Malone v. The Commissioner of Police for the Metropolis has shed little light on the scope or control of official telephone tapping. Malone, a Surrey antique dealer, is seeking to stop the police tapping his phone. During an abortive trial on charges of handling stolen property, last July, prosecuting counsel admitted that his phone had been tapped 'on the authority of the Secretary of State's warrant'.

Whether, in fact, a Secretary of State has any such authority at all is the subject on which the High Court is now due to rule. There is no statutory power to tap telephones or carry out other similar invasions of privacy – as the Birkett Commission reported over 20 years ago. Successive governments have been advised simply to presume the power, and have, since Birkett, stonewalled every question put to it on the subject. Judge Sir Robert Megarry now has the power to rule that tapping is unlawful, allowing Malone, or anyone else in the same situation, at least to claim damages. Moreover, when practised by the British government, phone tapping may be in breach of the European convention on Human Rights, which prohibits 'secret surveillance' without adequate 'guarantees against abuse'. In a similar closely fought case before the European Court last year, West Germany only escaped conviction because it has independent parliamentary review bodies to check on tapping and warrants. No such bodies exist in Britain.

In last week's case, the authorities maintained their customary stony silence, reaffirming that Birkett's recommendations were still in force – refusing even to confirm or deny the earlier official admission that Malone's phone had been tapped. However, the scope and application of surveillance technology has changed drastically since Birkett's 1956 report. There is also plentiful evidence that information about private telephone calls is passed on in many other ways than by the officially authorised tapping of a phone. The most common of these techniques is the use of a 'printer meter' – which records on paper tape all the numbers dialled from a phone to which it is attached. Records can readily be searched to reveal the names of those called.

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