Chapter 14 of "Spies, Lies and Whistleblowers"

The Israeli Embassy bombing and the Gagging Orders

In October 1997, David and the MoS made their first submission under the injunction. The then Home Secretary, Jack Straw, was rather oblique in his response. However, it still opened up a whole can of worms, which may yet rebound on ministers, judges and MI5.

Background

When you step into any issue relating to the Middle East conflict, you will inevitably be accused of taking sides, of becoming a pawn in a political game. Some Jewish people have, for example, accused David of making his disclosures with regard to the Israeli Embassy bombing out of sympathy for Palestinian terrorists. So, first, let me state that David and I support the state of Israel (within 1967 borders) as the only true democracy in the Middle East. We have enormous respect for the Jewish people and their values, while condemning the Israeli government's continued flouting of UN resolutions mandating them to withdraw from the Occupied Territories.

Where innocent Israelis are victims of terrorism or their security is threatened, we have spoken out. This is why we felt that David should speak out about MI5's failure to prevent the Embassy bombing in July 1994. We believed that MI5 was incapable of protecting the Israeli Embassy — a high profile target at the best of times — from terrorist operations in the same way that the service was incapable of protecting the British people. This is why David spoke out about the MI6 funding of Al Qaeda in Libya. If that country had become the first vehemently anti-Western Islamic extremist state, then only Egypt would have stood between Al Qaeda and Israel.

Directly because of David's allegations about MI5's bungling in the run up to the Israeli embassy bombing, the case of the two Palestinians convicted of conspiracy to carry out the attack, Samar Alami and Jawed Botmeh, was referred to the Court of Appeal and later the House of Lords. MI5 — and a number of other organisations — failed to disclose to the trial judge a document vital to their defence, so vital that any jury member who had seen it would have been obliged to acquit the two. The trial judge never reached the stage of considering whether these documents would qualify for a Public Interest Immunity certificate or "gagging orders"1. Alami and Botmeh were therefore convicted in a wholly unfair trial.

At the time, David believed this was a cock-up on the part of MI5:

"I don't believe MI5 deliberately hid the document away to pervert the course of justice or cover up, for example, Mossad's unofficial activities in Britain, as some have suggested," he wrote in Punch magazine, ". […] I do believe, however, that it was an honest mistake on the part of MI5 and others. "Mistakes happen in the services just as they do anywhere else. The difference is the reaction to them. Where other organisations deal with problems, MI5 routinely uses secrecy to cover up its cock-ups. […] I cannot be so sure that Mossad did not frame the two, as there is evidence to indicate that they did."

Samar Alami and Jawed Botmeh have remained behind bars for ten years because they were denied access to not one but two pieces of evidence, which could have proved their innocence. At the same

time, senior British judges in the Court of Appeal and the House of Lords failed to quash the conviction in the light of the new and compelling evidence.

Summary

Just after midday on 26 July 1994, a bomb went off in an Audi car, outside the Israeli Embassy in London. That night, another bomb went off outside Balfour House, Finchley, the home to a number of Jewish groups and a deeply symbolic target since the Balfour Declaration in 1927 had led to the creation of the state of Israel twenty years later. In all, nineteen people were injured but there were no fatalities. Shortly after, a previously unknown group calling itself the Palestinian Resistance Jaffa Group claimed responsibility for the attack.

In January 1995, police arrested Botmeh and Alami along with two other Palestinians, Nadia Zekra and Mahmoud Abu-Wardeh. Forensic work linked Botmeh to one of the cars involved in the incident, but only because he had helped an individual calling himself Reda Moghrabi to buy it. Despite this, Botmeh and Zekra were then charged with conspiracy to cause explosions and remanded in custody until the trial. Alami and Abu-Wardeh were released without charge.

Two months later, Alami was again arrested but this time she was charged with conspiracy to cause explosions, although she and Zekra were later released on bail. A month after she was released, police found low-density explosives (not linked to the Embassy bomb) in a locker Alami was renting from a branch of the Nationwide in west London. In June 1995, the Anti-Terrorist Squad arrested Alami again and remanded her in custody. Later that summer, Abu-Wardeh was charged with conspiracy to cause explosions and was remanded in custody until the trial. When the trial began in October 1996, the judge immediately acquitted Zekra due to lack of evidence.

In December 1996, the jury acquitted Abu-Wardeh but Alami and Botmeh were found guilty of conspiracy to cause explosions and sentenced to 20 years each in prison.

How David heard of the failure to prevent the bombing

When David joined G Branch in October 1994, the fourth floor of Thames House was buzzing with a strange tale of how vital intelligence had been lost in the run up to the attack on the Israeli Embassy in July 1994. He did not see the contents of the actual report but became aware that there was a Branch enquiry into the matter and heard accounts of what had happened from many different people in the section. They were all saying the same thing: in the weeks2 before the incident, G9B/4 Jane Richards3, an officer in the counter-Iranian section, had received a warning of an attack on the Israeli Embassy in London. It was not an anonymous tip off, the kind of tittle-tattle that routinely drifts across spooks and hacks desks and is worthless in investigative terms. It was a report from a reliable and well-placed secret source (presumably reporting on some aspect of the Iranian target, as G9B counters threats from the Iranian state and Iranian opposition groups).

Richards did not react to the report even though it came from a reliable source and the Israeli Embassy was assessed to be a prominent potential target for Palestinian terrorist groups and their fellow travellers. There are reasons for this. Most obviously, she may have been complacent. After all, at the time, there hadn’t been an Arab terrorist attack in the UK for many years. She may have thought she had longer to react. But the point is, she didn’t.

The issue of the missing warning was raised when G6, the agent running section, failed to receive its feedback form. For each source report, there are three copies. One remains with the originating section, G6. Two further copies one white, one blue go to the desk officer, who checks the names of those who appear against Service records. The officer then assesses, grades and comments on the new intelligence. The desk officer's white copy is filed on an investigative and/or personal file. The blue form is then returned to the agent running section to provide feedback to the agent's handler. Once there, it is filed with other reports produced by the same agent. If the blue copy is not returned to the agent running section within the month, it is chased it up.

In this case, G6 did not receive its blue copy, so in line with routine G6 approached Jane Richards to establish its whereabouts. She claimed to have passed it on but enquiries established that the Service's document audit system, STAR, had no record of the report being handed on to another officer. G9B officers searched their section room only to find the missing report in a security cupboard belonging to G9B/12 Elizabeth Botolph. In the enquiry into the matter, Botolph denied putting it there. David explains:

"I do not claim to know exactly what happened but we can speculate. Panicked by the prospect of a career-threatening blackmark for failing to warn others of the imminent attack, Richards hid the report in G9B/12's security cupboard. This was not difficult. Security cupboards generally remained open during the day and few officers followed the rules on locking them in short absences. Rather than draw attention to the report and her own failure to react, Richards I believe hoped the report would be forgotten in the attendant chaos which accompanies any new post-incident investigative work."

If the report had come in any other form, there would have been no reason for it to be traced. It could have been easily forgotten. Only the Service's procedures for handling source reports caught Richards out.

Ministers abuse first use of submission under injunction

In accordance with the temporary injunction, in October 1997 the MoS submitted to the Home Office the draft of an article written by Nick Fielding4 based on David's account. Later that month, the government wrote to the editor of the MoS to allow him to publish the article. In that letter, the Home Secretary did not deny the details of David's disclosure, but did state:

"Having discussed with the Security Service the allegations in the draft article I can say that it is not the case that such information as the Security Service had in their [sic] possession would have enabled it to prevent the Israeli Embassy bombing from happening. I can see, however, how Mr Shayler as a junior officer not involved in that area of work at the time, could have gained this mistaken impression. You should be aware that if I am asked about the article, that is how I shall respond"5

A number of issues arise from this. It is clear that David's disclosures have not been independently investigated. Instead, the Home Secretary 'discussed' the matter with MI5, an interested party in David's dispute with the authorities. Also, it is obvious that if the intelligence had not been mislaid, it could have been acted upon in some way:

- Security around the embassy could have been increased.

- The Israelis could have been tipped off to be more vigilant.

- MI5 could have made further enquiries of the source and investigated the group named in the report and its members.

When put in a corner like this where there is no independent scrutiny, MI5 is incapable of admitting its mistakes. In this case, it has no other option than to present the information in the best light possible in discussions with government. If that means being 'economical with the truth' at the expense of the public interest, justice, the rule of law, and a whistleblower's reputation, then inevitably MI5 will react in this way.

I maintain that David did not take his original disclosures to the government for fear that exactly this would happen. In fact Straw — himself the subject of an MI5 file — should have been acting as an impartial referee between David and MI5. Instead, he wrote:

'such information as the Security Service had in their [sic] possession'

instead of

'The Security Service did have information in its possession warning of an attack on the Israeli Embassy'.

In fact, Straw did not deny the fact that intelligence existed — or indeed that it had been mislaid — merely the interpretation or assessment of that intelligence. As we have seen in the now-infamous September dossier in the run-up to the Iraq war, the authorities can cherry-pick intelligence to support any assessment they want. In that instance, they sexed it up by omission. In David's submission, they sexed it down, again by omission.

Straw also denied an allegation that David had not even made. At no point did he say that the warning could definitely have prevented the bombing. In fact, until the actual perpetrator of the attack is detected — Alami and Botmeh were convicted only of conspiracy and have alibis for the day of the attack — the government is no position to come to any definitive conclusion regarding the relationship between the document in question and the attack.

Interestingly, the press briefings seem to have gone further than what Straw was prepared to write in his letter. It would seem inconceivable that both the Times and Telegraph journalists misheard the Home Office briefing. Straw's letter to the MoS certainly did not say that David's claim was untrue, yet The Times and The Telegraph had clearly been briefed that it did:

"Further accusations of MI5 'bungling' from the former intelligence desk officer David Shayler were published yesterday after the Home Secretary decided that they were untrue and therefore could not damage national security."6

"Jack Straw, the Home Secretary, allowed a newspaper to report that MI5 was warned about a bomb attack on the Israeli embassy in London because intelligence chiefs assured him that the claim was not true."7

Cock-up and cover-up

Faced with public knowledge that a warning of an attack on the Israeli Embassy had not been acted upon the cock-up MI5 and the authorities tried to discredit David by briefing heavily against him off-the-record the cover-up. But the authorities cocked it up again. In their desire to discredit David rather than listen to him, they had unwittingly admitted they had evidence relevant to any jury at trial: "I can see, however, how Mr Shayler as a junior officer not involved in that area of work at the time, could have gained this mistaken impression." The Home Secretary is in no position to judge whether this is a mistaken impression, as the actual perpetrators of the attack were not caught. In trying to undermine David's character, Straw unwittingly admitted that anyone could have gained this impression, including any jury member.

Further enquiries with Gareth Peirce, the lawyer for Alami and Botmeh, established that the document in question had not been disclosed at the original trial or been excused from disclosure by the trial judge and a PII certificate. Legal procedure had certainly been breached. Ministers should, of course, have ordered that the case be referred to the Court of Appeal immediately. It tarnishes the British legal system if victims of obvious miscarriages of justice are left to rot behind bars as if nothing has happened. But that is what occurred. David takes up the story:

"I have spent in total almost six months in prison for making my disclosures. That short period was bad enough. God knows how Alami and Botmeh felt, waiting to see if the government would acknowledge to a court information it had already given to the media, information that might still secure their release from prison. "

On reading the article in the MoS, Gareth Peirce, Alami and Botmeh's solicitor, wrote to the Crown Prosecution Service (CPS) to try to sort out their case. She was not to receive a satisfactory reply for a year.

Another undisclosed document

In July 1998, in David's last full week of freedom before he was arrested in Paris with a view to extradition, he met Paul Foot, the investigative journalist who had taken an increasing interest in the Israeli Embassy case.

Foot had already had a piece published calling for the material to be disclosed to the defence immediately. David told Foot:

"There is another document which may not have been disclosed or was not covered by the gagging orders issued at the original trial. I recall reading it on my first day in G9A in October 1994. In it, a senior manager, Andrew Knight8 recorded his findings based on his research into the investigation. This may sound hard to believe, but he assessed that the Israelis themselves were responsible for the bomb, in order to persuade the British authorities to increase the security around the Embassy.

"This is not as strange as it sounds. Shortly before the attack on the Israeli Embassy in Britain, nearly a hundred people had died in an attack on the Jewish Mutual Association building in Buenos Aires. As a result, the Israelis worried at the best of times over what they still see as the large presence of former Arab terrorists who have sought asylum in London were more paranoid about security than ever."

Foot told David that this tied in with information he had heard. Alami and Botmeh had told police that they knew an individual called Reda Moghrabi, who had gone with Botmeh to buy the car which had subsequently been used to carry out the Israeli Embassy attack. Moghrabi had disappeared but the families of Alami and Botmeh now suspected he was an Israeli agent who had framed the two. Experts have commented that the actual attacks were likely to have been done by professionals, as no traces of the explosives were left. So was Mossad, the Israeli equivalent of MI6, the professionals involved in the attack?

Mossad has no intelligence presence in Britain for the same reasons that Libya, North Korea and Iran are not allowed to have intelligence representatives in the UK. Their presence is likely to undermine rather than bolster the security of the British state. From time to time, Mossad asks to have an official presence in the UK but it is turned down each time on the recommendation of the British intelligence services, as it simply cannot be trusted. However, this does not stop Mossad from sending over undeclared, undercover intelligence officers (IOs) to gather information on Arab targets and their activities in Britain. From time to time, undeclared Mossad officers are detected by MI5 and quietly asked to leave the country. During our time in G Branch, an undeclared Mossad operative had moved to the north east of England, where he had come to attention for threatening Arab dissidents. He was expelled on the recommendation of G9.

Alami and Botmeh have never disputed the fact that they had access to weapons and low-density bomb-making equipment. But they argue the material connected to them was left by Moghrabi to be used in experiments, a few days before the Israeli embassy was bombed. As electrical and chemical engineers, the two explained they had tested the suitability of components and delivery methods of bombs to be used against the Israelis only in the Occupied Territories.

If the jury had accepted that the material was destined for the West Bank and the Gaza Strip, the two could not have been convicted of conspiracy to cause explosions under the Prevention of Terrorism Act (PTA). At the time, the PTA only applied to conspiracies to cause explosions in the UK (although the government has since changed this). More importantly, Alami and Botmeh's interest in explosives could have brought them to the attention of Mossad, the most likely arm of the Israeli state to have carried out any deniable attack in the UK. Mossad could therefore easily have framed the two.

There is further information to support this version of events. According to The Sunday Times, Mossad was in London to warn of an attack on the embassy by Hezbollah, a couple of weeks before it happened9. Were they putting out disinformation to cover up their own attack on the embassy? Or is it collateral (or corroboration) for the evidence which was kept from the jury who convicted Alami and Botmeh? Either way, this article supports the innocence of Alami and Botmeh.

Failure to disclose material at trial

Of course, the real reason for ministers' tardiness in this case became apparent a week after David's meeting with Foot in July 1998. The government knew that any jury trying David would see the public interest in divulging information pointing to a miscarriage of justice. It therefore decided to head David off at the pass. It requested his extradition, I believe, with two clear aims: to shut him up and to have him convicted before he was independently vindicated. In the context of the Alami and Botmeh case, I believe the government planned only to refer their grounds for appeal to the courts only after

David had been convicted.

Unfortunately for the government, things didn't quite go to plan. In November 1998, the French Appeal Court (and later the Supreme Court) refused to extradite David because it recognised that his offence was political. With no prospect of getting him back, the government finally had to do the decent thing and apply for a PII certificate to cover material which remained relevant but had not put before a jury or been seen by the judge at the original trial in late 1995. Shortly after David walked free from a French prison, nearly a year after Peirce first wrote to the CPS, a date was finally set for a PII hearing in March 1999.

In March 1999, the Home Secretary presented the signed gagging orders to the court. It is of great concern that MI5 did not submit this information at the original trial and that ministers have sought to keep it secret because:

- The mislaid intelligence warned of an attack, identifying a group unconnected to the two people convicted of conspiracy to cause the attack. Given that there is no firm evidence linking Alami and Botmeh to the actual bombing, this information would inevitably have created 'reasonable doubt' in the minds of jury members, who would the have been obliged to acquit the two.

- The other undisclosed document recorded a senior MI5 officer's assessment that the Israelis themselves were responsible for the attack, supporting the theory that Mossad framed the two. Under the rules of disclosure, a belief based on evidence is disclosable to the defence. Again, evidence of Mossad or Israeli involvement in the attack would have led the jury to acquit Alami and Botmeh.

The reliability of the convictions

The suppression of documents and departure from procedure would of course matter less if the case against Alami and Botmeh were conclusive. But it is far from it. There are many troubling aspects to the case. The trial judge acknowledged that the evidence was 'all circumstantial' and there was no evidence to link the two directly to the actual attacks. The evidential case where not actually indicating a miscarriage of justice raises major concerns about the reliability of the convictions:

- Alami and Botmeh both have cast-iron alibis for the attacks (although this obviously doesn't acquit them of the conspiracy charge, it confirms that others were involved. These others could have planned and prepared for the attacks as well as carrying them out).

- Evidence at the trial indicated that there was another man involved with Alami and Botmeh.

- All the witnesses to the buying of the car used in the bombing of the embassy confirmed that two men were involved. Botmeh immediately admitted he was one of them, explaining that the other, Reda Moghrabi, had asked him to help buy a car, and he had obliged.

- When asked to draw Moghrabi, Alami and Botmeh drew a similar figure even though at the time they were in separate prisons and. incommunicado.

- Uncontested handwriting evidence proved that the man who signed the purchase papers for the car was not Botmeh.

- The prosecution admitted that a hand-drawn map, which it had originally claimed was of a part of London, was actually of Sidon in Lebanon. Therefore it could not be targeting material for the London attacks.

- Israeli officials were, unusually, involved in the search for forensics around the Embassy.

- Discussions between British and Israeli forensic scientists about the explosives used to blow up the Israeli Embassy were also covered by PII certificates. Despite this, prosecution experts assessed that it was highly unlikely the type of explosive used in the attacks was TATP, the type discovered in the investigation into Alami and Botmeh.

- In his summing up, Mr Justice Garland remarked that, so far as the two accused were concerned, Moghrabi "could have been a Mossad agent or a police informer".

- When Peirce asked for the footage from the CCTV cameras covering the outside of the Embassy, she was told that they were not working that day. This seems doubly strange in the light of the heightened security alert following the attack on a Jewish interests centre in Buenos Aires the week before, in which 87 were killed and over 200 injured.

- An Israeli journalist reportedly approached a juror during the trail, prompting the judge to warn the jury and the media that undue influence on the trial would not be tolerated.

- In the light of the above, combined with the two MI5 documents which are now covered by PII certificates, it is difficult to imagine that a jury would have found Alami and Botmeh guilty.

Vindication for David at the Court of Appeal

Although ministers were first made aware of the undisclosed documents in November 1997 and summer 1998, it took until the end of October 2000 for the Court of Appeal formally to hear the grounds of appeal, a full three years after the original disclosure. Although the Crown – supported by the Appeal Court — refused to disclose the first document in question to the defence, it did give the defence counsel, Ben Emerson QC, a summary of the report.

"Some months prior to the bombing of the Israeli Embassy in London on 26 July 1994, the Security Service and MPSB had received information from an agent source that a terrorist organisation, unconnected to these appellants, was seeking information about the location and defences of the Israeli Embassy in London for a possible bombing attack."10

When pressed, prosecution lawyers admitted that the agent source was reliable and that the agent had named the terrorist group, although its identity was not revealed to defence lawyers.

Admittedly, the authorities have indicated, but presented no evidence, that the same source reported after the attack that this group did not carry out the bombing. But that only raises more questions than

it answers. Unless MI5's witness is cross-examined, we cannot get at the truth.

In addition, the lack of further intelligence reports to be disclosed supports David's original allegation that an MI5 officer failed to react to the warning before the actual attack. If MI5 had properly investigated this intelligence at the time, the source would have been tasked to find more information. This information would have been the basis of further intelligence reports concerning the build-up to the Israeli Embassy attack. They would also have to be disclosed or presented to the judge under public interest immunity certificates.

In fact, further evidence of the security services' incompetence and inability to fulfil their legal duties has emerged as a result of the Court of Appeal hearing. No less than seven individuals - from a variety of police and intelligence organisations – failed to ensure that a document absolutely vital to a jury determining the guilt or innocence of Alami and Botmeh was disclosed to the trial judge. For one officer to mislay a document looks like 'misfortune'. For seven to mislay the same document looks like deliberate 'carelessness' or indeed a conscious attempt to corrupt the judicial process. Anyone who disagrees with whistleblowing should ask whether MI5 would have ventured this information to ministers, without David's intervention. The Home Secretary either did not know or did not see fit to include this rather pertinent information in his letter to The Mail on Sunday in October 1997. That is a cover up either on the part of MI5 to ministers or on the part of ministers to the public. Straw and Lander should be called before MPs to explain themselves.

The summary disclosed to the Court of Appeal also demonstrates that the authorities abused their powers under the injunction's submission process in order to protect the services from embarrassment and undermine David's reliability as a whistleblower, when vetting the article submitted through the MoS in October 1997.

In this context, free speech and the free flow of information can only be lawfully restrained under the Convention 'in the interests of national security'11, yet ministers produced more details at the Appeal Court than during the original submission. This is proof that Straw either did not investigate David's original disclosure properly or that he withheld information vital to an understanding of David's disclosure. Either way, it is a clear example of being 'economical with the truth'. The relevant information about the detail of the document and the failure of officials to disclose it at trial cannot have been withheld 'in the interests of national security', because it was later disclosed in open court to three Appeal Court judges.

The future for fair trials and British justice

It is over seven years since David first disclosed the bungling in MI5 in the run up to the Israeli Embassy bombing. Alami' and Botmeh's convictions should have been quashed then, a year into the sentence. They should have been freed, pending any retrial where all the evidence could be heard.

Although the Court of Appeal and the House of Lords have dismissed Alami and Botmeh's appeal, they simply ignored case law about the breach of due process at trial. They also ignored Straw's admission about David's original disclosure, which indicated that the undisclosed report would be likely to influence anyone's understanding of the facts of the case, including that of the jury. If British judges were interested in justice, they would have immediately quashed the convictions with a view to a retrial. However, as we have also seen in the Hutton Enquiry, they are rather more concerned with

protecting the reputation of the intelligence services.

Alami and Botmeh's case is destined for the European Court of Human Rights. In the meantime, two people rot in prison. At the very least, they were convicted in a mistrial. More probably, they are the victims of a severe miscarriage of justice, because British spooks, ministers and judges cannot bring themselves to accept that the services made a monumental cock-up. Instead, they have done everything in their power to collude in an equally monumental cover-up.

Next time, there might not be a whistleblower to ensure the truth emerges. So what incentive will there be for MI5 to disclose vital material during trials, if they get away with it in this case?

It appears that we have given up on the notion of due process, fair trials and democratic rights in Britain.