

# statewatchjournal

reflections on the state and civil liberties in Europe



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# A nation of 'grasses'?

**Ben Hayes**

In 1950 Routledge published "Lag's Lexicon: A Comprehensive Dictionary and Encyclopaedia of the English Prison of Today" by Paul Tempest. It defined a "grasser" as "one who gives information" to the police (see also "informer", "nark", "snitch", "squealer", "squeaker" and "stool pigeon"). Tempest attributed the term to "grasshopper", Cockney rhyming slang for "copper" (itself slang for policeman), though others have suggested the term derives from the Latin poet Virgil, who coined the phrase "snake in the grass" (*latet anguis in herba*) to depict a traitor. Regardless of the etymology, by the early 1970s the term was so widely used and understood that British journalists would henceforth describe as "supergrasses" those who "turned" state's evidence and testified against friends and associates in "underworld" and terrorism trials.

In countries like Britain and the USA, "grassing" represented the ultimate betrayal of the fabled code of "honour among thieves"; in totalitarian regimes it was the lifeblood of state security. In the former German Democratic Republic, for example, records showed that 2.5% of the population were Stasi informants, but official archivists estimate the true figure to be three times higher. If "occasional informers" were included, suggested a former Stasi colonel, more than one quarter of the East German population would have been implicated.

Whether it's turning on one's friends or acquiescing to the demands of a police state, popular culture steeps informers in cowardice or treachery. Note how quickly prominent Republicans branded Edward Snowden a "traitor" for blowing the whistle (a form of democratic grassing?) on his former employers at the National Security Agency.

Though far from exhaustive, the essays that follow are broadly concerned with different types of informing. The intention is not to sort the "good" grasses from the "bad" but rather to interrogate the relationship between states and informers and better understand the role that they play not just in the pursuit of security and criminal justice, but state subversion and the pursuit of profit.

In Britain in particular, members of the public are increasingly being encouraged, and in some cases compelled, to monitor and report on each other's behaviour [see Max Rowlands]. Businesses employing workers from outside the EU and universities enrolling non-EU students are obliged to conduct extensive checks for the UK Border Agency or face severe sanction.

It is now proposed to extend these requirements to landlords and possibly schools, doctors and hospitals. Meanwhile, government initiatives urge people to report suspicions about terrorism, benefit fraud, "anti-social behaviour", bad driving and even the improper use of rubbish bins.

In Ireland, the British state has used informers with deadly consequences for nearly four centuries [see Paddy Hillyard and Margaret Urwin]. In the recent conflict, the security forces had paid agents and informers in all paramilitary organisations. In December 2012, Desmond de Silva QC published his long awaited report into the murder of civil rights lawyer Pat Finucane. While da Silva confirmed the state's role in "actively facilitating" his murder by loyalist paramilitaries, he refuted the long-standing and widespread allegation that the act was part of a sustained, government approved campaign against the IRA.

Though the focus of Britain's "war on terror" has shifted from Irish to Muslim communities, the use of informers continues to play a central role [see Aviva Stahl]. On the one hand, the widely criticised Prevent programme encourages a host of state and non-state actors, from schools and Mosques to health clinics and charities, to report to the police not just their suspicions about terrorism but ill-defined indicators of "radicalisation". On the other, British security and intelligence agencies continue to recruit "extremists" as informers, some of whom have gone on to commit serious crimes.

In revelations that have caused less shock and outrage than one might have expected, the deployment of British undercover police officers to infiltrate protest groups – not just in the UK but across Europe – is currently the subject of parliamentary and judicial enquiries [see Chris Jones]. The same is true of the "blacklisting" of construction industry workers on the basis of trade union membership, political beliefs or health and safety activities – a practice in which the police and private sector have allegedly long-conspired [see Trevor Hemmings].

Finally, the collection includes an historical analysis of vigilantism and counter-vigilantism in Spain, a country whose recent history shows a "stubborn continuity of surveillance, control, domination and revanchism as political strategy and social dynamic" [see Gemma Galdon-Clavell], and the outsourcing of responsibility for "stowaways" and "illegal" migrants to the merchant shipping industry [see Paloma Maquet and Julia Burtin Zortea].

The sound bite "Stasi 2.0" gets bandied around for every new surveillance scandal, with little forethought as to what it really implies. Policies and practices based on people informing on one another – especially the poor, the foreign and the non-conformist – entrench a particularly pernicious aspect of surveillance culture that fosters distrust, divisiveness and deprivation.

Statewatch is a non-profit-making voluntary group founded in 1991. It is comprised of lawyers, academics, journalists, researchers and community activists. Its European network of contributors is drawn from 18 countries. Statewatch encourages the publication of investigative journalism and critical research in Europe the fields of the state, justice and home affairs, civil liberties, accountability and openness.

One of Statewatch's primary purposes is to provide a service for civil society to encourage informed discussion and debate - through the provision of news, features and analyses backed up by full-text documentation so that people can access for themselves primary sources and come to their own conclusions. [www.statewatch.org/about.htm](http://www.statewatch.org/about.htm)



# A duty to inform? The outsourcing of state surveillance responsibilities to the British public

Max Rowlands, Statewatch

**The government is increasingly encouraging - and in some cases compelling - members of the public to monitor and report on each other's behaviour. This practice disproportionately targets the poor, foreign nationals and the already marginalised, and contributes to the normalisation of surveillance within British society.**

The coalition government has adopted and extended Labour's strategy of outsourcing the surveillance responsibilities of law enforcement agencies to the private sector, most notably in the field of immigration. UK businesses that employ non-European Economic Area (EEA) workers and universities that enrol non-EEA students are obliged to conduct extensive checks for the UK Border Agency (UKBA) or face severe financial penalties. Under changes announced in the Queen's speech of May 2013, this requirement will be extended to landlords and possibly schools, doctors and hospitals.

The Queen's Speech also outlines a replacement for Anti-Social Behaviour Orders; a Labour initiative that relies on members of the public informing on one another to be enforced effectively and is notorious for facilitating vindictive behaviour. Moreover, in recent years a plethora of government publicity campaigns have urged the public to report those who exhibit suspicious behaviour in relation to a wide range of offences including terrorism, benefit fraud, social housing violations, bad driving and even the improper use of rubbish bins.

The fact that in most cases allegations can be made anonymously and without substantive evidence means that these schemes provide an outlet for malicious accusations and often do little more than furnish the police and government officials with mounds of inaccurate data through which they have to trawl.

## The outsourcing of immigration controls

The centrepiece of the Queen's speech is a new Immigration Bill that will fulfil the coalition government's pledge to make Britain's immigration rules "amongst the toughest in the world." [1] It has yet to be published so precisely what this will entail

is unclear, but government briefing notes state that the Bill will focus on "stopping immigrants accessing services they are not entitled to" and "making it easier to remove people from the UK." This will include further outsourcing responsibility for enforcing immigration control to the private sector.

Businesses that employ foreign nationals are already incentivised to adopt UKBA functions by monitoring and reporting on their staff because doing so can help them avoid a fine if they are later found to have breached immigration rules. Under the civil penalty system introduced by Section 15 of the Asylum and Nationality Act 2006, employers can be fined up to £10,000 for each illegal worker they employ. In serious cases, the UKBA can prosecute those who knowingly employ (or have employed) illegal workers; an offence punishable by an unlimited fine and/or a prison sentence of up to two years. In all cases, sanction can be avoided if employers demonstrate a willingness to inspect the original documents of prospective employees and perform annual checks on the eligibility of those already employed. This effectively turns all employers into agents of the UKBA.

The new Immigration Bill promises yet harsher sanctions; it will "enable tough action against businesses that use illegal labour, including more substantial fines." In March 2013, Nick Clegg called for the size of the maximum penalty to be doubled to £20,000 per worker. [2] Any strengthening of the civil penalty system would be alarming because it has already been shown to have a divisive and stigmatising effect in the workplace. Many employers, anxious to avoid culpability, have imposed increasingly rigorous checks on prospective and existing staff. Migrants' Rights Network argues that "based on accounts from trades unions and workers associations... giving employers immigration responsibilities has thus far often resulted in confusion among employers, discrimination against minority workers, and persecution of many small ethnic businesses by the immigration authorities." [3]

The Bill introduces a similar system for private landlords who will now be required to "check the immigration status of their tenants and could face fines for failing to do so." [4] It is unclear how this system will be implemented and enforced because landlords and the state do not have a formal relationship, nor are landlords required to join a national register. Hours after the Queen's speech, Health Secretary Jeremy Hunt gave a radio interview in which he was unable to provide any details of how the new arrangement might work. [5] The housing and homelessness charity Shelter has voiced concerns over the practicability of "a system of using landlords and letting agents as an arm of the state to check up on illegal immigrants" and warned that this could "lead to increased discrimination against prospective renters of BME [Black and Minority Ethnic] backgrounds, foreign nationals and those with poor English." [6] The civil penalty system for businesses has caused some employers to adopt a safety-first approach to recruitment whereby all non-EEA candidates are avoided; a policy that inevitably forces people into illegitimate forms of employment. Many landlords might now feel the need to take a similar approach when considering tenancy applications. This would leave more people with little choice but to enter into

agreements with unscrupulous and exploitative landlords; an existing problem that the new Bill is likely to exacerbate rather than redress. The administrative costs of performing background checks could also be passed onto tenants.

The coalition government's desire to outsource responsibility for immigration control goes further. The Immigration Bill intends to stop temporary and "illegal immigrants accessing services they are not entitled to," specifically the National Health Service (NHS). Speaking in the House of Commons in March 2013, Jeremy Hunt suggested that NHS staff would be responsible for evaluating whether foreign nationals are eligible to receive healthcare treatment. [7] Similarly, the Guardian revealed in March 2013 that ministers were considering a plan to require schools to check the immigration status of their pupils. [8] Migrants' Rights Network warns: "The business of immigration control has expanded outwards from the borders of the country and has managed to wrap itself into ever more relationships between businesses and services, and immigrant communities - which is to say effectively everyone in Britain today." [9]

### **UK universities: the Points Based System and reporting 'radicalisation'**

Nowhere is this more evident than in UK universities. Not only must they screen all non-EEA employees (be they academics or cleaning staff) to mitigate the risk of punishment under the civil penalty system, but since 2009 have been obliged to monitor foreign students under the UKBA's Points Based System (PBS) for immigration. Under the PBS, any educational institution wishing to employ staff and enrol students from outside the EEA and Switzerland must apply to the UKBA to become a Highly Trusted Sponsor (HTS) and agree to adopt functions of immigration control. This means that, among other things, they have to maintain a record of non-EEA student passports, visas and contact details and report poor attendance to the UKBA. Failure to do so can result in the withdrawal of the institution's HTS status and with it the ability to admit non-EEA students and benefit from the high tuition fees they pay.

In his foreword to *A Points Based System: Making Migration Work for Britain*, published in March 2006, then Home Secretary Charles Clarke said:

*"I believe that this new points-based system will allow employers and those in educational institutions to take ownership of migration to this country. They, rather than just the Home Office alone, will be able to vet who comes into the UK..."* [10]

But is this an appropriate role for universities to play? The PBS clearly undermines the principle of academic freedom which is based, in part, on the notion that universities should be independent from government to ensure that teaching and research can be carried out without political interference and that academics can publish findings and act as independent experts in their field without fear of state sanction. Making academics do the work of the UKBA attenuates this tenet, but so disastrous are the financial implications of losing HTS status that most

universities have adhered to the PBS's surveillance requirements with little or no internal debate. Their obedience is motivated, in part, by the government's decision in August 2012 to strip London Metropolitan University of its HTS status because "a small minority of its international students did not have accurate documentation to remain in the UK." [11] This ruling was reversed in April 2013, but, according to the University and College Union (UCU), not before it created "an atmosphere of paranoia among many institutions" that led to the introduction of "more heavy-handed procedures for monitoring the performance, behaviour and activity of international staff and students." [12] Some institutions have gone so far as to introduce biometric fingerprint systems to log which students are present at lectures, even though in many cases attendance is not compulsory.

The UCU reports that "much of the day-to-day responsibility for monitoring staff and students and ensuring that their records are kept up to date has fallen upon existing academic and related staff members." This has damaging repercussions for their working relationship with non-EEA colleagues and teaching relationship with non-EEA students. Anyone who comes from outside the EEA now has every reason to be cautious about what information they divulge in case it is reported to the UKBA. UCU continues to campaign against the PBS for this reason: it has turned "academic and support staff into agents of the state" by forcing them to "assume roles commensurate with being an extra arm of the UK Borders Agency." [13]

Police have also visited a number of universities to ask them to report students whose work shows signs of "radicalisation". [14] Even before the PBS was introduced, some universities displayed a willingness to assume this responsibility. In May 2008, the University of Nottingham reported a student, Rizwaan Sabir, and a member of staff, Hicham Yezza, to police after university staff discovered an Al Qaeda training manual on Yezza's office computer. Both men were arrested and held for six days, but were eventually released without charge when the police found no evidence linking them to terrorism. The training manual, which Sabir was using to help draft his PhD proposal and had emailed to Yezza to print out, was shown to be an open source, declassified document that is readily available for download from a wide range of sources, including the US justice department website and Amazon.com.

In April 2011, a Nottingham University lecturer, Rod Thornton, published an article criticising both the university's decision to report Sabir and Yezza and university management staff's subsequent treatment of the men which, Thornton alleged, included increased monitoring and character smearing. [15] The university refuted these "baseless accusations" and immediately suspended Thornton. Two months later, Unileaks website published over 200 confidential Nottingham University documents to corroborate Thornton's assertions. They revealed that university security staff filmed students on campus with the intention of monitoring potential extremists and kept logs of Middle East related activities, including details of talks and seminars on Palestine. [16] The pressure group Support the Whistleblower at Nottingham, who helped leak the documents, argued:



*“These leaks show how everything can, and does, go wrong when a brand-conscious university is left to deal with security issues such as terrorism. What’s more this case highlights how a leading British university can act with impunity on such a sensitive issue” [17]*

## Anti-Social Behaviour Orders

Labour’s campaign against anti-social behaviour also encouraged members of the public to monitor and report on each other’s behaviour. Many of the schemes introduced by successive Labour governments between 1997 and 2010 rely heavily on public pro-activeness to be effective, most notably Anti-Social Behaviour Orders (ASBOs). These are civil orders that can be issued by a magistrates’ court to any person over ten years of age. They can ban an individual from committing certain acts, entering designated geographical locations or socialising with specific individuals. Breaching an ASBO is a criminal offence punishable by up to five years in prison, but that has not prevented over half of all recipients violating the terms of their order. Members of the public are encouraged to gather evidence against objectionable neighbours to aid the application process, which has often led to accusations of vindictiveness.

Once an order is made, many of the things prohibited by an ASBO, and thus criminalised, are so petty that it is virtually impossible for the police to enforce. Thus if someone is banned from walking along a specific road, wearing a hooded top, or swearing too loudly at their television set, it is typically the responsibility of their neighbours to notify police of a breach and ensure that the person is punished. To this end police actively encourage public participation by “naming and shaming” ASBO recipients. Their name, photograph and the terms of their order are often distributed in leaflets, published in the local press and posted on the internet. Some local councils have offered people diaries, video cameras and Dictaphones to gather and log evidence against their neighbours. ASBO usage peaked at 4,122 in 2005 but has declined every year since as evidence of their ineffectiveness mounted; 1,414 were issued in 2011. [18]

Soon after its inception in July 2010, the coalition government said that it was “time to move beyond the ASBO.” Almost three years later, the recent Queen’s speech announced a new Anti-social Behaviour, Crime and Policing Bill which will be responsible for “Replacing and condensing the 19 existing powers to deal with anti-social behaviour into six faster, more effective ones, giving victims the power to ensure that action is taken to deal with persistent anti-social behaviour through the new Community Trigger.” [19] ASBOs will be replaced by Criminal Behaviour Orders and Crime Prevention Injunctions, both of which will have a lower standard of proof meaning they can be more quickly put in place. It remains to be seen whether the effectiveness of the new system will be any less dependent on members of the public reporting on one another. The new “community trigger” scheme, under which police will be forced to investigate any incident of anti-social behaviour that is reported to them by at least five people or by the same person on three separate occasions,

has already prompted concern from police that it could facilitate vindictive behaviour and “spurious complaints.” [20]

## ‘Crowdsourcing’ the monitoring of CCTV cameras

The numbers of CCTV cameras operated in the UK – both publicly and privately owned – has grown rapidly in recent years, but there is little regulatory oversight governing how and where CCTV can be used and by whom. This has led to function creep, as cameras become increasingly prominent in new areas of everyday life. For example, since 2011 in Soham, Cambridgeshire, volunteers have been given responsibility for monitoring feeds from the town’s CCTV network. [21] This cost-cutting measure went ahead despite the obvious privacy concerns of allowing people to view footage of their neighbours. The website “Internet Eyes”, which since 2010 has streamed live CCTV feeds from businesses and shops to its subscribers, at least does not broadcast images from within a 30 mile radius of a user’s postcode. For an annual membership fee of £15.99, Internet Eyes allows anyone over 18 years of age to monitor CCTV footage and report “suspicious activity” by clicking an alert button. An email is then automatically sent to the owner of the CCTV camera (the website’s customer) containing video footage of the incident. Users are awarded £10 for every “positive alert.”

## Combatting terrorism

There are many other examples of members of the public being encouraged to surveil one another. The Metropolitan police ran anti-terrorism campaigns in March 2009 and December 2010 under the slogan: “Don’t rely on others. If you suspect it, report it.” Their current campaign postulates: “It’s probably nothing, but...” [22] Genuine concerns about terrorism should be reported, but the blanket approach advocated by police whereby even the most tenuous suspicion is communicated has been criticised for fostering distrust and wasting police time. One Metropolitan police poster encouraged people to report anything suspicious they saw in their neighbours’ garbage bins such as empty chemical bottles or batteries. Another poster urged people to report anyone they saw studying any of the UK’s vast array of CCTV cameras. [23] Similarly, a Metropolitan police campaign in March 2008 encouraged the public to report anyone they believed to be taking suspicious photographs. Advertisements ran in national newspapers with the slogan: “Thousands of people take photos every day. What if one of them seems odd?” [24] In May 2013, the former head of MI5, Stella Rimington, emphasised that the British public has a duty to act as the “eyes and ears” of the security services because “the enemy is everywhere.” [25]

Lest members of the public forget their duty to disclose any suspicions they might harbour about terrorist plotters, section 38B of the Terrorism Act 2000 provides that if a person has information which he or she “knows or believes might be of material assistance in (a) preventing the commission by another person of an act of terrorism or, (b) in securing the apprehension, prosecution or conviction of another person, in the UK, for an offence involving the commission, preparation or instigation of

an act of terrorism”, they commit a criminal offence if they do not disclose the information to police “as soon as reasonably practicable”.

## The London Olympics

This “duty” assumed a political dimension in April 2012 when the Minister for Sport, Hugh Robertson, criticised those planning protests during the Olympic Games for “letting down” Britain and urged the public to report them: “If you know of people, including neighbours, who are going to break the law during the Olympics you should let the authorities know.” Robertson acknowledged that the right to peaceful protest is enshrined in UK law, but argued: “This is an opportunity for us all to show the world the best of Britain and the last thing I want is that ruined by Occupy London protests or anything like that.” [26]

## Suspicious financial transactions

The banking sector, target of the Occupy protests, has also been drafted into the state’s surveillance machinery - the centuries old principle of banking privacy having long been kicked into touch. UK law requires the staff of banks to conduct ongoing surveillance of their customers and report “suspicious activities” to the Financial Intelligence Unit of the Serious Organised Crime Agency (SOCA).

The Proceeds of Crime Act 2002 (POCA) criminalises the failure to report suspicion of money laundering. Money laundering is defined extremely broadly: concealing, disguising, converting or transferring property which is the proceeds of crime [s.327, SOCA]. If you are employed by a bank, casino, real estate agent, dealer in precious metals or stones, legal or accountancy firm, you are committing a criminal offence under sections 330 or 331 of POCA if you fail to report your suspicion or knowledge of another person’s money laundering to SOCA.

Exemplary fines imposed on banks for lapses in “due diligence” have extenuated the risk adverse position taken by the financial sector with the net result that some 200,000 “Suspicious Activity Reports” are reported to SOCA every year. [27] The majority are stored in SOCA’s ELMER database for a period of six years and may be accessed by 80 different UK “end user organisations” via the money.web server. [28] This reportedly includes Trading Standards and some county councils, including “Nottinghamshire County Council [which] uses ELMER to investigate housing benefit fraud.” [29]

The House of Lords Select Committee on the European Union has criticised this framework and called for a change in the law so that failure to report a suspicious transaction relating to a minor criminal offence cannot be prosecuted. [30] The Information Commissioner has called for the government to reconsider the “very low threshold of suspicion that handling criminal property or money laundering is taking place.” [31]

## Grassing for austerity

The government also encourages the public to help reduce state

spending, for example by reporting benefit fraud. Tip offs can be made by post, online or by phoning the National Benefit Fraud Hotline. People can also call the charity Crimestoppers with their suspicions as part of a campaign launched by the Department for Work and Pensions in December 2011. [32] Reports can be made anonymously and with no evidential requirements. There are many instances of people claiming to have endured financial hardship and lengthy legal battles due to spurious allegations made by vindictive neighbours. [33] The deputy chief executive of Crimestoppers, Dave Cording, estimated that only one in every six calls received by his organisation would provide genuine information on benefit fraud. [34] In 2009-10, 253,708 cases were reported to the National Benefit Fraud Hotline of which 46,258 were referred to the Fraud Investigation Service for further action. In only 3,360 cases did this result in a sanction; a meagre overall success rate of 1.32%. [35]

In Scotland, the ‘Made from Crime’ initiative encourages the public to report anyone they perceive to be living beyond their means. The scheme encourages people to eye one another suspiciously: “How can he afford that flash car? How did she pay for all those designer clothes? How can they fund so many foreign holidays?” [36] Again reports can be made anonymously meaning there is no limit to the frequency and number of people an individual can accuse.

Members of the public have also been urged to report anyone they suspect to be unlawfully sub-letting social housing. The government announced a scheme in November 2009 that would pay £500 to the first 1,000 people whose telephone tip-offs led to a council house being repossessed. [37] Encouraging people to monitor each other’s living arrangements backfired spectacularly on then Home Secretary Jacqui Smith in February 2009 when her neighbours reported her to the parliamentary commissioner for standards for erroneously designating her London home as her main residence. This had allowed Smith to claim more than £116,000 in second-home allowances, none of which was she forced to repay despite being found to have breached House of Commons rules in October 2009.

## Local schemes

Similar schemes have been introduced at local level on a smaller scale. For example, since 2010, Sussex police has piloted a road-safety scheme called Operation Crackdown which encourages motorists to report instances of poor driving or excessive car noise. All complaints are checked against the Driver and Vehicle Licensing Agency database and the Police National Computer. If a driver is reported twice within a 12-month period they face police action despite never having been caught breaking the law. Big Brother Watch, who uncovered the scheme, said: “the whole process is based on unfounded accusations by untrained and possibly prejudiced members of the public... This scheme is wide-open to abuse; ranging from people with minor grudges against neighbours to busybody drivers who think they know what constitutes bad driving.” [38]

Other examples include local councils in England encouraging householders to report neighbours who put out their rubbish bins too early or fail to remove them on time. This includes issuing “environmental crime incident diaries” and asking people to provide photographic evidence of transgressions. [39] Repeat offenders will be fined £100 but this could rise to £1,000 should they fail to pay.

In July 2009, Cambridgeshire and Hampshire police forces launched radio campaigns encouraging people to check the background of anyone they think behaves oddly around children. Members of the public could contact police and check whether an individual is on the Violent and Sex Offenders Register. [40]

## Conclusion

Undoubtedly there are instances where it is necessary for the public to report behaviour they believe breaches the law, but the catch-all approach advocated by the raft of government schemes that promote this form of active citizenship sets too

low a threshold on what should be reported and does not require those levying accusations to present substantive evidence. When the government is encouraging people to report chemical containers in their neighbours’ rubbish it is reasonable to conclude that the net has been cast too wide. [41]

This level of self-policing can foster suspicion and mistrust and cultivate a sense of paranoia that our actions are never free from scrutiny. Certainly the practice appears incongruous with prime minister David Cameron’s vision of a “big society” in which “communities with oomph” will be built around the values of “voluntarism and philanthropy”. [42]

Most alarming is the extent to which these schemes normalise the idea that surveillance and informing are facts of everyday life. Increased public tolerance of Britain’s burgeoning surveillance culture and its targeting of the poor, foreign nationals, and the already marginalised, should give pause for thought about how society is being shaped by the systematic outsourcing of surveillance by the state.

## Endnotes

- [1] The Queen’s speech is given at the state opening of parliament and sets out the government’s legislative programme for the coming year; Sky News, 24.3.13: <http://skynews.skypressoffice.co.uk/newstranscripts/murnaghan-240313-interview-mark-harper-immigration-minister-and-chris-bryant-shadow->
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# Shining a light on deadly informers: The de Silva report on the murder of Pat Finucane

**Paddy Hillyard and Margaret Urwin**

Numerous flaws and oversights in de Silva's report highlight the need for a full scale independent public enquiry into the British state's dealings in Northern Ireland. Security agencies tasked with keeping the peace acted beyond the law, lied to their political masters, leaked information to loyalists, told falsehoods in criminal trials, and recruited known murderers as agents.

## Introduction

The use of informers in Ireland by the British state goes back many centuries. A man called Owen O'Connally informed on the Irish Rebels in 1641, and two of the rebel leaders were subsequently hanged at Tyburn Hill in London. O'Connally was rewarded but he did not live to enjoy his wealth or pension. Like so many after him, he was murdered two years later in the north of Ireland. [1] During the rebellion of 1798, Dublin Castle had a series of agents and informers high up within the ranks of the United Irishmen. In the Land War of the late nineteenth century, informers mingled in the crowds attending evictions and reported back to RIC Special Branch. They were used extensively during the War of Independence, particularly in County Cork. Agents and informers also played a central role in policing the recent conflict in Northern Ireland. Different elements of the security forces had paid agents and informers in all paramilitary organisations, some at the highest level.

On 12 February 1989, Patrick Finucane, a well-known practising lawyer, was brutally murdered by the Ulster Defence Association (UDA) in front of his family while having Sunday dinner. Two of

those involved were paid informers and a third, instead of being arrested for the murder, was recruited as an agent. [2]

Following the Belfast Agreement in 1998, the British and Irish governments held further discussions at Weston Park in England in 2001 with a view to implementing the agreement in full. It was agreed that both Governments would appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion in six incidents, including that of the murder of Pat Finucane. It was further agreed that if the appointed judge recommended a public inquiry the relevant government would implement one. In April 2004, Judge Cory, who carried out the review into the Finucane murder, recommended a public inquiry. Cynically, in 2005 the Labour Government passed the Inquiries Act which radically increased the control of public inquiries by the Government. But even this change has not been sufficient for successive governments to meet their internationally binding legal agreement under the Good Friday Agreement to hold a public inquiry into Pat Finucane's murder. Instead, in October 2011 the Finucane family was called to Downing Street to meet the Prime Minister, David Cameron, only to be informed that instead of a public inquiry there would be a review of the case led by QC Desmond de Silva – a response which the family described as insulting and a farce. [3]

De Silva published his two volume report in December 2012. The first volume contained 25 chapters of over 220,000 words. The second volume published a selection of scanned documents from the security services, agents and government departments covering some 329 pages. To anyone unfamiliar with events in Northern Ireland over the last 30 years, the report might appear a well-researched and meticulously written document providing a definitive public account which therefore eliminates any need for a public inquiry. However, to those familiar with the history of security strategies in Northern Ireland, there are numerous flaws in de Silva's analysis, reasoning and understanding of the context which, far from eliminating the need for a public inquiry, further strengthens the case in favour of one. This article focuses on the criticisms.

## The main findings

Over the years there have been many inquiries into different aspects of the security strategies used in Northern Ireland. [4] This article details the deceit, complicity and illegalities of the



various security agencies tasked with keeping the peace: the RUC Special Branch, the Army's Force Research Unit (FRU) and MI5. These agencies all acted beyond the law, lying to their political masters, running propaganda campaigns, leaking massive amounts of sensitive information to loyalists including putting in place FRU's own intelligence officer at the heart of the UDA, ignoring threats to the lives of those they were tasked to protect, telling falsehoods in criminal trials, steadfastly refusing to arrest and prosecute known murderers but instead recruiting them as agents, and refusing to co-operate with investigations into their nefarious behaviour. A list of specific abuses is noted in the Annex along with paragraph reference numbers.

The main conclusion of the report is that "a series of positive actions by employees of the state actively furthered and facilitated [Pat Finucane's] murder and that, in the aftermath of the murder, there was a relentless attempt to defeat the ends of justice." [5] However, de Silva also concluded that there was no "overarching state conspiracy to murder Pat Finucane" [6] – refuting the long-standing and widespread allegation that the Thatcher government approved a 'deniable' campaign against the IRA by deploying loyalist assassins, a strategy approved by all successive governments.

## Completeness of the documentation

De Silva asserts: "[I] was given access to all the evidence that I sought, including highly sensitive intelligence files". [7] But given the extent of the duplicity detailed in his report, how can he be sure that he saw all the relevant material? Judge Cory told the Joint Oireachtas Committee that he was satisfied he had seen all relevant documentation [8] but now de Silva informs us that he had "a wider evidential base" [9] which suggests that he received more documentation than Cory. Deep in the heart of his report, de Silva examines the disappearance of the tape on which Ken Barrett, one of the known killers of Pat Finucane, confesses to the murder in the back of a police car. It was replaced by another tape recorded a week later at the exact same location which does not have a confession on it. [10] Thus, what confidence can anyone have that other crucial evidence has not also disappeared or been substituted?

Much of the review is based on Contact Forms (CFs), Telephone Contact Forms (TCFs) and Military Intelligence Source Reports (MISRs). None of these documents are pre-numbered – which is suspicious in itself because this is a common practice of institutions which wish to deny responsibility for their actions. De Silva notes that the CFs from the period around Pat Finucane's murder were withheld from the Stevens Investigation for more than a year. He goes on to say that he found no "evidence to suggest that they were doctored to remove incriminating material". [11]

His rejection of the possibility that they were doctored is central to his overall conclusion that there was no 'overarching state conspiracy' and hence needs to be considered carefully. There were two elements in his argument. First, he argues that as some CFs were highly damaging to the FRU - including admissions that targeting information was passed to one of their key agents, Brian

Nelson, by his handlers- it "was *inconceivable* that there was an attempt to amend the content of the CFs" (Italics added). [12] On the contrary, it is highly conceivable that the most damaging CFs were removed, for example, those which might have suggested that there was a clear policy to use loyalist paramilitaries as assassins, and to leave in place CFs that were less damaging. This would shift responsibility and blame away from the upper echelons of the security services and government to the soldiers on the ground.

The second element in de Silva's argument involves the rejection of the evidence of Ian Hurst, aka Martin Ingram, an agent handler with FRU at the time of Pat Finucane's murder who claimed to have been told by a colleague involved in the task that CFs were being doctored. De Silva rejects Hurst's allegation on the grounds "of his general lack of credibility". [13] Instead he opts to believe those whom he has shown to have lied extensively and had attempted to undermine the earlier Stevens inquiry (See Annex).

Having rejected Hurst's credibility, the only other evidence suggesting that the FRU knew about the murder in advance was to be found in Nelson's long statement to the Stevens investigation and also in his journal written while in prison. [14] But de Silva rejects both because first, an analysis of the CFs do not show that the FRU were told in advance and second, Nelson tended to conceal the truth. [15] Thus, once again the credibility of an agent is rejected in favour of the credibility of discredited members of the security services.

## Intelligence-led policing

While de Silva's terms of reference were very narrow, nevertheless there is one glaring omission in his analysis: there is not one single reference to the blueprint for an intelligence-led policing system for Northern Ireland drawn up by Sir Patrick Walker, who at the time was believed to be second in command of MI5 in Northern Ireland and later became its Director (1988-1992). The blueprint, which was rolled out in early 1980, transformed policing in Northern Ireland from the prevention and detection of crime to a system in which intelligence collection dominated all aspects of policing including the decision to prosecute. Walker's reforms were drawn up and implemented in secret. The first the public and parliament knew of the strategy was from a UTV programme 20 years later in April 2001. [16] At the centre of the new strategy were informers and agents who were to be protected at all costs. The RUC Special Branch was given the task of controlling all intelligence and handling all decisions as to arrests and CID investigations. [17]

These reforms, which were developed by MI5 - an organisation whose very existence was not acknowledged until eight years later - and which bypassed the normal democratic process, must have been discussed at the highest level in the Northern Ireland Office and in the Joint Intelligence Committee which Mrs Thatcher chaired at the time. De Silva is totally silent on these developments and there is no reference in his report to having looked at any of the relevant minutes in the highest echelons of government.

Throughout his analysis, de Silva appears to assume that intelligence-led policing is all about saving lives and the prosecution and detention of offenders. But intelligence-led policing in Northern Ireland is very different from intelligence-led policing in Britain. As Ed Maloney has pointed out, [18] it had other goals such as manipulating the leadership of enemy groups to advance the careers of some and destroy the careers of others, and shaping policies and ideologies.

As de Silva extensively points out, this system of policing was not subject to legal controls. [19] The 1969 Home Office Guidelines on the use of informers were simply considered inappropriate and there was a “wilful and abject failure by the UK government to put in place adequate guidance and regulation for the running of agents.” [20] But as Maloney has noted: “no civil servant is going to recommend a set of rules, much less legislation that makes his or her Minister responsible for murder”. [21] It was a perfect system for the Security Service devised and controlled by them outside of the rule of law. [22]

In short, the security services and politicians conspired together to develop a system based on the widespread use of informers who were allowed to commit murder in order to be effective. It was conceived and approved in secret at the highest level of government. It had no legal basis and hence was illegal. Crucially, it was designed so that proper records would not be kept and hence there would be no audit trail. If challenged it could be denied. “Plausible deniability”, as one senior police officer described it, was built into the system from the start. [23] It was a system specifically devised to permit state agents to murder with impunity and one high profile victim was Pat Finucane. To suggest that there was no overarching conspiracy is therefore a matter of semantics.

### **Lack of any history on the use of informers**

From the earliest days of the troubles, the British authorities were anxious to penetrate the IRA’s network. Plain-clothes teams, initially joint RUC/army patrols, began operating around Easter 1971. These teams were reformed and expanded in late 1971 as Military Reaction Forces (MRFs) without RUC participation. [24]

IRA activists, when arrested, were given the choice between terms of imprisonment or undercover work for the British Army. At least ten of these defectors, known as ‘Fred’s’, were housed in Holywood Barracks, from where they operated under the command of an army officer, Captain McGregor of the Parachute Regiment. [25] There is incontrovertible evidence that, in 1972, the MRF was responsible for the murders of Patrick McVeigh [26] and Daniel Rooney [27] and the wounding of about a dozen men, [28] none of whom had any involvement with the IRA.

In late 1972, MRF operations were brought under centralised control and specialised training was introduced. The Special Reconnaissance Unit (SRU) was established under the command of Army HQNI. [29] Those recruited all had SAS training but, initially, soldiers who had served in the SAS in the previous three years were excluded so that SAS involvement could be denied. The SRU was a much more sophisticated and secretive

outfit than its predecessor and its detachments were located at various points around Northern Ireland. Its primary task was to conduct covert surveillance operations and to handle agents and informers. It continued its work after the SAS was openly deployed to County Armagh in January 1976.

It is against this background, which de Silva is unable to consider because of his terms of reference, that the Force Research Unit (FRU), a covert army agent-running unit, was formed in 1982. [30]

### **No analysis of the patterns of abuse**

De Silva’s report makes little or no reference to other official inquiries, Ombudsmen reports or reports from the Historical Inquiries Team (HET). [31] An analysis of these would have shown that many of the features of the security strategies which de Silva investigated – for example, the failure to arrest and prosecute murderers, the concealment of intelligence, deliberate loss or destruction of evidence, providing misleading or inaccurate information to the courts, the obstruction by both the army and the police of external investigations and the practices and processes of denial – were common features that had been extensively critiqued before.

There is only one mention of the Stalker/Sampson police inquiry into the killing by the RUC of six men in three separate incidents in 1982 and this is contained in a comment by the Chief constable. Yet Stalker as early as 1985 was concerned about the use of informers in Northern Ireland and the possibility that they were acting as agent provocateurs. He and his team were particularly worried about the influence Special Branch had over the entire police force. [32]

There is no mention of the Rosemary Nelson inquiry which revealed the very different practices adopted by Special Branch in Northern Ireland compared with England. It acted as ‘an intelligence cell’ and only supplied ‘sanitised scripts’ to the CID. [33] Similarly, there is no mention of the Wright inquiry which noted the lack of an adequate and effective system for information management and dissemination. [34]

The failure to examine any of these and other inquiries and reports foreclosed any analysis of patterns of behaviour which might have informed the conclusions based only on a narrow, document-based, legalistic analysis of the circumstances surrounding the murder of Pat Finucane. Hence it was relatively easy to dismiss the argument that these abuses, practices and processes were systemic or institutionalised.

### **The recruitment and re-recruitment of Brian Nelson by the FRU**

Brian Nelson was a central figure in the intelligence-led policing and security strategy in Northern Ireland. De Silva states that he was initially recruited by FRU in 1984. [35] He had previously been sentenced to seven years’ imprisonment for offences connected with the kidnapping and torture of a partially sighted man. Following his recruitment, “he played a pivotal role in the

targeting and attempted murder of a Sinn Féin Councillor”. [36] De Silva reports that between May 1984 and October 1985, Nelson, who apparently was the FRU’s only loyalist agent, met with his handlers some 60 times and was paid over £2,000 for the intelligence he had gathered. [37]

In October 1985, he gave up his role as an agent and took a job in Germany. He had no sooner settled into his new life before FRU were frantically trying to re-recruit him, meeting with him as early as December 1985 and January 1986. [38] Why was he allowed to leave at all if he was regarded as such a valuable agent? Did somebody higher up the line of command suddenly discover he had left and order his re-recruitment?

Gordon Kerr justified FRU’s re-recruitment of Nelson to de Silva as follows:

*“...there was a desperate need for operational intelligence on the Protestant terror groups, who were successfully targeting individuals for assassination on a seemingly ad hoc basis... We, in the FRU, decided that if we could persuade Brian Nelson to return to Northern Ireland we could re-instate him as Intelligence Officer in the UDA and gain valuable intelligence on UDA targeting.” [39]*

This justification rings rather hollow in light of the numbers being killed. In 1984, loyalist violence, particularly UDA violence, was low. The UDA killed two people in 1983 and eight people in the previous three years. The UVF, on the other hand, had killed ten people in 1983 and 33 people in the previous three years.

As can be seen clearly from Figure 1, loyalist violence had declined sharply until 1985. Why then was Nelson re-recruited

with such intensity? Kerr’s statement to the Stevens enquiry may, unwittingly, reveal FRU’s real intentions in re-recruiting Nelson:

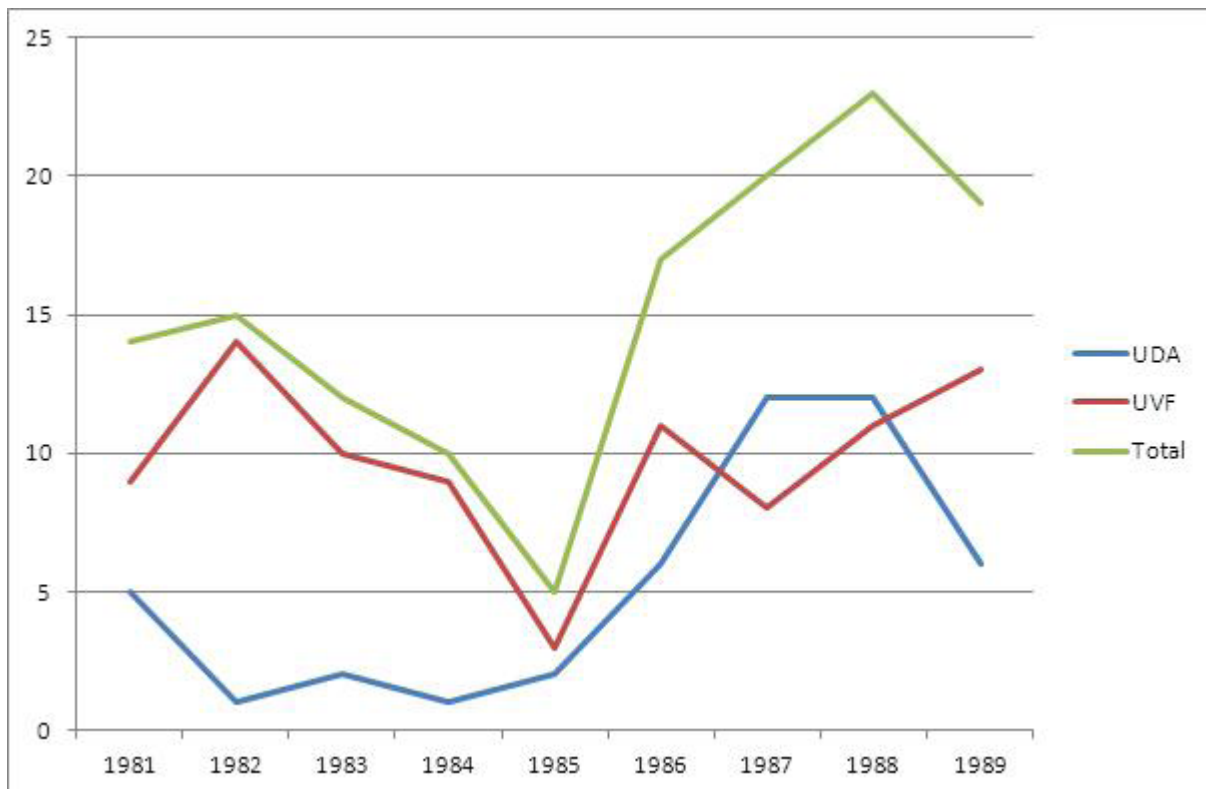
*“By getting him [Nelson] into that position [Chief Intelligence Officer for the UDA] FRU and SB reasoned that we could persuade the UDA to centralise their targeting through Nelson and to concentrate their targeting on known PIRA activists, who by the very nature of their own terrorist positions, were far harder targets. In this way we could get advance warning of planned attacks, could stop the ad hoc targeting of Catholics and could exploit the information more easily because the harder PIRA targets demanded more reconnaissance and planning, and these gave the RUC time to prepare counter measures” [40]*

This explanation suggests that FRU wanted to direct the UDA’s targeting towards members of the IRA. Kerr’s remark that the RUC would have more time to prepare counter measures to halt such attacks before they could be carried through does not stand up to scrutiny when one considers that the FRU was well aware that Special Branch had continually ignored information provided to them previously.

FRU was not the only organisation determined to re-recruit Nelson; MI5 was also anxious to procure his services. Both FRU and Security Service officers flew to Germany in May 1986 to seek a meeting with Nelson after he had failed to contact them over the Easter holidays.

After Nelson was successfully re-recruited, with the blessing of no less than the Army’s Chief of General Staff and Assistant Chief of Staff G2, a FRU officer, referring to Nelson’s security in a Contact Form dated 30 April 1987, wrote rather tellingly:

Figure 1: Loyalist killings between 1981 and 1989.



Source: McKittrick, D., et al. (2001). Lost Lives. Edinburgh: Mainstream Publishing Company.

*“In the past when [Nelson] targeted [sic] people for the UDA he of course would be aware that the victim would be ‘hit’ some time or other and based on his information. However, he never knew the identity of the ‘hit’ team or actually when they would strike. It is hoped these arrangements will continue as it leaves [Nelson] virtually above suspicion if a job goes wrong.” [41]*

De Silva acknowledges that the FRU’s priority, rather than using Nelson’s intelligence to prevent loss of life, appeared to be the protection of Nelson’s security and he notes that “even the MoD’s [Ministry of Defence’s] own internal document stated that it ‘could be interpreted as the Army approving of paramilitary murders’.” [42]

Nelson was offered a very tempting package by the FRU to entice him back from Germany. They bought him a house and a taxi costing £7,200 and agreed to pay him £200 per month for his services. [43]

Whatever the FRU’s intentions, Nelson’s re-recruitment was an abysmal failure. UDA murders increased during the three years 1987-89 as can be seen in Figure 1. During that time, 30 people were killed by the UDA: twelve in 1987, twelve in 1988 and six in 1989. Ten of those killed were Protestants. Only two members of the IRA were killed – one at the funeral of the three IRA members killed by the SAS in Gibraltar and one at his home in County Antrim in April 1989. The remaining 18 people, including Pat Finucane, were Catholic civilians.

De Silva admits that the provision of information to Nelson by the FRU was “utterly inconsistent with the objective of preventing terrorist attacks and saving lives” [44] and that the way Nelson was tasked and paid meant that he was in effect acting as an employee of the MOD. [45]

## MI5 propaganda

De Silva notes that by the 1980s the UK Government and the security forces considered there to be a need for propaganda initiatives against the paramilitaries, specifically against the IRA. [46] To this end, the Security Service disseminated information “within the broader loyalist community in a bid to counter republican propaganda” [47] – an initiative taken forward by MI5 without reference to the Northern Ireland Office. We are told very little about the details but it involved in some instances highlighting the effects of PIRA murders and attacks and in others “discrediting specific PIRA figures”. [48]

One of the figures targeted in the initiative was Pat Finucane. [49] As if to mitigate this finding, de Silva notes that he was not the ‘focus’ of the propaganda initiative [50] and that he found no evidence that Finucane’s “personal details were circulated by the Security Service”. [51] Nor was it “proposed that any individual or group should attack him”. [52] The purpose of the initiative apparently was designed “to discredit and ‘unnerve’ him””. [53] Anyone with a little understanding of Northern Ireland in the period would know that falsely linking people to the PIRA and spreading rumours amongst loyalist communities was an

encouragement to murder.

These propaganda initiatives were “comparatively limited” [54] and “appear to have been terminated around the end of 1989” (Italics added). [55] It is extraordinary that de Silva uses the word ‘appear’ because it suggests that he does not know conclusively, despite claiming to have had access to all relevant documentation. In any event, his analysis flies in the face of what is known about propaganda campaigns in Northern Ireland. While the MI5 initiatives involving Finucane were no doubt limited and terminated in a panic following his murder, propaganda was a central part of the security strategy to defeat the IRA. The Information Policy Unit was set up at army headquarters in Lisburn by the British Government in 1971, shortly after the introduction of internment to counteract what it perceived as IRA propaganda. The unit was joined by the Information Research Department (IRD), a covert branch of the Foreign Office created in the 1940s to counter communism. Both groups engaged in “a full-blown propaganda war against the IRA”. [56] Colin Wallace, who was senior information officer for the army specialising in ‘psychological operations’ in the 1970s, raised concern internally about the black propaganda campaigns and was forced to resign as an alternative to dismissal (only in 1990 was his role admitted in the House of Commons). [57] Subsequently, he was charged and convicted of killing the husband of a work colleague. He always claimed that he was innocent of the crime and had been set up. His conviction was eventually overturned. [58] There is no mention of this history in de Silva’s report.

## Leaks of intelligence to Loyalists

The incredible detail of leaks from both the RUC and the UDR, and apparently to a lesser extent the Army, undermines the view that the security forces were keeping the peace between two warring factions. De Silva examined just a sample of intelligence relating to security force leaks to the UDA in the greater Belfast area between January 1987 and September 1989 and found 270 separate incidences of leaks. [59] He notes that MI5 estimated that, in 1985, the UDA had thousands of items of intelligence material and that 85% of this was drawn from security force sources. [60]

Despite his attempts to downplay the leaks as ‘low-level’ and originating from ‘junior’ UDR and RUC officers, de Silva is forced to accept that there were a number of high-level RUC and army officers involved and that very sensitive information was sometimes passed. He quotes MI5 as follows: “Certainly our researches suggest that RUC links are as extensive as the UDR’s; although it is probably fair to say that RUC officers would not have committed so many offences of murder, manslaughter, firearms offences, etc”. [61] The obvious question that arises is just how many offences of murder, manslaughter and firearms offences have members of the RUC committed?

The leaking was so extensive that on one occasion the deputy head of Special Branch decided that it was not worth bothering to prevent a break-in at a UDR barracks “since the UDA already had lots of this stuff anyway” and “as they would find nothing of



value, there was little to be gained by trying to prevent the break-in". [62] No attempt therefore was made to prevent the UDA breaking into the UDR barracks and gaining intelligence. A UDR briefing video was stolen and given to Nelson who "encouraged UDA attacks on those [republicans] featuring on the video." [63] De Silva also refers to vetting difficulties in the UDR; an old problem, still alive and well in the late 1980s. He reports that the Stevens team found 1,350 adverse RUC vetting reports on individuals seeking to join the UDR during the period 1988-89. Despite these reports, 351 of these individuals were enlisted into the UDR. [64] Vetting of applicants to the UDR had been problematic from the inception of the regiment. In a memo of August 1973, the Director of Security (Army) admits that the process is merely a screening procedure with checks made with Special Branch and other 'int/sy' records. The check had been extended to include the interview of at least one character reference. However, it was remarked that this is no more than a public relations exercise because the applicant nominates the referee. [65]

More break-ins at armouries were occurring in the late 1980s, by then a traditional source of weapons for loyalists. The first major armoury break-in occurred at the TAVR/UDR Centre in Lurgan on 23 October 1972 when 83 rifles and 21 sub-machine were taken, along with a Land Rover belonging to 40 Signal Regiment (61 rifles and seven SMGs were subsequently recovered – the thieves had not expected such a huge haul). On the first anniversary of the break-in, four rifles, two sub-machine guns and five pistols were stolen from the armoury of E Company UDR in Portadown. [66] In the following years, break-ins at UDR armouries were a regular occurrence. [67]

## Arming the loyalists?

De Silva examines the attempt by the UDA to purchase arms in South Africa and totally discounts any involvement of FRU or the Security Service. He is adamant that there was no shipment of arms in 1985 based on the evidence that Nelson told his handlers that the UDA was unable to raise the required funds. He acknowledges, however, that Nelson did visit South Africa in 1985 with the sole purpose of obtaining arms for the UDA with the full knowledge and approval of FRU. [68] He omits to note that his travelling expenses were paid by FRU, a detail provided by Cory. [69] This raises the question: if the FRU was prepared to pay for his trip were they also prepared to pay for guns?

Cory is far less certain than de Silva that no shipment took place in 1985. He comments: "The evidence with regard to the completion of the arms transaction is frail and contradictory" and "whether the transaction was consummated remains an open question". [70] Ian Hurst, aka Martin Ingram, is in no doubt that arms were obtained in South Africa with the knowledge of both Armscor, the South African Armaments body, and the South African government. He argues that FRU was heavily involved in the whole process because it had two main advantages. First, it would increase the operational capacity of the UDA and second, it would improve the standing and prestige of Nelson. [71] This

account is not even considered by De Silva.

In relation to the shipment of arms via Lebanon in December 1987, de Silva is resolute that Nelson and FRU had absolutely no involvement and places the bulk of the responsibility on Ulster Resistance. [72] He refers to the "limited evidence available" and claims "Nelson had little awareness of this operation". [73] Is it credible that Nelson, Intelligence Officer for the UDA, would not have been fully aware of the operation even if he, himself, was not directly involved? An article in the *Guardian* quoted an Armscor source that "when arrangements were being made for the shipment of the arms from Lebanon, it had to be agreed by John McMichael and by his intelligence officer, Brian Nelson". [74] Ian Hurst confirms the shipment and the involvement of the FRU and the Security Service, pointing out that the loyalists were put in touch with the Lebanese gun-runner through an American in Boss, the South African government's secret intelligence agency. [75]

## Conclusion

De Silva's report has shone a light on the role played by the British state in a very dirty war. Its paid agents were involved in the murder of both innocent citizens and paramilitaries. The security service, MI5, designed and put in place a deniable and illegal system of intelligence-led policing which operated outside the rule of law. Successive British governments were aware of the existence of this system yet took no action against it. Senior officials in the police, army and MI5 attempted to subvert and undermine any independent investigations through lies, deceit and other means. Both the army and MI5 were prepared to re-recruit a known killer as an agent, supply him with intelligence and pay for him to go to South Africa with the assumed aim of purchasing arms at a time when UDA violence had declined significantly. What could have been the purpose of all these actions other than to encourage loyalist paramilitaries to intensify the war against the IRA and the Republican community? Far from dispelling the possibility that there was an overarching conspiracy in the murder of Pat Finucane, de Silva's report adds further weight to such a conclusion. A definitive answer can be obtained only by a full scale independent public inquiry in which key witnesses are cross-examined.

## Annex: de Silva's principal findings

### RUC Special Branch

- It failed to take action against the FRU's agent Brian Nelson who was involved in at least 4 murders and 10 attempted murders (29).
- It failed to respond to Nelson's intelligence (38).
- It failed to warn Pat Finucane of the threat to his life in 1981 (54) and 1985 (56).
- It failed to act on threat intelligence relating to Paddy McGrory in July and October 1989 (23.20).
- It failed to take action against the West Belfast UDA gang responsible for many murders and other attacks (17.16).

- It provided the Chair of the UDA and 'Brigadier' of the West Belfast UDA an entirely improper degree of protection and assistance (78).
- It failed to exploit William Stobie's intelligence which could have prevented Pat Finucane's murder (91).
- It did not reveal information regarding the probable murder weapon to the RUC CID murder investigation team (93) or the agent roles played by William Stobie and Brian Nelson (23.75).
- It failed to arrest Barrett, despite reliable intelligence of his involvement in the murder as early as 16 February 1989, until the Stevens III Investigation in 1999 (95).
- It recruited Barrett as an agent rather than charge him with Patrick Finucane's murder (97).
- It deliberately lost the original tape with Barrett's 'admission' to the murder in order to obstruct the investigation into the murder of Patrick Finucane (99).
- It seriously obstructed the Stevens investigation by withholding significant quantities of information (163).
- It lied to the Stevens investigation about its knowledge of Nelson's 'intelligence dump' (24.59) and its seizure by the FRU (24.67).
- It failed for more than a year to give the Stevens investigation a file reporting on RUC and UDR leaks during 1987-89, prepared by the FRU. The Security Service described the file as a 'fairly formidable folio on [Nelson's] reporting on collusion' (24.71).
- It failed to pass onto the Stevens investigation a Security Service compendium of leaks (24.80).
- It deliberately sought to direct the Stevens Investigation towards examining security force 'leaks' from the UDR and concealed information indicating that a similarly large number of leaks had emanated from RUC sources (163).
- It failed to arrest four individuals linked to the murder of Terence McDaid, six linked to the murder of Gerard Slane or a number of individuals linked to the three attempted murders (17.18).
- It provided highly misleading information regarding Nelson's role to the Attorney General, DPP(NI) and the prime minister (24.118, 24.137, 24.141).

#### **RUC in general**

- It proposed Patrick Finucane as a UDA target (74) and gave the UDA 'intelligence' on him (19.81).
- It provided assistance to loyalist paramilitaries in instances where they shared a desire to see republican paramilitaries killed (46).
- It failed to ensure an adequate investigation into the murder of Pat Finucane (94).
- It tipped off Nelson and other UDA members of pending arrests by the Stevens Investigation (24.82).

#### **The Army's Force Research Unit (FRU)**

- It allowed Nelson to update and disseminate targeting material to other loyalist paramilitaries (32).
- It passed intelligence to the RUC SB prior to the attack on Pat Finucane in the knowledge that the RUC was taking no action on

the bulk of intelligence supplied to them (40).

- It informed the Stevens investigation that the army itself did not use informants (24.41).
- It failed to provide the Stevens investigation with important material relevant to his criminal investigation (101).
- It gave Nelson at least three lessons in 'Resistance to Interrogation' techniques in case he was arrested and he was "told to say absolutely nothing to any interrogators no matter what the threat" (24.11).
- It failed to mention that Solicitor, Paddy McGrory, was the main target in a CF on loyalist targeting (23.16).

#### **Army in general**

- It gave instructions that no intelligence documents or access to its intelligence gathering units should be made available to the Stevens Investigation without reference to the DHSB (24.26).
- It briefed Government Ministers that leaks related to only a small number of 'rogue' individuals and was of 'low-level' when it was extensive and included highly sensitive information (47).
- It must bear a degree of responsibility for Nelson's targeting activity during 1987-89, including that of Patrick Finucane (87).
- It consciously failed to provide the Stevens investigation with important material relevant to his criminal investigation (101).
- Senior Army Officers deliberately lied to criminal investigators by informing them that they did not run agents in Northern Ireland to hide the existence of Brian Nelson (102).
- MOD wrote to Tom King that it would not wish Nelson to be prosecuted (24.102).

#### **MI5**

- It failed to carry out their advisory and co-ordinating duties adequately in relation to Nelson and the FRU (37).
- It supported the RUC SB's decision concerning threats to Pat Finucane to take no action in 1981, and appear to have made no attempt to prompt them into taking any action in 1985 (56).
- It failed to seek political clearance for its involvement in propaganda initiatives (63).
- It failed to take proportionate steps to protect the life of Solicitor Paddy McGrory in July and October 1989 (23.24).

#### **Security forces in general**

- They passed on to loyalist paramilitaries a very large volume of information including reported leaks of highly sensitive information (47).

#### **Government/Civil service criticisms**

- They failed to put in place an infrastructure underpinning the conduct of intelligence agents and handlers (108)
- MOD officials provided the Secretary of State for Defence highly misleading and, in parts, factually inaccurate advice about the FRU's handling of Nelson. (107).
- The system appears to have facilitated political deniability in relation to such operations, rather than creating mechanisms for an appropriate level of political oversight (25.25)

## Endnotes

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- [4] See Rolston, B. and Scraton, P. (2005). 'In the Full Glare of English Politics Ireland, Inquiries and the British State'. BJC 45: 547-564.
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- [6] Ibid. para. 116.
- [7] Ibid. para. 10.
- [8] Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights, conference telephone conversation with Judge Peter Cory, 5 March 2004
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- [10] See the account of the switching of the tapes by police officer Johnston Brown: Brown, J. (2005). *Into the Dark: 30 Years in the RUC*. Dublin: Gill & Macmillan. Pp. 172-199 and 238-248. Stalker also had problems gaining access to a tape in his investigation. After being told one existed, after many months he was informed that it no longer existed only a transcript of it.
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- [13] Ibid. para. 21.204.
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# Secrets and lies: undercover police operations raise more questions than answers

Chris Jones, Statewatch

**British police officers undercover in protest movements have been shown to have regularly operated outside the UK. Activists, lawyers and MPs have all called for an independent public inquiry in order to reveal the full extent of the practice.**

Two-and-a-half years after the unmasking of Mark Kennedy and other police spies in protest movements, new information has emerged that reveals the extent to which police forces across Europe colluded in their deployment. Accusations have been made that police infiltrators were at the forefront of planning protests, acting as agent provocateurs. European law enforcement agencies coordinated these activities in secretive, unaccountable transnational working groups. Police officers formed long-term, intimate relationships with activists, had children with them, and became part of their extended families. The identities of dead children were stolen to create cover “legends.”

Rather than provide answers, this information has given rise to more questions:

- On what grounds was infiltration authorised?
- Did national police forces have knowledge of foreign undercover officers operating on their territory and, if so, did they benefit from information obtained by those officers?
- Is forming relationships with “targets” – including having children with them - official state policy?
- To what extent are undercover deployments demonstrative of coordinated European police operations?
- How many - if any - of the groups infiltrated by undercover agents can be said to warrant such levels of intrusion, and how is this assessed?

Legal challenges and political inquiries have been made - and are ongoing - in an attempt to find answers to some of these questions. Official reviews have been carried out in a number of countries, but those that have been made public – for example in Iceland and the UK – have been condemned as lacklustre and shallow by political activists, journalists and elected representatives. [1] The majority of these reviews have been kept secret, providing no answers to those affected by the actions of undercover officers, while those who authorised and took part in the

operations have yet to be called to account. While officials may have occasionally wrung their hands and expressed concern, no heads have rolled - yet. [2]

Repeated calls have been made in the UK for an independent public inquiry into the use of police spies to infiltrate movements, including by a former Director of Public Prosecutions, Ken Macdonald, which have so far been resisted. [3] This article illustrates significant collusion amongst European police forces and arguably only a Europe-wide inquiry, for example by the European Parliament, can go some way towards establishing the extent to which authorities across the continent have undermined civil liberties and human rights.

## Operation Herne: 40 years of undercover operations

The largest official review to date is the Metropolitan Police's Operation Herne, an inquiry that claims to be examining every undercover operation undertaken by the Special Demonstration Squad (SDS), a now-disbanded Metropolitan Police unit that was established after anti-Vietnam war protests in 1968 and operated until 2008. Giving evidence to parliament's Home Affairs Committee in February this year, Deputy Assistant Commissioner Patricia Gallan told MPs sitting as part of the Home Affairs Committee (HAC):

*“I must stress we are looking at the activities of a unit... which was initially funded by the Home Office and set up in 1968 and ran for 40 years. There is not a dusty file sitting somewhere within Scotland Yard that we can pull out that will provide all the answers. There are more than 50,000 documents, paper and electronic, that we need to sift through.” [4]*

Gallan said 31 staff - 20 police officers and 11 police staff - are working on the review and that “the estimated cost to date has been £1.25 million.” The police recently admitted that Herne will take approximately three years to complete. MPs sitting on the Committee expressed disquiet at the cost and the time that the review has so far taken and were particularly critical of undercover police officers building “legends” from the stolen identities of dead children.

The *Guardian* reported in February that the Metropolitan Police “stole the identities of an estimated 80 dead children and issued fake passports in their names for use by undercover officers.” It was a practice that began in 1968 but which the Met said was not “currently” authorised. The Met subsequently announced an investigation - part of Operation Herne - into “past arrangements for undercover identities used by SDS officers.” [5] Deputy Assistant Commissioner Gallan told the HAC that prior to the *Guardian* article she knew of only one stolen identity, which she had found out about in September 2012. However, as far back as March 2010 ‘Officer A’ (now known in the press by his cover name Pete Black) told The *Guardian* that obtaining a cover identity involved “applying for the birth certificate of someone who died at an early age and using this to fabricate a cover story.” [6] The police have yet to contact any of the families of the children whose identities were used by the police. [7]



## “Ghoulish and disrespectful”

The HAC published its report on undercover policing in early March 2013 concluding that the use of dead infants' identities was “ghoulish and disrespectful” and “abhorrent”, stating that “it must never occur again.” The committee demanded not only that the investigation (and Operation Herne as a whole) be “expedited with all possible haste”, but that “once the identity of the senior responsible leaders has been established, the matter should be referred directly to the IPCC [Independent Police Complaints Commission], which should then investigate the matter itself.” The investigation remains in the hands of the police.

Two days after Gallan gave evidence to the HAC, Met Commissioner Bernard Hogan-Howe replaced her with Chief Constable Mick Creedon of Derbyshire Police “because he believed that public confidence would best be preserved by appointing an independent chief constable.” [8] The HAC noted that “senior leaders were aware of these issues [i.e. objectivity and independence] for several months before the change in leadership” and that “it is important that in future objectivity is ensured from the outset and not only when an operation comes under scrutiny.” Creedon’s most notable public statement on Herne so far relates to the use of dead children’s identities. He admitted in a letter to the HAC that it was “common practice.” [9]

The appointment of a high-ranking police officer from a different force does not guarantee that Operation Herne will get to the truth of the matter. Even were the IPCC given full responsibility for the investigation - rather than simply a “supervisory” role as is currently the case - based on past experience, many would question its ability to carry out its work impartially, even if it is soon to be awarded new powers and access to increased resources. [10] Those who make complaints against the police have found themselves frustrated with the IPCC; its ineffectiveness is one reason why so many people – from political activists to the UN Special Rapporteur on Freedom of Assembly and Association – have demanded an independent public inquiry into the undercover policing saga. As *The Guardian’s* Rob Evans put it:

*“This [Herne] appears to be a review of 40 years of undercover operations covering serious allegations of misconduct, but the public is being told nothing about what is going on. Like all the other 11 inquiries set up following disclosures surrounding the police spies, it is being held behind closed doors, with no input from those who were affected by the spying. It is a far cry from an over-arching full public inquiry which many including former DPP [Director of Public Prosecutions], Ken MacDonald, have called for, but there are no prizes for guessing what the authorities would prefer.”* [11]

## Legal challenge: police obtain secret hearing

An ongoing court case has reinforced the perception that the authorities would prefer as little transparency and accountability as possible. In December 2011, eight women announced that they were bringing a court case against the Metropolitan Police for the actions of five officers: Mark Kennedy, Jim Boyling, Bob

Lambert, Mark Jenner, and John Dines. A statement issued that month said:

*“The five undercover officers were all engaged in infiltrating environmental and social justice campaign groups between the mid 1980’s and 2010 and had relationships with the women lasting from 7 months and the longest spanning 9 years.*

*The women assert that the actions of the undercover officers breached their rights as protected by the European Convention on Human Rights, including Article 3 (no one shall be subject to inhumane or degrading treatment) and Article 8 (respect for private and family life, including the right to form relationships without unjustified interference by the state). The women are also seeking [common law] claims for deceit, assault, misfeasance in public office and negligence, and seek to highlight and prevent the continuation of psychological, emotional and sexual abuse of campaigners and others by undercover police officers.”* [12]

In January 2013, an initial hearing in the High Court (*AKJ and others v Commissioner of the Police for the Metropolis and Association of Chief Police Officers*) ruled in favour of an application by the Met for some parts of the case to be heard in the secretive Investigatory Powers Tribunal (IPT). [13] The IPT was established as part of the Regulation of Investigatory Powers Act 2000 (RIPA); legislation that is supposed to provide a legal framework for state surveillance and undercover operations. In hearings before the tribunal “complainants do not see the evidence from the state and have no automatic right to an oral hearing. Neither can they appeal against its decision.” [14] All eight complainants are bringing claims under common law, but only three of them - those who suffered violations after 2000, when the Human Rights Act came into force - can bring human rights claims. They will have to go through the IPT before their common law claims are heard. Solicitor Harriet Wistrich explained after the case: “there is nothing to stop us proceeding with the claims on behalf of the other five claimants.” However, she notes that “given the approach by the police so far, they may apply to strike out our case on different grounds.” [15]

Mr Tugendhat used the sexual adventures of Ian Fleming’s fictional spy James Bond to reason why parliament, when enacting RIPA, would have had intimate sexual relationships in mind as something that may be used by spies. Tugendhat said that:

*“James Bond is the most famous fictional example of a member of the intelligence services who used relationships with women to obtain information, or access to persons or property. Since he was writing a light entertainment, Ian Fleming did not dwell on the extent to which his hero used deception, still less upon the psychological harm he might have done to the women concerned. But fictional accounts (and there are others) lend credence to the view that the intelligence and police services have for many years deployed both men and women officers to form personal relationships of an intimate sexual nature (whether or not they were physical relationships) in order to obtain information*

or access... In the 1980s and the 1990s, when RIPA and other statutes were passing through Parliament, everyone in public life would, in my view, have assumed, whether rightly or wrongly, that the intelligence services and the police did from time to time deploy officers as CHIS [covert human intelligence sources] in this way." [16]

The ruling was condemned by the women who brought the case:

*"[W]e want to see an end to sexual and psychological abuse of campaigners for social justice and others by undercover police officers. We are outraged that the High Court has allowed the police to use the IPT to preserve the secrecy of their abusive and manipulative operations in order to prevent public scrutiny and challenge. In comparison, the privacy of citizens spied on by secret police is being given no such protection, which is contrary to the principles we would expect in a democratic society. It is unacceptable that state agents can cultivate intimate and long lasting relationships with political activists in order to gain so called intelligence on political movements. We intend to continue this fight."* [17]

There have been some positive legal developments following the exposure of police infiltration of the environmental movement. In July 2012, after the Ratcliffe-on-Soar case in which 20 convictions were overturned when it was revealed that the prosecution had not disclosed to the defence evidence gathered by Mark Kennedy, the Director of Public Prosecutions, Keir Starmer, stated that "he had concerns about the safety of the convictions following the Drax power station protest in 2008," after which 29 people were convicted for halting a train that was carrying coal to the power station. [18] He invited them to appeal, a process which is ongoing. Potential appeals against convictions in other cases are also being considered.

On the whole, however, the law does not seem to be working in favour of activists who have been spied upon. 'Alison' (not her real name), one of those who is part of the case recounted above, told the HAC that she submitted to the Metropolitan Police a subject access request under the Data Protection Act, a right intended to allow people to know - with exceptions - what information is held on them by organisations, whether public or private. She was told in a response that "the Commissioner has no information on [her] that he is required to supply."

The ongoing commitment of the Metropolitan police to secrecy over the undercover infiltration saga is reflected elsewhere. Jenny Jones, a Green Party member of the elected London Assembly, said earlier this year that the Met had been "deliberately obstructive" following her efforts to obtain answers on a number of issues related to undercover officers. The police said in one letter to Jones that ongoing legal proceedings and "the covert nature of undercover policing" meant they were "not prepared to put much of the information you seek in the public domain." [19] Given that disturbing revelations about undercover policing continue to emerge, it seems that secrecy is as much a damage limitation exercise as it is an attempt to ensure that police infiltration tactics remain covert.

## Questions across Europe

Mark Kennedy is believed to be the best-travelled of the police's former undercover operatives, having been to Ireland, Germany, Spain, Denmark, France, the USA, Italy, and Iceland, amongst other places. [20] His exposure led to demands in many of those countries for official information about his activities, but as will be demonstrated, in most cases this has not been forthcoming or failed to reveal anything substantial. What some of these enquiries have revealed is that authorities across Europe appear to be collaborating to ensure that as little substantive information as possible comes to light on undercover police operations.

### Ireland

A report drawn up by the Garda Síochána in the months following Kennedy's exposure as a spy has never been published. Kennedy spent a significant amount of time in Ireland, participating in workshops and demonstrations, including those against the EU summit in May 2004. [21] In January 2011 the *Irish Examiner* reported claims that, for the summit, Kennedy "brought a van from Britain containing crash helmets and offered to purchase broom handles to be used in combating gardaí." An activist who played host to Kennedy said that "he was always very supportive of 'direct action' protest. It's disturbing that he would seem to have been acting as a 'agent provocateur' attempting to get people into trouble." [22]

Days later, the *Examiner* again reported on Kennedy's activities. Despite repeatedly telling the paper that they had "no information" on the case, it was reported that "Garda bosses will admit in a report to Justice Minister Brendan Smith that they knew about [Kennedy's] presence [in Ireland]." The *Examiner* revealed that "senior Garda intelligence officers - attached to the Crime and Security Branch - had known all along about Mr Kennedy after being informed by the British Metropolitan police. Crime and Security did not inform local senior gardaí in the areas where Kennedy was active for fear of blowing his cover." [23] In April 2011, a Sinn Féin representative in the Dáil, the Irish parliament, complained that "we have still to receive a report on what exactly he was doing in this country, on whose behalf he was working and whether the Gardaí were aware that he was here." It appears that this report reached only a very limited number of officials. [24]

### Iceland

In Iceland, the National Security Unit of the National Commissioner published a report on Kennedy's activities in the country in May 2011. It included details of his infiltration of the environmental group Saving Iceland between 2005 and 2007. The *Reykjavík Grapevine* [25] noted that Kennedy undertook:

*"[P]roactive investigations to collect information in order to prevent possible actions... the Iceland police did not have such powers in 2005 and still do not. That should have made any local cooperation with the British spy illegal, just as any other proactive spying initiative would have been."*

Saving Iceland was less than impressed with the report: “we have to express our astonishment if Ögmundur Jónasson, the Minister of the Interior, is going to accept as valid the poorly reasoned cover-ups that are resorted to by the report’s authors.” According to Saving Iceland, the report says that:

*“During an overhaul of data at the National Commissioner’s office, no information came to light that makes it possible to ascertain if [Mark Kennedy] was here in Iceland with the knowledge of the police or with their collaboration in 2005.” [26]*

Saving Iceland criticised the report and argued that neither the Minister of the Interior nor the National Commissioner had answered questions from their lawyer seeking further information on police surveillance of the group and clarification of the specific wording of the terms of reference given by the Interior Ministry to the National Commissioner. The group said that it is clear that the authors “entirely avoid answering the questions about Saving Iceland and Mark Kennedy that it was reportedly supposed to answer.” Furthermore:

*“It is clear that the National Commissioner admits to have [sic] worked closely with the British authorities concerning the surveillance of Saving Iceland. He also admits to have received information not only from abroad but also from within Iceland. This information has been gathered by spying, in other words: by violating the privacy of our personal lives. To state that no recorded documents can be found in the offices of the National Commissioner about this cooperation with the British authorities is nothing but obvious evasions.”*

## Germany

In Germany, where both Mark Kennedy and a spy still known only by his cover name Mark Jacobs were deployed a number of times, parliamentary representatives for *Die Linke* have repeatedly made use of the right to ask extended questions of the Federal Government to obtain further information on the activities of individual undercover operatives and international police networks engaged in infiltration and surveillance. These efforts have yielded significant new information. Most recently the German Interior Ministry stated that entering into sexual relationships as part of an investigation is not permitted in any area of the Federal Government’s responsibility, a stipulation that also applies to foreign police agents operating in Germany. However, questions have also frequently been answered with the statement: “For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication.” [27]

*Die Linke* MP Andrej Hunko wrote to the British Home Secretary Theresa May in February 2013 outlining the German government’s acknowledgement that no undercover officers operating on German territory can lawfully engage in sexual relationships, and stated that the German Interior Ministry and the Federal police (*Bundeskriminalamt*, BKA) must “obtain clarification from the British authorities as to whether Mark Kennedy or ‘Mark

Jacobs’ also used personal and sexual relationships in Germany in order to obtain information. And the same applies to any of their fellow officers.” He also sought clarification over whether British officers may have covertly recorded conversations, because “spying operations like that require a warrant” and so there may have been “yet another infringement of the law.”

Hunko has requested that May identifies “who was responsible for ordering their deployment to Berlin and which German authorities received reports about it” so that “action may also be taken against any infringements of law by British police officers in the capital of Germany.” This is going to take some work, especially as the Berlin police have recently said that neither Kennedy nor Jacobs ever worked for them. A letter from a Berlin politician to Hunko said that “as a result of their review, the Berlin police announced that neither the former British undercover agent, Mr Mark Kennedy, nor a person named Marco Jacob had been used by the Berlin police.”

In a reply three weeks later from Damien Green, the UK’s Minister for Police and Criminal Justice, Hunko’s requests were rejected with arguments that have been used repeatedly by the police since the initial exposure of undercover officers. Green refused to confirm or deny whether ‘Mark Jacobs’ was a British undercover officer due to the fact that his identity had not been confirmed in the exceptional manner that Kennedy’s was following his exposure. He went on: “My officials and those of the Bundesministerium des Innern have already been in contact about these issues... We will ensure that the German authorities are regularly updated as to the progress of the investigation, known as Operation Herne, which is currently underway.”

In response to Hunko’s statement that it needed to be made clear under whose authority Kennedy was acting and what exactly he did whilst in Germany (potentially covertly recording conversations, for example), the minister dodged the request for assistance in establishing whether the law had been broken: “If you have evidence that German law has been broken, I would recommend you to pass it on to the Bundesministerium des Innern, who can then make an investigative request of the British police or the IPCC via the usual international diplomatic channels.” He summed up: “the current investigation and litigation must be allowed to run their course and therefore, I cannot provide you with more detail about past undercover police operations.”

## France

In November 2012, lawyers acting on behalf of Yildune Lévy initiated court proceedings demanding that the French Central Directorate of Interior Intelligence (Direction central du renseignement intérieur, DCRI, akin to UK’s MI5) be forced to reveal the contents of a dossier on which criminal charges against her and a number of others are partially based. In 2008, Lévy was arrested along with Julien Coupat and seven others as part of the ‘Tarnac Nine’ affair in which they were accused of “criminal association for the purposes of terrorist activity.” [28] All were subsequently bailed. Lévy’s lawyers are demanding that a dossier compiled



by the DCRI be revealed to the defence an argument that bears similarity to the Ratcliffe-on-Soar case in the UK which collapsed after it was revealed that the prosecution had failed to disclose evidence gathered by Mark Kennedy. [29] In this case too, it is alleged that information contained in the dossier “is largely based on information supplied by [Kennedy].” [30]

Lévy’s lawyers argue that the dossier submitted to the court by the DCRI does not contain any substantive evidence that could lead to the accusations against her: facts included in the dossier are not necessarily relevant to the charges; the interpretation of those facts is not necessarily correct; and the means by which those facts have been obtained is questionable. It is also argued that revealing the contents of the dossier will shed more light on the role of Mark Kennedy, who was present in Tarnac and allegedly supplied much of the information used by DCRI to bring charges against Lévy and others. As would be expected, the British authorities - in particular the National Public Order Intelligence Unit for whom Kennedy worked - were also recipients of the information obtained by Kennedy. [31] This included information gathered whilst in New York at the same time as Julien Coupat, much of which apparently also made its way to the FBI. Lévy’s lawyers argue that “access to all the elements of the dossier is an absolutely indispensable prerequisite” for obtaining a fair trial. Proceedings are ongoing.

## A European inquiry?

In the UK there have been repeated calls for an independent public inquiry into the police spies saga. Activists, MPs, the former Director of Public Prosecutions, Ken Macdonald, and the UN Special Rapporteur on Freedom of Assembly and Association, Maina Kiai, have all made the argument that only an open and independent public inquiry will reveal the full extent of the practice. In January 2013, Kiai said:

*“The case of Kennedy and other undercover officers is shocking as the groups in question were not engaged in criminal activities. The duration of this infiltration, and the resultant trauma and suspicion it has caused, are unacceptable in a democracy.” [32]*

Police and politicians have so far failed to be moved by such statements, saying that ongoing legal proceedings and Operation Herne must be allowed to conclude before any action can be considered. Mick Creedon, the officer now in charge of Herne, has told MPs that the inquiry “will last at least another three years.” [33] Even then, much of the report is unlikely to be made public. Deputy Commissioner of the Metropolitan Police Craig Mackey told the London Assembly’s Police and Crime Committee

in October last year: “I don’t know what will be in there, I don’t know what the scope will be... So there may be things that are perfectly acceptable to put in the public domain. There may be other parts... that cannot be.” [34]

While an inquiry in the UK would go some way to establishing exactly what the role of the UK’s police forces and state authorities in infiltrating protest movements over decades has been, it is clear that British authorities have undertaken significant collaborative efforts with their foreign counterparts, a point that raises troubling legal issues. There is much that remains unknown about the remit and powers of international police networks such as the European Cooperation Group on Undercover Activities, the Cross-Border Surveillance Working Group and the International Working Group on Undercover Policing. [35] Meanwhile, the more formal forum of the Council of the European Union has been used in the past to discuss different national legal frameworks for the deployment of undercover officers and to find ways of overcoming obstacles. [36] The German and UK delegations to the Council have also lobbied for undercover deployments to be removed from the scope of the European Investigation Order - their inclusion would have gone some way to harmonising the legal framework and potentially increasing parliamentary accountability. (Even if they were included it is unclear whether the European Investigation Order is a desirable piece of legislation. One analysis argues that “many of the changes proposed to the current legal framework would constitute a reduction in human rights protection and even... an attack on the national sovereignty of Member States.”) [37]

The deficiencies of reports issued and enquiries undertaken so far at national level has led to an ongoing effort to try and establish some form of Europe-wide inquiry, perhaps via the European Parliament. Such an initiative is not without precedent - the European Parliament undertook a major inquiry into the CIA’s rendition operations which went some way towards uncovering the extent of European state complicity in the USA’s global kidnap and torture programme. One problem such an inquiry would have is its inability to compel individuals or agencies to provide evidence. As has been demonstrated, those involved in directing and carrying out the infiltration of protest movements have not been keen to release information about it. European parliamentary questions to the Council and Commission are being prepared on the issue of accountability under national, European and international law for human rights violations committed by undercover police officers. This may be the first step on a long road towards stitching together what is currently a patchwork of attempts across Europe to obtain answers and accountability.



## Undercover cops uncovered

The following is a list of undercover officers involved in infiltrating and disrupting protest movements and social justice campaigns who have been exposed in the last few years. The first name listed is their cover name. If there is a name in brackets, it is the individual's real name. It is worth noting that the Metropolitan Police have only officially acknowledged that Mark Kennedy was an undercover police officer; they refuse to do so for any other individual.

### **Bob Robinson (Robert/Bob Lambert) [38]**

Infiltrated London Greenpeace and the Animal Liberation Front from 1984–88. Had a child with one of his “targets”. Has been accused in parliament by Caroline Lucas MP of participating in an arson attack on a department store. Later promoted to Head of Operations in the Special Demonstration Squad. Went on to run Special Branch's Muslim Contact Unit. Awarded MBE for services to policing. Currently works as an academic at St Andrews University.

### **Jim Sutton (Andrew James Boyling) [39]**

Infiltrated Reclaim the Streets from 1995–2000. Formed a relationship with a “target”, disappeared, and resurfaced a year later admitting to the woman that he was a police officer. They married and had two children but divorced in 2009.

### **John Barker (John Dines) [40]**

Infiltrated a number of groups including London Greenpeace and squatting groups between 1987 and 1992. Had a five-year relationship with one of his “targets”.

### **Lynn Watson [41]**

Based in Leeds, from 2003–08 she infiltrated numerous environmental, anti-capitalist and peace groups: Aldermaston Women's Peace Camp, UK Action Medics Collective, Drax Climate Camp, Dissent! and others.

### **Mark Cassidy (Mark Jenner) [42]**

Infiltrated the Colin Roach Centre, the Building Workers Group, Hackney Community Defence Association and, allegedly, Anti-Fascist Action and Red Action between 1995 and 2000. Had a four-year relationship with a woman now known publicly as 'Alison'. Bob Lambert was his boss.

### **Simon Wellings [47]**

Was exposed after five years with the group Globalise Resistance (2001–05) when he accidentally phoned an activist friend whilst discussing photos of and information on the group with officers at a police station.

### **Mark Stone (Mark Kennedy) [44]**

Spent seven years undercover, from 2003 until exposure in October 2010 by former friends and comrades. Travelled far and wide across the UK and Europe and worked with groups such as Dissent!, Rising Tide, Saving Iceland, Workers' Solidarity Movements, Rossport Solidarity, Climate Camp, Climate Justice Action and others.

### **Peter Daley/Pete Black (Peter Francis) [45]**

Infiltrated anti-racist and anti-road campaigns between 1993 and 1997 and slept with two activists during that time. He was in Special Branch before joining the Special Demonstration Squad where he used the identity of a four-year old who had died of leukaemia as his cover. His real name is unknown but he went to the press with stories of his time as an undercover officer in March 2010, before the exposure of Mark Kennedy in October.

### **Rod Richardson [46]**

Infiltrated anti-capitalist and hunt saboteur groups, in particular working with groups protesting against political summits such as the G20. Went abroad to Sweden, France and Italy at various times.

### **Mark/Marco Jacobs [43]**

Operated from 2004 to 2009, infiltrated anarchist, anti-militarist and migration campaigns. Travelled abroad to Germany and France (on a number of occasions with Mark Kennedy).

### **Unnamed officer**

Cover name and real name unknown, but was noted in a January 2012 article in the *Guardian* that outlined Bob Lambert's fathering of a child with an activist. The article said that he was “sent to spy on activists some years ago” and “had a short-lived relationship with a political activist which produced a child.” After leaving the relationship and the child, he used ongoing police monitoring reports to “regularly read details of her life,” watching “as she grew older and brought up their child as a single parent.” [48]

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# ‘Grassing’: the use and impact of informants in the War on Terror

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The use of “grasses” and the deployment of undercover police are at the centre of Britain’s counter-terrorism policy. These practices foster a culture of suspicion and have a profoundly damaging impact on British Muslim communities.

The issue of “grassing” in British Muslim communities is significant and worrying. It contributes to a broader trend in the War on Terror of a perceived two tiered system of justice - one for Muslims, and one for everyone else. To date most of the focus on grasses in Muslim communities has been in the USA. In the past few years, prominent news sources ranging from *The Village Voice* [1] to the *Guardian* [2], as well as several human rights organisations, have written about the use of informants and agent provocateurs in US terrorism prosecutions. Activists and community representatives from New York to Oakland have condemned the broad surveillance of American Muslim communities and the entrapment-like tactics of the NYPD and the FBI. [3]

In comparison to the US, the issue of “grasses” in Muslim communities in the UK remains sorely under-researched. In this article, I begin by exploring the history of the use of informants in British Muslim communities, and discuss four distinct trends of “grassing” that CagePrisoners has identified in its work. Next, I address the impact of “grassing” on British Muslims and consider how this practice intersects with and facilitates Britain’s broader counter-terrorism strategy. I conclude by detailing how CagePrisoners has endeavoured to address this issue and encourage the development of broad alliances to combat state infiltration of our many communities and movements.

## The Context: “home-grown terrorism” and 7/7

The story of “grassing” in British Muslim communities is inextricably linked to the events of 7 July 2007. There was a palpable sense of shock amongst the broader British public that the young men who committed the attacks had been born and raised in England. Consider the following excerpt from *Roots of violent radicalisation*, a report published by the Home Affairs Committee in 2012:

*“On 7 July 2005, 52 people were killed and more than 770 others injured in attacks on the London transport network*

*carried out by four men from West Yorkshire who had been radicalised by the ideology and rhetoric of Al Qa’ida. The nature of the current, deadly threat facing the UK from home-grown terrorism was fully exposed for the first time. This was only one of a number of terrorist plots which caused the British authorities to shift their attention over the past decade from external threats to national security to those lying within the UK borders.” [4] (emphasis added)*

After 7/7, it was the internal threat of so-called “home-grown terrorism” that became an important concern of the British government, police and security services. “Grassing” was an obvious solution to the perceived radicalisation of the British Muslim community.

## Grasses in British Muslim communities

“Grassing” encompasses a wide range of agents and behaviour – from information on individuals gathered through radicalisation prevention programmes, to “moles” recruited in secret, to undercover police placed in communities, to others who agree to inform in exchange for reduced sentences. CagePrisoners has identified four ways in which “grassing” operates in and affects British Muslim communities.

### Overt grassing: the Prevent strategy

Prevent is one of the four strands of CONTEST, the government’s counter-terrorism strategy that was first published in 2006. In 2011, the Home Office concluded a review of Prevent, which I analyse here. CagePrisoners believes that the Prevent strategy constitutes the British government’s most overt and systematic effort to gain information on Muslims for the stated aim of preventing radicalisation.

The 2011 Home Office review of Prevent concluded that the strategy has three stated objectives:

- “challenging the ideology that supports terrorism and those who promote it” [5] – for example, by funding charities to contest so-called extreme views and promote “mainstream” Islam, and encouraging public bodies to prohibit speaking events that feature extremists;
- “supporting vulnerable people” [6] e.g. by training tens of thousands of front-line staff, including doctors, prison staff, youth workers and others, to observe and identify those deemed at-risk of radicalisation;
- “working with key sectors” [7] – namely establishing working relationships between Prevent and a range of state and non-state actors, from educational and faith-based institutions to health clinics, the criminal justice system and charitable organisations.

Prevent engagement officers are police staff, so the vast majority of Prevent activity enables and in fact requires the sharing of individual or community data with the police. Prevent helps the police and security services keep their “eyes and ears on the ground” in Muslim communities, particularly because British Muslims may encounter Prevent-trained staff in nearly every institution they come across in their daily lives.

Challenging “extremism” and stopping “radicalisation” are the core components in the work of Prevent, so it is important to look at how these terms are defined. Extremism is defined in the glossary as “vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs...” [8]. But what are “British values? As Arun Kundnani observes:

*“The underlying assumption of the Prevent programme is that the government needs to combat extremism through a ‘battle of ideas’ which aims at isolating ‘mainstream Muslims’ from a global insurgency. A form of ideological campaigning for ‘British values’ and ‘moderate Islam’ has come to be seen as a matter of national security. Notions of multiculturalism are seen as a threat to this campaign. But such a campaign ends up constructing a false image of Britain’s Muslim citizens.” [9]*

‘Radicalisation’ is defined by Prevent as “the process by which a person comes to support terrorism and forms of extremism leading to terrorism” [10]. According to the authors, “Support for violence is associated with a lack of trust in democratic government and with an aspiration to defend Muslims when they appear to be under attack or unjustly treated.” [11] Yet many British Muslims believe that Muslim lands are unjustly under attack, that Muslims here face undue discrimination and that the democratic process does not respond to their concerns. These are legitimate political beliefs, not markers for a propensity to participate in criminal activity.

In sum, Prevent works by using established institutions, organisations and public services within Muslim communities to gather information and identify Muslims who subscribe to the theological and political beliefs deemed “acceptable” by the state.

**Case study: Rizwaan Sabir:** In 2008, while studying for his Master’s degree at the University of Nottingham, Rizwaan Sabir downloaded an al-Qaida training manual from the US Department of Justice website in order to prepare for his research on Islamist terrorism. The manual was also available at the university library and could be purchased from WH Smith, Waterstones and Amazon. Sabir emailed the manual and two related academic journal articles to a friend, Hicham Yezza, who had agreed to help him with his PhD proposal. This “dangerous” material was reported to the registrar of the University of Nottingham who was instructed by the Deputy Head of Security to call the police. In May 2008, both Sabir and his friend were arrested on campus on suspicion of possessing extremist material and held without charge for seven days in solitary confinement before being released. [12]

Sabir later sued the police for false imprisonment and racial discrimination. In a 2011 op-ed for *al-Jazeera*, Sabir wrote:

*“Only weeks before the trial was to begin, the police - desperate to prevent embarrassment and criticism - settled the case out of court. They paid me £20,000 (\$31,000) in compensation, all of my legal expenses and removed all the incorrect (and unnecessary) information that they held on my intelligence file. Documentation that stated I was*

*a “convicted” terrorist, that I wore a black hoody with the words “Free Palestine” written on it and had an ‘attitude’ toward the police...” [13]*

In 2012, it was also revealed that the police had fabricated evidence in order to justify Sabir’s arrest, namely by recording false statements from an interview with a professor at Sabir’s university about why he had downloaded the document. Sabir commented: “I have known that the police lied and deceived in order to justify my arrest and treatment and this has now been proven.” [14]

Sabir’s case highlights the way in which Prevent monitors Muslims for assumed political or theological beliefs, instead of for potential criminal behavior. The state should not place on university staff, doctors and youth workers the responsibility to monitor Muslims on its behalf, a job which compromises their professional roles.

### **Covert grassing: secret recruitment of community members**

We know that Prevent exists and can trace how its funding is used. Not all state efforts to listen in or gather information on Muslim communities operate with the same degree of transparency. Some British Muslims are secretly recruited by the police and security services to provide information about potentially dangerous or radicalised individuals.

It is difficult to establish the frequency with which this practice takes place. There are very few community members willing to admit on record that they have provided information to the authorities - but on occasion previous or current “grasses” have spoken to journalists and community advocates attempting to address the issue of informants in Muslim communities. In order to get a sense of the extent of the problem, the author of this report interviewed two people who have worked on this subject, Roshan Salih of Press TV and Moazzam Begg of CagePrisoners. Salih and Begg said they have observed that the police and security services tend to target community leaders, especially youth workers. They both stressed that state agents are likely to use personal information about individuals that could jeopardise their standing in the community in order to pressure them into informing, for example by threatening to disclose an extra-marital affair. Both men also reported that non-British citizens often agree to inform after having their immigration status threatened. Individuals may also be induced to inform through the promise of payments or lesser sentences for criminal offences. In the past, British police forces have paid more than £6 million a year to informants in exchange for information on criminal activity, although it is impossible to know what proportion of this sum has been paid to informants placed in Muslim communities. [15]

### **Case study: Mahdi Hashi and the Kentish Town Community Organisation workers:**

In 2009, five Muslim community workers from North London publicly denounced MI5 for attempting to blackmail them into working as informants. The men, who all worked with disadvantaged youth at the Kentish Town Community Organisation, reported that they were told they would be detained and harassed as terror suspects if they refused to provide information to security services. Three of the men were



detained at foreign airports after leaving Britain, sent back to the UK and stopped by MI5 agents under Schedule 7 of the Terrorism Act 2000, which allows an examining officer to stop, search, question and detain a person travelling through a port, airport or border area. Two others claimed that after they returned from trips abroad, officers disguised as postmen approached them at their homes to ask them to spy on fellow Muslims. In a 2009 article published by *The Independent*, the men recounted their terrifying interactions with security service agents. [16]

One of the men, Mahdi Hashi, told *The Independent* that upon arrival at Djibouti airport, he was held for 16 hours and then abruptly sent back to the UK. An officer allegedly told him that MI5 was responsible for his deportation and stressed that his “suspect” status would only be cleared if he agreed to co-operate with MI5. Hashi recalls, “I told him ‘This is blatant blackmail’; he said ‘No, it’s just proving your innocence. By co-operating with us we know you’re not guilty.’...I looked at him and said ‘I don’t ever want to see you or hear from you again.’” Hashi was 19 years old at the time. [17] According to his family, Hashi decided to move back to Somalia after being harassed by MI5. Last year, over the course of only a few months, he was stripped of his citizenship, kidnapped and imprisoned by the Djibouti authorities, then secretly transferred to US custody and charged with material support for terrorism. Hashi’s family, CagePrisoners, and other civil liberties advocates, believe that Mahdi was punished for refusing to “grass” on his community. [18]

The accounts of the Kentish Town Community Organisation care workers indicate the lengths to which MI5 agents may be willing to go in order to pressure Muslim community members to inform.

### Undercover police in Muslim communities

We know from the experiences of the left in Britain that undercover officers are used to infiltrate suspect communities. In 2011, the trial of six people accused of trying to shut down the Ratcliffe-on-Soar power station in Nottinghamshire collapsed when an undercover policeman came forward and offered to testify in their defence. One of the defendants explained the primary role played by the undercover officer: “We’re not talking about someone sitting at the back of the meeting taking notes - he was in the thick of it...Mark Stone was involved in organising this for months - they [the police] could have stopped it at the start.” [19]

It has also been revealed that several male undercover officers placed in protest groups developed long-term intimate relationships with female activists they had met. Some of these relationships lasted years and in at least one case resulted in the birth of a child. We also know that the police sometimes used the names and identities of dead infants to create aliases for undercover officers. [20]

Given what has been revealed about the actions of undercover officers in activist groups, it is not difficult to imagine that police officers may have similarly penetrated and established themselves in British Muslim communities. So far, there is only one known instance of undercover officers infiltrating Muslim communities.

**Case study: Munir Farooqi:** For about ten years, Munir Farooqi ran a *da’wa* (propagation) stall in Manchester that aimed to spread the message of Islam to non-believers. He provided information about Islam, sold CDs, DVDs and books, and encouraged individuals to take the *shahadah* (the Islamic testimony of faith). In 2008, two undercover police officers approached the stall and expressed an interest in Islam. Munir’s son, Harris, explained how the two men gained the trust of the Farooqi family:

*“Over the space of a year, they befriended me. I looked up to them because they were more practising than myself. They would encourage me to pray, they would encourage me to attend lectures and to do all sorts of good deeds. I felt embarrassed that these people who had come newly to Islam were teaching me...They took shahada, they would go the mosque and pray five times a day. They deceived the local community. They grew their beard, they would wear Islamic clothing, they would speak like the Muslims...” [21]*

The Farooqis invited the reverts into their home to eat and pray. According to the family’s account, which this author was not able to corroborate, the two men began to bring up political issues like Afghanistan, Iraq and Palestine. [22] Harris recalled: “I remember once he [the officer] cried in front of me because of the suffering of the *Ummah* (the Muslim community). I just told him to be patient.” [23] Eventually, the undercover officers began asking Munir Farooqi and others if they knew how to go abroad to fight against British and American soldiers. Harris told CagePrisoners that his father repeatedly told the two reverts that he was unable to advise them, but they pleaded with him to look into it and he eventually agreed. [24] Little did the family know that hundreds of hours of conversations between Munir and the two reverts had been recorded, including the conversations about jihad. In September 2011, Munir Farooqi was convicted of preparing terrorist acts, soliciting to murder and disseminating terrorist literature. He was sentenced to four life sentences and will serve a minimum of nine years before being considered for parole. [25]

The Farooqi case is the first known case in the UK in which undercover police were placed in a Muslim community for the purpose of facilitating a conviction. We know from the experiences of the left in Britain that the police and security services are willing to go to extreme lengths to gain the trust of members of suspect communities. Yet as Harris Farooqi remarked: “the fact that undercover officers pretended to be Muslim, that’s an insult to the Muslims. If an undercover officer had pretended to be a Christian, that would be an insult to Christianity.” [26] It is CagePrisoners’ view that it is absolutely unacceptable for officers to abuse the trust of the public they are supposed to serve, whether it is through engaging in sexual relationships or taking the shahada in front of a mosque congregation.

### Recruiting “grasses” through plea bargaining

The final way in which “grassing” has affected British Muslim communities is through plea bargains in the US. Nearly all criminal defendants in the US - about 97% of those indicted

in federal courts and 94% of those who face charges in state courts - choose to plead guilty rather than face a jury trial. [27] As Justice Kennedy has noted, plea bargaining “is not some adjunct to the criminal justice system; it is the criminal justice system”. Moreover, “longer sentences exist on the books largely for bargaining purposes.” [28] Defendants charged with terrorism-related crimes have a particularly strong incentive to plead guilty since they are likely to face systemic due process improprieties during trial and a harsh sentencing regime. [29]

When individuals claim to have information about terrorist cells or networks, prosecutors in the US have an immense incentive to offer them an attractive plea bargain in order to ensure their compliance with ongoing investigations or testimony in upcoming trials. Such deals are as yet illegal in the UK but, as the case study below highlights, “grasses” recruited through the American plea bargaining system can still shape the outcome of prosecutions in the UK.

**Case study: Muhammad Junaid Babar:** In 2001, just nine days after 9/11, naturalised US citizen Junaid Babar left New York for Pakistan in anticipation of a US-led invasion of Afghanistan. Babar claims he was responsible for setting up a training camp in Pakistan in July 2003 to help prepare individuals who wanted to fight against American, British and Northern Alliance forces in Afghanistan. Several British citizens attended the training camp, including the leader of the 7 July 2007 attackers, Mohammad Sidique Khan, at which time he is purported to have learned how to make the bombs used in the London attacks. Babar also maintains that he supplied several British men with aluminium powder and attempted to purchase ammonium nitrate on their behalf, “with the knowledge that it was going to be used for a plot somewhere in the U.K.” [30]

Several years after leaving New York for Pakistan, Babar returned home and was arrested by the FBI. He was induced to become a source and agreed to cooperate in exchange for a dramatically reduced sentence – five years instead of life. He pleaded guilty to several counts of conspiracy to provide material support to terrorists, as well as charges of providing material support.

Babar gained fame as a “supergrass” for his testimony in the prosecution of several British men for the fertiliser bomb plot, known as Operation Crevice. [31] Five of the seven accused were convicted, but not without doubts about the veracity of Babar’s testimony. According to one BBC reporter, “under rigorous cross-examination cracks began to appear in his carefully prepared account.” [32] Babar became uncertain about the details of a crucial meeting in Pakistan in which the group purportedly decided to attack targets on British soil. He also initially claimed that one of the defendants had given him a bag of detonators to take to the UK, but later seemed confused and unsure about how they were packaged. [33]

Babar’s case provides an important insight into the potential benefits of recruiting “grasses” through plea bargaining in the USA, since they provide unparalleled access to the workings of terrorist cells.

## The impact on British Muslims

### “Grassing” has had a profoundly damaging impact on individual British citizens and their families

This paper outlines only a few instances of “grassing” in British Muslim communities but there may well be more. The reach and breadth of Prevent suggests that tens of thousands of Muslims have likely engaged in some kind of Prevent activity since its inception, sometimes unknowingly.

What is clear is that “grassing” is profoundly damaging to the innocent individuals who are spied on or harassed by state officials. Rizwaan Sabir described how it felt when he was wrongfully imprisoned after being reported to the police by university staff:

*“I was sitting in there, crying, thinking ‘Oh my God, am I ever going to get out of here?’ And the scariest thing was... I know they can keep you for 28 days, and a minute goes like an hour, and an hour goes like a day, and a day like a year, inside a [solitary] cell. It’s like if you put yourself in your bathroom, seal all the windows... and take in a blanket, and sleep there for 24 hours, then you’ll feel how it feels to be in a [solitary] cell... Day six was probably the hardest because not knowing how your life is going to pan out depending on a decision that somebody else takes when you know that you’ve done absolutely nothing wrong – it really is psychological torture.” [34]*

“Grassing” also causes immense stress and hardship for the families of those accused. The practice divides Muslim communities and breaks down relationships of trust. It also has a broader impact on Muslim communities: through Prevent and the use of covert informants the state gains the information it needs to distinguish between “good” and “bad” Muslims, largely on the basis of their political and theological beliefs.

Moreover, the pervasive belief amongst Muslims that “someone is watching” has generated a perpetual state of fear; this allows the police and security services to more easily co-opt sections of the Muslim community. Prevent would not be possible without the close assistance of Muslims. Similarly, the state’s reliance on covert/informal informants is necessarily dependent on co-operation from community and youth workers. CagePrisoners believes that this strategy of divide and conquer works first and foremost because people are afraid.

The use of informants and undercover police has also made many Muslims wary of embracing reverts/converts to the faith. Harris Farooqi described his struggle with this issue: “My own brother-in-law is a revert and I wondered if he was not an agent. Of course, I know that he is not, but the fact that it even came to my mind... They destroyed the trust within the Muslim community.” [35] This is a particularly pernicious effect given Muslims’ religious duty to teach reverts about the faith, welcome them into their homes and assist them in establishing a new life in Islam.

### “Grassing” makes British Muslims more fearful of openly practising their faith or expressing their political beliefs.

The way “grassing” operates within British Muslim communities arguably curtails the right of conscience and religion under the

European Convention on Human Rights (Article 9) and the right of expression (Article 10). By marking particular religious beliefs as suspicious (e.g. definition and understanding of jihad), the state exerts pressure on Muslim communities to perform and express their religious duties and beliefs in particular ways.

Nor is it difficult to understand why the “grassing” regime might impinge on Muslims’ right to freely express their political beliefs. The Prevent policy explicitly states that aspiring to defend Muslim lands that are under attack is a potential marker of susceptibility to violence; it follows then that mosques, community groups and youth programmes are under pressure to curtail and shut down political discussions about the wars in Iraq, Afghanistan, Palestine and elsewhere. Moreover, the widespread belief that there are undercover agents within the community (whether police or community members who are acting as informants) means that many Muslims feel unsafe discussing their political beliefs unless with trusted family or friends. Some people suspect that the true purpose of the use of informants is to shut down political discourse in Muslim communities since they would otherwise serve as the primary pool of resistance against Britain’s foreign policy. [36]

## Grassing and Britain’s counter-terrorism strategy

### Relying on “grasses” is not an effective long-term counter-terrorism strategy

CagePrisoners does not believe the police and security services current reliance on “grasses” to be beneficial to the fight against terrorism in the long run. If the state allows the police and security services to go to extreme lengths to infiltrate and spy on Muslim communities, for example by blackmailing youth workers or allowing undercover police to utter the holiest words in Islam, it cannot reasonably expect Muslims to continue to place trust in these institutions. Prevent similarly positions various state and non-state actors - such as doctors, university administrators and youth workers - as extensions of the security apparatus, and thus as individuals whom Muslims, especially young male Muslims, should fear.

Furthermore, policies like Prevent narrow the space that previously existed within Muslim communities to freely discuss and debate questions of Islamic law and practice that might better tackle radicalisation and terrorism. The individuals who committed 9/11 and 7/7 were motivated by their commitment to their faith. They believed that what they were doing was Islamically permissible and only a counter-argument rooted in Islam would have convinced them otherwise. The people who are purportedly at risk of becoming terrorists should be encouraged to engage with the thousands of years of Islamic scholarship that addresses the question of jihad and the killing of civilians. These conversations can only happen if the state respects the right of Muslim communities to autonomously contest the meanings of Islamic texts and scholarship, without fearing that particular interpretations will lead to referrals to the police, security services or Prevent authorities. As it now stands, the state is propping up particular theological positions as the “correct” ones, and the

religious scholarship promoted by the state (e.g. individuals or institutions funded by Prevent) are not taken seriously. Britain’s counter-terrorism policy is simply encouraging the isolation and alienation of vulnerable Muslim community members by closing down the space for political and theological debate.

### “Grassing” is not an isolated issue; rather the phenomenon goes to the core of British counter-terrorism policy.

Finally, we cannot fully understand the purpose or impact of “grassing” in isolation from Britain’s broader counter-terrorism strategy. As the case of Mahdi Hashi demonstrates, the pressure to inform is closely linked to many other facets of counter-terrorism policy, from Schedule 7, to citizenship deprivation, to rendition.

Moreover, the belief that guides “grassing” in its various forms - from Prevent, to the covert recruitment of informants and the use of undercover police - is that Muslims should be treated first and foremost as “Others” worthy of the distrust of the broader British community. As CagePrisoners stated in its response to the 2011 review, “Prevent is the first British strategy that targets the entire Muslim community. It is perceived by Muslims to be a form of collective targeting for the acts of a few, and most resent being made to pay for someone else’s crimes.” [37] British Muslims should be treated as equal members of British society, not with immediate suspicion on the basis of their faith.

## Conclusion

CagePrisoners has challenged the many problems that arise from government counter-terrorism policy. The organisation has produced submissions for government consultations, including a 2012 report on Schedule 7 [38], and reviewed the effectiveness of current policy, most notably our 2011 response to the revised Prevent strategy. [39] The organisation also produces timely reports in relation to the issue of “grassing”, often with unique first-hand accounts, including *The Horn of Africa Inquisition: the latest profile in the War on Terror*. [40]

CagePrisoners has also hosted several events to address the issue of “grassing”, including a 2012 film and speaking tour entitled “The enemy within: state surveillance and infiltration in our communities”. [41] More recently, CagePrisoners participated in “Harassment of the Muslim Community: Spying and Entrapment”. [42]

CagePrisoners has also launched a new project entitled Schedule 7 Stories: Travelling While Muslims. [43] In the future, the organisation hopes to provide “know your rights” lessons to Muslim communities about their rights under Schedule 7, as well as their right to resist state pressure to “grass” on fellow Muslims.

The UK needs broad-based opposition to the use of “grasses” and existing counter-terrorism policies from Muslim communities, communities of colour, and activist groups. “Grassing” violates our civil liberties. It breaks down the trust that long existed within our communities, friends and families. The very practice of “grassing” makes it harder for us to resist the government policies we oppose, from violent policing, to MI5 harassment, to climate

change, to wars fought abroad. In short, “grassing” is far from merely a Muslim issue, although it undoubtedly has a grave effect on Muslim communities. Only by uniting across racial, religious

and political lines will we be able to challenge the impact of “grassing” on the civil liberties and freedoms cherished by us all. *This article was written in May 2013.*

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# “Every Man a Capitalist”: The long history of monitoring ‘unsuitable’ workers in the UK

Trevor Hemmings, Statewatch

**“Blacklisting is the practice of systematically denying individuals employment on the basis of information, accurate or not, held in some kind of database.” [1]**

In February 2009, investigators from the Information Commissioner’s Office (ICO) raided the premises of The Consulting Association (TCA) in Droitwich, West Midlands, confiscating a database comprising 3,213 names that was being used by 43 construction firms to blacklist workers they deemed “unsuitable” for employment. [2] The seized database was only a small fraction of the information held by TCA, but inexplicably the bulk of the data was left behind and subsequently destroyed. Clandestine blacklisting by multinational construction companies, who submitted the names and addresses for vetting by TCA, denied employment to thousands of workers on the basis of their trade union membership, political beliefs and health and safety activities. [3] Information held in the database was often based on little more than “gossip.” As a consequence of the raid, in July 2009 the director of TCA, Ian Kerr, was fined £5,000 after admitting breaching the Data Protection Act, but his fine was paid secretly by Sir Robert McAlpine on condition that the company’s name was not revealed. [4] Kerr died a fortnight later, taking unknown secrets to the grave.

As a result of the high profile raid, the practice of blacklisting was belatedly made illegal in March 2010 by the introduction of the *Employment Relations Act 1999 (Blacklisting) Regulations 2010*, under which it is unlawful to compile, sell, use or supply a prohibited list (a list which contains details of people who have been members of Trade Unions or have participated in Trade Union activities). The law has been criticised by trade unionists as being too little, too late. Article 11 of the European Convention on Human Rights, which has been in force since 1953, protects “the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions.” [5]

In July 2012, 80+ blacklisted workers launched a High Court action against the construction firm Sir Robert McAlpine, a Conservative Party donor and builder of the Olympic Stadium, for the firm’s alleged role in creating TCA and cooperating with other firms to keep them out of work. [6] The head of McAlpine’s

Human Resources department, David Cochrane, chaired TCA from 2006-2009 and the company effectively set up and funded it. Further insights into this “real live conspiracy” emerged when the House of Commons Scottish Affairs Committee heard evidence from a number of the key players and their victims in November 2012, some of which was later written up in an interim report published in April 2013. [7] The interim report was highly critical of the companies which failed to take responsibility for their “morally indefensible” blacklisting practices.

In January 2013, a House of Commons debate [8] moved by Labour MP Chukka Umana discussed police and security service collusion in the blacklisting and suggested that at least 200 environmental activists were also among those under surveillance by TCA. Umana told the *Guardian* newspaper:

*“Very serious allegations have been raised, including by a serving ICO official who is himself a former police officer, that information contained on the blacklist files came from police and security services. This only reinforces the need for a full investigation into blacklisting so we can get the full truth of what went on.” [9]*

In February 2013, the Metropolitan police reluctantly launched an investigation into allegations of collusion in the blacklisting of construction workers. The Met had previously dismissed a complaint from the Blacklist Support Group (BSG) which claimed the police had been involved in compiling the blacklist that came to light in the ICO raid. [10]

## A brief history of the Economic League

The twentieth century was dominated by the role played by the right-wing Economic League (EL) in “countering subversion” between 1919 and 1993. Its early years are opaque, although works by investigative journalists such as Mike Hughes, Mark Hollingsworth and Richard Norton-Taylor have thrown some light on this period. [11] The father to TCA, the Economic League was formed in 1919 to fight Bolshevism, combat the “red infection” and “crusade” for unregulated free-market capitalism. The League emerged from various cliques of industrialists, such as National Propaganda (NP), which had close links to the early intelligence services and military. [12] In 1925 the Economic League became a permanent organisation under its first director-general, John Baker White, who had been an intelligence officer and had maintained the security links that formed the basis of the League’s data collection and blacklisting services. As Mike Hughes has pointed out, the Economic League had dual objectives: its council members, pillars of the establishment and other powerful men, opposed socialism overtly, while at a covert level they began to establish the framework of a shadow state. One early anti-democratic activity was a campaign to break the 1926 General Strike under the slogan “Every Man a Capitalist.” [13]

Throughout the 1920s and 1930s, the EL compiled records on trade union organisers, socialists and communists, sometimes based on information which originated from police files. There is also well-documented evidence that the EL and British

intelligence agencies were cooperating at this time. [14] Despite this, the influence the League exerted on the British state over its first two decades had diminished by the Second World War when its model of unregulated free-enterprise came into conflict with the mixed economy supported by the mainstream Conservative Party, which was in government between 1951 and 1964. [15]

From the 1960s, a number of investigations, most notably by the Labour Research team, [16] published details of the blacklisting of workers, a practice the EL continued to deny until the 1969 publication of *A Subversive Guide to the Economic League*, [17] which revealed that in 1968 the organisation had an annual income of £266,000, £61,000 of which was contributed by 154 companies. Twenty-one known banks and financial institutions contributed as much as 47 manufacturing companies. According to the *State Research Bulletin*, in 1977 the top industrial donors to the Economic League were: Tate & Lyle; Imperial Group; Shell Petroleum Company; National Westminster Bank; Barclays Bank; Midland Bank and Lloyds Bank. The top four banks of the day were not only among the EL's donors, four of their directors sat on the organisation's Council. [18] Hollingsworth and Norton-Taylor cite a figure of £1m in annual income and 2,000 subscribers for the EL in their 1988 work, *Blacklist*. [19]

The EL's profile became even more visible in the 1980s as investigative journalists delved deep into its clandestine activities to reveal more names of companies that were vetting the politics of potential employees. This information also showed that the EL worked with MI5 to blacklist more than 22,000 "subversive workers", who ranged from trade unionists to individuals speaking up for work mates to anti-nuclear activists. [20] In light of these disclosures, in 1990 the House of Commons Select Committee on Employment heard evidence from the Economic League about its blacklist. This enabled campaigners and investigative journalists to exert further pressure on the organisation. The investigative journalist, Paul Foot, managed to obtain a complete copy of the EL's blacklist and ran a series of pivotal stories in the *Daily Mirror* newspaper. Its practices exposed to the public, the EL was wound up in 1993. Data protection laws meant that it would have had to open its files to further scrutiny, revealing personal data on thousands of shopfloor workers, prominent trade unionists, journalists, political activists and Labour Party MPs. [21]

### A chip off the old block: The Consulting Association

The Consulting Association grew out of the Economic League's Services Group, whose membership was comprised of construction firms. A key link between the EL and TCA was Ian Kerr, who had played a lead role in the League for many years before becoming TCA's chief officer. Unlike those he blacklisted and made unemployable (and in some instances destitute), while employed by TCA Kerr earned an annual salary of £50,000 plus bonus, had BUPA medical insurance and drove a Mercedes car. [22] Kerr gave evidence to the Scottish Affairs Committee shortly before he died, stating that TCA was founded in April 1993 with a £10,000 loan from Sir Robert McAlpine:

*"[The Consulting Association] was started out of the Services Group (SG), operated by and within the Economic League (EL). A Steering Committee of key people in construction companies of the Services Group drafted a constitution. Key operating features of TCA were decided by representatives of the major construction companies, who were the original members."* [23]

TCA operated from 1993 until 2009. Unfortunately the full extent of its operations may never be known as the ICO seized "only a small proportion of the documentation" held at TCA's Droitwich office. David Clancy from the ICO told the HSAC that:

*"We are talking of between 5% and 10% of what was in the office. What the other 90% or 95% was I can't comment on because we didn't go through lots of it."* [24]

Clancy argued that it had been unnecessary to look at anything else because he had "found the blacklist." However, TCA's Ian Kerr, giving evidence to the same committee, admitted that other information was held "including some files on environmental activists. These were not taken away by the ICO and were subsequently destroyed."

### Blacklist Support Group vs. Captains of Industry

The Blacklist Support Group (BSG) is a network of construction workers who have been blacklisted because of their trade union activities. [25] The network has run a campaign to "name and shame" the top construction company bosses who have chaired TCA and have also named the construction industry's 'main contacts' with the covert blacklisting organisation. [26] The Group has published a list of company directors that have chaired TCA:

1993-1996 Cullum McAlpine (Sir Robert McAlpine)

1997-1999 Tony Jennings (Laing O'Rourke)

2000-2001 Danny O'Sullivan (Kier)

2002-2003 Stephen Quant (Skanska)

2004-2005 Trevor Watchman (Balfour Beatty)

2006-2009 David Cochrane (Sir Robert McAlpine)

The BSG is seeking to "blacklist the blacklisters" and asks: Where are they working now? Are they involved in publicly funded contracts?

The BSG has also demanded compensation for blacklisted workers and that the companies responsible for their loss of earnings be made accountable for their actions. BSG is demanding:

- A full public apology,
- Compensation for blacklisted workers,
- Denial of public contracts for blacklisting firms,
- Jobs for blacklisted workers on major projects.

### Big spenders

The journal *Building* published a detailed analysis of the spending of 14 of TCA's main users in a report entitled "*Annual Spending by the Consulting Association 1996-2009*." [27] The main

players were Sir Robert MacAlpine and Skanska, each spending well over £200,000. They were followed by Laing O'Rourke and Balfour Beatty which both spent more than £100,000, with Carillion and Amec both spending around £70,000.

The Scottish Affairs Committee report also details the roles played by three major construction firms: Sir Robert MacAlpine Ltd, Skanska and Balfour Beatty, describing MacAlpine as a "major force" behind the blacklist and Balfour Beatty as a particularly "hard-nosed" user. Balfour Beatty is heavily criticised, with the SAC pointedly remarking:

*"...we are sure that [the company] regrets being caught; we were less convinced that management regretted its involvement with TCA."* [28]

The TCA's database was accessed by construction companies on an annual subscription basis - membership was at the invitation of an existing member - and a further £2.20 was paid for each name checked. The point of contact with TCA was usually through a senior executive in a company's Human Resources Department who would submit a list of names, to be checked against a card file held by the Association. Over a four-year period, for instance, Skanska vetted 66,000 names of workers to be employed on Ministry of Defence building projects while Balfour Beatty was vetting 15,000 workers a year.

## Red, black, blue and green

While the ICO's flawed investigation seriously undermined attempts to confirm the broader scope of the TCA covert blacklisting service, other lines of inquiry have been more forthcoming. Ian Kerr's evidence to the SAC described how blacklisted names were given different colours: black (for industrial relations - general); red/orange (mechanical and engineering); green (environmental activists) and blue (everything else). [29] While there is some question as to the veracity of Kerr's statements, it is worth briefly exploring the scope of TCA's activities.

Various industrial tribunal claims have resulted from the construction industry's blacklisting of workers. Two examples will serve here as an illustration of the effects of blacklisting on individual construction workers.

Construction worker, Steve Acheson (58), from Greater Manchester, obtained a copy of his 22-page file following the ICO raid on TCA. Acheson's trade union activities began in 1996 after the death of a 21-year old colleague at a site on which he was working. This compelled him to ensure that companies for which he worked complied with health and safety legislation. He has won four cases of unfair dismissal at various industrial tribunals. His TCA file began in April 2000 and confirmed that he had been placed on the blacklist because of raising health and safety issues and because of "suspected" trade union membership. The file included his name, address, date of birth, National Insurance number, mobile telephone number and a reference to his union membership. As a result of being blacklisted, Acheson was unemployed "for nine of the last 11 years and in the last five years [he] received only 16 pay packets." On the few occasions when he secured employment he was swiftly removed from the

site. This has had a devastating effect on his family and his wife had to work full time to support him.

Engineer, Dave Smith (47) had a 36-page file held on him by TCA and he was repeatedly victimised for highlighting safety hazards on sites. The file contains many entries regarding Smith's role as safety officer for the building workers' union, Ucat, while working on building sites controlled by John Mowlem and Schal International (both subsidiaries of Carillion) after he raised safety issues relating to the presence of asbestos and working conditions. In 2009, Smith became the secretary of the Blacklist Support Group. In January 2012, he pursued a claim against Carillion through an employment tribunal. Although Carillion accepted that Smith had been blacklisted, the company successfully argued that because he was not employed directly by them, but through a sub-contractor, Carillion was not legally responsible. Smith told the *Guardian* newspaper:

*"This is about human rights. I have not done anything illegal; I am a member of a trade union. I have worked in an attempt to improve health and safety on building sites and yet it appears my employers, the state, security services and the police have been conspiring against me."* [30]

It should be noted that the majority of those who have sought redress through the courts have failed. [31]

The scope of TCA's blacklisting has recently been shown to have included Irish construction workers; 370 people on the 3,200-name TCA database have typically Irish names. Irish workers were illegally barred from Ministry of Defence projects and the ICO's David Clancy has alleged state involvement, saying that some information on TCA's records "must have been supplied by either MI5 or police." The Labour MP, John McDonnell, who has spent many years highlighting the blacklisting scandal, called for the truth on how Irish workers were targeted and asked "who in the state authorised or turned a blind eye to this organised victimisation." To this end he called for an independent public inquiry into blacklisting:

*"I am calling for an independent public inquiry into blacklisting because many believe that what we have found out so far about the activities of The Consulting Association is just the tip of an iceberg."* [32]

According to the GMB trade union, the TCA's blacklist also included 582 workers who were living or working in Scotland. Describing the practice of blacklisting as "a deplorable activity that has ruined livelihoods for decades," Labour MP Jim McGovern called "on authorities to look into whether it remains an ongoing practice." [33] The GMB has met with officials from the Scottish government, which is considering preventing companies implicated in the blacklisting scandal from bidding for future contracts, worth billions of pounds. A Scottish government spokesman said: "Officials met union representatives to discuss new guidance to update existing public procurement processes and procedures in light of blacklisting of employees by contractors in the construction industry." [34]

In January 2013, a House of Commons debate on blacklisting



discussed police and security service collusion in the practice, suggesting that at least 200 green activists involved in road building protests were among those under surveillance by TCA. TCA's Ian Kerr had revealed to the parliamentary committee that construction firms wanted information on green protestors after being "badly hit" by their campaigns in the 1990s. He told the MPs:

*"In the mid-90s the industry was literally taken unaware by the people who came along and built treehouses, cut the hydraulic lines on the equipment and put sand in tanks, because at the time it was quite easy to win a contract and put a route through an area."* [35]

He went on to say that the construction industry had organised a meeting to debate green activism: "The targets were [activists at] the M11, Twyford Down, the Manchester second runway and the Bath eastern bypass." [36]

In a recent *Panorama* television investigation [37] Ian Kerr's wife, Mary, who worked as a bookkeeper for TCA, described the vetting that occurred during the building of the London "Dome" as extending to acrobats, dancers and entertainers who were seeking employment.

## The legal fight back

An estimate of the extent of TCA's activities can be gauged by legal documents lodged by Sir Hugh Tomlinson QC, acting on behalf of 80+ alleged victims of the blacklisting organisation. Their legal claim alleges that TCA's clandestine database monitored the trade union activity of workers in the construction industry, including compiling details on industrial action, political views and affiliation and membership of unions, with entries frequently being made after workers had made complaints about matters concerning health and safety. Addressing health and safety issues was considered by companies to be likely to delay construction and therefore lessen profits for no discernible benefit. The TCA's files did not only make recommendations on employment, with entries such as "do not employ" and "not recommended", but even commented on individual's relationships and wrongly accused others of criminal activities, such as accusing one man of claiming unemployment benefit while working. Victimised workers say that the conspiracy to run the blacklist caused them to suffer "loss and damage" by preventing them from obtaining employment [38].

The action also claims that Sir Robert McAlpine, and in particular Cullum McAlpine, had a central role in the establishment and operation of TCA.

*"[Cullum] McAlpine was the founding chairman at the organisation's inception in 1993. He was intimately involved in the foundation and operation of TCA. He formally offered Mr Kerr the position of director in August 1993. He finalised the written particulars of Mr Kerr's employment, sending them to members for approval and obtaining legal advice in relation to them. He oversaw the arrangement of life and health insurance for Mr Kerr as part of his remuneration."* [39]

The legal claim also says that once TCA's database was exposed in 2009 and Kerr was prosecuted, he was warned that if McAlpine's name was mentioned the company "might encounter serious difficulty in obtaining major construction contracts." Sir Robert McAlpine Ltd paid Kerr's winding up costs, legal costs and the fine imposed by the ICO through cheques not paid to him directly. McAlpine was invoiced by Kerr's daughter for "services rendered" and Callum McAlpine paid the bill. The company denies that these underhand payments "...were in any way linked to his taking responsibility or protecting Sir Robert McAlpine Ltd or any other member of the Consulting Association." [40]

However, Mike Hughes, in an article for SpinWatch, has warned that the legal complexities of the case and obscurity of the law "means that it will be hard to see that even if this case is successful it will set sufficiently clear precedents to change recruitment practices in general."

Commenting on the legal cases against Sir Robert McAlpine Ltd, a spokesman said:

*"TCA was established by a large group of construction companies. All the member companies contributed to, and accessed information from, the CA from time to time. Directors and representatives of a number of major construction firms chaired CA over the years. These included Mr Cullum McAlpine who was chairman for a period in the 1990s."* [41]

The depth of the company's state of denial was clear when a spokesman added that it had never operated a "blacklist."

*"We are, and have always been, wholly committed to maintaining good relationships with our workforce and to responsible trade unionism."* [42]

## Protests at local and European level

At the local level, members of trade unions such as Unite have been leafleting, petitioning and demonstrating to mobilise public support to prevent local authorities using the companies that blacklisted, and in some cases allegedly continue to blacklist, workers. Unite is calling on local authorities:

*"...to desist from using the services of companies proven to have blacklisted workers and in particular those companies, such as Royal BAM and Kier which appear to be continuing to abuse the basic human rights of ordinary working people."* [43]

Hull City Council voted unanimously to remove blacklisting firms from all council contracts at a full council meeting in December 2012. The council also recognised the GMB trade union campaign to win an apology and compensation for those who have been unable to work as a result of being blacklisted. [44] Around a dozen other councils in England, Scotland and Wales are considering moves to exclude blacklisting companies from local government contracts. The Blacklist Support Group has called on other local authorities to follow Hull's lead:

*"...until the blacklisting firms apologise and compensate the workers whose lives they have ruined. They have destroyed*



*careers in order to increase their profits. As profits are the only thing that the blacklisting companies are interested in, perhaps losing publically funded projects will make them own up to their responsibilities.” [45]*

The Unite trade union [46] maintains that blacklisting continues to be rife in the UK and that this is evident on the £15 billion publically funded Crossrail project (Europe’s largest railway engineering programme underway in southeast England). The union’s general secretary, Len McCluskey, has called for a national mobilisation against Crossrail consortium Bam Ferrovial Kier (BFK), after alleging that “blacklisting activity is continuing at Crossrail.” [41] The union says that workers’ have been excluded for raising safety issues, an allegation that will be tested at an employment tribunal by electrician, Frank Morris (38), who says that he was dismissed after becoming a union representative and voicing safety concerns.

At the European level, in April 2013 the Unite union led a delegation to Amsterdam to protest outside Royal BAM’s annual general meeting. BAM is the latest major contractor to have its overseas meetings targeted by anti-blacklisting protesters from the UK. Unite is running a campaign against the Crossrail project and its delegation to Holland was protesting at BAM Nuttall’s role in the London scheme. In the same month, the Blacklist Support Group and GMB trade union targeted the Skanska annual shareholders meeting in Stockholm. Unite’s assistant general secretary, Gail Cartmail, who attended the protest in Amsterdam said “Blacklisting ruins lives and we believe it is continuing today on Crossrail.” She continued: “Unite believes that the people of Holland and BAM’s shareholders deserve to know about BAM’s behaviour elsewhere in Europe.” [47]

## “We are all Thatcherites now”

Following the death of former Conservative Prime Minister, Margaret Thatcher, on 8 April 2013, the current Conservative Prime Minister David Cameron paid tribute to her, declaring that “We are all Thatcherites now.” Thatcher, who laid waste to vast swathes of working class communities when taking on the miners and other trade unionists during an earlier programme of

privatisation that left generations unemployed and unemployable, stands as an appropriate symbol for the blacklisting scandal. Like Thatcher before him, David Cameron has also targeted workers’ rights and imposed neo-liberal austerity measures that take from the poor to subsidise wealthy captains of industry, who continue to get vast bonuses that exceed what the average worker will earn in an entire lifetime.

The blacklisting and removal from employment of those workers who are represented by trade unions, or have the temerity to question health and safety standards, evokes this Thatcherite ethos, but also accurately signifies the role that working class people can expect to play in twenty-first century Britain. It is therefore unsurprising to find that the HSAC’s interim report also expresses grave doubts as to whether the illegal practice of blacklisting has actually ended. The Committee felt obliged to investigate the extent to which the practice continues within the construction industry and further afield, and will report its findings in a forthcoming report. In future sessions, the Committee will also examine the ongoing issues of compensation for victims and penalties for offenders.

However, it is clear that private websites, like HR Blacklist, [48] which describes itself as “an ethical human resources community for employers and employees” that promises to reveal “the truth about employees,” is continuing an old tradition. The company advertises five reasons for using its HR Blacklist:

1. Blacklisting an employee is free
2. Almost 50% of the candidates lie in their CV’s
3. Hiring the wrong person, may cost you money and reputation
4. Fast and easy CV search: find what other employers had to say about the candidate
5. Rate an employee, or check his/her rating

However, Mike Hughes has warned that:

*“...the technology of blacklisting is moving offshore and embracing wiki models where the conspiracy becomes more dispersed and tortuous and certainly less actionable.” [49]*

## Endnotes

- [1] House of Commons Scottish Affairs Committee “Blacklisting in Employment: interim report” (The Stationery Office), 16.4.13 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cm��otaf/1071/1071.pdf>
- [2] Information Commissioners Office “The Consulting Association” Press release (undated) See also: Phil Chamberlain “The Construction Industry Blacklist: how the Economic League lived on” *Lobster* 58, Winter 2009/10, for a detailed account of the raid.
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- [4] Daniel Boffey “McAlpine denies high court claim it had major role in ‘blacklist scandal’” *The Guardian* 12.1.13
- [5] European Court of Human Rights “The European Convention on Human Rights” 1950 [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf)
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- [7] Op. cited House of Commons Scottish Affairs Committee 2013.
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- [9] Matthew Taylor “MPs call for inquiry into blacklist of green activists” *The Guardian*, 29.1.13
- [10] *ibid*
- [11] See for instance: Mark Hollingsworth and Richard Norton-Taylor, *Blacklist: the inside story of political vetting* (The Hogarth Press 1988) Mike Hughes “Spies at Work” (1995) online book: <http://www.malcsbooks.com/resources/Spies%20at%20Work%20by%20Mike%20Hughes.pdf>
- [12] See for instance the role played by Sir Admiral Reginald ‘Blinker’ Hall a director of Naval Intelligence who advised the government on the establishment of MI6 in 1909
- [13] Op. cited, Hughes 1995
- [14] Matthew Taylor “MPs call for inquiry into blacklist of green activists” *The Guardian*, 29.1.13

- [15] Op. cited, Hughes 1995
- [16] The journal Labour Research still publishes news and information for trade unionists and continues to play an important role in exposing the activities of major construction companies in illegal blacklisting. Website: [www.ird.org.uk](http://www.ird.org.uk)
- [17] Labour Research "A Subversive Guide to the Economic League" 1969
- [18] State Research "The Economic League" Bulletin No. 7, pp. 135-145, 1978
- [19] Op. cited Mark Hollingsworth and Richard Norton-Taylor 1988
- [20] David Hencke "Left blacklist man joins euro fight" The Guardian, 9.9.00
- [21] When the Economic League was wound up two of its former directors formed a similar organisation called CAPRiM. The role of this organisation is enigmatic, but Ian Kerr has said that it was primarily an organisation that put out publications and checked potential employees curriculum vitae. He also suggested that it was a vehicle to ensure that he and other ex-Economic League employees were able to maintain their standard of living.
- [22] Op. cited Scottish Affairs Home Committee 2013
- [23] Op. cited Scottish Affairs Home Committee 2013
- [24] Op. cited Scottish Affairs Home Committee 2013
- [25] The BSG blog can be found on the Hazards website. See <http://www.hazards.org/blacklistblog>
- [26] *ibid*
- [27] <http://www.building.co.uk/news/blacklist-spending-building%E2%80%99s-exclusive-analysis/5050520.article>
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- [41] Op. cited The Guardian, 12.1.13
- [42] Op. cited The Guardian, 12.1.13
- [43] Tim Lezzard "Shoppers asked to support blacklisted workers (Union News 11.5.13)
- [44] Morning Star, 4.1.13
- [45] See Unite webpage: <http://www.unitetheunion.org/growing-our-union/organising-toolbox/leverage/crossrailmain>
- [46] Matthew Taylor "Unite calls for national action over Crossrail blacklisting allegations" The Guardian, 10.6.13.
- [47] Will Hurst "Blacklisting protesters target Royal Bam" <http://www.building.co.uk/news/blacklisting-protesters-target-royal-bam/5053701.article>
- [48] HR Blacklist website: <http://www.hrblacklist.com>
- [49] Mike Hughes "First concerted legal action against blacklist will reveal need for a radical rethink of employment regulations" SpinWatch, 18.1.13



## Neighbourhood patrols, vigilantism and counter-vigilantism in Spain

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Vigilantism, neighbourhood patrols and state sponsored informing are long established practices in Spain, and have been facilitated in recent years by new technologies and the growth of social media.

### Vigilantism, surveillance and social control before democracy

Spain has a long history of vigilantism. As a country with a recent authoritarian past, social control and surveillance have been the norm rather than the exception. In the twentieth century, Spain suffered almost 35 years of military rule (General Primo de Rivera between 1923 and 1930 and Francisco Franco Bahamonde, *El Generalísimo*, between 1939 and 1975), a Civil

War (1936-1939) and several episodes of military upheaval in the first years of the century. In 1936, before the *alzamiento* (military uprising), the electorate voted for the progressive and revolutionary forces of the Popular Front, but by 1939, in the immediate post-civil war years, Francoism needed to consolidate its military victory. Those who hadn't died or fled into exile were tracked down and prosecuted. "All criminal activity committed in the national territory during the red domination" was brought before special courts set up in order to organise the purging of reds, communists, separatists and freemasons.

In a country where most of the population lived in rural areas [1] and power was organised locally, this meant establishing local networks of control structured around institutions controlled by, or aligned with, the regime: the Church, unelected city councils, the Falange [2] and the Guardia Civil. In this period, deviancy was not only political, ideological or criminal, but also *moral*. Local priests, councillors, Falangists, and later members of the Guardia Civil, were asked by the Courts to submit reports on the activities of virtually everyone - a task which, with exceptions, most fulfilled enthusiastically. The Church had a key role in the everyday surveillance of this "National-Catholic" regime, with local priests playing an essential role in rural areas. They were often responsible for issuing "certificates of adherence to the national movement" which were necessary for a myriad of daily tasks and were based on "good behavior" - mainly understood as the following of Catholic rituals and principles. Attending Church, and having gone to Church prior to 1939, was one of the best defences one could muster when faced with investigation.

Spain's recent history shows a stubborn continuity of surveillance, control, domination and revanchism as a political strategy and social dynamic. [3] Informers were promoted and sponsored by the state when trying to consolidate military rule. While times have changed, there is little doubt that spying on others has a long tradition in Spain for cultural and historical reasons. Over the last few years, however, the landscape of vigilantism has diversified, with state-sponsored versions giving way to new practices of surveillance.

## A recent history of neighbourhood patrols

The earliest examples of self-organised neighbourhood or citizens' patrols (*patrullas ciudadanas*) in Spain were reported in the press in the late 1980s. They were often linked to high levels of insecurity and a crime wave blamed on a heroin epidemic that, at its peak, killed 300 people annually. In the early 1990s, 150,000 Spaniards were addicted to heroin.

This had an impact on community safety and people's perception of insecurity, with drug addicts openly using in public areas, stealing in order to buy drugs and suffering overdoses on residents' doorsteps. A perceived lack of response by the authorities led some citizens to organise patrols in notorious areas. In 1991, there were four patrols in Barcelona's metropolitan area (Barcelona, El Prat, Badalona and Sant Adrià) which pursued drug addicts and dealers, beat them up and ejected them from their neighbourhoods. While different kinds of patrols appeared in places as diverse as Sagunto, Palma de Mallorca, Valencia, Alicante, Madrid, Almería, Cartagena, Huelva and Pontevedra, most communities responded to the problem with peaceful demonstrations and meetings with the authorities. However, in Móstoles, San Blas, Alcorcón and El Prat, there were instances of attempted lynchings. Members of these neighbourhood patrol groups walked around with "sticks, chains and umbrellas," stopping busses to eject drug users and, in one case, chasing a drug addict to the top of a building and threatening to throw him off. There were also instances of fascist-like gangs joining neighbourhood patrols, creating a dynamic of poverty, prejudice and racism (most drug dealers were said to be Spanish Roma).

In this period, the authorities spoke out against neighbourhood patrols. They argued that the police force was the only entity that could confront the problem within the limits of the law. In 1992, Spain passed its first Community Safety law which increased police powers and established harsher fines for drug use in public places. The perception of increased police efficacy in dealing with drug users and dealers (the first instances of community policing in Spain date from this period), as well as decreasing rates of heroin consumption, meant that by the mid-1990s the *patrullas ciudadanas* seemed to be a thing of the past.

While in the 1980s and 1990s the authorities favoured the rule of law, from 2000 things began to change. A Cordoba district attorney's office report suggested for the first time that, in view of the increase in crimes against property, some measures of "social defence" were to be encouraged, such as carrying weapons, installing alarms in one's house or organising neighbourhood

patrols. [4] The district attorney denied that his office was in favour of such measures and claimed that certain passages of the report had been poorly written. The Mayor, the police force and civil society all rejected the measures. The authorities responded similarly in Barcelona when neighbourhood patrols reappeared in the city centre during the spring of 2000. These new patrols did not mobilise against drug users or property crimes but in response to a general feeling of insecurity blamed on sex workers and migrants. [5] Police and civil society organisations quickly intervened to discredit the the vigilantes and call for an increased police presence.

However, informal contact was made between citizens' patrols and Town Hall officials, who were flirting with the idea of giving watch members some form of official recognition to make them part of a public-private partnership against insecurity and crime. These efforts were never publicly acknowledged and, as members of the Mayor's office admitted years later, it quickly became obvious that members of citizens' patrol groups were not the best people to hand authority, because they tended to be violent and have problems dealing with others, including the authorities. [6]

## State sponsored grasses

Barcelona's experience left the authorities unwilling to promote neighbourhood patrols, but 12 years later the issue arose again – with a significant twist.

On 29 March 2012, a general strike saw thousands of people take to the streets to protest against austerity, wage cuts and labour reforms. Less than a month later, on 24 April, the Catalan Ministry of the Interior launched a website that carried 231 pictures of people causing property damage and/or attacking the police and others during the main demonstration in Barcelona. The authorities encouraged citizens to provide leads that would help police find and arrest those photographed. They were following the examples set by the UK's Metropolitan police and the Vancouver Police Department after the London [7] and Vancouver [8] riots in 2011.

Several civil society groups raised concerns about the legality of the website and at least one family sued the government for posting a picture of their 15-year old son. Some of those featured on the website called a press conference in a public square a few days after its launch to expose its worthlessness. The site was taken down after a few months. Information on how useful the website was in identifying and arresting people has not been published.

The website received extensive media coverage and led to the unearthing of other instances of official 'sponsorship' of *chivatos* [grasses]. Around the same time, the government launched a mobile phone application to check train times and fares for a regional train line. It included a button to report "anti-social behavior" – this ranged from putting feet on seats, smoking, playing music outside authorised areas and begging. The application even allowed the user to classify a beggar under different categories before sending the report. An online petition against the application was launched shortly after its release and was signed

by more than 50,000 people in a matter of days. The application was eventually removed.

State-sponsored informing also entered the school system. By 2012, the Department of Education was encouraging parents to report 'cheating' parents who used inaccurate residential data to gain admission for their children to a particular school. In a move that defied not only common sense but also data protection legislation, the government gave parents access to the names and addresses of other parents upon request so that they could report any wrongdoing – and potentially free up spaces for their own children. Previously, when someone was suspected of using a false address the town hall was responsible for checking the veracity of the information. In 2012, parents became responsible for spying and reporting on each other.

Another worrying development, which seems to have been put on hold for the time being, is a proposal to legalise so-called *somaténs*, a paramilitary police corps which was established in medieval times in certain areas of Spain. The *somaténs* were banned during the democratic periods of Spain's history, but recently an increase in criminal activity in rural areas (mainly involving the theft of cattle and farm tools) has seen a revival of the scheme in which groups of individuals arm themselves to patrol areas they feel are vulnerable to criminal activity.

There are currently a handful of these rural patrols in Catalunya. Up until late 2012, the regional government was exploring the idea of legitimising their activity as a civil aide to the police force, but a change of government seems to have halted those plans. However, the *somaténs* continue to operate and, in May 2012, a man being chased by such a group suffered a heart attack. [9] While the man's death was ruled accidental, it could be argued that the situation was provoked by a group of armed men chasing someone they believed to be a thief. In theory rural patrols should alert the police to cases of suspicious activity and never engage in pursuit or arrest. This protocol clearly was not followed during the events of May 2012, but the case did not receive much media attention or legal scrutiny.

## The watchers go online

New technologies and digital media mean that vigilantes can now operate online. There are already several examples of neighbourhood patrols using social media to communicate and instances of crowdsourcing the act of 'watching.' The best known example of this is probably Blueservo, a project proposed in 2006 with the intention of crowdsourcing policing of the US-Mexico border and 'empower[ing] the public to proactively participate in fighting border crime' – that is, reporting migrants trying to enter the USA. [10] Another example is 'Internet Eyes', a UK website that gives paid subscribers real-time access to CCTV footage and cash rewards for 'positive alerts.' [11]

Not all crowdsourcing is CCTV-based. In 2010, an English-speaking Barcelona resident launched a website and Facebook page called 'Robbed in Barcelona' in order to "raise awareness of the situation in the city and to embarrass the local authorities into action." [12] The site encourages people to anonymously

submit pictures, videos and advice on pickpockets and thieves. It often features robberies, detailing the methods and physical appearance of those identified as the perpetrators. While some comments just describe events, others tell stories that are difficult to believe:



This is not the only instance of informers going online. Recently a *somatén* in Riudellots de la Selva, a town of 2,000 people, launched a Facebook group and a 'whatsapp' account that was used by members to exchange information and pictures of any aberrant activity they observed. [13] The contributions are a mixture of self-promotion, dissemination of relevant news pieces, comments about specific crimes and stories about people begging, looking for a place to squat or just wandering around the village. Images of individuals (personal data) are circulated without their permission or consent. There is little data to suggest that such schemes contribute to the reduction of crime.

## Tales from the other side: neighbourhood care, countering vigilantism and policing the police

As the above cases show, there is a thin dividing line between neighbourhood patrols and vigilantism. Even when citizens' patrols are state-sponsored or intended as a civil contribution to a community's safety, it is difficult to ignore the impact of prejudicial and racist profiling through which these schemes create an 'other' to be placed under observation. As anti-drug neighbourhood patrols from the 1980s demonstrate, it is always easier to chase a drug user than a drug dealer. Those pursued by vigilantes are always the most vulnerable – victims of drug addiction, victims of trafficking in women, or exclusion in the case of sex workers.

However, there are also examples of 'neighbourhood care' schemes that defy stereotyping and explore self-organisation in solidarity with the community. As the 'Robbed in Barcelona' website shows, petty theft is common in Spain. Often it is the elderly who are affected by this type of crime; who are most vulnerable after they have withdrawn money from a cash machine or when running errands whilst wearing jewelry. Many elderly people only dare go out with help and support from family, friends and neighbours.

There are few accounts of these informal solidarity networks, but community groups maintain that it is common for volunteers to accompany older people when they go shopping, visit the doctor or spend time at the community centre. [14] In Reus, a medium-sized town in Catalunya, neighbourhood residents accompany elderly people on the streets to help them regain



confidence. Contrary to the examples mentioned previously, these groups do not seek publicity nor do they make specific demands on the authorities. [15]

In summer 2011, in the Andalusian capital Seville, several *patrullas* combined to draw attention to situations they felt resulted from a lack of policing. These included the growing number of informal 'parking attendants' (who make a living by requesting tips from drivers who want to leave their car in a specific area) and shanty towns erected on the outskirts of the city that are mainly inhabited by people of Romanian origin. The *patrullas* were quickly dismissed by some of the more established neighbourhood associations and authorities. Radical organisations linked to Indymedia exposed links between some of their members and the far right. [16]

As members of the *patrullas* gathered regularly in different shanty towns to harass the informal parking attendants, groups affiliated to the local radical left organised *contra-patrullas*. They met at the same time and location as the *patrullas*, forcing them to dismantle the scheme with some degree of success, as a tweet written by a member of the counter-patrol on 23 February 2013 shows: [17]



## Endnotes

- [1] In 1930, only ten Spanish cities had more than 100,000 inhabitants (Atlas Histórico de España).
- [2] Falange Española, or El Movimiento, was the social organisation of Francoism.
- [3] For a general history of this period, see, for instance, Carr, Raymond. 2001. *Modern Spain, 1875-1980*. Oxford: Oxford Paperbacks.
- [4] El País, 16.5.02: [http://elpais.com/diario/2002/05/16/espana/1021500017\\_850215.html](http://elpais.com/diario/2002/05/16/espana/1021500017_850215.html)
- [5] El País, 29.8.00: [http://elpais.com/diario/2000/08/29/catalunya/967511248\\_850215.html](http://elpais.com/diario/2000/08/29/catalunya/967511248_850215.html)
- [6] Interview with Barcelona's then Councilor for Community Safety (interview conducted in April 2010).
- [7] Metropolitan Police website: <http://content.met.police.uk/Site/operationwithern>
- [8] Vancouver Police Department website: <https://riot2011.vpd.ca>
- [9] el Periódico, 26.5.12: <http://www.elperiodico.com/es/noticias/sociedad/los-mossos-investigacion-muerte-ladron-cuando-huia-somaten-maials-1839221>

A similar development occurred in Madrid, when activists felt members of the central neighbourhood of Lavapiés were being harassed due to their origins or appearance. This time, however, the profiling was not done by other citizens but by the police.

Several sources have pointed out that police profiling is pervasive and illegal in Spain. [18] Stopping people to conduct identity checks because they "do not look Spanish" is a common procedure that is neither discouraged nor punished by police authorities, even if there is evidence that the profiling is discriminatory. In 2011, after the 15M (*indignados*) movement abandoned the public squares to continue its activities at local level, the Lavapiés neighbourhood decided to make the struggle against racist police stops one of its main activities. Videos of police stopping people of migrant 'appearance' are regularly posted online [19] and community members alert one another of police operations via telephone, twitter [20] and other means. These Neighbourhood Brigades to Observe Human Rights Compliance are one of the most long-lived and active instances of neighbourhood patrols in Spain. [21]

A close look at vigilantism and neighbourhood patrols in Spain exposes a counterintuitive picture. Vigilantism inspires both state-sponsored schemes and counter-vigilantism: the observed appropriate the ways and means of the observers, and the hierarchy of control is subverted. Suddenly, a nation of grasses meets a nation of whistleblowers that use the same social media, community rhetoric and appeals to the greater good to explain and justify its existence.

[10] <http://www.blueservo.net>

[11] <http://www.interneteyes.co.uk>

[12] Robbed in Barcelona, 9.3.10: <http://www.robbedinbarcelona.com/2010/03/09/the-creation-of-robbed-in-barcelona>

[13] <https://www.facebook.com/sometent.riudellotsdelaselva?fref=ts>

[14] Interview with community worker (May 2013).

[15] el Periódico, 16.5.13: <http://www.elperiodico.com/es/noticias/sociedad/abuelos-con-escolta-2392041>

[16] Indymedia estrecho, 6.7.12: <http://estrecho.indymedia.org/sevilla/noticia/ultraderechista-angel-bordas-detras-un-nuevo-brote-xenofobo-san-jeronimo>

[17] Xenophobic citizen patrol deactivated! Racists out of #Seville! #againstfascismnotonestepbackwards'

[18] See, for instance: <http://www.opensocietyfoundations.org/press-releases/report-un-details-pervasive-ethnic-profiling-spain>

[19] <http://www.youtube.com/watch?v=7LcBRjc0sWk>

[20] <https://twitter.com/BrigadasDDHH>

[21] <http://brigadasvecinales-ddhh.blogspot.com.es>



# Sanctions for stowaways: how merchant shipping joined the border police

**Paloma Maquet and Julia Burtin Zortea**

Translation by Marie Martin

**EU Member States are shifting responsibility for stowaways on board merchant vessels to carriers and are opposing any form of reception or support for irregular passengers in their territory. As a consequence, the maritime industry has developed strategies to remove migrants whilst avoiding delays in delivering shipments. Since 2001, the implementation of anti-terrorism policies and related security matters in the maritime sector has contributed to the emergence of preventive measures against a number of threats, including “irregular” migration. Beyond the professionalisation of insurance to “manage” stowaways, the sector has developed a growing - almost compulsory - outsourcing of law enforcement competences to workers at sea and in ports.**

Every year thousands of people board merchant vessels irregularly. According to the UN agency in charge of promoting vessel security (International Maritime Organisation, IMO), a person can be defined as a “stowaway” if they hide on a vessel without its owner’s or captain’s consent and are discovered after the ship has left port. A study by Migreurop of 22 ports in the European Union showed that figures provided by the IMO [1] to quantify this phenomenon “are far from exhaustive because research carried out in different European ports shows that, on the one hand, states do not always record every case and, on the other, they do not appear to transmit all the data to the IMO.” [2] This shortage of information is mainly due to the fact that “the regime that is applied to these passengers remains marked by discretion, opacity and a lack of respect for the rights of human beings.” [3] Recent reports and analyses have highlighted the silent evolution of migration policy in this respect, locating the problem at the juncture between policies carried out by the state and those adopted by the maritime industry for commercial purposes.

Migration policy is at a crossroads. States deny entry to irregular passengers, but it is impossible for a ship to keep them on board. This raises the question: who should be responsible for these passengers? A pragmatic, economically grounded response has been found to address this sensitive question: the emergence of an ad hoc migration policy conducted by private actors around the reality of stowaways – which is understood as a symptom as well as a means to regulate the sovereignty and responsibility

issues at stake. In other words, new procedures to detain and remove “undesirable migrants” have been shaped and implemented by the maritime industry itself to compensate for the state’s non-intervention in these matters. This “regime” is emblematic of governance models specific to contemporary neo-liberalism: faced with stowaway-related issues, management practices in the trade sector are increasingly geared towards the requirements of law enforcement and the state’s externalisation of these functions to the private sector. [4]

The treatment of stowaways casts light on the ambiguity of the externalisation of public policies to the private sector. The effective “management” of stowaway cases falls on maritime workers - captains, seamen, ship-owners, insurers - who, because they have to meet an economic imperative, are led to implement repressive migration policies (i.e. disembarking the stowaway as quickly as possible). The outsourcing of sea border control often seems de-politicised. To the merchant navy, the readmission of a migrant is not a choice but a necessity and a constraint; merchant seamen often (re-)externalise their “dirty work” onto “risk management professionals”.

This transfer of responsibility can also be seen in the emergence of a risk/threat prevention philosophy in the maritime sector. This mindset can be seen in the increased outsourcing of policing functions to sea workers and port officials. It is closely linked to the establishment of post-2001 anti-terrorism policies in the maritime sector and impacts on the logistics of the industry.

## **The responsibility game - who should be “given” the stowaway?**

According to international maritime law, any stowaway found on board a merchant vessel is the responsibility of the captain, who represents the ship-owner (i.e. the carrier). The stowaway is therefore a person without rights whose future is determined by a maritime company eager to disembark them as soon as possible. However, states typically refuse to allow carriers to disembark stowaways. In 1957, the IMO saw its request to members for the ratification of a convention that would oblige signatory states to receive stowaways rejected. In 2011, the above-mentioned Migreurop report highlighted that “the authorities treat not allowing people without valid documents to enter the territory as a matter of principle.” [5] Indeed, “France and a majority of other European states consider merchant navy carriers... responsible for their presence on their ships.” [6] Transportation codes, merchant navy codes, and legislation on foreigners, all enact penal and financial sanctions against carriers with the aim of making them behave more “responsibly”. For example, in France, helping a stowaway embark, hide or disembark is punished - in theory - by a €3,750 fine and six months imprisonment. [7] In Spain, a carrier can be fined €180,300 if a stowaway escapes the vessel [8] and enters Spanish territory.

IMO documents also reflect this emphasis on carrier responsibility, although a 1996 circular [9] - later incorporated into the Convention of Facilitation of International Maritime Traffic (FAL convention) in 2002 - encourages shared responsibility in the

handling of stowaway cases, the successful management of the situation ultimately remains the carrier's sole responsibility. [10] Recommendations issued by the IMO Security Committee between 1997 and 2010 stressed the importance of "carrier's liability" whilst encouraging states to lift financial sanctions if the ship-owner "cooperates." [11] For the carrier, the obligation to cooperate implies respecting the rules established by states - for example informing the authorities that there is a stowaway on board the vessel before entering territorial waters. It also means that the carrier has to prevent the irregular passenger from escaping once at the quayside. Through this perfectly legal IMO orchestrated blackmail - sanction vs. collaboration - states enact repressive practices by omission: in practice the reception and management of the stowaway, as well as all the expenses derived from their presence, are the carrier's responsibility.

On board a ship, the captain's powers and obligations are determined by the law of the flag state. In the case of French law, the merchant navy's disciplinary and penal code gives captains similar powers to those of a judicial police officer, enabling them to conduct a preliminary investigation of an offence committed on the high seas. [12] The law assumes that the captain will collect as much information as possible from the irregular passenger so that they can provide the French Administrator of Maritime Affairs (Administrateur des Affaires maritimes), the ship-owner and/or the insurer, with an official report and a statement of offence. [13] Moreover, it is the captain who is competent to decide whether or not the stowaway(s) should be detained in a cabin and if the cabin should be monitored. According to interviews, [14] captains see themselves as *de facto* bearing the ship-owner's responsibility; a role viewed with pragmatism and as a constraint that turns them into either police officers or prison guards. Two Turkish captains interviewed in Barcelona reported their uneasiness with the situation: "Having a migrant on board is synonymous with reprisals, additional responsibilities and workloads." [15]

Legislation clearly favours non-involvement by the state, but responsibility-sharing remains blurred in cases where the interests of all parties converge. The presence of a stowaway on board a vessel is obviously unwelcome both for carriers and captains whose goal is to meet delivery and loading deadlines. Unplanned delays cost money. "Sensitive" cases, where stowaways are potential refugees or unaccompanied minors, lead to lengthy administrative procedures which prevent the vessel from embarking until the process is over. In this respect, the preliminary investigation conducted for the Migreurop report showed that border guards and merchant shipping companies do not hesitate to collude by ignoring or filtering decisive information. In Bilbao, Spain, one lawyer mentioned a "pact of silence" when it comes to asylum claims and cases of unaccompanied minors. Such "convergence" helps prevent delay, which is convenient for companies, but does not change the nature of the problem. Responsibility for the stowaway always "comes back" to the carrier, who then has to address the question: how do you disembark a person who is undesirable everywhere?

In parallel to the "pact of silence", the IMO and the UN High Commissioner for Refugees (UNHCR) regularly issue

recommendations emphasising that captains have a duty to rescue migrants and refugees in distress, but never offer a solution as to where they can be disembarked. [16] Maritime ethics, overshadowed by repressive migration policies, are dressed-up with a humanitarian varnish which remains, in practice, inapplicable.

## Private management of removal

Given that the captain's priority and responsibility should be to disembark stowaways and remove them from any maritime route, two scenarios emerge depending on the vessel's itinerary. If the vessel follows a regular shipping line then the stowaway is maintained on board until they can be returned to the port where they embarked. The situation gets more complicated in the case of trampers (vessels travelling the world on the basis of commercial opportunities without a fixed schedule or pre-defined route), where the captain must keep the stowaway on board for an undetermined period. These circumstances have led to tragic scenarios. In 1995, in the MC Ruby case heard in the French city of Rouen, a captain and his assistant – both Ukrainian – were sentenced to life imprisonment for ordering the murder of eight Ghanaian stowaways off the shores of Normandie in November 1992. More recently, in October 2012, the crew of the South-Korean Hyundai Treasure Ship threw four stowaways into the sea. The captain took this action after he was refused permission to disembark the migrants at the port of Casablanca and the Moroccan authorities asked the carrier to pay the repatriation fees. This event was covered by the Algerian press but did not result in legal action. [17]

The vast majority of ship-owners have shifted the stowaway-related logistical and financial pressure on board trampers to insurance companies. Indeed, 90% of the world's flotilla is now insured with P&I clubs (Protection and Indemnity Insurance clubs). These groups were founded in England in the mid-nineteenth century. They guarantee the civil responsibility of ship-owners and provide cover for risks merchant navy vessels may face (beaching, pollution, container loss etc.). P&I clubs assume the risks and costs associated with the presence of stowaway(s) through a clause regarding risks to human life (death on board, personal injuries, financial costs of maintaining, repatriating or deporting deserters, strikers or stowaways). As a consequence, insurers employ legal practitioners who specialise in "crew and stowaway issues." [18]

In every port, P&I clubs employ "independent" correspondents who represent their interests locally. Their role is essential: they draft and implement a "repatriation plan" to send stowaways to their country of origin. Organising the plan requires that the agents be sufficiently knowledgeable about local legislation and practice.

Before the vessels reach port, the correspondents try to collect as much information as possible about the stowaway: name, nationality, date and place of birth, height, eye colour etc. The captain helps by asking stowaways to fill-in a detailed questionnaire and attaches a picture of them to the completed form. By doing so, the captain exceeds his administrative and policing

prerogatives (detailed above) in order to serve the “privatised” expulsion process of the stowaway. The questionnaire is then handed to the consular authorities of the migrant’s country of origin to obtain a *laissez-passer* before beginning readmission procedures.

Some P&I club correspondents have acknowledged that they typically pay for the consular authorities to identify stowaways and issue a *laissez-passer* without the required documentation and without the consular authorities having met them. In other words, some consultants “pay” for the issuing of the document. Indeed, everything must be ready for the vessel’s arrival in port if delays in its route are to be prevented. However, some correspondents have reported difficulties in obtaining all of the travel documents. Negotiation strategies, which are often based on informal relations and financial incentives, can prove unsuccessful. For example, in 2010, the Algerian consulate in Spain refused to recognise two stowaways as Algerian nationals in the port of Bilbao despite the P&I agent’s request. The Algerian consulate argued that only the police could lodge an identification request. The two passengers could not be disembarked in Spain and were taken by ship to Algeria. [19] In 1999, the Tanzanian Interior Minister sent an official request to the P&I clubs requesting they stop readmitting non-Tanzanian migrants to its territory. [20]

The repatriation procedure was developed with the aim of keeping costs to a minimum. The circumstances of the repatriation are then transmitted to the border guard authorities in charge of evaluating the feasibility of the process. Correspondents, who are in charge of escorting stowaways during the return flight, recruit private security personnel to accompany migrants during the return process. Meanwhile, P&I clubs have issued internal recommendations in the form of “Stowaway checklists” which encourage ship-owners and captains to be diligent in preventing boarding access to stowaways (e.g. surveillance of embarking and disembarking persons, patrols before each departure and full searches of so-called “strategic” sites etc.).

In addition to the professionalisation of P&I clubs in migration issues, expert consultancies specialising in the management and prevention of stowaways were established in the early 1990s. For example, the UK insurance company Robmarine, established in 1994, offers a host of services to ship-owners and/or P&I clubs such as the delivery of identification templates, close connections with several embassies and consulates across the world, seconded security and escort agents, an updated online database with the stowaway’s profile – including their identity, photographs, travel documents and fingerprints – and annually updated maps highlighting “hot spots” and “regions at risk” where migrants are likely to embark.

The management of stowaways in the maritime field is guided by an economically based policy of removal that has led to the outsourcing of migration practices to the private sector. Since 2001, this has been accentuated by the implementation of anti-terrorism policies that have changed how risk is evaluated and security methods are defined. The outsourcing of security

functions has become the norm, and everyday activities are now shaped by the imperative of preventative action.

## Anti-terrorism and the outsourcing of migration policies

The anti-terrorism policies adopted after 9/11 identified the maritime sector as being “at risk.” The intensification of the security aspects of maritime trade has translated into a series of regulations, programmes and conventions. As early as November 2001, the US Customs and Border Patrol (CBP) established a certification system – the Customs-Trade Partnership Against Terrorism – that invited supply chain stakeholders to “identify security gaps and implement specific security measures and best practices” [21] in exchange for quicker inspection of their vessels by customs authorities.

Similarly, the Container Security Initiative (CSI) – a bilateral programme launched by the CBP in January 2002 – aims to identify containers that may constitute a “terrorist risk” by deploying US customs officers specialised in container shipping to major overseas ports, with foreign customs officers sent to US ports by way of reciprocity [22]. Cooperation agreements between customs authorities have also been established at an international level through the adoption of the World Customs Organisation’s “SAFE Framework of Standards to Secure and Facilitate Global Trade.” [23]

This framework promotes cooperation between customs authorities and private companies to detect “high-risk consignments.” These measures frame the circulation of goods and extend security prevention tasks to dock work. They have introduced new control techniques focused on means of detection, including the systematic use of scanners and, in the case of CSI, the development of IT programmes to detect “at-risk” containers.

Alongside these measures, the United States has supported the IMO by adopting a convention to give the maritime sector international anti-terrorism standards by making maritime stakeholders accountable with respect to security and anti-terrorism matters (i.e. captains, seamen, ship-owners etc.) In 2002, states party to the International Convention for the Safety of Life at Sea (SOLAS) adopted the International Ship and Port Security Code (ISPS), which came into force in 2004. [24] The ISPS had a significant impact on security measures in ports and on board vessels, and made drastic changes to the way stowaways are perceived. The convention promotes cooperation between governments, public and private organisations, as well as between actors from the maritime and port sectors, in order to prevent and detect “threats.” Cooperation is encouraged when taking appropriate measures to address safety issues, including piracy, terrorism, illegal traffic, irregular migration, sabotage and hostage-taking. From this moment on, stowaways, who had been associated with “risk”, were now viewed as a “threat.” The symbolism is simple but effective: initially a singular, transitory event, stowaways now constitute a collective and permanent immigration phenomenon, the perception of which is politicised in a normative manner. Instead of being considered an economic inconvenience, since 2004 stowaways on merchant vessels have been turned into



figures who challenge the security of states. Repressive policies have thus been legally transferred to private maritime sector actors: seamen, ship-owner, insurers and charterers. By using anti-terrorism rhetoric, nation states – at least in Europe – have dug their moats and identified the “gendarmes” to patrol them; in so doing they prevent a social understanding of this migration phenomenon.

While some security programmes initiated at a political level have proved highly controversial (e.g. the CSI [25]), the ISPS code has been widely supported as a “panacea for all operators” (“*un sésame incontournable pour l’ensemble des opérateurs*”). [26] The ISPS vessel certification and port infrastructure is quite important to the maritime economy because it contributes to a port’s attractiveness. A vessel which is not accredited may be denied entry at an “ISPS certified” port and, conversely, an accredited vessel may refuse to anchor at a port that it deems is not safe enough. From 2004 onwards, local practices have developed to adjust to the ISPS code, mostly based on a preventive approach to risk. Each vessel has to develop a security plan on the basis of an evaluation. Ports engage in reforms and infrastructure work to obtain the ISPS Declaration of Conformity. In both cases, the point is to intensify awareness of port access points and intrusion on board ships. For example, ports are now equipped with protective fences along their perimeter and are divided into security zones to which access is constantly monitored. Several protocols have been developed that list a series of security tasks to be undertaken by the crew during and before setting sail (patrols, the prevention of all access to facilities, guards adapted to each port etc). The ISPS code is considered far too “bureaucratic” by its detractors but it remains a very efficient anti-migration tool. In addition to the increasing number of surveillance devices in ports of origin, the code introduced a specific search protocol for crew members before each departure to ensure that no stowaways are on board the vessel. This obligation is given priority over insurance company recommendations to seamen. P&I agents and police officers report that these precautionary measures have led to a significant drop in the number of stowaways on board ships since 2004. [27]

Although the ISPS code did not change the way stowaways are treated when discovered or who is responsible for them, it has turned a preventive measure against migration into a daily priority for ship crews. The numerous security tasks detailed in the

Ship Security Plans are the responsibility of seamen, despite the fact that they are not meant to have police responsibilities. Two new roles have been created to ensure the implementation of the Security Plan: a Ship Security Officer and a Company Security Officer. They are recruited from among the staff. Security tasks are viewed by the crew as “secondary” and as a burden. [28] Moreover, the two Turkish captains interviewed in Barcelona port explained that, when it comes to stowaways, the ISPS code has institutionalised the policing role that captains are obliged to take. One of them stated: “Before, the stowaway used to stay with the crew, we would watch the television together without this posing any problems. Now I am uncomfortable. I must explain to the crew that if I confine or detain the person, it is not to harm them. I also have to make two seamen monitor the cabin.” [29]

The outsourcing of control to maritime companies is encouraged by P&I clubs because economic sanctions against carriers may be lifted by state authorities if cooperation is “satisfactory” (i.e. if the ISPS recommendations and obligations are fully applied). This means being able to prove that the search protocol had been followed properly prior to setting sail. It also means showing that, if the stowaway had escaped the ship, it was only because they managed to avoid the highly developed security apparatus set up by the ship-owner and/or the insurer – including video-surveillance and bars in the window of the cabin used to hold irregular passengers. The private management of migration, initially the result of state indifference to the consequences of security policies in the maritime sector, has become a development of anti-terrorism policies implemented by public authorities. The maritime sector has thus increasingly been incorporated into the machinery of post-2001 security policy: in addition to the management of unforeseen events, merchant navy crews now take on the role of screening officers, under the aegis of maritime insurance companies.

In 2002, the insurance group Skuld emphasised the negative effects of the terrorist attacks of 11 September 2001 on flight repatriation procedures for stowaways. The company highlighted the growing difficulty in being issued a *laissez-passer* by embassies and the obligation to ask for a private escort during deportation because of the intensification of controls in airports. [30] There are moments when the security machinery gets stuck in a vicious circle and seems to run idle.

## Endnotes

[1] 1,070 stowaways in 2009, according to the IMO.

[2] Migreurop report 2010-2011, “At the margins of Europe, the externalisation of migration controls”, p.34.

[3] Migreurop, *Ibid*, p. 116.

[4] Understood here as policing functions.

[5] Migreurop, *Ibid*, p.65.

[6] Migreurop, *Ibid*, p.65.

[7] Article L. 5531-16 of the French Transportation Code.

[8] Article 115.2.e of the Spanish Law on State Ports and the merchant navy.

[9] FAL.2/Circ.43.

[10] Convention adopted by the IMO in 1965 to “facilitate international

maritime traffic.”

[11] Resolution A.871(20), resolution A.1027(26) and resolution MSC.312.

[12] Article 26 of the Disciplinary and Penal Code of the French merchant navy.

[13] This seems to be a common international practice.

[14] Interviews conducted for the purpose of the 2010-2011 Migreurop report, to which the authors have contributed.

[15] Migreurop, *Ibid*, p56.

[16] See IMO Manual, “Rescue at sea – A guide to principles and practice as applied to migrants and refugees”. <http://www.imo.org/OurWork/Facilitation/IllegalMigrants/Documents/Leaflet%20Rescue%20at%20se.pdf>

[17] El Watan, 19 October 2012.

- [18] See for example France P&I: <http://www.francepandi.fr/index2.php?banners=03&toptext=00&leftmenu=03-2&page=03-cv/03-04-cg>
- [19] Migreurop, *Ibid*, p. 82.
- [20] Governmental decree of 29 July 1999.
- [21] See the Securing the Global Supply Chain, Customs-Trade Partnership Against Terrorism (C-TPAT) strategic plan (2004), p. 18. [http://www.cbp.gov/linkhandler/cgov/trade/cargo\\_security/ctpat/ctpat\\_program\\_information/what\\_is\\_ctpat/ctpat\\_strat\\_plan.ctt/ctpat\\_strat\\_plan.pdf](http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/ctpat/ctpat_program_information/what_is_ctpat/ctpat_strat_plan.ctt/ctpat_strat_plan.pdf)
- [22] In Europe, CSI applies in the following ports: Anvers and Zeebrugge (Belgium); Le Havre and Marseille (France); Bremerhaven and Hamburg (Germany); Piraeus (Greece); La Spezia, Genoa, Naples Gioia Tauro and Livorno (Italy), Rotterdam (the Netherlands); Lisbon (Portugal), Algeiras, Barcelona, Valencia (Spain); Göteborg (Sweden); Felixstowe, Liverpool, Thamesport, Tilbury and Southampton (United Kingdom).
- [23] See the Safe framework of Standards to secure en facilitate global trade (2005). [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/policy\\_issues/customs\\_security/normes\\_wco\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/normes_wco_en.pdf)
- [24] "The SOLAS Convention is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster. The Convention in force today is sometimes referred to as SOLAS, 1974, as amended." IMO website.
- [25] The 9/11 bill was adopted by Congress in 2007 and aims to implement the recommendations of the 9/11 Commission. It introduced "100% scanning" in the CSI. This measure extends controls to all containers heading to the USA by 2012 in partner ports and brought about criticism from US parliamentarians and partner authorities including the European Commission. Indeed, the "100% scanning" will incur disproportionate expenses compared to the real risks. See the European Commission Staff Working Paper (2010), "Secure Trade and 100% Scanning of Containers". [http://ec.europa.eu/taxation\\_customs/resources/documents/common/whats\\_new/sec\\_2010\\_131\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/sec_2010_131_en.pdf)
- [26] See Judith Attali, *Le transport maritime de passagers clandestins*, Université de Droit, d'économie et des sciences d'Aix-Marseille III, 2008 (Master's Dissertation in Maritime and Transport Law), 2008
- [27] Migreurop, *Ibid*, p. 50.
- [28] See Prakash Metaparti (2010): "Rhetoric, rationality and reality in post-9/11 maritime security", *Maritime Policy & Management: The flagship journal of international shipping and port research*, 37:7, 723-736
- [29] Migreurop, *Ibid*, p56.
- [30] See Rodrigues A. et Bou-Melhem F., (2002), "How 11 September changed attitudes on stowaways and why owners should be even more careful", *Beacon Skuld Newsletter*, number 1.

## reviews

**Drone Warfare: Killing by Remote Control.** Medea Benjamin, *Verso Books (London)*, 2013, pp.231 (ISBN: 9781781680773).

Reviewed by Chris Jones

Medea Benjamin, a longstanding peace and human rights campaigner, takes a critical look at the expansion of the use of military drones by the US government since 2001. Although popular with the Bush administration, it is since Obama came to power in 2008 that their use has escalated dramatically: "In 2003 and 2004, the [US] Army flew UAVs about 1,500 hours a month... by mid-2006, that number had risen to about 9,000 hours a month... In Afghanistan, by 2010 the Air Force was flying at least twenty Predator drones over stretches of hostile Afghan territory each, providing a daily dose of some five hundred hours of video." Drones, of course, do not just fly and spy: they can also kill. There were 74 US drone strikes in Afghanistan in 2007; by 2012 this had grown to 333. In May 2012 it was revealed that Obama "had weekly meetings with his advisors on 'Terror Tuesdays' to look at profiles of terror suspects much as one would flip through baseball cards, and 'nominate' people to be on a kill list."

It is the consequences of this approach to war – "killing by remote control", as the book's title puts it – which Benjamin argues most forcefully against. The foreword by Barbara Ehrenreich notes that "in many ways, drones present the same moral issues as any other action-at-a-distance weapon," but Benjamin makes it clear that drones cannot be considered solely as a logical development of the manned fighter jet or bomber plane. This is particularly so given the potential development of autonomy: Benjamin quotes one Colonel who thinks that future weapons "will be too fast, too small, too numerous and will create an environment too complex for humans to direct," a potential development that the author notes will mean "dependency on machines that do not possess the troublesome emotions and consciences of its human pilots."

Along with chapters on the industry behind the machines, legality and morality, and the military infrastructure behind drone warfare, Benjamin also highlights the experiences of those "living under drones," in areas that are subjected to persistent surveillance and occasional, unpredictable missile strikes. Based on interviews with victims and victims' families in areas of rural Pakistan affected by the US' drone program, the effects on ordinary people are made clear: civilian deaths, disabilities, bereavement, stress, fear and reprisals by the Taliban against people accused of providing intelligence to the US.

The last two chapters of the book seek to highlight the efforts made by campaigners to challenge the growing use of drones by military forces around the world – predominantly in the US, where a formidable movement has sprung up over the last few years; in Pakistan and other countries affected by drone strikes such as Afghanistan and Yemen; and also in the UK and Europe, where the more belated and relatively less aggressive use of drones by national governments has only more recently begun to attract negative attention. It is the work of these activists that Benjamin sees as crucial in addressing the growing use of unmanned and potentially autonomous, global, robotic warfare: "The burden is now squarely on we the people to reassert our rights and push back against the normalisation of drones as a military and law enforcement tool."

## new material

### Civil liberties

**The Report of The Constitution Project's Task Force on Detainee Treatment.** *Constitution Project*, 2013, pp. 602.

The US-based Constitution Project's Task Force on Detainee Treatment is made up of former high-ranking officials with careers in the judiciary, Congress, the diplomatic service,

law enforcement, the military and other parts of the executive branch, as well as experts in law, medicine and ethics. The group includes Republicans and Democrats - including some pretty extreme Republicans - as well as the former Director of the FBI under presidents Reagan and Bush. This makes it all the more surprising that the Task Force reached the unanimous and unreserved conclusion “that the United States engaged in the practice of torture.” Among the cases documented in the report are examples of prisoners who were tortured and for which “no CIA personnel have been convicted or even charged” – these “include cases where interrogators exceeded what was authorised by the Office of Legal Counsel, and cases where detainees were tortured to death.” The report notes that although the worst excesses occurred under George W. Bush, the practice of extraordinary rendition began under Clinton (who handed dissidents to Moammar Gadhafi as a “favour”) and continues to this day under Obama, who differs only from his predecessors in sending victims to foreign countries for “processing.”

Download from: <http://detaineeataskforce.org/read>

**‘Travelling with Austerity’: impacts of cuts on Travellers, Traveller projects and services.** *Pavee Point Traveller and Roma Centre*, April 2013, pp. 52 (ISBN: 1-897598-35-1).

This report documents cuts to Irish Travellers, Traveller projects and services since 2008 and the effects that austerity has had on the community in general. Using the Irish government’s own figures, it tells an egregious story of an extraordinary level of disinvestment by the Irish state in the Traveller community, particularly regarding reductions in accommodation and education. The report also looks at the challenges for community development in the coming years highlighting four important areas: 1. preserving and extending the gains made by community development over the past 30 years; 2. challenging and reversing the effects of decisions that have disproportionately affected the Traveller community; 3. making the strategies and the structures developed over the past decades work effectively, and 4. addressing key political issues, most notably recognition of the Traveller community as a minority ethnic group.

Download from: <http://paveepoint.ie/sitenua/wp-content/uploads/2013/04/Pavee-Point-Austerity-PDF-1.pdf>

**For their eyes only: the commercialization of digital spying.** Morgan Marquis-Boire, *Citizen Lab and Canada Centre for Global Security Studies*, May 2013, pp. 117.

The revolutions in Tunisia and Egypt and the war in Libya brought to the world’s attention the role of telecommunications surveillance in upholding authoritarian regimes. Since then, there have been an increasing number of revelations about the production, sale and use of surveillance software in the press. This report provides the bigger picture of an industry that is growing fast. As noted in the introduction: “While hacking as a means of data-gathering has existed since the inception of the Internet, in the last few years the rise of an industry providing commercial intrusion and malware as lawful interception products has grown,”

with it now worth an estimated \$5 billion a year. Ten years ago, it was worth “nothing”. *For their eyes only* grew out of research into the use of surveillance software in Bahrain, where ongoing unrest against a despotic government has been quelled in part by the use of surveillance software to gather information on dissidents. In particular, Gamma International’s FinFisher has been identified as having been used by the Bahraini authorities, and the first chapter in the report examines the use of this software in the Gulf country, providing technical details of how it works and providing further recommendations on how to combat its use. Other chapters detail the infection of smart phones, the use of “backdoors” by the authorities, and the global reach of Gamma’s FinFisher software.

Download from: <https://citizenlab.org/storage/finfisher/final/forth-eireyesonly.pdf>

## Immigration and asylum

**Violence, Vulnerability and Migration: trapped at the gates of Europe.** *Medecins sans Frontieres*, March 2013, pp. 38.

This report looks specifically at the situation of sub-Saharan migrants stuck in Morocco with irregular status, and makes a useful complement to a recent Jesuit Refugee Service report on the situation of migrants trapped in Morocco and Algeria (*Lives in Transition*, December 2012). As would be expected of the organisation that produced the report, there is a strong focus on the physical and psychological impact that irregular status has on migrants in Morocco. Factors that affect this include poor living conditions, violence from state authorities and criminal groups, and sexual violence. The report goes on to note achievements and challenges for responding to migrants’ health needs and “calls, once again, on the Moroccan authorities to respect their international and national commitments to human rights, develop and implement protection mechanisms and ensure that sub-Saharan migrants are treated in a humane and dignified manner, no matter what their legal status.”

Download from: [https://www.doctorswithoutborders.org/publications/reports/2013/Trapped\\_at\\_the\\_Gates\\_of\\_Europe.pdf](https://www.doctorswithoutborders.org/publications/reports/2013/Trapped_at_the_Gates_of_Europe.pdf)

## Law

**Digital Surveillance: Why the Snoopers’ Charter is the wrong approach: A call for targeted and accountable investigatory powers.** *Open Rights Group*, April 2013, pp. 68.

The May 2013 Queen’s speech announced that the Communications Data Bill, more popularly-known as the Snoopers’ Charter, which would allow state monitoring of everyone’s email, internet usage and text messages, would be dropped. However, it also left open the possibility for legislation to be introduced in the future that would have the same aim, giving ongoing relevance to this report by the Open Rights Group. It includes chapters on the history of state surveillance and privacy; the current legislative situation; key surveillance

technologies and how they work; why there is a lack of “sensible and balanced discussion of surveillance laws”; and on “how more privacy-friendly surveillance policy could work”.

<http://www.openrightsgroup.org/ourwork/reports/digital-surveillance>

## Military

**Drones: No safe place for children.** *Reprieve*, March 2013, pp. 13.

This brief report examines the devastating impact that US drones strikes are having on children in Pakistan, Yemen and Somalia. “For children living in these communities, there is no aspect of day-to-day life that is not impacted by the constant presence of the drones and the threat that they bring,” says the report. First, it outlines the ways in which drone strikes violate international law relating to children, through “three of the six grave violations against children in armed conflict”: patterns of killing and maiming; attacks on schools; and denial of humanitarian access through the use of ‘double-tap’ strikes, in which one missile can be followed by another in the minutes or hours that follow, deterring people from providing assistance. Secondly, it examines the ways in which drone strikes violate aspects of the UN Convention on the Rights of the Child. Deaths caused by drone strikes breach Article 6, the right to survival and development; the destruction of homes and schools violates the right to an adequate standard of living (Article 27); while the right to health (Article 24) is violated directly through strikes that kill and injure children as well as the destruction of hospitals and health facilities. This is compounded by the fact that drone strikes most frequently take place in areas that already lack basic health facilities. Further health issues come through the mental distress and psychological trauma that follow drone strikes. The report says that “testimonies from community members [in places] as disparate as Pakistan and Yemen have led researchers to one conclusion: the US drone program is having a profound and possibly irreversible psychological effect on children.” There are extremely high levels of post-traumatic stress disorder among both adults and children in areas affected by drones. One of the many personal stories recounted in the report is that of Yasmin, an eight year old girl from Yemen. She witnessed “a presumed drone strike on her next door neighbour’s house,” and has gone from being a keen student to being “unable to concentrate on studying for more than 5 to 10 minutes. She is also resistant to attending school,” and has now become “hyperactive and argumentative, has hallucinations and dreams of chaos and dead people. She frequently vomits at the sounds of drones and airplanes; indeed she vomited as she passed the airport on her journey to the clinic.”

Download from: [http://www.reprieve.org.uk/media/downloads/2013\\_04\\_04\\_PUB\\_drones\\_no\\_safe\\_place\\_for\\_children.pdf](http://www.reprieve.org.uk/media/downloads/2013_04_04_PUB_drones_no_safe_place_for_children.pdf)

**Drones: Myths and reality in Pakistan.** *International Crisis Group*, 21 May 2013, pp. 49.

The International Crisis Group examines the use of US military

drones in Pakistan, arguing for greater transparency, for the US government to “ensure it is consistent with key principles of International Humanitarian and Human Rights Law,” and for the Pakistani government to bolster its ability “to protect its citizens and bring violent extremists to justice.” It contains sections on sovereignty; targeting; the social, economic and psychological impact; the legal basis; the responsibility of the Pakistani government; and “the best counter-terrorism strategy in [the Federally Administered Tribal Area] FATA: rule of law.” A number of recommendations are directed to the Pakistani and US governments.

Download from: <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/247-drones-myths-and-reality-in-pakistan>

**What exactly is the CIA doing in Afghanistan? Proxy militias and two airstrikes in Kunar.** Kate Clark, *Afghanistan Analysts Network*, April 2013, pp. 5.

This report documents CIA operations in conjunction with the NDS (the Afghani intelligence service) in Kunar. According to President Karzai, the NDS “is actually under CIA control.” The report focuses on a NATO air strike on 13 April 2013 which “killed as many as 17 civilians” and an earlier attack on 7 February in which nine civilians died. The two CIA operations came to light because a US “civilian advisor” (CIA officer) was killed in the most recent operation, rather than the less newsworthy deaths of many women and children. The Afghan presidential advisor, Shuja-ul-Mulk Jalala, who headed investigations into the two air strikes, told the Afghanistan Analysts Network that “the exact same forces had been involved in both operations, a paramilitary unit of the NDS, which he named as the O-4 unit, and ‘seven or eight’ CIA officers.” This unit is also known as the Counterterrorism Pursuit Team.

Download from: <http://aan-afghanistan.com/index.asp?id=3370>

**Hitting the Target? How new capabilities are shaping international intervention.** Michael Aaronson and Adrian Johnson (eds.), *Royal United Services Institute for Defence and Security Studies*, March 2013, pp. 135.

An edited collection looking at the increasing use of military drones. Chapters cover a variety of themes: British public opinion on drone warfare and “targeted killing”; “media misrepresentations of UAVs”; drones and international law; morality and responsibility; and the tactical and strategic usefulness (or not) of targeted killing; and the development of new capabilities.

Download from: [http://www.rusi.org/downloads/assets/Hitting\\_the\\_Target.pdf](http://www.rusi.org/downloads/assets/Hitting_the_Target.pdf)

## Policing

**Viewed with Suspicion: the human cost of stop and search in England and Wales.** *Open Society Justice Initiative and StopWatch*, April 2013, pp. 33.

This report begins by noting that after the UK’s August 2011 riots were over and analysis started it was evident that among their



causes for the riots were anger at the police and, in particular, resentment toward the disproportionate and excessive use of stop and search tactics. Police data shows that forces across England and Wales are using stop and search more than ever and in 2012 the police carried out over two million stops, and a million stop and searches. Fewer than 10% of stops and searches based on reasonable suspicion actually lead to an arrest. The data also shows that black people are stopped at seven times the rate of white people and Asians are stopped at twice the rate of whites. The report asks what this disproportionality means and examines some of the personal stories behind the numbers, interviewing nine people “whose lives have been directly affected by stop and search” from London, Leicester, and Manchester.

Download from: <http://www.opensocietyfoundations.org/reports/viewed-suspicion-human-cost-stop-and-search-england-and-wales>

**Drawing the line: Regulation of “wide area” riot control agent delivery mechanisms under the Chemical Weapons Convention.** *Bradford Non-lethal Weapons Project & Omega Research Foundation*, April 2013, pp. 66.

This report examines “the development, testing, production and promotion by state or commercial entities of a range of ‘wide area’ RCA [riot control agent] means of delivery including: large smoke generators, backpack or tank irritant sprayer devices; large calibre under-barrel and rifle grenade launchers; multiple munition launchers,” and others. The use of RCAs in warfare is prohibited by the Chemical Weapons Convention but their use for law enforcement purposes, such as riot control, is not. The report raises concerns over international regulation of the ways in which RCAs may be used by domestic law enforcement agencies and recommends that the Organisation for the Prohibition of Chemical Weapons should “develop a process for determining prohibited means of RCA delivery; develop a clarificatory [sic] document detailing prohibited RCA means of delivery; [and] strengthen existing RCA declaration and reporting measures, and explore the feasibility and utility of introducing appropriate monitoring and verification measures.”

Download from: <http://www.omegaresearchfoundation.org/assets/downloads/publications/BNLWRP%20ORF%20RCA%20Munitions%20Report%20April%202013.pdf>

**A Criminal Use of Police Cells? The use of police custody as a place of safety for people with mental health needs.** *Her Majesty’s Inspectorate of Constabulary, Her Majesty’s Inspectorate of Prisons, Care Quality Commission and Healthcare Inspectorate Wales 2013*, June 2013, pp. 59 (ISBN: 978-1-78246-147-0).

This joint report concludes that too many mentally ill people (more than 9,000 in 2011-12) are being detained in police custody despite official guidance and calls for a rethink of how powers are used to detain people in a “place of safety.” It says that people suffering from a mental disorder are “regularly”

detained under section 136 of the 1984 Mental Health Act, who should be detained in a hospital or other medical facility. In many of the 70 cases the report examined in depth, no reason was given as to why the detainees were held in police cells, although they found that eight out of 10 of those held in police cells had been detained in relation to fears either that they were suicidal or that they could harm themselves. Many people are detained because there is a lack of suitable places of safety where mental health professionals can accompany police officers to incidents.

Download from: <http://www.hmic.gov.uk/media/a-criminal-use-of-police-cells-20130620.pdf>

## Prisons

**The Myth of Foreign National Prisoners.** *Corporate Watch*, 25 April 2013, pp. 16.

This report discusses foreign national prisoners (FNPs) and the highly selective use of statistics by the Home Office and government which “include non-criminal prisoners who are held under powers conferred by the 1971 Immigration Act” which “has the effect of inflating FNP levels, especially after 2000, when significantly more people started to be detained under immigration powers.” The statistics “also include migrants held at three Immigration Removal Centres (IRCs) classified as ‘prisons’ because they are run by HM Prison Service, rather than a private company contracted by the UK Border Agency, even though all the ‘residents’ of these centres are held administratively under Immigration Act powers and are not serving criminal sentences.” Another way in which prison statistics are manipulated relates to people who are untried (that is, on remand and awaiting trial) who are also included in the data. The report also examines the myth that foreign prisoners are ‘more dangerous’ than British convicts, showing that foreign men held in prison were less likely to have a conviction for violence or stealing offences than British males. It also notes that an increasing number of foreign nationals have been convicted of immigration-related ‘offences’, such as using fake documents to obtain work, enrol with college or open a bank account, which “are obviously a result of immigration policies that deny asylum seekers and other migrants the right to work and live a normal life.” In short, the report identifies “gaping holes” in the UKBA’s readiness to justify its mass deportation operations by reference to foreign criminals.

Download from: <http://www.corporatewatch.org/download.php?id=184>

**Remand Prisoners: a thematic review.** *HM Inspectorate of Prisons*, August 2012, pp. 126 (ISBN: 978-1-84099-548-0).

The thematic review begins with the observation that at any one time, “remand prisoners make up about 15% of the prison population – about 12,000–13,000 prisoners. Women and those from black and minority ethnic and foreign national backgrounds are over-represented within the remand group. In 2010, 17% of defendants proceeded against at magistrates’ courts or tried at

the Crown Court were acquitted or not proceeded against, and 25% received a non-custodial sentence. In total, approximately 29,400 prisoners were released after trial.” The review examines the experience of remand (unconvicted and convicted un-sentenced) prisoners in local prisons against the Inspectorate’s four healthy prison tests: safety, respect, purposeful activity and resettlement. It found “that remand prisoners enter custody with multiple and complex needs that are equally, if not more, pervasive than among sentenced prisoners. However, despite a long established principle that remand prisoners...have rights and entitlements not available to sentenced prisoners, we found that many had a poorer regime, less support and less preparation for release.” The problems encountered include: remand prisoners at an increased risk of suicide and self-harm; drug or mental health problems; women had a higher incidence of housing problems, money worries and health concerns and were more likely to report problems with ensuring dependants were being looked after; and remand prisoners being unaware of support services available at the prison.

Download from: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/remand-thematic.pdf>

**Transforming Youth Custody: putting education at the heart of detention.** *Ministry of Justice*, February 2013, pp. 31 (ISBN 9780101856423).

This Ministry of Justice Consultation paper describes the Government’s plans to place education “at the heart of youth custody.” The National Association for the Care and Resettlement of Offenders has pointed out that while “it is important to improve educational attainment and provide skills for life you must also tackle the reasons why young people ended up in custody in the first place.” The former Children’s Commissioner, Al Aynsley-Green, has asked: “Is there really the political will at a time of severe financial constraint to ‘look out of the box’ and transform the outcomes for some of the most disadvantaged youngsters in the country?”

Download from: <https://consult.justice.gov.uk/digital-communications/transforming-youth-custody>

## Racism and fascism

**State intelligence agencies and the far right: a review of developments in Germany, Hungary and Austria.** *ERA Briefing Paper no. 6*, (Institute of Race Relations), April 2013, pp. 11.

This briefing paper draws comparisons between neo-Nazi criminal activities in Germany, Hungary and Austria involving murder and/or other serious crimes, with evidence of state collusion in each. In April 2013, the trial of Beate Zschäpe, the sole surviving member of the National Socialist Underground (NSU), and her four co-defendants on charges relating to ten racist murders and other violent crimes, began at the Higher Regional Court in Munich. The NSU’s victims were shot in the head at close range

between 2000 and 2007. The existence of the terrorist cell only came to light in November 2011 following a bank robbery which culminated in a shoot-out and the deaths of Uwe Mundlos and Uwe Böhnhardt. The trial, which is expected to last a year, is the largest of far-right extremists in the history of the Federal Republic of Germany and evidence has emerged that the neo-Nazis had close ties with the National Democratic Party of Germany (NPD) and the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz, BfV). The January 2013 Austrian police raids on the headquarters of the neo-Nazi Objekt 21, over the group’s criminal activities in Vienna’s red light districts where they are estimated to have damaged business to the tune of at least 3.5m euros, has not resulted in formal charges or even a trial date for those arrested. The government has resisted calls for a full inquiry. It is anticipated that the case against the Hungarian far-right faction will see charges brought against around 60 people, including two German neo-Nazis. At the Pest County High Court an estimated 160 witnesses have been giving evidence since early 2011 against four neo-Nazis accused of the serial killings of six Roma and other crimes. This briefing paper finds that a common denominator among the three cases is police and intelligence service failures “to recognise the dangers posed by the far Right [which] have undoubtedly contributed to the deaths of at least seventeen people.” The report concludes: “While ‘the collective failure’ manifests itself in different ways in the three different countries under review, its starting point is the same. National security is not seen in terms of human security (of citizens) but the security of the state. Intelligence agencies concentrate on the potential threat from Islamists, left-wing groups, anarchists, etc. rather than that from the far Right.”

Download from: [http://www.irr.org.uk/wp-content/uploads/2013/04/ERP\\_BP6\\_State\\_intelligence.pdf](http://www.irr.org.uk/wp-content/uploads/2013/04/ERP_BP6_State_intelligence.pdf)

**Divided We Fall: intolerance in Europe puts rights at risk.** Benjamin Ward, *Human Rights Watch*, February 2013, pp. 7.

This short report examines racism in the context of austerity, concluding that “hatred and intolerance are moving into the mainstream in Europe.” It argues that “Intolerance in Europe manifests itself in support for extremist parties and violence and discrimination against minorities and migrants. Rather than tackling the problem head on, Europe’s leaders often downplay the problem or blame the victims.” It then makes a series of recommendations on the “concerted steps that are needed to stop the violence and discrimination and curtail the corrosive influence of racist parties, without limiting freedoms of speech and association.”

Download from: [http://www.hrw.org/sites/default/files/related\\_material/2013\\_EU\\_Intolerance%20in%20Europe.pdf](http://www.hrw.org/sites/default/files/related_material/2013_EU_Intolerance%20in%20Europe.pdf)

**Report: Greece.** Nils Muižnieks, *Commission for Human Rights (Council of Europe)*, April 2013, pp. 32.

This report covers the visit to Greece by Commissioner Nils Muižnieks and his delegation from 28 January to 1 February

2013. The report focuses on the following human rights issues: 1. intolerance and hate crimes in Greece and the need for urgent action; 2. combating the impunity of perpetrators of hate crimes and victims' access to justice and protection; 3. the role of law enforcement authorities in combating racist and other hate crimes, 4. Shortcomings in asylum and immigration law and practice that need to be addressed. It concludes with a series of recommendations.

Download from: [http://ec.europa.eu/ewsi/en/resources/detail.cfm?ID\\_ITEMS=34379](http://ec.europa.eu/ewsi/en/resources/detail.cfm?ID_ITEMS=34379)

## Security and intelligence

**Convergence: Illicit networks and national security in the age of globalisation.** Michael Miklancic and Jacqueline Brewer (eds.), *National Defense University Press* (Washington, D.C., USA), April 2013, pp. 304

A free 300-page e-book that, according to the foreword, gathers “an impressive cadre of authors to illuminate the important aspects of transnational crime and other illicit networks.” The authors “describe the clear and present danger and the magnitude of the challenge of converging and connecting illicit networks; the ways and means used by transnational criminal networks and how illicit networks actually operate and interact; how the proliferation, convergence and horizontal diversification of illicit networks challenge state sovereignty; and how different national and international organisations are fighting back.” The volume contains 14 chapters divided into four sections, covering: “A Clear and Present Danger”, with chapters offering a global overview; “Complex Illicit Operations”, looking at the nature of particular illicit networks; “The Attack on Sovereignty”, examining the relationship between state sovereignty and illicit networks; and “Fighting Back”, which has three chapters looking at the response by states and other organisations. It is notable that while the book examines “illicit networks” – which includes everything from drug and human traffickers, to piracy on the high seas, to acts of terrorism and the financing and recruitment operations behind them – it was produced by the US National Defense University. Despite the issues with which it is concerned being broadly criminal in nature, there is a distinct military slant to many of the contributions: this seems to represent the continuation of a trend begun following the 9/11 attacks, when the US chose to launch a war in Afghanistan in its hunt for al-Qaeda, rather than make an effort to use more traditional law enforcement means.

Download from: <http://www.ndu.edu/press/convergence.html>

**Major Domestic Extremism Incidents — Europe, 1990-2010: Initial report.** *Athena Institute*, February 2012, pp. 73.

The Executive Summary describes this report as “a first step in an effort to describe and understand the nature of the threat posed by domestic extremist groups in Europe...made necessary by the fact that no previous Europe-wide research was available on the issue.” It notes that over the last 20 years, “almost 800 Western European citizens became a victim of major incidents,” while “in South Eastern Europe, almost 700 people became a victim and one third of them died.” Central Europe has the second lowest rate in terms of overall victim numbers (100).” While such research is undoubtedly useful, the report unfortunately fails to define the term “domestic extremism”. Lumped together are both extreme left-wing and extreme right-wing groups, something which many people are likely to find problematic. Victims, meanwhile, are categorised as “injured, fatalities or hostages.” “Attack types” include armed assault, bombings, assassinations, hijacking, kidnapping, facility/infrastructure attack, rioting and vandalism, amongst other things. The analysis is largely limited to statistical interpretation, and there are some gaps which could usefully be filled: for example, the report does not pick apart what type of incident tends to be associated with which types of group. Nevertheless it is likely to serve as a useful source of information to some researchers.

Download from: [http://www.athenainstitute.eu/pdf/Athena\\_Extremism\\_in\\_Europe\\_Report\\_electronic.pdf](http://www.athenainstitute.eu/pdf/Athena_Extremism_in_Europe_Report_electronic.pdf)

**Trapped in the Matrix.** Ian Cobain, *The Guardian*, 15 July 2013.

This is an interesting article that discusses the ‘disposition matrix’, the US government’s grid of suspected terrorists who are to be traced and assassinated in drone strikes. The matrix largely replaced the CIA’s rendition (kidnapping) programme when Obama decided “to dispose of its enemies in drone attacks” instead. However, Cobain points out that “the matrix is more than a mere kill list: “It is a sophisticated grid, mounted upon a database that is said to have been more than two years in the development, containing biographies of individuals believed to pose a threat to US interests, and their known or suspected locations, as well as a range of options for their disposal.” Cobain also explores British collusion in the disposition matrix highlighting the cases of four young Londoners whose names may have been placed on the matrix by MI5 and/or MI6.

See: <http://www.guardian.co.uk/world/2013/jul/14/obama-secret-kill-list-disposition-matrix>

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