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IMMIGRATION

France: new immigration laws

On 11 May 1993 the French national assembly began debating changes to French nationality law, part of a wide-ranging package of proposals on nationality and immigration put forward by France's new Interior Minister Charles Pasqua to, `stop illegal immigration and the spread of Islamic fundamentalism'. The Gaullist-RPR veteran, architect in 1986 of a notorious law on immediate expulsions which did away with judicial control and led to mass deportations, lost no time in bringing the proposals to the assembly, having announced them just three weeks before, immediately on taking office under the new right-wing administration.

The package of assaults on immigrants' rights includes the restoration to the police of widely abused powers to stop, search and check the papers of those `suspected of being illegally in France'. In practice the powers are a carte blanche for the police to harass black people at will. Visa officers overseas will be instructed to `separate genuine visitors from would-be immigrants' and will have more unreviewable powers to refuse visas. Identity cards are to be made forgery-proof, residents' visas are to be introduced, and expulsion made easier, so that illegal residents can be deported `en masse' to their countries of origin.

Further proposals in the package include an attack on family reunion by giving mayors the right to refuse family visits on the ground that the conditions of the proposed visit are `not compatible with municipal urbanisation objectives'; a ban on marriage in France on those who do not have permission to live there; and an extension of the `probationary period' before which citizenship can be claimed on the basis of marriage from six months to two years.

But the attack on the right of those born in France to French citizenship is symbolically the most important. For a century, those born in France of foreign parents have become French nationals automatically at 18 if they have lived in France for five years, unless they decline French citizenship, and the parents have a right to register their French-born children as French citizens at any time during their childhood. The proposed law puts the burden on the would-be citizen to apply between the ages of 16 and 21, and gives the authorities more discretion to refuse on grounds of character and criminal convictions. It also removes the right of parents to request citizenship for their children, on the ground that this right was abused by illegal immigrants who thereby acquired the right to remain in France themselves.

The proposals are the culmination of the Right's anti-immigrant and anti-Arab project, and are much influenced by the fascist Front Nationale. The right to French citizenship by birth on French territory (ius soli) has come under attack from the parliamentary right led by Jacques Chirac. In 1988 a government commission put forward the modified nationality proposals and Pasqua got them through the Senate in 1990.

Government's racism

Pasqua's Immigration Minister, Jean-Claude Barreau, an ex--Socialist Party member, has written virulent pamphlets on the threat to French nationhood posed by the immigration of Muslims. He claims that the statistics on immigrants in France grossly understate the numbers of those in the country, because those who `prefer not to declare their presence disappear from the statistics', and that they hide, too, the `link between immigration and unemployment'. The anti-immigrant project receives the wholehearted support of the right-wing press, which gleefully reiterates ministerial complaints of the laxity of the Socialists' immigration policies, and their statements that 80% of expulsion orders are not implemented and that one-third of drug cases involve immigrants.

But the measures owe a lot to the example of the UK government which paved the way in draconian measures of control through the investigation of marriages and restrictions on family reunion, and by modifying the `ius soli' by removing automatic citizenship rights from all those born in Britain by the British Nationality Act of 1981.

President Mitterand has warned Pasqua against infringing human rights in his fight against `crime and illegal immigration'. But his criticism misses the point. The fight is not against crime and illegal immigration; rather, these are the excuses for a full-scale attack on the French black and, particularly, Muslim community.

Figaro magazine 17.4.93, Times 27.4.93, Le Monde 12.5.93, Guardian 12,15.5.93.

Holland: Grenshospitium criticised

The Ministry of Justice is looking for an annex to the Grenshospitium in Amsterdam where asylum seekers viewed as `troublesome' by the authorities can be placed (see *Statewatch* vol 2 no 4). The new location in Leeuwarden (in the north of Holland) could be in operation by September. Asylum seekers and illegal aliens whose applications for entry have been refused are accommodated in the Grenshospitium while awaiting deportation. Over the last year repeated incidents have occurred at the Grenshospitium leading to `trouble makers' being transferred to remand prisons. The Supervisory Commission of the Grenshospitium, an independent body of experts, ruled on April 22 that asylum seekers who express their desire to leave the Hospitium cannot simply be accused of rebellion. In one case in November 1992 an asylum seeker was transferred to a prison where he was put in solitary confinement for five weeks after guards had accused him of instigating a protest. On appeal, the Commission has ruled

that the director of the Hospitium had to pay the asylum seeker dfl 1205.- in damages. Parliament has so far almost totally ignored the problems at the Grenshospitium. State secretary Mr Aad Kosto is also looking into the possibility of establishing a prison for refused asylum seekers awaiting extradition and criminal aliens to be expelled after serving their sentence. The capacity will be some 150 to 200 cells. One option under consideration is to adapt redundant military barracks.

Report advocates `restraints'

A Commission set up in January to review the treatment of aliens being held at Schipol airport pending deportation has recommended that those who resist may be put on the plane restrained by a straitjacket or strapped in a stretcher and for those shouting, biting and spitting an ice hockey-type mask should be developed. Aliens using life-threatening behaviour can under certain conditions be injected with a sedative (the use of anaesthetic injections as used by the Italian and Swiss authorities was ruled out).

The recommendations in the report `The application of pressure during the expulsion of illegal aliens' was presented by the Commission chair the president of the Amsterdam court of appeal Mr H van den Haak on May 6. The Commission was set up after Mr Hudaru, a Romanian refugee, was maimed for life by the Marechaussee paramilitary border police during his expulsion at Schiphol airport. The use of tape to silence individuals (which nearly killed the Romanian refugee) is rejected by the commission. Serious cases of physical resistance to expulsion occur at least once a week at Schiphol.

In an interview Mr Van den Haak admitted that the commission had avoided mentioning the refugees fear for their life as a possible reason for their desperate resistance.

Sweden: Celepli appeal admissible

The Human Rights Committee of the United Nations decided on 19 March that an application by Ismet Celepli under Article 12 of the International Covenant on Civil and Political Rights was admissible (see *Statewatch* vol 3 no 2). Article 12 protects the freedom of movement on condition that the individual is lawfully within the territory of a state. Mr Celepli was sentenced to municipal arrest which means he cannot leave the area and has to report to the police regularly (this power no longer exists). He is one of eight Kurds sentenced in this way who are under suspicion of being terrorists without any charges or evidence being brought against them. The UN Committee says that his case raises the question whether a person's freedom of movement can be lawfully restricted for reasons of national security without allowing a right of appeal against the decision. The further appeal under Article 13, which states that an alien may only be expelled in accordance with the law was turned down on the grounds that he has never been expelled. Mr Celepli has been denied Swedish citizenship on the grounds that the period of municipal arrest was the same as living abroad.

The Swedish government is currently considering new restrictions on the right of appeal on the granting of citizenship and limiting legal aid for the appellant. These measures are intended to limit the number of refugees granted permission to stay and to bring Sweden in line with the Schengen Agreement.

United Nations Office in Geneva, ref no G/SO 215/51 SWED [9] 456/1991.

Helsinki Citizens Assembly

At its conference in Prague on 20-23 May the Helsinki Citizens Assembly passed a resolution calling for the harmonisation of rights for all non-nationals living within the EC and the European Economic Area irrespective of their race, national origin or current citizenship. The resolution also expressed its opposition to the effect of the closing of the borders of the EC which was forcing East European countries to `build up borders and close them, only shortly after the fall of the "Iron Curtain"'. The resolution had been proposed by the Salzburg chapter of `SOS-Mitmensch' in Austria.

Participants in the Assembly went to meet with Milos Mrkvica, Head of the Migration Department at the Czech Ministry of the Interior. Mr Mrkvica said that many Vietnamese had been brought over as contract workers and that as the contracts expired they were being returned home at the government's expense. This led many to go underground and seek employment in other countries. Permanent residence had mainly been given to those Vietnamese who had married Czech nationals. He also said that the Czech Republic was heading towards a `Polish solution' to its relations with Germany. In order to meet Germany's demands to take back refugees and illegal immigrants Czechia had to set up `cascade agreements' with its neighbours to the east and south to return people to their country of origin or a country deemed `safe' which they had passed through. The `cascading policy' is based on a series of agreements signed with Austria in November 1992, with Poland in May 1993, and one to come into effect with Slovakia in November 1993.

Research Group Boltzmann-Institute/Steinocher-Foundation, Salzburg, Austria.

Immigration: in brief

CIREA: In reply to a parliamentary question, minister for immigration Charles Wardle said that the European documentation exchange centre on asylum-seekers, CIREA, had no director, and its meetings were serviced by the General Secretariat of the Council of Ministers. Information was passed to participants representing the EC member states. Initial exchanges were of statistics and changes in national legislation, but in due course joint evaluation of countries of origin would be discussed. Consideration was being given to the production of a manual covering a range of `practical questions' on asylum. *Hansard 26.2.93 col 741.*

European Forum on Refugees: Charles Wardle informed parliament that documents from the Budapest conference on uncontrolled migration held on 15/16 February 1993 (see Statewatch Vol 3 no 2) had been placed in the House of Commons Library. The conference revealed the rapid militarisation of European immigration control and approved measures such as readmission agreements with the EC's eastern and southern neighbours to create a buffer zone around the core European states. *Hansard 23.2.93 col 494.*

Switzerland to deport Tamils: The head of the Federal Refugee office, Peter Arbenz, has announced that there is nothing in principle to prevent the return of Tamils to Sri Lanka, and that his office intends to begin processing the asylum claims of all those who have been `tolerated' in Switzerland without having a claim formally determined, with a view to begin deportations. The Tamil community in Switzerland, numbering around 17,000, is alarmed by the announcement, although the Refugee Office has said that initially it intends to deal only with those registered after 1.9.92. *Tages-Anzeiger 26.2.93*

Fortress Malta: The Maltese government has ordered its consulate in Iran to stop issuing visas after applications were received from around 40,000 Shiites who had fled Iraq. Before the freeze was

announced 760 applicants had been admitted to Malta. *Guardian 26.4.93*

Italy: new decree: The Italian government passed a decree on 13 April under which foreign detainees awaiting trial can be expelled on the request of the police or prison authorities, subject to the approval of a judge. The measure was allegedly drawn up in order to reduce overcrowding in prisons, and has led to a wave of protests among immigrant organisations, trade unions, churches and others who say that expulsion before conviction for any criminal offence would be in breach of international human rights agreements. Foreign prisoners called a hunger strike in protest. The decree was subsequently amended so as to require prisoners to choose between detention and expulsion.
Migration newssheet May 1993.

`Better targeting' leads to more expulsions: The Home Office said that more efficient procedures for detecting illegal entrants were responsible for the increase in the numbers of those expelled from Britain to 6,100 in 1992, from 5,600 in 1991. The slower processing of applications for settlement, leading to a reduction of 1,300 to 52,600 people allowed to stay permanently in 1992) was explained by `more detailed enquiries aimed at detecting bogus marriage cases'. Almost 15,000 people were refused permission to enter Britain during the year. *Home Office Statistical Bulletin 14193: 6.5.93; Hansard (HC) 17.3.93 col 245.*

Immigration prisoners: Nearly 6,500 people were detained for more than seven days under the Immigration Acts in 1992, including asylumseekers, according to immigration minister Charles Wardle. On any given day there are between 300 and 600 immigration prisoners, of whom over 50 have been detained for over six months. Apart from airports (Heathrow, Gatwick, Stansted and Manchester) and immigration detention centres (Harmondsworth, Haslar), immigrants and asylum-seekers were detained in prisons at Bedford, Belmarsh, Birmingham, Brixton, Dorchester, Durham, Exeter, Gloucester, Holloway, Holme House, Leeds, Leicester, Lewes, Lincoln, Pentonville, Woodhill, Wormwood Scrubs, Crumlin Road (Belfast), Gateside, Barlinnie, Craiginches and Saughton; and police cells were also being used. There were plans to provide an extra 300 places for immigration prisoners between 1993 and 1995.
*Hansard 11.2.93 co*l 771; *23.2.93 col 495; 16.3.93* col 172.

Reprieve for Bosnian Croat: Home Office plans to remove Mira Litobac and her two children to France were reversed after the Refugee Council and others protested that such an action would be in breach of the undertaking given by immigration minister Charles Wardle in August last year. Mrs Litobac drove through Europe to escape from Croatia and join relatives in Britain. The Home Office wanted to apply the `safe third country' rule to her, but the minister had promised that refugees from the former Yugoslavia would not be returned to 'transit' countries. *Independent* 21,22.4.93

No reprieve for Colombian: However, Colombian refugee Gabriel Echavarria was removed to Portugal without having his asylum claim processed because the aircraft carrying him to Britain had to make an emergency landing in the Azores. He had become the target of local guerrilla groups and the security forces and had fled Colombia after the murder of his brother and threats to his own life. He has relatives in London, but none in Portugal. The Home Office said that because he had landed in Portuguese territory, he should claim asylum there. *Independent 24.4.93*

Compensation for excluded refugees: The government has paid out £120,000 in compensation to 24 Turkish refugees who were unlawfully prevented from seeking asylum here, according to Earl Ferrers, minister of state at the Home Office. *Hansard (Lords) 10.2.93 written answer 48.*

Immigration - new material

Commentary on Draft Conclusions of European ministers responsible for immigration affairs meeting in London on 30.11.92 and the not yet adopted Resolution concerning Family Reunification. Standing committee of experts in international immigration, refugee and criminal law, Utrecht, April 1993, 65pp. The ungainly title of this publication has the merit of telling you exactly what you get: a closely argued critique of the work of the London ministers, meeting (see Statewatch vol 3 no 1). The resolutions and conclusions on asylum, the recommendation on expulsion and the draft resolution on family reunification are subjected to detailed and fundamental criticisms, of which the main ones are that they have no regard to the rights protected by the Geneva Convention or the European Convention on Human Rights, that the wording of each document is vague, that the documents have no clear legal status, that they incorporate no mechanism for uniform legal control and demonstrate and perpetuate a complete lack of accountability for the executive.

At the end of each section there is a series of model parliamentary questions, to be asked of each government which participated in agreeing the measures. These are very useful, detailed and challenging, and should be taken up in the British and other national parliaments. The Commentary ends with the authors' own suggested draft articles on which the law of asylum can be based, incorporating recommendations from the United Nations High Commission for Refugees (UNHCR), and a list of international instruments on the protection of family life.

Reducing legal aid eligibility criteria: the impact for immigration law practitioners and their clients, Penny Smith. *Civil Justice Quarterly* April 1993, pp167-187. On a Cardiff Law School survey of immigration law practitioners that gathered data about patterns of immigration law practice linked to the green form scheme.

Goodbye to appeal rights, Leon Daniel. *New Law Journal* 26.2.93., pp280-281. Examines the potential effects of Clause 10 of the Asylum & immigration Appeals Bill.

The immigration interview, Carolyn Taylor & Mark Ashford. *Guardian Gazette*, 13.1.93., pp17-19. Examination of the procedure for advising suspects at the police station on immigration matters.

Britain's forgotten prisoners: meeting the needs of Immigration Act detainees, Kathy Lowe. Detention Advice Service, 2 Prince of Wales Road, London NW5 3LG, price £2.50, pp22. An investigation that shows how the use of detention powers by the UK authorities is producing a sharply increasing number of, overwhelmingly Black, Immigration Act prisoners each year.

Detained without trial: a survey of Immigration Act detention, Mark Ashford. JCWI, £4.99. Deals with the law and practice of immigration detention, including asylumseekers, and includes testimonies from detainees.

Britain's secret slaves, Anti-Slavery Society and Kalayaan, £5.50. A survey of the estimated 20,000 domestic servants in the UK with their employers. It concludes that almost nine-tenths of them suffer some form of abuse, one-third are brutalised and one in 12 sexually assaulted by their employers.

The legal status of international zones: the British experience with particular reference to asylum-seekers, Alison Stanley, Immigration Law & Practice Vol 6 no 4 1992 pp 126-130. On the theory and practice of immigration control at UK ports, and carriers' liability.

Unaccompanied refugee children, Sharon Persaud, New Law Journal 22.1.93 pp 83-84. On the procedures for receiving refugee children in Britain and Europe.

Refugee children: Childrens Legal Centre survey of European asylum policies, Childright No 93 Jan/Feb 1993 pp 7-8. Summary of report *Children as refugees: a survey of 14 West European countries, asylum policies,* CLC.

Parliamentary debates

Asylum & Immigration Appeals Bill (1st day), *Lords,* 2.3.93, cols 573-604 & 617-642
Asylum & Immigration Appeals Bill (2nd day), *Lords,* 4.3.93, cols 766-816
Asylum & Immigration Appeals Bill - Third Reading, *Lords,* 11.3.93, cols 1151-1201

LAW

Return to the bad old days?

On 13 May Home Secretary Kenneth Clarke announced that the Criminal Justice Act, in force for seven months, would be substantially modified in the light of criticisms of unit fines and statutory disregard of previous convictions (see `Panic on the Bench', Statewatch Vol 3 no 2). The unit fine system would be replaced by a discretionary system of fines, and sections of the act dealing with previous convictions of petty offenders would be repealed to enable persistent offenders to be sent to prison.

The U-turn, announced within days of Clarke's stated determination to retain the unit fine system, albeit in modified form, attracted widespread criticism. The unit fines system, it was pointed out by lawyers, had been introduced voluntarily in pilot schemes and it was its success and popularity with magistrates and clerks that had led to its introduction into statute. It needed fine tuning, not axing. Penal reformers were concerned that, with magistrates once again entitled to sentence petty offenders on their record, the prisons would fill up once more with non-violent offenders who should not be there. Police and some magistrates, however, welcomed the news; a spokesman for ACPO said that `magistrates will be able to impose effective sanctions'.
Independent 14.5.93.

ECHR

A Communist and CND activist has lost his claim to the European Commission of Human Rights over his rejection for a job at the Central Office of Information. David Esbester claimed that the UK had breached Article 8 of the ECHR (right to respect for private life) by inquiries by the Special Branch and the secret service into his political activities. The Commission accepted the government's argument that the inquiries were justified by the interests of national security (*Guardian* 6.4.93.).

Three gay men have launched a claim against Britain claiming that the age of consent for male homosexuals violates their right to respect for their private life under Art 8 of the Convention. The men say that, at 21, the British age of consent is the highest in Europe. Heterosexuals and lesbians are allowed to have sex at 16, but in 1991 213 gay men were prosecuted for underage sex in England and Wales, of whom 169 were convicted and 13 imprisoned. (*Independent*,5.4.93).

A requirement either to join a trade union or to move to another workplace was not a violation of Art 11 (freedom of association), said the European Court of Human Rights dismissing a claim against Britain. Mr Sibson claimed victimisation after he resigned from the TGWU and joined another union, but the Court said on 20 April that he did not have a conscientious objection to unions and he had not been forced to join one, so there was no relevant breach. (*Guardian* 10.5.93.)

European court: rules on privacy

The European Court of Human Rights has ruled that business premises can under some circumstances fall under the protection of article 8 of the European Convention. In the Niemietz case, a lawyer's office was searched in 1986 to obtain evidence against an anonymous person who used the pseudonym `Klaus Wegner' and who as a member of the political party Bunte Liste in Freiburg ran a campaign against the supposed abuse of power by a judge (Mr. Miosga). The Bunte Liste had used the lawyer's post box as its mail address. The European Court concluded that there was a breach of article 8, mainly because the interference was not `necessary in a democratic society' (ie: the offence in connection with which the search was effected was not sufficiently grave to justify the intrusion in the privacy, especially as it was a lawyer's office). The Court argued that it did not consider it possible or necessary to attempt an exhaustive definition of the notion of `private life' but considered that the words `private life' and `home' included certain professional or business activities or premises would be consonant with the essential object and purpose of article 8, namely to protect the individual against arbitrary interference by the public authorities.
ECHR 16 XII 1992: Niemietz case against Germany.

European Court: ID decision

The European Commission on Human Rights concluded that the Belgian mandatory identification is, in view of the data registered on the identity card, not a violation of article 8 ECRM. Nor does it restrict the freedom of movement or violate article 5(1)(b) ECRM. Only Belgium, Denmark, Greece, Portugal and Spain oblige their citizens to carry a mandatory identification cards. A Belgian citizen took a case to the court for violation of article 8 (respect for private life). The Commission said that since the card only contains information on a person's name, sex, date and place of birth, address and (possibly) the spouse's name, this does not affect private life. They could view that question differently if the card contained a registration number or a similar identifying code. Since the German and Danish cards and the future Dutch and Irish cards contain such identifying numbers or codes, this could mean that an appeal would be admissible. *European Commission of Human Rights* 9 IX 1992: Case of Reyntjens against Belgium (16810/90)

European Court: Case admissible

The European Commission on Human Rights has ruled admissible a case brought by the editors of the now defunct squatters' magazine *Bluf!*. In 1987 Bluf! published the contents of a 48-page BVD (the Dutch internal security agency) quarterly situation report from 1981 - it was said to have been be `left' on a train by a civil servant. The police raided the Bluf! offices and confiscated the entire edition. The raid had been anticipated and thousands of copies were printed elsewhere and sold gaining wide press coverage. The editors demanded the return of the confiscated edition and compensation for damages, claiming the police action had no legal ground for their action and that this was a violation of the fundamental right of a free press. Three arrests were made during the raid but none were prosecuted. The case can be expected to take two years before a decision is made. (see *Statewatch* vol 3 no 2)

Law: in brief

Prison rule unlawful: The Court of Appeal declared invalid a prison rule which allowed officers to read prisoners' correspondence with their lawyers about pending or contemplated legal proceedings. After adverse rulings from the European Court on Human Rights in the 1980s, prison rules were changed to preserve confidentiality between prisoner and lawyer in relation to `proceedings to which the prisoner is a party'; but did not extend the protection to correspondence on future proceedings, which the Court said should also be confidential. *R v Secretary of State for the Home Department ex parte Leech, Independent 20.5.93.*

Most rapes unpunished: A Home Office study has revealed that only one in four reported rape cases result in a conviction, while as many as 90% of rapes go unreported. The research, carried out in 1985, showed that almost half of complainants dropped out before court proceedings began, and a quarter of cases did not go to trial because of lack of supporting evidence or inability to find the perpetrator. Of those reaching court, about a quarter resulted in acquittal and another quarter in conviction for a lesser offence. Since the study was performed, further research from the University of North London suggests that the conviction rate has fallen even further. *Rape: from recording to conviction.* Home Office Research and Planning Unit paper 71, April 1993. *(Guardian 19.4.93.)*

UK blocks human rights court reforms: The UK government, together with Ireland, Italy and Denmark, has vetoed proposed reforms to the structure and procedure of the European Court of Human Rights at Strasbourg designed to speed up court cases. The proposals, agreed by the majority of signatory states to the European Convention on Human Rights, would have replaced the part-time court, holding hearings on which 40 judges sit, by a permanent court with fewer judges sitting. Without some such reform the waiting time for cases to reach the court, already five years, is likely to double in the next few years under the pressure of its increased workload. With 50 adverse rulings, Britain is the court's most persistent offender. *Observer 16.5.93.*

Government blocks torture committee appointment: The government has blocked the appointment of a criminologist, Silvia Casale, to the European Committee against Torture, a Council of Europe body set up to uphold human rights in prisons and police stations in the 26 signatory countries of the European Convention on the Prevention of Torture and Degrading Treatment. It has rejected Ms Casale's appointment by the Home office on the ground that `we need to reward a Conservative party loyalist with the job', and will put forward a list of suitable candidates drawn up by Conservative central Office. Britain's last appointment to the committee, now retiring, has proved something of an embarrassment with his forthright support for the death penalty and corporal punishment.
Guardian 7.5.93.

Law - new material

The need for a radical overhaul, Andrew Drzemczewski. *New Law Journal*, 29.1.93., pp126, 134-35. Drzemczewski, a barrister working at the Council of Europe, argues that the Court of Human Rights, which takes an average of five years to reach a decision, is need of radical reform.

Confessions, recording rules and miscarriages of justice: a mistaken emphasis, Helen Fenwick. *Criminal Law Review*, March 1993, pp174-184. This article discusses the mechanisms at which the various safeguards for police interviews come into effect and suggests that they are inadequate to prevent unreliable confessions.

Miscarriages of justice and the Court of Appeal, Richard Buxton. *Law Quarterly Review*, Vol 109 (January) 1993, pp66-81.

The "innocent" (?) who plead guilty, Michael Zander. *New Law Journal* 22.1.93., pp85-88, 95. On the Royal Commission's Crown Court study.

Contested bail applications: the treatment of ethnic minority and white offenders, Imogen Brown & Roy Hullin. *Criminal Law Review* February 1993, pp107-113.

A very English form of corruption, Anonymous. *New Law Journal*, 9.4.93., pp504-505. A practising barrister considers favouritism and misuse of patronage in the Bar appointments system.

Prosecuting the victim? A study of reporting of barristers' comments in rape cases, Keith Soothill & Debbie Soothill. *Howard Journal* 32:1 (February) 1993, pp12-24

Sexual history evidence - the ravishment of Section 2, Jennifer Tomkin. *Criminal Law review*, January 1993, pp3-20. Discusses the narrow interpretation of Section 2 of the Sexual Offences (Amendment) Act.

Hearsay and the European Court of Human Rights, Craig Osborne. *Criminal Law Review* April 1993, pp255-267. This article considers aspects of the application of the European Convention on Human Rights in national justice systems and hearsay evidence.

Entrapment and gay rights, Helen Power. *New Law Journal*, 15.1.93., pp47-49, 63. Examines a series of decisions that highlight the law's intolerance of homosexuality.

The road to nowhere? A report on the government's proposals to reform the Caravan Sites Act 1968, Liberty. February 1993. This report concludes that: "If the government's proposals are enacted, Gypsies and other Travellers will face an array of additional offences and penalties which are both draconian and discriminatory."

Parliamentary debates

Judges, *Commons*, 11.2.93, cols 1171-1180
Sellafield (discharge), *Commons*, 15.2.93, cols 2-26
Legal Aid, *Commons*, 31.3.93, cols 364-414
Criminal Justice Bill, *Commons*, 14.4.93, cols 859-924
Criminal Justice (Amendment), *Commons*, 20.4.93, cols 189-191
Criminal Justice (Amendment) (No. 2), *Commons*, 21.4.93, cols 324-326
George Beattie, *Commons*, 3.3.93, cols 426-434
Penalty for Murder Bill - Committee, *Lords,* 9.3.93, cols 927-930

RACISM & FASCISM

Racist killing in south London

An eighteen year old black man, Stephen Lawrence, was stabbed to death by a gang of racists in Eltham, south London. Stephen, and a friend who escaped, were waiting at a bus stop when they were approached by the gang who shouted racist abuse and then stabbed Stephen twice. He died before reaching hospital.

Stephen's death is the latest in a spate of racist murders in southeast London. They include Rolan Adams (15) who was stabbed to death in Thamesmead in February 1991 and Rohit Duggal (16) was murdered in Eltham in July 1992.

The Greenwich Action Committee on Racist Attacks (GACARA) reported 241 racial incidents in the area last year; in the first six months of this year the figure has passed the 200 mark, including three attacks involving firearms and 21 with knives.

The increase in racist violence in the area coincided with the opening of the headquarters of the openly fascist British National Party (BNP) in the neighbouring borough of Welling. The local Bexley council has been severely criticised for its refusal to take any action against the headquarters, which they argue is nothing more than a bookshop, despite almost continuous lobbying by local residents and groups.

Following the murder more than 3,000 people took part in a march against racism and the presence of the `bookshop', organised by Youth Against Racism in Europe. Their frustration was vented on the BNP headquarters when missiles were thrown at it. Riot police and police on horseback responded by charging protesters which resulted in fifteen demonstrators being taken to hospital.

The killing has been condemned by Nelson Mandela, president of the African National Congress, who visited the Lawrence family during a visit to London. Mr Mandela told the family that he was "deeply touched by the brutality of the murder" and, echoing the feeling of many black people living in southeast London, that "Black lives have become cheap."

A seventeen year old white youth has been charged with Stephen's murder. He is also charged with the attempted murder of a 16 year old black youth in an earlier incident in the same area of London.

Senior Nazi arrested

Eddie Whicker, a member of the National Front (NF) and recently exposed as a leader of the violently fascist Combat 18 (C18), has been arrested and charged with possessing firearms with intent to endanger life. Whicker was arrested at the beginning of June and did not apply for bail.

The arrest followed a police raid on the Crown and Cushion public house in Perry Bar, Birmingham, where two men were detained in possession of seven semi-automatic handguns and two hundred rounds of ammunition. One of the men, named Mcrudden, had Loyalist connections and is from Belfast, the other is from Camden in North London. Whicker was picked-up by police in south London the following day and charged.

Although based in London he has recently been spent a great deal of time in the Midlands and in the April 1992 general election he stood as the National Front candidate for Birmingham Hodge Hill where he received 370 votes, slightly less than 1% of the total.

During May the television programme *World in Action* exposed the recently formed fascist paramilitary outfit C18, in which Whicker was revealed to be a key figure. The membership of C18 is made up of familiar names, many of them associated with the British National Party, and they have appeared in a public role stewarding a series of meetings by revisionist historian David Irving.

They have also been involved in a series of covert activities, attacking Black and community groups. These included arson attacks on the Freedom Bookshop (the latest attack took place at the end of May and caused considerable damage) and the Morning Star newspaper in London. They have also targeted newspaper sellers from the Anti-Nazi League, attacking them with iron bars and causing several serious injuries.

The *World in Action* programme also alleged that C18 had extensive contacts with the Ulster Defence Association (UDA), the sectarian Loyalist paramilitary group that was recently banned in northern Ireland, but is still legal in England. While contacts between the far-right and Loyalists are well documented - a large number of Loyalists turned-out to support a BNP attack on a Bloody Sunday commemoration as recently as January - evidence of more sinister gun-running activities have been harder to come by.

Whicker's arrest offers confirmation of right-wing involvement with Loyalist paramilitaries in their campaign of sectarian assassination. It also raises questions about the direction in which the weapons were moving given the extensive evidence of the large quantities of weaponry reaching the Loyalists from South African sources. (see *Statewatch* vol 3 no 2).
Times 2.6.93; *Birmingham Evening Mail* 4.6.93.

Holland: Court criticises police

When the Amsterdam police raided several flats in March 1992 winding up an extensive investigation code-named `Goofy' into a Ghanaian drug smuggling ring, they claimed as many as 10,000 Ghanaian people lived in Amsterdam were illegal aliens, and living at some 1,500 suspect addresses. However the police came in for severe criticism on 27 April by the Court of Appeal. The President of the court Mr H Steenbergen said the figures were `incorrect and inappropriate' and that there was no evidence to support the exaggerated figures in the dossiers. Mr Steenbergen also disapproved of the premature release of the police views of the case: `It is unacceptable for the police after having arrested fifteen suspects and still during the preliminary investigation, to point an accusing finger at ten thousand people with a similar ethnic background'. By divulging such oversimplified stories, Mr Steenbergen said the police caused unfounded fears in the general public. The three suspects were convicted to 10, 8 and 5 years imprisonment respectively.

Racism & fascism: in brief

Nottingham police pay £25,000 for racism: Nottingham constabulary have paid out £25,000 in compensation to an Asian

PC who was refused promotion and racially abused and victimised by the force. Chief Constable, Dan Crompton, formally apologised to PC Joginder Singh Prem. The settlement brings the total paid out by Nottingham police for racial discrimination, in the last 16 months, to £60,000. *Police Review* 7.5.93.

Stoke Newington police lose another case: Another man, charged with possession of dangerous drugs, by officers at Stoke Newington police station, has been cleared at the Court of Appeal. Thirty-three year old Cyrus Baptiste's conviction for possession of crack was overturned after he claimed that officers from the station had planted the drug on him. Earlier this year two other men, charged with drug offences in separate incidents around the same time, were also acquitted. In all of these cases the credibility of the police officers has been thrown into question following an investigation into corruption at the station (see *Statewatch* Vol.2 No.2 & 4)
Guardian 25.5.93.

Racism & fascism: new material

Sagaland: Youth culture, racism and education, Centre for Multicultural Education, Institute of Education, London University, Bedford way, London WC1H 0AL. This is a report, commissioned by the Central Race Equality Unit of the London Borough of Greenwich, and carried out in Thamesmead, scene of the vicious racist murder of Rolan Adams in February 1991.

A lie too far: Searchlight, Hepple and the left, L O'Hara and others. Green Anarchist Press, c/o 151b London Road, Camberley, Surrey, price £1.60, pp55. This pamphlet questions the role of *Searchlight* magazine in the exposure of the neo-nazi Combat 18 outfit, and the role of the security-services.

Parliamentary debate

Burnsall's, Smethwick, *Commons*, 11.3.93, cols 1202-1210

EUROPE

Report from Copenhagen

The meeting of the Immigration/Trevi Ministers (Interior Ministers of the EC) in Copenhagen on 1-2 June carried forward several of the initiatives taken over the past three years. On 1 June the day started with a meeting of the `Troika' (Ministers and officials from Denmark, then holding Presidency of the EC, the UK, as the last holder, and Belgium as the country taking over on 1 July). Immigration and asylum formed the agenda for the rest of the morning when they agreed resolutions on: family reunification, refugees from Yugoslavia and on illegal immigrants within the EC. The whole afternoon, as at the previous meeting in London on 30 November, was taken up with the vexed question of the abolition of internal border controls. In the morning on 2 June, the Ministers took reports from the Trevi Senior Officials Group and signed the ministerial agreement on the European Drugs Unit. In the afternoon the Troika Ministers and their officials, met with the `Friends of Trevi' (the USA, Canada, Austria, Norway, Finland, Sweden, Switzerland and Morocco).

Targeting `illegal' immigrants
The EC is putting in place a number of policies to stop the entry of immigrants and asylum seekers - the Dublin Convention (introducing the `one-stop' rule for asylum seekers), the Parallel Dublin agreements with the EFTA countries, Eastern Europe and Canada, the External Borders Convention (which sets out categories of people to be excluded) and the creation of the European Information computer system (which will include a list of those to be refused entry to the EC). This meeting agreed measures to seek out `illegal' people already resident within the EC, thus opening the way for the harassment of all black and Third World people resident within the EC.

The measure was drawn up the Sub-Group on Expulsion of the Ad Hoc Group on Immigration which was set up in February 1992. It has met 18 times (6 times during the Portuguese presidency, 6 times during the UK presidency and 6 times during the Danish presidency). As is the practice in intergovernmental groups like this police, immigration and security services officers draw up proposals in secret, present their conclusions for Ministerial approval and only then are the contents published. Once adopted resolutions are intended to be common policy guidelines for EC member states and are not subject to parliamentary approval or discussion. In this instance between the final draft of the resolution prepared for the Ministers meeting (dated 16 May 1993) a number of amendments proposed by the French delegation were adopted.

The resolution opens with the general statement that: `it is fundamental to expulsion practices that there should also be effective means of identifying and apprehending those to be expelled' to which a French amendment added the need to improve `means for checking and expelling third-country nationals who are in an irregular situation'. The measures are intended to target `the employment of those known to have entered or remained illegally or those whose immigration status does not allow them to work'. Nationals and their families from EFTA countries are excluded from the provisions.

The detailed measures set out those not entitled to remain within the EC as people who 1] `remained unlawfully'; 2] those liable to `expulsion on grounds of public policy or national security'; and 3] those who asylum application has been turned down. Those to be expelled include people working in breach of their entry conditions and those, subject to `immigration/aliens provisions who have been involved in facilitation, harbouring or employment of illegal immigrants'. The resolution calls for `checks' to be made on those `known or suspected' of staying or working without authority. Two further groups are singled out as in need of checks to detect `abuse', people allowed to enter in order to live with their families and those given residence/work permits on the basis of marriage to a person resident in the EC.

The coordination of this new policy of internal checks is to monitored by CIREFI, a permanent body established in 1992 to monitor immigration policies, rejected asylum applications, and the expulsion of those `illegally' present in EC states.

The Danish Presidency viewed the measure as one that would not affect Denmark and require no change in their laws and were decidedly uncomfortable when it was suggested that the EC was now complementing external frontier controls with the internal policing of immigrants and their communities.

Yugoslavia and family reunification
Little press attention was given to the resolution on people admitted to the EC from Yugoslavia which served notice that their stay is viewed as temporary with people being returned when areas of the former Yugoslavia are consider `safe' (which could be an area `as close as possible to their homes'). In fact people who have fled from the conflict in Yugoslavia and are now resident in the EC could well become the subject of the above resolution on illegal immigrants. The resolution expressing its concern at `the

continuing humanitarian crisis in the former Yugoslavia' offers `particularly vulnerable persons...temporary protection'. The vulnerable groups are defined as those who have been prisoners of war or held in internment camps, those who are injured, those under direct threat, and those subject to sexual assault. These categories will be entitled to `stay temporarily...until conditions are suitable for their return, unless their stay constitutes a threat to public order, national security or the international relations of Member States'.

The resolution on family reunification, held over from the meeting in London in November 1992, was finally agreed due to the deletion of the clause on `the right to work'. The resolution applies to family members of non-EC nationals lawfully resident in a member state on a permanent or long-term basis. Those to be allowed in are the resident's spouse and children. The children have to be under 16 or 18 (depending on national laws), be unmarried and not be `leading an independent life'. Other family members, such as parents, aunts and uncles etc, will only be admitted if there are `compelling reasons'. These provisions are however subject to general conditions: 1] that there is available adequate accommodation and sufficient resources `to avoid a burden being placed on public funds'; 2] a family member may be refused entry if they are considered to be a threat to `national security or public policy'.

Another resolution, discussed but not agreed in Copenhagen, on `the admission on non-EC residents for employment' was not made available. It is understood to strictly limit the entry of non-EC nationals for work to the following categories: those temporarily admitted for limited periods if they have special qualifications; if Job Centres have failed to fill a post; for seasonal work within strict overall EC limits; and those filling `traditional needs' of a state. Workers in the seasonal category will only be allowed to stay for six months, when they have to leave for six months (family members will have no right to join them); those with special skills will be allowed to stay for a maximum of four years (spouses and children under 18 will be allowed to join them); students will be allowed to stay for up to three years, but together with visitors, will only be allowed to seek work in exceptional cases.

The Ministers also `noted' that a common list of 73 third countries requiring visas to enter the EC had been drawn up by the Ad Hoc Group on Immigration.

Internal border controls

The Ministers spent another full afternoon discussing, without agreement, the abolition of internal border controls. The Commission's Vice President for the internal market, Mr Raniero Vanni d'Archirafi, presented the views of the Commission and the European Parliament who are becoming increasingly frustrated at the lack of progress. Two issues were discussed: the differences between the nine Schengen countries and the UK, Ireland and Denmark, and the threat of France to hold up the Schengen countries' agreement because, in part, some countries had not yet ratified the Schengen Agreement.

The long-standing difference between the UK, Ireland and Denmark and the rest of the EC has often been presented by the UK as a united front determined to maintain border controls to check for terrorists, drugs and illegal immigrants. The UK government has also sought to exploit divisions in the positions of Schengen countries. What emerged at the Copenhagen meeting is that the Danish government holds quite a different view. It says that when three conditions are met it will remove internal border checks with Germany, whereas the UK says it will maintain controls `indefinitely' (the Irish Republic is tied to the UK position because a common travel area exists between the two countries).

These conditions set by Denmark are the ratification of the Dublin Convention and the External Borders Convention and the establishment of the European Information System (EIS, the EC wide computer database covering immigration, policing and legal matters). So far only six countries - Denmark, Greece, Italy, Luxembourg, Portugal and the UK - have ratified the Dublin Convention. The signing and ratification of the External Borders Convention has been held up for two years because of a dispute between the UK and Spain over the status of Gibraltar and no agreement is in sight. The establishment of the EIS is at least eighteen months away - the necessary Convention will not be available for signature (after which it has to be ratified by national parliaments) until the December EC Council under the Belgian Presidency. It is now unlikely that the three conditions will be met before the beginning of 1995.

It seemed as if the Schengen Agreement might flounder when the new French Minister for European Affairs, Alain Lamassoure, told the National Assembly Foreign Affairs Commission on 29 April that France was not ready to go along with its Schengen partners in abolishing internal border controls on 1 July. He said that Germany had not ratified the agreement, the Italian authorities were `incapable of reinforcing external controls', there were incompatible laws on drugs (eg: Holland), and that the Schengen Information System (SIS) was not ready. Underlying his statement was the new government intention to clampdown on immigration. The UK press, echoing the delight of the UK government, reported that the idea of a frontier free EC was now postponed indefinitely (*Independent* 1.5.93 & *Guardian* 30.4.93). The French press reported Lamassoure as saying there were dangers in `lifting border controls too quickly' and that he envisaged full participation in the Schengen Agreement in January 1994 although this was not a definite date (*L'Humanité* 30.4.93 & *Libération* 14.5.93). At the meeting of Schengen Interior Ministers in Madrid on 30 June it was agreed that the removal of frontier controls would start on 1 December 1993 between Germany, France, Belgium, Netherlands, Luxembourg and Spain - the other Schengen states, Italy, Portugal and Greece would join later. It was expected that the SIS would be operational from this date too.

Trevi

Those present at the Trevi meeting officially signed a ministerial agreement on the creation of the Europol Drugs Unit (EDU). This `agreement' precedes the Convention on Europol which will not be ready for signing until the EC Council meeting in Brussels in December (the Convention will then have to be ratified by national parliaments). The EDU's terms of reference state that it is a `non-operational team' exchanging and anaylsing `intelligence' on drug trafficking, the organisations involved, and money laundering activities associated with it. Such exchanges are to be related to specific investigations. The Unit is also charged with preparing `general situation reports and crime analyses on the basis of non-personal information supplied by Member states and from other sources'.

The staffing of the Unit, when fully developed is expected to be 70 officers. It will be under the control of the Coordinator and two Assistant Coordinators. Each country will appoint one or more liaison officers who will be in contact with a central national authority (for the UK the National Criminal Intelligence System, NCIS). The agreement states that requests for information may be made by police or `other law enforcement agencies' (unspecified). The decision to pass information from one state to another will be at the discretion of the liaison officers working within their national data protection laws. However, some EC countries do not have such laws, those that do vary greatly, and there is as yet no overall

data protection provision covering the EC. The agreement states that personal information will not be given to non-Member states or to international organisations. Nor will any personal information be held centrally by the Unit - the Unit acting as a means of passing personal information between states.

`Accountability' is to be exercised by the Ministers jointly with the Coordinator submitting six-monthly reports. National data protection agencies are being asked to supervise national liaison officers. There is no mention of accountability to national or European parliaments and no court of appeal is provided.

The agreement was due to come into effect when a permanent location for Europol was agreed but this meeting and that of the Prime Ministers at the end of June made no decision. The competitors for Europol's HQ are the Hague and Rome (with Strasbourg and Wiesbaden as outsiders).

The Ministers also received a report from the Trevi Senior Officials group which included a revised analysis of existing internal and external threats to Member states. The Trevi 1 working group, which deals with terrorism was given the additional task of investigating the extent to which racist attacks are carried out by organised groups. The Trevi 3 working party, which is often seen as the `jack of all trades' group, was asked to set up a `minor working party' on environmental crime; to look into motor cycle gangs and drugs; the consequences of the Draft Directive on Data Protection; and to consider ways of improving police practice in dealing with the sexual abuse of women and children.

Conclusion

The conference took place in the context of the new German law to stop asylum-seekers, the French Prime Minister's call for `zero immigration', the introduction of visas for people from Yugoslavia by Denmark and Sweden, and the UK government pushing through its new Asylum Act weeks ahead of schedule.

The conference itself marked the move from constructing external border controls, the provisions for which will be introduced over the next year, to the internal policing of black and migrant communities resident within the EC under the guise of seeking out `illegal' immigrants. These communities will now face a double-edged attack, from racist and fascist groups and from the police and courts.

Copies of the following resolutions are available from Statewatch: 1] Resolution on certain common guidelines as regards the admission of particularly vulnerable persons from the former Yugoslavia; 2] Harmonisation of national policies on family reunification; 3] Recommendation concerning checks on and expulsion of third country nationals residing or working without authorisation; 4] Ministerial agreement on the establishment of the Europol Drugs Unit.

Sweden: appeal fails

On 2 April 1993 the Swedish Supreme Court decided not to review the case of Hans Holmer, the first head of the investigation of the Palme assassination, and PerGoran Nass, the former Chief of the Swedish security police, who were convicted for illegal bugging. The Court of Appeal had sentenced Hans Holmer to a fine of 150 dayfines (a fine proportional to the offender's daily income; the maximum is 180 dayfines) on two counts of illegal bugging, and PerGoran Nass to a conditional sentence and 60 dayfines, on four counts of illegal bugging during 1986. The illegal bugging was primarily directed against Kurds and Palestinians living in Sweden. Hans Holmer later left the police force, while PerGoran Nass now is chief of the police in Uppsala, one of the largest Swedish towns.

Swedish Text-TV.

Europe: in brief

Italian prisons overcrowded: The prison population in Italy increased by a third last year to 47,588. The Italian government has agreed to hire more guards so that it can re-open closed prisons to ease the overcrowding problems. *Times* 6.4.93.

German-Polish agreement: on 7 May Germany and Poland signed an agreement by which Germany will pay 75 million dollars to Poland in 1993/4 to ensure that measures to send back refugees from its borders are applied.

Racism and xenophobia: On 21 April the European Parliament debated the upsurge in racism. Cesare de Piccoli (Italy, Soc) called for EC legislation with the recognition that any racist act was a crime and for a number of ways to better integrate the millions of non-EC citizens legally resident in the EC such as extending voting rights to all legal immigrants who have lived in an EC country for more than five years. But Jean-Marie le Chevallier (France, ER) dismissed the whole report, claiming it was based on inaccuracies. He insisted that institutional parties of the right had nothing to do with extreme right groups. Franz Schonhuber (Germany, Ind) complained that the report tried to criminalise the democratic right and he defended the right of people to defend their own culture and national heritage. Lode van Outrive (Belgium, Soc) said the recognition of equal rights for non-EC citizens legally resident was a fundamental precondition for the integration of minorities. The Parliament approved with amendment a resolution from the civil liberties committee on ways of curbing the rise of racism and xenophobia in Europe. The vote was 278 for to 39 against with 30 abstentions. Among MEPs demands are EC legislation against racism and voting rights in local elections to immigrants legally resident in the EC for more than five years.

Greek identity cards: 22 April - The compulsory inclusion of religion on Greek identity cards was again debated by MEPs in the European Parliament, with a resolution being adopted which calls on the Greek government to end the practice. Greece is the only EC country to include reference to religious faith on identity cards.

Europe - new material

Criminal justice - a European perspective, Heike Jung. *Criminal Law Review*, April 1993, pp237-254. Concludes that "we can expect a growing number of cases where the significance of E.C. rules is recognised."

Application of Article 14 of the European Convention of Human Rights to community law, Elspeth Guild. *Immigration & Nationality Law and Practice* 6:3, 1992, pp75-77.

NORTHERN IRELAND

Incidents in Britain

The Home Office has published a list of `terrorist incidents relating to Northern Irish terrorism in Great Britain' since the introduction of the Prevention of Terrorism Act in 1974 (*Hansard*, 4.3.93, cols 281-288). For the years prior to 1989 the list only includes incidents which resulted in death or injury. The list includes a description of the incident (in less than ten words), and the date and

location of the incident.The data show that from the passing of the PTA until the end of 1992 there were 63 deaths and 978 injuries in Britain. After an initial period of high levels of deaths and injuries, only 1 death and 18 injuries were recorded from 1977 to the end of 1980. Although the number of incidents involving deaths and injuries remained at less than five per year in the early 1980s, there were 25 deaths and 227 injuries up to and including the bombing of the Conservative Party annual conference in Brighton in October 1984. Following the latter, only two incidents are recorded until the start of 1989. The last four years have seen a rapid escalation of IRA operations in Britain as the table below shows. 37% of all deaths and 35% of all injuries since the passing of the PTA have occurred in the last four years.

Year	Incidents	Deaths	Injuries
1989	4	11	24
1990	19	3	55
1991	23	3	40
1992	48	6	222
Total	94	23	341

According to one report (*Irish Times* 27.5.93), there is growing concern within the Irish community in Britain about the way the police are arresting and detaining Irish people following IRA incidents. After the Bishopsgate/NatWest Tower bombing (24th April), eleven people were detained under the PTA. All were eventually released except John Matthews, a graduate of Queen's University, Belfast, who had been working in London as a hospital porter since September of last year. He was arrested at Heathrow Airport on his way back home to Derry. Matthews had been staying with his aunt in a flat in Wood Green. Shortly after his arrest, armed police broke down the door of a neighbouring flat before entering Matthews' aunt's flat at 3.00 in the morning. Matthews was questioned about several IRA operations, including the attack on Whitehall last October for which Patrick Murphy was charged even though he had been attending an Alcoholics Anonymous in Uxbridge at the time. Like Murphy, Matthews was charged after being picked out at an identification parade. Matthews took part in three such parades, none of which took account of his distinctive appearance - he is short (5 foot 2 inches) and has bright ginger hair.

Matthews' father told the Irish Times that his son had co-operated fully with the police and that many witnesses had backed up his alibi evidence covering all the incidents which the police had raised with him. Although the charges against Matthews were withdrawn in court he was immediately served with an exclusion order and taken to Northern Ireland.

Stevens stirs again

The *Sunday Business Post* claimed in May that John Stevens, the Deputy Chief Constable of Cambridge, is once again taking up the question of collusion between loyalist paramilitary groups and the security forces. Brian Nelson, who is serving a ten year sentence as a result of the original Stevens' inquiry and who, as the Belfast UDA's intelligence officer, supplied information to MI5 over a ten year period, was recently re-interviewed by Stevens. Nelson has written a 90,000 word `diary' of his activities which was acquired by the *Panorama* programme. *Panorama* linked British intelligence to the killing of Belfast solicitor, Pat Finucane and in February four America lawyers, including the Chief Judge of the New York State Court of Appeals, issued a report claiming there was good evidence linking the British army to the solicitor's death. Finucane was one of the lawyers who represented the families of the three IRA members shot dead by the SAS in Gibraltar in March 1988. The latter killings are to be the subject of an oral hearing before the European Commission on Human Rights on 3rd September. Relatives are arguing that the right to life was violated by the SAS.

The full report of the Stevens inquiry has never been made public, along with the Stalker/Sampson reports. A San Francisco judge has demanded that the British government release these documents to the court in order that it may judge the extradition case involving James Smyth. The documents could reveal if collusion between loyalist paramilitary groups and the security forces is such that to return to Ireland would threaten Smyth's life - one of the grounds for refusing extradition in the recently re-negotiated treaty between Britain and the US. The treaty also allows for the production of any information relevant to the case. Smyth is one of 38 prisoners who escaped from the Maze prison in 1983.
The Sunday Business Post, 23.5.93.

PTA Ruling

The European Court of Human Rights has ruled by 22 votes to 4 that the UK government's derogation from the European Convention for the Protection of Human Rights and Fundamental Freedoms is valid because, as allowed for under article 15, the `life of the nation' is threatened by the conflict over the national status of the North of Ireland. Britain derogated from the European Convention as long ago as 1957 with respect to Northern Ireland. This was withdrawn in 1984 and, as a result, Northern Ireland was no longer officially designated under the international instruments as a territory where `a public emergency threatening the life of the nation' exists. But after the Brogan case concerning seven-day detention in 1988, a further derogation was entered which left the question of whether Britain was justified in doing this with reference to the circumstances pertaining in Northern Ireland at the present time.

This latest case involved a judgement as to whether those circumstances were such that the seven day detention power - particularly the failure to subject the detention to judicial scrutiny `promptly', as required by the Convention - was strictly necessary. Peter Brannigan and Patrick McBride had been arrested under the PTA in January 1989 and the Home Secretary had granted extensions of their detention. They complained to the Court that they had not been brought promptly before a judge. But the Court decided in favour of the government that the independence of the judiciary would be compromised if they were seen to be involved in the granting of extensions of detention.

McBride did not live to hear the Court's verdict. He was one of three people killed when RUC officer Allen Moore talked his way into the Sinn Fein centre on the Falls Road, seeking an `interview' with Sinn Fein President Gerry Adams. The inquest into these deaths was held in May and was one of the largest on record, involving the calling of 97 witnesses. It was revealed at the inquest that Moore, who had shot and killed himself a few hours after the three murders, had bomb-making materials in his car and his bedroom. These consisted of copper piping, firework gunpowder, flash cubes and shotgun cartridges. Small devices of this nature, suitable for parcel bombs, had been sent to a number of nationalists in autumn 1991. The revelation added weight to the claim made by the *Andersonstown News* at the time of the killings (4 February 1992) that someone who said they were in the RUC phoned their offices about two hours afterwards. The caller gave precise details of Moore's movements in the hours leading up to the killings. He said Moore had fired shots over the grave of a fellow RUC officer, Norman Spratt, the night before and that both men were members of the Ulster Freedom Fighters. The contents of Moore's suicide note were not revealed at the inquest and the RUC have failed to

publish their own inquiry into the affair. The day of the killings, Moore was due to be part of the guard protecting President Robinson on her visit to Belfast.

Vetting the Irish Army

All soldiers in the Irish Army have been issued with a questionnaire which asks respondents to declare whether they, their friends or family are or have ever been members of the IRA, INLA, IRSP, Sinn Fein, the Communist Party or the Connolly Youth Movement. The Army's union, the Permanent Defence Forces Other Ranks Representatives Association, has instructed its members not to fill in the questionnaire. The Association's president said, `this circular puts a serious question mark over our loyalty. It means our members are not trusted and it has serious civil liberty and legal implications'.
Sunday Life, 23.5.93.

Paratrooper gets life

Private Lee Clegg has been found guilty of murdering Karen Reilly, one of two joyriders shot dead in West Belfast in September 1990 (see Statewatch, September/October 1991). Another soldier was given a seven year sentence for the attempted murder of the driver of the vehicle, Martin Peake. This is only the second time an on-duty soldier has been given a life sentence for murder in Northern Ireland even though there have been 350 killings by security forces in the 24-year history of the current conflict, many of them in disputed circumstances. The first soldier to be given life (Thain) served just over two years before being released and re-joining the army. He has since left the army. Two other soldiers were given life sentences in England in 1981 for two notorious `pitchfork murders' committed in 1972 in County Fermanagh.

A few months after the joyriders were shot, Neil Kinnock visited the Paratroop Regiment at Palace Barracks, Hollywood (just outside Belfast). Press coverage of the visit showed that among the Xmas decorations in the officers' mess was a large cut-out model of the joyriders' car, complete with bullet holes and a caption which read, `Vauxhall Astra. Built by robots. Driven by joyriders. Stopped by A COY III'. Above the Astra was the loyalist version of the Ulster flag in which the red hand is placed on a background of a six pointed star with crown. (The traditional Ulster provincial flag has a shield as the background.) A COY III was also written on the flag.

Clegg was a member of the Third Battalion of the Parachute Regiment, the same unit involved in sealing off Coalisland and allegedly assaulting staff and customers in a bar in May 1992 (Statewatch July/August 1992). It was this incident and further trouble five days later which led the Irish Foreign Minister to call for the complete withdrawal of the Parachute Regiment. Although at the time Security Minister Michael Mates described the behaviour of the soldiers as `entirely justified', six later faced various charges including disorderly conduct and assault. All six were acquitted in May but the Cookstown magistrate, Maurice McHugh, said the soldiers were `not entirely innocent' and bound them over to keep the peace for 18 months. In a further twist to the case, the Solicitors Criminal Bar Association has complained to Lord Mackay, the Lord Chancellor, about the generous legal representation given to the paratroopers who were represented by four senior QCs and four junior barristers at an estimated cost of £95,000. A member of the Association said, `if we have to be accountable for public money then so too should the Ministry of Defence. Otherwise we are going to develop two legal systems - one that skimps and a superior one for members of the security forces where money is no object'.

Border tour

The British government's objection to the removal of border controls partly rests on its mistrust of other EC member states' ability to secure the `external borders' of Europe. But the border between the North and South of Ireland seemingly provides a showcase for the technology appropriate to external border policing. Officials from the Spanish ministry of the Interior have been given a guided tour of border checkpoints and military installations. Whether this particular European border represents an external frontier, a security measure or an internal border control, remains to be tested under Article 8a of the Single European Act.

Annesley law reform

RUC Chief Constable Sir Hugh Annesley has launched an attack on the criminal justice system in Northern Ireland, describing it as `heavily loaded in favour of the accused'. Annesley used the occasion of the presentation of his annual report (27.5.93) to demand six changes. He wants revisions to the discovery process (the rules governing disclosure of information to the defence) and the complete removal of the right to silence. Courts are already able to draw a negative inference from a suspects silence. Annesley would like to make it an offence to refuse to answer security forces' questions. He also wants accomplice (informer) evidence to be more readily admissible than it currently is. The courts should be told of a suspect's previous terrorist convictions and finally, Annesley argues, intelligence evidence such as the transcripts of telephone taps should count as evidence before the courts.

Ireland - new material

Anglo-Irish extradition viewed from an Irish perspective, Hilary Delany & Gerard Hogan. *Public Law* (Spring) 1993, pp93-120

One-dimensional policing, Malachi O'Doherty. *Fortnight* 317 (May) 1993, pp19-21. On police checkpoints, largely targeted on Republicans rather than Loyalists, in Belfast.

Who fired the AK 47? Peter Trim. *Just News* 8:4 (April) 1993, pp4-5. Report on the Inquest into the deaths of three IRA members, Michael and Martin Harte and Brian Mullin, shot dead in a British Army ambush in August 1988.

The events of May 30th 1992 and the politics behind the banning of the James Connolly march, Scottish Democratic Resistance/James Connolly Society. £1. Pamphlet on the banning of last years James Connolly march and the motives behind it.

PRISONS

Prison conditions condemned

Judge Stephen Tumim, Chief Inspector of Prisons, has condemned conditions at Bristol prison for failing to improve since the riots of 1990. His report expresses concern at the treatment of gravely ill patients in the prison's health centre and describes their condition as `dangerous and unacceptable'.

In a separate report Tumim is even more critical of conditions at Cardiff prison which were described as `unhygienic and gross'. His comments followed a visit to the prison, which was built in 1827

and holds over 400 prisoners, last October.

Conditions inside Wolds prison, near Hull, have been criticised by The Prison Reform Trust (PRT). Wolds is Britain's first private prison this century and is run by Group 4 Remand Services. It holds approximately 235 remand prisoners. The PRT report says that life inside the prison is aimless and that there is widespread evidence of drug abuse and violence.

An independent inquiry, by the Howard League, into conditions at Feltham Young Offenders Centre, where four boys were found hanged within eight months in 1991, recommended that "the centre should no longer exist in its present condition."

Guardian 5.4.93, 14.4.93, 23.4.93; *Independent* 25.5.93.

Prison population

The prison population in England and Wales, on March 10, was 43,077.

Hansard 11.3.93.

Prisons - new material

Contemporary penal policy: a study in moral panics, *Criminal Justice*, 11:1 (February) 1993, pp4-6. Excerpts from a lecture by Thomas Mathieson at the Annual Meeting of the Howard League in November 1992.

Into the dark tunnel: foreign prisoners in the British prison system, Deborah Cheney. Prison Reform trust, 59 Caledonian Road, London N1 9BU, price £3.45, pp66.

Annual Report 1991-1992, Inquest, Ground Floor, Alexandra National House, 330 Seven Sisters Road, London N4 2PJ, pp12. Inquest campaigns against deaths in custody and for changes in the coroner's court system. This report has a review of 1991-92, and pieces on the Criminal Justice Act 1991 and the Ashworth special hospital Inquiry.

Life licensees and restricted offenders reconvictions: England and Wales 1990, *Home Office Statistical Bulletin* 3/93, 18.2.93.

The National Prison survey 1991: the main findings, Roy Walmsley, Liz Howard and Seila White. *Home Office Research & Statistics Department Research Findings* No 4, January 1993. This survey of almost 4,000 prisoners resulted in eight key points, among them that `Young people, ethnic minorities and people from partly skilled and unskilled occupations are over-represented in the prison population'.

POLICING

Denmark: 11 shot by police

On the night of 18 May just after the announcement of the result of the Danish referendum on the Maastricht Treaty (56.8% to 43.2% in favour) police shot at anti-Maastricht demonstrators, injuring at least 11 people, in the Nørrebro district of Copenhagen.

In the run up to the events of the night of 18 May police had twice fired `warning shots' in the air above demonstrators. The week before the police had intervened in a confrontation between young immigrants and a group of drunk young people - warning shots were fired. The next day they again fired warning shots during an anti-racist demonstration 500 strong. At one point the police shot out the tyre of a car carrying people who were trying to locate police reinforcements - they then searched the street for the bullet.

When the referendum result was given out people in Nørrebro declared it an `EC free zone' and blockaded the main bridge into the area with piles of wood and lit fires in the road. Some time later the police and fire brigade appeared - most of the police were engaged in monitoring a large, peaceful, gathering outside the parliament building. The events of the evening were graphically recorded by two video cameras from the alternative television channel TV STOP.

A single line of police, no more than 25-30 with shields and dressed in riot gear with gas masks, advanced down the main road, Nørrebrogade. Tear gas of the kind used in Israel and South Africa was fired over the police line - during the evening more gas was used than at any other single incident. The demonstrators numbering between 200-250 people, many with scarves on their faces to counter the gas, threw brick after brick at the police line. This bizarre scene continued for over an hour with the police very slowly moving down the road. The street was full of tear gas and smoke from the fires. The riot police were backed by the plainclothes URO-patruljen, a specialist squad very active in Nørrebro where many young people and migrants live. The squad, estimated to number between 50 and 80, was formed in 1966 at the time of `flower power' and its name literally means `noise police'. Now their main task is to tackle drugs which leads them to place many in the `youth milieux' under surveillance coupled with stop and search on the streets. Little love is lost between the young people and the URO-patruljen.

Members of the URO-patruljen were openly picking up the bricks thrown by the demonstrators and throwing them back over the police line. They were also egging on the police to fire at particular people. These officers made no attempt to disguise themselves and were clearly identifiable.

To the outside observer it was clear: 1] that the police should have withdrawn and waited for reinforcements before trying to clear the streets; 2] that there was no clear police command structure. At this point, with no apparent order given, the police, or rather some of them at random, drew their guns and fired - most in the air, but at least two or three into the crowd. Some ten to fifteen minutes later the police split into two groups on either side of the street and fired again. Around 80-90 shots were fired into the crowd and into the air. It was clear that most of the demonstrators did not realise in the confusion and smoke what was happening, some thought people had been hit with rubber bullets. The final confrontation happened in the main Square in the heart of Nørrebro where bricks for a new pavement provided ammunition for the demonstrators. Across the square, with a statue in the middle, the police, now backed openly by 20 plus plainclothes officers fired another 100 plus shots into the air and crowd. The shootings seemed almost casual and it was hard to see how they could know what they were firing at. In the melee some of those hit were many yards behind the front line of stone-throwers.

The official figures said 45 people were arrested and 11 people injured with gun wounds - though other sources say another 4-6 wounded people did not go to hospital. The wounded included one person shot in the jaw, others in the shoulder, back and in the stomach. All 11 people hospitalised were charged with offences as the police said they must have been in the front line throwing stones. At the hospital the police collected bullets removed from the wounded, fingerprinted everyone including several who were unconscious, impounded personal belongings and demanded their names and addresses from the hospital staff. The doctors' union has called for an investigation of staff rights when faced with police access and demands. Several police were injured but none seriously

enough to be in hospital a day later.

The next day the Prime Minister, the Minister of Justice and Chief of the Copenhagen police force claimed that police lives had been threatened. A major national paper used the opportunity to launch a `witch-hunt' on a whole range of left and progressive groups alleging they had `terrorist' links. However, the Minister of Justice was forced to set up an investigation headed by the Director of Public Prosecutions, Asbjørn Jensen - who is not viewed as neutral by many.

In Denmark the use of tear gas and the occasional firing of `warning shots' in the air has happened before, but the prolific and random firing of shots directly at demonstrators is without precedent. Local groups see it as a very dangerous precedent reminiscent of police tactics in Turkey and South Africa. Amnesty International has initiated an alternative investigation to which many groups, individuals and lawyers are submitting evidence.

France: police kill four

The new RPR-UDF French government under Mr Balladur had campaigned for tougher immigration laws and increased police powers. At the beginning of April four people died at the hands of the police which was followed by widespread riots, the government announced its intention of increasing police powers and toughening the immigration laws.

The riots were triggered on 4 April in Chambéry in eastern France when police arrested an 18 year old suspected of stealing a car. He was shot dead by the police during the arrest. Two days later, on 6 April, a 17 year old Zairean, Makome M'Bowole, was shot dead in custody after being arrested on suspicion of shoplifting. Makome's arrest took place in the 18th arrondissement of Paris, a district with a large immigrant population in the north of the city. While Makome was being held in the interrogation room at the local commissariat (police station), the arresting officer put a gun to the boy's head and shot him at point blank range. The police officer, Inspector Pascal Compain, who said he had `only wanted to frighten him' has been charged with voluntary manslaughter.

As the news filtered out, demonstrations took place outside the commissariat and these quickly turned to riots as the police tried to break up the crowds. All demonstrations in Paris were immediately banned, but people continued to demonstrate and the 8 April the rioting had spread to Lille. In Tourcoing, a Lille suburb, a 17 year old Algerian, Rachid Ardjouni, and four of his friends were caught up in a police round-up and told to lie on the ground. Rachid was shot in the head by a drunken police officer and died the following day. Sgt Frederick Fournier has been charged in connection with Ardjouni's killing.

Demonstrations and confrontations with police continued in both cities until 10 April when a final demonstration took place in the 18th arrondissement - seventy people were arrested, including six charged with rioting and carrying weapons.

The cause of Makome's arrest and subsequent murder was a major police sweep through the 18th arrondissement ostensibly to round up drug dealers and minor criminals in the area. `Sweeps' are regularly used in an racist way with white people rarely stopped and involve police carrying out identity card checks in the metro and the streets. They are used as a means of picking up `illegal' immigrants and over-stayers, especially as the time taken with dealing with the bureaucracy to get an identity card discourages all but the most persistent. This particular `sweep' led to many being arrested whose papers had expired or were otherwise out of order. Immigrants picked up in this way are frequently deported back to their country of origin.

On 8 April 32 year old Pascal Tais also died of a ruptured spleen while in police custody in the town of Arachon; police claimed that the injury was self-inflicted. A week later a 15-year old white youth, Eric Simonte, was seriously ill after being shot in the back by a motorcycle policeman who suspected him of stealing a car, near Cherbourg.

Interior Minister Charles Pasqua's response to the police killings was to announce the introduction of changes in the law. Three changes are planned concerning the ID card system: firstly, in future carrying the card will be obligatory for everyone (at present only immigrants must carry their cards at all times); secondly, all police will have the right to demand to see the card (at present it is only Officiers de Police Judiciare who are specially authorised to do this); lastly, in future all cards will be plastic with a computerised number to give instant access to police files.

The plans have led to criticism from civil liberties groups (see also story in Immigration section on changes in the law). They point to the Council of Europe report which criticised the French government for not having a code of conduct for police interrogations and the lack of any requirement to have a doctor or lawyer present. These killings occurred less than six months after the Council of Europe's Commission on the Prevention of Torture warned the French government that suspects in police detention ran `a not inconsiderable risk' of being mistreated.

In February Amnesty International accused European police forces of human rights abuses. Among the cases that they highlighted was that of a French citizen of Moroccan parents, Aissa Ihich, who died after being beaten in a police cell. A police doctor has been charged with involuntary homicide, but no police officers have been charged.

Reflex (Paris); IRR Race Audit no 3 & 4; *Amnesty International Press Release* 3.2.93.

Policing - new material

Knocking heads together, Anthony Heaton-Armstrong & David Wolchover. *Counsel* April 1993, pp14-15. On `collaborative police testimony'.

Policing and racial equality, Association of Chief Police Officers & Commission for Racial Equality 1993. A guide designed to `provide constructive guidance on the policing of a multi-racial society'.

Innocent and Inside: The Bridgewater Four, 15th year of wrongful imprisonment, Bridgewater Four Campaign, Houndsfield Lane, Wythall, Birmingham B47 6LS. pp12. This short pamphlet summarises the case of the Bridgewater 4, victims of a miscarriage of justice that has resulted in them spending 15 years in prison. In February then Home Secretary, Kenneth Clarke, refused to refer the case back to the Court of Appeal.

No hiding place: video wars on crime, *New Scientist* 8.5.93, pp 19-23.

Police keep tabs on travellers, *Independent on Sunday* 16.5.93.

Just how candid are the security cameras? *Observer* 9.5.93.

Trial by lie detector: admissibility of polygraph evidence, *Independent* 23.4.93.

Parliamentary debates

Police reform, *Commons*, 23.3.93, cols 765-783

Juvenile offending, *Commons*, 2.3.93, cols 139-150
Crime, *Commons*, 5.3.93, cols 565-636
The Police Service, *Lords,* 23.3.93, cols 182-197

CIVIL LIBERTIES

Economic League disbanded

The Economic League, the rightwing employment vetting agency, which kept blacklists on thousands of people, is reported to have disbanded. The League, which is acknowledged to have close links with the security services, had accumulated files on at least 30,000 people. During the 1980s it had more than 2,000 companies subscribing to it, bringing in an annual income of over £1 million.

The files that it held contained details of political and trade union activists, Labour Party MPs and individuals who, for instance, had written to their local papers protesting at government policy. The League always maintained that `innocent' people had nothing to fear as they only kept files on `known members of extreme organisations'. Nonetheless, the information they disseminated resulted in numerous cases of long periods of unemployment and hardship for the victims.

It is believed that the League will resurface in different guises and that its card files, used to avoid the provisions of the Data Protection Act, will be maintained. Stan Hardy, the League's director-general, and Jack Windsor, director of information, are thought to be setting up a new consultancy using this material while the Birmingham branch, which dealt with alleged `subversives' in the construction industry, is believed to have been taken over by former director Ian Kerr.
Guardian 24.4.93.

Civil liberties: new material

The following are recent publications added to the library of Liberty, 21 Tabard Street, London SE1 4LA. Tel: 071-403-3888. They are available for reference. Please make an appointment if you wish to visit - a small charge is made to non-members.

Proceedings of the 3rd round table with European Ombudsmen, Florence, 7-8 November 1991. Council of Europe (Human rights and democracy), 1992, 147pp. £4.25.

Ethical issues in journalism and the media. Andrew Belsey and Ruth Chadwick (eds). (Professional ethics). Routledge, 1992, 179pp, £10.99 (pb)

Awaiting trial: interim report: a survey of juveniles remanded in custody while awaiting trial in criminal proceedings April 1992 - March 1993 interim report of the first six months of the survey April - September 1992. Association of Chief Officers of Probation (ACOP) and National Association for the Care and Resettlement of Offenders (NACRO). NACRO Youth Crime Section, 1992, 24pp.

European immigration policy. D S Bell and J Gaffney (eds). (Contemporary European Affairs vol 3 no 3), Pergamon, 1990, 198 pp. £8.00.

Intergovernmental cooperation in the Council of Europe: 1992 objectives. Council of Europe 1992, 50pp. £3.50.

Telephone tapping and the recording of telecommunications in some Council of Europe member states. Council of Europe (Legislative dossier no 2) COE, May 1992, 12pp.

Prison health, issue 4, July 1992 incorporating `Health for all' conference papers 29 April - 1 May 1992. HM Prison Service. July 1992, 91 pp.

Race and sentencing : a study in the Crown Court, a report for the Commission for Racial Equality. Roger Hood and Graca Cordovil. Oxford University Press, 1992, 343pp. £35.00 (hb)

A question of judgement: race and sentencing. Commission for Racial Equality, 1992, 39pp. Summary of a report Race and sentencing a study in the Crown Court by Roger Hood and Graca Cordovil. £2.50.

Return to an address of the honourable the House of Commons dated December 1992 for a report of the inquiry into the circumstances surrounding the convictions arising out of the bomb attacks in Guildford and Woolwich in 1974: second report on the Maguire case. Sir John May (HC296), HMSO, 1992, 96pp. £12.10.

Fiction, fact and the fatwa: a chronology of censorship: revised. Article 19 and International Committee for the Defence of Salman Rushdie and his Publishers. Article 19, October 1992, 108pp.

Human rights in international law: basic texts. Council of Europe. COE, 1992, 465pp. £10.25 (pb)

Women after prison. Eaton, Mary. Open University Press, 1993, 168pp pp. £12.99.

Memorandum of good practice on video recorded interviews with child witnesses for criminal proceedings. Home Office and Department of Health, HMSO, 1992, 57pp.

The right to silence in police interrogation: a study of some of the issues underlying the debate. Roger Leng, (Royal Commission on Criminal Justice Research Study no. 10), HMSO, 1993, 83pp.

Parliamentary debates

Right to know Bill, *Commons*, 19.2.93, cols 583-656
Freedom & Responsibility of the Press Bill, *Commons*, 23.4.93, cols 669-694
Sexual Offences Bill, *Commons*, 30.4.93, cols 1259-1301

BOOKS RECEIVED

All books received are listed on the on-line database with chapter headings and short summaries.

Fascist Europe: the rise of racism and xenophobia, Glyn Ford. Pluto Press, 1992, pp216, £10.95 pk.

The rise of meso government in Europe, LJ Sharpe (ed). Sage Publications, 1993, pp327, £45 hd.

One Hundred days: the memoirs of the Falklands Battle group Commander, Admiral Sandy Woodward (with Patrick Robinson). Fontana, 1992, pp360, £6.99 pk.

Human rights in Europe: a study of the European Convention on Human Rights, AH Robertson & JG Merrils. Manchester University Press, 1993, pp422, £45 hd.

Reproducing rape: domination through talk in the courtroom, Gregory M Matoesian. Polity Press, 1993, pp256, £12.95 pk.

Moving targets: women murder and representation, Helen Birch (ed). Virago, 1993, pp302, £8.99 pk

Femicide: the politics of women killing, Jill Radford & Diana EH Russell (eds). Open University Press, 1992, pp379, £10.99 pk.

Crime control as an industry: towards GULAGS, western style?, Nils Christie. Routledge, 1993, pp192, £10.99 pk.

Contemporary issues in public disorder: a comparative and historical approach, David Waddington. Routledge, 1992, pp243, £12.99 pk.

The eclipse of Parliament: appearance and reality in British politics since 1914, Bruce P Lenman. Edward Arnold, 1992, pp284, £12.99 pk.

Suspect community: people's experience of the Prevention of Terrorism Acts in Britain, Paddy Hillyard. Pluto Press, 1993, pp300, £12.95 pk.

The politics of antagonism: understanding Northern Ireland, Brendan O'Leary & John McGarry. Athlone Press, 1993, pp358, £28 hd.

More instructions from the centre top secret files on KGB global operations 1975-1985, Christopher Andrew & Oleg Gordievsky. Frank Cass, 1992, pp130, £24 hd.

Feature:

Matrix-Churchill and public interest immunity

The 1992 Matrix-Churchill trial brought the clandestine `Boys' Own' world of the security services a bit further into the light of day. This was largely because of the efforts of defence lawyers in successfully arguing that hundreds of ministerial, departmental and Security and Intelligence Service (SIS, ie MI5 and MI6) documents should be made available to them. They revealed, as is now well-known, that agencies of government knew of, approved of and encouraged the sale of arms-making equipment to Iraq in the 1980s, and the exposure led to the acquittal of the defendants.

The prosecution had proceeded on the basis that the documents were `privileged' and not subject to the usual requirement that the prosecution ensure that all relevant material is made available to the defence. The `safe haven' into which the government, security services and prosecution tried to steer this vital material was public interest immunity (pii). Pii used to be termed `Crown privilege', but the term is no longer used, apparently because it is not necessarily only the Crown which asserts it, and ostensibly too because it is not supposed to be a privilege, but a duty, to protect sensitive material from disclosure. More cynical upholders of civil liberties might comment that this republican-style change of terminology owes more to George Orwell than to modernity or precision. The public must be protected from knowing about that which its servants and agents do in its name.

Pii has been a recognised legal concept for at least a century and a half. It is asserted to protect the interests of national security or diplomatic relations, or to protect the `integrity of communications' with or within a public department. National security considerations require little further explanation: to publish a list of MI5 operations might well be detrimental to its spying activities. Protecting inter- and intra-departmental communications is slightly more difficult to comprehend. The pii argument goes that ministers, policy advisers, civil servants, police officers and other public servants would not communicate with the same frankness and candour, should there be a threat of exposure of their discussions in open court.

The court procedure

In principle, pii is a duty which must be asserted and cannot be waived, so that a prosecutor in possession of a document in a `protected class' without which he could not prove his case would, in theory, be bound to object to its disclosure in court, and let the defendant walk free. This situation has never occurred, although a prosecution based solely on protected documents would in all probability not proceed, and cases based solely on the evidence of informants whose identity (or existence) the prosecution do not want to disclose have on several occasions been abandoned. This happened to a number of cases involving football `gangs' infiltrated by undercover police officers.

Theoretically pii can be raised by any party or by the judge, but in practice it is almost always asserted by the issue of a public interest certificate signed by ministers or an affidavit claiming public interest, produced by the prosecution. If pii is asserted, the person seeking disclosure of the document must first prove that it is

material to the case. This is not easy, since in all probability he has never seen it. Indeed, in most cases, including the Matrix-Churchill trial, not only the contents of such documents, but even their existence, is not known.

In the **Glor na nGael** case, the Northern Ireland Minister directed the withdrawal of funding from the West Belfast committee of the voluntary group after five years of funding, on the basis that after `security advice' was sought in relation to (unnamed) `persons understood to be prominent of the affairs of the committee', the Minister decided that there was a `grave risk that financial assistance would directly or indirectly assist a paramilitary organisation'. The group challenged the decision and asked to see the material the minister had relied on in his assessment. In response the minister signed a pii certificate in November 1990. Their application for disclosure was rejected on the ground that, since the minister's decision was reasonable, the documents were not necessary to decide that it was lawful. This reasoning, by Carswell J, was rejected by the Court of Appeal, who ordered a re-hearing of the application. Before it could be re-heard, however, the funding was miraculously restored.

If the hurdle of `relevance' is overcome, the judge must then conduct a `balancing exercise' between the public interest asserted in the certificate (eg the need to preserve confidentiality of communications) and the interest put forward by the party seeking the document's disclosure. This is usually expressed as `the interests of justice'. The judge has a delicate exercise to perform; most judges do not want to create a precedent in either direction, and when in doubt they will err on the side of caution, ie secrecy. In a criminal case, though, especially where liberty is in issue, the interests of justice must weigh particularly heavily in favour of disclosure.

Actions involving the police

The doctrine of pii is probably used most frequently in actions involving the police, who are continually claiming immunity for an ever-widening array of internal documents. When Alison Halford took her Chief Constable to court for sex discrimination, the Merseyside police claimed pii for the contents of all Complaints and Discipline (C&D) files on which many of their counter-allegations were based, and the Court of Appeal upheld their claim.[1] Although in the case of Sarah Locker, a policewoman alleging race and sex discrimination, the Employment Appeal Tribunal refused to give immunity to internal grievance procedure statements (Commissioner of Police of the Metropolis v Locker, Independent 19.3.93). Statements given by complainants to the Police Complaints Authority have long enjoyed immunity from production in related civil claims; in a 1989 case,[2] the High Court affirmed that the immunity applied even when its rationale, that complainants would not come forward if they were not guaranteed confidentiality, was completely undermined by the fact that the complainants agreed to the disclosure of their statements.

The police have used such immunity to tactical advantage by cross-examining complainants on discrepancies between their court evidence and the unseen and withheld statements. This tactical advantage was acknowledged by the High Court in 1990, when a lawyer who alleged malpractice in a prosecution for kerb-crawling was refused sight of PCA statements for his civil action. The court held that the police lawyers were entitled to make use of the statements to defend the civil action.[3]

In November 1992 a claim for pii for a police public order manual was upheld in a case involving officers suing their Chief Constable for negligence. The officers had been badly burned during a public order exercise. The court said that nevertheless the manual which the Chief Constable claimed to have been following was immune from production: `If organisers of demonstrations which sought to exploit the weapon of public disorder became aware of police methods for dealing with such situations, the opportunity to frustrate the efforts of the police to impose control is clear.'[4]

However, it has always been clear that the interests of the state in non-disclosure should give way to a `potent' countervailing public interest. In July 1992, the Court of Appeal recognised that there might be a countervailing public interest in disclosure. Two former West Midlands Serious Crime Squad officers had been accused of fabricating interviews with suspects, but the evidence of fabrication was contained in PCA statements. The officers had received £40,000 in damages from newspapers carrying the allegations, and sued the Coventry Evening Telegraph. The newspaper said it could not properly defend itself without the statements. The Court of Appeal said that `if ... these documents pointed clearly towards corruption by named police officers, it was surely not to be tolerated that those same officers should mulch the press in damages while the courts disabled their adversaries from an effective defence by withholding the documents from them. That would be repugnant alike to justice, to the public and indeed to those who gave their cooperation to the PCA.'[5] In December a High Court judge said that police should not be allowed the tactical advantage of denying complainants access to their own PCA statements, saying that the practice `emasculated and frustrated' the whole purpose of the complaint.[6]

Pii and criminal trials

Of course, there can be no more `potent countervailing interest' justifying disclosure of `immune' documents than the establishment of innocence in criminal cases, and this principle is in theory, and sometimes in practice, recognised by the courts. In the Matrix-Churchill case, with the defendants facing a maximum seven-year jail sentence, the judge decided in favour of discovery for this reason; no prosecution could be allowed to proceed where the most revealing documents were suppressed. It was put into practice, too, in Judith Ward's appeal against her conviction for terrorist offences, in which case the Court of Appeal decided that where the prosecution had evidence it did not wish to disclose to the defence, it should not make the decision itself but submit the material to the judge, to make a ruling.[7]

This ruling gave rise to great grumbling in police and prosecuting authorities, who accused defence lawyers of demanding vast amounts of irrelevant material. It was left to *Liberty* to point out that the convictions of the Guildford 4 and the Birmingham 6 cases, as well as Judith Ward's herself, had been achieved largely through non-disclosure of such `irrelevant' material. However, the grumblings had their effect, in an interlocutory hearing of the M25 appeal in January 1993, when the Court of Appeal said it had `gone too far' in Judith Ward's case in saying that the defence always had to be aware of an application for non-disclosure. In cases involving `sensitive' material, the Court said, the prosecution could apply to the judge without the defence being told.[8] In this ruling, the Court pre-empted the Royal Commission on Criminal Procedure, who were reported to be considering making it easier for the prosecution to withhold sensitive evidence from the defence.[9] This proposal is thought to come from ACPO, who in December 1992 were complaining that a number of serious trials have had to be abandoned in order to protect the identity of informants.

`National security'

Another area where secrecy rules is, of course, anything to do with `national security'. Armed Forces minister Archie Hamilton signed a certificate in January 1993 limiting the evidence to be given to the inquest of Seamus McElwain, who was shot in a field in Co

Fermanagh in April 1986. As a result of the certificate, only one of the four undercover officers involved in his killing would give live evidence; the other three would submit written statements, and would not be made available to be questioned.[10] Hamilton was following a 15-year practice whereby coroners in Northern Ireland have routinely granted pii certificates in inquests involving security forces. Belfast coroner John Leckey therefore made history when in April 1993 he rejected a certificate signed by Malcolm Rifkind and ordered undercover soldiers, from 14th Intelligence Company, involved in the killing of three men outside a betting shop in 1990 to give evidence in open court. The coroner said that pii certificates only applies to documentary evidence not to which witnesses could be called, whether they could be `screened' off from the court's view, and what questions they could be asked. The hearing has been adjourned as the Ministry of Defence is to appeal against Leckey's decision. The MOD admitted that it had been `policy' since 1986 to apply for pii certificates to ban sensitive evidence *Guardian 23.4.93 & 25.5.93.* Pii certificates are also signed frequently in employment cases, both in fair employment claims in the north of Ireland, and in cases involving military or security staff in the UK. In February 1992 the foreign secretary signed a certificate preventing disclosure of files needed by a sacked Foreign Office official. The files related to the relationship between MI6 and a former Iranian arms dealer. Douglas Hurd signed another certificate in June 1992 to prevent an industrial tribunal from hearing a case of a former diplomatic guard sacked on alleged national security grounds.

Ministerial frankness

Pii certificates are also used to protect ministerial communications even where no national security issue is at stake. In November 1992 the mine workers challenged the government over its pit closure proposals. In the course of the challenge, the government claimed that letters between energy and industry ministers and the Treasury were immune from disclosure or use in the proceedings.

It is evident from this partial survey that public interest immunity is cited frequently on behalf of government departments, security services and police. It is important to appreciate that pii can be claimed without the issue of a ministerial certificate. Thus, although Kenneth Clarke said in a written answer on 25 November 1992 that he had only signed four pii certificates in the past six months (two in relation to Matrix-Churchill, one in respect of the Police Public Order manual and one other), he did not disclose (because he was not asked) how many times pii had been claimed overall in the period. If all cases in which pii had been claimed was included, the number would have been much higher.

The fall-out from Matrix-Churchill

In the aftermath of Matrix-Churchill there was much recrimination surrounding the pii certificates signed by the ministers. They had hidden behind the advice received from the Attorney-General, that the law required them to issue the certificates, leaving it to the judge to determine whether disclosure should be ordered. On the face of it, their argument was an attractive one, but its inescapable implication is that, if the judge had not ordered disclosure of the documents, the ministers and the Attorney-General would have done nothing to prevent the imprisonment of three innocent men. The real answer to the ministers' argument is that, rather than sign the certificates, they should have made it clear that, with such information in its hands, the prosecution could not proceed.

Pii is a very dangerous weapon in the hands of a self-interested executive with political motives. Now that MI5 is taking responsibility for anti-IRA operations, and with the recent intimations from ACPO, the Royal Commission and the Court of Appeal, the spectre is upon us of criminal trials with identities, notes, reports, observations and statements of witnesses all being suppressed, and with evidence being given in secret or from behind screens. It is difficult to imagine a scenario more inimical to the principle of open justice, `justice being seen to be done'.

The Matrix-Churchill trial pushed the issue of secrecy into the public arena, and has to some extent undermined the untouchability of departments of state and their communications. But the departments are not giving up without a struggle. In April 1993, the senior lawyer for the Customs and Excise (who prosecuted the Matrix Churchill defendants) refused disclosure of similar documents to four men convicted in 1992 of selling arms to Saddam Hussein. At the trial the men kept quiet about their contacts with MI6 and pleaded guilty; in the light of the disclosures made since their conviction they decided to appeal. But the government will not give them anything, although many of the documents are now in the public domain. This refusal has been passed to the Scott inquiry.

[1] Halford v Chief Constable of Merseyside and others, [1992] [2] Makanjuola v Met Police Commissioner, 1989; [3] R v Met Police Commissioner ex parte Hart-Leverton, *Guardian* 6.2.90. [4] Gill v Chief Constable of Lancashire, *Independent* 11.11.92. [5] R v Bromell; re Coventry Evening Telegraph, *Independent* 20.8.92; [6] *Independent on Sunday* 27.12.92; [7] R v Ward, *Independent* 5.6.92; [8] R v Davis and others, *Independent* 22.1.93; [9] *Observer* 3.1.93; [10]*Guardian* 12.1.93.

RESEARCH & INFORMATION NOTICEBOARD

Readers are invited to send in items for this column - conferences, seminars, reports, researchers looking for information. Items should be not more than 300 words.

Control as enterprise: East and West: 21st Annual Conference of the European Group for the Study of Deviance and Social Control, 29 August - 1 September 1993, Prague. The topics to be discussed include: crime control as industry, transferring criminology, destruction and reconstruction of identities and controlled freedom and migration policies. For details contact: Paddy Hillyard, Dept of Social Administration, University of Bristol, 8 Woodlands Road, Bristol BS8 1TN.

Conference on `National security in the democratic state': organised by Quaker Concern for truth and integrity in public affairs in conjunction with Liberty. 30 October at Friends House, Euston Road, London NW1. £25.00 person (£15.00 concessionary rate). Details from: Robin Robison, 44 Holland Street, Brighton, BN2 2WB.

Criminal justice in crisis: Conference on Saturday 18 September at Scarman House, University of Warwick. The conference will be looking at the final report of the Royal Commission on Ms B Royall, Conference Organiser, Law School, University of Warwick, Coventry CV4 7AL.

Round table on European Action Against Racism, Xenophobia and Intolerance in Europe: to be held in Oslo, Norway in November 1993. Organised by the North-South Centre of the Council of Europe. Contact: North-South Centre (Bas Klein), 229-4 Av. da Liberdade, P-1200 Lisbon. Tel: ++ 351-1-522903.

Statewatch*ing* the new Europe: a handbook on the European state: 192 pages, publication August 1993. The handbook includes Chapters on: From Trevi to Europol and beyond; Secret Europe; Police forces; Security services; Northern Ireland; Immigration and asylum; Inside racist Europe; plus appendices: glossary of groups and organisations; ECHR case law; the Schengen Agreement; border controls; and a bibliography. Cost: £3.95 plus 55p p & p, total £4.50 from: Statewatch, PO Box 1516, London N16 0EW.

Contributions: Statewatch welcomes contributions of stories and articles, cuttings, reports and documents. Please send to the address below, or ring us on 081-802-1882.

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