

statewatch

monitoring the state and civil liberties in the UK and Europe

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EU OFFICIALS VISIT TURKEY TO SET UP CAMPS

- the Presidency

“had certainly never seen any papers on it”

The adoption of the 46 point Action Plan on the influx of migrants from Iraq and the neighbouring regions on 26 January was followed by a series of moves which emphasised the far-reaching nature of the Plan (see *Statewatch*, vol 8 no 1). The Action Plan does not just refer to Iraq, indeed the initiative is primarily concerned with plugging the gaps in the operation of existing policies (for example, the Dublin Convention and Eurodac) and second, and specifically, to deal with migrants coming through Turkey. On 29 January no less than seven Council Working Parties were circulated by the EU Presidency with the “EU action plan” assigning task to each (Asylum, EURODAC, Migration, Visa, Europol, CIREA and CIREFI Working Parties). To effect the Plan a high-level group visited Turkey to discuss the setting in of “camps” with EU help from which UNHCR are to be expressly excluded.

At the end of April a Joint Action was adopted to provide finance for the “voluntary repatriation of displaced persons who have found temporary protection” in the EU. At the end of May the chair of the Justice and Home Affairs Council, Jack Straw for the UK Presidency, denied all knowledge of plans being made by EU officials for “camps” in Turkey.

Joint Action

The Joint Action, adopted on 27 April, refers to the “voluntary repatriation” of: a) “displaced persons who have found temporary protection” in the EU; b) asylum seekers and c) “the Council and Commission” have confirmed that it:

may be used for the funding of projects to assist the voluntary return of third-country nationals holding a permanent residence permit in one of the Member States.

The wording of the Joint Action suggests in Article 1.2 migrants

and others would be repatriated to “their country of origin”. However, this may not be the only use of the Joint Action. The accompanying press release on 27 April made clear the link to the Action Plan, which talks of returning people to their “region of origin”, by saying that the Joint Action gave “a legal and financial basis to the implementation of the Action Plan on the influx of migrants from Iraq and the neighbouring region.”

The Action Plan also allows for another element in the initiative by seeking to “identify safe areas within the region of origin (“internal flights” options)”. It would appear that people given temporary protection and asylum seekers from within the EU could be collected together and sent/“repatriated” to “camps” in the “region of origin”. The K4 Committee report on the visit to Turkey spells out what a “region of origin” might be when it refers to migrants in or passing through that country from Iraq, Iran, Egypt, Sri Lanka, Pakistan and Bangladesh.

EU officials meet with Security Police and Ministers

The EU high-level group of officials visiting Istanbul and Ankara included the chair of the K4 Committee, the chair of the Migration Working Group, with representatives from the Commission and the General Secretariat of the Council (DG H). On 9 March in Istanbul the EU group met with Mr Cernal Aydin, Deputy Head of the Security Police in the Istanbul Police Department and Mr Orgun Aksu, head of the foreigner's branch of the Police Department. They said they were aware of “illegal immigration by land from the neighbouring region” from the six named countries (see above). Among their requests was help on the “readmission of third country nationals to Bangladesh and Pakistan”.

On 10 March the EU group met officials from the Ministry of Foreign Affairs and the Ministry of the Interior. Mr Erkan Gozer, Director General for Consular, Legal and Property Services told them that Turkey was a:

transit point given the attraction of the EU to illegal third country

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UK: Stop & search & arrest and racism see page 16

Schengen:report shows over 14 million entries see page 27

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national immigrants seeking asylum for economic purposes.

It should be noted at this point that nowhere does the document refer to Kurdish people. Turkey, with help from Italy, was going to create:

reception houses where illegal immigrants could be held pending their removal. The Presidency and the Commission indicated that this could be a project where EU expertise and funding might be of benefit. Turkey said they were open to offers of assistance.

And,

The Turkish authorities did not see UNHCR involvement in the reception houses as appropriate, since only illegal immigrants would be held there, nor were they happy to see closer cooperation generally on this issue with UNHCR.

They could however "accept a contribution", possibly by UNHCR in training for Turkish border guards.

The Turkish officials said that the setting up of "reception housing" was only one element and that what they needed was for the EU to give them advice and help on returning people to third countries (and technical equipment). They "were not interested in taking the initiative in developing formal readmission agreements" but "would be content for the EU to explore readmission agreements with Bangladesh and Pakistan on Turkey's behalf."

At the meeting of the K4 Committee on 26-27 March a six-point plan was agreed following the visit. The points, together with the "lead" EU countries in brackets, are:

- i) *"to assist Turkey in the improvement of conditions for detaining illegal immigrants prior to removal" (Italy)*
- ii) *"exchange of experience on removals to Bangladesh and Pakistan" (UK)*
- iii) *"experiences on formulation of laws on illegal immigration" (Belgium)*
- iv) *"expertise on the detection of false documents, including possible technical assistance and Community funding" (Germany)*
- v) *"operational information involving illegal immigration, in particular where trafficking is involved" (Netherlands)*
- vi) *training Turkish border guards to properly screen asylum-seekers (Austria)*

EU Minister says he has "never seen any papers on it"

At the Justice and Home Affairs Council on 28 May Jack Straw for the EU Presidency was asked by Martin Walker of the *Guardian* about EU funding to help set up camps in Turkey to hold refugees from which UNHCR would be expressly excluded. Mr Straw replied that he:

had certainly never seen any papers on it

When pressed he replied that the question "had never arisen" and that he had:

seen no proposals to provide funds for camps

It is extremely worrying feature of justice and home affairs in the EU that Ministers having agreed the broad policy (the Action Plan) have no knowledge of how it is put into practice by officials.

Chronology

26 January: *General Affairs Council adopts the Action Plan on the influx of migrants from Iraq and the neighbouring region*

29 January: *Detailed "EU action plan" sent to eight Council Working Parties.*

9-10 March: *K4 Committee delegation visits Istanbul and Ankara*

26-27 March: *K4 Committee discusses first report of visit to Turkey*

21 April: *The UK Presidency send a "Note" to the K4 Committee taking into account the discussion on 26-27 March*

27 April: *General Affairs Council adopted a Joint Action on "financing specific projects in favour of displaced persons who have found temporary protection in the Member States and asylum seekers" which is "intended to facilitate the voluntary repatriation of displaced persons who have found temporary protection.."*

28 May: *For the UK Presidency Jack Straw, Home Secretary, says he has "never seen any papers on it" [the K4 Committee visit to Turkey to set up camps]*

EU Action Plan on the influx of migrants from Iraq and the neighbouring region, Limité, 5503/98, 22.1.98; Influx of migrants from Iraq and the neighbouring region: EU action plan, Limité, 5593/98, 29.1.98; Influx of migrants from Iraq and the neighbouring region: report of the meetings held in Istanbul and Ankara on 9 and 10 March 1998, Limité, 6938/1/98, 21.4.98; Adoption in the official languages of the Communities of Joint Action..., Limité, 6691/98, 9.3.98; Joint Action on the basis of Article K.3 of the TEU concerning the financing of specific projects in favour of displaced persons who have found temporary protection in the Members States and asylum seekers, 27.4.98; General Affairs Council, press release, 27.4.98; EU asylum policy - help Turkey to keep people out, Refugee Council, press release, 18.5.98.

EUROPE

EU

Austria takes over Presidency

On 1 July Austria took over the Presidency of the European Union from the UK. Its programme on justice and home affairs in the field of legal cooperation includes harmonising the statute of limitations for serious crimes; measures to protect the euro from forgery; continuing work on the Joint Action to combat corruption in the private sector; and trying to finish work on the draft Convention on Mutual Assistance in Criminal Matters - "including provisions on the interception of telephone communications". In the field of civil law they will start work on a draft Convention on the law applicable to non-contractual obligations (Rome II).

The entry into force of the Europol Convention on 1 October will require a number of measures, as will preparatory work for the new powers to be given to Europol under the Amsterdam Treaty which is expected to come into effect during the following Presidency (Germany). Other policing measures are to include the computerised registration of serial offenders (murder and sexual assault) and the harmonisation of telecommunications equipment.

The Austrian Presidency will also be responsible for "completing" preparation for the incorporation of the Schengen acquis into the *acquis communautaire* (the Treaty of the European Communities, TEC and the Treaty of European Union, TEU). Plans are to be made for the transfer of the Schengen Secretariat to the General Secretariat of the Council and for the amalgamation of the Schengen and Council Working Parties.

Immigration

In the immigration and asylum field work will continue on the draft Convention on Eurodac; "equitable and mutually supportive arrangements will need to be found for sharing responsibility in the event of a mass exodus of refugees"; and the drawing up of a "uniform deportation agreement between the EU and third countries".

The Austrian Presidency will be taking forward the enlargement process including the adoption and implementation of the justice and home affairs *acquis* - the first wave of countries

are to be Poland, Hungary, Slovenia, the Czech Republic, Estonia and Cyprus. However, the Austrian government - a Social Democrat/Conservative coalition - has major reservations about the right of free movement for the peoples of these countries which will come with EU entry. The Social Democrat Federal Chancellor says that Austria has a 850-mile frontier with Hungary, the Czech Republic and Slovenia and that once the border are opened up to 300,000 "foreign workers" are forecast to move to Austria. They therefore want a long transition period to be enforced on these countries: "We have to recognise the special fears of the people. Austria has the longest land borders with Eastern Europe", said Chancellor Klima.

Austria 1998: Programme of the Austrian EU-Presidency 1998, SN 3268/1/98; Times, 2.7.98.

WEU

Armed rapid reaction police force

The Parliamentary Assembly of the Western European Union (WEU) agreed at its six-monthly meeting in Paris in June that its council of member countries ministers should: a) ask each member country to put forward police officers experienced enough to lead advance reconnaissance parties; b) establish a new policy sub-group for "police missions"; c) provide for the rapid deployment of specialised police forces for international crises; d) ask member countries to commit specialised police units, answerable to the WEU, to be the core of a rapid reaction force.

The arguments for creating a "regional" armed rapid reaction police force to act in central and eastern Europe were that UN/NATO troops were ill-equipped to cope with long-term commitments, like in Bosnia, where there was a need for a non-military force to remain after troops withdraw. SFOR in Bosnia, it is argued, has found itself having to undertake the supervision of elections and maintaining order. This task, the US has argued, is more suited to an 800-strong EU police force. One of the reports considered by the meeting of the Assembly said: "Maintenance of public order, riot control and the fight against terrorism are tasks which demand a great deal of specific training and knowledge and these are not usually understood by military forces or basic police forces."

This decision may lead to the creation of an EU paramilitary police force drawn from existing specialist squads at the national level.

The WEU has found a new lease of life following the Amsterdam Treaty which in Article 17 of the revised Treaty on European Union gives it an enhanced role. The future possibility of integrating the WEU into the European Union is provided for.

The WEU was founded in 1954 as a western European military alliance alongside NATO - its member states are: Belgium (1954), France (1954), Germany (1954), Greece (1995), Italy (1954), Luxembourg (1954), Netherlands (1954), Portugal (1990), Spain (1990) and the UK (1954). All of these countries are also members of NATO, as are the WEU's Associate Members - Iceland (1992), Norway (1992) and Turkey (1992). Denmark, a member of NATO, has observer status with the WEU. Four EU member states are not in NATO - Austria, Finland, Ireland and Sweden - they too just have observer status with the WEU. Ten central and eastern countries have an even lesser status as "Associate Partners". Only the 10 full EU member states have decision-making powers.

A little-noticed report from the WEU's Council of Ministers in Madrid on 14 November 1995 demonstrates the growing ambitions of the WEU (it is now on the internet at: <http://www.weu.int>). Just as European security and intelligence services have had to adjust to new "threats" to maintain

themselves so the WEU also sees a wider "peacekeeping" role for itself. "Organised crime" and drugs have, the reports says, a potential to "provoke both internal instability and to affect relations between countries" (para 56). "Uncontrolled or illegal immigration" has "become an issue relevant to European stability and security", moreover:

illegal migration can pose a threat to internal security and affect law and order in our societies (links with organised crime, "importation" of political conflicts elsewhere) (quotes in original; para 59).

"International terrorism and organised crime" are also referred to (para 149).

The seat of the WEU Council and Secretariat was moved from London to Brussels in 1993 together with the "Planning Cell" which includes an "Intelligence Section".

Rapid reaction - the security and defence arm of the European Union is set to set up a special police force to tackle trouble spots, Keith Nuthall, "International Police Review", July/August 1998, p31; European Security: a Common Concept of 27 WEU Countries, Extraordinary Council of Ministers, 14 November 1995, Madrid.

Europe - new material

The new EU after Amsterdam - from a Swedish point of view, Per Gahrton, member of the European Parliament, the Greens, Sweden., 141 pages. Chapters on democracy, foreign policy and the Western European Union (WEU), Schengen and Europol, and the Amsterdam Treaty implications. Bokförlaget Gröna Böcker 1998, Box 1244, 221 05 Lund, Sweden.

Searching for a Humane Europe! Bashy Quaraishy. *Ethnic Debate Forum*, Nyelandsvej 53, 2000- Fredericksberg, Denmark, 1998, 56 pages. Chapters on all aspects of the EU's and Danish immigration policies, racism, Schengen, and migrants rights.

Parliamentary debates

European Community (Convergence Criteria) Commons 21.4.98. cols. 696-719

European Communities (Amendment) Bill Lords 27.4.98. cols. 12-76 & . cols. 91-142; **Lords** 28.4.98. cols. 154-218 & cols. 233-284

Mutual Assistance in Criminal Matters: ECC Report Lords 7.5.98. cols. 791-802

European Communities (Amendment) Bill Lords 12.5.98. cols. 946-1013 & cols. 1030-1070; 14.5.98. cols. 1177-1192, cols. 1201-1244 & cols. 1261-1270; 21.5.98. cols. 1778-1840.

European Communities (Amendment) Bill Commons 9.6.98. cols. 933-979

Cardiff European Council Commons 11.6.98. cols. 1227-1285

CIVIL LIBERTIES

Civil liberties - in brief

■ **UK: MPs lower gay age of consent:** MPs in the House of Commons voted overwhelmingly to lower the gay age of consent to sixteen in June. The reform, which was backed by the leaders of the three main political parties, will now face opposition in the unelected House of Lords, where it is expected to be opposed by Christian peers. MPs are also going to set up an all party parliamentary group to press for further gay rights reforms following the vote. The Finnish parliament also voted for "equalisation" in June. And in Germany the federal states of Hamburg, Schleswig-Holstein and Lower Saxony have tabled a motion in the Bundesrat calling for same-sex partners to have the

same rights as married couples. The bill calls for an end to legal discrimination against lesbian and gay couples. It would extend all privileges enjoyed by married couples to same sex partnerships, including the right to refuse to testify in court and the right to adopt children.

■ **UK: Pain relief precedent?** A man who grows marijuana to relieve pain caused by a broken back was recently cleared of the charges that followed a police raid on his home. The proceedings at Manchester Crown Court ended on 5 June with the jury taking just 40 minutes to reach their verdict on Colin Davies, charged under the 1971 Misuse of Drugs Act. The decision follows a similar result in early April, when Alan Blythe was cleared in Warrington of charges relating to cultivation and supply. He was, however, fined £100 for possession of the cannabis that he had grown for his wife who has multiple sclerosis. Less than a week after the acquittal of Mr. Davies, the Home Office announced that it has granted two licenses to GW Pharmaceuticals to cultivate and carry out clinical trials of the drug. Although a small number of such licenses are already in force, the company is the first to propose testing on a large-scale. *Guardian*, 4.4.98, 6 & 12.6.98.

Civil liberties - new material

Political corruption and the law in the UK, Philip A Thomas. *Journal of Civil Liberties*, vol 3 no 1, 1998, pp5-30. Looks at the work of the Nolan Committee and the cases of Jonathan Aitken and Neil Hamilton and concludes: "paradoxically, perhaps the one constructive service those politicians have done for their country is to make corruption a national issue which demands action."

Parliamentary debates

Public Interest Disclosure Bill *Commons* 24.4.98. cols. 1124-1144

Human Rights Bill *Commons* 20.5.98. cols. 975-1074

Human Rights Bill *Commons* 3.6.98. cols. 388-475

Public Interest Disclosure Bill *Lords* 5.6.98. cols. 611-639

Sexual Orientation Discrimination Bill *Lords* 5.6.98. cols. 639-660

IMMIGRATION

GERMANY

Migrant "guests"

Mr Kohl, the German Chancellor, reiterated his position that immigrants abusing their status as "guests" in Germany should be deported. He was speaking at an election strategy meeting organised by his partner in government the Christian Democrats (CSU) in Bavaria. The authorities in Munich have already ordered a 13-year old Turkish youth, Mehmet, and his parents to leave the country voluntarily or face forced expulsion; his father has been working in Germany for 30 years - the parents are appealing against the deportation order. Meanwhile the Bavarian government has proposed an amendment to the Aliens Law in the Bundesrat to introduce the policy of expelling the parents of "delinquents" as a national policy.

Guardian, 10.7.98; *Migration News Sheet*, July 1998.

Immigration - new material

Life in Colombo for Tamils: Violation of human rights. Report on findings of research trip to Sri Lanka, May 6-21 1997, Sonia Routledge, 105pp, £4. This report summarises an investigation into the

"conditions of life in Colombo for Tamil residents of the city". It contains sections on "Arrests, Detentions and Disappearances", "The dangers for Returnees" and "The Persecution of Tamils in Colombo..." The section on failed asylum seekers will prove invaluable for those working in the field as will the chapter on persecution, which examines the role of "lodges" - "in practice, virtual prisons" - in curtailing Tamil freedom of movement. A number of appendices present individual accounts and the relevant emergency legislation. Available from the author at: PO Box 13794, London E12 5TX.

Control of immigration: statistics United Kingdom, second half and year 1997, Keith Jackson & Andy Bennett. *Statistical Bulletin* (Home Office) Issue 13/98, 21.5.98.

Asylum statistics United Kingdom 1997, Madelaine Watson & Philip Danzelman. *Statistical Bulletin* (Home Office) Issue 14/98, 21.5.98.

Asylum policy: protection not prison, Don Flynn. *Chartist* May/June 1998, pp16-17. This piece looks at the "awful mess" of the UK's refugee policy. While a "great deal of blame lies with the previous government's denial of the human rights dimension to refugee policy" the current government's overdue Home Office review is expected to announce an extension of Immigration Act detentions.

Campsfield Monitor Issue 12 (May) 1998. Latest issue of the Monitor contains updates on the Group 4-run immigration detention centre. Available from: 111 Magdalen Road, Oxford OX4.

Scandal of the missing children. *CARF* 44 (June/July) 1998, pp4-5. This piece looks at the plight of young female asylum-seekers and asks why the government does not reverse the Conservative Party policy of placing immigration policy above childrens' needs.

Commentary on the draft convention on rules for the admission of third-country nationals to the member states of the European Union. *Standing committee of experts on international immigration, refugee and criminal law.* 19 May 1998, 12 pages. This report, sent to the Civil Liberties Committee of the European Parliament, is critical of the draft Convention on two points: first, whether EU member states will be allowed to treat third-country nationals more favourably than the minimum standards set out, and second, that the text does not make clear whether "third-country nationals have to be treated as people with fundamental rights" thus setting limits to the actions of member states. From: Standing committee of experts on international immigration, refugee and criminal law, p/a Secretariat, postbus 201, 3500 AE Utrecht, Netherlands.

Mind the Gap! Ineffective Member State implementation of European Union asylum measures, Steve Peers. *Refugee Council and Immigration Law Practitioners' Association (ILPA)*, May 1998, 24 pages. An excellent report which shows that asylum seekers will have their cases determined according to very different criteria depending on which EU member state they apply in. Nick Hardwick, Chief Executive of the Refugee Council said: "The EU seems more preoccupied with finding ways to keep potential refugees out of the EU than protecting them". Andrew Nicol, Chair of ILPA, said: "Member States should harmonise their practices in line with obligations under international human rights conventions and to the best procedures in the Community". From: ILPA, Lindsey House, 40-42 Charterhouse Street, London EC1M 6JH or Refugee Council, 3 Bondway, London SW8 1SJ.

Parliamentary debates

Campsfield House Detention Centre *Lords* 29.4.98. cols. 338-361

Palestinian refugees *Commons* 29.4.98. cols. 303-310

MILITARY

Military - in brief

■ **WEU: Europe defence "identity" within NATO:** Western European Union (WEU) military chiefs met in April in Greece

to approve details of joint NATO-WEU procedures needed to transfer NATO airlift, communications or intelligence assets to the WEU for separate humanitarian, rescue or "peace enforcement" missions. A week earlier, NATO and WEU held one of four joint council meetings planned each year to compare documents aimed at harmonising consultation procedures. According to a NATO source the Military Committee of NATO is developing three "typical" mission profiles for WEU use of NATO assets involving humanitarian, disaster relief and one large-scale and a small-scale peace enforcement mission, below the scope of a Bosnia-type operation. A joint field exercise for commanders and troops is planned for the year 2000. *Jane's Defence Weekly*, 15.4.98.

■ **France: French increase their military spending:** France will increase spending on military equipment by 4.5% per annum for the coming four years and retain all its big defence programmes after a review of the country's military needs by the Socialist-led coalition government. Several important projects initiated during the Cold War - the Rafale fighter, the Tiger helicopter, the Leclerc main battle tank, nuclear missile submarines and the aircraft carrier Charles de Gaulle will continue without important changes. But the Horus espionage radar satellite that was planned with Germany and the TRIGAT long range anti-tank missile will be scrapped. *Jane's Defence Weekly*, 15.4.98.

■ **Eurocorps HQ set to deploy:** The headquarters of the multinational Eurocorps is set to deploy on operations for the first time since its inauguration in November 1993. The HQ will deploy to Bosnia in July as part of the NATO-led Stabilisation Force (SFOR). The HQ comprises personnel from Belgium, France, Germany, Luxembourg and Spain. The deployment will comprise 32 officers, 91 NCOs, 23 other ranks and a civilian. *Jane's Defence Weekly*, 6.5.98.

Military - new material

Learning Zone, B. Starr. *Jane's Defence Weekly*, 27.5.98 pp 24-27. NATO is looking at SFOR's experience in Bosnia as a model for future coalition warfare.

Identity crisis, M. Rogers. *Jane's Defence Weekly*, 3.6.98 pp 46-58. Crises in Bosnia, Albania and Kosovo have highlighted the lack of a working European security policy.

Instability in the eastern Mediterranean - A Cyprus crisis in the making, C Schofield and P. Hocknell. *Jane's Intelligence Special Report*, no 17, March 1998.

Warfare in the global city - The demands of modern military operations in urban terrain, M. Hewish and R. Pengelley. *Jane's International Defense Review*, no 6/1998 pp 32-43.

Grossauftrag fuer die europaeische Panzerindustrie [Big contract for the European armour industry] *AMI*, April 1998 pp 31-33. British-German plans for a new armoured personnel carrier.

Die Europaeisierung der deutschen Luft, Raumfahrt und Verteidigungsindustrie [European trend for the German Aerospace and Defence industry, W. Heinzmann. *Europaeische Sicherheit*, no 5/98 pp 16-20

Die Westeuropaeische Union - Rolle und Perspektiven [The WEU - mission and perspective], P.M. Sommer. *Europaeische Sicherheit*, no 5/98 pp 45-47.

EU pays high price for French support on code of conduct, G. O'Callaghan. *BASIC Reports*, no 64, 4.6.98 pp 1-2.

Sharpening the Weapons of Peace: The Development of a Common Military Doctrine for Peace Support operations, Lt Col Wilkinson. *ISIS Briefing Paper*, no 18, April 1998.

Firari. Campaign Against Compulsory Military Service in Turkey *Sayi*

5, 1998. This bulletin contains a round-up of reports relating to the campaigns activities opposing military service in Turkey. Available from: PO Box 2474, London N8; Tel. 0181 374 5027.

The technology of political control, Robin Ballantyne. *Covert Action Quarterly* (Spring) 1998, pp17-23. This important article looks back to warnings about the development of so-called "non-lethal weapons" and new technologies of political control by the British Society for Social Responsibility of Scientists twenty years ago. It concludes: "...there should be no illusions about the future targets of these technologies of political control: They are us."

Small arms, wrong hands - a case for government control of the small arms trade. Oxfam, April 1998. 88 pages. A detailed report on the supply of small arms by UK countries to the third world. While welcoming some of the recent changes it concludes that "current controls are inadequate.. the information held is inaccurate" and is a poor foundation for enforcing controls. From: Oxfam, 274 Banbury Road, Oxford OX2 7DZ.

Parliamentary debates

Nuclear Material (Reprocessing) *Commons* 22.4.98. cols. 821-827

Royal Air Force *Commons* 23.4.98. cols. 979-1063

Sierra Leone (Arms Sales) *Commons* 6.5.98. cols. 721-731

Sierra Leone: Arms Sales *Lords* 11.5.98. cols. 820-829

Sierra Leone: Sandline International 14.5.98. cols. 1174-1177

Sierra Leone *Commons* 18.5.98. cols. 598-656

Territorial Army *Commons* 18.5.98. cols. 657-701

NORTHERN IRELAND

PCA "lack of resources" prevents Diarmuid O'Neill investigation

Nearly two years after the death of Diarmuid O'Neill, shot six times by members of Scotland Yard's Tactical Firearms Group (SO19), the Police Complaints Authority (PCA) have still to produce their report into the matter. Police described the killing as the result of a "shootout" following a raid on a house in Hammersmith, west London, during a search for members of the IRA. Subsequent reports, said to include a security service tape recording, have suggested that those in the house were unarmed. Following the shooting, the PCA set a "target date" of January 1997 for the submission of their report. However, they have recently stated that they do not have the resources to complete an investigation in the short-term, with a spokesman declaring that "there are only two officers on the case and they have a mountain of paperwork". Such a lengthy delay has raised obvious questions as to whether this is a deliberate attempt to keep a potentially unlawful killing from the public eye. The Justice for Diarmuid O'Neill Campaign (see *Stewatch*, vol 7 no 2) has written to the PCA and Home Secretary on a number of occasions without adequate response and has resolved to picket the PCA on a regular basis. The campaign can be contacted at: BM Box D O'Neill, London WC1N 3XX.

Northern Ireland - new material

The devil is in the detail, Eamann McCann. *Red Pepper* No. 49 (June) 1998, pp18-19. This article critically considers the Northern Ireland peace agreement.

Just News Vol. 13, nos 4 & 5 (April-May) 1998. The latest editions of the bulletin from the Committee on the Administration of Justice contain

pieces on plastic bullets, statistics on the operation of emergency legislation, the judiciary, deaths in Maghaberry prison, equality and a review of Parade Commission Statutory documents. CAJ have a website: http://ourworld.compuserve.com/homepages/Comm_Admin_Justice/

Parliamentary debates

Northern Ireland (Belfast Agreement) Commons 20.4.98. cols. 479-500

Northern Ireland (Elections) Bill (Programme) Commons 22.4.98. cols. 833-846

Northern Ireland (Elections) Bill Commons 22.4.98. cols. 847-929

Northern Ireland Commons 22.4.98. cols. 930-940

Northern Ireland (Elections) Bill Lords 6.5.98. cols. 614-667

Northern Ireland (Elections) Bill Lords 7.5.98. cols. 775-782

Police (Northern Ireland) Bill Commons 7.5.98. cols. 891-933

Electoral Fraud (Northern Ireland) Lords 13.5.98. cols. 333-340

Police (Northern Ireland) Bill Lords 18.5.98. cols. 1354-1383

New Northern Ireland Assembly (Elections) Order 1998 Lords 18.5.98. cols. 1383-1390

Northern Ireland Referendum Commons 1.6.98. cols. 33-41

Northern Ireland (Sentences) Bill Commons 10.6.98. cols. 1082-1168

POLICING

UK

Judge criticises use of CS on pensioner

A jury at Luton Crown Court has cleared a police officer of assault after he sprayed CS gas into the face of a frail, 67-year old pensioner who parked his car in a restricted area. Kenneth Whittaker, who walks with a stick and suffers from arthritis and sciatica, had stopped to allow his disabled wife to visit her hairdresser when he was confronted by PC Andrew Taylor who accused him of causing an obstruction. In the ensuing argument the constable sprayed Mr Whittaker with CS gas, pulled him from the car and handcuffed him - the six-foot tall policeman explained to the court that this was necessary because he feared for his safety.

After the jury returned its controversial verdict of not guilty Judge Daniel Rodwell expressed serious doubts about the decision and refused to award the police officer costs:

I think it would be totally inappropriate to order any costs from public funds for this defendant. Notwithstanding the verdict, this has been a disturbing and upsetting case... It would be totally wrong to fund this defendant's costs out of public money.

The jury's finding has been widely criticised and John Wadham, on behalf of the civil liberties group, Liberty, called for the police use of CS "to be suspended until it is certain that the spray is safe and, in particular, that all police officers are using it only as a last resort." Even the Crown Prosecution Service warned that CS sprays were intended to protect police from serious attacks and not for law enforcement. However, the Association of Chief Police Officers said that it had no plans to review the use of the spray.

After the trial it was revealed that Mr Whittaker had already received £7,500 in compensation from Bedfordshire police after taking action in the civil courts against PC Taylor. In a separate incident, following a peaceful pensioners' protest outside the House of Commons in central London, the Sergeant at Arms,

Peter Jennings, has been asked to investigate complaints that police officers had pushed and shoved elderly people.

Recently, there has been a proliferation of cases where CS spray endangered children. In Bridgewater, Somerset, a family making a peaceful protest over delayed benefit payments was sprayed without provocation by police officers. In Manchester a 10-year old child was taken to hospital after policemen used the spray while trying to arrest a man. And, last year, in Bristol, the spray was used at a children's home after a 14-year old threatened staff. In its annual report for 1997-98 the Police Complaints Authority expressed concern after receiving 254 complaints about police use of CS gas.

Guardian 10.6.98; *Independent* 3.6.98; *Times* 11.6.98; *Big Issue* 8 & 15.6.98.

Police escape "unlawful killing" prosecution

Following its latest review the Crown Prosecution Service (CPS) has announced that it will uphold its original decision not to prosecute any police officer following the unlawful killing of Nigerian-born asylum seeker, Shiji Lapite. Lapite was killed in December 1994 after being beaten by police officers, one of whom admitted kicking him in the head as hard as he could, after they came across him "behaving suspiciously". At an inquest, in January 1996, a pathologist counted 45 separate injuries to Mr Lapite, including the fractured voice box which killed him (see *Statewatch* Vol 5, nos 1 & 4, Vol 6, no 1 and Vol 7, no 4/5).

Despite the inquest jury's conclusion that Mr Lapite died as a direct result of the unlawful and excessive violence used against him by the police, the CPS concluded that: "In the absence of evidence to show that the actions of the police officers either singly or in concert were a substantial cause of Mr Lapite's death, there is not a realistic prospect of conviction against any police officer for manslaughter". They noted that after consulting the pathologists involved in the original investigation, none of them "was able to state, without reservation, that compression of the neck was a substantial cause of Mr Lapite's death."

However, Raju Bhatt, solicitor for Mr Lapite's family, pointed out that "There was no doubt in the jury's mind that this man had died as a result of an unlawful and dangerous neckhold." The CPS announcement was also condemned by Deborah Coles, of Inquest, who said:

Today's decision once again brings the entire criminal justice system and the role of the Crown Prosecution Service into disrepute. At a time when the public is being told that there will be major improvements in the prosecution of serious crime the CPS have failed to demonstrate that deaths in police custody are taken seriously and that police officers will be subject to the full force of the law.

The Police Complaints Authority will now reconsider whether disciplinary action need be taken against any officers.

Crown Prosecution Service press release 4.6.98.; Inquest press release 4.6.98.

Tough on crime, tough on the causes of crime?

In a massive corruption probe, Scotland Yard's Complaints Investigation Bureau (CIB) continue to look into the affairs of up to 250 Metropolitan police officers, many said to be senior detectives from some of the force's most prestigious divisions. In January, the homes of 14 serving and five retired officers from the Yard's notorious Flying Squad were raided by the so-called "ghost squad", resulting in 13 suspensions from the Rigg Approach office in north-east London (see *Statewatch* vol 8, no 1). June and July has seen further raids, including one on a

Detective Sergeant arrested and bailed for the alleged theft of £110,000 of police funds. The number of suspensions currently stands at 23, although the CIB's investigations are expected to persist well into next year. A plethora of allegations surround the enquiries, including the contamination of evidence, bribery, drug dealing and contract killing. The Met's Commissioner Sir Paul Condon, who has expressed his intent to "deal with this mischief", is reportedly concerned about morale.

Meanwhile, four officers from Cleveland CID have been served with disciplinary notices informing them that complaints against them are under investigation. The internal inquiry is believed to be connected to Britain's largest ever heroin seizure in 1993. The case that followed the seizure collapsed when two detectives named the arrestee as their informant. A Police Complaints Authority spokesman said only that serious allegations were being investigated, while Cleveland Police stated that although one of the four was already under suspension the investigation was separate from "Operation Lancet", the corruption probe that has seen the suspension of the head of the Middlesbrough CID and zero tolerance "pioneer" Ray Mallon. High-profile and hard-line, Mallon's numerous soundbites include "we target a minority group - called criminals". Six other detectives have also been suspended, including Sean Allen and Brendan Whitehead who face allegations that they supplied heroin to a suspect in return for confessions. A further four have been "moved to other duties".

"Operation Jackpot", the three year inquiry into corruption at Stoke Newington police station triggered by widespread accusations of drug dealing has also recently resurfaced. Five officers, then at the north London station, were seeking a retrial of a libel action against the Guardian. Reynald Bennett, Bernard Gillen, Paul Goscombe, Gerald Mapp and Robert Watton claimed two articles written by Duncan Campbell in January 1992 suggested that they were involved in planting and dealing drugs. A High Court jury dismissed their claims in February of last year. Constable Ronald Palumbo, who also claimed defamation within the articles, was unable to see his writ served after being jailed for 11 years prior to the action for conspiring to smuggle £2 million pounds worth of cannabis into Britain (see *Statewatch* vol 7, no 1). The latest bid at the Court of Appeal, described as "wholly unjustified" by the newspaper's defence counsel, was thrown out on 8 July. The Police Federation, who supported the five in both actions, now face a legal bill approaching £1 million and, presumably, questions from rank-and-file officers as to its utilisation of union funds.

Elsewhere, PC John McAnenny was sacked in June by West Midlands police after 24 years service. He is currently awaiting trial in France after being arrested aboard a yacht in Calais loaded with cannabis estimated to be worth around £1 million. In March, the Metropolitan police dismissed John Cappello (Paddington Green) and Keith Roberts (Finsbury Park) after they admitted selling ecstasy to a colleague. Judge George Bathurst was incredibly lenient on the two, instead castigating their colleague, PC Sean Hallewell, and the tabloid newspaper to which he sold his story. Cappello and Roberts each received 200 hours community service, were ordered to pay £600 toward the prosecution costs and hand over the £35 received for the three and a half tablets. In Halifax, Andrew Haigh of the West Yorkshire force was remanded in police custody after being charged with the possession of amphetamines with intent to supply.

Guardian, 7.10.97, 2.12.97, 21.3.98, 18-19.6.98, 19.6.98, 10.7.98; *Independent*, 20.12.97, 30.1.98, 18.3.98, 5.6.98, 16.6.98, 10.7.98; *Police Review*, 30.1.98; *Times*, 21.3.98, 11.6.98.

Officers suspended over killing

Five Sussex police officers have been suspended and may face

criminal charges over the shooting of James Ashley in Hastings. On January 15, police entered Ashley's flat at 4am. In bed with his girlfriend, naked and unarmed, the 39-year-old was subsequently shot in the chest by Chris Sherwood of Sussex's Special Operations Unit. Constable Sherwood was suspended in February. Kent's assistant chief constable Barbara Wilding is heading the investigation into the shooting, and announced in May that a further four officers had been suspended. A Superintendent, acting Chief Inspector, an Inspector and another PC face charges over the alleged misrepresentation of intelligence leading to the armed raid. Following the shooting, Sussex chief constable Paul Whitehouse stated that the operation had been intended to track drug traffickers and two men wanted over an attempted murder. It later emerged that the attempted stabbing in question had in fact been averted by Mr Ashley who had pulled the assailant away. No significant drug seizures were made, and three men arrested at Ashley's flat on the night he was killed were released without charge. Prior to the suspensions, Ashley's family lodged complaints against Mr Whitehouse for implying wrongdoing on behalf of the deceased, attempting to pre-judge the independent inquiry by publicly backing his officers and leaking information to the press. However, the complaints were rejected by the Sussex police authority which has the power to vet allegations against senior officers before they reach the PCA. The inquest into the killing has been adjourned until July 22.

PCA "concerned" at police sexual assaults and harassment

The Police Complaints Authority (PCA), in its thirteenth annual report covering 1997-1998, recorded 18,354 complaints, down from the record 19,953 of the previous year. Created as part of the Police and Criminal Evidence Act 1984, after widespread concern over the manner in which complaints against the police had been mishandled, the PCA's remit is to oversee complaints received from the public and a few serious complaints from the police. Despite early, misleading attempts to laud its "independence", the PCA appoints a police officer to investigate its cases. It also reports directly to the deputy chief constable of the police force concerned who decides whether a case will be referred to the Crown Prosecution Service.

The Authority was effectively ignored by the public in its early years and less than 2,000 cases were referred to it directly according to figures in the latest report. The problem is even greater among "the minority communities, both minority ethnic communities and other minorities such as the gay community.":

Firstly, [they have] a fear of attitude. Many of their complaints arise from what they perceive, rightly or wrongly, to be a hostile or discriminatory attitude when they come face-to-face with officers in the course of the officer's duty. That may be a stop-and-search in the street. It may be a vehicle stop but nonetheless there is resentment at what appears to be a discriminatory or harassing attitude, and as a consequence they fear that if they make their complaint at a police station they will experience, at that station, the same attitude that they have experienced on the street. Secondly, they fear retaliation - either from the officer against whom they complain or colleagues of the officer.

Their latest report emphasises the "prominent" number of male police officers who prey on vulnerable female members of the public, women officers and support staff. The Authority dealt with 73 sexual harassment complaints which only resulted in nine punishments. In his Introduction, Chairman, Peter Moorhouse, described police harassment of members of vulnerable members of the public as "an almost absolute abuse of authority." The report went on to highlight a number of cases, including one where a police officer indecently assaulted several women while they were held in police cells and another where a 14-year old girl

had been subjected to an improper search in a public place.

The most disturbing complaints came from women whose vulnerability has been exploited by police officers to whom they had turned for help. In some cases, officers had formed sexual relationships with the victims of domestic violence. In others, women complaining of harassment had sought police protection only to suffer the same treatment from the officer supposed to be assisting them.

Women police officers alleged harassment at police stations, in police vehicles, during training courses and even while carrying out surveillance operations.

The report observed that: "Allegations of sexual harassment by police officers have been the subject of a growing number of cases dealt with...over recent years." Many of these complaints were made against officers in specialist squads. In a comment, that is not lacking in irony, PCA Chairman, Peter Moorhouse remarked that there was little point in issuing "mission statements" if police culture had not changed. He was supported by his deputy chairman, John Cartwright, who said that it was not enough to have an equal opportunities policy that was never applied and a grievance procedure that was never used.

Commenting on the 56 deaths (six of whom were black people) in police custody the report noted that "there is no doubt that a number of the 56 people who died in police custody last year should still be alive." The report calls for improved training for both custody officers and police surgeons. The police use of informers and the use of CS spray also created cause for concern.

Annual Report of the Police Complaints Authority Annual Report 1 April 1997- 31 March 1998 (HMSO) 1998 (HC 805); Police Complaints Authority press release 25.6.98

Policing - in brief

■ **UK: Call for inquiry into death in custody:** The family of a black man, Christopher Alder, has called for an independent inquiry into his death at Queen's Garden police station in Hull on April 1. Alder was arrested for being abusive to police officers as he was discharged from hospital after suffering superficial injuries following a fight. According to Humberside police, Mr Alder collapsed and died after arriving at the police station and a post mortem was unable to determine the cause of his death. In a move that has been welcomed by Mr Alder's family five police officers have been suspended from duty as part of a Police Complaints Authority (PCA) investigation. The PCA told the *Voice* newspaper that: "We are concerned with the treatment Christopher Alder received while in police custody". *Voice* 27.4.98. & 11.5.98.

■ **UK: Police issued with "steel ball" batons:** The Metropolitan police is to arm its 27,000 officers with a version of the ASP baton which is tipped with a "potentially bone-breaking" steel ball. The weapon, which is widely used by police forces in the United States, is seven inches long but extends to 21 inches when open. The new baton was approved by the previous Conservative Home Secretary, Michael Howard, and it has already been issued to some officers in police forces outside of London; there have already been a number of complaints to the Police Complaints Authority about its use. The new baton will replace the acrylic baton currently in use. *Sunday Times* 14.6.98.

■ **UK: Police call for national DNA database:** Chief Superintendent Peter Gammon, president of the Police Superintendents Association (PSA), has called for the government to consider establishing a national DNA database for the entire population. Mr Gammon said: "I am asking for an examination of the issue of setting up a national DNA database for all the population...if we set up a national database, we make investigation of major crime more efficient, and there will be cost savings." At present there are an estimated 250,000 DNA profiles stored on computer. The Home Office has indicated that it is

prepared to discuss the idea but noted that there were likely to be objections due to cost and infringement of civil liberties. *Independent* 6.5.98.

■ **UK: NCIS Director of Intelligence:** Commander Roger Gaspar was appointed Director of Intelligence for the National Criminal Intelligence Service (NCIS) on April 1. The post, which is equivalent to that of deputy chief constable, means that Gaspar is the second most senior officer in the NCIS. *The Job* 6.3.98.

■ **US: FBI reading encrypted mail:** The Canadian-based *Spycounterspy* have put up a web page giving advice on how to counter the FBI reading confidential encrypted e-mail. "Most people don't even realise they've been compromised, they continue to send e-mail thinking it is confidential". The site offers defence against FBI and police spying and offensive measures. <http://www.SPYCOUNTERSPY.com/fs006.html>

Policing - new material

New CMOS processor for PNC - the first in Europe. *PITO News*, April 1998, pp8-9. The Police National Computer (PNC), first introduced in 1974, is to get a major upgrade in September this year. The new CMOS computer system from Siemens is intended to cope with the growing demand by the police for instant access to information now running at 60 million searches a year (1997) with 10,000 "screens of information" being given out every five minutes. The new system will be linked to the National Automated Fingerprint Identification System (NAFIS). Other systems to be linked include QUEST which will allow investigative searches of the complete set of criminal records, Vehicles Owners Descriptive Search (VODS), the National Firearms Register, Automatic Number Plate Recognition systems (which logs the time and place of vehicle number plates), and in the future a Mobile Data Terminal to be carried by police on patrol and the planned Criminal Records Agency.

Press Digest One. *National Campaign Against CS Spray* 1998. The Campaign has compiled a digest of press cuttings and reports on police (mis)use of CS gas sprays. It contains a collection of articles from across the UK covering 1996-97. The Campaign would like supporters to send local press cuttings and information. The Digest is available for £3 (to cover costs and post) from: National Campaign Against CS Spray, c/o NMP, London E7 8QA; Tel. 0181 555 8151.

On the Road to Justice Newsletter. *M25 Three Campaign* Issue 8 (May) 1998. The M25 Three - Raphael Rowe, Michael Davis and Randolph Johnson - were jailed for life in 1990 after being convicted of murder. Despite eye-witness identification and police appeals for information on the two white men and one black man involved in the murder the M25 Three, all of whom are black, were convicted (see *Statewatch* 2:6). The Newsletter carries updates on their campaign for justice. Further information from: M25 Campaign, 28 Grimself Path, Farmers Road, London SE5 0TB; Website: http://www.spanno.demon.co.uk/m25_campaign

In the shadows, John Dean, *Police Review* 8.5.98. pp16-17. This piece reports on "a Northumbria undercover team which has broken down the barriers between CID and uniformed officers..." but "needs to retain anonymity to continue undercover surveillance work".

Earmarking evidence, David Adams. *Police Review* 8.5.98. pp26-27. Article on earprints, which are described as "a very useful contribution to crime detection." The National Training Centre for Scientific Support to Crime Investigation has been working with the Dutch National Police Training Institute to produce the required experts.

NAFIS launch: partners celebrate a world beating system. *PITO News* Issue 11 (June) 1998, pp4-7. Article on the National Automated Fingerprint Identification System (NAFIS), a national fingerprint database which has links to the Police National Computer and will be available to all 43 police forces in England and Wales by 2001.

Strong arm of the law? John Beaumont. *Police Review* 19.6.98. pp20-22. This article considers police "uncertainty" concerning the "amount

of force against the person that a police officer might lawfully use in the exercise of his or her duties.”

Shooting from the hip, Max Daly. *Big Issue* 8.6.98. pp6-7. This piece looks at the increasing number of complaints against the police's indiscriminate use of CS gas which have rocketed from 25 to 254 since last year.

Crime, disorder and criminalisation, Phil Scraton. *Foundations* Vol. 1, no. 2 (April-June) 1998. This article focuses on the morality debate which has contextualised political developments for policing and “targeting crime”, and examines the relationship between “New Right” and “New Labour” strategies concentrating on the current Crime and Disorder Bill.

The porn king, the stripper and the bent cops. *Secret History* (Channel 4) 18.5.98. This television programme, part of Channel 4's “Secret History” series, looks back at Operation Countryman and specifically at police involvement in Soho's pornography industry. Aply coinciding with the latest investigation of police corruption the programme reveals, in the words of Duncan Campbell, a “picture of endemic corruption throughout the detective branch of Scotland Yard at the time.”

Parliamentary debate

Hillsborough *Commons* 8.5.98. cols. 941-1003

SECURITY & INTELLIGENCE

SPAIN

Gonzalez questioned on GAL

The former Socialist prime minister, Felipe Gonzalez, appeared before the Spanish supreme court in June to answer allegations that he authorised the activities of the GAL (Grupos Antiterroristas de Liberacion) death squads. In 1996 deputy prime minister, Francisco Alvarez Cascos, implicated “Gonzalez and his circle” in orchestrating the GAL strategy, but last year the supreme court ruled that there was insufficient evidence to prosecute him after the government refused to declassify CESID documents. It did, however, agree that he should be called as a witness.

The GAL, who were funded by the Spanish interior ministry, operated as an illegal undercover hit squad that targeted Basque's and suspected ETA sympathizers. They killed 28 people between 1983 and 1987, many of whom were unconnected with the ETA. While opinion polls have indicated that most Spaniards believe that Gonzalez was behind the GAL it is former interior minister, Jose Barrionuevo, and eleven former senior officials and policemen who face charges of belonging to an armed group, kidnapping and misappropriating public funds, relating to the GALs first known operation in which they kidnapped a French businessman.

Appearing as a witness, Gonzalez denied under oath that he took any “illegal action” involving the GAL mercenaries. He also rejected claims, made by two of the defendants, that they had informed him of events. Barrionuevo has also denied any involvement, but has said that he will “confess to falsehoods” rather than damage national security. This may well prove unnecessary as it is looking increasingly likely that all the charges will be dropped because the offences took place too long ago for the defendants to receive a fair trial. It is unclear whether events will disrupt Gonzalez' ambitions to succeed Jacques Santer as president of the European Commission in the year 2000.

El Pais 23 & 24.6.98; See *Statewatch* Vol. 5, no 1, Vol 6, no 5

Security - new material

Spooks in the dark, Richard Norton-Taylor and Ian Black. *Guardian*, 5.5.98. “Analysis” feature on Government Communications Headquarters (GCHQ, 4,500 staff with a budget of £440 million), MI5 (1,860 staff budget of £120 million), MI6 (2,000 staff, budget of £140 million) and Defence Intelligence Staff (DIS, budget £150 million).

Steady as she goes: Labour and the spooks, Robin Ramsay. *Lobster* No. 35 (Summer) 1998, pp28-29. This is a round-up of some recent events from the intelligence world: it covers MI5's plans to destroy files on subversives; Robin Cook at the Foreign Office; the Parliamentary Intelligence and Security Committee; the death of journalist Jonathan Moyle in Chile and former MI5 officer David Shayler's revelations.

Germany: Bugging bedrooms: new law on audio and video surveillance. *Fortress Europe?* May 1998, pp8-11. Summary feature on the discussions in the German parliament on a controversial amendment to the constitution which will allow the police to instal “bugs” and cameras inside private premises.

Parliamentary debate

Lockerbie *Commons* 29.4.98. cols. 296-302

PRISONS

UK

Tilt's prison race relations unit

The director-general of the Prison Service, Richard Tilt, announced his intention to lead a new prison race relations unit in May. The decision follows Tilt's remarks, on the unlawful killing verdict on black prisoner Alton Manning that black people were more likely to suffocate while under restraint than white people (see *Statewatch* Vol. 8, no. 2). The comments, which were almost universally derided as inflammatory racist nonsense, were also perceived as an attempt to divert attention from a spate of black deaths in prison custody resulting from illegal restraint techniques used by prison officers. The director-general said that the new unit would monitor racism in the service and be mainly staffed by representatives from the ethnic minorities. However, judging from previous initiatives carried out by the police and other state agencies the unit is likely to be little more than a talking shop made up of conservative community “leaders” who will be used to diffuse and deflect anger directed at an increasingly privatised - and unaccountable - prison service.

Times 8.5.98.

Officers suspended at “brutal” Scrubs

A senior manager and eight prison officers have been suspended from duty following allegations of systematic brutality at Wormwood Scrubs prison in west London (see *Statewatch* Vol. 8, no. 2). Among those suspended was the woman manager of the jail's segregation unit (punishment block) who faces a disciplinary hearing. Senior officials at the jail have asked the Metropolitan police to launch a full-scale investigation into the allegations which have been described as the most serious for a decade.

A legal dossier of the prisoners' claims has been compiled by solicitors Hickman and Rose and includes accusations of intimidation, racism and beatings against eight officers that, in one case, amounted to systematic torture. Two prisoners were removed from the prison for their own safety at the end of March

after an alleged new round of threats from prison officers aimed at coercing them not to testify. Commenting on the situation Nick Flynn, of the Prison Reform Trust, observed: "None of the safeguards, the watchdogs or monitoring systems seem to have worked. They appear to have fallen into disuse at Wormwood Scrubs."

On the day following the suspensions over half of the officers working at the prison reported in "sick" in sympathy with their suspended colleagues, causing serious disruption at the prison and forcing more than seventy staff from other London jails to be brought in to replace them. These events, which were acknowledged as a "protest action" by the director-general of the Prison Service, Richard Tilt, meant that prisoners spent longer in their cells and visits were disrupted. For the Prison Officers Association, vice-chairman Ron Adams, complained that his members had been under severe stress and the absences reflected "a genuine level of illness": our members were breaking down in tears he complained with a straight face. At the end of May the Prison Service received a number of new allegations of "medium scale" assaults by staff.

In early 1997 the Prisons Inspectorate, in a report on Wormwood Scrubs, stated that they were "horrified" at conditions in the prison. Prophetically, the report observed that the attitudes of the prison officers "have no place in the modern world" - unfortunately, Richard Tilt seems not to have read their report.

Guardian 1.4.98, 28.5.98.

"Riot" at private children's Secure Training Centre

A fracas at a privatised children's secure training centre (STC) run by Rebound, a subsidiary of Group 4, resulted in 30 Kent police riot officers and dogs being introduced to restore control in June. The incident, at the Medway STC in Rochester, Kent, which at the time of the disturbance housed 15 vulnerable children, saw three 14-year olds arrested by police. A Home Office inquiry has been launched to investigate the disturbance.

Medway, the first of five Secure Training Centres introduced under the Criminal Justice and Public Order Act 1994, was launched with a fanfare of publicity last April, despite being opposed by the Labour government when in opposition. In 1993 when in opposition prime minister, Tony Blair, said of the centres:

It is really short-sighted beyond belief to invest large sums of money in building new penal institutions for 200 young people when we are neglecting programmes that are far less expensive and which may diminish the numbers that go to such institutions.

The STCs also received criticism from penal reform organisations who raised strenuous objections to the role of the privatised institution and the lack of staff training. The private sector prison officers undergo eight weeks training, "most of it centring around physical restraint techniques taught by the Prison Service College."

The Howard League's Fran Russell, in an article in the *Guardian* last year, saw the Labour Party's volte-face as a continuation of the previous government's "campaign to portray children as evil and dangerous". "This route may seem politically expedient in the short term", she warned, "but it will be expensive and ineffective in the long run."

The Medway centre is designed to hold 40 children, aged between 12 and 15, who have committed at least three punishable offences, and who have "a history of disrupted and chaotic lifestyles, poor relationships with parents and step-parents, disproportionate experience of loss, poor school histories, alcohol and drug misuse, and psychological or counselling help." They are supervised by a staff of 100. The children, who are euphemistically referred to as "trainees", are held at a cost of

£2,400 a week under Secure Training Orders which can detain them for up to one year.

Following the disturbances, Frances Crook, of the Howard League, expressed concern for the safety of the children under the privatised regime and called for the Centre to be closed:

The centre should be closed. If this had happened in a local authority secure unit, the local social services would have sent in a child protection team within an hour. Because it's Group 4 and it is private no one has to be sent in to see that the children are ok.

Medway is the first of five centres proposed by the former Conservative Home Secretary, Michael Howard. While they were vehemently opposed by the Labour Party as "colleges of crime" in opposition, they are now set to sign an agreement with Group 4 to open additional centres at Olney in Northamptonshire, Medomsley in Durham and Sharpness in Gloucestershire. Another will be built elsewhere.

Fran Russell, "A turn for the Worse" Guardian 16.7.97; Times 26.6.98; Home Office press release 1.7.98.

Disgrace of woman's "humiliating, degrading and inhumane" treatment

A 41-year old female remand prisoner, who was deprived of food and drink for 24 hours and refused access to a toilet or washing facilities for 48 hours, has had her complaint against the Prison Service upheld. The prisons Ombudsman, Sir Peter Woodhead, in his third annual report published at the beginning of July, described her treatment after being held in an unfurnished cell in "intolerable conditions" for an entire weekend as "humiliating, degrading and inhumane". In the introduction to his report he described it as: "...one of the worst cases of maltreatment by prison staff I have seen." He found it disturbing that, although the facts were accepted by the Prison Service, no disciplinary action was taken against any of the staff involved.

The prisoner was held at Risley prison in Cheshire and had been transferred to the segregation unit after a piece of metal was found to be missing from her cell. After refusing to wear a canvas "strip" dress in place of her own clothes she wrapped herself in a blanket and, as a consequence, staff refused to allow her food and drink and the opportunity to use toilet or washing facilities. The woman, who was menstruating at the time, was reduced to using a paper cup to urinate into in the absence of even a chamber pot in the cell.

The Ombudsman has called for the Prison Service to conduct "an investigation into the actions of the staff involved in this case with a view to considering whether such actions might form the basis of disciplinary charges." Two members of staff had "received advice" about the incident. Woodhead also requested the director general of the Prison Service, Richard Tilt, to make a personal apology to the woman. Tilt refused, but asked one of his staff to apologise on his behalf.

The 1997 annual report also criticises the handling of issues surrounding strip searching. In one case a prisoner had been "unnecessarily strip-searched twice within a matter of minutes of his arrival at the prison" (Case No. 11595/97). In another case (Case No. 11237/97) a prisoner had been ordered to carry out what amounted "to an intimate body search on himself." The report also lambasts the Prison Service's internal complaints system and notes that officers failed to investigate claims. He warned that: "The Prison Service ignores at its peril the finding of Lord Woolf, in his inquiry into the prison disturbances of April 1990, that one of the root causes of the riots was that prisoners believed that they had no effective method of ventilating their grievances." The Ombudsman received nearly 2000 complaints which resulted in 553 investigations. He upheld 44% of the complaints investigated.

Prisons - in brief

■ **£20,000 for woman chained in labour:** Annette Walker, the Holloway prisoner who was manacled to her bed for ten hours while in labour (see *Statewatch* Vol 6, no 1 & Vol 7 no 3), will receive £20,000 damages for the distress caused to her by the prison service. Ms Walker not only received the out of court settlement but forced a significant change in prison rules over the barbaric practice of shackling pregnant women.

Prisons - new material

Mandatory drug testing in prisons - an evaluation, Kimmet Edgar & Ian O'Donnell. *Research Findings* No 75 (Home Office Research and Statistics Directorate) 1998, pp4. This paper presents the results of a survey, of 148 prisoners in five jails, in response to the introduction of mandatory drug testing in March 1996.

Prison Privatisation Report International (Prison Reform Trust) Nos. 19 & 20 (April & May) 1998. These reports contain pieces on Group 4, the privately-run immigration detention centres at Campsfield and Tinsley House and incidents at HMP Parc as well as a round-up of news on private prisons around the world.

Prison Report (Prison Reform Trust) No. 43 (June) 1998. This issue includes Brendan O'Friel on industrial relations in the Prison Service; Clare Sparks on ways to reduce the prison population; Sir David Ramsbotham on the Prisons Inspectorate; Una Padel on the balance between security and prison visits and Nick Flynn on the release of politically-motivated prisoners in Northern Ireland.

A dossier of racism. *CARF* No. 44 (June/July) 1997, pp10-11. This article considers the "culture of racism at the heart of the prison system." It situates allegations of racism, brutality and torture at Wormwood Scrubs prison in the context of recent remarks by head of the Prison Service Richard Tilt and the contemptuous silence of Home Secretary, Jack Straw.

RACISM & FASCISM

FRANCE

Megret welcomes commission on National Preference

In France, former Prime Minister Eduard Balladur called in June for a commission to inquire into the issue of national preference, in which representatives of the Front National (FN) would be invited to participate. National preference amounts to discrimination between French nationals and others resident in France in the allocation of social security entitlements and in employment rights.

Balladur made his call for a commission on 14 June on the television debate Grand Jury-RTL-Le Monde. In the course of the debate, he sought to locate the notion of differentiated social rights in the European context. He went on to support his claim with the somewhat duplicitous proposition that, were a commission to come out against the concept of national preference, the FN would be disarmed of one element of its propaganda. His personal advocacy of differentiated social rights can, however, be traced back to 1986, when he called for the restriction of family allowance to French nationals.

Balladur's remarks have provoked mixed reactions on the

right. Francois Bayrou, head of Force Democrate, strongly condemned the proposal for a commission, stating that it is always bad strategy to hold debates on the opposition's territory. Others, including RPR Secretary General Nicolas Sarkozy and former RPR minister Alain Peyrefitte believe that the debate should take place and that there should be no taboo attached to the concept of national preference. RPR spokesman Fillon also defended Balladur's remarks, saying that he was not attempting to form an alliance with the FN.

The debate may be seen as a manifestation of a growing tendency on the traditional right to use immigration related issues as the territory on which to differentiate itself from the centre left, and of a tendency to seek common ground with the increasingly "respectable" FN. The latter tendency is proving controversial in the aftermath of the regional elections, as the official line of the RPR, the UDF and of President Chirac is of resisting the overtures of the racist extremists.

For the FN, Bruno Megret said that Balladur's words were a sign of "great progress" and indicated that the FN's ideas were making "great advances". In the FN paper *National Hebdo*, he spoke in more up-beat terms about national preference, saying that its introduction would constitute a "national revolution". (This was exactly the terminology used by the Vichy regime to describe the totality of its discriminatory legislation during world war two).

Le Monde, 17.6.98; 19.6.98; 23.6.98; *Observer*, 21.6.98

UK

Top nazi incited racial hatred

A British National Party (BNP) leader, Nick Griffin, escaped with a nine-month suspended sentence and a £2,000 fine after being found guilty of inciting racial hatred at Harrow crown court in May. Griffin, along with fellow BNP nazi Paul Ballard, who pleaded guilty and also received a suspended sentence, were charged after police seized nearly 350 copies of their magazine the *Rune* issue 12. It featured a noose on the front cover with the headline "What has a rope to do with white unity" and referred throughout to "mongrel slaves".

In an act of blatant political chutzpah Griffin managed to wheel out a couple of black US "Pan Africanists" in his defence. Where the prosecution described *The Rune* as "a call to arms to white supremacists", Osiris Akkebala and Kwame Akkebala told the court that they had no problem with the literature and that they considered Griffin as a "spiritual brother". This is not as surprising as it may appear as both men have previously been associated with other fascist causes; they attended a National Front conference in the UK and have collaborated with leading US white supremacist Tom Metzger. Another of Griffin's supporters, was the convicted Holocaust revisionist, Dr Robert Faurisson.

Since he joined the BNP two years ago, the Cambridge university educated, Griffin, has been running a distinctly unobvious campaign to inherit the leadership from current leader, John Tyndall, when he stands down. His success has surprised neutral observers, and disturbed BNP veterans, who believed that his opportunistic conversion to the BNP's cause and disruptive record of splitting most of the fascist organisations that he has been involved with - for instance, the effectively defunct National Front - would be held against him.

His main competitor for the leadership, and a much more serious proposition, is Tony Lecomber, (aka Tony East, Tony Wells, Tony Le Comber) a veteran fascist who was jailed for 3-years after attempting to bomb the offices of political opponents in south London in 1985. Lecomber has a solid base of support in the east London branches of the BNP and has recently launched his own glossy magazine, *The Patriot*, which has assiduously cultivated members who are out of favour with

the leadership. However, despite attempts to remodel himself as a Euro-nationalist, Lecomber lacks the "polish" of Griffin and is likely to find himself sidelined in the rush to adopt "post-fascist" electoral credibility.

Griffin's clout among the more street orientated members of the organisation - to whom he has been making overt appeals in the pages of the BNPs journal *Spearhead* - can only be enhanced by his token conviction, which is unlikely to cause him too many sleepless nights.

Ex-NF councillor elected

The fascist British National Party and the National Democrats did poorly in last May's local elections standing few candidates and making little impact outside of east London. While this does not bode well for the electoral chimera that both organisations are pursuing, another from the far-right had more success by following a more traditional route. Former west London National Front organiser, Phil Andrews, won an Isleworth council seat as an "independent" Isleworth Community candidate. Underplaying his Holocaust revisionism and demands for compulsory repatriation in favour of a law and order programme he managed to deceive enough people to get elected. Interestingly, Andrews omitted to mention in his electoral material that he was jailed for six months in 1986 for assaulting a black police officer. His election has prompted a boycott by the mainstream parties and anti-racist groups are committed to demonstrating against him if he attends meetings.

Black youths arrested for seeking protection from racist attack

Two black teenage students, Marcus Walters and Francisco Borg, were arrested in Cardiff by South Wales police after seeking protection from a vicious racist gang attack. The youths were set upon while parked in their car and, when one of the gang attempted to push his dog into the vehicle, Walters was forced to hand his baby sister, Emma, to a passer by. Leaving Emma with the complete stranger the youths escaped and stopped a police car seeking help.

When they returned to the scene the racists attacked again as police officers looked on. The officers not only failed to intervene but sprayed the victims with CS gas, threw them in the back of a police van and arrested them for violent disorder. It was only after a local Citizens' Advice Bureau campaign and the discovery of CCTV footage showing the racist gang smashing the car in front of the police officers that the charges were dropped.

One of the gang, National Front member Sean Canavan, was arrested at the scene. Two other gang members, have been convicted. John Shepherd, the owner of the dog set on Emma, pleaded guilty to violent disorder and Raymond Lovell was found guilty of using threatening words and behaviour. Sentencing was delayed.

CARF 44 (June/July) 1998

Racism & fascism - in brief

■ **France: Megret speaks up for racist killers:** The Front National heir apparent, Bruno Megret, appeared at the trial of three accredited FN supporters who were jailed for the murder of Ibrahim Ali. Speaking in their defence, Megret told the court that the three men had taken fright at the appearance of a group of black teenagers and that they were not evil men. They were, on the contrary, "the elite of the nation". The three had encountered the group of teenagers, (ten, at the most), whilst they were putting up FN propaganda posters in Marseilles in 1995. Robert Lagier

shot 17-year old Ali in the back with an outlawed dum-dum bullet. The three claimed that the teenagers had pelted them with stones, yet it was subsequently established that they had been carrying nothing but musical instruments. Lagier was sentenced to 15 years, Pierre Giglio to 12 months and Mario d'Abrasio to 10 years. Whilst the lawyer for the three, Jean-Michel Pesenti was at pains both to distance himself from the FN and to extol his own left-wing credentials, the advocate general, Etienne Ceccaldi, condemned the FN's support of the three men and its role in attempting to help them fabricate a case to say that they were acting in self-defence. Perhaps the most damning indictment of Lagier's beliefs came from his own granddaughter, who took the stand to denounce his racist attitudes. *Independent* 24.6.98; *Le Monde*, 24.6.98.

■ **UK: NF march stopped:** A National Front (NF) march in central London was halted by anti-fascists in May. The rump fascist organisation is increasing its street activities with the appointment of a new national activities organiser, Terry Blackham, and in the absence of the larger British National Party which is attempting to clean-up its image in time for European elections. The march was to protest against the Northern Ireland peace agreement and the "Marxist" Labour government. After being confronted by anti-fascists the NF were escorted from the area under police protection. *Socialist Worker*, 30.5.98.

■ **Germany: Police raid neo-nazi arsenals:** Police raids on neo-nazis in and around Berlin have uncovered weapons and sophisticated communications equipment. Shells, mortars, pistols, hunting rifles and automatic weapons, hand grenades, landmines and explosives were seized in raids on properties over the last few weeks in Lehnin, Potsdam and Magdeburg. While some of the weapons date from the second world war the majority are from Croatia, Poland and the Czech Republic. The latest arrests took place in Bavaria and the Rhineland Palatinate following violence from about 200 German football hooligans - some with links to neo-nazi groups - who attacked police during the World Cup in France, leaving a police officer in coma. *Sunday Telegraph* 14.6.98.

Racism & Fascism - new material

Racial inequalities in the North, Deepa Mann-Kler and **Hidden racism in the post-colonial society** Patrick Yu. *Fortnight* No 370 (May) 1998, pp21-24. These articles summarise the results of a research project and report on the experiences of women and young people from the Chinese, Indian, Pakistani and Traveller communities in Northern Ireland.

European Race Audit. *Institute of Race Relations* Bulletin 27 (May) 1998. Compilation of news and information from around Europe; covers events around racism and fascism, asylum and immigration, citizenship and minority rights, police and military.

New alliances on the right, Mr Lucas. *Animal* Issue 3 1998. The Countryside Alliance and links with the fascist British National Party.

A torpedo aimed at the boiler-room of consensus, Stuart Hall. *New Statesman* 17.4.98., pp14-19. This piece looks back thirty years to racist politician Enoch Powell's infamous "Rivers of Blood" speech and considers how many academics, journalists and politicians found excuses to defend him following his recent death.

Racism goes global. *CARF* no 44 (June/July) 1998, pp2-4. Looks at globalisation ("the relentless drive towards the integration of markets on a global scale [which] is shaping every government decision - from the dismantling of the welfare state to the privatisation of prisons, from the introduction of restrictive immigration and asylum laws to new codes on human rights") and why anti-racists must align themselves with the fight against globalisation.

An unbiased watch? The police and fascist/anti-fascist street conflict in Britain 1945-1951, Dave Renton. *Lobster* (Ramsay) Issue 35 (Summer) 1998, pp12-19.

Hillsborough: the failure of scrutiny

On 15 April 1989 Liverpool Football Club played Nottingham Forest at Hillsborough Stadium, Sheffield, England in the semi final of the national FA Cup. Half an hour before the 3pm kick-off the crowd outside the stadium at the Leppings Lane end of the stadium began to build up. It soon was obvious that the old turnstiles could not deal with the numbers waiting to enter the stadium. The South Yorkshire Police decided not to postpone the kick-off and opened a massive exit gate (Gate C) to relieve the congestion.

In a few minutes over 2,000 Liverpool supporters walked into the stadium through Gate C, unwarded and with no police direction. They walked across a concourse area and down a one in six gradient tunnel into the rear of two already overcrowded pens. In the pens the fans stood on terraced steps divided only by old crush barriers. They were trapped by a wall and fence to the front, which had a narrow locked gate up onto the perimeter track, and to the sides by lateral fencing.

As more fans came down the tunnel those at the front were gradually asphyxiated, their screams drowned by the roar of the crowd. Those at the back were unaware of the plight of those at the front. The police on the perimeter track did not open the narrow gates in the fence until it was too late. 96 died, 400 were hospitalised, 750 were injured and thousands traumatised. It was the UK's worst sporting disaster.

The Police Match Commander lied to the soccer officials and the media when he accused Liverpool supporters of breaking down Gate C and causing an inrush into the two central pens - Lord Justice Stuart-Smith referred to it as a "disgraceful lie" (p83 para 100). The truth was that opening Gate C without first closing off the tunnel and redirecting fans to the empty side pens caused the fatal crush.

Further, the failure of the police to act quickly in rescuing fans and evacuating the pens contributed to the deaths and injuries. When those in the pens were carried out there was an absence of adequate medical facilities. It is now clear that many of those who died could have been saved. Only 14 of the 96 were taken to hospital.

A Government Home Office Inquiry under Lord Justice Taylor found that police mismanagement of the crowd was the main reason for the disaster. He also criticised the Stadium, its owners, safety engineer, and the local authority. Damages were subsequently awarded against the police for "liability in negligence". The Director of Public Prosecutions, however, ruled that there was insufficient evidence to mount a prosecution against any police officer and the inquests returned a verdict of accidental death on all who died. These verdicts were upheld in the Divisional Court. In February 1998 a Judicial Scrutiny, under Lord Justice Stuart-Smith upheld these decisions.

Research by Professor Phil Scraton and a team from the Centre for Studies in Crime and Social Justice, Edge Hill University College, has exposed the depth of the miscarriages of justice which contextualise the Hillsborough Disaster. In its implications the analysis goes well beyond Hillsborough. It involves the unusual procedures through which police officers systematically "reviewed" and "altered" statements, the injustices of the inquest procedure and the ineffectiveness of police disciplinary processes which enabled senior officers to escape internal disciplining for "neglect" of duty. What follows is Phil Scraton's recent briefing paper for MPs in response to the

Judicial Scrutiny.

The Hillsborough Scrutiny: Briefing and Response

It is a matter of profound concern that after nearly nine years of investigation, inquiry and scrutiny the bereaved and survivors of the Hillsborough disaster remain burdened by a deep sense of injustice. They are persistently reminded that the South Yorkshire Police were allocated, and accepted, the main proportion of blame in the judgment of the civil action for damages and in the findings of Lord Justice Taylor. It has been suggested, unfairly, that the bereaved and survivors have been reduced to a prolonged campaign driven by vindictive and vengeful motives. What is clear, however, is that the legal processes have failed them. This briefing aims to overview the procedural inconsistencies and anomalies which dogged the initial inquiries and have been compounded by the judicial review of the inquests and, most recently, the Stuart-Smith scrutiny.

Liability

In the civil action for damages soon after the disaster the court found the police to be liable in negligence. Damages were paid accordingly. Although the South Yorkshire Police successfully settled their claim against other parties their liability in negligence has been interpreted as a "technical" acceptance of liability. The Chief Constable at the time, Peter Wright, and his successor, Richard Wells, consistently held the position that the South Yorkshire Police was one among several parties, including fans, whose actions contributed directly to the disaster.

Lord Justice Taylor rejected claims, primarily from the police, that fans' behaviour contributed to the deaths. He concluded that the main cause was overcrowding and the main reason was police mismanagement of the crowd. The decision to open Gate C, letting in approximately 2,000 fans, without sealing off the tunnel into the already full central pens 3 and 4, constituted a "blunder of the first magnitude". He also criticised Sheffield Wednesday Football Club, their safety engineers and the local authority while exonerating the St Johns Ambulance Services, the South Yorkshire Ambulance Service and the Fire Service of any blame.

Effectively, the civil actions and the Taylor Report indicated negligence with regard to the causes of the disaster and the events through which people received their injuries. What has remained at issue is the question of liability beyond the point of injury and whether negligence, omission or lack of appropriate care caused people to die who might have been saved.

Prosecution

In September 1990 the decision was taken by the Director of Public Prosecutions (DPP) that there was no evidence to initiate criminal prosecutions against any corporate body and insufficient evidence to pursue the prosecution of any police officer. The DPP took this decision after seeking the legal opinion of two senior counsel.

Disciplinary action

The decision was subsequently taken by the Police Complaints Authority to pursue disciplinary action against the Match Commander, Chief Superintendent David Duckenfield, and his assistant, Superintendent Bernard Murray, for "neglect of duty".

There is no criminal charge equivalent to such a breach of the Force disciplinary code.

In October 1991 Duckenfield retired from the South Yorkshire Police on medical grounds and the disciplinary case against him could not be pursued. Consequently the case against Murray was dropped and, eventually, he also retired.

Inquests

Prior to the DPP's decision on prosecution the Coroner took the unusual step, supported by the families' solicitors (the Hillsborough Steering Group), of resuming the inquests on a limited basis before the jury. It is normal practice, reflected in the Coroners' Rules, for an inquest to remain adjourned until criminal and/or civil actions are completed.

The Coroner's Court is not a court of liability. It decides on the medical cause of death, establishing how, when and where death occurred; reaching a verdict from a prescribed list in line with the circumstances and medical cause. In controversial cases, causation - and therefore liability - inevitably becomes the central issue. When all other actions fail and families receive limited disclosure of evidence the inquest offers the only public forum in which material evidence can be heard and cross-examined. The uneasy relationship between the coronial and prosecutorial systems is well-documented.

The South Yorkshire Coroner, Dr Stefan Popper, opened "preliminary hearings" or "mini-inquests" in April 1990. Their format was unprecedented. Each family was invited to attend the Coroner's Court to hear: i. the pathologist's evidence regarding the death of their loved one and the recorded blood alcohol level; ii. a summary of all other material evidence written and presented by a West Midlands Police investigating officer; iii. an overview of sightings (still photographs or televisual) of the deceased before, during and after the crush presented by a West Midlands Police investigating officer.

Disclosure of the evidence which informed the police summaries was denied. The families' legal representatives were not able to hear this evidence in full nor able to cross-examine on any issues of fact or opinion. Yet the summaries were presented to the jury as a factual account. Following the mini-inquests the Coroner again adjourned proceedings.

Once the DPP decided against prosecution the inquests were resumed on a generic basis. The bereaved families expected the questions unanswered by the mini-inquests, and much of the specific material evidence, to be dealt with and cross-examined. This was not so. The Coroner's criteria for selecting evidence were never revealed.

The Coroner imposed a 3.15pm cut-off on all evidence based on the assumption that all who died had suffered injuries of such severity that by that time their condition was "irrevocable" and death was inevitable. Effectively this cut-off denied families the opportunity to explore, examine or test evidence concerning the precise circumstances in which their loved ones died. The families accepted their lawyers' opinion to leave any possibility of a judicial review of the 3.15pm cut-off until the completion of the inquests.

After the longest inquests in legal history the Coroner directed the jury away from the verdict of unlawfully killed and towards accidental death. He emphasised that an accidental death verdict could accommodate a degree of negligence. After much deliberation the jury returned verdicts of accidental death on a 9-2 majority.

At the subsequent judicial review of the inquests, based on 6 test cases, the Divisional Court upheld the verdicts and considered exemplary the Coroner's handling of the inquests, his summing up and legal direction.

In November 1995 *No Last Rights: The Denial of Justice and the Promotion of Myth in the Aftermath of the Hillsborough Disaster* was published. It provided an in-depth and critical

review of the inquest procedure and the judicial review arguing that the procedures endured by the families, regardless of their legal advice or the Coroner's use of lawful discretion, amounted to a serious miscarriage of justice.

New Evidence

Following the screening of *Hillsborough* claims were made for new evidence which revealed: i. that the police in the Control Box could see more of the pens than they had previously claimed (evidence of video technician Roger Houldsworth); ii. that some of those who died had lived after 3.15pm (evidence of Dr Ed Walker). While this evidence was much publicised and proclaimed, it was not strong (Stuart-Smith considered Houldsworth's evidence to have been "blown out of all proportion").

Whatever the merits of the evidence, the public outcry which followed *Hillsborough* and the media coverage surrounding it, led Michael Howard, then Home Secretary, to consider a further inquiry.

In June 1997 Jack Straw, the incoming Home Secretary, announced an Independent Scrutiny into the disaster to be conducted by Lord Justice Stuart-Smith. While receiving a cautious welcome by the Hillsborough Families' Support Group and their lawyers, the decision to hold a Scrutiny, previously unheard of, without formal "status" in officially recognised procedures and with restricted terms of reference (scrutinising "new" evidence of sufficient significance that it would, in the Judge's opinion, have changed previous outcomes) was severely criticised.

The Home Secretary reassured critics that the Judge had the discretion to examine and report on "any matters in the public interest". But it was clear from the outset, and from the Judge's comments at his meetings with families, that his focus was "fresh evidence" and its potential impact on previous outcomes.

Submissions

The submission made by the families' lawyers focused primarily on the "new evidence" arising from *Hillsborough*. It also included case material, some of which had been presented to the judicial review, concerning the 3.15pm cut-off. Of particular concern was the clear evidence that a number of those who died lived on after 3.15pm and in several cases people thought to be dead had regained consciousness.

Professor Scraton's submission regretted that there was no prosecution available equivalent to "neglect of duty". Further, the prescribed list of inquest verdicts offered no verdict "between" accidental death and unlawfully killed which could have reflected negligence or lack of care in line with "neglect of duty".

This submission focused primarily on the denial of the right to a fair and thorough public inquiry into the precise circumstances in which each death occurred. A "fair" and "public" hearing, as enshrined in the European (Article 6.1) and International (Universal Declaration Article 10) conventions on human rights, should have included: i. disclosure of all statements concerning the circumstances of each death; ii. evidence given to the inquest regarding the circumstances of each death; iii. the opportunity to cross-examine that evidence.

Further, the submission revealed that the procedure for taking statements from South Yorkshire Police officers was outside normal custom and practice, possibly breaching Force and criminal justice guidelines. It demonstrated that this unprecedented procedure involved South Yorkshire Police senior management and the force solicitors in a process of "review and alteration" which turned personal recollections into formal statements then submitted to the West Midlands Police investigation.

Scrutiny

Lord Justice Stuart-Smith's Scrutiny has been heralded as "Meticulous", "detailed" and "rigorous" by, among others, the Home Secretary. It is clear from the Scrutiny report that Lord Justice Stuart-Smith considers the Taylor Interim Report beyond reproach or criticism. He accepts and endorses the scope and sufficiency of Taylor. In rejecting the case for a more detailed inquiry into the rescue operation after 3.15pm, for example, he concludes that "counsel for the Family Support Group ... made it plain that they accepted Lord Taylor's findings and the sufficiency of his Inquiry" (p61 para 105). Again, in responding to the so-called "10 'unresolved' Questions" (Appendix 10), Stuart-Smith relies on Taylor to respond to eight. Showing that Taylor dealt with matters relating to the questions does not demonstrate that they were adequately answered.

Related to this, a detailed reading of the text and its appendices reveals flaws in the Scrutiny particularly where Stuart-Smith fails to deal with the complexity or relevance of specific matters. For example, his reiteration of the Coroner's "logic" in establishing the 3.15pm cut-off does not address the contradictions inherent in the medical evidence on which the Coroner relied. Further, his brief discussion of Eddie Spearritt's important case (his whereabouts were unknown between losing consciousness at 3pm and arrival at hospital at 5pm) leads him to state: "I do not think that it is possible to conclude on the evidence that Mr Spearritt was at any time 'left for dead'." However, from the evidence, the opposite conclusion is more likely and this has significance for how the post-3.15pm operation was handled. These are two examples of many.

In his evaluation of evidence and his interviews Lord Justice Stuart-Smith adopts subjective criteria to assess and report reliability. Explanations or evidence taken from official sources, particularly the police, are given greater weight and credibility than those taken from other sources.

In dealing with the 3.15pm cut-off Lord Justice Stuart-Smith concludes that it is "not relevant whether the person died instantly at the scene or some time later, after medical or other unsuccessful treatment". In his opinion this renders inappropriate a Coroner's inquiry "into the response of the emergency services" or consideration that with a quicker, differently organised or better equipped response "a person who died might have been saved". What Lord Justice Stuart-Smith infers is that the appropriateness of the emergency services' response and the medical facilities on hand bore no relevance as to whether people lived or died:

They did not come by their deaths because first-aid or medical attention failed to resuscitate them (p49 para 56).

It would clearly be quite impossible to say about any given victim of the disaster that if more sophisticated or competent aid had reached him or her at some earlier moment, they would have survived ... (p61 para 103).

In my opinion there is no evidence of want of care by the emergency or medical services (p61 para 104).

The implication here is that for those who died death was inevitable. It suggests that those who were resuscitated or received intensive care would have lived regardless of medical intervention. This is an untenable proposition. Finally, the opportunity to hear and cross-examine evidence from the relevant emergency services or hospital staff was denied. Yet the "best evidence rule" regarding inquests emphasises the desirability of calling witnesses "most closely connected with the circumstances of death".

Lord Justice Stuart-Smith considers that there were "only two possible examples of cross-examination" (p89 para 24) where Liverpool supporters giving evidence at the Inquests were treated with hostility. This conclusion is unacceptable given the extent of hostility and differential treatment endured by survivors

giving evidence. It is well-documented in *No Last Rights* (pp139-149). The Judge was given a copy of the text.

Lord Justice Stuart-Smith's conclusions leave serious matters unaddressed. He upholds the inquests both procedurally and regarding their outcome yet the inquests were inadequate and flawed in giving families a thorough and fair hearing. As shown above, they failed the families. That they functioned within the boundaries of the Coroner's discretion, upheld in the Divisional Court, provides no guarantee of a fair, right or just process.

It is clear that had not a former South Yorkshire Police officer come forward with his amended statement the entire process of how informal, *ad hoc* recollections were transformed into formal statements through review and alteration, would not have come to light. The evidence, presented by Professor Scraton, led to further revelations by Lord Justice Stuart-Smith. According to the Judge ten alterations, covered in the Scrutiny's Appendix 7, represent the most substantial examples. Despite this, and the further revelation that the West Midlands investigators, Counsel to the Taylor Inquiry, Lord Justice Taylor and the Coroner knew of the process of "review and alteration", the Judge finds no real fault with the procedure; merely categorising some cases as constituting "an error of judgement" (p80 para 89). His key criterion, questionable in some of the cases illustrated, was whether removed or altered passages amounted to statements of fact or opinion. Yet, examination of the amended South Yorkshire Police statements reveals a prevalence of personal opinion and observation, especially regarding the behaviour of fans. He finds no cases in which amendments were misleading, nor does he consider that the inquiries were impeded. He expresses satisfaction that outcomes were not affected.

Lord Justice Stuart-Smith records a comment made soon after the disaster at a meeting of South Yorkshire Police officers involved with the inquiry. It concerned officers' "recollections" or "self-written statements" to be written on plain paper and not taken under Criminal Justice Act rules: "our job is to collate what evidence South Yorkshire Police officers can provide to their Chief Constable in order that *we can present a suitable case, on behalf of the force, to subsequent inquiries*" (p78 para 79 emphasis added). Thus it was on the basis of presenting a "suitable case" that the procedure was adopted and institutionalised.

Responses - specific

It is imperative that the Home Secretary orders a full judicial inquiry into the events which followed the evacuation of the pens and constituted the circumstances in which each person died. This should include the evacuation of Pens 3 and 4, medical attention and pronouncement of death at the back of Leppings Lane stand and on the pitch, the procedures and events in the gymnasium, the Ambulance Service response, treatment at the hospitals and the unprecedented Coroner's decision to take blood alcohol levels from all who died.

The Scrutiny does not answer the serious question as to why the unprecedented procedure of taking recollections from South Yorkshire Police officers and transforming them into formal statements following their "review" and "alteration" was adopted. Whether or not this procedure affected outcomes is not the issue. This procedure must be investigated thoroughly to establish whether or not it breached Force, Home Office or criminal justice guidelines.

Generic

No Last Rights makes 8 recommendations for reforming the role and constitution of official inquiries into disasters and 33 recommendations concerning the role and function of inquests into disasters (ppxx-xxiii). The reform of the inquest procedure, particularly with regard to controversial deaths, is long overdue.

The procedure enabling police officers to retire on health grounds, thus avoiding disciplinary proceedings, must be abandoned. It is unacceptable that despite demonstrable deceit by the officer in charge and established liability in negligence no police officer on duty at Hillsborough faced disciplinary proceedings.

The procedure within which police officers provide statements to official investigations or inquiries must be reviewed to ensure that such statements are witnessed, signed and forwarded in their original form. Under no circumstances should they be subjected to review or alteration.

UK: Stop & search & arrest and racism

In the late 1970s and early 1980s most local authorities in England and Wales, following the example set by the Greater London Council, established ethnic monitoring systems. It was argued at the time, that police forces should establish similar systems to monitor the use of their powers. There were numerous allegations, particularly from police monitoring groups, that the criminal justice system as a whole, and the police in particular, discriminated against ethnic minorities and it was therefore essential to monitor every aspect of the criminal justice process. Police forces, however, were reluctant to follow the example of local authorities.

With the passage of the Criminal Justice Act in 1991 the police were forced to take action. Section 95 places a duty on all persons working in the criminal justice system to avoid discriminating against anyone on the grounds of race, sex or other improper ground and the Home Secretary is obliged to publish information that he or she considers expedient to monitor this duty. In 1992 the Home Office sent a circular to all Chief Constables drawing their attention to the requirements of Section 95. The following year Her Majesty's Inspector of Constabulary (HMIC) began collating statistics for stops and searches but only on the basis of a white/nonwhite split and no ethnic information was collected on arrests.

In March 1995, following discussions within the Home Office, HMIC and the police, a more extensive system of ethnic monitoring was agreed. It now covers four main areas: stop/searches, arrests, cautions, and homicides. The system, described in *Race and the Criminal Justice System 1997* published by the Home Office, requires a police officer to make his or her own judgement about the ethnic origins of the person. They are required to use, "a 4-point scale", i.e. "White, Black, Asian and Other." (p8). The use of the word "scale" is totally inappropriate and implies a graduated series or order and suggests that the Home Secretary and the Chairman (sic) of the Criminal Justice Consultative Council, who sign and commend the Report, as well as a number of Home Office civil servants, have a long way to go in racism awareness.

The classification, apart from being based on a police officer's assessment of a person's ethnic identity rather than how the individual would describe themselves, fails to include a separate category for Irish people. They form the largest ethnic minority group in Britain and, moreover, there is increasing evidence that they are discriminated against by the police and in the criminal justice system. Yet most academic and government research continues to ignore their presence within British society. Notwithstanding these points, however, the new system of ethnic monitoring is a significant step forward and goes a long way to meet the demands of those who have been arguing for many years for some systematic monitoring of police powers.

This system of ethnic monitoring began in 1996 and the first set of figures were published by the Home Secretary in *Race and the Criminal Justice System 1997* in December last year, some six years after the Section 95 provision in the Criminal Justice Act.

The Report's findings

The Report presents a range of statistics on the four main areas.

It records for all police force areas, the total number of people stopped and searched under section 1 of the Police and Criminal Evidence Act (PACE), the number of arrests, and the number cautioned broken down by ethnic appearance. The small number of homicides - 671 in 1996/97 - prevented any sensible analysis of the statistics by police force area. An appendix contains a statistical update on racial incidents, the proportion of ethnic minorities on probation and in prison and the ethnic breakdown of those working in the criminal justice system.

Some police forces are still not in a position to supply all the data required. The main offender appears to be the Metropolitan Police Service (MPS) whose computer systems are apparently unable to provide all the detail on stops and searches and no data on the number of arrests by different ethnic groups. The Cheshire Police were also unable to supply data on arrests. This is an extraordinary situation given the length of time the police have had to introduce monitoring systems.

The report provides data on stops and searches and arrests relative to the proportion of different ethnic groups in the population of each police force area. Rates, however, are presented for just ten of the 43 police forces. No explanation is given why the analysis is not provided for all police forces: it is simply noted that the ten represent those with the highest percentage population of ethnic minorities. But discrimination against ethnic minorities may well be higher in those areas where numbers are low. Police notions of black "suspiciousness" is likely to be much higher in those areas where there are small proportions of ethnic minorities. By failing to provide a complete analysis of all forces, it gives rise to the suspicion that there is something to hide.

The rates for the ten police forces show widespread differentials in the proportions of ethnic minority communities subject to stop and search and arrest powers. They show that relative to the population the number of stops and searches of those recorded as being of black appearance was consistently about four or five times higher than for white people. The pattern for Asians was more varied but again it was consistently higher than the rates for white people. For arrests, the differences were even greater. The ratio varied from four to one in six forces to seven to one in one police force, Leicester. The arrest rates for Asians were considerably lower than for black people but in the majority of the ten forces they were higher than for white people. Despite these staggering differences the report received very little attention. This perhaps is not surprising as the press release announcing it was entitled "Home Secretary Publishes new Data and Research on Police Community Relations". It made no mention of ethnicity, race or racism.

Reworking the data

As the Report noted the numbers stopped and searched and arrested for every police force area broken down by ethnic group, it has been possible to rework the data to produce the rates for most of the police force areas. It has not been possible, however, to include either the MPS or Cheshire in all of the analyses because they have produced no data on arrests. In addition, as the City of London is so different, it has been omitted. The Census of Population figures on ethnic origin

Office report "Race and the Criminal Justice System 1994" have been used to produce the rates. These figures produce identical results as those presented by the Home Office for the ten police forces for stop and searches per 1000 for white and black people but produce slightly different figures for rates for Asians and other ethnic groups. Arrest figures, however, differ, sometimes significantly, from those presented in the Home Office report. Why this should be the case is difficult to understand because it is assumed that the Home Office used the same population figures in analysis of stop and searches and arrests.

Stop and search

The overall recorded rate of stop and search in England and Wales is 17 per 1000 of the whole population. The use of stop and search powers, however, varies greatly in different police force areas. Four police forces stop and search less than 5 per 1000 of their population: Devon and Cornwall, Dorset, Humberside and Wiltshire. At the other end, three forces stop and search over 30 per 1000 of their population: Northumbria (30 per 1000) Dyfed Powys (32 per 1000) and Cleveland (48 per 1000). Why there is such large differences in the use of the law is unknown but it has been a feature of policing for many years (see *Statewatch*, vol 6 no 4).

The variation in the use of these powers between white people and ethnic minorities in the population for England and Wales is extremely wide as can be seen in the Table. The rate for white people is 14 per 1000, for black people 108 per 1000, for Asians 25 per 1000 and for other ethnic groups 25 per 1000. In other words black people are nearly 8 times and Asians nearly twice as likely to be subject to a stop and search by the police than white people in England and Wales.

The variation of the use of the powers within different police forces against different groups is also very varied. Four police forces stop and search more than 100 black people per 1000 of the black population: Merseyside (189 per 1000), Metropolitan Police (141 per 1000), Cleveland (135 per 1000) and Dyfed Powys (118 per 1000). These figures can be expressed another way. On Merseyside, for example, nearly one in every fifth black person was stopped and searched. The actual rate is unlikely to be quite so high as some people may be stopped on more than one occasion during the year. Although the rate for Asians is consistently much less than for black people, nevertheless, five police forces have stop and search rates of more than 30 per 1000: Gwent (45 per 1000), Norfolk (42 per 1000), West Midlands (37 per 1000), MPS (34 per 1000) and West Mercia (31 per 1000).

When the differences in the stop and search rates between white people and other ethnic groups are compared for individual police forces, Surrey tops the list where black people are eight times more likely to be stopped and searched than white people. The next highest difference is found on Merseyside where the rate is 7 times greater. At the other end, only two police forces, Cumbria and Northumbria, tend to stop and search more white people, proportionately, than those in ethnic minority populations. The differential between white people and Asians are much closer. Two forces stand out with high differentials: Thames Valley where Asians are over 4 times more likely to be stopped and searched than white people and in Bedfordshire where the difference is 3 times as great.

Arrest powers

The overall arrest rate in England and Wales is 37 per 1000 of the whole population. The use of the arrest powers, as with the stop and search powers, varies greatly in different police force areas. Four police forces arrest more than 50 per 1000 of their population: Cleveland (60 per 1000), Northumbria (59 per 1000), Merseyside (53 per 1000) and Gwent (53 per 1000).

Police forces with very low rates of arrest include Surrey (15 per 1000) and Hertfordshire (18 per 1000). The variation in the use of these arrest powers between white people and ethnic minority groups in the population for England and Wales is extremely wide as can be seen from the Table. The arrest rate for white people is 34 per 1000, for black people 155 per 1000, for Asians 47 per 1000 and for other ethnic groups 64 per 1000. In other words, the arrest rate for all ethnic groups is higher than for white people. For black people it is nearly 5 times as great.

The variation of the use of the arrest powers within different police forces against black people is staggering. The highest arrest rate for white people is in Northumbria with a rate of 59 per 1000 of the population. Yet only four police forces in the whole of England and Wales have arrest rates for black people which are less than the highest rate for white people: North Wales (43 per 1000), Cleveland (33 per 1000), West Mercia (22 per 1000) and Cumbria (49 per 1000). In seven police forces arrest rates for black people exceed 200 per 1000 of the population: Sussex (242 per 1000), Kent (232 per 1000), MPS (231 per 1000), Norfolk (231 per 1000) Staffordshire (221 per 1000) Merseyside (205 per 1000) and Dyfed Powys (206 per 1000). These arrest rates are the equivalent of arresting one in every five black people in the period, assuming that the same person is not arrested on more than one occasion. Asian arrest rates are much closer to white arrest rates and exceed the white rate by more than twice in only two police forces.

Metropolitan Police and CRE Working Party

In 1995 a working group was set up with representatives from the Metropolitan Police, the Home Office, the Commission for Racial Equality and National Association for the Care and Resettlement of Offenders. A draft report was written over a year ago, showing the wide differentials between ethnic groups noted above, but, as recently reported in the *Independent*, Scotland Yard has decided not to publish it. It is claimed that it failed to address the contribution of stop and searches to the detection and prevention of crime. Beverley Thompson, a member of the working party, denies that this was in the original terms of reference, which was to look at ways to improve public confidence in stop and searches. She added: "They moved the goalposts because they didn't like the results".

The Home Office's response to the differentials

As these wide variations in the use of police powers in different sections of the population started to be revealed, the Home Office commissioned a number of research projects. One study by Fitzgerald and Sibbitt (1997), which examines various aspects of ethnic monitoring of the use of police powers, has now been published and another based on an analysis of the British Crime Survey data is shortly to be released. The argument of the research by Fitzgerald and Sibbitt is that the quality and limitations of the data makes it impossible to reach any conclusions about the over-representation of ethnic minorities. In particular, it is not possible to conclude that these staggering differentials indicate widespread police racism. For example, in relation to stop and searches they argue: "the evidence strongly suggests that even large ethnic differences in forces' PACE figures should not be taken at face value as indicating discrimination." (p64). They argue that numerous variables other than ethnicity need to be controlled to make any comparisons meaningful. Thus, at the very moment at which the first set of statistics are produced after a long struggle to get the police to introduce a system of ethnic monitoring, the statistics themselves are found wanting. In this context, too, the goalposts appear to have been moved.

Fitzgerald and Sibbitt recommend that there should be a shift from concentrating on what many assumed to be the essence of ethnic monitoring - the extent to which certain groups may be

over-represented in the criminal justice system relative to their presence in the population, to decisions about what happens to them once they are in the frame. This means that police forces should not concern themselves with whether or not there is a differential in the rates of stop and search and arrest between ethnic groups. Instead they should move to the next stage in the process and analyse the outcome of their decisions at this point and ascertain whether there are any important ethnic differences.

The Race and the Criminal Justice System 1997 Report draws heavily on these conclusions and plays down the significance of the differentials. It also makes numerous caveats about the data leaving the reader with the clear impression that any differences are simply an artefact of the data. In the chapter on Stops and Searches it dismisses the evidence provided for a number of years on a simple white/non white split, which has consistently shown that nonwhites are four times as likely to be subject to a stop and search as white people, on the grounds that the difference "mainly reflects the position in London, since the MPS area covers the majority of stops and searches and has the largest proportion of the ethnic minority population. This is simply nonsense: the difference cannot be explained away like this. The figures are represented as a proportion of different ethnic groups in each police force area and therefore it does not matter that the MPS carry out the majority of searches.

The report also makes reference to Fitzgerald and Sibbitt's finding that the official stop and searches do not form a complete record of all searches. This is, of course, something that has been known for many years and has been constantly drawn to the attention of the authorities by police monitoring groups. The under-recording, apart from indicating a sloppiness in police practices, it is not significant in itself. What is important is whether or not under-reporting varies between the different ethnic groups. The research claims that searches of white people are more likely to be under-recorded than those of black people. But this based on anecdotal evidence from police officers: no figures are provided on the extent of the under-recording. Furthermore, stops which are not accompanied by searches need not be reported at all. It may be that black people are disproportionately subject to this.

The report, in addition, refers to Fitzgerald and Sibbitt's argument about the variations in the use of PACE powers. It is important to quote the explanation in full because it provides an insight into the type of argument that the Home Office and the police are likely to present in response to high differentials in the use of police powers.

[The research shows] the fact that variations in police use of the PACE power by location, time of day and in connection with legitimate targeting may impact differently on different groups within the overall police area. This indicates that there may be no clear relationship between the population at risk of being stopped and the population of an area. For example, those stopped in the City of London may well be unrepresentative of the resident population.

There is little doubt that stop and searches do vary by location, time of day and in connection with legitimate targeting and therefore impact on different groups in different ways. But this point does not by itself provide a defence to the charge of racism. It is necessary to ascertain the extent to which these patterns are determined by prejudice or other factors that may adversely affect the treatment of ethnic minorities. In addition, to claim that differential policing practice "indicates" that there may be no clear relationship between the population at risk of being stopped and searched and the resident population is grossly misleading. Again, it is important to ascertain the police criteria for defining a population at risk and whether it is based on prejudice. Furthermore, to use the most unrepresentative comparison possible between an at risk population and the resident population is perverse. As the Home Office is very aware, the City of London has the smallest resident population - under 5000 - but the largest daily inflow population of any police force area.

One important factor that will affect the use of police powers is the age structure of the population in the police force area. The greater the proportion of the population in the age range from which the majority of street suspects are drawn either within the population as a whole or within different sections, the greater the likelihood, if all other factors are assumed equal, of the use of police powers. The number of stop and searches and arrests therefore need to be standardised, in the same way as the number of deaths, by the proportion of different age groups within the population as a whole and within different sections of it in each police force area. This exercise has not yet been carried out.

Arrest statistics are apparently even more problematic. Although the police have been obliged to collect statistics on arrests since the Criminal Law Act 1977, they have been subject to little attention. It is now claimed by the HMIC that the variability in the data between forces makes comparisons unsafe and the figures which it regularly published have been suspended for the time being. The MPS were never part of the HMIC's series but it did collect figures on arrests for notifiable offences, which were published annually. It has now emerged from Fitzgerald and Sibbitt's research that these figures only covered arrests which resulted in a caution or prosecution and excluded any arrest which led to no further action. It suggests that the actual number of arrests in England and Wales is far greater than previously estimated and may well be in excess of 2 million per year (See Statewatch July-August 1995). The Race and Criminal Justice 1997 Report draws attention to another problem with the arrest statistics: the basis for arrests apparently varies between police forces. But the law states clearly in relation to most offences that an arrest can only be made if an officer has reasonable suspicion that an offence has been committed or is about to be committed. Arrest is the most coercive power open to the police and it is extraordinary that in 1998 the MPS, the largest police force in the United Kingdom, still does not have comprehensive statistics on the number of citizens who are removed from the streets of London and detained in police custody every year and how many of these are from the ethnic minority communities. It contrasts sharply with the effort and resources that go into collecting statistics on the nature and extent of crime and the alleged ethnic identity of the perpetrators. It reflects not only a lack of concern about ethnic relations but also civil liberties.

Conclusions

It has taken many years for the police to introduce a system of ethnic monitoring following widespread complaints that black people, in particular, are subject to discrimination in the police use of stop and search and arrest powers. Now that the first set of figures are released which appear to support strongly the allegations, the government and the police say that the figures are either unreliable or subject to problems of interpretation. It is not a situation which inspires confidence in police community relations. While there are a number of factors other than discrimination which may explain some of the differences, such as the age structure of the different communities, it is wrong for the Home Office to go to the other extreme based on the current research, and argue that the differences should not be taken as indicating discrimination. Moreover, the refusal of the Metropolitan Police to publish its own working party's report on the use of stop and search and the fact that it still does not collect comprehensive figures on the number of arrests does little to instil confidence. All of this adds more weight for an independent body to have responsibility for the collection and publication of key social statistics.

Blacks are "targeted for police searches", Independent, 8.6.98; Fitzgerald, M and Sibbitt, R (1997), Ethnic Monitoring in police forces: A beginning, Home Office Research Study 173; Race and the Criminal Justice System 1997, Home Office.

BELGIUM: Defining a “criminal organisation”

In June 1997 the Belgian Chamber of Deputies approved the first draft of a law on criminal organisations, to which lawyers, academics and human rights organisations quickly raised objections. The bill was re-examined in the Senate, where amendments were set down for scrutiny by the Senate Justice Commission. By mid January 1998 the Government put forward further amendments to the Justice Commission, some of which it subsequently revised. At the beginning of April the bill as revised by the Justice Commission was adopted almost unanimously by the Senate. The bill has been finally amended by the Chamber Justice Commission and is now ready for a final vote by the Deputies.

The debates surrounding the question of organised crime in the EU may be identified as a starting point for the measures drafted in Belgium. The Council referred, in a preamble to its action programme on organised crime, to the infiltration of structures and organisations of civil society, at a transnational level, by criminal organisations and called this phenomenon “...a menace to society such as we know, and wish to preserve it”. As part of the effort to combat this phenomenon, the Belgian Minister for Justice elaborated the following three objectives:

1. To define a criminal organisation.
2. To criminalise any form of participation in a criminal organisation.
3. To write new methods and powers in investigations undertaken by police and magistrates into Belgian law.

Objections to the revised draft of the bill continued to be raised, particularly by the League for Human Rights (*la Ligue des droits de l'Homme*). These objections pertained in particular to the imprecise wording of the proposed additions to the penal code and to the legitimisation of “proactive investigation” by police and magistrates, which will allow mini-investigations, outside juridical control, into organisations on the basis of “reasonable suspicion” that the organisation in question intends to carry out punishable offences.

The bill before the Chamber proposes the addition of two sub-articles to article 324 of the Belgian Penal code: 324 bis and 324 ter. The former defines a criminal organisation, the latter criminalises participation in a criminal organisation. Article 324 bis reads:

A criminal organisation is a structured association of more than two people, established over a period of time, with a view to committing, in a concerted manner[...]crimes and offences punishable by a sentence of three years in prison, or by a more serious penalty in order to obtain, directly or indirectly, material benefits[...]by means of intimidation, threats, violence[...]fraud or corruption using commercial or other structures to conceal or to facilitate the offences.

The main objections raised in relation to 324 bis, by the Reflex group, (based at Brussels University), included the fact that the wording of the article fails to bring within its remit organisations which commit crimes as ends in themselves. Whilst from the wording it is clear that crimes committed in order to gain material benefits will be held to point to the existence of a criminal organisation, crimes committed as ends in themselves appear to have been excluded. This appeared to constitute a significant lacuna in attempts to combat organised crime. A paedophile network or a racist group, for examples, may pursue extremely pernicious but non-profit-making activities, whereas certain trade union activities, such as demonstrations for pay increases, could have led to the union being identified as a criminal organisation, (if, for example, criminal damage occurred during the course of the demonstration). Thus an organisation such as a

trade union which is generally not seen or recognised as having a criminal nature could have been brought within the remit of the legislation, whilst the nature of paedophile or racist groups' activities may leave them outside its scope. Reflex called for a clearer distinction between the means and ends of the activities which would define a criminal organisation, such that organisations which both legislators and public opinion would not consider to be illegitimate could not be defined as criminal.

The Chamber Justice Commission, on 17 June, adopted an amendment proposed by the Socialist deputy, Serge Moureaux, which positively excludes organisations which are of a uniquely political or trade union nature from having the law applied to them; nor can organisations whose goals are solely charitable, religious or philosophical fall within the remit of the legislation. Moreaux's amendment is particularly significant in relation to the Justice Minister's previous affirmation that both the IRA and ETA could fall within the remit of the legislation. However the amendment does not protect any of the aforementioned groups from the extensive new powers of investigation which have been granted to the Belgian police and magistrates.

Reflex also objected to the vague but inclusive language employed at the end of Article 324 bis which refers to recourse to commercial OR OTHER organisations in the activities of a criminal organisation. Reflex argued that such inclusive language is open to abuse and is contrary to the principle of restrictive interpretation which governs the application of the Belgian penal code.

Article 324 ter reads:

Para.1: Any person who, willingly and knowingly, is part of a criminal organisation... will be imprisoned for a period of between one and three years and/or will be fined between one hundred and five thousand francs even if they do not intend to commit an offence within the context of this organisation nor to associate themselves with it in one of the ways foreseen in Article 66 and following [articles].

Para.2: Anyone who participates in the preparation for or realization of any legitimate activities of this criminal organisation, knowing that... their participation contributes to the objectives of this organisation, as set out in Article 324 bis, will be imprisoned for between one and three years and/or fined between one hundred and five thousand francs.

Para.3: Anyone who participates in decision making in the context of this criminal organisation, knowing that their participation contributes to the objectives of this organisation, as set out in Article 324 bis will be imprisoned for between five and ten years and/or fined between five hundred and one hundred thousand francs.

Para.4: Any leader of a criminal organisation will be imprisoned for between ten and fifteen years and/or fined between one thousand and two hundred thousand francs.

Here, Reflex objected to the incrimination of mere adherence to a criminal organisation of whose aims one has knowledge, even though one does not intend to commit an offence in the context of this organisation. Again, the central concepts remain vaguely defined. If one is part of a criminal organisation does one adhere to or participate in the organisation? In the preparatory work for the bill there are examples of criteria for adhering to an organisation, including the existence of a contract to do work for the organisation, the possession of the organisation's membership card, attendance of the organisation's meetings or participation in its lawful activities. Thus a person who has only involved themselves in the legitimate activities of an organisation may be incriminated and would find themselves in the position of having

to prove a negative, ie. that they did not know of the criminal character or intentions of the organisation at the moment at which they joined or began to participate in it.

Reflex also criticised the fact that the same penalties were set out for mere adherence to an organisation as for involvement in the legal activities of an organisation with knowledge of its general aims. Notwithstanding the fact that it would be extremely difficult for a person to prove what they did, and more so what they did not know about the general aims of an organisation when they began to take part in its legitimate activities, it appears excessive for such active participation potentially to incur the same penalty as passive adherence.

Georges-Henri Beauthier, for the League for Human Rights, argued that the main problem is that the legislation will miss its target, presuming that its targets are the major players in networks of organised crime. The provisions of the legislation, such as those on adherence and participation cited above, are far more likely to entail the prosecution of small, unwitting or unconscious players. A bank clerk, for example, who regularly performs legitimate transactions for a mafia-type organisation may easily be incriminated if s/he cannot prove that s/he did not know of the criminal intentions of the organisation. Yet the omission from the law of any measures to tackle the problem of banking secrecy which suggests Beauthier, is central to the problem of organised crime in the EU, will severely limit its capability in terms of identifying major players and major operations. The preparatory work for the legislation contains numerous references to the small players in criminal organisations, such as bank clerks and drivers. Should such people really be the focus of legislation which seriously intends to combat organised crime? Beauthier also criticises the lack of precision surrounding some of the central concepts of the legislation and its extensive scope of applicability. He highlights the fact that this legislation has rendered intent punishable, reiterating that it is almost impossible to prove the absence of

intent.

Finally, Beauthier condemns the legislation's legalisation of "proactive investigation" by police and magistrates. These new powers of investigation will include the possibility of tapping individuals' and organisations' phones on the basis of a "reasonable suspicion" that they intend to commit such crimes as specified in the legislation. He notes that on 2 April 1998, the Senate approved a bill which increased the scope of phone tapping powers; in particular, it dispensed with the requirement that recorded conversations be wholly transcribed, which will necessarily entail a violation of the rights of defence attorneys' access to information.

The Belgian legislation may be contrasted with the European Council's Joint Action on criminal organisations and participation therein (see *Statewatch*, vol 8 no 2). In certain respects, the former is more restrictive and potentially repressive than the latter. The Joint Action does not incriminate mere adherence to an organisation. Rather, it equates "taking part in..." with active participation, although this active participation need not be in the execution of a crime. However, the Joint Action contains no safeguards for the status of legitimate organisations such as those introduced in Belgium by Senator Moreaux.

It should finally be noted that in the Belgian case, revisions of the texts and amendments such as Senator Moureaux's were possible because of the observance of the democratic procedures of open debates and consultation. No such democratic processes characterised the evolution of the Joint Action plan, to which Belgium remains a signatory.

Reflex: Observations sur le projet de loi relatif aux organisations criminelles...; Beauthier: La loi sur les organisations criminelles.

UK: Campsfield trial disgrace

On 1 June, nine West Africans, including two teenagers, stood trial on charges of riot and violent disorder, carrying a maximum sentence of ten years. The charges arose out of a disturbance in August 1997 at Campsfield immigration detention centre, near Oxford, run by Group 4 Security for profit. The prosecution had taken ten months to prepare. Over 50 prosecution witnesses were to be called. Dozens of interviews had been conducted, hundreds of statements, photographs and videos compiled. The trial was expected to last for at least eight weeks.

Just over a fortnight later, it was all over. On 17 June, prosecution counsel Nicholas Jarman QC stood up and told the judge, "No prosecution properly conducted could invite the jury to convict the Defendants on this evidence". The jury was directed to enter Not Guilty verdicts. What had happened?

The charges were based on video and eye-witness evidence purporting to identify the nine men in the dock as participants in a riot at the detention centre in which Group 4 staff were threatened, an internal gate was stormed, telephones, security cameras and TVs were smashed and fires were started in the centre's library and women's day room, causing thousands of pounds-worth of damage.

Even before the trial started, the prosecution case against the men was weakened by the withdrawal of video evidence against all but three of them. Group 4 identifications of defendants on video were no longer deemed reliable. That was a foretaste of things to come.

Using video footage from the security cameras and statements given by staff to an internal inquiry soon after the events, the defence demonstrated the unreliability of Group 4 staff's evidence. When Caryn Mitchelhill said she was trapped on her own in a corridor, surrounded by black men, her shoulders were grabbed and she was told "We've got you, white bitch," video evidence proved that it never happened - she was always with other Group 4 staff. When Chris Barry, Mitchelhill's boyfriend, said a foul-smelling chemical liquid had been poured over him, soaking his shirt, his shirt had been ripped, and he had passed out after a blow on the head, video evidence showed him up and about with a whole, dry shirt three minutes later. Witnesses who claimed to have identified defendants on the basis of weeks or months of acquaintance with them were confronted with incident reports of the previous day showing they had no idea who most of the detainees were. Staff claiming to identify defendants from vantage-points on the roof of the centre were proved unable to see what they claimed to see.

Some staff admitted they had got things wrong, told "undeliberate lies", or made mistakes. Others dug their heels in, digging the prosecution's grave in the process. Mitchelhill, confronted with the video which proved her a liar, blustered first that the woman shown on the video could not be her, and then that the video must have been taken on another day. Paul Bean was an escort for one of two detainees who were being moved out to a prison; it was their removal which sparked the protest.

Bean agreed that holding a detainee round the neck was "extremely dangerous" but denied that such a hold had been used. Shown video footage clearly showing the hands of an orderly, Mr Galloway, round the detainee's neck, he explained that Galloway was "trying to calm the detainee down; he was using his interpersonal skills".

The story which emerged from the questioning of Group 4 staff was quite different from the explosion of terrifying violence they had tried to portray. Detainees waking early saw and heard two of their number being removed by squads of guards who refused to say where they were being taken. One detainee was held by the neck and seemed to be being strangled. A group of fifteen or so concerned detainees went down the corridor leading to the administrative section of the centre (to which they had no access) to try to find a supervisor. Their attempts to find out what was happening to the two men met with stonewalling and abuse. On the detainees' side, there was alarm and anger. On the Group 4 side, rumours abounded that the detainees were "tooled up"; one had been seen with a knife (the "knife" turned out to be a feather). The order was given to secure the centre. Group 4 staff "kitted up" in NATO riot gear complete with long and short riot shields, batons and helmets (whose visors misted up frequently, adding to the chaos). A fire alarm went off, smoke was seen coming from the women's quarters, and almost all of the 187 detainees poured out of the building, closely followed by the tooled-up Group 4 staff. A confrontation ensued at a gate (an internal gate which was visible from outside the centre), where detainees held aloft placards demanding freedom and justice, and tried to tell the world about the feared strangulation of the detainee. Group 4 staff drew their batons, and some used them. One admitted hitting a detainee on the head. (No written report was made of his use of the baton, and he was unaware of any procedure for making such a report.) After a push at the gate, which was secured by Group 4, very little happened for the rest of the day. Facilities in the centre were damaged, sometimes by detainees, sometimes by staff (Group 4 staff admitted to smashing a telephone at trial, something they had not told police or their own management). Staff congregated inside, detainees outside. According to defendants, despite the fact that people of all races had joined the protest, detainees were allowed back in to the centre by ethnic group, until the only group left outside were the Africans. The rest were shipped out to other centres, but the Africans were held in the centre's gym for several days. Thirteen of them were arrested, interviewed and charged with violent disorder. Later, charges were dropped against four of the men, but the remaining nine had the more serious charge of riot added - a charge used to mark the most serious and life-threatening situations. Group 4 injuries totalled a few minor bruises.

On the first day of the trial, Premier Custody Services, who brought the defendants to court each day, asked for them to be handcuffed in the dock. The request was refused, but its reason was that the defendants were all classified as "exceptional risk" because of attempts at self-harm. Two teenage defendants had made serious suicide attempts and one was discharged days into the trial because he was so severely disturbed. (He remains in psychiatric care.) The young men on trial emerged as refugees in limbo, responding in solidarity to arbitrary punitive action by those in whose custody and power they were. Their detention was arbitrary: no-one knew why the detainees were detained in Campsfield in the first place. Not the chief immigration officer stationed at Campsfield to monitor the contract between Group 4 and the Home Office and to act as a channel for detainees' queries about their immigration cases. He had no idea why they were there; not his concern, he said. More alarmingly, detainees had no idea why they were there either. They were asylum-seekers who had not committed any crime, why were they locked up behind 12-foot high fences? HM Inspector of Prisons Sir David Ramsbotham, in his report on Campsfield published in March,

said the failure to give written reasons to detainees for their detention possibly violated Article 5(2) of the European Convention on Human Rights.

Because Campsfield is not a prison, there are no rules for detainees, and so punishment is arbitrary: the only sanction for disruptive behaviour, and one described as "grossly inappropriate" by Ramsbotham, was removal to prison. Such removal was arbitrary: the two men who were removed were chosen the previous night, according to the immigration officer, because they had been involved in an altercation with him earlier that evening (he allegedly told them to go back to Nigeria if they didn't like it). They weren't told they were to be removed; eight guards simply presented themselves at their rooms at the crack of dawn and told them to get up. There were no rules for Group 4, or for the running of Campsfield, either: the prison rules don't apply to immigration detention centres, and any rules laid down in their contract with the Home Office are confidential (as Dr Evan Harris was told when he tried to obtain them in a Parliamentary Question, the dictates of commercial confidentiality prevent disclosure of the contract).

As Ramsbotham reported, Group 4 staff have no powers vis-à-vis the detainees. Their power to use physical force is the same as that of an ordinary citizen. Yet they drew batons and hit people with them - and not in self-defence, but to defend an internal gate. This use of force, in which detainees were struck on the head and on the jaw (according to Group 4), was probably illegal. No-one knows.

These vulnerable asylum-seekers have no proper medical or psychiatric oversight, despite the vulnerability of the men: neither the immigration officer nor the Group 4 staff knew what their asylum claims were about, whether they had been tortured, whether they had psychiatric problems as a result - medical care was not for them. It was subcontracted to "Forensic Medical Services Ltd". No-one from FMS was produced to give evidence, despite the complaint by one teenage defendant that the doctor had only ever given him paracetamol for his auditory hallucinations, and had refused to treat a dislocated shoulder. A Group 4 orderly who came upon a detainee sitting awake all night muttering reported that he was "clearly disturbed" - yet failed to do anything to get appropriate treatment for him, merely noting that he was a nuisance who kept his room-mate awake.

The trial revealed what campaigners had been saying for years: that Campsfield is a shambles, detention there makes asylum-seekers ill, that Group 4 staff, unqualified, needing no pastoral experience, working 12-hour shifts for very little money, are grossly inappropriate custodians and carers of very vulnerable people, including minors.

Immigration minister Mike O'Brien went out of his way to defend Group 4, both before and after the trial. Days before the trial he presented Campsfield staff with an "Investors in People" award, a gesture which might have boosted their morale but which did nothing for the asylum-seekers there, who were given no opportunity to speak to him. And after the trial's ignominious collapse, he reiterated his defence of the staff and his attack on the Campsfield detainees.

Since the trial, several of the detainees have been close to deportation, but threats of court action have so far restrained the Home Office. Another detainee made a serious suicide attempt, and his condition, together with a fresh medical report which revealed the extent of the torture he had suffered in Nigeria and the threat of an injunction, persuaded the Home Office to release him pending reconsideration of his asylum claim. The teenager in psychiatric care has now been given permission to stay, after over a year in detention. Campsfield is now full of more asylum-seekers, and Mike O'Brien continues to devise fresh deterrents.

Campaigners ask: when will the scapegoating, detention and demoralisation of asylum-seekers end?

UK: Lawrence inquiry reveals “the good, the bad and the ugly”

From March through July the initial phase of the public inquiry, held at Hannibal House, Elephant and Castle in south London, into the events surrounding the racist murder of 18-year old black student Stephen Lawrence has disclosed an astonishing saga of incompetence, racism and possibly corruption. The inquiry is being held under Section 49 of the Police Act 1996 and is chaired by Sir William Macpherson, a former commander in the SAS and High Court judge, who has been criticised for his record on “race issues”. He is advised by Tom Cook (the former deputy chief constable of West Yorkshire), the right reverend Dr John Sentamu (Bishop of Stepney) and Dr Richard Stone (Jewish Council for Racial Equality).

The terms of reference for the hearing are:

To inquire into the matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes.

The second part of the hearing, which will start later this year, will see the inquiry team visit Bristol, Birmingham and Manchester examining “national issues relating to the investigation and prosecution of racially motivated crimes.” A report will be presented to Home Secretary, Jack Straw, at the end of the year.

The police “investigation” and cover-up

The hearing has been characterised by severe criticism of the police for their incompetent “investigation” into the racist murder of Stephen. In their opening statements counsel to the inquiry, Edmund Lawson QC, and Michael Mansfield QC, counsel for the Lawrence family, listed a catalogue of errors that included:

- * *the failure to administer first aid to Stephen*
- * *the failure to deal with important eye-witnesses*
- * *the absence of systematic mobile or house to house searches*
- * *the absence of written records of events*
- * *the failure to liaise with Stephen's family*
- * *the failure to act immediately on information from informers*
- * *the failure to make any early arrests*

The inordinate number of errors prompted Mansfield to ask whether “the initial investigation ever intended to result in a successful prosecution?” Introducing two themes that were to recur throughout the inquiry, he suggested that: “so much was missed that two propositions must be considered.” One, that racism “permeated the investigation” and two, that the perpetrators were “expecting some sort of [police] protection”. This claim was rejected by Jeremy Gompertz, for the Metropolitan police, who only accepted “shortcomings” in the investigation. His case echoed an earlier Police Complaints Authority (PCA) report into the police handling of Stephen's murder which accused officers of incompetence and identified serious errors, while denying that this amounted to anything more sinister.

Nearly 50 days of police evidence provided indisputable evidence of ineptness and incompetence that undermined the denials of racism and corruption and brought gasps from the public gallery. Many of the denials rested upon a secret 1993 internal review, carried out by a former head of the Flying

Squad, Detective Superintendent Roderick Barker, which concluded that the police investigation was conducted professionally and that all lines of enquiry had been pursued. However, Barker's report had already been criticised by the PCA, which found that he had neglected his duty, but failed to bring charges against him.

Questioned at the inquiry, Barker conceded that the report had been “toned down” and contained “inaccuracies and omissions” because the information might have been used by defence lawyers in future prosecutions. He denied that this constituted a cover-up. His excuses saw him dismissed from the inquiry by Macpherson, who said: “...his value as a witness and his credibility in vital matters have already been much undermined for reasons which will be perfectly obvious for anyone here today. We feel we ought to indicate that this review is likely to be regarded by us as indefensible...” Stephen Lawrence's father summed it up explicitly:

It [is]...clear that the Barker review is a complete and utter cover-up which all the most senior officers must have been aware of.

Police racism

Running parallel to the racism of an “incompetent” police investigation and the “indefensible” Barker cover-up was a concerted attempt to undermine the Lawrence family, their supporters and legal team. Police “liaison” officers were rude and abrasive to the family and their legal representatives were obstructed and criticised. Answering questions immediately before the Lawrences gave their evidence, the former third highest ranking officer in the Metropolitan police, Deputy Assistant Commissioner David Osland, now a Conservative councillor, defended a memo he sent to Commissioner Paul Condon saying that his patience with the Lawrence family was “wearing thin”. He stood by advice to detectives involved in the investigation that they should have sued the grieving family over claims of police racism.

Doreen Lawrence remained unphased by Osland's hostility and repeated her accusation of police racism, describing how they had treated her and her husband like: “gullible simpletons...We were patronised and fobbed off”. Faced with aggressive cross-examination by police representatives she defiantly asked: “Am I on trial here? From the time of my son's murder I have not been treated as a victim. To be questioned in this way, I don't appreciate it.” McPherson intervened to advise counsel for the police: “Your discretion should be exercised in favour of not asking further questions.” Mrs Lawrence received a standing ovation from the public gallery as she left the witness box. Next, her husband told the inquiry:

After 43 days I was expecting an apology from the Metropolitan police for the way they behaved for five years. Instead I saw a representative for the Metropolitan police attack my wife as if she were on trial...we have suffered all this trauma and disappointment - at the end we will get nothing from this - we will not get my son back.

In a dramatic finale to the police evidence the most senior officer to participate in the hearing, Assistant Commissioner Ian Johnston, belatedly offered Scotland Yard's first public apology to the Lawrences. However, many wondered why the apology did not come in person from the Commissioner. In his statement Johnston noted that: “...the Metropolitan Police...have lost the confidence of a significant section of the community for the way we have handled the case.”

However, his gesture was disingenuous in assuming that the police had ever had the confidence of black communities which face police coercion (through stop and search and deaths in custody) but lack protection from racist attacks. Following on from the Lawrences spirited defence against an intimidating cross-examination, Johnston's gesture was too little, too late and was produced only after criticism from Stephen's parents.

The racist murder suspects

The inquiry was told that the five men identified as Stephen's murderers, brothers Jamie and Neil Acourt, David Norris, Luke Knight and Gary Dobson, had been named to police by 26 separate sources. These informed them that the youths were in a local racist gang and associates of Jason Goatley and Kieran Highland, members of another gang responsible for another local racist murder, that of Rolan Adams in 1991. From their schooldays the Acourt brothers had a history of intimidating black students and had been stopped by police on numerous occasions and questioned or cautioned for possession of offensive weapons. Another gang member, David Norris, is the son of south London gangster, Clifford Norris, who it was alleged at the inquiry, had corrupt links with police officers linked to the Lawrence investigation (see below). Norris Snr is currently serving eight years for drug smuggling and possession of an arsenal of weapons.

In May the five, three of whom were acquitted after a private prosecution brought by the Lawrences collapsed in 1996, were summonsed to give evidence at the inquiry. However, a legal argument at the High Court stipulated that while they could be called to give evidence they should not be asked if they had killed Stephen. The laws governing public inquiries require that the five respond to all other questions put to them; if they refuse they could be fined or jailed for up to six months.

The suspects arrived to give evidence on 29-30 June. They swaggered into the inquiry after contemptuously blowing kisses to Lawrence family supporters waiting outside. Within minutes of cross-examination Macpherson intervened to warn Jamie Acourt to tell the truth or face prison after he balked at answering questions. This led to a repeated mantra of "Can't remember" from the five. At one point Mansfield had to break-off his cross-examination of David Norris in order to instruct his mother not to prompt her son.

Questioning centred around police surveillance video evidence secretly filmed at a flat rented by Gary Dobson that showed the gang stabbing furniture with knives while shouting some of the most obscene racist abuse seasoned observers had heard. In their synchronised evidence each insisted that they were not racists, claiming that their remarks were jokes. Neil Acourt, asked about his threat that "...every nigger should be chopped up...and be left with nothing but stumps", cynically claimed that he had been suffering from stress: "I've been through a lot", he pleaded, as Doreen and Neville Lawrence watched impassively.

Other questions focused on the arsenal of weapons discovered in police raids. Asked about six knives uncovered at the Acourt home the hearing was told, "I don't know who they belonged to". A knife, similar to that used to kill Stephen, was taken to the home of Gaynor Cullen, David Norris' girlfriend, for gardening, Norris claimed. Police also found a jacket identical to one described to the police as being worn by one of Stephen's attackers.

The fury stirred by the suspects' arrogant lies and selective amnesia was only exacerbated by a scribbled statement in which they insolently maintained their innocence while spelling their victim's name wrongly. They walked free from the inquiry, taunting and spitting at supporters of the Lawrence family, whom they provocatively addressed as "black bastards" and challenged to fight. As they left they were attacked and punched

before eventually escaping under police protection. Protesters turned on the police, pursuing them to the Walworth Road where a tense stand-off lasted for half an hour.

Allegations of police corruption

The role of police corruption in undermining the investigation into the murder of Stephen Lawrence surfaced throughout the inquiry. While there is no "smoking gun" the activities of a number of police officers leave little doubt that much more remains to be revealed.

Questioning of David Norris disclosed that he had been charged for the attempted murder of Stacey Benefield a few days after being arrested for the murder of Stephen Lawrence. Police witnesses and the victim claimed that Norris' father, Clifford, had bribed Benefield and "nobbled" the foreman of the jury resulting in his son's acquittal. The jury foreman, who cannot be named for legal reasons, was on bail and later convicted for dishonestly handling £23,000 in a stolen cheque fraud. He is related to a criminal associate of Norris' and now maintains that his actions were a "mistake".

The allegation was that the influence of Clifford Norris extended beyond mere bribery and jury tampering, and that the relationship between him, the flying squad's Sergeant David Coles and Detective Sergeant Ian Crampton was corruption. The inquiry was told of a custom's undercover drugs operation that had observed Norris meeting with, and passing packages to, Coles on several occasions. An internal police investigation found that Coles had falsified records relating to the event. He escaped punishment after getting a character reference from Crampton a former colleague at Bexleyheath police station. Crampton was not only a former colleague, but was also the officer in charge of the Lawrence investigation, and the person responsible for the failure to arrest the five suspects.

Another officer, Detective Sergeant Crowley, who denied knowing Clifford Norris, was alleged to have played a fundamental role in undermining the evidence of Stephen's friend, and eye-witness to his murder, Duwayne Brooks. It was the exclusion of Duwayne's evidence that led to the collapse of the Lawrence family's unsuccessful private prosecution at the Old Bailey. The inquiry was told that he had played a similar role in the Rolan Adams murder case concerning the evidence of Rolan's brother, Nathan. Ian McDonald QC, counsel for Duwayne Brooks, told Crowley: "Your questionable involvement in both murder inquiries... is sufficiently serious that it provides a basis for inferring an attempt to thwart the success of both inquiries."

As Paul Foot has pointed out in the *Guardian* the list of important witnesses who have not appeared at the inquiry is extraordinary, and certainly undermined the attempts to explore the allegations of police corruption. Clifford Norris was not called to explain his links to police officers involved in the case and neither was Sergeant Coles. Inevitably, the allegations were diminished by these important omissions.

The Macpherson report

The Macpherson report will be presented to the Home Secretary after phase 2 of the inquiry, before Christmas. While there is little point in attempting to predict the outcome it is difficult to envisage how he will be able to ignore - as the PCA report did before it - the lesson that racism was the defining feature of the incompetent police investigation and the ensuing cover-up.

The Lawrences, whose experiences have forced them to the conclusion that black people have no useful role to play in the police service, have called for the resignation of the Metropolitan Chief Constable, Sir Paul Condon. It is thought likely that he will stand down, probably for reasons of health, when his term of office expires in the year 2000. Even if Condon were to resign it would be a symbolic gesture, nonetheless, an important one for the Lawrence family. It would, however, do nothing to curb the

institutionalised racism that permeates the Metropolitan police.

The appointment of Deputy Assistant Commissioner John Grieve, as the new Metropolitan police director of Racial and Violent Crime is clearly an attempt to pre-empt any criticisms in the Macpherson report. The cynicism of the move is reflected in Grieve's brief, which will be the:

...reform of police racial awareness training and police investigation of racial and violent crime.

Racial awareness training (RAT) took off after the urban uprisings of 1981 and the Scarman inquiry and report which followed. RAT has been criticised by black scholars as being irreformable, a "con trick" for transforming racism into a "white problem" rather than situating it as "a problem of an exploitative white power structure." In the aftermath of the uprisings A. Sivanandan, editor of *Race & Class*, observed how RAT allowed institutionalised racism to thrive while simultaneously excusing the police service of any responsibility for its actions:

The Brixton "disorders", in particular, had shown up the endemic and unrelenting racism of the force in its entirety. Scarman, in rescuing them and the state from such public and universal

opprobrium, had let them off with a reprimand for "racially prejudiced attitudes" (in the lower ranks) and a severe course of multiculturalism and attitude-training. Gratefully, the police accepted the sentence. (Communities of Resistance)

It would seem likely, judging from the outcome of previous inquiries, that the inevitable demands for police reform will amount to little more than a "con-trick", a public relations exercise designed to smother the long-standing problem of institutionalised racism beneath a veneer of "attitude-training". A reprise of the Scarman report would, once again, be gratefully accepted by the police who will be able to reassure the public that many of the recommendations - a new race relations unit, perhaps - are already in place.

Such public relations exercises will not introduce an independent means of holding the police accountable for their actions. Nor will they do anything to alleviate the deep sense of mistrust within black communities beset by coercive policing. Such an exercise would, however, demonstrate the validity of the Lawrences accusations against the entire criminal justice system and endorse the truth of the slogan chanted by their supporters outside the inquiry: British justice, No justice.

EU: Justice and Home Affairs Council, 28-29 May

The meeting of the Justice and Home Affairs Council in Brussels on 28-29 May opened with the much-heralded "open debate on organised crime". It started late and then in sound only at first, with some sixty-odd members of the public and journalists watching the "debate" on a large screen. Each of the 15 Interior Ministers and the Commission read out prepared speeches. Jack Straw, Home Secretary, opened and reviewed the progress made under the UK Presidency of the EU. Dr Schelter, German Minister of Interior, said that:

organised crime is mainly international cross-border crime. In Germany over 60% of all incidents reveal an international dimension. The perpetrators come from 101 countries.

His theme that "crime" originates from an "external threat" had to be combated, he said, through:

security at the external borders.. Illegal immigration often nurtures and promotes crime. Opening the borders to our European neighbours cannot be allowed to lead to a loss of security. Our citizens will not accept that under any circumstances.

The Swedish Interior Minister said that "enlargement was the most efficient way of dealing with organised crime". The Dutch Minister said that the fight against organised crime "cannot be hindered by procedural problems". The French Minister said that a "legal area" had to be created, work on policing was progressing but EU judicial cooperation was needed. The Italian and Danish Ministers drew attention to "the clear link between environmental crime and organised crime". Only the Finnish Minister sounded a critical note when he said that trust in the police would be lost if they "misused their powers" and that it was necessary to "control the activities of authorities and make them liable for their policies". For the Commission Mrs Gradin chided the assembled Ministers over the failure of a single Member State to ratify the convention on fraud and corruption.

Fudge over Gibraltar

Faced with the long-standing failure to resolve the dispute between the UK and Spain over the status of Gibraltar meant

there were no less than four references which excluded Gibraltar. In the Convention on Driving Disqualifications and draft Eurodac Convention there is:

With regard to territorial scope..., as regards the United Kingdom, it will only apply to the United Kingdom of Great Britain and Northern Ireland.

In the Joint Action on Establishing a Judicial Network there are the additional words "the Channel Islands and the Isle of Man." In the draft Convention on Mutual Legal Assistance in criminal matters: the territorial scope was a "remaining problem".

Other decisions

Convention on driving disqualification: after seven years of discussions and three years of detailed negotiation political agreement was reached on this Convention. Using the concept of "state of the offence" and "state of residence" it seeks to enforce bans throughout the EU. The Convention allows the first member states to complete ratification to declare they will apply it in regard to other member states who similarly make a declaration.

Joint Action on good practice in mutual legal assistance in criminal matters: intended to speed up cooperation where requests are made to another member state for mutual legal assistance, it is also meant to cope with requests which "are left without reply". Within a year each member state has to deposit a Statement of good practice covering acknowledgement of all requests, give name and contacts details of responsible authorities, giving priority to urgent requests, and give an explanation when a request cannot be met.

Joint Action to create a European Judicial Network: will set up a network of judicial contact points to give "legal and practical information" to counterparts in other member states. The first meeting of the network will be held in September 1998 and in June 1999 will consider whether to set up its own "special telecommunications network" (the Joint Action comes into force in December 1998).

Europol: on 12 June it was announced that the last notification of ratification of the Europol Convention has been received by the Council (from Belgium) and that it would begin operations on 1 October 1998. However, this date would appear

to be contingent on eight EU member states completing ratification of the Protocol on the Privileges and Immunities of Europol - at 28 May only seven had done so. With the agreed extension of the remit of Europol to cover terrorism (19 March, JHA Council) from 1 January 1999 a debate took place on the expansion of its staff. A report from the current Europol Drugs Unit (EDU) proposed the addition of 57 new posts which would bring the total to 126 - the Council agreed an increase of 50 to 119. The Europol computer system will not be ready until the year 2000.

Draft Convention on mutual legal assistance in criminal matters: this draft Convention which was presented last autumn as almost ready for adoption is still on the table. This is partly because the UK Presidency revised the Articles on the interception of telecommunications but also because, quite late in the day, it appears some member states have raised the issues of data protection and the role of the Court of Justice.

Joint Action establishing a mechanism for collective evaluation: in simple terms this Joint Action sets up a group of experts from the member states and the Commission to evaluate the implementation of the "acquis of the EU in the field of justice and home affairs" in the applicant countries. This followed concern by France and Germany at the March JHA Council that the enlargement process could be jeopardised if this *acquis* is not fully implemented. This group of experts will get information from individual member states; reports from Member States' embassies and Commission delegations; and reports from the Council of Europe. They are also empowered to form *ad hoc* teams of representatives and experts to "carry out further missions on specific aspects." This initiative ties in directly with the following.

Pre-accession Pact on organised crime: this was agreed by the JHA Council meeting and approved the following day at the meeting with the Ministers of Justice and Home Affairs from central and eastern Europe and Cyprus. The Pact sets out 15 "Principles" but nowhere is "organised crime" defined, though it is clear from the preamble that it is intended to refer at least to all the areas covered by Europol including "illegal immigration". Essentially it sets out the legal and practical harmonisation of the criminal justice systems and immigration policies of the applicant countries with the EU, including the creation of national criminal intelligence centres and the posting of liaison officers to Europol HQ in the Hague.

Draft Eurodac Convention: at the March JHA Council it was agreed to carry out a "feasibility study" to see whether Eurodac, the computerised fingerprint database for asylum seekers, could also be extended to cover "illegal immigrants." This JHA meeting concluded that:

taking into account the feasibility study it [the Council] will draw up a Protocol to the Eurodac Convention to include the fingerprints of "illegal immigrants" (the precise definition of what constitutes an illegal immigrant is still to be determined) for adoption by the end of 1998 (inverted commas in original)

Other outstanding "problems" included the role of the Court of Justice, the "territorial scope" (it was agreed that it would only apply to UK and Northern Ireland), and the running of its central unit (a large majority favour giving it to the Commission).

Implementation of the 1996 Joint Action on Memoranda of Understanding (MOUs) between customs and business organisations in combatting drug trafficking: the primary targets for these MOUs is freight companies, airlines and port authorities. All EU Member States have a MOU Programme in place, "however, some Member States have yet to conclude actual MOUs". The number of MOUs in force is 222. It is intended to widen "the scope of MOUs.. beyond that concerned with drug smuggling".

Rules of Procedure for the Customs Information System

Management Committee: Until the Convention of 26 July 1995 on the Use of Information Technology for Customs Purposes is ratified by all 15 EU member states an Agreement already signed will allow the "provisional application" of the Convention once eight member states have completed ratification. During this "provisional" stage the Customs Cooperation Working Party will "act as a provisional Management Committee".

Data Protection: On the initiative of Italy a discussion was held on the need to provide consistent provisions on data protection in all the Conventions and Joint Actions being adopted. At present the only legally binding provision on all EU member states is the 1981 Council of Europe Convention which is only applicable to computerised data and not to manually processed data. The 1995 EC Directive on data protection does not cover justice and home affairs issues.

Council conclusions on encryption and law enforcement: marking a retreat from the ambitions of some member states these Conclusions recognised the needs of the law enforcement agencies to access encryption codes but intends to limit itself to preparing a Resolution on Encryption and Law Enforcement for the present. However, drafts are in circulation which would give these agencies access to codes on a case-by-case basis.

Article 18 Committee: in the "margins" as it is termed of the JHA Council the Ministers changed hats on 29 May and held the first meeting of the "Article 18 Committee", the executive committee under the Dublin Convention. The meeting agreed a Decision to try and make the Convention more effective - "a relatively small percentage of asylum applications made within the EU falls within the scope of the Convention" (our assessment suggests it is under 4%). This is largely because it is often impossible to determine in which country an undocumented migrant entered the EU - the Ministers decided to try and break this by agreeing to assess "from reliable sources on ways and means asylum seekers enter the EU" and therefore which country is responsible. The Committee also reached agreement on a Programme of Action which includes "encouraging applicants to retain their documentation; ways of dealing with undocumented asylum seekers.."

Formal adoptions

Convention on jurisdiction and the recognition and enforcement of judgements in matrimonial matters ("Brussels II"), signed on 28 May at JHA Council, together with the related Protocol on the interpretation by the Court of justice of this Convention.

Convention on Driving Disqualifications, adopted 16 June at the Environment Council (formally signed on 26 June)

Europol, formal announcement of launch on 1 October, 26 June

Joint Action establishing a mechanism for collective evaluation, adopted 29 June at General Affairs Council.

Joint Action on good practice in mutual legal assistance, adopted 29 June at General Affairs Council.

Joint Action establishing a European Judicial Network, adopted 29 June at General Affairs Council.

Speaking note for debate on organised crime, Mr Straw, 28.5.98; Speech by Dr Kurt Schelker, 28.5.98; Justice and Home Affairs Council, 28-29 May 1998, press release; Completion of ratification procedures of the Europol Convention, press release, 12.6.98; Europol Computer System - report to Council, Europol Group to K4 Committee, Limité, 7390/97, 16.4.98; Pre-accession Pact on organised crime between the Member States of the European Union and the applicant countries of central and eastern Europe and Cyprus, 28.5.98;

Schengen: annual report shows over 14 million entries in the Schengen Information System

The Schengen Executive Committee met in Ostend on 23 June under the Presidency of Belgium. On 1 July the Presidency will be taken over by Germany, not for six months but unusually for the whole year. This will mean that between 1 January - 30 June 1999 Germany will hold the Presidencies of the EU and of Schengen.

The Committee noted that the Presidency of the EU (then the UK) had been sent a copy of the Schengen *acquis*. The Ministers agreed "in principle" to set up a Standing Committee to evaluate and implement Schengen both in the existing members of Schengen and in "aspiring" states - based on reports from the Visiting Committees (which visited Italy, Austria and Greece in 1997). Greece exercised its right (under Article 132.3) to call for a two months delay on the final decision.

The Ministers also reached "political agreement" that the Task Force against "illegal immigration flows" should be continued and extended to cover "measures to combat such flows from whatever source".

On 24 June the Executive Committee met with the Interior Ministers of the applicant countries seeking EU membership - first wave: Poland, Hungary, Slovenia, Czech Republic, Estonia and Cyprus and the second wave: Bulgaria, Latvia, Lithuania, Romania and Slovakia. The EU (and Schengen) have only just agreed what is in the Schengen *acquis* and have yet to decide how its various provisions and decisions are all to be incorporated into the two EU-wide treaties - TEC and TEU - let alone what the legal force of each is to be. All the applicant countries have to adopt and implement the Schengen *acquis* prior to accession.

The conclusions of the meeting with the applicant countries said that the Schengen states considered the protection of external borders covers: a "security strategy" to "fight" against migratory pressures at every stage of the process; "threats and risks are tackled at their source" beginning in the "immigrant's country of origin"; to carry out, without fail, controls at road and rail crossings, airports and seaports checking documents, verifying whether the person has authority to enter, and whether their particulars "have been noted in the Schengen Information System".

Annual report

In 1997 the Schengen area extended from seven countries - Germany, France, Luxembourg, Belgium, Netherlands, Spain and Portugal - to ten - with Italy, Austria, Greece joining. Sweden, Denmark and Finland have also agreed to join and Norway and Iceland are to be given associate membership (to retain the Nordic Passport Union area). During 1997 the land border controls with Italy and Austria were maintained until 31 March 1998. The Schengen Convention was brought into force for Greece but "controls at the internal borders to this Schengen state have not yet been lifted" (in effect, for flights and sea crossings with other Schengen members). Operational connections with the Schengen Information System (SIS) began from 26.10.97 for Italy, 1.12.97 for Austria, and 8.12.97 for Greece. A decision to lift these controls will be taken before the end of 1998. France continued to exercise its right to

control its land borders with Belgium and Luxembourg (Article 2.2).

The report expresses concern at the effectiveness with the controls at Schengen external borders when confronted by "a large influx of immigrants from eastern Turkey, northern Iraq and Iran" - a clear reference to Kurdish people as well as people from Pakistan and Bangladesh (see story on EU Action Plan on front page). These "immigrant flows" came via either the Mediterranean route (Greece, Italy and France) or the land Balkan route (Bulgaria, Romania, Slovakia and the Czech Republic) then into or through Germany and Austria. The Schengen states have appointed a Task Force but despite deploying "considerable resources it appears difficult to guarantee total watertightness at this type of border".

Annual report - Schengen Information System (SIS) and SIRENE

The annual figures for "alerts" (record entries) entered into the SIS since it was launched in March 1995 are as follows:

1995: 3,868,529 "alerts"

1996: 4,592,949 "alerts"

1997 5,592,240 "alerts"

Total 1995-1997: 14,053,718.

No figures are given for the number of "alerts" withdrawn from the SIS.

The number of "hits" recorded by the SIRENE bureaux show that there were 15,669 "hits" recorded for the ten Schengen states where the originating country had a "hit" abroad (termed "external", entered by this Schengen state), and 21,280 "hits" where a country recorded a hit based on an "alert entered abroad" (termed "internal", "alert" entered by another Schengen state):

	internal	external
France:	9,029	3,143
Germany:	2,612	6,625
Belgium:	3,397	2,425
Spain:	2,106	468
Netherlands:	2,124	1,609
Luxembourg:	909	303
Portugal:	404	113
Italy:	136	895
Austria:	381	72
Greece:	182	16

Expressed another way France, Belgium, Spain, Netherlands, Luxembourg, Portugal, Austria and Greece obtained more "hits" based on information put in by another Schengen state than there were "hits" on information they put in. Only Germany and Italy were in a reverse position.

The figures for Germany are not entirely accurate because, as the report notes, "hits" recorded internally in response to national alerts entered by Germany are "not entered". Nor is the very approximate figure of 11,000 people a month (over 132,000 a year) "turned back" by the Federal Border Guard (*Bundesgrenzschutz*) as a result of searching the SIS.

The total number of "positive responses" or "hits" was:

1995: 31,585
1996: 33,179
1997: 36,949

One of the largest category of "hits" covers "aliens" to be refused entry (Article 96). The breakdown is as follows

	1996	1997
Article 96 (to be refused entry): (1995: 18,640)	16,663	14,806
Article 100 (vehicles):	11,346	18,902
Article 98 (persons wanted in court)	2,074	3,320
Article 95 (extradition)	928	1,357
Article 99 (people - "discrete surveillance")	1,440	1,690
Article 99 (vehicles - "discrete surveillance") (figures combined "external" and "internal")	36	244

The report simply notes "the arrest of an employee working for one of these Bureaux, suspected of having fed criminals data supplied by Schengen States.." and says this has led to "renewed vigilance.. with regard to data protection."

The employee concerned in fact worked for the Belgian SIRENE bureaux and is alleged to have been in possession of a large quantity of SIS/SIRENE data when arrested.

As noted above Italy, Austria and Greece were linked to the SIS/SIRENE network at the end of 1997. The Nordic countries - Denmark, Norway, Sweden, Finland and Iceland - will not be linked into the system until the year 2000 due to limits of the system capacity. Work is underway on SIS II and the SIRENE Phase II network which will increase the capacity of the SIS and enable SIRENE to increase the amount of information given "in the event of a hit".

Schengen is to "harmonise" its visa policy and says that: "The Executive Committee decided to abolish the list of third countries subject to different visa regulations by 1 January 1999 on the understanding that for three third countries, the Schengen States undertook to adopt a solution pursuant to Article 100c of the Treaty on European Union."

The number of cross-border surveillance operations carried out under Article 40 of the Schengen Convention during 1997 included 2 in Portugal, 6 in Germany, 8 in Spain, 19 in Luxembourg, 46 in France, 125 in the Netherlands and 165 in Belgium. The number of cross-border pursuits (Article 41) varied from 0 to 30 with none in Luxembourg or Portugal, 1 in Spain, 2 in Germany, 9 in France and 13 in Belgium.

Greater use was made during 1997 of extradition requests under Article 95 which gives equal force to a SIS "alert" and a formal provisional arrest warrant.

The report concludes with the observation that the Schengen Convention's instruments have not yet been fully utilised and that they should be developed further "after integration into the EU" of the Schengen *acquis*.

Meeting of the Schengen Executive Meeting, final press release of the Belgian Presidency, Ostend, 23.6.98; European Voice, 18.6.98; Agence Europe, 25.6.98; Annual Report: Schengen, Central Group, SCH/C (98) 60 rev 4, 22.6.98; SCH/OR.SIS-SIRENE (98) 43 rev 5; "SIRENE", is an acronym for "Supplementary Information Requests at the National Entry".

The Schengen *acquis* fiasco

Statewatch submitted the following evidence to the Select Committee on the European Communities in the House of Lords - Sub-Committee F (June 1998).

Introduction

Statewatch, founded in 1991, monitors justice and home affairs in the European Union. The Schengen Agreement and the Schengen *acquis* has been one of the major issues with which we have been concerned. When the decisions of the Schengen Executive Committee and its subordinate committees were given to another national parliament in the autumn of 1996 - we made this information available to researchers, voluntary groups and academics.

By way of introduction to the Committee's consideration of the incorporation of the Schengen *acquis* following the Amsterdam Treaty of June 1997 we would make the following observations:

a. When the Amsterdam Treaty ratification process is completed the Schengen *acquis* will apply immediately to thirteen Member States of the European Union. It will also automatically apply to the applicant countries under the enlargement process.

b. There is no provision in the Amsterdam Treaty for the European Parliament to be involved in the process of incorporating the Schengen *acquis*.

c. While the incorporation of the Schengen *acquis* has no direct effect on the UK under the Schengen Protocol in the Amsterdam Treaty - as the UK and Ireland have opted-out - it does potentially affect the UK as the government can decide to "opt-in" to any of its provision (for example, the Schengen Information System). It could also affect the rights of UK citizens who travel in the European Union as the Schengen *acquis* will incorporate new powers - on policing, public order, immigration and asylum - not at present provided for in the justice and home affairs *acquis* of the European Union. In this respect it will result in a major increase in the powers of the major agencies involved.

d. Progress on determining the content of the Schengen *acquis* has been slow and it should therefore be noted that should the status of any provisions of the *acquis* not be determined by the time the Amsterdam Treaty comes into force all such measures will automatically be placed under the intergovernmental third pillar.

e. Finally the comment must be made that when the 15 governments (including the UK in this respect) of the European Union agreed to incorporate the Schengen *acquis* in the Amsterdam Treaty in June 1997 few, if any, of them knew what was actually in the Schengen *acquis*.

Definition of the Schengen *acquis*

One draft decision (7233/1/98) concerns the definition of the *acquis*; the other concerns its allocation (6816/2/98). The first is to be adopted by the Council, as 13 Member States, under the general power given to the Council by Article 2(1), second subpara, second sentence of the Protocol; the second is to be adopted by the full Council under the specific power granted to the Council in the first sentence.

The important point about the definition of the *acquis* is that the Council are using this decision to decide what decisions in the *acquis* need not be allocated at all (if they have legal effects), either because they have been replaced by EC law (ie, firearms directive), or an EU measure binding all Member States (ie, Dublin Convention); or belong to the exclusive competence of Member States.

The definition decision lists in Article 1, detailed in

Annex A, what will be defined as the Schengen *acquis* before deciding what need not be allocated. Annex A is incomplete because it does not yet list acts of the Schengen organs for this purpose (for example, as they refer to the Schengen Information System (SIS), although it does list acts of the Executive Committee) - whether this is a complete list is a question we have not had time to examine.

The definition decision then lists in Article 2(1), detailed in Annex B, what will not be allocated for the reasons mentioned above: a) the original agreement of 1985; b) listed provisions of the Convention; c) listed provisions of Accession agreements/Protocols; d) listed measures of the Executive Committee; e) listed measures of organs of Schengen. Here they have not completed either d) (since they have not agreed which acts of the organs are in the *acquis* in the first place), but c) as well.

Will there be any sort of summary or description of the measures to be kept secret that will not be listed according to Article 1(2), or will the Council at least state why they are considered such and make provision for review of the continued secrecy?

Allocation of the Schengen *acquis*

The second decision concerns allocation. The first remarkable aspect is that the preamble is due to include a clause about the legal effect of the incorporation. We would ask: a) does the Council have the power under the Protocol to determine the legal effect of the incorporation, especially under the clause that just refers to allocation of the *acquis*; and b) if it considers that it does, the UK parliament (and other EU parliaments together with the European Parliament) must be informed as soon as possible what that legal effect is because it is very important for the debate on what aspects the UK government might wish to join. Parliaments should also have the chance to question the Council's draft beliefs as to what the legal effect is.

In light of the preambular clause stating that one object of this decision is to determine what legal bases should be used for measures building on the Schengen *acquis*, it might be relevant to ask whether the Council thinks the decision itself is immune from legal challenge from the Commission or the European Parliament (ie, that they have allocated a measure to the wrong legal base), or whether it thinks that the decision will

render its decisions building on the *acquis* immune from legal challenge (ie, that they have adopted a measure on the wrong legal base). Also does it think that the Court can interpret the Protocol or decisions based on it; and if so, under which part of which Treaty will the Court be exercising such powers? This point arises because the Protocol is attached to both the EU and EC Treaties, which give the court separate jurisdiction.

The articles and Annexes then list what decisions, accession agreements, Executive Committee acts and acts of organs are allocated to each legal base. The latter two sections are still blank; but this follows necessarily from the blank bits of Annex B of the other decision (in other words, they cannot allocate these measures before they have defined them fully first).

Comments on what has already been agreed

1) much of Articles 9-18 are to be allocated to Articles 62(2)(b) or 62. Surely it is necessary to define them in more detail, because parts of 62(2)(b) allow for QMV (Qualified Majority Voting) with Commission exclusive powers over proposals and some do not?

2) following on from that, what view is the Council going to take on the allocation of any measures relating to airport transit visas? Although the recent ECJ judgment said that such measures could not be based on the current Article 100c, the gist of which will become the portions of 62(2)(b) with QMV and Commission exclusive powers, that judgment was based solely on the existing wording of Article 3(d) of the Treaty, which is to be amended by Amsterdam.

3) Most of the allocation relating to police powers allocate the measure to TEU 30(1), cross-border police cooperation. But several decisions are allocated to TEU 30 as a whole. The difference is that 30(2) refers specifically to Europol. If the Council allocate a measure to Article 30 as a whole, are they intending to involve Europol? This has obvious implications for the UK opt-out from Schengen and for controls upon Europol. The decisions allocated to 30 as a whole are Articles 39, 71 and declaration 3 to the final act; it is not yet known which Executive Committee measures or acts of organs might be allocated to 30 as a whole.

EU: Swedish journalists union win in court; report on access; Ombudusman "critical" of Council in *Statewatch* case

Swedish journalists union win in court

On 17 June 1998 the Court of First Instance annulled a decision by the Council of the European Union to refuse access to the Swedish Journalists Union (requested by *Tidningen Journalisten*, the Union's newspaper) to 16 documents largely concerning Europol. This "victory" for the Journalists Union follows, and build on, the successful case taken out by John Carvel of the *Guardian* newspaper (see *Statewatch*, vol 3 no 6; vol 4 nos 1, 2, 3, 4 & 5; vol 5 nos 2, 4 & 5). The Union had filed their case on 22 September 1995 and the case was heard in court in Luxembourg on 17 September 1997.

The challenge to the Council's policy over access to documents started soon after Sweden joined the EU in 1995

when the Union applied to the Swedish government for 20 Council documents on Europol. Eighteen of the 20 documents were provided with some sections blanked out. In May the Union asked the Council of Ministers for the same set of 20 documents. On 1 June the Council supplied just two of the documents and a confirmatory application (appeal) led to two further documents being supplied on 6 July, making 4 out of 20 documents.

In response to the initial application the Council claimed access was refused on the grounds of the need to maintain the confidentiality of its proceedings (Article 4.2 of the 1993 Decision on access). At the second, confirmatory, stage the Council of Ministers claimed that their disclosure would be harmful to the "public interest" (Article 4.1) and was covered by confidentiality (Article 4.2) as the documents mentioned the

views of member states.

The Council was joined in the action by the governments of France and the UK. The UK's intervention in the case started under the previous Conservative government and the new Labour government chose not to withdraw. The governments of Denmark, Netherlands and Sweden intervened in support of the Swedish Journalist Union.

The first ploy of the Council, and the two supporting governments, was to challenge the admissibility of the Union's case partly on the grounds that they were already in possession of the documents in question.

The Court's judgement on the issue is emphatic: "the fact that the requested documents were already in the public domain is irrelevant" (para 69). The objective of the 1993 Council Decision on access to documents is, says the Court, to give "effect to the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions". Nor, the Court states, do citizens have to give "reasons for seeking access to requested documents". By virtue of the fact of refusal of access an interest in challenging the decision is established.

The French and UK governments also tried to challenge the right of the Court of First Instance to even consider access to documents concerning Title VI of the Maastricht Treaty (the "third pillar") which concern intergovernmental cooperation. The Court gave this argument short shrift too - their jurisdiction covers the implementation of the 1993 Decision because there is no provision in it to exclude Title VI.

The substance of the case the Court decided centred on the misapplication of the 1993 Decision by the Council. The Court said the 1993 Decision gave citizens "rights of access to documents" (para.109) - a view contested by the Council, the UK and France who argued there was no such "right". There are two categories of exception to access set out in Article 4 of the Decision but following the judgement in *WWF UK v Commission [1997]* these exceptions had to be "construed and applied restrictively so as not to defeat the general principle enshrined in the decision" (para 110). Also under the *WWF UK* judgement and that of *Interporc* "particular reasons" must be given for refusal of access. In this case the Council had given a confusing response to the applicant which invoked both the exceptions based on the protection of the public interest (public security), Article 4.1, and the need to protect the security of its proceedings, Article 4.2, without making clear which applies to each refused document.

One of the most interesting aspects of the Court's judgement is its findings on the concept of "public security". The case-law of the Court of Justice showed that it covers "internal security" and "external security" as well as the interruption of essential services and "could equally well encompass.. attempts of authorities to prevent criminal activities" (para 121).

Although the Court did not call for copies of the documents in question it did have before it a note summarising the contents of each of the refused documents - given to the applicant's lawyers - from Mr Elsen, Director-General of the Council Justice and Home Affairs Directorate (DG H). The Court, in an important statement, was thus able to distinguish between documents concerned with "operational matters of Europol itself" (which none of the documents covered) and the negotiations (including the views of EU governments) on the adoption of the Europol Convention (which the documents did cover). The Court therefore observed that there was no evidence that disclosure would "be liable to prejudice a particular aspect of public security". The Court seems here to be creating a crucial distinction between policy making (which properly belong in the public sphere) and particular (specific) operational matters (which do not).

The Court thus annulled the decision of the Council to refuse access to the documents to the Swedish Journalists Union. The Court was however very annoyed at the placing on the internet of the Council's defence and ordered the Council to pay two-thirds of the applicant's costs as well as its own.

The Swedish Journalists Union won the case and in doing so enabled the Court of Justice to emphatically assert its jurisdiction over access to documents concerning Title VI (the third pillar).

What were they hiding?

In their evidence to the Court the Netherlands government which had access to all the refused documents drew to the Court's attention that four of the refused documents had later been given to "a journalist, Mr T..." - a barely disguised reference to *Statewatch's* editor Tony Bunyan. As all the refused documents are to hand it is worth looking at some of them to see exactly what the Council was so concerned to keep secret:

1: *Sets out the conclusions of a meeting of the Working Party on Europol on the draft Convention covering the objectives, liaison officers, information to be held (later covered in the "analysis files"), the right of information (doc no.4269/95).*

2: *The Opinion of the Council Legal Service on whether Joint Actions adopted under Article K.3(2)(b) of Title VI are legally binding which concluded that they are "obligatory in law and that the extent of the obligation on the Member States depends on the content and the terms of each joint action" (doc no.12264/94).*

3: *The work programme of the incoming French Presidency on immigration and asylum for Steering Group I (doc no.12394/94).*

4: *The work programme of the incoming French Presidency on legal cooperation for Steering Group III (doc no.12239/94).*

5: *A draft of the Joint Action on the Europol Drugs Unit of 20 January 1995 which was adopted by the Justice and Home Affairs Council in March 1995 (no doc.no).*

6: *"Compromise proposal on security and confidentiality in accessing and processing data" in the Europol Convention (doc no.4268/95).*

7: *Annual report on the activities of the Europol Drugs Unit for 1994 (doc no.4533/95)*

8: *Note from Europol Drugs Unit, dated 17 February 1995, to the Europol Working Party asking for extra expenditure on the "Support of operational and intelligence activities of law-enforcement agencies within the European Union".*

9: *Document concerning the extension of the mandate of the Europol Drugs Unit dated 30 March 1995.*

10: *The proposed extension of the mandate of the Europol Drugs Unit to cover "clandestine immigration networks" (doc no.6517/95).*

What is clear from an examination of the documents in question is that although most do concern "Europol" many actually refer to its predecessor the "Europol Drugs Unit (EDU)". The latter should properly be in the public domain not just because they concern policy making (extending the remit of the EDU) but because they also concern the development of policy in practice short of concerning a particular and specific operation.

Moreover, if these documents had been available in May 1995, instead of nearly two years later, some would certainly have led to public concern and debate.

Second report on access to documents

The second report from the Secretary-General of the Council

on the operation of the Decision on public access to documents (1996-1997) was considered at the General Affairs Council on 29 June. The report presents the perspective of the General Secretariat of the Council as distinct from that of the Council of Ministers. Indeed it is noticeable that the General Affairs Council did not take up some of the issues raised in the report.

The number of documents requested was 3,325 in 1996-1997 as compared to 378 in 1994-1995.

Applications increased from 142 to 451.

Only 5.6% of the decisions of the General Secretariat were overturned by appeal to the Council.

One intriguing difference between the first and final version of the report is that in the former the Secretary General asserted, following the ruling of the Court of First Instance in *Hanne Norup Carlsen v Council*, that the Council did not have to give access to the opinions of its Legal Service. The final version deleted two paragraphs and said the issue was still being considered.

The report, like the last one, expresses thinly-disguised antagonism towards:

two applicants [who] alone accounted for 58% of the documents applied for. As a result of their 62 and 55 initial applications and their subsequent 17 and 20 confirmatory applications...

It refers to "applications which are manifestly excessive" which are "clearly designed to put the system to the test." The "two applicants" in question are: *Statewatch's* editor, Tony Bunyan and Steve Peers from Essex University. There is even a reference to "one of the applicants [who] proved in fact to have published a collection of texts" (*Statewatch's* "Key texts on justice and home affairs in the EU, vol 1, 1976-1993").

The Secretary-General's report is economical with the truth when dealing with the legal actions taken out in the Court of Justice or to the European Ombudsman. Referring to John Carvel's successful challenge on behalf of the *Guardian* newspaper it suggests that it had been unnecessary for him to bring a second case against the Council in order to obtain the documents after the Court ruled against the Council. In fact, the Council's first response, which purported to enclose all the required documents, only contained 8 out of 46 documents. John Carvel was forced to go back to the Court within a set time limit in order to force the Council to provide all the documents. Most of the documents were supplied after the Court deadline.

The complaints to the European Ombudsman are almost dismissed because they have been lodged by "the abovementioned two frequent applicants for large numbers of Council documents.. the Ombudsman is currently looking into the merits of these complaints in the light of comments and further information provided by the Council." The "merits" of the complaints are not in doubt (see below for the Council being forced to change three of its practices so far).

Justice and home affairs again tops the list for document requests comprising 46% of the total (1996-1997), followed by "common foreign and security policy" (second pillar) with 13%, then agriculture and environment with 4% each. The main reasons used by the General Secretariat for refusing access on the initial requests is to protect "the confidentiality of the Council's proceedings" (68%). Belgium tops the list of countries from which applications were made 27% followed by the UK with 21%, Germany 15%, Netherlands 6% and Spain 4%. Forty-six per cent of applicants are academics, 17% lawyers, 10% pressure groups, and 6% journalists. In 1997 a total of 2,431 documents were requested.

"critical" verdict against Council in *Statewatch* case

On 6 July the European Ombudsman issued the following press release. In the first case referred to as being closed with a "friendly solution" the Council agreed to change its practice of destroying the agendas of justice and home affairs Working

Parties.

Full text

EUROPEAN OMBUDSMAN HOLDS THAT THE COUNCIL MUST RE-EXAMINE AN APPLICATION FOR ACCESS TO DOCUMENTS

European Ombudsman Jacob Söderman has held that the (Council of the European Union was wrong not to consider British journalist Tony BUNYAN's application for access to agendas of the "Senior Level Group" and the "EU-US Task Force".

The Council rejected the application on the grounds that the Council was a joint author and not the sole author of the documents concerned. The Ombudsman held that the Council must also apply its rules on public access to documents which it has co-authored. The Ombudsman's decision means that the Council will have to reconsider Mr BUNYAN's application and apply the rules correctly.

The Ombudsman's inquiry also led to two other successes for Mr BUNYAN.

First, the Council changed its practice and is now making publicly available the timetable of meetings in the field of Justice and Home Affairs planned under each Presidency.

Second, the Council accepted that the Presidency is not "another institution", for the purposes of its rules on public access to documents. This means that the public can apply to the Council for access to documents which a Member State has written in its capacity as Presidency of the Council.

The complaint is one of six which Mr BUNYAN made to the Ombudsman late in 1996 (1056/ 25.11.96/ STATEWATCH /UK /IJH). One of the cases was closed last year with a friendly solution. The Ombudsman's investigations into the other four cases are continuing.

Notes for editors

The Council's rules on public access to documents are contained in Council Decision 93/731 (Official Journal 1993 L 340/43). Decision 93/731, together with the corresponding Commission Decision (Commission Decision 8 February 1994 on public access to Commission documents Official Journal 1994 L 46/58), implement the joint Code of Conduct on public access to documents (Official Journal) 1993 L 340/ 41) agreed by the Council and Commission after the Maastricht Treaty.

The Ombudsman's decision follows a recent judgement of the Court of First Instance which stated that the objective of Decision 93/731 is to give effect to the principle of the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration (Case T-174/95, Svenska Journalistförbundet (Tidningen Journalisten) v Council, judgement of 17 June 1998)

Tony Bunyan is editor of *Statewatch* bulletin which "monitors justice and home affairs in the European Union."

Second report on the implementation of Council Decision 93/731/EC on public access to Council documents, General Secretariat of the Council, Limité, 6717/1/98 and 6715/2/98, 12.5.98 & 15.6.98; Judgement of the Court of First Instance, 17.6.98, in Case T-174/95, Svenska Journalistförbundet & Report for hearing

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Web database

Statewatch has a searchable database on the World Wide Web. The url is: <http://www.poptel.org.uk/statewatch/>

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