RESTRICTED SUBJECTS

Freedom of Expression in the United Kingdom

Helsinki Watch
The Fund for Free Expression

Human Rights Watch
New York ● Washington ● Los Angeles ● London

Library of Congress Catalog Card No.:
ISBN 1-56432-044-8

Cover design by Deborah Thomas.

Helsinki Watch

Helsinki Watch was formed in 1978 to monitor and promote observance of domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. The chair of Helsinki Watch is Robert L. Bernstein and the vice chairs are Jonathan Fanton and Alice Henkin. Jeri Laber is the executive director; Lois Whitman is deputy director; Catherine Cosman is Washington representative; Holly Cartner is staff counsel; Ivana Nizich is staff consultant; Robert Kushen is Orville Schell fellow; and Sarai Brachman, Pamela Cox, and Elisabeth Socolow are associates.

The Fund for Free Expression

The Fund for Free Expression was established in 1975 to monitor and combat censorship around the world and in the United States. The chair is Roland Algrant and the vice chairs are Aryeh Neier and Robert Wedgeworth. Gara LaMarche is executive director and Lydia Lobenthal is associate.

Human Rights Watch

Human Rights Watch is composed of Africa Watch, Americas Watch, Asia Watch, Helsinki Watch, Middle East Watch, and the Fund for Free Expression.

The Executive Committee is comprised of Robert L. Bernstein, chair; Adrian DeWind, vice chair; Roland Algrant, Lisa Anderson, Peter Bell, Alice Brown, William Carmichael, Dorothy Cullman, Irene Diamond, Jonathan Fanton, Jack Greenberg, Alice H. Henkin, Stephen Kass, Marina Kaufman, Jeri Laber, Aryeh Neier, Bruce Rabb, Harriet Rabb, Kenneth Roth, Orville Schell, Gary Sick, and Robert Wedgeworth.

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Jeri Laber Andrew Whitley Gara LaMarche

TABLE OF CONTENTS

ACKNOWLEDGMENTS

This report was primarily written by Gara LaMarche, Executive Director of the Fund for Free Expression. Some portions also appear, in a slightly different form, in the recent Helsinki Watch report, *Human Rights in the United Kingdom*. Stephanie Shaw, a summer intern with the Fund for Free Expression, provided research assistance, and Lydia Lobenthal, the Fund's associate, produced the report. We are grateful to those who took the time to meet or talk with us in London and provide documents and reports, including Anthony Barnett, Geoffrey Bindman, Duncan Campbell, Martin Collins, Frances D'Souza, Maurice Frankel, Andrew Graham-Yooll, Matthew Hoffman, David Hooper, Anthony Lester, Leah Levin, Richard Norton-Taylor, Andrew Puddephatt, Geoffrey Robertson and Philip Spender.

INTRODUCTION

> Lord and Commons of England, consider what nation it is whereof ye are: a nation not slow and dull, but of a quick, ingenious, and piercing spirit. It must not be shackled or restricted. Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties.[1]
>
> -- *Milton*

Britain has a strong tradition of protection for freedom of expression. Before the United States had a First Amendment, residents of London lined the streets to chant "freedom of the press" after the acquittal of those tried for seditious attacks on King George III. Blackstone was the first to formulate the theory that prior restraint of speech and press was an intolerable curb on freedom of expression -- not adopted by the U.S. Supreme Court until 1931.

Britain is by comparison with many other countries a relatively free society. Books are not banned or burned; writers do not sit in prison for insulting the Queen or the Prime Minister; scholars and artists pursue their work without the heavy hand of state intervention.

But in recent years there has been a marked change for the worse in the climate for liberty in the United Kingdom. The British government has been increasingly hostile to freedom of the press -- particularly when its subject is defense, intelligence or military policy. In the face of mounting political protests, the government has accumulated substantially greater police powers over assemblies and demonstrations. The traditional independence of British broadcasting has been eroded. The "troubles" in Northern Ireland have spawned draconian anti-terrorism measures there and in the rest of the United Kingdom.

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[1]Milton, *Areopagitica*, 1644.

As one prominent barrister has written: "By and large, Parliament and the judiciary have taken the view that free speech is a very good thing so long as it does not cause trouble. Then, it may become expensive speech -- speech visited with costly court actions, fines and damages, and occasionally imprisonment. `Free speech', in fact, means no more than speech from which illegal utterances are subtracted."[2]

The England of Milton and Blackstone is today a country where the government can:

- conceal from Parliament an $800 million expenditure for a spy satellite, block the airing of a television program about it, and search the home of the documentary's producer and the offices of a magazine he worked for;

- send a 23-year old Government clerk to jail for six months in jail for leaking a document that embarrasses the government;

- ban all broadcast interviews with members of a lawful political party.

In addition, books are routinely sanitized because of draconian libel laws that require writers and journalists to prove the truth of every claim they make, there is no enforceable right of public assembly, and police have broad powers to ban demonstrations.

This report by Helsinki Watch and the Fund for Free Expression documents restrictions on freedom of expression by the United Kingdom in these and other areas.[3] It concludes that Britain falls short of protecting freedom of expression guaranteed by conventions and international agreements to which it is a

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[2]*Media Law: The Rights of Journalists and Broadcasters*, Geoffrey Robertson QC and Andrew Nicol, Longman, Second Edition 1990, p. 1.

[3]Some of the issues dealt with overlap the categories into which this report has been organized -- the ban on broadcast interviews relating to Northern Ireland, because it is in effect in the entire United Kingdom, is dealt with in the chapter on broadcasting; the suppression of the documentary, "The Secret Society" is primarily covered in the chapter on official secrecy.

party. At the end of this report, we make a number of recommendations for legal reform.

Britain lacks a written constitution with a Bill of Rights or any other overarching protection for individual liberty, and in the final section of this report we also discuss, without endorsing, the various measures that have been proposed for providing a more permanent legal foundation for the protection of free expression.

The uphill fight that such measures face has much to do with deeply-ingrained national attitudes. British culture does not accord a very high priority to freedom of expression against other social values, such as deference to authority. As former Home Secretary Roy Jenkins put it in a 1975 address, if Britain ever adopted a Bill of Rights, it is doubtful that freedom of speech would be the first right enumerated.

The distinction between "citizen" and "subject" implies, among other things, that those who govern -- in Orwell's phrase, the "the striped trousers ones who rule" -- know best. There is a widespread belief that the country is run better the less people know. Investigative journalism to expose government and corporate misconduct is hemmed in not only by the Official Secrets Act and onerous libel laws, but by what former *Times* of London editor Andrew Neil calls a "not in front of the children" attitude.[4]

The state of freedom of expression in the United Kingdom has implications far beyond its own borders. The British approach to such matters as "official secrets" and libel is reflected in the legal systems of many nations in the Commonwealth, from Kenya to Malaysia. When Britain suspends a basic right, as it did in 1988 in banning broadcast interviews with Sinn Fein representatives, other countries are quick to cite its actions as justification for their own repression.

We believe that it is important to report on British freedom of expression at this moment because in the last few years there has sprung up a robust domestic movement for reform that encourages the attention of international human rights

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[4]"What Britain Needs to Learn About a Free Press," Andrew Neil, *The Washington Post*, January 23, 1989, p. 25.

organizations.

This report was compiled on the basis of interviews in London with leading barristers and solicitors, journalists and human rights and civil liberties activists; numerous telephone conversations; and a considerable volume of written materials.

A few words are in order about the political structure of the United Kingdom and the geographical scope of this report. Britain is a parliamentary democracy with an essentially ceremonial monarchy. While its judiciary enjoys a great degree of independence with respect to criminal trials and civil adjudications, it has no power to overturn acts of Parliament.

While numerous decisions affecting freedom of expression may be made by local governments (for example, police determinations about demonstrations or local councils' decisions to fund community organizations), all criminal and civil law emanates from Parliament (unlike the United States, for example, which has a federal system and 50 state legal systems.)

The United Kingdom comprises Great Britain (England, Scotland and Wales) and Northern Ireland. Except as noted (some provisions apply only in Northern Ireland, and in a few respects Scottish practice is different), any characterization of British law made in these pages applies throughout the United Kingdom.

I. OFFICIAL SECRECY

> The prime minister is occasionally questioned on matters arising out of his responsibility. His answers may be regarded as uniformly uninformative. There is no further information that can usefully or properly be added before bringing this Chapter to an end.[5]
>
> -- the entire chapter devoted to national security in Former Prime Minister Harold Wilson's book, *The Governance of Britain*.

The talisman of national security is invoked by governments all over the world to shield themselves from legitimate scrutiny or to avoid embarrassment for mistakes, and the United Kingdom is no exception.

The recent targets of British censors have included a BBC program about a service member who spent his conscription years learning Russian; a documentary revealing that the 800-million-pound expenditure on a redundant spy satellite was concealed from Parliament; and an intelligence memoir revealing that MI5's domestic activities aimed at undermining a previous Labor government.

Deference to government and a penchant for secrecy where matters of state are concerned is a strong strain in British society, manifested in a number of laws restricting freedom of expression. The Official Secrets Act provides criminal penalties for revealing a broad range of foreign policy, defense and military information, regardless of whether the material is in the public interest or has been previously disclosed elsewhere. The law of confidence acts as a gag on hundreds of thousands of government employees and contractors. When cabinet ministers want to steer the press away from "sensitive" stories, they issue

[5] *The Governance of Britain*, Harold Wilson, 1977, p. 167.

"D-notices" recommending suppression or delay.

The British attitude about secrecy is captured well in a (pre-glasnost) anecdote about two of the leading Soviet spies in Great Britain reporting to the head of the KGB. One says he has information about where every one of Britain's nuclear warheads is located. The other boasts: "That's nothing! I have the minutes of the Leeds Water Board!" Not only are there criminal penalties for revealing much government information, there is no legal right of access to government information as in Canada, Australia, and numerous European countries. To find out, for example, about the safety records of British ships at sea, British reporters use the U.S. freedom of information act.

The government mania for secrecy extends well beyond military and defense matters and has impaired the effectiveness of government in other areas. For example, government decision-making on electricity and tin were affected when a 1986 inquiry by the Trade and Industry Committee into the financial collapse of the International Tin Council -- which contributed to the downfall of the Cornish tin industry -- was "thwarted" by government secrecy.[6]

OFFICIAL SECRETS ACT

Historically, the chief vehicle for suppression of information has been the Official Secrets Act. The original Act was approved by Parliament in 1911 during a period of tensions between Britain and Germany. The debate on the measure took only half an hour. The cabinet minister responsible for steering the bill's passage recalled in his memoirs that "no bill had ever yet passed through all its stages in one day without a word of explanation from the Minister in charge ... not one man seriously opposed, and in a little more time than it has taken me to write these words that formidable piece of legislation was passed."[7]

The law stood without significant amendment until 1989. The heart of the original Act, Section 2, criminalized the communication to unauthorized

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[6]"Freedom of Information," Maurice Frankel, in *Human Rights in the United Kingdom*, Pinter Publishers, London and New York, 1990, p. 101.

[7]Cited in *Official Secrets*, David Hooper, Coronet Books, London: 1988, p. 40.

persons, use or retention of "any secret official code word, or pass word, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or any thing in such a place" by a person working for or under contract to the government.

Its coverage was so broad that any of a million public servants could be criminally prosecuted for the unauthorized revelation of information gathered in the course of their jobs, no matter how trivial. Theoretically, it was even a crime to disclose how many cups of tea were served each day at the Home Office canteen.

In practice, however, most applications of the Official Secrets Act involved material pertaining to defense and foreign policy matters. A 1987 case involved a BBC documentary by investigative reporter Duncan Campbell -- the subject of more prosecutions under Section 2 of the Official Secrets Act than any other person in Britain -- on the "Zircon affair," about the Thatcher Government's concealment from Parliament of an $800 million expenditure for a spy satellite that duplicated existing American technology. Although the BBC acceded to government requests not to air the program, three days after Campbell wrote about it in *New Statesman*, Special Branch officers kicked his door in and searched his house and papers for seven hours. They proceeded to occupy the offices of the *New Statesman* for five days and four nights. When the detective in charge of the search was asked what he thought of the film, he replied: "We're not allowed to see it, that's why this search is so difficult."[8] Because the warrants were issued under Section 2 of the Official Secrets Act, advance notice of the search was not required.

Sentiment for reform of the Official Secrets Act was generated by the prosecutions of two civil servants who leaked information to expose what they believed were misguided government policies:

- Sarah Tisdall, a Foreign Office clerk, was sentenced in 1983 to a six month prison sentence for leaking a memo that Cruise missiles were about to be installed in England.

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[8] *Decade of Decline: Civil Liberties under Thatcher*, Peter Thornton, National Council for Civil Liberties, 1989, p. 7.

■ Clive Ponting, a Defense Ministry official, gave Parliament the details of a government memo about the sinking of the Argentine battleship the Belgrano during the Falklands War. In 1985, two years after the war, he gave documents to a Labor Member of Parliament proving that British naval officials sunk the Belgrano after it had changed course and was heading toward port. When he was prosecuted under Section 2, his defense argued that Ponting's action could not be "contrary to the interests of the state," because he had given the information to Parliament, which was part of the state. The judge rejected the defense, but the jury unanimously acquitted Ponting.

Spycatcher

The *Spycatcher* case of 1988 was not an Official Secrets Act prosecution, but the widespread condemnation of the government's efforts to block its publication was an important factor in the calls for the Act's reform. *Spycatcher* is the title of the memoirs of a former British MI5 agent, Peter Wright, who revealed, among other things, that MI5 had tried to assassinate Egyptian Prime Minister Nasser and to discredit former Prime Minister Harold Wilson as a Soviet agent.

The British government successfully sought injunctions against seven newspapers; the injunctions remained in effect for three years until overturned by the Law Lords -- despite the widespread availability of the book in the United States and elsewhere around the world. There were related curbs on the British Broadcasting Company's coverage of the controversy and even of the court proceedings challenging the government's action. The ludicrousness of the government's position was shown when 10,000 copies of the English translation of *Pravda* were impounded because they contained an article about *Spycatcher*.[9]

Spycatcher involved the British law of breach of confidence, which provides that government employees in the military, security or intelligence realms have a lifelong duty not to disclose information obtained in the course of their work. Some commentators argue that this law is a "stronger weapon"

[9]Thornton, p. 5.

against unauthorized publication than the Official Secrets Act because it does not depend on the unpredictability of convictions by juries. Proceedings under the law of confidence take place in the first instance in secret, without any notice to the other side.[10]

In its submission about the United Kingdom to the Human Rights Committee of the United Nations, Charter 88, a British human rights group, criticized "the extensive use of the civil law of breach of confidence to restrain government employees from revealing information as well as those who pass this information on to the general public..."[11] The European Commission on Human Rights held unanimously in October 1990 that interlocutory injunctions obtained against the seven newspapers in the *Spycatcher* case violated the European Convention on Human Rights, calling such injunctions "particularly obnoxious as they impose prior restraint on publication."

The government's attitudes about the value of free speech were revealed in an exchange that took place during the hearing on the *Spycatcher* case before the High Court in London in December 1987. When one justice asked Robert Alexander QC, the government's lead attorney, if his client considered freedom of speech and press as relevant to the case, he replied, "No, my Lord." The justice replied, "No?" Alexander explained, "That runs headlong into the principle of confidentiality ...there is simply no room for saying that freedom of the press is important."[12]

Indeed, the Law Lords decision overturning the *Spycatcher* injunction was premised on practical grounds. Lord Keith, the senior judge in the case, wrote: "I would stress that I do not base this [ruling] upon any balancing of public interest, nor upon any considerations of freedom of the press, but simply on the view that all possible damage to the interest of the Crown has already

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[10]Hooper, p. 243; April 25, 1991, interview.

[11]"Human Rights in the United Kingdom," commentary by Charter 88 on the "Third Periodic Report of the United Kingdom of Great Britain and Northern Ireland to the Human Rights Committee of the United Nations," March 18, 1991, p. 13.

[12]"No Facts Please, We're British," Duncan Campbell, *Mother Jones*, May 1988, p. 12.

been done."[13]

In a brief submitted to the European Court of Human Rights in the *Spycatcher* cases, ARTICLE 19, the international anti-censorship organization, compiled affidavits from experts on press law in Germany, Sweden, Norway, Denmark, Italy and the U.S., all of which asserted that the injunctions issued in the Spycatcher case could not have been upheld under applicable law in their countries.[14]

The government also used the law of confidence to obtain similar injunctions against the *Glasgow Herald* and other publications to prohibit them from reporting about or publishing excerpts from *Inside Intelligence*, by another former MI5 agent, after it was printed privately and distributed to Members of Parliament and journalists, and even barred from sale in Great Britain the copies of an American magazine, *Harper's*, that had published excerpts. An injunction was also issued against distribution of *One Girl's War*, the memoirs of a former MI5 officer.[15] The law of confidence was even used in 1975, in an effort to restrain the posthumous publication of the cabinet diaries of Richard Crossman, a former minister.

1989 Official Secrets Act amendments

In 1989, facing widespread criticism over the *Spycatcher* case and the

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[13]Cited in "What Britain Needs to Learn about a Free Press," Andrew Neil, *The Washington Post*, January 23, 1989.

[14]Case Nos. 50/1990/241/312 and 51/1990/242/313 *Times Newspapers Limited and Andrew Ferguson Neil*.

[15]Not all breach of confidence cases involve allegations that national security is at issue. A case now pending before the European Commission on Human Rights involves a reporter for a trade publication who received information from a confidential source concerning a firm's financial difficulties. When he called the company to check on the facts and obtain its comments for a story he was writing, company officials deduced that the information had been leaked, and obtained an injunction against his publication of the article. (*Goodwin v. U.K.*, 1989)

Tisdall and Ponting prosecutions, the government introduced a White Paper to reform the Official Secrets Act. Although the scope of the law was narrowed, there remains an absolute ban on disclosures about security and intelligence services, no matter how trivial. There is also a ban on disclosure of material pertaining to Britain's defense and international relations if the government asserts it will "endanger the interests of the United Kingdom abroad" or "seriously obstructs the promotion or protection of those interests."

In addition, despite a strong campaign by civil liberties advocates to include them, the new law, like the one it replaced, permits no room for defenses that disclosure is in the public interest or that the material involved is in the public domain or has been previously published elsewhere.

Some new offenses have also been created. It is now an absolute offense to reveal from official sources the name of a person whose telephone has been tapped or whose mail has been intercepted even if the act took place unlawfully without a warrant. Had this been in place in 1985, it almost certainly would have resulted in the prosecution of former MI5 agent Cathy Massiter, who in a television interview revealed that the agency had tapped the telephones of trade union leaders.[16] The new Act's provision on "the interests of the United Kingdom abroad" would probably also have resulted in the conviction of Jonathan Aitken, a journalist and politician who was acquitted after a trial on charges that he revealed information given to him by a British general about the war in Biafra that was at odds with the official government version.[17] The Act has also been broadened to apply to leaks overseas and for the disclosure of information an official *purports* to be about security and intelligence, even if in fact it is not.[18]

Maurice Frankel of the Campaign for Freedom of Information asserts that, in the wake of the 1989 amendments, "No defendant will be allowed to

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[16]Thornton, p. 18.

[17]*Freedom, the Individual and the Law*, Geoffrey Robertson, Penguin Books, London, 1989, p. 134.

[18]Interview with Maurice Frankel, April 26, 1991.

stand up and argue that a disclosure was the only way of stopping corruption, abuse of authority, or the willful jeopardizing of public safety. The message of the bill is: if you learn of a problem, take it to the authorities. If that fails -- and you must choose between exposing the abuse or remaining silent -- the law demands your silence."[19]

In arguing unsuccessfully for an amendment to permit a "public interest" defense in Official Secrets Act prosecutions, Lord Dacre (the historian Hugh Trevor-Roper) cited Britain's arguments against Nazi defendants in the Nuremberg trials: "One goes to one's superiors in order to take counsel, and in the last resort one may go public under this amendment if one is satisfied the crime has been committed. Well, hang it all, what argument did we use at Nuremburg? We argued that criminality is not excused by superior orders. Therefore someone in a subordinate position who considers that a real crime has been committed has a duty not to comply with it, not to obey those orders."[20]

While there have not yet been any prosecutions under the new Act, its critics have pointed out that the ban on disclosure of defense-related information could be invoked to apply to reports on the adequacy of British protection for the Falkland Islands, or on the status of the country's troops in Hong Kong. The provision barring disclosures "relating to international relations" would apply to revelations that British Cabinet ministers were working to undermine sanctions against Iran or South Africa. Furthermore, it is virtually inconceivable that the Official Secrets Act would permit disclosure of a British example of the U.S. "Iran-Contra" scandal.

FREEDOM OF INFORMATION

In contrast to the United States, Canada, Australia, New Zealand and several European countries,[21] there is no general right of access to government

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[19]"Enormous tightening up of control of information," Maurice Frankel, *Secrets*, Issue 16, February 1989.

[20]*Hansard*, (House of Lords), April 18, 1989, col. 717.

[21]See, for example, "Freedom of Information in Australia, Canada and New Zealand," Robert Hazell, *Public Administration*, Summer 1989, Vol. 67, No. 2.

information in the United Kingdom. A dogged movement for reform led by the Campaign for Freedom of Information has resulted in a the passage of a series of recent "private members' bills" -- that is, not part of the majority party's official legislative agenda -- adopted since 1987: the Access to Health Records Act (1990), which allows people to see copies of their own health records, and have errors corrected; the Access to Medical Records Act (1988), allowing access to doctors' reports for insurance companies or employers; the Environment and Safety Information Act (1988) requiring publication of enforcement actions against firms which break safety or environmental laws; and the Access to Personal Files Act (1987) allowing access to certain school, social work and housing records.[22]

Otherwise, British subjects who wish to find out what their government is doing must wait for the unsealing of government files by the Public Record Office 50 to 100 years after the fact. For example, Home Office papers on the wartime detention -- for a period of three and a half years, without trial -- of British fascist sympathizer Oswald Mosley are still being withheld, on "security grounds."[23]

These policies appear to conflict with the provisions of The Helsinki Final Act, which the United Kingdom has signed, calling upon the participating states to "facilitate the freer and wider dissemination of information of all kinds."[24] In addition, in a case from Britain involving an injunction against *The Sunday Times* from publishing information about the thalidomide birth defects scandal, the European Court of Human Rights interpreted Article 10 of the European Convention on Human Rights to guarantee "not only the freedom of the press to inform the public, but also the right of the public to be properly informed." The court held that any restrictions must be "sufficiently pressing to

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[22]"School Records Opened Up," *Secrets*, publication of the Campaign for Freedom of Information, October 18, 1989; "Medical Records Bill Gets Royal Assent," press release from The Campaign for Freedom of Information, July 13, 1990.

[23]*The New Yorker*, August 5, 1991, p. 81.

[24]*Helsinki Final Act*, Conference on Security and Cooperation in Europe, 1975.

outweigh the public interest."[25]

The difficulty of obtaining information from government has given rise to a peculiar British institution, "The Lobby," a group of approximately 200 political correspondents chosen by their editors for special access to the House of Commons. They can enter parts of the building closed to the general public and to other journalists, such as the Members' Lobby, get advance copies of official publications under an arrangement in which they agree to keep them secret until official publication, and participate in regular, unattributable briefings.[26]

D-NOTICES

Another informal but effective device for controlling public information is the "D-notice" system. Material that may be sensitive is reviewed by the Defense, Press and Broadcasting Committee, composed of representatives of the Ministry of Defense, the Home Office and the Foreign Office, along with media officials. While the group has no official status, it issues general guidelines and "Private and Confidential Notices," known as "D-notices," which can recommend suppression or delay of stories. Many editors profess to like this, because they say it gives them a clear idea of what they can write or broadcast.[27] In December 1987, editors and broadcasters threatened to abandon cooperation with the system after the government enjoined the BBC from broadcasting "My Country Right or Wrong," a documentary about the British intelligence service, despite its having been cleared by the D-Notice committee. The injunction was upheld, but some months later the government allowed the programs to be broadcast after examination of the transcripts.[28]

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[25] *The Sunday Times v. United Kingdom* (Judgment No. 30) (1979) 2 EHRR 245.

[26] "How the Lobby undermines the integrity of the media," Des Wilson and Maurice Frankel, *Secrets*, Issue 17, May 1989.

[27] "The Law Offers Little Comfort," Anne Halifax, *Index on Censorship*, April/May 1991, p. 15.

[28] "Freedom of Expression," by Kevin Boyle, in *Human Rights in the United Kingdom*, edited by Paul Sieghart, Pinter Publishers (London and New York) 1988, p. 90.

Without exception, British media acceded to Ministry of Defense request during the Gulf War not to run a story on the theft of an army computer containing battle plans for the Gulf War.[29] As in the U.S., British Ministry of Defense guidelines required journalists to be accompanied at all times by military "minders." A few days after the war began, the BBC announced that it would make certain programming changes on grounds of "taste" and "sensitivity." Among the songs it deemed too "inappropriate or hurtful" to play were "I Shot the Sheriff," "Saturday Night's Alright for Fighting," "Give Peace a Chance," "Light My Fire," "Killing Me Softly," and "Everybody Wants to Rule the World."[30] The BBC also decided not to run a documentary on the export to Iraq of British-built "superguns," on the grounds that the "tone is wrong."[31]

THE SECURITY SERVICE BILL

In 1988, the passage of the Security Service Bill placed MI5 on a statutory footing for the first time ever. The legislation was spurred by a defeat for Britain in two cases before the European Court of Human Rights, one involving M15's listing of two women as subversive because they worked for Liberty. The cases came to light because of the "whistleblowing" of former agent Cathy Massiter. Unfortunately, the net effect of the law is to legalize these abuses, including wiretapping and burglary by security services, and adopt the broad definition of "subversive," which includes lawful, non-violent political activity, used by M15 for the vetting of civil service employees.[32]

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[29]"Two Cheers for the First Amendment," Geoffrey Robertson, *Communications Lawyer*, Spring 1991, p. 8.

[30]Directive from Radio Training Department of British Broadcasting Corporation to music programmers at local radio stations, January 17, 1991.

[31]*Times of London*, January 29, 1991.

[32]Thornton, p. 20.

II. LIBEL

> Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press.
>
> --
>
> *Blackstone*

> The times of Mr. Blackstone are not relevant to the times of Mr. Murdoch.[33]
>
> -- *Lord Templeman*

British law is far more favorable to those seeking redress from writers and journalists than the United States or other European countries. Juries routinely award substantial amounts in damages, which are free from taxation. Britain's onerous libel laws are a greater practical, day-to-day concern for writers and journalists than the infrequently invoked Official Secrets Act, resulting in what David Hooper, a solicitor specializing in defamation cases,calls "a vast, submerged self-censorship."[34] The numerous cases that come to court are said to be the "tip of a legal iceberg" which freezes "large chunks of interesting news and comment, especially about wealthy people and companies which have a reputation for issuing writs."[35]

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[33]Cited in "Not-so Free Speech in Britain," Peter Jenkins, *The New York Review of Books*, December 8, 1988, p. 18.

[34]Interview, April 25, 1991.

[35]Robertson, *Freedom, the Individual and the Law*, p. 266

The libel laws were originally enforced in a draconian fashion by the Star Chamber. Civil libel grew up as an alternative to duelling for resolving disputes over perceived attacks on reputation.

As in the United States, defamation is generally not codified in statutory law, but has evolved as a system of court-made legal rules. British defamation law recognizes no defense that the plaintiff is a public figure or that the expression involved was in the public interest. The burden is on the defendant to prove the truth of the challenged claim. In fact, many judgments have been awarded in cases where the facts subsequently proved to be accurate, such as Cabinet Minister John Profumo's suit over the allegation that he shared a prostitute with a KGB officer, and Liberace's against the *Daily Mirror* in 1959 for implying that he was gay.

RECENT VERDICTS

The most-publicized recent defamation suits in Britain have involved awards of 500,000 pounds to novelist and former Member of Parliament Jeffrey Archer, over the suggestion that he had sex with a prostitute (despite proof that he gave her 4,000 pounds); 300,000 pounds to actress Koo Stark and 1 million to musician Elton John. (All were collected from the tabloid press.) The highest award ever levied on a private person was against Nikolai Tolstoy, who was ordered to pay 1.5 million pounds to Lord Aldington over a pamphlet he wrote about the forced repatriation of Cossacks and Yugoslavs at end of World War II.[36]

British libel laws have a very wide reach. Publisher Robert Maxwell was able to sue the author of a critical article by his biographer and critic, Tom Bower, in the U.S. magazine *The New Republic*, because it has 136 British subscribers. American actor Sylvester Stallone is suing a columnist for *The Independent on Sunday* for questioning his patriotism. Encouraged by a 450,000 pound award won in Britain by a Greek citizen against a Greek newspaper that had circulated only 50 copies in Britain, former Greek Prime Minister George Papandreou sued *Time* magazine over a bribery allegation.[37]

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[36] *Article 19 1991 World Report*, p. 333.

[37] Robertson, *Communications Lawyer*.

One way of measuring the impact of British libel laws is to compare material published in Britain and the United States. When British newspapers published reports, in the early stages of the Gulf War, on firms doing business with Iraq, based on information released by the U.S. government, there was a rash of libel actions. In order to avoid libel suits in Britain, 22 cuts had to be made in William Shawcross's book about U.S. action in Cambodia, *Sideshow*. U.S. Senator Daniel Patrick Moynihan's famous jibe about Henry Kissinger -- that the former Secretary of State "doesn't lie because it's in his interest, he lies because it's in his nature," -- is routinely edited out of British books about American politics. There was heavy blue-pencilling in the *Daily Telegraph* of excerpts from Kitty Kelley's recent biography of former U.S. First Lady Nancy Reagan.[38]

Occasionally defamation law is applied in an almost farcical fashion. A television host recently accepted "substantial" five-figure damages over a newspaper article claiming that he had wrecked a Florida couple's "dream" underwater wedding by being "sick on the vicar."[39] An autobiographical novel, *A Dog's Life*, by biographer and former British PEN President Michael Holroyd, has been published in the United States, but not in Britain, because Holroyd's British publisher canceled the contract after Holroyd's father, who had been shown a copy of the manuscript, threatened a libel suit.[40] McDonald's threatened a libel suit and obtained changes in the script of a satirical play performed in Scotland, entitled "MacBurgers -- Real Neat Scotch Fare." [41]

ALTERNATIVES TO LIBEL

One reason the British libel laws are so harsh is that there is widespread

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[38]*The Independent Magazine*, April 27, 1991, p. 10.

[39]*Glasgow Herald*, April 27, 1991, p. 8

[40]"Charms and the Man," Arthur Lubow, *Vanity Fair*, September 1991.

[41]Letter from Article 19 to McDonald's, July 9, 1991.

revulsion in the country at the excesses of a vigorous tabloid press. An often-cited example is that when a popular television actor lay dying in a hospital as a result of wounds received in an auto accident, one reporter posed as a doctor to obtain his treatment notes, and another sent messages to fellow patients in the intensive-care ward offering large amounts of money for information about his condition.[42]

Concern about an abusive and irresponsible press has led to the establishment of a series of private bodies charged with staving off the threat of government regulation. The Press Complaints Council, which considers complaints of unfair or inaccurate press coverage, is the latest in a series of such self-policing efforts. It cannot award compensation or enforce compliance with its adjudications, but in 1989 it considered 1,484 complaints for all national and regional newspapers and magazines, upholding 73, including 47 for national press.[43]

Since 1881, British law has provided a limited right of reply where defamatory statements are made at certain public meetings or company annual general meetings, and in police and government notices. The person who believes he or she has been defamed is offered an opportunity to provide "a reasonable letter or statement of explanation or contradiction."[44]

PROPOSALS FOR REFORM

There appears to be no serious discussion of curbing the scope of British defamation laws to require plaintiffs to meet a higher standard (such as the U.S. rule, set down by a unanimous Supreme Court in *New York Times v. Sullivan*, that plaintiffs prove "actual malice" -- that statements were made with "reckless disregard" for their truth or falsity in order to collect damages). Most critiques of the defamation law focus on curbing excessive damages by juries. The Conservative Government supported damage limitations in a February 1990

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[42]Robertson, pp. 99-100; Hooper interview.

[43]"Trampling Over Freedom," Liz Forgan, *Index on Censorship*, June 1990, p. 32.

[44]Section 7, 1952 Defamation Act, Part II.

report, but no action has yet been taken.

Another frequent criticism is that libel is the only area of common law for which legal aid is not available. According to Justice, a law reform group, "The lottery of libel is out of control. At one extreme the absence of legal aid for libel means that the poor (and not-so-poor) can be libelled with impunity and have no means of remedy. At the other extreme, the level of libel damages (and of settlements in anticipation of them) make libel trials a very expensive game, which is made even more of a gamble by the rules on payment into court. There must be a better way of protecting reputation."[45]
The Lord Chancellor recently suggested that printers should be entitled to the same defense now available to distributors, that they were not aware of the contents of a publication.[46]

Criminal libel still exists in all of the United Kingdom except Scotland, but it is rarely used, because plaintiffs need permission from the High Court to file charges.[47]

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[45]"Freedom of Expression and the Law," Justice, 1990, p. 10.

[46]*The Times*, May 15, 1991.

[47]Law of Libel Amendment Act 1988.

III. PUBLIC ORDER

> There have been moments during the argument in this case when it appeared to be suggested that the Court had to do with a grave case involving what is called the right of public meeting. I say "called," because English law does not recognize any special right of public meeting for political or other purposes. The right of assembly...is nothing more than a view taken by the Court of the individual liberty of the subject.
>
> -- *Lord Chief Justice Hewart*[48]

In contrast to other European countries, there is no affirmative right in the United Kingdom to engage in peaceable public assembly or to hold a meeting in a public place.[49] Even to stand on a soapbox at the famous Hyde Park Speaker's Corner requires prior permission from the Department of the Environment.[50] Urged in 1986 to include a right of peaceful assembly in the revision of the Public Order Act, the Home Office refused, but sent around a circular urging local police to bear the concerns of protesters in mind.

Not only does Britain lack affirmative protections for public protest, but the most recent reform of its Public Order Act, in 1986, significantly expands police power to control public marches, meetings and picketing, capitalizing on a

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[48]In *Duncan v. Jones*, (1936), KB249, a case concerning the right of an unemployed worker to speak at a public meeting.

[49]"Replies of Governments to the Secretary-General's Enquiry Relating to the implementation of Articles 8-11 of the European Convention on Human Rights," Council of Europe, October 1976.

[50]Organizations refused such permission include the Campaign for Nuclear Disarmament, "Save Greece from Fascism," Northern Ireland Civil Rights Movement and other organizations connected with events in Northern Ireland.

period of public concern over a series of events in the mid-1980s including inner-city riots, strikes by miners, marches by racist groups, and anti-nuclear demonstrations.

LEGAL STRUCTURE

According to Denis Galligan, Co-Director of the Institute for Criminal Justice at the University of Southampton, "there is little support in English law for even the most modest claims" for "positive rights to the resources and facilities necessary to ensure the worth and effectiveness of public protest:"

> All that the law typically recognizes is a liberty to enter certain public places, such as streets, parks, and halls, for a range of possible activities which may include acts of protest. That liberty may, according to the circumstances, be protected by a range of immunities from interference by persons acting in an official or private capacity. But everything does indeed depend on the circumstances, and, when the object is public protest, the liberties in issue are likely to be subject to a host of restrictions on the use of roads and streets.
>
> Decisions about public protest are made by the police, local officials, the Home Secretary, and the courts, and are to a substantial degree discretionary ... decisions are made in the relative absence of reasonably specific and binding standards, and depend to a significant degree on the views and assessments of those making the decisions. Typically the exercise of discretion is not subject to appeal or review on the merits.
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> [The v]iew of the law established in a chain of judicial decisions ... that the police have extremely wide powers to intervene in acts of public protest ...[51]

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[51]"Preserving public protest: the legal approach," by Denis Galligan, in *Civil Liberties in Conflict*, Larry Gostin, ed., Routledge (London and New York) 1988.

There is no practical right of appeal from police decisions to restrict or ban public assembly, unless they are found to lack any reasonable basis -- something British courts have been disinclined to find.

The broad power to order changes in the site or numbers of a demonstration carries the potential for interference with the intended message and impact of the protest. For example, a demonstration against the South African Embassy could be moved to the New Zealand High Commission, or a mass trade union picket could be limited to a dozen persons.

Not only may the police ban or impose restrictions on a specific demonstration, but if the Chief Constable believes these are not sufficient, since the adoption of the 1936 Public Order Act -- passed during a period of frequent clashes between fascist and communist groups -- he or she can apply to the local authority for permission to impose blanket bans on all processions for up to three months, subject to the approval of the Home Secretary.[52] Blanket orders aimed at preventing a march by the National Front have resulted in the cancellation of "Save the Whales" rallies and the annual May Day procession in London sponsored by trade unions.[53] Between 1936 and April 1980, only eleven bans were imposed in Great Britain. But from April 1980 to June 1982 there were 51 total bans. In 1989, according to a government report,

> Processions and marches within a 4-mile radius of the Stonehenge monument were banned over a short period around the summer solstice. The ban had a useful deterrent effect in that far fewer people converged on the area than in previous years and the solstice passed off without serious incident.
>
> Processions were also banned in York over the Remembrance Sunday weekend as a result of the risk of confrontation

[52]Except in London, where the Home Secretary acts directly upon the recommendation of the Metropolitan Commissioner of Police.

[53]Robertson, *Freedom, the Individual and the Law*, p. 73.

between supporters and opponents of the British National Party.[54]

Most of the total bans were justified on the grounds of preventing racist marches, but there has been a considerable spillover effect. Friends of the Earth lost 5% of its annual income when a long-planned march against nuclear power had to be canceled at the last minute because it fell within the banning period imposed to deal with National Front march. After losing its seventh demonstration in five months, the Campaign for Nuclear Disarmament asked the Court of Appeal to quash an order banning all demonstrations in London during May 1981. The court conceded that the reasons for the ban were meager, but held that it could not be overturned unless there were no reasons at all -- a virtually impossible standard to meet. According to Liberty, no case of judicial review against the police in this context has ever succeeded.

In short, the fate of demonstrations is entirely in the hands of the local public authority, with no effective recourse against arbitrary decision or political discrimination in the use of public facilities.

PUBLIC ORDER ACT OF 1986

Beyond this basic structure, which has been in place since 1936, the 1986 Act further expanded police powers over demonstrations, marches and assemblies. It requires six days' advance notice of demonstrations, with criminal penalties for failure to comply. Where formerly police could impose conditions on marches only on grounds that "serious public disorder" may result, they now may take action based on anticipation of "serious disruption of the life of the community" or "serious damage to property" or if they believe that the purpose of the gathering is to intimidate people. The revised act also explicitly permits the police to impose limits on the numbers and the sites of meetings, demonstrations and pickets and creates for the first time the criminal offense -- subject to a maximum penalty of five years' imprisonment -- of "violent disorder" when three or more persons use or threaten violence in way that "a person of reasonable firmness present at the scene would fear for his personal

[54]From Report of Her Majesty's Chief Inspector of Constabulary for the Year 1989 cm 524, July 1990.

safety." Yet no actual violence need take place and nobody need be present who attests to fear for his or her personal safety.

Another new offense, contained in Section 5 of the Act, is to use "threatening, abusive or insulting words or behavior, or disorderly behavior ..." or display "any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby." While the section was designed as a tool against racial harassment, during the 1987 general election it was invoked (unsuccessfully) to prosecute students who put up a satirical poster portraying Prime Minister Thatcher as a sexual dominatrix, and has also been used against two 19-year old men for kissing in the street. (They pled guilty and received fines of 40 pounds each.)[55]

Britain's first race hatred legislation, the Race Relations Act of 1965, required proof of the speaker's intent to stir up race hatred, but this safeguard has since been repealed.

Prosecutions for incitement to racial hatred may be brought only with the approval of the Attorney General and are relatively rare. There were 28 prosecutions from 1976-82, and fifteen in 1984, as tensions mounted over immigration. Two pending at the present time involve a candidate for Parliament who used a racial epithet about an opponent, and an anti-Semitic "blood libel" charge.[56] The offense applies not only to remarks at public meetings and demonstrations, but even to theatrical performances, subject to a requirement to assess the material by "taking the performance as a whole." It is also an offense to possess racially inflammatory material, with no express exceptions for authors, journalists or scholars, checked only by the requirement to obtain the attorney general's approval for prosecution.

Until 1990, the BBC and independent television stations were exempt from the racial incitement laws, but they were included for the first time in the Broadcasting Act of 1964.

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[55]"Public Order Outrage," *The GALOP Bulletin*, No. 3, June 1988.

[56]Interview with Anthony Lester, April 24, 1991.

The Malicious Communications Act of 1988, also aimed primarily at racial harassment, makes it an offense to "send a letter or article which is threatening or contains a message which is indecent or grossly offensive, or which is false, if the intention of the sender is to cause distress or anxiety."[57] There have been no reported prosecutions to date.

Few would assert that the race hatred laws have had much impact in stemming racist sentiments. In fact, as a Home Office paper on the law pointed out, while it appears to have resulted in "a shift away from crudely racialist propaganda, it is not an unmixed benefit. The more apparently rational and moderate is the message, the greater is its probable impact on public opinion." [58] In addition, as in much of the world, the law is often applied in an arbitrary manner. Shortly after the adoption of the first racial incitement statute in 1965, the first person jailed for a race hatred offense was Michael X, convicted by an all-white jury in 1967 for black-consciousness remarks. The first prosecution under a revised section in the 1986 Public Order Act was of a demonstrator at a reception at South Africa House who shouted "Apartheid murderers" at visitors, who refused police orders to move out of earshot. The charge was dismissed when the police conceded that they had given the order simply to avoid discomfort to the visitors. During a visit to London in April by the Reverend Al Sharpton of New York, a young white demonstrator was charged under the incitement clause for waving a banana at the minister.[59]

In contrast to France, Austria and several other European nations, the United Kingdom does not criminalize the expression of views that are merely insulting to racist groups, and has not seriously considered proscribing such groups. The provisions on incitement to racial hatred do not apply to Northern Ireland, but a similar provision aimed at the incitement of religious hatred is in force there.

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[57]Joanna Oyediran, "The United Kingdom's Compliance with Article 4 of the Convention for the Elimination of All Forms of Racial Discrimination," April 1991.

[58]Cmnd 6234 (1975).

[59]"Mouth of the Thames," *Newsweek*, May 13, 1991, p. 47.

BINDOVERS

Any ruling pertaining to a public order offense can made binding on future activities, a classic prior restraint on expression. Bertrand Russell and Campaign for Nuclear Disarmament campaigners were sent to prison in 1961 for refusing to be bound over; Pat Arrowsmith was jailed for six months in 1969 for refusing to provide sureties for future good conduct after an anti-Vietnam War demonstration. The practice has recently been applied to anti-hunting demonstrators.

The police power to restrain "breaches of the peace" has been abused. In 1984, carloads of striking miners were turned back several hundred miles from their destination. Courts can also impose as a condition of bail for those accused of public order offenses that they not engage in picketing except at their own place of work.

POLICE AND CRIMINAL EVIDENCE ACT

The Police and Criminal Evidence Act of 1984, which significantly expanded police powers of search, arrest and detention, also broadened their authority to seize otherwise confidential papers for purposes of investigation into a "serious arrestable offense" -- for example, to seize journalists' untransmitted film. After a March 1990 protest rally against the unpopular "poll tax" turned violent, London police demanded that television stations and newspapers hand over unused film so they could find and charge suspects. When they refused, the police obtained court orders to compel 29 news organizations, including the Associated Press, to hand over film taken at the rally. In addition to raising freedom-of-the-press issues, this action endangered journalists. At a later rally in October, photographers were singled out for attack from members of the crowd fearful of being photographed.

The BBC's chief of editorial policy, John Wilson, wrote in a report to the International Press Institute that "Official police requests in Britain for journalistic material used to be rare. Now they are frequent, and police easily get court orders for material to be handed over."[60]

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[60]Cited in *Newsletter on Intellectual Freedom*, American Library Association, March

IV. BROADCASTING AND FILMS

> If you work for a regulatory body, you have to have the stomach for regulation.[61]
>
> -- *Claire Mulholland, Independent Television Commission*

British television productions have received world acclaim, but in recent years the traditional independence of British broadcasters has been eroded. Government power to control this important medium has always been present, but recently it has been used with distressing frequency as a tool to achieve political objectives or shield the government from criticism or embarrassment.

The best-known example of this trend is the "broadcast ban" imposed in 1988 on interviews with members of the outlawed Irish Republican Army or its lawful political organization, Sinn Fein. But there have also been frequent bans on interviews with present or former members of the security and intelligence services. A threat of prosecution under the Official Secrets Act caused the BBC to drop plans to air the program, "Get By in Russian." The government has also obtained injunctions against a broadcast which aimed to recreate the court hearing into the 1973 Birmingham pub bombings and has banned Duncan Campbell's documentary, "The Secret Society," which disclosed the concealment from Parliament of a massive expenditure for the "Zircon" spy satellite.

Moreover, it was revealed in 1985 that senior officials of the BBC had been forced to sign a pledge of compliance with the Official Secrets Act, and that MI5 had vetted BBC employees. The BBC ended security vetting in April

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1991, p.52.

[61]Panel discussion on Channel 4, April 28, 1991.

1986.[62]

LEGAL STRUCTURE

The British Broadcasting Corporation is incorporated by Royal Charter. Nine governors are appointed by the Crown on the advice of the Prime Minister. The BBC's licensing agreement permits the Home Secretary, in an emergency and when he or she deems it "expedient" to act, to send troops to "take possession of the BBC in the name and on behalf of Her Majesty." Prime Minister Anthony Eden considered invoking it during the Suez crisis, and Margaret Thatcher cited it during the Falklands War as authority for using BBC transmitters to beam propaganda broadcasts to Argentina.

The licensing agreement also permits the Home Secretary to bar the BBC from transmitting any program at any time. Apart from a tradition of a largely hands-off approach to broadcasting content, the only safeguard against political censorship is the provision that the BBC "may" tell the public that it has received such an order.

INDEPENDENT BROADCASTING

In recent years, two independent television channels have been established, governed by a Crown-appointed Independent Television Commission, which has similar powers over program content. Section 10 of the Broadcasting Act permits the Home Secretary "at any time, in writing, [to] require the commission to refrain from broadcasting any matter or classes of matter as specified ..."

The Commission is required by Section 6(1)a of the 1990 Broadcasting Act of 1981 to assure:

"(a) that nothing is included in the programs which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling ...

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[62] *Index on Censorship*, June 1986, Volume 15, No. 6

"(b) that due impartiality is preserved on the part of persons providing the programs as respects matters of political or industrial controversy or relating to current public policy."

The ITC is composed of 18 government appointees empowered to grant independent broadcast licenses for eight- or ten-year periods. It is not required to hold public hearings, publish applications, or make known its reasons for giving or withholding licenses.

BROADCASTING BAN

On October 19, 1988, then-Home Secretary Douglas Hurd sent to the British Broadcasting Corporation (BBC) and the Independent Television Commission (then called the Independent Broadcasting Authority) notices requesting that they refrain at all times from broadcasting

> any words spoken whether in the course of an interview or discussion or otherwise, by a person who appears or is heard on the programme in which the matter is broadcast where
>
> (a) the person speaking the words represents or purports to represent an organization specified in paragraph 2 below, or
>
> (b) the words support or solicit or invite support for such an organization.[63]

This order, subsequently known as "the broadcasting ban," was issued under Section 29 of the Broadcasting Act of 1981 and the BBC's Charter.

The eleven organizations specified included banned Republican paramilitary groups (the IRA, its women's and youth wings, the INLA (Irish National Liberation Army) and Saor Eire; illegal Loyalist paramilitary groups (the Ulster Volunteer Force (UVF), the Ulster Freedom Fighters (UFF) and the Red Hand Commandos); a legal Loyalist paramilitary group, the Ulster Defense

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[63] *Speak No Evil: The British Broadcasting Ban, The Media and the Conflict in Ireland*. Glasgow University Media Group, Glasgow, 1990, page 14.

Association (UDA); and two legal political parties -- Sinn Fein, the political arm of the IRA, and a smaller group, Republican Sinn Fein.[64]

Under the ban a person's face can be seen; the words he or she speaks can be read by someone else, paraphrased, or printed on the screen, but his or her own voice cannot be heard. In guidelines drawn up by the Home Office, two exceptions to the ban were permitted: (1) members of the proscribed organizations were allowed to speak on radio or TV during election campaigns or during proceedings at Parliament in Westminster, and (2) elected representatives -- Sinn Fein councillors and Member of Parliament Gerry Adams -- were allowed to be heard speaking about constituency matters, as long as they were not speaking on behalf of an organization listed in the ban. (Commentators promptly pointed out that in some situations it is difficult, if not impossible, to determine whether an elected official, when discussing issues concerning constituents, is speaking as well for an organization.)

According to Home Secretary Hurd, the broadcasting ban was initiated because the appearance on radio or TV of members of paramilitary groups had "caused widespread offense" to listeners and viewers.[65] Prime Minister Margaret Thatcher said of the ban, "To beat off your enemy in a war, you have to suspend some of your civil liberties for a time."[66]

A spokesperson for the Northern Ireland Office told us that the broadcasting ban is not censorship, since a person's views can be heard -- it is only his or her voice that is kept off the air. He reported that the government believes that a person's appearance on television is an "emotional layer" on top of his or her words, and that "terrorists'" appearances on television caused an "intolerable level of offense."[67]

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[64]*No Comment: Censorship, Secrecy and the Irish Troubles*. Article 19, London, 1989, page 24.

[65]*No Comment*, page 26.

[66]*Ibid*., page 25.

[67]This has led to absurd situations like a December 1990 interview with Gerry Adams in which an actor's reading of Adams's words was synchronized with Adams's appearance on

A spokesperson for the Home Office in London told us that the ban had been set up because it "caused offense to ordinary, law-abiding members of the public; because it was a platform for publicity for paramilitaries, and lent them a spurious respectability; and because it was used to intimidate law-abiding people in Northern Ireland -- if someone was killed because he or she worked for or supported security forces, a paramilitary supporter would say, `he was killed because he supported security forces -- let this be a warning.' In other words, the government introduced the measure to protect the public from intimidation." The spokesperson told us that the fact that the number of inquiries of Sinn Fein by journalists had declined considerably indicated that the ban had been effective.

Voice-overs of Sinn Fein speakers were used thirty times by the BBC during the first year of the ban's existence.[68] Most of these voice-overs were used in current news reports, but many others related to historical or archival material.

Some of the programs affected were:

- A children's history series, *Understanding Northern Ireland*, which was not allowed to show Ireland's first Prime Minister, Eamonn de Valera, or Nobel Peace Prize winner and former IRA chief of staff, Sean McBride.[69]

- The film *Mother Ireland*, which included an interview with Mairead Farrell, who was shot and killed by security forces in Gibraltar in 1988, was rejected by Channel 4.

- The song, "Streets of Sorrow/Birmingham Six," which was banned by the IBA in November 1988. Performed by the group The Pogues, the song

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television; unless viewers knew Adams's voice, they would have thought Adams himself was speaking.

[68] *Ibid*., page 32.

[69] *Index on Censorship*, October 1990, page 34.

proclaims the innocence of the Guildford Four and the Birmingham Six (all subsequently released by the British government in "Miscarriage of Justice" cases). The IBA banned the song because it "solicited or invited support" for a listed organization because it contained a "general disagreement with the way in which the British government responds to and the courts deal with the terrorist threat in the UK."[70]

- The Thames TV series, *The Troubles*, which first appeared in 1981, had to be re-edited before it could be shown again in 1989.[71]

- A passage in a Channel 4 film, "Trouble the Calm," which was cut out and subtitled in May 1989. A caption read: "Under government broadcasting restrictions, in force since October 1988, this woman cannot explain her husband's beliefs and motivations which led to his imprisonment."[72]

The broadcasting ban has also resulted in self-censorship because of difficulties in interpreting it. Deciding whether someone who is not a member of a listed organization will speak in "support" of a listed organization or will "solicit or invite support for such an organization" is not always easy. A broadcaster must either pre-record an interview and expurgate prohibited words, or play it safe and refrain from interviews. A number of people who are not members of listed organizations have been banned, including Brighton Labour Councillor Richard Stanton, former M.P. Bernadette Devlin McAliskey, American author Margie Bernard, and an uncle of Paul Hill, one of the "Guildford Four."[73]

Elected representatives, including Hugh Brady, a Sinn Fein councillor in Derry, told us that although Sinn Fein councillors are supposed to be able to speak about social and economic issues -- issues of direct concern to their

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[70] *The Observer*, Nov. 20, 1988. Quoted in *Speak No Evil*, *op cit*., p. 47.

[71] *No Comment*, *op cit*., pages 32 and 33.

[72] News release for *Speak No Evil*, October 11, 1990, page 2.

[73] *Ibid*.

constituents -- as long as they are not speaking on behalf of a listed organization, they are frequently denied the opportunity to appear on radio or television. Hugh Brady told us that the broadcasting ban has affected him directly. "Not every councillor can speak on radio or TV," he said; "you can only talk if you are the chair of a major committee. Also, when an actor reads your words, they can be misconstrued." A spokesperson for the banned Loyalist group, the Ulster Defense Association, however, told Helsinki Watch that the broadcasting ban had not significantly affected the UDA.

On December 19, 1990, Home Secretary Kenneth Baker announced that the broadcasting ban would continue, and would be extended to include for the first time cable and non-domestic satellite television services. Explaining the extension, Secretary Baker said:

> The Government believes the current broadcasting restrictions have proved effective in generally preventing terrorist spokesmen and their supporters from gaining direct access to television and radio in this country, and thus denying them the publicity they continually seek.[74]

John Alderdice, leader of the Alliance Party, told us that the government's approach, as reflected in the broadcast ban, is "incoherent and nonsensical. I sit on the Belfast City Council; Sinn Fein is there too, but they can't be interviewed on the issues and broadcast." Tom Lyne, the British Labor Party's researcher on Northern Ireland, told Helsinki Watch that the Labor Party opposes the ban.

The Director-General of the BBC, Michael Checkland, and its chair, Marmaduke Hussey, called the broadcast ban a "damaging precedent ... that will make our reporting of Northern Ireland affairs incomplete."[75] The Labor Party's shadow Home Secretary feared that "this proposal will be used both at home and abroad, and particularly in the U.S.A., to portray this Government as the enemy

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[74]*The Guardian*, December 12, 1990.

[75]"British Radio and Television Censored," *Index on Censorship Briefing Paper* No. 308, October 20, 1988.

of free expression." Sinn Fein spokesperson Danny Morrison warned, "the British public won't get our point of view. That's why the I.R.A. carry out bombings. The British public listens to bombings."

Shortly after the ban was announced, then-President Botha of South Africa warned his country's press to "exercise self-discipline and smother the views of people advocating violence." Otherwise, he said, "they mustn't complain when we adopt measures similar to those used by the British Government."[76]

Article 19 has challenged the broadcasting ban in a case that is now before the European Court of Human Rights at Strasbourg, following a ruling by the House of Lords in February 1991 upholding the ban. Article 19 argues (1) administrative decisions should not, in the absence of pressing social need, interfere with the fundamental right to freedom of expression recognized by UK common law and guaranteed by Article 10 of European Convention of Human Rights; (2) the proportionality principle requires inquiry as to whether the means are disproportionate to the ends.[77]

The last time the Government exercised its option to limit broadcasting was in 1964, when it banned subliminal ads from television.[78] The effort to overturn the Northern Ireland ban suffered a setback when the European Commission on Human Rights refused an application by Irish broadcast unions to appeal a similar ban against the broadcasting of interviews with members of proscribed organizations in effect in the Republic of Ireland since 1973.[79]

OTHER BANNED PROGRAMS

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[76]IPI Report, December 1988, p. 31.

[77]"United Kingdom Broadcasting Ban Case," *Article 19 Bulletin*, Issue Eleven, April 1991.

[78]"Broadcast Curbs Ordered on Ulster," *New York Times*, October 20, 1988.

[79]"European Court upholds rule denying access to Eire radio and TV," *Index on Censorship*, July 1991, p. 33.

The broadcasting ban is not the only occasion when the British government has invoked its powers over broadcasting. There have been a number of other instances involving Northern Ireland or other matters allegedly involving national security:

- "At the Edge of the Union," which included an interview with the chief of staff of the Irish Republican Army, was canceled by the BBC in 1985 after the government asked for its withdrawal on the grounds that it was "against the national interest." The Chairman of the BBC's Board of Governors denied political interference in the decision,[80] but the action led to a one-day strike by television and radio journalists all across the country.[81] Prime Minister Thatcher said she would "utterly condemn" the program, but asserted that neither she nor Home Secretary Leon Brittan had seen it.[82]

- In 1988, the BBC rejected an appeal from Foreign Secretary Geoffrey Howe to delay the broadcast "Death on the Rock," a program questioning the government's version of events surrounding the killing of three IRA members in Gibraltar. The program focused on the controversy over whether the unarmed IRA members had been shot while trying to give themselves up, or, as the government claimed, because they had made "threatening gestures." The government asserted that the broadcast could affect the fairness of the inquest into the matter, but none of those interviewed had been questioned by government or asked to appear at the hearing.[83]

- "The Secret Society," a series of six programs, was banned by BBC Director-General Alistair Milne in January 1987 because one concerned the secret $800 million Zircon spy satellite, developed in defiance of an understanding that defense projects over 250 million pounds would be disclosed

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[80]"BBC Cancels Documentary," *Washington Post*, July 31, 1985.

[81]"BBC is Caught Up in New Furor," *New York Times*, August 22, 1985.

[82]"Britain Wants TV Show Withheld," *Washington Post*, July 30, 1985.

[83]"BBC Defies Thatcher, Shows IRA Program," *Washington Post*, May 6, 1983, A25.

to the House of Commons Public Accounts Committee. Police raided producer Duncan Campbell's home and the offices of the BBC in Glasgow, taking away many files pertaining to the program, unused film and all six films in the series.[84]

- In 1987, when the BBC announced plans to air "My Country Right or Wrong," a three-part documentary about the nation's intelligence services, the government first sought to obtain an advance transcript. The BBC responded that the programs breached no secrets and declined to cooperate. The Home Office then proceeded to obtain a High Court injunction against any program covering the workings of the intelligence agencies -- extending even to naming Peter Wright, the author of "Spycatcher." Sir Patrick Mayhew, Attorney General, denied that censorship was involved and claimed he was only enforcing "the duty of the Government to protect the confidentiality that is owed to it."[85]

A murkier area, similar to the controversy over the National Endowment for the Arts in the U.S., arises when the BBC itself bans programs. On the one hand, the process of programming is inherently one of selection, akin to an editorial process at a newspaper. On the other hand, the BBC is quasi-governmental, and a decision by its governors to block a program or to require alterations in it involves the state in the process and inevitably introduces political considerations. For example, in 1979, when the BBC canceled a production of Ian McEwen's play, *Solid Geometry*, producer David Hare was told that incoming Prime Minister Margaret Thatcher would be embarrassed by the recording of a play "which featured a twelve-inch penis in a bottle" and warned that his contract would be revoked if he discussed the controversy with the press.[86] Other television productions blocked by the BBC include Quentin Crisp's "The Naked Civil Servant;" Dennis Potter's "Brimstone and Treacle;" "Scum," a play about prison conditions in Borstal; and "The War Game," a film

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[84]*Index on Censorship*, March 1987.

[85]"Cries of Censor as Britain Bars Another Broadcast," *New York Times*, December 6, 1987.

[86]"Ah mischief: the role of public broadcasting," David Hare, *The Guardian*, August 15, 1981.

made in 1965 about the horrors of nuclear war and not shown for 20 years.[87]

BROADCASTING COMPLAINTS COMMISSION

A recently-initiated vehicle for influencing the content of television and radio programs is the Broadcasting Complaints Commission, whose three members are appointed by the Home Secretary to investigate and issue public rulings concerning complaints of unfair treatment, invasions of privacy, or "offensive" programming by broadcasters. This government "watchdog" is chaired by Lord William Rees-Mogg, who has recruited 2,000 volunteer "monitors" to send in reports on television sex and violence. He told the *New York Times* that "he feels no conflict because he is part of a society that takes a more restrictive view of freedom of the press and freedom of expression than does the United States. `One has to remember, first of all, that the United States has a First Amendment and we don't,' he said. `We have got a difference here of constitutional background and culture.'"[88]

OTHER BROADCASTING REGULATIONS

In addition to the broad powers given to the Home Office over program content, a number of other specific provisions regulate content. Section 6 of the Broadcasting Act attempts to assure impartiality in programs -- like the Fairness Doctrine in the United States -- by requiring broadcasters to air an opposing view at a similar time on the same channel as the original broadcast. It also bars any "improper exploitation" in religious programs.[89] Section 93 of Representation of the People Act prevents the broadcast of any radio or television program featuring candidates in which all do not take part -- effectively giving incumbents or front-runners a veto over any debate.

FILM AND VIDEO REGULATION

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[87]Robertson, p. 232.

[88]"In Tory Country, Someone to Watch Over TV," *New York Times*, June 10, 1988.

[89]"Evangelism on TV," letter to *The Times* from Michael Alison, MP for Selby (Conservative) and Lord Orr-Ewing, March 29, 1991.

Film censorship is achieved through a combination of public and private powers. The rating of films is carried out by a private, industry-appointed body, the British Board of Film Censors. To this extent, the system of film regulation is analogous to the role played by the Motion Picture Association in the United States. But British movie theatres must be licensed by local government authorities, and it is here that the actions of the BBFC acquire force, because compliance with its classifications is one of the conditions of licensing.[90]

James Ferman, president of the British Board of Film Classification, and a former TV director, calls himself a "poacher turned gamekeeper." He has asserted that he cares about "bringing a modern set of principles to censorship" and boasted that "one of the first things we did was to clamp down on porno-rape; we don't allow it at all now, and we have gone back and taken it out of films uncut before that date."[91]

The rating system under which such determinations are made contains six different categories, ranging from "U" (for "universal," or suitable for all ages) to 18R, restricting distribution "through segregated premises to which no one under 18 is admitted." These categories have been endorsed by the Home Office and by all local councils enforcing cinema regulation. While most of the films affected by these categories include some degree of explicit sex or violence, there are concerns that political considerations may sometimes play a part. Film director Michael Winner complained that "`Born on the Fourth of July,' a serious anti-war film, was given an 18 certificate ... Chile and South Africa were the only other countries they could think of that gave this film an 18."[92]

The Video Recordings Act of 1984 provides an even more extensive

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[90]Kevin Boyle, "Freedom of Expression" in *Human Rights in United Kingdom*, p. 93.

[91]"First Impressions and Second Thoughts," James Ferman, *Index on Censorship*, March 1991.

[92]1990 Guardian lecture on Film Censorship in the UK, by Michael Winner.

scheme of government regulation of films released on videocassette, permitting the BBFC not only to classify tapes but to require cuts in them before they can be released for sale or rental. There are exceptions for tapes concerning sports, religion, music or documentaries, unless they deal "to any significant extent" with sex or violence.

Among the films that have been cut by the BBFC before approval for video release are *Christianne F*, about heroin addicts; *Crocodile Dundee*, over a comic scene involving cocaine-sniffing; Alfred Hitchcock's *Frenzy* and the Charles Bronson film *Death Wish*.

Because the BBFC charges distributors for the cost of reviewing the films, one consequence of the screening process has been that a number of less commercially profitable titles have not been submitted, reducing the choices available to viewers. To handle the new regulatory load, the BBFC's staff has grown to over fifty persons.

V. NORTHERN IRELAND

> Fifty-three people lost their jobs at the Glencairn Community Association. The government just walked in and said, "We're closing you down." There was no time to argue. They thought a couple of the members were paramilitaries, so the whole community was "linked to paramilitaries."
>
> -- *William Smith, Justice for All*

Because a number of measures originated in response to the "Troubles" in Northern Ireland -- such as the broadcast ban, the proscription of organizations, and the Home Secretary's power to exclude British subjects from one part of the United Kingdom to the other -- apply throughout the United Kingdom, they are dealt with in previous chapters.

There remain two provisions affecting freedom of expression that apply at this time only to Northern Ireland: the defunding of organizations on political grounds and the loyalty oaths required of all persons seeking public office in Northern Ireland.

POLITICAL VETTING OF COMMUNITY ORGANIZATIONS

At least 26 organizations have lost their funding since 1985 because the Northern Ireland Office has decided that it was not in the public interest to fund them, since they had "sufficiently close links to paramilitary organizations."[93] An organization is not told the reasons for this action, is not given a hearing or an opportunity to state its own case or to cross-examine witnesses against it.

Political vetting in Northern Ireland began on June 27, 1985, when then-Secretary of State for Northern Ireland Douglas Hurd reported to Parliament that, while the government was determined to support genuine "voluntary and community-based activity in Northern Ireland, I am satisfied, from information available to me, that there are cases in which some community

[93] Statement of Northern Ireland Office, reported on the BBC in September 1990.

groups, or persons prominent in the direction or management of some community groups, have sufficiently close links with paramilitary organizations to give rise to a grave risk that to give support to those groups would have the effect of improving the standing and furthering the aims of a paramilitary organization, whether directly or indirectly. I do not consider that any such use of government funds would be in the public interest, and in any particular case in which I am satisfied that these conditions prevail no grant will be paid."[94]

On the same day, a letter was sent to the Conway Mill Women's Self-Help Group in West Belfast from the Department of Economic Development (DED), telling the group that the Secretary of State had decided it was not in the public interest to continue the group's DED grant. No reason was given for taking away the funding.

Since that time, a number of other groups have fallen victim to such "political vetting," as it came to be called. Among them are:

- Conway Community Enterprises, a group that organized small job creation units, lost funding for four Action for Community Employment (ACE) workers in 1985.

- Conway Mill Creche lost funding for two ACE workers in 1985.

- Conway Education Centre, an adjunct of community education work carried out by Springhill Community House, lost money in 1985 for tutors who were working in Conway Mill.[95]

- La, an Irish language daily newspaper based in Conway Mill, lost finding for five ACE workers in September 1985.

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[94] *The Political Vetting of Community Work in Northern Ireland*, The Political Vetting of Community Work Working Group, Belfast, October 1990, page 3.

[95] Conway Mill, an old flax mill in Conway Street off the Falls road, closed in 1974. In 1982, a group of community people leased the empty building to encourage economic development in West Belfast and to promote education.

- Shantallow Tenants' Association application for funding for eleven ACE workers was denied, and its existing workers terminated in February 1986.

- Dove House, London/Derry, lost four ACE workers in June 1986, but lobbied successfully for their reinstatement in August 1986.

- Naiscoil Mhic Airt, an Irish language nursery school in Belfast, lost funding for five ACE workers in 1987.

- Twinbrook Tenants' and Community Association lost six ACE workers in August 1987.

- Glencairn Community Association lost funding for 53 ACE workers in December 1989.

- Belfast Exposed, a photography association, received funding for one ACE worker in 1984, a year before Secretary Hurd's statement, on condition that the worker be based anywhere but at Conway Mill.

In none of these cases was an organization given an explanation for its loss of funding.[96]

In the most recent case, the Irish language group, Glor na nGael, was deprived of its funding in August 1990. Glor na nGael (the voice or language of the Gael), an all-Ireland Irish language competition set up in 1961, was organized in West Belfast in 1982, at the time of a revival of interest in the Irish language. Its Belfast group has worked to set up Irish street signs, and to encourage Irish language education. In recent years, the group has organized and provided services for seven of the eight Irish nursery schools in Belfast; it has provided classes in the Irish language for the Protestant, as well as for the

[96]The NIO has the power to dispense outside funds, as well as its own. The European Community, through the European Social Fund and the European Regional Development Fund, for example, provided nearly 197 million pounds to the DED between 1982 and 1987. Most of this money went to ACE and Youth Training Programs (YTP). Also, money from the International Fund for Ireland, most of which comes from the United States Government, is funneled through the NIO.

Catholic community; and it has trained people in the teaching of a second language. The group has won awards, including an All-Ireland Prize for doing the most for the Irish language, and has been widely praised.

Glor na nGael's ACE funding began in 1984. Its 1990 budget came largely from a 90,000 pound annual grant from the government's Training and Employment Agency for ACE workers. The group used the ACE funding for training programs for twenty long-term unemployed people.

On August 25, 1990, Glor na nGael received a letter from the Training and Employment Agency telling the staff that the funding would end on August 31, 1990. The letter gave no reason for the decision except to say that it was based on the policy laid out in Douglas Hurd's 1985 statement.

Noirin Ui Chleirigh, the group's chairperson, told Helsinki Watch in January 1991: "We believe that language is not political. Learning the Irish language has led our people to have greater self-respect and self-worth. It shows us that we are not stupid. Underneath everything else in Belfast, there is a feeling of no hope -- unemployment is very high, and all people can do is think of ways to diddle money out of the dole. Some people get in a rut and don't even apply for jobs any more because they have been turned down so often. Glor na nGael had a ripple effect -- a feeling of pride that we could do something on our own. We've had success rehabilitating people -- four of our people have gone on to university."

Ms. Ui Chleirigh told us that she herself had felt inferior--like a second-class citizen. "One of my kids has been educated in English, and two in Irish. The two who've been educated in Irish have more self-respect and self-confidence; they're not defensive about being Irish. The Irish language can be a great unifying force."

William Smith, the Unionist who heads Justice for All, an organization devoted to exposing government harassment of the Protestant community, told Helsinki Watch:

> One of the biggest cases of political vetting happened here. Fifty-three people lost their jobs at the Glencairn Community Association. The government just walked in and said, "We're

> closing you down." There was no time to argue. They thought a couple of the members were paramilitaries, so the whole community was "linked to paramilitaries." And political vetting can extend into your social life -- to hold office in a social club, like a snooker club, you have to get a license every year, and the officers' names are listed. Police will oppose your licence if they suspect anyone of connections with paramilitaries. It happened to three clubs this week -- people had to get off the list of officers because they had served time. In one case, someone served five years fifteen years ago; another served three years twelve years ago.

Political vetting can seriously harm a community group, not only in denying funding, but in branding the group as being close to a paramilitary organization. Some groups have reported that their effectiveness has been sharply curtailed; membership declines if people are afraid to be associated with a vetted group, fearing that they too will be tarred as "having close links to paramilitary organizations." Such allegations also raise the possibility that a vetted group may be targeted for violence -- even political assassination -- by opposing paramilitaries. Targeted groups have also reported difficulties in raising money from other sources once they have been marked as having close links to paramilitaries. Political vetting has effectively meant black-listing organizations. And, of course, it has also resulted in self-censorship -- a sort of self-vetting -- in which groups try to avoid any actions that might be construed by the government as suggesting ties to paramilitary groups.[97]

NON-VIOLENCE DECLARATIONS REQUIRED FOR COUNCILLORS

Anyone who runs for a seat on a district council in Northern Ireland is required by the Elected Authorities (Northern Ireland) Act 1988 to sign a declaration stating:

> If elected, I will not by word or deed express support for or approval of

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[97]For a full discussion of the effect of political vetting on community groups in Northern Ireland, see *The Political Vetting of Community Work in Northern Ireland*, *op cit*.

(a) any proscribed organization or

(b) acts of terrorism (that is to say, violence for political ends) connected with the affairs of Northern Ireland.

Since the enactment of this law, Sinn Fein candidates for council seats have all signed the declaration. Republican Sinn Fein, a smaller group, announced that its candidates would not sign such a declaration.

The Standing Advisory Commission on Human Rights opposed the oaths, and stated that it is "fundamentally wrong [to] devise artificial means to exclude councillors from local politics; such policies cannot hope to succeed in the long term.[98]

[98] *No Comment*, p.76.

VI. ANTI-TERRORISM LAWS

> The use of repressive legislation exacerbated the violence in Northern Ireland which then spread to the mainland -- followed by the emergency legislation which helped create it.[99]
>
> -- *National Council on Civil Liberties*

Draconian police powers for the prevention of "terrorism" were first introduced in the United Kingdom as a whole -- they had been in effect in Northern Ireland for some years -- in 1974, following the Birmingham pub bombings. Although originally justified as a temporary measure, the Prevention of Terrorism Act (PTA) has been renewed three times since, each time retaining the word "temporary" in its title. Initially its scope was limited to "acts of terrorism connected with the affairs in Northern Ireland," but in 1984 it was extended to cover "any acts of terrorism of any other description." Terrorism is defined as "the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear." But the law extends not simply to illegal acts, but "promoting or encouraging" such acts, and therefore penalizes the expression of advocacy.

The Prevention of Terrorism Act authorizes the proscription of organizations said to be involved in terroristic activities; the detention, for up to seven days, of those believed to be involved in such activities; and the exclusion of British subjects from one part of the United Kingdom to the other.

It also makes it an offense not to pass on information about future acts of terrorism -- encouraging detainees to furnish police with false and misleading information in order to be released from custody.

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[99] *The New Prevention of Terrorism Act: The Case for Repeal*, Catherine Scorer, Sarah Spencer and Patricia Hewitt, National Council for Civil Liberties, 1985.

BANNING OF ORGANIZATIONS

Section 1 of the 1989 PTA enables the Secretary of State to "proscribe in Great Britain any organization that appears to him to be concerned in terrorism occurring in the United Kingdom connected with Northern Irish affairs, or in promoting or encouraging it." The IRA has been proscribed since 1974, and the Irish National Liberation Army since 1979. As the United Kingdom reported to the U.N. Human Rights Commission, "It is an offense under the 1978, 1987 and 1989 Acts to belong to a proscribed organization; to solicit support for or contribute to the resources of a proscribed organization; to arrange meetings in support of a proscribed organization; and to display support in public for a proscribed organization."[100]

According to Liberty, it is an offense under this provision to display, carry or wear in public anything which suggests that a person is a member or supporter of a proscribed organization -- even if he or she is not.

Persons convicted under the provision barring support of a proscribed organization under the Act include James Fegan of Glasgow, sentenced to six months' imprisonment in 1975 for selling posters to "support the boys" in the IRA, and a Sinn Fein official, Jan Taylor, fined 150 pounds in 1983 for selling a "1984 Republican Resistance Calendar" containing pictures and commemorative dates. Liberty reports that it has been consulted on a number of similar issues, from selling Easter Lilies to commemorate the Rising of 1916 in Dublin to raising money for prisoners' families and selling newspapers.[101]

While there have been few convictions under the proscription provisions of the Act, it has had the effect of curtailing debate and legitimate political activity on issues pertaining to the situation in Northern Ireland. It is widely conceded that the proscription of organizations has had no effect in stemming violence and little effect in limiting support for their views, and that it

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[100]United Kingdom (Third) Periodic Report to the United Nations Human Rights Committee Under Article 40 of the International Covenant on Civil and Political Rights, 1990, Section 278.

[101]Scorer *et al*. p. 15.

would be at least as effective, and more consistent with free expression principles, to remove the bans and prosecute members where appropriate for actual criminal offenses, but a 1983 government report, prepared in advance of the 1984 renewal of the PTA, argued that repeal of this provision would imply a change in its attitude about the banned groups.

DETENTION

The Prevention of Terrorism Act authorizes the detention for up to seven days of persons believed to belong to a proscribed organization or to be guilty of other offenses under the Act, or subject to an exclusion order. For the first 48 hours, the person can be held incommunicado, without notifying his or her lawyers, family or friends. From 1974 through 1990, according to figures made available by the Home Office, 6,932 people have been detained in connection with Northern Ireland and nearly 6,000 were released without further action taken, with most being held for fewer than 48 hours.[102]

In 1987, the European Commission for Human Rights held that Britain's detention of four men from Northern Ireland, for seven days without charges was in violation of the European Convention on Human Rights, Article 5 (3), because the detainees were not brought promptly before a judicial authority. The next year the European Court held that four days and six hours was too long, but did not specify an acceptable time period. The government then officially derogated from Article 5 (3) and continues to detain suspects for up to seven days.

INTERNAL EXCLUSION

Two other provisions, Section 5 and 6 of the act, permit the Home Secretary or the Northern Ireland Secretary to exclude a person from one part of the United Kingdom to the other for up to three years if:

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[102] *Statewatch*, March-April 1991, p. 10.

> (1) it appears to him expedient, in order to prevent acts of terrorism intended to influence Government policy or public opinion with respect to Northern Ireland affairs, and
>
> (2) he believes that a person is or has been concerned in the `commission, preparation or instigation of acts of terrorism,' or
>
> (3) he believes that a person is attempting to enter Great Britain or to Northern Ireland, with a view to being concerned in the commission, preparation or instigation of acts of terrorism.

A citizen of the United Kingdom can be restricted under these provisions to living in Great Britain -- that is, England, Scotland or Wales -- or Northern Ireland, regardless of whether he or she has any ties to the place of exclusion.

The person excluded has no right under the law to know the evidence on which the action is based, to cross-examine witnesses, to have a public or formal hearing, or to appeal the decision to a court or independent tribunal. There is no right to have an attorney present during questioning, but a person subjected to an exclusion order may have an "adviser" make representations to the government on his or her behalf. It is a criminal offense to disobey an exclusion order, or to harbor or help someone subject to an exclusion order. The exclusion order must be renewed every three years, but the procedures remain the same.

At the present, according to the Home Office in London, about 100 exclusion orders are in effect. Ninety-five of these exclude people from Great Britain or the U.K. as a whole; five or six orders exclude people from Northern Ireland.[103]

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[103]The exclusion of citizens from one part of the United Kingdom to another, and the lack of due process connected with the exercise of this power, violates various international declarations and agreements. For a full discussion of these standards, see the Helsinki Watch report, *Human Rights in Northern Ireland*, Chapter VII.

EXCLUSION OF NON-CITIZENS

Similar authority granted is to the Home Secretary under the Immigration Act of 1971 to deport or detain non-British citizens, if he or she thinks it is in the interests of national security or relations between the U.K. and another country, and "conducive to the public good." The Joint Council for the Welfare of Immigrants claims that these powers are used for internment, coercion and deterrence.[104]

Detainees have no right to apply for bail and no right of appeal. They can only make representations to three advisers chosen by the Home Office, which is not obligated to follow the advisers' recommendations. They also have no right of legal representation, but may have a friend assist them in the proceedings if the advisers permit it.

From November 1990 to January of this year, 180 nationals of Middle East countries were served with notices of intent to deport -- mostly Iraqi post-graduate students, along with some Palestinians, Yemenis, and Lebanese, including some who had lived in the United Kingdom for up to 21 years. Several dozen were interned as prisoners of war with no individual investigation of their cases.

Article 13 of the International Covenant on Civil and Political Rights requires that Britain make a demonstration of "compelling reasons of national security" that would permit it to abrogate the general principle of allowing affected persons to submit reasons against expulsion and have a review of their cases by a competent authority.

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[104]"Submission to the United Nations Human Rights Committee in Relation to the Consideration of the Report of the United Kingdom Under Article 40 of the International Covenant on Civil and Political Rights," Joint Council for the Welfare of Immigrants, March 16, 1990.

VII. OTHER ISSUES

BLASPHEMY

The British blasphemy law has lain relatively dormant for most of the last sixty years, but it was the focus of renewed attention during the controversy over Salman Rushdie's *Satanic Verses* in 1989, when many in the Muslim community demanded that the author be prosecuted for offenses to Islam. It was a time of considerable tension in England -- protest marches against the book ended in violence; several bookshops that displayed *The Satanic Verses* were fire-bombed -- but the Chief Metropolitan Magistrate refused to grant summonses against Rushdie and his publishers for blasphemous libel on the grounds that the law of blasphemy protects only the Christian religion. The ruling was upheld by the High Court.[105]

The blasphemy law was invoked again later that year, in October, with more success, when the British Board of Film Classification refused to certify the video *Visions of Ecstasy*, blocking its release for public distribution. The BBFC ruled that the video, which depicts St. Teresa of Avila's visions of Christ in an erotic manner, was insulting to believing Christians and at risk of prosecution.[106] This was the first film in the BBFC's 77-year history to be rejected on grounds of blasphemy. The BBFC's action is being challenged at the European Commission of Human Rights.

The last British blasphemy prosecution had been in 1977, when Denis Lemon, the editor and publisher of *Gay News*, was convicted for the publication of a poem by James Kirkup, in which the author used the imagery of homosexual love to convey a feeling of union with God.

In the case against Lemon, the British Courts defined blasphemous libel as "any writing concerning God or Christ, the Christian religion, the Bible, or

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[105] *ARTICLE 19 1991 World Report*, p. 338.

[106] *Ibid*.

some sacred subject, using words which are scurrilous, abusive or offensive and which tend to vilify the Christian religion."[107]

In June 1985, the Law Commission criticized the blasphemy law as "unsatisfactory and archaic."[108] The Commission found that "almost any controversial material concerning religion could be found blasphemous" and held that "the main effect of the law is to inhibit free expression about religion in a way which is elsewhere thought to be completely unacceptable."[109] The Commission also criticized the law's failure to permit a defense of allegedly blasphemous material on grounds of the artistic, literary, or cultural value of the work as a whole.

Anticipating the Muslim concern over Rushdie, the Law Commission found that "in the circumstances now prevailing in this country, the limitation of (the law's) protection to Christianity and, it would seem, the tenets of the Church of England, could not be justified." But it called for the elimination of the law, not its extension to cover all religions. It has also been argued that "the claims of public order, morality, and the rights of individuals provide insufficient justification for any offense additional to the existing breaches of the peace."[110]

In April 1989, a bill was introduced in Parliament "to abolish prosecutions for the expression of opinion on matters of religion," but it never came up for debate.

CONTEMPT OF COURT

British judges have broad authority to restrain the media from reporting

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[107]*Whitehouse v. Lemon*, cited in a report by The Law Commission; *The Law Commission, Criminal Law: Offenses against Religion and Public Worship*, Her Majesty's Stationary Office, June 18, 1985.

[108]*Ibid*.

[109]Nicholas Walter, *Blasphemy in Britain*, Rationalist Press Association, 1977.

[110]*Ibid*., p. 213.

about matters in litigation. Parliament revised its Contempt of Court Act in 1981 after the European Court of Human Rights held that the previous law, used to restrain *The Sunday Times* from publishing articles about the case against the manufacturers of Thalidomide, violated the European Convention on Human Rights. Where the old contempt law permitted restraint of the press if there was a "possibility" that the judicial process might be compromised, the new law requires a "substantial" risk of "serious" prejudice.

The law also contains an absolute prohibition against post-trial interviews with jurors; and gives judges the power to postpone reports of proceedings, ban the mention of names or other items of evidence. It was used against *The Independent*'s reporting on the *Spycatcher* litigation even though it was not a party to earlier cases involving *The Guardian* and *The Observer*. It is also an offense, though rarely invoked, to "scandalize" the court by criticizing (in Scotland, "murmuring") judges.

In December 1987 the Court of Appeal enjoined Channel 4 from re-enacting portions of a hearing in the "Birmingham Six" case, in which six Irish men appealed their convictions (since overturned) in a case involving IRA bombings in 1974. The Lord Chief Justice held that the broadcast "was likely to undermine public confidence in the administration of justice."[111]

SECTION 28: A LAW TO "RESTRAIN AUTHORITIES FROM PROMOTING HOMOSEXUALITY"

On December 8, 1987, Section 28 of the Local Government Act of 1988 was adopted by the House of Commons. It states:

> A local authority shall not:
> (a) intentionally promote homosexuality or publish material with the intention of promoting homosexuality;
>
> (b) promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.

[111]Boyle, p. 86.

Another clause states that the law is not intended "to prohibit the doing of anything for the purpose of treating or preventing the spread of disease."

Section 28 was sparked by a controversy similar to that which spawned the debate in the United States over the policies of the National Endowment for the Arts. It began with a children's picture book, *Jenny lives with Eric and Martin*, which tells the story of a day in the life of a young girl in Denmark who is being raised by her father and his male partner. Among the book's photographic illustrations is a picture of Jenny having breakfast in bed with Eric and Martin. The Secretary of State for Education denounced it as "pretty blatant homosexual propaganda."[112] Tabloids falsely reported that the Inner London Educational Authority was distributing copies of the book to young children. In fact, there was "one book, in one teachers' centre, in one school, under one authority. ... [The] book was kept to help teachers who are occasionally asked to advise pupils who come from homes with gay parents."[113]

When similar legislation was first introduced in 1986, the Government minister responsible, Lord Skelmersdale, called it unnecessary and open to harmful misinterpretation.[114] It nevertheless passed the House of Lords and fell in the House of Commons only because a general election was announced.

What is now known as Section 28 was proposed in December of 1987. It drew strong opposition not only in Britain, but in the United States and across Europe as well. This time the British government supported its adoption, on the grounds that there was "growing concern in Parliament and in the country as a whole about the use of ratepayers' money by some local authorities intentionally to promote homosexuality."[115] Others countered that this growing countrywide

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[112]*Index on Censorship*, Nov.-Dec. 1986.

[113]*Hansard*, House of Commons, 9/3/88, col. 376-7.

[114]Madeleine Colvin, *Section 28, A practical guide to the law and its implications*, National Council for Civil Liberties, (1989), p.2.

[115]*Ibid*., p. 2.

concern was actually little more than "the personal obsession of a handful of MPs and one or two local authority members, augmented by allegations made by some of the more lurid tabloid newspapers which were subsequently shown to be either complete fabrications or wild distortions."[116]

In an opinion submitted to the Association of London Authorities, Michael Barnes QC wrote that "it is open to serious debate whether [Section 28] will render unlawful many decisions or actions presently lawful."[117] The fears expressed on the bill's passage by the National Council on Civil Liberties -- that the legislation was "prejudicial, unnecessary, discriminatory and liable to arouse hatred"[118] -- appear to have been realized in "increasingly virulent eruptions of anti-gay and anti-lesbian feelings and action."[119]

Despite the claims of the Earl of Caithness, the Government Minister responsible for the Bill in the House of Lords, that "the clause in no way imposes some form of discrimination against homosexuals,"[120] since it went into effect on May 24, 1988 Section 28 has been used to justify numerous acts of censorship and discrimination:

- In May 1988, the East Sussex County Council banned from its schools a publication which lists organizations offering voluntary work opportunities for young people. Among over 100 entries in the publication were six which listed opportunities for work at gay and lesbian organizations. The Council was particularly troubled by an entry for the London Lesbian and Gay Centre which sought volunteers with "a positive attitude of their sexuality."[121]

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[116] *Ibid*.

[117] *Ibid*. pp 14, 61.

[118] Bernard Levin, in an article in *The Times*, cited in M. Colvin, *Section 28*, p.61.

[119] Colvin, p.6.

[120] *Hansard*, House of Lords, 16.2.88, col. 641.

[121] *Index on Censorship*, June 1988, p.34; M. Colvin, p. 5.

■ In September 1988, a production of *Trapped in Time*, which was to be performed by the Avon Theatre Touring Company at a secondary school, was canceled by the school's head teacher. The play, which is intended as a serious piece challenging individuals to think about the issues of racism, sexism and sexuality, includes a scene in which one of the characters tells his friends that he is gay.[122]

On several college campuses, gay and lesbian groups have been refused access to meeting places which remain open to others. In January 1988 the Director of the City of Leeds College of Music banned the student Gay and Lesbian Society from meeting on college premises. In April 1988 the Deputy Director of Education at Strathclyde in Scotland wrote to all Colleges of Further Education stating that all grants to student associations would be withheld unless they ceased all lesbian and gay related activities. In August 1988, the Essex County Council issued a directive to all principals of Further Education Colleges instructing them not to permit lesbian and gay groups to meet in colleges or in any other building owned by the Council.[123]

Section 28 is not the only law that has been implicated in alleged discrimination against homosexuals and the censorship of gay-oriented material. The Customs Consolidation Act of 1876, which was originally drafted to deal with sedition, permits customs officers to seize any imported material that might be described as indecent or obscene. The artistic merit or cultural value of the material is not a defense under the Act, and material is more likely to be considered indecent or obscene if it is aimed at a gay or lesbian audience.

On April 10, 1984, customs officers raided Gay's the Word bookshop in London and seized 800 volumes and the shop's subscription list. Personal copies of several books were taken from the homes of the bookshop's managers.[124] In the following months, a number of other bookstores stocking imported gay titles

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[122]Colvin, p. 5.

[123]*Ibid*.

[124]Michele Field, "Stifling the Gay Word", *Index on Censorship*, p.40, June 1984.

were also searched, and had their shipments intercepted. Booksellers, gay organizations and civil liberties organizations charged that "the Customs Department's authority to arbitrarily confiscate stock was being used as an easy way of bankrupting an 'undesirable' bookshop."[125] In addition, there was concern that "the homosexual content of the books may itself have been taken to be of an obscene nature by Customs and Excise."[126] The case against Gay's the Word was dropped after a ruling by the European Economic Community Court of Justice in another case[127] that British customs officials could not apply a more stringent test for "indecency" to imported materials than to those generated domestically.

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[125] *Ibid*.

[126] "Books and the Customs and Excise," *The Bookseller*, Sept. 22, 1984.

[127] *Conegate Ltd. v. Customs and Excise Commissioners*, 1986.

VIII. PROPOSALS FOR REFORM

> We have been brought up in Britain to believe that we are free: that our Parliament is the mother of democracy; that our liberty is the envy of the world; that our system of justice is always fair; that the guardians of our safety, the police and security services, are subject to democratic, legal control; that our civil service is impartial; that our cities and communities maintain a proud identity; that our press is brave and honest. Today such beliefs are increasingly implausible. The gap between reality and the received ideas of Britain's `unwritten constitution' has widened to a degree that many find hard to endure.
>
> -- *Opening words of Charter 88's manifesto*

> The Government could not consider any constitutional reforms which were not widely understood and supported in Parliament and in the country at large. Furthermore, the Government does not feel that a written constitution in itself changes or guarantees anything: everything depends on how constitutional guarantees, whether written or unwritten, are interpreted and applied in daily life. Some of the more oppressive states in the world have written constitutions.
>
> -- *former British Prime Minister Margaret Thatcher, in reply to a letter from a Charter 88 supporter*

As this report has documented, there are numerous freedom of expression violations that Britain should remedy in order to conform to international human rights covenants and its own best traditions. In the following section, we will make a number of specific proposals for legal reform. Yet there is a widespread view among civil liberties activists in the United Kingdom that something more than piecemeal reform is called for -- that the fragility of freedom of expression in Britain owes a great deal to the fact that individual liberty is dependent on the good will of Parliament, not enshrined in

any higher permanent law. As one commentator has written: "The trouble with Britain is that almost every time we are called upon to sit down and judge where the public interest lies in a case of conflict between free expression and restraint we make the wrong decision. And the main reason for that is because we have never got around to enshrining our commitment to freedom of expression in statute law."[128]

More than 200 British activists and intellectuals came together in 1988 -- and have since been joined by thousands of others -- to sign "Charter 88," calling for a written constitution and an American-style Bill of Rights. Charter 88 has taken no position about the substance of a Bill of Rights -- preferring to let that emerge from "the democratic process,"[129] but favors incorporation of the European Convention on Human Rights as a first step. A recent report from the Institute for Public Policy Research, which is closely connected with the Labor Party, proposes draft language that would closely track the language of Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights. The provision would recognize basic rights to freedom of opinion, expression and assembly, but acknowledge grounds for restriction in the interests of protecting "the rights and freedoms of others," "national security," "public order," and "public health and morals." [130]

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights was drawn up in 1951. Britain ratified the Convention at that time, but did not accept enforcement until 1966. The United Kingdom has been brought before the Court in Strasbourg more than 30 times since, more than any other country in Europe. The Court has issued numerous decisions upholding freedom of expression in Britain, but the process of adjudication requires the initial exhaustion of domestic judicial remedies, and can take up to five years before a final decision is rendered. Even then, the Convention is not directly enforceable; the government involved must

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[128]"Trampling Over Freedom," Liz Forgan, *Index on Censorship*, June 1990, p. 31.

[129]Interview with Anthony Barnett, September 12, 1991.

[130]"A British Bill of Rights," Institute for Policy Research, London, 1990.

change the law which gave rise to the infringement.

One such ruling, in 1983, invalidated the censorship of prisoners' letters as then practiced by the U.K. Up to that point, prisoners could only communicate with people they had met, ruling out nearly all people in the public eye, and had no legal right to complain to the Home Office. Britain also took steps to liberalize the Contempt of Court Act after the European Court ruled that the Convention was violated by government's blocking *The Sunday Times* from publishing articles about Thalidomide birth defect cases.

Liberty has argued for the incorporation of the European Convention on Human Rights into U.K. law. Britain is the only one of the 23 members of European Community that have not done so. The advantage of incorporation is that it would avoid the cumbersome procedure for bringing British cases before the European Court of Human Rights.

PARLIAMENT AS A PROTECTOR OF LIBERTIES

Some in Britain contend that Parliament is a check on abuses of individual rights by government ministries. As former Prime Minister Thatcher argued in opposing a freedom of information law: "Under our constitution, Ministers are accountable to Parliament for the work of their departments, and that includes the provision of information. A statutory right of public access would remove this enormously important area of decision-making from Parliament and transfer ultimate decisions to the courts..."[131]

But Maurice Frankel points out that Parliament is ill-equipped to function as a check on abuses of power. Forty percent of the members have no research assistant; many have ministerial ambitions that tend to deter independence and criticism; even communication with members is limited -- only one letter can be hand-delivered to Parliamentary offices each day.[132]

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[131]Prime Minister Margaret Thatcher, quoted in *The Secrets File*, Desmond Wilson, editor, Heinemann, London, 1984.

[132] All cited in "Parliamentary Accountablity and Government Control of Information," Maurice Frankel, in *Happy and Glorious: the Constitution in Transition*," edited by Norman Lewis, Open University Press, London.

Frankel cites the experience of the Thames Television consumer program "For What It's Worth," which began an item on social security this way: "As part of our film we wanted to interview the Social Security Minister Nicholas Scott. He said he would speak to us only if he was given all our questions in advance and provided he was given a written synopsis of the points made by all our other interviewees. What's more he insisted that his interview be un-edited and that none of the other interviewers be allowed to comment on anything he said. So it was under these reporting restrictions that I spoke to him earlier today."[133]

Criticizing the adequacy of Parliamentary scrutiny, former *Times of London* editor Harold Evans has asserted: "Question Time notably is a joke for extracting information other than that which the Administration -- any Administration -- wants to give. All this century despite the enormous growth of bureaucratic power its time has stayed fixed at 50-55 minutes and its restrictions grown ever more arbitrary. And given the gnomic casuistry of our Civil Service to ask an effective question you have to know the answer already."[134]

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[133]Transcript of December 5, 1989 broadcast, cited in Frankel, "Parliamentary Accountability..."

[134]Remarks by Harold Evans at the fifth anniversary presentation of Freedom of Information Awards by the Campaign for Freedom of Information, reprinted in *Secrets*, Issue 17, May 1989, p. 4.

IX. RECOMMENDATIONS

Helsinki Watch and the Fund for Free Expression call upon the British government to take a series of steps to restore rights of freedom of expression that have been eroded in recent years. While we endorse no specific structural reform, such as the adoption of a Bill of Rights or the incorporation into British law of the European Convention on Human Rights, we strongly encourage the British Government to enact a scheme of permanent protection for individual liberties, including freedom of expression. We also call upon the Government to:

(1) Repeal the Official Secrets Act -- or, at a minimum, reform it to provide for a defense that the disclosure at issue serves the public interest or has been previously published elsewhere -- and adopt a freedom of information law.

(2) Bar the use of injunctions against the press for publishing material obtained in breach of confidence.

(3) Revise the defamation laws to provide a higher burden of proof for plaintiffs -- particularly those who are public officials or well-known public figures -- and stronger defenses for those sued, such as the fact that publication serves the public interest.

(4) Revise the Public Order Act to recognize an affirmative right of peaceable assembly and limit police and local authority power over assemblies and demonstrations to the imposition of impartially-applied time, place and manner restrictions.

(5) Rescind the "broadcasting ban" on interviews with representatives of Sinn Fein Northern Ireland, and reform the broadcasting statute to insulate the British Broadcasting Corporation and independent television and radio from government interference with program content.

(6) Abolish the power of local government authorities to ban films in cinemas, and abolish the powers of the British Board of Film Classification to ban or require cuts in videocassettes.

(7) Reform the Prevention of Terrorism Act to end the proscription of organizations.

(8) Require the Northern Ireland Office to demonstrate a reasonable basis for a decision to remove funding from a community organization and adoption of an impartial and non-partisan process to guard against the denial of funding on political grounds.

(9) Abolish the requirement that local councillors in Northern Ireland sign declarations repudiating proscribed organizations or the use of violence for political ends.

(10) Repeal the blasphemy law.

(11) Repeal Clause 28.

APPENDIX A: International Standards

Freedom of expression is guaranteed by international agreements. Article 19 of the International Covenant on Civil and Political Rights states:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of

information received in confidence, or for maintaining the authority and impartiality of the judiciary.

APPENDIX B: Organizations Working to Protect Freedom of Expression in the United Kingdom

Campaign for Freedom of Information
88 Old Street
London EC1
ENGLAND

(tel) 011 44 71 253-2445
(fax) 011 44 81 958-7976

Charter 88
Panther House
38 Mount Pleasant
London WC1
ENGLAND

(tel) 011 44 71 833-5813
(fax) 011 44 71 833-5895

Justice
95-A Chancery Lane
London WC2A 1DT
ENGLAND

(tel) 011 44 71 405-6018
(fax) 011 44 71 404-5032

Liberty (National Council for Civil Liberties)
21 Tabard Street
London SE1 4LA
ENGLAND

(tel) 011 44 71 403-3888
(fax) 011 44 71 407-5354

Human Rights Watch

Human Rights Watch is composed of Africa Watch, Americas Watch, Asia Watch, Helsinki Watch, Middle East Watch, and the Fund for Free Expression.

The executive committee is comprised of Robert L. Bernstein, chair; Adrian DeWind, vice chair; Roland Algrant, Lisa Anderson, Peter Bell, Alice Brown, William Carmichael, Dorothy Cullman, Irene Diamond, Jonathan Fanton, Jack Greenberg, Alice H. Henkin, Stephen Kass, Marina Kaufman, Jeri Laber, Aryeh Neier, Bruce Rabb, Harriet Rabb, Kenneth Roth, Orville Schell, Gary Sick, and Robert Wedgeworth.

The staff includes Aryeh Neier, executive director; Kenneth Roth, deputy director; Holly J. Burkhalter, Washington director; Ellen Lutz, California director; Susan Osnos, press director; Jemera Rone, counsel; Joanna Weschler, Prison Project director; and Dorothy Q. Thomas, Women's Rights Project director.

Executive Directors

Africa Watch	Americas Watch	Asia Watch
Rakiya Omaar	Juan E. Méndez	Sidney Jones
Helsinki Watch	Middle East Watch	Fund for Free Expression
Jeri Laber	Andrew Whitley	Gara LaMarche

Addresses for Human Rights Watch and its Divisions

485 Fifth Avenue
New York, NY 10017
Tel: (212) 972-8400
Fax: (212) 972-0905

1522 K Street, NW, #910
Washington, DC 20005
Tel: (202) 371-6592
Fax: (202) 371-0124

10951 West Pico Blvd., #203
Los Angeles, CA 90064
Tel: (213) 475-3070
Fax: (213) 475-5613

90 Borough High Street
London, UK SE1 1LL
Tel: (071) 378-8008
Fax: (071) 378-8029