PREM 19/1827

MT

CONFIDENTIAL FILING

Survey of the use of peremptory challenges by the defence counsel concerning jurors.

LEGAL PROCEDURE

COPY OF CALCUTT INQUIRY IN ATTACHED FOLDER

DECEMBER 1985

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~18.12.85~~							
~~15.4.86~~							
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TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC(86) 18th Meeting, item 1	01/05/1986

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 4/11/2014

PREM Records Team

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Wednesday, 9 July 1986

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Press
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BY PRIVATE NOTICE

Mr Gerald Kaufman (Gorton): To ask the Secretary of State for the Home Department, if he will make a statement about the Government's response to the recommendation of the Roskill Report that random jury challenges be abolished.

REPLY (MR HURD)

In the White Paper on plans for criminal justice legislation, we invited comments on concern which had been expressed by my Rt Hon friend the Member for Twickenham and others, about the right of the defence to challenge up to three jurors without giving cause. The White Paper set out several options for change, including abolition of peremptory challenge, as had been recommended by the Roskill Committee on Fraud Trials. I have been reflecting on these options in the light of the response to the White Paper.

Peremptory challenge can be used as a means of removing jurors, simply on grounds of their age or appearance. It seems wrong in principle, and offensive to those concerned, that jurors should be removed without reasons being given. It is also understandable that, in cases with large numbers of defendants, the composition of the jury should be capable of being influenced so substantially. I have therefore decided that it would be desirable to abolish peremptory challenge, and shall be including proposals with that effect in legislation which I hope to introduce next Session. [My Rt Hon friend the Attorney General has agreed that if peremptory challenge is abolished, the use by

the prosecution of its right to require jurors to stand by for the Crown should be more sparing, and confined to sensitive cases. Challenge for cause, the right of either party to seek the removal of a juror for stated reasons, would be unaffected]. The Government sees the abolition of peremptory challenge as a contribution to public confidence in the jury, and is determined to maintain the effectiveness and integrity of the system of jury trial.

Top Salaries Review Body

5.1 pm

Sir Kenneth Lewis (Stamford and Spalding): On a point of order, Mr. Speaker. We now have the copies of the pay review bodies' reports and my right hon. Friend the Chancellor's letter. I notice that a large number of public servants will get quite good rises, especially those in the medical field, as from 1 July, which happens to be my birthday. It looks as though my hon. Friends and myself will be the only people to be left out. Will my right hon. Friend the Chancellor put that right by sending another letter to say that, in view of the bounty that is coming on my birthday, there can be something for me and my hon. Friends?

Mr. Speaker: I hope that the hon. Gentleman has a very happy birthday on 1 July.

Cyprus Secrets Trial (Calcutt Report)

5.2 pm

The Minister of State for the Armed Forces (Mr. John Stanley): Following the acquittal last year of eight service men from 9 Signal Regiment in Cyprus who had been charged under the Official Secrets Acts, I announced in the House on 29 October that there was to be an independent inquiry into the way in which the service police carried out their investigations of the eight men originally accused. Mr. David Calcutt QC agreed to conduct this inquiry. The House was also told that it was the intention that, subject to the usual security considerations, Mr. Calcutt's report on his inquiry would be published. The report has been published today, Cmnd. 9781.

Mr. Calcutt has concluded that the service police investigations, which he acknowledged involved special difficulties due to their sensitivity and complexity, were undertaken without any animosity or ill-will towards the service men concerned, and that none of the service men were subjected to any violence or threats of violence, or any form of torture or inhuman or degrading treatment.

Mr. Calcutt has, however, concluded that the custody of the eight service men was, for part of the time, unlawful and that even after the service men had been lawfully arrested on holding charges their continued custody was at least improper. The interviews by the service police with each of the eight service men mostly took place during these periods of unlawful and improper custody.

In the light of Mr. Calcutt's conclusions as to the lawfulness of the custody of the service men, my right hon. Friend the Secretary of State for Defence has concluded that in the case of seven of them he is prepared to make an ex gratia payment. The seven service men concerned are Senior Aircraftmen Kriehn, Lightowler, Owen and Payne, Lance-Corporal Glass and Signalmen Hardman and Tuffy. On their application, my right hon. Friend will ask Mr. Michael Ogden QC, who acts as an independent assessor for my right hon. Friend the Home Secretary, to make an independent assessment of the amount of the award in each case.

As regards the eight service man, Senior Aircraftman Jones, Mr. Calcutt considered on his construction of Air Force rules of procedure that his custody was unlawful. Although the facts adduced in evidence before both Mr. Calcutt and the trial judge were essentially the same, the submissions addressed to them by counsel were very different. Indeed, before the trial judge, Senior Aircraftman Jones's counsel did not contend that the custody was unlawful. When the trial judge considered the same provisions of the Air Force rules of procedure, he accepted that Jones's custody was lawful. In these circumstances, since the trial judge found that Senior Aircraftman Jones's detention was lawful, it would be inappropriate to offer an ex gratia payment in his case. It is of course always open to him to pursue his remedies in the courts, should he be so advised.

Mr. Calcutt has also concluded that, as the number of days spent in custody increased, so the pressure which was exerted on each of the servicemen gradually built up and crossed over, from what was at first proper to what he could only regard as becoming improper, and that the pressures which were ultimately exerted on each of the service men were such that these were likely to render

[Mr. John Stanley]

unreliable answers given or statements made by them. However, Mr. Calcutt also points out that the investigations carried out by the service police in Cyprus in February and March 1984 were difficult, sensitive and complex, and they would have created profound problems for anyone who was given the task of carrying them out. Mr. Calcutt concludes that, although he has pointed to some breaches of lawful and proper procedures, it would be unfair to be over-critical either of the investigating service police or of those who were advising them.

The Government fully recognise the difficult position in which the service investigators in the case were placed and that they were motivated solely by what they perceived to be their clear duty. The Government are also grateful to the service investigators for their full participation in Mr. Calcutt's inquiry, which was entirely of their own volition. I should also like to take this opportunity to make it quite clear that we continue to have full confidence in the integrity and professionalism of the royal military police and the RAF police who do difficult, complex and very important security work in many key defence areas.

Mr. Calcutt has recommended seven matters for further consideration. These are: the potential conflict between learning the nature, extent and full circumstances of any breach of security and bringing the offender to justice; the need to give at an early stage in an investigation clear guidance on the relative priority to be given to the counter-intelligence aspect and the criminal aspect of a security case; whether, in certain circumstances, the 48-hour maximum period allowed under current service procedures for suspects to be detained without charge should be capable of being extended; whether RAF Queen's regulation 1034 should be either annulled or amended; how far the rigid application of the "need to know" principle may have the effect of depriving a suspect of the protection which the law provides for him; the effect of classifying the routine documentation in security investigations; and whether investigations such as those leading up to the Cyprus trial should be conducted from the United Kingdom rather than overseas. The Government accept all Mr. Calcutt's recommendations for further consideration, and the House will be informed of the outcome of this further work.

As far as present practice is concerned, Mr. Calcutt acknowledges that the new code of practice for the treatment and questioning of persons by the service police has now been issued under the Police and Criminal Evidence Act 1984 and that this may at least go some way towards overcoming some of the shortcomings revealed by the inquiry. In addition, the House will wish to know that RAF Queen's regulation 1034, which provides for a form of custody short of arrest, has been suspended, and that further instructions are being issued to clarify and re-emphasise the safeguards for individuals under investigation.

Finally, I should like to express our gratitude to Mr. Calcutt for conducting his inquiry both speedily and with great thoroughness, and for producing a rigorously argued and most valuable report.

Mr. Kevin McNamara (Kingston upon Hull, North): The House owes a debt to Mr. Calcutt for this report. In the short time that we have had to glance at it, it is apparent that the House will understand why the new Parliamentary Secretary, whom I congratulate on his appointment, moved the motion in the Select Committee on the Armed Forces Bill that it conclude its business before Mr. Calcutt reported. Given the cold, cruel and measured tones of Mr. Calcutt when he does not consider himself to be overly critical, I would hate to be at the receiving end of his tongue when he is.

This is one of the most devastating and horrific statements that I have ever read. It is about what happened to people described by Mr. Calcutt in paragraph 5.47 in the following terms:

"With the exception of Lance Corporal Glass, who was in his early thirties, all of the servicemen were young and inexperienced. One minor matter apart, none of them had ever been in any form of trouble. They had no previous criminal convictions. They were all young men of good character. They were, however, junior in rank, and military discipline requires orders by those of a higher rank to be obeyed."

They were caught up in a web of intrigue and circumstance, of bullying and of improper treatment. If we had seen that in a weekend horror film we should have said, "That is good fiction." For this to have happened to those men is one of the worst indictments that could be made. We strongly welcome the decision to make ex gratia payments to them, but no sum of money can compensate them for what they have been through, for careers ruined and reputations blemished. Thank God they had the benefit of a British jury.

I have read the carefully constructed statement by the Minister and one has to bear in mind the background against which it was constructed. It says that we must pay attention to the difficult problems surrounding this sort of inquiry. That almost suggests that this is the first time such a thing has happened in Cyprus. We have already had one section I Cyprus spy trial, at the Old Bailey, the Mata Hari and the Aircraftman Davies trial. The people who investigated for that trial were used for the second trial and the first trial collapsed around the ears of the prosecution. The Government then sought another occasion and again we had the Old Bailey, Cyprus, sex, blackmail, young men who did not know what was happening to them, and forced confessions. But again, thank God, we had a British jury. We saw the Ministry of Defence turned down by a British jury about Ponting, Davies and these eight men. In some ways we have things for which to be grateful.

Let us look at some of the things Mr. Calcutt said. In paragraph 4.197 he says:

"I am of the view that the service police did caution the suspects, as they assert, though whether it meant anything to the servicemen (and whether they realised that they need not answer questions) may be open to doubt."

In paragraph 4.198 he says:

"I am quite satisfied that none of the servicemen was subjected to any form of deep interrogation or to any inhuman treatment."

He further says in paragraph 4.199:

"I have no doubt that the service police interviewed the suspects in a firm and vigorous way. I believe that accounts of events were suggested to the various servicemen as being the truth, and that denials often resulted in relentless and aggressive questioning."

He says in paragraphs 4.202 and 4.203:

"Taken together, these coincidences and inconsistencies tend to support the view that the approach of the service police during the interviews was very far from simply being a matter of waiting for the servicemen themselves to volunteer information.

There was other evidence that the service police were willing to resort to threats during the interviews. Threats featured in the evidence of most of those who were interviewed by the service

police. The threats mentioned both at the trial and the Inquiry were of a similar pattern; first, prolonged incarceration in the event of failure to co-operate; second, threats to involve a suspect as a major spy punishable by a long prison sentence if he did not admit to being a minor spy, which would only be punishable by a short sentence; and threats to involve the suspects's family or his home in the event of failure to co-operate."

Those are all classic interrogation procedures and all meant to build up pressure. Therefore, the question one must ask is, what was improper and what was proper? Where was the line to be drawn and at what point do pressures of this sort on young men so described become degrading treatment and be seen to be so? There are other questions that have not been answered by Mr. Calcutt. Finally, who manufactured the evidence to which they were forced to confess? Secondly, why are no disciplinary procedures being instigated against the people involved in these investigations? Thirdly, are the people and the House not entitled to know about what happened at that base, what was going on? Why were so many of the men who served there purged from the regiment and transferred elsewhere? Fourthly, there is ministerial responsibility in this matter; why is someone in the Government not taking the proper course and thinking about resigning?

Mr. Stanley: The extremely exaggerated and selective accounts of the Calcutt report given by the hon. Member for Kingston upon Hull, North (Mr. McNamara) do not constitute a balanced view of the report, which I have read from cover to cover. If the hon. Gentleman has not done so already, I hope that he will read the report from cover to cover, because it is only by doing that that one can be in a position to take a balanced view.

I am grateful to the hon. Gentleman for acknowledging the good work carried out by Mr. Calcutt. We endorse that acknowledgement. Mr. Calcutt has made a detailed and rigorous study in a remarkably short time and I am glad that the hon. Gentleman shares our views on that.

The view taken by the majority on the Select Committee on the Armed Forces Bill is fully vindicated by the Calcutt report. It is quite evident from the report that there is no question of the primary legislation on service discipline being called into question. It is quite apparent from Mr. Calcutt's recommendations that, if there are to be changes, they will be made to existing procedures and will almost certainly be made by administrative action, by amendment to Queen's regulations or by secondary legislation. If by chance there are to be amendments that require primary legislation, they are likely to be made in Home Office legislation to which the Ministry of Defence would be joined. It is quite evident from a careful reading of Mr. Calcutt's report that he does not call into question the primary legislation underpinning the services discipline Acts.

The hon. Gentleman said that the service men had been subjected to degrading treatment. I must make it quite clear to him and to the House that Mr. Calcutt's conclusion is quite to the contrary. I repeat what I said in my statement which reflects the conclusions of Mr. Calcutt. I said:

"none of the servicemen were subjected to any violence or threats of violence, or any form of torture or inhuman or degrading treatment."

That is Mr. Calcutt's conclusion. The hon. Gentleman also spoke about disciplinary action and I should like to tell the House the conclusions that we have reached on that.

As the House would expect, the question of disciplinary action against any of those involved in the custody decision, which has subsequently been held to be unlawful and improper, has been fully considered. As Mr. Calcutt's report shows, the unlawful custody arose principally through an initial interpretation of QR(RAF) 1034 which we are satisfied was given in good faith, but which was subsequently held to be unsound. As I said in my statement, that regulation has been suspended, but in these circumstances and in the absence of evidence of any culpable action or neglect on the part of any individual, it has been concluded that there are no proper grounds for disciplinary action on this score.

The question of disciplinary action against the service investigators has been considered carefully, and the conclusion of the service authorities is that there is no basis to take disciplinary action against any individuals for culpable action or neglect.

Several Hon. Members *rose*——

Mr. Speaker: Order. I am aware that this important report has been published. I ask hon. Members to ask questions rather than to indulge in debating points.

Sir Antony Buck (Colchester, North): Both sides of the House have expressed gratitude to Mr. Calcutt for the thoroughness of the report and the speed with which he compiled it. We are also grateful to my right hon. Friend the Minister for coming to the House and making this statement. Will he hive in on two further points? When will we have an opportunity to debate the matter further? I presume we may do so during our debate on the White Paper, or during single service debates. We he hive in on the recommendations contained in the final paragraph of the report where Mr. Calcutt suggests that matters should be investigated from the United Kingdom rather than locally, if, unfortunately, there should ever be a similar repetition of this, and where he casts doubts on the efficacy of QR(RAF) 1034? I think the Minister said that it was to be suspended. Is it proposed to be abolished in due course? Will the Minister clarify the position of the regulation?

Mr. Stanley: I am grateful to my hon. and learned Friend. Further debates are a matter for the usual channels, but, obviously, as the matter affects the armed services, if hon. Members wish to make comments on this when we have a debate on the defence White Paper, that would seem to be an opportunity. The single service debates provide a further opportunity. In addition, the Opposition have their own time.

On the specific recommendation that such inquiries should in future be conducted from the United Kingdom, as I said in my statement, that is one of the seven recommendations for further consideration which Mr. Calcutt has made, and we shall obviously address that one extremely carefully.

QR(RAF) 1034 is suspended. The question of its future must be seen in the context of some other matters that Mr. Calcutt has given us to consider. In view of the criticism which has been made of that regulation, I am certain that, if it were to be restored in any shape or form, it would be in a way which would meet the criticisms made in the report.

Mr. Tam Dalyell (Linlithgow): Is the Minister satisfied with the conduct of Flight Sergeant Sheehan? May I ask the Attorney-General to give a full answer to question No. 238 on the Order Paper today, particularly on the geographical limitations of Detective-Superintendent Eames?

Mr. Stanley: I am sure that my right hon. and learned Friend the Attorney-General has heard the hon. Gentleman's request. On the individual to whom the hon. Gentleman refers, I have already covered that matter in what I said in relation to service discipline against the service investigators.

Sir Anthony Meyer (Clwyd, North-West): Does my right hon. Friend accept that I would not wish to say anything at this point about SAC Owen, until I have had an opportunity to talk to him and consider the matter further? Does my right hon. Friend accept that the most important sentence in the whole of this most impressive report is that which states:

"In our society, it is for Parliament and not for investigators, however genuinely and well motivated, to decide if and when, and in what circumstances, the interests of an individual should be subordinated to the interests of society as a whole."

Will he bear that wise maxim firmly in mind?

Mr. Stanley: Certainly the whole Government would fully endorse that extremely important maxim. In view of my hon. Friend's constituent, I should like to tell the House the position of each of the eight service men. As of today the position is as follows. Four service men, Lance Corporal Glass, Signalman Hardman, Signalman Tuffy and SAC Payne, have already left the services on completion of their engagements; and a fifth service man, SAC Lightowler has already left the RAF prematurely at his own request. Extremely careful consideration has been given to the future of the remaining three service men, SAC Jones, SAC Owen, and SAC Kriehn. Today they are being advised that the Air Force Board is being recommended to consider their discharge from the RAF. The reasons for the recommendation are being given in writing to the service men. They are being advised that they may make representations to the Air Force Board, and use the redress of grievance procedure before the board comes to a final conclusion.

Mr. James Wallace (Orkney and Shetland): We on the alliance Bench wish to express our gratitude to Mr. Calcutt for what, at a brief glance, seems to be a thorough report, which will certainly merit study during the coming days. I do not think that Opposition Members on the Select Committee on the Armed Forces Bill were as convinced as he and his whipped hon. Friends that there is nothing in the report which would have been a cause for proper study by the Committee.

While we acknowledge the ex gratia payments made to seven of the men involved, at first sight it appears petty and mean that on the technicality that a point was not taken at the trial, no payment has been offered to SAC Jones. Will the Minister explain why he considers it inappropriate? He has expressed his views on the lack of disciplinary charges brought against the men involved. While he has given an explanation about QR(RAF)1034, can he expand on why the commanding officers were given no discretion under rule 4 of the rules and regulations regarding commanding officers' discretion to hold men in close or open custody? Who refused to allow them discretion? Have disciplinary procedures been considered in respect of those senior officers? As the code of guidance, under the Police and Criminal Evidence Act 1984, provides for disciplinary proceedings against police officers who breach the code of guidance, in future will there be disciplinary procedure against service personnel who are in breach of any of the provisions of their codes of guidance?

Mr. Stanley: On the hon. Gentleman's last point, I can certainly assure him that if any member of the armed forces is responsible for a breach which represents culpability, he is liable to discipline under the services discipline Acts. On his point about the Select Committee, the majority of members of the Armed Forces Bill Select Committee pointed out that the issue was not whether the matter might be studied by it, but whether it raised questions for the primary legislation underpinning the services discipline Acts, which were before the Committee. The Committee, in coming to its majority conclusion, was mindful of the fact that it is open to the Defence Select Committee, which is a permanent Committee, to look on a more long-term basis at any of the aspects of service affairs raised by the Calcutt report.

SAC Jones's eligibility for an ex gratia payment was not decided on a technicality; as I said in my statement, it was the fact that the trial judge found SAC Jones's detention to be lawful. That is the basis on which we had to conclude that an ex gratia payment would not be appropriate in his case. I am aware of the background to the hon. Gentleman's question about rule 4. Obviously, it will be considered in the context of the wider recommendations that Mr. Calcutt has made.

Mr. Cyril D. Townsend (Bexleyheath): Will my right hon. Friend continue to make it clear inside and outside the House that the service police had abundant reason for thinking that a serious security breach had taken place? Is it not remarkable that, in such a meticulous report of 165 pages, so few recommendations for improvement are made, and that even they are couched in general terms?

Mr. Stanley: My hon. Friend makes two extremely important points. In considering the background to the Calcutt report and forming its views on it, the House must be mindful of what Mr. Calcutt says in the opening sentence of paragraph 5.2:

"I am satisfied that throughout the investigations the service police had reasonable — indeed abundant — grounds for believing that a breach of security had occurred in 9 Signal Regiment."

That is the fundamental backcloth to approaching the problem.

My hon. Friend's second point was extremely valid and reassuring. After the detailed and thorough investigation made by Mr. Calcutt, he has proposed seven recommendations, all of which are in the form of considerations for further study.

Mr. Patrick Nicholls (Teignbridge): May I ask my right hon. Friend to clarify his attitude to the ex gratia payment to Senior Aircraftman Jones? The Minister bases his decision not to make such a payment on the fact that the trial judge was satisfied that this person's detention was lawful. But paragraph 5.30 of the Calcutt report states:

"My conclusion is that SAC Jones was lawfully arrested on 6 February but that the failure to charge him within 48 hours in accordance with rule 4 of the Rules of Procedure was a breach of that rule and rendered his continued detention until 8 March unlawful."

My right hon. Friend must agree that if he is prepared to accept so many aspects of the Calcutt report, that point should be considered, too.

The most troubling and worrying aspect of the report is one which, in the interests of time, he did not mention:

that the investigators, worthy and conscientious though they may have been, were apparently completely blind to their conflict of interest. Understandably, they wanted to find out what had happened in terms of the security breach. In their enthusiasm, they seem to have been completely unaware that they had to consider the rights of the people whom they were investigating.

Bearing that in mind, along with what the report states about unlawful detention, does my right hon. Friend accept that, in such cases, he should not rely on the legalities and be too strict in his interpretation of the criteria for ex gratia payments? This man was acquitted. For at least part of the time, he was detained unlawfully. It is clear from the face of the report that the investigators did not consider that the defendants also had rights. Is this not a case where, if all of the others are to be given ex gratia payments, Jones should be given one too?

Mr. Stanley: I do not believe that my hon. Friend is doing the investigators full justice—he will wish to read the report from cover to cover—when he says that they were unconcerned about the rights of those whom they were investigating. No possible construction of the Calcutt report bears that out.

I fully acknowledge, as is brought out carefully by Mr. Calcutt, that there was a conflict between the counter-intelligence requirements to establish the extent of any breach of security that had occurred, and the requirements to ensure a basis for successful criminal prosecution. Mr. Calcutt has drawn attention to the need to provide guidance to investigators on how to deal with that conflict. We shall consider it carefully. It would not be right to say that the service investigators ignored the individual rights of those whom they were investigating.

My hon. Friend mentioned Senior Aircraftsman Jones' entitlement to an ex gratia payment. He will understand that there is a clear difference of legal opinion on this matter. He will understand that I and my right hon. Friend the Secretary of State for Defence have taken the most carefully considered advice that is available to us, which is that, in view of the decision of the trial judge that Senior Aircraftsman Jones's detention was lawful, it would be wrong to make an ex gratia payment in his case.

Dr. Norman A. Godman (Greenock and Port Glasgow): As someone who served his national service with the royal military police, I listened to the Minister with sadness and regret. I was trained to treat suspects humanely. The Minister said that, in this case, we are discussing the unlawful custody of the men. Paragraph 6.3 states that none of the service men was told of his right to legal advice. That is a scandal. In the light of this case, will the Minister bring to the attention of the commanding officers of military police and serving police units the importance of strict adherence to the code of practice on suspects' rights?

Mr. Stanley: I assure the hon. Gentleman that we are doing that. As I said in my statement, we are issuing further instructions to clarify and re-emphasise the safeguards for individuals under investigation. I assure him that we attach the highest priority to the strictest adherence to the codes of guidance issued under the Police and Criminal Evidence Act 1984.

Mr. Michael Marshall (Arundel): Does my right hon. Friend accept that I have only just heard the recommendation for discharge in respect of Senior Aircraftsman Wayne Kriehn? My right hon. Friend has made, as he always does, a courteous effort to give advice on the matter. I must consider my position in the light of what he announced this afternoon.

Reverting to general principles, may I ask my right hon. Friend to accept that my constituent, Senior Aircraftsman Kriehn, has suffered the grave injustice of unlawful detention, improper pressure, the failure, for the best part of a year, to give information to his family on the length of detention and isolation fom officers known to him? For many months, I and my hon. Friend the Member for Clwyd, North-West (Sir A. Meyer) referred to those matters in correspondence with the Minister. I mention this not because I wish to say, "I told you so," but because I wish the Minister to say whether he believes that this shows a problem in the system that does not seem to be covered by the recommendations.

There is no ministerial intervention or senior officer intervention in the present system; nor would there be in any future system. Will my right hon. Friend give careful consideration to that aspect, to prevent another such tragedy?

Mr. Stanley: I acknowledge that my hon. Friend has been sedulous in drawing our attention to the anxieties of his constituent, Senior Aircraftman Kriehn. As for the hardships that he suffered, I assure my hon. Friend that Mr. Ogden will make his assessment of the ex gratia payment against the background of the Calcutt report.

On ministerial and senior officer involvement, my hon. Friend will be aware that the ultimate responsibility for disciplinary matters for the three services lies with the service boards, on which are represented the most senior officers of the three services, and Ministers. He will understand that it would not be appropriate, remotely practical or desirable for Ministers to become involved in the detailed handling of individual cases. We fully accept the responsibility that lies ultimately on Ministers to ensure that the instructions, guidance, regulations and, indeed, the legislation which apply when suspects are being investigated by service policemen are of a standard that would be fully acceptable to the House and comparable with what applies in the civilian sector.

Dr. Keith Hampson (Leeds, North-West): My right hon. Friend will accept that Mr. Calcutt stresses that the delicate line between proper and improper behaviour was crossed. Equally, Mr. Calcutt has no doubts that the investigation and the trial were justified, despite the claims made afterwards by the press and the Opposition that the trial and inquiry were a waste of time and public money. On the contrary, there was a major security leak from that base. In the light of all that has happened, is my right hon. Friend content that there will be no further breaches of security?

Mr. Stanley: No further legal proceedings under the Official Secrets Act 1911 have been taken or are under consideration in relation to this case. I also remind my hon. Friend that my right hon. Friend the Member for Henley (Mr. Heseltine) the previous Secretary of State for Defence, took immediate steps to consider 9 Signal Regiment and its security arrangements to ensure that changes were made which would rectify the weaknesses of security which may have emerged.

[Mr. Stanley]

My right hon. Friend the Prime Minister has asked the Security Commission to examine the security of this and other similar units. I believe that everything possible and everything that is reasonable has been done to try to learn security lessons from this case.

Mr. Kenneth Hind (Lancashire, West): Does my right hon. Friend agree that, with the exception of RAF regulation 1034, this report suggests that the new code of conduct for the interrogation of suspects under the Police and Criminal Evidence Act 1984, followed by the Armed Forces Bill, will deal with many of the problems which have arisen in this case such as the right to legal advice? The report totally vindicates the decision of the Select Committee on the Armed Forces Bill not to pursue inquiries until this matter had come before the House.

Mr. Stanley: I believe that my hon. Friend is correct about the decision of the Select Committee. I endorse what he has said. The changes to the codes of guidance, under the Police and Criminal Evidence Act 1984 should do a certain amount to deal with the problems which have arisen in this case. We are anxious that fresh instructions should be issued to highlight the importance of making certain that clear priority is given to protecting the legal rights of individuals who are investigated.

Mr. David Ashby (Leicestershire, North-West): Will my right hon. Friend reconsider the position of SAC Jones? There has been a manifest injustice in his case. The trial judge apparently ruled that the detention was lawful. By virtue of his acquittal, SAC Jones has no locus, no standing and no right of appeal, but Mr. Calcutt's report shows that the detention was unlawful. The matter was examined with great care by Mr. Calcutt. He was investigating as well as drawing conclusions. Mr. Calcutt clearly states that it was unlawful. Therefore, there is no justification for treating SAC Jones differently from the others. Justice ought to be seen to be done and, as a result of the inquiry, all the individuals should be treated equally.

Mr. Stanley: I am sure that my hon. Friend will acknowledge that Mr. Calcutt's report and inquiry do not constitute an appeal in a judicial sense. Mr. Calcutt and the trial judge made different legal interpretations. I assure my hon. Friend and others who have spoken on this point that, before this conclusion was reached, the most careful considerations had been given and the most careful advice taken.

Mr. McNamara: It seems to be common ground in the House that the case of SAC Jones should be looked at again. Despite the careful advice which has been given, I would be grateful if the Minister could say, having heard the opinions of hon. Members, that he will reconsider the case.

The letters which were sent to the Minister by the hon. Member for Arundel (Mr. Marshall) and the hon. Member for Clwyd, North-West (Sir A. Meyer) raise an important issue. I understand that the Minister could not interfere in the judicial procedure, but, if the matter went to the Army Board, was no notice taken of the concern which had been expressed in letters to the Minister from constituency Members regarding what was happening to people who were under inquiry? May we know the grounds upon which three men, who were found not guilty by a jury and who wish to remain in Her Majesty's Armed Forces, are being recommended for dismissal? That almost suggests that, despite the trial, despite everything which has come up before and despite the verdict of the jury, the Ministry of Defence still thinks that those men were guilty.

Mr. Stanley: I can give the hon. Member the absolute assurance that, when any hon. Member writes to the Ministry and conveys a complaint on behalf of an individual service man, that complaint is carefully investigated. A careful report is made to Ministers before they reply to an hon. Member. I assure the hon. Gentleman that that is done in each and every case.

With regard to the grounds for dismissal of the remaining three senior aircraft men still in the service, the hon. Gentleman, and, I hope, the whole House, will understand that it would be improper for me to say what those grounds are. The service men concerned are being informed of this in writing, and what use they make of that information is entirely up to them. It would not be right for me to indicate the grounds. I wish to make it clear that meticulous care has been taken to disregard any matters which were contested or disputed in the Official Secrets Act trial.

BILL PRESENTED

POLICE COMPLAINTS PROCEDURE (AMENDMENT) (NO. 2)

Mr. Peter Pike presented a Bill to amend the Police and Criminal Evidence Act 1984 to establish an entitlement for a complainant to have access to the report of the police on the substance of his or her complaint; to make further provision in relation to the complaints procedure; and for connected purposes. And the same was read the First time; and ordered to be read a Second time Friday 6 June and to be printed. [Bill 166.]

EUROPEAN COMMUNITY DOCUMENTS

Ordered,

That European Community Document No. 4676/86, laying down definitions of fishing vessels' characteristics and measurements, be referred to a Standing Committee on European Community Documents.—*[Mr. Maude.]*

PATENTS, DESIGNS AND MARKS BILL *[Lords]*:

Ordered,

That the Patents, Designs and Marks Bill *[Lords]* be referred to a Second Reading Committee.—*[Mr. Maude.]*

CC QUEST
BC
TF
NW

Private Secretary to
MINISTER OF STATE FOR
THE ARMED FORCES

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB

Telephone 01-218 2216 (Direct Dialling)
01-218 9000 (Switchboard)

CONFIDENTIAL

D/MIN(AF)/JS/12/1

21 May 1986

Dear Private Secretary,

THE CALCUTT REPORT: STATEMENT

... I attach a copy of the final draft of the statement which my Minister proposes to make tomorrow afternoon, the contents of which have been discussed with officials in your Department. If there are any further comments I should be grateful to have these by cease of play to-day.

I am copying these to the Private Secretaries to the Prime Minister, the Home Secretary, the Foreign Secretary and to the Director of Public Prosecutions and the Treasury Solicitor.

John Tesh.

J F M TESH

Private Secretary to
the Attorney General

CONFIDENTIAL

CALCUTT INQUIRY: FINAL DRAFT STATEMENT

1. Following the acquittal last year of eight servicemen from 9 Signal Regiment in Cyprus who had been charged under the Official Secrets Acts, I announced in the House on 29 October that there was to be an independent inquiry into the way in which the Service police carried out their investigations of the eight men originally accused. Mr David Calcutt QC agreed to conduct this inquiry. The House was also told that it was the intention that, subject to the usual security considerations, Mr Calcutt's report on his inquiry would be published. The report has been published to-day Cmnd 9781 .

2. Mr Calcutt has concluded that the Service police investigations, which he acknowledged involved special difficulties due to their sensitivity and complexity, were undertaken without any animosity or ill-will towards the servicemen concerned, and that none of the servicemen were subjected to any violence or threats of violence, or any form of torture or inhuman or degrading treatment.

3. Mr Calcutt has, however, concluded that the custody of the eight servicemen was, for part of the time, unlawful and that even after the servicemen had been lawfully arrested on holding charges their continued custody was at least improper. The interviews by the service police with each of the eight servicemen mostly took place during these periods of unlawful and improper custody.

6. Mr Calcutt has also concluded that, as the number of days spent in custody increased, so the pressure which was exerted on each of the servicemen gradually built up and crossed over, from what was at first proper to what he could only regard as becoming improper, and that the pressures which were ultimately exerted on each of the servicemen were such that these were likely to render unreliable answers given or statements made by them. However Mr Calcutt also points out that the investigations carried out by the service police in Cyprus in February and March 1984 were difficult, sensitive and complex, and they would have created profound problems for anyone who was given the task of carrying them out. Mr Calcutt concludes that though he has pointed to some breaches of lawful and proper procedures, it would be unfair to be over-critical either of the investigating service police or of those who were advising them.

7. The Government fully recognises the difficult position in which the Service investigators in the case were placed and that they were motivated solely by what they perceived to be their clear duty. The Government is also grateful to the service investigators for their full participation in Mr Calcutt's inquiry which was entirely of their own volition. I should also like to take this opportunity to make it quite clear that we continue to have full confidence in the integrity and professionalism of the Royal Military Police and the RAF Police who do difficult, complex and very important security work in many key Defence areas.

8. Mr Calcutt has recommended seven matters for further consideration. These are:

the potential conflict between learning the nature, extent and full circumstances of any breach of security and bringing the offender to justice;

the need to give at an early stage in an investigation clear guidance on the relative priority to be given to the counter-intelligence aspect and the criminal aspect of a security case;

whether, in certain circumstances, the 48 hour maximum period allowed under current service procedures for suspects to be detained without charge should be capable of being extended;

whether RAF Queens Regulation 1034 should be either annulled or amended;

how far the rigid application of the need to know principle may have the effect of depriving a suspect of the protection which the law provides for him;

the effect of classifying the routine documentation in security investigations; and

whether investigations such as those leading up to the Cyprus trial should be conducted from the UK rather than overseas.

The Government accepts all of Mr Calcutt's recommendations for further consideration and,
the House will be informed of the outcome of this further work.

9. As far present practice is concerned, Mr Calcutt acknowledges that the new Code of Practice for the treatment and questioning of persons by the service police has now been issued under the Police and Criminal Evidence Act 1984 and that this may at least go some of the way towards overcoming some of the shortcomings revealed by the inquiry. In addition the House will wish to know that RAF Queens Regulation 1034 that provides for a form of custody short of arrest has been suspended, and that further instructions are being issued to clarify and re-emphasise the safeguards for individuals under investigation.

10. Finally, I should like to express our gratitude to Mr Calcutt for conducting his inquiry both speedily and with great thoroughness, and for producing a rigorously argued and most valuable report.

From: THE PRIVATE SECRETARY

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

21st May 1986

Dear John

THE CALCUTT REPORT: STATEMENT

Thank you for sending me a copy of your letter of 21 May enclosing a draft of this statement.

I am afraid that we feel that some amendment is needed to paragraph 4, since this does not quite reflect the advice which we have given to your officials. The present draft implies that it is Mr Ogden who makes decisions on whether an ex gratia payment should be made to someone in respect of a wrongful conviction or charge. In fact, Mr Ogden merely determines the amount of the award: the decision to make an award is taken by the Home Secretary.

I attach a revised passage which you may care to consider.

I am copying this letter to the recipients of yours.

Yours sincerely

for S W BOYS SMITH

J F M Tesh, Esq

CONFIDENTIAL

4. In the light of Mr Calcutt's conclusions as to the lawfulness of the custody of the servicemen, my Rt Hon Friend the Secretary of State for Defence has concluded that in the case of 7 of them he is prepared to make an ex gratia payment [in compensation for their [unlawful] [improper] custody]. The 7 servicemen concerned are [names]. On their application, my Rt Hon Friend will ask Mr Michael Ogden QC to make an independent assessment of the amount of the award in each case. (Mr Ogden acts as the independent assessor in cases where the Home Secretary has agreed to make an ex gratia payment in respect of a wrongful conviction or charge.)

LEGAL PROCEDURE
PEREMPTORY
CHALLENGES
12/85

cc QUEST
BG
TF
NW

Private Secretary to
MINISTER OF STATE FOR
THE ARMED FORCES

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB

Telephone 01-218 2216 (Direct Dialling)
01-218 9000 (Switchboard)

CONFIDENTIAL

D/MIN(AF)/JS/12/1

21 May 1986

Dear Private Secretary,

THE CALCUTT REPORT: STATEMENT

I attach a copy of the final draft of the statement which my Minister proposes to make tomorrow afternoon, the contents of which have been discussed with officials in your Department. If there are any further comments I should be grateful to have these by cease of play to-day.

I am copying these to the Private Secretaries to the Prime Minister, the Home Secretary, the Foreign Secretary and to the Director of Public Prosecutions and the Treasury Solicitor.

John Tesh

J F M TESH

Private Secretary to
the Attorney General

CONFIDENTIAL

CALCUTT INQUIRY: FINAL DRAFT STATEMENT

1. Following the acquittal last year of eight servicemen from 9 Signal Regiment in Cyprus who had been charged under the Official Secrets Acts, I announced in the House on 29 October that there was to be an independent inquiry into the way in which the Service police carried out their investigations of the eight men originally accused. Mr David Calcutt QC agreed to conduct this inquiry. The House was also told that it was the intention that, subject to the usual security considerations, Mr Calcutt's report on his inquiry would be published. The report has been published to-day Cmnd 9781 .

2. Mr Calcutt has concluded that the Service police investigations, which he acknowledged involved special difficulties due to their sensitivity and complexity, were undertaken without any animosity or ill-will towards the servicemen concerned, and that none of the servicemen were subjected to any violence or threats of violence, or any form of torture or inhuman or degrading treatment.

3. Mr Calcutt has, however, concluded that the custody of the eight servicemen was, for part of the time, unlawful and that even after the servicemen had been lawfully arrested on holding charges their continued custody was at least improper. The interviews by the service police with each of the eight servicemen mostly took place during these periods of unlawful and improper custody.

4. In the light of Mr Calcutt's conclusions as to the lawfulness of the custody of the servicemen, my Rt Hon Friend the Secretary of State for Defence has concluded that in the case of 7 of them we should adopt the procedures followed by the Home Office for ex gratia payments in cases of wrongful conviction or charge described to the House by my Rt Hon Friend the Home Secretary on 29 November last year at Written Answers Col. 691. These 7 servicemen - Senior Aircraftsmen Kriehn, Lightowler, Owen and Payne, Lance Corporal Glass and Signalmen Hardman and Tuffy - will be told that they may make an application for an ex gratia payment. If they do so, their applications will be referred to Mr Michael Ogden QC, who acts as the independent assessor in Home Office cases and who has agreed to do so here.

5. As regards the eighth serviceman, Senior Aircraftsman Jones, the Trial Judge, now Lord Justice Stocker, considered the provisions of the Air Force Rules of Procedure and concluded that the relevant Rule had been complied with in the case of Senior Aircraftsman Jones and that his custody was lawful. In these circumstances, my Rt Hon Friend the Secretary of State does not consider that an ex gratia payment can be paid in Senior Aircraftsman Jones's case.

6. Mr Calcutt has also concluded that, as the number of days spent in custody increased, so the pressure which was exerted on each of the servicemen gradually built up and crossed over, from what was at first proper to what he could only regard as becoming improper, and that the pressures which were ultimately exerted on each of the servicemen were such that these were likely to render unreliable answers given or statements made by them. However Mr Calcutt also points out that the investigations carried out by the service police in Cyprus in February and March 1984 were difficult, sensitive and complex, and they would have created profound problems for anyone who was given the task of carrying them out. Mr Calcutt concludes that though he has pointed to some breaches of lawful and proper procedures, it would be unfair to be over-critical either of the investigating service police or of those who were advising them.

7. The Government fully recognises the difficult position in which the Service investigators in the case were placed and that they were motivated solely by what they perceived to be their clear duty. The Government is also grateful to the service investigators for their full participation in Mr Calcutt's inquiry which was entirely of their own volition. I should also like to take this opportunity to make it quite clear that we continue to have full confidence in the integrity and professionalism of the Royal Military Police and the RAF Police who do difficult, complex and very important security work in many key Defence areas.

8. Mr Calcutt has recommended seven matters for further consideration. These are:

the potential conflict between learning the nature, extent and full circumstances of any breach of security and bringing the offender to justice;

the need to give at an early stage in an investigation clear guidance on the relative priority to be given to the counter-intelligence aspect and the criminal aspect of a security case;

whether, in certain circumstances, the 48 hour maximum period allowed under current service procedures for suspects to be detained without charge should be capable of being extended;

whether RAF Queens Regulation 1034 should be either annulled or amended;

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the effect of classifying the routine documentation in security investigations; and

whether investigations such as those leading up to the Cyprus trial should be conducted from the UK rather than overseas.

The Government accepts all of Mr Calcutt's recommendations for further consideration and,
the House will be informed of the outcome of this further work.

NB PM CCPC

to see

MW. 12/5

NW

CDP 12/5

SECRETARY OF STATE FOR DEFENCE

THE CALCUTT REPORT

1. As you know, I have been considering with the Director of Public Prosecutions and the Treasury Solicitor the apparent inconsistency between the views of Stocker J and Calcutt on the question of the lawfulness of SAC Jones's detention. Stocker J, when considering during the trial the admissibility of confessions made by the accused, seems to have concluded that the requirements of the Rules of Procedure had been complied with (and in particular the charging requirements). Calcutt, on the other hand, comes to the conclusion (paragraph 5.30) that while Jones was lawfully arrested on 6 February there was a failure to charge him within 48 hours in accordance with Rule 4 of the Rules of Procedure and that his detention was unlawful.

2. I understand that it is intended to refer the assessment of the amount of compensation payable to those found to be unlawfully detained to Mr Michael Ogden QC. If we were persuaded that Calcutt was undoubtedly right in relation to the lawfulness of Jones's detention, then the assessment of compensation due to him could also be referred to Ogden. We do, however, have a High Court Judgment on the issue, which was given on the basis of all the relevant facts which were later before Calcutt (although it is true to say that the point of law was not argued before the Court because the defence did not consider the point to be arguable!). I am also conscious of the fact that the judiciary would be extremely critical if the Government were to adopt the view of a Silk in preference to that expressed by a High Court Judge, faced with the same issue and all the relevant facts. Looking at the question of law myself, I am not convinced that Calcutt was right on this issue. There are weighty arguments both ways. The unsatisfactory

..../inconsistencies

inconsistencies which exist between the various provisions which are applicable to the detention of servicemen make it extremely difficult to reach a firm view.

3. In these circumstances, I would advise that the Government should agree to Ogden assessing the quantum of compensation payable to the four servicemen who were found by Stocker J to have been unlawfully detained. It would not be right - and would cause considerable concern among the judiciary - if Ogden were to consider anew the issue of the lawfulness of Jones's detention. The Government should, as to that issue, state that there is a conflict of view between Stocker J and Calcutt, state that it is inappropriate for Ogden to consider Jones's case at all and indicate that it is always open to Jones to pursue his remedies in the Courts, if so advised. I am attaching a draft passage which you might like to consider including in the Statement.

4. I am copying this minute to the Prime Minister, the Home Secretary and to Sir Robert Armstrong.

M.H.

9 May 1986

DRAFT

PASSAGE TO BE INSERTED (after a passage stating that quantum of compensation is to be referred to Mr Michael Ogden QC)

As regards SAC Jones, before the Trial Judge, Jones's Counsel did not contend that his detention was unlawful. The Judge considered the provisions of the Rules of Procedure and concluded that the relevant Rule had been complied with. The evidence heard by Calcutt was augmented but the facts adduced in evidence were essentially the same. On his construction of the same provisions, he held that the continued detention of SAC Jones had been unlawful.

It is not the practice of the Government to comment upon any part of a Judgment delivered by a Court. In the circumstances, it would be inappropriate to invite Mr Michael Ogden to assess Jones's case. It is of course always open to Jones to pursue his remedies in the Courts, should he be so advised.

[The Secretary of State accepts the need for a careful review of the relevant provisions with the object of establishing whether greater clarity can be achieved. That review has already commenced].

LEGAL PROCEDURE: Peremptory challenges re. juries:
Dec. 1985

cc PC

Papers removed from file

Date 12.5.86

Att. Gen. to SS/MOD
9.5.86

LEGAL PROCEDURE:
Peremptory challenges
re. juries: Dec. 1985

Foreign and Commonwealth Office

London SW1A 2AH

30 April 1986

Dear David

The Calcutt Report

Thank you for sending me a copy of your letter to Tim Flesher about the above. I am writing to confirm that we have no objection to the publication of the report.

The Foreign Secretary has commented that it is a very balanced report. He hopes that publicity will be given to Sections 5.52-5.54 of the report when it is presented for publication since they contain essential thoughts.

I am copying this letter to the recipients of your.

Yours ever

(R N Culshaw)
Private Secretary

D Woodhead Esq
PS/MOD

LEGAL PROCEDURE: peremptory challenges, Dec 1985-

file

10 DOWNING STREET

From the Private Secretary

29 April 1986

Thank you for your letter of 15 April about the Calcutt Report. This is just to confirm what I have already told Jeremy Wright that the Prime Minister is content that the report should be published on 7 May and accompanied by an oral statement by Mr. Stanley.

TIM FLESHER

David Woodhead, Esq.,
Ministry of Defence

E.R.

PRIME MINISTER

CALCUTT REPORT

I am sorry to come back to you on this yet again, but the MOD are not covering themselves in glory. Having first said that they were going to postpone the publication of Calcutt until the week beginning 12 May, they now discover that the Lords Business Managers will not let them because of the Armed Forces Bill. Moreover, the Defence White Paper is being published on the Monday. They now want to go back to 7 May with a Statement by John Stanley in the absence of George Younger.

In these circumstances, do you want to take the matter up with the Lord President: essentially this would mean telling him that the Report would have to come out only a very short time before the Armed Forces Bill enters its Committee Stage in the House of Lords. Personally, I think the Lords Business Managers are overdoing the objections to this, but I am not entirely sure the point is worth pressing.

Are you content that the Report should be published on 7 May, or do you wish to insist on the following week?

N

Let it go ahead on 7 May
- unless the L.P. says otherwise
MT

Timothy Flesher

25 April 1986

(RAMAFX)

PRIME MINISTER

THE CALCUTT REPORT

You saw this minute from the MOD at the weekend. I mentioned then that the Lord President was going to comment on timing, but I understand that he is content, from his point of view, with 7 May. Mr. Younger is proposing to make an oral statement on publication day. You wished to discuss timing. Were there any particular points?

N

I will have a word with the Lord President MT

Timothy Flesher

Prime Minister

I understand that due to the absence of the SofS in Saudi Arabia, the MOD would prefer to make the announcement the following week ie that beginning 12 May.

23 April 1986

Does this meet your wishes or do you still wish to speak to the Lord President

Yes MT

No MT

(DSG.46)

N 24/4

N

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB
Telephone 01-~~930 7022~~ 218 6169

* The Lord President has news on timing: 7 May is the day before the local elections + Ryedale + W. Derbyshire W.

MO 23/1E

15th April 1986

CC pre-await Lord Pres comment

1. Mr Powell - seen
2. Mr Wicks
3. The Minister

N

Dear Tim

This report, while criticising the conduct of the Cyprus investigation essentially dismisses the defence claim of duress. Agree to publication?* W

THE CALCUTT REPORT

You may recall that, following the acquittal last year of 8 servicemen charged under the Official Secrets Act, Mr Stanley announced on 29th October that an Inquiry had been set up, led by Mr David Calcutt QC, to investigate allegations of improper treatment of the accused by Service police during the investigation. The Terms of Reference for his Inquiry were: 18/4

Yes - may be disingenuous but

> "To enquire into the question of whether the investigations carried out by Royal Air Force's Provost Marshal branch and the Army's Special Investigation Branch into matters which formed the substance of charges subsequently made under the Official Secrets Act against [8 named individuals] were carried out in accordance with lawful and proper procedures: to report with all practicable speed and make recommendations as to relevant procedure."

Mr Stanley also said that it was the intention, subject to usual security considerations, to publish Mr Calcutt's report.

Mr Calcutt's report was received last week. I attach a copy. The report's conclusions are set out in Chapter 5. Briefly, Mr Calcutt exonerates the Service police (paras 5.2-5.6) and the Scots Guards in whose custody the accused were placed (paras 5.21-5.25) of maltreatment of those being investigated either during detention or questioning, and concludes that a good deal of care was taken to make the servicemen as comfortable as possible in the circumstances. He also points out (paras 5.7-5.11) the difficulties associated with enquiries into suspected breaches of security, where there is a conflict between the desire to establish quickly the extent of any breach, and the legal requirements associated with police enquiries that might lead to criminal proceedings. Mr Calcutt

Timothy Flesher Esq
10 Downing Street

does, however, make a number of adverse comments. He notes the lack of guidance from higher levels available to those conducting the enquiry on which function was to take priority, and he is critical of this. He further concludes (paras 5.26-5.38) that the basis for the arrest and/or continued holding in close custody of those under investigation, including the use of holding charges, was either unlawful or, at best, improper. Finally, he concludes that, as the number of days in custody increased, the pressure on those under investigation built up, to the extent that they were likely to render unreliable answers or statements. These last two points, in particular, are likely to provide a focus for criticism despite Mr Calcutt's findings that the allegations of serious maltreatment made in the media could not be substantiated.

In all, Mr Calcutt makes 7 recommendations (Chapter 6), all of which propose further study of particular problems highlighted by the case, in particular of ways of resolving the conflict of function between security and police investigations; and of the legal and administrative arrangements for conducting enquiries of this kind.

In accordance with the previous undertaking, the Defence Secretary wishes to publish this report as a Command paper and hopes to do so on 7th May. This timescale is influenced not only by the time needed for printing, but also by consideration of the Armed Forces Bill in the House of Lords. The second reading of that Bill is currently planned for 28th April and it would not be practicable to publish before that. The Committee stage is likely to take place during the week beginning 12th May. Publication on the 7th would enable the Lords to have the report available during the later stages of their consideration of the Bill and also allows sufficient time (but only just) for us to produce it. I should be grateful for approval to proceed on this basis, although we have yet to finalise our plans for handling the announcement and the comment which the report will undoubtedly arouse.

The report has been checked by both MOD and GCHQ security authorities who are content from their point of view that it be published as written. We are, however, treating it as Management In Confidence prior to publication in Parliament.

I am copying this letter to the Private Secretaries to the Lord President, the Lord Chancellor, the Foreign and Commonwealth Secretary, the Home Secretary, the Lord Privy Seal, the Scottish Secretary, the Chief Whips in the Lords and the Commons, to the Legal Secretary to the Law Officers and to the Private Secretary to the Cabinet Secretary.

Yours

(D J WOODHEAD)

bo 55

10 DOWNING STREET

From the Principal Private Secretary

Sir Robert Armstrong

I have shown the Prime Minister your minute of 16 December about the use of peremptory challenges by the defence counsel.

The Prime Minister agrees that the discussion of this issue described in paragraph 2 of your minute does not now suggest any great sense of urgency, and she would like you to try to instil a greater urgency into the consideration of this subject.

Please could you do this, and keep the Prime Minister in touch with progress.

NLW

18 December, 1985.

JB

cc Security: 9
Prime Minister Signals Regimat
FCO 84

RTA clearly thinks this is not being pushed forward fast enough. I suggest you ask him to try to instil great urgency into the consideration of this subject.

Ref. A085/3279

MR WICKS

I minuted you on 2 December (A085/3108) about Mr Toby Jessel's allegations of a conspiracy between baristers and solicitors to pack the jury for the Cyprus trial.

Yes no Agree? N.L.W. 17-12

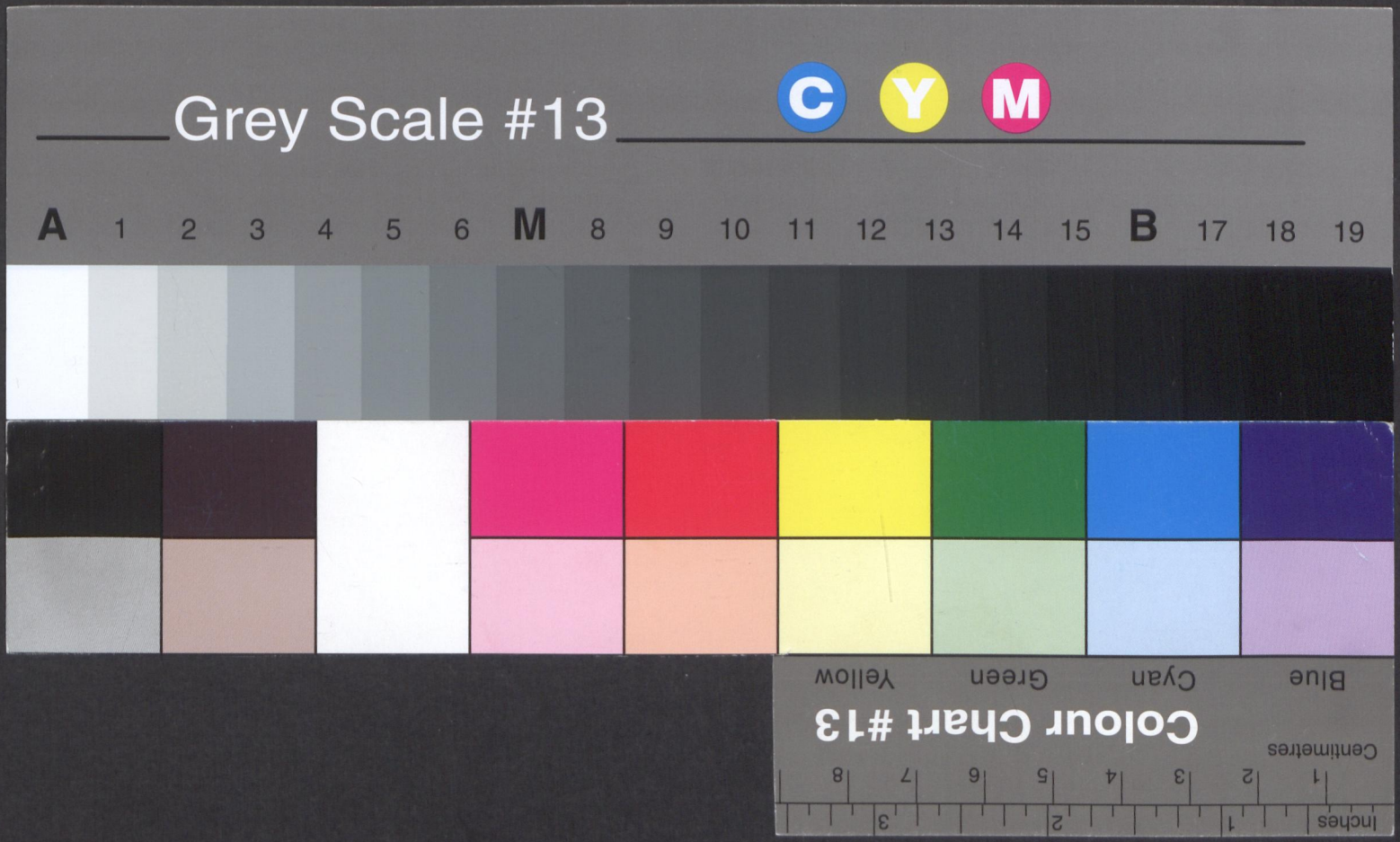
2. As you agreed, I followed the letter up with the Departments concerned. The Home Secretary and the Law Officers are in correspondence on the subject, and the Lord Chancellor's Department and some of the senior judges have been involved. With the agreement of the Solicitor General the Home Secretary has announced that the Crown Prosecution Service, once it comes into operation, will conduct a systematic survey of the use of peremptory challenges by the defence counsel. This does not suggest any great sense of urgency, but I gather that the Home Secretary may be coming forward to his colleagues with other ideas.

RTA

ROBERT ARMSTRONG

16 December 1985

SECURITY: 9 Signals Regiment: Feb 1984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