

**“War is easy to declare, peace is an elusive
prize”**

Put in mind of his own father and
moved to tears
Achilles took him by the hand and
pushed the old king
Gently away, but Priam curled up at
his feet and
wept with him until their sadness
filled the building
Taking Hector's corpse into his own
hands Achilles
made sure it was washed and for the
old king's sake
Laid out in uniform, ready for Priam
to carry
Wrapped like a present home to Troy
at daybreak
When they had eaten together, it
pleased them both
To stare at each other's beauty as
lovers might
Achilles built like a god, Priam
good looking still
And full of conversation, who earlier
had sighed:
I get down on my knees and do what must be done
And kiss Achilles' hand, the killer of
my son. ¹

Introduction

If only it was that straightforward. This poem had a particular resonance for me as it came to my attention at a time when I was beginning to realise that in order to deliver 21st century policing, we require a radical solution to the past. I made this point in an interview after 100 days in office, and have continued to raise it when appropriate. It is disappointing that there has at times appeared to be little interest in taking the debate forward in an organised way. However, it is hardly surprising since it is a topic where potential controversy is matched by obvious complexity. Today's conference is both timely and welcome.

¹ Michael Longley

(Story of Priam asking for the body of his son Hector, killed by Achilles in revenge for Hector slaying his best friend Patroclus (Iliad book 24))

Why look back?

I know that I am not the only person to have been struck quite forcibly by the need to address more fundamentally and comprehensively one of the starker legacies of the Troubles, that is, the unanswered questions around over 2,000 deaths. These include over 1,800 unsolved murders and some 300 security-related deaths. Northern Ireland's past has also left us with individuals with horrific injuries, has ruined lives, damaged families and caused emotional and psychological trauma for many.

Before we address the means or method of exploring the past, we need to meet the basic challenge of whether we should in fact remember at all or instead put the past, its pain, conflict and potential for controversy to one side and, as it were, just forget.

The reality is that for some this is not possible. They live with the graves and pain of loss of loved ones everyday. They have unanswered questions and unresolved hurt that will not let them cast their memories to one side and move on. These are people who are in search of different outcomes – some not even sure of what it is that will make closure possible, if indeed at all attainable.

I have met fathers and mothers, brothers and sisters, sons and daughters - people from all sides who struggle with simple questions about the deaths of their relatives. Often they just ask how or why, believing that these details will bring acceptance. I believe them when they say they just want to know what happened. Many have accepted that prosecutions may never be possible. They are simply looking for someone to tell them the story of how their relative died.

From a policing perspective, I have some compelling reasons for insisting that we deal with the past in order to facilitate movement forward.

In simple terms, the past has the potential to destroy all the effort and real change policing has delivered in the post-Patten world. Firstly, in practical terms the sheer volume of unsolved crime would incrementally lead to the increased deployment of current resources to chase old cases, at the direct expense of day to day demands. As I have said previously we are funded to police the present, not the past.

In the broader context, revisiting old cases in an unstructured way over a prolonged time period would mean regularly surfacing old accusations and old suspicions and will detract from progress and reforms made in policing and investigation methods in recent years. I am opposed to a piecemeal approach to history; we need a comprehensive strategy.

A failure to engage in this difficult territory leaves the legal route as the only current way forward. As a result a grievance process has emerged that flows from an initial demand, (by families, lawyers, interest groups, or special rapporteurs), through organisational resistance (as the service checks out the legal position), resort to law (ranging from judicial review to Strasbourg), media campaigns and use of champions, (National and International) towards some low level promise to review old papers, as a minimum final response, through formal re-investigations (independent or in-force), to government involvement and full blown public enquiries in a small number of cases. This approach is unsatisfactory. It lends itself to a survival of the fittest

phenomenon since it delivers results for those high profile cases which stay the course or attract the most media or political attention.

Demands for public enquiries or re-investigations become the order of the day, with a focus on State collusion and conspiracy. This one-dimensional approach fails to acknowledge the sheer scale of the miserable history, and allows a hierarchy of death to be created where some victims are deemed more important than others. In statistical terms, it is a matter of fact that the majority of re-investigations and enquiries currently underway are focussed on victims of alleged state involvement in the murder² in a context where the majority of deaths and injuries resulted from the actions of paramilitary organisations. The impact on other victims is substantial. They feel disenfranchised, and do not see the State pursuing their loved ones' killers with matching vigour.

The pressure to deal with history has also increased as the current police service has been subject to ever more oversight. I currently command a highly accountable service with at least 18 different organisations having some right to look into my world. I have no difficulty with the principle of oversight, as it is essential that I am held to account for my decisions, and the actions of my officers. However, many groups and individuals continue to dedicate themselves to uncovering the past, and where necessary changing history, rather than focussing on holding the current service to account.

The Ombudsman has significant powers to investigate complaints from the past with allied powers to seize documents³ and this has provided an avenue to individuals who seek greater explanation about events from history. It is important however when such enquiries are completed and reported on that the context in which the original investigation took place is not ignored. A failure to acknowledge or recognise a changed police environment can contribute to a crisis of confidence in policing, both internally and externally.

So why am I interested in this? The answer is quite simple, if we are to deliver effective policing to the communities of Northern Ireland, and continue to build on some of the outstanding work currently being achieved, I need to focus on the present. My task is to deliver a Service that is fit for purpose and structured in a way that it focuses on a community policing style, underpinned by an intelligence led approach to long term problem solving that enables it to perform against targets and, through the National Intelligence Model protect communities from crime⁴.

It is fully accepted that history cannot be swept under the carpet and suggestions about "drawing a line" can be deeply offensive to some. However, action is needed if

² Stevens 3 investigation now covers the murder of Finucane and an investigation into "Steak Knife" an informant who is alleged to have been committing murders whilst employed by the Security Services. Work is progressing on the establishment of the four public enquiries recommended by Cory.

³ Section 66 Police (Northern Ireland) Act 2000 states that the Chief Constable and the board shall supply the Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of his functions. Relevance is a matter for PONI, thus highly sensitive documents fall under this remit. There is a potential clash with other legislation, as the Regulation of Investigatory Powers Act requires

⁴ Section 32 Police (Northern Ireland) Act 2000

policing is not to be dragged backwards. However, we can only deliver a partial solution to the challenge.

Historical Enquiries Team – the Police contribution to dealing with the past

Given the particular stake we as police had in devising a way of dealing with the past in a more organised and comprehensive way, we set about formulating an initiative where we as police could offer some solution or answers.

I and senior colleagues worked closely with the Northern Ireland Office to seek to formalise and fund a special unit to review old cases. It is a massive challenge and it is unique in policing. No one has ever tried to work through such a complex group of unsolved crimes spanning over 30 years. I believe that with government support and funding, proper structures and the right personnel, we can meet that challenge, or at the very least make a determined and genuine effort to bring closure to as many families as possible.

Before going on to outline how it is proposed the unit will work, it is important to emphasise that this work must not be seen as some alternative to a wider truth commission. Neither should it be dismissed as an effort by police to avoid independent examination of its own activities or as a means of avoiding difficult questions for the security forces. Rather it should be viewed as a significant contribution to a broader process to address the past.

The work will not be without its challenges. I worked for nearly three years on the Stevens Inquiry investigating the murder of Patrick Finucane. This gives me some insight into how hard it is to obtain evidence to convict suspects in old cases. While we were, in policing terms, successful in convicting the killer of Mr Finucane, it was achieved with substantial resources that simply could not be applied to the huge number of outstanding cases. And of course the experience raises the issue of the definition of success and whether it is defined by judicial outcomes (the conviction of Barrett) or the satisfaction of the victim's family (the Finucane family still seek answers).

To my knowledge, this scale of historic case review has never before been tried. Costing some £32m over four to six years, it is not an enterprise for the faint-hearted and it carries substantial risks. However, it is the right thing to do. We are determined to give it our best firstly, because the families of victims deserve a greater level of closure than they currently have and, secondly, because from an investigative perspective many opportunities now exist that would not have been available to the original SIOs.

So where does one begin in what is very much new territory, and where do the main challenges lie?

How will it work?

The Historical Enquiries Unit (HET) will be headed up by two officers who worked with me on the Stevens 3 inquiry, David Cox and Philip James, who will operate under the direct supervision of ACC Sam Kinkaid who is in charge of major crime investigation in NI. It will operate in accordance with legislation and within the criminal justice system. It will be a police based enterprise thus reviews and

investigations will be conducted to a criminal burden of proof level and appropriate cases passed to Director of Public Prosecutions.⁵

The unit will have an assessment, review, evidence gathering and investigative capability. It is likely to be structured around two investigative units, a 'Special Case' section made up of seconded officers from other forces and a 'Review and Investigation team'. The 'Special Cases' section will undertake particular enquiries where allegations of collusion or involvement of the security forces are intrinsic elements of enquiries.

There will be a twin track approach to examining cases, with one underpinning the other. The first track will be an assessment in chronological order, commencing with those from 1968. The second will supplement this and include other cases taken on specific grounds, including:

- Cases which were already re-opened before HET was established;
- Cases where there are overriding humanitarian considerations (e.g. an elderly surviving relative in poor health);
- A case is shown by evidence or analysis to be part of a series or linked to one already re-opened, and where investigative good practice requires concurrent examination;
- A case where an overriding Public Interest element is established.

The unit will examine all deaths in Northern Ireland that were related to the security situation during the period 1968 to 1998.

Over 2,000 deaths will be re-examined. As cases progress through the process, individual Family Liaison Officers (FLO) will be appointed to each family who requests further information about the death of a loved one.

The initial contact point will be a 'Help desk' facility, based at Sprucefield, which will manage general enquiries and act as a point of contact and information. As cases progress through the process, individual family liaison officers will be appointed to each family who will maintain close contact, keeping them updated with developments.

The Challenges

I am not sure how many colleagues from other police forces could honestly claim that they could locate papers on every 30-year old murder file together with exhibits. Nonetheless, stage one, which is already underway, is to search every building and office to see what we can recover.

The issue of staffing is also critical, and we have advertised across the islands of Ireland and the UK for serving and retired colleagues to assist us. The difficult history

⁵ The role of C8 is distinct from the reinvestigation of more recent, post Good Friday Agreement cases which fall under a separate department of Crime Operations Group.

here dictates that we will need a substantial number of officers who are from outside Northern Ireland.

Family liaison will present particular challenges and any chance of success will require a bespoke approach in each case. Individual needs will be diverse. Many families will be content for the Senior investigating officer (SIO) and the Family liaison officer, (FLO) to deliver the findings, while for others, confidence in the police as an institution will be so low that no level of independent support will assist. Other families will fall at points between these approaches and meeting those varied attitudes effectively will require the advice and involvement of churches, community leaders, family support groups, and politicians. In short, there is no ready-made single solution here.

Current best practice in this area was not designed to manage the expectations of some 2,000 families spanning a 30-year period. We are currently developing a strategy to deal with this area, because if we fail to deliver in this crucial aspect, the operation itself will fail. I have spent many hours over the past three years listening to families' stories whether directly, through interest groups or through lawyers. A number of themes emerge but the starkest is the desire to be told the story of the original investigation - what was done, what was not done and why. People also have some personal but deeply important questions about the circumstances of their loved one's death. It was through this listening that I began to understand just how little many families knew and just how important basic knowledge could be in terms of closure. This quest for knowledge crosses all divisions in Northern Ireland and led me to determine that our operating principle must be one of "maximum disclosure".

We are working with experts to develop our thinking in this area and we are examining the potential of a critical incident exercise developed specifically for this purpose. I am convinced that proper investment in the planning and implementation of our interface with families will be time well spent, and may well determine whether we are successful in this venture.

While some cases lend themselves to further prosecution through the judicial system – with forensic science providing the greatest chance of judicial closure – I don't believe it will be possible in many cases. Witnesses and suspects will have died and memories will have faded. The hurt however will not have eased and in most cases our contribution will be to explore opportunities to outline to families the circumstances of their case and its investigation. We must recognise that some families will not want to see us as they have put the past behind them and I am acutely aware that we must be careful not to increase the pain for some. In my view, if families do not want a review, we should respect that request regardless of whether there is a potential for success. However, a case will be examined where it forms part of a linked series of deaths.

There are of course some other stark consequences and challenges which flow from this initiative not least for those who engaged in violent activity during the Troubles and who now "moved on" as it were. This is a reality across the sectarian divide although the impact may differ in quality and form. Many former Republican terrorists are now part of the new order and it follows that the impact in some cases is potentially substantial. From a loyalist perspective the main challenges will present

themselves around allegations of collusion between the State and those responsible for violent deaths. Having spent some two and a half years working to Lord Stevens in this difficult territory, I am acutely aware that the implications here are equally challenging.

I anticipate that the Historical Enquiries Team will be fully up and running by September this year. However, as previously mentioned, we are only part of the complex equation that will sum to a comprehensive solution to the past. It is frustrating that although there has been some smoke around a wider debate on the past, there has been little action.

The latest Government position is that the time is not right. Speaking in the House of Commons on 1 March 2005, the Secretary of State Paul Murphy said:

Last Spring, the Prime Minister said that he hoped that the Government could find a way to deal with Northern Ireland's past. Since then I have been reflecting on how we might begin this process. I have visited South Africa, to see first hand how a very different society has sought to address its own particular legacy. I have talked privately to experts and opinion formers to hear their views. And in parallel with that process the Minister for Victims, Angela Smith, has been engaged in a detailed consultation with groups representing victims and survivors of the Troubles on the future shape of services to meet their needs.... I have drawn a number of lessons from these experiences. These considerations have led me to conclude that any process for dealing with the past in Northern Ireland cannot be designed in isolation, or imposed by Government. There will need to be broadly-based consultation that allows individuals and groups across the community to put their views on what form any process might take. And that consultation process itself will need broad cross-community support if the ideas it generates are to be constructively received. In the light of recent events, I am clear that now is not the right moment to launch such a broadly-based consultation process. And I think that we need to be realistic about what can be achieved in advance of a political settlement.

If there is one thing I have learnt since my appointment it is that there is no such thing as a good timing. This conference will hopefully act as a catalyst to put third ways of dealing with the past back on the agenda.

There is no model that can be taken off the shelf, but there is much experience in the international community which could assist to start the ball rolling. The solution needs to include some radical thinking around issues such as amnesties and statutes of limitations as well as creating opportunities for people to tell their stories. Truth and reconciliation is clearly a step too far, but some form of truth commission may be

possible. Compensation whilst rehearsed before and applied in some legal and non legal ways may still be a legitimate part of the equation.

Substantial international pressure from statesmen and leaders may be required to get some players into line. It seems to me that, in the new world of terrorism and conflict, Northern Ireland is rapidly becoming less important and could well be relegated from the premier league. Currently we punch way above our weight internationally and it is increasingly obvious that we risk becoming boring to the big players who see our inability to move forward as a reason to disengage.

In order to ensure that any solution is comprehensive and final and does not lend itself to unpicking in the future, it requires legislative underpinning. This has to form the entry point. There must also be a recognition that any legal solution will have to apply across the board however unpalatable that may seem to some. The key issue will be the debate around “state killing” vs. the rest. However, if we are to move on, any process will have to apply to all. It may need to be accompanied by some form of state apology with similar unconditional admissions by paramilitary groups. It may also require an element of technical conviction as proposed for “on the runs”. The issue of compatibility with Human Rights legislation will also need to be examined.

Running alongside the legal process must be some opportunity for those affected by the Troubles to tell their story. This may be a truth commission but one designed to deal with the specific issues in Northern Ireland. International experiences may be informative. However, I am not convinced that there is a model that could simply be adopted from elsewhere. Nonetheless some strands of the South African model could form a starting point. The notion of “layers of truth”⁶ is an attractive one, allowing space for the narrative. I personally believe story telling has an important part to play. It is a belief based on many conversations I have had over the past three years.

How one starts such a process is a matter of debate. There has to be an international dimension to this challenge. Northern Ireland has to realise that it runs the risk of getting left behind if it continues to avoid dealing with the past. As Archbishop Desmond Tutu put it when he visited in November 2001, “what is your problem.”⁷ His South African story of the chicken scratching around in the sand for pieces of corn rather than behaving like an eagle looking down at the whole picture providing a clear illustration of how he saw the issue. I see the need for a powerful international delegation of great distinction to send a very clear message and act as a catalyst for change that has to be listened to. There is no obvious person to lead this, and sadly Mandela is too old!

To conclude, I would argue that this issue can no longer be ignored. Demands from the various players in Northern Ireland to deal with history through the pursuit of individual cases is short sighted, divisive and doomed to fail. It will lead to increasing

⁶ The South African Model dealt with the following four strands; Factual, personal or narrative, social or dialogue and healing and restorative.

⁷ Archbishop Tutu was speaking at an event organised by the CAJ and Global Citizens Circle. He observed that coming from a place of such “ghastly awfulness, an example of how not to deal with problems.... between sections of society” he was in a position to say that “nowhere in the world, could anyone ever again say that their problem was intractable, could not be resolved, or was a totally hopeless cause” ISBN 1 873285 29 9

frustration and has the potential to damage policing. It is entirely foreseeable that the demands to take on more and more old cases and the growing interest of the Ombudsman's office will not abate. In addition, as we get our own house in order and restructure to deliver an effective response to major crime, other matters from history will emerge.

The first stage is, in my view, the establishment of a well-funded, high level and cross-cutting conference or committee to try and scope the issues. The Chairman and Deputy Chairman of the Policing Board also recently supported a commission as a starting point.⁸ If we achieve this, we will have started on a road that recognises the sheer impossibility of securing closure through judicial means. I remain convinced that there is a need for an international dimension to this, as well as substantial commitment from the Governments and the Churches.

The 2002 Healing Through Remembering Project⁹ recognised that there was no single treatment for the healing process in Northern Ireland. It recommended a number of structures, ranging from storytelling and acknowledgement, to networks around commemoration and remembering. This report does not seem to have created the critical mass of opinion to generate activity. Unless we move from debate to action, the potential damage to the future of Northern Ireland, and in particular policing could be overwhelming.

⁸ Seeking to hold the past in a healthy balance with the future. A paper by Desmond Rea and Denis Bradley. Feb 04.

⁹ Healing Through Remembering Report 2002. e-mail info@healingthroughremembering.org; website; www.healingthroughremembering.org