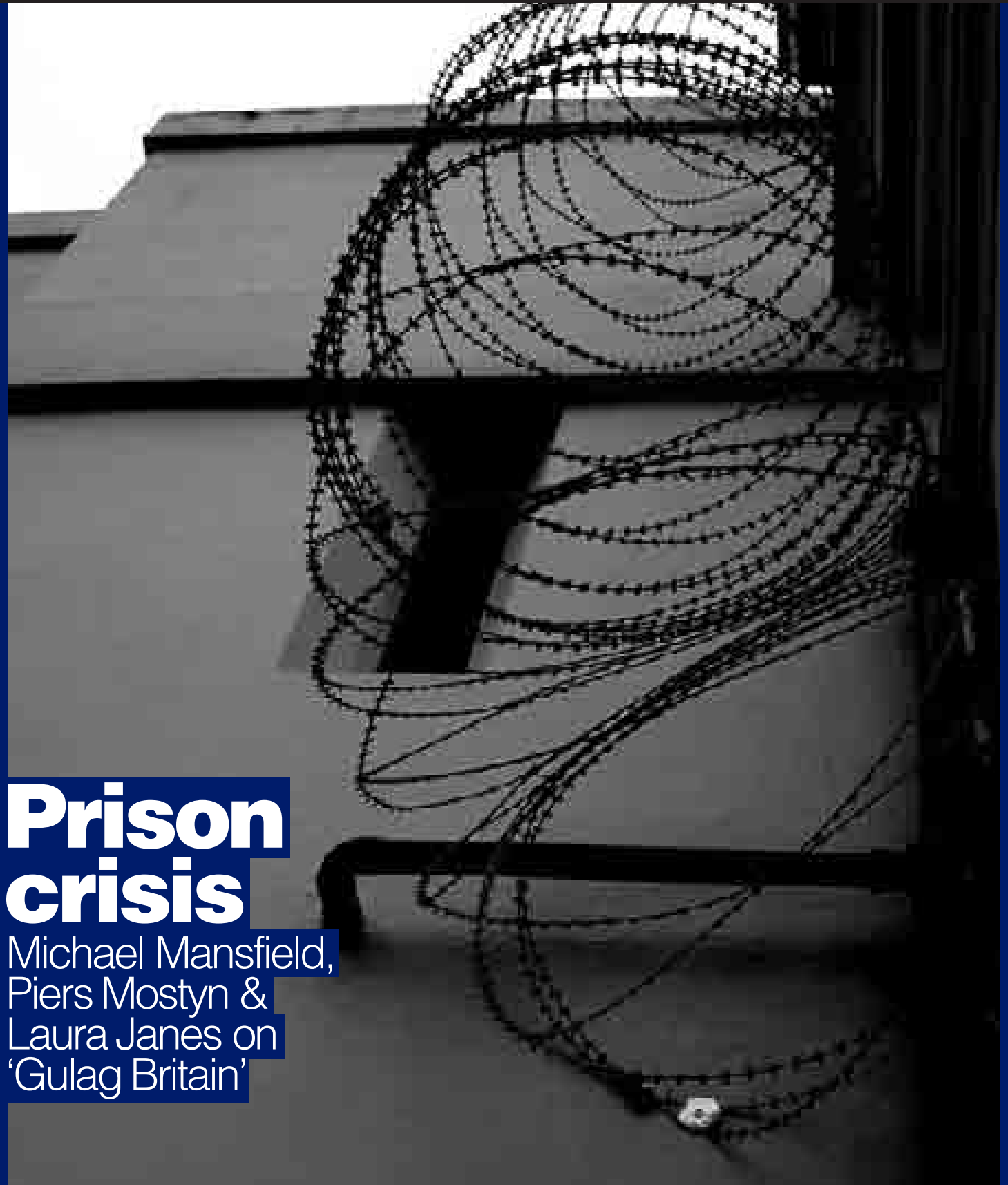


# *Socialist* **Lawyer**

Magazine of the Haldane Society of Socialist Lawyers ■ Number 45 ● December 2006

£2.50



## **Prison crisis**

Michael Mansfield,  
Piers Mostyn &  
Laura Janes on  
'Gulag Britain'

**TONY BENN THE  
LAW, SOCIETY  
AND A NEW  
WORLD ORDER**

**YASMIN  
KHAN JEAN  
CHARLES DE  
MENEZES**

**SADAT SAYEED  
GUANTANAMO:  
WORK BEHIND  
THE SCENES**

**BILL BOWRING  
DO 'TERROR'  
SUSPECTS'  
HAVE RIGHTS?**

# Haldane Society of Socialist Lawyers

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Website: [www.haldane.org](http://www.haldane.org)

The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes.

The Haldane Society is independent of any political party. Membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates.

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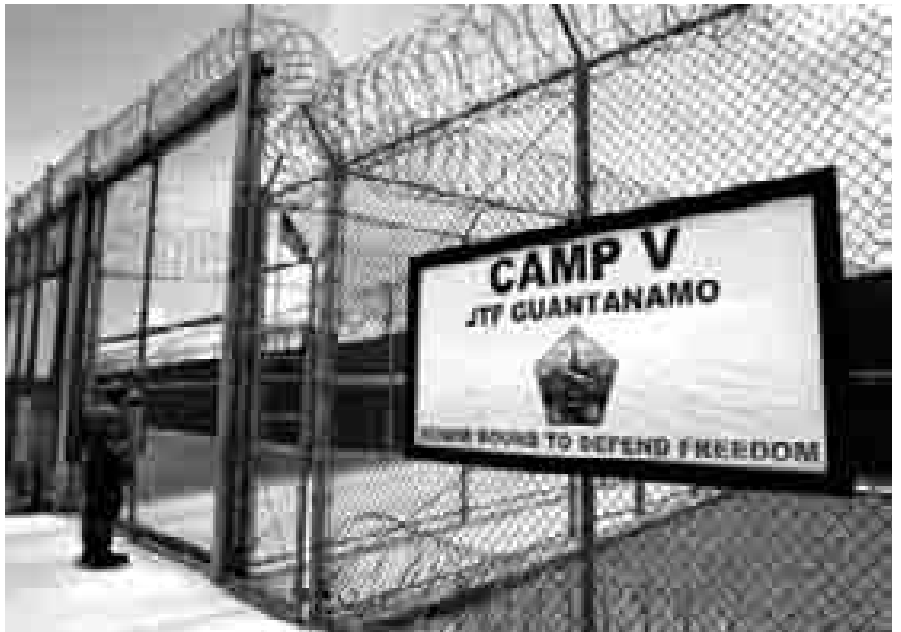
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*Printed by:* The Russell Press *Cover picture:* Janet Evans

Many thanks to all our contributors and members who have helped with this issue

# Who's out of touch?

**"M**y kind of justice is swift, effective and matches the crime" says John Reid. In Reid's world, justice doesn't involve that minor and troublesome detail of going to Court. Far better to resolve disputes on a dark night, down a quiet alley, perhaps with a few swift and effective punches.

Tony Blair's valedictory Queen's Speech contains everything that a vigilante Home Secretary could desire. The Fraud (Trials Without Jury) Bill does just what it says on the tin: it abolishes those inconvenient creatures called juries. You may have a sense of déjà vu: New Labour has been trying to abolish trial by jury in one form or another since 1997. Until recently, every attempt failed. But, buried away in the Criminal Justice Act 2003, is the abolition of trial by jury in cases of serious fraud. Even then, it was so controversial that Labour could only persuade enough of its backbenchers to vote for it by promising another Parliamentary vote before implementation. This is the implementing vote and, shamefully, its second reading was passed on 29 November with only a handful of Labour rebels lining up with the Opposition to vote against.

Other legislative proposals continue the theme of handing unchecked power to the executive. The immigration service is to have greater powers "to police borders". Expect more asylum seekers to be locked up without due process. The police are to have greater powers to police "serious and organised crime". Expect those powers to be extended to police the rest of us sooner or later.

And police powers to evict – without the messy business of obtaining a Court order – will be extended from existing closure notices and closure orders (for premises where the police suspect drug dealing or prostitution), to cases of "noise" and "anti-social behaviour" in general.

This issue of *Socialist Lawyer* explores the human rights abuses that inevitably occur when power is in the hands of the executive, unchecked by the Courts.

Piers Mostyn, Mike Mansfield QC and Laura Janes write devastating critiques of New Labour's penal policy: more and heavier prison sentences result in more vulnerable prisoners, more overcrowding, fewer rights, and a higher rate of re-offending at the end.

Yasmin Khan, from the Justice4Jean Campaign, writes of the Menezes family's difficult struggle to obtain justice, and to bring Jean Charles de Menezes' murderers to account. And Sadat Sayeed, recently returned from working on the Guantánamo Global Justice Initiative, sets out in clinical and distressing detail the inhuman and degrading treatment routinely practised on the inmates of Guantánamo Bay.

The job of progressive lawyers is to use the law to check the power of the executive, to force the Courts to maintain basic standards of human rights and civil liberties. Sometimes we win; sometimes we lose. There are progressive lawyers all over the world – Sadat Sayeed describes working with a number of them in New York – and many give their time and expertise free. In

Britain, most progressive lawyers spend their time on publicly funded cases – ranging from the ground-breaking test case to the more routine, but just as significant for the individual involved, criminal defence, housing advice, immigration advice or representation in child care proceedings. Without publicly funded lawyers, there will be more miscarriages of justice, more evictions at whim, more asylum seekers deported to face torture or imprisonment, and more children removed from their parents without proper Court scrutiny.

The Carter proposals "Legal Aid Reform: the way ahead" threaten that work. The Government makes no bones about it: "legal aid reform" means cuts in the actual resources available. Fixed fees are about reducing costs. The Government hopes that the public won't turn out to defend fat cat legal aid lawyers.

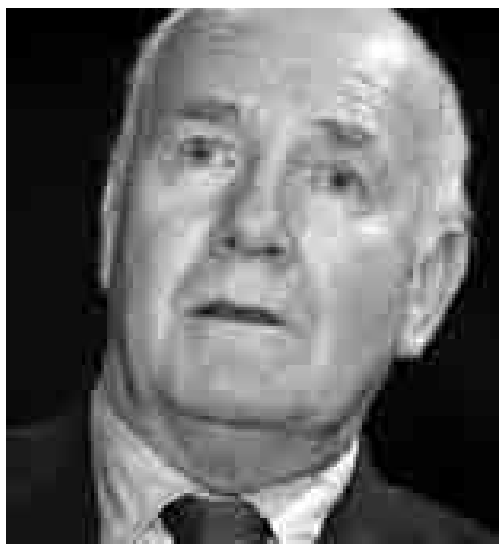
Most legal aid lawyers are already thin, under-nourished cats. If the Carter proposals are adopted, very few legal aid solicitors will be able to carry on making a living. And, in the world of criminal defence, housing, parents facing the removal of their children, there isn't exactly a rich private client group to turn to, to subsidise the loss-making publicly funded cases. The Haldane Society opposes these proposals, not for our own sake, but because ordinary people who can't afford legal fees will lose the opportunity of specialist legal advice and representation. Kat Craig, from Young Legal Aid Lawyers and the Haldane Society, sets out the Government's agenda and what we can do to resist it.

Human rights, justice, due process, equal treatment before the law are not some natural phenomenon. In a speech to the Haldane Society's Annual General Meeting, Tony Benn reminded us that democracy and civil liberties – which we so often take for granted – are the product of centuries of struggle, against feudalism, against Empire and nowadays against the neo-conservatives running America and Britain. For sure, progressive lawyers have been and remain part of those struggles. But human rights will not be defended solely by legal challenges, important though these are. We need the public on our side.

In announcing his proposals, John Reid acknowledged that his idea of justice is not "what a lawyer or legal academic might think" justice is. He claims that his is the voice of common sense, the ordinary chap

in the street, and that only out-of-touch lawyers insist on Court proceedings. The Haldane Society thinks John Reid is wrong. We believe that, however much the major political parties and the media attack human rights and civil liberties, however many media storms are whipped up, most people believe that, if arrested for a crime they didn't commit, they would want to be tried by a jury. If facing eviction, they would prefer a Judge to decide rather than the police turning up at 3am with an immediate eviction notice. If claiming asylum, they would want a fair hearing. If facing devastation of their family life through the removal of a child, they would want to be properly represented. We believe that it is John Reid who is out of touch.

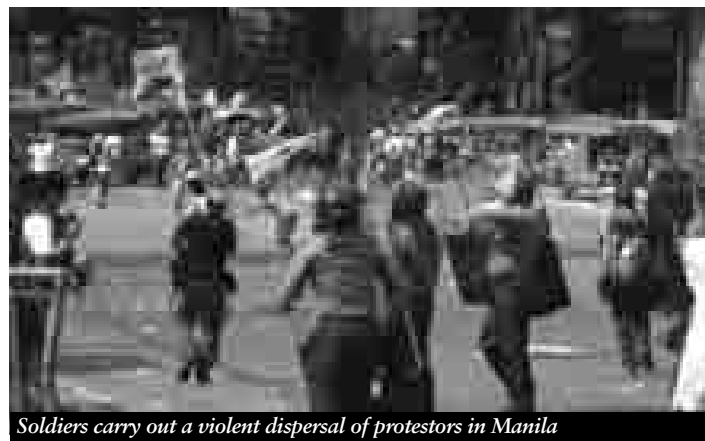
● **Liz Davies, chair,**  
**Haldane Society**  
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## Women lawyers investigate rising repression in the Philippines

**T**hree women lawyers travelled to the Philippines in May on a human rights fact finding mission organised by GABRIELA Network USA and hosted in the Philippines by GABRIELA, the national alliance of women's organisations, and Gabriela Women's Party. The delegation was called in response to the recent State of Emergency, escalated killings of workers, women, and activists, and the charges of "rebellion" lodged against six progressive party-list members of Congress (known collectively as the 'Batasan 6'), and other progressive leaders.

The six progressive members of Congress and the people's organisations they represent have led the call for the impeachment of President Gloria Macapagal-Arroyo, widely perceived in the Philippines as a US puppet who gained re-election in 2004 by fraud. Under the Arroyo government, a key partner in the US 'war on terror', human rights violations are reaching a level similar to the Marcos era. The rebellion charges against progressives based in the capital are just one component of Arroyo's systematic campaign to eradicate dissent. Activists, progressive lawyers and judges, human rights workers, and journalists are being gunned down by motorcycle-riding, military death squads. At the same time, with the backing of the US, the government is unleashing a



*Soldiers carry out a violent dispersal of protestors in Manila*

military campaign to end the 37-year-old armed leftist insurgency.

During our short stay in the Philippines the death toll continued to rise. Just as we arrived on 26th May, Noel Noli Capulong, a regional coordinator of Bayan Muna, was killed. Bayan Muna (People First) is a major coalition of worker's and progressive organisations which holds three party-list seats in Congress, and Capulong was its 95th member to be killed since 2001.

Then on 29th May, as our delegation observed a hearing concerning the rebellion case, news of another death spread through the court. One of the defendants, Sotero 'Ka Teroy' Llamas, had been killed by two assassins, becoming the 607th victim.

The Philippines instituted an electoral 'party-list' system in 1998, with the stated goal of increasing the representation of

marginalised and underrepresented sectors in a Congress which is overwhelmingly dominated by the elite and political clans. Despite their small number, the six progressive party-list representatives have been successful in defeating, delaying or diluting many of Arroyo's anti-people measures. At the same time, they have been able to make improvements for the people. Gabriela Women's Party representative Liza Maza has succeeded in passing for the first time a critical Anti-Trafficking in Persons and Children Act and an Anti-Violence Against Women and Children Act. Additionally, she is sponsoring a bill which would introduce divorce to the Philippines, and other important legislation and community projects advancing the specific concerns of women.

On 24th February, President

Arroyo declared a state of national emergency, and ordered the military and police to quash public dissent. The government justified the emergency proclamation by stating that it had foiled a supposed coup plot that it claimed had been planned by an unlikely alliance of right-wing military adventurists, Communist armed insurgents, and legal progressive political organisations. As part of this order, Arroyo revoked all permits for demonstrations. Next day, police arrested 73-year-old Anakpawis (Toiling Masses) party-list Congressman Crispin Beltran and attempted to arrest Liza Maza and the other four progressive Representatives: Satur Ocampo, Joel Virador and Teodoro Casiño of Bayan Muna; and Rafael Mariano of Anakpawis.

A former Marcos detainee, Ka Bel has been detained by Arroyo ever since 25th February, for most of this in a hospital room due to serious health problems. The other five legislators were forced to take sanctuary inside the House of Representatives building (the Batasan), sleeping on office floors for more than two months. Although the State of Emergency was rescinded on 3rd March, and on 8th May the five legislators were able to leave the Batasan, two rebellion cases were filed, one against Ka Bel, and the other against all six party-list legislators plus 45 other leaders of legal organisations, some leaders of underground left organisations, and some rebel military officers. The charging documents allege that the legislators and the other above-ground leaders of progressive party-list organisations such as Bayan

## August

**1:** A confidential internal Police and Prison Service report leaked to the BBC says there are at least 1,000 corrupt prison officers who smuggle drugs and mobile phones into prisons and that another 500 staff are involved in 'inappropriate relationships' with inmates. The report warns that the problem is growing.

**1:** Britain's three most senior Judges rule that the Home Secretary's 'virtual house arrest' powers are incompatible with human rights law. The Appeal Court judges dismissed a plea from John Reid to overturn an earlier High Court decision to squash the control orders against six Iraqis, which included a daily 18-hour curfew.

**12:** The Government announces that Diplock courts, the non-jury trials in which thousands of Northern Ireland terrorist suspects have been tried since 1973, are to be abolished by next summer. But the DPP will have the sole power of discretion as to which cases should be heard without juries since judge-only trials will be retained for 'exceptional' cases where juries could still be intimidated.

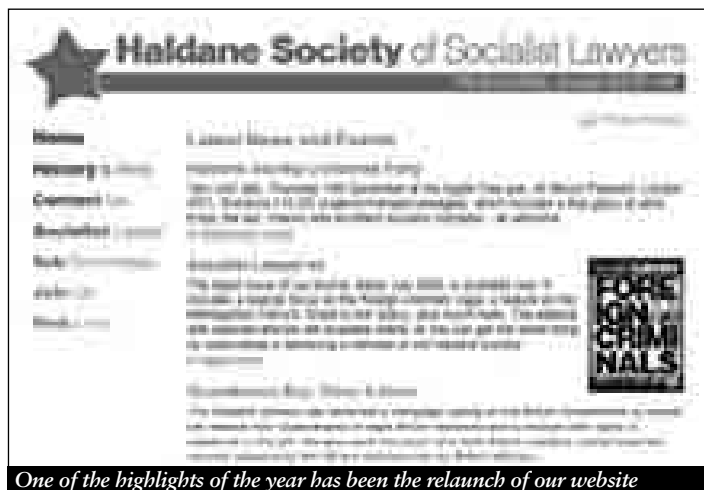
**16:** Muslim Council of Britain warn the government they risk alienating the Muslim community after reports that the Department of Transport was consulting the aviation industry over possibly introducing a method of passenger profiling which could be used to single out Muslims for security checks.

Muna, Anakpawis and Gabriela Women's Party are actually leaders of the Communist Party of the Philippines (CPP) – in league with the armed struggle and who plotted a coup in conspiracy with rebel military officers.

From our discussion with the defense lawyers, it was clear that even given the limited independence of the Philippine judiciary, the evidence is so weak that the rebellion prosecution will ultimately fail. Arroyo's government's aim is while the case slowly wends its way through the highly inefficient Philippine court system, publicity will hurt the progressive movement's chances in the 2007 elections and diminish its ability to engage the Arroyo regime in the political mainstream.

Despite these dire circumstances, we could not help but be inspired by the optimism and unity of the Philippine movement and by the dedicated Filipino human rights lawyers who persevere despite rampant judicial corruption, along with harassment, threats, attempts on their lives, and a number of their colleagues being killed.

During our five days in the Philippines, the delegation held press conferences, appeared on cable TV, spoke at a public forum at a law school, and received tons of Philippine media attention. Our trip was a stepping stone for increased international interaction to help counter the repression. A comprehensive report on our findings, distributed at the United Nations and numerous legal and human rights organisations can be found at: [www.nlg.org](http://www.nlg.org)  
 ● For more information contact Merrilyn at [monisko@yahoo.com](mailto:monisko@yahoo.com)



One of the highlights of the year has been the relaunch of our website

## High Society as AGM gears up for the coming year

**T**here was standing room only at this year's Annual General Meeting of the Haldane Society. Membership has increased by 10% over the past year and our increased profile may have helped to fill the room. However, in all modesty, we must acknowledge that it is just possible that the choice of keynote speaker (see Tony Benn's speech in this issue) had some impact on attendance! It was also particularly inspiring to see so many young lawyers and law students rallying to the cause and we are grateful to the support of Young Legal Aid Lawyers, on whose behalf Kat Craig also addressed the meeting.

The elections to the Haldane Executive Committee were as follows: Liz Davies (Chairperson);

Richard Harvey (Vice-Chair); Declan Owens (Treasurer); Azam Zia (Membership Secretary); Bill Bowring (International Secretary); Rebekah Wilson (Editor Socialist Lawyer); Marcus Joyce (Secretary); John Beckley; Adrian Berry; Hannah Rought Brooks; Kat Craig; Fiona Harvey; Monica Pirani; Adam Straw.

An amendment to the Society's constitution was passed unanimously, that four weeks' notice be required for the holding an AGM, with ordinary motions to be communicated to the Secretary two weeks before the AGM. Two emergency motions were passed unanimously: first, calling on President Musharraf of Pakistan to reprieve Mirza Tahir Hussain, then under sentence of death. We are happy to report that Mr. Hussain was re-

leased from prison and returned to the UK six weeks after the AGM. The second emergency motion welcomed the formation of the Justice for the Shrewsbury Pickets organisation and agreed to support them in pursuit of a public inquiry into the miscarriages of justice and their victimization by the state.

On vacating the chair of the Society after two years, Richard Harvey recalled a number of highlights, including the triumphant 75th Anniversary and the star-studded lecture series, a powerful precedent which we will repeat in 2007. *Socialist Lawyer* goes from strength to strength thanks to Rebekah Wilson, Andy Smith and our excellent editorial board. We will intensify our campaign against the Guantánamo illegal hell-hole under the banner: "Close it Down; Bring them Home." Thanks to our newly upgraded website we are in an ever stronger position to give the lead, not just in defending the Human Rights Act but in extending it.

In conclusion, Richard said: "The Haldane Society must give the lead, not just in defending the Human Rights Act but in extending it. We must continue to challenge illegal wars, especially when our own government bears criminal responsibility for instigating them. And we must also rise to the challenge of the kind of world we want to leave to our children. They have the human right to a healthy environment; to social, economic and cultural justice. In the midst of global warming, we cannot allow Britain to become a cold house for full human rights." ■

## September

**18:** The Home Office is drawing up plans to forcibly repatriate up to 500 children to Vietnam as part of a programme that could see thousands of minors sent back to countries where they were born. The trial run of Vietnamese children is part of a plan to remove failed asylum-seeking children who have no family in Britain.

**7:** European Union's highest court declares that Britain breached politically sensitive working-time rules and had failed to ensure that workers were given proper breaks. The European Court of Justice said Britain's official guidelines on the directive only advise employers to ensure that workers 'can' take their rest. The Department of Trade and Industry, which 'transposed' the EU directive into British law, must go further and make certain that employers ensure staff 'do' take breaks.

**13:** Cressida Dick, the officer who was in command of the firearms team that shot dead Jean Charles de Menezes is promoted from commander to deputy assistant commissioner in the Metropolitan police.

**13:** The Government's experts on drug policy recommend a much tougher drink-drive limit for young drivers and a higher legal age at which cigarettes can be bought. They want drink-driving limit for drivers under 25 to be cut by nearly 40%, and say it is time to raise the legal age for buying tobacco from 16 to 18 and ensure that the underage drinking and smoking laws are much more strictly enforced.

## Don't be 'different' under New Labour

**H**elena Kennedy argues that New Labour has stolen and subverted feminist arguments. New Labour attacks the rights of defendants facing criminal trials by using a "rights of victims" rhetoric. The language is based on feminist campaigns from the 1970s and 1980s when we were arguing that the criminal justice system didn't support women's complaints of rape or domestic violence.

A similar abuse of feminism has been used to justify the "war on terror". After 9/11, Bush and Blair suddenly discovered that women were being abused in Afghanistan. Cherie Blair famously mocked the burqa. Women's rights had become a pretext for invasion.

Now Jack Straw attempts to appeal to secular and feminist values by attacking the niqab. Women covering their face make him feel uncomfortable, he says. After 27 years of representing Muslim women and men as Blackburn's MP, Straw has chosen this moment publicly to announce his discomfort.

There has been a regular drip-drip-drip from government ministers implying that Muslims are outside the permitted limits of diversity and have to get their act together if they are to be accepted by the rest of us. Reid's warning to Muslim parents to watch their children, Straw's comments, Phil

Woolas and even Blair weighing in against the primary school teacher who wanted to wear her niqab at school. It used to be just the BNP upbraiding minorities for an alleged failure to fit in; now New Labour and the Tories have made it mainstream.

The implication has worked. Assaults against Muslims and attacks on mosques are on the increase. And it allows the police and security services to paint Muslims as legitimate targets, thus justifying racial and religious profiling that targets Asians and others whom the police perceive as Muslim. Asians are far more likely to be stopped and searched under anti-terrorist laws than anyone else, and that disparity increased dramatically after the 7th July bombings and again after the arrests on 10th August this year. Asians, or dark-skinned people whom the police might perceive as Muslims, are more likely to be shot and even killed by the police, as we know from Forest Gate and Jean Charles de Menezes.

Reid is threatening to re-introduce to Parliament a period of detention without charge for longer than the current controversial and unjustifiable 28 days. How much easier his job might be if Muslims, the likely victims of long periods of police detention, are widely perceived as different to the rest of us, and perhaps less entitled to human rights and the protection of law.



Jack Straw: should be ashamed

Straw's attacks on the niqab might have more resonance if the government actively supported women who resist wearing it. Provide more money for refuges for women fleeing domestic violence, help them enforce their rights to their children. Instead of listening to Muslim feminist voices (and they exist), the government prefers to treat Muslims as a homogenous community. It listens to the overwhelmingly male leadership's demands for Muslim faith schools. The idea that there might be Muslim feminists, or Muslim lesbians or gay men, who want to maintain their faith and also assert their identities, does not seem to enter the

government's head.

As a feminist, I abhor the niqab and the burqa. I don't just feel uncomfortable when I see women wearing them; I feel angry. Unlike Jack Straw, I'm angry for the woman herself; not because I might be discomfited or embarrassed. Wearing the niqab and covering your face in public confines your individualism to the private, domestic sphere. It's completely different to wearing the hijab, which doesn't restrict your ability to play a public role in any way.

Wearing the niqab in public, women are anonymous; they have no discernible identity. It creates practical difficulties when

## September

**15:** Two peace activists, Paul Milling and Margaret Jones walk free from Bristol Crown Court after jury fail to reach verdict on charges of conspiracy to cause criminal damage. They argued they were justified in disabling trailers used to transport bombs for US jets in order to prevent war crimes in Iraq.

**18:** Black people are more likely to face criminal charges when caught carrying cannabis than white people committing the same offence, according to a Scotland Yard study of new drugs laws. They are also far more likely to be caught in possession because there is a greater likelihood of them being stopped and searched.

**20:** The Met enters a plea of not guilty to a charge that it failed in its duty of care to Jean Charles de Menezes who was shot dead at Stockwell tube station, after being mistaken for a terrorist.

**20:** Corporal Donald Payne pleads guilty at a court martial that he abused prisoners at a detention centre in southern Iraq, but denies manslaughter and intending to pervert the course of justice. One civilian, Baha Mousa was killed and others tortured whilst being held in custody.

**22:** Director of Public Prosecutions Ken Macdonald backs calls by Attorney General Lord Goldsmith for the removal of the ban on using phone-tap evidence in court. Goldsmith spoke out for the change from the US after meetings with American officials and the FBI.



eating, running for buses, undertaking many types of employment. Even if the wearing of the niqab is the woman's own choice, the message sent is that she is her husband's property. Only he can enjoy seeing her unveiled. Those messages can be subverted – countless Bollywood musicals, drawing on Urdu poetic traditions, extol the beauty, mystery and sexiness of the veiled woman's eyes. And, of course, plenty of women wearing the niqab do work and would angrily reject the idea that it made them anonymous. But ultimately it is hard to imagine that, without numerous direct and indirect pressures, many women would

choose to wear it.

However, at this moment, in this place, some women do choose to wear the niqab. Sometimes it's not their free choice: it's directly forced upon them by male relatives. Those women should be supported and empowered to resist that force. But there are enough women who choose to wear it for varied and complex reasons: including asserting their religious identity, preferring the anonymity, or out of habit. Indeed, the attack on how Muslim women should dress is likely to produce more women wearing the niqab as an act of defiance.

Not only would be wrong to legislate to prevent them from wearing what they choose; it's wrong for a government minister even to suggest that their choice of clothing is somehow inappropriate because it makes him uncomfortable.

I was opposed to the government's religious hatred law. Jack Straw, as Leader of the House of Commons, attempted to steer it onto the statute-books. The Bill as originally proposed made it an offence for anyone to say anything that might be likely to stir up religious hatred in whoever heard it. The point was not whether or not the speaker intended to stir up religious hatred, but whether, regardless of the speaker's intentions, his or her words would be likely to have that effect. The government had, in the end, to accept a much watered down version. Had Jack Straw got his law through, his comments on the veil would have got him hauled up before the judges.

● **Liz Davies**

This article first appeared in the *Morning Star*.

## Blair complicit in war crime in Lebanon, say protesters

Over 100,000 people took to the streets of London on 5th August to demand an end to Israel's assault on Lebanon and Gaza – and to express their fury at Tony Blair's refusal to call for an immediate and unconditional ceasefire.

The emergency demonstration, called by the Stop the War Coalition at a week's notice, attracted a broad range of people. Many had decided to come along at the last moment, after the march was featured on the front page of the *Independent*.

Protesters booed as they filed past the US embassy in Grosvenor Square. They left 1,500 pairs of children's shoes outside Downing Street to symbolise the children Israel had killed.

Speakers at the rally in Parliament Square argued that Israel's onslaught had to be understood as part of the wider 'war on terror' and George Bush's plans for a 'new Middle East'.

Both Louise Christian (the human rights lawyer and a Haldane Society vice-president) and Craig Murray, a former British ambassador to Uzbekistan, said Tony Blair was complicit in war crimes and should be called to account.

Bruce Kent of CND and the Movement for the Abolition of War said:

"The other day, I was in Downing Street handing in a petition against replacing Trident, and I thought how wonderful it would have been if I had taken in a warrant from the International Criminal Court, and I was offering it to Mr Blair and a policeman would arrest him. That's a dream that will come one day."

"First it was Afghanistan and Iraq, now it's Lebanon – this is another imperial war," said Soumaya Ghannoushi from the British Muslim Initiative. "Bush and Blair are not just giving Israel a green light. They are partners in war crimes."

Blair's complicity was also highlighted by Mark Serwotka, general secretary of the PCS union. "Why did our foreign secretary tell the media that she did not know that US planes taking bombs to Israel were refuelling at Prestwick airport?" he asked. "When faced with protests, they had to stop these flights – this shows that if we protest we can make a difference."

"They sought to divide the Middle East – but in fact they have united Muslim and Christian, Sunni and Shia, Islamist and secular," said Daoud Abdullah from the Muslim Council of Britain. "This war has given birth to millions of resistance fighters across the region." ■



## October

**2:** Happy birthday to the Human Rights Act, six years old today, and under attack, from the British Government.

**3:** British government refuses offer by US to return nearly all the British residents held at Guantanamo. Americans demand that the detainees be kept under 24-hour surveillance if set free.

**4:** European Court of Justice rules that employers cannot lawfully pay some workers much higher salaries than others solely on the grounds of long service. Bernadette Cadman took her case to an employment tribunal five years ago when she found that male workers on the same grade at the Health and Safety Executive were earning up to £9,000 more than her. Her union, Prospect, described the case as the most important on equal pay to be brought in the past 10 years.

**6:** Lawyers acting for Mau Mau veterans launch legal action in UK, accusing Army and colonial authorities of torturing or illegally killing thousands of Kenyans during the rebellion for independence 50 years ago.

**7:** Under changes to double jeopardy law a man cleared 15 years ago of murdering a young mother was jailed for life. William Dunlop had stood trial for the murder of Julie Hogg in 1989 but juries failed to reach a verdict. In prison for another assault he confessed to a prison officer but nothing could be done until the change of law last year.

## Lawyer on hunger strike prepared to face death

*Jo Wilding and Azam Zia from the Haldane Society were part of a lawyers' delegation to Turkey from 29th November to 2nd December 2006 to meet lawyers and activists opposing isolation regimes in Turkish prisons – particularly the lawyer Behic Asci who has joined the mass hunger strike protest.*



*Behic Asci: fighting the barbarity of prison isolation in Turkey*

**B**ehic began his hunger strike on 5th April 2006, International Lawyers' Day, joining prisoners protesting at the isolation in Turkey's notorious F-type prisons.

Hunger strike has a history in Turkish prisons. In 1984, when there were a lot of political prisoners after the 1980 military coup, four people died in a hunger strike against the introduction of military-style prison uniforms, when prisoners had always worn civilian clothes. If a hunger strike seems an extreme reaction, in the context of military rule, the move was seen as one towards restructuring of Turkish society as a whole along more militaristic lines. The junta backed down and the uniforms were abandoned.

In 1996, plans were announced to introduce a new kind of prison. After 12 hunger-strikers died, the nominally civilian

government again backed down. Early in 2000 the plans were re-introduced and prisoners and activists again protested. On 20th October that year another hunger strike was declared. This time the government did not retreat and, on 19th December, 8335 special troops, guards and police attacked 20 prisons, killing 28 prisoners and injuring hundreds. Women with vicious scars on their faces and hands described how, on that day, a women's ward of Bayrampasa prison in Istanbul was fired on with gas grenades for several hours before being set on fire by the troops. Hundreds of prisoners were moved to 'F-Type' prisons.

F-Types are high security prisons in which single prisoners or groups of three are isolated. They are allowed out of their cells, if at all, for half an hour once a week if a member of their immediate family visits. There are no provisions for exercise, work, education or socialising. The

government claims it does not isolate prisoners and has enacted legislation allowing for five hours a week outside the cells. Dozens of lawyers from the People's Law Office and others told us that even that meagre provision meant nothing in practice. In order to be eligible for the five hours, prisoners have to go on 'rehabilitation' programmes, said to be political re-education.

The government claimed that the prison crackdown had succeeded in breaking the protests and that the hunger strike was over, provoking increasing solidarity hunger strikes beyond the prisons, first family members and then other activists joining the fast to make visible the struggles inside. F-types are represented as modern, European style prisons. Yet they are also represented as particularly harsh prisons and television stations are allowed to broadcast pictures of violent repression of demon-

strations to warn citizens against protest.

All political prisoners are isolated. Most were arrested on suspicion of membership of a banned group, for which the maximum sentence is 12 years. To raise suspicion, a person need only sell magazines on the street.

Once arrested, a person commonly spends a long time remanded in custody waiting for a trial to either start or finish. A year or two in custody before conviction is not unusual. Some prisoners have waited on remand for as much as eight years, only to be acquitted eventually.

Twelve years a lawyer, Behic Asci described the effects of isolation on one of his clients. "He was 20 years old, detained for a month and a half in isolation and when he was released he had to be admitted to hospital with clinical depression. If he was not kept in isolation he would not be in that condition." Sensory deprivation results in tinnitus, hearing loss and severely deteriorating eyesight. Physical illnesses, early menopause, depression, anxiety, loss of memory or concentration are all common.

"But besides the direct effects, it makes abuse and torture more common, more easy. One of my clients was in a single-person cell in Kandira F-Type prison. They came to do the prisoner count and he said he would not stand up to be counted because they knew he was the only one in there. They beat him, they smashed his skull against the wall of the cell. I went to court to sue the prison guards and the court said there is no case. There are no witnesses because they are all isolated."

## October

**7:** US court throws out 300 British claims for compensation for faulty drug Vioxx. Claimants, who had suffered strokes and heart attacks after taking the drug for arthritis and which was withdrawn in 2004, had been refused legal aid in the UK. US Judge ruled that the British legal system should provide sufficient redress.

**12:** Police are to pay £500,000 in damages to two of the 'Cardiff Three', who served more than a decade in prison after officers allegedly framed them for a murder they did not commit.

**12:** Five Law Lords unanimously overturn a High Court and Appeal Court libel judgements against the *Wall Street Journal Europe* in 2003 and quash damages totalling £40,000 to a Saudi billionaire businessman, an important boost for investigative journalists.

**12:** Appeal Court rules Government is under no obligation to demand the return of three UK residents from Guantanamo who suffered degrading treatment. "This suffering is the consequence of the actions of a foreign sovereign state for which the United Kingdom bears no responsibility under the European Convention on Human Rights or the Human Rights Act".

**13:** A Coroner states that he will be writing to the Attorney General and the Director of Public Prosecutions concerning the shooting of ITN journalist Terry Lloyd by US soldiers.

For all his years of experience and training, in the face of the Turkish state, Behic felt he had exhausted the legal remedies for his clients. "It just gets worse. I cannot help my clients." In this context Behic began his hunger strike in April. "The response of the State so far had been that it was illegal organisations which were campaigning against F-Types and that was why they and the military police were justified in their treatment of the strikers. As a lawyer I was able to break through the censorship and put the isolation and the protest back in the media."

Though there is not much in English on the internet about Behic, he has clearly had some effect on the Turkish authorities: police went to his (blind) father in November and pressured him to sign a document consenting to forced medical treatment of Behic. The document is of no legal effect because Mr Asc senior has no authority to consent on his son's behalf, even had he known what he was signing.

The fear is that the document was part of preparations to raid Behic's house and force an end to his protest. Many hunger strikers have been disabled by force-feeding and, in an Istanbul suburb in November 2001, four people were killed when police raided a house where a released prisoner was continuing her strike, having first obtained a similar consent document from a relative.

Hunger strike, though, is not the issue. Behic was quick to explain that fasting is only a means of protest. The issue is isolation. It is the Minister of Justice who has the power to end isolation.

Though the military Junta

handed over sovereignty to a civilian government in 1983, it left behind a constitution allowing the National Security Council (MGK) to overrule Parliament, which tends to pass laws 'suggested' by the MGK. Military officers dominate the MGK, though high ranking politicians and selected businessmen are included. The reformist former Prosecutor General of Bayrampasa prison suggested publicly that prisoners could be treated better and lost his job. He had to send his family abroad because of threats. "He lost his place in the system when he criticised it," one lawyer told us. Like most, he asked not to be named.

The set-up of F-Type prisons is displayed on a model in one of the bases of Tayad, a prison activist group set up by families and friends of political prisoners. Rectangular in shape, a row of narrow cells runs the length of the building, two blocks of six, one of five. Each block has a larger area onto which each cell has a door. As a first step, say the lawyers of the People's Law Office, all we are asking the government to do is open those cell doors, so that prisoners can associate with each other. The five or six people in the cells could then associate with one another during the day. The three-person cells each open onto a larger area which could be available to the inmates all day. "We are not even asking them to close the F-Type prisons, just to open the doors. They can pass a statute in a single day," one of the lawyers explained. "They can end isolation and save Behic's life with one sentence and a signature." ■

## European champions

In Paris on 1st May 1993, the Haldane Society became a founder member of the European Association of Lawyers for Democracy and Human Rights. EALDH is open to lawyers from all European countries, and already has members in 12 countries. The Administrative Council, its executive committee, meets twice a year, each time in a different city. In May 2005, the AC met in London, and as Haldane's International Secretary, I was elected President. The Secretary General is Thomas Schmidt, a German trade union lawyer based in Dusseldorf.

The most recent meeting of the AC took place October in Barcelona, in the office of the advocate Rafael Calderón i Fochs, the President of the Associació Catalana per a la Defensa dels Drets Humans (Catalan Association for the Defence of Human Rights). The meeting was attended by representatives of democratic lawyers from the Basque Country, Bulgaria, England, France, Germany, and Italy.

The members of the AC also took part in a large ad dynamic conference which EALDH co-organised, Borders of Europe – Zones without Rights, on issues of asylum seekers and detention. The conference attracted over 200 mostly young lawyers from Italy, France and Spain.

EALDH activities in the past year have included a Conference on Social Rights in Europe, held at the HQ of the German trade

union ver-di in Berlin; participation at the meetings of the European Network against Racism; observation of the Trial 18/98 in Madrid against 59 defendants (Tim Potter, a Haldane member (January 2006), Micó Savia (February 2006)); a meeting with Basque Lawyers in February in Bilbao; participation at the international conference of the Arab Lawyers Union in Damascus, January. EALDH also launched an Appeal to the European Governments and the European Union "Don't tolerate Aggression, War Crimes and Human Rights Violations in Lebanon, Palestine and Israel!". In November, Berlin, a conference The "War against Terrorism" and the "need" for security, followed by the awarding of the bi-annual Hans Litten Prize to Michael Ratner, advocate from New York, President of the Centre for Constitutional Rights, and former president of Haldane's sister organisation in the US, the National Lawyers Guild; November in Berlin, a meeting preparing the renewed prosecution of Donald Rumsfeld under Germany law for war crimes; Venezuela: Observation of the elections taking place as we went to press.

Upcoming activities include a Seminar in April in Munich to prepare a conference in 2008 in Pisa on The Situation in Prisons; in Autumn 2007, in Paris, an International Colloquy: Which Europe do we want?

For more info about EALDH go to: [www.ealdh.org](http://www.ealdh.org)

● **Bill Bowring** Any members interested in participating in the EALDH's activities can contact me at [b.bowring@bbk.ac.uk](mailto:b.bowring@bbk.ac.uk)

**18:** A woman who feared she would be subjected to female circumcision if she was returned to Sierra Leone has her asylum appeal upheld by the Law Lords.

**19:** A British Muslim teacher who refused to remove her veil in primary school when male colleagues were present loses her discrimination test case, but wins £1,000 for victimisation in the way the dispute was handled.

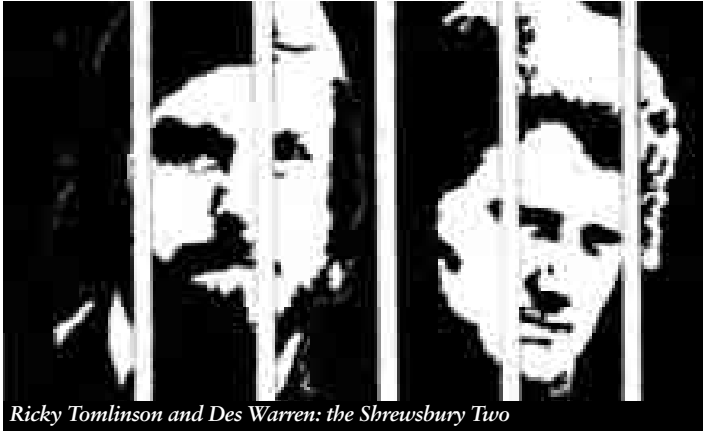
**24:** Home Secretary John Reid announces that on-the-spot fines of up to £1,000 will be introduced for Romanians and Bulgarians who take jobs in the UK without a permit.

**27:** Anne Owers, the Chief Inspector of Prisons reports that nearly half the prisoners in Britain's biggest jail, Wandsworth prison in south London, say they have been victimised by staff, with one in eight reporting they have been kicked, hit or assaulted by staff.

## November

**5:** Saddam Hussein is sentenced to death by hanging in a Baghdad court for crimes against humanity.

**5:** Thousands of rejected asylum seekers are remaining in the UK without any financial or medical support and are sleeping rough in parks, public toilets and churches according to a study by Amnesty International and Refugee Action.



Ricky Tomlinson and Des Warren: the Shrewsbury Two

## Shrewsbury pickets: it's now time for justice

**T**he Haldane annual meeting declared its support for building workers seeking to overturn their convictions on conspiracy and other charges, handed down after a strike in 1972. 'Justice for the Shrewsbury Pickets' was formed this year in Liverpool and is demanding a public inquiry into the pickets' trial, which trades unionists have always insisted was politically motivated.

Twenty-four union activists were tried. One of them, Des Warren, served three years in jail, and was administered tranquillising drugs that were a contributory cause of Parkinson's Disease, from which he suffered up until his death in 2004. Another picket convicted and jailed under the 1875 Conspiracy Act was Ricky Tomlinson, who later became a well-known actor.

The background to the

Shrewsbury trial involved building workers fighting against the low wages and appalling safety record in the construction industry in the early 1970s. The Transport and General Workers' Union (TGWU) and the Union of Construction, Allied Trades and Technicians (UCATT) advanced a "builders' charter", including demands for a minimum wage and a 35-hour week. In June 1972, after a long campaign of organisation on building sites, a national strike was called.

Thousands of workers on big sites came out and local committees began to send out busloads of pickets to persuade more workers to join the protest.

As the bitter 12-week dispute went on, the "flying pickets" – a traditional method of spreading solidarity before it was outlawed by anti-union legislation – closed down more and more sites.

The notoriously anti-union

building employers made accusations of intimidation and violence, and the National Federation of Building Trades Employers sent a dossier to the Tory government of the day, headed by Edward Heath, alleging that pickets had threatened and beaten up workers.

The then Home Secretary, Robert Carr, told Parliament that he had decided to take action against the flying pickets. After a huge police investigation, 24 union activists were arrested in North Wales. During their trials, held between October and December 1973, there were widespread protests and demonstrations by building workers and other trades unionists.

At the first trial, six men were found guilty of unlawful assembly and three of affray. On appeal, the charge of affray was quashed. But the real innovation by the prosecution was the charge of conspiracy under an 1875 Act, which had never before been used in an industrial dispute. This crime carried no maximum sentence. If they had been indicted for the crime at the centre of the conspiracy charge – the intimidation of workers to abstain from work – the maximum sentence would have been three months.

But Warren, Tomlinson and John McKinsie Jones were found guilty of conspiracy, and were sentenced to three years, two years and nine months respectively. John Carpenter, John Llywarch and Kenneth O'Shea were given nine months' suspended sentences. The judge told Des Warren: "You are no martyr... You have the power of speech

and the power of leadership, which you apparently used to ill purpose. You thought you could flout the law. You were wrong."

In subsequent trials, pressure was brought on defendants to plea guilty to unlawful assembly to avoid the charge of conspiracy. Some accepted the deal, while others refused. Brian Williams, Arthur Murray and Mike Pierce were found guilty on unlawful assembly and affray and were given sentences of six months and four months concurrent. In the last of the trials, Terry Renshaw, John Seaburg and Lennie Williams again refused to plead guilty to unlawful assembly. Seaburg was found guilty on both charges and got suspended sentences of six and four months, while Renshaw and Williams were found guilty of unlawful assembly and given suspended sentences of four months.

The Trades Union Congress was unwilling to make strong representations for the pickets' release, since Harold Wilson's Labour Government had come to power in 1974 and they did not want to rock the boat. This rankled with Warren, a lifelong activist on the left. "The TUC leaders had the key to my cell in their pocket all the time," he said, "but they never used it." Upon his release, Warren was defiant. "My sentence was to have been a deterrent to trade unionists," he said. "It appears that trade unionists are not deterred: neither am I."

Contact: justice4pickets@yahoo.co.uk or go to the website: [www.billhunterweb.org.uk/des\\_warren/contact\\_the\\_campaign.htm](http://www.billhunterweb.org.uk/des_warren/contact_the_campaign.htm)

● **Monika Pirani**

## November

**8:** More than 300 soldiers executed for desertion and other offences during the First World War are pardoned when the Royal Forces Act gained Royal Assent.

**9:** Mizanur Rahman is convicted of inciting racial hatred after calling for the killing of British troops during a protest against cartoons held to be offensive to Islam.

**10:** British National Party's Nick Griffin walks free from Court, acquitted on race hate charges. All-white jury cleared him and Mark Collett of 'words and behaviour which were either intended or likely to stir up racial hatred'. At BNP meetings in West Yorkshire – secretly filmed by the BBC – Griffin was shown denouncing Islam as "a wicked, vicious faith" and Collett repeatedly called asylum seekers "cockroaches". Their defence asserted they were not speaking in public but to like-minded partisans.

**14:** US-based civil rights Centre for Constitutional Rights group asks German prosecutors to take legal action against former US Secretary of Defence Donald Rumsfeld for war crimes and alleged abuses in Iraq and at Guantánamo Bay.

**14:** Gordon Brown supports call by Metropolitan Police Commissioner Blair for sweeping changes, including an extension of 28-day limit for holding terrorist suspects without charge and new rules allowing suspects to be interviewed after charge and the use of security service phonetap evidence in Court.

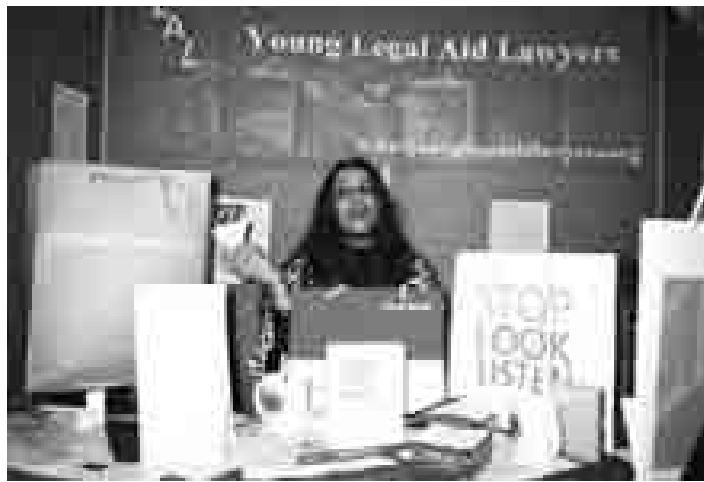
## Keeping it in the family

I began writing this while sitting at the Oxford University law careers fair: the Young Legal Aid Lawyers' stall with its photocopied handouts and banner stuck with velcro to the boards was a sorry sight. Lots of high-heeled students explaining that they want to do human rights work on an international level and human rights work generally. The other stallholders dishing out champagne, chocolate and baseballs (genuine) to promising candidates laden with glamorous shopping bags printed with the names of City firms.

The Young Legal Aid Lawyers had been asked to attend the fair to provide a presence for legal aid work – a presence that was much needed. Some students knew about legal aid but others asked whether it was like “pro bono” or “like drop-in centres”.

And suddenly the world of legal aid seemed like a small (although rather dysfunctional) family. As young legal aid lawyers we sometimes feel as though we are at the bottom of the pile, the poor relations struggling to retain a place, some respect – and a future.

In the current climate young legal aid lawyers are suffering from something akin to teenage angst: we want to be independent and to forge meaningful careers in legal aid – but all around us



*Fair play for legal aid*

we see our elders writhing in despair as means testing, Carter and the Legal Services Bill (due to be progressed this session) foreshadow a bleak future for legal aid. Despite the Minister for Legal Aid's admonitions that despair and gloom are unwarranted, how can young lawyers embarking on a career in legal aid feel anything but gloomy?

As discussions about firm action ebb and flow amongst practitioners, there appears to be a lack of cohesion in the established profession and, more importantly, firms rightly concerned with their own survival simply have no incentive to focus on the training of young

lawyers. Indeed, many firms are simply not recruiting due to the current uncertainty, and our representative bodies are proposing to scrap the minimum wage for trainees and re-introduce unfunded pupillages! While it is a great relief that the Law Society has finally joined the campaign to defend legal aid, the powers that be in the DCA appear to be of the view that the Bar is in favour of Carter – and there seems to be little evidence in the form of public protest from the Bar to dispel that. While Carter may not have been as detrimental to the Bar as it could have been in terms of fees for crown court cases, there is no doubt

that the junior Bar will feel the sting in Carter.

Meanwhile, YLAL have continuously tried to secure a future for legal aid – and more importantly for our future clients. The LSC has finally published the list of firms that provide training contracts and the DCA appear to be seriously considering our proposition that firms of a certain size should be required as part of the new contract to commit to a certain number of training contracts. And we will continue to fight.

But it is time for the profession as a whole to take a broader, more cohesive and consequently stronger stance. In particular if the Bar is to retain its independence the senior Bar needs to provide for the junior Bar: anything other than that is short-sighted and will lead to an impoverished legal aid system in the future. This means senior practitioners engaging with the Bar Council and the Law Society in their consultations about unfunded pupillages and the minimum wage, devising ways in which to provide training and support for the junior end of the profession and supporting the campaign to defend legal aid – if not for themselves, for us and our clients.

Young legal aid lawyers are part of the family... and without young legal aid lawyers there will be no future for legal aid, just “pro bono” and “drop-in centres”.

● **Laura Janes, Chair YLAL**  
[www.younglegalaidlawyers.org](http://www.younglegalaidlawyers.org)

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# REIDING BETWEEN THE LINES

The prison service is in a deep crisis. But, argues **Michael Mansfield QC**, the problem is that New Labour (and Tories alike) think prison 'works'

**T**here is a vacuum. Criminological bankruptcy. A stark lack of vision. Beyond the posturing and the rhetoric there lies a supine fear of tabloid vilification. Sentencing policy has become beholden to the populist response, couched in easy sound bites terms.

Upon assuming the office of Home Secretary, John Reid proudly pronounced that the Labour Government has 'locked up more people for longer' than any predecessor as if the prison population is a market commodity whose numbers provide a quality assured marker of a safer society. All this kind of statement achieves is reinforcement of a punitive and thoroughly erroneous belief that 'prison works' – a notion purveyed by yet another Home Secretary, Michael Howard.

The facts demonstrate a quite different truth, not that high-ranking politicians have ever allowed the facts to get in the way of the truth. Richard Garside, the acting Director of the Centre for Crime and Justice Studies at Kings College, London, observed recently:

'The Government has lost its way on sentencing policy. It continues to unpick a framework it only introduced a couple of years ago. There is no sense of any underlying philosophy, or a clear set of principles that could guide its decisions. It is left lurching from one crisis to another, chasing short

term headlines while doing nothing to address the underlying malaise in the sentencing system.'

In the 1980s I was involved in two high-profile Prison Riot Trials – Risley and Strangeways. I acted for the main defendant in both. At that time there were a number of other disturbances in prisons throughout the United Kingdom. The complaints were manifold but some were common, longstanding and obvious. The two most serious, and inter-related, were overcrowding and deficient regimes. The Woolf Report which followed these events was a thorough investigation of the causes and made far-reaching recommendations. They have not been heeded.

When Lord Woolf produced his Report in 1991, the prison population was stabilised and falling. Within the passing of a mere decade the situation has been reversed. The population has very nearly doubled, with the Home Office predicting 190,600 by 2010. This is one of the highest pro rata prison populations in the

"Keeping the lid on is now the only object. Containment is the name of the game"

world and the highest in Europe. At the end of February 2004, 85 of 138 prisons in England and Wales were overcrowded and at the end of November 2003, over 16,500 prisoners were doubling up in cells designed for one.

Small wonder that the Home Office is presently in a state of desperation and crisis. Various hare-brained schemes are being activated in the face of saturation – by 6th October it was just 162 short of capacity. Operation Safeguard it is claimed would release 500 police cells at £300 per night per prison. Such a measure is both short-lived and expensive, in 2002 it cost over £10 million.

Consideration is also being given to deporting some of the 11,000 foreign prisoners, or alternatively housing some of them in the Maze prison in Northern Ireland. The Maze, whose infamous H blocks saw the IRA hunger strikes of the 1980s, was closed in 2000 and demolition commenced last month – October 2006. Similarly, converting disused Parachute Regiment barracks in Dover is under review.

Even more extreme, conjuring up Dickensian descriptions of prison hulks in the Thames Estuary in 'Great Expectations', is the bid to use ships as floating prisons. Ridiculously, the Government is negotiating with an oil firm for the return of HMP Weare at £10 million per year, having only just sold it for oil exploration in Nigeria for a quarter of that cost.

All of this adds up to a blunt instrument for



*A typical British prison: its 'revolving doors' mean two-thirds of criminals get sent back within two years*



Picture: Janet Evans

forging a human dustbin. Keeping the lid on is now the only object. Containment is the name of the game.

Forget sensible regimes, rehabilitation, let alone reformation. Prison and Probation Service staffing levels, let alone resources, does not permit such initiatives being successfully implemented. The only way prison works in these circumstances is to sustain the criminal way of life.

Once again, the well-known and long-appreciated cycle of re-offending has surfaced in the Cambridge University study into delinquent behaviour going back over forty years to 1961. This prompted the headline in *The Times* on Friday 10th November 2006: 'Two-thirds of criminals sent back to jail within two years.' The findings suggest that the most prolific criminals start early and have long criminal careers. Unsurprisingly, therefore, the main recommendations of this study to halt the 'revolving door syndrome' is a programme of early intervention focussed on important childhood risk factors – criminality in the family, poverty, impulsiveness, poor parenting, low school attainment. An echo of tough on crime and tough on the causes. Mind you, it was only another sound bite so far as Blair was concerned.

In April 2004, Lord Woolf, then the Lord Chief Justice, delivered the Mischon Lecture at University College London entitled 'Do we

need a new approach to penal policy?' He highlighted those same problems, as he had foreshadowed in his earlier Report, –

**'The average cost of keeping a prisoner in custody is over £36,000. But prison is ineffective in reducing re-offending.....the inescapable conclusion is that unless there is a dramatic change in the way that we deal with offenders there is every likelihood of the position getting worse.'**

These sentiments have been echoed recently by his successor, Lord Phillips, who spent a day experiencing community service in October 2006.

**'It is madness to spend £37,000 jailing someone when spending much less on services in the community you can do as good a job. It is no answer just to put more and more people in prison.'**

These are simple points that are simply understood. Were there to be a Home Secretary brave enough to suffer the slings and arrows in order to promote reasoned, sensible and effective policy the public would be better served and better protected. Sir Leon Radzinowitz, the eminent criminologist observed:

**'No meaningful advance in penal matters can be achieved in contemporary democratic society so long as it remains a topic of political controversy instead of a matter of national concern.'**

In place of a meaningful advance, the latest

raft of imaginative proposals include a promise to build another 8,000 prison places by 2011, the abolition of an independent and critical Prison Inspectorate and a crackdown on early release. This is being put forward under the banner of a rebalancing of the system in favour of the victims of crime. Were the victims to be given the full picture of a system in which crime is fostered and festers until the point of release and a system in which prevention attracts scant attention, still less the resources, there might be a better prospect of a less punitive and more constructive national community.

Perhaps the most trenchant, and illuminating insight, however, into the Home Office approach to prison regimes, and any real prospect for change, comes in the revelations contained in the Quinn Report on a nine year reign on terror at Wormwood Scrubs. *The Guardian* [13th November 2006] published the results of the investigation which found more than 160 prison officers were involved in inflicting and covering-up a 'regime of torture' between 1992 and 2001. The Quinn review concluded that the findings had such serious ramifications for the prison service as a whole that a Public Inquiry should be held. Needless to say, no Home Secretary, from Blunkett, onwards has been prepared to act courageously and openly on this and establish a far-reaching and fundamental judicial Inquiry to reappraise the workings and objectives of the prison system. ■

# 'GULAG BRITAIN' PUTS US ALL AT RISK

*Pentonville prison: a dirty vermin-infested institution where 40% of the inmates have been assaulted or insulted by staff*

The prisons are overcrowded, crime is 'rising'. The government's answer? Build more prisons. **Piers Mostyn** looks at the roots of the crisis...

The parlous state of this country's penal policy surely ranks high, when it comes to expensive political disaster stories. Don't kid yourself it's just Iraq and the Millennium Dome. Inmate numbers have risen steeply since the early 1990s. In 1992 it was 45,000. By 1997, when Tony Blair came to power, it was 60,000. At the end of 2005 there were 77,000 in prison. It is currently just short of 80,000, 10,000 too many for the places available.

Current Home Office projections indicate a best case scenario involving 87,600 under lock and key in five years time. Failing that, it will break through the 100,00 mark and could reach 106,000 by 2013. Frances Crook of the Howard League for Penal Reform has described this as "truly chilling ... the Home Secretary is projecting a future of "gulag Britain" that puts us all at risk".

England and Wales have the highest imprisonment rate in Western Europe, at 148 per 100,000, 50% higher than the average, with France on 85 and Germany 95. We easily outstrip authoritarian regimes like China, Burma and Saudi Arabia. In the West the country is second only to the USA which notoriously keeps over 2.1 million behind bars.

Serious questions need answering about what is fuelling the growth. The comparative statistics suggest there is nothing inevitable about it.

Each prisoner costs around £40,000 a year to maintain and each new prison place comes

with a price tag of almost £100,000. This is a phenomenal cash drain at times when mental health, drug addiction, probation and housing are inadequately resourced. But there are numerous other debilitating knock-on effects.

Overcrowding leads to more lock up time and less access to services that are vital if prisoners are going to return to the community better people than when they were banged up. 18,000 are forced to share cells. Far too few prisoners receive any training or education.

Prison regimes struggle to perform basic tasks under the enormous strain. This has resulted in a stream of critical reports from Anne Owers, the Chief Inspector of Prisons, as there were from her predecessor. Only a massive House of Lords revolt forced the government to scrap plans to get rid of the inspectorate that tells this crucial story.

In recent months Pentonville has been condemned as a dirty vermin-infested institution where 40% of the inmates have been assaulted or insulted by staff. The inspectors found that one evening there was not enough food to go around at the only cooked meal of the day. Basic operations were described as at best patchy and at worst non-existent. Fear of violence has grown largely due to the easy availability of drugs.

In October, at Wandsworth, Britain's biggest jail, it was reported that half the prisoners said they had been victimised by staff – with 1 in 8 physically assaulted by them. Although there has been an improvement in vocational training opportunities – only 96 out of 1,400 in-





mates were able to take advantage.

And a year long investigation by the Prison Services anti-corruption unit and the Metropolitan police has suggested that around 1,000 prison officers were involved in varieties of corruption.

It is well established that the reconviction rate for prisoners is higher – at 67.4% re-offending within two years of release – than for offenders punished in the community. A significant increase on 15 years ago (when it was 51%). Among 18-21 year olds the figure is 78.4%. Juliet Lyon, director of the Prison Reform Trust has commented that, “no one can be satisfied with a prison system which turns people out more, not less, likely to offend again. Overcrowded prisons are turning petty criminals into the old lags of the future”.

The impact of all this is worst on the most vulnerable. Self harm and suicide in prison continues to be an endemic problem. A large proportion have mental health problems. And there are currently 5,000 inmates that former Prison chief Martin Narey described as “profoundly mentally ill” – requiring urgent transfer to NHS facilities.

There are over 11,000 prisoners under 21 in England and Wales. In October the Youth Justice Board reported that, with 3,350 of these under 18 year olds, the system is in meltdown. This is more than double the figure a decade ago and rising higher than the general prison population. Almost half of them will have been in care at some point. Up to 30% of young women in custody report having been sexually abused in childhood. 10% suffer from severe psychotic illness compared with 0.2% in the general population. Around 2/3 experience anxiety and depression. 29 children have taken their lives in custody since 1990.

The number of women in prison has also risen at a higher rate than the average, more than double over the last decade. The majority are for non violent offences. The relentless increase in male prisoners is impacting on womens prisons, as they are converted to make places. As a result women are more than twice as likely to be held more than 50 miles from their home despite a large proportion being mothers.

55% of self harm incidents in prison are committed by women, although they are only 6% of the total – with 42 female suicides in the past four years.

And the cancer of racism has been highlighted by this year’s Inquiry on Zahid Mubarek, the young Asian male, unnecessarily imprisoned for a minor offence and murdered by his psychopathic Nazi cell mate. In the decade to 2003 the proportion of ethnic minority inmates increased from 16% to 25%. How much has changed since the Commission for Racial Equality condemned the prison service for racial discrimination on 17 separate counts, two years ago?

A discussion on the causes of crime and how it should be dealt with is essential to this issue, although it hardly provides an explanation. It is a complex debate, not helped by two contradictory sets of statistics – recorded crime going up but the more authoritative British Crime Survey showing a reduction. And there are important variations among particular crimes – violent and sexual offences bucking the general

“England and Wales have the highest imprisonment rate in Western Europe, ... We easily outstrip authoritarian regimes like China, Burma and Saudi Arabia”

downward trend. But the general consensus is that crime rates are stable or are falling.

Rising numbers cannot be explained by an increase in arrests. The number of defendants coming before the courts remained broadly stable through the 1990s – a time of accelerating prison growth. What changed was the number sent to prison and the length of sentences. Between 1996 and 2002 the number of people receiving custodial sentences increased by 32% from 85,000 to 112,000 a year. Although the use of community sentences also increased by 41%, the use of fines fell. There has been a ratcheting up in which offences at each level of seriousness are being given more punitive sentences.

No doubt magistrates and judges should take their share of the blame. But the central responsibility lies with the government. New Labour has created new offences, increased sentencing powers, introduced new minimum and life sentences, clamped down on bail rights and created a whole new risk of incarceration (through ASBOs) from behaviour not previously classified as criminal.

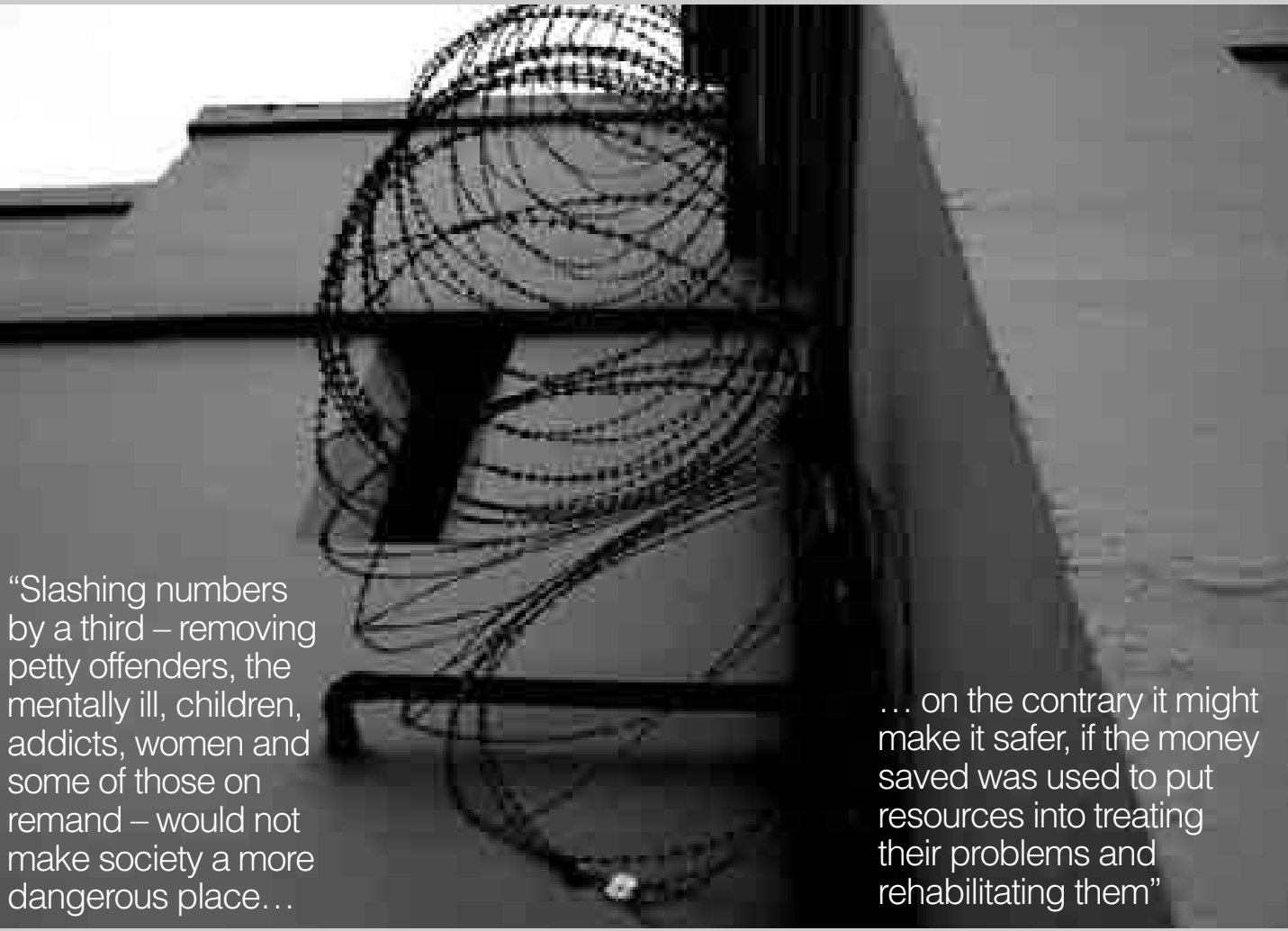
More significantly it has engaged in an overt bidding war with the Tories, aided and betted by the reactionary tabloids, to see who can be the hardest on crime and “disorder”. At the slightest chance, public anxiety is whipped up. The courts then respond to this pressure, although of course – if the independence of the judiciary meant anything – they shouldn’t.

The usual riposte is to blame “the people”. “Public opinion must be obeyed”, “by being tough we at least hold the line against hanging and flogging”: so the argument goes. But how valid is it?

An ICM survey conduct by the charity SmartJustice this Summer showed that 62% out of 1,000 crime victims did not believe prison reduces non-violent crimes and 80% thought more constructive activities for young people in the community and better supervision of children by parents would be effective in stopping re-offending.

And reactionary populism of this type doesn’t come from nowhere. The context for popular discourse has been two and a half decades of government-led rightism on law and order. This has not been inevitable. You can conspire with it and nurture it, as Murdoch and Blair have done, or you can look to the alternatives.

What are the roots of this public anxiety? It is now well established that public perceptions about both the crime rate and the way the criminal justice system deal with it are incon-



“Slashing numbers by a third – removing petty offenders, the mentally ill, children, addicts, women and some of those on remand – would not make society a more dangerous place...

... on the contrary it might make it safer, if the money saved was used to put resources into treating their problems and rehabilitating them”

Picture: Janet Evans

► sistent with the true facts. In other words things aren't as bad as people think they are.

We are living in an age of heightened insecurity the roots of which pre-date the current over-crowding crisis or Osama Bin Laden's rise to fame.

Post-Thatcher changes to the economy, society and the welfare state have produced a society with the longest working hours in Europe, growing inequality (higher now than under Thatcher) and large numbers working for low wages on short term contracts. Unemployment may technically be down, but huge numbers are on sickness benefits, many suffering from depression. Simply visiting your GP is far more difficult than it was 30 years ago. An acute housing shortage adds further pressure. And the reduced value of and greater uncertainty over pensions combines with changes to the job market to heighten insecurity about the future.

In these circumstances it is hardly surprising that people project anxieties stemming from a plethora of causes over which they have no control and perhaps little awareness on to more tangible targets – disorder, crime, etc – exaggerating their significance at the very least.

In any event, significant aspects of the prison population are directly under government control. The number of prisoners being returned to jail for breaching conditions under which they were released on licence has soared by 400% in four years – from 2,457 in 2001 to 9,320 last year. The majority of these have been for technical breaches rather than further offences. John Reid has recently presided over a

significant drop in lifers getting parole – a response to the current “crisis” over the issue, but also proving how easy it is to turn the tap on and off.

A large number of inmates are being held on remand, (currently 16.7% of the total). But less than half of these go on to receive a prison sentence. Just over one in five of the female prison population are on remand, one of the fast growing groups.

And thousands of prisoners with serious mental health and addiction problems are simply in the wrong place. Arguably the introduction of a woefully under-resourced “care in the community” system since the 1990s has simply led to the dumping of large numbers in prison as an expensive and counterproductive alternative, many of them self-medicating on illegal drugs en route.

The Healthcare Commission reported in November that Primary Care Trusts are failing to provide adequate mental health care for young offenders. Service provision is patchy and inconsistent, with many PCTs failing to meet their legal obligation to provide appropriate levels of care. Effective treatment of mental health problems is crucial to reducing the very high re-offending rate of this age group.

Much of this isn't very controversial. Senior ministers and judges have been on record for some time in acknowledging that there is nothing healthy about the situation. So what can be done about it?

Crime and the fear of crime have substantial

roots in an increase in insecurity, alienation and individualism and a decline in social solidarity and strong communities. Successive Tory and Labour governments have implemented policies that have exacerbated these dynamics. The political trajectory driving this has to be changed.

Even given the status quo, what justification can there be for a prison population above the European average? Slashing numbers by a third – removing petty offenders, the mental ill, children, addicts, women and some of those on remand – would not make society a more dangerous place. On the contrary it might make it safer, if the money saved was used to put resources into treating their problems and rehabilitating them.

Well run and carefully targeted rehabilitation programmes have lower reconviction rates. The Howard League estimates that replacing 20,000 prison places with alternative sentences would save the taxpayer £690 million.

This has got to be better than Labour's planned 8,000 new prison places by 2012 (topping the £2.5 billion spent on them new since 1997). The only real beneficiary will be the private sector, which will profit from running half of it. And this may not be sufficient even to meet the most optimistic official predictions.

Sources include the websites of: The Howard League for Penal Reform, The Prison Reform Trust, Guardian Unlimited, The Home Office, SmartJustice, The Independent, The BBC and The International Centre for Prison Studies ■

# CHILDREN IN CUSTODY: CHILDREN IN NEED

There are literally thousands of young people in custody in the UK right now. **Laura Janes** reports on a shocking aspect of society today...

**S**ome 10,000 children pass through the secure estate for juveniles per year. At any one time there are approximately 3,000 children under the age of 18 held in secure children's homes, Secure Training Centres (STCs) or Young Offender Institutions (YOIs).

Incarceration is costly: A Secure Training Centre place (run by private contractors) costs £164,750, and a local authority secure children's home place costs £185,780, reflecting staffing ratios of four staff to eight youngsters. A place at a Young Offender Institution run by the Prison Service costs £50,800, with a ratio of around four staff to 60 youngsters.

Criminal responsibility in England and Wales begins at the age of ten years – the lowest (bar Scotland) in Europe. England and Wales imprison more children and young people than any Western European country, behind only Turkey and Ukraine. Article 40 of the UN Convention on the Rights of the Child stipulates that 'if children are accused of breaking the law they should get legal help. Prison should only be used for the most serious crimes.' It is clear that custody is not being used as a last resort in England and Wales. Rather, the advent of Anti-Social Behavioral Orders mean that it is not unknown for young people to be placed in custody without ever having committed a substantive criminal offence.

A recent statement by the Lord Chief Justice emphasised the difficulties in sending damaged people to prison:

'I have been talking about the large number of inadequate or damaged members of society for whom minor criminality is the only way of life they know. Short spells of imprisonment followed by reoffending is an expensive and ineffective way of dealing with these. Meaningful punishment in the community, coupled with a proper programme of rehabilitation, properly resourced and managed, must be the better option.'

'Damaged members of society' are extremely well represented amongst the child

prison population. Over half of the children in custody have been in the care of, or involved with, social services prior to entering custody. Two out of five girls and one out of four boys report suffering violence at home. One in three girls and one in 20 boys in prison report sexual abuse. Eighty-five per cent of children in prison show signs of a personality disorder. One in ten shows signs of a psychotic illness (such as schizophrenia). One in four females (aged 16 to 20) and one in seven males in prison were dependent on opiates such as heroin. Over half of the girls in prison and two-thirds of the boy population had alcohol problems before entering prison.

The picture is well summarised by Mr Justice Munby in a judicial review brought by the Howard League for Penal Reform in 2002, which successfully determined that the Children Act 1989 does not cease to apply simply because a child is incarcerated:

'[Children in custody] are, on any view, vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse or neglect. Over half of the children in YOIs have been in care. Significant percentages report having suffered or experienced abuse of a violent, sexual or emotional nature. A very large percentage have run away from home at some time or another. Very significant percentages were not living with either parent prior to coming into custody and were either homeless or living in insecure accommodation. Over half were not attending school, either because they had been permanently excluded or because of long-term non-attendance. Over three-quarters had no educational qualifications. Two-thirds of those who could be employed were in fact unemployed. Many reported problems relating to drug or alcohol use. Many had a history of treatment for mental health problems. Disturbingly high percentages had considered or even attempted suicide.'

As a result of the Munby case, the duties towards children in custody under the Children Act have been recognised and incorporated

into the Prison Service Order for Juvenile regimes. Where children in custody are in need of protection a referral must be made to social services and each establishment now has child area protection committees. The recently published report of the Carlile Inquiry commissioned by the Howard League suggests that there is still much to be done within the juvenile secure estate to ensure that children inside custody are not subjected to serious harm. The report recommended severely restricting physical intervention, stopping the strip searching of children and an end to segregation of children in custody. Lord Carlile's comments on the publication of his inquiry amount to a damning indictment of the current position:

'The rule of law and protection of human rights should apply to all children equally, regardless of whether they are detained in custody or in the community. We found that some of the treatment children in custody experience would in another setting be considered abusive and could trigger a child protection investigation. If children in custody are expected to learn to behave well, they have to be treated well and the staff and various authorities have to set the very highest standards. My team of expert advisers shared my shock at some of the practices we witnessed.'

However, physical control and restraint techniques continue to be widely used on children in custody. Research by the Howard League for Penal Reform suggested that up to one in five children sustained injuries as a result of restraint while in custody. These ranged from broken wrists to nosebleeds, friction burns and bruising. An answer to a parliamentary question showed that between January 1999 and June 2004, restraint was used 11,593 times in STCs

A further and deeply worrying issue that the Howard League has campaigned on recently is the number of child deaths in custody: twenty nine children have died in penal custody since 1990. Twenty-seven of the children took their own lives; one was the victim of homicide and one boy died whilst being restrained by staff. Twenty-seven of the children died in prisons and two died in privately run jails for children, the secure training centres. A study published in *The Lancet* on 15th September 2005 suggested that children in prison are 18 times more likely to commit suicide than their counterparts in the community.

Prison does not work for children. In addition, as a country we are clearly in breach of the UN Convention on the Rights of the Child in that we do not reserve custody as a last resort.

In short, children in the penal system are often seen as offenders first and children

● Laura Janes is a solicitor and Legal Officer for the Howard League for Penal Reform, whose legal team was established in 2003 following the landmark victory the organisation achieved in the Children Act Case in order to represent children in custody. The team has evolved (from December 2006, representing people in custody under 21) and now has a criminal defence (prison law) contract with the Legal Services Commission, for which it has been awarded the Quality Mark.

# GUANTÁNAMO:

In December 2005, following a telephone interview with the Legal Director of the Center for Constitutional Rights in New York, **Sadat Sayeed** was offered a three month fellowship to work on CCR's 'September 11th' dockets, and in particular, on the 'Guantánamo Global Justice Initiative'. What follows is an overview of the last five years at Guantánamo Bay, the litigation efforts, and the lawyers who are leading the fight to close one of the 21st century's most hideous symbols.

**T**he Center for Constitutional Rights is a non-profit legal and educational organisation dedicated to protecting and advancing the rights guaranteed by the US Constitution and the Universal Declaration of Human Rights. CCR's work began in the 1960s, on behalf of civil rights activists, and it has grown into the US's leading progressive legal center, undertaking innovative and ground-breaking litigation on behalf of popular movements for social, legal and racial justice.

It cannot be doubted that the events of 11th September 2001 rocked the United States, and in particular New York. The Bush administration, which at the time had been in power for less than a year, acted swiftly, and in early October 2001 George W Bush ordered the invasion of Afghanistan to overthrow the Taliban, and destroy Al-Qaeda. By early 2002, the US Naval Base at Guantánamo Bay started to receive alleged members of the Taliban and Al-Qaeda who had been captured on the battlefield in Afghanistan. The initial images of detainees dressed in orange boiler suits, shackled, blindfolded and being moved around on trolleys, were potent symbols of the new neo-conservative world order created by George W Bush with the assistance of his junior partner, Tony Blair.

At a time when New York was still reeling from the attacks of 9/11, and the American public as well as the legal and political establishment fell into line with the President, none of the established civil liberties organisations stepped forward to challenge the human rights outrage that was unfolding at Guantánamo Bay. All except CCR. Representing two Australians, David Hicks and Mamdouh Habib, and two men from the U.K, Shafiq Rasul and Asif Iqbal, CCR filed a petition seeking a writ of habeas corpus for the detained men in the District Court for the District of Columbia. The petition challenged the Presidential Executive Order of 13th November 2001, which authorised indefinite detention without due process of law, as a violation of international law and the US Constitution. No other legal organisation was willing to join CCR in their efforts, and they received scores of death threats and hate mail.

Within months however, under the bold leadership of CCR, increasing numbers of lawyers throughout the US started to take notice of the monstrous regime which had been put in place at Guantánamo Bay, and also of the assault on the US Constitution which the vast majority of Americans, whatever their political persuasion, hold so dear. This

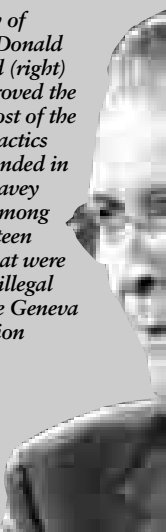


quickly developed into the Guantánamo Global Justice Initiative under which CCR started to recruit, coordinate and train attorneys from around the country to provide legal help to the Guantánamo detainees and those captured around the world in the name of the war on terror. This group of lawyers has now grown to around 500 in number, and the lawyers range from 'one man band' firms in the Mid-West, through to partners in huge Wall Street law firms, all of whom work on a pro-bono basis. The incredibly broad spectrum of lawyers, who are willing to give up their time and effort, is a reflection of how inimical Guantánamo Bay is to the rule of law.

## Litigation efforts

The initial habeas applications proceeded all the way to the Supreme Court, and on 28th June 2004 in *Rasul v Bush*, the Court ruled in favour of the detainees in a landmark judgment which held that the detainees had the right to habeas corpus in the American federal courts. The New York Times hailed the victory as "the most important civil liberties case

*Secretary of Defense Donald Rumsfeld (right) had approved the use of most of the specific tactics recommended in the Dunlavey Memo, among them sixteen tactics that were patently illegal under the Geneva Convention*



# FIVE YEARS ON

in half a century". This was a significant blow to the Bush administration's attempts to hermetically seal away the detainees in a lawless black hole. Within a month of the decision, CCR had filed habeas petitions for 53 of the detainees, and in January 2005, CCR lodged habeas corpus applications for more than 500 detainees in a lawsuit entitled 'John Does Nos. 1-570 v. Bush', named so because the Bush Administration refused to disclose the identities of the detainees it was keeping in indefinite detention.

However, the seminal ruling in *Rasul v Bush* on one of the cornerstones of Anglo-American law, was subsequently washed away by the 'Graham-Levin' legislative amendment which sought to eliminate the right of habeas corpus for anyone held at Guantánamo. The affect of the amendment, proposed by Senators Graham and Levin, was to strip federal courts of habeas jurisdiction, thereby eliminating a right, the origins of which go back to the Magna Carta in 1215. The *New York Times* condemned the Graham-Levin amendment as "a malignant measure" and warned that it "would do grievous harm to the rule that the government cannot just lock you up without showing cause to a court. This fundamental principle of democratic justice must not be watered down so the Bush administration does not have to answer for the illegal detentions of hundreds of men at Guantánamo Bay and other prison camps."

Despite a vigorous campaign by CCR and other leading civil liberties and human rights organisations against this hideous amendment, on 30th December 2005, the President signed into law the Detainee Treatment Act of 2005 (DTA), which contained a provision (introduced by Senator McCain) that explicitly stated, "No individual in the custody or under the physical control of the United States Government... shall be subject to cruel, inhuman, or degrading treatment or punishment".<sup>1</sup> This provision was a welcome affirmation of the US government's obligations under international law. However, what was given with one hand was taken away by the other. Section 1005 of the DTA (the Graham-Levin amendment) purported to sharply limit the rights of the Guantánamo detainees to bring habeas corpus petitions in the US courts to challenge their detentions. The effect of this provision was to erase the memory and effect of the Supreme Court's ruling in *Rasul v Bush*.

Under section 1005 of the DTA, the US Court of Appeal for the D.C. Circuit was given exclusive jurisdiction to hear habeas cases brought by individuals held at Guantánamo Bay, however review was limited only to the status determination made by Combatant Status Review Tribunals (CSRT), ad hoc hearings established by the administration at Guantánamo in 2004, limited to establishing whether a detainee has been properly designated an "enemy combatant." In addition, the DTA circumscribed judicial review of

military commissions, providing exclusive jurisdiction to the D.C. Circuit to review final decisions by military commissions where a sentence of 10 years or more was imposed. The jurisdictional limitation provided by the DTA was a grossly inadequate substitute for the great writ of habeas corpus. The CSRTs could not even be described as 'third class justice', offering not a modicum of due process to the detainee. Under the CSRT procedure, detainees are not aware of the charges against them, cannot present rebuttal evidence, have no right to counsel, and no right to present witnesses.

## Detainee abuse

The protracted litigation was set against the backdrop of constant reports of torture and abuse of detainees. Much of this abuse was state sanctioned. On 11th October 2002, Major General Michael B. Dunlavey, Commander of the Joint Task Force 170 at Guantánamo, sought approval of certain special interrogation tactics from General James T. Hill, Commander, United States Southern Command. The proposed interrogation techniques were divided into categories. Among Category II tactics were the use of dogs, removal of clothing, hooding, stress positions, isolation for up to 30 days, 20-hour interrogations, and deprivation of light and auditory stimuli. The Category III tactics sought were "use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family," "exposure to cold weather or water," "use of a wet towel and dripping water to induce the misperception of suffocation," and "use of mild, non-injurious physical contact."<sup>2</sup> By 2nd December 2002, Secretary of Defense Donald Rumsfeld had approved use of most of the specific tactics recommended in the Dunlavey Memo. Among the sixteen tactics were those that were patently illegal under the Geneva Conventions and other international laws, and included stripping detainees naked, use of hoods, use of dogs, yelling, stress positions, isolation for 30 days, light deprivation, and use of loud sounds as interrogation tactics.

Several detainee accounts detailed brutal beatings, waterboarding, stress positions for prolonged periods of time, applying electric shocks to a person, mock execution, sexual assault, hooding, threats of rape, physical restraint of detainees in very painful conditions, witnessing the torture of other detainees, and keeping detainees naked in cells.<sup>3</sup> Detainees were also subject to other acts which by any view constitute torture or other cruel, inhuman or degrading treatment or punishment. These included allowing medically untrained military personnel to attempt inserting intravenously into detainees, being injected with syringes of unknown medicines, being placed in a room with varying degrees of water and threatened with electrocution and drowning, being beaten while blindfolded, spending prolonged periods in isolation, being shackled for prolonged periods so that the detainee urinated on himself, being doused with pine sol (a household cleaning product) and used as a "human mop" by military personnel, forcing detainees to urinate and defecate on themselves, manipulating sleep cycles by brightly lighting cells for 24 hours a day, sexual assault and other variations.

1. Section 1003 of the Detainee Treatment Act.

2. In the House of Lords (UK) in *A and 9 others v Secretary of State for the Home Department* [2005] UKHL 71, Lord Bingham giving the lead judgment stated "It may well be that the conduct complained of in *Ireland v United*

Kingdom, or some of the Category II or III techniques detailed in a J2 memorandum dated 11 October 2002 addressed to the Commander, Joint Task Force 170 at Guantánamo Bay, Cuba, (see *The Torture Papers: The Road to Abu Ghraib*, ed. K Greenberg and J

Dratel, (2005), pp 227-228), would now be held to fall within the definition in article 1 of the Torture Convention."

3. Open letter of Shafiq Rasul and Asif Iqbal to President George W Bush and the United States Senate dated 13th May, 2004.



## My arrival in New York: an “undesirable Muslim”?

My trip to New York began with a decidedly unusual experience. After long consideration, I decided I would not apply for a visa in advance of travelling to the US, as this would have required an interview at the US Embassy in London. Considering the nature of the work I was going to be doing in New York, and the organisation I was going to be working for, I was not at all confident that I would be granted a visa. As a British national, I was entitled to enter the US on the ‘visa waiver programme’, and as I was not being paid to do my fellowship, I would not require any kind of permission to work. Upon arrival at JFK international airport, after spending five minutes at the immigration counter I was taken away to a separate holding area which was full of people that the Department of Homeland Security had deemed as possibly not appropriate for entry. As a lawyer I knew that I had done nothing wrong, however, at the time, the story of another CCR client, Maher Arar was in my thoughts. Mr Arar, a Syrian-born Canadian citizen was detained during a transfer through J.F.K. Airport in September 2002 on

his way home to his family in Canada. He was held in solitary confinement for nine days and interrogated without the benefit of legal counsel, his requests for a lawyer being denied. The Bush administration labeled him a member of Al Qaeda, and rendered him, not to Canada, his home and country of citizenship, but to Syrian intelligence authorities. Mr Arar spent ten months in detention in Syria, where he was brutally interrogated and tortured, without charge. Enduring constant beatings, including being whipped with two-inch thick electrical cable, Mr Arar falsely confessed that he had attended a training camp in Afghanistan, fighting against the United States. As the thoughts of Maher Arar passed through my mind, being a British lawyer (albeit a Muslim one) felt like it did not count for much.

After being kept waiting for two hours, I was taken to be interviewed. During this interview, I was asked who I was and what I was in the United States for. Whilst I was entirely candid about the reasons for my trip, my responses were met with a degree of contempt. I later found out

that the reason I had been stopped and questioned was because there had been some sort of name match from the Department of Homeland Security’s enormous database of ‘undesirable’ Muslims. The purpose of the interview was to eliminate me from their enquiries. However, in the course of seeking to do so, they showed me a printout of my profile from chambers’ website, which amongst many other things, mentions ‘terrorism’ and ‘torture’. It was remarkable to witness how obtuse those who were interviewing me actually were. They refused to acknowledge the context in which those words were used, namely as a lawyer working in areas of law in which those words are common currency, and were only interested in the reference to those words in complete isolation. Eventually, after three hours of being held in the immigration holding facility, I was begrudgingly granted a 90 day entry, but not before all my bags were opened and thoroughly checked. The whole experience was somewhat shocking, but with the benefit of hindsight, considering this was post 9/11 New York, maybe I should not have been surprised at all.



According to records released under the Freedom of Information Act, the government’s treatment of the detainees clearly crossed the line into torture. FBI agents who participated in interrogations complained about the “torture techniques” and “extreme interrogation techniques” employed at Guantánamo. FBI agents reported, among other incidents: (1) a female interrogator grabbing the genitals of a detainee and bending his thumbs back; (2) a detainee gagged with his head wrapped with duct tape; (3) the use of dogs to intimidate detainees; (4) a detainee left in isolation for three months in a cell constantly flooded with bright light who afterward showed signs of “extreme psychological trauma”; (5) detainees left chained “hand and foot in a fetal position to the floor, with no chair, food, or water,” for periods of 24 hours or more, with the result that the detainees had “urinated or defecated on themselves”; (6) a detainee left in an unventilated interrogation room with no air conditioning with the temperature “probably well over 100 degrees” and the detainee “almost unconscious on the floor, with a pile of hair next to him” because “[h]e had apparently been literally pulling his own hair out throughout the night”; and (7) a detainee left in an interrogation room where “the temperature [was] unbearably hot” and “extremely loud rap music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.”

Despite the appalling treatment the detainees have received, it has been widely acknowledged by government officials that many of those at Guantánamo should not be there. As the *Wall Street Journal* reported: “American commanders acknowledge that many prisoners shouldn’t have been locked up here in the first place because they weren’t dangerous and didn’t know anything of value.” In 2005, the then commander at Guantánamo, Brigadier General Jay Hood stated “Sometimes, we just didn’t get the right folks.” The then deputy commander, General Martin Lucenti, commented that, “Most of these guys weren’t fighting. They

were running.” When asked how many Guantánamo detainees were connected to terrorism, Eric Saar, an army linguist who participated in numerous Guantánamo interrogations responded “At best, I would say there were a few dozen.”

### International Condemnation

Much of what was happening at Guantánamo was not going unnoticed around the world, and was the subject of judicial comment in the UK as early as November 2002. In *R (on the application of Abbasi) v Secretary of State for Foreign and Commonwealth Affairs & Secretary of State for the Home Department* [2002] EWCA Civ 1598, Lord Phillips MR stated:

“in apparent contravention of fundamental principles recognised by both jurisdictions and by international law, Mr Abbasi is at present arbitrarily detained in a ‘legal black-hole’.” [para 64]

“What appears to us to be objectionable is that Mr Abbasi should be subject to indefinite detention in territory over which the United States has exclusive control with no opportunity to challenge the legitimacy of his detention before any court or tribunal.” [para 66]

More recently, Mr Justice Collins granting permission in *R (on the application of Al Rawi) v Secretary of State for Foreign and Commonwealth Affairs & Secretary of State for the Home Department* [2006] EWHC 458 (Admin), stated:

“What is said to tip the balance here is the evidence which was not available in Abbasi that there is torture being practiced in Guantánamo Bay. ...Unfortunately, it appears that the Americans have a somewhat different view as to what constitutes torture to certainly this country and to what is applied by Strasbourg under the European Convention on Human Rights, and I suspect what is applied by the international body in relation to the Convention against Torture.”

*Much of what was happening at Guantánamo was not going unnoticed around the world*

*Brigadier General Jay Hood (below) said: “Sometimes, we just didn’t get the right folks.”*





The conduct of US military personnel and treatment of detainees at Guantánamo has also been the subject of severe criticism from various international bodies. The Parliamentary Assembly of the Council of Europe in its Resolution 1433 (2005), entitled ‘Lawfulness of detentions by the United States in Guantánamo Bay,’ and adopted on 26th April 2005, concluded that “many if not all detainees have been subjected to cruel, inhuman or degrading treatment occurring as a direct result of official policy, authorised at the very highest levels of government” and that “many detainees have been subjected to ill-treatment amounting to torture which has occurred systematically and with the knowledge and complicity of the United States Government”. Further, the Assembly also concluded that the United States has, by practicing “rendition” allowed detainees to be subjected to torture and cruel, inhuman or degrading treatment, in violation of the prohibition on non-refoulement.

Notwithstanding the complicity of the British government in the war on terror and the methods used by the Bush administration, on 10th May 2006, the Attorney General Lord Goldsmith called for the closure of Guantánamo Bay, stating that “The existence of Guantánamo remains unacceptable. It is time, in my view, that it should close. Not only would it, in my personal opinion, be right to close Guantánamo as a matter of principle, I believe it would also help to remove what has become a symbol to many – right or wrong – of injustice.” He also stated that the UK was “unable to accept that the US military tribunals proposed for those detained at Guantánamo Bay offered sufficient guarantees of a fair trial in accordance with international standards.”

In its report of 16th February 2006, the United Nations Commission on Human Rights concluded that the interrogation techniques authorised by the Department of Defense, amounted to degrading treatment in violation of Article 16 of the Convention Against Torture (CAT) and Article 7 of the International Covenant on Civil and Political Rights

(ICCPR), and that the general conditions of detention, in particular the uncertainty about the length of detention and prolonged solitary confinement, amounted to inhuman treatment. The Commission also concluded that the excessive violence used in many cases during transportation and force-feeding of detainees on hunger strike had to be assessed as amounting to torture as defined in Article 1 of the CAT.

#### **My time in New York**

My experience at CCR was an unforgettable one. CCR has been at the forefront of resisting the Bush administration’s attempts to subvert accepted norms of international human rights law. As an organisation, CCR is probably the equivalent to Liberty in the UK, except with none of the mainstream political kudos. They have often been labeled as “lawyers for terror”, and are regarded by the current administration as dangerous dissidents. Whilst there are lawyers who do similar work in the UK, within the context of US politics, CCR occupy a very different political space than do their UK counterparts. If there was any doubt about this, one need only read the suit filed by the CCR in the Federal District Court for the Southern District of New York on its own attorneys and legal staff representing clients who fit the criteria described by the US Attorney General for targeting, under the National Security Agency (NSA) Surveillance Program. The NSA program purports to target communications between persons in the United States and persons abroad where one party is suspected of having connections to terrorism. Because of the work CCR has done to secure the rights of those accused of connections to terrorism in a post 9/11 world, and because there are no safeguards put in place to ensure that attorney-client privileged communications are not being monitored, attorneys at CCR were almost certain that confidential communications between their staff and clients had been caught up in this massive web of illegal surveillance. The admin- ▶

►istration had its eyes and ears on the lawyers, as well as the clients.

For a lawyer who had only previously heard about Guantánamo Bay in the newspapers and on television, it was amazing to witness the representation of the detainees in real time. On many occasions at the CCR offices, one would hear of events at Guantánamo Bay minutes after they happened. Lawyers at CCR and those who were working as part of the Global Justice Initiative would often travel to Cuba to visit their clients, and I would regularly hear accounts of how they would be denied access to detainees, and the manner in which the military would attempt to circumvent orders made by the federal courts in relation to such access.

The event that sticks in my mind above all others, was the immediate aftermath of the deaths of three detainees over the weekend of 10th-11th June 2006, the first deaths to occur at Guantánamo. CCR's response was instantaneous and throughout the following week, there was a flurry of activity as CCR sought to protect the detainees from any further harm, as well as preserve evidence in relation to these shocking deaths. As with much of CCR's work, this took place both through legal action as well as through making sure that events were properly covered by the media. Unfortunately, in the US, legal work is only as effective as the media coverage which reports it.

I primarily worked on the international law aspects of Guantánamo. I was involved in the drafting of the Center's submissions to the United Nations Committee Against Torture (on the US's compliance with the Convention Against Torture) and to the United Nations Human Rights Committee (on the US's compliance with the International Covenant on Civil and Political Rights). During my stint at the CCR, the Committee Against Torture returned with their report on the US's compliance.

The Committee stated that the US should cease to detain any person at Guantánamo Bay and close the detention facility. The Committee said it was worried that detainees were being held for protracted periods with insufficient legal safeguards and without judicial assessment of the justification for their detention. The Committee also expressed concern about allegations that the United States has established secret prisons, where the international Red Cross do not have access to the detainees, stating that the United States "should ensure that no one is detained in any secret detention facility under its de facto effective control." In relation to treatment of detainees, the Committee commented that the United States "should take immediate measures to eradicate all forms of torture and ill-treatment of detainees by its military or civilian personnel, in any territory under its jurisdiction". It said the United States also "should rescind any interrogation technique – including methods involving sexual humiliation, 'water boarding,' 'short shackling' and using dogs to induce fear – that constitute torture or cruel, inhuman or degrading treatment or punishment, in all places of detention under its de facto effective control." It also said some techniques "have resulted in the death of some detainees during interrogation" and criticised vague US guidelines that "have led to serious abuse of detainees."

One of the most encouraging aspects of CCR's work has been the way in which they have managed to transform principles of international human rights law into a major force in American law. For some time, American lawyers of all political persuasions have been reticent in employing principles of international law as a tool in progressing the debate on human rights in the US, with the Constitution having always been seen as the well-spring of rights. CCR, and most notably Barbara Olanshky, CCR's lead habeas counsel, has been central in placing international law at the forefront of the fight against the Bush administration's campaign of illegality in prosecuting the war on terror, and the condemnation from a procession of international bodies has slowly but surely turned the screw on the Bush administration.



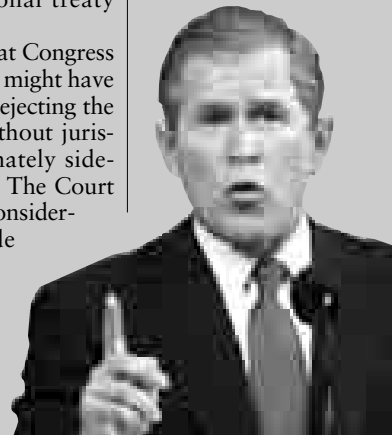
#### Recent events

On 29th June 2006, the Supreme Court gave judgment in *Hamdan v Rumsfeld*. Salim Ahmed Hamdan was captured by bounty hunters during the invasion of Afghanistan, was purchased by the United States, and then sent to Guantánamo Bay. In July 2004, he was charged with conspiracy to commit terrorism, and the Bush administration made arrangements to try him before a military commission. Hamdan filed a petition for a writ of habeas corpus, arguing that the military commission convened to try him was illegal and lacked the protections required under the Geneva Conventions and United States Uniform Code of Military Justice (UCMJ). The Court was asked to consider whether the DTA ousted its jurisdiction, and also whether the military commissions that had been set up violated federal law (including the UCMJ and international treaty obligations).

On the issue of jurisdiction, the Court held that Congress did not include express language in the DTA that might have precluded Supreme Court jurisdiction, thereby rejecting the government's argument that the Court was without jurisdiction. In some respects, the judgment ultimately sidestepped the real question on 'habeas-stripping'. The Court held that because the DTA did not bar it from considering the petition, it was unnecessary to decide whether laws barring habeas corpus petitions unconditionally would unconstitutionally violate the Suspension Clause in the United States Constitution which states that "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it."

*Only 10 of the 450 detainees now held at Guantánamo have been charged before military commissions. The rest continue to be detained there indefinitely...*

*In October, Bush signed into law an Act which expands the President's powers in an array of troubling ways*





In relation to the issue of the laws of war, the majority of the Court held that these necessarily include the UCMJ and the Geneva Conventions, each of which requires more protections than the military commission provides. The Court found that the military commissions which had been set up at Guantánamo were deficient in a number of key respects:

- The defendant and the defendant's attorney may be forbidden to view certain evidence used against the defendant, and the defendant's attorney may be forbidden to discuss certain evidence with the defendant;
- Evidence judged to have any probative value may be admitted, including hearsay, unsworn live testimony, and statements gathered through torture; and
- Appeals are not heard by courts, but only within the Executive Branch.

These deficiencies meant that the commissions violated the UCMJ. Crucially, the majority also found that the procedures in question violated the applicable Common Article 3 of the Geneva Conventions which forbids, absolutely, "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture", "outrages upon personal dignity, in particular humiliating and degrading treatment", and "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples."

Whilst the denouncement of the kangaroo courts set up by the Bush administration was a significant blow to the Bush administration, it has only been of limited use to the vast majority of detainees at

Guantánamo. It has to be remembered that only 10 of the approximately 450 detainees now held at Guantánamo have been charged before military commissions. The rest apparently continue to be detained at Guantánamo indefinitely.

Days after the judgment in Hamdan, the Pentagon issued a memo requesting that its entire staff "promptly review all relevant directives, regulations, policies, practices and procedures under your purview to ensure that they comply with the standards of Common Article 3 [of the Geneva Conventions]." However, not deterred by two Supreme Court decisions condemning the administration's attempts to insulate Guantánamo from judicial scrutiny, on 17th October 2006, President Bush signed into law the Military Commissions Act of 2006 (MCA). Once again, the Act strips the right of non-citizens to seek review of their detention by a court through the filing of a writ of habeas corpus. The Act is also meant to erase the hundreds of habeas corpus petitions that CCR and others have brought on behalf of many of the 450 men being held at Guantánamo Bay, a move already once denied by the Supreme Court.

Further, the MCA dramatically expands the President's powers in an array of troubling ways, including permitting him to determine what constitutes torture and who may be labeled an "unlawful enemy combatant" and therefore detained indefinitely. Such a wide and apparently untrammelled discretion means that non-citizens, such as those rounded up in sweeps after 9/11 in the US, could be held without charge or trial. US citizens deemed to have "materially supported" hostilities against the United States could be held as enemy combatants as well. Once in US custody, the law allows detainees to be subjected to stress positions, temperature extremes, sleep deprivation, and possibly waterboarding and defines sexual violence crimes so narrowly that some of the appalling acts in Abu Ghraib, such as forced nudity, would not be punishable, and defines rape and sexual abuse in a manner that is inconsistent with international law. At the same time, the Act provides retrospective immunity for U.S military and intelligence officials for the torture of detainees, including the roundly condemned horrors which occurred at Abu Ghraib and Guantánamo.

### The future?

In early 2007, following the US mid-term elections, there will be new room for optimism. A large swathe of the American public has demonstrated its disapproval of the war in Iraq, and to a lesser extent, with the way in which the Bush administration has handled the war on terror. More importantly, as far as Guantánamo is concerned, the much welcomed departure of Secretary of Defense Donald Rumsfeld may constitute an important victory in the campaign to close the camp. Rumsfeld was the administration's main advocate for the use of Guantánamo as a detention facility, was the person who authorised and defended the grotesque use of torture at the camp, and more broadly, has been (along with Bush, Cheney and Rice), responsible for encouraging and facilitating the abuse of human rights by US forces all over the world.

As of today, the detention facility at Guantánamo Bay remains open, and continues to hold over 450 detainees. The overwhelming majority are guilty of nothing more than being caught up in the wrong place at the wrong time. The plight of these men has captured many ordinary people around the world, and in many respects, is representative of the world in which we now live. However, what has also emerged from the horror of Guantánamo is a group of lawyers and campaigners who will not rest until the terror of Guantánamo is brought to an end. ■

- Sadat Sayeed is a barrister at Garden Court Chambers
- Go to [www.haldane.org/news/guantanamo](http://www.haldane.org/news/guantanamo) for details of the Haldane campaign to close down Guantánamo

*The artist Banksy's Clerkenwell Green sculpture, "dedicated to thugs, bullies, liars, thieves, the corrupt, the arrogant and the stupid. Essentially it is dedicated to the entire British legal system".*



# THE FALL

**S**ome three months ago I embarked on what I have always hoped would be the beginning of a difficult but rewarding career in legal aid. I realised that it would be difficult not only because of the demanding nature of the work, but also because of the Government's apparent attempts to curtail access to justice. Maybe I should consider myself lucky: at least I had appreciated in advance that the State was mounting yet another systematic attack on a particular class of people who were soon to be my clients.

I have read Lord Carter's report, the latest in the Government's scattergun approach to its review of legal aid, as well as most other recent reports produced by various Government bodies. But this foresight has made it no easier to accept that, despite the emphasis on a sustainable future, my future seems nothing of the sort. Nor does that of my clients, who, after my limited experience in criminal law, have proven to be so overwhelmingly vulnerable.

## **The rise of legal aid: a potted history**

The legal aid system was introduced after the Second World War, alongside the development of the NHS and educational policies, as a key part of the welfare state. Initially administered by the Law Society, the budget grew from a rather meagre amount to a significant spend. In the early 1980s, the Legal Aid Board was



# RISE AND IMMINENT OF LEGAL AID

by **Kat Craig**

created to take over the administrative role as a quango. The Access to Justice Act replaced the Legal Aid Board with the Legal Services Commission (LSC) in 2000.

Since its inception, legal aid has been subject to constant review: the latest round is in fact the fifth major review of legal aid. However, there is a worrying trend with which Carter does not break: when the Government decides to draw the line on its commitments, the profession is left to pick up the pieces.

That said, the UK has made a decent effort when it comes to legal aid. There has been an ongoing recognition that our international obligations, and those under Article 6 (the right to a fair trial) in particular, should be met at all costs. British legal aid spend has traditionally been greater than in other systems, although this may be attributable more to the nature and requirements of our adversarial system than to any political commitment by our Government.

Historically, our criminal legal aid system has been a demand-led service, where we have responded to the increasing need for defence lawyers, following the introduction of more offences, more complex procedures and more complex evidential issues.

A good example of this is the introduction of the Police and Criminal Evidence Act 1984 (PACE). The new legislation raised serious concerns about suspects' rights, and so civil

liberty groups and opposition politicians forced the Government to make concessions in the form of a statutory right to free legal advice at police stations. With more, although still not most, people in police stations demanding legal representation, the cost of legal aid inevitably rose – and rose to the extent that Government began to rethink its spending policy on legal aid seriously.

In actual fact, the Government line that legal aid spending has risen by an enormous 39% in the last 10 years is misleading. The costs of running a private practice have risen by about 60% and spend in the criminal justice system as a whole has risen by 46%. Meanwhile rates of pay for legal aid work have effectively been frozen. In total, the legal aid spend amounts to just 0.4% of the budget.

Despite the fact that the figures make legal aid sound like a bargain, in 2004, the Government launched the current phase of scrutiny: the Fundamental Legal Aid Review (FLAR), a policy review aimed at overhauling the entire system. The Government's message at the time was the same as it is now: we need an efficient and fair legal aid system but the Government is not prepared to invest in it. Interestingly, FLAR never produced a report: instead it commissioned Lord Carter to undertake an 'independent' review, at a cost of £1.5million.

## **The imminent fall: fixed fees and price competitive tendering**

Alongside the launch of FLAR, the LSC produced a consultation paper on Price Competitive Tendering (PCT) for criminal legal services. The paper was met with outrage from practitioners. Government response was to put PCT on hold and to bring in Lord Carter to undertake a comprehensive review of legal aid expenditure with a view to producing a strategy to deal with the £100million or so overspend.

The current system is based on lawyers getting paid for the work they do on an ex post facto basis. If there is a dispute about the necessity of costs incurred, the LSC (or the relevant costs office) and the lawyer will argue it out. This has posed a problem in the context of the treasury's aspiration to cap expenditure as it is contrary to the 'there's no more money for legal aid' mantra.

Carter, with his 'review team', which interestingly failed to include any lawyers with experience of legal aid, spent a year developing a system that will allow Government to stick to the budget. It is remarkably similar to PCT and the rationale can be simplified in this way: one works backwards from a fixed budget, divided by fixed fees economies of scale. Minimal quality standards will be met by a system of peer review. Of course, in reality to us this means absolving the Government

of the responsibility of paying for a decent justice system by creating a method of payment that only covers part of the inevitable costs incurred, leaving lawyers to pay for the rest.

Fixed fees were instrumental in Carter's ability to stick to a fixed budget. It's a simple concept: instead of paying lawyers for the number of hours actually worked on a case, create an artificial fixed rate that you pay in all cases. Then, all you need to do is manage the caseload to manage the budget. Swings and roundabouts should mean that you can make an overall profit if you are efficient. On an aside, means testing re-introduced recently into the Magistrates' court has apparently led to a significant reduction in applications and grants of legal aid. This will go some way towards managing the budget, if only by further curtailing access to justice.

As it stands, proposed rates are punitively low and the thresholds for escaping them extremely high. This system will not differentiate the complicated from the simple cases. A survey carried out by a collective of the main criminal and legal aid bodies, alongside the Law Society, has shown that fixed fees in police stations and Magistrates courts could cause firms to face reductions in income of 25% of their monthly turnover. If, as I understand to be the case, very few (if any) legal aid firms have such a profit margin, the introduction of fixed fees will represent a serious loss to some firms, and worse for many more. This pattern is mirrored in civil work too.

With the best will in the world, there's a limit beyond which we can do high quality work without payment and be expected to run efficient businesses that will be successful in tendering rounds. This will mean that certain complex cases simply won't be taken on as they would not be cost-effective because only part of the work required would be remunerated. Where more complex cases are taken on, fee-earners will be under pressure to either do yet more unpaid work or cut corners. Neither of these options is acceptable. And the ones who suffer most will be the most vulnerable clients, who require extra time and attention, but who don't meet the bizarrely high escape threshold of four times the usual rate.

But it gets worse. Fixed fees are to be combined with PCT, which seems to be little more than a crude auctioning off of justice. The proposals envisage firms competing for the right to take on legal aid work. The fear is that work will simply be allocated to the lowest bidder with minimal standards in relation to quality.

Legal aid providers already operate in a competitive market. It is only in sectors where there is a desperate shortage of advice and representation that there is no competition. And in these cases it should be the desperate shortage, not the lack of competition that preoccupies us. Further, the system of PCT has been tried and tested before without much success in the US. Although the price went down in the short-term, it rose in the long-term as a cartel was created driving up the price.

Carter's short-term vision, combining fixed fees with PCT, will lead to a cull on the basis of costs, not quality. These latest proposals highlight the Government's obsession with



market models and neo-liberal economics. But commercial market models cannot simply be imposed on the provision of legal aid services. Justice and the law are not the same as a commercial product.

Fixed fees and PCT will inevitably favour a 'bigger is better' mentality in line with the ideology of economies of scale. The loss of small and niche practices will be irreversible. Once valuable community-based firms have been replaced by larger, super-firms, they will be hard to re-establish. Thirty years of trust and experience in a community is not easy to regain, especially by a profession which continues to be viewed sceptically by its clients.

### **So where do we go from here? Picking up the pieces...**

Notwithstanding the poor track record of lawyers in fighting their own corner, this is the time for us to get together and take a stand. We should withstand the divide-and-rule strategy which by now we should have become wise to. In the long-term, it will make little difference whether these changes are brought in on a phased basis or at once, or whether nationwide or regionally. If Carter does go ahead (and Government's response to representations on Carter published in November 2006 demonstrate a clear intention to do so), we're in serious trouble.

And this includes the Bar, who have by and large accepted Carter, not least because the Government has simply offered them a slightly better deal. The Bar has, rightly or wrongly, more influence when it comes to policy. Yet to

**"Despite noises from the Government that Carter is going ahead regardless, there is still time to oppose these proposals..."**

date it has done little to flex its muscles when it comes to Carter. The minor concessions do not reflect the intentions for the future of the Bar. The Government is pushing for more solicitor advocates, and less barristers. And while this may not affect those senior members of the Bar, it will most definitely affect those on the junior end. Less and less work will be farmed out by solicitors.

Despite noises from the Government that Carter is going ahead regardless, there is still time to oppose these proposals in a unified manner. And the requisite unity is not impossible. Criminal solicitors across the country, with the support of some of the more progressive chambers, have responded to the impractical, unsustainable and unjust re-implementation of means testing. Despite a weak professional body and the lack of unionisation, a new, grass-roots movement has developed. Starting in the West Country and spreading nationally, a protocol and suggestions for unified action have been put forward and are being debated in courts around the country.

Together, we should be calling for an in-depth and independent assessment of legal aid, with adequate consultation, on a scale that reflects the importance of the repercussions of any such review. It is not our job to make policy, but it is our responsibility to stand firm and defend our clients' long-term interests. But most of all, we should not be afraid to say that a good justice system costs money, and that rising cost is not a result of extravagance on lawyers. Good public legal services equate with high levels of funding. This is, alas, inescapable.

The alternative is a future of advice deserts, loss of established and trusted community practices, miscarriages of justice and lower (if any) profit margins with knock-on effects such as less diversity in an already elitist profession. But most of all, the new regime will mean even less access to justice to disadvantaged groups.

Government's commitment to fair trials has been replaced by an apparent and incessant need to cap a fairly modest budget. And the relative size of the legal aid budget certainly begs the question as to why so much time and energy has been channeled into overhauling the whole system to deal with an overspend of around £150million – a drop in the Treasury ocean.

If Government were serious about the desire to maintain quality, the overspend could be dealt with on a simple quality cull. However, the proposed system will inevitably drive quality lawyers out: those same quality lawyers that use legal aid funds to judicially review new and unfair laws and policies. Even more importantly, our difficult clients will be restricted in their challenges if they are unable to access the rigour of the law. This will keep them homeless, locked up or simply silenced. The disenfranchisement of our vulnerable clients will be worth many times over £150million to Government. But it will be a terrible loss to our society.

It is time to stand up for our clients, some of whom are vulnerable, if at times unpopular, members of society. Now is the time to act. If we fail to do so now, access to justice will become a privilege for a few, rather than a right for all. ■

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In the immediate days after Jean died, the Menezes family were whisked off by the Metropolitan police and holed up in an anonymous hotel on the far outskirts of London. They had their phone lines cut off and were not advised they may need legal representation. It is a sad indictment of the British justice system that their treatment by statutory agencies has not improved in the sixteen months since that fateful day in July. The Menezes family have been treated with nothing but contempt by the combined statutory agencies of the Metropolitan Police, the Independent Police Complaints Commission (IPCC) and the Crown Prosecution Service (CPS). They have been let down by a government that refuses to criticise the inaction of these agencies and continues to support an armed policing strategy that could lead to more innocent lives being lost. Almost a year and a half after Jean's killing the Menezes family have not seen either of the IPCC reports into his death; any police officers prosecuted for Jean's killing; the inquest into his death adjourned until at least 2008 and the 'shoot to kill' policy, Operation Kratos remains in place.

#### Rewarded not reprimanded

In light of these challenges, the dignity and strength of the Menezes family over the last year has been admirable. The fact that not a single police officer has been prosecuted; suspended or even disciplined for the deliberate killing of their loved one has added insult to injury for the family.

For them it has been extremely painful to see that rather than being reprimanded, officers involved in the shooting have been rewarded. Cressida Dick, the Gold Commander of the operation has been promoted to Deputy Assistant Commissioner and Andy Hayman, head of the Met's anti-terrorism operations has been awarded a CBE. More shockingly, one of the marksmen who fired the shots into Jean's head has returned to firearms duties and recently is reported to have killed someone else. Sir Iain Blair, the head of the Metropolitan police, is still under investigation for 'cover up' allegations that his officers put out misleading information about the killing in the immediate aftermath of the shooting, but despite this landmark investigation against the most senior police officer in the country, he has been allowed to continue in his post, giving the impression that he did nothing wrong.

Exactly the same misinformation was put in the public domain by police officers after the Forest Gate raid demonstrating that police officers are happy to lie in their briefings to the media knowing they will never be made to

answer for it. The Menezes case highlights that for officers involved in suspicious deaths to be put back on front line duty before the investigation had been completed is completely premature. Whilst other public servants like teacher or nurses are suspended whilst under investigation, police officers are given a special status as being above the law and due process.

#### Posturing over prosecutions

In July this year, the CPS charged the Metropolitan police under health and safety legislation, the first time such a prosecution has been used for a death in custody. Some have argued that such a prosecution is a step forward from the usual impunity offered in police shootings.

But it is completely inappropriate for the crime that was committed. Under this offence, no individual can be held responsible for the crime, Sir Iain Blair is not required to account for his organisation's policies and the maximum penalty that can be awarded is a fine. (A sanction, of course, ultimately paid for by the tax payer). The CPS based their decision not to prosecute any officers on the first IPCC report into his death which they refused to disclose to the Menezes family or their legal team until very recently, several months after the decision was announced and after threat of judicial review. The fact that such decisions can be made based on secret reports highlights just how little investigations into deaths in police

# JUSTICE FOR JEAN?

In July 2005, a 27-year-old Brazilian man was pinned down on a London tube carriage and shot seven times in the head by Metropolitan police officers.

**Yasmin Khan**, from the Jean Charles de Menezes Family Campaign, looks at the struggles faced by the Menezes family and what can be done now...



*Maria Otone de Menezes, the mother of Jean Charles, speaking at a family campaign meeting at the LSE in London last year, a picture of her dead son in the background*

“One of the marksmen who fired the shots into Jean's head has returned to firearms duties and is reported to have recently killed someone else”

custody have moved forward under the IPCC as opposed to the old discredited investigations system of the Police Complaints Authority. When the IPCC was established after many years campaigning by families who had lost loved ones in police custody, the public and bereaved families expected there to be a change. The experience of the Menezes family shows that nothing has changed. Families are still excluded from information about the investigatory process and police officers are not prosecuted or even disciplined for deaths for which they may be responsible.

### **Taking the fight forward**

Some in the police service and the government

wish to portray Jean's death as either a mistake or the price we must get used to paying because the rules of the game have changed. But Jean died as a result of a fundamental change in policing policy which was never subject to any public or parliamentary scrutiny. The longer that there are delays in bringing a public investigation into Jean's death the harder it becomes for individuals to be held accountable and for the police's anti-terrorism tactics to be challenged. The Forest Gate shooting narrowly escaped being another innocent fatality. How many more shootings will occur before these tactics are subject to public scrutiny? Public support for the Menezes campaign is needed now to bring these issues into the political

arena. Given the seriousness and sheer extent of the issues that have been thrown up by the case a public inquiry may be the only way to get all of the facts into the public domain. This would enable the action (or inaction) of all the agencies involved to be fully examined and for wider policy issues that would fall out of any inquest proceedings to be addressed.

Despite the set backs suffered this year, the Jean Charles de Menezes Family Campaign will be continuing its fight for justice until someone is held responsible for the killing of an innocent man. This December, the family, represented by their excellent legal team, have been given permission to apply to judicial review the decisions by the CPS not to prosecute any individual officers and the decision by the IPCC not to disclose their report into his death. A shadow will hang over all those involved in Jean's killing until there is an open and public investigation into his death, rather than secret reports and impunity for anyone wearing a uniform.

### **The Jean Charles de Menezes Family Campaign**

Who we are:

On the 22nd July 2005 Jean Charles de Menezes was killed by police at Stockwell tube station. He was shot seven times in the head whilst reportedly, being restrained.

The Jean Charles de Menezes Family Campaign was founded by the friends and family of Jean to:

- Find out the truth about Jean's death;
- Bring all those responsible for his death to justice;
- Campaign to end the 'shoot to kill' policy and prevent a similar tragedy happening again.

The campaign is led by the Menezes family with support from justice and civil rights campaigners. What we have done:

Since Jean's death we have supported the Menezes family in their ongoing struggle for justice by organising public meetings; demonstrations; memorial services and vigils. We have produced briefings; organised press conferences; written articles; spoken at national and international events; met MP's and foreign dignitaries including the President of Brazil. We have shown support to other families who have died in police custody and to the Forest Gate family who were subject to a police shooting in a similar botched Anti-Terror raid.

What you can do:

- Raise the issue with elected representatives;
- Write letters to newspapers when the issue is covered;
- Organise a meeting and invite us to speak;
- Affiliate or join to the campaign – email [justice4jean@hotmail.co.uk](mailto:justice4jean@hotmail.co.uk) for more details;
- Donate money.

The Jean Charles de Menezes Family Campaign needs ongoing public support in order to campaign, anything that you can do to help would be greatly appreciated. The campaign is run entirely by volunteers and is able to function solely by donations from members of the public. If you would like to make a financial donation to the campaign, please send a cheque payable to 'Jean Charles de Menezes Campaign' to: Jean Charles de Menezes Family Campaign, PO Box 273, London E7. Go to [www.justice4jean.com](http://www.justice4jean.com) for more details. ■





# 'All the gains that have been made have been won by struggle'

**Tony Benn** was the guest speaker at the Haldane Society's Annual General Meeting in October. Here we print extracts from his talk

I'm a bit over-awed at meeting lawyers. I once appeared in court and made a speech that lasted for nine days trying to get out of the House of Lords. The result was that two judges said that a peerage was an incorporeal hereditament affixed in the blood and annexed to posterity. On that basis Bristol South East lost its MP. I spoke to the Haldane Society on the 19th December 1979, and I've been to events since and all I want to do tonight very modestly is reflect on things.

Two changes I thought might interest you – in 1928 I met a Labour MP, when I was three. His name was Oswald Mosley, and you all know what happened to him. I've also met many of the people locked up at the time of the British empire as terrorists and trouble makers and they all ended up having tea with the queen, so I am a bit sceptical about terrorism. From prison to commonwealth conferences is something we ought to think about.

Can I say a word of genuine tribute to the Haldane Society, because I am an old libertarian? You've made arguments for trade union rights, for women's rights, and, recently, a very powerful case with the help of Bill Bowring on the illegality of the war in Iraq. I and many others signed the presentation which went to the Human Rights Commissioner, who replied saying that it raised matters of serious concern. The idea of the illegality of the war is something that needs to be kept in the forefront of people's minds. The war was also immoral, but that never counts nowadays, and it is unwinnable. That last point is having a huge effect in America but I wouldn't want to advocate an end of the war simply on the grounds that you can't win it.

The other question is the question of civil

liberties and the battle allegedly against terrorism. I remember 1939, when I was fourteen years old, when under the Emergency Powers Act and Regulation 18b people were detained because they were foreign or hostile to British interests. Among the people who were put in prison was a Tory MP called Captain Ramsey. So, when you look at America and its Patriot Act and its latest Military Commissions Act which virtually allows President Bush to arrest and detain Americans as well as foreigners, it's not the first time that anyone has eroded civil liberties in the light of some foreign threat

In Britain, we're told we have domestic problems about crime. It looks to me as if the editor of the News of the World is now effectively the Home Secretary, because the spin doctors have warned the prime minister that the power of the media is so strong, you dare not alienate them on matters of law and order. The shift from Stalin to Blair is in my opinion a very very minor shift as proved by the current Home Secretary.

These days, I find some very surprising allies. I heard the debate on the terrorism legislation in the House of Lords the other day. Tom King (Mrs Thatcher's secretary of state for Northern Ireland) got up and said all we ever did in the Maze prison was to recruit terrorists. I thought that was just really very interesting.

On the left we have always been a bit suspicious of the law, but then I met Lord MacKay of Clashfern who was apoplectic about the way that Brian Haw has been treated – the man who sits in Parliament Square and has done for many many years and was tried under the Serious Crime and Disor-

▶ der Act for the offence of putting up slogans saying thou shalt not kill and love thy neighbour. That is now serious crime and disorder. Brian Haw only got around it because the judges said well you have been doing it before the legislation came in but otherwise he would have been locked up.

I find John Major was very much against identity cards.

And so you must not assume that it is always left and right. There are authoritarian leftists and some libertarian rightists. I think the question of liberty is one that everybody particularly socialists need to have in mind.

More broadly, people are beginning to realise that the role of fear, whether real or imagined, is a very important element in the maintenance of the power of the establishment. The fear of the danger of invasion, the danger of revolution or the danger of riot justifies governments in doing anything they want to do.

In the First World War, they used to say about the Germans that they were melting down the bodies of British soldiers to make fat to lubricate their ammunition, although when I look at the First World War, it was a war fought between three of Queen Victoria's grandchildren, and you ask yourself what was that really about?

Then the First World War triggered off communism in Russian and fascism in Germany, and so in the 1920s and 1930s it was the communist that frightened the British establishment. Then during the war it was Hitler (though Truman, the man who founded NATO and also was the man who authorised the atomic bomb in 1945, said that if the Germans seemed to be winning, we should help the Russians and if the Russians seemed to be winning, we should help the Germans).

Now that the questions of the reds are out of the way, it's the Muslims and in no time at all, it will be the Chinese. I think the Home Office have already prepared people to go into every Chinese take away in case they are doing propaganda from Beijing. I am sure we shall have a lot of civil liberties questions on behalf of take away owners who said they have nothing whatever to do with the Chinese Central Communist Party which was introducing capitalism at an amazing speed.

Now if I try to look at the law from an objective point of view, I put it to you that the contemporary law always reflects the balance of power in society at that particular moment. A lot is said about Magna Carta as the foundation of our legal rights, actually Magna Carta was a row between the King and the Barons and he wasn't strong enough to beat the Barons so he had to make some concessions, it had nothing to do with the common people at all. The Bill of Rights was negotiated in a conflict between the King and Parliament and enforced on the King by Parliament. The growth of the democratic vote in the nineteenth century was as a result of a recognition firstly of the power of the trade unions when the Tolpuddle Martyrs were sent to Australia as convicts. And later when the trade unions won the argument that people had rights. Trade unions were recognised properly in the 1906 Trades Disputes Act which is being cited by quite a number of progressive lawyers now.





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“We don’t elect the head of state [or] the House of Lords but we do have the right to get rid of governments – that is very important”

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I have a quote on the role of labour and I will give you a prize if you can guess who said it. Capital is only the fruit of labour and could never have existed if labour had not first existed; labour is a superior capital and deserves much higher consideration. Who was that? Abraham Lincoln 1861. So don’t ever underestimate the fact that there has been an understanding even in the 19th century United States of the rights of labour.

Take the effect of democracy – the more I think about it I see how revolutionary democracy is. What democracy did was to transfer power from the wallet to the ballot, from the market to the polling station. After the Municipal Corporations Act 1837 Birmingham set up municipal schools, municipal fire brigade, municipal hospitals, later on museums and art galleries, before democracy came in. The power to be educated, have a home, look after your old age was in the hands of the wealthy. After that came the welfare state which was a product of democracy.

The final example of the balance of power being reflected in the law was the UN charter. After the Second World War there was a new objective to avert war because of the massive suffering that the war had caused. The preamble of the UN charter says “we, the people of the United Nations, determine to save succeeding generations from the scourge of war which twice in our lifetime has caused untold suffering to mankind.”

Those words are inscribed in my heart because I was coming back in the troop ship in the summer of 1945. That was a reflection of the law at the time and was totally brushed aside when we went into Iraq.

Now the other thing to understand is that all the gains that have been made have been won by struggle against the British ruling class. I don’t know if it’s true of others, but the British ruling class always gave way rather than go to the guillotine. The French ruling class would prefer the guillotine than give way, but following the English revolution the English ruling classes were very very clever. If you press them, they concede in order to survive and then what they do after that is to try to diffuse the pressure by co-opting the leaders (such as putting trade unionist leaders in the House of Lords). At the moment there is not much sign that they are in a position to concede the pressure because the pressure isn’t as great as it should be.

I came across a very nice quotation: technology discloses man’s mode of dealing with nature, the process of production by which he sustains his life and thereby lays bare the formation of his social relations and the mental

conceptions that flow from it. That of course is the most brilliant analysis of the way in which technology shapes our society. When I was Minister of Technology I put that out in a number of ministerial statements but I didn’t tell my officials who wrote it. If you look at the history of the world – the stone age, the iron age, the industrial age, the space age, the computer age, the nuclear age – all of them have changed the balance of power in society one way or the other. In the feudal period of course the land was so valuable that the government of the day privatised the land in the famous Enclosure Acts. I once went to the House of Commons and said I want to repeal the Enclosure Act and they said what do you mean there are 10,000 of them. The last armed land raid in the United Kingdom was in 1922 when some people in Scotland went to recapture the land that had been taken away three years before. These issues do not ever, ever disappear.

The computer age is probably the most significant of all. The internet has an impact with the way the police can police us all. All this affects the way in which we are governed. Of course modern technology has created the multi national corporation and the American empire just as the technology of the past created old empires. Genghis Khan succeeded because he had the means of delivery – which was a horse – and the war head – which was gun powder which we invented. Genghis Khan went into Iraq in 1258 and killed a million Iraqis and that was a product of Chinese power. Similarly the British empire grew up as the first industrialised nation. Now we have the full impact of the American empire which I think is in decline but wounded tigers can be very very dangerous. The American empire is trying to fill the gap left by the British Empire – we invaded Afghanistan in 1834, captured Kabul, and were booted out 18 months later at the loss of 15,000 troops. We invaded Egypt in 1882, and did not get out until in 1955, and then went in again a year later officially as a peacekeeping mission to keep the Israelis out but really to recapture the canal. We were in Palestine of course – the mandate given to us by the UN for many many years. We were in Iraq. What has happened is, as the British empire has collapsed, the Americans are trying to go in and this argument that it is about democracy, or it is about terrorism is absolute rubbish. It is the intention by the United States to re-occupy the role we occupied in the Middle East with the special reason now that it is about oil and power.

So now I want to come to the question that I hope will trigger your interests most of all. What is the effect this has had on the democracy that we have so far obtained? We never really completed democracy. We don’t elect the head of state, we don’t elect the House of Lords but we do have the right to get rid of governments – that is very important. I once worked out my five democratic questions. If you meet a powerful person, ask them five questions:

*What powers have you got?  
Where did you get them from?  
In whose interests do you exercise them?  
To whom you are accountable?  
And how can we get rid of you? ■*

## Informing, educating and empowering women on their legal rights



**Domestic Violence Injunction Handbook (2nd ed)**  
Rights of Women



**From A to Z: A Woman's Guide to the Law**  
Rights of Women

Rights of Women is a feminist organisation that has been campaigning for gender equality for the past 30 years. During that time we have advised thousands of women on the law and their legal rights on a variety of issues including family, employment, and criminal law, particularly in relation to domestic and sexual violence. We are the only organisation in England and Wales that has a dedicated legal advice line for survivors of sexual violence.

Domestic violence is the largest cause of morbidity worldwide in women aged 19-44, greater than war, cancer or road accidents. According to the British Crime Survey (2004-05 report) domestic violence kills two women each week and accounts for 16% of all violent crime. 1 in 4 incidents of domestic violence result in serious physical injury. 10% of 129 women surveyed in North London GP surgeries reported

being knocked unconscious by their partners while 5% had sustained broken bones (Elizabeth Stanko, Debbie Crisp, Chris Hale and Hebe Lucreft (1997) *Counting the Costs: Estimating the Impact of Domestic Violence in the London Borough of Hackney*, Swindon: Crime Concern). On average a woman will have been assaulted 35 times before she contacts the police for help. In terms of the correlation between domestic violence and sexual violence women are most likely to be raped by men they know and 50% involve repeated assaults by the same man. The percentage of rapes reported to the police in 2004 in England and Wales which resulted in conviction was just 5.29%.

Until recently, domestic violence was seen as a private matter. Less than 15 years ago a Commissioner for the Metropolitan police questioned whether it could be considered a "crime" at all. Attitudes within the police, CPS and court have changed and are continuing to do so but there is no doubt that women are still routinely denied protection from violence.

One of the central problems women face in accessing justice is finding legal representation. Carter may have died a quiet (but expensive) death but women still face considerable difficulties in accessing legal

advice. The 'cut off' point for legal aid means that very few women are eligible for free legal advice and even if they are, legal aid deserts mean that finding a solicitor who is able to see them is increasingly difficult. Over the past five years, there has been an 18% drop in the number of advice cases started under legal aid.

It is against this background that Rights of Women launched two new publications, the *Domestic Violence DIY Injunction Handbook (2nd ed)* and *From A to Z: A Woman's Guide to the Law*.

First published in 2000 the *Domestic Violence DIY Injunction Handbook* explains the legal remedies available to women who are experiencing domestic violence under Part IV of the Family Law Act 1996. It has helped thousands of women apply for and get protection from the courts. This 2nd edition has been updated to include all the relevant changes in the Domestic Violence Crime and Victims' Act 2004 that are in force.

The handbook is in two parts, the first going through the legal framework, the types of order available and who can apply. The second part is a step-by-step guide which goes through how to complete the application form, write a witness statement, prepare supporting evidence, represent yourself in court and enforce the injunction. The book has been so successful with individual women, law centres and support organisations not just because it contains all the information needed about applying to the courts for protection but because it presents it in such an accessible and clear way. We hope that this second edition will prove to be even more effective than the first in enabling women to get the protection from the courts that they need.

While we produced the *Domestic Violence DIY Injunction Handbook* to assist

women who are experiencing domestic violence, our motivation for writing *From A to Z: A Woman's Guide to the Law* was broader. Through our work giving legal advice and delivering training we knew there was a huge demand for more general information about the law across a wide range of areas. This demand came from women who wanted information so that they could make more informed decisions as well as from lawyers and advisers who wanted basic information about unfamiliar areas of law to enable them to advise their clients and service users more fully. *From A to Z* covers an extensive range of legal topics including: asylum and immigration law, criminal law, discrimination and employment law, family law, housing, human rights law and welfare and consumer rights.

As with all our publications *From A to Z* is written to make it as clear, accessible and comprehensive as possible and covers everything from abduction to zero tolerance taking in issues like judicial review, no recourse to public funds and trafficking on the way. It is the only publication of its kind in the UK. Harriet Harman, QC, MP (Minister of State in the Department of Constitutional Affairs) said that *From A to Z* "...is a vital guide to help women get their rights in a legal system where laws are mainly made by men and judged by men in an overwhelmingly male legal profession."

We hope that these new publications will empower individual women to seek protection from the law and to understand and secure their legal rights as well as help all women by contributing to the struggle for equality.

● **Cate Briddick**, Legal Officer, Rights of Women

■ For more information about Rights of Women and to order copies of *The Domestic Violence DIY Injunction Handbook* (£8) and *From A to Z* (£10) visit our website at [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)



*From A to Z "...is a vital guide to help women get their rights in a legal system where laws are mainly made by men and judged by men in an overwhelmingly male legal profession."* **Harriet Harman QC, MP**

*Moazzam Begg: the first insider's account of life for detainees in Guantánamo*



**Enemy Combatant. A British Muslim's Journey to Guantánamo and Back**

Moazzam Begg

(with Victoria Brittain)  
£18.99 Free Press

Moazzam Begg provides the first insider's account of life for detainees in the infamous prison in Guantánamo Bay. Detained first in Pakistan, he was taken, hooded, shackled and cuffed to Kandahar and then finally onto Guantánamo. Never charged with a crime and with no explanation for his detention, he was finally released in early 2005.

*Enemy Combatant* provides a searing indictment of Camp Xray. Currently out in hardback, it is a gripping,



terrifying and compelling read. You might want to wait though, for the paperback, which should be out in time to co-incide with the five year anniversary of the

opening of the prison in January 2007.

That it is still open and detainees including British residents is brought into sharp

focus by the book.

The book goes into interesting detail of Moazzam's background and the reasons he chose to live in Afghanistan. One being the wish to live somewhere where his wife might not be stared at when going to the shops dressed in a hijab. How many Muslims will be seeking refuge elsewhere now?

The book ends with Moazzam's release. It perhaps stops short on the impact of his detention on his life – this would have been interesting to read more about.

Moazzam hopes that, "one of the more ambitious aims of this book is to find some common ground between people on opposing sides of this new war, to introduce the voice of reason, which is so frequently drowned by the roar of hatred and intolerance."

For that reason alone it is a must read.

● **Rebekah Wilson**



**Standing on the Shoulders of Fascism: from immigration control to the strong state**

by Steve Cohen  
£17.99, Trentham Books

As soon as it became obvious that he (Jean Charles de Menezes) was himself not involved in terrorism, the Home Office suggested he had overstayed his leave in the UK – as though this somehow justified his being shot dead."

In this collection of essays, new and old, Steve Cohen demonstrates that immigration controls are not so much standing on the shoulders as seeped in every fibre of their being with fascist overtones. And that they have always been so. Fascist upsurges have prefaced all legislative and practical controls of

movement of people. Just as "...the Nazi extermination programme was preceded in time by the forced, brutal, mass deportation of Jews."

Three questions emerge. Can anti-fascist and anti-immigration control movements ever join together? Is it possible to argue for "fair" or even "benign" controls? Can the success of individual anti-deportation campaigns translate into opposition to all immigration controls?

(In reverse order) the author first suggests that it is only through self-organisation of the "undocumented", in militant campaigns, that victory can be achieved. This requires solidarity, not pity. "The struggle against controls is only politically effective when it is threatening, when it involves masses of people in struggle, when it refuses to make any concessions to the ideology of immigration control, when it represents a danger to the state."

Second, the notion of "just"

or "humane" controls is a contradiction in terms. "A system of law built historically on fascist activity could never be humane." Reminiscent of Thatcher's election-winning slogan "Labour isn't working", Home Secretary Charles Clarke was removed because his system of deportation of non-British prisoners "wasn't working". But no one subject to immigration controls wants them to "work better" when what this means is yet more, firmer, faster, and furious, unchallengeable removals. Including those "criminals" who have been (re-)detained for crimes of fabricating documents simply because they wanted to work (legitimate work, paying taxes and national insurance, contributing to society – and economy).

Indeed, the Immigration and Nationality Department employs 17,392 people – whose job in 2004 was to remove 56,920 other human beings. Not to mention the private contractors who manage removal centres and immigration

"escort" services. The latest Home Secretary assured Parliament that he had over 400 full-time staff now coping with the "problem" – of 1000 people who had served their time but were going to be rounded up, detained again, and then deported. This new triple punishment exceeds the objections of the "Manifesto of the Campaign Against Double Punishment", of the early 1990s, usefully appended by the author.

Third, there is no choice. There is no third way. Collusion with the machinery of immigration control stands shoulder-to-shoulder with collusion with the fascists. Local authorities, voluntary services, even lawyers, all have to take sides.

But the question of how - how anti-fascist and anti-immigration control movements can make effective common cause – is another story. Still waiting, still needing, to unfold - and be told.

● **John Nicholson**

Pictures: Jess Hurd / reportdigital.co.uk



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of Socialist Lawyers**  
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2007 / Number 1

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