

**Internment:
the truth behind the 'war on terror'**

***Liberty Lecture by Gareth Peirce on 15
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1. We are here to discuss the predicament of 16 foreign nationals who fled to this country from persecution and who have been certificated by the Home Secretary since December 2001 as requiring to be detained indefinitely without trial in this country and whose presence here is said to constitute so great a risk to national security as to contribute to a state of national emergency.

We live in the 21st century in a context of world politics which is still a context of nations. The issue of the security of any nation, "national security" is complex and contentious and of immense practical importance to each nation in its exercise of political power.

Politicians and commentators invariably talk of the state in which they live as a source of security necessary for their protection against actual or reasonably likely threats from other states or from internal violence and this concept is shared by and large by people generally. There may be often real disagreement about the genuineness or seriousness of any claimed threat and the appropriate response to it, but the role of the state as the guarantor of security is seldom called into question. 'Security' is such a potent and yet undefined symbol that those in positions of power are able to curb criticism and shut off debate by invoking it and claiming to possess vital knowledge (which of course it is also claimed cannot safely be revealed) to support their actions or policies. They draw on traditions of deference and non-partisanship when it comes to security, making it unnecessary for governments to provide reasoned justification where it is said to be involved. There is a curious vicious circle that surrounds the whole area. Deference is in part fed by ignorance and ignorance is fed in turn by claims of indispensable secrecy instead of fully reasoned explanations. The public receives only the barest of justifications supposed to be taken on trust. Frighteningly, in any nation, the potential political function of security is as a part of the coinage of power hoarded and used by ministerial and bureaucratic elites to ignore or short-circuit normal democratic processes.

The appeal to national security as a justification for actions and policies which would otherwise have to be explained is a political tool of immense convenience for a large variety of sectional interests in all types of state. There are many values and institutions embodied in the state which genuinely merit being secured and it is wrong to dismiss the problem by contending that national security is simply a sham and a dishonest slogan designed to favour sinister interests and to legitimate various forms of repression. However it is essential always to remember that the state is simultaneously protector and threat to vital personal and political values.

When the state cries 'national security' that cry demands the greatest rather than the least degree of public, truly public scrutiny.

2. Since the end of the second world war there was a transformation from defence to national security first as the guiding concept of US foreign policy, at that time a deliberate choice of terminology intended to express a more grandly ambitious conception of that nation's role in world affairs which postulates the interrelatedness of so many different political, economic and military factors that developments half-way round the globe are seen to have automatically a direct impact on the US's core interests. Virtually every development in the world is perceived to be potentially crucial. An adverse turn of events anywhere endangers the United States. Problems in foreign relations are viewed as urgent and immediate threats. Thus, desirable foreign policy goals are translated into issues of national survival and the range of threats becomes limitless. The doctrine is characterised by expansiveness, a tendency to push the subjective boundaries of security outwards to more and more areas to encompass more and more geography and more and more problems. It was not an accident but rather an inevitable consequence that once the United States embarked upon its ambitious view of what constituted its own national security, McCarthyism followed rapidly in its wake.

The more extravagant the declarations about the needs, claims or rights of a state couched in the same language of national security ought always to be treated with extreme suspicion.

3. In the aftermath of World War II the nations of the world community entered into treaty obligations with each other by which they committed themselves to respect a large number of significant principles and rights which were from then on to be attached to the individual, inalienable rights which could never be taken away under any circumstances. The members of the European Community, then a small number of nations, committed themselves to their own further treaty which provided the potential of individual petition, designed to give teeth to the enforcement of the individual's inalienable rights against the government under whose rules he or she was living. Among the rights were right to freedom from arbitrary arrest and imprisonment without trial, the right to a number of significant guarantees as to what might constitute a fair trial, freedom from torture, inhuman and degrading treatment, the guaranteed right to life, and rights of association, freedom of speech, religion and freedom from discrimination. Some of those rights had exceptional caveats attached to them if in the interests of a number of circumstances society felt it necessary that they be modified. One of those circumstances was that of national security. This in the European Convention was a new term, the terminology used by Britain and France before had been defence of the realm. The English lawyers responsible for drafting the European Convention appear to have been affected by the altered post-war US concept of national security, a far more ambitious imperialist concept which within a few years we came to see bore fruit in the US in the shape of McCarthyism. Other rights could not be qualified at all. Some could only be qualified if there were a national emergency threatening the very fabric of a nation and if that were ever to be the case, the nation involved was required to lodge a notice of derogation with the Council of Europe asking for exemption from its treaty obligation, that exemption to last only as long as the emergency itself demanded and only to be applied as strictly proportionate and necessary to deal with the emergency specified.

4. In December 2001, two years ago, our Home Secretary informed the Council of Europe that there was in the UK a national emergency threatening the life of the nation so extreme that the UK needed to withdraw from its treaty obligation, specifically the obligation that no individual could be detained without trial. No other country of the now 40-plus member states of Europe has felt that necessity. At the beginning, when the Home Secretary

announced the legislation that he was intending, he was reminded that it was impermissible short of a national emergency. His response was that that was a ‘technicality’. Later, clearly after having forceful legal advice, he attempted to put flesh on the bone of that claim. The claim that was then made was that there was a specific threat of a kind only encountered otherwise in a time of war or internal armed conflict and that came from al Qaeda and organisations and individuals closely linked to and working in harmony with al Qaeda with the same objectives, the objective being to attack America and its close allies, Israel and the United Kingdom. The word internment still was equated in the public memory with injustice after mass internment of a significant percentage of half only of the population of Northern Ireland, more than 30 years ago. It had been a disaster. It had failed to incarcerate IRA activists. The so-called intelligence on which it was based was entirely erroneous and the burning injustice had the effect of consolidating support for armed struggle for more than three decades against those who had imposed it.

5. Mr Blunkett stated that this was not internment since there would be no British nationals detained, only foreign nationals who had somewhere to go, and they were entirely free to go, however they were not being deported since the UK acknowledged that the one country to which each had a right to go, his own, he would face with near certainty torture and death.

6. Parliament and the public had to be persuaded. The public and indeed Parliament, has only one source of information, the press. The Home Affairs editor of the *Observer* later provided a statement to the Commission that came to consider the individual cases in which he described the process by which the public come to be informed about matters that are linked to intelligence and national security. Every time, he told the Commission, that you see the word Intelligence sources, Whitehall sources, MI5 sources, Foreign Office sources, these are derived from briefings given by an appointed officer in MI5 and MI6 to each journalist who then writes the story without further explanation or attribution precisely in the terms in which he or she was briefed. As journalists have no other independent source of information for any issue of vital national interest that briefing is regurgitated in its

entirety without criticism or explanation or alternative information. Martin Bright described how, in the run-up to the passage of this legislation, there was an unprecedented storm of briefings suggesting that there was indeed an emergency. Of relevance to what was to emerge later, the briefings in turn came to demonise one individual in particular, with quotations from Intelligence sources that the legislation was tailor-made for him. So far as the passage through Parliament was concerned, there was of course questioning and concern, although all of this muted in the context of the repeated mantra that we were facing a national emergency.

7. To go back for a moment to equip ourselves to analyse whether Parliament was told the truth, let alone the whole truth, about what it was to decide upon we remind ourselves that over the past 25 years, and increasingly during the past five years, there have been extraordinarily wide-ranging powers under a number of different pieces of legislation specifically aimed at terrorism. For 25 years there was the Prevention of Terrorism Act and then by leaps and bounds there were jurisdictional extensions that were extraterritorial so that it now became a crime to possess an item in this country or do an act in this country or conspire in this country or support in this country or raise money in this country for the purposes of assisting terrorism outside this jurisdiction. The definition of terrorism was extended from violence for political ends to ideological or religious ends and no longer requiring acts of extreme violence, but acts that were designed to influence any government, anywhere in the world with the potential result of destabilising the health and safety of that country. Any act anywhere in the world against any government however brutal, however, is now reassured that this country has the capacity if it wishes to prosecute its dissidents as terrorists.

8. In the light of this, an important question was repeatedly asked by Parliamentarians. As we have all of these pieces of legislation, why do we not use these to prosecute these individuals and place them on trial with all the safeguards of due process guaranteed by the European Convention and now the Human Rights Act? The answer was twofold. First these are people that we cannot prosecute in the normal way because the evidence that will be used against them is dependent either upon phone-tap evidence which we do not make

admissible in criminal proceedings in this country, (unlike virtually every other country in the world, as a matter of arbitrary choice and counter to repeated recommendations by individual members of the House of Lords who have overseen the workings of terrorism legislation over the years). In addition, it was said the evidence is based otherwise on intelligence and intelligence demands secrecy. The detainee will be entirely protected. There were inbuilt safeguards. There was bail; he will have access to lawyers and be able to appeal to the Special Appeals Commission which will consider his appeal, albeit much of it in secret but importantly, no one will be subject to a decision to certificate him and place him in this process unless and until the Crown Prosecution Service has taken a considered decision on the evidence available against him as to whether he can be prosecuted or not in the normal way. Only then, as a last resort would any person be detained under this legislation.

9. There was of course extensive publicity attached to the coming into force of this legislation just before Christmas two years ago. Whatever the reassurances that were given to Parliament that individuals would have legal representation and interests would be protected, this was not the case. Ten individuals were seized from their homes the morning after the legislation was passed and taken straight to Belmarsh Prison and Woodhill Prison near Milton Keynes. Their families had no idea what had happened to them or where they had gone. No one was informed that they were arrested. By complete accident a number of them arrived on a landing in Belmarsh Prison where one remand prisoner who had money in his property and a phone card was able to phone his solicitor and inform her that a number of people were in Belmarsh who were not being allowed to make phone calls and who needed a lawyer urgently. Belmarsh refused visits until after Christmas. There was now a day and a half before a complete shut-down before Christmas. Threatened Judicial review produced a scrappy visit in Belmarsh the next morning. The Commission was informed that an urgent bail application was to be made and listed an application for one man the following day. HMSO said that the legislation was not yet published and would not be available until after Christmas. In desperation an interview with a radio produced the following morning a copy of the legislation five minutes before the bail application, hot off the press. A faxed note late at night from the Home Secretary's lawyers contained the

reasons why that first individual had been certificated. It was too dangerous for him to be removed to Morocco and he had visited two named individuals in Belmarsh Prison. It was clearly wholly astonishing to the innumerable unnamed members of government departments who were present at that bail application to learn that the man was not an asylum seeker. He had lived in this country for 18 years as a taxpayer but had visited Morocco each year for those 18 years to see his family. Yes indeed he had visited two named persons in Belmarsh Prison. He had done so as an interpreter and had been cleared by police and security at Belmarsh before doing so. Nevertheless the Commission said it must regard the purpose of the legislation as detention and must regard the decision of the Secretary of State to have issued a certificate as reasonable until proven to the contrary and that the only circumstance in which bail could be granted would be if an individual was terminally ill or could prove that he was not the person in question.

10. That hearing was the first experience of the reality of the legislation. In the two years since that time each revelation as to what has been the true basis of internment and how it has been dealt with has left us increasingly horrified. Though the shock of the first bail application was considerable nevertheless we believed that the legislation was unjustifiable and hence unlawful legally, factually and morally, and that in relation to the individuals, all of whom expressed their wholesale astonishment to have been selected for certification and equally their astonishment at the selection of some of the others detained because they had known them previously, might be able to be established in particular when we saw the actual evidence against each detainee. One in particular, Mamoud Abu Rideh, a Palestinian victim of Israeli torture, was very well known in the community as a highly eccentric and damaged individual, albeit one with a burning commitment to helping others, in particular fundraising for charities in Afghanistan. We have had described to us over and over again Abu Rideh's travels around the Muslim communities of this country with a little exhibition he would set up of photographs of schools, projects for wells, projects for work for widows and the details of a recognised UN charity for humanitarian aid to which these monies were transmitted. This man, already traumatised, in Belmarsh immediately began to react to the reintroduction of trauma and became gravely disturbed, now one and a half years ago, after

he had deteriorated into a life-threatening state, being unable to eat and too weak to be out of a wheelchair, came to removed on the orders of the Home Secretary to Broadmoor, against the wishes of Broadmoor who said he was not at all dangerous and mentally ill, but clearly suffering the effects of being confined in Belmarsh and there he remains. Bail application for him before the Commission had no more success than those on behalf of the Moroccan interpreter. We considered however that some ability to analyse the evidence produced against each would allow for us as lawyers to investigate and challenge the assertions made by the Home Secretary.

11. More shocking to us, however, came the realisation of what the evidence was that we were to be allowed to know. We had assumed when the faxed information was sent at that first scabbled together early bail application that when we received the evidence against each individual, then we would begin to understand why he had been detained and be able to work to disprove the contention. Instead, we saw that these first few lines were to remain the evidence. This was not evidence. These were assertions, unsupported by any evidence whatsoever, thus an individual would be said to have been certificated as being an international terrorist or person who was a supporter of international terrorism on the basis that he associated with other persons who had links with other persons who were extremists and were associated with groups which in turn had links with al Qaeda. This was it. Of course the words 'links', 'associated with', 'extremists' are words lacking any definition. On occasion the name of the individual with whom a connection was made would emerge. One such man was an individual called Abu Doha awaiting extradition to the United States. Other were clerics in this country, or other persons who were all alive and well and undetained in the community here. Very rarely, in relation to one or two people, was there a snippet of surveillance evidence showing that the individual had been seen for instance, going to a particular address on a particular day, such as to demonstrate association. As for the evidence as to what those allegedly more central individuals might themselves have been doing, we could hardly believe what we were presented with. Someone in the Security Services or the Home Office had simply punched the internet and obtained in relation to each name or proposition a range of newspaper articles on any one subject for instance the GIA, an Algerian organisation, for Abu Doha, for Abu Hamza, Abu Qatada, for al Qaeda.

There was no evidence whatsoever. There were simply assertions by unnamed Security Service officers purporting to constitute a statement backed by ring binders of newspaper articles, the claim being made “normally intelligence information cannot be given but since what is enclosed here is already in the public domain we will provide it.” Therefore what was being provided was the very evidence that Martin Bright, bravely in a sense, biting the hand that fed him, said in a statement to the Commission had been fed to the press week by week, month by month, for the purpose of obtaining the passage of the legislation itself and as Mr Bright said as well recently having seen with astonishment one of his articles included in the bundle, embarrassingly now along with many journalists two years later, could hardly bear to read things that they had written when they had little or no knowledge when now percolating up variously from around the world one is able to develop a very different and more informed point of view.

12. The failure to provide any evidence in real terms against the detainees was baffling. It was not just shocking, but baffling in terms of the reassurance Parliament had been given. Remember, despite all of the wide provisions for arrest and questioning for seven days under the Terrorism Act, various pieces of terrorism legislation, those who were certificated were never arrested at all and questioned. Not at all. We therefore believed that there must be some other consideration that had led the Crown Prosecution Service to make its decision not to prosecute, otherwise as happens in every other case, if consulted about the sufficiency of evidence, they would say to the police what the police would know very well and think for themselves. If we have a suspicion that a person is involved in support for terrorism, then it is our duty to arrest them and to question them and by questioning of course our intention to obtain evidence that will either support or refute our suspicion. I have spent months of my life during the past several years in Paddington Green Police Station, at detentions for seven days under the wide powers of the Terrorism Act, while the police seek evidence on which to prosecute individuals with all of the safeguards, however insufficient they appear to defendants and defence lawyers, that a trial provides. I therefore wrote to the Director of Public Prosecutions and asked him on which date the decision had been taken not to prosecute each of the detainees, which Crown Prosecution Service officer had taken the decision and what information he or she had before them when they took it.

After some time a reply came back that the Crown Prosecution Service had never taken any decision in relation to any of these individuals. They had never been consulted. In the first of the individual appeals themselves, when a Security Service witness standing behind a curtain, Witness A, was questioned about the decision-making process Parliament had been reassured had been taken in every case by the Crown Prosecution Service, the answer was that they thought there had been conversation between the relevant Special Branch officer and someone in MI5.

13. In relation to any individual and any information, one would want to go to the best source. Bear in mind that the proposition advanced by the Home Secretary for the legislation is that this country has in its midst a significant number of individuals who present a threat. The Home Secretary said in his evidence that some of these individuals are detained here awaiting extradition to other countries, for instance Abu Doha. Some are British nationals and the legislation does not cover them. Those who are detained, there is no other way to deal with them. Not only has each of the individuals internees expressed his astonishment that nobody ever came to talk to him but so also have some of the individuals whose presence in this country, and contact with whom is said to justify the certification of other individuals have themselves. They neither have ever been interviewed. Four individuals said to be key in Belmarsh Prison now, have said in puzzlement, is there nobody in the Government who will be interested or who would like to talk to us? Is there nobody who would be interested to hear what is the real position about the fears and suspicions they have? Is there nobody who has a concern to know our view as to whether there is or was a threat and who might like to know that insofar as we ever had the ability to influence anybody, our repeated message was if you come to this country, as a refugee, if this country has provided you with hospitality then Islam says that is a contract and you have an absolute duty to obey the laws of this country and to respect it. Ironically we have seen an MI5 report of some five years old in relation to a conversation with one of those individuals in which that was precisely the reported impression that the MI5 officer had that this individual was a charismatic figure of influence and was exerting a restraining influence upon potential younger hotheads. That individual is, as with others, now locked up with others in Belmarsh. One may be entirely wrong, the picture may not be that, but if

this country was interested in the reality then informed conversations with willing individuals would have appeared to be an important prerequisite.

13. Instead, a significant number of solicitors who have clients in Muslim communities around this country will tell you the process of information gathering has been frightening inappropriate. Innumerable individuals have expressed their fear they have had a knock on the door, an approach in the street, an obstruction in the aisle at Tesco's, from an individual saying that he was from the Security Services and wanted to obtain from them information about this country as to whether there was a threat from terrorism and that in exchange considerable help could be given to the obtaining of British citizenship or regularising of immigration status. A significant number of individuals have reported a threat that in the absence of doing so they would be returned to countries from which they had fled. It is entirely obvious that much of the information that must have been heard in secret session must be evidence obtained through methodology known to produce entirely unreliable evidence since it involves coercion, inducements and threats. We do not even know if such individuals appear as witnesses behind closed doors to the Commission or if what they say or are claimed to have said reported second-hand through the evidence of Security Service agents. We suspect the latter but we do not know and we are not allowed to know. Secret evidence is evidence that enjoys the confidence that it will never have to withstand the bright light of public exposure and scrutiny.

14. Worse, however, was to come. The challenge to the legislation itself came first. The individual appeals came more than a year later, the first ten appellants waited almost two years to have any decision on their individual cases. The appeal consists of receiving the assertion, putting in a written statement and any evidence to try to counter the assertions and eventually a semi-oral appeal, in the sense that there is a brief session in which there is a security witness who appears behind a curtain but is able to be cross-examined, but whose frequent response is 'I can give the answer to that in closed session but not in open session'. Then, the appellant, if he wishes, can give evidence and be cross-examined, and in the process it is extremely clear that the barrister on behalf of the Home Secretary is asking

questions of the appellant which can have no possible meaning other than that the advocate believes that he can establish that what the appellant says is a lie in closed session.

15. It was always our real concern that a number of brutal regimes had for many years been pressing this country to take action against refugees here who opposed them. The internment legislation that had been brought in here demanded a direct connection (to justify detention) with al Qaeda since that was the basis upon which the emergency had been claimed. No link was able to be made between the detainees and Al Qaida. Instead, links were claimed with organisations linked to opposition to entirely different regimes and it was then asserted that those organisations had in turn a link with Al Qaeda. Algeria, the most significant in terms of the number of internees from Algeria, has long claimed that some members of the GIA and the GSPC have found safe refuge in this country and has provided information to this country that in more than one case has been clearly obtained through the use of torture. We expressed our view to the Commission that any evidence sourced from these regimes had to be discounted. Not only was it partisan but it was likely to have been obtained by means which the international community rejected as unlawful through the use of torture and the infliction of death.

16. The evidence that the Secretary of State presented suggested claimed direct connections which are entirely baffling and fly in the face of all known objective evidence. He claimed because he had to claim in order to intern a number of these people, that they had links with terrorist groups which he claimed had links with al Qaeda putting them as directly threatening to this country as outposts of al Qaeda using terminology that suggested exact definition - providing safe houses, providing logistical support, fundraising. He provided a graphic showing a hierarchical structure with al Qaeda and bin Laden at the top with an ever-expanding series of boxes underneath, spreading out to Algerian, Egyptian and other organisations of Islamic resistance or opposition to those respective countries. For a number of reasons the expert who provided that graphic has been accepted as being discredited. However, his thesis, of a cohesive network leading to the pinnacle of bin Laden and al Qaeda now comprehensively discredited was the thesis

adopted by the Home Secretary in declaring the national emergency. In consequence, the evidence against the individuals detained had to be choreographed to that theme and it was.

16. The appeals produced a number of surprises for the Home Secretary that demanded alterations to his initial thesis central to his initial claims. In respect of a number of the appellants the assertion had been that they were involved in fundraising or providing logistical support in conjunction with a man, Abu Doha, for the purposes of terrorism. Clearly surprising to the Home Secretary, instead of a denial of the activity those appellants in their response said of course we were involved in fundraising. We were indeed involved in providing logistical support to Chechnya, which had been brutally invaded by Russia the second time in 1999. The world was silent, Russia had received no criticism from the West and the population of Chechnya who was being wiped out in mass genocide was attempting to resist. The United Nations Declaration of Human Rights and the United Nations Charter guarantee both self-determination is the right of the people such as the Chechens but also that armed resistance to a tyrant is a guaranteed right to those peoples in the face of tyranny. The European Convention of Human Rights is a child of the UN Declarations and its preamble expresses that view although it specifies only within the Convention only a limited number of rights that it chooses to spell out. Nevertheless it adopts its overriding ethos in which it was written, all of the principles, both principles of the United Nations. When it was suggested that they were purchasing satellite telephone time and satellite phones they said 'yes'. With Abu Doha, 'yes'. If there was a snip of a surveillance observation saying that they had boots and blankets in a van, they said yes. It was all for Chechnya and it is lawful. The UN tells us we can do this; the European Convention tells us that we can do this. Domestic UK law tells us that we are doing nothing unlawful in assisting self-defence.

17. The Secretary of State during the past year shifted his position. He said there is Chechen resistance but there are good Chechen resisters, there are middle Chechen resisters who are Islamic and there are bad Chechen resisters who have links to al Qaeda and we believe on the basis on no evidence that it is the bad Chechen resisters who you were helping and it doesn't matter if you sent boots that went to a good and a middle resister, if

you sent boots that ended up on the feet of the bad resister fighting alongside the good and the middle then you were assisting international terrorism with a link to al Qaeda. And there were suddenly by the end of the appeal hearings a number of new terrorist groups, one the Abu Doha group. Why a link? Because some Chechens fought in Afghanistan against the Russians, in fact at a time when the USA and the CIA were funding the resisters and some supporters of Chechen resistance went to Islamic camps in Afghanistan where they received some rudimentary military training en route not necessarily to Chechnya, but earlier than that, to Afghanistan and then to Bosnia, which had proved a wake-up call to the Muslim world that no one else would go to the aid along with the community being wiped and that as a necessity to go to their aid. An echo of the International Brigade in the Spanish Civil War, similar people, principled, serious, law-abiding decent young men, motivated not by any self-interest but by altruism. Afghanistan, it seemed, was the central key to the Home Secretary's thesis in establishing that there were links between individuals in this country and al Qaeda. A number of those individuals to whom we have been able to talk at huge length and in great detail have expressed astonishment even at the very name, let alone the concept of al Qaeda, a name that they had themselves never heard until after September 11th, even though some had lived at least for a while in Afghanistan. Bin Laden and his small group, al Qaeda, were only one of many individuals who had found their way to Afghanistan between 1990 and 2001. By the mid-1990s the Taliban, the name means in Arabic 'scholars', had formed the government in Afghanistan and were attempting to set up a truly Islamic state, to one side, the constantly repeated flaws in that attempt, and consider the position of a diaspora of refugees and indeed non-refugees around the world who thought that that ideal was one in which they wished to participate and a small but significant number of individuals moved to Afghanistan in an attempt to be involved in the creation of that state, setting up schools, rudimentary industry, agriculture that was not based on the production of heroin, and were inevitably as a diaspora, in touch with the wider diaspora worldwide. It is that circumstance that the Home Secretary has entirely adopted as the necessary plank of his thesis but without any satisfactory understanding when one of the security witnesses was cross-examined as to her understanding of the number of training camps that there were in Afghanistan, whether al Qaeda or not al Qaeda, she expressed the view after a considerable pause that there were between ten and a

hundred. In fact there were two, not al Qaeda and one entirely separate different and remote al Qaeda camp. It was during the individual appeals this summer and whilst for the first time in the few answers given in open session by the Security Services witnesses that we were beginning to comprehend the wholesale lack of information and knowledge so that we found that we having had and taken extensively the opportunity of talking to those whose presence the Home Secretary claimed constituted a national emergency appreciated that we were able to have a far more accurate knowledge of many basic facts.

17. This led us to puzzle as to what evidence the Secretary of State could be producing in secret session and had relied upon in determining that there was a national emergency. By chance, I had been working with the father of one of the detainees in Guantanamo Bay, Moazzem Begg, who had emigrated to Afghanistan with his wife and children to set up a school in Kabul, who had escaped when Afghanistan was invaded to Pakistan, had been abducted by Americans from Pakistan unlawfully, taken to Bagram airbase for a year, however secret reports have come out again and again and again of the use of what the Americans refer to as torture-light and stress and duress techniques and worse, and then after a year taken to Guantanamo Bay. I had written to the Prime Minister and the Foreign Secretary and the Home Secretary repeatedly asking if they accepted what had been done to him was unlawful and that the two years of unlawful interrogation of him must therefore constitute no basis for a hearing before any tribunal, military or other. In the course of that correspondence I repeatedly asked what information had been given to the American interrogators by the UK. What product has been received by the UK? Have our Intelligence Service agents been present at any interrogation? And a reply came back too late for any of the individual appeals, that the UK had had its agents present at interrogations conducted in both Guantanamo Bay and Afghanistan. Given the illegality and worse of that system of interrogation, the admission that our Intelligence Services were participating was shocking. However, during the appeals one Intelligence Service agent had answered in response to our questions that evidence if obtained from Guantanamo or Bagram or that might have involved the use of torture would be used by the Intelligence Services, it would be merely a question of what weight to attach to it. The advocate for the Home Secretary echoed that that was our official policy and practice and to our everlasting disappointment the

Commission in rejecting all ten of the first appeals indicated that it was not excluded from consideration. The Home Secretary only had to raise reasonable suspicion it was not for SIAC to enter into a debate as to the evidence and how it was produced and in any event, it was for the appellant to prove that torture had been used in relation to evidence that we can only guess at and is heard entirely in secret.

18. What is now completely clear to us is that internment for the UK just as detention in Guantanamo Bay for the US is in the nature of an experiment and that a significant part of the experiment is the degree of protest and successful protest including by the Courts that these procedures will arouse. To a significant extent, for the present moment, that experiment has been a success for the governments concerned. There has been very little protest, even less in relation to internment, than there has in relation to Guantanamo Bay. No wonder the United Kingdom cannot effectively protest about the fate of British detainees in Guantanamo. Of course it cannot. It is complicit, far more than we originally thought in the process.

20. Here, in respect of internment, there has been wholesale success. Parliament was successfully misled. There was never any consideration of prosecution of these men. They were to be locked up, to conform with an idea already distributed to and swallowed whole by the effective means of information that the citizens of this country have, the press. They were not to have any prospect of bail. Although they had lawyers in name, they could not investigate and challenge when they had access to no information. No wonder the secret hearings are essential. The evidence and more importantly the way it has been obtained, would shock many in this country. Our expressed willingness to make use of evidence obtained by torture puts us in direct breach of our obligations under the Treaty for the Prevention of Torture including the stipulation that we have undertaken that information obtained from torture should not be used in any legal proceedings. While the Houses of Commons, of Lords, lawyers and judges express their continued determination to ensure the right of jury trial and debate any proposed dent in that right vigorously, these proceedings against these men in one fell swoop have evaded the potential of jury trial in its entirety. Every single principle of open justice is violated. They do not know what is

said against them. What is said is said in secret. The state no longer has to prove its case beyond reasonable doubt. All that is required is that the Home Secretary had a reasonable suspicion in 2001 on the basis of what he was himself told. No matter that whatever activity you might have been involved in, two years before the Act was lawful, it has now been made retrospectively unlawful by the retrospective perception of the Home Secretary that legitimate help to Chechens under siege could be subdivided as help to al Qaeda., that individuals with whom you worked on that lawful activity none are said, retrospectively to constitute a terrorist group The case of one man is chilling, an Algerian who was arrested in 1997 and acquitted on the basis of a defence that what he was attempting to do from here was to assist villagers that were subject to massacre in Algeria for sending a number of rudimentary items for their self-defence. The Home Secretary detained this man again, reactivated the case in which he had been acquitted and then as a basis for his detention, stated that he has not been observed to be doing anything since then and therefore the methods of avoiding detection must have become more sophisticated. That man also has lost his appeal.

21. National security is not a separate thesis so that human rights are able to be extracted from it and placed in a balance in order to protect the overall interests of all. It is a misleading analysis which is constantly relied upon that we must be careful in our quest for national security that we don't undermine the values of democracy for which that national security is sought. That is not exactly enough. National security includes as an integral and central part the inalienable rights of individuals. "National security" has a seductive ring. It frightens off political disagreement. It frightens the population and makes it more subservient to authoritarian measures. It widens a circle of fear as the ever-expanding notion of national security perceives a nation's interests as being capable of being directly affected by events all around the world. It creates an exaggerated degree of fear and an exaggerated degree of threat and it is of immense importance to governments and governmental institutions which have an inherent desire to act in secrecy and to hide material from which vital national decisions are made, from scrutiny. When these circumstances are invoked they demand critical investigation. They demand public information. Absolutely vitally they demand it to be said that a government that is willing

to and allows government employees to provide unattributable briefings to the press to convey a message is the antithesis of a democracy and indeed, is actively contributing to the potential of its destruction. Our country is not and has not faced an emergency of the kind claimed to the Council of Europe. The Council of Europe was misled. Parliament was misled. The citizens of this country were misled. We are privileged. Our institutions are for the most part safe and respected. We enjoy security. We are not in danger from foreign attack or internal violence of the kind that is conjured up by the term 'national emergency'. Whether we like it or not, the corrosion of our true security, the unnoticed undermining of a number of vital guarantees, even if they are for only 16 people who you don't know and who you are not meant to know, then that is a serious serious alarm bell that may in turn suggest a true risk to our real national security and the makings of a worrying emergency here. There is no exit strategy for this legislation or for those detained under it. The only hope for real security in its vital sense is to grapple with an understanding of the methodology that has been adopted and to look at it clearly in the light of what we can now however belatedly appreciate has taken place.

Gareth Peirce

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