

*BRITISH BROADCASTING CORPORATION*

*RADIO 4*

*TRANSCRIPT OF "FILE ON 4"- 'SURVEILLANCE'*

*CURRENT AFFAIRS GROUP*

*TRANSMISSION: Tuesday 21<sup>st</sup> November 2006 2000 - 2040*

*REPEAT: Sunday 26<sup>th</sup> November 2006 1700 - 1740*

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*PROGRAMME NUMBER: 06VQ3628LHO*

THE ATTACHED TRANSCRIPT WAS TYPED FROM A RECORDING AND NOT COPIED FROM AN ORIGINAL SCRIPT. BECAUSE OF THE RISK OF MISHEARING AND THE DIFFICULTY IN SOME CASES OF IDENTIFYING INDIVIDUAL SPEAKERS, THE BBC CANNOT VOUCH FOR ITS COMPLETE ACCURACY.

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NORTHAM: On Thursday, in the Commons, the Home Secretary, John Reid, made clear that he is not yet persuaded that phone taps of suspected terrorists and other criminals should be used as evidence in their trials. The Government remains divided on the issue. The Attorney General, Lord Goldsmith, has expressed his own support for so-called intercept evidence, saying it could prove a vital tool in court. And there are other powerful voices on either side of the argument. The Director of Public Prosecutions has told File On 4 that he is pressing for the right to play phone taps to juries.

MACDONALD: We are completely satisfied that if we get to use this material, we will be able to build stronger cases against some of the most dangerous people that we're dealing with, including, of course, terrorists.

NORTHAM: But there's strong resistance from the intelligence and security agencies which actually tap phones.

PARK: We are trained as services to do our professional damnedest - live agents and sophisticated methods should be protected even at the expense of a very impressive, potentially impressive statement in court.

NORTHAM: This week, we examine the impact of a law on phone taps which the Court of Appeal has called 'particularly puzzling', and ask what would really be lost if it were to be changed.

#### SIGNATURE TUNE

NORTHAM: One of the puzzling things about the law as it currently operates is that some evidence from phone taps is allowed and used in court. It comes in trials where calls have been intercepted not by British police, but by a foreign agency.

ARLIDGE: The case of Regina against P is reported in the Law Reports, volumes for the appeal cases, which are the House of Lords cases ...

NORTHAM: In the House of Lords six years ago, Anthony Arlidge QC, fought and lost what became the landmark battle as he tried to keep phone taps recorded in Holland out of the trial of a drugs importer known, for legal reasons, only by his initial, in the case of Regina v P.

ARLIDGE: Mr P was charged with a conspiracy to import Class A drugs from Holland into the United Kingdom. He had an associate in Holland, who I will call A. A used a mobile phone registered to a mobile phone company in Holland and he used that mobile phone to telephone P in the United Kingdom when A was in Holland. There were also occasions when A came over to the United Kingdom and he phoned P on that mobile phone whilst they were both in England.

NORTHAM: And that was intercepted?

ARLIDGE: And that was intercepted in Holland. All the calls were intercepted in Holland.

NORTHAM: How important was this intercepted telephone evidence in his being found guilty?

ARLIDGE: It was alleged by the Crown that it was a coded telephone conversation – in other words, it didn't refer openly to the use of drugs or the importation of drugs. But if you married it together with the movements of the various defendants and the physical things that were found – because eventually one of the alleged conspirators was found with parcels of drugs in a Belgian port – that that demonstrated that it was drugs, cocaine, that was being talked about.

NORTHAM: Anthony Arlidge recognises the stark contrast the law creates between intercept evidence recorded abroad and a ban on using similar recordings made by the British authorities.

ARLIDGE: The House of Lords took the view that this had been used in proceedings in Holland, it was in the public domain in Holland because it had been done lawfully under Dutch law, and therefore, even though the evidence, had the intercept occurred in the United Kingdom could not have been admitted in the United Kingdom, it was permissible to use it.

NORTHAM: It seems, to put it mildly, a legal oddity that two people can have a phone conversation, if it's intercepted by Dutch authorities it's admissible as evidence in Britain, and if it's intercepted by the British authorities it isn't.

ARLIDGE: Well, that was effectively our argument in the House of Lords, but it was rejected for the reason that I've said.

NORTHAM: Does this make any sense to you?

ARLIDGE: Well, I can see there is some argument for saying if something has already been used publicly in another country it can be used here, but it does present obviously on the face of it an anomalous situation.

NORTHAM: On the strength of this evidence, Mr P got fourteen years. Following his conviction, other British cases have also used Dutch phone taps. At the Prosecutor's office in Amsterdam, Hanneke Festen sees such co-operation as nothing out of the ordinary.

NORTHAM cont:                                  How common is it, in your experience, for phone tap evidence made by the Dutch authorities to be passed to a British court?

FESTEN:    Well, there are two types of legal assistance that we can provide. We can either transfer phone intercept evidence that we have gathered in a Dutch prosecution case, or we can intercept phones for a UK case without there being a Dutch court case.

NORTHAM:     So the British authorities can ask you to make an interception on their behalf?

FESTEN:    That's correct.

NORTHAM:     And that actually happens, does it?

FESTEN:    Yes, it has happened, it's possible and it has happened.

NORTHAM:     So this is a case, as it were, of the British authorities passing to the Dutch authorities the responsibility for making recordings?

FESTEN:    Basically the system of legal assistance in criminal cases is that you need to investigate certain actions beyond your own borders, and because the UK authorities cannot do it themselves, they have to ask for the assistance of foreign authorities who can do it if their own legal system allows for it.

NORTHAM:     The Crown Prosecution Service say they are unable to give the number of cases which have relied on interception abroad. Many other countries routinely use phone tap recordings in court. A recent report by the human rights group, Justice, finds that among Common Law jurisdictions, their use is banned only in Britain and Hong Kong. Australia, Canada, New Zealand, South Africa and the United States all admit intercept evidence in trials. So, with different judicial systems, does much of Europe including the Dutch. As a prosecutor, Hanneke Festen would not wish to be denied this powerful ammunition in court.

FESTEN: We find phone interception to be very useful, not only as evidence, but also during a criminal investigation to give us some direction on where a suspect is and who he is in contact with.

NORTHAM: Would it be fair to say that this is almost a routine part of prosecuting cases now?

FESTEN: Depending on type of case, you could say that in certain cases, phone interception is quite common, yes.

NORTHAM: Serious crime cases, organised crime cases?

FESTEN: Not just that, no. If somebody is robbed in the street and there's a certain amount of violence involved and one of the items stolen is a mobile phone, we will always tap the mobile phone.

NORTHAM: How quickly can those kind of interceptions be arranged by the authorities?

FESTEN: Well, it depends. Normally it's done based on an order by the prosecutor, authorised by an investigative judge. But if it is an urgent case, in theory it could be done within five minutes.

NORTHAM: Five minutes?

FESTEN: Yes.

NORTHAM: And how conclusive is the evidence? Are there cases in which you've had successful prosecutions which you think would have failed if it were not for the introduction of intercept evidence?

FESTEN: I am convinced that that would be the case, yes.

NORTHAM: In Britain, the argument over the ban on intercept evidence has rumbled on for at least twenty years, and has recently surfaced with unusual clarity. At the most senior level, some in the legal establishment, including the Director of Public Prosecutions, Ken Macdonald, are openly calling for a change in the law.

MACDONALD: I've spent quite a lot of time speaking to criminal justice colleagues in other countries, in the United States, in Canada and Australia and so on, about their use of this sort of material. In the United States, most major trials against organised crime figures rely on intercept. The Drug Enforcement Agency in the United States, which prosecutes all of their serious drug crime, told me they couldn't remember when they last had an important trial that didn't rely on intercept material, so it's regarded by people who have this power as absolutely invaluable.

NORTHAM: Would you win more cases if you had the ability to introduce intercept evidence?

MACDONALD: That's the bottom line, isn't it? I think the answer is yes.

NORTHAM: There are cases that come to you that you think could be won if you were able to introduce intercept evidence?

MACDONALD: If you have recordings of people in a criminal gang talking about what they're doing, that is extremely powerful evidence. We had a recent major case of people-trafficking where we were able to use intercept evidence, because it was obtained by agencies abroad - Belgium, Austria and other countries - so we were able to use it. The evidence was so powerful that the individuals pleaded guilty, and of course this is the model which is very often followed in the United States. You record people talking about their crimes, you have them in, you play them this material, you get perhaps a cooperation agreement with one of the minor players, who offers to give evidence against the major players on the basis of the strength of the case against him, and the pack of cards collapses. Now this is the sort of model which we would like to be able to follow in this country.

NORTHAM: So why has the law not been changed already? The reason is that strong arguments from very powerful voices have been raised in favour of the current ban on intercept evidence. One of those voices is the distinguished former judge, Sir Swinton Thomas, who is the outgoing Interception of Communications Commissioner, who has given his first broadcast interview to File On 4. Sir Swinton's job is to ensure the correct operation of the system for authorising phone taps, which are currently used for intelligence-gathering on criminals. The subject is likely to form a significant part of his final annual report, due in the next few weeks. He characterises some of those who argue for a change in the law as misguided, ill-informed and unwise.

THOMAS: Very extensive trials indeed have been carried out in order to show whether or not intercept material would be valuable in prosecutions. And those inquiries have shown very clearly that the number of cases where intercept material would make a substantial difference to the prosecution case are marginal or possibly even non-existent.

NORTHAM: Well that's not the view of the Director of Public Prosecutions, who said to us that this is priceless evidence that can be deployed to great effect in court.

THOMAS: That is certainly not my experience. I've seen the material, I have seen these trials carried out in a good deal of detail and there may be some cases where there would be some advantage, but the cases where there would be any substantive advantage are very few indeed, if any.

NORTHAM: So there's a clear difference of opinion here between the senior legal officials, the Director of Public Prosecutions, the Attorney General and yourself as outgoing Intercepts Commissioner?

THOMAS: Yes.

NORTHAM: The implications of that are?



THOMAS: The implications are that either I or they are wrong. I personally - and I feel this very strongly, because I think it is so enormously important from the point of view of protecting the citizens of this country largely from terrorism - I have no doubt to the view that I have expressed is correct.

NORTHAM: Some senior police officers, including the Metropolitan Commissioner, want to see intercept evidence used, but the official view of ACPO, the Association of Chief Police Officers, is as distinctly cautious as Sir Swinton Thomas. ACPO's spokesman, the Deputy Chief Constable of Merseyside, Jon Murphy, sees great peril in revealing what the police can and can't do with phone taps.

MURPHY: We have to accept that criminals and those involved in terrorist acts know that the police intercept telephones. What they don't know is what our actual capacity is, what our actual capability is. There will be things that they think we can do that perhaps we can't and there'll be things they think we can't do that perhaps we can, and that kind of confusion can only assist.

NORTHAM: And if this evidence were to be made available, why would it necessarily reveal what you can do?

MURPHY: The concern is that once it's put into the evidential arena, unless protection is put in place, it will open the door for the defence to probe behind the intercept, how the intercept was gathered, what's the technical integrity of the gathering of the intercept, the need for expert witnesses to come to court. The potential for some of those people to be vulnerable within the criminal justice process because, you know, some of these are seriously violent and successful criminals and they will seek to subvert prosecutions, intimidate witnesses, and the thin end of the wedge is perhaps not where we want to be at this time.

NORTHAM: But, by another quirk in the current law, it is already possible for British police to listen in on criminals' phone calls and then use the recordings as evidence against them.

ACTUALITY IN CAR

NORTHAM: A case here in Yorkshire has revealed a strategy which has the effect of introducing the content of calls into a trial. Russell Knaggs was an articulate and intelligent drug-trafficker, smart enough to know that he was likely to be under constant surveillance. So he made a large 4x4 like this one into his mobile office, secure in the knowledge that even if calls he made from it were tapped, they couldn't be used against him in court. But unknown to him, the police had deployed another recording method, which is admissible as evidence.

When he was arrested, Russell Knaggs learned that a number of conversations he'd had with passengers in the 4x4 had been picked up by a bug - ironically made out of parts from another mobile phone - which had also recorded him making a couple of thousand calls on his mobile. His technical expert at the trial, Bevan Clues, explained what has become a common police tactic.

CLUES: The technology they use is a normal mobile phone with the earpiece removed and the microphone extended into the interior of the vehicle, mounted in the headrest behind the driver, but the phone itself has to be installed in the vehicle and connected to the vehicle's battery supply. There's also a need to get a radio signal to it, and so some arrangements would have to be made to connect an antenna so that the phone can make contact with its mobile network.

NORTHAM: And all this can be done without it being visible to the naked eye, can it?

CLUES: I think if somebody were to investigate and look around for a probe, it may well be found, but usually it can be hidden somewhere, possibly in the engine compartment, where it would not normally be noticed by the user of the vehicle.

NORTHAM: And just the microphone is then in the car itself, in the headrest?

CLUES: That's right, that's all that's needed inside the vehicle itself and that will be cabled out to wherever the mobile phone has been positioned.

NORTHAM: How difficult a job is it to fit this system up in a car to make it work?

CLUES: It requires access to the vehicle and so a convenient time would be, for example, if the vehicle's gone in to be serviced into a garage. It would need something of the order of thirty minutes to install and to test that it's working properly.

NORTHAM: The law does allow recordings made from hidden microphones, known as probes, to be used in court. In Russell Knaggs' case, the vast majority of the recordings were telephone calls, and they were transmitted from his car to the police listening post via the mobile phone network. All perfectly lawful and admissible as evidence. His barrister at Appeal, David Gottlieb, found that Mr Knaggs had a substantial case to answer.

GOTTLIEB: The probe would pick up his conversations in the car and his side of the telephone conversation, but of course if he used hands-free on his mobile phone it would pick up both sides of the conversation. The prosecution's case was that the phone calls included references to a drug trade. There's references to purity and selling items at certain prices. Mr Knaggs, of course, said otherwise.

NORTHAM: So both sides of a phone call were recorded by the probe in some cases?

GOTTLIEB: Yes.

NORTHAM: And this was admissible in evidence?

GOTTLIEB: Yes, because it comes under intrusive surveillance, which can be authorised by a senior police officer.

NORTHAM: So there's a paradox that these conversations were admissible because they were recorded by a bug. They wouldn't have been admissible if they'd been recorded by a phone tap.

GOTTLIEB: That's right. It's been interesting to see the trend of the courts over the years. When the Act was first passed they were very reluctant to allow phone conversations or even half sides of phone conversations. But as time has gone by and people have got more used to these probes, clearly when you've got very important conversations, either the prosecution or the defence will want this kind of information if it's available.

NORTHAM: The problem for the police in this case was that the 450 hours they taped from Russell Knaggs' vehicle are of distinctly mixed quality technically. But officers were able to decipher what's being said, including moments where Mr Knaggs uses his phone on the hands-free system and both sides of the conversation are recorded, as in this call to an innocent friend about avoiding after-hours drinking at a bar the Knaggs family owns.

#### ACTUALITY OF PHONE CALL

KNAGGS: So I says to Andrea, so look Andrea, and I've told you and I've told Vic, I said I want no after-hours drinking ...

MAN: Yeah yeah, that's right.

KNAGGS: I said if they want to go up into the flat, I says just lock them doors ...

NORTHAM: A further twist to the current law became apparent when Russell Knaggs wanted to challenge the recorded evidence against him. His argument was that police had also been tapping his phone calls, and that parts of those recordings could be identified among what was said to be the output of the probe in his car. On the line from Doncaster prison, where he's currently serving a long sentence, he argues that any intercept recordings should be made available in court. Had all this evidence been admissible and you be able to challenge it ...

KNAGGS: Yeah.

NORTHAM: ... it would have shown you were guilty, wouldn't it?

KNAGGS: Absolutely not, quite the opposite. Quite the opposite. You see, if this intercept evidence was to be allowed in court, what I would have then done is I would have then asked for all the intercept evidence and then I could have then actually give a proper honest explanation to the actual conversations as they took place. The actual true account of the conversations will show 100% my innocence.

NORTHAM: So when the prosecution said that what these phone calls showed was that you were discussing amounts of drugs, prices of drugs, the purity of drugs, you're telling me there's an innocent explanation for those conversations, are you?

KNAGGS: Absolutely. What you've got to remember, Gerry, is that drugs are not mentioned.

NORTHAM: They say you're talking in code.

KNAGGS: Exactly. They do say I'm talking in code, but with all respect, if you was to put a number of probes in your own environment and I was allowed then to mix and match and cut and paste, I could make you out to be looking as though you were doing something illegal.

NORTHAM: And you think people will believe that that's what happened in this case?

KNAGGS: That's clearly what's happened.

NORTHAM: The way the law's phrased meant that Russell Knaggs was unable to raise his main line of defence in court. The Act forbids any mention of phone tapping, or even of anything which 'tends to suggest' that it has occurred. It's known as the forbidden domain. When Mr Knaggs tried to raise his suspicion that there was intercept material among the recordings used against him, he was given no chance to do so.

KNAGGS: What the judge basically said was that there was a blanket prohibition on any material that would reveal or even suggest that the National Crime Squad operated a telephone intercept. My evidence was such a suggestion, which is an absurd position to be in.

NORTHAM: So you were told you simply couldn't raise these matters in your own defence?

KNAGGS: I couldn't raise it, but I couldn't call my expert witnesses or any of the other evidence that I had to demonstrate that those tapes contained material that shouldn't have even seen the court room.

NORTHAM: And where does that leave you?

KNAGGS: The only evidence against me is the probe evidence, so when I couldn't challenge that evidence I had to plead guilty, because there was nothing else I could have done, and I told the judge this when I pleaded guilty, and I stood up and I said to the judge, 'Listen, I dispute this evidence and I am only pleading guilty because I can't receive a fair trial.' And the judge even stopped me from even saying that. So when I was even trying to tell the judge the problems, the judge actually stopped me from ventilating those problems in open court.

NORTHAM: Isn't the reality, that the public are bound to see in this case, that you're an angry man and you're angry because the police outwitted you?

KNAGGS: No. I'm absolutely furious, that's a fact, because the police have manipulated material, they've then disclosed that material and the judge has interpreted this legislation in such a way that I can't reveal their conduct. It's nonsense.

NORTHAM: Russell Knaggs' consternation in this is shared by his solicitor, Chaman Salhan, who sees the operation of the law as a restriction not only of his client's rights, but of his proper duties as a defence lawyer.

SALHAN: You can't do your job. You simply are in a situation where you're prevented from putting forward the defence that your client wants to put forward, it prevents him from having a fair trial. You have to tell him, 'This is the position you're in,' and ultimately you either take your chances and try and raise some of these points without going into the issue of an intercept before a jury, which is very difficult. You're asking someone to run their defence with their hands tied behind their back. I mean, it is an impossible situation. So invariably what happens is, it results in people pleading guilty where they may actually have a very credible defence.

NORTHAM: But if the law, as it stands, encourages drug dealers to plead guilty, what's wrong with that?

SALHAN: Well, that's working on the assumption that they're guilty. I mean, it's taking away the fundamental right that someone is innocent until proven guilty. And what we're saying is, you're not being allowed the ability to prove your innocence. So if you want to revert to a system where you're guilty and have to prove your innocence, well then that's fine, because that is where we are heading.

NORTHAM: Russell Knaggs' case has now been lodged with the European Court of Human Rights. The National Crime Squad is now part of the Serious Organised Crime Agency, who wouldn't be interviewed about this case, but told File On 4 that there is no truth in the allegation that recorded material was manipulated. As for the suspicion that police may deliberately use recordings from hidden microphones as a way round the ban on phone tap evidence, ACPO's spokesman, Jon Murphy, insists that they abide by the rules.

MURPHY: I can understand that argument. I mean, it seems perverse generally that you can put a bug into somebody's house and listen to them and that is admissible in evidence, but you go to intercept the telephone and that's not admissible evidence. It is, I accept, it seems a paradoxical situation.

NORTHAM: In one case we've looked at, there were something like 27 conversations recorded in the car, and a couple of thousand phone calls. So the burden of that evidence was as if it were intercept evidence in some cases.

MURPHY: I can understand that that seems odd and I can't and I won't comment on a particular case. But what I can say is that there are quite strict safeguards to ensure that bugs are not deployed as a means of working around the requirement for a telephone intercept, and that is policed quite robustly.

NORTHAM: The Director of Public Prosecutions, Ken MacDonald, acknowledges that the law is, at the very least, idiosyncratic in allowing recordings of phone calls as long as they haven't been made by direct interception.

MACDONALD: Actually, you could come up with an even more extraordinary anomaly. I could put a little bug in your mobile phone and record what's being said by those means and I could deploy that in court.

NORTHAM: You could use that because it's a bug?

MACDONALD: Because it's a bug.

NORTHAM: Even though it's my mobile phone and it's the same material as if you'd tapped it?

MACDONALD: Yes, but again...

NORTHAM: It is an anomaly, isn't it?

MACDONALD: Well, it does look odd, doesn't it, and I'm quite sure that people listening to this programme will think that it's quite bizarre and in some ways it is.

NORTHAM: But you don't conceal the fact that, as Director of Public Prosecutions, you want to be able to use this evidence from intercepts?

MACDONALD: I think you'd be hard pressed to find a prosecutor anywhere in the world who didn't want to deploy this sort of material. I can't tell you the satisfaction that a prosecutor feels when he or she sits down to listen to a tape of two



MACDONALD cont: individuals that we want to prosecute talking about what they're up to. It's about the best evidence that you can have.

NORTHAM: Sir Swinton Thomas, the Interceptions Commissioner, recognises that there are inconsistencies in the way the law currently works. Permitting phone calls as evidence, but only if they've been either recorded abroad or made by using a hidden bug.

THOMAS: The first, I think, is a real anomaly and it arises out of the drafting of the legislation, and to be absolutely honest I'm not clear as to why the legislation was drafted in that way, but it does create that anomaly. There is not an anomaly, I do not think, in the same way, in relation to the bugged conversation. There is, I think, an obvious practical distinction between a bug which is hidden unknown in your house and a telephone conversation, which may or may not be intercepted.

NORTHAM: Even if what the bug picks up is both sides of a telephone conversation that you're making on a hands-free system?

THOMAS: Yes, because again that arises from the wording of the legislation itself, and to that extent you're quite right, that it probably is an anomaly. I think with legislation of this nature, if you comb through it you're bound to find some anomalies - it's almost inevitable.

NORTHAM: Is this a well-written piece of law, in that case?

THOMAS: Well, I think that the Regulation of Investigatory Powers Act 2000 is quite a good Act. It is not perfect. If it was rewritten in 2006 it would not be drafted exactly in the way that it is now, so it's not perfect.

NORTHAM: Each year the Interceptions Commissioner's report gives the number of warrants issued by the Home Secretary for tapping phones, reading emails or opening letters. But to the technical expert, Duncan Campbell, these statistics aren't as informative as they may appear.

CAMPBELL: The figures given for warrants every year are in the range of one to two thousand. It's been rising massively and these can cover more than one line. But the figures are a distortion of the true picture, because the two so-called external intelligence agencies – that is to say the Secret Intelligence Service or SIS, but particularly Government Communications Headquarters, GCHQ – the figures for their interception within the United Kingdom are never published and never have been. So whilst the numbers still appear to be limited in comparison to other countries, the fact is Europe simply don't know what proportion you're actually seeing in the numbers that the Home Secretary is prepared to disclose.

NORTHAM: Because MI6 and GCHQ simply don't get included in the figures?

CAMPBELL: No details of that have ever been published.

NORTHAM: So we just don't know?

CAMPBELL: We just don't know.

NORTHAM: In last week's Commons exchanges, the Home Secretary, John Reid, gave no hint of the full extent of phone and other interceptions, but did set out his own considerable doubts about the wisdom of using such material as evidence in criminal trials.

#### EXTRACT FROM HOUSE OF COMMONS SPEECH

REID: I want to lay rest, lay to rest one myth. It is the myth which seems to be held by the Opposition that there is some simple solution to all our problems, merely by using intercept as evidence, that somehow if we did that, this would allow us to avoid the hard choices and control orders or detention or tagging or everything else. The myth that intercepts are a sort of silver bullet. I'm considering these matters at the moment, but I want to make plain to the House that this is a myth.

NORTHAM: If the rumours from Westminster are true, the Home Secretary is seriously concerned that lifting the ban on intercept evidence could damage police and security operations. Such doubts were clearly expressed by his predecessors in office. Outside Government, the most powerful voices on this issue are those which go unheard on the air – GCHQ and MI5 both declined to be interviewed for this programme, but are reported to be hostile to the idea of lifting the ban.

#### ACTUALITY AT VAUXHALL

NORTHAM: As for MI6, here at its magnificently eccentric headquarters in Vauxhall on the Thames, there's no public comment – this is after all the Secret Intelligence Service. But well-informed views have been expressed by one of the few people permitted under the Official Secrets Act to reveal that they have worked for MI6. The veteran intelligence controller, Daphne Park, now Baroness Park, has spoken passionately in the House of Lords about the risks she sees from disclosing phone taps. Her prime concern is terrorism, and the stakes for her could hardly be higher if the Government were to lift the ban.

PARK: All over the world, Al Qaeda would take a very close look at the communications and interception methods and so forth, and they would say, 'Ahh, there was a weak link there. What was it?' And they would try to identify whether it was a human weakling, in which case the agent will suffer, or whether it was that they were over-confident in their technical capacity. Either way, they would have a very big housekeeping look at all their communications. That seems to me to be a bad idea.

NORTHAM: When you say a bad idea, that's an understatement? What do you really mean?

PARK: I mean it would be a disaster. Years of work would be wasted, but most of all, of course, I'm concerned about the human agent.

NORTHAM: And at risk means what in their case?

PARK: Well, if it was an agent who was operating in the field, it would probably mean death and possibly torture first. It is a danger to which they ought not to be exposed, in my view.

NORTHAM: Do you understand the frustration that is expressed by a number of senior police officers and prosecutors, including the Director of Public Prosecutions, that this evidence exists, it could prove devastating in a court, and yet they can't use it?

PARK: I recognise their frustration, but they've got to know that if they do it, it is going to be fatal to a whole series of possible future operations, and therefore you could, for instance, have a mad situation in which you were able to send one man to jail, but in doing that you lost the chance of picking up a group of ten.

NORTHAM: This is one of the crucial points on which debate is currently centred in Whitehall. If national security would be jeopardised by revealing phone taps, then no Government would even think of agreeing to it. It's an argument the Director of Public Prosecutions, Ken MacDonald, has spent considerable effort trying to counter.

MACDONALD: I'm not belittling the fears, I'm not belittling the risk, but I do say and we do believe strongly that it is possible to devise a system which both enables us to use this material and protects techniques. Actually we're not obliged to disclose any material to the defence unless we're either going to rely upon it or it either undermines our case or assists their case. It's very difficult to see how a technique per se could fall into that category. And of course we always have the final great protection is that we simply cease prosecuting the case, and we do that from time to time. If we're ordered to disclose something by a judge that we don't wish to disclose for reasons, for example, of national security, we'll simply stop prosecuting the trial. It's inconceivable, isn't it, that a Director of Public Prosecutions would sanction the disclosure of a piece of material if that disclosure was opposed for one of these reasons. It just wouldn't happen.

NORTHAM: How far have you been able to satisfy the anxieties of the intelligence and security services?

MACDONALD: Well, we're all people of goodwill, I think. We continue to discuss this issue and many ...

NORTHAM: You're not there yet, clearly.

MACDONALD: Well if we were there yet we'd have some legislation.

NORTHAM: Another key obstacle to agreement is the potentially enormous administrative burden evidence-preparation would place on the security and intelligence agencies. Sir Swinton Thomas points to the bureaucratic commitments which already arise from bugging evidence.

THOMAS: There was an example recently where a court ordered that 16,000 hours of eavesdropping material had to be transcribed to be produced in court. The cost was a little under £2 million - quite disproportionate to any perceived advantage to be gained by the material. And that would be even worse with intercept, because there was a huge amount of it, the cost of keeping it, transcribing it and presenting it would be enormous.

NORTHAM: But in the end, the crucial question is not whether this is an administrative burden, but whether prosecutions can be gained which would otherwise be lost. It's not a final argument, is it, to say that this would place an extra workload on people?

THOMAS: I entirely agree with that. If one thought that the introduction of this material would result in a substantial advantage, then cost becomes relatively unimportant. But the primary point that I was making is that you would greatly increase the workload on the intelligence and law enforcement agencies, taking them away from work which is much more important from our point of view, from the public point of view, than trying to present this evidence.

**NORTHAM:** There are earnest discussions underway about how this workload might be kept to manageable proportions. The Government is actively looking for ways round this and other objections to lifting the ban. We asked to interview a Home Office Minister, but were told nobody would be available. In a statement, the Home Office has told File On 4:

**READER IN STUDIO:** There is ongoing work to review these issues and identify, if possible, a legal model which would provide the necessary safeguards to allow intercept material to be used as evidence. Officials will report by the end of the year.

**SIGNATURE TUNE**