Socialist Lawyer

Magazine of the Haldane Society of Socialist Lawyers ■ Number 31 ● Autumn 1999 £2.50

The jury's out: Has New Labour lost the plot?

Defend the right to trial by jury by Michael Mansfield
Malaysia Corruption of justice **Personality Disorder**
Ocalan Pinochet Round Two **Labour Party** by Liz Davies

Haldane Society of Socialist Lawyers

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The **Haldane** Society of *Socialist* **Lawyers** has moved to: 25a Red Lion Square, Conway Hall, London WC1R 4RL. Tel: 020 7242 2897

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Designed by **Andy Smith** *Printed by* **East End Offset, London E3**
Cover picture by **Jess Hurd**

Editorial

Great expectations, greater disappointment

Many people who voted Labour on 1 May 1997 and cheered with delight when the Labour landslide swept the Tories from office, must now be wondering what on earth has gone wrong. All the reactionary legislation brought in over the previous eighteen years by the Tories and condemned by one shadow minister after another remains in place. Worse, policies that the Tories felt too insecure to introduce are being implemented with a zeal that must make Mrs Thatcher think her legacy is well protected.

On almost every single issue the Home Secretary Jack Straw seems determined to prove that he is the equal of Michael Howard. Just to take a few examples: having spoken out against the threat to trial by jury proposed by his predecessor, he now believes this age-old democratic right to be 'eccentric' and sets about doing away with it. Having promised a Freedom of Information Bill, the proposed legislation amounts to nothing of the sort. New Labour's approach to immigration and asylum is as devoid of compassion and as hard-nosed and brutal as the Tories.

As it stands the Freedom of Information Bill will not give the public the right to see reports on issues such as road and rail safety, dealings with multinational food companies or arms trading. Unlawful acts by the state will be classified as official secrets. Surely, the whole point about a Freedom of Information Act is that it allows the public to see, as of right, what the government and its agencies are up to. Instead, Straw insists that ministers should decide how much information should be released to the public. Even Tory MP Richard Shepherd has condemned the government's attitude in denying people in the UK the rights that are available in other countries: 'Why should the citizens of the UK be treated as lesser citizens than those in Australia, New Zealand, the United States, Canada or Ireland? There is no reason why we should not have the same rights as those people.' Criticised from all sides it is hoped that on this issue, if not on others, the government may be forced to reconsider.

On Asylum and Immigration the previous government's policy of treating those who flee oppression, torture and dictatorship as criminals is continued. Straw is even determined to follow Howard to the High Court where he was regularly found to have acted unlawfully.

Straw has so far been found to have acted unlawfully in allowing the prosecution of asylum seekers who travel with false documents. The prosecutions, which could lead to prison sentences of six to nine months, were found to be in breach of the Geneva Convention relating to the status of refugees. Article 31 states that asylum seekers should not be penalised for entering a country illegally. Despite New Labour's proclaimed adherence to 'human rights' Lord Justice Simon Brown pointed out that no one in the government had given the least thought to its obligations under the article. 'One cannot help wondering,' he commented, 'whether perhaps the increasing incidence of such prosecutions is yet another weapon in the battle to deter refugees from ever seeking asylum in this country.'

This despicable policy was locking up as many as 1,000 asylum seekers every year. As Amnesty International pointed out: 'Those attempting to flee persecution are often unable to obtain passports from their own authorities. This has forced such persons to resort to the use of forged travel documents and unorthodox means of travel'. Perhaps we can be forgiven if we expected that those now in power would have realised this as well.

The previous week the Court of Appeal held that Straw had acted unlawfully in authorising the removal of asylum seekers to countries that would send them back to the very country they had fled.

Undeterred, Straw responded by promising a crackdown on refugees who travel to Britain on Eurostar. In a full page article in the *News of the World* Straw talked of immigration officers at Waterloo station being put on 'a state of increased vigilance against illegal immigrants.'

Unfortunately, New Labour's way of dealing with refugees is to build more prisons in which to detain them. Every year an estimated 10,000 immigrants and asylum seekers are detained, many for months on end without ever having been convicted of any offence.

Under the government's Asylum Bill those asylum seekers fortunate enough not to be incarcerated will be forced to survive on vouchers worth £1.17 a day for adults and £1 for children. Now the government has been forced to admit that the voucher system will cost more to run than the present system. This degrading treatment can only be intended to serve one purpose: to dissuade asylum seekers from seeking refuge in the UK.

In similar vein, the proposal to do away with the right to trial by jury for up to 20,000 defendants a year has very little to do with cost (never a good reason to deny the right to justice) and much more to do with the belief that too many people are getting off! More trials in front of magistrates, they reason, mean more convictions.

Being 'tough on crime' in New Labour terms is no different from old Tory rhetoric on 'law and order'. It means locking up more criminals. When New Labour took over two years ago the prison population was 60,000. It now stands at 64,000, a rise of 64 percent since 1992. The number of people in custody on remand, i.e. not convicted of an offence, has also increased. Britain imprisons a higher proportion of the population, at 122 per 100,000, than any other European country. The inevitable consequence of this, and one that New Labour has eagerly embraced, is that more prisons have to be built (and run, of course, by the private sector). Yet nowhere is there any research to show that locking up more criminals does anything to prevent crime. The government's approach is simply a palliative for *Daily Mail* readers - and even they will realise sooner or later that the policy doesn't work.

This draconian approach to regulating crime is reflected in the now all-pervasive introduction of CCTV cameras to watch our every move, despite research which shows their presence does nothing to lower the incidence of crime. Meanwhile, the police tool up with CS spray and more are provided with firearms. In what amounts to a new form of intimidation and harassment we see the use of 'in your face' hand-held video cameras on the streets of Brixton and elsewhere to record the activity of 'suspected' criminals, particularly of black youth. 'Human Rights'? Whatever happened to 'Civil Liberties'?

This tendency to authoritarianism isn't only revealed in the realms of 'law and order'. Most recently the government has raised the prospect of outlawing the right to strike for groups like the Fire Service workers. It seems a perverse approach to 'rights' to outlaw something as fundamental as the right to withdraw your labour. But, then, it depends on whose rights this government is ultimately protecting.

So much for democracy

by Liz Davies
Labour Party National Executive Committee (personal capacity)

Labour's National Policy Forum, which met over the weekend of 2 - 4- July, witnessed old-fashioned arm-twisting and back-room deals, topped up with New Labour spin. As a democratic exercise, it was largely a charade, and confirmed the fears that the Party's new policy-making structures were merely mechanisms for top-down control.

The National Policy Forum was set up by Partnership into Power, passed at Labour Party conference in 1997. Instead of constituencies and trade unions being able to put motions directly to Party Conference, there is a Party-wide two-year consultation process on specified subjects.

Local constituency parties, trade unions and local policy forums were asked for comments on draft documents (produced by Millbank, Labour's head office) on health, welfare and crime and justice. These documents were then debated by the National Policy Forum, which consists of 175 people, elected as constituency representatives at a regional level, as trade union delegates, and representatives of government and the Parliamentary Labour Party. The NPF meets in closed session and only delegates to the NPF can submit amendments to the policy documents. The NPF then sends the policy documents to Party Conference. Amendments to the policy documents can only be submitted to Party Conference if they have received the support of 25 percent of the delegates to the NPF, subject to a minimum threshold of 35 delegates.

The NPF in July was therefore dealing with the culmination of the two-year consultation process for the first time. Despite the wide consultation process, none of those organisations consulted could submit amendments. Amendments could only be submitted by delegates to the NPF, and had to reflect issues raised in the consultation process.

Readers of *Socialist Lawyer* will be most interested in the policy process on crime and justice. The policy document first produced by Millbank was a fascinating exercise in New Labour newspeak. Despite the government's frequent references in public to "three strikes and you're out" and other law 'n' order rhetoric stolen from the Tories, the policy document was carefully oriented towards the social conscience of Labour Party members. It stressed action to combat the causes of crime, and community-based sentences. Several of the government's current policies, such as the removal of election of Crown Court trial for either way offences, were only included in the final draft of the document, after it had been out for consultation.

The consultation process showed that Labour Party members valued measures to reduce crime, and to increase rehabilitation rates. Many responses to the consultation identified poverty as one of the causes of crime, and stressed that prison should be a last resort, preferring community based sentences. The Society of Labour Lawyers sent in a detailed paper, defending the availability of legal aid, and trial by jury. They may be interested to know that the documents attached to their submission were not reproduced by Millbank, and so delegates did not get the opportunity to read their detailed arguments.

> "Rather than dealing with the causes of crime, Boateng preferred to outline the case of the single mother living in a tower block who was afraid to leave her flat in case she was burgled or the toddler contracted a disease from used syringes lying around"

I submitted amendments on behalf of the Centre-Left Grassroots Alliance to the crime and justice policy document. All our amendments were supported by fourteen delegates and dealt with issues arising from the consultation. We defended the availability of legal aid and the right of a defendant to elect trial by jury. We argued for the serious prosecution of white-collar crime, for poverty to be recognised as one of the key causes of crime, for effective action against domestic violence, for the repeal of emergency legislation, against private prisons and against mandatory sentencing. I also put in an amendment that emerged from Ashford CLP that wigs and gowns should be abolished.

The trade unions submitted amendments calling for increased measures to protect workers from assault at work. There were amendments calling for government action against homophobia, suggesting that a Royal Commission on drugs could at least be considered, calling for a modernisation of drink-driving laws, and for greater protection for children from domestic violence.

On health and welfare, delegates from the Grassroots Alliance submitted amendments opposing the government's proposals to means-test incapacity benefit; supporting the restoration of the link between pensions and earnings and of welfare benefits to asylum seekers; supporting the retention of housing benefit and the reinstatement of rent controls, and calling for an increase in the upper earnings limit on national insurance contributions. On health, our amendments called for local accountability of representatives on NHS trusts and opposition to PFI deals. ▶

We were hoping that a few of these amendments, which represented positions held by substantial numbers of Labour Party members, indeed on some issues the majority of Labour Party members, would receive sufficient support - 35 votes - to put them on the agenda for Party conference.

Sadly, none of us anticipated New Labour's desperation to avoid debate of any sort, even behind closed doors in the plenary session of the NPF.

On the Friday afternoon, individual delegates proposing amendments were called in for what were described as "one to one" meetings with the relevant Ministers. In fact the meetings were more like ten to one. In my case, the Minister accepted two amendments (after some discussion over the wording) and agreed that the remainder would be put to the vote. Many other delegates faced a longer grilling, and immense pressure to withdraw what were characterised as "unhelpful" amendments. All the amendments submitted by trade unions and by those constituency delegates not associated with the Grassroots Alliance were either withdrawn or accepted in anodyne form. As a result, the votes on Sunday were entirely between the leadership's made-to-order policy documents and the democratic amendments pushed by the Grassroots Alliance.

When it came to the votes on the Sunday morning, we found that we were not allowed to propose or speak to any of our amendments. We were treated to long speeches by each of the relevant Ministers - Alistair Darling and Paul Boateng - and then our amendments were summarily put to the vote. Boateng's speech was quite a shock - so much so that *Private Eye* reported it. Rather than dealing with the causes of crime, he preferred to outline the case of the single mother living in a tower block who was afraid to leave her flat in case she was burgled or the toddler contracted a disease from used syringes lying around. On the specific issues, he came up with statements that will have misled a number of delegates. He announced that legal aid was only being withdrawn for personal injury cases where the injury was caused by negligence, without letting on that these are the vast majority of personal injury cases. He claimed that there is no right to trial by jury for the majority of criminal cases, ignoring the relative seriousness of either way offences. We never got the chance to answer him - delegates only got to hear one side of the argument.

Despite the fact that the Grassroots Alliance amendments clearly reflected views held by a substantial number of Party members, none gained the 35 votes required to gain a place on the agenda for Party Conference. Out of a total of 90 voting delegates, our highest votes - on legal aid and on trial by jury - was 16. None of the trade unions voted for any of the Grassroots Alliance proposals and the process of voting on over 20 amendments took less than 30 minutes. By the end, it was such a foregone conclusion that the Chair of the session, Ian McCartney, barely bothered to look up as he announced after each vote that the numbers voting against were greater than the numbers voting for.

Behind the scenes, it was clear that deals had been done. All the trade unions withdrew their various amendments on welfare benefits, some of which had been quite critical of government policy, in support of a composite proposed by the T & GWU calling for a "review" of the welfare state. Delegates who had expressed support for some of the Grassroots Alliance amendments in the workshops were suddenly voting against those amendments.

If the NPF met in public, Party members would be horrified as they saw proposals that carry substantial support within the Party voted down summarily. Conference will now consist of a series of set-pieces speeches from Ministers, and the real concerns of Party members - on pensions, benefits, privatisation, civil rights - will only be expressed at fringe meeting.

● Liz Davies was recently re-elected to Labour's National Executive Committee with an increased share of the total vote.

Abdullah Ocalan

A plea for justice

"I feel as if I am in an abyss... I don't know if I can bear it much longer," Abdullah Ocalan warned his lawyers visiting Imrali Island prison at the end of April 1999. Yet throughout what had been labelled 'the Trial of the Century,' those in court were raising their eyebrows in surprise at the PKK leader's candidly ardent professions of love for the Turkish Republic.

After 105 days in solitary confinement, having been subjected to intense psychological interrogation throughout, to some observers of the trial, the pale, greyer man who appeared before the television cameras now bore the look of a laboratory animal freshly removed from a terrible experiment. Illegal abduction, illegal trial. After Ocalan's illegal abduction from Kenya to Turkey on 15 February 1999, the Turkish authorities had promised the world a "fair trial" for their celebrated captive.

At the conclusion of the trial, however, European observers and human rights organisations alike pronounced the trial "unfair" in its particulars. In its special August 1999 report "Turkey: Death Sentence after Unfair Trial; the Case of Abdullah Ocalan", Amnesty International carefully detailed all the infringements of international law. From the outset Abdullah Ocalan had been judged, condemned and his life pledged to those who were baying for his blood.

by Sheri Laizer

Whilst all along it had been the Kurdish Cause on trial as much as the person of Mr. Ocalan, the inexorable machinery of Kemalism systematically ground all due process of law underfoot in its determined march towards the pronouncement of a 'guilty' verdict and the death sentence. There was never any presumption of Ocalan's innocence until proven guilty, never the right for a defence to be made of his own free will. Indeed, the degree to which Abdullah Ocalan has been operating under his own free will and the extent to which his real thinking is expressed in his statements made from the prison island is debatable. Sophisticated intelligence-gathering techniques, promises of a reprieve from execution, secret offers by the Turkish state to take concrete steps on the road towards the democratic resolution of the Kurdish problem are all possibilities.

However, beyond the walls of Imrali, the mass arrests of HADEP (People's Democracy Party) members and human rights advocates, and the issuing of arrest warrants for officials from the Brussels-based Kurdistan Parliament in Exile, as well as MIT's (Turkish Intelligence Organisation) illegal kidnapping from Moldova of alleged PKK/HADEP lynch-pin, Cevat Soysal, a political refugee from Germany - were scarce cause for optimism.

Moreover, the Turkish government had just recently boasted that it had ordered the construction of nine other cells on Imrali, similar to Ocalan's in which to hold captive for life the nine most senior figures in the PKK in conditions where even the 'flight of a bird' would be prevented. Soon afterwards, a spate of diplomatic entreaties were directed at the Iranian government demanding the interception of members of the PKK Presidential Council, allegedly operating from headquarters within Iran's borders, and their immediate handover for trial, or worse. If the horrific torture of Cevat Soysal was anything to go by, the mood in the 'Democratic Republic' of Turkey was far from one of equitable justice.

Lawyers in jeopardy

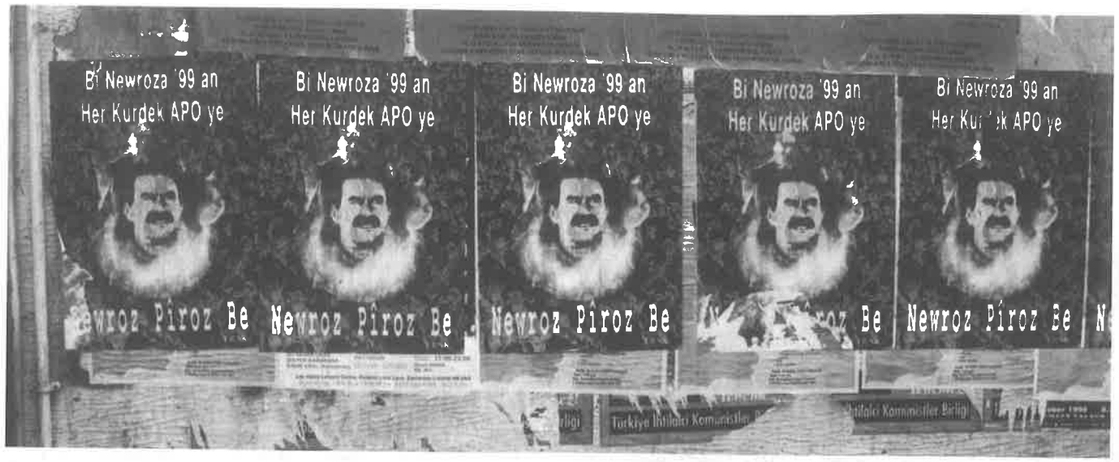
By the end of the trial and the pronouncement of the death sentence against Abdullah Ocalan on 29 June 1999, of the eighty or so Turkish lawyers who had first put themselves forward to defend Ocalan few remained on the case. The key players had become so public a focus for Turkish nationalist wrath that they found themselves more or less in the same boat as their client. Lynch mobs greeted their every journey to and from Imrali; the Turkish police simply stood back and allowed the lawyers to be beaten. Death threats continued in their homes and workplaces. There were vicious phone-calls, abusive, violence threatening letters. At the opening day of trial in the Ankara State Security Court on 30 April 1999, the attacks had continued with such severity that several lawyers were in need of medical treatment for injuries sustained in court.

The situation had become so grave that Ahmet Zeki Okcuoglu - then leader of the defence team - called upon the United States as Turkey's mentor (and one who had played so instrumental a role in Mr. Ocalan's capture) to take the responsibility for the lawyers' safety upon itself. Neither the Turkish President nor the Prime Minister had taken any preventative action. When no answer was forthcoming from any quarter Okcuoglu resigned. By so doing, he was also, ironically, to spare himself the spectacle of his client ignoring legal counsel and, instructing his lawyers to remain silent, taking over his own defence in a manner which left the court gaping with wonder. By this stage, those lawyers who still remained on the case were themselves under investigation for crimes of separatism.

Isolation and speculation

Of course, Abdullah Ocalan had been deprived of contact with the outside world for some time. In a small area adjacent to his cell he would enjoy only one hour of fresh air a day. The rest of the time was spent alone, shut in, shut off, seen only by his interrogators and psychologists. For someone used to being in the driving seat, speaking volumes to silent followers, the court appearances offered him the last possibility of creating a political forum. The world may never know what precisely went on behind the doors of Imrali up until this time. From the outset, there had been nothing ordinary about this case. A special 'Crisis Desk' had been set up and was accorded full responsibility for the handling of the pre-trial procedures which at once made it a case unique in Turkish law. When Mr. Ocalan's lawyers first tried to access the Crisis Desk they were told that nobody knew where it was. Every possible obstacle was put in the way of the preparation of the defence.

In addition, increasingly uncharacteristic statements attributed to Ocalan were placed in the media to create confusion in



the general public and for the Kurds alike. Despite the confusion and uncertainties, Ocalan's defence team succeeded in establishing working links with international lawyers to represent the client before the European Court of Human Rights. An office was also set up in the name of the 'Trial of the Century Bureau', or Asrin Hukuk Burosu based in Germany.

Since the PKK leader's arrival in Italy in November 1998 and his desperate attempts to press for a solution of the Kurdish Question, a number of politicians, human rights organisations and law fora had begun to press for an international hearing of the Ocalan vs. Turkey case as well as for a conference on the Kurdish Problem.

While the European Court of Human Rights had long since presented a general finding against Turkey over its inclusion of military personnel among the three judges who presided over the State Security Courts (DGM), and Amnesty International had published strong reservations concerning the competence, impartiality and independence of the DGMs, by the opening of Ocalan's trial the Turkish government had withdrawn the military judge to head off criticism and replaced him with a civil figure, immediately pronouncing the trial procedures 'fair'. At the same time, they warned that Turkey would tolerate no foreign interference in the workings of its justice system.

A political about-turn

Although Abdullah Ocalan merited the designation of political prisoner, the state saw fit to try him as a common criminal. From the beginning, his lawyers had held frank discussions with him about the prosecution's efforts to see the death penalty handed down, and that elements in government were certainly determined to see it implemented. Ocalan chose to believe that, just as in the period immediately prior to his capture from Kenya, the sole hope of justice being realised lay in his ability to generate initiatives to internationalise debate on the political merits of the Kurdish case. In court, he offered to work as a tool for peace and for the establishment of a 'Democratic Republic'.

This same political argument formed the basis of his formal defence and, after the handing down of the death penalty on July, encouraged him to make further offers to the government to bring about an end to violence, and propose the withdraw of the PKK's fighters from Turkey. For so long as Turkey and its allies had managed to criminalise him, the underlying political facts had been conveniently obscured. Now, in the aftermath of the Kosovo Crisis, the Ocalan trial had begun to turn the tables. Where before his hearing the press had been ablaze with headlines reviling Ocalan as a 'baby killer', or as the author of the deaths of some 30,000 people, Ocalan had now effected such an about-turn that it was those who most profited from the war who would be exposed as the real criminals.

With the proferred cessation of PKK attacks (the armed wing of the party, the ARGK, reserved the right to respond to any hostilities in self-defence) the real provocateurs would emerge. It was not the Kurds who wanted war, stressed Ocalan: peace was as vital to the Kurdish and Turkish people as bread and water. At an earlier stage of the proceedings, defence lawyer, Ms. Eren Keskin, had similarly commented about the culpability for the 30,000 dead in a press interview stating: *"As a person who knows otherwise, I ask who killed Musa Anter, Vedat Aydin, Medet Serhat, Faik Candan and some 10,000 others like them who lost their lives in contra-guerrilla murders? Who was it who killed Zeynep Avci, Remziye Dinc? Who was it who raped little R.K? Who was it who stubbed out cigarettes on the body of three-and-a-half-year old Azat and killed him? I took on this case so that I could ask these very questions. I am sure that all my colleagues also did the same with the same feelings..."*

The Framework of the Conflict

The Kurdish problem in Turkey did not begin with the PKK or Abdullah Ocalan. It began the moment the Turkish Republic expressed its raison d'être in terms of a unitary constitution which denied the existence of any people but the Turkish people. For seventy-five years thereafter, repressive articles in the Turkish Penal Code covering in particular, Freedom of Expression and Freedom of Political Association, were to be employed by the state to fight the Kurds through 'the law' while the military hit them on the ground. Any statement which called for a settlement of the Kurdish problem was equated with 'inciting racial hatred, disseminating racist propaganda and advocating 'separatism' - even treason. Today, neither the Kurdish language, nor the Kurds constitutionally exist. The brilliant lives of Turkey's most sincere democrats are still being wasted in Turkish prisons.

Since the capture of Abdullah Ocalan, Turkey has become polarised into two camps; the political situation has grown more tense as the chasm between two warring nationalisms has yawned wider - the one, Turkish nationalism, justified under arguments of national security; while the other, Kurdish rights, are subsumed beneath the rhetoric of 'terrorism.' The Kurdish Question in Turkey cannot be solved by the public humiliation of Mr. Ocalan; not by the breaking of his mind and spirit, nor by the taking of his life. The atrocities suffered en masse by the Kurdish nation for the past 75 years can only begin to be redressed through a negotiated political settlement.

The Kurdish Problem cannot be swept under the table either by Ocalan's execution or the decimation of the PKK's guerrilla forces. The groundswell of popular discontent in Turkey today is a far more dangerous element threatening the country's stability and given all the present options for a lasting settlement, is a situation for which the Turkish government bears full and final responsibility. ■

Corporate control, compliant Government and the mis-regulation of genetically-modified seeds

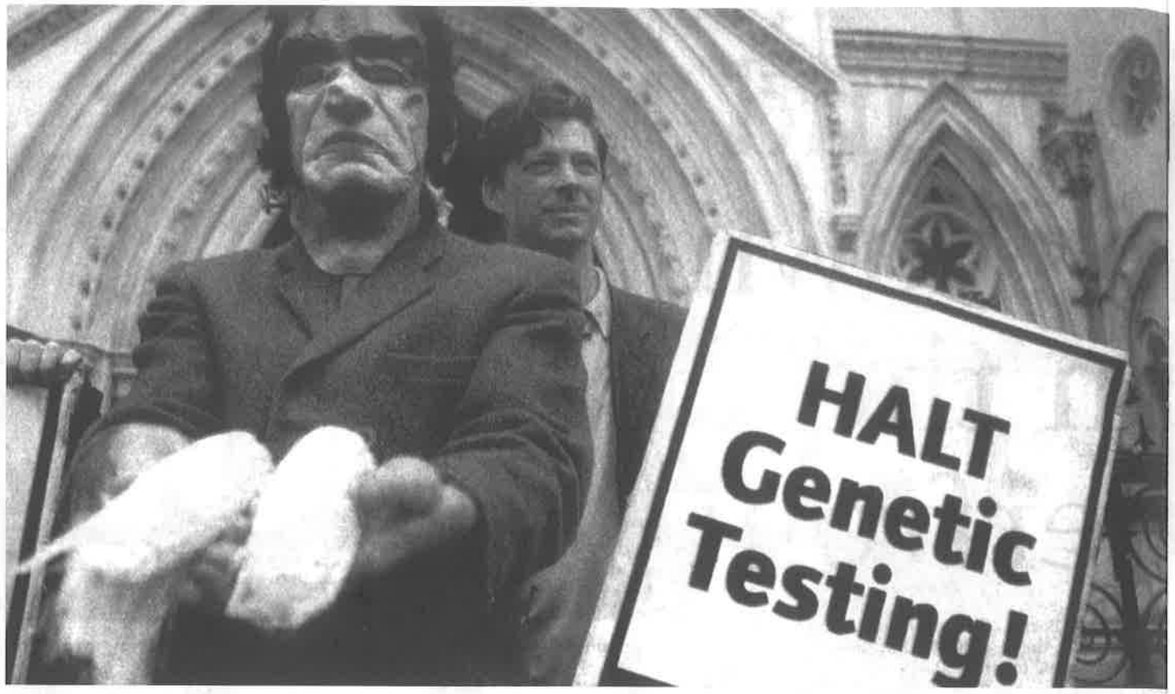
THE FOOD WE EAT

by
Peter Roderick
of Friends of the Earth

In its expensive advertising campaign last year, extolling the virtues of genetically-modified (GM) foods, Monsanto made much of their approval by regulatory bodies in many countries. Less than twelve months later, claims made in the campaign have been condemned by the Advertising Standards Authority, Monsanto has been fined for breaking GMO law, 77% of the UK public has said they don't want GM crops to be grown commercially, and now the Ministry of Agriculture, Fisheries and Food (MAFF) has been found to have broken its own regulations in ways which speeded-up the commercialisation of GM crops - twice!

The first instance came last summer. Guy Watson, an organic farmer in Devon, discovered GM maize being grown right next to his farm and threatening his organic status. He sought the support of Friends of the Earth, the Soil Association and others in seeking a judicial review. Although no order was made to pull up the GM crop - that had to be left to direct action - the Court of Appeal found that MAFF's Plant Variety and Seeds Office (PVSO) had acted unlawfully under the Seeds (National Lists of Varieties) Regulations 1982 *(R v. DETR and MAFF, ex parte Watson)*.

The second instance came on 31 March this year, after an unprecedented judicial review was sought by 3 cross-party MPs - Norman Baker (Lib Dem), John Randall (Tory) and Alan Simpson (Labour) and Friends of the Earth. Papers were lodged with the Crown Office in the morning, arguing that the PVSO's decision to accelerate the commercialisation of GM crops, was illegal. By the end of the afternoon, MAFF had conceded!



The non-statutory scheme

In February 1999, MAFF announced that it was revising its 24-year old "non-statutory provisional seed 'certification' scheme" to encompass GM seeds. Although I have been advising Friends of the Earth for over a year on GMO and seed law, I had never heard of this scheme. But with the Court of Appeal's judgment in *Watson* very much in mind, I decided to explore this already-fertile ground a bit further.

What we found was a PVSO, assiduously facilitating GM commercialisation from its inconspicuous office down a side road in a Cambridge suburb, but out of legal control yet again - and this time, going behind Parliament's back.

The law

Basically, a seed (GM and non-GM) can only be marketed if its variety has first been listed, and thereafter each seed lot has been certified. Before varieties are listed, they must undergo at least two years of tests and trials (establishing distinctiveness, uniformity, stability and (for agricultural crops) a "clear improvement" for agriculture).

GM seed legislation

Before GM seeds can be marketed:

(a) they must have a GMO marketing consent under Part VI of the Environmental Protection Act 1990, regulations made thereunder and EU Directive 90/220;

(b) their variety must have been listed under the Seeds (National Lists of Varieties) Regulations 1982, implementing EU Directives 70/457 and 70/458; and, once the variety has been listed,

(c) each seed lot must be certified under various certification regulations, implementing EU Directives 66/400, 66/401, 66/402, 66/403, 69/208 and 70/458 concerning the marketing, respectively, of beet seed, fodder plant seed, cereal seed, seed potatoes, oil and fibre plant seed and vegetable seed.

Only after that, once the identity of the variety is clear, can seeds be certified as meeting prescribed purity and health standards. And it takes up to another four years building up the stocks of seeds, growing them year-on-year, for the seed finally to be produced in sufficient quantities for human and animal consumption - so-called "Certified Seed".

MAFF's complicity

The seed companies don't like to hang around going through all these hurdles, and want to get their wares to market as soon as they can get away with it. So, because the consecutive requirements described above strung things out too long for them, back in 1975 MAFF officials introduced their very own non-statutory provisional "certification" scheme in order to make these requirements, in part, concurrent.

This had the effect of allowing Certified Seed status to be granted immediately upon listing of the variety - so that the industry could hit the market running and not have to wait, as the law requires, another three or four years before that status would be reached. As MAFF said in 1975, "these arrangements are designed to facilitate the production of seed of new varieties under the control of breeders or maintainers so that they may readily commercialize new varieties as soon as they have been named on the UK National List". And so merrily they went on their way, even charging fees for issuing non-statutory "certificates", and amending the scheme from time to time when it seemed like a good idea.

Relevance to GMOs

Nervously in the weeks after the Court of Appeal in *Watson*, when their approach had been slammed by the Court variously as "remarkable", "regrettable" and "impermissible", the PVSO moved in effect to exclude GM seeds from the non-statutory scheme. But then in February 1999, at the very time that public concern and debate was hitting the headlines, they revised the scheme, specifically to encompass GM seeds.

Avoiding Parliament

One of the key features of the GM debate so far has been the intransigence of the Government, siding with the biotechnology companies in the face of overwhelming public opposition and scepticism. Tony Blair was personally caught on the hop, and dug in. But there is a lack of unanimity within Government, and back-benchers are sceptical - the very people who should have had oversight of any amendment to the certification regulations, and the very people who could have been expected to be particularly alert to any attempt to speed up commercialisation of GM seeds. Hence the interest of Messrs Baker, Randall and Simpson.

It was heartening that cross-party support for the judicial review was forthcoming, and particularly for a Labour MP to be willing to take a Labour Government to court when he saw the executive stealing a march on the legislature. Alas, personal position and preferment seem to be stronger driving forces for the majority of his peers.

MAFF has said that it will legislate to put the matter right, but they are restricted by EU law as to what they can do. So we will monitor carefully their proposals and not hesitate to go back to court if we think they're still behaving unlawfully.

Where now for GMOs?

The latest Government response has been to allow commercially-driven "farm-scale plantings" of GM crops to proceed this spring in Wiltshire, Oxfordshire and Lincolnshire. "Environmental studies" have been tagged-on to the end of these and future plantings, costing the taxpayer over £3m. But Cabinet Office minutes leaked to Friends of the Earth reveal that they are not scientifically sound. These plantings will allow the industry to build up its stocks of GM seeds (oilseed rape, maize and sugar beet), ready for commercialisation.

Meanwhile in the US, 40% of soya, 30% of cotton and 15% of maize is now GM, and increasing. The revolution has occurred there silently and with little public opposition. In part this is due to the close relationship between the US administration and the biotechnology industry. But they have, deliciously, been shocked by widespread European opposition, of which the UK is but the latest.

The future of GM crops and food now hinges on international trade interests on the one hand, and consumer choice on the other. In February, the US led the opposition which resulted in the failure of over 140 countries in Columbia to agree a Biosafety Protocol controlling GMO trade. In November, the issue will rear its head again at the WTO Seattle meeting, close on the heels of the banana and beef wars.

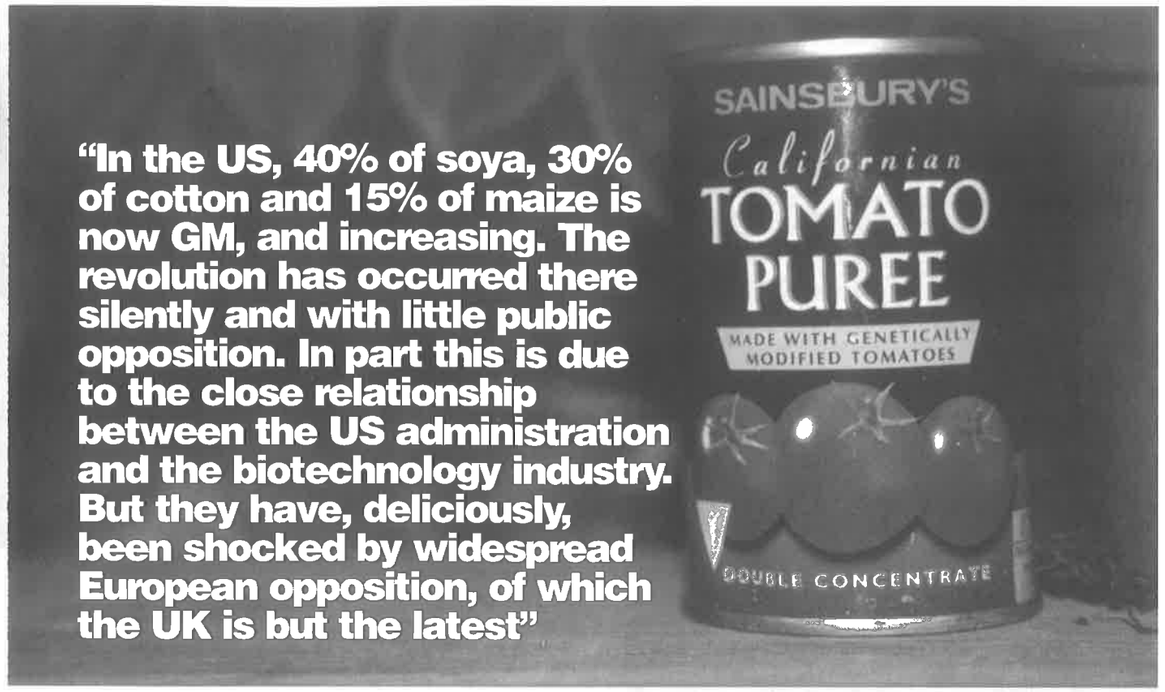
Listen, Mr Blair!

Meanwhile, judging the UK Government by its actions, rather than its words, I can't avoid the conclusion that it doesn't want to listen. Rather, its strategy is to batten down the hatches, ride the storm and cross its fingers that it'll be able to hood-wink the public - or, in the words of a DTI Report, "[t]here must also be opportunities created for repeated presentation of certain messages in an attractive format in order to maintain the public's attention and allow for a gradual assimilation of knowledge" (*"R&D Surveillance Report 361, Development of a strategy to promote the public's understanding of biotechnology"*, published in December 1998).

And the Report thinks that those messages "should be conceptualised as not tampering or interfering with nature, but simply as adapting existing natural processes under controlled conditions, to create stronger, higher yield and disease-resistant agricultural produce, in turn giving rise to more nutritious, safer food for consumers".

But the marvellous news is that the public isn't listening. Sixty environmental, developmental, social, consumer, commercial and public organisations have called for a 5-year freeze on commercialisation. We know that ministerial claims that a freeze would, contrary to Counsel's advice, be prevented under EU and WTO law is a smokescreen for Blair's promises to Clinton not to rock the boat on biotechnology. And now all the major supermarkets have pledged to go GM-free for their own products. So much for "more nutritious, safer food for consumers" - we don't want them.

So, come on Mr Blair, admit that you've lost the plot on this one, and show that your infatuation with "modernity", big business and the Labour Party's acceptance of bitoech company money, aren't the real reasons why you cannot hear what the British people are saying. ■



"In the US, 40% of soya, 30% of cotton and 15% of maize is now GM, and increasing. The revolution has occurred there silently and with little public opposition. In part this is due to the close relationship between the US administration and the biotechnology industry. But they have, deliciously, been shocked by widespread European opposition, of which the UK is but the latest"

London bombings

Out of the grief comes resistance

by John Simon Hobson

Within months of Macpherson's report and the outpouring of sympathy for the Lawrence family, London experienced three manifestations of violent hatred which left three people dead and others horrifically injured at Brixton, Brick Lane and Soho.

Whatever one's thoughts about the precise nature of the seam of prejudice in which these acts were rooted, there were nevertheless elements of hope to be acknowledged in the face of such shocking events. The bomb attack on the Admiral Duncan pub, for example, led to a near-spontaneous street demonstration that followed on from private and then collective expressions of grief. The protest joined those already marching from Brixton, and in solidarity with Brick Lane. This public expression on the streets of central London reflected the diversity of the city itself with contributions from many groupings, including the activist left, arguably at its best when it stands unequivocally and in solidarity in such circumstances.

Black and white, gay and straight, united in Soho

At the re-opening of the Admiral Duncan, Old Compton Street on Friday 2 July, adopted symbols of the gay and lesbian community were visible alongside the banners of trade unionists from within and without that same community. The area itself was quite simply jammed with people seeking to reclaim the street and pub. The crowd fell silent at 6.37 pm as the bell of St Anne's church in Soho rang out three times. They remembered Andrea Dykes, John Light and Nik Moore who were killed nine weeks earlier, as well as those so personally affected by injury or bereavement.

Never to forget such events is important in the process of building the future. By remembering, new layers and generations will become informed of the struggle and cost involved in the progress that has indeed been made and learn that eternal vigilance has been, and will remain the price of freedom.

● The April Bombings Appeal, which seeks to aid those affected by the bombing of Brixton, Brick Lane and Soho, can be contacted on 0171 539 7777

The bombing in Old Compton Street - in the aftermath many wanted a strong legal response

The Haldane Society is forming a **Working Party** on the proposed Government legislation on terrorism. The idea is to scrutinise and criticise the proposals with a view to forming a coalition to campaign **for the preservation and extension of civil liberties** in this field. If you, or the group you work for, are interested in participating in this work, please get in touch by writing to the *Haldane Office* (see inside front cover for address), or by emailing us at haldaneec@hotmail.com Please mark letters or emails for the attention of the **'Civil Liberties Working Party'.**

What future for anti-terrorism law?

by Conor Gearty
King's College London

The recent explosion of three bombs in London was a sharp reminder of the recent past, when such attacks occurred with depressing and bloody regularity. In the twenty five years up to the first IRA ceasefire, it seemed almost as though these tragedies were a perpetual price that had to be paid for the failure to resolve the political and sectarian divisions in Northern Ireland.

Now various initiatives in that Province have sharply reduced the threat from it of subversive violence, and there is the prospect of a stable peace if the current process produces the institutions which the Good Friday Agreement envisaged. It would be disastrous if the recent bombs in London, aimed at members of the ethnic and gay communities, were to be made the excuse for not only the retention but even the expansion of the United Kingdom's anti-terrorism laws. There is clear evidence, however, that this is the Government's intention.

Just before Christmas last year, a consultation paper was issued on the future of the prevention of terrorism legislation. It might be thought that in the event of there being a stable peace in Northern Ireland, no need for such legislation arises at all. After all it was only introduced in 1974 after horrific levels of IRA-orchestrated violence in Britain and even then was declared to be a temporary measure.

Since 1974 however, the Act has become deeply enmeshed in our laws, being re-enacted and expanded on numerous occasions, added to in other legislation and broadened to include "international terrorism" in 1984. This latter change was followed by an addition to the remit of the security service (MI5) to include "the protection of national security and, in particular, its protection against threats from ... terrorism ...".

"International terrorism" is a fairly amorphous concept at the best of times, and it would be hard to justify the entire corpus of anti-terrorism law being deployed against such a vague and controversial chimera, itself largely a throwback to the Cold War rhetoric of the Thatcher-Reagan era. The solution the Government's consultation paper comes up with is to turn the anti-terrorism laws against domestic political groups. The main domestic bodies to which reference is made are the environmental and animal rights protesters, though there is some talk as well of Scottish and Welsh nationalist extremists. The levels of violence are admitted to be extremely low but there are anxieties expressed about possible future attacks. (Ironically there is no reference at all to racist and anti-gay attacks or killings, which many would feel are the clearest example of politically motivated criminal violence which currently takes place in Britain.)

The Consultation Paper is not content merely to widen the remit of the anti-terrorism law, it also wants to add to its breadth. A new definition of terrorism is suggested: "the use of serious violence against persons or property, or the threat to use such violence, to intimidate or coerce a government, the public, or any section of the public for political, religious or ideological ends".

This may be thought to be wide enough but the Government goes on to say that the "term serious violence would need to be defined so that it included serious disruption, for instance resulting from attacks on computer installations or public utilities ...".

The right to protest

The idea of punishing as "terrorism" non-violent serious disruption has stark implications for civil liberties and the right to protest. The Government notes that "[v]iolence that can be described as 'politically motivated' may arise in the context of demonstrations and industrial disputes" though it promises that it "has no intention of suggesting that matters that can properly be dealt with under normal public order powers should in future be dealt with under counter-terrorist legislation." This is of course true but the whole point of the new law would be to add to, not duplicate State power.

If the Government gets its way, a whole range of radical political and industrial conduct would be susceptible to be classified in the official mind as potentially "terrorist". The effect of this would not be to criminalise such behaviour, but rather to unlock a series of administrative powers that could then be deployed against such activists.

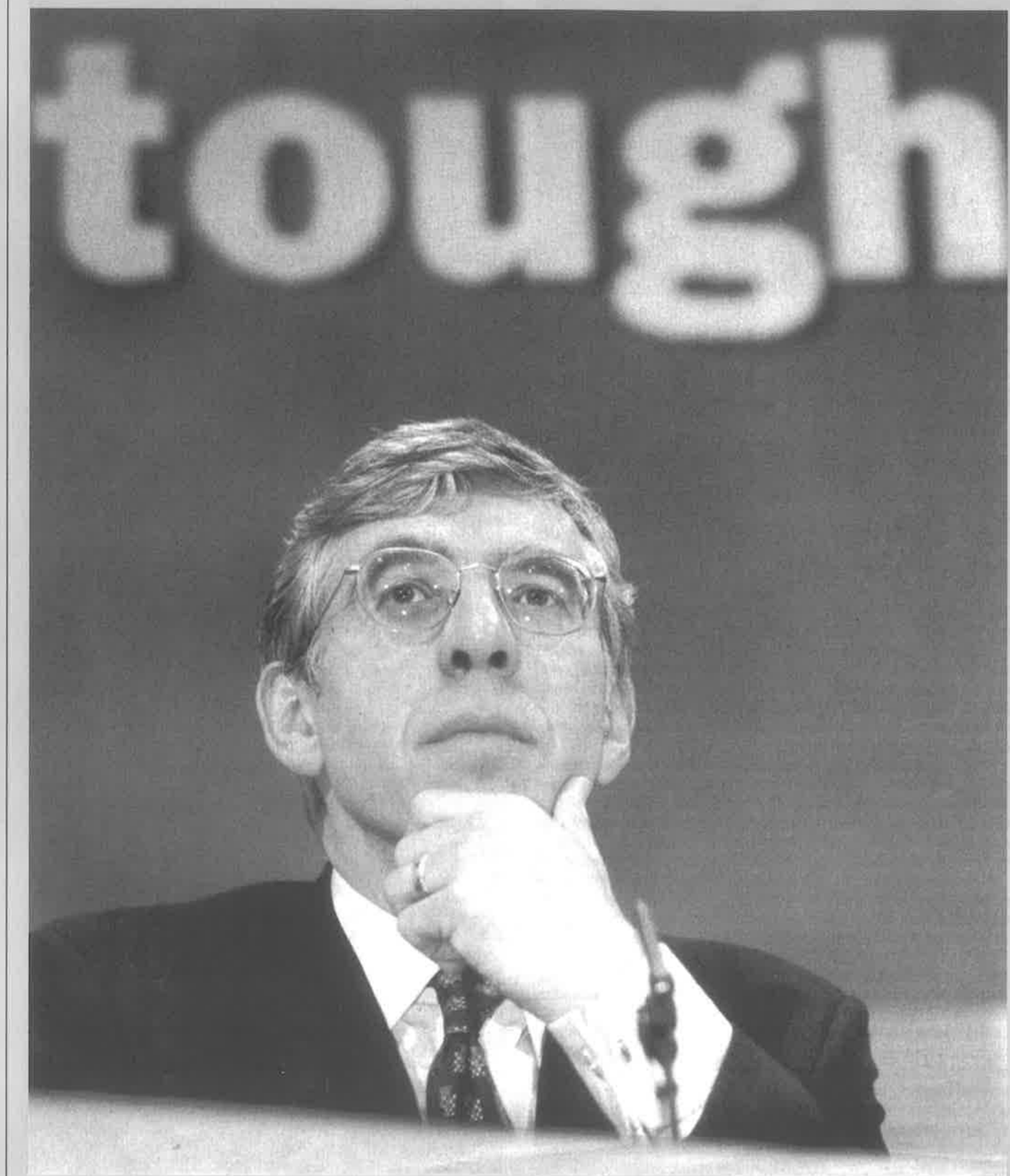
Special powers of arrest, detention, stop and search would become available. Access to a lawyer during interrogation could be denied for a longer than usual period. Fingerprints could be taken and the data retained whether or not charges were brought. Legislation designed to attack the financial operations of the IRA could be wheeled into action against targeted environmental or other activist groups whose threatened disruption reached the required level of seriousness in the official mind.

It is perfectly understandable that in the aftermath of the London bombs the various groups most directly affected by these acts should have felt the need for a strong legislative response. But the reality is that the blowing up of public houses and street markets is already criminal and can be dealt with without resort to special powers.

It is opportunistic of those who want new anti-terrorism powers for the police and MI5 to use these bombs as a device with which to excite a public clamour for such legislation. If enacted, there will be no exemption from their reach for Black activist groups of the sort formed in the aftermath of the Lawrence inquiry or for the kind of organised direct action with which certain anti-discrimination campaigners has become identified over the years.

The Government has recently promised that the Human Rights Act will be brought into force in October 2000. The European Convention on Human Rights which this Act incorporates has as its core ideal a pluralist society in which different political opinions can be formed and acted upon within a shared framework of an equal system of laws. Already, in a recent case before the Lord Chief Justice, parts of the anti-terrorism legislative edifice have been shown up as infringing the basic procedural rights to be found in this document. When Labour are in power, it should surely not have to fall to the courts to defend our civil liberties from executive excess. ■

A price too high to pay?



Defend the right to trial by jury

by Michael Mansfield QC

This year alone has seen some remarkable U turns by the Labour Government. No wonder Rory Bremner feels it is time to establish 'Amnesia International' for political prisoners incarcerated in the Cabinet! The list of issues is interminable – Immigration and Asylum, Freedom of Information, Access to Justice, Disability, selection in Education, but none so obvious and central than the threat to trial by jury.

When Michael Howard proposed to remove the right to trial by jury for 20,000 people a year facing criminal charges there was outrageous indignation from the opposition Labour spokespersons. Then, Jack Straw said the plan was "unfair, short-sighted and likely to prove ineffective." The then Shadow Attorney-General, John Morris, proclaimed that "the right to jury must be kept - it is cardinal." Now, Jack Straw proudly proclaims that he has "changed his mind on this". The Attorney General has remained a shadow on this!

When Tony and Cherie Blair went to Beijing last year, one thing they were anxious to promote was the way a jury provides an excellent and effective opportunity for ordinary people to participate in the administration of justice, introducing a democratic element lacking in many other jurisdictions. They even laid on a mock British trial with British lawyers and a Chinese jury. It seems that trial by jury is good enough to recommend to the Chinese but not so good that it should be retained at home.

Government spokespeople have a knack of putting the changes forward as some small administrative tweaking of the system, to tidy it up, tighten up loopholes, save money and prevent manipulation by the unscrupulous. The backdrop, however, has been a steady erosion of jury trial throughout this century such that 90 per cent of crime is presently tried without a jury in the magistrates courts. One method used to achieve this has been a periodic redefinition of categories of crime to enlarge the numbers triable only by magistrates as summary offences. This is the method to be adopted again.

How is the change to be implemented in practice? If the magistrate is now to exercise the choice on behalf of a defendant, how does the magistrate determine which defendants deserve to benefit from the right to jury trial? Take two identical charges involving dishonesty, and the same value of property. Is it being said that if you have previous convictions you forfeit the chance? Or is it a failure to speak in interview? Or is it because the magistrate takes the view that it is an overwhelming case against the defendant and that a plea of guilty should be entered?

And a refusal to grant trial by jury will see that decision appealed to the Crown Court. The trial will be delayed while the appeal is heard and more legal costs incurred.

Research repeatedly shows clearly that ordinary people prefer their community, and not those appointed by the state, to carry out the job of deciding what happened and what you intended where there is a dispute in a criminal case.

Picture: Tim Hetherington

We should be encouraging trial by jury and building a system in which it plays the central part in all criminal justice. Instead Straw's proposal will affect about 20,000 cases a year - a third of all those heard at the crown courts: offences of dishonesty, drugs, offensive weapons and dangerous driving. All of these may involve significant issues of dispute and the risk of serious repercussions for the convicted . There is a significant difference between acquittal rates in the crown court (57 per cent) and those in the magistrates courts (37 per cent).

Basic freedoms attacked

Measures which undermine basic freedoms and rights in the UK are never single cataclysmic blows, but nearly always the result of long attrition waged by those with one purpose in mind - control and exercise of authority and power for their own ends. Michael Howard's proposals over the abolition of the right to jury trial came from an expected source. That they have been taken up by Jack Straw and Labour cannot disguise their anti-democratic and authoritarian nature.

Previous attacks on the jury have come in many forms. The Roskill Commission claimed that juries were not qualified to deal with complicated financial questions and required specialist tribunals. Lord Rawlinson, Sir Frederick Lawton and Lord Hailsham thought a property - owning qualification was necessary to preserve a better class of jury. Other members of the higher judiciary have considered that juries might be susceptible to nobbling and so heavy crime should be removed from their consideration.

The shared hidden agenda is not cost, nor efficiency, although those are the ideas meant for public consumption. What matters more is the overwhelming belief that ordinary people, given the chance, acquit too many of those on trial. Historically, juries have performed their task conscientiously, often to the chagrin of the authorities.

This is most clear and poignant in those political cases where juries returned conscientious decisions, reminding us of an earlier century when Quakers William Penn and William Meade were tried at the Old Bailey for conspiratorial gathering.

The jury was bullied and threatened, locked up without "meat, drink, fire and tobacco" and told by the Recorder "we shall have a verdict or you shall starve for it". When after three nights they acquitted William Penn, they were fined and imprisoned until the fines were paid. Four refused to pay and remained in prison.

It is this democratic resistance that poses the greatest threat, not the drain on the public purse.

Democracy

It is ironic that, as public faith in the integrity and efficacy of the Criminal Justice system is severely shaken, public participation in that system should be limited or removed. It is the most democratic form of justice in the world, a protection against the use of overbearing and arbitrary power by governments.

Jack Straw would do well to bear in mind the words of Lord Devlin: " What makes juries worthwhile is that they see things differently from judges..." And EP Thompson once wrote that the English common law rests upon a bargain between the law and the people. " the jury box is where the people come into court ... A jury is the place where the bargain is struck. A jury attends in judgment not only upon the accused, but also upon the justice and humanity of the law."

The jury debate cannot be a market-led argument - economies of scale or supermarket justice - because magistrates courts are already overloaded and understaffed. So many extra cases would require a bigger building programme, more magistrates, longer waiting times and increased costs.

No doubt this Government , with the majority it has, will not feel the need to consult with the public which elected it. Such consultation as has taken place was short and narrowly based. The results are yet to be published. None of this bodes well for a government that so readily embraced the Universal Declaration of Human Rights and the European Convention on Human Rights, now incorporated into the Human Rights Act. The centrepiece of the Convention is the right to a fair trial.

The simple truth is that we still have a government that despite all its high-sounding words speaks in one direction and looks in the other, a government willing to incorporate rights into law, yet one that still frustrates every attempt to implement them effectively.

No doubt this Government's next target will be the presumption of innocence itself, on the basis that it would be quicker and cheaper to presume guilt and pass straight to summary execution. ■

"The shared hidden agenda is not cost, nor efficiency, although those are the ideas meant for public consumption. What matters more is the overwhelming belief that ordinary people, given the chance, acquit too many of those on trial. Historically, juries have performed their task conscientiously, often to the chagrin of the authorities"

Round two: an equivocal victory

Amidst speculation that Chile and Spain may come to some agreement whereby Pinochet would not stand trial in Spain, Amnesty International has called for Pinochet to be tried here, **Frances Webber** looks at the House of Lords decision that said Pinochet should be extradited

By the time of the Lords' second decision, on 24 March 1999, affirming the old ex-dictator's liability to extradition but on dramatically reduced charges, the sense of drama attending the first decision had seeped away. The response, on both sides, was muted in comparison with the joy and rage of last November.

The permanent picket of the relatives of the disappeared outside the House of Lords cheered briefly for the cameras but half-heartedly. Pinochet's supporters, long gone from their allotted protest spot on St Margaret's Green, claimed 'victory' on the basis that the Lords all heavily hinted to Jack Straw that this time he really should send the old man home; his lawyers rushed straight to the High Court to try to force Straw's hand.

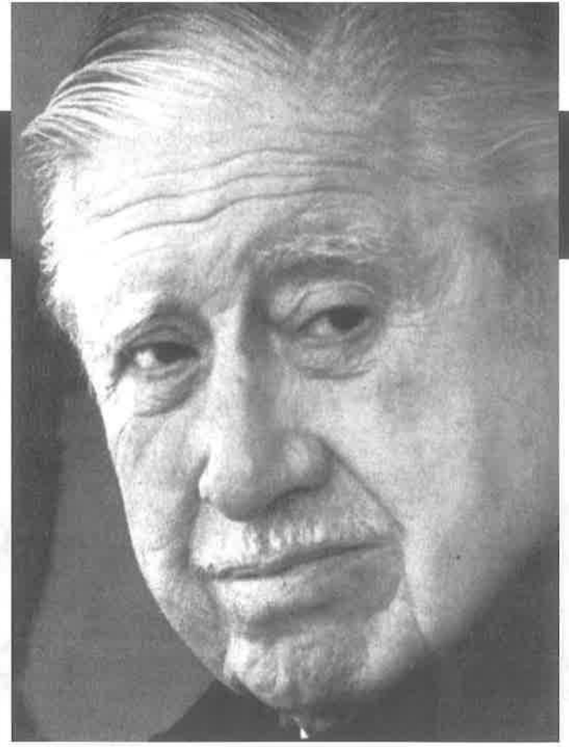
Straw, man of principle to the last on issues of law and order (as opposed, that is, to the treatment of asylum-seekers) courageously stuck to his earlier decision in the face of more or less strident calls, pleas and demands from the Pope, the Dhalai Lama and lesser mortals (doubtless with their own positions to consider) such as Lady Thatcher, George Bush and Henry Kissinger.

The second hearing, held after a specially convened panel of Law Lords headed by Lord Browne-Wilkinson set aside the first judgment for bias after Lord Hoffmann's failure to declare his links with Amnesty International, took twelve days, from 18 January to 4 February. The seven-strong panel, headed by Browne-Wilkinson, heard oral argument from the Republic of Chile and (as before) from Amnesty International as well as from the CPS (representing the Kingdom of Spain), Pinochet's team and the amicus, and read submissions from Human Rights Watch.

The hearing took a very different shape, which was reflected in the final result. At the first hearing, argument focussed on the certified question of 'the proper interpretation and scope of the immunity enjoyed by a former Head of State from arrest and extradition proceedings in the UK in respect of acts committed when he was 'Head of State'. The State Immunity Act 1978, the Diplomatic Privileges Act 1964 (under which a former head of state's immunities were equated to those of a former diplomat), and the Vienna Convention on Diplomatic Relations, Article 39 of which retained immunity for former diplomats for acts performed 'in the exercise of their functions', were analysed and dissected.

Customary international law on immunity was confronted with customary international law on international crimes. The history of the international crimes of torture, genocide and crimes against humanity was traced from the end of the First World War, and the decision of the tripartite Commission on Responsibility of the Authors of War that Kaiser should be extradited, through the Second World War, the Nuremberg Charter in 1945 and the adoption by the UN of the Nuremberg Principles, the Genocide Convention of 1948, the Geneva Conventions of 1949, to the Torture Convention of 1984 and on to the International Law Commission Draft Code of Crimes 1996 and the ▶

Pinochet



1998 Statute of the International Criminal Court.

Torture

The argument accepted by the majority in the first hearing was that in the light of the unequivocal denunciation of torture and its characterisation as a crime of universal jurisdiction, torture could never be part of the functions of a head of state and so, once the personal immunity that goes with the job was lost by stepping down, the residual functional immunity went. (See *Socialist Lawyer* No. 30 Winter 1999, 'No hiding place'.) In the Divisional Court and at the first hearing there had been a fairly weak attempt to argue that Pinochet had not been head of state until a decree of 1974; prior to that, the Crown Prosecution Service asserted, he had been the head of the ruling junta but not president.

That argument had been rejected: a Hansard was produced by Pinochet's team to show that the British government had recognised Pinochet's government on 22 September, and affidavits from two former Chilean ambassadors asserted that Pinochet was head of state from the coup of 11 September. For the second hearing, the government of Chile, as intervenor, adopted that assertion. So, on the first day of the second hearing, the CPS, apparently doubting that the immunity argument would be accepted by the second panel, tried to get round the immunity argument in a different way - by extending backwards the crimes of which Pinochet was accused.

The direction of the second hearing was determined by that decision. In response to a request for further particulars, the Spanish authorities had sent more material to the CPS setting out details of agreements and choate offences committed before the coup.

There was an allegation that a number of sailors were tortured in a naval base under the authority of Pinochet during the period that the coup was being plotted, and conspiracies in that pre-coup period to commit tortures and murders in the course of gaining and securing power were described. In the interests of finality, the Lords agreed after argument to look at the new material. It was clear that there could be no question of immunity for many of these crimes (although Pinochet's team tried to argue that head-of-state immunity can extend backwards to cover prior illegal acts).

A total of at least three days of the hearing were taken up in debating these new allegations: whether there was an offence in Spanish law corresponding to conspiracy in English law; whether it mattered; whether the Spanish request contained accusations (so as to found extradition charges) or merely a narrative (which would not be enough for extradition). But the argument which caught the Lords' attention was on retroactivity: torture was not made a crime in the UK until 1988, and the CPS was trying to extradite on crimes of torture committed 15 years before.

In the Divisional Court the argument had been briefly addressed and rejected. Lord Bingham had referred to the wording of section 2 of the Extradition Act 1989 which defined an extradition crime as conduct in a foreign state which 'if it occurred in the UK, would constitute an offence punishable with imprisonment .. and which, however described in the law of the foreign state, is so punishable under that law'. The language of the section is present tense. It was obvious, he concluded, that the double criminality rule (that the conduct must be criminal both here and in the requesting state) required that the conduct be unlawful at the date of the request; not necessarily at the date of its commission.

This position was accepted by the other members of the Divisional Court and was not contested at the first Lords' hearing. But the CPS's backward extension of the crimes for which extradition was sought so as to escape the immunity block forced Pinochet's team to address the temporal dimension of double criminality seriously for the first time. And having addressed it, as Lord Saville of Newdigate pointed out to a grateful Clive Nicholls during the hearing, once raised, the point could not be confined to the period before Pinochet became head of state. It potentially affected all but one or two of the charges. As the retroactivity/double criminality argument developed, the argument took on a surreal aspect.

It was strange enough hearing Pinochet's lawyers stand up and say without flinching that torture, as something performed by a State's military and paramilitary forces, is a function of the State *par excellence*. But they excelled themselves in arguing that it was unfair to extradite Pinochet for crimes which weren't crimes under UK law when he committed them, because extra-territorial torture didn't become a crime in the UK until 1988.

'It is simply unsupportable,' Clare Montgomery QC said, 'that Senator Pinochet would not be guilty of an offence of torture here because it all happened before the Torture Act (sic) came into force and that was specifically not to be retrospective, but he could still be extradited.' The argument prevailed. While accepting by a 6-1 majority that torture was an international crime which was incompatible with the survival of functional (as opposed to personal) immunity, the Lords swallowed Pinochet's argument on double criminality.

They accepted that present-tense language did not mean what it said and that pre-1988 torture in Chile was not an extradition crime because 'conduct, if it occurred in the UK' meant 'torture in Chile in 1973'.

They were persuaded into this extraordinary departure from the normal rules of statutory construction by what, on the face of it, seems a fallacious argument that the 1989 Act was a consolidating Act built on the 1870 Extradition Act, which expressly stated the double criminality rule in past-tense terms (the conduct had to be an offence under UK law at the date of its commission, not at the date of request).

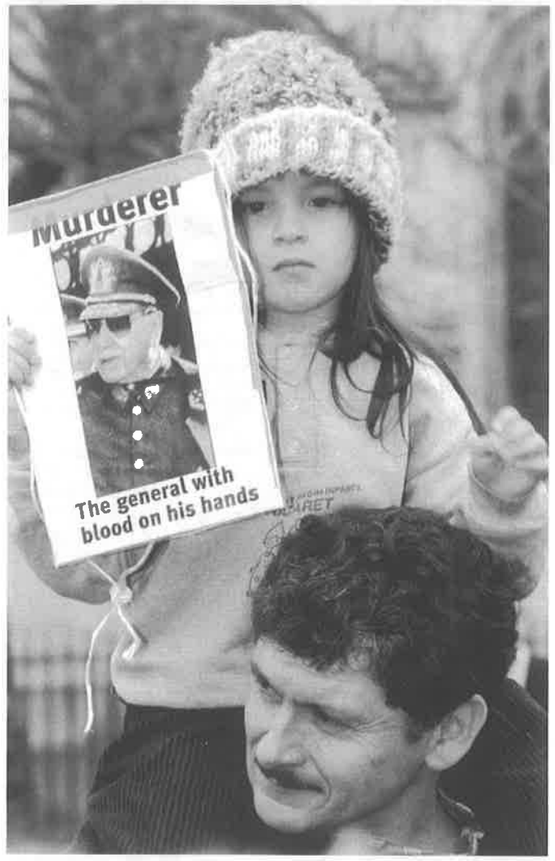
The careful exposition by Alun Jones QC in reply, taking the court through the different schemes with their different tests, the authoritative quotations from writers and legislators in other jurisdictions, even the citation of UK authority (though admittedly only at Divisional Court level) supporting the present-tense test - all came too late. The Lords had seen the way out of the intractable problem of Pinochet, and were all too eager to take it.

The impression gained by observers at the hearing was that the Lords did not want to align themselves with an anachronistic doctrine inimical to the development of international human rights law by upholding Pinochet's immunity as a former head of state.

They also wanted to uphold the authority of the Lords itself by not repudiating the judgment of the previous panel (which would have brought the status of the House of Lords as possibly the world's most senior common-law court into even worse disrepute). But equally, they did not want to be accused of continuing what fellow peers and senior conservatives were describing as a witch-hunt, and perhaps they did not want to be associated with the relatives of the disappeared across the green; whatever it was, they gave the impression of seeking a way of rowing Pinochet himself out. The impression of gratefully seizing an opportunity was reinforced by the cursory way the argument was dealt with.

Of the seven law lords, only Browne-Wilkinson reasoned his preference for the Pinochet team's interpretation of the Extradition Act provisions - and in his judgment there is no trace of Alun Jones' submissions, the case law or texts he cited. Nor is there any trace of the different parentage and different legal requirements in the different extradition schemes embraced in the 1989 Act. His conclusion, with which the others agreed, was that the conduct founding an extradition crime must have been an offence in the UK at the time of its commission, and an extra-territorial offence must have been extra-territorial at the date of commission.

Thus, even if torture could have been charged as grievous bodily harm in 1973, torture in Chile could not have been charged in the UK at all and so is not an 'extradition crime' under the 1989 Act. Of the five law Lords who agreed with Browne-Wilkinson on the test for double criminality, Lord Hope analysed the charges to indicate what survived this interpretation, but he based his analysis on Browne-Wilkinson's reasoning. None of the others gave any reasons of their own for agreeing.



Only Lord Millett dissented. His reasoning was that the English courts have and always have had extraterritorial criminal jurisdiction in respect of crimes of universal jurisdiction (which include torture) under customary international law. 'The systematic use of torture on a large scale and as an instrument of state policy had joined piracy, war crimes and crimes against peace as an international crime of universal jurisdiction ... by 1973.' Because torture had been taken as the 'paradigm offence' for the purposes of the argument, Browne-Wilkinson also brushed aside the arguments advanced by the CPS as to why the mass murders alleged against Pinochet should be considered as 'crimes against humanity' and lose immunity on the same basis as torture.

He ruled that 'no one has advanced any reason why the ordinary rules of immunity should not apply'. Hope, too, in dismissing the murder and conspiracy to murder charges, failed to look at them as crimes against humanity, of universal jurisdiction and therefore extra-territorial.

Perhaps this is carping. After all, on the main issue, that torture as state policy cannot attract functional immunity, upholding the previous Lords decision by an improved, 6-1 majority makes for a strong and important decision for use in the future. ■

by Frances Webber

Malaysia

Senior police officers were revealed as corrupt themselves for "someone higher than the deputy – prepared to perjure prime minister"

The six-year sentence imposed earlier this year on the former deputy prime minister of Malaysia Anwar Ibrahim for corrupt abuse of power was the result of blatant abuse of executive power to pervert and corrupt the legal system by the executive. The decision shocked seasoned observers - including diplomats from the European Union and Canada who maintained a presence throughout the five months of the trial.

Anwar was arrested last September after leading a massive demonstration in protest against his sacking by prime minister Mahathir Mohamed. He was beaten by the country's most senior policeman (who later resigned and finally admitted the assault), and held under the notorious Internal Security Act, which allows prolonged incommunicado detention and internment without trial for two-year periods. After a week he was charged, not with causing riots (as announced the day after the arrest) but with five counts of sodomy and five of corrupt abuse of power. The corruption alleged in four counts was using his office to direct police to obtain retractions of witness statements which complained of sodomy and sexual misconduct, so as to avoid criminal prosecution. (Consensual homosexual sex in private carries a 20-year sentence in Malaysia.)

Mahathir Mohamed – PM

State interference

The interference with the judicial process began immediately, with the prime minister setting out his agenda within days of the arrest: 'I actually interviewed the people who were sodomised, the women whom he had sex with .. I'm not interested in [corruption]. I can't accept a sodomist as leader of this country.' In fact it had started even earlier: the groundwork had been laid during the summer, by the arrest, detention and torture of a number of Anwar's associates, two of whom pleaded guilty the day before his arrest to having sex with him. A police affidavit containing fabricated salacious details of Anwar's sexual misdeeds had been leaked to the Mahathir-controlled press even earlier, with the express approval of a High Court judge.

To avoid accusations of corruption, Malaysia has a transparent system for allocating judges to trials, whereby the sitting judge in the relevant division hears the case. The decision was taken to split the charges into three trials and deal with the four corruption charges first. The cases were to be heard in the Criminal Division of the High Court, whose senior sitting judge was very experienced, very independent-minded and available. He was not allocated; instead a recent appointee, Augustine Paul, was selected to decide the case on which Malaysia's future depended.

(There have been no juries in criminal trials since the 1980s.) His first act was to deny bail, although the charges no longer merited ISA detention.

Anwar's lawyers, a nine-person team who worked pro bono, appealed to the Court of Appeal, who said they had no jurisdiction and that anyway, if Anwar was free the public order problems caused by the daily after-court protests would be exacerbated so there were good grounds for his continuing detention. (In a powerful and prophetic dissent, Judge Chan warned, 'What is there to discourage a renegade judge from exercising his discretion in opposition to established principles of law?')

The charges change

The sodomy and sexual misconduct were crucial ingredients of the corruption charges as drafted. By the end of the prosecution case, however, the sexual allegations lay in tatters. Witnesses retracted their allegations or simply denied them. The infamous semen-stained mattress seized from a downtown Kuala Lumpur apartment rebounded on the prosecution; their DNA evidence was exposed as inadequate to prove any sexual activity. Senior police officers had emerged from questioning revealed as brutal, corrupt and prepared to perjure themselves for 'someone higher than the deputy prime minister'. Seeing the evidence of sexual misdeeds melt away, the prosecution - led by the Attorney-General - applied to amend the charges so that proof of sexual misconduct was unnecessary. The judge allowed the amendments. The charges as amended alleged that Anwar had abused his position by getting police to obtain retractions of sodomy and sexual misconduct allegations, to save himself embarrassment (rather than a criminal prosecution). Then he ruled there was a case to answer, since Anwar had accepted that he had asked the police to investigate poison-pen allegations - at Mahathir's instigation.

The effect of the rulings was that Anwar was unable to rebut ▶

Anwar Ibrahim

The corruption of justice

the sexual allegations: they were now 'irrelevant'. He was unable, too, to present evidence of conspiracy to fabricate the allegations in order to destroy him politically: that too was 'irrelevant'. Indeed most of the evidence his lawyers sought to adduce was ruled 'irrelevant' - so much so that protesters outside the court dubbed the judge 'irrelevant'.

They were right, of course: the judge was irrelevant. He was Mahathir's poodle. Such was his zeal to curb the irrelevant that when lawyer Zainur Zakaria tried to present a statutory declaration from Dr Munawar Meese, one of those arrested and tortured to 'confess' to a homosexual affair with Anwar, he sentenced him to three months' imprisonment for contempt of court, for making 'scandalous allegations' against the police.

Only a lunchtime dash to the Court of Appeal prevented Zakaria's immediate incarceration; a stay was granted pending an appeal against the sentence, which is still pending.

And when, at the end of the defence case, the defence team refused to make final submissions after their application for the judge to be disqualified for partiality had been 'lost' in the court registry, the judge ruled the whole team in contempt.

Throughout the trial, the Attorney-General, one of those conspiring, according to Anwar, to destroy him, sat in the prosecution benches, curbing the few timid attempts by the judge to assert some independence. Thus, when the judge seemed minded to rule in favour of the defence on an application for disclosure of documents held by the prosecution, saying the argument based on equality of arms was attractive, it took only a few well-chosen words from the A-G to make him change his mind.

The judge ruled inadmissible evidence of Mahathir's personal involvement in decisions about whether charges should be brought or continued against senior politicians and banned the media from reporting it. He ruled irrelevant Anwar's ADC's evidence that he was summoned to the attorney-general's chambers at the beginning of the trial and told what to say: 'If he was forced to make a statement, what's the relevance?' When the defence sought to adduce reported conversations, they were inadmissible hearsay, although when the prosecution had sought to adduce them they were not.

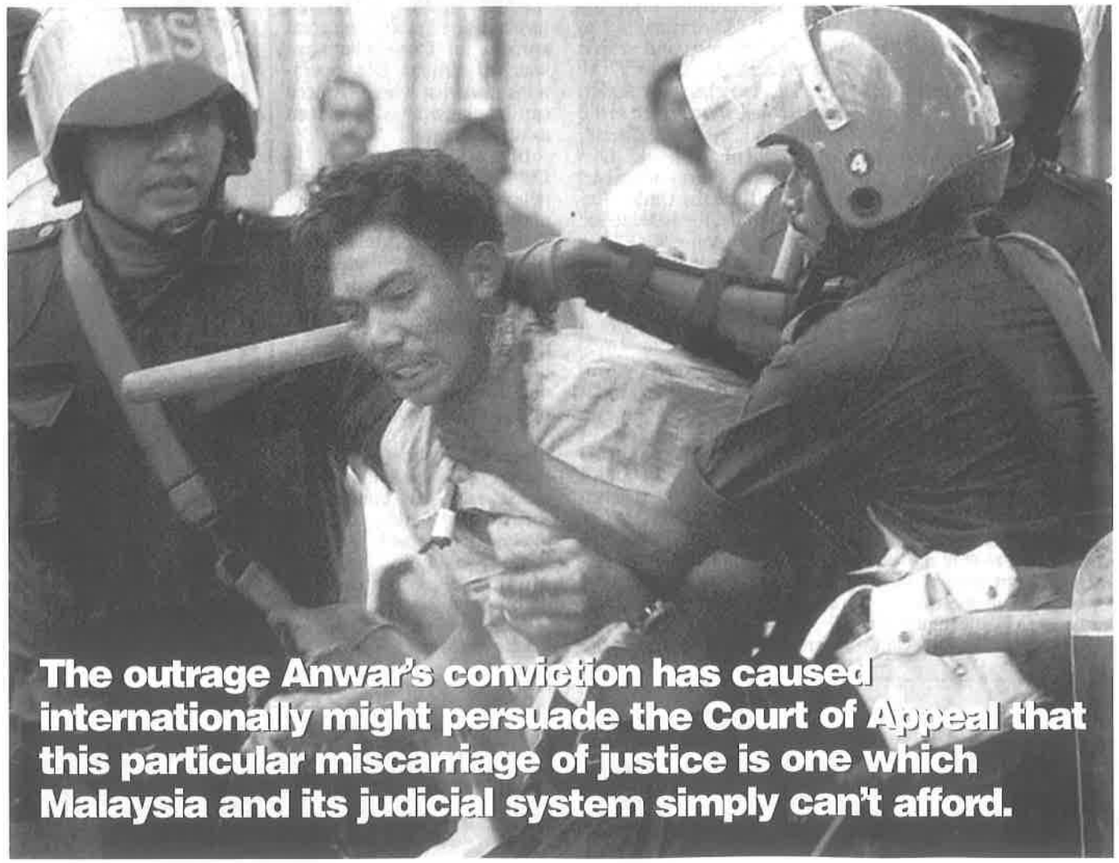
As Anwar commented on 14 April, 'this trial has influenced perception regarding our judiciary, not just among Malaysians, but the international community as well. It has opened the people's eyes.'

The trial was only the latest manifestation of contempt for the legal system by Mahathir and his associates. In 1988 the prime minister's attacks on constitutional safeguards led to criticism from the higher judiciary; for his 'interference in politics' their Lord President Tun Salleh Abas was sacked and replaced by the man who sacked him, Chief Justice Tan Hamid Omar.

Since then the law has increasingly been used to silence critics. In 1996, Irene Fernandez, director of a women's and migrants' rights group, Tenaganita, was charged with 'publishing false news' after submitting a report to Mahathir on the abuse and ill-treatment of Indonesian migrant workers in immigration detention camps.

In 1998 a sentence of 18 months' imprisonment was upheld on opposition MP Lim Guan Eng for sedition and printing false news. He had accused the government of covering up the rape by a minister of a 15-year-old girl.

Anwar's case will now go to appeal. The outrage his conviction has caused internationally might persuade the Court of Appeal that this particular miscarriage of justice is one which Malaysia and its judicial system simply can't afford. ■



The outrage Anwar's conviction has caused internationally might persuade the Court of Appeal that this particular miscarriage of justice is one which Malaysia and its judicial system simply can't afford.

Picture: MIND

Personality Disorder: a legitimate ground for preventive detention?

The government has proposed to change the law to enable the detention of more than 2,000 people deemed to contribute a "very high" risk to the public even if they have committed no crime. **Margaret Pedler**, Head of Legal and Policy Development at Mind looks at the implications of this drastic measure

The Department of Health and the Home Office issued jointly in July a consultion paper detailing the Government's plans to introduce a preventive detention regime for dangerous severely personality disordered individuals who pose a high risk to others regardless of whether they have committed any criminal offence or any efective treatment is available to them.

The proposals

The proposals envisage new legal powers of indeterminate but reviewable detention of this group. This would be achieved either by amending the existing frameworks of criminal and mental health law or by a new legal framework allowing both criminal and civil courts to order detention in specialist facilities.

In a parliamentary statement on this issue in February (15/2/99) the Home Secretary stated that there will be a "robust system of checks and balances covering both legal and clinical issues" including regular quasi-judicial reviews of the justification for continued detention. Those detained will benefit from "a range of specialist programmes and a new approach to managing detention".

The proposals share some common features with the reviewable sentences for personality disordered offenders recommended by the Fallon Inquiry in their recent report on Ashworth Hospital. They go beyond

that recommendation however in their controversial application to non-offenders.

The perceived problem

The Government allege that the group targeted by the proposed powers are not satisfactorily dealt with at present by either the criminal law or the Mental Health Act. Under criminal law people have to be released at the end of a determinate sentence even if they are still thought to pose a high risk and may even be making clear their criminal intentions. Under mental health law the limitation arises from the requirement that those diagnosed as suffering from psychopathic disorder can only be lawfully detained if "treatment is likely to alleviate or prevent a deterioration of" the condition.

Mind's view

Mind has some sympathy with the view that there is a very small number of people who present such a grave risk to the safety of others that it may be justifiable to detain them indefinitely if necessary subject to tight definition and rigorous safeguards. We believe however that, in the exercise of this power, the emphasis should be on risk not diagnosis especially given the major difficulties over the particular diagnosis of personality disorder as set out below.

We are also concerned that focussing on diagnosis will stigmatise the large numbers of people with that broad diagnosis most of whom present no risk to anyone. On the day of the publication of the consultation paper Mind's advice line was flooded with calls from people either currently or previously diagnosed as having a personality disorder who feared that they were about to be locked up for life.

We also believe that people with a diagnosis of personality disorder are not served well by the existing system. The label can be used to write off people who are perceived as difficult and used as an excuse for denying access to support or services especially at the community level. Where people are dealt with through the criminal justice system it seems to be a lottery whether they end up in prison where suitable help is virtually non-existent or in a secure hospital.

An unsound diagnosis?

Personality disorder is one of the most controversial psychiatric diagnoses. Psychiatric manuals identify a number of categories of personality disorder which cover a wide range of attitudes and behaviour from ruthless exploitativeness to fear of other people and social withdrawal. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSMIV) distinguishes ten personality disorders including paranoid, schizoid, borderline, histrionic, obsessive-compulsive and antisocial personality disorder (APD). About 10 per cent of the general population is thought to have a personality disorder.(**1**) This rises to 75% of those on remand and 66% of sentenced male prisoners. (**2**)

Clearly therefore personality disorder alone is not a sufficient basis on which to found a system of preventive detention.

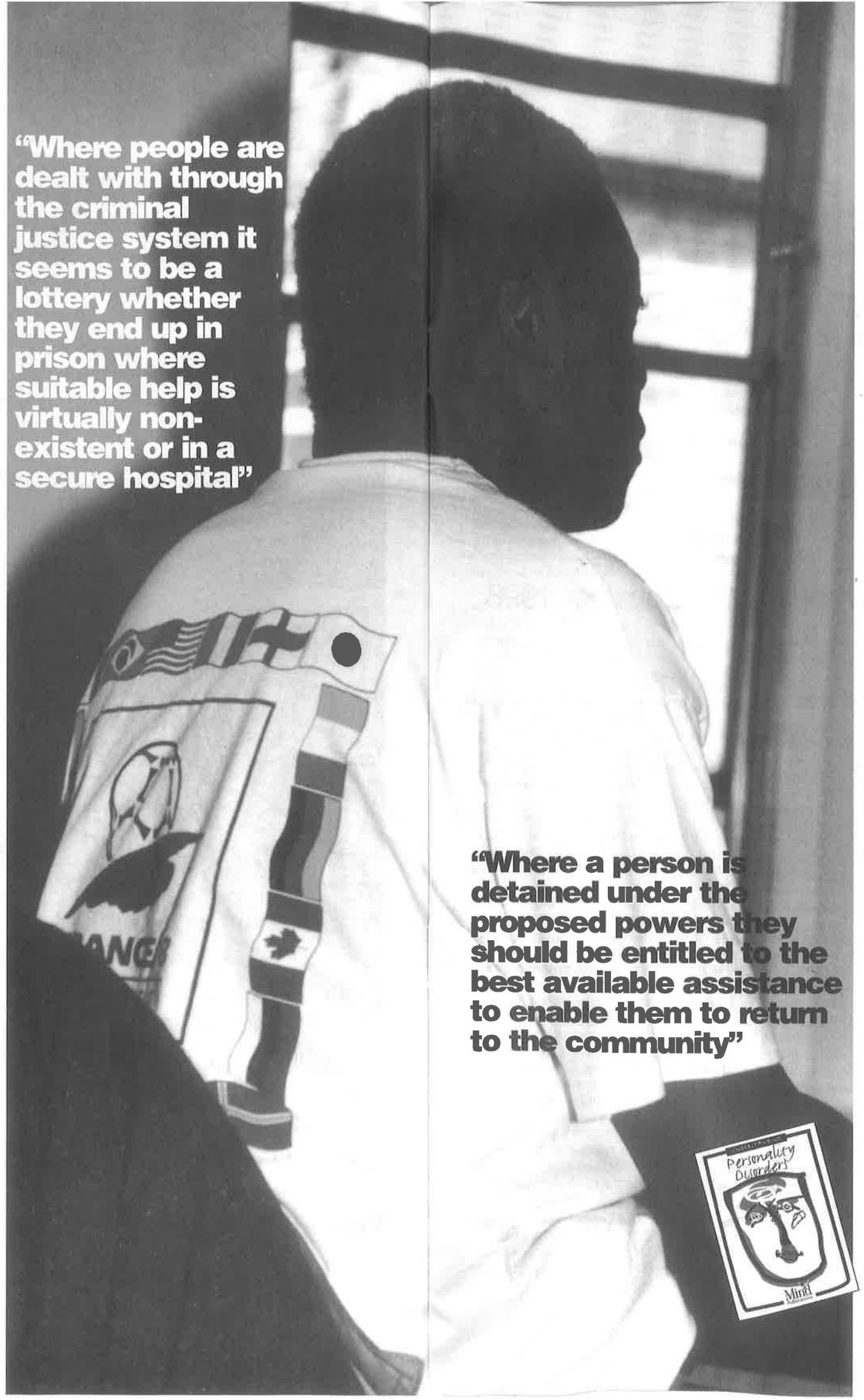
It is APD (also referred to as psychopathy - this is the term used in the Mental Health Act 1983) which is most closely linked with adult criminal behaviour and seems likely to be the main target of the government's proposals.

Whose definition?

But there are also problems over this definition. The diagnostic criteria in DSMIV are "a pervasive pattern of disregard for and violation of the rights of others occurring since the age of 15 years", as indicated by three or more of failure to conform to social norms, deceitfulness, impulsivity, irritability and aggressiveness, reckless disregard for safety, consistent irresponsibility and lack of remorse. Many of these are characteristics found in many members of the population and assessment of them is hardly value-free.

There are also problems of circularity in the definition. A person is labelled as having APD because they engage in violent behaviour and the reason they engage in violent behaviour is because they have APD. There seems to be a risk that the definition will be stretched to include whoever the Government or public opinion thinks at any particular point in time ought to be preventively detained. It is interesting that in his February statement the Home Secretary claimed that those with a propensity to commit the most serious sexual and violent acts "are plainly suffering from what the public would understand as the most serious personality disorder".

The Mental Health Act already leaves undefined the concept of mental illness and the courts have held that the term should be interpreted in the way that "ordinary sensible people" would interpret it (**3**). This has subsequently been described as "the-man-must-be-mad test" (**4**). It seems that this is now to be joined by the "person-must-be-personality-disordered test"! If the diagnosis is merely to be stretched to cover any dangerous person it seems necessary to detain, what does the reference to "severe personality disorder" add in real terms? If it is a real test then will there not be people who present just as serious risk to the public who will remain at large?



"Where people are dealt with through the criminal justice system it seems to be a lottery whether they end up in prison where suitable help is virtually non-existent or in a secure hospital"

"Where a person is detained under the proposed powers they should be entitled to the best available assistance to enable them to return to the community"

Risk not diagnosis

One of the issues in the debate over the convicted paedophiles Robert Oliver and Sidney Cooke was whether they did have any form of mental disorder. But at the end of the day these arguments miss the point. The reason the Government want to be able to detain such people is not because of their diagnosis but because of the risk they present. So why not make this the sole criterion for the powers with the legislation spelling out the factors which would have to be taken into account in any risk assessment. This may include factors which form part of the diagnostic criteria for APD but such a diagnosis would not itself be either sufficient or necessary. It may also include offending behaviour.

There is some suspicion that the reason for including the criterion of "severe personality disorder" is because of the need, in the case of non-offenders, to make the legislation comply with the European Convention. Article 5, which is concerned with the right to liberty would appear to rule out a general system of preventive detention of non-offenders based on risk assessment. It does however allow detention under certain conditions of "persons of unsound mind, alcoholics, drug addicts or vagrants". Is personality disorder included to try and bring the power within the "unsound mind " category? But if in fact other people outside this category present as great if not a greater risk is this not just discrimination against people with a mental health diagnosis - discrimination which other arms of government have pledged to remove.

An untreatable condition?

One of the key themes in the debate on this issue has been whether or not personality disorder is treatable. Mind does not accept that such a diagnosis does confer untreatability. In our view there are psychological interventions which can benefit some people although treatment is likely to be long-term and expensive. The label should not be used as a means of writing people off - there should be rights to assessment, treatment and support from an early stage. Where a person is detained under the proposed powers they should be entitled to the best available assistance to enable them to return to the community. This requires ways to engage people and to develop the skills they need to curb their anti-social behaviour.

The wider mental health agenda

The proposals on personality disorder are only one of several initiatives being pursued by the Government in the field of mental health. They are also committed to a "root and branch" review of the Mental Health Act and have set up a working party chaired by Professor Genevra Richardson which has recently reported to Ministers. They have instructed this group that for people with mental health problems "non-compliance with agreed treatment programmes is not an option" and that they want to be advised on the means of introducing a form of community treatment order. Mind has serious concerns about this proposal. A briefing on this issue is available on request from Mind together with details of Mind's overall submission to the Government's working party (**5**).

Footnotes:

1. Fallon P, Blugrass R, Edwards B, Daniels G, (1999) Report of the Committee of Inquiry into the Personality Disorder Unit, Ashworth Special Hospital, Volume 1 page 374 (The Stationery Office).

2. Singleton N, Meltzer H, Gatward R, with Coid J, and Deasy D, (1998) Psychiatric morbidity among prisoners, Office of National Statistics (The Stationery Office)

3. W v L [1974] QB 711, 719 C.A.

4. Hoggett B, (1996) Mental Health Law page 32

5. Please write to Margaret Pedlar at Mind, 15-19, Broadway, Stratford, London E15 4BQ.

Human Rights, Privatisation and Reaganomics

A Response to Professor Griffiths *Socialist* **Lawyer** No 29, Summer 1998 by Michael Ellman

The Rule of Law and personal freedoms in Britain have always been taken for granted in the struggles between the individual, the working class and popular organisations such as trade unions on the one hand and the government and the establishment on the other hand.

Magna Carta, the Bill of Rights and the various Reform Acts represented significant advances for the former against constant encroachment by the establishment. Magna Carta, contrary to what Professor Griffiths suggests, contained only general propositions and the Bill of Rights was not much better.

Nevertheless, individual freedoms and the Rule of Law were respected with a degree of sanctity by 'gentlemen' who constituted the powers that beat the various stages of our history. The freedoms were very limited by modern standards, of course, but rights like Habeas Corpus were great advances and were jealously guarded. Men like Sir Thomas More were prepared to go to the scaffold for their beliefs and John Hampden challenged the King's Writ rather than pay Ship Money not voted by Parliament. More recently the right to strike was won after gruelling struggles, but once achieved (though never entrenched in law) even the most diehard Conservatives respected it until the 1980s.

All this changed when the Thatcher

A Bill of Rights?

JARROW CRUSADE

"A bill of rights does very little for the poor and the deprived. It says nothing about their primary concerns like the right to a living wage or the right to work."

government came to power and drove a coach and horses through the 'gentleman's agreement' that hitherto existed. The right to strike was curtailed drastically; the right to roam on private property was restricted and (under Major) the right to silence in the courts was abolished. These cardinal principles of freedoms in the 20th century were set aside by obedient sheep at Westminster on the command of the Almighty Lady!

When the European Convention on Human Rights and Fundamental Freedoms was first discussed by the Cabinet in the 1950s, the attitude was partly that it would never work, but more significantly that 'we respect freedom better than any other country in the world'. This may have been true in the first half of the 20th century when Habeas Corpus meant what it said - even if social and economic rights were almost unknown. However, with increasingly sophisticated government interference, the disappearance of Habeas Corpus to all practical effect and other encroachments of government policy, our civil and political liberties have been seriously eroded.

The European Convention dates from 1950 (drafted in the 1940s) and is therefore very basic and rudimentary, and certainly does not cover of all the needs of the21st century (the International Covenants on Civil and Political Rights and Social, Economic and Cultural Rights are better, and some of the more recent treaties are much better), but at least it is a start. It brings a measure of international impartiality to our very insular judiciary. True, the Court in Strasbourg is not always as progressive as it might be and there are exceptions to most of the articles which a weak court can always use to justify not finding a breach of the Convention, but some significant victories have been won against intransigent British governments and judges.

Certainly, to interpret it fairly will require significant re-training of many of our judges, but this is already in progress and this re-training of itself must be of benefit to us all.

If the Spycatcher case was not decided on the right grounds, at least it liberated the book, while the decision in the Gibraltar killings case was a landmark in the fight of the individual against authority. The decision in Chahal upholding the rights of a refugee from persecution against an intransigent Home Office is another landmark and the right to strike was won after gruelling struggles, but once achieved (though never entrenched in law) even the most diehard Conservatives respected it until the 1980s. Our judges, whom Professor Griffiths so rightly rates as being political appointees will have to take note of international jurisprudence.

All legislation enacted by Parliament has to be interpreted by the judiciary which has in the past used narrow English rules of literal interpretation to avoid the spirit and intention of laws: now they will have to accept the spirit and intention of the Convention if they are not to be overruled by Strasbourg.

As Parliament is so consistently the creature of the executive, tied to vested interests, we must sometimes look to the judiciary to preserve our liberties. With a Labour Government so far removed from Socialism, we are unlikely to get significant progress in establishing our rights through Parliament, which has in recent years deprived refugees of the right to social security, taken away the right of silence and the right to free university education, to name but a few. The increasing use of judicial review has shown the value of using the Courts to challenge an overwhelming executive. The creation of an international criminal court and the House of Lords' judgment in the Pinochet case have shown how law can be used to advance human rights while a progressive interpretation of human rights.

The next step will be to incorporate the International Covenant on Civil and Political Rights and other treaties - and then to give judicial effect to the International Covenant on Economic and Social Rights which certainly does more for the poor and deprived. Already groups of NGOs led by Oxfam have taken the British Government to talk before the UN Social and Economic Council for its failure to provide adequate standards of health, education and housing, and this policy of "naming and shaming" states before international tribunals is having a salutary effect. If we believe in rights, then we have to have a tribunal to enforce them.

Although the incorporation of the European Convention into British law is still only partial, significant clauses such as Articles 1, 13 and 60 having been omitted, and although the Courts do not have the power to strike down legislation which violates human rights, it is a first step and we must seize it and take advantage of it in an imaginative and forthright way. We must press for these Articles to be incorporated, for a Human Rights Commission to make the Act effective and use it to insist on our rights. Otherwise, we shall get nothing from this Government - or any government in the foreseeable future. ■

Letter

Victim-friendly rape laws?

'A woman can sleep with every passenger on a bus but refuse to sleep with the driver. If he forces her it is rape.' As a statement of the law this is correct but it is wrong to use the quote, as do Women Against Rape (WAR), to argue that previous sexual history evidence should never be allowed in rape trials (*Socialist* **Lawyer** No. 30 Winter 1999 p31).

Jurors in rape trials are sometimes confronted with the very difficult task of deciding either whether the woman consented to sex or whether the man believed that she had. In the example cited above, the jury might find either that the woman consented to sex or that the driver believed that she had if the jury knew, as the driver did, that she had recently slept with all the passengers on the bus. There are times when previous sexual history can assist a jury to reach the right verdict.

The call by WAR to exclude previous sexual history evidence has been adopted partially by the Government. The Youth Justice and Criminal Evidence Bill proposes to exclude such evidence that relates to an incident more than 24 hours before the alleged rape. The arbitrariness of this particular reform is striking: a relevant incident of previous sexual history cannot cease to be relevant if it happened one minute and 24 hours before an alleged rape.

A rape trial is invariably a traumatic occasion for a woman who has been raped. The trauma is undoubtedly made worse for the 30% of complainants who may be subjected to previous sexual history evidence (statistic cited in *New Law Journal* 15/1/99 p44). But unless and until the jury has given a guilty verdict, the defendant has a right to be treated as innocent. A reform that assumes the defendant is a rapist and the complainant a victim is a reform that undermines the whole basis of criminal proceedings. Nobody who is concerned to prevent miscarriages of justice could support a reform that fetters a court's ability to enquire objectively into the facts.

● **Jon Holbrook**

*Book***review**

Criminal Litigation – First Steps to Survival
by Anthony Metzer and Julian Weinberg
Legal Action Group Books, 318 pages
ISBN 0-905099-83-4, **£22**

For those making their first appearances as advocates in the Magistrates' Courts it can feel as if they themselves are on trial. Magistrates' Courts in comparison to many others are fast moving places. For the novice there are a number of practical issues to deal with in negotiating a way through the thicket of procedural points that need to followed. As the criminal courts of first, and often in reality of last, instance the Magistrates' Courts are much more important than their lowly status in the Court System might suggest. Any criminal practitioner embarking on a career as an advocate needs to be equipped with a knowledge of the Magistrates Court procedure before they make her first appearance if she is to represent her client effectively.

Anthony Metzer and Julian Weinberg have produced a book for the Legal Action Group that attempts to provide useful tips for those working for a firm of solicitors and for pupil barristers. It has good chapters on legal aid, bail, mode of trial proceedings, committal hearings and how to prepare a brief among others. It also deals with some Crown Court procedural points and with sentencing. The book is written in a very re-assuring style. It is well set out and proceeds to explain what needs to be done in a plain and clear manner. Its great strength is that it renders the court system familiar and makes it possible to have some small degree of confidence before starting out.

It is perhaps unfair to criticise a book subtitled 'First Steps to Survival' for not being fully comprehensive in the depth of its coverage. However it must be said that this book will not be enough on its own. It is best used as a complementary volume for other works. Aside from the practitioner volumes such as Archbold and Blackstone's, there are other books which are useful. Anthony and Berryman's *Magistrates Court Guide* sets out offences and sentencing guidelines well. I think it's very useful and like Anthony Metzer and Julian Weinberg's book is a slim volume to carry around. I also happen to think that the *Inns of Court School of Law Criminal Litigation and Sentencing Manual* is very good. As well as being used on the Bar Vocational Course around the country, it can be purchased at most legal bookshops.

In truth, all these books are essentially complementary. 'First Steps to Survival' humanises the criminal litigation procedure in a way that others do not. It is a very sympathetic guide. However, any criminal advocate will read it with profit once and refer to it rarely thereafter. It is not something to rely on in court. It does not pretend to be. What it does do it does well and on this basis it deserves some attention.

● **Adrian Berry**

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