

# Subversion dissent:

## Where ASIO draws the line

Jenny Hocking

**T**he *Tribune* of 22 June, 1983 reported the findings earlier that month of the Security Appeals Tribunal, concerning the appeal made by Stephen Rix against an adverse security assessment given by ASIO (the Australian Security Intelligence Organisation) during Rix's employment with the Department of Trade and Resources. Rix had been a member of the Communist Party of Australia since 1980, and it was on that ground alone that ASIO had denied him a positive security assessment — ASIO declared the CPA a subversive organisation and Rix, as a member, was considered a security risk.

The Security Appeals Tribunal reached a land-mark decision in its findings that the CPA is not a subversive organisation within the meaning of the 1979 ASIO Act, and from this, that membership of the CPA cannot in itself be accepted as the basis for a negative security assessment. As the *Tribune* pointed out, these findings "should go a long way to removing unwarranted impediments to the careers of people given adverse security assessments by ASIO". However, the Security Appeals Tribunal placed an important rider on its decision: "that our findings do not, and indeed could not, in any way affect the exercise of the functions of (ASIO) under section 17 of the Act to obtain, correlate and evaluate intelligence relevant to security ..."

Section 17 of the ASIO Act relates to ASIO's maintenance of security files, from which, in turn, its security assessments derive. Clearly then, the Security Appeals Tribunal was quite explicit in its view that, despite the

Tribunal's perception of the CPA as a non-subversive organisation, ASIO may nevertheless continue to consider the CPA as "relevant to security" in terms of its security records.

What follows is a clarification of the areas of political activity seen by ASIO as "relevant to security" for the purposes of its security files, and an assessment of the criteria on which these files are maintained.

**O**n 22 June, 1974, the weekly magazine *The Bulletin* printed an article titled "Cairns: ASIO's startling dossier", which contained extracts from an assessment by ASIO of the then deputy Prime Minister, Dr. Jim Cairns. This report, which had "fallen into the hands" of *The Bulletin's* Canberra correspondent, had been written in 1971 at the height of the anti-Viet Nam war demonstrations, and provided an invaluable insight into ASIO's attitude towards this type of popular dissent, its perception of the nature of liberal-democracy and its corresponding conception of activities and ideologies which presented a threat to the viability of a democracy. The dossier's assessment of Dr. Cairns was based largely on his writings and public statements. It claimed that Cairns held a "populist-type theory" which advocated generating extra-parliamentary opposition to the parliamentary system itself through the development of protest and dissent movements. Several references were made in the assessment to perceived similarities between Cairns' beliefs and those of the Communist Party of Australia: "the kind of socialism

envisaged by Dr. Cairns bears a striking resemblance to that promoted by the Communist Party of Australia"; his views "echo the current view of the Communist Party of Australia"; ASIO's analysis of Cairns' participation in protest movements concluded that this sort of activity could lead "to the growth of elitism in every sphere, to the manipulation of people by demagogues, to the fascist cult of the personality, to the worship of force, and to the destruction of the democratic system of government and its replacement by a form of collectivism .... That way lies Anarchy and in due course left-wing fascism."

The publication of this article raised two important questions: what criteria was ASIO using as the basis for its maintenance of security files on individuals or groups; and how adequate was the degree of ministerial control of ASIO if ASIO was in a position selectively to disclose intelligence information it had collected on members of a political party. However, the poor standard of the dossier's political analysis (referred to by *The Age* as "speculative, exaggerated and paranoid"<sup>3</sup>) caused widespread condemnation of ASIO's "political illiteracy" rather than of its maintenance of the file itself. The public concern expressed over the nature of the document and the political use to which it had been put, provided the federal Labor government with a politically opportune moment at which to institute a judicial inquiry into the activities of Australia's security organisations. The editorial referred to above argued

# and political

NEWS

## ASIO's wings clipped

by a special correspondent

- The Communist Party of Australia is not a subversive organisation.
- People cannot be denied "security clearances" because of their membership of the CPA.
- ASIO and its Director-General are bound by the terms of the ASIO Act, 1979, and cannot use their own security matters.

Findings made on June 1 by the Security Commission, in a victory for democratic rights and against unwarranted impediments to the exercise of the rights of citizens, led to widespread demands for a change in the security activities.

procedure in  
separately.



...the Country Party  
...Melbourne, 1947.

added.)  
Other events of recent as well as past times indicate that such impermissible ASIO activity and persecution are not confined to matters connected with the Communist Party, but involves members of the ALP and others.  
At the same time, the Tribunal made it clear.

"...that our findings do not, and indeed could not, in any way affect the exercise of the functions of (ASIO) under section 17 of the Act to obtain, correlate and evaluate intelligence relevant to security, and that they do not imply any criticism of the exercise of those functions." (Page 31.)

ASIO evidently also argued that a member of the CPA could not be a reliable public servant because a purpose of the party is:

"to erode and denigrate the structure of government, administration and the security forces, and to influence the decision making process, in order to weaken the response of the capitalist regime to the pressure exerted by the revolutionary encroachment." (page 28)

ASIO gave as evidence for their view such statements in the CPA Program as:

"The CPA aims to be a party of activists and to educate its members in Marxist and socialist theory and practice. It encourages and assists them to become effective mass workers and activists. It seeks to develop methods of work which can win and bring less struggle the maximum number of people" (Program, page 65) and aims to penetrate all levels and areas of society, for example "by asserting democratic control in workplace, locality and social affairs, encroaching on the rights of owners, managers and bureaucrats." (Program, page 42.)

...through considering a rational  
...this argument, the  
...and it is argued...

"Dr. Cairns and the Communist Party of Australia (are leading) to the fascist cult of the personality, to the worship of force, and to the destruction of the democratic system of government ...."

strongly for this inquiry, and concluded that "the affair underlines the need for a thorough inquiry into activities and operations of ASIO, a clearer definition of its proper role, and the establishment of effective safeguards against the abuse of its powers". The subsequent establishment, in August 1974, of the Royal Commission on Intelligence and Security was therefore not unexpected. The then Prime Minister, Mr. Whitlam, had included the establishment of such an inquiry in his 1974 pre-election policy speech, and it had been rumoured intermittently that an inquiry was imminent ever since the Labor government first assumed office in 1972.

### Expectations of the Royal Commission on Intelligence and Security

The Royal Commission on Intelligence and Security was established at a time of some turbulence in government and security relations, following not only the immediate matter of ASIO's security file on the deputy Prime Minister, but also the much earlier "raid" of ASIO's Melbourne headquarters by the federal Labor Attorney-General, Senator Lionel Murphy, in 1973. This turbulence underscored the expectation that the Royal

Commission would suggest radical changes in the operations and accountability of Australia's security services, and possibly even the abolition of some of these operations. Speculation that the Royal Commission would result in at least a major administrative reorganisation of security organisations was strengthened by the announcement that Mr. Justice Hope, a New South Wales Supreme Court judge, would be heading the Royal Commission. Hope was considered "an acknowledged small-l liberal", "a champion of civil liberties"<sup>4</sup>, and had been very active in civil liberties issues before going to the bench. This "libertarian" profile has since been irrevocably damaged.

The prospect of the inquiry being highly critical of the security services was further bolstered by continuing revelations of the widespread abuses by security services overseas of their power to undertake operations according to their own determinations of "national security". The lesson of the earlier Murphy "raid" of ASIO highlighted the problems associated with a lack of accountability in these crucial security determinations.

The expected, interrelated recommendations of the Hope report regarding the resolution of these security issues were that —

- ASIO would be made more accountable to the minister in charge of it, there would be an increase in policy guidance from the government to ASIO and the setting of strict priorities in its operations.

- ASIO's role and functions would be more clearly defined to avoid any extension of its activities into areas not relevant to national security.

On these matters, in particular, Hope's recommendations were entirely unexpected.

### **The Report of the Royal Commission on Intelligence and Security**

The long-awaited inquiry into Australia's security services was finally established in August 1974, with very broad terms of reference which demanded an examination of the operations, structure and co-ordination of Australia's intelligence organisations, of which the major ones considered were the Joint Intelligence Organisation (JIO), the Australian Secret Intelligence Service (ASIS), and ASIO. The commission's fourth report dealt specifically with ASIO and provided an overall review of its operations. It is this fourth report which will be principally discussed here and referred to simply as the "Hope report". The essential part of Hope's terms of reference for this report were: "in the light of past experience, and having regard to the security of Australia as a nation, the rights and responsibilities of individual persons, and future as well as present needs, to make recommendations on the intelligence and security services which the nation should have available to it and on the



way in which the relevant organisations can most efficiently and effectively serve the interests of the Australian people and Government....<sup>75</sup>

Critics of the Hope report have referred to it as "bizarre", "a document of stunning illogicality and frightening implications", and "a commentary which anticipated the *laissez-faire* government attitude to clandestine services"<sup>6</sup>. Even those who accepted the report's findings found it difficult to reconcile its trenchant criticisms of many aspects of ASIO's operations with its recommendations, nonetheless, to diminish ministerial control over ASIO and to widen ASIO's legislative powers in several crucial areas.

### **Hope's Criticisms of ASIO**

Hope found that "neither the quality nor reliability" of submissions and information supplied to him by ASIO was as "one might have wished"<sup>7</sup>. The Royal Commissioner and his staff personally examined hundreds of ASIO files partly because ASIO's own evidence could not be relied upon. Of these files, Hope commented that the extent of their disorder was such that "I have been quite unable to establish the truth or otherwise of many of the particulars of matters alleged in evidence, or raised by ASIO as the result of other inquiries"<sup>8</sup>. Hope also found that ASIO had in the past departed from

"principles of propriety, including legality, to which ASIO should have regard in fulfilling its functions"<sup>9</sup>. In some areas, he continued, "its operations were or may have been in breach of the law"<sup>10</sup>. Further criticism was levelled against ASIO for leaking its own intelligence information to sections of the media: "ASIO has in the past provided selected people with security intelligence material for publication"<sup>11</sup>. However, the report's most strident criticism was reserved for the operations of ASIO's Special Projects Section which had been disbanded prior to the writing of Hope's report. The functions of this section included taking action "to build and maintain liaison with selected contacts in a variety of fields, including the media"<sup>12</sup>. Hope referred to these functions as "improper in the extreme". Raising another issue, he noted that this impropriety was exacerbated by ASIO's "tendency to think of anyone they chose to call 'left wing' as subversive"<sup>13</sup>.

Clearly the maintenance by ASIO of files on the basis of people being "left wing" rather than genuinely subversive, introduces the possibility that ASIO could maintain files on a purely political basis which could then be leaked to selected contacts in an effort to discredit either a particular political party or pressure group. The document on Dr. Cairns compiled by ASIO and leaked to *The Bulletin* can be interpreted in this way, and Hope does not dispute that ASIO has misused its powers in such a manner in

the past. Hope's comments on ASIO's past abuses set the tone and perspective of his report. "I have taken the view ... that my task is to make recommendations for the future rather than to seek to track down the truth or otherwise of past errors ..."<sup>14</sup>. "I do not propose to deal with ASIO's transgressions in detail. This report is concerned with the future rather than the past and to point to what should happen in the future."<sup>15</sup> Justice Hope apparently felt that evidence of ASIO's past misdeeds had little bearing on the realism or practicality of his recommendations, and his comments contrast starkly with his terms of reference which specified that his recommendations were to be made "in the light of past experience".

The main area of the Hope report's discussions and recommendations to be examined in detail here concerns ASIO's criteria for the maintenance of security records, and in particular its understanding of "subversion".

### Subversion: Hope's View

ASIO's principal function, Justice Hope considered, should be the protection of Australia against four types of activities: espionage; "active measures" (the use of "agents of influence", the dissemination of "disinformation", and "other forms of clandestine or deceptive action"); sabotage and subversion.

Subversion is the most controversial of the four principal activities listed above, since the domestic variety

(Hope recognises two classes of subversion, those involving "foreign activities" and those involving "domestic activities") impinges so closely on the legitimate activity of political dissent. Unlike the other three areas, which all involve the interaction (in varying degrees) between individuals and foreign governments or foreign security organisations, domestic subversion relates solely to the political activities and philosophies of individuals "not directed by, subsidised by or otherwise undertaken in active collaboration with a foreign power or a foreign political organisation"<sup>16</sup>. Hope rightly points out that at the "outer limit" of subversion — which "extends to the mounting of armed revolution" — identifying subversive activities presents few problems. The "inner limit" is the area in which dissent and subversion merge and which therefore makes defining subversion not only extremely difficult but also extremely important.

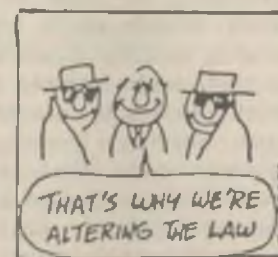
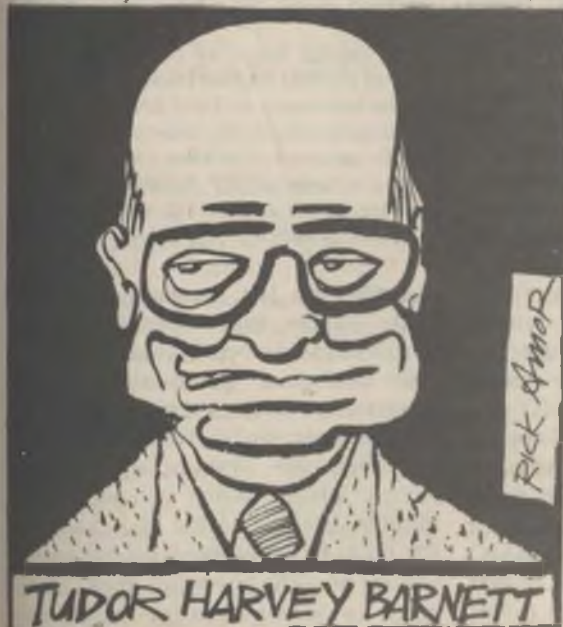
The 1954 ASIO Act gave no definition of subversion, and although this neatly avoided the problem of legislatively distinguishing between subversion and political dissent, could enable ASIO to impinge on legitimate political behaviour and the expression of political rights generally considered essential to democratic practice. It was the potential danger to democracy which Hope cited in his recommendation for the inclusion of legislative guidelines concerning subversion in the ASIO Act.

*There is an inherent potential danger of intrusion into proper political activity and the resultant infringement of basic democratic and legal rights. Democracy thrives on non-violent differences of opinion and attitudes and ASIO must be careful to avoid mistaking mere dissent or non-conformity for subversion.<sup>17</sup>*

Hope suggested that the proposed definition of subversion should include:

*those activities which involve, or will involve, or are intended ultimately to involve, the use of force or violence or other unlawful acts (whether by themselves or others) for the purposes of:*

- (i) overthrowing the constitutional government of the Commonwealth of Australia or of a State or Territory; or
- (ii) Obstructing, hindering or interfering with the taking of measures by the Commonwealth Government in the interests of the security of Australia.



(Hope notes that "security" here is used in its common and wider meaning of "safety" and not in its statutory sense as set out in the ASIO Act.) This suggested definition has been criticised largely on the grounds that it is too broad, and certainly the second purpose presents a vague area within which ASIO's discretion will continue to operate. However, Hope's description of subversion confines subversion to criminal offences committed or intended ultimately to be committed (and as Hope points out, this intention also constitutes a criminal offence) with either of the above two purposes. This element of criminality does place a restriction on the types of activities which ASIO may legitimately consider subversive.

**I**n theory, this aspect of Hope's definition removes the basis for previous criticisms that ASIO's use of the concept of subversion had extended to cover activities which were lawful, non-violent and which were seen as subversive solely by virtue of their political content. Unfortunately, this definition does not remove the possibility that in practice ASIO may yet continue to consider subversive anyone it perceives as left wing, as Hope noted had been its tendency in the past. For although Hope makes quite specific the narrow, legal sense in which subversive is to be understood, ASIO's primary use of the term does not require a precise legal opinion as to whether or not someone is actually a subversive. **it requires only the identification of "known", "suspected" or "potential" subversives.** Of these groups Hope writes: "the Government should expect that ASIO should look at them and that some watch should be kept upon their activities"<sup>18</sup>. "Potential subversives" in particular presents the possibility of future conflict between security concerns and political liberties, for Hope's description of this term marks a transition from the assessment of actual or intended criminal action, to an interpretation of the likelihood of this action from a given ideology. "Potentially subversive" describes "those persons or organisations who have merely a "contemplation" in respect of these actions ... mere contemplation exists when persons have a purpose or espouse an ideology in which the possibility of the use of acts within the

stated classes is foreseen or the nature of the purpose or the ideology involves that possibility, but not only the time for their use **but their use at all**, even though necessary to achieve that purpose, **has been left for future decision**"<sup>19</sup>. (my emphasis)

**"Potential subversives" in particular presents the possibility of future conflict between security and political liberties."**

The ambit of this concept clearly encompasses those groups or individuals with no history of violence or criminality, and who may in fact explicitly denounce such actions, yet who (on the basis only of their ideas rather than their actions) may be nonetheless considered "potentially subversive" according to ASIO's own political analysis, an analysis which has already proved to be disarmingly superficial. The surveillance of, and maintenance of files on, alleged "potential subversives" in themselves constitute an affront to the political and personal privacy of those involved. But the impact of this vigilance is far more serious since these files form an essential component of ASIO's "vetting" of applicants for public service and defence force positions. ASIO's vetting system has, since the early 1950s, included all applicants for clerical and professional positions in the third division of the public service, regardless of whether or not they would actually have access to classified information in those positions. Hope does not specify the role of state police special branches in this vetting system, nor the maintenance by them of extensive security records which are used in providing security checks for ASIO. The relationship between ASIO and special branches, the nature of special branch security records, are all revelations of the White report to be discussed below. One of Hope's few comments explicitly linking ASIO and special branch activities, is that "the material before me about police

special branches does not establish that either the nation or its citizens' liberties would be better provided for if ASIO were not concerned with subversion"<sup>20</sup>. This assertion is strongly disputed by the findings and recommendations of the White report.

***The Inquiry by Acting Justice White into the Security Records of the SA Special Branch***

**T**he security role of the special branches of state police forces has, until recently, been extremely covert. The former South Australian Premier, Don Dunstan, has stated that he was unaware of the existence of that state's special branch until 1970, although he had been state Attorney-General between 1965 and 1968.<sup>21</sup> It was not until 1975 that Dunstan was informed of the nature of special branch's activities, and specifically of the co-operation between ASIO and special branch in the maintenance of files on potential or actual security risks. That so much is now known of special branch operations is due to the revelations of the White report, established in South Australia in November 1977.

The conflict in South Australia over its special branch was precipitated by an article in *The Australian* on 3 September 1977, headed "Exposed ... the Secret Police Dossiers on Demonstrators". This article, co-written by the Premier's former executive assistant Peter Ward, claimed that:

*State special branches ostensibly collect data to prevent "subversion". But those on file include many eminent lawyers, judges, politicians, academics, journalists, and top public servants ... Within each state they act as a "mini-ASIO", and the way they operate and collect data is entirely interchangeable with ASIO.<sup>22</sup>*

Following the repeated claims in that paper that special branch maintained "political files", and continued questioning of the government on the issue in parliament, the Cabinet on 7 November 1977 approved the appointment of Mr Acting Justice White to conduct an inquiry into the nature and extent of the records maintained by the state's special branch. The terms of reference given to White specified the criteria

which the government considered to be the proper basis for the maintenance of security files, and White was asked to determine the extent to which special branch files complied with these criteria, and to report on what other criteria were used to determine the recording of information by special branch.

Although these terms of reference were quite explicit, White interpreted them broadly, and in that interpretation lies the importance of assessing his report in relation to the Hope report. The mutual bearing of these reports on each other can be seen from White's description of the scope of his findings:

*My report explores two subjects which at first sight might not appear to be directly relevant to the terms of reference — first, the concept of domestic subversion and the application of that concept to particular cases and, second, the relationships between the Australian Security Intelligence Organisation and Special Branches of State Police Forces, and between the Executive and the Commissioner .... Special Branch records can only be understood within the wider framework of ASIO policy and records and the history of liaison between Special Branch and ASIO. In turn, ASIO's policy and records are influenced by those of other friendly powers. My principal concern about Special Branch records was the width of its interpretation of "domestic subversion", an interpretation obviously influenced by ASIO and by the Federal Bureau of Investigation of the United States.<sup>23</sup>*

Dunstan received White's report at the end of 1977. As he was about to leave South Australia for a short holiday, he "looked at it briefly, realised that it was pretty hair-raising, and locked it away until I returned to the office in the New Year".<sup>24</sup> Even the introduction to the report was "hair-raising". In it White summarised his major findings:

*I found there a hard core of genuine security intelligence material, substantially conforming with the criteria, relating to extremist left-wing and right-wing organisations and persons reasonably suspected of being potential security risks in the security areas of espionage, terrorism, sabotage and subversion. However, I also found there a mass of records (indeed, the greater part of Special Branch records) relating to matters, organisations and persons having no connection whatsoever with genuine*

*security risks. A significant proportion of the files relates to political, trade union and other sensitive matters. Grave difficulties have been encountered in past attempts to define domestic subversion and grave mistakes have been made by Special Branch in attempting to apply vague and erroneous concepts to particular organisations, persons and activities.<sup>25</sup>*

The report accepted Hope's view that communists are to be seen as security risks "on the grounds of reasonable suspicion of the likelihood that they might ultimately commit acts of espionage and subversion when in a position to do so". The various communist parties therefore made up the largest areas of legitimate concern for special branch records. Of the remaining categories, for which the holding of information was not justified, White noted that files were maintained on: "All ALP candidates and elected members .... There are no corresponding files about Liberal Party or Country Party personalities"; on unions: "There is an armful of files about the ACTU"; on demonstrators: "Most of this information seems irrelevant to security purposes"; on peace movements: "Most, if not all, of the activity (on file) was peaceful and non-subversive. Even prayer meetings for peace were watched and recorded." on the Council for Civil Liberties: "All of the members .... are on file .... Long before the Council was formed, the public utterances of many prominent persons who advocated any form of civil rights or liberties were indexed."<sup>26</sup>

**"Most, if not all, of the activity (on file) was peaceful and non-subversive. Even prayer meetings for peace were watched and recorded."**

In all, there were about 40,000 index cards (opened on anyone who "came under notice"), and about 28,500 of these referred to individuals. White describes this process of "coming under notice": "Such persons were

selected because the organisation or situation, in which they were when they came under notice, was considered by Special Branch to be potentially subversive *per se*, a judgment made on unsound criteria, which were laid down long ago, and continued uncritically, without review by higher ranking officers sensitive to policy matters".<sup>27</sup>

Of special branch's general consideration of "subversive" (which will be discussed fully below) White noted that

*organisations and persons were conceived to be "left wing", and suspected by Special Branch of holding or supporting "subversive" views by reason only of the fact that such organisations or persons adopted policies or opinions which were "radical" or "to the left" of an arbitrary centre point fixed by someone in Special Branch. I have no doubt that the arbitrary centre point was established by Special Branch with the assistance of ASIO.<sup>28</sup>*

It was because of this link between ASIO and special branch that the nature of the latter's files is so significant, for the information contained in these files provided the basis for ASIO's vetting system and flows beyond this to the security services with which ASIO conducts information exchange. Although much of the material White uncovered may appear in itself innocuous, it does not remain so when considered in conjunction with ASIO's records and the use to which they are put. The corollary of this is that ASIO's records can likewise not be assessed in isolation from the nature of the special branch records which provide them with subsidiary information.

### **Subversion: White's View**

One of the major areas of divergence between the White and Hope reports concerns the interpretations of "subversion", and the extent to which this term provides a legitimate basis for surveillance. White expresses "some reservations" about Hope's suggested definition of subversion. Although he accepts Hope's emphasis on the potential or actual use of force or violence as the standard against which an assessment of any actions as subversive should be predicated, White mirrored several criticisms already mentioned in his

view that Hope's failure to specify any criteria for determining "the interests of the security of Australia" was quite inappropriate. White's own view is, in line with that implied by his terms of reference, "that the threat of immediate or ultimate force or violence must be the touchstone which distinguishes legitimate from illegitimate political activity".<sup>29</sup> This tenet is consistently used throughout his report as the criterion on which White assesses special branch's determination of groups or individuals as security risks, and was also the criterion referred to by the Security Appeals Tribunal in their findings concerning Stephen Rix's appeal.

Although there is substantial similarity in the approaches to subversion presented in these two reports, through their mutual concentration on the "threat of immediate or ultimate force or violence", Hope's categories of legitimate subject matter for security records are significantly more expansive than White's. This is so because Hope's view of subversive actions as those which may ultimately involve the use of force or violence, is repeatedly qualified by White who introduces an additional criterion of "reasonable suspicion" that force or violence may ultimately be involved. Hope's description of legitimate areas for security records is further expanded by his inclusion of the category of "potential subversion" which perceives incipient violence according to ASIO's analysis of the likelihood of violence from a group's or an individual's ideology.

Although White does not refer specifically to Hope's description of "potential subversion", he does note that "peripheral security risks" constitute "too subtle an exercise for any Special Branch of a State Police Force to undertake".<sup>30</sup> The implication throughout the White report is that any action which is not expressly violent or which does not give rise to a reasonable suspicion of future violence, is not an area for special branch security records concern.

The dangers implicit in the "subtle exercise" of identifying legitimate areas of security surveillance from Hope's "inner limit" of subversion are clearly documented by White's findings. The question remains whether these dangers (to personal

privacy, to political expression, to the practical workings of democratic principles) are justifiably risked by the security benefits which flow from the collection of information on groups and individuals not yet reasonably suspected of incipient violence or subversion. These threats are posed not only because of the maintenance of files on the basis of an obsolete notion

of "subversion", but also because of the dissemination of information thus collected being determined by ASIO without any ministerial oversight. One of the areas which Hope recommended should be relieved of ministerial control and which was later enacted in the 1979 ASIO Act was "Whether, to whom, and in what manner any intelligence held by ASIO"

SOUTH AUSTRALIA

# SPECIAL BRANCH SECURITY RECORDS

INITIAL REPORT

TO

THE HONOURABLE DONALD ALLAN DUNSTAN, Q.C., LL.B., M.P.  
Premier of the State of South Australia

BY

THE HONOURABLE MR. ACTING JUSTICE WHITE  
ADELAIDE

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should be communciated".<sup>31</sup> It is this provision for ASIO's operative independence which actually translates the maintenance of files on "peripheral security risks" into a potential area of political misuse of security information. In his speech to the House of Assembly on 7 February, 1978 on the White report, Dunstan referred to an incident which provides evidence of the existence of precisely this type of political manipulation.

### "The Analysis"

At the hearings of the Royal Commission on Intelligence and Security in July 1975, a Sydney journalist, Robert Mayne, gave evidence that ASIO files on five "left wingers" had been made available to him five years earlier by the leader of the NSW Liberal opposition, Peter Coleman. These files were to be used as the basis for articles in a new magazine aimed specifically at discrediting radical individuals (including members of the ALP) and political organisations (including the Vietnam Moratorium Campaign).<sup>32</sup> This evidence was not new; it had first been raised in March 1973 by the *National Times* which disclosed that in September 1971, Mayne, Coleman, an ASIO officer Ernest Redford, and a Sydney businessman Peter Warren, met to discuss the proposed magazine called *The Analysis*, for which Mayne was offered \$1,000 a year to prepare material on the basis of information supplied to him by ASIO.<sup>33</sup> Coleman persistently denied having ever seen any personal ASIO files, although he admitted that he had registered the name *The Analysis* at that time, and that he had been shown some ASIO material.<sup>34</sup> Dunstan raised this matter in parliament soon after the release of the White report because one of those five files handed to Mayne had been that of a prominent South Australian. Dunstan claimed that this file was one of the South Australian special branch files maintained for purely political reasons, and that this incident indicated the chain of information exchange between special branch and ASIO. The importance of recounting this episode is that it presents an empirical foundation to the concern expressed throughout the White report, that the maintenance of security files on a basis other than

actual, or a reasonable suspicion of, potential violence, could (particularly where there exists an ineffectual ministerial control of the security organisation) give rise to such specific political use of at least the organisation's information, if not of the organisation itself. The broader a perception of subversion is, the more speculative must be the determination of specific instances of subversion, and the more imprecise is the distinction between legitimate and illegitimate political activity.

In the instance described above, the speculative net had been cast so widely that it encompassed not only extra-parliamentary dissent movements, but also those parties or individuals who circulated ideas within the parliamentary sphere, which were to the left of ASIO's "centre point".

### The Implications for Political Liberties

The events which have been described above, together highlight the potential abuse of political rights presented by the use of a broad and ill-defined notion of subversion as one of the criteria on which security files are maintained. ASIO's determination of "non-subversive" political behaviour has been shown as not only based in its own entrenched bias, but as also compounded by the secrecy which surrounds its activities and which, particularly since the enactment of the 1979 ASIO Act, provides for inadequate supervision of its operations.

The clear misconception of our security services as to the nature of democracy and the integral role of public dissent and agitation within it, is cause for substantial concern. It is particularly revealing that the bulk of the security records which White considered were "not legitimately" the subject matter of special branch files, comprised the activities of people and organisations concerned with political and social issues at a largely extra-parliamentary level. At a time of growing political "consensus", with its corollary of the increasing marginalisation of political activity outside that consensus, the left should not become complacent about the everyday workings of Australia's domestic security services.

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