Guantánamo: Close it down
Clive Stafford-Smith

Plus: HELENA KENNEDY ON ‘THE RIGHTS OF WOMEN’
MICHAEL FINUCANE: ‘WHY NO PUBLIC INQUIRY OF MY FATHER’S MURDER?’

Haldane’s 75th birthday
see back page

Plus: PHIL SHINER, CONOR GEARTY, ISRAELI WALL, SECTION 9 & more
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Many thanks to all our contributors and members who have helped with this issue
So, comrades, come rally...

W e are celebrating our 75th Anniversary in a spirit of renewed activism. The Haldane is attracting many new members and drawing on the experience of its veterans in holding the first annual Haldane Human Rights Lecture series. We have had four inspiring talks in under three months: Helena Kennedy (“Rights of Women,” see p.18), Michael Mansfield and Gareth Peirce (“Time to Repeal the Anti-Terrorism Laws”), Daniel Machover and Asad Rehman (“Shoot-to-Kill”), and John Hendy and Tonia Novitz (“The Trade Union Freedom Bill”). Those to come include Rick Scannell (“Future of Refugees and Human Rights Law”), Louise Christian, Michael Finucane and Suresh Grover (“Inquiries and Public Confidence After the 2005 Act”). Full details are at p.15.

As progressive lawyers we have a unique duty to hold our govern- ment to account for its international human rights obligations. We have launched the Haldane campaign, “Close it Down, Bring them Home”, to focus on British government complicity in the torture of nine men in Guantánamo Bay and to demand they be granted their rights to British residency (Clive Stafford-Smith, p.4, Haldane letter, p.5). If you have not already done so, please join our campaign by writing to Jack Straw and Charles Clarke. Together we can hasten the closing of Guantánamo and ending the international crime of “extraordinary rendition”. Do nothing and we let our govern- ment get away with torture.

Our 75th Birthday Bash on May 3rd at Conway Hall (see back cover) is a must for all progressive lawyers. Please join Jeremy Hardy, Shami Chakrabarti, Jon Snow and others in celebrating the Haldane’s rich, impressive history. It will be an evening to remem- ber and an opportunity to help sustain the Haldane so we can con- tinue regular publication of Socialist Lawyer and create and maintain a Haldane website as a vital tool for legal activism and education. The website is under construction and we plan to launch it in time for our Birthday.

To do all this will cost more money than we receive from our cur- rent subscriptions so please check the rates inside the back cover to make sure your standing order is for (at least) the appropriate amount. Please do more if at all possible; many members pledge £10 – £20 a month. Please note: Silvio Berlusconi does not provide mortgages to members, not that we would accept them, of course. Neither do we offer peerages to donors.

On the subject of honours, however, we congratulate our Vice- President, Professor Kader Asmal MP, who was awarded the Légion d’Honneur on February 9th in recognition of his tireless struggle for international human rights and the freedom of South Africa. I have known Kader for 30 years, first when he was senior lecturer in law at Trinity College Dublin, then as Minister for Water and Forestry under President Mandela and as Minister for Education under President Mbeki. He recently chaired the UNESCO committee which produced the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression. It calls cultural diversity a ‘com- mon heritage’ and defending cultural diversity an ‘ethical impera- tive inseparable from respect for human dignity.’ In his acceptance speech, on the theme of National Identity and Human Rights, Prof. Asmal said:

“All law begins and ends with the central responsibilities and rights of each individual and how individuals relate to society in their many identities. No wide indictment of any people or any groups of peoples makes legal or moral sense. The demonisation of Muslims and Islam since September 11, 2001 does not make sense; neither does the attack on the people of Denmark or its gov- ernment for the insensitivity of a private body. Tolerance requires self-restraint.”

In the early 1980s, Geoffrey Bindman and I worked with Kader in the North of Ireland to investigate the Shoot-to-Kill tactics used by the army and police. Our report documented over 160 cases of unarmed individuals shot dead by the security forces in suspicious circumstances. Then, in 1989, Kader and I arrived by chance together at the house of his former student, Pat Finucane, to pay our respects to the murdered solicitor’s family. As we entered the house, there was a small group of people gathered around a 16 year-old young man who, with remarkable composure, was telling how the gang of loyalists had broken into the house and opened fire as the family sat at their Sunday dinner two days earlier. That was our first introduction to Michael Finucane, who has gone on to become a champion of liberty in his own right. I feel privileged that we are able to publish his account of his family’s continuing fight for truth at p.16. As he clearly shows, the shameful conduct of the present govern- ment in passing the Inquiries Act 2005 only compounds the shame of its predecessors whose agents conspired to assassinate Pat.

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To return to South Africa in conclusion, in a recent web-search I found that apparently each country has its own version of The Internationale and I was particularly struck by the contemporary message in South Africa’s second verse:

“No more deluded by reaction
On tyrants only we’ll make war
The soldiers too will take strike action
They’ll break ranks and fight no more
And if those cannibals keep trying
To sacrifice us to their pride
They soon shall hear the bullets flying
We’ll shoot the generals on our own side.”

So comrades, come rally with us on May 3rd. It won’t be the last fight that we face but we’ll have a damned good party. See you there.

Richard Harvey, chair, Haldane Society
(richardharvey@juno.com)
There are eight British residents still in Guantanamo Bay. Bisher al Rawi has lived just outside London for 18 years, since his family fled Saddam Hussein. Jamil el Banna has five British children awaiting his release; Shaker Aamer has four. Omar Deghayes’ father was murdered by Col. Gaddafi, before the family turned to this country for protection in 1986. Ahmed Errachidi spent 18 years as a chef in London. Binyam Mohamed lived in Kensington before the Americans rendered him to Morocco for 18 months of torture, where his interrogators took a razor blade to his penis. We do not know a lot about Ahmed Ben Bacha and Abdelnour Sameur, as the Americans have not allowed anyone – let alone a lawyer – to see them for four years.

The British government, in line with virtually unanimous world opinion, has consistently condemned the endless, lawless and – according to the UN most recently – torturous detention of the prisoners in Guantanamo. Since human rights apply by definition to all humans, it stands to reason that the Government would strongly support the right of all prisoners to a fair trial. This might seem doubly obvious in the case of people who have lived in Britain, peaceably, for up to two decades.

Would that it were true.

There was a ninth British resident in Guantanamo, my client Jamal Kiyemba, who was released two weeks ago. He has lived in Britain since he was 14. His life was not easy – his mother moved to Britain, leaving him to a father in Uganda who was then killed in an accident. Jamal was shuttled back and forth until he finally found a home here. He went to school and university here, studying pharmacy. The Guantanamo guards thought he was British; but for a piece of paper, he was.

At Reprieve, we have struggled to help Jamal and the other British residents for many months. I had hoped, with all due naïveté, that the Government would be keen to assist our efforts on behalf of these all-but-Britons, and I wrote to the Home Office asking for help bringing the prisoners home. Mr. Clarke first chose the role of Pontius Pilate, washing his hands rather than standing up for a principle. It took three months, but we eventually received a reply saying that a resident who stays out of the country for more than two years has no right to return.

I was astonished. Jamal and the other prisoners had only been out of the country for over two years because they were held in Guantanamo, illegally and involuntarily. I wrote again, asking for an urgent meeting. It was urgent because the prisoners were being subjected to terrible abuses. Seven months went by this time without any response at all. My mother would call that bad manners.

On 9th February, Jamal was released from Guantanamo, because the Americans had determined, officially, that he was no threat to anyone. But he was sent to Uganda not Britain. The moment it happened, I did finally receive a communication from Mr. Clarke: “You should… be aware that the Home Secretary has personally directed that [Mr. Kiyemba] should be excluded from the UK on grounds of national security.”

Through this message, Clarke metamorphosed from Pilate into Judas Iscariot, betraying everything he should respect. First, he betrayed Jamal, who would never be allowed to come home to see his mother, his brothers, and his friends. Second, Clarke betrayed his principles: Far from assisting the British resident prisoners who were being tortured, he had stabbed them in the back.

Third, Clarke betrayed the Law Lords, who recently barred the use of torture evidence in official decision-making. While Clarke has not had the decency to tell Jamal the basis for this ban, he indubitably relied on evidence abused out of Jamal by the American military. Neither does Clarke allow Jamal the right of reply. If Jamal was able to convince an American military tribunal that he posed no threat, presumably he could convince even a British politician, if only he were allowed the chance.

Clarke’s actions are despicable, of course, but this is merely an example of how the new Blair terror rules operate.
ment now claims the right to ban anyone who it “suspects” to be an “international terrorist”, defined as including any person who “has links with a person who is a member of, or belongs to, an international terrorist group.” Jamal was in Guan-
tamano, so he clearly has “links” to 500 people identified, rightly or wrongly, by the Americans as terrorists. I represent more than 40 Guantanamo prisoners, so that puts me in the same boat – or cell.

In seeking to propagate the rule of law around the world, the Government’s first stratagem was to create indefinite detention without trial in Belmarsh. In opposing the ‘anomaly’ of Guantanamo, the Government’s next plan was to refuse any help to the prisoners with ties to Britain who are held there. In opposing torture, the Government’s new idea is to use torture evidence to bar Jamal Kiyemba from this country, without telling him what the evidence is, let alone offering him the chance to refute it. This is as foolish as it is offensive. The most effective counter-terrorism measure is the consistent enforcement of human rights – hardly a novel idea, but one that ‘New Labour’ appears to be unable to grasp.

If Omar Deghayes is not allowed to return to Brighton – where the council has voted overwhelmingly to welcome him home – the Libyan delegation that visited Guantanamo in 2004 has already promised that he will be tortured and killed there. If Shaker Aamer is forced to go to Saudi Arabia, his four little children may never see him again. If Bisher al Rawi is forced to go to Iraq, who knows what will happen to him.

At least Clarke has warned us what he plans to do. The other eight British residents need our help now to prevent a repetition of Jamal Kiyemba’s fate.

Clive Stafford Smith is Legal Director of Reprieve, which provides legal representation to prisoners on Death Row and in Guantanamo Bay. Contact info@reprieve.org.uk

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Vice-Chair: Liz Davies
President: Michael Mansfield QC

CLOSE IT DOWN AND BRING THEM HOME

The Haldane Society has launched a campaign calling on the British Government to secure the release from Guantánamo of eight British residents and to restore their rights of residence in the UK. We also seek the return of a ninth British resident, Jamal Kiyemba, recently released by the US but refused entry by British officials.

The Home Office recently told Clive Stafford-Smith of Reprieve that a resident who stays out of the country for more than two years (irrespective of whether their absence was the result of illegal kidnap, false imprisonment and torture) has no right of return. They refused Kiyemba’s request to rejoin his family in this country on “grounds of national security”, notwithstanding the Americans’ determination that he presents no such threat.

We have therefore written to the Foreign and Commonwealth Secretary and the Home Secretary, emphasising the government’s human rights obligations to these nine British residents and insisting on their right to return here.

As lawyers we have a particular responsibility to hold our government to account when it fails to live up to its human rights obligations. We urge you and your colleagues to join us in this campaign and to send us copies of the letters you write. United, we can make a real difference, not only to the lives of these nine men but to the worldwide campaign to close down Guantánamo and to stop the illegal practice of “extraordinary renditions”.

Michael Mansfield, President
Richard Harvey, Chairperson
Liz Davies, Vice-Chairperson
After a trial contaminated with prejudicial and irrelevant evidence, leading US civil rights lawyer, Lynne Stewart is facing up to 20 years in prison. A New York jury found her guilty of providing material support to terrorists, and she is expected to be sentenced on 30th March.

In a career spanning more than three decades Stewart, 66, has acted as trial attorney to many controversial defendants including members of the Black Panthers and senior Mafiosi.

Stewart’s conviction came after she represented Egyptian cleric, Abdel Omar Rahman. Rahman said to be the spiritual leader of an Islamist militia, the Islamic Group which the US labels a terrorist organisation, and is serving life imprisonment for his part in a plot to blow up prominent Manhattan bridges, tunnels and other landmarks including the UN building. Stewart was a member of the defence team that represented Omar Rahman at trial. After his conviction in 1996, Stewart continued to act as his attorney.

At Stewart’s trial, the key evidence against her was a series of covert FBI video recordings which showed meetings between Stewart and Omar Rahman. The videos were made during her visits to him in prison – in breach of privilege. Stewart was filmed talking loudly in English to provide cover for her interpreter while he read out questions and messages from the cleric’s supporters in Egypt. In the critical messages used as evidence at her trial, the cleric’s supporters asked him for his opinion on whether the Islamic Group should maintain its ceasefire with the Egyptian government. Omar Rahman said he did not want to see an end to the ceasefire. Stewart then passed this message to a Reuters correspondent. Incorrectly, she told the correspondent that Omar Rahman had withdrawn his support from the ceasefire.

In passing the message to Reuters, Stewart breached a civil gagging order she had signed in December 2002. The Order forbade her from communicating Omar Rahman’s views to people outside his immediate family. By signing the Order, she agreed to refrain from assisting Rahman in any attempt to communicate with the outside world. Breaching the Order was not itself a crime, but the Justice Department decided to indict her with assisting a terrorist.

At trial, Stewart said that issuing the press release was part of her duty to represent the cleric, to progress negotiations between his supporters and the Egyptian government. The Federal prosecutor said Stewart was directly assisting the Islamic Group. She “effectively broke Abdel Rahman out of jail, made him available to the worst kind of criminal we find in this world, terrorists,” he said.

There are many troubling aspects about the conduct of her trial and the circumstances which surrounded it. As well as questions about the relevance of the evidence, allegations of jury intimidation have surfaced. Since the verdict in June 2005, two jurors have come forward anonymously to report intimidation inside the jury room and outside. They said they feared for their safety if they said Stewart was not guilty. One juror, known as Juror 39, gave an interview to the Washington Post in which she stated that other jury members had discussed their wish to teach the defendants a lesson. “They had an agenda,” Juror 39 said. She said she was too scared to find in Stewart’s favour. “I have to plead guilty to being a coward,” she told the Washington Post. “I punked out.”

Stewart was tried together with her interpreter, Mohammed Yousry and Ahmed Sattar, a supporter of Omar Rahman. Prosecutors adduced evidence of thousands of hours of wiretaps recording communication between Sattar and a terrorist group. The aim was to suggest that Stewart knowingly assisted the enemies of the US. Convicted at the same trial, Yousry and Sattar are facing 20 years and life imprisonment respectively.

The jury, sitting less than a mile from Ground Zero, heard highly prejudicial evidence which included screenings of the September 11th attacks, and a video tape of Bin Laden lending his support to Omar Rahman. None of this was relevant to the allegations Stewart faced.

Stewart says that if she is sent to prison, she will be a political prisoner. She says that the Justice Department’s targeting of radical lawyers is another front in the so-called ‘war on terror’ and that the struggle for civil rights will become a much harsher place if lawyers are silenced with threats of imprisonment. “Political people know that lawyers are the first line of defence. And if they’re gone, then the political movement as such may well be gone, because who are you going to call? There’s nobody left except very scared people who are not going to do your politics, not in an open courtroom,” she said.

Dominic Teagle
For info: www.lynnestewart.org

US attorney to face jail for ‘assisting terrorists’
‘Get back to Russia’? They won’t let Bill... 

Professor Bill Bowring, Haldane’s international secretary, a British barister and a leading expert on human rights in Russia was refused entry there last November. “I was detained for six hours at the airport,” Bill told SL, “then the FSB (formerly KGB) officials cancelled my multi-entry visa, and said I was being deported and that the order came from higher competent organs.” Bill was flying to Nizhni Novgorod to act as an international observer at the trials of the Russian-Chechen Friendship Society, which has come under sustained legal assault over the past year. Its Director is accused of “inciting racial hatred”, and the organisation of tax evasion.

Bill told SL: “They cancelled my multi-entry visa which was valid to September 2006. I have now started judicial review proceedings in two courts in Russia, and following my formal request for reasons was given a really insignificant one – that I allegedly failed to hand back the second half of my landing card on a previous occasion. In fact, I always do hand them back. I have been given a visa to go to Kazakhstan later this month, which is encouraging... and two colleagues from the European Human Rights Advocacy Centre are presently in Russia now working on our 90 ECHR cases against Russia. They had no trouble getting in.”

Project launched to combat miscarriages of justice

The first Innocence Project in Wales has been launched by Liberty’s director, Shami Chakrabarti. The project, in association with Wales Liberty, was officially opened at Cardiff University’s Law School on 16th February.

Designed to investigate possible miscarriages of justice, the scheme uses the skills and enthusiasm of students under professional academic and legal supervision as a tool for unearthing wrongful convictions. Sixty-five students, at undergraduate and postgraduate level, completed a training programme at the School from October to December of 2005 to prepare them for the Project.

Speaking at the launch, Shami said: “At a time when there is no suspension of innocence for a suspect on the street and a diminishing one for defendants in the criminal court room, the risk of miscarriages of justice is an increasing but neglected concern. It is so important that law students keep the presumption alive. Innocence projects are more important than ever if we are to make sure convicted people who may not be guilty are not left to languish forgotten in our prisons.”

The Project is linked to ‘Innocence Network UK’ of which Michael Mansfield QC is a Patron, and has established similar schemes in Bristol and Leeds. John McCarthy, of Leo Abse & Co and Chair of South Wales Liberty, said: “It is often difficult for solicitors to investigate claims of innocence due to restrictions on funding in appeal cases. The innocence scheme is supported by us as a firm as it allows students to do investigative work on real cases under supervision where wrongful conviction is suspected and a miscarriage of justice may have occurred.”

Jodi Morgan

Justice for Gurkhas: report is out


Of particular concern, the report highlighted the lack of free medical aftercare for Gurkha veterans. It was Anne Widdecombe MP that spoke passionately on the discrimination against Gurkhas at the launch! It is perhaps a reflection of this current Labour Government that an issue of poverty and inequality is given more attention by Conservative MPs than Labour MPs. The issue of the veterans treatment will not go away, although of course it will increasingly be too late for some of the older veterans.

Action point: Please help the Gurkha veterans, by writing to your MP and ask them to sign the Early Day Motion tabled by Anne Widdecombe, entitled ‘Justice for Gurkha Veterans’. For further information contact: hannah.ought-brooks@tooks.co.uk or rebekah.wilson@tooks.co.uk

6: The CPS decides no criminal charges will be brought against any individuals in relation to the Paddington rail crash which claimed 31 lives. After a three-year-long investigation it was decided that there was “insufficient evidence to provide a realistic prospect of conviction of any individual for any offences.”

8: Law Lords rule that evidence gained under torture cannot be used in UK. They over-ruled an appeal court judgement from last August, which decided that such evidence could be used if it was obtained abroad by third parties and if Britain had not condoned or connived in the torture.

12: Northern Ireland secretary, Peter Hain, announces the Government is shelving its bill to grant amnesty to “on-the-run” paramilitaries. The Northern Ireland (Offences) Bill was scrapped after criticism by all parties involved.

20: Asian prisoners in England and Wales now face more racist bullying and abuse than black prisoners. Chief Inspector of Prisons, Anne Owens, says that 52% of Asian inmates say they feel unsafe compared to 32% of white prisoners and 18% of black inmates.

21: The Appeal Court rules that British soldiers in Iraq are bound by the Human Rights Act which forbids torture and inhuman or degrading treatment of prisoners. The judgement also criticised the way the military has investigated allegations of criminal conduct by UK forces.
Stirring speeches and varied verdicts

The recent trials of Muslim preacher Abu Hamza and British National Party leader Nick Griffin added stimulation to the discussion on freedom of expression, already in the throes of a global debate generated by the publication of the controversial Danish cartoons, and in the midst of a national debate over the government’s Racial and Religious Hatred Bill. However, perhaps more importantly, the trials demonstrated the dichotomy faced by the government in tackling the twin problems of Islamophobia and Muslim extremism.

Both Abu Hamza and Nick Griffin were charged with similar offences relating to incitement to racial hatred under the Public Order Act 1986. Abu Hamza was charged with three counts relating to ‘stirring up racial hatred’ and one count of owning recordings related to ‘stirring up racial hatred’. Evidence presented was a series of nine speeches, recorded in audio and videotapes, which took place between 1997 and 2000 at various locations including Blackburn, Luton, and Finsbury Park Mosque. Abu Hamza was captured referring to Jews as “blasphemous, traitors and dirty” and stated that “Hitler was sent into the world” because “dirty” and stated that “Hitler was sent into the world” because “White men who go with Negro women should be killed.” This was convicted for stating, “You can take any woman you want as long as they’re not Muslim. These 18, 19 and 25-year-old Asian Muslims are seducing and raping white girls... right now.”

Both Abu Hamza and Nick Griffin relied upon freedom of expression in their defence, and both denied they were racists. The outcomes of the trials for the two men were, however, different. Abu Hamza was convicted on 7th February whilst Griffin was acquitted by a jury a few days earlier, on 3rd February, after they failed to reach a verdict on all of the charges.

The trials highlighted an anomaly in racial hatred legislation which provides protection to mono-ethnic religious groups, such as Jews and Sikhs, whilst leaving out faith groups such as Christians and Muslims because they do not constitute a single ethnic block. So, whilst both promulgated the same types of views, Abu Hamza was convicted for directing his comments against Jews, a racial or ethnic group, whilst Griffin, who propagated anti-Muslim hatred, walked free for directing his comments at Muslims, a faith group unprotected by the law.

Massoud Shadjareh, Chair of the Islamic Human Rights Commission expressed sentiments felt by many: “At a time when we are witnessing free speech mania directed at Muslims who have been told to toughen up with any insult, offence and abuse in the name of free speech, this verdict sends yet another signal that Muslims are not equal in the eyes of the law of this country.”

Following the Griffin verdict, the government was quick to point out that it had introduced its Racial and Religious Hatred Bill to plug this gap, a piece of legislation vehemently opposed by proponents of freedom of expression. The government asserted that a successful prosecution of Griffin might have been brought under the original form of the Bill for the “reckless” use of “threatening, insulting or abusive” language instead of the watered down version of “threatening” language used with the intention of stirring up religious hatred.

Whilst the government may assert that such legislation would be used to tackle Islamophobia, let us remember the implementation of racial hatred law in the UK. The first prosecution for publishing material liable to incite racial hatred introduced under the Race Relations Act 1965, was of Michael Defreytas, alias Michael X, a Trinidadian Black Power activist. In 1970 he was convicted for stating, “White men who go with Negro women should be killed.” This led many to believe that the legislation had been brought in to curb the growth of black power movements.

There is the inherent risk that Racial and Religious
Colombian lawyers in the firing line

Colombia’s armed conflict, which pits the Colombian army and their paramilitary allies against the left-wing guerrillas, has been waged for over 40 years. But when people think of Colombia they rarely move away from the two most common misconceptions about the country’s conflict; that it is simply about drugs and terrorism. The reality is that of the thousands of victims who are murdered or “disappeared” every year, most are civil society activists who have suffered this repression at the hands of State Security Forces and their allied right-wing paramilitary death squads.

According to the International Confederation of Trade Unions, Colombia is the most dangerous place in the world in which to be a trade unionist – over 3,500 unionists have been assassinated in the last 20 years. Colombia is also one of the most dangerous places in the world in which to defend labour and human rights. Many lawyers have been assassinated in recent years, whilst many others have “disappeared”, received death threats, been held in prison on trumped up charges or tortured for their work. This perilous situation was exemplified by the assassination of Pedro Perez Orozco last October. Pedro, who was a prominent human rights and labour lawyer, was gunned down by two men on a motorbike as he left his office. Despite repeated appeals to the police about numerous death threats, he was denied any formal protection. No one has been arrested for this crime. Another lawyer, Ernesto Moreno Gordillo, from the Colombian Association of Democratic Jurists, was assassinated last November after being shot three times by gunmen.

Increasing efforts are being made to raise awareness and encourage solidarity with our Colombian colleagues. Last November, Soraya Gutiérrez, a prominent Colombian human rights lawyer and a member of the Corporación Colectivo de Abogados ‘José Alvear Restrepo’, a human rights lawyers’ collective, visited the UK and met with many lawyers including the Haldane Society Executive Committee, to raise awareness of the Colombian lawyers in the firing line. She is a founding member of the Corporación Colectivo de Abogados, and is the National Coordinator for the Corporación Colectivos de Abogados in Colombia. She is also a member of the Corporación Abogados de Derechos Humanos (CADC).

Hatred Bill may be used as an instrument against those it purports to protect.

Whilst the trials of Abu Hamza and Nick Griffin may demonstrate the notion that some are more equal than others, any proposed remedies need to be carefully considered, particularly so in a time of continuing onslaught on civil liberties by a government determined to ‘win’ the ‘war on terror’.

Sultana Tafadar

February

9: Figures released show that serious violent crime, including stabblings, fell by 21% following the introduction of longer pub opening hours. The statistics cover the last six weeks of 2006 and areas where police participated in a crackdown on drinking. Overall violent crime fell by 11%.

9: Shakeup in the way lawyers are paid for criminal defence work in England and Wales will see earnings at the top cut and redistributed to barristers who do one to 10-day cases in the crown court. Final phase of the review is expected in May.

13: Government wins vote that means millions of British citizens will be compulsorily required to hold an identity card and see their biometric details placed on a central data base. Anyone applying for passports or immigration documents will in two years time be required to apply for an ID card.

17: Doctors who give mistaken evidence in child abuse cases are granted immunity in law from disciplinary action in groundbreaking high court ruling that cleared the controversial paediatrician Professor Sir Roy Meadow of serious professional misconduct.

20: The defence secretary, John Reid, blames human rights lawyers for helping to undermine the morale of British soldiers in Iraq. Reid said British soldiers faced an “uneven playing field of scrutiny”.

Justice, Colombian-style

Justice for Colombia (JFC), which funds human rights projects for trade unionists and human rights lawyers representing political prisoners, and is organising a lawyers’ delegation to Colombia, from 12th to 20th May 2006. If you are interested in participating in this, or would like more information, contact Mariela at the Justice for Colombia office on 020 7794 3644 or at mariela@justiceforcolombia.org

Steve Cottingham
Death penalty success in the Bahamas

The mandatory death penalty in the Bahamas suffered a fatal blow with the help of UK lawyers. In a landmark decision delivered on 8th March 2006, the Judicial Committee of the Privy Council unanimously struck down the mandatory death sentence imposed on those convicted of murder in the Bahamas, as being in breach of the Constitution. Since 1973, sixteen people have been executed in the Bahamas, six of them in the last ten years. As leading counsel in the case, Edward Fitzgerald QC, of Doughty Street Chambers, argued that judges should have a discretion in applying the death penalty. If they had, and mitigating circumstances had been taken into account, many individuals may not have been executed.

The decision is a milestone in the international campaign against the death penalty. Parvais Jabbar, of Simons, Muirhead & Burton, said: “Because discretionary not mandatory use of the death penalty may be used, 29 to 30 inmates’ cases will now be heard as a direct result, providing the opportunity for full litigation to go before the judge.”

Keir Starmer QC, of Doughty Street Chambers, said: “This is the culmination of a ten year litigation strategy to abolish the mandatory death penalty in the English-speaking Caribbean.”

‘Vine and fig tree’ trial: who are the criminals?

In the early hours of 5th August 2005 a group of us entered the Atomic Weapons Establishment at Aldermaston and planted vines and fig trees. We were soon arrested for our attempted conversion of a nuclear weapons research facility into… a peace garden. Our trial followed in Newbury Magistrates’ Court in February this year and our vine and fig tree community, about ten people from five countries, sent out invitations to friends to come to the trial and we received good help from Bindman and Partners.

7th February. Into court came Madame Leigh, a district judge. She asked us each whether we considered ourselves guilty or not guilty. All eight of us answered “Not guilty.” The prosecutor, a young man in a striped suit, called 27(!) witnesses to prove the Crown’s case. We intervened and managed to reach a deal where only five witnesses were called. One of the witnesses called into the witness stand was PC Judge (yeah, for real). Since all eight of us conducted our own defence we were all entitled to cross-examine all the witnesses. Per Herngren asked PC Judge: “If you found out that AWE Aldermaston was committing a crime would you have a duty to report it?” He answered: “Yes.” “Would you have a duty to stop that crime?” Again he replied: “Yes.” We used this later on in the trial to say that the police have a duty to stop the ongoing crime that is being committed at AWE Aldermaston through the development of illegal nuclear weapons.

8th February. We were given the opportunity to give an oral presentation in the witness stand. Susan Clarkson, a Catholic nun said: “I went to Aldermaston because I am a Christian. I believe that all killing is wrong. Aldermaston is contrary to the Gospel.” Stephen Hancock argued that “an ongoing crime is being committed at AWE Aldermaston. Nuclear weapons are vehicles for mass murder. Developing nuclear weapons is conspiracy to murder.” All eight of us were given generous room to present our defence.

9th February. The judge had promised that today she would give us the verdict. My prison bag had a book, stamps, a pen, a notebook and some money, I had prepared myself both mentally and physically to go to prison if that would be the sentence. In her verdict statement she found each defendant guilty of criminal damage to a value of £1,805. She also said that issues like nuclear weapons are “not for this court”. The prosecutor wanted us to pay a fine compensating for the damaged fence and court costs. The judge asked us all for a “statement of mitigation”. All of us said that we would refuse to pay any compensation or fine. We didn’t want to give money to the Ministry of Defence which protects illegal activity nor to the court which protects AWE Al-

February

17: Lord Carlile, after a year-long review into restraint in juvenile detention centres, says methods that inflicted sharp bursts of pain would, in another setting, be considered abusive and trigger a child protection investigation. He said there should be a ban on the use of handcuffs for child offenders and an end to full strip searches.

20: David Irving starts a three-year prison sentence in Austria for denying the Holocaust and the gas chambers of Auschwitz. He went on trial for two speeches he delivered in the country 17 years ago.

23: Lord Falconer, the Lord Chancellor announces plans, under a pilot scheme, to allow the families of murder and manslaughter victims to speak out in court about the impact on their lives. Those who prefer not to speak in person will be able to ask a victim’s advocate to speak on their behalf after the killer’s conviction but before sentencing. At present, families have the right only to make a written victim statement but victims are often not told of their right.

March

8: A family of Gypsies lost their appeal against eviction from a public recreation ground near Leeds in a judgment from seven law lords which clarifies local councils’ responsibilities under the Human Rights Act.

13: Did Sir Ian Blair’s secret taping of his phone call with the Attorney General breach the Data Protection Act and European human rights laws?
European champions league

The European Association of Lawyers for Democracy and World Human Rights’s Admin Council meeting took place on 18th February in Bilbao. The day before the meeting, myself as EALDH President, and Thomas Schmidt, the Secretary General, participated in a widely-reported meeting with 40 lawyers from the Basque country. The main issue was the 18/98 Macro-Trial in Madrid against 59 Basques. After this meeting we went on a peaceful 20,000-strong demonstration, organised by most of the Basque political organisations, from left to right. A report on this trial has been written by Haldane member Tim Potter, who visited Madrid and Bilbao in January. Offers to take part in observation missions will be gratefully received.

The meeting was attended by Basque, Bulgarian, English, French, German and Italian lawyers. Future events include preparation of the EALDH Conference “Social Rights in Europe”, 6th May in Berlin; a Colloquy on “Reform of the ECHR system” in Strasbourg, autumn 2006; an Expert Meeting in Paris in November “Which Europe do we want?”, participation in a conference of EDL (European Democratic Lawyers) on 20th-21st October in Barcelona, “Situation of Refugees on the Borders of Europe”.

Martin Smedjeback
http://ickeval.net/vineandfitgreetrees

14: No worker will be forced to retire before 65 and 16: The boss of a railway maintenance firm was today convicted of the manslaughter through gross negligence of four workers who died when a runaway wagon hit them. Mark Connolly was also found guilty at Newcastle crown court of three counts of breaching health and safety laws in connection with the tragedy at Tebay, Cumbria two years ago.

Myth of ‘youth apathy’: only dead fish go with the flow

Legal aid in England is on the brink of disaster. Carter has produced his first report, complete with plans for short term contracts and fixed fees; the Regulatory White Paper proposes to transform the very essence of the profession and strip away our independence; the “Fairer Deal”, government’s overarching vision for legal aid, envisages enhanced services but promises no extra money. The future looks bleak.

Meanwhile, senior practitioners are concerned that there is “no new blood coming into the profession” or that they simply can’t afford to take on trainee solicitors. None of the new proposals mention how young or newly qualified lawyers will be attracted to work in legal aid. The Legal Services Commission proudly promotes their sponsorship scheme for trainees, but have not disclosed which firms have such sponsorship. The number of sponsored places is minimal and, on the whole, training contracts in legal aid are like cut price gold dust. Contracts and pupillages in the area are few and far between, pitifully paid and often incredibly pressured.

Added to this, there is the general perception about our profession as a whole. In the first week of one member’s training contract, her supervisor told her she was “mad” to be going into legal aid at this time! While there are many senior practitioners that have voiced their concerns, young lawyers often meet with a disparaging sense of gloom and acceptance of the changes. This is simply not on. Young aspiring legal aid lawyers need the support and solidarity of our seniors if our fight against the tide is to come to anything.

It is unlikely that any lawyer reading this will be guilty of such pessimism or apathy. That is precisely why we are writing this to ask you to write a column for Socialist Lawyer. We will be keeping you up to date with our views of new proposals and sharing the energy of a group of young people doing anything but going with the flow.

Laura James, Chair YLAL
info@younglegalaidlawyers.org
After the 9/11 attacks in America and the 7th July attacks in London the Government argued that British anti-terrorist legislation needs to be updated to enable it to respond to the “new” threat that the UK faces. Is the threat posed by terrorism motivated by Islamic extremism so different from threats to national security that the UK has encountered in the past?

Well, it is obviously different at one level, the descriptive one. But at another level it is not: the state has had to deal with violent threats to its integrity before, and these have invariably been presented as uniquely threatening to the fabric of the nation. So at this level of generality there is a lot of repetition. Of course there is a risk of mass destruction but actually that risk has been there for longer than people allow. Similarly, whilst the techniques of killing are different – through the use of suicide bombers for example, the use of semtex and dynamite were also “new” in their day, as was (more recently) the use of remote controlled explosions.

Hazel Blears has argued that criminal law in the UK is not suitable for dealing with terrorism because it is reactive; concentrating on the proceedings that occur after a crime has taken place. By contrast, she argues, anti-terrorist legislation aims to prevent terrorist acts from occurring, something that the criminal law is not equipped to do. Do you accept this justification for the need for legislation that deals with terrorist offences differently to “ordinary” crimes?

No, I don’t. The criminal law now has a range of crimes that can deal with pre-substantive offences, for example: attempt, incitement, conspiracy, and solicitation to murder. Good police investigative work can be done via the ordinary criminal law which empowers them to act in a number of ways before a crime is committed through arresting, stopping and searching and entering and searching property. Consequently it is a mischaracterisation of the criminal law to describe it as only “reactive”.

Why have Governments historically deployed anti-terrorism legislation if the criminal law regime is able to deal with terrorist threats?

After a bad atrocity I think governments like to be seen to be doing something new. To be fair, there is pressure on the government to act...
in a fresh way and not just say “we are using the old law to catch these bad guys” – that sounds weak even though it isn’t. And security agencies like to be able to say “we would have stopped that atrocity if only we had had law x”. So the two combine together to create a momentum for the perpetual expansion of the law.

You argued against the creation of a Human Rights framework in the UK that usurped Parliamentary authority by giving judges the same powers as their American colleagues to “strike down” legislation. However, in the last two years we have seen the House of Lords reject the use of evidence obtained by torture and declare that the detention of terrorist suspects without trial incompatible with the UK’s human rights obligations. Do any of these cases make you question whether the balance that the Human Rights Act struck between Parliament and the judiciary is the right one?

On the contrary, these cases persuade me that the balance struck by the Human Rights Act is exactly right. The torture case raises no issue of parliamentary sovereignty: Parliament had not authorised the use of torture, so the case does not trump parliament. The Belmarsh detention case is powerful precisely because the ultimate responsibility was – rightly in my view – left with the legislative and executive branches. I think the judges drew a kind of strength from the knowledge that their speeches in the Lords were part of a discussion rather than conclusive statements of overriding declarations of law. The government had to address the issue head-on and not release the detainees whilst blaming the judges for having had their hand forced. This is exactly as it should be in a democracy.

At the Fabian Conference on Britishness which took place on 14th January 2006 philosopher Julian Baggini argued that debates on the concept of liberty which focus exclusively on infringements to negative liberty are rooted in the ideology of the libertarian right. In contrast the Labour movement has traditionally understood that freedom is more complex, and through the creation of the welfare state has recognised the need for freedom from poverty, disease and ignorance. Do you think that the UK would benefit from a rights charter or constitution which gave citizens “economic and social rights?”

I think that in England, the idea of pre-political negative liberty was initially a progressive one, enabling the propertied to defeat the King, but that it became reactionary when through the gradual democratisation of (what had become) the UK a gap grew up between the propertied / wealthy and the voters. To the former, pre-political property rights and other negative liberties outside politics became attractive excuses for denying the power of the (now increasingly democratic) legislative branch. It was out of this latter, democratic tradition that the Labour party emerged, and with it a suspicion of human rights that lasted for decades. Instead, Labour has historically used its control of the sovereign parliament to deliver social and economic rights in the form of positive legislation which the judges were not able easily to destroy (though which they could damage via hostile statutory interpretation). I think this is the right approach. I still don’t think that promulgating a written constitution with or without a social and economic rights component is the right way forward. Why rely on judges and courts when the way to effect change is through precise and strongly argued for legislation? Having said that there may be room for a social and economic bill of rights on the model of the Human Rights Act – the key would be that it should not be able to “strike down” other legislation, that it should be subject to exactly the same restriction that currently applies to the Human Rights Act.

On 24th January, the Council of Europe reported that it is “highly likely” that European governments are aware of the “extra-ordinary rendition” of up to 100 prisoners through Europe to third countries where they may face torture. Alan Dershowitz, author and Harvard University law professor, has argued that if torture is going to be “administered” as a “last resort in a ticking bomb case to save enormous numbers of lives” it should be done “openly, with accountability, with approval by the president of the United States or by a Supreme Court justice” through the is-
suing of a “torture warrant”. Are there any circumstances where the use of torture is justified?

No, definitely not. It is a measure of how decayed the culture has become that it can seriously be argued that we either need to torture people or that because there is so much of it already happening it is time to regularise the behaviour under cover of a judicial warrant. People don’t say, “Ah, the police are shooting more and more people” so let’s regularise it with homicide warrants: why should this be said about torture?

Any official involved in torture should be prosecuted. If I were on a jury I would vote to convict regardless of the circumstances. Hopefully my fellow jurors would as well. Naturally people argue a hypothetical case against, the ticking-time bomb and so on, just as they argue hypothetical disaster as a reason for draconian terror laws. It is interesting how so much of the justification for brutality lies in hypothesis rather than fact.

Dershowitz argued that the issue of “torture warrants” is preferable to allowing “low level” people to torture or sending terrorist suspects to countries such as Syria or Jordan for questioning. Such arguments seem to be based in the idea that if a certain procedures are followed (evidence given and a torture warrant issued) then the outcome (an individual being tortured) is acceptable. The law, from this position, appears to be entirely procedural with their being little room for substantive rights, such as the right to be free from torture, inhuman and degrading treatment. What do you think of this attempt to “proceduralise” the law?

Well it is a transparent attempt to circumvent the basic rules against cruelty. Human rights is not just about due process. It is about substance and the torture prohibition is about as substantive as it gets. The motive behind all this torture talk is two-fold. It is firstly to get people to concentrate on this terrible conduct and therefore make it more credible than before; talking about this taboo helps normalise it, make it less scary and horrifying. This is a way of dealing with Abu Ghraib: it wasn’t that bad really, why were we only talking about regularising torture the other day. Second, when you put torture at the centre of the stage, all the other things (inhuman and degrading treatment, internment, denial of due process) seem tame by comparison. It diverts moral energy away from these targets.

Finally, political debates about terrorism and national security have set up a dichotomy between human rights and civil liberties on the one hand and national security and safety on the other. Why is national security used to undermine rights in this way and what can be done to reframe the debate so that rights and safety are not always seen in opposition?

There have been two discourses in the democratic era, the first based on hope has concentrated on democracy and human rights. The second rooted in fear has focused on security and danger. The second once spoke through the language of real wars and the cold war. Now it speaks through the ‘war on terror’. To reframe the debate proponents of human rights need first to recast national security as human security and then to show that human rights is about the rights of everybody and not just this or that minority clique. But the language of fear is difficult to beat as horror is always a better, or more compelling story than happiness.
75th Anniversary lecture series
organised by the Haldane Society of Socialist Lawyers
in association with Tooks Chambers

● Thursday 30th March 2006:
Freedom of Expression – What Freedoms Remain?
Speakers: Shami Chakrabati Director, Liberty
Emma Sangster Parliament Square Peace Campaign

● Thursday 13th April 2006:
The Future for Refugee and Human Rights Law
Speaker: Rick Scannell Barrister, Garden Court Chambers

● Thursday 27th April 2006:
Inquiries and Public Confidence Post the 2005 Act
Speakers: Louise Christian Solicitor for Victims of the Southall and Paddington Rail Crashes
Michael Finucane Solicitor and Campaigner for Civil Liberties and Human Rights throughout Ireland
Suresh Grover The Monitoring Group, Campaigner against Racial Injustice

All lectures: 6.30pm–8pm at the Law Society,
113 Chancery Lane, London WC2
1.5 hrs CPD points
£20 Non Haldane members
£10 Haldane members (concessions free)
Seventeen years ago defence lawyer Pat Finucane (left) was murdered in Belfast – the UDA men who killed him had colluded with members of the security forces. Now, Pat’s son Michael Finucane asks why the British government has still not held the public inquiry it promised?

As the impasse in the Irish peace process continues and attention moves to America for St. Patrick’s Day celebrations, efforts will intensify to try to lay the ground for a restitution of devolved government. However, the spectre of unresolved business at home looms large and nowhere is this more acute than in the case of Pat Finucane, the solicitor murdered in Belfast in 1989. The Finucane murder presents a particular problem for the British Government because the killing is one in which collusion between the British Army and RUC and Loyalist paramilitaries has been shown beyond doubt. The unresolved aspects of the matter now focus on how far the collusion went up the chain of command, who knew about it and who was authorising it. The public inquiry that the British Government were forced to promise in the case is, therefore, a potentially damaging exercise that could leave many political casualties in its wake as misdeeds that rob it of the very thing that makes it valuable: Government control that infects all inquiries with such an inquiry because the degree of control the business of the inquiry in a manner not susceptible to public scrutiny. The Finucane family have been forced to declare that they will not participate in or cooperate with such an inquiry because the degree of Government control that infects all inquiries rob it of the very thing that makes it valuable: independence.

The family are supported in this by, among others, the Irish Government and Amnesty International, whose recent report was scathing in its criticism of the Government’s proposed inquiry. Senior judicial figures have also expressed concern. Lord Saville of Newdigate, Chairman of the Bloody Sunday Inquiry, has criticised the Act for interfering with inquiries to an unacceptable extent, as did the former Chief Justice, Lord Woolf. Justice Peter Cory, the man who wrote the report recommending the inquiry in the first place, was himself sufficiently incensed that he communicated his views on the new act in a letter to a US Congressional Committee in March 2005. He stated: “[I]t seems to me that the proposed new Act would make a meaningful inquiry impossible. The commissions would be working in an impossible situation. For example, the Minister, the actions of whose ministry was to be reviewed by the public inquiry would have the authority to thwart the efforts of the inquiry at every step. It really creates an intolerable Alice in Wonderland situation. There have been references in the press to an international judicial membership in the Inquiry. If the new Act were to become law, I would advise all Canadian judges to decline an appointment in light of the impossible situation they would be facing. In fact, I cannot contemplate any self respecting Canadian judge accepting an appointment to an inquiry constituted under the new proposed act.” Lord Saville said that the provisions of the act made “…a serious inroad into the independence of any inquiry. It is likely to damage or destroy public confidence in the inquiry and its findings, especially in any case where the conduct of the authorities may be in question.”

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We need to be reminded about the way in which women’s issues took a hold in the Haldane Society. In the 1970s the women’s movement was young and vibrant. The spotlight had moved to looking at institutions and the ways in which they dealt with women’s equality and held the search for equality in check. It was interesting because the generation of feminists that was a little older than me had imagined that the real issue was about “getting equality with men”. Taking the lead from women like Brenda Hale and concentrating on issues around family law, we argued that women should be treated no differently to the way that men were treated. This was a mistake. The great lesson we have learnt is that arguing for equal treatment did not work for women, because, for many of our clients, being treated the same as men actually only served to entrench the inequalities that women experienced. We have to have an understanding of the context and the world in which people live in order to understand women’s position and begin to treat women fairly.

In 1978 there was a great moment in the history of the Haldane Society. In the organisation at the time were women like myself and Tess Gill who wanted women’s issues to be taken seriously and to become part of mainstream political thought and debate. Haldane was much better at all of this than the Labour Lawyers at that stage and was a much more vibrant place politically for progressive lawyers because feminism was not being engaged with by the mainstream political parties. Women interested in feminism therefore tended to come into Haldane. At that time there was, of course, no organisation for women. Women who were arguing for these types of things were also, on the whole, socialists. So there was a conjunction of socialism and feminism with a number of women really looking at how these issues came together. A conference was organised which brought together women from the US, the USSR, Japan, France, Germany, and Italy. It was an incredible gathering and was organised under the flag of the International Association of Democratic Lawyers. The Haldane Society was affiliated to the IADL which meant that we had access to lots of democratic lawyers’ organisations across the world.

The conference flagged up how many problems there were on the left dealing with feminism. Women’s issues were still seen on the left, from Communist organisations to Trotskyite organisations, as “second order issues”. What they meant was that women’s issues would be dealt with when more serious things, such as the economy, had been addressed. The situation was rather like today when we worry about the developing world but deal only with the economy and trade and hope that justice and human rights somehow follow later.

For lawyers, the Haldane Society was where dynamic discourse took place. Out of this grew other organisations such as Rights of Women and later the Association of Women Lawyers. There were lots of intense debates.
The Haldane Society's 75th Anniversary Lecture Series started on 26th January 2006 with Baroness Helena Kennedy QC speaking on the subject ‘The Development and Future of the Rights of Women’. Here we print extracts from her talk.

about issues like rape and the way that women were treated by the courts. It was hard for many defenders of rights to even acknowledge some of the arguments that we made about the way women were treated by the criminal justice system. In those early days the battles were raw indeed. Arguing that as the victims of crime women were doubly exposed and put on trial as much as the defendant caused much controversy.

In 1991 I wrote Eve Was Framed. The book came from almost 20 years of practice at the Bar. At the time I wasn’t representing a lot of women, that was not my practice. It was just that as a woman on the left and as a feminist, I was alert to the ways that women were treated differently or where the law was unacceptably skewed. A lot of the time it was about the men on the bench, not just about their attitudes but that at the heart of the law the subject remained male-defined. The law was configured around a male personage. One of the people I worked most closely with on these issues in the 1970s and into the 1980s was Albie Sachs. He was a great freedom fighter and drafter of the South African Constitution. He was very much at the forefront of issues on feminism and the law and I learnt a lot from him. I have also done a lot with Southall Black Sisters on issues of domestic violence and racism and I learned a considerable amount working with them both intellectually and in practical terms.

Writing about these issues in 1991 was almost like committing an assault on the legal profession. Trying to get them to accept there was a serious problem was very difficult. Whilst there were a lot of women who knew all these things the problems we are discussing were still not acknowledged in the mainstream profession. When I wrote about the treatment of women lawyers by the system I didn’t want the book to be about the effects of discrimination on women who were lawyers, given that we are some of the most privileged people within society. Rather, it was showing that if this was happening to lawyers, what was happening to women in court, either in the dock and the witness box? It would be apparent to anyone who represented women in the criminal justice system that there were a number of double standards at work, about sex, about parenting and the ways in which women are measured, as distinct from the ways in which men are. There was a sense that, even when it came to sentencing, there was no account taken of the fact that women were often primary carers and therefore that women often felt and experienced punishment differently to men.

What has happened since?

What I sought to do in revisiting Eve Was Framed last year was to see whether there was still a gap. I wasn’t in much doubt that there was a gap but I wanted to examine the claim that was made that most of battles had been fought. The Chair of this meeting, Liz Davies, and I were smiling over an article in the New Statesman entitled: “Where have all the Feminists Gone?” Well, we know that there are a number in this room, both male and female. But the idea that Zoe Williams was exploring...
is that there are still ghastly issues around but, in a funny “third way”, people in the middle ground are dealing with issues like abortion in a different way. So now people say “of course we should allow abortion but shouldn’t we be preventing people from having abortions so late, and make it all happen in the first 12 weeks?” This allows the idea of the situation is very different from this ideal and in many local authorities abortion is not readily available in those early stages.

What Zoe Williams was pointing out is that these arguments are no longer “read in tooth and claw”. That is true. The major political parties have accepted that women’s aspirations have changed and that it is necessary to deal with women very differently. The language has changed. We can play the numbers game on this easily, we can look at the number of women who are judges, who are practising, who are law students and we can all celebrate the increased numbers. But the fact that there are only one or two women in the House of Lords is a cause for us to gape. When I was a pupil we used to talk about this, men in Chambers would say “we don’t discriminate against women, we’ve got one!” I feel that this is what the House of Lords is like now, and until we get more women in the House of Lords we should be banging on the table. You hear comments being made that there are not enough women of the “right intellectual calibre” and you wonder how they are being judged.

Over the last year I have been involved as a kind of amicus in decisions being made who should be QCs or judges. I, like other “outsiders” involved in the monitoring process, were shocked about comments made that certain people were not thought to “have the cut of QC about them”. Somehow, there was an expectation about what a female QC should look like. There was a whole sense that some people did not have the right appearance or presence up to some male idea of appropriateness.

What I found in reviewing this whole area was that whilst there have been changes and developments, not enough has changed. That was the point in revisiting Eve Was Framed, to say that in the period in between the books not enough has changed. In the analysis I have put in the new version I have shown that some Government’s authoritarian ways of approaching issues in the law has a double hit for women.

I was also shocked about the ways in which we as women have had our arguments hijacked and seized on by governments who have used them to justify their own regressive policies. We have seen that in particular areas, in relation to ASBOs, previous convictions, stalking laws, and powers of arrest in cases of domestic assault.

We identified key areas where we felt women were particularly “hard done by” in the legal system. Violence against women was one of the key areas, that then fed in turn into issues of immigration and the ways in which
is that there is still a strong undertow of misogyny in the courts. A lot of it is to do with expectations of what is “good” womanhood. I have now reached a stage in my life when lots of colleagues from my generation, feminist women, sit as judges and what they tell me is that as soon as there is a suggestion that a woman has consumed alcohol or if she is considered to have had a number of relationships with men she has “had it” in terms of her credibility. Nearly a quarter of violent crime is domestic – this is the figure that the Home Office accepts. One woman is killed every week in a domestic situation.

I recently chaired an inquiry for the Royal College of Pathologists and the Royal College of Paediatrics and Child Health into sudden infant death, in the aftermath of miscarriages of justice where mothers were wrongly convicted of murdering their babies. You will all remember the cases of Sally Clark, Angela Cannings, Donna Anthony and Trupti Patel. It was interesting getting the transcripts of the cross-examination of these women and seeing how they were cross-examined. It was suggested to all the women and Trupti Patel. It was interesting getting the transcripts of the cross-examination of these women and seeing how they were cross-examined. It was suggested to all the women and Trupti Patel. It was interesting getting the transcripts of the cross-examination of these women and seeing how they were cross-examined. It was suggested to all the women

complaints against him seriously because of their nature. Huntley had complaints made against him concerning under-age sex with girls. The police seemed to think that as long as they were consenting it was fine. There was no question of an adult’s responsibility to girls who were 14 or 15 years old. There was a particular case that raised my hackles where a woman had made an allegation of rape against the man after they danced together in a dance hall. When she left the club to walk home he followed her and dragged her into an alley way, molested and raped her. She went to the police immediately. The Police got hold of CCTV footage showing her dancing with him and decided that she must have flirted with him and that that somehow justified his actions.

I am afraid that although a lot of this stuff has moved on there are still problems. Take sex trafficking, and the fact that the Poppy Project has found that 81% of women working in the sex industry are from overseas. Not all of these women are on the streets; they are often operating from massage parlours and saunas. We still don’t have it right with the Home Office as there are no guarantees that the women won’t be deported back home if they contact the authorities. They are still fearful of what might happen to their families if they gave evidence against those who exploit them.

Pragna Patel (from Southall Black Sisters) was to have talked this evening about the issues of forced marriages, punishment killings and high level of suicides amongst Asian women. She was going to highlight the SBS case of Zura Shah. I have included it in Eve Was Framed, it was a terrible case of abuse where she killed her abuser and remains in prison. Her appeal against conviction failed because of judgements made about her as a woman. There are a series of special problems that women in minority communities have that are beginning to be being addressed, but still not well enough.

So you cannot disentangle the authoritarianism that I can see in the way that the present and last governments have dealt with issues of law from the problems that women face. The rhetoric of punishment has, for example, vastly increased the number of women in prison. I am part of a visiting group that goes into Holloway and, whilst things have recently improved, the majority of women prisoners in Holloway have serious mental, alcohol and drug problems and shouldn’t be in prison at all. In the desire to appease the tabloids we have allowed more and more to be sent to prison and judges are fearful of ‘red top’ responses.

Pragna Patel from Southall Black Sisters was to speak at the meeting but unfortunately she was unable to attend though ill-health.

For more information on Southall Black Sisters visit www.southallblacksisters.org.uk – for information about Rights of Women visit www.rightsofwomen.org.uk – for the Poppy Project visit www.poppyproject.org

For more information about our 75th Anniversary lecture series see page 15.

Cate Briddick is Legal Officer for Rights of Women.

Are you a woman barrister or solicitor experienced in family law and able to volunteer two hours of your time each month to helping other women on our busy national legal advice line?

Contact Emma at Rights of Women on 020 7251 6575/6 or emma@row.org.uk

Training, benefits and expenses provided
Israel approved the first stage of a 'physical barrier' to separate it from the West Bank in June 2002 “to protect its citizens against violence” and has since extended the size and length of the wall. But does the Israeli state’s reasons for the barrier’s route reflect reality? Hannah Rought-Brooks reports
Painting on the Separation Wall in Tulkarm
On 9th July 2004 the International Court of Justice gave its advisory opinion on the legality of the separation barrier being built by Israel. Specifically the Court was asked to give an opinion on the question: “What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”

Reading the ruling, Court President Shi Jiuyong of China said the court was not convinced the barrier’s construction was the only means to achieve Israel’s aim of protecting its people from suicide attacks. The court ruled that:

- the construction and its associated regime was contrary to international law;
- Israel was wrong to use construction and dismantle the wall;
- Israel should compensate owners of land seized to construct the barrier and those harmed by the barrier;
- all states are under obligation not to recognise the situation and ensure Israel’s compliance with international law;
- the UN should consider what further action to take.

One of the 15 members of the court, US Judge Thomas Buergenthal, dissented from all of the above findings.

The first major issue considered in the opinion relates to the effects of the barrier on the right of the Palestinian people to self-determination. The court pointed out that there was a grave fear that the barrier’s route would create “facts on the ground” that would lead to the de facto annexation of the territory and determination of the future borders between Israel and Palestine. Mr Shi said: “That construction, along with measures previously taken, thus severely impeded the exercise by the Palestinian people of its right to self-determination.”

The second matter concerned the legality of the barrier in the context of international humanitarian law and in particular the application of the Fourth Geneva Convention. Israel has always argued that the Convention does not apply because the West Bank and Gaza were never part of a sovereign state. The Court rejected Israel’s argument and held that the state must exercise control over the territory in accordance with the provisions of the Convention.

The Court noted that Article 49, paragraph 6, of the Fourth Geneva Convention provides: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” and concluded that the settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law. The Court further found that the separation barrier is intended to assist those settlements and noted that “the route of the wall as fixed by the Israeli Government includes within the “Closed Area” some 80 per cent of the settlers living in the Occupied Palestinian Territory.”

The court described the “Closed Areas” established by the Israeli Defence Forces as follows: “Residents of this area may no longer remain in it, nor may non-residents enter it, unless holding a permit or identity card issued by the Israeli authorities. According to the report of the Secretary General, most residents have received permits for a limited period. Israeli citizens, Israeli permanent residents and those eligible to immigrate to Israel in accordance with the Law of Return may remain in, or move freely to, and from within the Closed Area without a permit. Access to and exit from the Closed Area can only be made through access gates, which are opened infrequently and for short periods.” This would mean that as a result of the construction of the wall, around 160,000 Palestinians would reside in almost completely encircled communities.

On the third major issue, the court found that international human rights law applies in its entirety in the occupied territory along with humanitarian law. The court ruled that the separation barrier violates rights in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child to which Israel is a party. The Court found that the wall impeded the liberty of movement of the inhabitants of the Occupied Palestinian Territory (with the exception of Israeli citizens) and that they also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as enshrined in Articles 6, 11, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights.

Israel had not co-operated with the proceedings and when the decision was announced Israel stated that it would not accept the non-binding judgement, and that the barrier has already served its stated purpose by preventing suicide bomb attacks. The Court stated that Israel had the right and duty to protect its citizens against violence, but its defensive actions must comply with international law. The brief discussion on the possible security justifications for the route of the barrier may have resulted from Israel’s refusal to present its arguments to the court, and from its decision to simply submit a written statement contending the court lacked jurisdiction.

Several countries, including the US and UK, had argued the court should stay out of the issue, warning that any opinion it gave could interfere with the Middle East peace process.

The government of Israel approved the first stage of a physical barrier to separate the West Bank and Israel in June 2002. Since then and notwithstanding the decision of the Interna-
The separation barrier cuts Bil’in villagers off from their land and thereby facilitates the settlers’ access to it. But in addition to effectively annexing the land on which the unapproved construction at Matiyahu East is taking place, the route of the barrier extends even further to include additional Palestinian privately owned and cultivated land on which the Mod’in Illit Master Plan eventually forsees expanding the settlement. A road linking the settlements has already been cleared which required more than 100 olive trees to be uprooted.

Israeli human rights groups and activists have been working alongside the Palestinians...
In Bil’in to protest against the building of the settlement for almost a year holding weekly demonstrations in the village. Together they have built their own outpost on the Bil’in land with a permit issued by the village, only a few hundred metres away from the new Israeli settlement housing units. In order to get there the protesters and villagers have to pass through a hole cut in the fence.

This small building or “outpost” was built with the express purpose of demonstrating the double standards Israel employs with respect to giving permission for building in Area C (ie, the Palestinian “outpost” on Palestinian land being demolished and the outposts erected by Jewish settlers being allowed to remain in place.) It is also worth noting that despite the fact that 90% of the West Bank population is Palestinian they are barred from construction on at least 60% of the land due to Israeli zoning and planning policies and therefore have very little area on which they may legally build. Even on the rest of the land which is privately owned and not disputed by Israel, they are rarely granted construction permits from Israel.

Lawyer Michael Sfard who is acting for the villagers of Bil’in highlights this contradiction in the petition that he presented to the Israeli High Court to try and bring a halt to the work. On 12th January the High Court granted a temporary injunction freezing construction work being carried out at the site and also made an order to forbid anyone from inhabiting the apartments or giving over delivery to buyers. However it appears from current reports from activists that the construction work is continuing.

The South Hebron Hills
In the Spring 2005 issue of Socialist Lawyer, I wrote about the impact that the illegal Settler Communities in Ma’on had on the lives of Palestinians living in the South Hebron Hills in the West Bank. I stayed for a time in the village of at-Tuwani and experienced first hand the intimidation and harassment of the Settlers from Ma’on and from the nearby outpost. Now this area too will be affected by the building of the wall along the northern border of the South Hebron Hills region in the southern West Bank would be separate and potentially isolated Palestinian territories. The creation of territorial continuity between the settlements mentioned above and Israel proper. The fear of the ICJ was that the creation of facts on the ground would lead to the annexation of the territory and determination of the future borders between Israel and Palestine. This is exactly what is being done in the At-Tuwani area.

These are not of course simply legal niceties for the people living in the areas. The report by CPT and Operation Dove focuses on the impact on the day to day life of Palestinians living in the area. The creation, by a barrier, of separate and potentially isolated Palestinian region in the southern West Bank would be disastrous, socially and economically for the people of at-Tuwani and the surrounding area. The Christian Peacemaker Team who have a permanent present in At-Tuwani together with an Italian Peace Group, Operation Dove have prepared a report on the impact of these restrictions on the people living in the area:

“Our own Government and those in Europe continue to turn a blind eye to Israel’s disregard for international law”
tanks of water to survive during the dry periods, and the vehicles pulling the tanks in from Yatta can only access the area by crossing Route 317. At-Tuwani has a diesel generator to provide a few hours of electricity each day, and the people can only bring in the diesel and parts to service the generator from Yatta by crossing Route 317.

The building of the wall in the area is likely to worsen the problems arising from the restricted access to Route 317. The closures would be more permanent and access through gates will be more rigorously restricted making it more difficult for Palestinians to access their land or to travel to market, to schools, work and hospitals. Precedents from other areas similarly affected such as Jayyous in the north show that Palestinians experience frequent and almost daily problems in accessing land through gates which can only be opened by IDF soldiers. CPT and Operation Dove conclude that, “The proposed security wall, if built, should be expected to cause a humanitarian crisis in Masafer Yatta in a matter of months.”

East Jerusalem

In November last year EU diplomats presented a secret report criticising Israel’s policies in East Jerusalem to an EU Council of Ministers meeting. The report concluded that the separation barrier was being built by Israel in the West Bank to expropriate Palestinian land and to keep the proportion of Palestinians in Jerusalem at no more than 30% of the total.

The report states that, “This de facto annexation of Palestinian land will be irreversible without very large-scale forced evacuations of settlers and the rerouting of the barrier.” Further, that “When the barrier is completed, Israel will control all access to East Jerusalem, cutting off its Palestinian satellite cities of Bethlehem and Ramallah, and the West Bank beyond. This will have serious... consequences for the Palestinians.” They particularly note the deep alarm felt by Palestinians and their fear that Israel will “get away with it” under the cover of disengagement.

They note a number of factors which they say demonstrate a clear Israeli intention to turn the annexation of East Jerusalem into a concrete fact:
• the near-completion of the barrier around east Jerusalem, far from the Green Line;
• the construction and expansion of illegal settlements, by private entities and the Israeli government, in and around East Jerusalem;
• the demolition of Palestinian homes built without permits (which are all but unobtainable);
• stricter enforcement of rules separating Palestinians resident in East Jerusalem from those resident in the West Bank, including a reduction of working permits;
• and discriminatory taxation, expenditure and building permit policy by the Jerusalem municipality.

In respect of the Wall in East Jerusalem the Israeli High Court ruled that it was legal to take into account political considerations, in addition to security considerations, for the routing of the barrier in East Jerusalem because East Jerusalem had been Israeli territory since its annexation in 1967 (i.e. political considerations are not legal in the West Bank, which has not been annexed to Israel). On 20th February 2005, the Israeli Government approved the revised route of the separation barrier in Jerusalem. This route seals off most of East Jerusalem, with its 230,000 Palestinian residents, from the West Bank (i.e., it divides Palestinians from Palestinians, rather than Palestinians from Israelis). The Israeli cabinet on 10th July 2005 made a decision to route the Jerusalem barrier so as to keep around 55,000 East Jerusalemite Palestinians, mainly in the Shu’afat refugee camp, outside the barrier, cutting them off from their employment, schools and families.

The authors (British officials at the Consulate in East Jerusalem) are deeply concerned about the impact on Palestinians of cutting the link between East Jerusalem and the West Bank. They state that “East Jerusalem has traditionally been the centre of political, commercial, religious and cultural activities for the West Bank, with Palestinians operating as one cohesive social and economic unit. Separation from the rest of the West Bank is affecting the economy and weakening the social fabric.”

The report’s authors remind us of the ICJ ruling on the barrier which states that “all States are under an obligation not to recognise the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction” and stated “We should ensure that any support we provide to East Jerusalem is not simply an attempt to reduce the negative consequences of the construction of the separation barrier.” The report concludes that Israel had largely ignored the Advisory Opinion of 9th July 2004 of the International Court of Justice regarding the barrier. They recommend that the European Union and the Quartet should make clear statements that Jerusalem remains an issue for negotiation by the two sides, and that Israel should desist from all measures designed to pre-empt such negotiations and that this should be done alongside support for Palestinian cultural, political and economic activities in East Jerusalem.

The report was secret and was never made public although in defiance of a ban, it was published on the websites of over thirty Jewish, Palestinian, peace and anti-poverty groups from around Europe.

Our own Government and those in Europe continue then to turn a blind eye to Israel’s disregard for international law and the decision of the ICJ. It seems beyond doubt that the ICJ was correct in its conclusions that the wall was intended to protect settlements and create facts on the ground rather than provide security for Israel itself. Disengagement from Gaza and selected settlements is not enough when the Palestinians of East Jerusalem and the West Bank are slowly but surely losing their land, their livelihoods and their dignity. The Jordan Valley has been unilaterally annexed with not a murmur from the EU or US. It is time for the UK government not just to follow the recommendations of the ICJ but those of its own officials.

Hannah Rought-Brooks is a barrister at Tooks Chambers. She spent three months in Israel and Palestine as an Ecumenical Accompanier in 2004.
ARE OUR ARMED FORCES BEYOND THE LAW?

In February, the News of the World published pictures from a video shot in southern Iraq in 2004, showing British soldiers kicking, punching and striking civilians. Was this an isolated case? *Phil Shiner* thinks not…

The Prime Minister’s response to the video of UK soldiers abusing Iraqi youths is revealing in a number of ways. First, he emphasises the “few rotten apples” thesis; second, he promises that “allegations of mistreatment… will be investigated very fully indeed”. At the same time, R (on the Application of Al Skeini) v. The Secretary of State for Defence, [2005] EWCA Civ 1609, 21 December 2005, (Al Skeini) – in which the Government has persisted in denying that the acts of UK soldiers in South East Iraq are subject to the Human Rights Act 1998 (HRA) – proceeds to the House of Lords.

Al Skeini relates to six test cases, and a further 32 stayed cases, of killings, torture and abuse that took place in Iraq between 2003 and 2004. One of these, Baha Mousa, was a 26-year old hotel receptionist who was arrested by British troops along with eight others and beaten to death in custody.

Does Tony Blair’s approach square with the Government’s legal arguments in this case, or with the reality of what actually took place in occupied Iraq?

Abuse and humiliation of Iraqis was commonplace. There is clear evidence of widespread and systematic abuse that contravenes Article 3 ECHR (the prohibition on torture).

Nine men were tortured in the Baha Mousa incident by men who took it in turns to beat them, one to death, another to the brink of death, and the other seven badly. Another nine men were abused in Camp Breadbasket. At least two other men have been killed in detention. There are the Osnabruck photographs and now the latest video. The evidence in the Court of Appeal showed up a system of, for example, hooding and stressing all detainees.

None of this is surprising. The Government’s position in Al Skeini is that the HRA, the Torture Convention and the International Covenant on Civil and Political Rights do not apply. When soldiers were sent into Iraq and when the incidents in the video took place in 2004, that was the official view of the Government. Presumably soldiers were not trained to comply with their human rights obligations because it was being denied that such obligations existed. So, then, one can hardly expect our soldiers to respect human rights standards. Accordingly, the culture of abuse seen in the interrogation techniques used in Northern Ireland and the bullying cases from Deepcut and other barracks has continued.

It is surprising that pictorial evidence induces the PM to promise an investigation.
especially in Al Skeini, strongly suggests none of this occurred. What is at stake in Al Skeini is of critical importance. First, because these issues go way beyond Iraq. If the HRA only applies within UK territory, violations by state agents around the world can only be dealt with in Strasbourg. Second, because it is through human rights law that international humanitarian law is enforced and its violators brought to account. Geneva Convention IV, for instance, provides for minimal protection of civilians without obliging states to carry out independent inquiries to uncover the perpetrators of abuses. The Government’s position has been that it is enough for the commanding officer to conduct an inquiry. Third, because a notable casualty in the war on terror has been respect for human rights law. The redefinition of torture by the US and US behaviour at Guantanamo Bay, Abu Ghraib, and elsewhere in Iraq is of a piece with our Belmarsh, our preventive detention system in Basra and our role in extraordinary renditions.

Now is the time for human rights principles to prevail. The government accuses lawyers of trying to tie the hands of soldiers fighting wars. Not so. These incidents took place during the occupation. In any case, human rights principles go hand in hand with strong and internationally respected armed forces. In 1993 the Canadian public were shocked by the torture to death of a teenager by Canadian forces acting as peacekeepers in Somalia. The Canadian State’s reaction was swift and principled: it established a full-scale public inquiry and a Special Advisory Group on Military Justice and Investigation Services. More importantly, it established a new independent Military Police Complaints Commission to make military investigations accountable to civilians, the public and Parliament. In doing so, it made Canadian forces accountable for violations of the Canadian Charter of Rights and Freedoms wherever they serve. Such a response is in marked contrast to our Government’s grudging response to the Mousa, and other, incidents. Apparently this country went to war in Iraq to introduce human rights. It is about time our own Government accepted that human rights standards apply to our soldiers there.
In December 2004, section 9 of the Asylum and Immigration Act came into force, giving the Home Secretary more powers to remove people who have failed in their bid to seek asylum here. **John Nicholson** is angry…

The Home Office has been attempting to coerce failed asylum seekers with children into leaving the United Kingdom by withdrawing accommodation and support. In the past such people have continued to receive asylum support, after their immigration appeals for leave to remain under the Refugee Convention and Article 3 of the Human Rights Convention have failed, until they voluntarily left the UK or were forcibly removed. This is no longer the case.

On 1st December 2004, section 9 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 came into force. This provision amends schedule 3 of the Nationality, Immigration and Asylum Act 2002 and enables the Home Secretary to certify that in his opinion that a person seeking asylum, whose initial claim has been refused, has failed without reasonable excuse to take reasonable steps to leave the United Kingdom voluntarily or to place him or herself in a position where he or she is able to do so.

Where the Home Secretary issues such a certificate asylum support is withdrawn unless it would be necessary to exercise the power to provide support in order to avoid a breach of the Human Rights Convention or rights under the European Community treaties. There is a right of appeal to the Asylum Support Adjudicators against a certificate issued by the Home Secretary. There is no public funding available for representation before such an Adjudicator.

**Asylum Support as a tool of immigration policy**

The use of section 9 follows on from previous Labour government attempts to use asylum support as a tool of immigration control.

Under section 55 of the 2002 Act, the Home Office withdrew asylum support from those they considered had not claimed asylum as soon as reasonably practicable. This scheme suffered fatal setbacks when the High Court, the Court of Appeal and finally the House of Lords, in the case of Secretary of State v Limbuwa [2005] UKHL 66, all set humane tests for where the power to provide accommodation and support needed to be exercised in order to avoid a breach of Article 3 of the Human Rights Convention.

Under the 2004 Act there is also provision under section 10 for accommodation and support to be provided to failed asylum seekers on the condition that they perform compulsory labour in the form of community service. So far the Home Office have been unsuccessful in setting up any pilot schemes for this measure.

**August 2005: Case Studies**

On 1st August 2005 Ngiedi Lusukumu’s family in Bolton and Vahid Khanali’s family in Bury both received notice of their Asylum Support Adjudicator Appeal hearings following a decision to certify them under the section 9 provisions. This was their final chance to avoid destitution at the hands of the Home Office.

By 1st September 2005 the families had lost their appeals. Both had received eviction notices but Bolton and Bury Councils had allowed them to remain in their houses. Neither were receiving cash or food, even to care for their children, although the Councils claimed that “voluntary assistance” was now available to them pending “legal clarification”.

As a result of similar measures an unknown number of other families have “absconded” and gone underground. Nineteen families were receiving cash or food, even to care for their children, although the Councils claimed that “voluntary assistance” was now available to them pending “legal clarification”.

The passage into law of the 2004 Act ignored the widespread opposition raised to what is now section 9 of the Act. Senior civil servants reportedly stated that the drafting was “ill thought out”. Recent commentary by Steve Cunningham and Jo Tomlinson suggested that threatening children with destitution and possible removal from their families undermined the government’s stated ambition to ensure that “every child matters”, see ‘Starve Them Out: Does Every Child Really Matter’ Critical Social Policy vol 25(2) 253-275.

Bill Morris, former General Secretary of the TGWU, said, “Using children to blackmail their parents” was “plumbing the depths of morality”. For the Parliamentary Joint Committee on Human Rights (Fifth Report of Session 2003-2004), the idea of “using children and the threat of taking them into care as a deterrent or incentive to persuade adults to cooperate with the authorities” directly contravened the UN Convention of the Rights of the Child.

The British Association of Social Workers similarly argued that, regardless of the decisions of adults, it was “fundamentally unjust to introduce legislation that will make children destitute” and force them into care. It was “as if the government wishes to use children as a rod with which to implement its immigration policy”. BASW stated that it would be “utterly
opportunities for our children, have the chal-

sure whether you are doing the right thing.

easy being a parent. You learn on the job, never

best guarantee that a child will thrive. It’s not

when he said, “A parent’s love and care is the

child’s life.”

their parents is the most critical influence on a

secure family. The bond between the child and

deserve the chance to grow up in a loving,

earlier, the DfES had stated that “All children

Matters’ Cm 5860, published just three months

wards children. In the Department for Educ-

tion and Skills Green Paper ‘Every Child

measured against the stated policy goals to-

tion will continue supporting parents in the

difficult, but vital, task of bringing up their chil-

dren.”

The use of section 9 against parents who are

failed asylum seekers makes it clear that some

parents have been excluded from the embrace

of these sentiments. For parents whose support

has been withdrawn under section 9, the line

taken against them has been very tough.

At the time the then Immigration Minister

at the Home Office, Beverley Hughes, formerly

a lecturer who taught social workers that their

primary duty was to ensure the welfare of chil-

dren, denied that parents were faced with a

choice between “voluntary” removals or

having their children taken into care. In any

case she stated “I expect them to act as any

parent would, to make the best decision for

their children and leave the UK” (letter to The


For David Blunkett, then Home Secretary,
taking children into care would not be the

result of Government policy, but of the “un-

reasonable behaviour of the parents” (“I am not

King Herod”, The Guardian, 27th November

2003).

In the Lords, Baroness Scotland could only
defend a “framework where the effect of what

we anticipate is managed in a way that we do not

hope will not injure... children”, House of

Lords, Hansard, 5th April 2004, col 1699.

Tony McNulty, the current Immigration

Minister, has robustly defended the “tough”
policy. He has stated “we need to send a clear

message” – families “must leave the UK”,

(letter to The Guardian, 31st August 2005).

In a similar vein “irresponsible” parents are

blamed in Asylum Support Appeal determina-
tions following appeals against section 9 cer-
tificates. It is often said by Adjudicators that

Article 8 (the right to respect for family life) is

not breached as the family can all stay together

if they all leave the country, together.

In Law and in Legal Practice

Section 9 demands a collective legal response,
on the part of housing, children and immigra-
tion lawyers, and on the part of social welfare

practitioners, trade unionists and local commu-

nities. The application of a certificate under

section 9 withdraws support. In such circum-

stances a local authority will be faced with the

option of taking the children into care, or sup-

porting them alone, and leaving their parents

destitute.

In time section 9 may raise wider issues, of

local authority collusion in evictions generally,
as their role as landlords to failed asylum seek-

ers may expand. Local authorities cannot cur-

rently provide accommodation to failed asylum

seekers under section 4 of the Immigration and

Asylum Act 1999; such accommodation has to

be privately provided. However under clause

43, originally clause 37, of the 2005 Immigra-

tion, Asylum and Nationality Bill will allow

local authorities to do provide such accommo-

dation. This has been presented as benevolent

but it may mean that there will be local au-

thority evictions for those who do not return

home “voluntarily”.

Perhaps it will take a claim for declaration of

incompatibility under the Human Rights Act

1998, on the basis that the legislation is unlaw-

ful and disproportionate under Article 8(2) of

the Human Rights Convention, insofar as it

compels a family to be split up, before the Home

Office abandons reliance on this provision.

Implementation: Yet Another Pilot

Scheme

Section 9 has been “piloted” by the Govern-

ment on 116 families in Greater Manchester,

West Yorkshire and North London. The im-

plementation is, however, inhuman. It in-

volves “making them an offer they cannot

refuse”, either they must “volunteer” to go

back to their original country from which they

have fled, or they will be made destitute, be

thrown out on the streets, and have their chil-

dren taken away into local authority “care”.

Far from a “choice”, this is cruelly black-

mailing families into leaving the country. Worst

of all, it brings increased anxiety to people who

are already frightened, having come to this
country to seek protection from persecution.
Such people already face incredulous courts, which don’t believe what has happened to them. As if that was not enough, they then endure a process of the removal of already limited benefits and housing to force them to leave the UK. The upset and distress caused to families by the section 9 process is itself degrading therapy for people who should be receiving support.

The Sukula family in Bolton were issued their final section 9 appeal papers on 1st August 2005, for a hearing on 4 August 2005. They lost this appeal, although the Adjudicator stated that, “in the strictest sense”, the Home Office had not followed its own procedures.

Surely the point of such procedures is that they have to be followed “strictly” if they are to be lawful. The family were issued an eviction notice for 5th August 2005 but stayed put. The Council has not since sought to evict them but are receiving no cash or subsistence support.

The Khanali family in Bury were also issued with their final section 9 appeal papers on 1st August 2005, for a hearing on Friday 5th August 2005. The Home Office denied that it had received any representations, including one from a Church to whom it had replied “thank you for your letter......”. The Asylum Support Adjudicator remitted the case, for the Home Office to “reconsider and review all the evidence”. They did so. It took them precisely one and a half working days. Then they just reissued the termination of support letter effective on 26th August 2005.

A second appeal was lodged, but this time unsuccessfully. In 51 paragraphs of a long determination, a different Adjudicator stated that “I am satisfied that any procedural irregularity which may (sic) have resulted in the decision of 22 July 2005 being unlawful was corrected upon remittal of the previous appeal and detailed consideration (sic) having been given to the representations of the Bury Law Centre and by Ivan Lewis MP.”

Bury Law Centre commented: “In the Asylum Support Appeal hearing two weeks ago, the Adjudicator threw the Home Office case out, as they had not followed their own procedures. This time, although nothing has changed, a different Adjudicator was more forgiving of the Home Office errors. It feels like getting the umpire to call “no-ball” until eventually the bowler can get one to hit the stumps.”

Official Reaction and Counter-Reaction
Both Bury and Bolton local authorities are members of the Greater Manchester group that wrote to the Home Office to call for an urgent review of the whole pilot. The Yorkshire and Humberside Councils, BASW, the Association of Directors of Social Services (“ADSS”) and the Children’s Commissioner did likewise.

Peter Gilroy, chief executive of Kent County Council and chair of the Asylum Task Force of the ADSS said that section 9 raises “legal and ethical dilemmas” for local authorities. “The Government has already accepted that wherever possible children should be cared for by their parents and has made this clear by making reductions in the numbers of children in public care a principal target for local government. It seems iniquitous that they have now introduced immigration legislation which militates against this view.”

Councillors, school governors and local community groups in both areas, demanded that their Councils keep the families together, not least because it would be cheaper for council-tax-payers than taking the children into care. Both families discussed above included 7 month old, breast-feeding babies.

Support for these two families has even come from the full range of local newspapers, not widely regarded as the most progressive forces in society. The Bolton Evening News has run front page and editorial comments calling for support, with a tear-off coupon for people to send back supporting the Sukula family, and the editor appears on campaign public meeting platforms.

The Bury Times, Prestwich and Whitefield Gazette, and local Advertiser have run front page stories, with sympathetic coverage each week. And the Manchester Evening News conducted its own telephone poll of readers, which produced an 87% result in favour of Councils refusing to implement section 9.

Amid widespread cynicism at the notion that the pilot scheme would be evaluated, Government documents talked of “when” the pilot would be “Rolled out”, not “if”.

Arguably however the campaign against section 9 may have ensured that the Government is having to take evaluation more seriously than it intended. An evaluation survey has been circulated to local authorities with 28 questions. Stuningly, in the era of Smiley-Face Nul-Labour, number 27 asks “Does your local authority believe that there is a need for changes to the section 9 procedures or were you happy with the original procedures?” Happy?

Voluntary agencies, including even those who are involved with implementation of the Government’s policies, have given section 9 a resounding thumbs down. Barnardos, supported by the Refugee Children’s Consortium, have produced a damning report. Crucially they noted that refugee children are children first and foremost and that UK asylum policy should protect their welfare as a first principle. “Threatening families with destitution, with having their children taken into care, is not an ‘incentive’ that any caring society should utilise. When asylum-seeking families come to the ‘end of the road’ we should be meeting their welfare needs and working to ensure that any return is voluntary, supported and safe.”

Barnardos called on the government to take the opportunity presented by the new Immigration, Asylum and Nationality Bill to repeal section 9 “before its implementation does further damage to the lives of individual children and families”. Going further still, they called for a review of asylum policy as a whole, specifically to consider the extent to which it is compatible with the Children Act 1989, Human Rights Act 1998 and UN Convention on the Rights of the Child.

The Inter Agency Partnership, involving the Refugee Council, Refugee Action, Migrant Helpline, Refugee Arrivals Project, Scottish Refugee Council and Welsh Refugee Council, conducted a detailed analysis of the support that their members had given families. Their evaluation noted that families had experienced mental health problems, difficulties accessing legal advice, which included the effects of LSC funding restrictions, and destitution, as well as concerns about returning to their countries of origin and the whole decision-making process.

The evaluation concluded:

• Voluntary return has not increased as a consequence of implementation;
• Section 9 support and related costs are far higher than continuing section 95 support for families (The support provided to failed asylum seeker families prior to the introduction of section 9);
• There is no evidence that asylum applications have reduced as a result of the section 9 pilot;
• The credibility of the asylum process has been questioned rather than reinforced by the section 9 pilot.

Consequently, just in its own terms, the “project” had failed, and the message to Government from these agencies was that it should not be implemented nationally.

Of those families affected to date, it is understood that some thirty families have melted away. Forty families have lost all support. As the Barnardos report noted, once beneath the radar, these families, already vulnerable, are open to “abuse and exploitation”. Only sixteen families have taken up the option of agreeing to return to the countries from which they fled. None have yet been returned.

This is not just some academic legal debate. What matters is the situation of the people themselves.
The Inter Agency Partnership report states that despite Home Office claims that one family had voluntarily returned and four had registered for voluntary return, the IAP had found that no family was willing to take steps to leave the UK and indeed that one who had signed the Immigration Service declaration to leave voluntarily did so only after being coerced by Immigration Service officers to do so.

The White Welfare State or Every White Child Matters
Who Welcomes Refugees?

The White Welfare State or Every White Child Matters

It is probably inaccurate to think that the Home Office aim is simply removal of as many people as possible, although the statistics may look good to their target audience of Daily Mail readers. More likely, they want people out of sight, removed from view in much the same way as homeless people have been swept off the streets when Olympic Bid Committees come to visit.

In particular, the welfare state appears not to mean benefits for migrant black people, especially large families of them occupying council houses. Never mind that the families want to work, pay taxes, buy their own houses, and contribute to the local community.

Mirroring the institutional blackmail of the families, the Home Office made clear that if the Councils took the children into institutional care, they could expect to have their costs reimbursed. If they chose to keep the families together, they could not.

For practitioners, BASW now sees its warnings coming true. The practice of section 9 is in conflict with the “Ethical Code for Social Workers”. BASW commented:

“This brutal power is not only an infringement on the human rights of children and families but also calls into question our standing in the international community given our commitment and obligations as a nation state to the Human Rights Act 1998 and the European Convention on Human Rights”, Media Statement, 8th August 2005.

Articles 3 and 8 of the Human Rights Convention prohibit inhuman and degrading treatment and guarantee families the right to respect for family life respectively. They should be considered to apply and should be used to keep the whole family together as the best way of ensuring the welfare of the child.

This is not just some academic legal debate. What matters is the situation of the people themselves, who campaigners, communities, trade unionists and others are working to support. The families and those who work to support them deserve our backing.

Stop press:
As a result of the campaign against the inhumanity of section 9, the government may well be halting proceeding with it. This means that it hasn’t been ‘rolled out’ to the other 5,000 families who were in the firing line, and the government may well not reintroduce it at all in future. However, what has been raised (including by some of the social services and refugee voluntary organisations) is the concept of “humane alternatives” – such as making failed asylum seekers receive benefits on a sliding scale based on their compliance with removal, or putting families into special detention centres. Also, there are still no benefits for the 50 families who have been able to remain in local authority accommodation, without income since last August – let alone for the other 50 or so who have been evicted, or simply left their accommodation as a result of the threats, and then gone underground and disappeared below welfare radar.

Top right: John Nicholson is a pupil barrister at Doughty Street Chambers

Michael Finucane is the eldest son of Pat Finucane and a practising solicitor in Dublin.

He went on to say, “[I] would not be prepared to be a member of an inquiry if at my back was a minister with power to exclude the public or evidence from the hearings.

Against this background, a highly significant rejection of the position of the British position was delivered recently by Dáil Eireann, the Irish Parliament in Dublin, with the full support of the incumbent government. On 7th March 2006, an all-party resolution was moved by the Irish Minister for Foreign Affairs, Dermot Ahern TD, where he stated the clear position of his administration: “The Government has made clear our opposition to the British proposals, both bilaterally and through international fora. We will continue to do so in London, Washington, Belfast and elsewhere. I have consistently raised this case with the Secretary of State for Northern Ireland, Mr. Peter Hain, who met with the Finucane family last month. I regret to say that in his recent reply to the family the Secretary of State failed to address the family’s fundamental concerns. The Government wishes the British Government to establish a full, independent and public judicial inquiry into the murder of Mr. Finucane, and nothing less. I commend this motion to the House.” The motion was unanimously passed by all political parties and not without considerable vocal support for the Finucane family and swinging criticism of Britain. The leader of the main opposition party, Enda Kenny TD, stated “…[t]he limited form of inquiry proposed under the UK Inquiries Act 2005 is flawed. It contradicts the clear understanding that any inquiry recommended by Judge Cory would take place under the aegis of the UK Tribunals of Inquiry (Evidence) Act 1921. Its seriously limited provisions favour optics over substance, a case of being seen to do something rather than doing what is right.” He continued: “Allegations and evidence of collusion between loyalism and the security forces in the North are viler aspects of an already vile era in the history of all the peoples of this island. At a time of new and fragile peace, it behoves the British Government to confront unequivocally what is a major disquiet for people North and South. The inquiry into the murder of Pat Finucane must be forensic, independent and public, in terms of both justice and human decency. It is long overdue and is needed now.”

The comments of Mr. Ahern and Mr. Kenny were reinforced in the speeches of many other parliamentarians who spoke to the motion leaving the British in the position of having its governmental partner in the peace process passing highly critical motions of its conduct in the domestic Irish parliament. One would think that the lack of credibility or tenability in the British position on the Finucane case would lead to a rethink but this is nowhere to be found on the political horizon. It seems the keepers of secrets are keeping the keys firmly in their pockets and a long time may pass before they are forced to turn them in any collusion lock.

The Manchester Evening News poll of readers produced an 87% result in favour of Councils refusing to implement section 9.

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How can Europe treat people like this?

The Deportation Machine
Europe, Asylum and Human Rights
by Liz Fekete
Issue no. 51 of the IRR European Race Bulletin, £15, published by the Institute of Race Relations.

Liz Fekete is a terrific researcher, providing statistics and human stories. In the past, on behalf of the Institute of Race Relations, she’s dug up invaluable information on the impact of arbitrary police powers on the Asian community. In this book she examines the European trend of deporting more and more so-called “failed” asylum seekers and illegal immigrants, and what that means in human terms. The stories will be familiar to asylum lawyers. For the rest of us, they are a wake-up call.

Attempting to deter asylum seekers is a European-wide phenomenon. The “European Council Directive on minimum standards for the qualification and status of third-country nationals and Stateless persons as refugees or as persons who otherwise need international protection”, passed in June 2004, is a deliberate policy designed to undermine the Geneva Convention. It redefines the Convention’s requirement that refugees are protected from conflict until state protection in their countries of origin has been restored, by adding that protection can be also provided by parties and organisations including international organisations. Thus, asylum seekers can be returned to countries with no effective government, such as Iraq, Somalia, the Congo, Afghanistan.

Europe’s next step, enthusiastically endorsed by Jack Straw, is to “warehouse” refugees — confining refugees to camps in their regions of origin whilst they watch out the conflicts in their original countries. The idea is that a claim for asylum should only be a temporary situation. Instead of someone who is at risk of persecution being granted full refugee status, as the Convention demands and which carries concomitant rights, he or she will simply be left in abeyance, in a camp, until the powers-that-be deem return to his or her original country to be safe.

What happens on their return? The European governments don’t care, and exact figures are impossible to establish. If the home country didn’t know that someone had left and claimed asylum before, it is given a very large clue as the person is forcibly dismembered by European security guards. There is evidence of returned asylum seekers being tortured in Turkey, Syria, Egypt, Iran, Eritrea, the Congo, and elsewhere. European governments have systematically ignored these accounts. Famously, Blair himself tried to negotiate the deportation to Egypt of four asylum seekers, and was impatient when advised there was ample evidence of serious human rights abuses. “This is crazy. Why can’t we press on?” he said, showing his respect for human rights. “This is crazy. Why can’t we press on?” he said, showing his respect for European-wide “anti-foreigner racism”. The racist rhetoric of New Labour and the Tories in Britain, and other political parties, mostly from the far-right, elsewhere in Europe, has led to a culture whereby recent immigrants in general, and asylum seekers in particular, aren’t considered worthy of rights. In Britain, asylum seekers are prohibited from working and have no access to the welfare state. They are shunted into a separate state-apparatus, NASS, which decides where they will live, gives them less than subsistence levels to live off, and cuts off that meagre amount if they “fail to comply”. Officials assume that asylum seekers are lying — about their identity, their history, even their age — unless proved otherwise: a reversal of the usual burden of proof. As the political parties and the media continue their hate-filled rhetoric, people are targeted, assaulted, sometimes even murdered, just for being asylum seekers.

Liz Fekete’s extensive legal and statistical research and the human stories behind the statistics is both heart-breaking and necessary. The treatment of asylum seekers is one of the greatest crimes that European governments are committing. Her research gives us the ammunition to try to stop them.

Liz Davies
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75 years on, we’re still taking a stand on the key issues. As part of the international peace movement we campaign against Bush and Blair’s illegal wars and the occupation of Iraq. We defend our civil rights from the government’s assaults. We call for Guantánamo Bay to be closed down, all prisoners detained without charge to be released and an end to our government’s complicity in “extraordinary renditions”.

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