Winter 1986 No:1

SOCIALIST LAWYER

contents

Haldane Society of Socialist Lawyers

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Haldane Society of Socialist Lawyers

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SOCIALIST LAWYER will appear three times a year. It is edited by Nick Paul and Andrew Buchan. The Editors would welcome contributions so if you are interested in writing articles or book reviews please contact them at:
1, Dr Johnson's Bldgs., Temple, London EC4

PUBLIC MEETINGS PROGRAMME

Spring

Full details of the Spring Programme are set out on the poster enclosed in the Christmas mailing to members. All meetings are at the London School of Economics, Houghton Street unless otherwise stated.

5th FEBRUARY 1987

"Developments in Judicial Review"
Speakers: Stephen Sedley Q.C., Patrick McCausland, Professor of Public Law LSE.

19th FEBRUARY 1987

"Women's Rights under a Labour Government"
Speakers: Tess Gill and Patricia Hewitt

11th March 1987

Accidents: Whose fault or No-fault?"
Speakers: Dave Gee, Health and Safety Officer GMBATU: Geoff Shears, Solicitor, Brian Thompson & Partners; Greg Powell, Solicitor, Powell McGrath.

4th-5th APRIL 1987

"Legal Services: A socialist alternative?"
Conference and Special General Meeting at the University of Leicester.

Summer

Details of the Summer Programme will be given in the Easter mailing. Meetings are being planned for May and June on refugees and on the dilemas and difficulties which many socialist lawyers experience when prosecuting in the criminal courts. The Annual General Meeting will be in June/July 1987.

ANC BENEFIT

The Haldane Society will be holding a benefit on behalf of the African National Congress in May/June 1987. Food, drink, music and a speaker from the ANC. Full details in the Easter mailing.

HALDANE NEWS

EXECUTIVE COMMITTEE

Joe O'Hara has had to resign from the EC because of his work commitments. The EC has co-opted two new members: BARBARA COHEN and PAM BRIGHTON. Barbara Cohen will be well known to many members through her work with the National Council for Civil Liberties and, more recently, the Wapping legal observer scheme. She is now a solicitor in private practice. Pam is a pupil barrister who has recently become Convenor of the Crime Sub-committee. She will be co-ordinating the Society's response to the Criminal Justice Bill.

WAPPING

The legal observer scheme at Wapping is still continuing. If anyone could **spare a few hours** each week to help with the administration of the scheme would s/he please contact Ben Emerson, 154, St Paul's Road, London N1. Tel: 01-226 8696. Volunteer observers are also needed.

INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

Jeremy Smith, Joanna Dodson and Rhys Vaughan attended the IADL's 40th anniversary celebrations in Paris on the weekend of 12th/13th December.

SOUTH AFRICAN MINEWORKERS

On 16th September 1986 at the Kincross Gold Mine in South Africa, 177 miners died in an underground fire. The National Union of Mineworkers and the Anti-Apartheid Movement held a memorial service for the dead men and their families on 29th November in Sheffield Cathedral. Tributes were given by Arthur Scargill and James Motlatsi, President of the National Union of Mineworkers (South Africa). Beverley Lang attended on behalf of the Haldane Society and the International Association of Democratic Lawyers.

MANCHESTER BRANCH

A Manchester Branch of the Haldane Society has been established for Society members living or working in the Greater Manchester area. Anyone interested in joining or receiving details of public meetings organised by the branch should contact Rhys Vaughan, 382, Dickenson Road, Longsight, Manchester. Tel: 061-224 1439.

MEMBERSHIP

Subscriptions: Thanks to all those who responded to the subscriptions reminder which was sent out with the Autumn mailing. There are still some members who have not brought their subscriptions up to date. This is a last reminder. Please could you make sure that you have paid your 1986/87 (October 1986 — September 1987) subscription by **31st January 1987** otherwise your membership will lapse. If you do not already pay by standing order there is a standing order form on the back of "Socialist Lawyer" which you could fill in. Although the membership year runs from October to September, annual outstanding order payments can be made at any time during the year.

Tribute to Owen Parsons

OWEN PARSONS died on August 23rd 1986 at the age of 72. A vice-president of the Haldane Society, he had been an active member since he served articles with W.H. Thompson before the war. I had known Owen since 1941 and I last talked with him in May of this year.

We worked together in W.H. Thompson's office evacuated to High Wycombe during the war and there I came to know well the kind of man he was. His training with the great W.H. Thomspon impinged effectively on an acute mind to develop an outstanding industrial lawyer.

His scale of social values included strong awareness of class struggle problems and there was no doubt in his mind as to the role the law had to play in this connection – at one moment an obstacle to be overcome with devious subtlety at another a useful weapon to complement activities for progress.

He vented his hatred of the capitalist system in vigorous prosecution of workmen's compensation and damages claims. Many an insurance company felt the thrust of his dislike in correspondence and court tactics.

Undoubtedly he can be ranked as a member of that select band of lawyers who over the last 150 years have made a fundamental contribution in assisting trade unions to cope with hostile law. He wrote innumerable articles for *Labour Research* on every new development in industrial law over forty years: he published pamphlets and booklets on topics ranging from the *Essential Work Order* (1940) to the *Tory War on the Trade Unions* (1980). He also found time to address many trade union branches and conferences.

With all this he had a sharp sense of humour and was stimulating company.

His contribution to the movement has been substantial: its termination is a significant loss. **John L. Williams**

Legal Services

Conference: 3rd/4th April 1987 Special General Meeting: 2.00 pm 4th APRIL 1987

During 1985 and 1986 the Legal Profession Subcommittee of the Society (Hugh Tomlinson, Heather Rogers, Shelia Kavanagh and Marcia Purnell) prepared papers on the reform of legal services. The Executive Committee circulated those papers for discussion prior to the 1986 Annual General Meeting.

The Executive Committee organised a public meeting on legal services in May 1986 to provide an opportunity for debate but unfortunately the meeting was poorly attended and no conclusions were reached.

The main proposals contained in the papers submitted by the Legal Profession Subcommittee were presented to the AGM in the form of a Resolution:

"The Haldane Society reiterates its condemnation of the present organisation of the legal profession as elitist, archaic and inefficient."

The Haldane Society calls for:

(a) the fusion of barristers and solicitors into a single legal profession.

(b) the abolition of the Inns of Court and the Law Society and their replacement by a "College of Lawyers" governed by elected representatives of its members and a substantial and socially mixed representative lay element.

(c) the extension of rights of audience to all members of the College.

(d) common legal training comprising academic, vocational and in-service elements with optional advanced training as a "specialist advocate."

At the 1986 AGM there was a heated debate on the Society's policy on legal services. The papers submitted by the legal Profession Sub-Committee were criticised by some members for their failure to support the extension of the Law Centre movement and by others for their failure to support a nationalised legal service. Unfortunately, no other resolutions on legal services had been submitted and so it was impossible for the debate to be resolved by a vote. The Resolution set out above was passed with a few minor amendments.

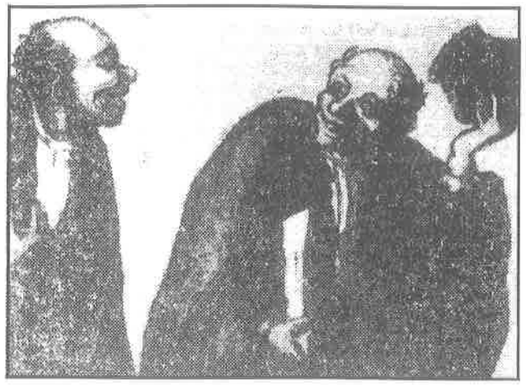
The new Executive Committee did not reconstitute the Legal Profession Subcommittee. Instead it held two EC meetings on legal services: one to discuss a paper by Rhys Vaughan on proposals for a national legal service and the other to consider submissions drafted by Beverley Lang on behalf of the Society in response to the Lord Chancellor's Department Scrutiny Report on Legal Aid. It became clear at those meetings that it would not be possible for the EC to formulate a policy to present to the 1987 AGM because there some profound disagreements within the Committee and the issues were so broad that they needed to be canvasseed among a larger cross-section of members. For these reasons, the EC decided to organise a Legal Services Conference to debate the issues and to combine it with a Special General Meeting which would formally resolve the Society's policy on the future of legal services.

The Conference and the Special General Meeting will be held at the University of Leicester on 4th/5th April 1987. A registration form with further details will be included in the Christmas mailing.

The Conference will be open to members and non-members upon payment of a registration fee. It will begin on Saturday 4th April and end at lunchtime on Sunday 5th April.

The Special General Meeting will be open to all members free of charge. It will begin at 2.00 pm on Sunday 5th April and end at about 4.00 pm.

Rules 11 and 12 of the Society's rules apply to a Special General Meeting and therefore any member intending to propose a motion at the Special General Meeting must serve written notice of the motion upon the Secretary **no later than 15th March 1987.**Motions which are not served upon the Secretary by this date may not be debated without the leave of the EC or the meeting and, even if they are taken as emergency motions, they will not be binding on the Society.



Labour Party Conference

DICK LOMAX attended a fringe meeting at Labour Party Conference organised by a group called "Progressive Lawyers". He reports as follows:

Opinions were varied but not inevitably incompatible Austin Mitchell M.P. — who has already introduced legislation dealing with the profession — spoke of the difficulties in getting the Labour Movement to spell out what reform of the legal profession would mean. **Debate about the professions — about the future of legal services has, he said, too often been dominated by lawyers.** He saw the abolition of restrictive practices, and the freeing up of the professions as progressive measures. He looked forward to the abolition of QC's, the creation of a Public Defender Service, Family Courts, the adoption of a Bill of Rights, and a Minister of Justice.

Tony Gifford also spoke of the importance of an accountable minister of Justice, but warned that privileges would not be easily given up. He was concerned that a salaried service would not be independent. He wanted to see a more determined assault on racial prejudice, positions with the professions opened up to younger lawyers, and a change in the method of education and training having that would give lawyers greater competence in dealing with the problems of working class families.

The meeting heard a proposal for sweeping reform from Rhys Vaughan who called for Labour to establish a National Legal Service modelled on the ideals of the National Health Service. The Service should be accessible, competent and generally available. The present legal aid arrangements usually mean that capitalist lawyers receive public money for preserving the legal interests of the working classes. This should be brought to an end.

Support for law centres figured in contributions by other speakers who were concerned that legal services should be based in the communities which provided the clients that needed the services.

Ben Emerson

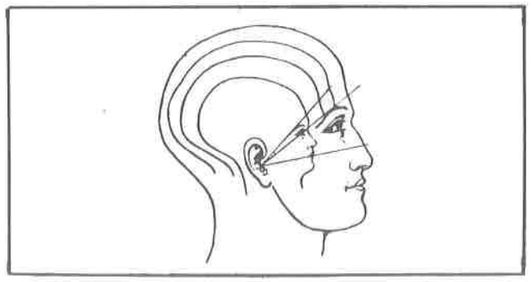
The Role of the Radical Lawyer: From Theory to Practice

Conference on 1st November 1986

The Haldane Society's Vice-Chair, Jeremy Smith opened this afternoon conference for new members by outlining the history of the Society and its links with the labour movement and progressive organisations within the UK and abroad. He explained the current work of the different subcommittees and their influence on policy-making. **New members were invited to participate in the Society's work** and the meeting then broke into workshops organised around the work of the Crime, Race and Immigration, Mental Health, Employment, Women and Northern Ireland Subcommittees, and chaired by their convenors.

The closing session, which was chaired by the Haldane's Secretary, Beverly Lang, consisted of five speakers describing the role of socialist lawyers in their own particular field. Jeremy McMullen, ex-legal officer for the GMBATU described the work of Trade Union legal officers and the growing input of lawyers into Trade Union policy, as a result of the present government's anti-union legislation.

Carline McKeon, a barrister spoke about the difficulties facing socialist barristers trying to operate in a hostile environment, but stressed the importance of a client's right to be represented by a person s/he has confidence in and who can understand her/his politics and put them across in court.



Jane Ramsey, legal assistant at ILEA, spoke on behalf of lawyers in local government. she described the structure of local government decision-making, and the role that socialist lawyers can have in helping to implement radical policies in Labour-controlled local authorities.

The view that solicitors are better placed than other lawyers to work as part of a community and to take part in grass roots politics, was put forward by Rees Vaughn, a solicitor from Manchester. He pointed out the importance of fighting not just for an individual client, but **against** the institutions which oppress her/him as a class.

Finally, Kate Marcus, Secretary of the Law Centres Federation, and a worker at Brent Law Centre, spoke about the problem of private lawyers lacking expertise in areas of importance to underprivileged people. She described the crucial role Law Centres play in providing adequate legal services to the community and the current difficulties facing the Law Centres movement.

The afternoon was well-attended by both older and newer members of the Society and finished with a lively question session on the issues raised by the speakers. Thanks to everyone who came along and took part.

Kuttan Menon

Lawyers Visit to the Hague

On the 10th September a team of international lawyers including myself as the Haldane's representative were present at the Dutch Supreme Court's hearing of the United Kingdom's application to extradite from Holland Brendan McFarlane and Gerard Kelly the IRA prisoners who had escaped from the Maze prison in Northern Ireland in 1983. The other observers included lawyers from the International Association of Democratic Jurists and a lawyer from Amnesty International.

The Hearing

David Chesterton, a senior Northern Ireland Civil servant giving evidence for the UK government agreed that the IRA was not responsible for all the "political" violence in the province. Other groups including the Protestant Loyalist groups bore some of the responsibility for the violence. He said that the IRA had successfully exploited the considerable dissatisfaction with the Stormont Government felt by all sections of the Catholic nationalist community in the '60s. Brian Palmer, head of the Northern Ireland Prison service, also on behalf of the UK government said that all prisoners in Northern Ireland were treated according to the law.

"No, I've no evidence of any prisoner being badly treated in Northern Ireland", he claimed.

The Arguments

Tony Gifford, for the IRA men, outlined to the court the principal features of the British criminal trial with the built in safeguards of the jury system; he stressed the importance of the jury in the British system which unlike the continental jurisdictions did not have an impartial judicial involvement at the pre-trial investigation stage. The split function between judge and jury preserved a proper balance between prosecution and defence. The non-jury Diplock courts in Northern Ireland removed these vital safeguards for the accused without adding any corresponding protection to ensure that the individual received a fair trial. The recent successful appeals against the convictions based solely on "supergrass" evidence highlighted the grave deficiency in the Diplock Court trials of cases of a political nature.

Bernadette McAliskey, the former MP gave an eloquent account of the Nationalist community's struggles in the 60s and 70s which resulted in the abolition of the Stormont parliament, internment without trial, direct rule by the UK and all the other consequences of the transfer of power. She also dealt with the hunger strikes. Reminding the court of the nearly successful attempt on her life by a loyalist group, she made the telling point that if those responsible were now facing extradition she would not have hesitated to plead on their behalf with equal force the political nature of the offences.

McFarlane and Kelly addressed the court at length and stressed that they were escaped prisoners of war captured during the Irish struggle against British military occupation just as the Dutch had resisted the Nazi invasion. The court after reserving judgement found against the IRA men who have subsequently been extradited to the UK.

The Court Proceedings

As an observer I was struck by the following things. Unlike hearings before the House of Lords, the Dutch Supreme court heard from both sides including expert witnesses and the persons resisting the extradition. They were all subject to cross-examination but not as closely as would have been the case in England.

"The witnesses were allowed to make lengthy politcal statements as well as to delve into Irish history."

I looked in vain for the advocate representing the UK government until I realised that the person doing so — the Dutch Attorney General was sitting up on the platform alongside the appeal judges one of whom was a woman.

John Hendy

Labour Laws with a Labour Government.

On 2nd September 1986 the Haldane Society held a fringe meeting at Brighton during the Trades Union Congress annual Conference. The meeting was attended by about 60 delegates. The speakers were Margaret Prosser National Women's Officer of the TGWU and John Hendy secretary Haldane Society Employment Law Committee. Ken Gill chairman of the TUC was to have spoken but was unable to attend at the last moment.

On 1st September 1986, the TUC passed a historic resolution on employment law. The same day it endorsed a policy statement "New Rights, New Responsibilities" which was later endorsed by the Labour Party at its Conference in October 1986. The meeting dealt with the implications.

A Workers' Charter

The work of the Haldane Society and others in pressing for a comprehensive reform of all laws affecting people at work as a planned strategy rather than as bits of a piecemeal response to Tory legislation and judges' decisions, has been rewarded by the breadth of the TUC resolution and the NRNR pamphlet. There can be no doubt that the labour movement is entitled to radical reform: the Tories themselves have brought about the most radical changes in labour law ever seen in the country. They have diminished rights not to be unfairly dismissed, maternity rights, wages protection, the right to take industrial action. They have attacked trade union democracy and they are poised for an assault on health and safety protection at work under the code word "deregulation". Most important the Tories have established the law as a central element in industrial relations, exploiting two facts: one, that the law invariably assists the employer, and two, that the law carries an appearance of impartiality with it. It is now a commonplace that faced with the possibility of industrial action the employer goes running to lawyers.

With the passing of the resolution and the new policy pamphlet the T U C and Labour Party have in fact opted for a workers' charter. The Haldane Society wholeheartedly backs this concept. Like it or not the law does have **some** part to play in employment: the job of the Labour movement is to make sure that its involvement is kept to a minimum and that it is as favourable as possible to the interests of the working class.

It is worth mentioning the principal arguments from the trade union viewpoint for and against legal involvement. The arguments in favour are basically these:

1. Minimum rights are necessary to protect the weak and unorganised (e.g. Wages Councils)
2. Legal procedures are necessary to quantify and enforce the payment of money. (e.g. damages for accidents at work).
3. Legal standards have a "normative" effect in improving standards of employer behaviour. (e.g. time off for trade union duties).

The arguments against are essentially these:

1. Interference in industrial relations by lawyers and judges has been almost constantly anti-working class (e.g. injunctions against strikes).
2. Reliance on the legal process diminshes reliance on collective strength and organisations (e.g. industrial tribunals preferred to industrial action to prevent unfair dismissal).
3. Use of the law legitimises the institution of the law and tends to impose legal forms and concepts which disguise and hamper industrial reality.

There is no"right" answer and the labour movement should avoid the superficial attraction of a Code of Law which is symmetrical and deals with each bit of industrial law in the same way. **The Haldane Society believes that the interests of the working class are best served by providing extensive minimum rights in some areas (e.g. wages, health and safety) but excluding the law as far as possible in others (e.g. industrial action, trade union rulebooks). Thus the debate as to whether we should have "rights" or "immunities" is legally irrelevant.**

The pamphlet NRNR is a little vague on the precise laws it envisages. This is not surprising for a short paper but the labour movement must be thinking hard about precisely what laws it wants and the Haldane Society's "Workers Charter" sets out suggested guidelines for all areas of employment law. More generally however there are three factors which need to be taken into account.

A vote winner

The labour movement needs a Labour government. The labour laws we want will be twisted by the media in an attempt to create anti-Labour propoganda. Nevertheless we should not be scared of presenting a workers' charter. If properly explained it can be an electoral asset. People will be attracted by the idea of being given more rights at work. We should not let fear of media propaganda alter our objectives. Take an example. Much is made of the individual right not to strike and the obligation to call stike ballots. We can use the logical and persuasive argument that if there is a ballot in favour of a strike then the minority should be obliged *by law* to abide by the decision of the majority.

No immodesty!

The labour movement is far too deferential and modest in its demands. There is no reason why we should not press for entitlement to holidays and notice preiods equivalent to other European countries. We should not merely meekly stand against: "no arbitrary reductions in the protective clauses of the Factories Act" (as the TUC resolution does); we should **demand** that the Factories Act standards are improved and applied to other workplaces.

Counter the mythology

The law works partly by imposing penalties (fines, damages, imprisonment, sequestration, receivership) and partly by creating images in people's minds of legitimate, appropriate, acceptable behaviour. Thus for example several injunctions were granted during the miners' strike to prevent it being called "official". The real intention was to affect the image of the strike in the minds of miners, drivers who might picket lines, and the public who gave money and support.

Conclusion

The labour movement must not let the debate stop with NRNR. Now is the time to decide the exact laws we seek — before the next general election. NRNR and the Haldane Society's "Workers Charter" are beginnings and not the end. We must seek a framework of labour law which moves the goalposts of legitimacy in every sphere in which people work.

References:

"New Rights, New Responsibilities,"
TUC/Labour Party 60p.

"Workers Charter" — Haldane Society – free with next issue of the Employment Law Bulletin. Subscriptions £5 for four issues per year to 58 Upper Tollington Park, London N4.

"Building Business, Not Barriers"
(Conservative Party proposals on deregulation).

Nicholas Paul

Juries: A balanced tribunal: The peremptory challenge

1. The government has recently announced that it intends to abolish the right of peremptory challenge of jurors. This proposal although the subject of much political comment and criticism was first given official substance in the Fraud Trials Committee Report (Roskill report) published in early 1986. Subsequently in March 1986 the government published its proposals in a white paper: CRIMINAL JUSTICE: Plans for legislation.

2. The starting point in any analysis of the motives and reasons for bringing about such a fundamental change must be the Morris Committee. Jury Trials report (1965) Cmnd, 2627. This committee reviewed all aspects of the history and practise of juries in our legal system. It was not specifically mandated to examine the question of peremptory challenges in detail. However as a result of complaints made by womens organisations that the peremptory challenge was being used to obtain all male juries the committee was unanimous in concluding that there was no evidence that such an abuse was actually occurring. In general terms it took for granted the old age practise of challenge for cause and peremptory challenges no doubt for the same reason that the government White Paper conceded that:

> "the traditional rationale for peremptory challenges has been broadly, to enable the defendant to have confidence in the jury even where he could not assign specific reasons for his objection".

3. When we come forward to today the question that arises is how can the views of those who manage the system have changed so dramatically. There is one immediate and obvious explanation. When the Morris committee was deliberating in the early 60's there was still the old property qualification in existence for jurors. One of their principal recommendations was that this be abolished and that all persons on the electoral register should henceforth be liable for jury service. Once those recommendations were put into effect juries became more representative of the population at large and more importantly they frequently came from the same background, race and religion as the defendants that they were trying. This lead to various sorts of allegations being made, for example that a higher acquittal rate was influenced by juries said to be too sympathetic with the defendants or hostile to the police. Furthermore defence counsel were said to be packing juries to suit their clients by, for example, ensuring that there were no middle class jurors trying their working class clients on dishonesty charges. The government white paper said:

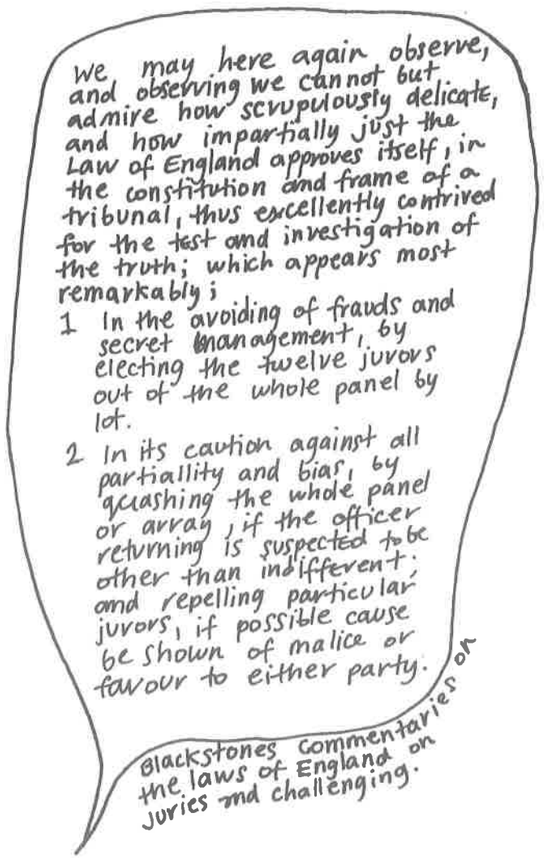
> "(re: peremptory challenges) But it is also capable of misuse — and these are the cases that have given rise to concern — as a means of getting rid of jurors whose mere appearance is thought to indicate a degree of insight or respect for the law which is inimical to the interest of the defence. This is contrary to the interests of justice as well as offensive to the individual juror."

This conclusion is open to the interpretation that the type of people who end up on juries are themselves less than desirable because they will have a lower respect for the law than the jury selected without challenge.

4. The obvious recent example of the type of case that the government clearly had in mind were the trials of miners on criminal charges in the aftermath of the Miner's strike in 1984/85. The white paper explicitly recognized this by dealing with multi-defendant cases, where the defendants can act in concert to pool their challenges. As the paper puts it:

> "An entire jury can thereby be replaced, or new jurors can be challenged in their turn until those who look more likely to favour the defence come along. There can still be no guarantee that the effect aimed at will be achieved, but, if the defendants can settle upon a common object, it is more likely to be achieved in multi-defendant cases."

In recent riot trials where all the defendants have been black, defence counsel have sort to use the challenge system to obtain a more racially balanced jury. But on the government's analysis this could just as easily be defined as an attempt to obtain a jury less respectful for the law. Clearly therefore there is a residual fear that a jury too broadly drawn from the citizens of this country can be too easily manipulated by clever lawyers.



"It is no mere coincidence that the goverment should be making these proposals at a time when ther are more trials touching on sensitive policing and industrial and social issues."

5. What then is the evidence that the use of the peremptory challenge along with the challenge for cause can influence jury verdicts. In their book JURY TRIALS (1979) Oxford Press Chapter 6, Baldwin McConville specifically examined the use and abuse of the peremptory challenge. They drew these conclusion:

> (pg 92) "It does not seem, therefore, that the opportunity to challenge jurors in these ways made much difference in Birmingham to the final composition of any jury and, where it was exercised, it proved to be an ineffective means of obtaining a noticeably sympathetic jury," and (pg 105) "the truth of the matter is that most juries in Birmingham were extremely mixed, and it is to be expected that the amalgam of personal and social attributes that make up a jury will produce verdicts which reflect that unique social mix rather than the broad social characteristics of the individuals concerned."

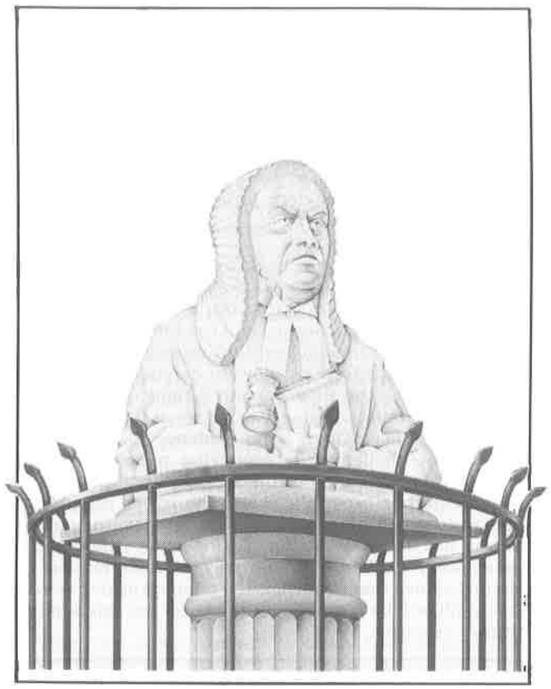
The Roskill committee starts from the premise that any interference by way of challenge amounts to an erosion of the principle of random selection. This is because any challenge will be by reference to superficial factors alone such as dress, manner, age and the carrying of particular newspapers. As counsel are entitled to have the names and addresses of the jury panel they can check their area to see if they might be at all antagonistic, Roskill concludes that especially in multi-defendant cases this will result in rigged juries. There is no evidence cited to support these conclusions and in his dissenting report Walter Merricks makes the following points, Roskill's proposals to make challenges for cause the basis for establishing a fairly mixed jury are unsound. The existing permissible grounds for making a challenge for cause are not wide enough to permit such a practise. This is because there must be a foundation in fact for the challenge based on provable bias, disqualification on previous convictions whereas the real issue is obtaining a jury that is balanced in the eyes of the defendant(s). Roskill proposes that the old habit of disclosing jurors occupations (stopped by the Lord Chancellor in 1973) to be restarted. However even if this were done it would then mean the judge becoming involved in the process of jury selection which might very well lead to controversy.

6. The Roskill committee was set up to examine Fraud trials. Part of it's brief was to consider whether or not there was a need for fundamental changes in the mode of trial. The most controversial conclusion now rejected by the government was that in certain types of fraud cases there should be trial by judge with expert assessors but without a jury. At the time there was doubt as to whether a modern jury had the intellectual faculties to grasp the complexities of modern fraud. It appears therefore that the Roskill committee had a vested interest in discrediting the jury system as being unreliable in certain circumstances, for example; in a case of fraud involving many jurors defence counsel might make a concerted effort to remove all jurors who might have any grasp of financial detail. The evidence called by the committee did not show that juries were unable to convict in fraud cases. Indeed the argument that the role of advocates in such cases was to make the evidence and issues as simple as possible has obviously persuaded the government as well as everybody else. In other words it is accepted that modern juries are able to properly participate in such cases.

7. The issue then comes back to whether or not juries can be twisted by the use of the challenge. The proper conclusion to be drawn is that the proposed abolition of the peremptory challenge is a politically motivated device. The government feel that in politically sensitive cases it cannot afford to allow to defendents and their representatives the time honoured right of using these rules to maintain the balance as between the prosecution and the defence. There is no evidence to suggest that the use of challenges is producing peverse verdicts. However in multi-defendant cases where there have been acquittals especially when the issues raised have had widespread public importance the government has felt it has lost the battle. Taking away the right to peremptory challenge is one way of undermining the subtle balance that underpins the criminal justice system. It's result will be diminished respect for the fair administration of justice.

Tony Gifford, Q.C.

Pritt Memorial Lecture: Politics and Justice: Can the Legal System be reformed?



I thought it only right to prepare this lecture by re-reading 'Justice in England', published for the Left Book Club in 1938 and written by 'a Barrister'. 'A Barrister' was of course D.N. Pritt. The underlying premise of the book was stated in the introduction: As one studies the system in its separate parts, the judges, the magistrates, the lawyers, the provision for poor litigants, the law itself and its procedure, it becomes ever clearer that it is but a part of the whole, a limb of the body of capitalism, sharing with it inescapably its inequality, its social injustice, and all its symptoms of decay.''

Pritt commented on one particular obstacle to any major reform — ''the deeply-held conviction of our upper and middle classes that the system is as near perfect as it can be.'' He then proceeded to analyse the imperfection of each part: the judges (''incapable of understanding the problems, the difficulties, the aspirations, the emotions, the vices and virtues, the temptations, often even the speech, of nine-tenths of the people who come before them''); the magistrates (''so grotesquely unfitted for the task of truly administering justice that they seem to present the exact antithesis of every quality they should possess''); the lawyers, the arrangements for legal aid, and the law itself. Only in his chapter on juries, whom he described as ''as handy and reliable a weapon of reaction as any ruler could desire'', was his judgment, I believe, at fault; though with the property qualifications as they were, juries were not then any kind of bulwark against repressive political prosecutions.

Pritt, while making an analysis whose basic soundness has not changed in 50 years, was aware of the potential of lawyers to be part of the movement for change. He wrote of the ''small but rapidly-growing left-wing element'' at the Bar, which if it once gained the ascendency would be ''a very powerful support of reform''. And he was writing at a time when socialist lawyers were so few and so isolated that it took extraordinary dedication to stand firm as Pritt did throughout his life, for the defence of the oppressed in Britain and in the British Empire. While class relations in Britain have not changed, there has, between the 1930s and the 1980s, been a major change in the make-up of the radical legal movement. We have become quite numerous — at least in comparison with even 15 years ago. We are openly organised in radical sets of chambers, progressive firms, and law centres. Many of our ideas **are** gaining the ascendancy. We have a responsibility, not just to expose and fight against the injustices of the legal system, but to articulate policies through which they can be ended, and to agitate for a Labour Government to accept them. We may even become involved with institutional power in implementing progressive policies, as for example we have in work done for the GLC and other socialist councils.

Whatever part we play, we have a complementary responsibility — not to become over-comfortable, not to become detached from, or superior to, our brothers and sisters who are in the front line of resistance to oppression.

''Anyone who is tempted to sit back, and believe that the legal system is getting more enlightened, should reflect on some of the grotesque injustices meted out by the law in recent times'':

The charade of the Diplock courts in the north of Ireland; the railroading through the British courts of innocent Irish defendants such as the Guildford Four and the Birmingham Six; the sequestration of the assets of the NUM for non-payment of unprecedented, six-figure fines; the cattle-pen justice of the Nottingham magistrates courts, during the miners' strike; the jailing of women such as Iqbal Begum who resisted male violence, while many wife-killers go free; and going on at this very time, the imprisoning of young people for seven years for throwing stones at the Broadwater Farm disturbances — young people convicted only on the evidence of 'confessions' extracted over days of interrogation and solitary confinement.

Labour Party Policy — The Way Forward

With these responsibilities in mind, I come to the immediate context of this lecture. But first, a general comment on the meaning of a socialist programme for justice.

''Ruling class interests will accuse us of disrespect for the rule of law and political interference with the judiciary. We should meet that argument head on.''

We believe deeply in the rule of law, because the rule of law means that all people, however poor and unpopular, can have their rights upheld. What rule of law have black people in Britain enjoyed, whose rights have been routinely abused by officers of the law, with little redress from the courts? We do **not** believe in a rule of law which protects only a minority. We believe in the independence of the judiciary from Government: but today we see a judiciary which meekly bows down to the dictat of Government at the first mention of a national security issue. Where was the independent judiciary when the trade union rights were swept away from the workers at GCHQ? The classic expression of the lapdog mentality of senior judges towards the Executive was made by Lord Denning in the Hosenball case: ''In some parts of the world national security has on occasions been used as an excuse for all sorts of infringements of individual liberty. But not in England. Both during the wars and after them, successive ministers have discharged their duties to the complete satisfaction of the people at large. They have set up advisory committees to help them. Usually with a chairman who has done everything he can to ensure that justice is done. They have never interfered with the liberty or the freedom of movement of any individual except where it is absolutely necessary for the safety of the state.'' So do not fear that radical reform may infringe basic principles of legal fairness. Throughout history it has been radicals and socialists who have most truly understood the principles which ought to underpin the law but in practice do not.

One has to observe that it is late in the day for the Labour Party to be asked to produce a policy statement for the legal system; also that the contents of the policy are so vaguely indicated in the resolution as to leave one with little confidence that anything radical will emerge. But there is the beginning of a commitment. There could well be a Labour Government within a year. We must therefore be setting out the essential elements of a policy which would achieve the aspirations of the resolution. I propose to cover four of these elements; there are several others, but these four will arouse particular opposition, and so must be argued for with particular clarity and determination.

A Ministry of Justice

First, a Labour Government should set up a Ministry of Justice, with a Minister in the House of Commons, replacing the Lord Chancellor and his Department, and taking on all responsibilities relating to the protection of people's rights. There are senior Labour lawyers who say that to abolish such a venerable personage, such a long and curious chapter in the constitutional law books, would be to tamper with the sacrosanct. They hesitate to change the unwritten constitution. It is necessary therefore to argue fully the reasons why the existing ministerial framework cannot meet the needs of the people for justice.

Above all there is the argument of accountability. The responsible Minister for most legal affairs sits in the House of Lords, whose members know next to nothing about the injustices suffered by working class people. But in the House of Commons, whose members receive daily correspondence about the problems of their constituents, the only person to complain to is the Attorney General, whose department is quite separate from the Lord Chancellor

Lord Hailsham has sought to make a virtue of his place in the Lords. He argues that since the duty of the Lord Chancellor is to preserve the independence of the judiciary, he ''must be immune from the day-to-day turbulence and violent in-fighting in the House of Commons.'' I find this reasoning misleading and somewhat arrogant. Misleading, because a Minister of Justice in the House of Commons would be there to account for the responsibilities of his or her Department, not for the rulings of an independent judiciary. Arrogant, because it seems to treat the House of Commons as a rabble who should not be allowed to question the workings of the legal system.

''In a modern democracy, the selection of judges and magistrates, the service provided by lawyers and the courts, and the protection of basic human rights under the law, are all political issues for which the responsible minister should be accountable.''

An alternative has been suggested by the Society of Labour Lawyers in their draft ''Charter for Legal Rights'', that there should be ''a Minister in the House of Commons accountable for the expenditure of the Lord Chancellor's Department'', the Lord Chancellor remaining in the Lords. That sort of second-hand, second-rate accountability will achieve nothing, because the person with the real power will continue to be screened from the democratic representatives of the people.

''I didn't hear what you said but I disagree with you''

Tackling the Bar

The fourth area of policy change is to deal with the injustices for which barristers are responsible. The Bar, which always claims to have the public interest at heart, has failed the public, patently and disgracefully, in two respects. First it has perpetuated a system of recruitment and training which denies access to those who have no funds. There is no other public service which fails to offer an open entry through proper remuneration and fair selection procedures to all who can pass the necessary examination.

The Bar will never change this of its own accord. After 12 years of the Wellington Street fee-sharing system, which now pays pupils a starting salary of £63000 a year, not even other members of this society have followed our lead. The change to be imposed is to unify the education and training of all lawyers, through a grant-aided academic course and salaried in-service training, so that every successful trainee would qualify as a barrister-and-solicitor, or more simply as a lawyer with rights of audience in all the courts of justice.

At the time the restrictions on the rights of audience of existing solicitors would be removed, thus ending the second cause of disgrace — the feather-bedding of the barristers' profession by a restrictive practice which means that in case after case a barrister briefed overnight does a job which an experienced solicitor would do much better.

These proposals do not disregard the value of specialisation. They retain the freedom for specialist advocates to set up in business at any time after qualifying, taking cases on referral from other lawyers; thus continuing the barrister's role by choice of the client and on merit, rather than by right of monopoly. That would be one option; but the liberation of lawyers from restrictive practices would allow for others which socialist lawyers would find interesting, such as the setting up of a comprehensive office with lawyers taking on every aspect of a case in a co-ordinated team which could give an excellent service to the client.

The First Priorities

Out of this review of four policy areas I would draw these immediate demands to be presented to a new Labour Government:

— Create a Ministry of Justice
— Set up a Parliamentary Select Committee on Legal Affairs
— Institute an overhaul of the appointment of magistrates and judges
— Take on the core funding of existing and projected law centres
— End the restrictions on the rights of audience of solicitors.

Add to that priority reforms in other areas which I have not covered, such as the setting up of a family court, the extension of jury trial, and the protection of fundamental human rights.

Will any of this happen? The challenge is on us, as socialist lawyers, through individual effort and still more through effectively using the strength of this organisation, to make it happen. To answer the question posed in the title of this talk, I believe that the legal system **can** be radically reformed.

The second argument for a Minister of Justice concerns the allocation of responsibility for the protection of people's rights. At present this is a bureaucratic mess in which people's rights become entangled and lost. The Home Office which answers for the police and the immigration service, should never have responsibility for the appointment of immigration adjudicators; for the procedures in magistrates' courts; or for the re-opening of cases where a miscarriage of justice may have occurred. There are other anomalies which are even more bizarre. Magistrates in Lancashire are appointed by Norman Tebbitt, Chancellor of the Duchy of Lancaster. Law Centres have been tossed between the Lord Chancellor and the Department of the Environment, and still neither ministry will accept financial responsibility for them. A single Ministry is needed, with clearly defined duties and functions covering the whole field of justice and legal rights.

Thirdly, there is the constitutional argument **in favour of** the abolition of the Lord Chancellor. The role of the Lord Chancellor as Speaker of the House of Lords is unnecessary, and his role as head of the judiciary, sitting as a judge of the House of Lords during his term of office, is in principle objectionable. One only has to imagine what would be said if a radical Lord Chancellor were to sit regularly in the House of Lords, giving dissenting judgments on human rights issues, standing up for the rights of trade unionists, gays, and other oppressed people. It would be a great opportunity, but could we defend it for one moment?

In practice the assimilation of the Minister responsible for justice with the pomp and ceremony of judicial office has had a deadening effect. It has subverted the Labour holders of the office into conservative attitudes of mind. They shrink from radical change for fear of giving offence to the judiciary of which they have become part.

Far from drawing back from constitutional change, we should require it. I know of no Commonwealth or European country where the Minister of Justice sits in the Supreme Court. It is an anachronism, a brake on socialist progress, and a Labour Government should end it. In practical terms there would be a two-stage process. At the outset Labour would appoint a 'Minister for Justice and Lord Chancellor', in order to affirm the commitment to radical change, while retaining the Lord Chancellor to fulfil the statutory duties of that office. At the same time the new Ministry would be set up, for changing the ministerial structures does not require legislation. Later a new Act would be passed to terminate the Lord Chancellor's legal existence.

Judicial Appointments

The second priority, in the ambitious (some might say fanciful) words of the Labour Party resolution, is to secure "a judicial system geared to the protection of individual rights rather than the protection of property and wealth." But how is this to be done? I reject the direct election of judges and magistrates. The certain horrors of right wing candidates elected on a law-and-order ticket, with sentences being passed to win electoral support, and the Sun and other media making sure their readers know who to vote for, far outweigh the advantages of direct democratic legitimacy.

In the case of magistrates the necessary changes are: to dismantle the present structure of secret advisory committees composed largely of serving magistrates; to re-create a structure of local committees according to guidelines laying down the types of skill and experience required to make them fair-minded and broad-based; to require these committees to go out publicly to a range of organisations, extending the present range to include ethnic minority groups, civil liberty groups and the like (what better qualification to be a magistrate than to be actively involved in promoting civil liberty?) By these means we can reach towards the ideal of the lay magistracy as a genuinely representative mini-jury, much to be preferred to an increase in the numbers of full time, case hardened stipendiary magistrates.

The selection of judges presents far greater difficulty, for the obvious reason that the existing field of selection presents little room for manoevre. For example, the count which I carried out of all judges down to assistant recorder, 1629 of them, revealed a gender breakdown of 1558 men and 71 women. But if you are largely limited to practising barristers of over 10 years call, how far could the most positive discrimination increase the proportion of women? And what sort of political views would they hold?

The assumptions about eligibility for judgeship must themselves be challenged. It has not been *my* experience that long years of practice at the Bar teach barristers to be open-minded, or sympathetic to human problems, or experts at discovering the truth.

"The majority of judges do not recognise their prejudices, much less seek to overcome them."

For example, some basic training in the awareness of racism, both in society and in oneself, should be essential for anyone who will be judging a number of black people. This is only one area of judicial ignorance. As Pritt observed in 1938, "they have no training in, and normally no knowledge of, criminology, penology, or psychology." There are many who have not even learned what I would have though was the first lesson in the art of being a judge, how to convey the appearance of being fair.

I propose first that Labour should set up a system of judicial appointments and training with three interlocking features. Judges should be selected:

— from a far wider range of qualified lawyers, including solicitors and academic lawyers who would be eligible for any post;
- at a younger age, say after a minimum of three years practice or teaching, so that being a judge becomes a career in itself,
— after an extensive period of further education in the general principles of natural justice, the relevant law for particular judicial posts, and related disciplines such as penology and human psychology.

We should learn from the experience of other European countries, where judges are highly trained professionals, and where progressive judges, while by no means in the majority, are able to express their opinions, through organisations such as the Syndicat des Magistrats in France, without being thought to be unprofessional. I believe this to be a direct consequence of judges being younger and more representative of different classes in society.

A more open career structure will not of itself secure appointments of fair-minded and representative judges. The bodies involved in the appointing process must themselves be more open.

There should be a judicial Appointments Advisory Board composed of both legal and lay people — advisory because the Minister of Justice should make and be accountable for the ultimate decisions. For the top appointments which carry enormous and irremovable power to shape the law, there should also be a scrutiny by a Select Committee of the House of Commons. Those like the lord Chief Justice and the Master of the Rolls, who can never be sacked from their job (for reasons of independence which I agree with) should for that reason be approved by the representatives of the electorate rather than emerge from secret consultations.

Finally there should be a method of dealing with complaints about judicial conduct which is more acceptable than the lamentable arrangment whereby people write to the Lord Chancellor and wait vainly for action to be taken. There is a distinction to be made between matters of legal judgment, which must go through the processes of appeal, and matters such as judicial rudeness, failing to explain procedures to litigants in person, expressing impatience or boredom at the defence, casting meaningful glances towards the jury, which normally give no cause for appeal, but are often the cause of bitterness and disgust from members of the public who suffer them. It should be possible to devise a sort of judicial ombudsman whose office would take up complaints, sit in at hearings, set standards for judicial behaviour, and report to the Minister of Justice any cases of serious or repeated misconduct.

A Network of Legal Services

The third area of policy concerns the basic services which the public receive from solicitors, law centres and other advice organisations. Let me say at once that I do not advocate, at least in present conditions of social conflict, a 'National Legal Service'. If this means transferring the main publicly-funded provision of legal services away from legal aid to a salaried public service. I am wholly against it.

If this were done, the private profession would of course remain available for fee-paying clients, particularly the powerful institutions and businesses. The National Legal Service offices would quickly become a second-rate service which gave the public no choice; and if it was not, it would be defenceless against the imposition of cut-backs and directives from a right-wing government. The loss of independent committed legal aid firms which have been at the forefront of so many battles against right-wing injustice, would be irreplaceable.

We would do far better to build on what we have already got, by extending and securing national funding for a network of law centres and advice services, and by improving the effectiveness of legal aid.

"I stand fully by the law centre movement. In only 16 years they have vindicated their value in the face of right-wing political attacks and in spite of never-ending financial insecurity."

Certainly in some cases there has been ineffeciency, a high staff turnover, and weak relations with the local community. But the best law centres have achieved remarkable case victories; have pioneered new ways of securing rights for a whole class of oppressed people; and have won genuine community support. For example I recall a meeting of fifty Newham residents in the House of Lords, haranguing a Lord Chancellor who was threatening to stop their funding. The funding was continued.

Improving the standards of service of legal aid provision poses complex problems. For example the duty solicitor scheme now provides most people with a lawyer in the police station or magistrates court, but what quality of lawyer? In too many cases the scheme is becoming a cosy racket for picking up clients, who have signed a legal aid form under the duress of the situation, find that they have 'chosen' a solicitor who is difficult, sometimes impossible, to get rid of.

The recent Efficiency Scrutiny Report threw up some ideas of interest: taking legal aid away from the Law Society; funding group and public interest cases; ensuring that solicitors have expertise in the relevant area of law; streamlining methods of legal aid billing and payment. But its proposal to abolish Green Form advice must be condemned outright, for the same reason that I condemned the 'national Legal Service' idea. It would remove choice. It would confine the client to the advice bureau network, and if the advice bureau is no good, the client has to lump it. Not my idea of an independent high quality legal provision.

Stop Press

Grenada Trials

THE COMMITTEE FOR HUMAN RIGHTS IN GRENADA HAS ISSUED THE FOLLOWING PRESS RELEASE:

The verdict and vicious sentences have come as no surprise to persons who have been closely following the kangaroo trial of the surviving leaders of the Peoples Revolutionary Government and the officers and soldiers of the Peoples Revolutionary Army in Grenada. 14 people were sentenced to hang and 3 to imprisonment for peroids from 30 to 45 years. There can have been few trials, if any, in history in which the trial in Grenada will have been equalled in terms of:
(a) violations of the rights of the accused;
(b) disregard for the law;
(c) disregard for the principles of natural justice;
(d) hostile bias of the judge and jury; and,
(e) prejudical reports and comments in the local and international media before and during the proceedings.

At the present time there is no right of appeal from the Appeal Court in Grenada to the Judicial Committee of the Privy council, as there is in most other Commonwealth countries. Grenada is to be re-admitted to the Eastern Caribbean judicial system, from which there is such a right of appeal, but the authorities in Grenada are endeavouring to delay Grenada's re-admission so that the 14 leaders of the Grenada Revolution, who have been sentenced to death, can be hung before their right of appeal to the Privy Council is restored.

Glaring Miscarriages of Justice and Abuses of Human Rights

Among the many glaring abuses which have characterised this so-called trial, the following are particularly deserving of condemnation:

1. The accused were unrepresented; defence lawyers having withdrawn from the trial given the unconstitutional nature and bias of the court.

2. The trial has been held inside the prison in which the accused have been imprisoned instead of in the regular court, with a restricted admission of members of the press and public and in intimindatory presence of soldiers and police.

3. The accused have been humiliated and made to look like convicts by having their heads and beards shaved.

4. The array of jurors, from whom the trial jury was empannelled, was selected with complete disregard for the precise requirements of the local stature governing the selection of juries. The Registrar, who was insisting on compliance with the law, was dismissed and a barrister, who up to 2 days prior to the appointment was a member of the prosecution team, was appointed to replace him.

5. The jury panel from which the 12 man jury was selected had shown open hostility to the defendants and their lawyers, heckling and shouting at them in the court before the evidence had even started. Small wonder, then, that the jury took only 3 hours to return verdicts in 198 counts against the 18 accused!

6. The evidence of prosecution witnesses was heard in the absence of all but one of the accused, the other seventeen being at that time confined to their prison cells. This directly violates a specific provision in the Grenada Constitution that no person who is charged for an offence for which he may be sentenced to death may be tried in his absence.

7. When the judge, as he was required to do, invited the accused to address the jury, they requested a copy of the notes of evidence of what had been said against them by prosecution witnesses in thier absence. This the judge refused to allow them to have, saying that it would take too long to type the notes. He persisted in this refusal even when the accused pointed out that they would be in no position to prepare addresses to the jury if they had no record of what had been said about them while they were not present, commenting that they must have seen the newspaper reports.

8. One of the duties of a judge is to see that justice is done. This is his primary duty. At the Preliminary Inquiry, preceding the trial, the prosecution called two security guards of the late Maurice Bishop to give evidence. One of them stated that there was no meeting of the Central Committee at Fort Frederick on October 19th, but this was not what the prosecution wanted to hear as their whole case rested on evidence given by the other security guard that there had been an open air meeting at which a decision to kill Bishop was allegedly shouted to the assembled soldiers.

At the trial the prosecution called only the security guard upon whose evidence they were relying to prove that this alleged meeting took place. and omitted, as they were entitled to do, to call the other security guard. Had the accused been legally represented, their counsel would have drawn attention to this discrepency and would probably have called the other security guard as a witness for the defence. The judge was aware of the facts as he had a copy of the depositions from the Preliminary Inquiry before him. The judge has power at any time to call witnesses himself. This was clearly a case in which the interests of justice required that the other security guard, and possibly one or two of the hundreds of other soldiers present should have been called to give evidence. The Judge was aware of the importance of evidence on the question of whether or not the alleged meeting took place because, in his summing up to the jury, he admitted that the prosecution's case against the members of the Central Committee rested on the security guard who was called. But the Judge did not call for any further evidence.

9. The prosecution case, particularly against the New Jewel Movement Central Committee, was very weak. In addition to Cletus St. Paul (security guard mentioned above), the only other evidence against them was "confessions" from several of the accused. Despite the defendants complaints both at the time of the investigations and in the trial that the said "confessions" were extracted by torture, the Judge allowed all these statements to be admitted as evidence to the jury.

10. Where an accused person is not legally represented and does not give evidence or call witnesses, it is not permitted in English practice (which is what the Court is supposed to be guided by in Grenada unless there is statutory provision to the contrary) for the prosecution to be given a second opportunity to address the jury. In this case, however, the Judge not only allowed the chief prosecutor to make a second address to the jury, but, most improperly, did not restrain him from commenting on the unsworn statements made by the accused, and distorting the meaning of what some of them had said.

It is no exaggeration, therefore, to describe what had taken place in this trial in Grenada as a complete travesty of justice.

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