

THE COMMITTEE ON THE
ADMINISTRATION OF JUSTICE

**THE STALKER AFFAIR:
MORE QUESTIONS
THAN ANSWERS**

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PREFACE

This short pamphlet is intended to provide a timely reminder of the many unanswered questions thrown up by the Stalker affair. It is based on extensive research, being a revised and expanded version of a paper originally presented at the April 1987 meeting of the Committee on the Administration of Justice. The author, Dr. Paul Hainsworth, is a lecturer in politics at the University of Ulster at Jordanstown. The views expressed herein are, strictly speaking, his own, though other members of the CAJ read earlier drafts of the paper and made some comments on it. We are very grateful to Paul for permitting us to publish his work in our series of pamphlets and we thank him for providing such a well-documented account of what is undoubtedly a most curious business.

The CAJ is a non-sectarian civil rights group which campaigns for improvements in the system for administering justice in Northern Ireland. We welcome new members and financial support. For further information please contact:

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A related pamphlet on the topic of police accountability will be published by the CAJ within two or three months. Also pending are pamphlets on discrimination in employment and the Payments for Debt Act. Other CAJ pamphlets still in print are as follows:

- No. 3 Complaints Against the Police in N. Ireland (1982) 50p
- No. 4 Procedures For Handling Complaints Against the Police (1983) 50p
- No. 7 Ways of Protecting Minority Rights in N. Ireland (1985) £1.00
- No. 8 Plastic Bullets and the Law (1985) 50p
- No. 9 "The Blessings of Liberty": An American Perspective on a Bill of Rights for N. Ireland (1986) £1.50

THE STALKER AFFAIR: MORE QUESTIONS THAN ANSWERS

INTRODUCTION

In 1982, several police suspects were shot dead by the Royal Ulster Constabulary (RUC) in circumstances which prompted allegations that the RUC was operating a 'shoot-to-kill' policy which ignored elementary principles of justice. The subsequent inquests and strong suggestions of a 'cover-up' led, in 1984, to the appointment of John Stalker, Deputy Chief Constable of Greater Manchester, to investigate the circumstances in which cover stories were fabricated and to establish whether any criminal offences had been committed. From the outset Stalker interpreted his portfolio liberally but in May 1986, when his report into six shootings by RUC officers was virtually complete, he was taken off the case, informally suspended from duty by the Greater Manchester Police Authority and subjected to a distressing, controversial, fruitless police enquiry into his own behaviour as Deputy Chief Constable of Greater Manchester. Stalker's removal from the Northern Ireland investigation coincided with his plans to interview the most senior RUC officers in order to finalise his report. The timing of his suspension (or, technically, his enforced leave on full pay), the course of subsequent investigations into his conduct and the eventual hollowness of allegations against him led many observers to suspect foul play. For instance, had Stalker's investigations been too thorough, resulting in damning criticisms of police and intelligence operations in Northern Ireland at a time likely to undermine police morale and effectiveness? Whatever the verdict, as the Stalker affair unfolded throughout 1986-87, a tapestry of rich detail was revealed worthy of some Kafkaesque novel. Indeed, at the autumn 1986 conference of the Labour Party, one delegate spoke of 'a whiff of the Dreyfus affair' in the treatment of John Stalker, whilst another alluded to 'a stench worse than a Venetian cellar'. In December 1986, Stalker resigned prematurely from the police force, an act which, if anything, has heightened public concern about the whole affair.

STALKER'S INVESTIGATIONS

Even prior to his suspension, Stalker's investigations in Northern Ireland had run into difficulties. Stalker had threatened to resign from the inquiry and go public on his reasons for doing so. Peter Murtagh¹ has listed some of the problems encountered by Stalker: broken appointments by RUC officers, access to information delayed, evasion and lies from the RUC, inordinate delay in processing his interim report, failure to suspend officers involved in shoot-to-kill operations and general all round police obstruction on the ground. Speaking on BBC Radio Ulster (20 March 1987) following his subsequent resignation from the police force, Stalker claimed: "There were difficulties. Co-operation was not always what I believe it should have been". Stalker was particularly critical of RUC Chief Constable Sir John Hermon for withholding access to MI5 surveillance tape-recordings able to shed light on shoot-to-kill activity. Amongst Stalker's additional concerns were evidence of potential cover-up operations, police officers advised by superiors to

perjure themselves to avoid the truth coming out, the resignation of the Armagh coroner over irregularities concerning shoot-to-kill victims, over-reliance on suspect and paid informers, forged intelligence reports, and falsification of forensic evidence.

Evidently, Stalker's interim report advised substantial reorganisation within the RUC and constituted a de facto critique of police organisation in Northern Ireland. Criticism of RUC procedures and organisation would more than likely reflect badly on Her Majesty's Inspector of Constabulary for Northern Ireland, Sir Philip Myers, who was to play an important role in the suspension of Stalker. The thrusts of Stalker's investigations were well leaked to the press and Chief Constable Hermon admitted receipt from Stalker of 'a voluminous document', retained by the RUC Chief Constable for five months before transference to the Director of Public Prosecutions (DPP) in Northern Ireland.

Confusion and controversy surrounded the interim report. For instance, in June 1986 the Northern Ireland Secretary of State (Tom King) and Northern Ireland Office (NIO) Minister Nicholas Scott informed the House of Commons that Stalker's report was interim and incomplete, and Scott apologised about any 'misunderstanding' here. This revelation added to growing speculation and public concern surrounding the Stalker affair. Moreover, the affair spilled over into the Anglo-Irish process, already a veritable minefield of trouble since the signing of the Anglo-Irish Agreement at Hillsborough in November 1985. Only two days prior to the House of Commons statement by Nicholas Scott, at a meeting of the Anglo-Irish Intergovernmental Conference (itself a product of the Hillsborough Agreement), the Irish Foreign Affairs and Justice Ministers (Peter Barry and Alan Dukes respectively) had been told that the Stalker report was complete. In view of this apparent revision 'unease, dismay and puzzlement'² were expressed in government circles in Dublin. The Irish Taoiseach (premier), Garret FitzGerald, was reported as 'taken aback'³ at being misinformed by the British Government over the interim nature of the Stalker report. Furthermore, FitzGerald was concerned about shoot-to-kill activity since it involved alleged intrusions across the Irish border. Proof of this would have been a blow to the Anglo-Irish process, increasingly criticised by Charles Haughey, leader of the opposition Fianna Fail. If - as suggested by inter alia the Conservative MP for Barrow, Cecil Franks, Sinn Fein's Gerry Adams and the Belfast News Letter - FitzGerald's government had prior knowledge of cross-border incursions this too might be fatal for the Irish government.

CROSS-BORDER ASPECTS / INTELLIGENCE PROCEDURES

Cross-border activity pre-dated Stalker. The Irish Press⁴ reported fifty to sixty recorded instances per annum in the late 1970s, falling off to twenty to thirty incidents but, by the mid 1980s, up again to thirty to forty. Cross-border foraging by the British security forces is a central theme of Frank Doherty, The Stalker Affair (Mercier Press : Dublin 1986) and Patsy McArdle, The Secret War

(Mercier Press : Dublin 1984). Doherty's book, whilst lacking documented references and sources³, is interesting for the questions it raises about the Stalker affair.

Doherty claims that Stalker was spirited off the case because he 'lifted the lid' ^s on a series of illegal operations by SAS-trained RUC special support units (SSUs). With the constraints of the Official Secrets' Act waived, the trial of officers involved in shoot-to-kill operations had revealed evidence of cross-border activity and led Garret FitzGerald and others to express reservations. Doherty also points to other disturbing aspects of British security policy which Stalker's investigations would have led to: British MI5 penetration of the Garda Siochana (Irish police), MI5 usage of loyalist paramilitaries against republican suspects and attempted MI5 destabilisation of an elected government in Ireland. Again, these themes pre-dated Stalker. For instance, Richard Deacon, in his biography of Maurice Oldfield, the former British intelligence supremo in Northern Ireland, discusses British intelligence penetration of the Garda⁷. Moreover, former participants in British intelligence operations such as Fred Holroyd (ex-MI6 agent responsible for cross-border excursions) and Colin Wallace (ex-British Army intelligence and MI5 agent) have repeatedly urged a review of intelligence methods based on their own experiences in Northern Ireland. Both point to official usage of loyalist paramilitaries in cross-border operations⁸. In July 1987 the maiden Commons speech of Ken Livingstone (Labour MP, Brent) attempted unsuccessfully to encourage the government to authorise an inquiry into intelligence procedures in Northern Ireland.

The diverse calls for security and intelligence reviews and scrutiny may be seen against the embarrassing backcloth of the Peter Wright trial in Australia, the publication of his book 'Spy Catcher' outside the UK and the British government's attempts to bottle up unwarranted openness in the intelligence arena. In this light, the British government has repeatedly ruled out independent investigation of British intelligence. The appointment of Sir Philip Woodfield as ombudsman for the security and intelligence services, in November 1987 is unlikely to reduce demands for more widespread scrutiny. If investigation substantiates accusations against MI5/MI6 agencies seeking to destabilise elected governments in the UK or Ireland (Wright, Chapman Pincher, Holroyd, Wallace, Doherty etc.) then clearly it is time to review these bodies. Arguably, Stalker's investigations, interim or otherwise, would have led inevitably to this minefield of secrecy and official subterfuge. Labour MP Dale Campbell-Savours⁹ has expressed a determination 'to get to the bottom' of 'dirty tricks' in Northern Ireland. Campbell-Savours' view is that a political settlement could not be achieved if there were security organisations undermining the negotiating position of democratically elected representatives by operating in the background. However, it needs to be asked whether these organisations and intelligence gathering agencies are guilty of maverick, illegal behaviour or whether they act with the authorisation, connivance or compliance of elected representatives.

Stalker's investigation of shoot-to-kill circumstances included a careful verification of what happened in the separate incidents. For example, Stalker discovered MI5 bugging of a hayshed where weapons were stored. However, MI5 bugging devices failed and weapons were moved from the hayshed and, subsequently, used to kill three RUC officers in October 1982. This raises questions of efficiency and the potential rivalry of competing intelligence agencies (MI5, MI6, Special Branch etc.) with fatal results for police officers and embarrassing consequences for their superiors.¹⁰

STALKER'S SUSPENSION

Of course, the Stalker interim report remained in a state of limbo and investigations into Stalker increasingly overshadowed investigations by Stalker. Stalker's removal followed a meeting at Scarborough during the Police Federation's Conference and involved Sir Laurence Byford, Chief Inspector of Constabulary at the Home Office, Sir Philip Myers, regional inspector for the North-West and Northern Ireland and James Anderton, Stalker's Chief Constable at Manchester. With John Hermon's approval, Colin Sampson, Chief Constable of West Yorkshire, replaced Stalker as head of the shoot-to-kill enquiry. Simultaneously, however, Sampson was appointed to investigate allegations against Stalker which had prompted his suspension. With these developments, a number of questions were posed, none of which has received a satisfactory, convincing response.

First, was the timing of Stalker's suspension designed to prevent him from making inopportune, damaging criticisms of the RUC in Northern Ireland? Had Stalker discovered too much and at the wrong time? The suspension came at a time when the RUC already faced IRA attacks and an increasingly hostile loyalist/unionist community whose political leaders accused Chief Constable Hermon of policing, i.e. protecting, the Anglo-Irish Agreement. With the traditional, annual 'marching season' imminent and the likely rerouting of loyalist marchers to avoid inter-community (Catholic/Protestant) strife, the police could expect difficult times ahead. Moreover, since the signing of the Anglo-Irish Agreement, many police officers' homes had been attacked or threatened. Criticisms via the anticipated Stalker report would further undermine police morale and possibly deplete ranks. Drawing from 'sources close to Mr. Stalker' The Observer¹¹ claimed that senior government officials put pressure on him to retreat from exposing the RUC to damaging criticisms. Indeed, prominent British and Irish newspapers reported up to forty RUC officers liable for prosecution as a result of the shoot-to-kill investigations.

Second, was it advisable to have Colin Sampson take over Stalker's role in Northern Ireland and lead the inquiry into allegations against Stalker? Chief Constable Hermon and British government Ministers insisted that both probes were unrelated. Yet, in the public view, the duality of Sampson's role inevitably linked the shoot-to-kill investigation with Stalker's suspension. According to The Observer¹², senior Home Office sources revealed that when asked to approve

Stalker's removal from the RUC inquiry, Sir Laurence Byford was unaware of the RUC's reluctance for Stalker to return to Northern Ireland to finish his inquiry. Again, Byford was advised that it would be better for simply one police chief to investigate Stalker and the RUC inquiry. The Observer implies that the economics of manpower resources won the argument, leaving Home Secretary Douglas Hurd to ratify a fait accompli. Nevertheless, the dual appointment of Sampson aroused cries of 'professional misjudgment' (against Myers and Byford) and political acquiescence (against the government). Sampson's monopolisation of both inquiries nourished growing suspicions of a conspiracy afoot to keep the affairs 'within the family'.

Following his subsequent reinstatement to the Greater Manchester police force, Stalker commented, with characteristic caution: "I'm certainly not saying there was a conspiracy, but I think it's a wise man who says there wasn't".¹³ Less wise men than Stalker were quick to draw conclusions from the 'coincidence' of allegations against him and his attempted finalisation of the shoot-to-kill report. Furthermore, while the British government expressed a willingness to proceed thoroughly and quickly with the shoot-to-kill inquiry, this squared badly with Sampson's dual role, as this removed him from the Northern Ireland investigations until the case against Stalker was complete.

What, then, were the allegations against Stalker? How substantial were they? Did they really warrant his removal and suspension? After all, the Manchester Deputy Chief Constable had been vetted positively three times and, by all accounts, was destined for higher office. Inevitably, his suspension raised doubts about the role of Chief Constable Anderton who, more than anyone, could testify to Stalker's exemplary police record. Nevertheless, Anderton played a significant role in the 'trials' of John Stalker, providing evidence to the suspending Greater Manchester Police Authority (and apparently cold-shouldering his Deputy Chief Constable following the Police Authority's vindication). Essentially, Stalker stood accused of misuse of police vehicles, his allocated police car, and association with known criminals. However, Stalker had to wait for over a month before being presented officially, by Sampson, with the case against him. Much of Sampson's investigation centred on Stalker's connections with Kevin Taylor, a Manchester businessman and former chairman of the Conservative Party in Manchester. According to Cecil Franks MP, himself investigated during the Taylor inquiry: "I have been trained as a solicitor and the rule is that you get your evidence and then you lay your charges. The impression I get in this case - and so do other people - is that the charges are being laid and everybody is trying to scratch around to find the evidence".¹⁴

THE SAMPSON REPORT

Significantly, the Sampson report found no evidence of corruption or criminal offence. Stalker's crime was guilt by association, although Taylor himself had no criminal convictions and later was to initiate (unsuccessfully) a legal case against Anderton for conspiracy to pervert the course of justice. A major accusation of Sampson was that criminals had been present at four functions attended by Stalker between 1982-85. Stalker, belatedly appraised of the case against him, denied any suggestions of unlawful behaviour and (genuinely) failed to comprehend the thrust of Sampson's report against him. According to Stalker, "I believe I have done nothing wrong. It seems to me what has happened is that someone has moved the goal posts in the past two months and the rules have been changed".¹⁵ The Sampson report went on to accuse Stalker of professional misconduct, bringing the police force into discredit and 'a less than excellent standard of professional performance', the latter constituting a somewhat incredible yardstick of judgment. Indeed, the latter accusation might have been more easily laid at Sampson's door when Stalker and his solicitors noted material inaccuracies in the Sampson report and witnesses reported misrepresentation of evidence. Stalker's lawyers even considered legal action against Sampson on account of the report, which Stalker considered would be "a difficult one to write because there is a lot of subjective opinion involved".

The evidence against Stalker was rather flimsy and unsubstantial.¹⁶ Nevertheless, Sampson concluded that Stalker's record necessitated a disciplinary tribunal, appointed by the Lord Chancellor and operating in private. Stalker feared this would lead to unnecessary delay, costs and secrecy and, in the event, the Greater Manchester Police Authority rejected - by 36 to 6 - the allegations against Stalker, ignored calls for a disciplinary tribunal and reinstated the Deputy Chief Constable with a mild warning to be more circumspect in future associations.

STALKER'S RESIGNATION

Stalker returned to work in Manchester but, despite calls from various quarters (e.g. the Labour Party, the SDP, the Northern Ireland Social and Democratic Labour Party, Manchester's police monitoring committee etc.) was not reappointed to the shoot-to-kill inquiry. Nor was his return to work a happy experience. Within four months Stalker declared his intention to retire. Following the handling by the Greater Manchester police of the return of child murderess Myra Hindley to Saddleworth Moore, Stalker complained of a lack of consultation over this and other decisions. Cold-shouldering by senior colleagues undoubtedly had its effect on Stalker who lamented, "I perhaps underestimated the pressure that would remain after I returned to work... The Stalker Affair, as it is called, has a life of its own".¹⁷ In his professional obituary ('My farewell to the force'), Stalker expressed one regret only, his inability to complete his work in Northern Ireland.¹⁸ He explained

that pressure on his family had become intolerable and, clearly, the whole affair had sapped his morale. Moreover, although cleared of allegations and looking increasingly like the sacrificial lamb of the shoot-to-kill saga, Stalker was left with a £21,900 bill for legal costs. Neither the Manchester Police Authority nor the Manchester police force seemed anxious to pick up this bill. (In contrast, in September 1987, the Manchester Police Authority agreed to pay the £94,000 bill for the West Yorkshire police investigation of Stalker.) Also, the Stalker family was reported to be upset by Chief Constable Anderton's undermining comment about the potential illegality of public sympathy donations to offset legal costs - despite the Home Secretary's clearance of such funds. Nevertheless, public donations and a celebrity gala night enabled Stalker to meet his legal costs and testified to considerable public sympathy for his plight.

THE ROLE OF THE CHIEF CONSTABLE

Anderton's intervention attracted further attention to the Manchester Chief Constable, who had played a key role in the Stalker affair. Initially responsible for recommending Stalker to the RUC investigation, Anderton's reporting to the Police Complaints Authority resulted in Stalker's investigation by Sampson and 'trial' before Manchester's Police Authority. Throughout the affair there was little visible support from Anderton for his Deputy Chief Constable. Anderton knew Stalker's connection with Taylor - indeed all three had been photographed together at one function - and was well aware of Stalker's vetting throughout his career. Nevertheless, Anderton used considerable powers of discretion throughout the Stalker affair, thereby reviving the old argument about accountability of chief police officers.

Anderton, of course, defended his role: "It is up to the Chief Constable, as a professional officer, to bring the Committee's (i.e. the Greater Manchester Police Authority's) attention and the Police Complaints Authority's to items he feels need investigating".¹⁹ However, Anderton protested against journalistic harrassment over the Stalker affair, singling out The Observer's David Leigh as the worst culprit. Moreover, Anderton visibly resented any criticism of his own role in the affair and the threat by some Labour members of the Police Authority to subject him to the same scrutiny as Stalker, e.g. on usage of police vehicles and personal associates.²⁰ In the wake of Stalker's trials and after further utterances by Anderton (notably on AIDS), the Manchester Police Authority demanded to know its actual powers vis-a-vis the Chief Constable and the Home Office was obliged to call in both sides to help establish a working truce. This would not be easy given Anderton's view of police authorities as 'the enemy within'.

Inevitably, the role of Chief Constable Hermon was under public scrutiny also. Without doubt, Stalker-Hermon relations had been bad and, as we noted earlier, Stalker had difficulty gaining Hermon's full co-operation in the shoot-to-kill investigation. Despite initiating the shoot-to-kill inquiry, Hermon demonstrated occasional unwillingness to be

available and accountable to Stalker. Further, with Sampson's shoot-to-kill report, press coverage hinted at exoneration from responsibility for John Hermon. Seamus Mallon, MP for Newry and deputy leader of the Social Democratic and Labour Party (SDLP) argued that, as Chief Constable, Hermon was responsible for activities of his police officers and should therefore resign if faced with evidence of shoot-to-kill operations. The latter involved MI5 and SAS-style Divisional Mobile Support Units (DMSUs) trained in "firepower, speed and aggression" according to RUC Deputy Chief Constable Michael McAtamney. In McAtamney's words: "Once you have decided to fire, you shoot to take out your enemy".²¹ The role of these SAS trained forces inevitably raises questions of accountability and resort to illegal operations against police suspects. At this point, therefore, it will be instructive to say something about the nature of special security and intelligence units in Northern Ireland in the context of the Stalker affair.

THE USE OF LETHAL FORCE BY THE POLICE

Stalker's enquiries had centred upon the unit E4A, part of the RUC Special Branch responsible for undercover work, bugging and surveillance. E4A was backed up by the home (or headquarters) mobile support units (HMSUs) or special support units (SSUs) attached to the DMSUs, the 'quick-reaction' force of the RUC. Interestingly, the Rev. Ian Paisley MP, MEP and leader of the loyalist Democratic Unionist Party (DUP) had questioned the role of DMSUs, noting thirty instances of alleged brutality and heavy handedness leaving the regular RUC to 'pick up the pieces'.²²

Kader Asmal and his lawyers' team criticised the training of special units and the provision to them of, in effect, a blank cheque for firearms usage.²³ Asmal interprets the SAS-style training as counter to international law such as the European Convention on Human Rights (ECHR). Brice Dickson, however, might query this approach: "Every lawyer knows that for every principle of international law pointing in one direction, there is another principle pointing in the opposite direction."²⁴ Nevertheless, Asmal sees the basis of the special units as abandoning the concept of minimum force in favour of maximum force. Furthermore, behind Asmal's queries is the issue of authorisation. The shoot-to-kill incidents should not be seen as random episodes or crude summary justice by isolated officers. According to one alleged RUC source, "The setting up of the SSU and E4A had to be sanctioned at the highest level. Approval had to be received from the top for the training programme."²⁵ Unity, the journal of the Communist Party of Ireland, draws the following conclusion: "It is a story of the direct organisation of the murder of opponents by very high figures in the British system."²⁶ This viewpoint, in part, would be strengthened by Deputy Chief Constable McAtamney's evidence at the shoot-to-kill trials preceding Stalker's appointment. According to McAtamney, the RUC officers were trained to fire at people and put them permanently out of action. Peter Taylor sees McAtamney's evidence as testifying quite clearly to a shoot-to-kill training programme but not a preconceived

policy to 'take out' suspects.²⁷ Without doubt, the role of these special security forces is controversial and Amnesty International has even referred (albeit inquiringly) to the term 'death squads'.

Of course, this discussion needs to be seen in the context of repeated attacks on and killings of members of the security forces since 1969. Amnesty International, Asmal and others recognise this factor. According to the Secretary to the Police Complaints Board for Northern Ireland, between 1969-86 two hundred and thirty three policemen were killed by opponents.²⁸ So far, fifteen have been killed in 1987. Selective assassination, rocket attacks on police stations and harassment of individuals connected with the security forces are all part of the picture. Asmal recognises an "embattled, militarised police force under constant threat of armed attack".²⁹ Few observers would doubt the environment of extreme danger for members of the security forces in Northern Ireland. Nevertheless, shoot-to-kill suspicions and Stalker's ham-fisted removal nourish doubts about the security forces' policy and operational framework.

Stalker's investigations would have noted the loose guidelines for the use of lethal force by security forces. The latter are authorised to use 'such force as is reasonable in the circumstances'. Amnesty International³⁰ has criticised the elasticity of United Kingdom law which permits such force as is reasonable as opposed to 'strictly necessary'. Amnesty sees UK legislation as inferior to international law, such as the ECHR and the United Nations' code of conduct. Similarly, Taylor suggests the concept of reasonable force enables the judiciary to acquit police officers using lethal force.³¹ Rulings of the judiciary, including the House of Lords, have tended to cushion the security forces against prosecutions. For example, Lord Justice Gibson commended officers involved in shoot-to-kill incidents for their sharp shooting which brought suspects to their final court of justice.

Both Taylor and Hadden³² point to the virtual impossibility of securing convictions against officers involved in killings in disputed circumstances. Hadden has called for a new criminal offence of "causing death by the unreasonable use of lethal force". He would like to see the charge of manslaughter applied when the use of some force is legitimate but the use of lethal force is disproportionate. Otherwise, judges are left with a stark all-or-nothing choice between murder or acquittal. Of course, "the demands of justice are not necessarily best served by the prosecution of the person who actually fired the shot. The real responsibility rests with those who planned the operation or created the situation in which the use of force was inevitable".³³ Consequently, a step in the right direction was the announcement by Secretary of State Tom King (in July 1987) of an inspection of the organisation and procedure of the RUC, with control and accountability of SSUs the likely targets (see below).

THE ACCOUNTABILITY OF THE RUC

Unsurprisingly, then, the Stalker affair has fuelled the debate about police accountability - but, the criteria of his investigational standards have met with some reservations. According to one view, Stalker used conventional standards of civil policing to apply to the RUC, a counter-insurgency force unlike its British counterparts. Thus Stalker misunderstood the ground rules by recommending prosecution of officers acting in a counter-insurgency manner, which allegedly was the official policy. Consequently, "prosecutions for counter-insurgency operations would be seen within the RUC as the basest kind of double-dealing by the Government, and would be liable to cause the force to dissolve back into the Protestant community".³⁴ This viewpoint depicts the operational basis of the RUC as (British) policy-bound whilst recognising the implications for policing of the Anglo-Irish Agreement. An interesting contribution to the debate came from editorialist Barry White in the Belfast Telegraph and is worth quoting at some length:

"There is no way that one can apply the same rules in Manchester and Belfast, though that is what Mr. Stalker was asked to do. He arrived in a province where police have had to contend with low-level rebellion, over a period of years, without being able to count on the active support of more than, say, about 70 per cent of the population in its anti-terrorist operations. Things are done, to compensate for that lack of cooperation, that strictly speaking should not be done. Just occasionally, they go too far, and facts emerge in court that are highly embarrassing for all concerned. Inquiries are ordered, to remind those in charge what the limits are, and perhaps to hand out a few penalties. But the background of half-hearted support for the rule of law, on both sides of this divided community, doesn't change and sooner or later there will be further instances of police over-stepping the mark and getting their knuckles rapped."³⁵ The Belfast Telegraph's commentaries on the Stalker affair consistently stressed the different context for policing in Northern Ireland and Britain. Nevertheless, the newspaper was anxious for the mystery surrounding the Stalker affair to be dissipated: "Justice must be seen to be done, if there is to be a hope of uniting the community behind the RUC".³⁶

Concern to exonerate the RUC conditioned various politicians' responses to the Stalker affair. For instance, the Official Unionist MEP and MP for Strangford, John Taylor, wanted the speculation surrounding John Stalker brought to an end, "in the interests of the good name of the RUC". Similarly, British Labour Party spokespersons on Northern Ireland reiterated this angle. Nevertheless, Catholic Primate Thomas O'Fiaich and Seamus Mallon (SDLP) used the Stalker affair as a valid reason to discourage Catholics from joining the mainly Protestant RUC. Obviously, this response offended the Catholic minority within the RUC³⁷ and, at the same time, conflicted with Peter Barry's encouragement to Northern Catholics to join up. The differences between Barry and Mallon/O'Fiaich reintroduced speculation about the Anglo-Irish dimension to the Stalker affair. In mid-December 1986, the Irish Times and The Guardian reported that assurances had

been given to the Irish Republic through the Anglo-Irish Agreement of intended prosecutions of RUC officers after the Sampson completion of the shoot-to-kill investigation. Unsurprisingly, Unionists in Northern Ireland took this as a threat to the independent role of the Director of Public Prosecutions and further proof of the malevolence of the Anglo-Irish Agreement. The Northern Ireland Office was quick to refute the reports and reaffirm the independent status of the DPP in Northern Ireland.

THE ROLE OF THE DPP

Since the establishment of the DPP in Northern Ireland in 1972, the office has aroused some controversy. The Bennett Report (1979) called for greater scrutiny of the DPP and Richard Harvey³⁸ and other critics have accused the DPP of being too slow or unwilling to bring prosecutions. Harvey also notes the DPP's power to choose the date of proceedings and, therefore, in effect, the judge.³⁹ Asmal and company have even suggested that certain judges, by virtue of their rulings, have disqualified themselves as impartial arbiters of shoot-to-kill trials.⁴⁰ Resort to single judge, juryless (Diplock) courts naturally (unnaturally?) reinforces the powers of the judiciary.

The DPP played an important role in the shoot-to-kill process, initially conducting prosecutions of RUC officers. In fact, Peter Taylor⁴¹ praises Sir Barry Shaw (DPP) for asking Sir John Hermon to conduct further investigation of shoot-to-kill activity. As a result, external (Stalker) and senior internal probes followed preliminary RUC investigations. However, the DPP's relationship to the Attorney-General (a government Minister) remains a contested area, undermining the independence of the DPP. For instance, the Attorney-General, who appoints the DPP, may decide that there are 'legitimate reasons' not to proceed with convictions which might not be in 'the public interest'. The subservience of the DPP to the Attorney-General was evident in October 1986 when Colin Sampson submitted the first part of his Northern Ireland findings and Tom King warned against any DPP prosecutions without instruction from the Attorney-General and consultation with the RUC's Chief Constable. Unsurprisingly, therefore, there have been cries to reform the office of the DPP. The CAJ has counselled that 'the DPP should be replaced by a Crown prosecutor system modelled on the Procurators Fiscal in Scotland'.⁴² This is also the view of the House of Commons Home Affairs Committee.

COMPLAINTS PROCEDURES

As for the complaints procedure, some critics noted the somewhat passive role of the Police Complaints Authority (PCA), responsible for supervising the report on Stalker. The PCA's powers enabled it to direct the scope and conduct of the investigation into Stalker, veto the appointment of Sampson and issue a statement on the satisfactory or otherwise nature of the Sampson report. In these matters, Roland Moyle - Deputy Chairman of the PCA and spokesman on

the Stalker investigation - found no cause for complaint. However, this view was not shared by the vast majority of the Greater Manchester Police Authority.

Councillor David Moffat, acting chairman of the Police Authority, noted 'holes' in the Sampson report and described the charges therein as 'peripheral and pettifogging': "it was not the concerted, co-ordinated report I'd expected from a man in such a high position."⁴³ Tony McCardell was more scathing: "Rubbish...I just couldn't believe it that he'd been suspended for three months because of this."⁴⁴ An interesting and provocative reservation came from Kevin McNamara MP, soon to be appointed as the Labour Party's spokesman on Northern Ireland. McNamara queried Moyle's appointment as overseer to the Sampson report since Moyle was identified with British Intelligence during his period at the Northern Ireland Office in the 1970s. Doherty⁴⁵ quotes McNamara's letter to Sir Cecil Clothier, Chairman of the Police Complaints' Authority: "Did you at the time of your appointment of Mr. Moyle...have brought to your attention, or were you aware of, Mr. Moyle's connection with security in Northern Ireland? Can you say that at no time the allegations made against Mr. Stalker...originated from Northern Ireland or the RUC or from members of MI5 or MI6?"

Behind McNamara's doubts were suspicions of an MI5 or MI6 smear against Stalker and possible reliance on the evidence of (unreliable) Special Branch informers. Certainly, police informer evidence played some role in the allegations against Stalker. At the same time, Stalker was known to be critical of the Special Branch usage of informers, likening them to unreliable bounty hunters. Again, this may have been an example of differential police force standards and the RUC would have doubted Stalker's grasp of local requirements. Nevertheless, given the unanswered questions associated with the Stalker affair, there were widespread demands (eg from Amnesty International, the National Council of Civil Liberties, members of the Greater Manchester Police Authority and opposition political parties) for a full, independent judicial inquiry into the whole affair in order to establish the truth and prevent any recurrence of what appeared to the general public as a messy affair.

THE FREEMASONRY CONNECTION

One controversial and rather speculative angle of the affair was the occasional allegations of a freemasonic conspiracy behind Stalker's removal from Northern Ireland investigations. Undoubtedly, some of the key figures in the affair were deemed to be freemasons (eg Sampson, Myers and officers investigating Kevin Taylor and John Stalker). In 1984, Sir Kenneth Newman, Head of the Metropolitan Police, had advised his officers to steer clear of the freemasonic brotherhood. Was there a conflict of interests between membership of the brotherhood with its oath of loyalty and mutual self-help and the efficiency, impartiality and image of the police force? Whatever the view, freemasonic leaders in the North West of England were disturbed enough by

allegations to go public (a rare event) in order to refute the idea of a freemasonic conspiracy against Stalker. According to Colin Gregory, provincial grand secretary: "At the moment we have what has become known as the Stalker affair, which has gathered rumour and counter rumour over the past two months.... There have been allegations that there is some sinister organisation, possibly based in the building, which is in cahoots with the RUC. I have no evidence of this.... I emphatically deny that there is any such organisation active here."⁴⁶ Indeed, at a unique press conference to deflate allegations of freemasonic favours in the Stalker affair, Gregory warned that any masons making improper use of the order were liable to expulsion. Nevertheless, the provision of a full judicial inquiry might have shed further light on the existence or not of a masonic undercurrent in the Stalker affair. After all, police-masonic solidarity is a familiar, pervasive theme.⁴⁷

STALKER'S VIEWPOINT

Stalker himself made no public comment about the role of freemasons. However, he was known to be unhappy with the nature of investigations into him. First, he had waited some weeks before learning of the full allegations. Second, the Police Authority dismissed the allegations against Stalker but had rejected his repeated offers to go before it to defend himself. Third, he had been misinformed by officers from his own police force about the nature of investigations into Kevin Taylor. Indeed, since the association between Taylor and the Manchester Deputy Chief Constable was central to the Stalker affair, the Solicitor General (Sir Patrick Mayhew) made the retrospectively surprising announcement to the House of Commons, in early July 1986, that investigations into Stalker and Taylor were separate matters. Fourth, according to The Observer,⁴⁸ Stalker had to rely on the newspaper's copy of the Sampson report to learn the full details and recommendations. Fifth, Stalker was not interviewed before allegations were made against him. John Alderson, ex-Chief Constable of Devon and Cornwall, criticised the Manchester Chief Constable for not calling Stalker into his office and warning him to reform his ways before submitting allegations to the police complaints procedure. Certainly, the medicine seemed disproportionate to the ailment. Preventative warnings would have been the best and obvious cure. Sixth, the Stalker family resented the alleged grubbing around for evidence against him as well as the assertion that he had consciously associated with known criminals. Cecil Franks MP pointed out to the Commons the tenor and implications of allegations against Stalker: "Perhaps MPs should ask the Home Secretary that, if they receive invitations to social events, he should make available to us the Home Office computer so we can run through the guest list before we accept. The whole thing has become absurd."⁴⁹

Following his reinstatement, Stalker planned to submit proposals to improve the investigatory and disciplinary process in order to avoid inordinate delay or stress. If completed, these proposals would go to the Association of

Chief Police Officers (ACPO) now presided over by James Anderton. However, in mid-December 1986, Stalker resigned from the police force taking characteristic care to distance himself from assertions that he was unhappy with his abrupt mode of exit from the profession.

CONCLUSION

With Stalker's resignation it was hard to escape the conclusion that a senior police officer had been "forced into the cold just for doing his job".⁵⁰ McGardell supported this interpretation wholeheartedly: "Something happened at some point and John Stalker decided to do not the job he was sent for but the job he should have been doing and report a "shoot-to-kill" policy. John Stalker had gone to Ireland to do a job for the government. When it went wrong, they had to get rid of him."⁵¹ Despite Peter Taylor's analysis, the evidence against him appeared so lightweight that, inevitably, suspicions were fuelled of a conspiracy of sorts to remove Stalker from Northern Ireland.

On several occasions parliamentarians attempted to get the Stalker affair debated in the House of Commons only to be told by Margaret Thatcher, Douglas Hurd and Tom King that the investigations were sub judice, thereby precluding government comment, or that issues raised were beyond the jurisdiction of the government. In July 1987 King said he would like to make a statement about those aspects of the Sampson report which fell within his responsibility but was not yet able to do so.⁵² Nevertheless, at the end of the day, government Ministers appreciated that some statement would have to be made to the Commons concerning the shoot-to-kill affair. After all, it was valid to ask whether a shoot-to-kill policy could operate without the consent or acquiescence of authoritative superiors. Moreover, and notwithstanding the difficult role of the police in Northern Ireland, there must be some confidence in the judicial and legal process and in the principle of "innocent until declared guilty". Certainly, if the intention was to distract attention from the RUC probe by focussing on Stalker, the attempt backfired, leaving some embarrassment amongst Stalker stalkers and many eager eyes on the anticipated Sampson report in Northern Ireland.

The Stalker affair may be seen within the parameters of Boyle, Hadden and Hillyard's portrayal of the British authorities' two-track response to unrest in Northern Ireland.⁵³ These authors pointed to (a) a 'security' response and (b) a desire to retain public confidence in the legal and judicial process. As violence prevails, the authorities become more security conscious rather than justice conscious. 'Results' are valued above elementary principles of justice. The Loughgall shootings may be seen in this context and as a response to the killing of Lord Justice Gibson.⁵⁴ In 1983, Boyle, Hadden and Walsh were critical about the way the security/justice pendulum had swung: "The principle that those who commit offences on behalf of the state should be brought to justice has been subordinated to the notion that it is undesirable to

interfere with the operations of the security forces when they are operating in...difficult conditions."⁵⁵

Over-emphasis on results runs the risk of alienating the minority community and lowering confidence in the legal/judicial process. Representatives of the minority community, therefore, have taken a negative view of the shoot-to-kill-cum-Stalker affair. For instance, the Social Democratic and Labour Party has adopted a consistently vigilant and critical approach, with deputy leader Mallon calling for more openness, less secrecy. SDLP leader John Hume expected the new Fianna Fail government (February 1987) to link the enactment of the 1986 Extradition Act to progress on the Stalker affair.⁵⁶ Clearly, the SDLP wants more emphasis on the 'justice response' and sees the Anglo-Irish Agreement as the appropriate framework to engineer reforms (eg Diplock Courts, three judges, fair employment etc.). Consequently, it is significant that Secretary of State King announced an inquiry into the RUC on the eve of a meeting of the Anglo-Irish Intergovernmental Conference.

In July 1987 King informed the House of Commons that in response to the Sampson report on the RUC, "certain matters of organisation and procedure should be more fully examined". King refused to give further details but The Times front page⁵⁷ detailed the areas of inquiry as the RUC's elite anti-terrorist squads, RUC Special Branch gathering and handling of intelligence information and use of informers, and the accountability, management and operational processes of the HMSUs (or SSUs). Inspection would be under the responsibility of HM Chief Inspector of Constabulary, Stanley Barratt. The loyalist Newsletter⁵⁸ condemned the inquiry as a 'stab in the back for the RUC' and divined the shadow of the Anglo-Irish Agreement behind 'the utter insensitivity of Northern Ireland Office Ministers'. However, the same newspaper reported previously about the concern over the RUC's command and control structures "with an apparent system whereby no senior officers appear accountable for on-the-ground operations".⁵⁹

King's announcement may be seen as the government's response to the need to ensure public confidence in the administration of justice in Northern Ireland. Indeed, notwithstanding Boyle, Hadden and Hillyard's two-track criteria, there is an uneven and ambiguous dialectic between the security and justice responses. At times, the authorities may follow both tracks simultaneously, i.e. tough anti-terrorist measures, extradition demands, tighter cross-border security co-operation and a process of piecemeal reform.⁶⁰ Some observers might see in this some evidence of a desire to appear 'even-handed', whilst others might construe British reforms as palliatives to sweeten the pill of direct rule. In turn, even-handedness is by definition duplicitous, ambivalent and a potential recipe for confusion over the 'real' intentions of the British government.⁶¹

Ultimately, the case for a full, independent, judicial inquiry into the Stalker affair is a strong one. According to Stalker, "There are more pieces of the jigsaw coming into place but it is still not clear. Whether that will ever

happen, I don't know."⁶² Government statements on the Sampson report and (albeit welcome) reforms run the risk of leaving too many pieces of the jigsaw undiscovered. Unless public confidence is reassured as to why Stalker was really removed from the shoot-to-kill inquiry in highly contestable circumstances, respect for legal and judicial processes is menaced. Recent polls suggest that only 7% of Catholics (and 61% of Protestants) support a shoot-to-kill policy.⁶³ The Stalker inquiry is important since it acted as a magnet for legal and judicial shortcomings and serves as a focus for constructive reforms and proposals concerning the use of lethal force, the remit of coroners' courts⁶⁴, the use of informers, the accountability of security and intelligence services, the police complaints process, the role of the DPP, the Diplock courts etc. According to one view,⁶⁵ Stalker may be seen as 'a relatively minor pawn in a very vicious game' and the issues raised are still very much on the agenda. Without doubt, the wall of secrecy⁶⁶ and mystery surrounding the Stalker affair has nourished conspiracy theories and undermined official explanations. The secrecy is in marked contrast to the televised drama of the Irangate hearings in the USA. As yet, it is wishful thinking to talk of a 'Stalkergate', for that would imply a level of official openness and inquiry which has so far proved elusive.

NOTES

1. Fortnight, September 1986
2. Belfast Telegraph, 21 June 1986
3. Belfast Telegraph, 23 June 1986
4. Irish Press, 25 February 1987
5. For a review of this book see Just News (CAJ Newsheet), July 1987, p.2
6. Frank Doherty, The Stalker Affair, Mercier Press, Dublin, 1986
7. Richard Deacon, 'C' - A Biography of Sir Maurice Oldfield, Futura Publications, London, 1985
8. For further information on Holroyd and Wallace see Duncan Campbell's three articles in New Statesman, 4, 11 and 18 May 1984; Patsy McArdle, The Secret War: An account of the sinister activities along the border involving Gardai, RUC, British Army and the SAS, Mercier Press, Dublin, 1984, pp 95-99; Doherty op. cit.; C. Wallace, 'Ex-Psy-spy speaks out' Labour and Ireland, May-June, 1987; R. Ramsay, 'Will the truth ever be told? The inside story of Britain's dirty war', Labour and Ireland, Dec-Jan, 1986-87; R. Norton-Taylor, 'The spectre of a secret war', Guardian, 9 July 1987
9. Irish Press, 20 February 1987
10. For intelligence rivalry see Jonathan Bloch and Patrick Fitzgerald, British Intelligence and Covert Action, Brandon, Dingle, 1982
11. Observer, 6 July 1986
12. Observer, 6 July 1986
13. Irish Times, 25 August 1986
14. Belfast Telegraph, 24 June 1986. In September 1987, charges were eventually laid against Kevin Taylor, accused of conspiring to obtain pecuniary advantage from one of his companies. However, his solicitor contested the admissibility of police evidence, rejected the charge and argued that the real cause for court orders against Taylor was to target Stalker. The case was adjourned until January 1988.
15. Irish News, 22 August 1986
16. This is not the view of Peter Taylor, The Stalker Affair: - the search for the truth, Faber and Faber, London, 1987. Taylor contends that the case against Stalker was substantial enough to take him off the

- shoot to kill enquiry in order to save the credibility of the Northern Ireland probe. For a review of Taylor's book see Just News, op. cit.
17. Observer, 21 December 1986
 18. Observer, 15 March 1987
 19. Yorkshire Post, 23 August 1986
 20. cf. Anderton-Stalker: What's the Difference? Police Watch (Journal of Manchester City Council Police Monitoring Unit), No. 6, February 1987, pp. 3-4. On police accountability in Northern Ireland see the (forthcoming) CAJ pamphlet 'Police Accountability in Northern Ireland', 1987
 21. Quoted in Kader Asmal, 'Shoot to kill? International Lawyers Inquiry into the Lethal Use of Firearms by the Security Forces In Northern Ireland', Mercier Press, Dublin, 1985
 22. News Letter, Belfast, 4 September 1986
 23. Asmal, op. cit.
 24. Just News, October 1985, p. 3
 25. News Letter, 9 May 1984
 26. Unity, 18 October 1986
 27. Taylor op. cit., pp. 40-43
 28. Brian McClelland, Oversight of Law Enforcement in Northern Ireland, International Conference of Civilian Oversight of Law Enforcement, Miami Beach, December 1986
 29. Asmal, op. cit., p. 102
 30. Amnesty International news release, International Secretariat, London, 30 September 1986. cf. Amnesty International Report, London 1987
 31. Taylor, op. cit., pp. 35-36
 32. Tom Hadden, Fortnight, 29 April 1985
 33. Editorial, Just News, October 1986, p. 4
 34. Stalker and Paramilitary Policing, Irish Political Review, Vol. 1, No. 1, July 1986, p. 9
 35. Belfast Telegraph, 19 June 1986
 36. Belfast Telegraph, 17 June 1986
 37. McClelland, op. cit., gives a figure of 11% for Catholics in the RUC

38. Richard Harvey, Diplock and the Assault on Civil Liberties, Haldane Society of Socialist Lawyers, London 1981
39. Ibid., p. 33
40. Asmal, op. cit., pp. 91-93
41. Taylor, op. cit., pp. 40-43
42. Procedures for Handling Complaints Against the Police, CAJ Pamphlet No. 4, May 1983, p. 21
43. Quoted in Taylor, op. cit., p. 178
44. Ibid., p. 179
45. Doherty, op. cit., p. 88
46. Irish News, 7 August 1986
47. cf. Stephen Knight, The Brotherhood, Grafton Books, London, 1986, and Police Watch, op. cit. The author is grateful to Brian Woollard for details on freemasonry and the police force.
48. Observer, 7 September 1986. A year later, The Guardian, 12 September 1987, reported that a team of detectives were investigating how reporters obtained copies of Sampson's report on Stalker.
49. Belfast Telegraph, 24 June 1986
50. Guardian, 22 December 1986
51. Irish News, 14 February 1987
52. News Letter, 16 July 1987
53. K. Boyle, T. Hadden, P. Hillyard, Law and State. The case of Northern Ireland, Martin Robertson, London, 1975, p. 120
54. In April 1987, Lord Justice Gibson and his wife were killed by remote controlled explosives when their car crossed the Irish border. In May, eight IRA members and one civilian passer-by were killed by the security forces whilst in process of planning an attack on a police station in Loughgall. For two differing views see: 'Roden', 'The Lessons of Loughgall', Ulster, (Ulster Defence Association monthly), July-August 1987, p. 11 and Brice Dickson, 'The Loughgall Ambush', Just News, June 1987, p. 4
55. K. Boyle, T. Hadden, D. Walsh, 'Abuse and failure in security policies Fortnight, September 1983, p. 6
56. Interview in Irish Times, 30 March 1987

57. The Times, 16 July 1987
58. News Letter, 17 July 1987 (editorial)
59. News Letter, 16 July 1987
60. Examples of piecemeal reform would be the Public Order (N.I.) Order 1987, the Police (N.I.) Order 1987, the N.I. (Emergency Provisions) Act 1987, and the appointment of Lord Colville to conduct a review of the Prevention of Terrorism Act (PTA) and Emergency Provisions Act (EPA). Ironically, Stalker's suspension coincided with NIO Minister Scott's announcement of proposals to change the police complaints procedure in Northern Ireland. The proposals will bring Northern Ireland more in line with the rest of the U.K. by introducing an independent element into the process. The new Independent Commission for Police Complaints will be empowered to initiate and direct specific lines of inquiry, receive progress reports, testify to the satisfactory (or otherwise) nature of investigations and act as a watchdog on complaints against the police. The government's intention was stated in a White Paper, Reform of Police Complaints and Discipline Procedures (July 1986): "The Government believes that the introduction of an effective system for handling complaints against police officers, in which both police and public could have confidence, would make a significant contribution towards sustaining the RUC's acceptability throughout the whole community thereby strengthening its capability to combat terrorism and prevent crime." The reform was immediately welcomed (as a positive step) by various organisations e.g. the Workers' Party, the Alliance Party and the Standing Advisory Commission on Human Rights (SACHR) in Northern Ireland. However, the limited scope of the proposals evoked criticisms, which echoed those 'across the water'. A major criticism was that the new Commission would not be involved in all stages of investigations. Basically, it would be limited to supervisory investigations by police officers. Also, the Chairman of the SACHR sees the Commission as too dependent on the Chief Constable or Secretary of State or Police Authority for reference before it could supervise an investigation. Nevertheless this development may be seen within the context of attempting to secure public confidence in the police, an issue central to the Stalker affair. More recently a new R.U.C code of conduct has been produced although this has been shrouded in controversy because it has not been officially made public.
61. In this context P. Bew and H. Patterson, The British State and the Ulster Crisis, Verso, London, 1985 examine the incoherence of British policy towards Northern Ireland and their analysis can be applied to the justice/security dichotomy. Interestingly, the same authors, 'The Sectarian Divide: Ireland after the Accord', Marxism Today, September 1986, pp. 36-41 see the Anglo-Irish Agreement as detrimental to the cause

of stability in Northern Ireland and would prefer reforms without the fanfare. Therefore, whilst Dale Campbell-Savours might see undercover operations as undermining political initiatives, Bew and Patterson would concentrate on the political initiative as the destabiliser, creating uncertainties and expectations and intensifying the conflict in Northern Ireland.

62. Belfast Telegraph, 13 March 1987
63. cf. Ronald Weitzer, 'Policing Northern Ireland Today', Political Quarterly, January-March 1987, pp. 88-96
64. Stalker was disturbed by the resignation (1984) of the Armagh Coroner who noted 'certain grave irregularities' in RUC files on shoot-to-kill victims. cf. Asmal op. cit., pp.105-113
65. Irish News, 14 February 1987
66. This wall of secrecy is likely to be breached by the forthcoming publication of John Stalker's view of the affair in February 1988 (Viking Books).

FOREWARD TO THE SECOND EDITION/UPDATE

Since this pamphlet was first published in late 1987, a series of rapid developments have characterised the Stalker Affair. Therefore, this update seeks briefly to account for and assess the main developments in early 1988.

THE STALKER AFFAIR : DEVELOPMENTS IN 1988

In 1988, the Stalker Affair once again assumed the centre stage of political and public interest. As we suggested above, the publication of Stalker's book - his own account of the affair - was bound to act as a catalyst and this is precisely what happened. Serialisation in a prominent tabloid daily and widespread publicity ensured the book and issues therein a wide general interest. In addition, unconstrained by office, Stalker abandoned his previous reserve and adopted a high media and public profile, no doubt to coincide with the book's publication. Published in early February, and quickly becoming a best seller, the book confirmed much of the criticism surrounding the affair and discussed above. Stalker took the view that 'it could reasonably be argued that because of the passage of time and the diminishing quality of the evidence, the public interest does not now demand prosecutions. That would be a perfectly proper, legal and moral stance to take. In the context of Northern Ireland, it would also be an eminently sensible one'.² In this respect, Stalker was retreating on his earlier recommendations. In other respects, the book was very critical of procedures and personalities and represented Stalker's testament of innocence in the aftermath of resignation from the police force. In the first section which follows, and in view of the immense controversy surrounding it, we examine Stalker's book.

Moreover, the book's publication overlapped with the Attorney-General's statement in the House of Commons on 25th January, 1988 that, despite evidence of attempts to pervert the course of justice, there would be no prosecutions 'in the public interest'. Unsurprisingly, this statement has met with a chorus of protest from various quarters concerned with the administration of justice in Northern Ireland. The Anglo-Irish process, in particular, was a victim of this statement as Irish Politicians complained about lack of

adequate dialogue and falsely raised expectations within the framework of the Anglo-Irish Agreement. In response, the British Secretary of State for Northern Ireland offered a number of reassurances, inquiries, apologies and reforms designed to redress the deficiencies revealed by the Stalker/Sampson probe and take the sting out of criticisms of the Attorney-General's revelation. We look more closely at these matters in sections 2 and 3 below.

1. STALKER ON STALKER

Much of the content of Stalker's book was already familiar to observers of the affair. Indeed, investigative journalism and heavy 'leaking' had exposed its detail and parameters. Nevertheless, Stalker's subjective version of the events bound up with his suspension was an important contribution to an understanding of the affair.

Essentially, Stalker contends that he was removed from the shoot-to-kill inquiry to prevent damaging and morale-sapping prosecutions of RUC officers, at a time when the Ulster police force was facing great pressures, including the onset of 'the marching season' in the context of the recent Anglo-Irish Agreement. According to Stalker, '...I believe that in April 1986 a government decision was made to end my involvement in the inquiry. A decision of this importance I feel sure would be unlikely to have been made at anything less than the highest levels'.^e In Stalker's view, he had become an embarrassment^a and 'The evident need to remove me was obviously more pressing than having a reason for doing it'.^e Consequently, Stalker has little sympathy for Peter Taylor's argument (see above) equating his suspension with an attempt to preserve the purity of the probe in Northern Ireland.^f 'If my removal was intended to protect the integrity of my own enquiry then it failed miserably.'^g

A major concern of Stalker is to re-establish his own professional and moral credibility after a personally bruising experience. Hence, an important breakthrough for him was his verification - notably in conversation with James Anderton - that investigations into his own activities only began after the delivery to Sir John Hermon of his interim report. Similarly, serious investigation into Kevin Taylor's business affairs and the attempts to associate Stalker with Taylor's allegedly spurious contacts postdated completion and delivery of the interim report. The attempt to discredit Stalker, therefore, rested on the potential for building up a case against him after his suspension. In the event, Stalker could hardly believe the crude and ham-fisted enterprise to concoct a valid case against his professional activity. Unsurprisingly, harsh words are reserved for the Sampson report on him: 'a shoddily put together document', 'nothing of real substance', 'a hugely indigestible chunk of speculative writing', etc.^h Certainly, there is a sympathy for Sampson's embarrassment at being thrust (willingly?) into a situation based on scant concrete evidence but, ultimately, Stalker claimed to have lost respect for Sampson and hoped he would do a better job in Northern Ireland.

Besides Sampson, Stalker is critical of the two other Chief Constables central to the affair. Hermon is accused of obstructiveness and delay whilst Anderton is portrayed as petty, unprofessional and guilty of 'childish discourtesy' towards Stalker. In one instance, already much publicised, Stalker accuses Hermon of leaving behind a cigarette packet detailing Stalker's mother's Catholic family tree.³ Is this bizarre incident likely to have been invented by Stalker or is a more rational explanation possible? Whatever the verdict, Hermon and other maligned individuals have been quick to refute assertions made in Stalker's book. As well as individuals, various structures or institutions (but not MI5 or the DPP) are taken to task: the RUC Special Branch for its excessive powers; the Police Complaints Authority for its passive compliance with Sampson's report on Stalker; the Greater Manchester Police Committee for failing to hear Stalker's own version of events; freemasonry inside the Manchester CID; the role of HM Inspectorate for Constabulary, Sir Phillip Myers throughout the affair; etc. According to Stalker, he got 'too close to the truth'⁴ and, in the process, 'pushed powerful people and institutions rather harder than a more sensible man might have done'⁵.

In part, the above statement reflects Stalker's retrospective acknowledgement that perhaps he tried to do too much in Northern Ireland. The reader senses the professional-cum-moral dilemma haunting Stalker throughout his inquiries in Northern Ireland. On the one hand, he applies a thoroughly professional, detached but expansive view of his role in Northern Ireland but, at the same time, he is instinctively sympathetic to the RUC's policing difficulties. Ultimately, Stalker takes the view that it was not his brief to make a moral judgment about anti-terrorist activity but rather, to serve as the independent investigator of circumstances potentially undermining the rule of law and the administration of justice. In this context, Stalker affirms his admiration for the RUC and interprets his interim report as an attempt to improve RUC structures, accountability and popular backing. Therefore, whilst appreciating Hermon's understandable inclination to protect his force from undue intrusion, Stalker sees the Chief Constable's alleged obstructiveness as 'a sadly short-sighted decision'.⁶ The same verdict might also be applied to the Attorney-General's statement to which we now turn.

2. THE ATTORNEY-GENERAL AND THE PUBLIC INTEREST

With the completion of the Sampson report on Northern Ireland, the next logical steps were statements by the Attorney-General, the DPP and the Northern Ireland Secretary. An immediate outcome of the Attorney-General's controversial statement to the Commons was the renewed debate over the role of the DPP and the latter's relationship with the former.⁷ The Attorney-General and government supporters were at pains to emphasise that the DPP had taken the key decision not to recommend prosecution of police officers despite evidence of conspiracy to pervert the course of justice. According to Tom King, the Attorney-General based his statement upon a directive from the DPP

and there could be no cause for revision or contravention. Any criticism of this decision was construed as an attempt to undermine the honour and independence of the DPP, Sir Barry Shaw. Nevertheless, critics portrayed the DPP as the 'fall guy' for an essentially political decision. Already, we have alluded to King's earlier statement (see p.12) that the DPP's decision would rest on consultation with the Attorney-General and, in view of this, it is not unreasonable to recall the latter's power to guide and advise the DPP. As one observer points out, the 1972 Prosecution of Offences (Northern Ireland) Order, which created the DPP, requires him to 'discharge his functions under the direction of the Attorney-General' and to be 'subject to all directions of the Attorney-General in all matters' P.

Unsurprisingly, there was massive discontent (within the media, political parties and interested groups inside the UK, Ireland and beyond) with the Attorney-General's statement. For example, the case for review was underlined by the European Parliament whilst Garret FitzGerald claimed the Attorney-General's decision was out of line with assurances given in late 1986 'at a high political level' a. A logical consequence of this decision will be the renewed querying of the Attorney-General's quasi judicial role and demands to review the legal relationship between the DPP and the Attorney-General. The Attorney-General's statement provoked a crisis in Anglo-Irish relations and prompted new calls for the British government to respond positively to the Stalker/Sampson report and the vacuum created by the decision not to prosecute. In response, the Northern Ireland Secretary tabled a catalogue of proposals and reforms aimed at defusing the affair and pacifying critics.

3. REFORM OR RETRENCHMENT? THE BRITISH GOVERNMENT RESPONDS

On the issue of prosecutions, the Secretary of State has explained there is no precedent for reversing the DPP's decision and the Attorney-General's statement. Of course this could hardly satisfy many critics of the decision. Nevertheless, in response to pressures, the Secretary of State obviously felt a need to address some of the criticisms made throughout the Stalker affair. Therefore, his statement to the Commons (17.2.1988) was seen by The Guardian as 'the most comprehensive statement yet' about the Stalker affair and Kevin McNamara viewed it as 'the most amazing rehabilitation of John Stalker' e. However, The Times f accused the government of insufficient openness throughout the affair: '...the British side has appeared reactive, ill-prepared and ill-co-ordinated'. Moreover, the affair had been 'allowed to drift until just before Mr. Stalker forced the pace of public events by publishing his book' . g Certainly, King's statement gave the impression that the government appreciated some concessions and changes were necessary; so what exactly was being

proposed? It will be useful to list here the main developments, principally stemming from King's response:

- * The Northern Ireland Police Authority would consider whether disciplinary charges were advisable against senior police officers.
- * Mr. Charles Kelly, Chief Constable of Staffordshire would examine the case for disciplinary charges against junior officers up to the rank of Chief Superintendent.
- * Changes inside the RUC had been made to make the Special Branch more accountable.
- * Cross border foraging in the shoot-to-kill incidents had been accepted as wrong and King apologised to Dublin on this matter.
- * The RUC Chief Constable had accepted a report by HMI Sir Charles McLachlan commissioned in the wake of the Stalker/Sampson report. McLachlan recommended appointment of an outside Assistant Chief Constable to head inquiries into controversial RUC incidents, further integration of the Special Branch into the RUC, better procedures for incidents involving death or injury via firearms, better usage of forensic, pathological and photographic resources, etc.
- * Guarantees were given that the DPP would receive full and accurate information 'in the future' - an admission of failings in the past.
- * There was an admission that Stalker's work had not been wasted and that recommendations had resulted from the interim report.

All in all, King's statement represented some progress on the affair although many critics, including voices in Dublin and the SDLP, found the response totally inadequate. For example, Taoiseach Charles Haughey demanded publication of the Stalker/Sampson report and a reconsideration of the question of prosecutions. In the SDLP, Seamus Mallon complained that 'Lofty, high sounding phrases such as "the public interest" and "national security" were brought into play as euphemisms which would allow people to hide behind legal precepts until the matter subsided'. Similarly, The Times was critical of the lack of openness, notably King's admission that changes in RUC practice (concerning the Special Branch) had been implemented in 1983 but only now announced as a reform.

It remains to be seen how the above reforms will work out. Undoubtedly, there has been some response to the problems thrown up by the Stalker affair but, to date, the handling of the affair has failed to reassure diverse interests concerned with the administration of justice in Northern Ireland.* Despite the willingness, indeed necessity to make some progress in this area, the British government has continued to rule out a judicial inquiry as

"unnecessary and inappropriate". In a recent article, Nicholas Scott (in his capacity as Minister of State for Northern Ireland) admitted there was still further work to be done to ensure confidence in the administration of justice. Unfortunately, the ramifications of the Stalker affair render this process all the more difficult.

NOTES

- a Ibid.
- b John Stalker, Stalker, Harrap, London. 1988 p. 270
(N.B. Viking will publish the American version)
- c Ibid., p. 264
- d Ibid., p. 265
- e Ibid., p. 130
- f Stalker views this line of reasoning as 'a convoluted argument that convinced very few people'. Ibid., p. 173
- g Ibid., p. 174
- h Ibid., pp. 199-203
- i Ibid., p. 184
- j Ibid., pp. 30-31
- k Ibid., p. 10
- l Ibid., p. 269
- m Ibid., p. 263
- n cf. S. Greer, 'What Sir Patrick may do', Fortnight, March 1988, and Michael McDowell's article in Irish Times, 6 February 1988
- o Belfast Newsletter, 3 February 1988
- p Greer, op.cit.
- q Irish Times, 18 February 1988
- r Guardian, 18 February 1988
- s Independent, 18 February 1988
- t The Times, 18 February 1988
- u Ibid.
- v S. Mallon, 'Time to Grasp the Nettle of Policing', Fortnight, March 1988
- w The Times, 18 February 1988
- x This includes the government of the Irish Republic. Through the Anglo-Irish Agreement, the British government recognises an Irish interest in the administration of justice in Northern Ireland. The Dail debate on Anglo-Irish relations (February 1988), meetings within the Anglo-Irish Intergovernmental

Conference, contributions from the Taoiseach and Irish political leaders, etc. have testified to the irritation in Ireland with the course of the Stalker affair and, in particular, the Attorney-General's statement in the Commons and the lack of information, consultation or sensitivity surrounding it. To say the least, the Stalker affair has undermined confidence in the workings of the Anglo-Irish Agreement, leaving the Irish government with a sense of grievance over alleged British disregard for Irish viewpoints. The impasse in Anglo-Irish relations needs to be seen, of course, in the context of other contemporaneous developments (besides Stalker) considered to be critical in the view of Dublin e.g. the judicial decision on the Birmingham Six, making permanent the Prevention of Terrorism Act, extradition procedures, the release and reinstatement of a British soldier after only three years of a life sentence for a fatal shooting in Northern Ireland, etc. These issues are too involved to discuss in a short pamphlet. Suffice it to say here that, together with the Stalker affair, they have reinforced Irish criticisms and conveyed an impression of minimal British sensitivity to an Irish input into the administration of justice in Northern Ireland.

y Statement by John Wakeham, Lord President of the Council, on behalf of the government and in response to British Labour Party questioning, Belfast Telegraph, 12 February 1988

z N. Scott, 'Northern Ireland: The Need for a Co-Operative Approach', Conflict, Volume 7, No. 3, 1987, p. 334