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Legal battle ensnares Boston College's Irish history project

by Joshua J. McElwee

As leaders across the world were hailing the end of three decades of brutally violent conflict in Northern Ireland in 2000, Jesuit-run Boston College launched an oral history project aimed at learning lessons from those who had participated in the most volatile moments in the struggle.

Twelve years later, that project has become the center of a legal showdown that, experts and government officials say, potentially threatens to place its aims on their head, possibly re-igniting tensions among Northern Ireland's pro-British and pro-Republican parties.

The showdown revolves around two sets of subpoenas issued by the Police Service of Northern Ireland (PSNI) to Boston College for the testimonies. The PSNI alleges the histories, gathered for a 2001-2006 initiative called the Belfast Project, could provide information essential to the pursuit of prosecutions of unsolved crimes.

The PSNI's request for the testimonies, first made to U.S. officials in May 2011, touched off a continuing saga that has garnered wide attention on two continents and has raised questions about the stability of the Northern Irish peace process.

Those questions might come to an apex this week. The U.S. Supreme Court is expected to decide whether to take up the case as soon as Thursday. Justice Stephen Breyer granted a temporary stay delaying the release of some of the documents Oct. 1, pending that decision.

Speaking to *NCR*, Ed Moloney, a noted Irish journalist who headed the project for Boston College, said the matters at hand are stark and "very, very dangerous."

The PSNI says it is investigating the 1972 abduction and killing of Jean McConville, a mother of 10 who was abducted by the Provisional Irish Republican Army (IRA), the pro-Irish independence group known for acts of terrorism across the British Isles.

The Northern Irish police's case for the subpoenas stems from an interview the project had with Dolours Price, a former IRA member known for her involvement in a 1973 car bombing in central London at the Old Bailey, the Central Criminal Court of England and Wales.

Following interviews with Price in several Irish papers in 2010 and 2011, in which she referred to the Boston College project, officials with the PSNI asked U.S. officials to issue subpoenas for the testimony of Price and others interviewed. The PSNI made the request under the mutual legal assistance treaty between the United States and the United Kingdom, an agreement that each will assist the other in criminal prosecutions.

Over the past year, several reports in prominent U.K. papers and media outlets have speculated that Price's testimony could link a key government leader in Northern Ireland to McConville's murder: Gerry Adams, head of the republican Sinn Féin party.

While Adams has maintained that he was never an IRA member, the reports allege that Price's testimony could reveal him as a key leader of the group in the 1970s, and perhaps even place him as responsible for ordering attacks like the one on McConville.

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Pointing to the impact that release of the testimonies could have on Adams' reputation should they reveal his involvement in McConville's death or in planning IRA attacks in the 1970s, Moloney said, "The damage that it could do to the peace process is really quite considerable."

"There is no way, I think, that if the police moved to charge Adams in the relation to this killing that the power-sharing government in Northern Ireland could survive," said Moloney, who has covered the conflict for some three decades, including in stints as the Northern Ireland editor for *The Irish Times* and the *Sunday Tribune* of Dublin. "And the power-sharing government is the peace process. So it's a very, very dangerous, very foolish move by the police."

While another noted Irish researcher agreed with some of Moloney's assessment of the impact of the case, she disagreed that it could tear apart the Northern Irish government.

Although there are "all sorts of difficulties" with the power-sharing structure, said Marie Breen-Smyth, the system of working together has "become a habit and ? a custom and practice."

"We know that political systems have some sort of capacity to resist change," said Breen-Smyth, who has written several books on the Northern Irish conflict and now serves as the chair in international politics at the University of Surrey in England. "I'm not convinced, personally, that this would necessary bring down the government."

Both Moloney and Boston College have filed appeals to prevent release of the testimonies, which they say were given under strict agreement they would be kept confidential until the interviewees' deaths.

The two, however, have broken association with each other and are fighting the subpoenas separately. In

interviews, Moloney and Boston College's director of news and public affairs, Jack Dunn, each criticized the others' response to the requests.

Moloney alleged that the college had acted inappropriately by handing over copies of the testimonies for a confidential review by U.S. District Court Judge William Young in December 2011 after a court order.

Dunn said he would not respond to Moloney's allegations and said the contract with the interviewees only guaranteed confidentiality "to the extent that American law allows."

Following denial of a motion to quash one set of the subpoenas in U.S. District Court last fall, Boston College appealed the matter Sept. 7 to the U.S. Court of Appeals for the First Circuit. That appeal is still pending.

Moloney and one of the project's interviewers, former IRA member Anthony McIntyre, also filed a request to quash the other set of subpoenas in Belfast at the High Court of Justice, Northern Ireland's second-highest court. They lost that request Oct. 2, but have pledged to appeal there.

Among those in the United States who have publicly opposed the subpoenas are both of Massachusetts' senators, Democrat John Kerry and Republican Scott Brown, as well as Democratic Sen. Bob Menendez of New Jersey and Sen. Chuck Schumer of New York, the third-ranking Democrat in the Senate.

Each of the senators has written letters to Secretary of State Hillary Clinton, asking her to intervene in the case. Schumer and Brown have also made similar requests to Attorney General Eric Holder.

In an op-ed in the *Boston Herald* in April, Kerry wrote that fulfillment of the subpoenas could "create an extremely dangerous situation" if information in the testimonies "were used to upend" the peace process.

On the other side of the Atlantic, the subpoenas have also generated criticism. A representative of the United Kingdom's 38,000-member National Union of Journalists said the group "strongly supports" Moloney's fight against the subpoenas. Seamus Dooley, the union's Irish secretary, told *NCR* in an email that the case "has profound implications for academic and journalistic research."

"It is vital that commitments made in interviews are honored and that confidentiality of sources is respected," he said. "The long-term consequences may be the undermining of research and that would be a blow to academic freedom."

Beyond the legal contretemps over what will be released from the testimonies, Moloney said the years-long saga has also revealed flaws in the continuing Northern Irish peace process.

"To me this is a symptom that the peace process itself is very shallow," he said. "Because if the peace process had got deeper roots and was more widely accepted, then there would have been agreement on a way to deal with the past. But instead you have the police being allowed to delve back into events that took place way back in the 1970s, events which were supposed to have been put behind us."

"They're digging back into these events," Moloney said. "And they're scratching away at scars and the scars are opening and bleeding."

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A longer version of this report will appear in NCR's Colleges and Universities special section, which will be published in our Nov. 9-22 print issue.

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