

*Duncan Campbell writes:* The closing last week of *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.

Some 16,000 or more of these devices are now in use – the majority, admittedly, to check on disputed telephone bills. Soon to enter production is the 'Call Event Recorder', a new version of the printer meter which includes a sophisticated electronic circuit that could be used to analyse data. At least 20,000 are likely to be ordered.

The Post Office has always carried out an enormous programme of 'random' monitoring of calls, under a procedure known as 'service observation': 300,000 calls are monitored every week by 600 'observers' at various centres throughout Britain; around 10,000 of these are monitored from beginning to end. Originally, this procedure was amalgamated with telephone tapping; phone lines being tapped were included among a much larger number of lines being 'randomly' watched. The objects of 'service observation' are mainly technical – but information overheard can be passed to police or other authorities.

New types of equipment enable tapping to take place under cover of other activities. 'Call check' circuits have been introduced at all major British exchanges, allowing individual lines to be monitored at a distance of at least 50 miles. The Post Office have refused to identify the purpose of the equipment – but the specification, which we have seen, describes it as a 'tapping circuit'. At least two of these tapping circuits are routinely fitted to large exchanges. A new version of the 'call check' circuit allows the number intended for tapping to be dialled remotely by the eavesdropper, instead of connecting wires as at present. This is already being done on other equipment used for testing lines – notably by the army in Ulster.

SUCH SPECIAL FACILITIES for tapping telephones are often used by the large Post Office Investigation Department, who have access to all Post Office information and services without question. They can also bypass Post Office official procedures which are supposed to ensure customer confidentiality. The normal official instructions – contained in a document entitled 'Disclosure of Information about Telephone Calls', of which NEW STATESMAN has a copy – point out that the 1868

Telegraph Act prohibits staff from passing on information 'contrary to their duty'. But it then progressively widens their discretion – so that *in extremis*, local telephone managers apparently have the power to let police listen in on a phone line. The Post Office admit that their regulations 'appear to allow' such unauthorised tapping. But they claim that the only police requests for information, normally limited to the destination of calls only, were made through normal channels. There were 15 applications last year, with approval granted 6 times.

In fact, a vastly larger number of cases are handled directly by the POID, according to unofficial PO sources. The same impression is given in *Operation Julie*: the book about the well known police LSD investigation two years ago. The author, a former drugs squad inspector in charge of the operation, recounts how the POID readily attached printer meters and intercepted mail and parcels on their request, without formal permission. He also describes some seven telephone tapping cases, but only refers to obtaining an official warrant in three.

In one 'an organisation, which for security purposes cannot be named' laid on a tap bypassing the Scotland Yard procedure; in another three cases, an obliging Home Office official 'brushed aside the usual red tape'.

Such scanty evidence as is available points to at least 1,500 or more official tapping warrants a year – almost a tenfold growth since Birkett – and that of course does not include other methods used to get around normal procedures. MPs are not even allowed to table enquiries to the Home Office as to the numbers of warrants issued, let alone examine the use to which authorised and unauthorised tapping and other surveillance is put.

Malone's lawyers have dropped a damages claim in favour of a request for a simple declaration that British telephone tapping practices breach the right to privacy and respect for correspondence which are enshrined in the European Convention – and that Malone or others aggrieved should have a remedy. But that, according to Labour's Solicitor General, would be something 'quite inappropriate for a domestic court' to decide.