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Duncan Campbell

Paradoxes of secrecy

The Prime Minister and her officials are utterly disdainful of press freedom, open government or the American concept of the press as 'fourth estate'

Freedom of speech and journalistic pluralism, which survived and occasionally thrived in Britain in the first half of the 1980s has since then been debased and abused with increasing frequency. For the moment the UK cannot bear comparison with many governments' violent or murderous excesses against the press. But security forces are being given greater licence, and the deliberate suppression of investigative journalism already plays a major role in facilitating state 'counter-terrorism'. Almost a decade of authoritarian rule under Prime Minister Margaret Thatcher has scarred freedom of expression on controversial topics, and in the broadcast media, for many years to come.

The legal basis of British government secrecy is the wide-reaching and unpopular Official Secrets Act (OSA), which was passed in 1911. The Act makes it illegal for any public official or civil servant in Britain to give *any* information about government activity to the public — unless the government has authorised it first. The bill was passed in an era of exceptional patriotic fervour, when Members of Parliament in disagreement with the Act were forcibly confined to their seats to prevent them speaking.

For anyone in Britain, receiving or indeed hearing of any official 'note, document or information', no matter how trivial, is an offence 'unless the recipient proves that the communication... was contrary to his desire'. The law covers all official information, not just classified or military data. All violators, including reporters or editors who receive unauthorised official information may be punished by up to two years imprisonment — even if they do not publish. Section 2 of the Official Secrets Act automatically covers data about such items as agricultural subsidies and health statistics.

Duncan Campbell (35) has been an investigative journalist in Britain for 12 years. He is now Associate Editor of New Statesman & Society magazine. He began working on the New Statesman in 1977 while being prosecuted under Britain's notorious Official Secrets Act, Section 2, and has since repeatedly been investigated or threatened with the Act.

But juries and many judges have never liked the law. When journalists or 'whistleblowers' (confidential sources or informants) have made disclosures in the public interest, successive trials (including my own trial on secrecy charges, ten years ago) have shown that they are unlikely to be convicted; or if convicted, unlikely to be punished. In a particularly embarrassing 1985 case, senior defence ministry official Clive Ponting was acquitted of Official Secrets charges for having passed ministerial papers to an MP. The leaked papers showed that the government had misrepresented the circumstances of the sinking of the Argentine battleship *Belgrano* during the 1982 Falklands/Malvinas war.

Widely drawn as the Act is, its greatest effect has been the long term discouragement of any sort of 'open government', rather than the instigation of numerous prosecutions. Technical breaches of the law by journalists have generally been frequent, and are usually ignored except in cases of particular political embarrassment. Among the many paradoxes of British secrecy is that critical reporting of such sensitive areas of government affairs as domestic security service activities — an area which was taboo for mainstream media organisations throughout most of the 1970s — became commonplace by the mid 1980s.

So although Mrs Thatcher's government has had available at all times the sweeping powers of the OSA to inhibit public discussion or journalistic enquiry, it has never actually used the Act for prosecuting journalists. However, new changes in the civil and criminal law have been proposed or enacted in 1987 and 1988 which have already seriously undermined independent or investigative reporting.

* * *

If 'investigative journalism' has a specifically British history, it began in the 1960s, with teams of TV and Sunday newspaper journalists increasingly willing to challenge the established order. The high profile journalism of the early 1970s in the United States — the Watergate affair and the pivotal role of investigative journalism in the downfall of Richard Nixon — led to a rapidly developing interest in the

possibility of similar domestic political activities in Britain. In 1975/76, the author became part of this largely left-oriented interest.

Although such activities as reporting the role of the CIA in Britain were not visibly opposed at the time by legal or security authorities, we have subsequently learned that during the mid 1970s, the UK Security Service (widely known as MI5) was completing a major realignment of its role. Instead of concentrating on the traditional target of foreign espionage (primarily from Soviet Bloc entities), MI5 moved many of its resources to look inwards at so-called 'domestic subversion'. Journalists, as well as lawyers, elected politicians, and liberal and law reform campaigners came under particular attention.

During this period, from 1972 on, the MI5 rules regarding which organisations or individuals might be put under surveillance became particularly elastic. I and some other journalists, who had no Communist, Trotskyist or other far-left affiliations, were justified as security service targets by being categorised, bizarrely, as 'unaffiliated revolutionaries'. The National Council for Civil Liberties was made a formal security target for equally ill-justified reasons (the marriage of a single senior official to a former Communist party member was held to make the organisation a 'Communist front'). From May 1976 onwards, my telephone line was tapped, an activity which has to my knowledge continued well into the mid 1980s, and probably continues to this day.

The counter-attack against investigative journalism began in 1976-7. First, two American writers, Mark Hosenball and Philip Agee, were deported as 'threats to national security'. Under prevailing procedures, no evidence was presented as to what activities of theirs constituted the alleged threat. But it was soon clear that Hosenball's 'offence' had been the co-authorship, with me, of the first article ever to describe the activities of Government Communications Headquarters, the now well-known British electronic intelligence agency. Agee's 'offence' had been to write and campaign about the international activities of the CIA, by whom he had formerly been employed.

Soon after the deportation, I and another

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journalist were arrested in a connected case. I and Crispin Aubrey were accused of breaking Section 2 by having interviewed a former soldier, John Berry. The case, which became known as 'ABC' after the defendants' surnames, took almost two years to come to trial. During this time the prosecution introduced several charges of espionage, one of which was intended to criminalise investigative reporting in general. This new charge, which was quickly to fail in the final trial, asserted that it was an offence to gather publicly available information, if deductions might be made from these 'open' sources.

The ABC secrets trial was, ironically, sanctioned by a Labour (socialist) government. The result of the case, discharges for myself and my fellow journalist, and a short suspended sentence for the former soldier, was widely held to compel the government to introduce long-promised changes in secrecy laws, and measures for open government. The Labour administration continued to drag its feet, and fell from power six months later.

* * *

One of the earliest new laws proposed by the incoming Conservative government under Margaret Thatcher was a new 'Protection of Official Information Act'. In the familiar guise of a liberal, reforming measure (which withdrew criminal penalties from some areas of government information), the new Act would actually have made it possible to prosecute journalists who published stories based on material already public; or even material which was untrue (on such subjects as telephone tapping). The draft Bill for the new Act also contained the 'jigsaw puzzle' offence. This would have clearly made it possible for an inquiring journalist to be prosecuted for publishing, or merely researching, a story which contained no 'inside' information, but which fell into certain prohibited areas of inquiry.

The 1979 Protection of Official Information Act would have considerably undermined journalism in these key areas. Fortuitously, as the Bill was debated, a senior Royal adviser, Sir Anthony Blunt, was revealed to have confessed 15 years earlier to being a Soviet spy. He has not been punished. The Bill was withdrawn when it was realised that it would have prevented the disclosure of Blunt's treachery.

Thus chided, the government did not return to the question of reforming the secrecy laws until 1988. Although for some years there were few formal proceedings against journalists, 'investigative' journalism went into decline — by the

author's definition, at any rate. Much tabloid (popular newspaper) journalism claims the label of 'investigative journalism'. Such writing often is the 'we expose the scandal of gay vicar' type of story. Characteristically, these reports are an intrusion into private lives of the powerless by enormously more powerful media corporations. I do not believe that, to the extent that these stories use investigative methods, they constitute 'investigative journalism' in the normal, public-interest, sense of the term.

That investigative journalism may be characterised by its relationship to the distribution of power within society, and by journalistic intervention typically on behalf of the less powerful against the more powerful. In another sense, investigative journalism can only be defined by antithesis to the more conventional reactive rather than pro-active type of journalism. So it's not 'lobby' journalism, or the rewriting and recycling of press releases. It goes along with the old American maxim — 'the news is what someone, somewhere *doesn't* want to see printed'. It has often been called 'muckraking' journalism, which should properly be seen as a term of approbation, rather than of disapproval.

The decline of such reporting in Britain in the 80s resulted from many factors; new technology, offices and working practices in the newspaper industry more than the authoritarian outlook of the Conservative government. But several significant changes were the direct effect of government intervention, particularly the decision to permit the exceptional centralisation of

many newspaper titles in the hands of the News International group controlled by the Australian/American entrepreneur, Rupert Murdoch. Murdoch's takeover moved the *Sunday Times* and *Times* significantly to the right, and cost these papers all their best investigative reporters.

The *Sunday Times* 'Insight' team had hitherto been a role model for investigative journalism. With that gone, in the new mood of the times, investigative journalism became seen increasingly as a minority or left-wing anti-authoritarian enterprise. Nevertheless, investigation could continue through the 1980s, despite the maintenance of the OSA and a separate press self-censorship organisation, known as the D (for Defence) Notice system. Mrs Thatcher's government seemed to face more unauthorised leaks of cabinet material than her predecessors; but only two cases of leaks to the press led to prosecution. In the first of these, in 1983/84, a Foreign Office clerk admitted giving copies of memoranda about the deception of parliament about cruise missile deployment plans to a newspaper; she was gaoled for six months, under Section 2. But when only a year later the senior defence ministry official Clive Ponting was acquitted by a jury, on public interest grounds, it was apparent that the law remained substantially unusable.

During this period, my own reports were four times the subject of investigation by police or security officials. On one occasion early in 1984, following an accident on my bicycle (there are no grounds for supposing that the accident was 'arranged'), police

The 'Zircon' affair

November 1985-December 1986:

Investigative journalist Duncan Campbell makes a six-part series, 'Secret Society', for BBC TV Scotland. One of the programmes reveals that Britain is developing a sky satellite codenamed 'Zircon'. The programme claims that the project, costing \$800m., has been kept secret from Parliament despite an agreement between the Ministry of Defence and the Public Accounts Committee of the House of Commons that all defence projects worth more than £200m. must be disclosed. Contributors to the programme include a former Permanent Secretary to the Ministry of Defence and a former Chief Scientific Advisor to the Ministry.

15 January 1987: Despite earlier assurances by Deputy Director General Alan Protheroe, the BBC bans the 'Zircon' film after coming under pressure from BBC governors.

19-20 January 1987: MPs and journalists see the 'Zircon' film.

21-22 January 1987: Attorney General obtains an injunction preventing Campbell from talking or writing about 'Zircon' but fails to get an injunction banning MPs from seeing the programme at the House of Commons. The *New Statesman* publishes the 'Zircon' story in full. In a constitutionally unprecedented move the Speaker of the Commons bans the showing of the film on the premises of the Houses of Parliament.

24-25 January 1987: Special branch detectives raid the offices of the *New Statesman* and the homes of Duncan Campbell and two of his researchers.

31 January 1987: Special branch raids BBC Scotland and removes all documents and film relating to the Secret Society series.

25 February 1987: High court lifts injunction against Duncan Campbell.

27 November 1987: The government announces that no prosecutions will take place over the 'Zircon' film.

The BBC has now lifted its ban on the programme and plans to screen it in late September 1988.

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removed my working papers and shortly thereafter raided my house and searched all my files. No charges resulted, however, and most material was quickly returned.

* * *

From the turbulent, but politically stable period of the mid-1980s, press freedom has quickly declined in Britain. Indeed, by the end of 1987, the perspective had changed so dramatically that government officials felt no need even to pay lip service to the importance of press freedom. In a High Court hearing in London in December 1987, Mr Robert Alexander, representing the Attorney General, was asked by the trial judge if the British government would wish him to consider Freedom of Speech and Freedom of the Press as relevant considerations in reaching judgment? 'No, my Lord', Alexander replied. 'That runs headlong into the principle of confidentiality... There is simply no room for saying that Freedom of the Press is important'.

This remarkable interchange was part of an almost interminable, worldwide censorship action by the British government over the memoirs of a former security service officer, Peter Wright. The battle to ensure the (non-) publication of Wright's memoirs has been one of two major government encroachments on the freedom of the press. The other has been a headlong assault on the independence of the country's main broadcasting institutions.

In an attack on the BBC over the last four years, the Conservative government's

irritation with the state-owned media corporation has moved from sniping and bitchiness — always a ruling party's attitude to the BBC — to a new, steely determination to mould the BBC into being the voice of government alone. Personal attacks on the motives or work of individual producers or broadcasters — had already been deployed. In 1986, the Conservative Party published a critical analysis of the BBC's allegedly pro-Quadhafi coverage of the 1986 US raid on Tripoli, Libya. The government analysis was duff; the BBC won the skirmish. But the 'Secret Society affair' in which I was centrally involved was to be a full frontal attack on the Corporation's integrity.

'Secret Society', which began in 1986, was a series of programmes examining the use of British government secrecy to conceal or deceive legislators and the public about major areas of government policy or activity. The central issue of the first programme in the series was the deception of Parliament about funds voted to government departments. That programme, 'Spy in the Sky', revealed how the British government had concealed the planned expenditure of \$800 million on a new UK intelligence satellite, codenamed 'Zircon'.

'Zircon', together with the rest of the series, had originally been scheduled for transmission in January 1987. But three BBC Governors, each of them selected by the Thatcher government, applied pressure on the organisation's Director General to withdraw the whole series. The first programme was banned.

Following the ban, I arranged to show the film to Members of Parliament in the British House of Commons — where, constitutionally, neither courts nor police can intervene in the MPs' business. Although the planned MPs' showing was disrupted, the *New Statesman* magazine published the story the same day. We were harried in response. Three days later, before half a dozen TV cameras and 40 reporters, a Special (political) Branch squad kicked in the front door of my house and mounted a seven hour long search of my home and papers. Two researchers' houses were turned over in their absence. Then, for five days and four nights, the Special Branch of the police continuously occupied and searched the entire offices of the *New Statesman* magazine.

Soon afterwards, the government tried to get a permanent ban on such films ever being seen by MPs — and failed. The government's next move was to try to seize all the 'Secret Society' films. The next weekend, the day after the BBC Governors had sacked the Director-General, a Special Branch team raided the BBC's Scottish headquarters. After 18 hours, the senior officer told the BBC's top executives that he had grown tired of waiting while they challenged their general search warrant in court. He wanted compliance, he wanted it quickly, and he told them that they could comply 'the easy way, or the hard way'.

The 'easy' way was to summon film editors and library staff to empty all the film material of the 'Secret Society' series into waiting police vans, before dawn. The 'hard way' was that the whole huge headquarters building would be flooded with police, and taken apart, in a search for evidence.

A few hours before, the highest court in Scotland's independent legal system, the Court of Sessions, had just declared the original police search warrants unlawful. But the Special Branch just came back with new warrants — and promised, or threatened, to write out as many more new warrants as might be required to replace those overruled by the courts. They did not care that BBC lawyers had pointed out again and again that all the police had done was to change two words on an otherwise unlawful warrant.

The police, told that their warrant was drafted too widely, and thus unlawful, had come back with a warrant they soon chose to interpret as having even greater breadth. The police were clearly confident of their authority to act irrespective of what the courts said. 'It has been discussed at the highest level,' they said.

Master videotapes for all six programmes were seized. To prevent the BBC transmitting any of the programmes, the police were

The Clive Ponting case

In the wake of the Falklands war, persistent questions to the government by MPs, Party Committees and researchers as to the exact circumstances of the sinking of the Argentinian battleship Belgrano on 2 May 1982, with the loss of 68 lives, remained unanswered.

March-July 1984: Clive Ponting, a high-standing official at the Ministry of Defence, participates in a series of meetings at the Ministry which have as their purpose prevention of full disclosure of facts on the Belgrano affair. He is personally asked to write two memoranda, one giving the full facts, the other outlining the way in which the public should be informed. Ponting, deeply concerned that Parliament is being misled, sends two memoranda arising from the meetings, both concerning the Ministry of Defence's efforts at concealment, to the Labour MP Tam Dalyell, who has repeatedly questioned the government on the Belgrano affair. Dalyell publicises the

documents and passes them to the House of Commons Select Committee on Defence, which returns them to the Ministry of Defence.

9 November 1984: Ponting is committed for trial by jury in London under Section 2 of the Official Secrets Act. He pleads not guilty. His defence is that his responsibility to the interests of the state is higher than his loyalty to the Minister of the day. Misleading parliament and the public for political reasons is not part of his brief, he claims.

10 February 1985: Addressing the jury at Ponting's trial, Judge McCowan claims that in law the interests of the state are identical with the policies of the government of the day, arguing by implication that Ponting's defence is not acceptable.

11 February 1985: Despite strong guidance from the judge to find Ponting guilty, the jury unanimously acquits him.

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instructed to seize backup videotape copies of the programmes, as well as all original film used in making them. In the morning darkness, the rule of law was immaterial, and for those in the BBC, many of them loyal and long-serving members of the British establishment, the earth had moved in a most unpleasant way.

After the sacking of Director-General Alasdair Milne, all the top appointees in BBC radio and television were moved out. A special 'political unit' was established to pre-check any programme items that might irritate the government. And if not all the new postholders were those with whom the Thatcher regime could feel comfortable, they were at least very well aware of what Thatcher's fire had done to their predecessors. One of the first acts of the new regime was to cancel plans for a second series of 'Secret Society'. Although the 'Zircon' programme was eventually resurrected to be shown as an historical document in September 1988, the most damaging programme from the government's point of view, 'Cabinet', was carefully dropped.

* * *

The greatest danger of all has been done by the long and continuing series of prior restraint actions against the British press, which started in 1986 when former Security Service agent Peter Wright was about to publish his memoirs in Australia. The memoirs later became a 1987 US bestseller, and can be (and were) legally imported to Britain. They explain that the head of the Service, MI5, was probably an undetected Soviet spy; and that three times MI5 were aware of or involved in plots against the British Labour Party, even when it was in government. But every journalist who has attempted to write about, refer to, or even review Wright's book has been threatened with citation for contempt of court. Three major newspapers have had to fund costly defence cases against contempt charges for nearly two years.

The new showers of interdicts and injunctions have offered the government many attractive advantages. They offer complete prior restraint. The Press can be stopped before they publish anything. Under a new court ruling, a court order against one media organisation automatically applies to all others. So if you give your story to another paper, they can't publish it either. And even if the story is published abroad, as with *Spycatcher*, it's still illegal to tell the British about it.

The second advantage for the government of the gag order system is that contempt of court charges are tried only before judges. So journalists may be charged, fined, and jailed, without the

The Sarah Tisdall case

22 October 1983: *The Guardian* receives, from an anonymous sender, a photocopy of a memorandum to the Prime Minister signed by Secretary of Defence Michael Heseltine. The memorandum reveals that the first US Cruise Missiles are due to arrive at Greenham Common, Britain on 1 November and outlines plans for handling the ensuing public and parliamentary response. Announcement of the missiles' arrival was to be made only after it occurred. *The Guardian* publishes the story and later the full text of the memorandum. Immediately after publication of the story, the Government asks *The Guardian* to hand over the document (as government property) so that the source of the leak can be traced. *The Guardian* refuses. The Government goes to the High Court, which orders *The Guardian* to return the

document. *The Guardian* appeals.

15 December 1983: The Court of Appeal upholds the High Court's order. It rejects the newspaper's contention that journalists are allowed to protect their sources, a principle enshrined in the Contempt of Court Act 1981.

9 January 1984: Sarah Tisdall, a 23-year old clerical officer at the Foreign Office, is charged under Section 2 of the Official Secrets Act. While photocopying the memorandum she realised its importance and felt that the public should know 'what was being done to them by the back door'. She considered the Defence Secretary's plans 'indecent' and 'immoral'.

23 March 1984: Sarah Tisdall is sentenced to 6 months' imprisonment by the Crown Court in London. She is later elected Honorary President of the Young Liberals.

unpredictable and undesirable intervention of a jury, which had so enraged the government in the Ponting case. The third is that the standard of proof in a civil court lies only in a test of 'balance of probability' of truth; there is no duty on the 'prosecution' (in this case, the 'plaintiff') to prove their case 'beyond reasonable doubt' which is the normal standard of British criminal law.

These restraints have already been put into practice. One injunction, brought against me in December 1987, may effectively ban me from writing about the activities of the government agency, GCHQ. The order would require me to prove that the source of any article on the agency was *not* an insider; if I could not prove this, I should face jail for contempt of court. Reporters have not yet been gaoled for contempt charges of this kind. But one financial reporter narrowly escaped gaol early in 1988 on charges quite unrelated to government secrecy when he refused to disclose the source of a report on financial 'insider trading'. (See page 43)

In her third term of office, from 1987 onwards, it has become quite clear that the Prime Minister and her officials are utterly disdainful of press freedom, open government or the American concept of the press as 'fourth estate'. (Indeed, the British system of government also wholly lacks the constitutional pluralism that would make the concept of other estates of the realm at all meaningful.) On a recent US tour, Mrs Thatcher's press secretary Bernard Ingham boasted to the US media that the 'ordinary' British subject not only has no right to know but does not want to know. 'There's a commonsense idea of how to run a country,' he said 'and Britain is full of commonsense people.'

This 'commonsense' doctrine of all-embracing official secrecy (and public acquiescence) has as one major focus the purpose of concealing all activities of the security and intelligence agencies. We have few means of finding out all that may be covered up. Until the last few months, however, it has at least been possible to say that national security has not been an excuse for concealing state killings, or other, wilder excesses typical of South American republics. But now even that boundary has chillingly been eroded, as a direct consequence of censorship and secrecy about the intelligence agencies.

To ensure more respectful compliance with 'commonsense', a new official secrecy law has been drafted, since pressure to reform the existing measure (from both sides) has proven too difficult to throw off. In return for dropping constraints on reporting non-controversial areas of government (which don't work anyway), the government hopes to pass tight new laws which will firmly criminalise all investigative journalism or public debate in areas like internal security or the defence community. Then the government will be able to shut up and gaol irksome reporters without having to chase them across the world or face tangling with the First Amendment in the USA to ban disclosures such as Wright's book. ■