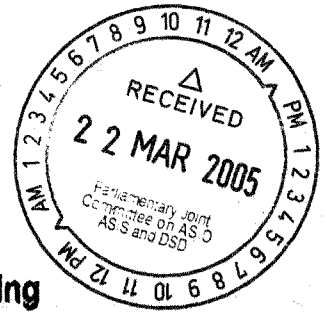


Submission No: 29

Date Received: 22-3-05

Secretary:



**Submission to the Parliamentary Joint Committee Reviewing
ASIO, ASIS and DSD's Questioning and Detention Powers
Parliament House, Canberra, ACT 2600
by Joan Coxsedge and Gerry Harant
March 2005**

We are responding to this 'review' of ASIO's questioning and detention regime only because of our deep concern at the escalating onslaught on our basic civil rights which, in the wake of September 11 and the Bali bombings, are being eroded at an alarming rate. This is happening despite the strong laws already in place to deal with violent acts against the state.

In the past three years alone, at least 20 new complex and detailed laws giving ASIO unprecedented tough powers to secretly investigate, detain and interview people - including four at the end of 2004 - have been passed by the federal parliament with minimal debate and almost no media coverage, giving Australia the dubious distinction of having one of the most draconian raft of anti-terrorist laws in the western world. Some might argue we need strong laws, but surely not at the expense of the very freedoms we are claiming to protect and which, in the long term, will permanently damage our society as a whole.

Although the legislation purports to provide checks and balances for Australian citizens caught up in these powers, it clearly does not. Justice and fairness don't get a look in.

The dubious nature of this belated parliamentary exercise is exemplified by the fact that according to a quote from ASIO's report, three warrants were issued during 2003-2004, but that is the only information we are given. We do not know whether the detention of the three individuals was justified or not, considering they were detained on the highly subjective basis that there were 'reasonable grounds' that they 'may' alert someone involved in a terrorism offence.

An obvious question is who decides what are 'reasonable grounds'? Who defines what is a 'terrorism offence'? The leadership of a covert body which sets its own budgets and guidelines and which, through a range of secret international agreements, is an appendage of the US security network? Hardly politically neutral nor a source to inspire confidence considering that these same people relied on a plethora of distortions and straight-out lies regarding 'weapons of mass destruction' to provide the justification for an invasion and war against the citizens of a sovereign nation.

In any case, how on earth can an outsider judge whether the grounds are 'reasonable' when there is no mechanism to ensure that even minimal safeguards are being observed, bearing in mind the total secrecy that surrounds such decisions.

Perhaps the committee should heed the words of Justice Hope in his first Royal Commission on Security and Intelligence, when he found that:

- . ASIO's management was not as good as it should have been.
- . Information from ASIO proved to be neither the quality nor the reliability one might have wished.
- . There was 'little evidence in ASIO that the qualities of mind and expertise needed were recognised or available in any large measure'.
- . There were departures by ASIO from principles of propriety and legality.

Justice Hope repeated his concerns years later during his inquiry into the Combe/Ivanov debacle, which once again revealed numerous cases of ASIO's cavalier attitude to the truth. George Orwell would have got a laugh out of one ASIO dictum that truth, in ASIO's minds, is what it creates in its files! Most of its 'errors' fell into this category. For example:

. Combe and his wife's trip to the Soviet Union was incorrectly claimed by ASIO to have been paid for in total by the USSR government (transcript page 626). ASIO hadn't bothered to check.

. ASIO Director-General Barnett asserted in evidence that the film 'Allies' had input from the KGB and was financed from the Soviet Union (transcript page 425). He was later forced to retract this statement, which was not a 'mistake' but was a typical ASIO surmise based on pure bias (transcript page 3518-3519).

. Barnett made other wild accusations against unspecified ALP members whose association with Ivanov 'may have been quite legitimate but...' ASIO again had no facts to back up its allegation (transcript page 619).

. Former Attorney-General Gareth Evans was forced to admit that Barnett's presentation had 'an element of dramatisation'. For instance, Barnett claimed that Paul Everingham, Northern Territory Chief Minister, had been 'visibly shaken' when confronted with the awful news of Combe's association with Ivanov when in fact he was about 'as shaken as the desk' (transcript page 3436).

If ASIO operatives were behaving like that in a relatively benign political climate when there was no real threat to Australia's security, clearly they are now far more likely to be breaching the law and people's civil rights across the board in the current environment of manufactured fear and hysteria.

Before the security horse has completely bolted, there are a number of serious questions you should address as a matter of urgency, because as you say in your covering letter: '*...this review by the Committee may represent the only opportunity for detailed parliamentary scrutiny of these powers*', and you then list seven issues that the Committee might wish to examine. But if you genuinely want a considered response, we want to know how we can respond so that you can respond to ASIO's demands when we - and that includes you, despite being the elected representatives of the people - do not have, and it seems can never have, the necessary and relevant information to do so.

We repeat, how can outsiders have the slightest idea about what was achieved when we don't even know who was arrested. In fact, we are told, according to ASIO, that 'no-one was arrested'.

In reference to Point 3, we can only assume that 'any problems encountered in the use of the legislation' would be anyone questioning the validity of these powers. And as we don't know what aspects of the legislation have been used, we can hardly comment on aspects that haven't yet been used! And even if we did have such information, it would come from sources inside the agencies, which independent people would not consider reliable. These are just a few of the fundamental contradictions and absurdities which arise when dealing with the actions of the secret intelligence establishment in a democratic society.

In a recent article, respected UK commentator on security matters, Phillip Knightley, makes the point that western agency spying is far more complicated than might appear. Knightley had spoken with a long-time CIA agent who blew the whistle on the way his agency evaluates reports, probably mirroring the modus vivendi of our lot, with ABCD designated for reliability and 1234 for accuracy. A1 meant the source was impeccable while D4 indicated the complete opposite. In nine times out of ten, the designation was C3, said the CIA agent, meaning the source was 'usually reliable' (dubious?) and the information 'possibly true'.

Logically this means that the usually reliable source was sometimes reliable and that the information described as possibly true could just as possibly be false. On top of this, the 'source' can find themselves under pressure to present what their political masters want rather than what they believe to be true in an 'intelligence briefing'. Hardly grounds to inspire confidence in these agencies.

From Phillip Knightly: *'It is almost impossible in the intelligence game to blame anyone for anything. No matter what goes wrong, the intelligence community always has a plausible excuse....Inquiries into the intelligence services produce little. There are only two certainties about such inquiries: the services will emerge with larger staff and a bigger budget. Oh yes, and nobody will resign and some may even be promoted.*

Confronted with all the shortcomings of the secret services, its supporters reply that it would be unthinkable not to have a secret service, forgetting that we (UK) did not have one until 1911. Anything is better than nothing. But is this true? According to a study by the Royal Institute for International Affairs, western intelligence success in predicting Soviet moves was no better than that of America's think tanks. The intelligence community does everything it can to avoid assessment of its efficiency, usually by falling back on the unanswerable statement: "We have had some marvellous successes but we can't talk about them because they're secret".

The reality is that the intelligence game is a vast confidence trick. Sergei Kondrashov, a retired KGB chief of counter-intelligence, told me at a conference in Germany that if the KGB was forced to choose between a Russian mole in the US administration and a subscription to The New York Times, he would take the New York Times any day.'

Apart from the issues listed for the committee to examine, we urge that it should also investigate a disturbing situation that has come to light about the extended use of questioning and detention powers not covered by any Australian legislation, but which are clearly in use and clearly relevant when passing judgement on this question. Especially considering that Australian citizen Mamdouh Habib, accused of training several of the 9/11 hijackers, was transferred to Egypt after being incarcerated in Guantanamo Bay, where he suffered months of torture before being released without charge.

There have been a spate of recent articles in the US and UK press about this practice of 'rendition', which involves transporting abducted 'terror suspects' to third countries notorious for their brutal interrogation methods, a form of torture by proxy. 'Rendition' was originally carried out on a limited basis against a discrete group of suspects, a practice begun during the Clinton administration, but after September 11, the programme expanded beyond recognition to include a wide and ill-defined body of 'illegal enemy combatants', many of whom have never been publicly charged with any crime.

New York's University Law School has estimated that a hundred and fifty people have been 'rendered' since 2001, the most common destinations being Egypt, Morocco, Jordan, Pakistan and Uzbekistan, all allied with the US in the fight against terror and all cited for gross human rights abuses, prepared to ride roughshod over the the UN Convention Against Torture and all international norms. It has also been claimed that UK airports are operational bases for executive jets to carry out 'renditions' of terror suspects. As a close ally of the United States, is Australia also involved? A question for the committee.

A parliamentary investigation in Sweden found that the CIA had seized two Egyptian nationals from that country in December 2001. The two men - Ahmed Agiza and Al Zery - were grabbed by CIA agents wearing black masks and taken to the police station at Sweden's Bromma airport where, while shackled hand and foot, they had their clothes cut off in pieces and 'suppositories of an unknown kind inserted into their rectums'. Dressed in diapers and dark overalls, blindfolded and hooded, the men were flown to Cairo in a Gulfstream 5 jet. While all this was going on, Swedish police were kept apart in the outer public section of their own station, powerless to intervene.

The Sunday Times (UK) gave even more details about the mystery Gulfstream 5 jet, registration number N379P, after obtaining the logs of some 300 flights showing its movements. 'Leased by agents from the US Defence Department and the CIA', the jet 'always' departs from Washington and 'has flown to 49 destinations outside America, including the Guantanamo Bay prison camp and other US military bases'.

The Gulfstream made at least seven trips to Uzbekistan where, the Times stated: 'the secret police are notorious for their interrogation methods, including the alleged boiling of prisoners'. The article quoted Craig Murray, a former British ambassador to Uzbekistan, who stated on Swedish television: 'I have come across many cases of rape in front of family members who they wish to extract information from and I have post mortem photos of a corpse. These show that the person was boiled to death.'

And so clearly, as an entire system has been devised to bypass normal safeguards of detention and interrogation, where does that leave your inquiry? The entire edifice relies on the assumption that secret agency personnel are people of integrity with the well-being of our country at heart. But the war in Iraq and the practice of 'rendition' show the very opposite. Belief in the integrity of secret agencies, such as it was, now lies at the bottom of the sea, along with the children who were thrown overboard by their parents.

Instead of expanding their powers and turning a blind eye to their abuses, now might be a good time to close the spook industry down. And yes, we know that's about as likely as the Pope building minarets in Vatican City.

PS: For the umpteenth time, we warn that true security will never be achieved with harsh laws - or bombing runs. They only make things worse, as we can see from the expanding horror of Iraq. Unless we address the growing poverty and gross inequalities bedevilling our world, then we will continue to reap the consequences. Before rushing ahead to accept legislation which is turning this country into a police state, we urge you to heed the words of eleven Nobel laureates who attended a Nobel Peace Prize Centennial Symposium in Oslo in December 2001.

They stated: ***'The most profound danger to world peace in the coming years will stem, not from the irrational acts of individuals, but from the legitimate demands of the world's dispossessed.'*** The sad irony is that thirty years ago, the world's richest nations pledged 0.7% of their GDP to help the world's poorest. It has now slumped to 0.22%. And Australia?

We rest our case.

Joan Coxsedg

Gerry Harant

.au

March 2005
