Just News

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The Wall of Silence Loses Another Brick

On 16 January 1980, the then Chief Constable of the RUC commissioned a report on the interchange of intelligence between Special Branch (SB) and the Criminal Investigation Department (CID) and on the staffing and organisation of various other RUC units. This was written by one Patrick J. Walker, then a senior officer in the Belfast base of MI5 and later Director-General of the whole organisation.

The existence of the report and some of its implications were revealed by UTV, the Guardian and other media in 2001 but the report itself remained secret. After a long running freedom of information campaign to access the report, and just as the case was about to be heard by the First Tier Information Tribunal on 1st May 2018, the PSNI agreed to release a "lightly redacted" version of the report to the Committee on the Administration of Justice (CAJ). We received a copy on 3rd May but it was embargoed until 1st August or until a legacy inquest concluded its relevant processes, whichever would be the earlier. The embargo on placing it into the public domain was lifted on 19th June.

The release of the report means the removal of another brick in the wall of silence and obfuscation that has been erected to prevent the truth emerging about the activities of Special Branch and other state agencies during the conflict. The report itself recommended structural change in the RUC which gave effective operational control over all activities relevant to combating "subversive crime" to Special Branch. It was the foundation of what became to be called "the force within a force" and facilitated the primacy of intelligence over prosecution, the authorisation of agents and informants to commit serious crime and in some cases collusion between Special Branch and illegal armed groups.

The early part of the report recommends that all CID informants who were members of "subversive organisations" should be declared to Special Branch at central and regional levels. It goes on to say that wherever possible CID agents should be handed over to SB or at least handled jointly. In other words, Special Branch was to take over all what are now called Covert Human Intelligence Sources within paramilitary organisations.

Protection for agents is explicitly put in place. CID could not charge an agent with any crime without the approval of Special Branch – it must only happen as "the result of a conscious decision by both SB and CID." Furthermore, agents were to be protected from arrests: "All proposals to effect arrests, other than those arising directly out of an incident, must be cleared with SB to ensure that no agents, either RUC or Army, are involved." This effectively means that no action against paramilitary organisations was to be taken except with the express authorisation of Special Branch.

It is clear that the report author felt that "interviews" of suspects were a prime location for the recruitment of new agents. He instructed CID to be aware of the possibility of recruitment when interviewing someone and that they should involve Special Branch at an early stage.

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In saying that SB needed to be more involved in the euphemistically termed "interviews," the report author commented on the situation in "early 1972" when SB "became reluctant to be involved in interviews," "partly due to the attitude of the Judiciary and Director of Public Prosecutions to SB questioning in the then Holding Centre in Holywood barracks…" This is presumably a coy reference to the fact that even a case-hardened judiciary and a less than notably progressive DPP had been unable to stomach the methods SB were using on suspects within the protective perimeter of Palace Barracks.

Throughout the report, the emphasis is on developing Special Branch as the hub and focus in combating subversive crime. There are a number of recommendations about the centralisation of intelligence outputs in Special Branch headquarters. Other units were to be brought under SB control. The Weapons and Explosives Intelligence Unit (WEIU) and the Data Reference Centre (DRC) (which did all kinds of firearms related analysis) were recommended to join the SB family. This would mean that the collation and investigation of information based on analysis of weapons and explosives would all be brought under SB control. The report justifies this by remarking that scientific reports had to be brought together with all available intelligence to be most effective. "However," it goes on, "SB will always have serious reservations about supplying their most sensitive reports on a regular basis to a group operating outside SB." The ability of SB to decide who should get their intelligence is taken for granted – the solution is to bring all relevant units under their control.

Intriguingly, in the latter part of the report, there are a number of references indicating that Special Branch itself could choose which officers were placed with it. Discussing bringing the DRC under SB, the report says in relation to the head of the unit "(it would have to be an SB post if the newly appointed uniform Inspector is not acceptable to SB)" and goes on to make this a formal recommendation. In relation to the Weapons Unit, the report comments, "the Detective Inspector should be a member of SB (the present DI would be acceptable in SB)." So the "force within a force" even had control over who was recruited to its ranks. It would be really interesting to know what criteria for acceptability or not were used by SB in this exercise.

All in all, the Walker Report is a blueprint for how to turn a police force into a conflict-fighting weapon where victory against the "subversives" is the overriding priority and traditional functions such as preventing crime and upholding the rule of law are sidelined. You create a relatively small group of officers, distinct from the rest of the force, able to maintain their war-fighting ethos by vetting all recruits to their ranks, you concentrate intelligence gathering, analysis and dissemination in their hands, you give them direct access to overt and covert operational resources, you allow them a veto over arrests and charges and you give them the ability to place agents of influence in armed groups, some of which claim to be fighting on the same side in the "war." Of course, the RUC was already sectarian in composition and ethos, heavily armed and well used to repressive methods, but this report created an elite, counter-insurgency unit which chose who to allow into its magic circle and with access to and authority over all the resources of the wider force.

The creation of this anti-subversive "driving force" was designed to create a key combatant in the conflict – the question remains of who was leading and directing it? There is a major gap in the report. Even though its author was the Deputy Director of its Belfast station, there is not a hint of the existence, never mind the role, of the Security Service, MI5. We now know more about the role of MI5 during the conflict even from official sources such as the De Silva report. MI5 clearly regarded SB as in some way its protégé and the De Silva report quotes former Deputy Chief Constable Blair Wallace describing the Service as a "valuable source of help for SB as a developing organisation." The role of MI5 in Northern Ireland is still opaque but this report does tell us that back in 1980 it was about the business of creating a "force within a force" whose deeds and misdeeds we are still investigating today.

The "Standing" of the Human Rights Commission

Les Allamby, Chief Commissioner Northern Ireland Human Rights Commission

The Commission's recent challenge to the current law on abortion in Northern Ireland and whether it meets human rights standards in cases of serious malformation of the foetus and for victims of sexual crimes including rape and incest ultimately foundered because of the Commission's own legal standing.

The Commission took the case in its own name based on the understanding of our powers and the ramifications for women. For example a woman facing, a fatal foetal abnormality or a pregnancy resulting from a sexual crime having to face the burden of court action on top of everything else she would be coping with.

The Supreme Court ruled by a majority of four (Lord Mance, Lord Reed, Lady Black and Lord Lloyd-Jones) to three (Lord Kerr, Lord Wilson and Lady Hale) that the Commission did not have powers to bring proceedings as they were not instituted by identifying any unlawful act or potential victim.

The lead judgement given by Lord Mance took a literal approach to the relevant sections of sections 69 and 71 of the Northern Ireland Act. As a result, he held the Commission's powers do not include either instituting or intervening in proceedings where the only complaint is that primary legislation is incompatible with the European Convention of Human Rights as such proceedings would not involve an unlawful act within the meaning of sections 6 and 7 of the Human Rights Act. The Offences against the Person Act 1861, which criminalises abortion, is primary legislation. Lord Mance held that it was no surprise that Parliament did not provide an unfettered right to challenge the interpretation or compatibility of primary legislation with Convention rights. The judgement interestingly fails to set out what then the purpose actually was of the amendment to the Commission's powers under the Justice and Security (NI) Act 2007.

In contrast, Lord Kerr's starting point was the Commission's creation in the Good Friday (Belfast) Agreement. He noted the will of Parliament and the legislation's true purpose was to allow the Commission to bring a legal challenge pre-emptively where there have been victims of the laws being challenged.

Of particular note, is having ruled the Commission had no standing, the Supreme Court unusually went on to offer its views on the substantive issue holding that the current law breaches Article 8 (the right to family and private life) and a woman's right to personal and bodily autonomy in cases of fatal foetal abnormality and for victims of rape and incest.

The Commission is now seeking a legislative amendment and an appropriate Parliamentary statement to put beyond doubt the Commission's right to take a case in its own name on the compatibility of primary legislation with the Human Rights Act.

In practice, there is a need for a timely response. Any reduction in powers will have to be reported to the Global Alliance of National Human Rights Institutions (GANHRI) sub-accreditation committee. GANHRI re-awarded the Commission its 'A' status as an NHRI under UN Paris Principles in May 2015. GANHRI is likely to consider the correspondence reporting our reduction in mandate and the UK government's response in the autumn. As a result, we have written to the Secretary of State to obtain her view on the matter.

Based on initial soundings and without being complacent we are hopeful of securing the necessary amendment during the next session in Parliament. The Commission has always used its powers to take cases in its own name sparingly and discerningly. At this point, we would welcome human rights NGOs keeping a watching brief on the restoration of the powers until the government's position becomes clearer.

The following articles are written by two leading academics who are both members of CAJ's Executive and participants in the "Model Bill Drafting Group" that has been working on the implementation of the Stormont House Agreement for the past four years. They deal with two of the slightly lesser known institutions to be established, the Oral History Archive and the Independent Commission for Information Retrieval.

The Proposals on the Independent Commission on Information Retrieval

Professor Louise Mallinder, Ulster University

The Stormont House Agreement (2014) called for the creation, through a treaty between the British and Irish governments, of an Independent Commission on Information Retrieval (ICIR). The Agreement stated the Commission's role would be 'to enable family members to seek and privately receive information about the Troubles-related deaths of their relatives'. It is widely recognised that criminal case reviews and investigations are unlikely to yield substantial new evidence in most cases, due to the limited nature of the investigations that occurred when the deaths took place and the passage of time further limiting the availability of witnesses and the reliability of forensic and other materials. Therefore, the ICIR should be viewed as an important mechanism that offers victims and survivors the opportunity to gain information about the deaths of their relatives that would not be available from other sources.

The Governments agreed a draft treaty to establish the ICIR in October 2015. It has not been ratified but the draft was published in 2016. As a result, much of the detail on the ICIR's composition and functions has been publicly known since then. The consultation on the legacy proposals, including the draft Bill with provisions on ICIR, published by the Northern Ireland Office in May 2018 largely corresponded with the draft treaty. This article outlines the key elements of the current proposals.

These proposals state that the ICIR would launch an information recovery process into a Troubles-related death when it receives a voluntary request to do so from an eligible family. Following such a request, the ICIR would actively seek information. The proposals provide no guidance on how the ICIR would do this. However, as the process is modelled on the Independent Commission on the Location of Victims' Remains, it is likely that the ICIR would seek to establish links with groups that might be able to provide information, either through interlocutors or by putting the ICIR directly in contact with persons with information. Under the proposals, the ICIR would have no power to compel anyone to provide information, nor would it have powers to compel public authorities to disclose information.

Where the ICIR is successful in obtaining information, the draft treaty commits it to evaluating the credibility of the information before sharing it with families. The NIO consultation document states that the Commission's methods for doing this 'could include use of a variety of information sources, interview and analytical techniques'. It further states that 'with the permission of the family, the ICIR could publicise cases on which it is seeking information'. The ICIR would be required to keep families informed about progress in the information recovery process, and at the end the process, to write a report for families containing only information that it has established to be credible.

However, before the Commission can share a written report with a family, the proposals stipulate that the report must be submitted to the Northern Ireland Secretary of State and the Irish government. Both governments would be able to review the report and require the ICIR to remove any material that either government views as posing a risk their national security interests, as putting at risk the life or safety of any person, or as potentially having a prejudicial effect on any actual or prospective legal proceedings in either jurisdiction. This proposal thus provides for considerable political control over the information that the ICIR provides to families, and as such, risks undermining the independence of the institution and its credibility with families.

In addition to seeking information, following family requests, the ICIR would be able to receive unsolicited information from any individual. Contributors would be able to engage directly with the commission or through intermediaries.

The Consultation Document states that contributors could include those directly involved in a particular death, bystanders who witnessed events, and those with second-hand information about Troubles-related deaths. The draft treaty notes that unsolicited information would be held securely by the ICIR for the duration of its operations in case there is a subsequent family request.

For both requested and unsolicited information, there are a number of safeguards for contributors:

- engagement in the process would be confidential and the ICIR would not revealing the name or identity of (1) anyone who provides information to the commission; and (2) persons alleged by contributors to be responsible for a death;
- the ICIR would not disclose information provided to it to law enforcement or intelligence agencies;
- any Commissioner or staff member of the Commissioner who makes an unauthorised disclosure could be liable to criminal prosecution and punishment;
- information provided to the ICIR would be inadmissible in criminal, civil and inquest proceedings. However, this does not amount to an amnesty and contributors could be liable for prosecution on the basis of information that becomes known from other sources. According to the Explanatory Notes accompanying the draft bill, this includes evidence that was gathered by following lines of inquiry based on information disclosed in family reports.
- on completion of its work, the ICIR would destroy the raw material and operating files that it holds relating to deaths within its remit

Finally, at the completion of its work, the ICIR would be required to provide the Implementation and Reconciliation Group (IRG) with a written report on (1) themes and patterns it has identified from its work and (2) the level of cooperation it has received in carrying out its work. The draft Bill stipulates that the IRG would Commission a report from independent academics' experts on themes and patterns that would draw on ICIR reports as well as other sources.

The Proposals on the Oral History Archive

Dr. Anna Bryson, Queen's University Belfast

Storytelling and oral history initiatives are internationally acknowledged as an important and distinctive element of peacebuilding and reconciliation. In the absence of an over-arching truth recovery mechanism, they have provided a particularly important outlet for victims and survivors of the Northern Ireland conflict.

The prosecutorial and information recovery mechanisms proposed under the terms of the Stormont House Agreement (SHA) cannot possibly meet the needs of all victims and survivors. As noted by Pablo De Greiff (former UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence) in his 2016 report, case-based judicial procedures inevitably lead to 'fragmentation'. This echoes ongoing concerns about the dominance of 'legalism' within the broader legacy project.

The proposal to create an Oral History Archive presents an important opportunity to reach out to a wide range of victims and survivors in Ireland, north and south, and throughout Britain. These individual voices and perspectives can help to document and explore hitherto neglected themes such as the gendered dimensions of conflict. Far from being a 'soft' or merely complementary option, this mechanism touches on issues of central importance to the wider legacy project. It takes the longer view, defies simplistic and mono-causal explanations of conflict, and opens up opportunities to hear 'the other's' voice - in all its 'messy' complexity. Providing such opportunities could take some of the heat out of toxic debates about 'rewriting history' and instead make a substantive contribution to the ultimate goal of reconciliation and 'non-recurrence'. But these opportunities can only be grasped if we get the model right.

In the political negotiations that followed the SHA, our politicians invited the Public Records Office of Northern Ireland (PRONI) to scope out a blueprint for the implementation of the Oral History Archive (OHA). By its nature the Public Records Office tends to be passive rather than proactive in terms of its acquisitions. It is not therefore generally associated with outreach to community and voluntary groups, or indeed with the curation of audio or audio-visual material. Moreover, as an agency of one of the devolved Departments of state (the prevailing Minister is the 'Keeper' of its Records), concerns have been voiced about how far the Archive as proposed could (as stipulated in the Stormont House Agreement) be 'independent and free from political interference'.

The latest version of the legacy legislation (published by the NIO in May 2018) places the archive squarely 'under the charge and superintendence of the Deputy Keeper'. It stipulates that it is for the Deputy Keeper (in particular) to decide which oral history records have the 'required connection with Northern Ireland' and should thus form part of the archive, the extent to which such records should be made publicly available, and which records should be destroyed. Beyond this there is precious little detail as to how the Archive will function in practice. In the proposal to create a steering group that the Deputy Keeper 'must consult' there is a nod to the checks and balances that we called for in the course of our work on a 'Model Bill' but this is not enough to allay the fears and concerns of those who have already castigated what they see as a 'top-down', 'state-centric' and disproportionately risk-averse model. (In October 2015 a team of researchers from QUB, UU and CAJ launched a 'Model Bill' – a detailed human rights compliant version of the legislation now out for public consultation. This process was designed to assist and inform public debate on the implementation of the key legacy mechanisms.)

We know from national and international experience how quickly mechanisms of this nature – be they truth and reconciliation commissions or oral history archives – can get labelled as elitist or otherwise exclusionary. We know also that in work of this nature second chances are hard to come by. If the Archive must be housed in the Public Records Office of Northern Ireland, under the 'charge and superintendence' of a career civil servant, it is vital that the powers of both the Deputy Keeper and the state are tempered by an independent steering group with real and demonstrable powers of oversight. Appointments to this board should not be in the gift of the Deputy Keeper and / or the Minister for Communities. Rather they should be made in accordance with transparent criteria such as that applied by the Arts and Humanities Research Council (AHRC).

In a spirit of shared authority this board should crucially seek to engage and enlist the support of existing oral history projects, networks and organisations. Granted real and meaningful powers of oversight, this steering group would serve a vitally important function in helping to establish and develop: an appropriate vision for this Archive; a sensible and transparent acquisitions policy; creative and imaginative ways of engaging with existing groups and organisations; and means of garnering the support and trust of previously unheard voices, including victims and survivors. This is all the more important in light of a renewed emphasis on the extent to which the themes and patterns emerging from the stories admitted to the Oral History Archive will (within the critical first five years) feed into the final report of the Implementation and Reconciliation Group.

New border policing powers proposed

A Draft Bill introduced into the House of Commons by the UK Government proposes new powers for police, customs and immigration officers along the Border. In a mile-wide strip along the Border between North and South, people will be liable to stopped, searched and detained in order to check whether they are entering or leaving Northern Ireland. The power will also apply to the first place a train from the Republic stops in Northern Ireland to let passengers off. These powers are contained in a new Counter-Terrorism and Border Security Bill currently before the Commons and open to consultation (https://services.parliament.uk/Bills/2017-19/counterterrorismandbordersecurity/documents.html). The Bill in general represents a new power grab by government and some provisions come dangerously close to breaching the right to freedom of expression. CAJ will comment on those elsewhere, but the new Border powers are an amendment to the notorious Schedule 7 powers of the Terrorism Act 2000. These Schedule 7 powers allow police, or designated customs and immigration officers, to stop, question, search and detain people at ports and airports (and along our land border) to see if they are "terrorists." These powers are controversial in general, not least because they appear to be used in a racially discriminatory way. The latest Report by Max Hill QC, the Independent Reviewer of Terrorism Legislation, reveals that a person of Asian origin is about 18 times more likely to be stopped than a white person and even more likely to be detained (held for more than an hour).

However, the powers seem to be used disproportionately in Northern Ireland. In 2017 we had about 3% of the passenger numbers of the whole of the UK but about 18% of the stops under these powers. As an air or sea passenger entering or leaving Northern Ireland, you were therefore six times as likely to be stopped than if travelling to or from the rest of the UK. Very strangely, none of the people stopped in Northern Ireland were detained for more than an hour whereas in the rest of the UK the figure was 9%. The PSNI has explained that the reason for this apparent lack of further action was that some of those stopped would be "wanted or of interest" to immigration or tax authorities and would be handed over under other legislation. CAJ is therefore concerned that these counter-terrorism powers are being used as a form of immigration control. The new powers apply in order to check whether people have been involved in "hostile activity." This new, broad concept is defined as doing a hostile act on behalf of, or in the interests of a foreign government. A hostile act is one that threatens national security or the economic well-being of the UK or is an act of serious crime. "National security" is notoriously undefined and "economic well-being" is such a vague concept that almost any act could "threaten" it. The powers can be used not just at the external borders of the UK but also in relation to domestic air travel and sea travel between Britain and Northern Ireland.

However, there is a special power, in Schedule 3 Paragraph (2), that only applies in the Border strip and Newry or Portadown train stations. This provides that anyone can be stopped, questioned, searched and detained, without any reasonable grounds or suspicion of any offence, simply in order to check if they are entering or leaving Northern Ireland. This is an extraordinary power which, if applied, could make for the hardest of hard borders – for people if not for goods.

This power is explained as "essentially a pre-cursor power" to establish whether the "entering or leaving the UK" condition is met in order to trigger the "hostile activity" power. However, the full range of stop and search powers are built into this "pre-cursor" element and there is no guarantee that the production of a passport or driving licence would be sufficient to satisfy an examining officer. Of course, people might argue that this power would never be routinely used on the border; the counter is that when powers exist they tend to be used. CAJ is already concerned that the Schedule 7 powers are being misused for immigration control – and probably on the basis of racial profiling – these new powers are dangerously vague and could also be misused. Will we see a kind of militarised zone along the Border, where roving patrols can stop and question any person, resident or traveller, without any kind of justification? We hope not, but in this piece of legislation such a scenario is expressly provided for. Why give such a power to state forces unless they are going to be used? Is this a preparation for a post-Brexit "fortress UK?" We don't know, but one thing is clear – we don't want or need this power and the legislation should not be passed.

Civil Liberties Diary - May/ June

1st May

The Supreme Court heard an appeal on behalf of the Belfast bakery which was found guilty of discrimination for declining to supply a cake with a gay marriage slogan. The Northern Ireland Equality Commission successfully assisted a customer in taking the case against Ashers Baking Company in Belfast.

2nd May

A coalition of women's organisations, children's charities and trade unions have called on Stormont to extend universal childcare to Northern Ireland. The Childcare for All initiative launched a new charter and campaign to introduce guaranteed free childcare and access to financial support. Northern Ireland is the only region in the UK where there is no requirement for the government to guarantee free childcare or provide support.

25th May

A High Court judge has ruled that the decision to approve a new £55 million office block beside an inner city housing district in Belfast was unlawful. Mr Justice Mc Closkey held that council planning officials failed to take relevant considerations in to account when they granted permission for the development of up to 14 storeys in the historic Market area of Belfast. Members of the Market community brought the legal challenge against Belfast City Council and mounted a campaign under the slogan "Sunshine Not Skyscrapers".

26th May

Sinn Fein leader Mary Lou McDonald has pledged that women in Northern Ireland will not be left marooned following the referendum in Ireland. McDonald said that new legislation should allow women from Northern Ireland to access abortion services in the Republic. McDonald stressed that abortion was a devolved issue. This comes as continued calls were made for Theresa May to intervene to liberalise abortion law in NI in the absence of a devolved government.

1st June

The PSNI has launched an investigation about pro-choice campaigners who took "abortion pills" during a rally in front of Laganside courts on 31st May. Officers attempted to remove one women who openly took a tablet in front of the high court building.

4th June

A cross party coalition of MPs is calling the government to repeal the more than 150 year old Person Act of 1861 which criminalises abortions.

8th June

The undercover Policing inquiry on 7th June has shown that the Special Demonstration Squad infiltrated political groups like the Northern Ireland Civil Rights Association and Sinn Fein. The activities of the SDS are the subject of the ongoing Inquiry.

13th June

The Irish government is to appeal against a European court decision that found that British soldiers did not torture the so-called "Hooded Men" during the Troubles. The Hooded Men were 14 Catholics interned - detained indefinitely without trial – in 1971 who said they were subjected to torture methods.

Compiled by Sinead Burns from various newspapers

Just News

Just News welcomes readers' news, views and comments.

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