

ON TRIAL

Contempt of Court proceedings against Peace News, The Leveller and the National Union of Journalists began in the High Court on Tuesday, May 2nd. Below is an account of the first two days of the hearing.

More than fifty people braved the pouring rain on Tuesday morning to picket the High Court in London at the start of the contempt of court hearing against *Peace News*, *The Leveller* and the National Union of Journalists.

Court 4 was crowded out, too, by supporters — so crowded that by the afternoon (and at the special request of the defence lawyers) the first-floor public gallery was opened for the first time in five years. Contempt is a civil, rather than a criminal, offence, so there is no dock for the defendants. In fact those who are not defending themselves don't even have the right to be in the court: Helen Linton, Chris Jones and Alison de Reybekill from *PN*, who are represented by Tony Gifford, have spent most of the hearing in the public gallery because the front bench where the other defendants sit is so crowded. From the benches immediately below the judges' dais where the press sit huddled, the judges themselves (Lord Chief Justice Widgery, Stocker and Croom-Johnson) are disembodied voices, heard but not seen. The Victorian Gothic décor (what a waste of good oak!) makes the airless court feel even more oppressive.

PROSECUTION

According to the Attorney General, who is responsible for the prosecution being brought, the colonel who gave evidence at the committal proceedings against Crispin Aubrey, John Berry and Duncan Campbell under the Official Secrets Act "had properly been permitted not to disclose his identity when giving evidence . . . the Chairman directing in open Court that no attempt should be made to disclose the identity of Colonel B": Silkin, the Attorney General, also contends that the "disclosure of the identity of Colonel B tended and was calculated to prejudice the due administration of justice: it was intended to flout the aforesaid direction and make it difficult for witnesses in the position of Colonel B to give evidence in open Court".

When Harry Woolf opened the case for the prosecution, he asserted confidently that a "direction" not to name the colonel had been made at the committal proceedings last November and he produced an affidavit (written statement of evidence) from Anne Butler, of the Director of Public Prosecutions' office, to that effect. But the first affidavit produced by the defence flatly contradicted that assertion. The Clerk of Tottenham Magistrates' Court,

Leslie Pratt, stated that he had no recollection of what Anne Butler asserted and did not agree with what she said happened. "The Official Secrets Act provides for exclusion of all or part of the public, and in fact the public was excluded during the playing of the tape, but I am not aware of any other provision made such as is referred to or implied in Anne Butler's affidavit and that was the reason why the Magistrates did not make any Order such as she refers to — because I advised them that they had no power to do so."

After that Mr Woolf was a little less certain: "The word direction I no longer rely on, but it was a flouting of the arrangements made by the court".

CLOAK OF MARTYRS

Mr Woolf, however, has not confined himself to the "narrow" consideration of a particular contempt of a particular court. "As far as *Peace News* and *The Leveller* were concerned, it would be my submission that the evidence shows that they were engaged for political reasons upon a campaign the main part of the object of which was to undermine the prosecution of a series of offences . . . of which the magistrate had found a *prima facie* case, and they were using what I will call the Colonel B issue for that purpose. Seeing the evidence, you may form the impression that they made it inevitable for the Attorney General to bring the matter before the Court, and having succeeded in this they now seek to draw upon themselves a mantle which is inappropriate, to dress themselves in the cloak of martyrs."

The part of the NUJ he considered to be much less, despite the fact that the name had been published twice in *The Journalist* (the second time, in the April issue, after it was known that proceedings were going ahead against *PN* and *The Leveller*).

COLONEL BLANK, COLONEL BLEEP

Woolf then proceeded to read extracts from the issues of *Peace News*, *The Leveller* and *The Journalist* which had named the colonel. Spellbound, the papers' supporters listened as he invented more and more discreet substitutes for the colonel's name (Colonel Blank, the Name of One, the Familiar Name, the Colonel Whose Name is Set Out, Colonel-er-gulp). He even gave a fair rendition of the bleep which the BBC had inserted in an interview with Tim Gopsill, of *The Leveller*. But even Mr Woolf couldn't keep it up forever, and when he finally let slip a "Colonel H.A. Johnstone" he was greeted with prolonged laughter and applause from the public gallery.

The defence was opened by the NUJ's counsel, John Melville Williams, with the affidavit mentioned above from the Clerk at Tottenham Magistrates' Court. An affidavit was read from Ken Ashton, General Secretary of the NUJ, which described the NUJ's concern "in recent years with the operation and reform of the Official Secrets Acts and of the law of contempt of Court".



Sir Reginald Bonkers, a less well-known member of the judiciary, encounters picketers at the entrance to the High Court

ON TRIAL PART TWO

diana shelley

If we are found guilty of contempt, you will have to rewrite the entire media of the past few weeks. Instructions for doing this are to be found in George Orwell's 1984. Phil Kelly.

When judges Widgery, Stocker and Croom-Johnson reserved judgement on Friday May 5, the fourth day of contempt proceedings, the case for the prosecution seemed in ruins. Harry Woolf, prosecuting *Peace News*, the *Leveller* and the National Union of Journalists for the Attorney General, had been relying on the fact that the magistrates had made a "direction" for Colonel B's name not to be revealed following his anonymous appearance in the Official Secrets committal against Crispin Aubrey, John Berry and Duncan Campbell. When evidence from the clerk of the Magistrates Court made it clear there had been no such order, Woolf was reduced to making accusations that an "arrangement" had been flouted.

This is a selective and political prosecution. You are not going to take on the wealthy and powerful sections of the press. Tim Gopsill.

But the acquittal which common sense (and even law!) seems to demand may not come so easily in a political trial of this sort. It would not be the first time that a set of High Court judges had "illuminated" an obscure corner of the law. Nor would it be impossible for the law allowing anonymity to rape and blackmail victims to be extended to include any witness whose identity the state wishes to keep secret for whatever reason. In this case, to provide a back-up of secrecy to the secrets prosecution brought against Aubrey, Berry and Campbell for purely political motives.

The question is raised of making someone, a reporter for instance, not only bound to try and understand the current practice of the law, but also to try and make a guess at what the law will be in six months' time - after several days of complex argument. Nigel Thomas.

On Thursday, Stephen Sedley finished presenting the case for the *Leveller* company. (Some of his arguments were reported in the trial supplement in the last issue of *PN*.) He said that it was quite irrelevant to the case whether the name was published as part of a political campaign; what had to be shown was that the magistrates had made a direction and that the papers were in contempt if they broke it.

Reading the Colonel's evidence it is clear that, in anyone's terms, his name is a relatively minor matter compared to other more substantial information he, without demur, discusses. Matters of national security are clearly not involved with his name, if all the other evidence he gave could be uttered unchallenged in open court. Albert Beale.

Tony Gifford, for Alison de Reybekill, Helen Linton and Chris Jones, argued that the magistrates did have a statutory right, under the Official Secrets Act, to go into camera (that is, to conduct all or some of the proceedings in private) but had chosen not to do so while Colonel B gave his evidence. The withholding of the names of witnesses was "a major and dangerous encroachment on the rule that justice must be done in public...An anonymous witness is much more free to make outrageous statements and to tell lies".

If Hugh Johnstone is in any way carrying out his duties, he will be aware of the names of his opposite numbers in countries making use of Signals Intelligence - as much as they will be aware of his. If this is the case, the only reason for concealing his name would be to keep it from the people of this country. Except that even before the ABC committal hearing anyone in this country could walk into a public library and, with sufficient patience, identify the names of the entire command structure of Signals Intelligence. Mike Holderness.

ALL CHANGE

It was at this point that Woolf made an attempt to get the grounds on which the prosecution was based changed from contempt of a "direction" to contempt of a "procedure" of the court.

Mr Woolf submits...that the "arrangement" was equivalent to the ABC committal hearing going into camera. If this were allowed to be so, in future the courts would be able to go in and out of camera like frightened bunnies. Except that the movements of rabbits are clearly visible; if Mr Woolf were to be believed, a fragment of the ABC committal hearing has gone into camera in retrospect, five months after the event. Mike Holderness.

Nick Blake, for the *PN* company, backed up the previous legal arguments and pointed out clearly that a magistrate in a committal proceeding has no power to stop a witness's name being published; a request not to do so was not enforceable.

The defence case was concluded on Thursday with brief statements from all the *Leveller* defendants (Dave Clark, Phil Kelly, Tim Gopsill, Russel Southwood, Nigel Thomas) and Albert Beale and Mike Holderness from *PN*. It was the only time there was any clear statement of the political principles involved.

Egged on by paranoid security service chiefs (Britain's thought police), this charge has been brought for political reasons, since it seems legally quite baseless. Albert Beale.

In his closing speech, Woolf attempted to rebut the defence argument. Amongst other things, he said that a court was not sitting in open court if the public and press could not hear what was going on (an absurd idea, even given the atrocious acoustics of many courts). In fact in many civil courts affidavits (written evidence) are not read out in full but merely referred to. According to him Colonel B was allowed to write down his name in the interests of "national security" and therefore to publish it was contempt.

*On April 21, the name was in all but two of the national papers... But despite these disclosures to an audience thousands of times larger than the combined readership of *PN* and the *Leveller*, the state seems to have survived. I would suggest that we can dismiss the national security argument. Albert Beale.*

The "national security" which is apparently threatened was not discussed in the magistrates' court with regard to Colonel Johnstone, nor indeed defined two weeks ago in the High Court. *PN* readers may find it hard to identify with a nation whose "security" depends on anonymous witnesses from secret organisations operating as a totally unaccountable part of an armed force. By the time you read this, the judgment may be known. Whatever it is they won't shut us up.

Peace News does not exist to expose what we might consider to be dubious proceedings in courts of law. I see that as an essential but incidental activity on the path to creating a society which has no need of courts of law, in which there is no rape, no blackmail and no official secrets. Mike Holderness.

The First Battalion Gordon Pielanders' *PN* Pie Day in Aberdeen.

