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The Review of Security and the State

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STATE RESEARCH

BULLETIN No. 9

THE ABC TRIALS: A DEFEAT FOR THE STATE – JOURNALISTS

OPPOSE POLICE PRESS CARDS – GUIDELINES ON JURY VETTING

NEWS & DEVELOPMENTS

BRITAIN'S NEW EXTRADITION PACT WITH W. GERMANY

An order in council made by the Government and which came into force on October 3, changed an agreement on extradition between Britain and West Germany so that Britain can now legally extradite its own nationals to West Germany, while West Germany, under its own constitution, cannot legally extradite its nationals to Britain. The order in council changing the agreement had been 'laid' before Parliament, in order for objections to be raised, for just one day, while Parliament was not sitting, before becoming law.

The main law governing extradition from Britain is the 1870 Extradition Act, which was amended by a 1935 Act. Under the powers given in these acts, two agreements (1872 and 1960) have governed the terms for extradition of people from Britain to West Germany, and vice versa. The new order-in-council (No 1403, the Federal Republic of Germany (Extradition) (Amendment) order 1978) amends the 1872 Treaty, (as amended by the 1960 Agreement) extending extradition in two ways. First, a 'catch-all' clause has been added to the previous list of 27 extraditable offences, which allows anything which is a crime (of a certain seriousness) in both countries to be treated as an extraditable offence, even if it is not listed in the Agreement. Second, the prohibition on the extradition of British nationals, which was in the 1960 Agreement, has been removed.

The latter clause (Clause 3) is the crucial one. It amends Article IV of the 1960 Agreement, which laid down that no British citizen should be 'delivered up' to West Germany, and substitutes the wording: 'The Government of the United Kingdom of Great Britain and Northern Ireland **shall not be obliged** to extradite a citizen of the United Kingdom and Colonies, and the Government of the Federal Republic of Germany **shall not be obliged** to extradite a German national' (our emphasis). This gives both parties the option to extradite their own nationals. In Britain, the decision will rest with the Home Secretary, as the

Home Office has responsibility for the application of the law in this country.

There is not, and never has been, a general prohibition in British law on extraditing British citizens to other countries, although some extradition agreements into which Britain has entered have explicitly excluded this option. Among these are the current agreements with Denmark and Greece and, until October 2, the agreement with West Germany. However, there are agreements with many countries ranging from Austria, France, Belgium, Finland and USA to Czechoslovakia which allow for the extradition of British citizens, and current British policy is to bring other agreements in line with these, and remove obstacles to extradition.

The West German position is, however, completely different. The extradition of German citizens is explicitly ruled out by the terms of their Constitution, which requires a two-thirds majority in both Houses of the West German parliament to be changed. There appear to be no moves to have this clause changed.

Among the principles governing British extradition agreements are that 1) all agreements between foreign countries must be consistent with the laws of each country and 2) all agreements should be reciprocal ie. apply equally to both parties. These principles are not enshrined in law. They are the general policy aims of the Home and Foreign Offices for extradition agreements, and certain previous agreements have fallen short of the principles.

In the case of this order it is clear that, while the negative formulation 'shall not be obliged' ('nicht verpflichtet') formally satisfies these two principles, it contradicts the spirit: in practice Britain can now legally extradite its own nationals to West Germany, while West Germany, by its own constitution, cannot legally extradite its own nationals to Britain. This inequality is only partially offset by the fact that West Germany has far wider powers to try its own citizens for crimes committed abroad than Britain has.

This order-in-council was made by a statutory instrument under the 1870 Extradition Act. There are two kinds of orders-in-council: one, known as Statutory Instruments, are issued as a result of powers given to ministers under parliamentary legislation; the other is when a minister exercises, on behalf of the monarch, a prerogative power to make orders-in-council. Although both kinds have to be 'laid' before parliament, they automatically become law unless there are objections from MPs. However such is the plethora of parliamentary papers that orders-in-council usually become law quite unnoticed. In this case the order-in-council was only laid before Parliament the day before it was scheduled to come into force, and as Parliament was not sitting that day, the realistic possibility of MPs having time to object before it became law, was reduced to virtually zero.

A further question arises in relation to the timing and the speed with which the order-in-council was made. Discussions on this subject had been going on between the West German government, the Foreign Office (which is always involved in dealings with foreign governments), and the Home Office (which has responsibility for extradition) during June and July. Then, on Monday September 25, the text of the new agreement was sent by the German Ambassador to the Foreign Office; the Foreign Office reply was sent on Wednesday 27; the Order was made on Friday 29, laid before Parliament on Monday October 2 and came into force on Tuesday October 3. September 25 was ten days after Astrid Proll was arrested in Britain pending an application for extradition by West Germany to face charges in connection with her earlier membership of the Red Army Fraction. The extradition hearing was originally set for October 16. Importantly, Astrid Proll, although not at the present a British citizen, is entitled to citizenship under the 1947 Nationality Act, as she married a Briton in January 1975. It seems likely therefore that the timing of the order-in-council is linked to the Proll case.

THE GUIDELINES ON JURY VETTING

The discussion in the press and the concern by civil libertarians about vetting of Central Criminal Court jurors after the revelation that the jury in the ABC Official Secrets Trial was vetted 'for loyalty' (see State Research Bulletin No 8) has prompted the Attorney-General to publish the guidelines for these checks (**The Times**, 11.10.78). The guidelines were drawn up by the Attorney-General (Sam Silkin), the Home Secretary (Merlyn Rees) and the Director of Public Prosecutions, after the Provisional IRA bombing campaign in 1974. They state that, under the 1974 Juries Act, members of the jury should be randomly selected unless the Act disqualifies them.

However, there are exceptions, where the safeguards of the 1974 Act are not considered sufficient. There is no precise definition of such exceptions, but they include cases where 'strong political motives' are involved (the IRA, other 'terrorists' and cases under the Official Secrets Act are specified). Only extreme political connections (again, unspecified) or, in Official Secrets cases, the suspicion that **in camera** evidence might not be secure, can be a reason for disqualification. Consequently, Mr Silkin considers 'limited investigation of the panel' to be necessary on occasions. These checks, which can be made only on the authority of the DPP or her/his deputy, and must be notified to the Home Secretary, may involve recourse to Criminal Records, Special Branch or CID files. No enquiries other than to the police may be made, and 'there is no question of telephone intercepts', surveillance or investigation into personal background 'other than to establish identity'. There is no duty to explain why a potential juror has been rejected. The guidelines recognise that it is usually the prosecution which initiates such investigations, but state that prosecuting counsel has a duty to exercise this right when s/he fears bias against the defence, and may share information about prospective jurors on a counsel-to-counsel basis with the defence.

Mr Silkin also emphasises that, under Section 5.2 of the Juries Act, 'It is open to the defence to seek information' in the same way, and that 'the principle of equality of information to prosecution and defence is to be regarded as of great importance.'

The statement summarises the use of police records in the 25 cases since 1975 where jury-vetting has been carried out. In 14 cases, (12 IRA, 2 Official Secret) CRO and Special Branch records were consulted. In 11 cases (murder, armed robbery and international fraud), CRO records only were used.

The four-year-old guidelines were published in full during the second ABC trial because of hostile reactions to the revelations of the vetting of the first trial jury. Early in the second trial, Mr Justice Mars Jones gave instructions to pressmen that no reference to the vetting of the jury should be published. Thus, ironically, Silkin's publication of the guidelines was in breach of this instruction and was regarded as contempt of court by the judge.

It is obvious from the statistics given by Silkin that jury-vetting is a political weapon. The publication of these guidelines cannot allay fears that police, prosecution and judges are playing an increasingly important part in restricting the sovereignty of juries and therefore in influencing the outcome of certain politically sensitive trials.

LABOUR PARTY TO PROBE SECURITY SERVICES

Prompted by an initiative from Energy Secretary Tony Benn, the Home Policy Committee of the Labour Party's National Executive has set up a study group to inquire into the workings of Britain's security services. The object of this important initiative — the first major response to the issue in modern times from Labour's leadership — is to enable pledges

for reform to be incorporated in the Party's General Election Manifesto.

Mr Benn's initiative consisted of a five-page paper, entitled 'Civil Liberties and the Security Services'. In it he notes growing concern among MPs, trade unionists and from the National Union of Journalists and the National Council for Civil Liberties. Uppermost in his mind are clearly the Parliamentary Debates on the Special Branch, set up by Robin Cook MP, and the TUC resolution on the same subject, moved by the Tobacco Workers Union and passed overwhelmingly at September's Conference. These debates, says Mr Benn, raise 'questions which cannot be answered because of the secrecy which surrounds such matters'.

Because they operate in secret, there is a danger that the security services 'may drift into practices which could actually undermine, or endanger, the freedom they are supposed to defend'.

According to Mr Benn, the public interest in security matters is of two kinds:

> 'First, citizens are concerned to be safeguarded from external and internal dangers to their freedom. We depend on the security services to protect us, and they need to rely on public support.
>
> Second, citizens, must be concerned at the possibility that extensive surveillance, computerized dossiers and secret files may be compiled covering a wide range of people, beliefs and activities that extend far beyond any possible threat to our security and which could develop into an apparatus that is not under proper democratic control, nor is really accountable to the responsible Minister, to the Cabinet, to Parliament, or to the community'.

His initial proposal is for a study group which would report on: dangers to the security of the state external and internal; the technology now available and the use made of it in comparable countries; the possibility of publishing annually the budget and staffing of the security services, the names of those in charge of them, any guidelines issued to them concerning objectives and methods, the numbers of dossiers relating to political activities, an account of the reasons for collection and use made of such dossiers, an annual report on mail and telephone interceptions and full details of reciprocal arrangements between British and foreign security services.

At the Parliamentary level, Mr Benn wants the study group to look at the possibility of setting up a special House of Commons Select Committee, meeting in secret if necessary and composed of Privy councillors, 'empowered to question both the responsible Ministers and Security Officers on the whole range of their policy and activities'. Citizens would be entitled to appeal to the new Select Committee concerning material in their own records and would have American-style rights to control information about themselves held by Government. He suggests the introduction of a 'Security Services Annual Act' — similar to legislation governing the military — to bring the security services under direct parliamentary control.

Labour's Home Policy Committee approved Mr Benn's proposals on 6 November. The study group — which has been asked to produce an interim report setting out proposals for the Manifesto — has yet to be appointed.

JOURNALISTS OPPOSE POLICE PRESS CARDS

Scotland Yard is to proceed with the issuing of its own press cards to selected journalists as from January 1st 1979. Existing cards expire at the end of 1978. Opposition is mounting from the National Union of Journalists, which has long maintained that the card which it issues to its members should be the only identification which they require to establish them as bona fide journalists. This has been the union's position for some time. But numerous meetings with Scotland Yard by various union officials have failed to alter Metropolitan Police policy. When the Police press cards, which have a two-year validity, were issued on two previous occasions, the police encountered only token opposition. In January, they face a tougher struggle.

Dissatisfaction has been rising among members, particularly photographers, who do not hold the Met card — actually issued jointly by the Metropolitan and the City of London forces. As a result, the union is gearing itself to stop its members accepting or using the cards. Their usefulness to the police depends largely on whether journalists on the national dailies use them, as they regularly do at present. This time, the secretary of the Union's Central London Branch, which covers Fleet Street, has pledged that disciplinary action will be taken against those journalists who use Metropolitan Police press passes.

Police press cards were issued first in 1972. They were to be used and applied for on a voluntary basis and it was understood that no applications would be refused. The then Commissioner, Sir Robert Mark, intended them as a news-management tool for the police. In a circular to police divisions in 1973, Sir Robert insisted: 'It is crucial that future holders of the (police) press card should find it of real value in day-to-day dealings with the Metropolitan police, carrying a significance which is readily recognised and accepted by all members of the force ... in normal circumstances card-holders are to be provided with such opportunities for access as can be made available ... special facilities cannot be accorded to non-holders of Metropolitan and City Police Press cards.'

Since then, the situations in which the Police press card has been of use to the police have increased. They are particularly useful in the sort of disorders such as those at the Notting Hill Carnival, or the large demonstrations organised by the Anti-Nazi League. Holders of the card have been accorded briefings with senior officers controlling police detachments which have clashed with demonstrators or pickets. At some recent demonstrations, police have even set up special mobile press offices for their benefit. But journalists trying to operate without the Met card, and particularly photographers working for the left and trade union press, have been subjected to increasing harassment, and there have been at least two arrests of photographers caught between police and demonstrators, who were accused of obstruction despite producing NUJ cards. Others, for example the authorities at the Old Bailey, and the National Front, have made possession of the Met card a condition of admission to trials and meetings respectively.

The use of the card enables police to distinguish between two sorts of journalist. On the one hand, there are those journalists working for the bourgeois press, who, whatever their own attitude to the police, or their critical reporting of a particular operation or example of police action, are part of newspapers which in general can be expected to take a 'balanced', that is, favourable, attitude to the police. On the other hand, journalists working for the radical press, and their papers, cannot be relied on.

Despite the experience of an increasing dichotomy of treatment between the two sorts of journalist, Scotland Yard maintains that there is no such systematic discrimination, but that the decision on which journalists should be given facilities rests on operational decisions, and is for the senior officer in charge.

But a recent communication from Deputy Assistant Commissioner Peter Neivens, responsible for public order, to the London Freelance Branch of the NUJ, which has been one of the branches active in pursuing the campaign against police press cards, reveals an interesting attitude. Mr Neidvens drew a sharp distinction between those 'involved in news gathering' and members of the union's other branches 'such as Magazine and Book', who were, he claimed, not so involved.

Most journalists and photographers working for the radical press hold cards issued by the Magazine, Book or London Freelance branches of the NUJ, and the clear discrimination between them and

those on the national dailies is precisely what the police intend to continue.

One objection which the police have found to the NUJ card is that it is not secure, as the photograph is optional and can easily be replaced, enabling the card to be used by a non-journalist; and that it is easily imitated or forged. Several firms offer 'Press Cards' for sale which are similar to the NUJ cards, and the British Army in Ulster was found two years ago to be using forged NUJ cards for plain-clothes soldiers. Until now, the NUJ has resisted suggestions that its cards should be changed; at present it doubles as identity card and subscription record. However, the Union is now likely to be pressured to change the card, so that it is more secure, and easier to use. It may be changed to the sort of format which the Police use, with the holder's photograph laminated with the card in a sealed transparent cover.

The police also argue that if they were to recognise the NUJ card, then other cards — those of the right-wing Institute Of Journalists, foreign press cards — would also have to be recognized.

A recent two-page article in the NUJ paper 'The Journalist' put the Union's case: 'Police information must be freely available to all members'. The NUJ is opposed to the selection by the police of favourable journalists in order to achieve a favourable view of police action.

The attitude against the NUJ card was neatly summed up in 1973 by Mr Leslie Boyd, the Old Bailey Court Administrator: 'It is issued by someone over whom the authorities have no control'. Precisely.

GOVERNMENT PLANS FOR THE OFFICIAL SECRETS ACT

The Queen's Speech, on 1 November, included the statement, 'It remains My Government's intention to replace section 2 of the Official Secrets Act 1911 with a measure better suited to present-day conditions'. This has been generally interpreted as implying that there will be no Bill in the current Parliament to implement the proposals in the recent White Paper.

Other subjects mentioned in the Queen's Speech, in which the Government sets out its legislative intentions for the forthcoming session, include a new criminal justice and criminal law Bill for Scotland, new legal aid legislation, the implementation of the Annan Committee's proposals on broadcasting, an increase in the number of MPs from Northern Ireland from 12 to 17, and campaigns against vandalism and in support of 'strengthening the Police Service'. (**Hansard**, 1 November, 1978).

DEFENCE: A SECRET REVIEW OF THE WAY AHEAD

The Ministry of Defence announced at the end of October that a major survey of Britain's defence capability has been taking place since earlier this year. This survey is called the 'Way Ahead' study, and is looking at the various directions in which the armed forces can develop over the next 20-30 years 'in the light of trends in the military technological, economic and geo-political environment.'

This is the second important survey carried out in the last four years, the first being the 1974 Defence Review conducted under the Labour Government to streamline the armed forces and make them more efficient in a time of economic crisis (see Bulletin No 8, and 1975 Statement on the Defence Estimates, Cmnd 5976). The 1974 Review, however, only covered the period up to 1983/4, while the current survey is looking as far ahead as the first decade of the next century. But information on the study is extremely limited as the Ministry of Defence has stated that 'The content of the work is and has always been classified', thus ruling out informed public discussion on a review which will determine the whole orientation and direction of the British armed forces over the next decades.

The survey is being conducted by the most powerful figures in the British military establishment, the Chiefs of Staff, and their powerful supporting committee headed by the Chief of the General Staff, the principal military adviser to the government.

These men are all serving military officers, the three Chiefs of Staff being the individual heads of the three armed services, the Army, Royal Navy and the Royal Air Force.

Individually they represent the interests of their particular service in dealings with the other services, the Ministry of Defence, the government and the outside world. Collectively, the Chiefs of Staff Committee is, in theory, 'responsible to the government for professional advice on strategy and military operations and on the military implications of defence policy' (Central Organisation for Defence, Cmnd 2097, para 23). In practice the Committee and its entourage are the single most important influence on British defence policy. Because of state secrecy, the Committee controls not only the three services, but also the outward flow of information about them.

THE SPECIAL BRANCH IN WEST YORKSHIRE

In June, Ken Patterson, a Councillor on the West Yorkshire County Council, put a number of questions to the Chairman of the Council's Police Committee on the local Special Branch. The four main questions he asked were: how many officers were there in the Special Branch in West Yorkshire; how many files were kept on people living in the region; is the information held in the files available for correction by those on whom it is kept; and to whom was the information held communicated?

The Chairman of the Police Committee refused to answer the first question as to the number of Special Branch officers as this would 'impair the efficiency of the police' and 'aid criminal elements'. However, from the figures given by the Home Secretary in the Commons in May it is possible to estimate how many officers there are. There are 850 officers engaged on Special Branch activity in England and Wales, excluding Scotland Yard, and by distributing this total number according to the total size of each local police force it is possible to estimate that the number in West Yorkshire is at least 45 fulltime Special Branch officers (see Bulletin No2 and No6).

It is instructive to draw a parallel with the South Australian Special Branch (which was formed on the British model) where four Special Branch officers maintained information on the political and industrial activities of 40,000 people out of a total population of 1.25 million people. How many files, it might be asked, are being held by a 45-strong Special Branch in a region with a total population of 2 million people?

The reply to the second question, concerning how many files were being held, was equally evasive: 'It is not known how many files are held for people in West Yorkshire and it would take a disproportionate amount of time to examine each file to find out'. The open admission that files were being held and were so extensive as to require a lot of work to find out exactly how many, is in itself revealing. As to whether, in answer to the third question, people on whom information is held could correct their files the reply came that it would be 'quite improper to reveal the contents to persons who are subject of it'. The reasons given were that the Special Branch did not hold information on 'persons with particular political beliefs' except in relation to the Chief Constable's responsibility to 'maintain law and order' and 'the security of the state'.

These are precisely the reasons always given to justify the holding of files on people's political activities. Mr Rees has specified those who are subjected to Special Branch surveillance. In March he said: 'The Special Branch collects information on those who I think cause problems for the

state' (**Hansard**, 2.3.78). And in April he stated that the surveillance of 'subversives', which is one of the main jobs of the Special Branch, was investigation of those whose activities 'threaten the safety and well-being of the state and are intended to overthrow democracy by political, industrial or violent means' (**Hansard**, 6.4.78).

The information held by the West Yorkshire local Special Branch is communicated to: the Chief Constable; the Home Secretary (in respect of aliens and immigrants), the Metropolitan Police Special Branch because of their overall responsibility in connection with Irish affairs, and to 'the Security Services'. The communication of information to the Security Services, the main one of which is MI5, the large undercover agency, confirms that information gathered on political and industrial activists in each region is collated at national level.

Cllr Patterson said that he was not satisfied with these answers and intended to pursue them further. He also expressed the hope that councillors in other areas would ask similar questions.

This was given added weight in a reply from Rees to Newcastle MP Harry Cowans who had written asking for a breakdown of the Special Branch, force by force. Rees replied that he had no wish to see the Special Branch hidden in 'any undesirable secrecy', which was why, as the police authority for London he had given the figure (409: see Bulletin No 6) for the Metropolitan Police Special Branch (letter dated August 31, 1978). As to forces outside London it was up to each Chief Constable concerned, Rees added.

REVIEWS

THE CONTEMPTUOUS CONSTABLE

IN THE OFFICE OF CONSTABLE by Robert Mark, Collins, £5.95.

Robert Mark was born in Manchester in 1917. He joined the police in 1937 after working as a carpet salesman and rose rapidly through the ranks to become Chief Constable of Leicester in 1957. Ten years later he was appointed Assistant Commissioner, Metropolitan Police; in 1968 he became Deputy Commissioner and from 1972-77 was Commissioner.* He was the first Commissioner not to have worked his way up through the Met and his appointment precipitated a major battle for control of the London force. Mark was an unprecedentedly outspoken policeman, using the media to launch views on an ever-widening range of subjects. Since retirement, he has acted as security consultant to the Kuwaiti and Australian governments.

Mark's autobiography is full of contempt, for individuals, for organisations and for institutions. But these attitudes are not mere egocentric arrogance; they represent a right-wing political perspective.

Mark's contempt for Parliament is illustrated in his discussion of the 1976 Police Act, which introduced a limited independent scrutiny of complaints against the police. This was the first time that part of internal discipline was taken out of police hands and even this limited accountability precipitated Mark's resignation as Metropolitan Commissioner. He writes: 'If every member of the House was compelled to sit an examination paper consisting of ten simple questions about the working of the police disciplinary system and the pass mark was set as low as 20 per cent not 5 per cent of them would be likely to pass. So much for the will of Parliament!' (pp 152-3)

On police pay he states: 'It did not take me long to appreciate that the only way to win was **to go over the heads of the politicians and the Civil Service** and appeal to public opinion in moderate and persuasive terms' (our emphasis, p 139). When the 1974 Wilson government planned to introduce a statutory right for pickets to stop vehicles, he threatened the Home Office that 'if there was any danger of this proposal reaching the statute book I would declare in **The Times** that this was an unjustifiable infringement of individual liberty' (p 152).

As Robert Kilroy-Silk MP pointed out in a **Sunday Times** review, Mark even shows contempt for the law. 'We would not let any **legal niceties** prevent us from dealing with terrorism' (our emphasis, p 173). In January 1974 he unilaterally arranged for troops to be moved into Heathrow airport in the first joint civil-military exercise of its kind. Ministerial consent was only sought after the event (p 165). This attitude is not confined to specific circumstances; on police powers in general he writes: 'I am one of those who believe that if the criminal law and the procedures relating to it were applied strictly according to the book, as a means of protecting society it would collapse in a few days' (p 51).

Civil liberties groups

Predictably, Mark has contempt for civil liberties groups, notably the National Council for Civil Liberties, 'a small, self-appointed political pressure-group with a misleading title ... usually trying to usurp the function of the democratically appointed agencies for the achievement of political change' (p 133). Even ex-Home Secretary Reginald Maudling has upbraided Mark for such hostility: 'He gives less than adequate credit to the motives of those whom he regards as his opponents' (**Evening Standard**, 9 October 1978).

Politicians fare no better. He is contemptuous of Harold Wilson (p 221) and of the 'mediocre crew' that formed Wilson's Cabinet (p 231). Socialism is now dedicated, in Mark's view 'to reducing the standards of the wealthy, the skilled and the deserving to the lowest common denominator' (p 244).

Perhaps the positive reality of Mark's politics shows through in his views of the Shrewsbury pickets: 'To some of us (they) had committed the worst of all crimes, worse even than murder, the attempt to achieve an industrial or political objective by criminal violence' (p 152); or of Liberation, 'not a whit less odious than the National Front' (p 167); or in his lumping together of bombers, corrupt police and political demonstrators (p 143). Contrast these with his approval of Ross McWhirter, 'a notable upholder of freedom for the individual' (p 177); or of Grunwick's boss George Ward who 'courageously and successfully stood firm against politically motivated violence' (p 299).

A down on lawyers

Mark has always had a down on lawyers and has used public hostility to them to serve his other ends. In this book he repeats the sweeping allegations of corruption and malpractice which he made in his famous 1973 Dimbleby Lecture. And he constantly snipes at the 'legal trade unions' who had the temerity to oppose his views. Less expected, but more significant, is his ill-concealed contempt for the police themselves, an 'artisan service' (p 162) of 'limited intellectual capacity' (p 240). Throughout the book there are derogatory references to the views and tactics of the Police Federation.

The book tells us more about the man and police thinking than it does about police operations and practice. But there are useful comments on public order technology (p 103) and surveillance techniques (p 189) and extended defences of Mark's policy towards the press, police corruption and discipline, public order and Special Branch work. In the concluding chapter, Mark comments: 'Doctrinaire determination, self-interest, obsession with power, are all only too evident in those who make the rules today' (p 299). It is an apt summary of this opinionated lawman.

*The Metropolitan Police Commissioner is traditionally the country's senior policeman. Unlike Chief Constables who are appointed by local police committees, the Commissioner is appointed by the

Crown on the recommendation of the Home Secretary (Metropolitan Police Act 1829 as amended). The Commissioner has no set retirement age and can only be dismissed by the Crown. The Commissioner is not a serving policeman; his task is to administer the Metropolitan police force on behalf of the Home Secretary, who is the Met's policy authority and who may direct the Commissioner as he wishes.

HOW COLONEL EVELEIGH WOULD KEEP THE PEACE

PEACEKEEPING IN A DEMOCRATIC SOCIETY. The Lessons of Northern Ireland, by Robin Eveleigh. C. Hurst & Co. £7.50.

Colonel Robin Eveleigh has long experience of peacekeeping — British Army style. A sixth generation officer, he saw active service in Borneo and in Cyprus before being appointed Commander of the 3rd Royal Battalion Green Jackets in Belfast in 1972 and 1973. He wrote this book as a Defence Fellow at Oxford University and is now, the back jacket tells us, director of an 'international trading and transport company'.

The period when the Green Jackets under Eveleigh's command were based at Springfield Road police station was also the time when Kitson, author of **Low Intensity Operations**, was instituting low-level civil-military-police coordination in Belfast. Kitson's book, based on a current military manual, was intended to establish the Army's right to dictate security solutions to politicians and civil servants. Eveleigh is very much a Kitson man, and his book expands on Kitson's dictum that there are times when the law should be 'just another weapon in the Government's arsenal'.

The purpose of Eveleigh's book is to explain why the British Army and Government have failed to suppress insurgency in Northern Ireland, and to propose solutions to this problem. He is not concerned with political analysis because 'civil disorder' needs no analysis: his interest is in how it should be suppressed. He sums up the problem thus: why, when there is 'a popular desire for peace'; when skilled politicians are pouring money into the province; when 'brave, hard-working and fair' police officers and 'courageous, disciplined' soldiers are doing their best; why, given these 'near-ideal' instruments, has success up to now evaded the Government? His conclusion has dangerous implications for democracy everywhere: there can be no success because of 'faults in the constitutional framework' and 'shortcomings in the laws governing the operation of the security forces'.

As early as 1971, Kitson was proposing the 'legal fix': using the law as 'little more than a propaganda cover for the disposal of unwanted members of the public'. Despite the Prevention of Terrorism Act, detention without trial and persistent extra-legal activity by the Army, Eveleigh is not satisfied. He argues that since the Army is anyway acting as the direct instrument of the Government, why not legalize its position? Why not give it absolute power to suppress riots, arrest and imprison where and when it wishes? Like Kitson, he believes that politicians, however well-meaning, fumble at the crucial juncture. They rush inappropriate legislation through Parliament, failing to understand what measures would be effective. The Army is in the best position to determine the security needs.

Eveleigh's practical proposals are based on a series of legal measures of which the two vital powers are those to 'identify the population and to produce informers from among the terrorists'. This requires complete population surveillance, starting with a compulsory Census conducted by the police or Army, which would enable them to compel all citizens 'to attend an interview of, say, no more than two hours', once every six months. Each person would be identified by photographs, signatures, handwriting and fingerprints. This is already in progress: he admits that widespread photography of citizens was carried out in the Republican areas of Belfast from 1971 onwards, without specific legal authorization.

The introduction of identity cards is his next suggestion. If there is a mass campaign against this, people should be blackmailed into complying by making the identity card obligatory for obtaining such government services as train tickets, drawing supplementary benefits and so on. Identity cards and Census intelligence would then be linked by a computer with access to other government department information (social security, national insurance etc.) and to private organizations such as banks. Since 'significant public good overrides private confidentiality', Eveleigh denounces as 'Luddites' Labour MPs who have protested in the Commons against the use of computers for this kind of intelligence: 'To prohibit this is like equipping the Security Forces with bows and arrows'.

Obtaining information from and infiltrating the opposition forces is equally important. 'The law must make this possible and easy ... (by providing) ... the right to interview, plenty of time to interrogate and persuade, and the ability to indemnify defectors'. Again without legal authority, the Army and police have carried out mass arrests to 'make contact and develop informers'. He recommends methods to make people talk, from torture to bribery and blackmail to ideological persuasion, and advocates a modified form of solitary confinement that might satisfy the European Commission on Human Rights but would certainly be unacceptable to its Irish victims.

After intelligence, Eveleigh turns to riots. He is concerned about the open, democratic practice of marching and demonstrating. His proposal is to revive the 1714 Riot Act, Section 3 of which provided for a one-hour warning by an authorized officer of the Crown, after which anyone still on the streets could be shot on sight and the soldier or police officer responsible for the shooting would be immune from prosecution. 'To have been able to say, as the Riot Act would have allowed, "Disperse in one hour or be shot dead" would have quickly put an end to all rioting in Northern Ireland.' It would also be the death of what remains of democracy there.

This book demonstrates clearly that the Army is pressing for control in Northern Ireland. Its arguments are so embarrassing that Minister of Defence Mason tried to prevent publication, even though it was approved by the Ministry. Admissions that the Army is now effectively outside the law and that 'ultimately these Catholic areas could only be governed by the British by methods, however mollified, that all occupying nations use to hold down all occupying territories', must be a source of shame to the present Labour government. Eveleigh predicts that 'in 70 years or less from now, situations that could unavoidably drag the Army into the maintenance of public order in mainland Britain might arise'. This book should force the Government to recognize the danger to democracy and to human life posed by the Army's continuing presence in Northern Ireland.

THE POLITICS OF THE POLICE MANUAL

PUBLIC ORDER AND THE POLICE, by Kenneth Sloan, with an introduction by Rt Hon William Whitelaw MP. Police Review Publishing Co Ltd, 14 Cross Street, London EC1, 1978, 134pp. £2.50.

This booklet is written for police officers and published by Police Review. It is even in a handy 5in by 4 in pocket size, presumably so it can be read during the longeurs of picket or demonstration duty. It is a manual of basic public order law and a beginner's guide to political groups of the left and right.

Since it presents itself as a straight work of reference, it is very significant that its politics are explicitly Tory-orientated. The introduction is by Willie Whitelaw, prospective Home Secretary in a Tory

government, not by Merlyn Rees, the incumbent in charge of the force. Whitelaw commends the analysis of 'the many small minority factions who are now frankly conspiring to overthrow our society' and speaks of 'a systematic attempt to abuse the privileges which a free society must afford its citizens'. Sloan quotes approvingly Margaret Thatcher's description of the National Front and the Socialist Workers' Party as both parties of the Left: 'Your Communist is the left foot of socialism and your Fascist is the right foot of it — using socialism in the same sense that it is total regimentation, control by the state'.

Sloan analyses public order law — a notoriously complex field — with great skill and his summaries are very valuable. But the book's significance lies in its political judgements. He disparages the idea that the police need further powers, as suggested by Robert Mark to the Scarman Inquiry on Red Lion Square, 1974. Nevertheless he is quite willing to propose more effective and imaginative use of the existing law. For example, he suggests that the NF, the SWP 'or whatever the current party causing trouble is' could simply be proscribed under the Prevention of Terrorism Act. However, this would be impossible under the Act as it stands, which requires a proscribed organisation to be concerned in, or encouraging, terrorism and connected with Northern Ireland affairs.

A striking section of the book is that on crowd control methods. Sloan clearly envisages far more riot control technology than has so far been seen in this country — at any rate outside Northern Ireland: 'the question of long staves and firearms must soon be considered'. And he argues that army expertise and training methods in controlling civil disorder should be adapted for police use. This section of the book ends with a quote from an unnamed officer: 'All you have to do is spray them — spray them with machine-guns'.

The equally fascinating latter part of the book gives brief introduction to the political background, ideas and organisations of 'Marxism', 'Trotskyism', 'Maoism', 'Anarchism' and 'Fascism'. 'This division of ideas', says Sloan 'serves only to fragment the movement towards socialism and makes unity and the achieving of that objective just a dream'.

In spite of this reassurance, Sloan offers a detailed introduction to the politics of left and right in remarkably accurate and fairly up-to-date terms extending even to the New Communist Party of Sid French. There are inevitably some errors and curious judgements, such as the statement that the Workers' Revolutionary Party is the largest Trotskyist organisation in Britain — a judgement based on analysis of membership records, perhaps?

Sloan may well have got himself into serious legal difficulties by his inclusion of the National Association for Freedom under the heading 'Fascism'. He places NAFF alongside the NF, National Party and Column 88, quite clearly implying a common outlook between these four groups. Not even the disclaimer that 'NAFF is only fascist in that its members are extreme right wing and oppose communism' seems likely to spare Police Review from the scourge of a NAFF libel writ.

THE SHACKLETON REPORT ON THE PTA

The underlying problem in discussion of the Prevention of Terrorism Act (PTA) is, or should be, whether it actually prevents terrorism. As Lord Shackleton puts it in his Report,* this cannot be judged purely from statistics which can never measure the deterrent effects of the Act. Nevertheless, the available statistical sources and the casework-based research on the Act by the NCCL both give good grounds for suspecting that the powers of exclusion and detention have been used for purposes other than the prevention of terrorism and in ways which appear to be only marginal to the security situation (see Bulletin no. 7). Lord Shackleton was asked to prepare the Report as a result of sustained dissatisfaction expressed by NCCL and MPs

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The Report's detailed conclusions cover each section of the Act: the proscription of organisations, exclusion orders, powers of arrest and detention, port powers and the withholding of information. This last subject (Section 11 of the Act) was introduced into the law in the 1976 amendment. It makes it an offence to have information which might be of assistance in preventing terrorism and not to disclose it to the police. Shackleton has found that it

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- the use of the Police National Computer to store information on political affiliations
- development of co-operation between British and European police forces, military etc.

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Ever since it was hurriedly introduced in the aftermath of the appalling Birmingham bombings of November 1974, there have been indications that the Act's primary function is to provide political evidence of the Government's determination to oppose terrorism rather than to arm the police with powers without which terrorism could not be combatted. Lord Shackleton himself draws attention to the fact that most of the short parliamentary debate on the Act in November 1974 was taken up with discussion of the proscription of the IRA rather than of the other parts of the Act (exclusion orders, detention powers etc.) which have proved subsequently to be the meat of the Act in practice.

But the Shackleton Report is not a reconsideration of the issues and principles underpinning the legislation: it is a review of the way that the Act has worked. The terms of reference begin, 'Accepting the continuing need for legislation against terrorism'. So Lord Shackleton has been unable to discuss the political context, desirability or necessity of such legislation.

Shackleton has caused himself further problems by being so circumspect about his own terms of reference: 'My task, as I understand it, has been to stand back a little from the debate, to look in detail at each part of the Act, and to suggest conclusions which represent the results of a detailed study, carried out as objectively as possible, rather than to enter into the fray of dogma and polemic' (para 113). But the credibility of empiricism rests on the presentation of facts and, in the case of the PTA, this must mean details of cases. There are no cases quoted in the Report.

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Otherwise, Shackleton endorses the basic rationale and structure of the Prevention of Terrorism Act. He proposes a number of adjustments in procedure of a humane kind (improvement of diet, exercise and comfort for detainees) and rather more rigorous record-keeping (fuller records of interviews). He also calls for greater uniformity of police practice in following the prescribed procedures and for the Home Office to consider a general review of all exclusion order cases to see whether some might now be revoked. These too are all desirable changes.

The Shackleton Report is not a real review of the operation of the Prevention of Terrorism Act. It is a well-meaning but quite inadequate attempt to allay the concerns of civil libertarian critics of the Act. It is unlikely to satisfy these critics but it will be more than enough to satisfy the parliamentary lobby-fodder, who probably weren't that concerned in the first place. And because of this, the Report may have legitimated the retention of the Prevention of Terrorism Act for some years to come.

***Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976** by The Rt Hon Lord Shackleton KG OBE. Cmnd. 7324. HMSO £1.75

NEW BOOKS AND PAMPHLETS

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Home Defence — Region Six. Army-police liaison plans for the Sussex area in the event of emergencies from nuclear war to serious strikes have been pieced together in this useful pamphlet. Available from Brighton Voice, 7 Victoria Road, Brighton.

Astrid Proll: The Case Against Her Extradition. A short pamphlet on Astrid Proll's experience in German prisons, her life in Britain and the dangers she faces if extradited. 10p from Friends of Astrid Proll, 109 Backchurch Lane, London E1.

The Right To Know, by Tony Benn. The text of a September 1978 lecture by the Energy Secretary on open government and freedom of information. A valuable summary of his current views on secrecy and security. 30p from Institute for Workers' Control, Bertrand Russell House, Gamble Street, Nottingham NG7 4ET.

Sources

Starting with the next issue of the Bulletin (No 10) we shall be adding a new section, Sources. The section will contain listings of important books, pamphlets and articles in relevant fields, plus details of Parliamentary and Government publications. We would be grateful for any contributions to this section, which we hope will develop into cumulative reading and information lists. In particular, any reader who sees rare or esoteric journals that State Research is unlikely to monitor itself, is invited to monitor them on our behalf.

THE ABC TRIALS: A DEFEAT FOR THE STATE

BACKGROUND PAPER

The conclusion of the trial of Crispin Aubrey, John Berry and Duncan Campbell (ABC) under the Official Secrets Act last month marked the end of the current phase of the state's attempt to silence those seeking to make public information about areas it considers too 'sensitive' to be known to the public. It ended in a victory for the three defendants, and a defeat, on this occasion, for the state. The arrest of ABC in the first instance was the direct result of the surveillance by M15, the security service, of the Agee-Hosenball Defence Committee — which was formed in November 1976 to fight the deportation orders issued against these two Americans in the 'interests of national security'.

The background to these two, connected, events would have an unreal James Bondish quality were it not for the importance of the issues involved — the democratic discussion of key areas like military and foreign affairs; the practices and accountability of the intelligence and security agencies; and basic civil iberties over the surveillance of legitimate political activity.

Philip Agee, an ex-CIA agent and later a journalist, and John Berry, an ex-British soldier who worked on Signals Intelligence, were both considered to be 'traitors' by their ex-employers. Aubrey, Campbell and Hosenball were journalists seeking to report on the secret working of the British and American states. Agee and Berry both believed that their political responsibility as citizens outweighed their oaths of allegiance. Similarly, the three journalists considered their duty to the public interest to report on important areas of state practices to outweigh the state's contention that these areas should remain secret. It is too simple to present the deportations and the Official Secrets trial as a conspiracy; rather they should be seen as attempts to punish the Agees and the Berrys for

speaking out and the journalists for giving them a platform.

'Whistle-blowers' and the public interest

In America there has been a tradition, largely as a result of the Vietnam war and its aftermath, of what has been termed 'investigative journalism' for more than a decade. There this tradition has been rooted largely **within** the established media rather than on the margins. There are good reasons for this. In America there is no Official Secrets Act to ensure that even the most insignificant fact is considered 'officially secret'. For this reason there have been many 'whistle-blowers' — from the CIA, the National Security Agency (NSA), the FBI, the State Department and many other agencies. The 'Watergate' affair which led to President Nixon's downfall, the publication of the Pentagon Papers which exposed US atrocities in Vietnam, the Church Committee in the US Senate and the Pike Committee in the House of Representatives which investigated the CIA and uncovered 'destabilisation' operations and assassinations, were all events which could not have happened in Britain.

Walter Mondale, now Vice-President of the USA, and a member of the Church Committee, said:

> 'Our investigations showed that many of the abuses of the Nixon years could be traced back to the attitudes of the Cold War. Fastened on us was the fearful myth that America could not be defended without more deceit and illegality than democracy permits ... For years, this assumption was used to justify actions abroad — from subversion of freely elected governments, to assassination attempts aimed at foreign leaders.
>
> The CIA came home to launch 'operation chaos' — a surveillance programme directed against American citizens — even though that agency is forbidden from exercising internal security functions. The law didn't matter ... There were massive invasions of privacy. For years the FBI and the CIA illegally tapped phones and engaged in other forms of electronic surveillance. The law didn't matter. The FBI and the CIA both opened the private mail of American citizens. The law didn't matter. The National Security Agency obtained from major international cable companies copies of all private telegrams sent overseas by American citizens or businesses. The law didn't matter.,

Journalists and whistle-blowers were backed in their actions by broad-based sectors of the concerned American public which held the fundamental belief that in a democracy the people have a right to know, and to criticise, what is being done in their name. As a result, many of the actions of the CIA, the FBI, and US foreign and military policy have been publicly aired and some restraints placed on their future practices.

No such combination exists in Britain. The established media and book publishers have, with few exceptions, been content to operate within the boundaries laid down by the state: formally through the potential threat of the Official Secrets Act but more importantly through informal 'news management' — consulting with the Secretary of the D-Notice Committee on 'sensitive' subjects, through the 'lobby system' (a system of privileged correspondents on specialist areas like the police and defence), through Ministerial 'leaks', and a general reluctance to question state policy in many areas.

Similarly major book publishers have for many years submitted manuscripts to the D-Notice Committee well in advance of publication. Quite apart from having the most tight-lipped Civil Service in the world, there has grown up in the postwar period a bi-partisan agreement in Parliament that key areas are above party politics, and therefore not open to democratic debate. These key areas cover most aspects of: defence, foreign policy, British intelligence activities overseas, the security services at home, and the police.

Double standard

The British way of doing things rests on a clear double standard. During the ABC trial, Chapman Pincher's book, Inside Story, was published in which he describes dozens of discussions with military intelligence and security officers: his sources include 'an official from Government Communications Headquarters (GCHQ)' (p.18); a girl in the MI5 registry (p.26); 'a former MI5 officer (p.114); a Deputy Director of MI6 (p.165); and 'a very senior member of MI6' (p.376). Following the book's publication E.P. Thompson, the historian, wrote to the Guardian:

> 'I wonder how it happens that Mr Pincher's secret conversations with informants in flagrant breach of the (Official Secrets) Act were not detected? Why no tape-recordings and sudden arrests ensued? Why Mr Silkin did not authorise immediate action? Why charges have not been laid and juries politically screened?' (**Guardian**, 7.10.78.).

The lesson is clear: Pincher's stories in the Daily Express, by and large, serve the interests of the state and its officials while those of radical journalists whom the state cannot control risk arrest, trial and imprisonment (see, 'The Secret State within the State' by E.P. Thompson, **New Statesman**, 10.11.78).

At the beginning of the Seventies a number of radical British journalists and researchers began, using the 'fringe' press, to look at 'sensitive' areas of the state such as the police, Special Branch, MI5, MI6 (Britain's CIA), and the CIA presence in Britain. That this kind of work began in Britain in the early Seventies was no historical accident: it was rooted in the objectively more aggressive role of the state. There was a civil war in Northern Ireland; massive opposition to the Heath government's Industrial Relations Act (1971); the first and second miners' strikes in 1972 and 1974, with widespread confrontations between the police and pickets; and five declarations of a national 'state of emergency' over strikes between 1970-3.

There were two important features to this initiative. The authorities could exercise none of the traditional restraints on what was published, because these relied on the co-operation of journalists and papers. Moreover, to their annoyance, information published on the 'fringe' did, from time to time, permeate the established media (e.g. the Littlejohn affair concerning MI6's hiring of agents-provocateurs). The second feature, which clearly separates radical journalists from establishment figures like Pincher, is that they relied on secondary sources, on information culled from public sources. The thrust behind the ABC prosecution by the state was to prevent the development of a 'whistle-blowing' tradition and to discourage radical journalists from learning how to handle obscure public information fluently, to build an accurate picture of state activities, and thus raise doubts about their assumptions and practices.

Why Agee and Hosenball had to go

Philip Agee arrived in Britain in 1972 and for the next three years worked on a book describing his experience as a CIA officer in Latin America. His book, Inside The Company: CIA Diary, was published in Britain by Penguin in 1975 and has since been translated into more than 17 languages. This fact alone did not endear Agee to his former masters, but what pleased them even less was that following the publication of his book Agee took to the road. He addressed meetings in Britain, most West European countries, answered enquiries from all over the world, and advised political and trade union activists, journalists and writers on the methods of the CIA. To add insult to injury Agee, by now living in Cambridge, was using Britain — the USA's major NATO ally — as a base from which to campaign. If justification were needed for Agee's exposure of the CIA's world-wide activities then the findings of the Church and Pike Committee's of the US Congress have demonstrated how great this need was.

Mark Hosenball, a young American journalist, arrived in Britain from Dublin in 1974 and joined the news staff of Time Out magazine late in that year. During his two years there, Hosenball specialized in stories about British and American intelligence and security agencies.

Four events stand out in the 18 months before the deportation orders were issued.

In the spring of 1975 Time Out, using publicly available records, listed 50 CIA agents based at the US Embassy in London (**Time Out**, 6 March 1975). Hosenball was one of a number of journalists who worked on this story. There was little reaction in the established media, even the liberal Guardian refused to run the story. The then editor told his reporter, who had written a story timed to coincide with Time Out's, that: 'These people are our allies; we are not in business to help the KGB' (**Journalist**, April 1975). Parliamentary questions were put, based on the Time Out story, and then national newspapers (including The Guardian) reported the exchanges in the House of Commons. The value of the Time Out story lay not in the naming of names but in opening to question — on the by now proven evidence of CIA interventions in the internal politics of other countries — the maintenance of such a large CIA station in this country.

Later in 1975 Forum World Features a London-based news agency supplying news and background stories used extensively by the media in many Third World countries shut down hurriedly after ten years when Time Out discovered its connection with the CIA. An internal CIA operational summary to the then Director of the CIA, Richard Helms, said: 'Forum World Features has provided the United States with a significant means to counter Communist propaganda and has become a respected feature service well on the way to a position of prestige in the journalism world'. At the bottom of the memo was written: 'Run with the knowledge and co-operation of British intelligence'. The exposure of this CIA media operation was widely covered, especially in The Guardian, and can hardly have pleased the CIA, or for that matter British intelligence, MI6.

In May 1976 an article entitled 'The Eavesdroppers' appeared in Time Out under the by-line of Mark Hosenball and Duncan Campbell, a freelance journalist. It was widely believed at the time of the deportations that this article constituted the main grounds against Hosenball. The article described in detail the work of Government Communications Headquarters (GCHQ) at Cheltenham, the centre of the British SIGINT operation. SIGINT involves the interception of military and diplomatic communications. Supposedly its primary function is to monitor and analyse communications from the Eastern bloc it also eavesdrops — contrary to international agreements — on transmissions of many Third World countries whose cyphers can easily be broken as their equipment comes from Western countries. The article also described the operations of the massive American agency, the National Security Agency (NSA), and its bases in Britain (see Bulletin No 7).

Much of the information on the NSA operations was supplied by Winslow Peck, another American whistle-blower who had worked as an analyst for NSA. A month after the publications of the Eavesdroppers article, in June 1976, Peck was held at Heathrow airport when he arrived for a visit to Britain and was refused entry under the 1971 Immigration Act on the grounds that his presence was not 'in the national interest'.

One more event seemed to have proved decisive. In September 1976, Philip Agee went to Jamaica at the request of a number of Jamaican political and trade union groups. At the time the country was in the midst of a general election campaign, characterised by what seemed classic 'destabilization techniques — misinformation in the foreign press, the supply of arms and money to the government's opponents, and

assassinations. The 'destabilisation' campaign was designed to oust the moderate social-democrat Prime Minister Michael Manley, who was too independent and friendly with Cuba for Western tastes. Agee addressed several meetings and confirmed that what was happening fitted the pattern of a typical CIA operation. He also named seven CIA agents at the US embassy who quickly departed. What Agee did not realise was that Jamaica, as an ex-British colony, also fell into the province of the British overseas intelligence agency, MI6. The operation he helped expose was, in all probability, a joint US-UK operation. Agee had stepped directly on the toes of British interests and unknowingly provided grounds which could persuasively be put before the new Home Secretary, Merlyn Rees.

These four events alone were, in the eyes of the US and UK intelligence and security agencies, sufficient reasons for acting: the exposure of the CIA in Britain, the closure of a successful London-based media operation directed at Third World countries, the exposure of UK and US eavesdropping on international communications, and the exposure of a joint US-UK destabilization campaign in Jamaica. It is equally clear that the exposure of the use of this country in aiding US operations directed against the Third World, and the revelation of the close co-operation of British intelligence agencies in that, was in the public interest.

Who was behind the deportation orders?

On November 15, 1976 Merlyn Rees issued deportation orders against Agee and Hosenball on the grounds that their departure from the UK 'would be conducive to the public good as being in the interests of national security' (Home Office letter to Agee, 15 November, 1976). The power to deport on grounds of 'national security' were provided under Section 3(5)(b) of the 1971 Immigration Act. Rees alleged that Agee had 'maintained regular **contacts** harmful to the security of the UK'; 'has been and continues to be involved in **disseminating information** harmful to the security of the UK'; 'has **aided** and **counselled** others in obtaining information for publication which could be harmful to the security of the UK'. Hosenball received a similar letter which alleged that he sought to obtain, and **had obtained**, for publication **information** harmful to the security of the UK, including information prejudicial to the safety of servants of the crown (our emphasis, in both cases).

The innuendoes in the orders served to confuse many and did not have to be proved before a court of law. As aliens Agee and Hosenball had only the dubious right of appearing before a panel of 'three wise men' appointed by Rees. This they both did, without ever being told the exact nature of the evidence against them. On Wednesday, February 16, 1977 Rees, having been 'advised' by the panel, announced in the Commons that the orders stood and that Agee and Hosenball were to be deported.

But who prompted the Home Secretary to act in the first place? It is unlikely that Rees had ever heard of Agee and Hosenball before two rather fat files arrived on his desk, via his Principal Private Secretary, from the security service, MI5. These files were sufficiently impressive to convince Rees to issue the deportation orders which he knew would provoke widespread opposition from within his own party and outside.

The agencies involved in preparing the files for Rees included MI6 (representing CIA interests), the Foreign Office, the Director of Government Communications Headquarters, the Defence Intelligence Committee (which co-ordinates overseas intelligence work), the Ministry of Defence, and finally, MI5, who are responsible for security inside Britain.

The only other person known to have been party to the decision was the Prime Minister, Mr Callaghan. He would have been 'advised' by the Co-ordinator of Security and Intelligence in the Cabinet Office, at the time Sir Leonard Hooper. Hooper became the Co-ordinator in 1974 after being the Director of GCHQ (the

subject of the 'Eavesdroppers' article) for many years. Mr Michael Foot, the Deputy Prime Minister and Leader of the House of Commons, was certainly not privy to the decision. When he asked to see the files on which the deportation orders were based he was politely informed that this would not be possible as he had not been 'positively vetted'.

The instigator of the deportations was not the Home Secretary or the Prime Minister but the 'state within the state', the intelligence and security agencies.

The surveillance of the Agee-Hosenball Defence Committee (AHDC)

Agee had been the subject of surveillance since he entered the country in 1972, and the various agencies concerned had been monitoring the activities and published articles of Agee, Hosenball and other British journalists for a considerable period. In the eyes of the British security services these journalists and their contacts were considered to be 'subversives' (a term used to describe Duncan Campbell by the Director of Public Prosecutions' counsel in November 1977 because of his assiduous collection of information on 'sensitive' areas). When the Agee-Hosenball Defence Committee (AHDC) was formed to protest against the deportation orders and its members automatically came under MI5 surveillance. This surveillance included not only telephone-tapping and mail-opening but also illegal thefts and break-ins.

The panel hearings for Agee and Hosenball had been completed on February 3. Rees was due to announce his decision to the Commons on Wednesday, February 16 — a fact known to MI5. There was no better time to intervene and extend their information on the AHDC, perhaps hoping to find some incriminating evidence. On February 7, the car of the Treasurer of the AHDC was broken into and the financial records together with her handbag were stolen. These records contained all the receipts and cheque payment stubs of the three month campaign. It was indeed an eccentric 'thief' who broke into the Treasurer's car — her personal cheque book and cheque card were returned to her bank. The financial records of the campaign were never recovered.

Four days later, on February 11, the car of the girl friend of the Convenor of the AHDC was broken into in South London. Fortunately there was nothing to steal. On Monday, February 21, three days after the ABC arrests the car of the Treasurer of the AHDC was again broken into — during the first meeting of the newly-formed ABC Defence Committee. Two more break-ins happened in the week that followed, both on journalists active in the AHDC campaign — one had his briefcase stolen from his car, the other's flat was entered and all his personal papers gone through.

All the thefts and break-ins were reported to the police, and Robin Cook MP raised them with the Home Secretary. Lord Harris, Minister of State at the Home Office, replied at the end of July that:

> 'The report I have from the Commissioner (of the Metropolitan Police) states that so far no arrest for these offences has been made and it has not been possible to establish a motive for the offences' (letter to Robin Cook, 29 July 1977).

Now, nearly two years later, the break-ins and thefts remain unsolved, but the 'motive for the offences' is quite clear.

The surveillance of the AHDC is not only important in its own terms but doubly so because it led to the arreest of Aubrey, Berry and Campbell (ABC).

The arrest of ABC

In this same period, before Rees' confirmation of the deportations, John Berry, an ex-soldier who had served in the Intelligence Corps in Cyprus (at one of GCHQ's listening posts) wrote a letter to the AHDC office. This was on February 4, and on February 11, Berry went into the defence campaign's office to type out a one-page statement. He had read the 'Eavesdroppers' article and wanted to help

the campaign against the deportations.

Crispin Aubrey, a Time Out journalist and an active member of the AHDC, was one of a number of journalists who got a copy of Berry's statement. He like many others suspected that the 'Eavesdroppers' article lay behind the deportation of Hosenball, so enlisting the help of Duncan Campbell, a technical journalist, arranged to meet Berry at his flat in Muswell Hill, London. The meeting was arranged, over the phone, the day before on Thursday, February 17.

The manner of the arrest of Aubrey, Berry and Campbell on Friday, February 18 confirmed that MI5 had kept the AHDC under surveillance and arranged for the Special Branch to carry out the arrest. MI5 officers have no powers of arrest and in order to protect their anonymity the Special Branch as police officers always carry out arrests on their behalf. All spies in the postwar period were arrested in this way). Detective Chief Superintendent Harry Nicholls was told on the Friday morning by Commander Rollo Watts, then head of Special Branch operations, to stand by for duty that evening. The Special Branch team did not arrive outside the flat until 8pm, an hour after the meeting started, and after the arrests took some considerable time to find the local police station — just 10 minutes drive away.

Just two days after the uproar over Rees' decision to deport Agee and Hosenball the security service, MI5, dumped another hot potato by arranging the arrest of ABC into the lap of another Minister, the Attorney-General.

From S.2. to S.1.

When ABC were arrested they were charged under Section 2 of the 1911 Official Secrets Act, which covers the communicating and receiving of official information. All prosecutions under this Act have to have the fiat (the agreement) of the Attorney-General. The Attorney-General is a Government Minister as well as a Senior law officer. Rees, the Home Secretary, had told the Commons in November 1976 that the government intended to reform Section 2 of the Act, and that it was intended that 'receipt' would no longer be an offence. This section had fallen into disrepute after the unsuccessful prosecution of the Editor of the Sunday Telegraph and journalist Jonathan Aitken (now a Tory MP) in 1970.

The only other occasion when the Attorney-General had been called on to make a decision was in December 1974 when the Special Branch arrested two researchers, John Russell and Mila Caley, who were charged under Section 2 with the unlawful possession of a copy of a Ministry of Defence manual Land Operations Vol. Three, Counter Revolutionary Operations). They were both released from custody when the Attorney-General decided not to proceed with the charges.

To everyone's astonishment the Attorney-General, Sam Silkin, not only consented to the bringing of Section 2 charges, he also sanctioned charges under Section 1 too. Section 1 charges had, with one exception, solely been used against spies and Rees himself had described it in February, 1977 as 'the espionage clause'. On May 9th, 1977 Campbell was charged under Section 1 with collecting information about defence communications which might be of use to an enemy, a charge based on his journalists's files taken from his flat in Brighton by the Special Branch. Two weeks later, all three men were charged under Section 1, communicating and receiving being an offence under this section too. ABC now faced charges which carried prison sentences of up to 14 years as a result of a three hour conversaton in a flat in Muswell Hill (the full charges are set out below).

Here again we have to look at the instigators of these very serious charges. As Rees had been over the deportations, Silkin, the Attorney-General, was convinced on the basis of the evidence presented to him that the meeting in Muswell Hill warranted S.1. charges. The agencies who provided this evidence were the same ones who 'advised' Rees. A nine-man team at the Ministry of Defence

THE CHARGES

First Count: John Berry, of **communicating** information to Duncan Campbell on February 18, 1977 contrary to S.1(1)(c) of the Official Secrets Act 1911.

Second Count: Duncan Campbell of **obtaining** information from John Berry on February 18, 1977 contrary to S.1(1)(c) of the Official Secrets Act 1911.

Third Count: Crispin Aubrey of doing a **preparatory act** (making an appointment) to an offence contrary to S.1. of the Official Secrets Act 1911, contrary to S.7. of the Official Secrets Act 1920.

Fourth Count: Crispin Aubrey of **abetting** an offence contrary to S.1. of the Official Secrets Act 1911 on February 18, 1977, contrary to S.7. of the Official Secrets Act 1920.

Fifth Count: John Berry of **communicating** information obtained as an officeholder under Her Majesty to Duncan Campbell on February 18, 1977 contrary to S.2(1)(a) of the Official Secrets Act 1911.

Sixth Count: Duncan Campbell of **receiving** information from John Berry on February 18, 1977 contrary to S.2(2) of the Official Secrets Act 1911.

Seventh Count: Crispin Aubrey of doing a **preparatory act** (making the appointment) to an offence contrary to S.2(1)(a) of the Official Secrets Act 1911 on a day between February 14 and 18, 1977, contrary to S.7. of the Official Secrets Act 1920.

Eighth Count: Crispin Aubrey of **abetting** Duncan Campbell to commit an offence contrary to S.2(2) of the Official Secrets Act 1911 on February 18, 1977, contrary to S.7. of the Official Secrets Act 1920.

Ninth Count: Duncan Campbell of collecting information concerning defence communications contrary to S.1.(1)(c) of the Official Secrets Act 1911.

(mostly members of the Defence Intelligence Staff military intelligence); the Director of GCHQ in Cheltenham; the Defence Intelligence Committee; and the ex-head of GCHQ, Sir Leonard Hooper, the Co-ordinator of Security and Intelligence in the Cabinet Office.

The fact that in the event all but the original S.2. charges had to be dropped with the agreement of the Attorney-General when tested in court at the Old Bailey only serves to emphasize the unhealthy power and influence these hidden, and totally unaccountable, agencies wield in 'advising' elected Minister.

The Colonel 'B' affair

At the committal proceedings at Tottenham magistrates court in November 1977 ABC were committed for trial at the Old Bailey on all nine counts. The prosecution, led by Mr Coombe for the Director of Public Prosecutions office, sought to emphasize the gravity of the offences committed. Regarding the S.1. charge against Campbell of 'collecting information', a usual practice for any competent journalist, Mr Coombe said that Campbell although not a spy was a very 'subversive' man. The anonymity of the key witness for the prosecution, a Colonel 'B' from the Ministry of Defence, only served to heighten the gravity of the alleged offences.

This anonymity was short-lived because in December Peace News, doing some elementary research in 'Wire', the magazine of the Signals Association, named the mysterious Colonel as Hugh Antony Johnstone. The Leveller magazine and the Journalist, the journal of the National Union of Journalists followed suit. Contempt of court orders were served on the three magazines by the Attorney-General. The drama continued when on April 20 four MPs — Jo Richardson, Christopher Price, Robert Kilroy-Silk and Ron Thomas — named the Colonel in the Commons, which was therefore recorded in Hansard. Recordings of the proceedings of Parliament naming the Colonel were broadcast on both BBC

and ITN news bulletins and the next day nearly all the national press printed the Colonel's name. Just over a week later, on May 2nd, representatives of the three magazines appeared in the High Court before Lord Chief Justice Widgery and two other judges. Each was fined for contempt of court — Peace News £500 (plus costs) and the Journalist £200 (plus costs). As a member of the Leveller collective commented: 'The Attorney-General is attempting to slam the stable door after the horse has bolted'. The ludicrousness of these fines, which with costs amounted to several thousand pounds, became apparent when the mysterious Colonel appeared at the Old Bailey trial in October 1978 under his full name. When asked why he had originally sought to disguise his identity he replied, 'because I was instructed to'.

The trials at the Old Bailey

In the summer, prior to the start of the trial scheduled to start in September, the DPP's office offered to drop all S.1. charges providing Berry and Campbell pleaded guilty to S.2. charges (which carry a maximum of 2 years imprisonment, rather than 14 years under S.1.). This offer was rejected by the defendants. The reason behind this offer by the prosecution seems to have had more to do with the prospect of an autumn General Election than a change of heart related to the alleged offence.

The first trial under Mr Justice Willis got off to a stormy start when it was learnt that the jury panel for the trial (from which 12 jurors are chosen) had been 'vetted' for 'loyalty' by the security services (see, Bulletin No8 and the News section in this issue). The first trial was stopped in its third week by the judge after a report on the London Weekend Television programme, Saturday Night People, revealed that the defence had objected to the foreman of the jury because he had signed the Official Secrets Act and was an ex-member of the SAS (Special Air Services regiment). Two other members of the jury had also signed the Act. Despite the fact that the trial judge asked for the LWT report to be reported to the Attorney-General as contempt of court, Silkin decided to take no action.

When the second trial started with a new judge, Mr Justice Mars-Jones, the first cracks in the prosecution case began to show — the S.1. charge (Count Nine) against Campbell for 'collecting information' was withdrawn by the prosecution. The major breakthrough came at the end of the prosecution case when on October 24th all the other S.1. charges were dropped (Counts One, Two,Three and Four). The judge said that the bringing of S.1. charges in a case which clearly did not involve espionage or sabotage was 'very oppressive'. The Attorney-General was consulted and he agreed to the charges being put 'on file' (effectively to drop them). The groundwork for this decision had been laid by the defence counsels' cross-examination of prosecution witnesses, including Colonel Johnstone, by demonstrating time and time again that information alleged to have been 'secret' was already in the public domain, i.e. had appeared in print.

The trial then became concerned just with S.2. charges, and one of these against Aubrey (Count Seven preparatory act) was also dropped on the judge's instructions. Only three of the original nine charges remained.

In his summing up the judge directed the jury to find Berry guilty, and indicated that If Campbell was guilty under S.2. then so too was Aubrey. The jury quickly found Berry guilty, but took more than two days to return guilty verdicts against Aubrey and Campbell. Mars-Jones sentenced Berry to six months imprisonment for communicating information, suspended for two years; Campbell for receiving information, and Aubrey for aiding and abetting (Campbell), were given conditional discharges for three years. However, he ordered that the two journalists pay swingeing costs — Campbell a total of £4,700 and Aubrey, an estimated £12,500 (these costs being related to their stated means).

After handing out the sentences Mars-Jones said: 'We will not tolerate

defectors or whistle-blowers from our intelligence services who seek the assistance of the press or other media to publicise secrets whatever the motive' (**Evening Standard** 17.11.78).

The three defendants although found guilty had been given derisory sentences given the seriousness of the charges brought by the Attorney-General. At a press conference John Berry commented:

> 'This whole affair will not stop here. Far be it for me to incite people, but I don't think anyone is going to be discouraged by this case. We have won a battle and the war will go on. The ABC trial has marginally exposed the secret state within the state. There were powerful agencies behind this prosecution and they are not responsible to anyone' (**Guardian** 18.11.78).

The prosecution of ABC cost more than £250,000 of taxpayers' money and ended in sentences which were tantamount to acquittals. Moreover, the public now knows a great deal more about Signals Intelligence, the very thing the state sought to prevent.

What are the lessons?

The most important lesson of this two year attack by the British state on 'whistle-blowers' and journalists is that the instigators were the security, intelligence and other agencies of the state. These agencies have always been outside the control of parliament, and their actions show how determined they are to preserve their 'state within the state'. The myth that these agencies are accountable to elected Ministers has been clearly exposed. Boththe Agee-Hosenball deportations and the prosecution of Aubrey, Berry and Campbell showed that the Ministers concerned, the Home Secretary and the Attorney-General, were totally dependent, and convinced by, the evidence presented to them by the security and intelligence agencies. It is also clear that MI5 at least conducted surveillance of quite a legitimate political activity, the Agee-Hosenball Defence Committee, and carried out illegal break-ins. The case for making them accountable to democratic institutions has never been more clearly demonstrated.

There are several other lessons. It has been admitted that for several years the security services have been 'vetting' potential jurors in cases agreed to by the Attorney-General. This is a further instance of a generalized attack on the jury system, which enables people to be tried by their peers (see 'The state versus its enemies', by E.P. Thompson, **New Society**, (19.10.78) Another aspect of the ABC trials is worth comment. In the second trial the judge, Mr Justice Mars Jones, established the partial independence of the judiciary from other sectors of the state. Just before the end of the prosecution case he told Mr Leonard, the DPP's counsel, that he would need to be convinced that the S.1 charges should proceed — they were duly dropped with the agreement of the Attorney-General. In effect, the security services case was thrown out of court by the judge.

Another lesson concerns the Official Secrets Act and its proposed reform (as outlined in the government White Paper published this summer). Unless this Act is limited in its substantive form, that is S.1. of the 1911 Act, to an Espionage Act then Aubrey, Berry and Campbell would still have been open to prosecution under S.1.. There has been no indication that the government intends to do this. Moreover, even under the 'reformed' S.2. John Berry would still have been open to prosecution — but this time, in Mr Rees' words, by an 'Armalite' rifle rather than a 'blunderbuss'.

As John Berry said after the trial 'the war goes on'. This 'war' is primarily about the right of people in a democracy to know what is being done in their name, and to be free from surveillance and harrassment when they try to find out what is being done in their name. In doing so they will inevitably come up against those agencies of the state who are determined to remain free from public accountability to parliament and the British people.