

# Communists On Tap

Mr Justice Taylor's judgment on the tapping of John Cox's telephone conversations with Joan Ruddock and Bruce Kent has made some important legal advances. The case brought by CND was based on the evidence of Cathy Massiter, a former MI5 intelligence officer who became so disturbed at the political abuse of state security functions that she first objected and then (when told to see a psychiatrist) resigned.

Although the case went the government's way on the inferences to be drawn from Cathy Massiter's evidence, it went CND's way on a series of important propositions of civil liberty law. And the court was constrained to accept her factual testimony that in 1983 she had been asked to put up an application to the Home Secretary for a tap on the telephone of John Cox, a leading officer of CND and a prominent Communist. Because Cox lived in Wales, most of his contact with other CND leaders had to be by phone, so that a tap on him worked as a tap on CND's leaders.

First, the case has established that although the law gives nobody a positive right of privacy in Britain, an invasion of personal privacy by the state is a sufficiently serious thing to give the victim a right to challenge it in court.

Secondly, the case established that if the state publicly undertakes to limit its activity of spying on citizens and to abide by published criteria for doing so, a citizen who is adversely affected can challenge the lawfulness of the state's activity if the state breaks its own rules.

Thirdly, the judge rejected the argument that because the Home Secretary considered national security to be at stake where phone-tapping was concerned, the court should decline to adjudicate on the claim. The fact that the government dared to invite the court to abdicate in its favour was an indication of how far seven



John Cox: a threat to security?

Perhaps the most striking thing revealed by Massiter's evidence and not contradicted by the government was that MI5 was blithely labelling CND 'communist dominated' until 1979, which apparently gave it *carte blanche* to spy on CND members. The organisation was then relegated to a 'communist penetrated' category, which should have meant minimal surveillance. Instead, surveillance then proceeded to grow in direct proportion to CND's political effectiveness. More officers were assigned to watching it and a spy, Harry Newton was planted in its head office.

The tap on John Cox's telephone was a part of this escalation: MI5 was satisfied that his work in CND had no ulterior motive, but his CP membership furnished the excuse they needed to monitor his and hence CND's telephone traffic.

The unpleasant after-taste of the judgment lies in its apparent acceptance that his mere membership or leading position in the Communist Party might have been enough to allow MI5 to tap John Cox's telephone within the government's published criteria. These criteria require 'a major subversive or espionage activity that is likely to injure the national interest', coupled with a likelihood that a telephone tap will provide material of direct use in countering the threat.

The point was not one which was or had to be decided by the judge, and the Home Secretary did not pitch his argument there. The trouble is that unless it is made very plain to the security services that people who believe our society needs a fundamental overhaul and who campaign openly for their views are not necessarily a threat to the national interest, the security services and their political overseers are quite doty enough to believe that they are and to go on tapping their telephones accordingly. •

Maurice Archer

years of Thatcherism have eroded political acceptance of the constitutional norms of three centuries.

Where CND's case came unstuck was on the evidence. How, said the judge, could one know that the Home Secretary or the MIS brasshats did not have more information than Cathy Massiter did to justify tapping John Cox's phone? The Home Office had chosen to preserve silence on this question in its evidence. Cathy Massiter later commented that the notion was untenable: it was she who was in charge of MI5's intelligence-gathering on CND. But on this the case was lost.

Ironically the judge also thought that because it had taken four months for her application for the warrant to reach the Home Secretary and be signed by him suggested that there had been fuller deliberation on further material higher up the line. Once again the civil service may have been rescued by the cock-up factor, a regular phenomenon of bureaucracy which has the effect of making its mistakes appear to be conspiracies and its conspiracies to be mistakes.