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## Chapter 5

### Ferrets or Skunks? The ABC Trial

The trial which in the seventies had the most impact on law and on politics - certainly on lawyer-politicians, and on that amorphous construct, the State - is recalled through its acronym, 'the ABC case'. This stands for the surnames of three defendants, Crispin Aubrey (a *Time Out* reporter), John Berry (an ex-soldier) and Duncan Campbell, a 24-year-old scientific prodigy who had chosen to make headlines as a freelance journalist rather than money as a telecommunications whizz-kid. They were arrested for talking to each other over a bottle of chianti in a London flat on a wet evening in February 1977, and prosecuted on charges laid under the Official Secrets Act which carried (in Campbell's case) a maximum of thirty years' imprisonment. By the time the proceedings ended, with a champagne celebration outside the Old Bailey eighteen months later, Britain was a less secret country. In 1977, the Attorney General's response to Duncan Campbell's ability to uncover State secrets was to try to lock him away. In 1987, when Campbell was about to broadcast details of the Zircon spy satellite, the Attorney General took him to lunch at the Garrick Club instead. This progress, from the stick of prison to the boiled carrots of the Gentleman's Club, showed that a lesson had been learned: in a democracy, the criminal law cannot be deployed as a tool for disposing of those who use their right of free speech to embarrass or inconvenience the authorities.

Termination of Duncan Campbell, if not with extreme prejudice then at least by a long prison sentence, was the object of a prosecution brought by a Labour government. The few who condemned it at the time (most vociferously, a young Scottish MP named Robin Cook) may have learned from history and may not, attaining office twenty years later, be condemned to repeat it. That depends on what they made of their senior colleagues who loudly condemned human rights abuses (like secret trials and the jailing of dissident journalists) in other countries, yet who could approve the prosecution of A, B and C. It was ordered by the law officers, Sam Silkin and Peter Archer, who were leading members of Amnesty and JUSTICE. Foreign Secretary David Owen published pontificating lectures on human rights at the very time officials of the organisations for which he was responsible - GCHQ and MI6 - were pressing for heavy jail sentences on Campbell. Home Secretary Merlyn Rees reneged on his party's promise to reform the Official Secrets Act so as to make the 'mere receipt' by journalists of official information no longer a crime. Civil liberties were not safe in the seventies in the hands of Labour cabinet ministers. Nor were they secured by independent prosecutors or defended by liberal newspaper editors or vindicated by a jury. Most of the credit for their protection belonged to a fierce but fair High Court judge, with help from a fearless QC, an irresponsible television programme, a Marxist historian and a few hundred residents of North London prepared to earn a Special Branch record for standing up against a serious abuse of human rights.

The geo-politics of the ABC proceedings went crudely like this. The cloak-and-dagger spies whom Le Carre and other novelists had convinced the public were crucial to the Cold War had, by 1977, little relevance to it. The top secrets came not through Human Intelligence (HUMINT in security speak) but through ELINT (Electronic Intelligence) and COMINT (Communications Intelligence) as intercepted, cracked and decoded by Signals Intelligence (SIGINT). This is hardly a revelation in 1997, when the wartime work of the Bletchley code-breakers is so widely celebrated, but even that was classified 'top secret' in Britain in 1977. The UK was very much a subservient partner to the United States in Western defence arrangements, but its abiding asset was a spider's web of intercept stations covering the globe, spun from microwave towers located in the outposts of the former British Empire. The spider itself was headquartered in Cheltenham (hence GCHQ - General Communications Head Quarters), its threads criss-crossing the Atlantic to its mate, the National Security Agency (NSA) in Fort Meade, Maryland.

What the Americans valued most was the signals intelligence scooped up in Cheltenham from a net which ranged from Pine Gap in Australia to Little Sai Wan in Hong Kong to Ayios Nikolaos in Cyprus. Any electronic communication could be caught in the net: an incautious comment by a terrorist in a long-distance phone call; one tank commander talking to another on some benighted border; political leaders chatting on car telephones in Moscow. SIGINT was important to Britain as a guarantee of some continuing influence on American defence strategy. The subject was blanketed by 'D' notices, the curious and very English system whereby the country's newspaper editors - all of them - cravenly complied with directives from a committee dominated by the security services and the armed forces. These notices had no legal force at all, nor any basis in law, but they ensured that SIGINT was unmentionable and unmentioned in the media: the initials 'GCHQ' had never appeared in that order in British print, and any comment on the work of the thousands of technicians and translators in Cheltenham, and on the array of aerials on several dozen US bases in Britain, was forbidden on pain of an Official Secrets Act prosecution. A terror about mentioning the subject had descended on the British media after a case in 1956, when two undergraduates were jailed for wittily recounting some national service experiences at a signals intercept base in Crete.

SIGINT and GCHQ were not so secret to the rest of the world. In America, in the aftermath of Vietnam, a good deal of investigative journalism had focused on NSA and its role in programmes directed against radicals, by both the Johnson and the Nixon administrations. There had been two major inquiries - a Senate committee chaired by Frank Church and the Pike Inquiry by Congress - which had identified the central role of GCHQ in the UK-USA agreement, signed in 1947 by the two countries (and by Australia and Canada) pledging to cooperate in code-breaking and to share all their intercepts. There had been a plethora of published articles - from scientific papers to features in *Penthouse* about the international eavesdropping alliance, and first-person accounts by American servicemen of work at SIGINT bases. This publicity - much of it critical - had to be suffered in silence under the First Amendment. Thus the consequence of the British security blanket was to keep the British public in ignorance of one major contribution it was making to the defence of the West. The real absurdity was that the Soviets knew all about SIGINT. They had been told, in detail, by defectors: George Blake had given them a fairly accurate global picture during his years in MI6, and in the sixties and early seventies a number of senior SIGINT operatives had defected to Moscow. Moreover, the SIGINT capacity of a base is obvious both to the naked eye and to the Soviet 'spy in the sky' satellite. A microwave transmitter cannot be hidden, let alone the electronic Stonehenge of aerials which announce themselves as intercept stations. There was a cluster of such sites in Britain most of which Campbell had

identified by the time he was arrested - and their existence was no secret to the Warsaw Pact commanders whose communications they monitored.

Britain's largest spy network organisation is not MI5 or MI6 but an electronic intelligence network controlled from a country town in the Cotswolds. With the huge US National Security Agency as partner, it intercepts and decodes communications throughout the world. Freelance writer *Duncan Campbell* and *Mark Hosenball* trace the rise to power of the electronic eavesdroppers.

These words - the opening paragraph of a double-page spread in *Time Out* in May 1976 - triggered an immediate response from the State. Hosenball, the 25-year-old son of a Washington lawyer, working as a journalist for the *Evening Standard*, was ordered out of the country by Home Secretary Merlyn Rees on the grounds that he was a danger to national security. Campbell was Scottish and could not be disposed of quite so easily: MI5 watched him and waited. Hosenball went to court, to seek reasons for his deportation but succeeded only in giving Lord Denning, whose love of freedom sometimes stopped short of extending it to foreigners or dissidents, the opportunity to decree that government actions were legally unchallengeable when made on grounds of national security. Hosenball was left to state his case to a tribunal of what were called 'three wise men' (they were more like three blind mice), who heard him out in an oak-panelled room of the Imperial Services Club in Pall Mall. He had no idea why he was being deported until he saw their sudden excitement when he mentioned 'The Eavesdroppers'. His own contribution to the article had been minimal - it was written almost entirely by Campbell, who readily admitted his authorship. Nonetheless, in February 1977, Merlyn Rees confirmed the deportation orders on Hosenball, as well as on the CIA defector, Phillip Agee.

John Berry, a social worker in North London who had, seven years earlier, been a corporal in a SIGINT regiment in Cyprus, was angry enough to write to the 'Agee-Hosenball Defence Committee', care of the National Council for Civil Liberties at Kings Cross. He identified himself as a former member of 'an organisation spending vast amounts of money in total absence of public control' who would 'like to know of any medium through which these concerns could be published'. The Committee knew of only one publication which might be prepared to defy the 'D' notice which had been placed on GCHQ and all its networks, and that is how his letter ended up on the desk of the environmental reporter, Crispin Aubrey, working for *Time Out*, a London listings magazine and the only 'underground paper' to survive police raids with circulation enhanced and politics more or less intact. Since Aubrey knew nothing about electronic surveillance he summoned Duncan Campbell to join him at an interview with this promising source. 'I want you to decide whether he's a bullshitter,' he said as they fixed a time (7 p.m., 18 February 1977) and a place (Berry's flat) for a first meeting. These details were carefully noted by MI5, which was tapping the telephones of Duncan Campbell as well as the telephones of the NCCL under a warrant which must have been signed by Labour's Home Secretary, Merlyn Rees.

MI5 ordered a Special Branch team to converge on the Muswell Hill basement where A, B and C met as planned. Aubrey had such innocent intent that he brought his new tape-recorder - a Christmas present he had not yet had the chance to use - and ran it for three hours to provide an unassailable transcript of their criminal conversation. At 10 p.m. the tape ran out and the meeting broke up, at which precise point thirteen Special Branch officers descended to arrest them for offences committed under the Official Secrets Act. A, B and C were held in police cells for two days without being allowed to see their families or their solicitors, while Campbell's flat in Brighton was raided and its vast library (including the novels of Hemingway and Graham Greene, and a book listed in the trial exhibits as *The Female Unok*) was transferred to Scotland Yard by police pantechnicon. The three were refused bail, and carted off to Brixton Prison. They were charged under Section 2 of the Official Secrets Act, which made it an offence to give or receive 'official' information, whether secret or not. This was, said the police, a 'holding charge' - i.e. a justification for holding dangerous men in custody until more serious charges were formulated.

I became involved in this case at this point, and by mistake. Hearing a news flash that a journalist named Duncan Campbell had been arrested, I assumed him to be my friend of that name who was then the editor of *Time Out*. I called Bernard Simons, *Time Out's* solicitor, and offered to stand as his surety. Bernard thanked me but explained that the arrested man was 'the other Duncan Campbell' whom I did not know. Would I like to be his counsel instead, to seek bail from a High Court judge? This application was to be vigorously opposed, so I rushed up John Mortimer to lead me in making it.

The security services in those days believed they could obtain anything they wanted from the courts by incanting the magic words 'danger to national security'. But as Philby and Blunt well understood, there is in England one immunity to the spell: the possession of class. John Mortimer knew this too and carefully eschewed any argument based on freedom of speech. Duncan, he explained, was recently 'down from Oxford' ('Which college?' asked the judge automatically). His lineage, although Scottish, was distinguished. Crispin Aubrey, too, had exemplary middle-class roots (chaps named Crispin do not belong in prison). Ever so delicately, John defused the Crown's allegation that they were out to cause 'exceptionally grave damage to national security' with references to Oxford days and student pranks and young men of good parentage who obviously didn't realise the seriousness of what they were doing. The judge released the two journalists into the custody of their good parents. The ex-soldier, who came from a working-class background, he ordered to remain in prison.

The first Section I charges hit all three defendants soon after, and related entirely to the conversation they had taped themselves having with each other. The transcript was made up of long questions by Duncan Campbell - Aubrey said barely a word - and unsensational answers by Berry, who clearly knew much less than his interlocutor. He did describe the boredom of sitting for hours twiddling wireless dials at Ayios Nikolaos, as a member of 9th Signals Regiment, but most of what he said might have been written unexceptionally on postcards home. He did mention how he had tuned into tank traffic on the Iran/Iraq border, and how he had once heard a cry to Allah by an Egyptian soldier as his tank was hit by an Israeli shell during the seven-day war. He described his indoctrinations into secrecy, which could hardly themselves be secret. 'What you see here, what you do here, what you hear here, when you leave here, let it stay here' was not a mantra that would excite readers of *Time Out*. The only piece of information that was rationally classifiable as secret, and then only because it might cause diplomatic embarrassment if published, was Berry's confirmation that his base intercepted communications emanating from NATO partners.

This would not have come as any surprise to the States concerned, but Berry had without doubt breached his service undertakings and had committed the Section 2 offence of communicating official information without authorisation. But his information was seven years out of date and his sentence for imparting it should have been short or suspended. Section I of the Official Secrets Act, however, is the most draconian law on the British statute book. It provides up to fourteen years' imprisonment for persons who collect or communicate 'information directly or indirectly useful to a potential enemy' if they did so for 'any purpose prejudicial to the State'. Section I, uniquely in English law, has oppressive provisions which reverse the burden of proof, and allow guilt by association. It was used against traitors like the atom spies and Gordon Lonsdale

and George Blake, agents of a foreign power whose activities put countries, as well as lives, at risk. Section I had never been intended for use against journalists - as previous Attorney Generals had assured Parliament in 1921 and 1949. Why was a Labour government breaching those assurances in 1977?

The mystery deepened with the addition, a few months later, of a new Section I charge against Campbell alone, relating to the files found in his flat in Brighton. Like any journalist who specialised in military communications and civil defence, Campbell had collected vast quantities of information, all from published sources. Over nine hundred pages had been culled by MI5 from his files, and were alleged to be of 'direct or indirect' use to a potential enemy. So they were - in the sense that an A-Z of London would be of use. None of it related to debriefing of people in sensitive employment, and there were no documents stolen or obtained without authorisation from official sources.

The real problem, it turned out, was that Duncan Campbell was a prodigy: give him a few published sources (a telephone book, an Ordnance Survey map and a regimental magazine) and he could tell you secrets which not even the cabinet was supposed to know. There was no stopping him, short of either recruiting him into the intelligence services or putting him in jail. MI5 had chosen to do the latter, by charging him with collecting information (from published sources) of direct and indirect use (like most information) to a potential enemy, for a purpose (he might publish it in *Time Out*) prejudicial to the State. Effectively, Campbell was put on trial for being a dangerous maverick, a defence journalist with analytical ability who worked without fear of 'D' notices. What the security services wanted to put in solitary confinement was Duncan Campbell's brain.

It took some time to understand the policy behind this prosecution. I could well see that Campbell was an irritant, one of a new breed of post-Watergate journalists who did not accept the unilateral right of the State to define national security. What made him especially irritating was that, unlike others of this ilk, he had the technical expertise (first-class honours in physics, a Master of Science) to see through official press releases. Defence journalists in this period rarely looked beyond the boundary wire of their 'D' notices and obediently summarised press releases from the Ministry of Defence. There was virtually no informed mainstream coverage of the security services other than by Chapman Pincher, who scavenged leaks from Peter Wright and other irresponsible reactionaries within the service. Campbell, on the other hand, was young and left-wing. He was an altogether more suitable candidate than Pincher for an exercise designed to prove that such critical journalism was as inimical to the safety of the State as the treason of those who collaborated with the enemy. The theory behind the Section I charges was that journalists could do as much damage as spies. That is, at least theoretically, true - but the difference, of course, lay in the intention with which they did it. Section I did not require the prosecution to prove any intention to help the enemy, or any hostile intention at all.

Since none of the three had any apparent defence to the Section 2 charges - Berry had volunteered official information and Aubrey and Campbell had received it on tape - it should have been possible to negotiate a 'plea bargain' with the prosecution. If the defendants pleaded guilty to Section 2 at the magistrates' court, this would limit their sentence to three months' imprisonment or a measly £50 fine. The benefit to the government of such a course was that it would save large amounts of public money, and more importantly (if its case had any logic) it would save any secret beans being spilled in the course of a lengthy and probably intemperate trial. When I canvassed this possibility with the prosecution, however, I received this chilling response: 'That course might be acceptable for Berry and Aubrey. But the security services want Campbell in prison for a very long time.'

Sam Silkin, the Attorney General, had given his personal consent to the laying of Section I charges against these journalists. He was not the only liberal to be spooked by MI5. The government's action went uncondemned and virtually unreported in the national press, which appeared entirely unconcerned by this unprecedented attack on its own freedom. This was thanks to a 'whispering campaign' by MI5 through its editorial contacts on Fleet Street and in the BBC. Duncan Campbell was slandered as a communist, or as a fellow traveller happy to 'put lives at risk'. Editors who should have known better fell for this, and when the *Sunday Times* gave Duncan some freelance employment to tide him over after his arrest, its executives were informed by a cabinet minister that he was a 'dangerous subversive'. Come the committal, however, the State would have to lay its cards on the table: the defendants waived reporting restrictions, so that the media could appreciate how threadbare the case against them really was.

The committal took place in November 1977 at Tottenham Magistrates' Court. The prosecution opened by caricaturing Campbell as a 'thoroughly subversive man who was quite prepared to publish information which was secret'. It went on to claim that his activities could 'even put at risk lives in Northern Ireland' - a wild accusation for which no evidence was ever produced and which was never repeated at the subsequent trials. He was alleged to have collected information of use to a foreign power, although the only foreigners with whom he had corresponded were liberal think-tanks in Washington and a Peace Research Institute in Oslo. At my insistence it was eventually conceded that there was 'no suggestion that he was in the employ of a foreign power'. Duncan's mother, who had worked throughout the war code-breaking at Bletchley, was deeply distressed by the outline of the case against her son. As I comforted her, I realised for the first time just how easily governments and their lawyers can cry 'lives at risk', the formula used eighteen years later on the Public Interest Immunity Certificates in the Matrix Churchill trial.

On the second day of the committal a gigantic horse-box was drawn up at the back entrance to the court, alleged to contain a personage of such secrecy that no mortal could gaze upon him, or learn his name. He was to be known only as 'Lieutenant Colonel A', and his expert evidence would prove that ABC had been engaged on an enterprise severely damaging to national security. The notion that a witness is so significant that the very revelation of his name would imperil the realm is calculated to impress the court. It did not, however, impress the court clerk, a tall, immaculate gentleman of weary manners and surprisingly stern attention to legal detail. Mr Pratt was a Dickensian figure, but a good Dickensian figure, I felt, as he narrowed his eyes at the prosecutor and drawled: 'What's your authority for keeping your expert's identity a secret?' The prosecution was taken aback: its 'authority' was the interests of national security, which would always justify secrecy. But how could I cross-examine Lieut. Colonel A if I did not know his background, his publications, his postings - indeed if I could not even see the man, since it was proposed that he give evidence from behind a screen? The Bench retired, with Mr Pratt to 'advise them on the law', and came back looking as though they had just lost their OBEs. 'Solely on the advice of Mr Pratt and with great regret' they ruled that a court had no power to receive expert evidence from a voice behind a curtain.

After a few days' adjournment, another letter in the army alphabet was produced, Colonel 'not quite so secret' B. His real name might just be disclosable to the defendants and their lawyers, although certainly not to anyone else. The horse-box returned, with its horse of a different colour. There was a portentous silence in court as the clerk was solemnly handed a slip of paper with the witness's real name. It read simply 'H A

Johnstone'. I approached the dock and handed the slip to Duncan. 'Hugh Johnstone,' he whispered with a grin. 'I've got masses of information on him.' And so he had, produced in the next few minutes from a bundle of magazines at his feet. It very quickly transpired that the ultra-secret Colonel B was until recently the well-known and popular commander of the 9th Signals Regiment at Ayios Nikolaos. His doings featured constantly in *The Wire*, the regimental magazine available at many public libraries and on subscription to anyone, including the KGB. There were detailed records of his postings to and from Cyprus, cartoons of him playing squash, uncryptic comments like 'Hugh Johnstone, Don of our communications underworld'.

Colonel Johnstone was called as the prosecution expert on secrecy, to prove that the information revealed by Berry was of a kind which fell under Section I of the Act. It seemed reasonable, therefore, to test his opinion by reference to his belief in the secrecy of himself. He was a Colonel with the Ministry of Defence - was his Defence Intelligence Department number a secret? No it was not: he actually volunteered it. I asked him whether his own name and rank and number had been widely published whenever he received a fresh posting, and when he hesitated I showed him some material I did not identify - Duncan's copies of *The Wire*. 'Yes, I see my name and rank and number have been published in various publications,' he congenially volunteered. Mr Pratt, who had gone from confounding the State with his legal advice to the unexalted task of taking down the witness's words in longhand to form his 'deposition' or sworn statement, decided at this point to intervene. He could have had no consciousness of the constitutional crisis he was about to ignite, as he leant over towards the witness and asked him in a voice of tired sufferance, 'What are you looking at?' 'It's *The Wire*,' said Colonel B proudly. 'Our regimental magazine.' Mr Pratt wrote - and spoke what he was writing aloud for the Colonel's benefit - 'I am now aware my posting was published in *The Wire* . . .' Mr Pratt looked up again, with the irritable tone of one who is dotting i's and crossing t's: 'And what edition of *Wire* are you looking at?' Happy to comply, Johnstone looked at the cover and read aloud, 'December 1974-January 1975'. At the end of his deposition, the punctilious Mr Pratt read back this evidence, slowly and in a loud voice.

It is probably a measure of the inward-turning nature of court proceedings that nobody involved - the prosecutor, the clerk, the magistrates, the Colonel or myself - realised that Colonel B, the expert in secrecy, was comprehensively blowing his own cover. Behind our backs, a bearded reporter from *Peace News* was the first to the door, hot-foot to the British Library to look up *The Wire* for December 74-January 75. In no time the Colonel's real name was discovered, as was the fact that he was listed under it, with his actual home address, in the London telephone directory. Soon articles appeared in *Peace News* and *The Leveller* with headlines like 'Who are you trying to kid, Colonel H A Johnstone?' Sam Silkin sent Special Branch officers to interrogate the editors and summons them for contempt of court. A police team even raided the annual conference of the NUJ at the seaside resort of Whitley Bay when they heard that delegates were writing the forbidden name in the sand. The tide washed away the evidence before they arrived.

Then early one afternoon at Parliamentary question-time, when the Speaker was dozing, an obscure backbencher named Robert Kilroy-Silk, followed in turn by three other MPs, rose and asked questions about official secrets and Colonel H A Johnstone. This meant that the press was constitutionally privileged to print the name as part of any report of that afternoon's parliamentary proceedings: it had, after all, gone out live in radio coverage of the House. I am not sure that many newspapers would have bothered, but Silkin and his flummoxed DPP, Tony Hetherington, threatened to prosecute any that did for contempt of court. Foolishly, the DPP sent them an empty but threatening letter which at last provoked the media to show its mettle. In a rare moment of unanimity, the BBC and ITV networks joined with every newspaper to condemn the DPP's unconstitutional threat, and to defy him by revealing Colonel B's real name. For the first time in the 'ABC' affair, the Law Officers backed down: there was at last a limit to the number of liberties they could take at the request of the intelligence services.

I quite warmed to Colonel B at the committal - a serious but pleasant fellow in a grey suit who should not have been testifying in the first place. He was not an 'expert' on secrecy (as he proved by letting himself slip), he was an army commander. What was known about SIGINT, from public sources both in Britain and overseas, was beyond his brief and his belief. His stock answer was that 'any revelation of or about SIGINT must inevitably affect adversely our ability to defend ourselves'. His 'expert' evidence was that no mention should be made of SIGINT - in the press, in Parliament or over private dinner-tables - ever, by anyone who had not been positively vetted. 'Until this case the public has been quite unaware of SIGINT.' So has the national security been damaged by mentioning SIGINT in court? 'Yes, I think it has. I think any reference to SIGINT in the media is damaging.' He flinched when shown detailed articles on SIGINT, published in the *New York Review of Books* and the *New York Times*. He had never seen them before, but at least they weren't *British* media. Local newspapers in Cyprus had published details of his SIGINT installations, and sometimes, political demands for their removal. Colonel B was unfazed. The work of the 9th Signals Regiment might be known in Cyprus, but it must never be disclosed in Britain.

Harry Nicholls, the Special Branch officer in charge of the arrests of A, B and C, said they had only been instructed two hours before they left Scotland Yard. By whom? I politely enquired, but the prosecutor objected to any mention of MI5, the very existence of which was then an official secret. Indeed, these proceedings were the first time that the existence of GCHQ had been admitted, and the prosecution felt it had let enough history slip out for 1977. Major Philp of the Royal Signals Corps was one witness who refused to disguise his admiration for Duncan's technical and journalistic ability. He told of hosting MOD press launches for new pieces of equipment, at which the regular defence correspondents would swill champagne and take away a press hand-out. Duncan, the abstemious journalist then working for *New Scientist*, was the only one capable of discussing the technical - and frequently, surveillance - role of the equipment. 'Get him out of here,' a superior had once told Philp when Campbell was seen at a press launch. 'He asks too many questions.'

The Section I 'collection' charge Duncan Campbell faced was based on the nine hundred pages culled from his files, all from public or published sources. Major-General Sturge asserted that 'Campbell set about a concerted effort to find out about the communications system of Britain and its relevance to defence. In my opinion this would be of use to an enemy.' So, of course, would a collection of Ordnance Survey maps, or a book like Peter Laurie's *Beneath the City Streets* - a popular paperback about the country's civil defence network for which Campbell had been doing further research, and to which most of his files related. The 'prejudicial purpose' on which the prosecution relied was not helping a foreign power, but research for publication - in books like Laurie's, or in articles for *New Scientist* or *Time Out*. This was not, of course, prejudicial to a democratic State with a rule of law protecting the freedom to publish inferences from available information, although it might well seem so to an authoritarian State which punished journalists who pried into subjects its military did not wish to see discussed in print. The prosecution theory,

in a nutshell, was that they could put Campbell behind bars under Section I not because of the information he had collected, but because, unlike other journalists who obeyed 'D' notices, he could not be trusted to do what he was told with it.

This was the point I tried to get across to the Tottenham justices:

The prosecution has mistaken investigative journalism for subversion. Because Campbell is a journalist, he's a ferret not a skunk. Section I is aimed at skunks - traitors and spies. In the nine hundred pages of evidence extracted from his library, there's no suggestion that his mind ever entertained a disloyal fantasy or that this information was ever collected other than for his own research. The prosecution describes him as a 'thoroughly subversive man', but the legal definition of a subversive is 'someone who contemplates the overthrow of the government by unlawful means'. There's no evidence that Campbell comes within a mile of that definition. The best synonym the prosecution has been able to come up with is 'anti-establishment'. I thought it was only in Russia that people were out in prison for being anti-establishment . . .

It was a speech delivered with some passion. How could it amount to a serious criminal offence for a journalist to collect information from published sources, or - unless clairvoyant - to question a soldier who had asked to be interviewed and claimed to have something significant to impart? The prosecutor pointed out that under Section I, they merely had to prove that the information *might* be of use to a potential enemy. Since it was obviously of use, it remained only for them to prove that it was collected for a purpose prejudicial to the State. An obscure subsection of Section I says that a defendant's purpose should be *deemed* prejudicial to the State if he is found in possession of 'any note, sketch, photograph or document' which relates to a *prohibited place*. A place is 'prohibited' if the government declares it to be prohibited, and its declarations over the years covered many well-known places mentioned or photographed in Campbell's files, including the Post Office Tower at Euston, of which Campbell had some postcards. His possession of them meant that he was 'deemed' to have a purpose prejudicial to the State, unless he proved the contrary. The prosecutor made this point with relish: unlike any other crime, Section I cuts the golden thread of the criminal law: it presumes that the defendant is guilty until proven innocent.

The lay justices were not lawyers. They sat stony-faced and overawed by the responsibility for protecting national security which had been thrust upon them. They committed A, B and C for trial on all counts. That was the cue for the prosecution to object to bail, especially for Campbell 'now that you have had a full opportunity to assess the seriousness of these charges'. This was MI5 speaking, with the harsh demand that Duncan be confined to prison for the year which would inevitably elapse before the Old Bailey trial. The magistrates retired for a nail-biting half-hour, but returned to set the defendants at liberty as before. Advocacy had not resulted in the removal of a single charge, but at least it appeared to have convinced the Tottenham justices - or the unflappable Mr Pratt who advised them - that the skies would not fall if Duncan Campbell were allowed just a little more time to follow his journalistic career.

The trial would not begin until September 1978; by which time we had to crack the prosecution's Section I syllogism:

Whatever is in the interest of SIGINT is in the interests of the State.  
 Absolute secrecy is in the interests of SIGINT.  
 Therefore, absolute secrecy on the subject of SIGINT is in the interests of the State.

Absolutely secrecy *had* been necessary during the Second World War, when SIGINT was under British control and was used exclusively for the purpose of defeating the Axis powers. UKUSA was originally a partnership agreement, but by 1978 the four parties to it had ceased to be partners. The UK, Australia and Canada had become clients of the US, which bought control by expending US \$15 billion and employing 120,000 personnel world-wide, to give America by far the major stake. The interests of SIGINT had become the interests of a US foreign policy which propped up some of the most tyrannical regimes against democratic challenge. Britain had trained and sent SIGINT operators secretly to be part of the US war effort against North Vietnam; had provided intelligence support for the CIA to destabilise the Allende regime in Chile and to shore up the Shah's rule in Iran; and had taken a soft line on apartheid partly for fear of jeopardising communications facilities in South Africa. SIGINT was also used unlawfully by the Nixon regime to gather information on US residents living abroad (especially in the UK) whom it targeted as 'enemies'. Did British SIGINT give any assistance? Issues like this were regularly raised in the American press: democratic debate over them in Britain had not begun, and would - if this prosecution succeeded - be stifled indefinitely.

We were contacted by Jock Kane, a former GCHQ employee who unveiled for us evidence of widespread corruption and inefficiency. Major electronics suppliers were making fortunes out of SIGINT equipment: the secrecy meant that there was no proper accounting over their profits and no control over spin-off sales to dubious foreign dictatorships. Some of his examples were almost amusing (at Little Sai Wan base in Hong Kong, the Chinese cleaners who were for some years employed to remove the waste baskets of intercepts removed them to the Chinese Embassy). But the scale and detail of Kane's accusations were alarming, and his credibility was unchallengeable (as Mrs Thatcher reluctantly accepted when his allegations were published some years later). What they proved was that beneath a blanket of unaccountable secrecy, insecure and even corrupt practices flourish. The syllogism had been cracked: absolute secrecy was in the interests of SIGINT *officials*, but not always or necessarily in the interests of the State.

I spent much of the summer of 1978 discussing tactics, often on the telephone, with Jeremy Hutchinson - the most fearless and formidable advocate of the day - who was to lead Campbell's defence team. He could not understand why the security services had not been prepared to accept my offer of a plea to Section 2 in return for dropping all the Section I charges. Shortly after we discussed whether we might renew it, he found himself invited to a dinner party at which, by the strangest coincidence, there appeared a very senior public servant who took him aside and said that the intelligence services would now be 'very interested' in any agreement which would avoid the need for a trial. So we went to see John Leonard - the sensible and fair-minded silk who had been brought in to lead the prosecution - and we found him more than happy to drop all Section I charges, in return for a single plea by all three of guilty to a Section 2 offence. For Campbell this was, on the face of it, a real bargain. Nobody had ever been acquitted of a Section I charge, and he was facing two of them. His liability to prison would shrink at a stroke from thirty years to two years. Moreover, the judge who had been allotted to the ABC trial was the fearsome Mr Justice Thesiger, quite capable of putting Campbell inside for many years if the trial resulted in his conviction on Section I. Although he would probably jail them for a year under Section 2, the pressure on all defendants to accept the plea bargain was intense.

Courageously, they decided to tempt fate. Their bandwagon - the ABC campaign - was rolling towards the Old Bailey and on it by now were several Labour MPs, the NUJ and other trade unions, and some leading writers and academics, as well as Buzby - a large fluffy bird who sat on telephone wires in television ads for the Post Office - and an enormous Chinese dragon which breathed fire and hissed 'silly secrets'. The defendants called a press conference just before the trial to announce that they were going to fight, that they had been offered a plea bargain, and had turned it down. Sam Silkin had been defending himself for consenting to the Section I charges on the grounds that they were absolutely necessary in the national interest: the revelation that he was prepared to drop them in return for a plea to a lesser offence suggested that they were not necessary at all. So, on the first day of the trial, A, B and C arrived with the dragon at the head of a colourful procession of supporters waving their 'Military Intelligence is a contradiction in terms' placards and wearing their 'Tell me an official secret' badges, pinned to T-shirts reading 'Buzby says: who's tapping your phone?' (Buzby was given the bird by the Post Office shortly after he became the mascot of the ABC campaign.) What was happening inside the Old Bailey was more dramatic, and of some historic importance.

At our eve-of-trial conference, Duncan had expressed his mistrust of the security services. The publicity given to the plea bargain and its rejection would, he felt, infuriate them and make them want to convict him at all costs. He would not even put it past them to 'vet' the jury. Jeremy Hutchinson had taken a very firm line against this paranoia: jury vetting was, in England in 1978, quite unthinkable. He had never heard any suggestion that such a thing could happen. I mentioned that Viscount Dilhorne had once admitted to removing a communist from a jury trying an official secrets case, back in 1956. Dilhorne was Jeremy's sworn adversary in past courtroom battles, and that night he lay awake, wondering. At 9 a.m. he strolled into the office of the chief clerk at the Old Bailey. 'Has there been any - how shall I put it - *interest* in the jury panel for today's trial?' he enquired innocently. The clerk, honoured to receive a visit from the great advocate, explained that there had been no interest at all over the past six weeks, ever since the prosecution had applied in secret to Mr Justice Thesiger to have the names and addresses of all the jurors on the panel so they could be vetted for the ABC trial.

'They've vetted the jury!' Jeremy was in a fine old state in the robing room, half-enraged at the prosecution's behaviour, half excited by the mischief he would cause when he stood up in court to reveal it. We both instinctively felt it was an outrage, although we did not, at that moment, know exactly why. The word 'unconstitutional' sprang to my lips, but that is always a tricky notion in the courts of a country which does not have a written constitution. I had a new pupil starting that morning - Andrew Nicol, a lecturer at the London School of Economics - and I sent him urgently back to school to find some authority which might provide a basis for complaining about this unheard-of behaviour. It was a measure of Andy's brilliance that he returned within the hour clutching the first and last word on the subject, Jeremy Bentham's *Elements of the Art of Jury Packing*. This 1821 masterpiece - Bentham's very first book - provided some historical sound-bites to orchestrate Jeremy's impromptu condemnation of a prosecution which had taken a liberty not seen since William Pitt, who had introduced specially vetted juries to convict for seditious defendants who sympathised with the French Revolution. Bentham condemned a vetting system 'which is become regular, quietly established and quietly suffered. Not only is the yoke already about our necks, but our neck is already fashioned for it.'

Just how apt these words were became clear as soon as Jeremy's angry denunciation of it detonated in court. John Leonard explained that the Crown had made a secret application to obtain the names of jurors 'in sufficient time to complete the checks which are normal in cases of this sort'. Ah ha: 'normal' - just what had been going on 'in cases of this sort'? Mr Justice Willis (a last-minute replacement for Thesiger, who had fallen ill) was noncommittal - he knew nothing about it, and wanted to know nothing. 'It is not a matter for me,' he said, taken by such surprise that he forgot to ban the ensuing press coverage, which was massive. The public are always, and rightly, anxious at any suggestion of tampering with juries, and Silkin, under fire from all sides, was forced to own up. On taking office in 1974 he and Home Secretary Roy Jenkins had been prevailed upon by the security services to authorise a system of vetting jurors in cases of a class which 'was impossible to define precisely' but 'when, broadly speaking, strong political motives were involved'. Between 1974 and 1978 no fewer than twenty-five cases had involved secret vetting of the jury panel, unbeknown to the defence. The whole system had been deliberately kept quiet, in the hope that lawyers and MPs would never find out. Silkin claimed to have drawn up 'firm safeguards' to ensure that the system was not abused, but these too were of course secret, so no one could ever know whether they were firm, or even whether they had been followed.

The jury-vetting episode provided further evidence for the uncomfortable proposition that civil liberties are less secure in the hands of Labour politicians, nervously striving to prove their responsibility by bowing to pressure from the police and the security services, than of dyed-in-the-wool Conservatives who have no need to prove their law and order credentials. The system, the establishment of which had been deliberately withheld from public debate, involved a secret prosecution application to the trial judge, who would order court officials to hand to Special Branch a list of the names and addresses and occupations of jurors on the panel for a particular trial, so that 'checks' could be made with police and security records to see whether any juror was listed as having strong political views, or any hostility to the State (e.g. by having lodged a complaint against the police). Prosecuting counsel could then challenge the juror, with no reason given. Any information suggesting the juror would be hostile to the *defendant* would never be supplied to the defence, because that would give the secret vetting game away. The system authorised by Jenkins and Silkin was unfair in this quite elemental way, and they should have realised it. The historian E P Thompson, who had joined the defence campaign responded with a memorable defence of the jury:

Time and again, when judges and law officers, mounted on high horses, have been riding at breakneck speed towards some convenient despotism, those shadowy figures - not particularly good or especially true - have risen from the bushes beside the highway to fling a gate across their path. They are known to historians as the Gang of Twelve.

Turning to Silkin and his guidelines (hastily made public in an attempt to defuse the criticism), Thompson shredded them both:

Mr Attorney General, what precision is there in these 'guidelines' you served out secretly to the police? What is a guideline? Is it a rule at law or is it a nudge-nudge be-careful-how-you-go? What officers have you appointed to see that these 'guidelines' are observed? What sanctions have you imposed against transgressions? How are we to know if a case be of an 'exceptional type' or not? What rule of law may hang upon the phrase 'it is impossible to define precisely' the cases to which it might refer? If law is now to rest upon such nice terms as 'broadly speaking', who is to speak and how broad may that speech be? If a person be deprived of his juror's rights (which I had once supposed to be a right and duty inherent in a citizen) because of 'strong political motives' and 'extreme political convictions', who is to determine whether his views be 'strong' or 'extreme'? Yourself? Or Tony the DPP? The prosecution? Or the police? Whichever it may be, you are taking a liberty: the liberty of the people.

Heady as the jury-vetting controversy was, it did not impact directly on the trial. John Leonard opened it by conceding that Section I was normally used in 'spying' cases, and that ABC's offence 'came at the lowest end of the Section I scale' - a retreat from the more extravagant approach of the prosecutor at Tottenham Magistrates' Court. But an offence was made out if their purpose was prejudicial to the safety or interests of the State, and 'here, the prejudicial purpose is Campbell and Aubrey's purpose of publishing or passing on Berry's information'. The prosecution case against Campbell on the collection charge was that 'when you look at the collection, it goes beyond the ordinary inquisitiveness of a journalist . . . the defendant's conviction is essential to the safety of this country within the NATO alliance . . . if information of this kind is collected, it will affect whether one sleeps well in one's bed at night or not.' Campbell was a 'highly qualified and very able scientist' who had 'taken the pieces of our defence jigsaw puzzle, and put them together'. Since much of his information related to 'prohibited places', the law *deemed* him to have collected it for a prejudicial purpose unless he could prove the contrary. His behaviour, when invited as a journalist to attend the launch of new defence products, was 'to ask questions which he knew perfectly well that the manufacturers were not allowed to answer. He was told these questions could not be asked, yet he went on persistently to ask them!'

It was an extraordinary theory, which proceeded on the basis that there existed an acceptable threshold of journalistic inquisitiveness which Campbell had exceeded by virtue of his ability and expertise. The prosecution could not define the point at which the bulging Campbell files had passed from legitimate research into evidence of the commission of a serious offence, and its case soon came apart under Jeremy Hutchinson's relentless cross-examination. The witnesses were all from the bases which Campbell had identified in his research as having a defence communications function, and it transpired that all of these 'secret' bases and facilities had been identified in some published source as possessing precisely that function - many of them by large signs (the Regimental Display Board) posted outside their perimeter fences. Their function had often been discussed in local newspapers and in regimental magazines and occasionally in the national press. Their aerials, which gave away that function to any experienced observer (including KGB analysts who saw them on satellite photographs) were also identified on Ordnance Survey maps. There was regular merriment in court when we produced a 'Hazards Map' issued by the Civil Aviation Authority, which showed the location and by inference the function of all the prosecution's 'top secret' sites: it was routinely issued to all commercial airlines, including Aeroflot. Each witness was solemnly required to identify his secret base on 'The Aeroflot Map'. When told, at the close of a cross-examination which had featured dozens of public references to the role of his unit, that it was being suggested that this role was a State secret, most were driven to agree that the suggestion was, in Jeremy's words, 'absolutely idiotic'.

But still they came, from places as far afield as Bude and Chicksands and Orfordness and Edzell in Scotland, to identify their units in Campbell's cuttings. Many of these were 'joint facilities', ostensibly operated in partnership with the US, although this was a fiction: they were operated entirely by the US. Their lone UK officers, when called to testify, admitted they had no idea what the Americans were doing, and it was no part of their duty to enquire. 'I am the only British officer on the base. I do not know what it does. I do not know details of its operations. I play no part in them. I am completely isolated. My US colleagues do not speak to me,' said the RAF officer from 'RAF' Edzell. 'I am not involved in the running of the station. That is done by high-ranking American officers. I don't know the details - I'm only the landlord's representative,' said an RAF group captain whose main job was to raise and lower the British flag outside another 'joint facility'. The officer who came from the RAF establishment at Orfordness was very frank: he said a recent decision to shut down new equipment at the base at a cost of £40 million was 'of the greatest possible public interest'. The secrecy surrounding the base 'can be very annoying. Speaking as a human being, I agree it is absolutely idiotic.'

More amusement was caused when the prosecution called a fifteen-year-old schoolboy who had corresponded with Campbell about the location and function of microwave stations along the East Coast. Phillip Quigley was from Ampleforth College. He had been introduced to Duncan by a schoolmaster, Father Anselm Cramer, who gave lectures on civil defence. This monk was as interested in SIGINT as trainspotters are in trains, and had taken the boy on a 'microwave treasure hunt' by compass near the East Coast as part of a school project. Master and pupil spoke with genuine enthusiasm of their journeys of discovery, of their curiosity about the American bases and the aerials dotting the landscape, and how it never occurred to them that they were breaking the Official Secrets Act by photographing 'prohibited places'. 'Inside every schoolmaster,' Cramer told the jury, 'there is a small boy.' Civil defence had been a compulsive interest, and until the Special Branch had raided Ampleforth: 'I didn't know I was doing anything wrong'.

At the forensic level, the trial was going beautifully for the defence. But I am always mindful of the story about the advocate congratulated by his client on a particularly skillful cross examination: 'We're doing great.' 'I'm doing great,' corrected the lawyer, 'you are going to jail for many years.' Jeremy's cross examination was delighting everyone in court who was sceptical about official secrecy. Did that include the jury? It was hard to tell: they had listened so attentively as John Leonard told them they would sleep more easily in their beds without Duncan Campbell's curiosity about the signals intelligence system that served the Western alliance. We noticed one juror in particular - a well-built man in his thirties - aiming very hostile glances in the direction of the dock. He had been elected foreman, and our hearts sank one morning as we read the officious note he passed to the judge: 'Only three members of the jury have signed the Official Secrets Act!' We were appalled to learn that *any* member of the jury had signed the Act. The judge made enquiries and it turned out that one of the three was a civil servant, another a former security officer in the army, but the third - the foreman himself - had been a soldier in the SAS, who had done duty in Northern Ireland, the Far East and Cyprus. Some of the exhibits included articles written by Duncan which were critical of the SAS. All defence counsel applied for the jury to be discharged on the grounds that justice must not only be done but be *seen* to be done, and that A, B and C could not in these circumstances be perceived to have a fair trial. This was a powerful application, but the judge turned it down.

The next morning, a Friday, there came a witness from a top secret communications station outside Dover. Leonard showed him what he had described in opening as the prosecution's best single piece of evidence: a photograph from Campbell's collection which could only have been taken from a helicopter. The witness agreed it was a very high-quality photograph of a secret site which must have been taken from the air - one juror was heard to gasp at Campbell's audacity, apparently hiring a helicopter and leaning out of it to take the forbidden photograph. Then it was Jeremy's turn to ask whether Marconi had been responsible for the installation (it had been) and whether it had arranged for some aerial photographs to be taken of its handiwork (yes, probably) and whether the photograph had been issued for publicity purposes by the Ministry of Defence (he didn't know). 'It will be the defence case that this high-quality photograph of a top-secret installation was supplied to the defendant and numerous other journalists in a press pack by the MOD,' Jeremy explained serenely. John Leonard, normally the most unflappable of counsel, turned to the MI5 lawyers behind him, who shrugged helplessly.

We broke for the weekend, pleased at the prosecution's disarray but more worried than ever about the jury foreman, who had been overheard in the corridors talking to other jurors about his SAS exploits. Journalists covering the trial found it astonishing that the prosecution could vet a jury for 'loyalty', yet the defence could not object to jurors who had been indoctrinated into the cult of official secrecy. To their frustration, the judge had ruled that none of this could be published. One journalist, Christopher Hitchens, and the television producer Barry Cox decided to take the law into their own hands. Hitchens was the guest that weekend on a late-night satire show produced by Cox and hosted by Russell Harty, called *Saturday Night People*. It was full of 'scripted ad-libs' and when Harty invited Hitchens to tell the audience something they could not read in the papers, he announced that three of the vetted jurors in the ABC trial had signed the Official Secrets Act, that the foreman had been in the SAS and that the judge had refused a defence application to discharge them.

Monday was another dramatic morning: the Special Branch descended on London Weekend Television to seize a video of the offending programme to show in court, after which the judge condemned this 'piece of gratuitous journalistic gossip'. He was now obliged to discharge the jury in fairness to the defendants, since Hitchens had revealed that the defence objected to them. There would have to be a new trial. And there was another surprise in store. John Leonard asked for an adjournment 'in order to take instructions to see whether I can present the prosecution case more economically'. With this most delicate phrasing, he signalled that the Section I collection charge would not be pursued. A jury might - who knows - have convicted, but an independent prosecutor, persuaded of his innocence, was not prepared to take that risk.

A few days later, Mr Justice Willis was rushed to hospital, and doctors declared him too ill to preside over the second trial. The ABC campaign sent him a 'get well soon' card and a large bunch of red roses, which he acknowledged in a note to Jeremy both charming and chilling. 'I am glad I shall not be doing the retrial as I was not looking forward to passing the sentences.' Jeremy fretted about the eventual fate of our clients. 'They will send us the toughest judge they can find,' he predicted. Quite who 'they' were has never been very clear to me: there is no known procedure for appointing a judge for a particular trial. It is all meant to happen by happenstance - the luck of the High Court calendar, a question of who is available on the day. Was it mere coincidence that we first drew the extremely severe Mr Justice Theisger, followed by Mr Justice Willis who had spent the war in the Royal Signals Regiment? We speculated about which red judge was most likely to put this derailed trial back on its tracks without further damage to the State. 'It's Mars-Jones.' I phoned Jeremy with the news, when the name finally emerged from the Old Bailey list office. 'What did I tell you!' he exclaimed. 'He's the worst possible choice. Juries do exactly what he tells them. He has total contempt for barristers. And his sentences are over the top. Can we object to him?'

I had never encountered Mr Justice Mars-Jones, although I rather liked what I had heard of him: he had conducted the inquiry into Harry Challoner and the bent police officers at West End Central in the sixties and had jailed most of Scotland Yard's Obscene Publications Squad for corruption a few years after the Oz trial. He had a son - Adam - who was beginning to make his name as a writer, which seemed a good sign. He had another son, too, who had once gone out with the daughter of Chris Price, a Labour MP who was to be a defence witness in the trial. Clutching this slim reed, we sent the judge a note inviting him to disqualify himself over this family connection, and he sent a message back telling us not to be ridiculous. Jeremy sighed, and prepared himself for the advocate's hardest task - to reach out to a jury which is under the sway of a judicial master. In all the cases I was privileged to work with Jeremy Hutchinson, his instincts were only ever wrong on one occasion. This one.

The second trial began with what was becoming almost a traditional procession to the Old Bailey, led by the 'silly secrets' dragon and the larger-than-life Buzby. Jeremy once again made his attack on the unconstitutionality of jury-vetting, which the judge rebuffed by pointing out that the defence could obtain the names and addresses of jurors and do its own vetting - which would have been fine had we the intelligence services and the Special Branch at our command. That afternoon Duncan bicycled around to the addresses of potential jurors, but the information he obtained was ambivalent. One juror had a beard - was this a sign of unconventionality, or inadequacy? Some of their homes had double locks on the front doors - did that mean they would be too security conscious? Mars-Jones, gravelled in voice and commanding in presence, seemed determined to live up to Jeremy's fears: with unnecessary ferocity he ordered that nothing should be published about jury-vetting. The media - even *Time Out* - meekly obeyed, but the following week Sam Silkin issued a press statement on the subject. Jeremy, with a show of outrage, demanded that the Attorney General be reported to himself for contempt of court. The Law Officer made a grovelling apology to the judge, and the trial continued.

It was, as John Leonard had promised, a much more modest prosecution. He began it by paying a previously unheard tribute to the role of the press in a democracy. He dropped the 'collection' charge and focused on Section 2, but did not abandon the Section I charge relating to the interview with Berry. We noticed, however, that when referring to the contents of the tape, he described them as containing 'matters which *I'm told* are secret'. Early witnesses testified to Berry's indoctrination about the importance of keeping secret the identity of his unit and its location. The prosecution insisted that in open court they be referred to only as 'Unit A' at 'Location I'. Cross-examination soon showed this secrecy to be bogus: the name and location of Unit A had been mentioned in press and in Parliament, and was well known in Cyprus. Indeed, it was known to any tourist who passed the noticeboard in front of the cluster of aeries outside Ayios Nikolaos, because it read '9th Signals Regiment, British Army'. We asked the judge's permission to identify Unit A and Location I in open court, and he readily and sensibly gave it. That was when the DPP personally descended on the court, which went into secret session so the prosecution could beseech the judge not to embarrass Britain by revealing that electronic intelligence was being gathered from Cyprus. The judge grumpily gave in to what he was told was diplomatic necessity, and the upshot was that witnesses were shown the photograph of the sign outside the base, and asked the following:

Q: Is that the name of your unit?

A: I cannot answer that question, that is a secret.

Q: Is that the board which passers-by on the main road see outside your unit's base?

A: Yes.

Q: Read it out to the jury, please.

A: I cannot do that. it is a secret.

And so matters continued for some days, until, on the morning of 24 October 1978, we arrived at court to find it had been cleared on the judge's order. We suspected some new excess by Buzby and the ABC dragon whose out-of-court activities had been a regular subject of complaint, but this time the prosecutors were mystified too. It was towards them the judge turned when he came into court. He had been reviewing their case, and he could not understand why they were proceeding on charges under Section I of the Official Secrets Act. This, he declared, was an



extremely oppressive piece of legislation, suitable only for dealing with saboteurs or spies in the service of a foreign power. It permitted guilt by association, it reversed the burden of proof - why was it being used against these young journalists? He had read all the evidence, and he was 'extremely unhappy' about this 'oppressive prosecution'. John Leonard replied that the prosecution had been authorised by the Attorney General. 'If the Attorney General can authorise the prosecution, then he can unauthorise it,' snapped Mr Justice Mars-Jones in a voice which at once exemplified and justified the independence of the judiciary.

Everyone in court was stunned. But the judge had not finished. He turned to the defendants. They had no defence to the Section 2 charges that he could think of, and they could save everyone's time by pleading guilty. But whether they did or not, he had formed the very firm view that none of them deserved a custodial sentence. So while the prosecution was taking instructions about dropping Section I, would they consider whether to plead 'guilty' to Section 2, so we could all go home? The court rose, and the defendants - who had spent the last year reconciling themselves to Christmas in jail - stumbled from the dock into the arms of their equally amazed lawyers. Bill Mars-Jones was an avenging angel, usually, if you were a bank robber or a bent copper. But to these journalists, who had faced for the past eighteen months the prospect of a long prison stretch for talking over a bottle of wine with a peeved ex-soldier, he appeared a red-robed angel of mercy. How MI5 perceived him I do not know, and he plainly did not care.

Much has been said and written, especially from a jejune left wing perspective, about the unfitness of judges as guardians of civil liberties and as protectors of the citizen against the State. Self important 'old Labour' politicians and cynical academics have derided the demand for a Bill of Rights, for example, on the grounds that it will be implemented by judges who cannot be trusted with a power which should belong exclusively to Parliament. On 24 October 1978, Mr Justice Mars-Jones proved them wrong. Democracy had done nothing to stop the wrongful prosecution of the 'Time Out Two': a weak Labour administration, overawed by the intelligence service, had abused human rights by invoking Section I and only a handful of its back-benchers had bothered to protest. The press had stayed silent, except for the *New Statesman* and (up to a point) the *Guardian*. A, B and C were free, not as a result of their own courage (which was a precondition) or of their campaign (which gave them courage, but did not help the courtroom battle): they owed their release to a judge robustly indifferent to the State. Other judges, it is true, might not have recognised the oppressiveness of the indictment, or have called a halt to the case in the same way or at all. But for an era which is remembered for wrongful convictions and the liberties taken by the security services, the action of Mars-Jones is worth remembering, and worth celebrating. It says something for a system when the State, with all its power bent on conviction, cannot intimidate the courts or make prosecutors flinch from their duties of fairness. The Attorney General accepted defeat with good grace, and may privately have been glad to find in the judge's words the power he was lacking as a politician to stand up to the security services. The next day, he instructed the prosecution to withdraw the Section I charges.

The defendants, promised their freedom in any event, were not prepared to give up the chance of a sympathy acquittal. So, anti-climactically, the trial limped on for another fortnight under the remaining Section 2 charge. Much of this time was taken in cross examining Colonel B about the merits of the policy of blanket secrecy over anything related to SIGINT. The Colonel's position was still that SIGINT was an official secret and any mention of GCHQ, no matter how anodyne or how unimportant to the public, was extremely damaging to national security. It did not matter that the 9th Signals Regiment's intercept role in Cyprus had been widely published and was well known on the island. It did not matter that the Soviets had been told by defectors all the details of the base, or that they had spy-satellites taking pictures of it. All that mattered was that HMG had not, for diplomatic reasons, admitted its role, and therefore it did not have one. The secret world has no existence, other than in rumour or as speculation, until it is acknowledged by an official source. 'It only becomes a fact after some official says it is,' Jeremy commented acidly, and Colonel B wholeheartedly agreed.

The trial ended with a whimper, not a bang. Campbell and Aubrey were given conditional discharges, and a helpful judicial reference ('I am sure you are both good journalists with bright futures in front of you'), while Berry received a suspended sentence. They almost escaped conviction: the jury spent three nights in a hotel before reluctantly bringing back the verdict required by the catch-all nature of Section 2. The newspapers, which had been so notably silent about the case, published the front-page stories and editorials they should have written eighteen months before, condemning the prosecution and calling for Sam Silkin to resign, or at least to explain why he had authorised an oppressive prosecution. He did so, in a telling self-defence:

I personally and critically questioned those who made the damage assessment . . . How could any responsible Attorney General ignore the unanimous views presented to me that evidence of both the material collected by Campbell and the information imparted by Berry could do damage ranging from serious to exceptionally grave to the national security?

Sam Silkin, like other liberal-minded lawyer-politicians, had a psychological need to be perceived as 'responsible' - by the security services, the Americans, the opposition. This is not only a British phenomenon: it was Ramsey Clark, the 'liberal' US attorney, who obeyed J Edgar Hoover's orders to prosecute Dr Spock; it was John Kerr, the 'liberal' QC who became Governor General of Australia and sacked the Whitlam Labour government for reasons associated with CIA concern that it might close down SIGINT bases. Richard Kliendienst, Nixon's crooked Attorney General, claimed on this evidence that civil liberties are safer in the hands of conservatives, who do not need to prove that they are 'responsible', than entrusted to people whose past support for radical causes makes them more vulnerable to police and security service pressure. I once asked Gerald Gardiner why it was that as Lord Chancellor in the first Wilson government he refused to hold sensitive conversations in his office or his house. 'I believed they would be bugged by the security services.' But how could you believe that? 'Because, you see, I'd been a pacifist during the war, I was on the Board of the *New Statesman* . . .' For this reason, Gardiner and Elwyn Jones, the Attorney General, were in the habit of discussing sensitive subjects in a car going round and round Trafalgar Square. ('We trusted the driver.') I do not believe that power tends to corrupt liberals, but it makes them extremely nervous.

The Labour Law Officers were good and conscientious men, much affected by the exigencies of the Cold War. Their failure was in not holding fast to the principle of freedom of expression in a democracy. The quality of 'responsibility' in a law officer includes an ability to distinguish between the national interest and the vested interest of the intelligence community in protecting from criticism their policies and their alliances and especially their budgets. It seems incredible now that the role of GCHQ remained a secret until the 1977 committal proceedings at Tottenham: a few years later it was barely out of the news as the government ban on trade unions and then on homosexuals became running disputes in the courts, and then Geoffrey Prime was jailed for having sold most of its secrets to the Soviets, years before A and C met B. Today

SIGINT is known about and budgeted for and expected to play a part in gathering evidence of international crime and terrorism and human-rights abuses. It is pleasing to record that one of the first decisions taken by Robin Cook, when he became Foreign Secretary in 1997, was to direct that intercepts of Bosnian Serb communications gathered by GCHQ from its aerals in Cyprus should be supplied to the War Crimes prosecutors in The Hague. He had read of the existence of this evidence in a newspaper, in the kind of story which would, twenty years before, have provoked a prosecution under Section I of the Official Secrets Act.

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