

QUAKER CONCERN FOR THE ABOLITION OF TORTURE

Briefing 33

March 2012

The spooks' conversion of David Anderson QC

Independent terrorism reviewer falls for specious claims that the US will withdraw intelligence cooperation unless UK promises secret hearings. Richard Norton-Taylor - Guardian 27/03/12

The spooks have talked to David Anderson, the government-appointed "independent reviewer of terrorism legislation", after his earlier criticism of the green paper on "security and justice". That is not surprising. It is, after all, their job. And it is his job to listen.

Anderson has now presented a "supplementary memorandum" to parliament's joint committee on human rights (JCHR). He has already given evidence to the JCHR. But he made clear that he was then not in a position to judge how serious the concerns of MI5 and MI6 were - and by extension, those of ministers - which led the government to propose, in its green paper, that in future any intelligence-related information would be heard in secret in all future civil cases.

... After covering these issues for many years and the long-running Binyam Mohamed case from the start, I read (Anderson's) memo with growing concern. Most worrying are his observations about the "control principle", whereby the original owner of intelligence must decide whether or not the information can be disclosed, not those subsequently provided with it. Thus the CIA, and the CIA alone, decides whether intelligence it passed to MI5, MI6, or GCHQ, can be revealed.

The issue came to a head during the Binyam Mohamed case where the high court, and subsequently the appeal court, ruled that a short summary of information supplied by the CIA should indeed be disclosed. The information consisted of seven paragraphs summarising what the CIA told MI5 about the abuse meted out to Mohamed.

"We are in a world of second-best solutions", says Anderson. He adds: "But it does not seem to me that the level of injustice inherent in the use of a CMP (closed material procedure) in a case of this nature necessarily exceeds either the injustice to the claimant of a case being struck out, or the moral hazard and reputational damage to the intelligence agencies that is caused by settling a case which, had it been possible to adduce all the evidence, would have been fought" [my italics]...

We should not forget the words of the high court judges hearing the Binyam Mohamed case. "Of itself", they said, "the treatment to which Mr Mohamed was subjected could never properly be described in a democracy as 'a secret' or an 'intelligence secret' or a 'summary of classified intelligence'". What the seven paragraphs revealed was "admissions of what officials of the US did to BM during his detention in Pakistan".

The judges added: "It was impossible to believe that President Obama would take action against the United Kingdom" if the summary of CIA material was disclosed. Publication was "necessary to uphold the rule of law and democratic accountability", the judges continued. "In our view", they said, "as a court in the United Kingdom, a vital public interest requires, for reasons of accountability and the rule of law in the United Kingdom, that a summary of the most important evidence relating to the involvement of the British security services in wrongdoing be placed in the public domain in the UK."

... Moreover, it transpired that the British government and their lawyers were trying to suppress information that had already been released by the Obama administration, notably his decision to publish CIA memos on interrogation techniques. One document Miliband eventually agreed could be disclosed referred to a memo from Jay Bybee, former US assistant attorney general, to John Rizzo, acting CIA general counsel, which, the judges said, "made clear that the techniques described were those employed against Mr Zubaydah, alleged to be a high-ranking member of al-Qaida".

Another document which the British government insisted had to remain secret consisted of a "verbatim quote" from an official memo made public in the US seven months previously. That was in October 2009. The following February, the appeal court rowed in. Some security officials "appear to have dubious records when it comes to human rights and coercive techniques", noted the Master of the Rolls, Lord Neuberger. There was reason to "distrust" the advice and information of the security services when it came to Mohamed's mistreatment. "The security services have an interest in the suppression of such information", said the appeal court, referring to knowledge of torture and inhuman treatment.

The appeal court judges continued: "In principle, a real risk of serious damage to national security, of whatever degree, should not automatically trump a public interest in open justice when it concerned UK knowledge of unlawful interrogation techniques used by US officials"...

The judges went on: "Dealing with this appeal as a matter of practical reality rather than abstract legal theory, unless the control principle is to be treated as if it were absolute, it is hard to conceive of a clearer case for its disapplication than a judgment in which its application would partially conceal the full reasons why the court concluded that those for whom the executive in this country is ultimately responsible were involved in or facilitated wrongdoing in the context of the abhorrent practice of torture..."

"Such a case engages concepts of democratic accountability and, ultimately, the rule of law itself."

For a contrary but moderate view see Malcolm Rifkind in *The Times* on the same date

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Because of its importance this 'guide' is circulated as an additional Briefing UK investigations into torture and rendition – a guide

A series of investigations have sought to get to the bottom of claims that British officials were implicated in abuse of detainees *Ian Cobain - The Guardian, Monday 26 March 2012*

Operation Hinton

Scotland Yard's investigation into MI5's interrogation of Binyam Mohamed after the CIA told the agency he was being "continuously deprived of sleep", shackled and threatened. Details of what MI5 knew before the official identified as Witness B was sent to Pakistan to question Mohamed were made public on the orders of the appeal court after the last Labour government failed in lengthy attempts to keep them secret. Compensation was paid to Mohamed in an out-of-court settlement. The police investigation lasted two and a half years, during which time detectives at the Yard attempted to trace responsibility for Witness B's actions up the chain of command. Police and the Crown Prosecution Service concluded there was insufficient evidence to press charges.

Operation Iden

A parallel police investigation into the actions of MI6 officers who interrogated suspects at the US-run prison at Bagram, Afghanistan, in January 2002. It began after MI6 itself referred one of its officers to the attorney general, with David Miliband, then foreign secretary, saying the initiative was "unprompted by any accusation against MI6 or the individual concerned". Detectives did not take a statement from Shaker Aamer, who is thought to have been a witness to the incident under investigation, and who remains in Guantánamo. MI6 were always confident their officer would not be charged. It is thought police had difficulty identifying the alleged victim. In addition, US intelligence officers who were also present refused to give statements. There was insufficient evidence to press charges.

Operation Lydd

Scotland Yard announced in January 2012 that it was launching a criminal investigation into two secret rendition operations mounted by MI6 in 2004 in co-operation with Muammar Gaddafi's intelligence services. Two leading dissidents, Sami al-Saadi and Abdul Hakim Belhaj, were abducted and flown to Tripoli, where they spent six years in jail and were, they say, frequently tortured. Saadi's wife and four children – the youngest a girl aged six – were also rendered and imprisoned, while Belhaj's pregnant wife was abducted alongside him. The operations came to light by chance when an investigator from the NGO Human Rights Watch discovered a cache of secret documents in a Libyan office building abandoned during the revolution.

The Gibson inquiry

An inquiry announced by the prime minister in July 2010 to "look at whether Britain was implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11". The chair, Sir Peter Gibson, a former appeal court judge, said he did not wish to begin hearings until Operations Hinton and Iden were completed. After police announced that they were to investigate the Libyan renditions, the government abandoned the Gibson inquiry, but pledged that a judge-led inquiry would be held in due course. Human rights groups, who boycotted Gibson, say the new inquiry will be need to be less secretive and show greater independence of government if they are not to walk away again.

The al-Sweady inquiry

Similar to the Baha Mousa inquiry that came to a close in 2011, this inquiry is to start hearing evidence later this year into allegations that a number of Iraqi civilians were unlawfully killed at a British army base in May 2004, and that other prisoners were mistreated at another base between May and September that year. The inquiry is different from the Baha Mousa case in that the Ministry of Defence firmly denies the allegations. The claims arise out of the aftermath of a firefight between British troops and Shia insurgents near al-Majar, which became known as the Battle of Danny Boy. The inquiry was established after a judicial review on behalf of relatives of Hamid al-Sweady, who died in the incident, resulted in criticism of the Royal Military Police and an admission from government lawyers they could not assure the court that all relevant information had been disclosed.

The Ihat investigation

The Iraq Historic Allegations Team (Ihat) is a group of about 80 military police officers and retired civilian detectives examining allegations that British troops were responsible for widespread abuse of civilians taken prisoner in south-east Iraq between 2003 and 2008. It is also re-examining the investigations into the deaths of up to nine people in UK military custody. Investigators have received complaints from more than 160 former prisoners and have recovered thousands of video recordings of interrogations conducted by the Intelligence Corps. The court of appeal ruled in November 2011 that Ihat was insufficiently independent of the Ministry of Defence, with the result that the MoD offered to replace army police with Royal Navy investigators.

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