ *Id.*

also cites Colonel Kerr's testimony at Nelson's sentencing hearing. As mentioned in Chapter 3, Colonel Kerr, the leader of the FRU, entered an extensive plea in mitigation on Nelson's behalf. He claimed that Nelson's position in the UDA had enabled him to pass on information that prevented paramilitary assassinations. Indeed, he testified that based on Nelson's information, the FRU had produced 730 reports on threats to the lives of 217 individuals. He insisted that all of this information was passed on to prevent the attacks. Seemingly because of Kerr's evidence, Nelson received an unusually lenient ten-year sentence. The sentencing judge even hailed Nelson as a man of "the greatest courage" for risking his life to protect the lives of others.²⁸²

In the 2002 *Panorama* interview, Benwell described his astonishment upon listening to Kerr's testimony. Benwell explained:

I was incredulous. It just wasn't right; it wasn't correct. Afterwards I went through all of the documents. I could only find maybe two cases where the information given by Nelson may have been helpful to the security forces in preventing attacks.²⁸³

Benwell also revealed that no loyalist had ever been arrested based on any of the information Nelson provided.²⁸⁴

B. The Early Stevens Findings

So what were the findings of the early Stevens investigations? On *Panorama*, Detective Sergeant Benwell made clear that long before Stevens was called in for the third time, the Stevens investigations had concluded that military intelligence was colluding with Nelson to direct UDA targeting. Benwell told *Panorama*, "There was certainly an agreement between his handlers and Nelson that the targeting should concentrate on what they described as the 'right' people."²⁸⁵ The contours of this arrangement are discussed extensively in Chapter 3.²⁸⁶ Benwell estimated that Nelson himself was

²⁸² Ware, *supra* note 98.

²⁸³ *Panorama: A License to Murder*, Part II, *supra* note 251, at 8.

²⁸⁴ *Id.*

²⁸⁵ *Id.*, at 2.

²⁸⁶ In addition, *Panorama* claimed that MI5 had unlimited access to Army files

involved in over 50 crimes.²⁸⁷

Furthermore, Benwell confirmed that Nelson had shared his targeting files with other loyalist paramilitary groups. Benwell told Ware that it was a “dreadful situation,” with Nelson passing his information on to “other groups of killers who [were] completely outside his control, and his handlers [were] just following on and letting him do it.”²⁸⁸ Indeed, Army records revealed that Nelson had copied his files at least 36 times. *Panorama* claimed that at least 80 people in Nelson’s targeting files had been attacked. Of those 80, 29 were shot dead.²⁸⁹

C. Detective Superintendent Alan Simpson

In addition, according to *Panorama*, the Stevens investigation has established that Special Branch knew the names of Ken Barrett and the other UDA gunman within days of the murder.²⁹⁰ Special Branch did not share this information with Detective Superintendent Alan Simpson, however, the CID officer in charge of the original murder investigation. John Ware asked Simpson if Special Branch had given the CID any information on key suspects in the murder. Simpson replied, “No, no leads, no directions at all from them, which was quite unusual.”²⁹¹

Furthermore, in another BBC interview, Simpson confirmed that Special Branch had never informed him that William Stobie was one of its agents.²⁹² The story of Stobie’s role in the murder is described in detail in Chapters 3 and 5. Simpson told the BBC, “Had I known about Stobie, I could have set the murder investigation on a proper course at a very early stage.”²⁹³ Simpson claimed that the

on a daily basis and knew all along about Army and police collusion. Despite this, according to *Panorama*, MI5 signed statements for the Stevens I team saying that they knew virtually nothing about collusion in Northern Ireland. *Id.*, at 20.

²⁸⁷ *Id.*, at 4.

²⁸⁸ *Panorama: A License to Murder*, Part I, *supra* note 113, at 9.

²⁸⁹ *Id.*

²⁹⁰ *Panorama: A License to Murder*, Part II, *supra* note 251, at 11; *see also* Ware, *supra* note 46, at 10.

²⁹¹ *Panorama: A License to Murder*, Part II, *supra* note 251, at 11.

²⁹² *See Spotlight: Root and Branch* (BBC television broadcast, May 21, 2002), available for viewing at http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/1561238.stm (accessed December 15, 2002).

²⁹³ *Id.*

information about Stobie would have enabled his CID team to uncover the evidence necessary to prosecute those responsible for the murder. He emphasized that Special Branch had denied his team that opportunity, however.²⁹⁴

IV. CONCLUSION

The material revealed by *Panorama* must be fully explored in a public inquiry. In particular, a public inquiry must examine Barrett's account of the murder and establish the identity of the Special Branch officer who reportedly convinced him to target Finucane. In addition, it must uncover the full extent of the Army's efforts to deceive the Stevens teams and the public at large. Did Colonel Kerr lie at Nelson's sentencing hearing, and if so, how did he get away with it? Finally, when a public inquiry is eventually established, it must examine why the U.K. government has resisted it for so long. Indeed, as discussed in the next chapter, the government has devised another mechanism for delay.

²⁹⁴ *Id.*

Chapter 8

WESTON PARK AND THE CONTINUING CALLS FOR A PUBLIC INQUIRY

I. THE WESTON PARK PROPOSAL

In July 2001, the U.K. and Irish governments hosted talks with Northern Ireland's pro-Agreement parties in an attempt to break a deadlock in the peace process. This deadlock had been precipitated by David Trimble's resignation as First Minister of the Northern Ireland Assembly over the IRA's failure to disarm. The talks, which were held at Weston Park in England, concerned four main topics: (1) paramilitary decommissioning; (2) U.K. demilitarization in Northern Ireland; (3) the reform of the RUC; and (4) the stability of Northern Ireland's political institutions. On August 1, 2001, the U.K. and Irish governments issued a joint package of proposals aimed at ending the political impasse.

As part of these proposals, the two governments announced that they would jointly appoint "a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion" into the murder of Patrick Finucane as well as five other controversial cases.²⁹⁵ The governments revealed that in each of the six cases, the judge would be asked: (1) to review all the papers; (2) to interview anyone who could help; (3) to establish the facts; and (4) to report with recommendations for any further action. Specifically, the governments noted that if the judge recommended a public inquiry in any of the six cases, the relevant government would implement that recommendation. The governments also stated that arrangements would be made to "hear the views of the victims' families and keep them informed of progress."

The Lawyers Committee was deeply unsatisfied with these proposals.²⁹⁶ While at first blush, the appointment of an international judge might seem like a step forward, we believed the plan could prevent the truth from emerging for many years to come. The international judge was supposed to review all of the papers, interview

²⁹⁵ The five other cases are the murders of: (1) Rosemary Nelson; (2) Robert Hamill; (3) Billy Wright; (4) Lord Justice and Lady Gibson; and (5) Chief Superintendent Harry Breen and Superintendent Bob Buchanan.

²⁹⁶ See, e.g., Liz Trainor and Barry McCaffery, "Lawyers Reject Finucane

“anyone” who might help, and establish the facts in not one, but six incredibly complicated and contentious cases. The Patrick Finucane case alone, has been active for much of the last 14 years. The current Stevens team has been investigating his murder for nearly four years, and this is Stevens’s third foray into the murky world of collusion in Northern Ireland. Despite this, no one has ever been successfully prosecuted for Finucane’s killing. The international judge would be coming to all six cases completely cold.

The Lawyers Committee was not alone in its public criticisms of the proposal.²⁹⁷ Dato’ Param Cumaraswamy, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, pointedly dismissed the plan at the 58th session of the U.N. Commission on Human Rights in March 2002. He told the Human Rights Commission:

After so many years of multiple investigations, particularly in the Patrick Finucane case, the resultant delays and the loss of key witnesses, calling in an international judge to look into these outstanding murder investigations would only result in further delays, expense, and public anguish.²⁹⁸

II. THE APPOINTMENT OF PETER CORY

Despite such criticisms, the U.K. and Irish governments announced on May 29, 2002, that they had jointly appointed the Honorable Peter de Carteret Cory as the international judge. Judge Cory is a retired justice of the Supreme Court of Canada. He was appointed to the Canadian Supreme Court on February 1, 1989 and retired on June 1, 1999. Before serving on the Supreme Court, Judge Cory sat on the Ontario Court of Appeal. He began his work in London in August 2002.

Not long after appointing Judge Cory, the two governments

Plan,” *The Irish News*, February 12, 2002 (noting that the Lawyers Committee had rejected the international judge plan as counterproductive); Rosie Cowan, “Call for Urgent Finucane Inquiry,” *The Guardian*, February 13, 2002.

²⁹⁷ Geraldine Finucane noted, for example, that the international judge proposal could mean a delay of “at least another four or five years” in her husband’s case. See *Insight: Justice on Trial*, supra note 118, at 21.

²⁹⁸ See Dato’ Param Cumaraswamy, *Report to the Commission on Human Rights*, March 2002.

released a letter, reaffirming the terms of reference that had been announced in the Weston Park proposal almost a year earlier.²⁹⁹ In doing so, they did not grant Judge Cory any formal powers to subpoena documents or summon witnesses, simply promising to provide him with “all relevant material.” Given the history of obstruction faced by the Stevens investigations, this was clearly a disturbing omission. Furthermore, a controversy soon erupted about the independence of Judge Cory’s role. It emerged that five U.K. civil servants had been seconded to work for his office, including officials designated for unspecified “Grade 5” and “Grade 7” positions. In the wake of the controversy, Judge Cory took steps to ensure that no officials from the Northern Ireland Office served on his staff, but retained two officials from the Lord Chancellor’s Department in London. He has repeatedly assured the Lawyers Committee that their role is purely administrative.

The Lawyers Committee remains concerned that Judge Cory’s investigation falls short of international human rights standards. We are particularly concerned about the transparency of the investigation and the family’s ability to participate and secure access to documents. Although Judge Cory has agreed to accept written submissions from the families and from human rights groups, he has been heading an essentially private investigation—one run from behind closed doors.

Under the case law of the European Court of Human Rights, the investigation in right to life cases must have a sufficient element of public scrutiny to secure practical accountability.³⁰⁰ Families must also be able to participate and access documents to the extent necessary to protect their interests, which the Court noted might be in direct conflict with those of the police or security forces.³⁰¹ Article 6 of the International Covenant on Civil and Political Rights has also been interpreted to require an “open and accountable investigation.”³⁰² Furthermore, under the U.N. Principles on Extra-Legal Executions, the family must have access to any hearings as well as “all information relevant to the investigation.”³⁰³ In this context, the

²⁹⁹ See Letter from John Reid and Brian Cowen to Peter Cory, June 2002.

³⁰⁰ See, e.g. *Shanagan*, *supra* note 49, at para. 92.

³⁰¹ *Id.*, at para. 117.

³⁰² See *Bleir v. Uruguay*, *supra* note 57, at 30.

³⁰³ Principle 16 of the United Nations Principles on the Effective Prevention

governments' general commitment to keep the family "informed of progress" does not seem very promising. Indeed, if the government were fully prepared to afford the necessary international human rights safeguards at this point, then why not simply proceed with a public inquiry now?

III. A PUBLIC INQUIRY

Under the Tribunals of Inquiry (Evidence) Act 1921, an independent judicial inquiry may be established by resolution of both Houses of the U.K. Parliament. Inquiries established under the Act have the same powers as the High Court to enforce the attendance of witnesses and compel the production of documents.³⁰⁴ The United Kingdom has a long history of using inquiries to examine matters of urgent public importance.³⁰⁵ The most prominent recent example is the Bloody Sunday Inquiry, set up in 1998 to investigate the deaths of 13 Catholics by the security forces in Derry/Londonderry, Northern Ireland on January 30, 1972.³⁰⁶ Among the most important features of public inquiries are their expansive judicial powers, their independence, and their transparency to the public. These attributes are intended to ensure that the truth emerges fully, openly, and fairly.

The United Nations has long recognized the need for public inquiries in cases like Patrick Finucane's. Principle 11 of the U.N.

and Investigation of Extra-Legal, Arbitrary and Summary Executions.

³⁰⁴ In theory, an inquiry could also be established under the Police (Northern Ireland) Act 1998. This Act empowers the Secretary of State to establish a local inquiry into any matter connected with policing. The Lawyers Committee is concerned about several provisions in the statute, however. Under the Tribunals of Inquiry Act, there is a baseline assumption that the inquiry will be held in public. Under the Police (Northern Ireland) Act, however, there is no such assumption; the Secretary of State may decide to make the inquiry either public or private. The Tribunals of Inquiry Act also provides for significant contempt powers. The sanctions for contempt include up to two years imprisonment *and* a fine of whatever amount is deemed appropriate under the circumstances. Under the Police (Northern Ireland) Act, however, the sanction for contempt is no more than three months imprisonment *or* no more than a £20 fine. The Lawyers Committee believes that in order for the inquiry to be meaningful, it must be held in public and have the same powers as the High Court.

³⁰⁵ Ní Aoláin, *supra* note 3, at 175–178 (noting that there have been a total of 22 inquiry tribunals set up under the existing law); *see also* Amnesty International, *supra* note 58, at para. 9.

³⁰⁶ *See* Bloody Sunday Inquiry, available at www.bloody-sunday-inquiry.org.uk

Principles on Extra-Legal Executions makes clear:

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.³⁰⁷

The public inquiry we envision for the Finucane case must have the requisite powers and independence to carry out its functions effectively and maintain public confidence in its work. Its task will be all the more difficult because it must examine the state's overlapping intelligence agencies, which are highly secretive by nature. Sir John Stevens has openly acknowledged that this has made his own work much more challenging.³⁰⁸ He has also acknowledged that his investigations have been obstructed by "high-level opposition" and that he has at times feared for his career and for his own safety.³⁰⁹ In a

(accessed January 30, 2003); Simon Winchester, "13 Killed as Paratroops Break Riot," *The Guardian*, January 31, 1972. A 14th victim was shot on Bloody Sunday and died five months later. See "First Bloody Sunday Casualties, Not Rioting," BBC News, November 30, 2000, available at http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/1048608.stm (accessed January 30, 2003).

³⁰⁷ The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 11.

³⁰⁸ See, e.g., Barry McCaffery, "Finucane Inquiry Studies New Information," *The Irish News*, January 20, 2003 (noting that Stevens has admitted that his investigations have been "hampered by the fact that he is investigating the state's own security agencies"); Jackie Ashley, "Burglars, Guns and Terrorists in Sights of the Yard's Top Man," *The Guardian*, January 20, 2003 (noting that his investigation has taken so long "because of the secrecy and the fact that we are investigating not just the Army, and what was the RUC, but MI5 activity as well").

³⁰⁹ See Ashley, *supra* note 308; Thornton, *supra* note 91.

January 2003 interview, he remarked, “The ends that people are prepared to go, to actually thwart this [investigation], are extraordinary.”³¹⁰

IV. THE INTERNATIONAL RESPONSE TO THE FINUCANE CASE

In the 14 years since Patrick Finucane’s murder, many distinguished voices from around the world have joined his family’s call for an independent public inquiry. This long list includes the Irish government, the U.S. House of Representatives, the Northern Ireland Human Rights Commission, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, and the U.N. Special Representative of the Secretary General on Human Rights Defenders. The list also includes a host of bar associations, such as the Bar Council of Northern Ireland, the International Bar Association, the American Bar Association, and the Association of the Bar of the City of New York. In addition, the Law Society of Northern Ireland, the Law Society of England and Wales, and the Law Society of Ireland have all called for a public inquiry into the murder. Many human rights organizations have also actively campaigned for a public inquiry. These groups include Amnesty International, British Irish Rights Watch (BIRW), the Committee on the Administration of Justice (CAJ), Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, the Irish Council for Civil Liberties (ICCL), the Lawyers Committee for Human Rights, Liberty, the Pat Finucane Centre, and Relatives for Justice. On February 12, 1999, the tenth anniversary of Finucane’s murder, an international petition calling for a public inquiry was published in several U.K. newspapers. The petition was signed by more than 1,300 lawyers.³¹¹

The international campaign for a public inquiry in the Finucane case is part of a larger movement for the protection of human rights defenders worldwide. The international community has repeatedly acknowledged the essential role of local activists and lawyers in

³¹⁰ Thornton, *supra* note 91.

³¹¹ See Testimony of Michael Finucane, U.S. House of Representatives, International Operations and Human Rights Subcommittee of the House International Relations Committee, September 24, 1999.

securing human rights protections on the ground. Because of their front line advocacy, however, these human rights defenders have often come under threat from their own governments. Given the many allegations of state involvement in Patrick Finucane's murder, his case has become highly significant in this context.

Several prominent United Nations experts have been especially active on Patrick Finucane's case. In particular, Special Rapporteur Dato' Param Cumaraswamy has helped to keep worldwide attention focused on the case and has served to spotlight attention more generally on the situation of defense attorneys in Northern Ireland. Because of Cumaraswamy's reports and the testimony of human rights groups, the U.N. Human Rights Committee made the following observation in November 2001:

The Committee is deeply disturbed that, a considerable time after murders of persons (including human rights defenders) have occurred, a significant number of such instances have yet to receive fully independent and comprehensive investigations, and the prosecution of the people responsible. This phenomenon is doubly troubling where persistent allegations of involvement by members of the State's Party security forces, including the Force Research Unit, remain unresolved.

The failure of the U.K. government to fully investigate and prosecute those responsible for Finucane's murder has also caused growing concern in the United States and elsewhere. In the United States, for example, the Committee on International Relations of the U.S. House of Representatives has heard testimony over the years about the Finucane case from members of the Finucane family, as well as from CAJ, BIRW, and the Lawyers Committee. Rosemary Nelson, a prominent Northern Ireland human rights lawyer, also testified before the House International Relations Committee less than six months before she was murdered on March 15, 1999.³¹² As part of this testimony, Nelson emphasized the continuing significance of Patrick Finucane's murder for lawyers practicing in Northern

³¹² Rosemary Nelson was the second human rights lawyer to be murdered in Northern Ireland in just over ten years. The Red Hand Defenders claimed responsibility for her murder. The Loyalist Volunteer Force, a group with close links to the UDA, is said to have been responsible. See Jason Bennetto, "Loyalist Questioned

Ireland. After describing the abuse that she too had suffered at the hands of RUC officers,³¹³ she explained:

Although I have tried to ignore these threats, inevitably I have had to take account of the possible consequences for my family and for my staff. No lawyer in Northern Ireland can forget what happened to Patrick Finucane or dismiss it from their minds.

Indeed, in the years after Finucane's murder, his death became an international symbol of the official harassment and intimidation of defense lawyers in Northern Ireland.³¹⁴

V. CONCLUSION

The Lawyers Committee first called for a public inquiry in the Finucane case more than ten years ago. Since that time, we have watched in dismay as a disturbing trend emerged. Journalists or human rights groups would unearth new evidence of collusion in the case, and these isolated pieces of evidence would dominate the headlines for a few days. Long periods elapsed between each new revelation, however, and the bursts of pressure were episodic eruptions that did not build into a unified swell. At various points, the pressure did force the U.K. government into action—but each time the government would insist upon a privately-run investigation, from which the public learned very little.

With *Beyond Collusion*, we renew our demand for a public inquiry in the Finucane case. The U.K. government must commit to uncovering the truth about Finucane's murder—not only for the sake of his family—but to demonstrate its own commitment to truth and accountability and to restore public confidence in the criminal justice system. No other avenue is legitimate, given the many credible allegations of deep-seated security force involvement in the case. As Prime Minister Tony Blair affirmed when establishing the Bloody Sunday Inquiry:

Over Nelson Murder," *The Independent*, December 4, 2001. There are also allegations of collusion in Rosemary Nelson's murder. Her case is one of the six to be considered by the international judge under the Weston Park proposal.

³¹³ For a discussion of these threats, see Massimino, *supra* note 39.

³¹⁴ Rosemary Nelson's murder has also become highly significant in this context.

Where the state's own authorities are concerned, we must be as sure as we can of the truth, precisely because we pride ourselves on our democracy and respect for the law, and on the professionalism and dedication of our security forces.³¹⁵

We believe that a public inquiry in Fincane's case is an important part of the peace process in Northern Ireland. The government must confront its past and reveal the full scope of security force involvement in the murder and subsequent cover up. It is only by acknowledging the past that the government can help implement the reforms necessary to overcome the legacy of human rights abuses in Northern Ireland. Genuine peace can only be built upon the foundations of democratic accountability.

³¹⁵ See *Hansard*, January 29, 1998, Prime Minister's Statement (also available on the website for the Bloody Sunday Inquiry, *supra* note 306).

Beyond Collusion

The U.K. Security Forces and the Murder of Patrick Finucane

Patrick Finucane was a highly effective human rights lawyer who gained international recognition in the 1980s for representing people arrested under Northern Ireland's antiterrorism laws. On February 12, 1989, masked gunmen broke into his Belfast home and shot him 14 times in front of his wife and three children. Although the Ulster Defense Association, a loyalist paramilitary group, claimed responsibility for the killing, strong evidence has emerged linking three separate U.K. intelligence agencies to the murder. Despite this, the results of the official investigations into the case have remained largely classified, and no one has ever been successfully prosecuted for the killing.

With *Beyond Collusion*, the Lawyers Committee provides a comprehensive account of the Finucane case on the 14th anniversary of his murder. Drawing on Lawyers Committee's investigative missions to Northern Ireland, the report pieces together the extensive evidence of state involvement that has emerged in the many years since the killing.

The Lawyers Committee believes that a public inquiry into the murder is an essential element of the peace process in Northern Ireland. As Northern Ireland struggles to leave its violent past behind, questions about the U.K. government's commitment to the accountability and reform of the security forces continue to linger—due in no small part to the controversy surrounding the Finucane case.

