

# INQUIRING INTO COLLUSION? COLLUSION, THE STATE AND THE MANAGEMENT OF TRUTH RECOVERY IN NORTHERN IRELAND

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**Abstract:** This article critically examines the issue of collusion as part of truth recovery and post-conflict transition in Northern Ireland. As state crime, collusion involves state agents (military, intelligence, police) engaging with non-state agents in wrongful acts often of (or linked to) non-state political violence. A key element of the conflict in the North, and a contentious dimension of post-conflict transitional justice, collusion is also understood as exemplifying the “state of exception” (Agamben 2005) and state practices of denial (Cohen 2001). After characterizing the nature and role of collusion, the article critically analyses the record of various official truth recovery mechanisms established since 1998, in re-investigating cases of alleged collusion by focussing on particular cases (most involving allegation of collusion with loyalists). Ultimately, it is argued, though important information about collusion has been revealed, current processes constitute the state management of truth recovery and illuminate the limits and nature of state practice in dealing with state violence and state crime.

**Keywords:** collusion; transitional justice; truth recovery; state violence; state of exception; terrorism

## **Introduction: Inquiring into Collusion? The Case of Pat Finucane**

On 12 February 1989 the human rights lawyer Pat Finucane was murdered in his home in front of his family by members of the loyalist paramilitary organization the Ulster Freedom Fighters (UFF) (Amnesty International 1994; O’Brien 2005).<sup>1</sup> From the time of his death, and against a background of concerns that predated it, there were allegations of British state security force involvement and collusion in Pat’s killing. Two inquiries, the first conducted by the former Head of the Metropolitan Police Force Sir John Stevens (2003), the second by retired Canadian Judge Peter Cory (2004), found clear and irrefutable evidence of collusion between loyalists, members of the Special Branch of the Royal Ulster Constabulary (RUC) and British Military Intelligence (Stevens 2003; Cory 2004a). Cory recommended a full public inquiry be held. By a binding international Agreement signed at Weston Park in

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2001 (NIO and DFA 2001) the British and Irish Governments had in fact already committed themselves to holding such an inquiry on Cory's recommendation.

On 11 October 2011 Pat Finucane's widow Geraldine (herself injured in the attack) emerged from 10 Downing Street after a meeting with British Conservative Prime Minister David Cameron was brought to an abrupt halt (BBC 2011). As she spoke of her anger to the waiting press outside it became clear that the long promised full public inquiry was not now to happen. Instead an "independent review" was to be held, chaired by the international QC Sir Desmond de Silva. Such a "review", in which the family were to play no part, fell far short of their demands for a mechanism ensuring transparency, accountability and impartiality and possessed of the powers (for example, to compel witnesses) which they viewed as imperative to get to the full truth. Given the sensitivity of the issues at stake, independence from Government had long been central to their concerns. Opposition to holding an inquiry under the terms of the Public Inquiries Act 2005 (introduced by the Blair Government following the Cory Inquiry findings) had centred precisely on fears over the degree of control given to Government Ministers over the remit, conduct, suspension and termination of inquiries (British-Irish Rights Watch 2005; Amnesty International et al. 2005).

For Geraldine Finucane, Cameron's decision was taken by a "disreputable government led by a dishonourable man" (quoted in McKitterick 2011). The public justifications for the Government's decision were twofold. First, they accepted the Stevens and Cory findings that collusion had occurred. Both Cameron and Owen Paterson (the then Secretary of State for Northern Ireland) formally apologized for the collusion shown to have taken place. Paterson (2011) argued this meant "we do not need a statutory inquiry to tell us that there was collusion, we accept that". Second, it was argued, an inquiry could prove to be costly and ineffective. Cameron (2011) declared the answer "is not to have another costly and open-ended public inquiry" while Paterson (2011) argued the key task was to "uncover the details of this murder". The De Silva review of pre-existing evidence was "the quickest and most effective way of getting to the truth", ensuring that "details" previously "kept secret" would be "exposed" and the "full facts will be set out" (Paterson 2011).

Yet, the arguments presented by both Cameron and Paterson raise as many questions as they answer. In cases of alleged state collusion in murder, are apologies sufficient? What is the meaning (and the politics) of such apologies? Should public inquiries into alleged state killings be denied on the grounds of "costliness"? Are there alternatives to recovering the truth about collusion beyond public inquiries or an "independent review"? And, most important of all, was the task of any further investigation into the death of Pat Finucane solely to "uncover the details of this murder" or to examine the full story and whether it was linked to, or indicative of, wider patterns of collusion and state involvement in extra-judicial killing?

Significantly, in private, Cameron admitted to the Finucanes that there were people within “the corridors of power” who would not let him hold a full inquiry (Finucane 2012). Perhaps key is not to see either the killing of Pat Finucane, or how to get to the truth about his murder, in isolation.

The de Silva report was published in late 2012, as this article was going to press, and its full contents are beyond the scope of this analysis. It may have revealed additional significant detail of the extent of state collusion in Pat Finucane’s death, but was also immediately condemned by the Finucane family as a “whitewash [that] at every turn give[s] the benefit of the doubt to the state” (Bowcott 2012; de Silva 2012). The Pat Finucane case has also been discussed in-depth elsewhere (O’Brien 2005; Rolston 2005). The aim of this article is therefore not to focus on the Finucane case itself but to place it in context by providing an overview of some other recently raised concerns over the conduct of truth recovery in cases of alleged state collusion in extra-judicial killing during the conflict in the North of Ireland. It will focus in the main on cases involving alleged collusion with loyalist paramilitaries. The article will be in four parts. First, it will provide some conceptual and historical background to the issue of collusion before briefly outlining the official truth recovery mechanisms created since the signing of the Good Friday Agreement. The next three sections will examine some of the major problems and shortcomings of these official mechanisms when re-examining collusion by exploring certain key cases. Part two will look at public inquiries into collusion and focus on the case of Billy Wright. Part three will critically examine the work of the Office of the Police Ombudsman of Northern Ireland (PONI), looking at the re-investigations of the McGurk’s Bar Bombing (1971) and Loughinisland Massacre (1994). Part four will examine the Historical Enquiries Team (HET) through their handling of the cases of the Ormeau Road Massacre (1992) and the murder of Sam Marshall (1990). In detailing these cases, and what they say about truth recovery in relation to collusion, the article will also identify a series of common themes and issues drawing, in part, on a number of key conceptual perspectives in order to critically evaluate the issue of truth recovery and collusion as a whole. These include the politics of definition and denial (Cohen 2001), collusion and the meaning of the “state of exception” (Agamben 1998, 2005) and truth recovery, bureaucratic ordering and official discourse (Burton and Carlen 1979).

## **Collusion as State Crime: The Meaning of Collusion**

### **Defining Collusion**

Collusion is a form of death squad activity (Campbell and Brenner 2000; Sluka 2000). Rolston (2005: 181) defines death squads as “paramilitary groups involved

in state-sponsored or state-tolerated terror against political opponents”. For Sluka (2000: 4) death squads have become one of the “hallmark[s] of the massive growth of state terror in the last quarter of the twentieth century”. Often associated with right-wing authoritarian regimes in the developing world, death squads have also been a feature of the political practices of western states, most obviously the US. Part of a continuum of repressive state practice, ranging from arms sales to “extraordinary rendition”, death squads are an aspect of a “global culture of terror” (Sluka 2000: 7). This has included the direct involvement of western states, such as Spain, in supporting or sponsoring non-state paramilitary groups in the strategic use of extra-judicial killings (Woodworth 2001).

The definition of collusion has become a deeply contentious aspect of truth recovery and truth management in Northern Ireland. That said, the key issue has been less the definition of collusion *per se* so much as how that definition has been operationalized and the failure to apply it robustly or in a uniform manner in the investigation of specific cases. Stevens (2003: 16) argued that collusion could involve a range of actions including the “wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder”. Cory (2004a: 21–2) deliberately adopted a broad definition of collusion because “army and police officers must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or supplying information to assist them in their wrongful acts or encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning or even encouraging state involvement in crimes, thereby shattering all public confidence in these important agencies”. For the purposes of this article, following Cory, collusion is understood as the involvement of state agents, directly or indirectly, through commission, collaboration or connivance in “wrongful acts”, usually (although not exclusively) related to non-state political violence (McGovern 2011).

### **Characterizing Collusion**

As Rolston (2005) suggests, academic studies rarely explore western state involvement with death squads and collusion, despite the deniability of such covert actions providing a highly “effective mask for terror”. Indeed, deniability, whether “literal”, “interpretative” or “implicatory” is one of the most fundamental features of collusion as an aspect of “democratic” state practice (Cohen 2001: 7). Collusion in the North was long the subject of literal official denial and allegations treated with mainstream academic and media scorn. Collusion, if acknowledged, was interpreted as aberrant, individual acts; the work of a few “rotten apples” (Bruce 1992). The view that there was no “systematic collusion” prevails in many quarters still (Shanahan 2009: 206). Others suggest a relative operational autonomy within

the British State security apparatus explains collusion as a consequence of “personal fiefdoms” (Tonge 2006: 92).

Some analysts distinguish between “formal” and informal” collusion, where the former is understood as the “sanctioned use of loyalist gangs with directives coming from the operational and/or political levels” (Ellison and Smyth 2000: 134). Allegations of systematic or formal collusion have been voiced throughout the conflict (RFJ 1995, 2002). Various military intelligence units operating in the 1970s, such as the Military Reaction Force (MRF) and the Special Reconnaissance Unit (SRU) (Dillon 1991) were forerunners of a raft of others within the British army, military intelligence and RUC Special Branch that conducted the State’s “dirty war” for decades. These covert units were at the centre of collusion allegations that came more to the fore from the mid-1980s onwards; paralleling a massive rise in loyalist violence in the same period (Ní Aoláin 2000). The activities of a covert British military intelligence group, the Force Research Unit (FRU) and their involvement in the killing of Pat Finucane have been the subject of significant scrutiny (Cory 2004a; O’Brien 2005; RFJ 1995; Rolston 2005). Formed in 1980/81 the FRU was the primary military intelligence unit responsible for handling British agents in paramilitary organizations and is alleged to have been involved in a number of murders, providing intelligence files and facilitating the importation of a large cache of weapons from South Africa used by loyalists in over 200 killings (RFJ 1995). These activities only came to light after the inadvertent arrest of their agent (and senior UDA intelligence officer) Brian Nelson in 1992. Nelson’s record was subsequently defended in court by the head of the FRU (Col. Gordon Kerr) who later went on to serve as a commander of covert British units in Iraq and Afghanistan.

It is well-established that there was informal collusion between individual members of the security forces and loyalist paramilitaries (Ellison and Smyth 2000: 138–41). This was particularly so of members of the Ulster Defence Regiment (UDR), the locally recruited regiment of the British Army, passing information, weapons and directly participating in loyalist groups (Cassel 2006). However, supposed “informal” collusion blurred with collusion as matter of policy when such acts were tolerated or a blind eye was turned by state authorities. For two decades, argue Ellison and Smyth (2000: 140), the UDR “operated a system of low-level state terror that was tolerated by the authorities because it fitted into the overall goals of the security apparatus”. Secret military intelligence files uncovered in 2006 showed that, from the early 1970s onwards, the British Government was aware that the UDR was considered the “best single source of weapons... for Protestant extremist groups” and British military intelligence estimated that up to 15 per cent of UDR members were also linked to loyalist paramilitaries (McCaffery 2006). The key question is why would such “subversion” of a key part of the British military be tolerated by the authorities? Counter-insurgency strategies in the North were adopted and adapted

from those developed in earlier British end-of-empire campaigns, including the use of locally-recruited forces and “counter-gangs” (Kitson 1960, 1971). A growing need to preserve the supposed “constitutional propriety” of the British State and downplay the damaging image of military occupation (McGovern 2010) ensured, if anything, an increasing emphasis upon covert, clandestine, deniable actions directed toward the key strategic aim of combatting the State’s principal enemy; the IRA.

It was an approach that impacted across various state security agencies. RUC Special Branch has long been subject to allegations of collusion. In the early 1980s the Walker Report (1981) outlined instructions for the handling of intelligence within the RUC establishing the primacy of counterinsurgency policing and intelligence gathering, principally undertaken by RUC Special Branch, over criminal investigations.<sup>2</sup> As Paddy Hillyard argues (in McGovern 2010: 18) the result was the subverting of the primary policing function of detection to the imperative of counterinsurgency. Institutionally Special Branch became an increasingly powerful “force within a force” able to supersede other elements of the RUC (and most obviously CID) in control over investigations. This policy framework was a necessary precondition for Special Branch handling of paramilitary informers that constituted and opened the door to collusion in extortion, racketeering, robbery and murder (O’Loan 2007).

In some senses the distinction between “formal” and “informal” collusion is a false one, or at least more fluid than at first appears and may fail to capture the space within which collusion took shape. Of its nature, collusion is a clandestine activity framed by the goal of deniability. It is a practice that requires a culture of impunity, the avoidance of public scrutiny and confounding avenues of accountability. When confronted with the evidence of torture perpetrated by US forces at Abu Ghraib prison, avowed proponent of the Iraq invasion Christopher Hitchens argued there could only be two interpretations of how it happened (cited in Žižek 2008: 148). Either those involved in torturing detainees acted of their own volition or they had been specifically authorized. However, as Žižek (2008) insists, this is to entirely misunderstand the context within which such acts come to receive social and institutional legitimation. For Žižek (2008: 148) the horrors of Abu Ghraib were an example of a “Code Red [an] unwritten rule of a military community that... condones an [illegal] act of transgression”. As Žižek notes, such a military culture takes shape within the context of a “state of exception” where the suspension of legal norms reduces those subject to such torture as *homo sacer* (Agamben 1998).

Agamben (2005) argues that modern “so-called” democracies are not characterized by adherence to a set of legal norms that are certain, predictable and guarantee a range of minimal freedoms in opposition to arbitrary power; as the self-legitimizing ideology of the liberal democratic state would insist (McGovern 2011). Rather it is the “state of exception”, the suspension of law and legal norms and the exercise of

arbitrary decision that is the “dominant paradigm of government in contemporary politics” (Agamben 2005: 3). This exceptional state is not necessarily achieved in the form of dictatorship, or the adoption of full powers, but in bringing the law to a “standstill”, creating a “suspension or void of law” where normative constraints of the juridical-institutional order are removed permitting state agents to act in ways otherwise impermissible (Agamben 2005: 41–2). If viewed through this lens collusion appears not as an aberration, or the result of “bad apples”, certainly not as an affirmation of democratic accountability, but rather as a key aspect of the suspension of legal norms that marks the state of exception as a defining aspect of contemporary state practice.

Collusion happens in this “space devoid of law” or “zone of anomie” (Agamben 2005: 23), a “state of exception” that helps preserve deniability and the legitimating myths of the liberal democratic order. In essence, certainly in some cases, the question to be addressed by truth recovery is not whether collusion was the result of a breakdown of order, command and control, but rather is symptomatic of, and facilitated by, the way order and control were organized. As Agamben (2005: 50) also notes, the actions taken by state agents in the context of a crisis or “tumult” leading to the suspension of legal norms lie in a plane of the “un-decidable” as far as the sphere of law is concerned. Judgements on those actions, once the “standstill of the law” has itself expired, will in turn then depend on the circumstances and approaches adopted to re-establish law’s claim to legitimacy and sovereignty (Agamben 2005: 50). This may result in a range of alternative avenues and decisions with regard to the individual actions taken by the “unrestrained magistracy” during the preceding “juridical void”, but whether or not these choices can go beyond the frames and delimiting overriding logic of the liberal democratic state’s self-defining claim of its own adherence to the “rule of law” is a moot point (Agamben 2005: 50).

### **Collusion and the Terrain of Truth Recovery**

The landscape of official truth recovery and truth management in Northern Ireland is complex, often confusing and characterized by a range of distinct structures and institutions rather than a comprehensive, all-embracing process, such as a truth commission (Lundy and McGovern 2008b). In terms of examining allegations of collusion such processes have included a series of free-standing public inquiries and investigations undertaken by various policing bodies. Following on from the Stevens Inquiries, two policing bodies have been primarily responsible for the re-investigation of collusion cases; the Office of the Police Ombudsman of Northern Ireland (PONI), and “cold case” investigations carried out by the specially created Historical Enquiries Team (HET) and the legacy unit of the Police Service of Northern Ireland (PSNI).

Central to the work of both the PONI and the HET in particular is the requirement that they meet international human rights standards and are in explicit compliance with Article 2 of the European Convention on Human Rights (ECHR). This is the result of a long struggle by human rights activists and lawyers and successful challenges to earlier investigations in cases brought from Northern Ireland to the European Courts (Lundy 2012; Ní Aoláin 2000). In enshrining the “right to life”, Article 2 requires that the investigations of deaths are wholly independent of those under (or potentially under) investigation and that they should involve the family of the person killed. Clearly, a need for investigative independence and family engagement are nowhere more critical than in collusion cases, where there is alleged involvement of members of the police, army or intelligence services in wrongdoing.

### **What Price the Truth? Public Inquiries and Collusion**

Throughout the conflict official public inquiries in the North were essentially mechanisms for re-establishing the legitimacy of the authoritarian state, failing to “hold to account the power of the state” or to challenge the fundamental power interests at play in the operation of state practice (Rolston and Scraton 2005: 561; Burton and Carlen 1979). That record has made many critics of state policy highly sceptical of their efficacy as truth recovery mechanisms. Nevertheless, calls for official inquiries have formed an important part of the strategy of those campaigning on truth and justice issues; as exemplified in the demands for a new public inquiry into Bloody Sunday.<sup>3</sup> Attitudes towards the Saville Inquiry, established in 1997 to re-examine Bloody Sunday, have greatly shaped the debate on public inquiries as a mechanism for truth recovery. Reporting 13 years later in June 2010, though it had important limitations, the Saville Inquiry refuted the original Widgery Inquiry findings, established the innocence of the victims and found the British Army culpable for their “unjustified and unjustifiable” deaths (Cameron 2011). A Prime Ministerial apology followed and the potential of criminal proceedings remains.

Yet it is the refrain of avoiding “lengthy and costly public inquiries” that has been taken up by current British officials, unionist commentators and neo-conservatives opposed to truth recovery initiatives (Bew 2005; Empey 2010; Murray 2011). Certainly the costs and time taken were significant issues; the Saville Inquiry was the longest and most expensive in British legal history, ultimately costing around £200 million. However, the focus from certain quarters on the cost and timescale reflects a wider problem; the way in which truth and justice issues can be “sectarianized” and presented through the prism of a “two traditions” model of the Northern Ireland conflict. One of the major difficulties that truth recovery has faced as part of post-conflict transition is the way it has often been characterized as part of a purely “nationalist” or “republican” agenda (Lundy and McGovern 2008a).

### **Weston Park and the Cory Inquiries**

The perception of truth recovery and human rights as a “nationalist agenda” impacted upon the choice of inquiries established following the Weston Park Agreement. As noted earlier, Weston Park committed the British and Irish Governments to creating initial public inquiries into allegations of collusion in several high profile cases (NIO and DFA 2001). For the British Government the selection of cases was a political calculation to assuage unionist concerns and “balance an otherwise exclusively catholic bias” (Powell 2009: 199). So, alongside the killings of Pat Finucane, Rosemary Nelson<sup>4</sup> and Robert Hamill<sup>5</sup> (all nationalists whose deaths had been subject to long campaigns for justice) there were re-investigations into the deaths of the loyalist leader Billy Wright,<sup>6</sup> and two cases where collusion between members of the Garda Síochána (the police force of the Republic of Ireland) and the IRA was suspected.<sup>7</sup> Weston Park further committed both Governments to the principle that, following the findings of these inquiries in each case “the relevant Government will implement that recommendation” (NIO and DFA 2001: 6). Judge Cory (2003a/b, 2004a/b/c/d) investigated and reported in 2003–04. In all, except the case of Lord and Lady Gibson, Cory found evidential grounds that collusion had occurred and recommended full public inquiries.

However, before these could take place the British Government passed the 2005 Public Inquiries Act. This legislation substantially reduced the independence and potential effectiveness of inquiries, introducing a far greater degree of Ministerial and political influence over the shaping and conduct of public inquiries, raising fears that such procedures would again fail to challenge powerful institutional vested interests within state agencies. As Rolston and Scraton (2005: 562–3) note, Peter Cory himself was highly critical of the new legislation, arguing it was “chang[ing] the ground rules [and would make] a meaningful inquiry impossible”. The Finucane family refused to endorse an inquiry held under the terms of the 2005 Act. Those into the deaths of Robert Hamill, Rosemary Nelson and Billy Wright went ahead. In addition, the Irish Government established an inquiry chaired by Judge Peter Smithwick in March 2005 to investigate the killing of RUC officers Breen and Buchanan. The Smithwick Inquiry began public hearings in June 2011 and is currently ongoing.<sup>8</sup> At time of writing, the report into the case of Robert Hamill is being withheld following prosecutions brought against three men in December 2010 in connection with his murder, including a former RUC reservist. The Rosemary Nelson Inquiry reported in May 2011 and echoed some of the concerns already raised in relation to that held into the death of Billy Wright.

### **Redefining Collusion: The Billy Wright Inquiry**

If the 2005 Act moved the goalposts in the investigation of collusion, that was amplified by the report into the killing of Billy Wright. Chaired by Lord MacLean

the report was published in 2010 finding there had been “serious failings” by the prison authorities but no collusion in the killing of Billy Wright (MacLean 2010). Denounced by the Wright family as a “whitewash” (Geoghegan 2010) these conclusions were widely criticized. The SDLP MP Mark Durkan noted that the report found a large number of “wrongful omissions” and “wrongful acts” on the part of the prison service and the RUC (including the withholding of intelligence by Special Branch) which both directly and indirectly facilitated the murder (Durkan 2010). Yet the “no collusion” finding was predicated on two important dimensions of the manner in which the inquiry approached its task.

First, (as would occur in the Rosemary Nelson Inquiry and the PONI report into the 1972 Claudy bombing) the MacLean Inquiry found no evidence of collusion because, to all intents and purposes, it placed such a finding beyond its remit (Durkan 2010; MacLean 2010: 9). Sidestepping the Cory collusion definition, MacLean decided that actions such as “turning a blind eye” which might include “wrongful acts or admissions”, including intentional acts that could have facilitated the death, could “amply be covered by the terms of reference without attempting to analyse them in terms of collusion” (MacLean 2010: 9). The inquiry could examine all the issues at stake “without having to resort to the words ‘collusion’ or ‘collusive’” (MacLean 2010: 9). Despite the fact that MacLean argued the Inquiry had “at the forefront of [their] minds the possibility that individuals within state agencies behaved collusively” (MacLean 2010: 642), through this discursive definitional practice, far from constituting an investigation of collusion, the MacLean Inquiry ensured that was the one thing it could not find.

Second, was the discursive style of the report. The report’s language resembles nothing so much as a managerial systems review; an institutional audit reducing many questions at stake to a series of administrative procedural problems. The adoption of the discourse and language of “professional”, administrative rationality articulates a bureaucratic, compartmentalized ordering of social reality and serves several ends. There is a distancing and re-constituting of the meaning of that reality rendering it socially and politically impotent. It is also a means, not only in its findings but in the very procedures, practices and discursive construction of the subject itself, of re-establishing state legitimacy. The practices under scrutiny are re-integrated into the institutional self-presentation of a certain, predictable, normative juridical order in contrast to “collusion” as the arbitrary exercise of state power. Such “official discourse” is an abiding feature of public inquiries, rendering an understanding of the subject within the “systematisation of modes of argument that proclaim the state’s legal and administrative rationality” that is in turn a “necessary requirement for political and ideological hegemony” (Burton and Carlen 1979: 48). This discursive, bureaucratic ordering of reality and the failure

to apply Cory's definition of collusion in the case of Billy Wright has since been paralleled in the report of the Rosemary Nelson Inquiry (Root and Hitchings 2011).

### **New Broom or Old Guard? Collusion and the PONI Inquiries**

The office of the Police Ombudsman of Northern Ireland (PONI) was created in 1999 as part of the post-conflict reform of policing and the replacement of the RUC by a new Police Service of Northern Ireland (PSNI). The PONI is a police complaints system. Concerned primarily with issues arising from current PSNI policies and practices, unsurprisingly the legacy of the conflict has occupied a considerable amount of its time as the PONI has been called upon to investigate allegations of collusion by RUC officers. From the outset there was considerable controversy over the operation and findings of the PONI. In 2001 the first Police Ombudsman Nuala O'Loan published a highly critical report suggesting Special Branch could have prevented the August 1998 Real IRA bombing of Omagh (O'Loan 2001). In 2007 O'Loan published a report declaring there had been systematic and sustained collusion (in up to 15 murders) over more than a decade involving RUC/PSNI Special Branch and loyalist paramilitaries in North Belfast (O'Loan 2007). O'Loan also complained publicly of facing obstruction and opposition in the conduct of her investigations from both former and serving members of the police force.

O'Loan's tenure as Ombudsman was not immune from criticism by human rights organizations, deeply concerned in particular about the capacity for the PONI to deliver independent and robust scrutiny of historical cases. However, more significant was the evident opposition toward her actions within the policing hierarchy and from former senior members of the RUC. In many ways this illustrates the tensions arising within state structures when, as Agamben (2005: 50) would have it, the period of "tumult" has passed and actions previously "un-decidable" in the legal sphere come under scrutiny in the process of re-establishing the apparent sovereignty of the "rule of law". As the "state of exception" is not synonymous with dictatorship so it is problematic to conceive of the state merely as a monolith, or of managing truth recovery as a simple conspiracy. There are a range of forces and approaches shaping particular state policies and initiatives, and clashes within and between state agents and agencies can arise where delimited alternative decisions become politically possible; if invariably framed by the end of re-establishing the legitimacy of the state, its institutions and interests.

Shortly after publication of the 2007 report O'Loan was replaced as Police Ombudsman by Al Hutchinson. Certainly retrenchment appeared to be the order of the day. Hutchinson soon faced fierce criticisms from families, human rights NGOs and even many within his own organization. O'Loan's former deputy resigned from his position as Chief Executive in April 2011, citing a "significant lowering

of professional independence” of the PONI (McCaffrey 2011a). A damning report by the Committee on the Administration of Justice (CAJ) published in June 2011 highlighted problems in terms of the effectiveness, efficiency and transparency of PONI investigation of historic cases, and particularly raised concerns over the independence of the office, the control of intelligence and bias in the conduct of historical inquiries (CAJ 2011: 7–11). Hutchinson “stepped down” and all historic case investigations were suspended following the findings of a report by the Criminal Justice Inspection for Northern Ireland (CJINI) (Maguire 2011). The CJINI report upheld the criticisms levelled by CAJ and found, amongst other “failings” that there had been an “inconsistent investigation process”, a “problematic” handling of “sensitive material” and a “lowering of its operational independence” (Maguire 2011: v). The result was a “lack of confidence” in investigations of historic cases that were fundamentally “flawed” (Maguire 2011: v). It may yet prove to be significant (and signalling something of a shift in policy orientation) that Hutchinson’s replacement as Ombudsman is Michael Maguire, who as the Chief Inspector of Criminal Justice published the highly critical CJINI report. Many of the cases where major failings were highlighted by CAJ and the CJINI involved allegations of collusion, including those of the McGurk’s Bar and Loughinisland massacres, examined in more depth below.

### **The McGurk’s Bar Massacre (1971)**

The PONI investigation into the 1971 McGurk’s Bar bombing had already raised huge questions over investigative independence and the interpretation of findings. On 4 December 1971 members of the UVF planted a bomb at an entrance way of McGurk’s bar in North Belfast. The explosion obliterated the bar killing 15 people; at that time (and until the 1998 Omagh bombing) the largest loss of life from a single incident during the conflict. Although claimed by the “Empire Loyalists” (a UVF *nom de guerre*) political, police and military officials attributed blame to the IRA, claiming the massacre was an “own goal” resulting from a premature explosion. Despite the victims’ families and a broad spectrum of nationalist opinion arguing otherwise, this “own goal” theory became the dominant, official narrative in the immediate aftermath of the bombing and for many years to come. Suspicions of collusion in carrying out the attack, in the police investigation and in the representation and dissemination of this “own goal” theory were widespread from the outset. A HET investigation finally led to a Government apology in 2008 that the “own goal” theory was “erroneous” and may have led to “preconceived ideas [that] cloud[ed] the actual evidence” (quoted Hutchinson 2011a: 4; see also MacAirt 2012).

A PONI investigation followed. Due to report in 2010, a draft report was hastily withdrawn following criticism from the families, who allege it was an equally hasty re-write of an earlier, more critical version (Interview, McGurk’s Families

Representatives/MFR, 2012). A concern over the re-writing of PONI reports was one of the chief findings of the CJINI (Maguire 2011). When the final report was published in February 2011 it concluded there had been “investigative bias” (Hutchinson 2011a: 77) in the conduct of the RUC investigation, criticizing how the “own goal” theory had come to the fore in political as well as policing circles. This included, for example, failing to investigate even after one of the loyalists involved had confessed to the murders in 1976. However, the report stopped well short of finding “collusion”.

Once more, this was in part due to a re-definition, or rather the creation of a definitional lacuna, as to what constitutes collusion. In earlier reports Hutchinson had begun a process of narrowing, indeed largely denying, Cory’s definition (Hutchinson 2010: 22–3). In the case of McGurk’s, the report questions the Cory definition, calls for a “broader dialogue” about the meaning of the term, asserting it “has yet to be fully defined”, while failing to provide a substantive alternative (Hutchinson 2011a: ii, 75; CAJ 2011: 21). It also argues that “the essence of collusion” involved a number of elements usually including “an agreement between two or more parties” which would show an “act of omission [was] deliberate and not merely negligent or inadvertent” (Hutchinson 2011a: 75). Such a position, aside from substantially raising the bar of a burden of proof, also insinuates that collusion will normally involve a conscious, almost contractual arrangement, excluding a range of other possible actions state agencies might adopt. Paralleling the Billy Wright Inquiry, Hutchinson suggested his remit only extended to “whether or not any actions of the police constitute a criminal act or misconduct”, excluding a category of acts that might be “collusive” but understood as not criminal (Hutchinson 2011a: 74).

Alongside this interpretive, discursive stratagem the framing of the PONI inquiry similarly pre-empted the possibility of finding “collusion”. By making only vague recommendations and limiting criticism to supposed “failings” the report into McGurk’s allowed for any real responsibility or accountability to be avoided (CAJ 2011: 21). Far more significant was the institutional limit to the PONI investigative remit. As the report made clear from the outset, the Ombudsman could only be concerned with police wrongdoing. As Hutchinson argued: “I cannot investigate allegations of broader state collusion” (Hutchinson 2011a: ii). Given that the most substantive allegations surrounding the McGurk’s bar bombing concern the involvement of British Military Intelligence (in the form of the MRU) and the Army’s role in propagating the “own goal” theory as part of its “psychological operations” this is, to put it mildly, a substantial limitation indeed. In essence, the PONI report was not going to find collusion because it was looking in the wrong place. Despite these weak findings within hours of their publication the current Head of the PSNI (Matt Baggott) dismissed the possibility of further investigations and rejected even the allegation of “investigative bias”. This reaction may have

evidenced ongoing influence of former members of the RUC and an institutional desire to preserve and promote a “corporate memory” of the force’s record that a public acknowledgement of “investigative bias”, never mind collusion, would undermine (Interview MFR 2012).

### **The Loughinisland Massacre (1994)**

On 18 June 1994 members of the UVF entered the Heights Bar in the small townland of Loughinisland, Co. Down while most inside watched the Republic of Ireland versus Italy World Cup football match. The masked gunmen fired indiscriminately killing six men aged between 34 and 87. The attack in Loughinisland was one of several such mass sectarian shootings and a significant escalation of loyalist violence in the early 1990s. Initially only seeking greater information about what happened, victims’ families have become increasingly concerned over allegations of collusion in the attack and in the subsequent police investigation. Suspicions have grown that some of those involved may have been police informers or agents and (as in Operation Ballast) were subsequently protected from prosecution in a case where no charges have ever been brought (Interview, Representative of Loughinisland Families/RLF, 2012; RFJ 2012a).

The families asked the PONI to re-investigate in March 2006. After a two year delay the PONI report was finally published in June 2011. It states categorically that, while “police failings had been identified [that meant the police did not] pursue relentlessly all investigative opportunities [there was] no evidence of collusion on the part of the police” (Hutchinson 2011b: ii). Despite this, grave concerns have, if anything, been heightened by revelations concerning the nature of the RUC investigations including the loss or mishandling of forensics evidence and “institutional indifference and investigative bias” (RFJ 2012a: 4). Legal inquiries also revealed that the original notes from suspect interviews in the Loughinisland case and in many other highly sensitive cases dating from the same period in the Mid-Ulster area were destroyed in 1998, due to alleged asbestos contamination at Gough Barracks, without copies being made (Interview RLF 2012; RFJ 2012a: 4). The weapons used in the Loughinisland attack were part of the South African consignment brought into the North by FRU agent Brian Nelson in 1988 (RFJ 1995; O’Brien 2005).

As journalist Barry McCaffrey (2011b) notes, there is a notable absence of the role of Special Branch from the PONI investigations (McCaffrey 2011b). The massacre took place during the same period as that investigated by Nuala O’Loan (2007) who found Special Branch provided protection for informers within loyalist organizations involved in murder. Allegedly one such agent in North Belfast provided the getaway car for the Loughinisland attack (Interview RLF 2012; RFJ 2012a: 2). McCaffrey (2011b) has also argued that the absence of any investigation of Special Branch

in the Loughinisland case “caused a deep split within the Police Ombudsman’s office...[and was]...a source of anxiety internally, with some senior staff distancing themselves from the Ombudsman’s perceived loss of independence”. The Police Ombudsman (as with the HET) has adopted a standard position and language in dealing with allegations of collusion where the protection of informers or agents is suspected. Citing operational necessity the PONI state that they “can neither confirm nor deny” whether those under suspicion were agents/informers. Similar to all-encompassing claims of “national security,” this lexical masking subverts an ability to get to the heart of the collusion issue. Alongside well-founded fears of a lack of independence and bias it also generates unease and suspicion.

The ongoing campaigns waged by both the McGurk’s and Loughinisland families and their lawyers have helped ensure that these major problems with the work of the PONI have not been allowed to go unnoticed. Since the appointment of Michael Maguire as Ombudsman in July 2012 the McGurk’s case has been referred back to the PONI (in December) and the report into Loughinisland has been quashed in the courts and the case re-opened (BBC 2012).

## **Uncovering the Truth or Protecting the State? Collusion and the HET**

### **The Historical Enquiries Team (HET)**

The HET was created in September 2005 to re-investigate all unsolved conflict-related deaths between 1969 and 1998. While not solely concerned with collusion, invariably the HET has dealt with alleged collusion cases and the issue forms one of its key thematic investigative concerns. Critical engagement with the HET has provided a great deal of new information in a number of cases, the importance of which should not be underestimated. This has included significant revelations in some collusion cases, opening up further avenues of inquiry and analysis for families and campaigners alike. The recent report into the Miami Showband massacre (1976) highlighted the involvement of members of the RUC and UDR with loyalist paramilitaries (and intelligence agents within loyalist organizations), in the border areas of Armagh and Down in the mid-1970s; previously the subject of campaigns and an unofficial truth inquiry ([miamishowband.com](http://miamishowband.com); Cassel 2006). However, the structure and workings of the HET have been subject to criticism by human rights groups and thoroughly explored in the ground-breaking research undertaken by Patricia Lundy (2009a/b, 2011, 2012). Lundy’s work has been pivotal in revealing fundamental structural, operational and personnel problems with the HET, most recently in terms of apparent bias in the handling of cases originally investigated by the Royal Military Police involving killings by the British Army from the early years of the conflict (Lundy 2012).<sup>9</sup>

This research has critically challenged the HET in terms of a lack of independence, investigative and procedural bias and the control of intelligence; all of which have great significance for the management of truth in collusion cases. Institutionally located within the PSNI the independence of the HET has always been questioned; concerns heightened by evidence that former senior RUC/Special Branch officers have been pivotal in the management of the HET and acting as intelligence gatekeepers (Lundy 2011). This has included rehiring former senior officers of Special Branch (as “civilians” and therefore beyond oversight mechanisms). Since 2009 a “memorandum of understanding” has been established between the HET and C2 (the contemporary PSNI equivalent of Special Branch) giving the latter responsibility for re-investigating many highly sensitive cases (CAJ and PFC 2012: 6). Unsurprisingly many families have looked upon such arrangements with dismay and profoundly questioned the efficacy of the HET to deliver truth in collusion cases where the organization suspected may also be crucial to the process of re-investigation.

### **The Ormeau Road Massacre (1992)**

On the afternoon of 5 February 1992 two armed, masked loyalists shot dead five people in Sean Graham’s Bookmakers in the small nationalist enclave area of the Lower Ormeau Road in South Belfast (RFJ 2012b). Allegations of collusion have centred on the role of informers and agents in the attack and the initial RUC investigation. While the HET would neither confirm nor deny whether they were agents or informers, several of the chief loyalist suspects in the case have been subject to such allegations (McCaffrey 2007; RFJ 2012b: 8). One of the weapons used in the Ormeau Road attack was part of the MI5/Nelson South Africa consignment (RFJ 2012b). The story of the other weapon involves two loyalist agents familiar from the Pat Finucane case; first “stolen” by Ken Barrett from a UDR barracks before being handed to Special Branch by William Stobie and then returned to the UDA/UFF *prior* to the Ormeau Road attack (RFJ 2012b: 4; Cory 2004a; O’Brien 2005). When this came to light after the weapons were recovered during a later arrest, Special Branch claimed to have “deactivated” the weapon when in their possession. A forensic report uncovered by the families’ solicitors (through a standard public records procedure) disproves this claim. The HET report had stated this forensic evidence, and the interview notes of those charged when the weapons were seized, had been “disposed of” (HET 2011: 34; RFJ 2012b; Interview, Ormeau Road Families Representatives/ORFR, 2012). The papers also revealed the arrival on the scene in the immediate aftermath of the attack of members of the British Army’s Weapons Intelligence Section; alleged by the families’ lawyers as highly unusual, if not unique and also an issue they argue was not examined by the HET.

The conduct of the HET investigation has also been severely criticized for the way it has dealt with the relatives and the conclusions arrived at in the 2011 report (Interview ORFR 2012; HET 2011; RFJ 2012b). The litany of complaints includes a lack of contact and information during the HET investigation. Indeed, several of the families have never been contacted by the HET, even though the investigation has been completed, and have never received a report into the death of their family member (Interview ORFR 2012). The families continue to challenge the findings of the HET that there was no evidence of collusion and that there are no outstanding investigative opportunities.

### **Unmasking the Dirty War? The Case of Sam Marshall (1990)**

If there has been some information unveiled by the various truth recovery mechanisms involved in re-examining collusion cases there is a growing concern that they are at the same time acting to thwart examination of the full extent and nature of collusion as state practice (Interview RLF 2012; RFJ 2012b). This is particularly so when the investigations involve the actions of covert British intelligence units and Special Forces. The HET investigation of the death of Sam Marshall is illustrative here and worth exploring in-depth (MFCG 2012).

Sam Marshall was a well-known republican, Sinn Fein member and former prisoner from Lurgan, Co. Armagh. On 7 March he and two other republicans (Tony McCaughey and Colin Duffy) reported to Lurgan RUC station as part of bail conditions. This was the first occasion all three had signed at the same time and the family maintain the dates and times were known only to the men, their solicitors and the police. Minutes after leaving the RUC station two masked UVF men emerged from a parked car and fired a total of 49 shots at the three men. Sam Marshall was wounded then killed as he lay on the ground. McCaughey and Duffy escaped. The family believe the attack aimed to kill all three in a pre-planned operation involving RUC Special Branch and British military intelligence (MFCG 2012). Allegations of security force collusion emerged in the immediate aftermath focussing on the suspected leak of information of the bail signing and the alleged presence of covert intelligence personnel. There were widespread calls for a full public inquiry from, amongst others, the Catholic Bishop of Dromore (MFCG 2012: 13). The initial RUC investigation, led by one of the police officers suspected of involvement in collusion, reported that “extensive police inquiries have failed to give any credence or standing to these spurious allegations [of collusion]”. However, in 1993, the same officer inadvertently revealed to a US extradition hearing that a car in the vicinity at the time of the shooting was a surveillance vehicle seemingly belonging to a military intelligence unit; refusing to reveal any further details on the grounds of “national security” (British-Irish Rights Watch 1996; Human Rights Watch 1997). Despite

this, in January 1994 then Conservative Minister Sir Patrick Mayhew insisted there was no surveillance in place at the time of Sam Marshall's death (MFCG 2012: 15).

Allegations and denials of collusion persisted (McPhilemy 1998; Ware 1999). In pursuit of information the family sought an inquest. Inquests into disputed killings involving state agencies had long been the subject of severe criticism; particularly the "abiding scandal" of endemic delays in holding inquests (CAJ 1992: 27). Delays of many years, as well as limitations of their scope, remit and powers of investigation have all been highlighted as profound flaws preventing open, full and transparent inquiry. Exemplifying the maze created by the mix of judicial and extra-judicial mechanisms that constitute the terrain of truth recovery in the North, in 2008 the coroner ruled that he had no power to investigate collusion in the case of Sam Marshall and directed the family to approach both the HET and the PONI. They lodged a formal complaint with PONI soon after. No response was received until a generic letter informed them, almost four years later at the end of 2011, that no investigation had yet begun and (as with all historic cases) was now in abeyance (Interview, Marshall Family Representatives/MFR, 2012). In May 2012 PONI indicated it was not in a position to investigate the case.

The HET handed its initial report to the Marshall family in July 2010. Its contents demonstrate the contradictions seemingly inherent in the state truth management process. On the one hand, there were revealing details of the events surrounding Sam Marshall's killing that, as far as the family and lawyers were concerned, pointed to collusion. Yet, the report concluded the exact opposite, affirming that having "assessed all the investigative and intelligence material linked to Sam's murder [the HET] found no evidence of collusion" nor were there any investigative opportunities that could be pursued (HET 2010: 46). The report did confirm that, despite earlier "misleading" RUC statements, there was a major surveillance operation in place at the time of the shooting on a previously unimagined scale. This involved nine undercover British soldiers, one of whom directed movements from a remote location, with others located nearby in six cars and two soldiers following the three men closely behind on foot as they left the RUC station (HET 2010; MFCG 2012). Despite being as close as 20 yards from the shooting, close enough so that Tony McCaughey had to run past one soldier to escape, the two soldiers claimed they did not see the actual shootings and, despite being armed, were not in a position to intervene. Nor it appears did any of the surveillance vehicles act, even to provide support or protection to their own colleagues. The soldiers on foot admitted they "partially witnessed" the shooting but claimed at the time to have only seen the UVF gunmen making their (successful) escape, despite the close proximity of this extensive security force presence. The only subsequent convictions were of two men for stealing the car used in the attack (and the HET investigation casts doubt on the safety of these convictions).

Clearly the HET investigation produced substantial new information. However, the family have contested the “no collusion” conclusion as well as the extent and nature of the HET investigation, raising some 200 questions in response (Interview MFR 2012). Despite revealing this extensive, sophisticated surveillance operation, none of the soldiers were re-interviewed. The operation was also undertaken at the behest of Special Branch, yet the whereabouts and activities of over eight Special Branch officers on the night of the shooting were not established, nor were these officers re-interviewed. Of an alleged 39 members of the state forces involved in both the initial operation and the investigation, only four members of the RUC were re-interviewed, otherwise the HET relied on the original statements provided to the RUC (MFCG 2012: 24). There was also evidence of important forensic evidence being “lost”.

The HET conclusions, the family contends, are not borne out by its own arguments. So, for example, the HET assert it is “possible that the two soldiers following the men may not have seen the shots fired”, yet the opposite may be equally true; they did see what happened (MFCG 2012: 30). Crucially for the family the extent of upper echelon foreknowledge, involvement and/or decision-making within the RUC, Military, Intelligence and Political establishments in a case such as that of Sam Marshall appears to be beyond the scope and vision of the HET to investigate, as it is of the other state truth mechanisms (Interview MFR 2012; MFCG 2012). Having exhausted the options of both the PONI and the HET the Marshalls returned to the coroner’s court to again pursue an inquest. At a preliminary hearing in March 2012 the family’s legal representatives were first told no inquest could take place until after a PONI inquiry had been held; a process which, it was estimated by a PONI representative, could take another six years (Interview MFR 2012). Only after the PONI confirmed they would not be re-investigating the case did the Coroner concede in May 2012 that he would consider whether an inquest was required; some 22 years after the death of Sam Marshall.

## **Conclusion: Collusion and the Maze of State Truth Management**

For many NGOs and human rights activists the case of Sam Marshall, as in the other cases outlined above, highlights that truth recovery in the North fails to meet Article 2 and international human rights standards. As previously noted, Article 2 compliance is supposed to be a foundation of official truth recovery mechanisms in historic cases in Northern Ireland. Some would argue that these mechanisms continue the collusive practice of denial that has marred the administration of justice in the North and which they are ostensibly designed to end. Sam Marshall’s death occurred just over a year after the killing of Pat Finucane and the Marshall family solicitor for many years was Rosemary Nelson. The case is also one of a

number involving allegations of collusion by covert intelligence units of the British military and Special Branch in the late 1980s and early 1990s. If even some of such allegations were found to be true the evidence could point toward a campaign of targeted assassination in this period, many of known republicans or family members, carried out by loyalist paramilitaries in collusion with the state (Interview RFJ 2012). Far from collusion in the Finucane case being seen as unique or an aberration from the norm it would then need to be understood quite differently. Unusual, not so much for the fact that collusion occurred, but that it was directed at the death of a well-known human rights lawyer.

Fragmentation and compartmentalization have characterized the approach to truth recovery processes in collusion cases in Northern Ireland. So too has a record of bureaucratic shifting of legislative, procedural and discursive boundaries. Redrafting laws, redefining terms, restructuring the processes and procedures of investigation, inquiry and institutional interactions, retrenchment and a return of the “old guard” have all been features of a drawn-out process of post-conflict official truth management extending back over a decade and a half. It suggests an effort not only to maintain, or re-interpret, the denial of collusion, but to do so in large part through a series of discursive practices whereby state crime is reduced to a politically neutralized set of managerial problems.

There have been regularly expressed demands for a comprehensive, inclusive and independent approach to truth recovery. In January 2009 a Government established Consultative Group on Dealing with the Past recommended the creation of a “Legacy Commission”, headed by an international figure to take over the work of the PONI and HET (CGP 2009). The Eames-Bradley Report (named after the joint chairs) was immediately and unceremoniously side-lined by the Labour Government of the day. As with a 2006 House of Commons Select Committee report on dealing with the past, a lack of consensus was cited as the grounds for this denial of a truth or legacy commission. The non-consensus argument was reiterated by Select Committee response to Eames-Bradley in 2010 and remains the dominant official discourse opposing an inclusive mechanism (HC NI Committee 2009; Paterson 2012).

The official processes introduced have largely been responses to long term campaigns by victims’ families and their supporters for truth and justice in collusion cases; usually in the face of massive official, media and populist hostility. They continue to challenge the official narratives attempting to delimit and divert public attention from the full implications of the issue of collusion. As well as critically engaging with the PONI and HET, families have continued to pursue truth and justice through the due processes of the criminal justice system (inquests, judicial reviews and civil cases) and by taking cases to European courts and wider international opinion. Indeed, as official transitional justice approaches have been seen to block and limit access to the truth in collusion cases there has been something of

a return to law in pursuit of processes based on Article 2 and international human rights standards.

Whether collusion should be understood as part of a pattern of policy and practice of the state is one of the essential issues that any truth recovery process needs to tackle. Certainly it is crucial to the case of Pat Finucane (and a question the de Silva report has not answered) as well as to the others discussed in depth here. It is questionable whether the current official truth recovery processes in place can therefore be seen as fit for purpose, if exploring such questions is their purpose. This is not only because of any ideological or political reluctance to reveal the truth, although that must be considered as a factor, but also (and the two may not be entirely unconnected) because the structural and institutional forms that truth recovery has taken tend to work against the ability for patterns of state action to be systematically explored. Alongside the undoubted benefit of providing some important information, the various truth recovery mechanisms also evidence a record of evasion, denial and dubious practice. It is difficult not to come to the conclusion that they have formed not so much a mosaic of paths mapping a way through to the truth about collusion, as a maze managing what truth can and cannot be told. Because of these official truth recovery processes, rather than in spite of them, the issue of collusion continues to occupy that zone of indeterminacy, hovering on the threshold of the juridical, that Agamben identifies as crucial to a critical understanding of the state of exception as a dominant paradigm of governance in our “so-called democracies” (Agamben 2005: 3). Fighting for the truth about British State involvement in extra-judicial killings and collusion during the conflict in Northern Ireland is of continued importance both because it aims to reveal what was done in the past and tells us of the nature of state power now.

## Notes

1. The UFF was a cover name used by the Ulster Defence Association (UDA). This helped the UDA retain its legal status until it was finally proscribed in 1992.
2. The Walker Report is so-called after its author, Patrick Walker, believed to be second in command of MI5 in Northern Ireland at the time (and later Director General of MI5 1987–92).
3. Bloody Sunday, 30 January 1972, saw 14 unarmed civilians shot dead during an anti-internment march in the Bogside, Derry by members of the British Parachute Regiment. The first inquiry, chaired by Lord Widgery, exonerated the British Paratroopers and acted as a catalyst for conflict.
4. Rosemary Nelson was a well-known Lurgan-based lawyer who came to prominence acting on behalf of some republicans and taking actions on behalf of the Garvaghy Road Residents Coalition against the RUC for their policing of the controversial Drumcree parade in Portadown (Root and Hitchings 2011). On 15 March 1999 Rosemary Nelson was killed in a car bomb planted by the Red Hand Defenders (a cover name for an amalgam of dissident members of the UDA and the Billy Wright-led Loyalist Volunteer Force). Following RUC intimidation and threats against defence lawyers fears had been raised for Rosemary Nelson’s safety before she was killed (Cumaraswamy 1999: 190–6). There were widespread allegations of security force involvement in her death.

5. Robert Hamill was beaten to death by a mob of loyalists when he and a small group of friends were attacked on their way home from a night out in Portadown on 27 April 1997 (Cory 2004c). The sustained attack lasted for up to 10 minutes while armed members of the RUC sat and watched from an armoured Land Rover less than 20 feet away. The RUC initially claimed Robert's death was the result of a large scale gang fight.
6. Billy Wright was a leading Portadown-based loyalist and long-time Mid-Ulster commander of the Ulster Volunteer Force (UVF). In 1996 he formed the LVF, a breakaway group of UVF members opposed to the loyalist ceasefire and the peace process. In 1997 Wright was imprisoned in the Maze prison where, on 27 December, he was shot dead by republican inmates, members of the Irish National Liberation Army (INLA). Again, there were allegations of collusion in Wright's death. There have also been longstanding, disputed allegations of Wright himself acting in collusion with British intelligence and RUC Special Branch in many killings of Catholics and Republicans in the Mid-Ulster area through the 1980s and 1990s (Larkin 2004; McPhilemy 1998).
7. In March 1989 two senior RUC officers (Chief Superintendent Harry Breen and Superintendent Bob Buchanan) were killed in an ambush by the IRA shortly after they left an intelligence meeting with counterparts in the Garda (Cory 2003a). Members of the Garda were suspected of having passed on information of their movements. In April 1987 Lord Chief Justice Maurice Gibson was blown up with his wife when a bomb planted by the IRA exploded. The couple were crossing the border from the Republic of Ireland returning from a holiday. Again, there were allegations that information as to their movements had been passed from the Garda to the IRA (Cory 2003b).
8. See <http://www.smithwicktribunal.ie/>
9. At time of writing, the HET actions in these cases are currently suspended and the subject of review by Her Majesty's Inspectorate of Constabulary.

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