

# Still keeping secrets? The DA-Notice system post 9/11

Pauline Sadler

In the BBC series 'Yes Minister' Sir Arnold Robinson, the Cabinet Secretary, comments: 'My dear boy, it is a contradiction in terms: you can be open or you can have government.'<sup>1</sup> The DA-Notice system, which operates only in the UK, represents an extra legal way of effecting some balance between government secrecy (here invoked in the name of national security) and open government (or freedom of speech). The DA-Notice system had its genesis in the formation of the Joint Standing Committee (Admiralty, War Office and Press Committee) in 1912.<sup>2</sup> The Committee, which oversees the operation of the DA-Notice system, is today called the Defence Press and Broadcasting Advisory Committee (DPBAC). The DA-Notice system is a voluntary extra-legal arrangement between the government and the media where the media agree not to publish certain information in the interests of national security. The arrangement, described as 'uniquely British', remained secret until its existence was revealed in Parliament in May 1961.<sup>3</sup> A similar system operated in Australia between 1952 and 1982.<sup>4</sup>

The purpose of this article is to compare the operation of the DA-Notice system before and after the events of September 11, 2001, including the invasion of Iraq, to see if there are any differences. The period post 2001 somewhat of a watershed not only because national security, in the form of terrorism, was thrust to the forefront of media attention, but also because of the rapidly increasing use of new technology to record and disseminate news.<sup>5</sup>

## Brief history of the DA-Notice system

The minutes of one of the first meetings of the Joint Standing Committee, held in January 1913, set out two matters of concern to the press side:

'... While agreeing, on behalf of the Press that the publication of information of a secret or confidential character relating to naval and military subjects should thus be liable to prohibition, the Press members stipulated that the Joint Committee should not be used as a medium for the dissemination of false information, or for the purpose of stifling criticisms of policy, or, except in really important cases where national interests were at stake, for the restriction of news. They also made repeated representations on a point, disregard of which, they urged, would jeopardize the continuance of any friendly arrangement. They pressed most strongly the importance of avoiding

favouritism in the distribution of news to journals; all papers should be treated on an equality without distinction made by any authority ...'<sup>6</sup>

The issue that the system would be used to suppress material that is not genuinely prejudicial to the interests of national security has remained contentious. There has been in the past the suspicion on occasion that the suppressed material has had more to do with revelations that would embarrass the incumbent government.

The tension between keeping information secret in the interests of national security and the media's interest in providing news of current events has a history that stretches back through the nineteenth century. During the Peninsular War (1808–14) the Duke of Wellington had cause to complain that the newspapers in England were giving an advantage to the French by openly publishing information about his troop movements.<sup>7</sup> During the Crimean War (1854–56) *The Times* exposed the inadequacies of English military equipment, and in 1884 the *Pall Mall Gazette* reported similar problems in the navy.<sup>8</sup> The English newspapers in 1898 published details of the 'composition of garrisons of all home defended ports ... the existence of submarine defences at Portsmouth, Falmouth and other ports ...', and in 1899 at the start of the Boer War three newspapers in England gave full details of British troop strengths on the day of publication in the camp at Dundee in North Natal.<sup>9</sup>

In the first decade of the twentieth century the issue of instituting formal press censorship simmered under the surface. Statutory censorship of the press in wartime had been considered in 1899 and 1905, and rejected on both occasions for fear of the political consequences arising from press opposition.<sup>10</sup> Press censorship came to the fore again in 1911 following the publication of an article in the *Morning Post* entitled 'Guardianship of British Forts' which detailed the defences of many of the fortifications on the East Coast of England.<sup>11</sup>

During 1912 two conferences were held with representatives of the press and service representatives present. The conferences were followed by the formation of the Joint Standing Committee (Admiralty, War Office and Press Committee) which was to be a friendly arrangement between the press and the government, in which the former would submit to voluntary censorship. Such an arrangement was intended to, and did, circumvent the difficulty of imposing statutory censorship on the press.<sup>12</sup> As it was a voluntary system, and not connected directly with any statute, there was no need for Parliamentary approval.

Indeed the system was secret and neither Parliament generally, nor the public, knew of the arrangement until May 1961 when Harold Macmillan, then Prime Minister, was forced to acknowledge its existence in answer to a question in the House of Commons.<sup>13</sup> A comment made in reference to the Australian D-Notice system is equally apposite here: 'It is the ultimate in censorship to conceal the very existence of a system of censorship however informal it might be.'<sup>14</sup>

There have been several name changes between 1912 and 2007. The more significant are as follows: in 1918 the system became known as the Admiralty, War Office, Air Ministry and Press Committee, to reflect the emergence of the Air Force; sometime shortly after 1945 it became known as the Services, Press and Broadcasting Committee, to reflect the emergence of the broadcast media, and in 1970 it became known as the Defence, Press and Broadcasting Committee. In 1993 it became known as the Defence, Press and Broadcasting Advisory Committee, and also in 1993 D-Notices became DA-Notices (Defence Advisory Notices) – these are the names that remain current in 2007.<sup>15</sup>

It seems to be commonly accepted now that the 'D' in D-Notices, or DA-Notices, stands for defence, but this may not have originally been the case. A letter written in 1932 by C Robertson of the Air Ministry Press Section gives an alternative explanation:

'[T]he Press Bureau issued during the War several kinds of notices, each class having a different letter. There were "A" notices and so on. The letter "D" happened to be allotted to "Parker" messages. It has no significance and does not stand (as I once thought myself) for the word "Defence" although it is, on that account, rather appropriate.'<sup>16</sup>

Books were not included until 1937, which is well into the history of the system.<sup>17</sup> This late inclusion is of note given that in the late 1990s books formed a large part of the workload of the secretary of the DPBAC.<sup>18</sup> Given the concerns expressed in the minutes of 1913, quoted earlier, also of interest is that the list of recipients of D-Notices was at times selective. Between 1945 and 1952 there were ongoing discussions at meetings of the Committee as to the status of the *Daily Worker*, the Communist Party newspaper. It seems that from 1945 the D-Notices were circulated to the *Daily Worker*, but the Committee was concerned that the information therein would be passed on to the Soviet Union. Minutes of a meeting in April 1952 indicate that the question of inclusion or otherwise of the *Daily Worker* had been referred to the government which recommended that certain D-Notices be withheld from the newspaper.<sup>19</sup>

The end of World War II brought about a significant change to the Committee. Until 1938 the secretary of the Committee had been from the press side, but from 1945 onwards the secretary has been a retired high ranking member of the services.<sup>20</sup> By 1962 the chair of the Committee was the Permanent Under Secretary of Defence. These changes marked a subtle shift in emphasis from the press side to the government side.

Originally there were numerous D-Notices which covered different matters on an ad hoc basis. A document dated January 1937 reported that 'the total number of Notices issued to date is approximately 890'.<sup>21</sup> These notices covered specific issues. For example, a D-Notice was issued just before the outbreak of war in August 1914 asking the press not to discuss firing experiments being conducted by HMS Hood, and another requested that there be no publication of details about the movement of ships, aircraft and troops without first seeking advice from the relevant department.<sup>22</sup> Over time the number of notices has been progressively reduced and they now cover general issues rather than specifics. There were 12 notices in 1971, eight by 1989, six by 1993, finally reduced to five in 2000.<sup>23</sup> The five that are current at present are as follows:

- DA-Notice 01: Military Operations, Plans & Capabilities
- DA-Notice 02: Nuclear & Non-Nuclear Weapons & Equipment
- DA-Notice 03: Ciphers & Secure Communications
- DA-Notice 04: Sensitive Installations & Home Addresses
- DA-Notice 05: United Kingdom Security & Intelligence Services and Special Services<sup>24</sup>

During the 1960s there was a series of high profile events that involved D-Notices. One of these was the 'Naval Spy Ring' case in early 1961 where Gordon Lonsdale, Harry Houghton, Ethel Gee and Morris and Lona Cohen (alias Peter and Helen Kroger) were prosecuted with offences under section 1 of the Official Secrets Act 1911 for which all five were found guilty. The government wanted to balance maximum exposure of the trial with the need to keep certain matters secret, so a D-Notice was sent out regarding the proceedings. This case contrasts with the trial a short time later in May 1961 of George Blake, an officer of MI6 who spied for the Soviet Union, also for espionage under section 1 of the Official Secrets Act 1911. Blake pleaded guilty. Before the trial a D-Notice was issued requesting the media to downplay the trial. According to Chapman Pincher:

'Much of the effort made by Macmillan and his government to blanket the horrific details of Blake's treachery was to conceal from the British public the inefficiency which had allowed such a spy to operate for so long inside the Secret Service. The main objective, however, was to conceal the facts from the US congress after the Fuchs and Maclean cases had already done so much damage to the reputation of Britain as a safe ally with whom to share secrets.'<sup>25</sup>

Both reasons therefore had more to do with preventing revelations that were embarrassing for the government rather than the fear of exposing anything that was genuinely prejudicial to national security. Interestingly while the British media complied with the D-Notice, foreign newspapers, available in the UK, did not. This resulted in the issuing of a second D-Notice requesting that the

British media did not repeat the information suppressed by the first D-Notice that had been published in the foreign press. It was at about the same time, in May 1961, that the existence of the D-Notice system was revealed for the first time in Parliament, as mentioned earlier.

In 1967 the 'Cable Vetting Sensation' marked a low point in the operation of the D-Notice system as far as the government was concerned. The defence correspondent for the *Daily Express*, Chapman Pincher, learnt that all cables leaving England for overseas were first vetted by the Ministry of Defence. Pincher followed the story up with various government officials, and also checked with Colonel Leslie Lohan, then secretary of the Services Press and Broadcasting Committee. Pincher and Lohan were long-standing friends and it became obvious that there was a misunderstanding about what had transpired. Pincher thought that no D-Notice applied, and Lohan that he had carried out the instructions he had been given by the Foreign Office to suppress the story. The story was published in the *Daily Express* on February 21, 1967.<sup>26</sup> Harold Wilson, then Prime Minister, said in Parliament that he was convinced there had been a deliberate breach of two D-Notices, and the system was not working. Pincher responded the next day in the *Daily Express*, to which the Prime Minister replied in Parliament the day after that. The acrimony continued until February 28, 1967 when the Prime Minister advised Parliament that Lord Radcliffe would chair a Committee of Privy Councillors (the Radcliffe Committee) formed to investigate the incident.<sup>27</sup> Colonel Lohan resigned before the Radcliffe Committee reported in May 1967.

In the event the Radcliffe Committee found no breach of any D-Notices, nor any attempt to evade or defy the procedure.<sup>28</sup> Not happy with this outcome the government simultaneously released a White Paper rejecting in particular the finding that there had been no breach of the D-Notices.<sup>29</sup> A heated debate on these happenings took place in Parliament in June 1967, the Prime Minister maintaining his preference of the findings in the White Paper over the findings of the Radcliffe Committee Report, and, in doing so, making a personal attack on Colonel Lohan.<sup>30</sup> In July 1967 the matter was debated in the House of Lords during which Lord Radcliffe was scathing in his attack on the actions of the government. Lord Radcliffe's participation in these proceedings was unusual in itself.<sup>31</sup> He said:

'... Of course, even the Government cannot "reject" a Report that has been made by a Committee set up for the purpose. The Report stands; though the Government can say that they do not agree with it. You might say that you did not agree with the result of last year's Cup Final, and that the referee had given the wrong decision. But it would not be much use saying that you rejected it – even if you had a loyal vote to support you.'<sup>32</sup>

There were a number of other notable events during the course of the 1960s,<sup>33</sup> but one that occurred in 1970 is worthy of examination as it again concerns material that appeared to be politically sensitive rather than sensitive to national security. In a report entitled *An Appreciation of*

*the Nigerian Conflict* the Defence Advisor to the High Commission in Lagos had assessed the situation in the Biafran war, and in doing so had been critical of the role of the Nigerian army which at the time was being supplied arms by the British. Jonathan Aitken, at the time a journalist and aspiring politician, had been given a copy of the report, unaware that it was confidential. Aitken had offered the story to the *Sunday Telegraph* via a literary agent, with the proceeds to go to charity. The *Sunday Telegraph* ran the story in January 1970, having first cleared it by telephone with Vice Admiral Sir Norman Denning, then secretary of the Defence, Press and Broadcasting Committee, who advised it was not subject to a D-Notice because it referred to the forces of a foreign power. Aitken took this as giving the story legal immunity, but when the Nigerians expelled Scott and an enquiry into the leak ensued, Aitken was charged under section 2(2) of the Official Secrets Act 1911. Also charged were the editor of the *Sunday Times*, Brian Roberts, the *Sunday Telegraph* Ltd and Colonel Douglas Cairns who was suspected of having passed the report to Aitken's contact. All the accused were acquitted by the jury after a three and a half week trial.<sup>34</sup> The judge, Caulfield J, criticised the operation of section 2 of the Official Secrets Act 1911. He pointed out in his summing up that the section should be replaced with one that enabled people such as the defendants:

'[T]o determine without any great difficulty whether a communication by any one of them or a certain piece of information originating from an official source, and not concerned in the slightest with national security, is going to put them in peril of being enclosed in a dock and facing a criminal charge ...'<sup>35</sup>

The Aitken case caused great consternation in the press because previously the media had thought that clearance from the secretary of the Defence, Press and Broadcasting Committee would give immunity from prosecution under the Official Secrets Act. There are two differing views on this – one being that there is no purpose in having such a Committee if clearance does not give immunity. The other view is that the type of material covered by DA-Notices (or D-Notices as they were then) and the Official Secrets Act (and the more recent legislation covering terrorism, for example) may overlap in part, it is not identical in all respects. Although information may not be subject to a DA-Notice, it is nevertheless still possible for it to be subject to statutory prohibition.<sup>36</sup>

## 1980 criticisms of the DA-Notice system

The first time a committee of the Parliament reviewed the D-Notice system as a whole was at the end of 1970s, when the House of Commons Select Committee on Defence (the Defence Committee) took a close look at the operation of the system. The Defence Committee took evidence from a number of witnesses, publishing its report in August 1980. As a result of the evidence the report contained four main criticisms. The first was that the D-Notice system operated as a form of censorship, and of a rather general nature so there was an impression of 'the government seeking to

prohibit public discussion of defence matters across a very wide area.<sup>37</sup> The second criticism was that participation in the D-Notice system compromised press freedom. While most of the evidence reflected acceptance of the system, this was a view held strongly by a minority of the corporate media witnesses who submitted evidence (representing some of the publications with an interest in defence matters, such as the *New Statesman*). It was also the view held by several individual journalists.<sup>38</sup>

The third criticism centred on the confusion between the operation of the D-Notice system and the operation of the Official Secrets Act – clearance from the former giving no immunity from the latter, for example the Aitken case mentioned above, and defiance of the former not necessarily resulting in prosecution under the latter. The fourth criticism was that the D-Notice system was no longer serving the purpose for which it was created. The Defence Committee did, however, see a continuing role for the D-Notice system but recommended some changes, in particular that the secretary should be ‘seen to be the servant of the whole Committee and not just of the Ministry of Defence’.<sup>39</sup> Because of the criticisms in the report the secretary did in fact become more a servant of the Committee as a whole, and in addition the D-Notices were rewritten and no longer classified as ‘confidential’.

## DA Notice system and the law

The secretary of the DPBAC does not give legal advice to the journalists seeking information about whether or not material is sensitive because it relates to national security. As noted above, the various secretaries were initially from the press side until 1945 and since then the secretary has been a retired high ranking member of the services. This is because such a person has either the knowledge or the contacts to make a proper assessment of the sensitivity of the information in relation to national security and the possible flow on consequences of publication. Neither the secretary, nor the Committee, has ever been in a position to give legal advice. This was reiterated during a discussion on the Terrorism Act 2006 in the DPBAC meeting held on November 15, 2006:

‘The Secretary reported that the absence of authoritative guidance, either on the wording of the statute itself or of relevant case law, made it impractical at present for the DPBAC to offer even general advice to the UK media on the implications of the Terrorism Act 2006. Even when sufficient case law existed, it would mark a major departure for the DPBAC to attempt to offer advice on the law, one which might call into question its independent status and for which it is neither qualified nor had a mandate.’<sup>40</sup>

From the perspective of the government, particularly in the historical context, a major weakness of the system has been its voluntary nature, allowing the media the choice of publishing material which the government would prefer to have suppressed. Section 2 of the Official Secrets Act 1911, as amended in 1920, and its replacement in the Official Secrets Act 1989, has in the past occasionally

been used in addition to, or as an alternative to, the DA-Notice system, as seen in the case of Jonathan Aitken discussed above. While the criminal law has rarely been used against the media in this context, the mere threat of prosecution may deter publication as the media apply self-censorship. When a criminal prosecution does take place, however, it usually occurs after the event of publication, so the material still enters the public domain which is contrary to the wishes of the government. It is unlikely that an injunction, a civil remedy, would be granted to restrain a criminal act.<sup>41</sup> A criminal trial also results in further publicity which is likely to be adverse to the government when media defendants are involved.

From the late 1970s the government turned to the civil action of breach of confidence because this provides pre publication suppression in the form of an injunction. The best example is the extraordinary litigation surrounding the book *Spycatcher* written by former MI5 officer Peter Wright (co-authored with Paul Greengrass).<sup>42</sup> At the time the book was written Wright was living in Australia. The book was a memoir, containing details about Wright’s time with MI5, classic D-Notice material, and included much that did not reflect well on the operation of the Security Service. When *The Observer* and *The Guardian* started publishing extracts, the government took action on the grounds that it was not in the interest of national security for the information to be disseminated. The government was granted interlocutory injunctions in breach of confidence against the respective newspapers restraining further publication of the extracts, pending trial where the government sought permanent injunctions.

A parallel series of cases then began against *The Independent* and other newspapers for contempt of court when they published material in defiance of the injunctions against *The Observer* and *The Guardian*. Both series of cases eventually found their way to the House of Lords, in the case of the breach of confidence actions more than once. During the course of the proceedings, however, the book was published in the US, and because people were able to bring it back into the UK the material was no longer confidential. The House of Lords when hearing the appeal with respect to the trial of the issues in breach of confidence discharged the injunctions because the availability of the book overseas had destroyed the confidentiality of the information.<sup>43</sup>

One further advantage to a government bringing legal action is that both civil and criminal proceedings may be subject to suppression orders, so that the public is unaware even that the matter is pending. Suppression orders are hotly contested by the media, especially if they are directly involved to their disadvantage, for example where they wish to publish something to which a government objects. By their very nature it is not possible to know how many cases remain unknown beyond the parties concerned due to suppression orders.<sup>44</sup>

## The current operation of the DA-Notice system

The DPBAC has a comprehensive website which appears to be updated on a regular basis. The website contains

information about the individual DA-Notices, the Committee members, the secretary, the operation of the system, a brief history, records (minutes of meetings), articles and speeches, the agenda of forthcoming meetings and FAQs.<sup>45</sup> The present DPBAC consists of the Chairman, Bill Jeffrey CB, who is the Permanent Under Secretary of State, Ministry of Defence, and the Vice-Chairman (Chairman, Press and Broadcasting Side) R Hutchinson, who is the editorial policy adviser to Jane's Information Group. There are four government members, representing the Home Office, the Ministry of Defence, the Foreign and Commonwealth Office and the Cabinet Office, and there are 13 press and broadcasting members (including Hutchinson), nine from the print media and four from the broadcast media. The full time secretary, since December 2004, is Air Vice-Marshal Andrew Vallance CB OBE, and the Deputy Secretary is Air Commodore David Adams. Vallance is 'employed as a Civil Servant on the budget of the Ministry of Defence'. The stated purpose of the Committee is to oversee 'a voluntary code which operates between those Government departments which have responsibilities for national security and the media; using as its vehicle the DA-Notice system'.<sup>46</sup>

The Committee meets twice a year, usually in spring and autumn, at which the secretary presents a report covering the period since the previous meeting. If necessary, the DA-Notices are updated. Between the meetings the secretary is available at all times to provide advice to members of the media on the 'application of a DA-Notice to a particular set of circumstances ... consulting as necessary with appropriate departmental officials. He is not invested with the authority to give rulings nor to advise on considerations other than national security'.<sup>47</sup>

In his report of November 15, 2006 Vallance noted that there had been 88 enquiries in the previous six months. Media interest 'was focussed predominantly on five areas of defence and security: Special Forces (SF), UK operations in Iraq and also in Afghanistan, the security agencies and counter terrorism'.<sup>48</sup> The report of June 19, 2007 showed the level of enquiries had increased markedly to 161. The issues included such matters as 'UK operations in Iraq and Afghanistan', 'Aerial and Satellite Photography' (which will be referred to again later), 'The Security Agencies', 'Counter-Terrorism', 'The Britons kidnapped in Ethiopia' and 'The Planned Operational Deployment of Prince Harry to Iraq'.<sup>49</sup>

In May 2006 Vallance was one of the speakers at the 4th International Conference for the Information Commissioners, hosted in Manchester by the UK Information Commissioner. In his address, entitled *Secrecy vs Security; the Jigsaw Effect*, Vallance discussed the current operation of the DA-Notice system as follows:

'Unique to Great Britain, this system emerged at the end of the Cold War from the long established "D Notice" system, which was widely seen as a form of government censorship. The present DA Notice system was shaped to meet the very different conditions already emerging in the 1990s, and was from the outset based on consensus and shared responsibility between

government and the national media for the disclosure of national security information ...

Please note that these DA Notices have been agreed by representatives of the UK government and the UK media, are published in full and can be accessed by the public on the DPBAC's website: [www.dnotice.org.uk](http://www.dnotice.org.uk). They are framed to permit sensible interpretation and negotiation between journalists, authors and editors on the one hand, and the DPBAC Secretary on the other. They act as a societal agreement between the UK government and the media to share responsibility for the disclosure of national security information, one which upholds the media's right to report in the public interest but recognises it has an obligation to ensure that the public is not damaged as a result.

The two key supporting pillars of this very British arrangement are confidentiality and consent. Journalist and editors must have confidence that when they seek DA Notice advice it will not be used against them, or their story passed on to competitors. Without that assurance they would cease to seek advice and the system would collapse.<sup>50</sup>

Vallance continued his speech by noting that in order to maintain this confidence on the part of the media, the Committee had concluded that it should not be subject to the Freedom of Information Act 2000 or the Freedom of Information Act Scotland (2002). As he said, 'the continuing effectiveness of the system relies on individual case-work, and the advice offered ... to government officials and to members of the media and public remaining strictly private.'<sup>51</sup> The home page of the DA-Notice system website makes reference to the fact that the DPBAC is not subject to the Acts, but says the Committee 'is committed to practising a policy of maximum disclosure of its activities' while at the same time honouring 'any assurance of confidentiality given to the individuals and organisations with which it deals'.<sup>52</sup> The website itself is one means of providing maximum disclosure of its activities.

In 1997, in an interview with the author of this article, the then secretary Rear Admiral David Pulvertaft described his role as one of an 'independent broker' between the media and bureaucrats, and as being like walking a tightrope. He regarded the regular twice yearly meetings as one of the reasons for the survival of the system. If either the media or the bureaucrats felt he was not sufficiently looking after their interests they would use that forum to say so and he would take note; this would help to keep his approach even handed. Pulvertaft said he tried only to prevent highly classified detail being published rather than the whole story, so would suggest amendments such as the changing of wording or the deletion of a certain passage. The response to a request for advice is either that the material is subject to a DA-Notice, and in other cases the secretary does not give clearance but instead makes a 'no advice' comment.

Another requirement for the continuing effectiveness of the system is undoubtedly the public relations skills of

the secretary. Comprehensive contact information for the secretary is freely available on the website and there is a willingness and enthusiasm to talk freely and openly about the system. The website includes speeches by the previous secretary Rear Admiral Nick Wilkinson at events such as the 'Soho Writers' Festival Civil Liberties Panel' (2002), the 'Campaign for Press and Broadcasting Freedom' (2001) and the 'Freedom Forum' (2000).<sup>53</sup> It is interesting to note that in June 2005, about six months after his term as secretary of the DPBAC finished, Wilkinson was appointed as a public member to the Press Complaints Commission. The public, or 'lay', members have no connections to newspapers or magazines and are appointed by an independent panel following public advertisement and interview.<sup>54</sup>

## Has anything changed?

At the outset it was stated that the purpose of this article is to compare the operation of the DA-Notice system before and after the events of September 11, 2001, including the invasion of Iraq, to see if there are any differences. In terms of the day to day operation of the system, surprisingly little appears to have changed. The following are consistent before and after: the DPBAC met twice a year, the secretary deals with specific enquiries from the media and there is a comprehensive website.

In his 'Opening Remarks' to the Soho Writers' Festival Civil Liberties Panel on November 19, 2002, the secretary Rear Admiral Nick Wilkinson addressed the issue of change directly:

'How has September 11 last year changed the D-Notice [*sic*] system? The answer may be the only relatively good news you hear tonight. It is that September 11 has changed nothing – the standing D-Notices [*sic*] remain as before, and I have very consciously ensured that the way I interpret them has also remained unchanged. In my perception, although we live in an unstable and sometimes dangerous world, we also did so before 9/11. We are certainly now more aware of the threat from one particular direction, and that threat is possibly more directly focussed on us now because of our role since 9/11, but on the other hand the intelligence and security services are also now better organised to counter it, even if no measures against terrorists can ever be 100%, and an element of good luck is needed. So the situation is not so significantly more dangerous now that we need to go overboard on new security measures, especially any that greatly erode civil liberties.'<sup>55</sup>

However, while the operation of the DA-Notice system itself has not changed, there are external forces that may in the longer term render it ineffective because what is indeed changing very quickly is the way in which news and information is disseminated. As a result such information enters the public domain far more rapidly and readily, and this negates the purpose of the DA-Notice system which is to keep information secret. The growth of the

internet had already started to have an effect before 2001, and there had already been instances where material on the internet had breached DA-Notices and the Official Secrets Act 1989. For example, in May 1999 over one hundred names of MI6 operatives were published on the internet, allegedly by a former MI6 officer (who denied the accusation). As soon as the government persuaded the respective internet service provider to shut down the offending website, several mirror sites appeared elsewhere.<sup>56</sup>

Mobile phones can now take, send and receive photographs and video clips, so any individual with a suitable mobile phone, or with a digital camera, can record on the spot when newsworthy events happen. The material can be uploaded onto the internet instantly, and is then visible to millions through websites such as [www.utube.com](http://www.utube.com), with no reference to the DA-Notice system. While the mainstream news organisations have a presence on the internet, so do non mainstream news organisations, with no reference to the DA-Notice system. Blogs abound, with every conceivable type of information being discussed. In August 2007 the Ministry of Defence banned service personnel from giving without permission any information about military matters by blogging. 'Personnel will also be barred from playing multi-player computer games and sending text messages, photographs and audio or video material without permission if they relate to defence matters'.<sup>57</sup> This may now deter British forces from relaying information, including photos and video clips, via the internet or by mobile phone, especially if they are in war zones. It does not, however, prevent civilians in those war zones, or other combatants, from relaying information via the internet, including photos and video clips, that involves British forces.

As well as the above examples of where the internet provides a rich source of information that may be prejudicial to national security, the internet has sites that showcase in astonishing detail aerial and satellite photography. Google Earth is one of the foremost examples of this, but there is also [getmapping.com](http://getmapping.com), which describes its product as 'the most comprehensive and detailed aerial photographic survey of the UK', and [www.secret-bases.co.uk](http://www.secret-bases.co.uk).<sup>58</sup> Critics have commented on how useful these aerial pictures are to terrorists planning an attack, but the MD of Getmapping, Tristram Cary, apparently obtained clearance for the website from what is referred to as the 'MoD' both before and after September 11, 2001. Cary 'pointed out that there was also an "open skies" policy in the UK, under which anyone could fly 3,000ft over sites and take their own detailed photographs'.<sup>59</sup> Secret Bases says that the secretary of the DPBAC had no objections to that website either.

The matter of *Aerial and Satellite Photography* was included in the secretary's report to the June 19, 2007 meeting of the DPBAC:

'There had been a marked increase in enquiries for advice on publishing aerial and satellite photography during the last 7 months. The Secretary reported that, given the ease of access to web-sites such as Google Earth, little or nothing that could now be seen and photographed from the air or from space could be

regarded as anything other than widely available in the public domain. The ease of accessing aerial or satellite imagery had been factored into DA Notice disclosure advice.<sup>60</sup>

As a measure of how much this new material in the public domain has changed the nature of the DA-Notice system, Google Earth now makes it possible to see close up with great clarity the Government Communication Headquarters (GCHQ) building outside Cheltenham. The very existence of GCHQ was a secret and subject to a D-Notice until 1977, and so it is a mark of different times when an aerial photo of it appeared on the front cover of *Cotswold Life* in June 2006. Google Earth was the subject of a CNN Report entitled 'Google views raise concerns' on October 9, 2007 which centred on clearly visible sensitive sites in Israel. This report also showed how it is possible for Google Earth to conceal some specific sites when it demonstrated how the house of Dick Cheney, the Vice President of the United States, is pixillated into obscurity.<sup>61</sup>

## Conclusion

The purpose of this article is to make a comparison of the period before and after the events of 11 September 2001 to see if there are any differences in the operation of the DA-Notice system post 2001. The examination of the early

history demonstrates that over the years there were some notable changes in the manner in which the system operated. However since 1993, when it became known as the Defence, Press and Broadcasting Advisory Committee and the D-Notices became DA-Notices, the operation of the system has remained relatively unchanged. Even following the events of 9/11 the operation of the system gives the impression of being business as usual. This is despite increased internal and external threats to national security resulting from 9/11. It is also despite the impact of the 9/11 events on the mainstream media in terms of their ability to freely disseminate information that may have national security implications. While no changes are manifest, of great significance is the change in the way in which information is becoming available. This may be a greater catalyst for change than anything hitherto.

Dr Pauline Sadler

Associate Professor, Director, Applied Law & Policy AORE, School of Business Law, Curtin University of Technology, Perth, Western Australia

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## NOTES

- 1 'Yes Minister' Series 1, Episode 1 (1980).
- 2 NA (National Archives) DEFE 53/1.
- 3 *Third Report from the Defence Committee (Session 1979–80), The D Notice System* (1980) HC 773 (August 1980), para 12, for both the description 'uniquely British' and the fact that the system operates only in the UK and Australia; HC Deb, vol 639, col 1616, May 4, 1961, for the revelation of the existence of the system.
- 4 The Commission of Enquiry into the Australian Secret Intelligence Service *Report on the Australian Secret Intelligence Service*, AGPS Canberra, para 11.3 (1995).
- 5 This article serves as a brief update on the author's book *National Security and the D-Notice System*, Ashgate Aldershot (2001). The historical material in this article formed a small part of the research for the book, and some of it appears there in more detail.
- 6 NA CAB 16/27: January 31, 1913, para 14: Minutes of the 'Standing Sub-Committee of the Committee of Imperial Defence Enquiry Regarding Press and Postal Censorship in Time of War. Press Censorship. January 31, 1913'.
- 7 J C Stocqueler *The Life of the Duke of Wellington* Ingram, Cooke and Co London, 152 (1853).
- 8 D Williams *Not in the Public Interest: the Problem of Security in Democracy* Hutchinson London, 81 (1965).
- 9 NA Cab 16/27 para 4; NA WO 32/6381.
- 10 NA WO 32/6381. Memo dated March 1, 1899 from Sir Evelyn Wood to C in C. The memo also recognised the financial loss that might occur when a newspaper was conscientious and other, less conscientious, newspapers ran the story anyway. C Lovelace 'British press censorship during the First World War' in G Boyce, J Curran & P Wingate (eds) *Newspaper History from the 17th Century to the Present Day*, Constable, London, 309 (1978).
- 11 *Morning Post* September 2, 1911, 7 (sighted in the British Museum's newspaper library).
- 12 NA CAB 17/91.
- 13 HC Deb, vol 640, col 636–38, May 11, 1961.
- 14 E Campbell & W Whitmore, *Freedom in Australia*, Sydney University Press, Sydney, 333 (1975).
- 15 <http://www.dnotice.org.uk> (accessed February 19, 2007). In this article reference to the system and to the notices before 1993 is D-Notice system and D-Notices; after 1993 it is DA-Notice system and DA-Notices.
- 16 NA ADM 116/4082. 'Parker' was a code word which would communicate to Postmasters during the First World War what was required of them and which would mean nothing to anyone else. It came from 'Parke,' a War Office official concerned with the arrangements (NA ADM 116/4082).
- 17 NA DEFE 53/2.
- 18 P Sadler *National Security and the D-Notice System*, Ashgate, Aldershot, 60 (2001).
- 19 NA DEFE 53/6.
- 20 Under the FAQs 'How is the Secretary selected?' and 'What qualifications are required in selecting the Secretary?' the website says 'The post is advertised amongst recently retired public servants, and the Chairman and Vice-Chairman of the Committee make the final selection' and 'In practice, this has so far meant a retired 2-star officer from one of the armed services': <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 21 NA DEFE 53/2.
- 22 NA DEFE 53/1.
- 23 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 24 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 25 C Pincher, *Their Trade is Treachery*, Sidgwick and Jackson, London, 151–52 (1981).
- 26 P Hedley & C. Aynsley, *The D-Notice Affair*, Michael Joseph, London, 9–16, 20, 22, 25, 27.
- 27 HC Deb, vol 741, col. 1975–1980, February 23, 1967; see also P Hedley & C Aynsley, *The D-Notice Affair*, Michael Joseph, London, 50–51 and 57.
- 28 *Report of Committee of Privy Councillors appointed to inquire into 'D' Notice matters* (1967) Cmnd 3309, para 7.
- 29 *The 'D' Notice System* (1967), cmnd 3312, para 24.
- 30 HC Deb, vol 748, col 1989, 2080–2090, June 22, 1967.
- 31 HL Deb, vol 284, col 775–83, July 6, 1967.
- 32 HL Deb, vol 284, col 776, July 6, 1967.
- 33 See for example, P Sadler, *National Security and the D-Notice System*, Ashgate, Aldershot, 41–47 (2001).
- 34 J Aitken, *Officially Secret*, Weidenfeld & Nicholson, London, 112–32 (1971); *R v Cairns, Aitken and Roberts* (unreported, but a write-up appeared in *The Times*, February 4, 1971, 1, 2, and 15).
- 35 J Aitken, *Officially Secret*, Weidenfeld & Nicholson, London, 197–98 (1971).

- 36 On this see D Fairley, 'D Notices, Official Secrets and the Law,' (1990), 10 *Oxford Journal of Legal Studies*, 430, 431.
- 37 *Third Report from the Defence Committee (Session 1979–80), The D Notice System* (1980), HC 773, paras 17–18.
- 38 *Third Report from the Defence Committee (Session 1979–80), The D Notice System* (1980), HC 773, para 20.
- 39 *Third Report from the Defence Committee (Session 1979–80), The D Notice System* (1980), HC 773, paras 21–24, 29–30, 36 (the quote is in para 36).
- 40 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 41 For a discussion on this, see P Sadler, *National Security and the D-Notice System*, Ashgate, Aldershot, Chapter 7 (2001).
- 42 Greengrass is Director of the 2007 film *The Bourne Ultimatum*. During an interview reported in 2007 reference was made to *Spycatcher*, which Greengrass called 'a rather obscure little book'. He said: '*Spycatcher* was a tremendous cause celebre at the time ... Of all the major democracies, ours is the most centralised and secretive'; M Naglazas 'Shooting from the hip,' *WestWeekend Magazine, The West Australian*, 28–29, September 1, 2007.
- 43 This paragraph forms a brief synopsis of very complicated proceedings. For a detailed examination see P Sadler *National Security and the D-Notice System*, Ashgate, Aldershot, Chapters 7 & 8 (2001).
- 44 In Australia this occurred in a 1995 case when the Australian government successfully sought an injunction in breach of confidence to restrain the publication of a story detailing the bugging of the Chinese Embassy during construction in Canberra. A suppression order was placed on the proceedings. Were it not for the outright defiance of other members of the media who were not covered directly by the suppression orders, to whom the story had been leaked and who published it, it would have remained secret: *Commonwealth of Australia v John Fairfax Publications Pty Ltd, David Lague, Radio 2UE Sydney Pty Ltd, Alan Jones and Australian Broadcasting Corporation* (June 26, 1995) unreported.
- 45 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 46 <http://www.dnotice.org.uk> (accessed October 17, 2007).
- 47 <http://www.dnotice.org.uk> (accessed June 14, 2007).
- 48 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 49 <http://www.dnotice.org.uk> (accessed July 26, 2007).
- 50 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 51 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 52 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 53 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 54 <http://www.pcc.org.uk> (accessed October 21, 2007); <http://media.guardian.co.uk/presspublishing/story/0,,1512245,00.html> (accessed October 21, 2007).
- 55 <http://www.dnotice.org.uk> (accessed February 19, 2007).
- 56 <http://news.bbc.co.uk> Wednesday May 12, 1999 and Saturday May 15, 1999 (accessed October 24, 2007).
- 57 <http://newsvote.bbc.co.uk> (accessed October 24, 2007).
- 58 The home page of [www.secret-bases.co.uk](http://www.secret-bases.co.uk) describes the site as 'An entertaining guide to using internet-based research tools – Ordnance Survey's maps, Getmapping's aerial photos and Google Earth! – to reveal the UK's "hidden" MoD facilities and military sites'.
- 59 <http://news.bbc.co.uk> Friday June 7, 2002 (accessed October 21, 2007). It is not clear whether 'MoD' means clearance through the DA-Notice system.
- 60 <http://www.dnotice.org.uk> (accessed June 26, 2007).
- 61 <http://edition.cnn.com/video> October 9, 2007 (accessed October 11, 2007).