

## Oral History Society Statement on the Boston College Belfast Project, May 2014

The legal action taken by the Police Service of Northern Ireland (PSNI) to seize oral histories held by Boston College serves as a warning not only to oral historians, but to all those engaged in collecting historical data about criminal activity or allegations of criminal offences. The case raises legal, ethical and moral issues for researchers and archivists.

We do not believe that there is a lack of legal clarity regarding the status of oral history confidentiality and recording agreements. The law is quite clear. The Oral History Society has consistently advised that we can continue to offer assurances to our interviewees about the closure and confidentiality of their interviews, or parts of their interviews, within archives and other places of deposit, **except** where they have revealed criminal acts.<sup>1</sup> Furthermore, whilst publicly-funded archives and other bodies holding archive materials are legally obliged to respond to requests under the Freedom of Information and Data Protection Acts, this does **not** mean that they have to provide access to closed and/or restricted and confidential interviews.

Nonetheless disclosure of confidential information to meet a legal requirement can be mandatory, and beyond the reasonable control of an archive. Such legal obligations may include (but are not limited to) court orders; or mandatory obligations of disclosure arising from statutory legislation. Oral historians and archivists should be clear about these limitations when working with interviewees. Where illegal activities are divulged and recorded as part of an oral history interview, it is not possible to guarantee that such data, if closed or restricted, will not be accessed in the case of a court order compelling the release of such material.

The Oral History Society has continued to invest effort in keeping our ethical and legal guidelines up to date (see <http://www.ohs.org.uk/ethics.php>), and remains convinced that oral historians must work to meet legal and ethical standards that protect the people we interview.

We also believe, however, that oral history can make an important contribution to our understanding of the past. Current sensitivities, whether personal or political, may change, as the situation relating to the Boston College Belfast Project shows. Priorities

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<sup>1</sup> See 'What should I do if the police want access to interviews in my collection?' in Frequently Asked Questions, *Is your oral history legal and ethical?: practical steps*, <http://www.ohs.org.uk/ethics.php> (last accessed 13 May 2014).

and policies may also change. In this case, state actions, such as the PSNI subpoenas, are potentially harmful to research which is based in the elicitation of the memories of participants in conflict and struggle. This is particularly so when that research is into areas that have not been spoken about publicly and where reprisal is a real fear amongst divided protagonists and victims. But it might also have the effect of discouraging individuals from speaking openly and honestly in a wide variety of contexts.

An overlooked and more reassuring aspect of the US court judgment was that only material specific to a named crime need be disclosed, thus partly dispelling fears that the police can go on 'fishing trips' in archives.<sup>2</sup>

PSNI made use of the subpoenas in the stated belief that the oral history materials might form the basis for criminal investigations leading to prosecutions. When archives are drawn into legal processes by the state or its agents historians are placed in a difficult position and this is particularly the case for oral historians who depend on participants having confidence in our practices. The state itself is of course not always neutral in its use of archived material. We also would note the continuing use of embargoes by civil servants and politicians in other circumstances that have served to avoid legal redress.

The Boston case highlights a key challenge for researchers operating in post-conflict situations in which peace settlements have inadequately addressed past crimes. There can be a lack of clarity for oral historians working in particular contexts. For example, in post-conflict situations in which a peace process has failed to address past culpability, by means of either amnesty or 'special', statute of limitations. Silencing the voices of the past, while undertaking partial and selective legal actions, does not bode well for the future. History, left unaddressed, to paraphrase James Joyce, may well result in a nightmare from which we will struggle to awake.

## **The Trustees of the Oral History Society**

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<sup>2</sup> In the Boston College Belfast Project case the initial judgment to release all the materials (as subpoenaed up to 2011) was overturned, and only relevant material specific to a named crime was required to be turned over. Sensationalist and inaccurate media reports, failed to note Judge Young's judgment which basically was that there was a 'paucity of information' in respect to the crime and that Boston College need only provide parts of two interviews from two interviewees. Judge Young also stated that the Court was mindful of the requirements of academic freedom.