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New Light on Steane's Case

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Abstract: R. v Steane (1947) is regularly cited in modern textbooks on criminal law on the distinction between motive and intention in respect to *mens rea*. In that case the conviction of the defendant for having broadcast enemy propaganda from Berlin during the Second World War was quashed by the Court of Appeal on the basis of the trial judge's misdirection. Steane himself claimed he had been forced to broadcast for the Nazis as a result of threats to himself and his family. The present article looks at new evidence, including that from MI5 sources, which, it is submitted, now casts serious doubt on Steane's credibility and which suggests that the question of his loyalty as a British subject was at least ambiguous during the war.

Keywords: modern legal history, criminal law, motive and intention, aiding the enemy, world war II

INTRODUCTION

The case of *Steane* [1947] KB 997 continues to fascinate criminal lawyers nearly 60 years after the decision of the Court of Criminal Appeal. It may be recalled that the prisoner had originally been convicted of acts likely to assist the enemy with intent to assist the enemy, that is, broadcasting German propaganda to the Allies, contrary to reg. 2A of the Defence (General) Regulations 1939. However the conviction was subsequently quashed on the ground of misdirection by the trial judge. Since the prisoner had claimed that the Gestapo had threatened him and his family with internment in a concentration camp and with violence, the Lord Chief Justice, Lord Goddard, accepted that the question of whether the appellant *intended* to assist the enemy (reflecting the wording of the regulation) should have been put to the jury. For since on the totality of the evidence there could be more than one view of his intention, his particular intent to assist the enemy, rather than the innocent intent to save his family, had to be proved by the Crown just like any other fact. The prohibited intent could not simply be inferred in accordance with the dictum that a person intends the natural consequences of his action, notwithstanding that in the case in question an 'innocent' intent could only be achieved by means of a prohibited intent. Thus the trial judge ought to have

directed the jury to the issue of the prisoner's *mens rea*. The failure to do so led to Steane's acquittal.

Since the judgment the case has attracted extensive comment in the textbooks up to the present day. While the most crucial passages in the judgment of Goddard CJ (at p.1004) relating to the issues above have received subsequent approval in recent years, for example, by Lord Bridge in *Moloney* [1985] 1 All E R 1025 (HL), at p.1039, much of the criticism is to the effect that the prisoner did possess the necessary *mens rea* since the likelihood of assisting the enemy was the natural consequence of his act. However notwithstanding the criticism directed at Goddard's analysis, many modern commentators conceded that a defence of duress was available to him.¹

Some recent writers have argued that what Lord Goddard presented was a 'perverted'² or a 'narrow'³ definition of intention which took account of the prisoner's laudable motive. This would mean (today) that, given a model direction to the effect that where the defendant foresees or appreciates a virtually certain result (which reflects the recent directions in *Nedrick* [1986] 3 All ER 1 and in *Woollin* [1999] AC 82), a jury could nonetheless still find that the accused did not intend that result. Thus Norrie argues that intention is, 'a series of options organised around two contradictory poles of individual justice and of (the judges' conception of) the requirements of social control'.⁴ The judiciary could thereby privilege certain favoured defendants such as Steane (or the health authority and its doctors in the non-criminal *Gillick* case⁵), as against the 'less deserving' defendants such as the CND protestors in *Chandler v DPP* [1964] AC 776.

FACTUAL ASSUMPTIONS

But implicit in most of the academic discussion on the case is the acceptance of Steane's submission that his will was 'overborne', that he was indeed forced to broadcast for the Germans and that he did not desire (and therefore had no intention) to assist the enemy. Moreover the assumption would apply whether one accepted the defence that the prisoner lacked *mens rea* or the alternative defence of duress. Clarkson and Keating, for example, state that 'his acquittal should have been by reason of the defence of duress (that he was forced to broadcast) rather than on the somewhat tortuous basis that he had no intent to assist the enemy.'⁶ The authors cite other writings to similar effect. Thus they quote Lord Denning:

This man Steane had no desire or purpose to assist the enemy. The Gestapo had said to him: 'If you don't obey, your wife and children will be put in a concentration camp'. So he obeyed their commands. It would be very hard to convict him of an 'intent to assist the enemy' if it was the last thing he desired to do.

They also refer to the conclusion of R.A. Duff that assisting the enemy was not Steane's reason for acting. Since he did not broadcast to benefit the Germans, he would not have viewed the absence of benefit to have constituted a failure on his part. Finally Clarkson and Keating, in noting the argument that Steane's actions had the immediate purpose of assisting the enemy *and* the long-term aim of saving his family, concluded that, 'Steane undoubtedly found his circumstances highly undesirable and deeply regretted the necessity for his actions.'⁷

It is the case that Steane *did* find his circumstances prior to commencing his broadcasting career 'highly undesirable'. Given that he (but not his British wife and two sons) was interned as an enemy alien in Stalag 13A for a few months from the outbreak of war in September 1939 until early December, this is not surprising. But it does not automatically follow that he 'deeply regretted the necessity for his actions'. For while the quashing of his conviction has been permanently carved into the record for nearly 60 years, his central claim that the Gestapo's threats impelled him to undertake broadcasting duties for the Nazis disguises a much more complex, and possibly more murky story regarding Anthony Claude Sebastian Steane than the various commentaries on the case will allow.

STEANE'S CLAIMS

It is first necessary to remind ourselves of the claims put forward by Steane to excuse his conduct before we proceed to question his account. At his trial he told the court that following his arrest after the outbreak of the war he was subjected to questioning, the session ending with the order, 'Say *Heil Hitler*, you dirty swine.' On refusing to comply he was, he said, struck in the face and lost some teeth. Internment followed on 11 September and then just before Christmas he was taken to see the Minister for Propaganda, Dr Goebbels. Explaining to the court that he had declined the invitation to broadcast for the Nazis, he asserted he was warned that as he was now in an enemy country, there were methods available to force people to act as required by the authorities. One of the *Reichsrundfunk* officials saw him the following week and hinted at German persuasion techniques, as did a professor friend of his. He therefore agreed to undergo a voice test, which he claimed he tried to sabotage as best he could. Despite his worst endeavours he was ordered to read the news in English three times a day from the following day.

Steane further claimed that he tried to be unreliable in attendance thereafter and that he refused further news broadcasting in April 1940. As a result, he continued, two Gestapo men arrived and informed him that, 'If you do not obey, your wife and children will be put in a concentration camp.' He

told the Old Bailey that the following month three Gestapo officials paid him a visit, leaving him badly beaten up and with an ear partly torn off. According to the law report he then agreed to work for his old employers assisting in the production of films. There was no evidence, it was stated, that such films were or could be of assistance to the Germans or harmful to the United Kingdom. However during the whole of this time he remained, he alleged, in continual fear for his wife and sons, and that he did what he did in order to save them from a terrible fate. Finally by doing what he did he could not have assisted the enemy except in the most technical sense.

AN ALTERNATIVE VERSION: BRITAIN ALERTED

Steane had been born in London in 1893 to British parents.⁸ His religion was listed as Church of England (his father wrote hymn scores in his spare time). On leaving school he joined a firm of shipbrokers before obtaining a commission in the Army in 1915. He saw service in Gallipoli and on the Somme, sustaining a slight shrapnel wound. He also suffered ill health. During a period of leave in England in 1917, he obtained two rings from shops in London by passing dud cheques. Pleading guilty at the Old Bailey he received six months imprisonment and lost his commission. An appeal failed though the Army apparently were willing to accept him back into the ranks after his sentence.⁹ There is no evidence, however, that this occurred.

On 30 August 1919 he married Alma Vetsera Hayne, a divorcee, and allegedly the illegitimate daughter of the heir to the Austrian throne. Two months later she died in mysterious circumstances following attendance at a commemorative Victory Ball at Claridge's. The coroner recorded that she took her own life by swallowing poison. At the inquest Steane was described as holding the rank of captain, which seems improbable in view of his having previously been cashiered.¹⁰ Already, therefore, important doubts regarding his probity in 1917 and 1919 can be raised.

He remarried, his new wife being Mary Haywood, who had been divorced from Harry Penton, the wealthy owner of the Pentonville Estates. They had two sons, the elder (Robert) born in England and the younger (Michael) born, it is believed, after the family moved to Germany in 1924. As the law reports in 1947 noted, Steane had been a film actor before the war (his professional name was Jack Trevor) and he was so employed in Germany when war broke out. In fact he had previously appeared in a number of British silent movies in the earlier years, including *Champagne* (1929) directed by Alfred Hitchcock.¹¹ But his mainstay role in Germany in the 1930s (which provided him with a comfortable existence) was as a typical English gentleman, aristocrat or officer. The film companies for which he worked were, of course, under Nazi control from 1933.¹²

How were the British authorities alerted to Steane's broadcasting activities for the Nazis? For it appears that whenever he undertook broadcasts from Germany, neither of his surnames (Steane and Trevor) were announced. For example a fellow-broadcaster, Mrs Francis Eckersley, told her interrogators in July 1945 that, 'During this period I announced various British speakers (to October 1941). These were.... Jack Trevor... I did not announce their names, but they were the speakers'.¹³ The programmes comprised, initially, news-reading and subsequently feature and entertainment programmes aimed at British and Commonwealth forces (called 'Anzac Tattoos'), before he commenced broadcasting blatant propaganda in programmes entitled 'D-Day Calling' and 'Jerry Calling', which were designed to stoke up dissension between the British and American forces after the Normandy invasion of June 1944. It should be noted that his broadcasting career after he ceased reading the news in April 1940 received no mention by Lord Goddard who, it appears, seems to have assumed that Steane subsequently devoted himself solely to making innocuous films.

Perhaps the first indication of his activities came with the publication of William Shirer's *Berlin Diary* (1941). For the American journalist and broadcaster, better known for his classic work, *The Rise and Fall of the Third Reich* (1959), had referred to 'Haw-Haw's [William Joyce's] colleague, Jack Trevor, an English actor, who does anti-British broadcasts for Dr Goebbels'. Shirer also mentioned attending a Christmas Eve party at the German Broadcasting Company, the *Rundfunk* (at which William and Margaret Joyce were present). Trevor was also there; indeed was in a drunken state.¹⁴ Moreover in his diary entry for 26 September 1940 Shirer observed that Trevor's

one burning passion is hatred of the Jews. Last winter it used to be a common sight to see him stand in the snow, with a mighty blizzard blowing, and rave to an SS guard outside the studio door about the urgent necessity of liquidating the Jews everywhere. The guard, who undoubtedly had no special love for the Jews, but whose only thought was how much longer he must stand guard on an unholy night, would stamp his freezing feet in the snow, turn his head from the biting wind, and mutter: 'Ja. Ja. Ja', probably wondering what freaks Englishmen are.¹⁵

In the same year the British journalist, Douglas Reed, wrote (albeit inaccurately) in the *Daily Herald* that Trevor was Joyce's deputy. Reed had met him in Berlin in 1928 after which the actor then disappeared. He next met him in Vienna not long before the *Anschluss* in March 1938. He considered that Trevor was a Gestapo spy.¹⁶

The following year the *Sunday Pictorial* quoted Trevor as having proclaimed in a broadcast, ‘The British Army, led by drunkards, cannot stand against the mighty forces of the *Fuehrer*... The British are doomed.’ The newspaper added that when Trevor had been in Vienna before the war he had mixed with actors and intellectuals who were refugees from the Nazis.

He made up to them, got friendly. And when the Nazi horde swept over the frontier in Hitler’s first major aggression, Trevor supplied the Gestapo with a list of ‘enemies of the Reich’. Men who faced the firing squad, who died a lingering death in concentration camps, owe their fate to Trevor, the renegade Briton. When war came he got his reward. Now, for £15 a week, he broadcasts over the German radio. It was he who, imitating the accents of a Cockney, broadcast Communist propaganda to this country.¹⁷

Although Reed’s claim is unverified, there was nonetheless sufficient evidence from other sources to prompt MI5 to open a file on Steane in 1943. Indeed further wartime evidence of Trevor’s activities was obtained from the United States embassy which had noted in February 1940 that he was ‘most distinctly on our list of “doubtful cases”’ since he had ‘apparently been broadcasting regularly’, was ‘now hobnobbing with Dr Goebbels’, and was shortly expected to be in a new film with an actor whom he named as Lionel [*sic*] Jannings and who had worked with him on the film, *Königin Louise* (*Princess Louise*), which was abandoned at the outbreak of the war. Jannings was in fact a reference to *Emil Jannings*, a well-known actor who played the lead role as Paul Kruger in 1941 in a propaganda film, *Ohm Kruger* (*Uncle Kruger*), about British mistreatment of the Boers during the South African War, and which it was planned would be shown in South Africa after the German victory (in fact after the Allied victory it was banned from all public screenings!). As we shall see, Trevor also had a deeper involvement in this film (the ‘film of the nation’, according to Goebbels¹⁸) than he initially disclosed to his post-war interrogators.

Many other pieces of evidence surfaced in the period after his MI5 file was opened in early 1943, including information from the Swiss legation regarding the renewal of his wife’s British passport (it was not!); the statements of British subjects repatriated before the end of the war; and information from a German prisoner of war who had deserted from the Nazis and who knew him in Oberammergau where his family lived while he worked in Berlin. The latter source did, however, have an understanding that Trevor had declined to perform *any* (my emphasis) duties which might bring him into conflict with the Allies if Germany were to lose the war (which begs the obvious question of what Steane thought he had been doing

since December 1939). None of this evidence was qualified by references to Gestapo coercion against him and his family in Bavaria, which does not, *per se*, disprove his own claims in exculpation of his behaviour.

THE ISSUES

The question is therefore not whether Steane did broadcast enemy propaganda. There is ample evidence to that effect even after he had ceased broadcasting the news in early 1940 and had commenced writing and broadcasting the features and entertainment items to Allied audiences in ‘Anzac Tattoos’ before returning to more clear-cut propaganda in ‘D-Day Calling’ (he might have disputed the propaganda content of ‘Anzac Tattoos’ but as noted by Steane’s MI5 case officer, G.E. Wakefield, those broadcasts ‘were obviously not sponsored by the German Government as a purely charitable exercise designed to relieve the boredom of the Allied Forces’). So the issue is the reliability of his claims, during his post-war interrogations, to have been subjected to Gestapo threats to compel him to do the German broadcasting authorities’ bidding (he also claimed that he attempted to resist those threats). We have already noted some evidence from journalists and other sources which questions Steane’s credibility in regard to his claim to have been forced to broadcast. What else does the historical record (not all of which would have been available to, or admissible in, the court) tell us in this respect?

Essentially we shall note the pro-Nazi network with whom Steane surrounded himself during this period; identify the crucial omissions in his own accounts to his post-war Allied interrogators; and suggest that even if evidence of ardent support for the Nazi regime on Steane’s part is elusive (or ambiguous where some indication of it can be discovered), the explanation for his conduct advanced by a number of collaborators who knew him was that he *willingly* undertook his broadcasting work for the prosaic (but in the circumstances blameworthy) reason that it provided sufficient remuneration for him to support a comfortable existence far removed from the hardships of internment as an enemy alien.

INTERROGATIONS

Some of the evidence regarding his broadcasting activities was in fact first supplied by Steane himself in the various statements he made to his interrogators after the war. He claimed that he had ‘escaped’ from Berlin in early February 1945 and had made his way to his family at Oberammergau where he remained until the Americans reached the zone. He then reported to an American officer and in due course he and his wife were placed in

internment camps to await interrogation. The Allies had at their disposal a ‘Central Security War Black List’ compiled by MI5 which contained lists of alleged collaborators. Steane was on the list, as was his wife though she was not the subject of criminal investigation.¹⁹

Steane was first interrogated by the Seventh [United States] Army Counter Intelligence Corps (CIC) on 5 July 1945. This account, although referred to at his trial, was not produced in evidence against him, presumably because his statement to Captain (later Major) Spooner in October 1945 covered the same ground, and more. In his CIC statement he told his interviewer that immediately following the abandonment of the *Königin Louise* project he telephoned his wife on 31 August 1939 to say he intended to take her and the boys back to Britain as soon as possible since war seemed possible. There is, however, no evidence that serious plans to this effect were being made before he was interned at Stalag 13A in Wulzburg, Bavaria, on 11 September. His account to the Americans then jumps to 5 December when he is instructed to report to the police in Berlin. Taking a room in the celebrated Hotel Adlon he then allegedly told the police he wished to return to Oberammergau. On 12 December he was asked ‘If I would care to work for the Radio! I flatly refused and asked to be returned to the Internment camp where as an Englishman I belonged. Upon this I was asked if I had heard of the Gestapo. I answered, “Yes, but what about it?”. I was then allowed to leave and return to my hotel.’

The visit of the *Rundfunk* official (von Bockmann) mentioned in the law report is next recounted before Steane noted sadly (it appeared) that, ‘I was obliged to spend Christmas alone in the hotel away from my family.’ On 1 January (11 January is given in other statements) he was required to report to von Bockmann’s office to undergo his voice test. The threats, his fears for his family and his acts of ‘resistance’ are recorded. His broadcasting, he stated, was confined to non-propaganda plays, to sports and theatre features and, from 1942, to ‘Anzac Tattoo’, the variety programme written by him which also contained news of British and colonial prisoners of war. The payments he received for each programme (perhaps 280 *Reichmarks* (RM), equal to about £30 at the outbreak of the war) were, he stated, applied to the payment of his son’s medical bills (his wife received 270 RM each month transferred through intermediary banks from her previous divorce settlement). At his trial, the prosecution claimed that he earned 100,000 RM (£10,000) during his wartime broadcasting career.²⁰

In answer to a question from his interrogators about friends in Germany he insisted he had none, ‘having kept strictly to myself and my family all through the war’. He mentioned his children’s teachers (who were monks) and other individuals in Oberammergau; a ‘fanatical anti-Nazi’ waiter; and a couple living 40 kilometres from Berlin with whom he stayed, ‘in order to keep away from people’.

Several times, he told his interrogator, he had considered escaping from Germany through Switzerland and had discussed routes with his elder son. But since he could not take his family with him on such a 'perilous adventure' he had abandoned the idea. Consequently he had waited five and a half years for the day of his family's freedom. In conclusion he complained at his continued detention in an American internment camp without a hearing before any authority with power to release him.

The internal comments on his interrogation initially observed that in

Attempting to evade charges of collaboration, he states that he does not desire to say anything which will prevent his return to England with a clear record. In his desire to show his innocence of any treachery, he consistently condemns other English collaborators as well as the German leaders.

That 'Steane has by no means told the whole truth,' as Major Paul Kubala who was in charge of the Seventh Army interrogation centre noted, is apparent (all his interrogators took this view, though in one brief questionnaire administered to him in May 1946 while he was still in an American camp, the officer asking the questions wrote that he 'seems to speak the truth'; however, the latter was not to know that Steane's explanation for his leaving the Army in 1917, that is, 'Discharged after injury', was very far from being the truth, as was his statement that he broadcast the news for only three days). For example while the actor referred to three apparently innocuous films in which he appeared, no mention was made of the propaganda film, *Ohm Kruger*, mentioned above (and see later). Another radio programme, 'Stories of Old Vienna', in which he took part from the middle of 1944 until January 1945 received no mention. Nor were his personal contacts with other known collaborators including William Joyce and his wife, Margaret Joyce, Edward Bowlby (a former BUF member and cinema manager in Stockport who broadcast vicious anti-Semitic propaganda²¹), and one Powell (probably Ralph Baden-Powell, a nephew of the founder of the scouting movement and a regular broadcaster on the German European Service²²).

When MI5 saw the CIC report they also noted that Steane had omitted mention of his First World War conviction, and much more crucially, his reading of the German news in 1939 and 1940 and his later broadcasts to Allied troops in the propaganda programmes 'Jerry Calling' and 'D-Day Calling', which commenced immediately after the start of the Normandy landings.

Reginald Spooner of MI5 Liaison Section now interviewed him on 15 October at the Americans' internment camp Number 74 at Ludwigsburg. The lengthy statement he made on that occasion was the principal evidence against him at his trial the following year. We have already referred to parts

of it when presenting Steane's account of and excuses for his activities. But once again there are some damning omissions as well as statements whose veracity is at most debatable but which were more likely deliberate untruths.

For example there is no reference to his having received, while interned at Stalag 13A, a telegram from Goebbels inviting him to do broadcasting work. The telegram had been seen by a fellow-internee, Walter Reginald Ames (mentioned by Steane in his statement), who was later repatriated during the war and who, by November 1944, was in Brixton Jail. Steane's failure to refer to the telegram might not, of course, undermine his account, previously cited, of how he bravely faced down Goebbels on 12 December 1939.²³ At his trial, however, the prosecution produced a Mr Hammett, interned with Steane in 1939, who testified that the actor had shown him a telegram signed by Hermann Goering's wife, Emmie, which stated that he could expect to be released and be home very shortly.²⁴ It must be presumed that if both telegrams existed and were genuine, Steane's standing with the most senior powers in the Third Reich was higher than one would assume from his description of his treatment at the hands of the Gestapo during his internment.

Nor is there any mention in his statement of his attending the New Year's Eve party at the *Rundfunk* at which the Joyces were also present. According to William Shirer, 'the people were dancing and making merry with champagne... Lord Haw-Haw, the British traitor... and his English wife were at the party, but I avoided them. Later Jack Trevor, an English actor, who has also turned traitor and broadcasts German propaganda to England, came in, much in his cups. I cannot stomach him either.'²⁵ Perhaps charitably we might conclude that Steane was in a maudlin frame of mind, was still lamenting not having his wife with him and was thus not in a mood to enter into the spirit of the occasion.

The problem with this explanation is that until that month the couple's marriage had been in deep trouble and they had been separated for a couple of years (almost certainly at his instigation; two of his wife's letters to him in early December 1939, written just before and just after his release from internment, are couched in the most affectionate of terms. She did, however, tell G.E. Wakefield, the MI5 case officer, in early 1947 that her husband had been 'more or less mad in 1937 and '38'). As to the free-flowing champagne, a *Rundfunk* official, Dr Eduard Dietze, who was born in Glasgow to a Scottish mother and to a half-Hungarian and half-German father, later told his interrogators on 29 May 1945 that in the 1939–40 period, 'He [Steane] was drunk so often that we got rid of him as a news reader' (which of course contrasts with Steane's explanation for his transfer to other work).

Another fellow-broadcaster, Pamela Ursula Rosaleen James, an actress, interrogated by the Americans in Paris between 30 April and 5 May 1945,

said that Steane was ‘often drunk and had a dissipated appearance’. Especially damning was her comment that,

I regard him as a common traitor because he did what he did solely for the money he could make, whereas he could have found work elsewhere, such as film work. He is a famous film actor in Germany and was idolised by the public.

It is possible that James was pursuing a hidden personal agenda, for in a letter from Mrs Steane to her husband after his release from internment there is a reference to ‘Ursula’.

You will have to be very careful and circumspect and you will have to aid us and not be seen anywhere with Ursula. You cannot let your wife and children be aided by the film charity – leave them with nothing, and be seen constantly about with a woman who is well known in Berlin.²⁶

Was Steane’s attitude to his employment purely mercenary, as James suggested? We know of Steane’s own explanation for his conduct and we have also noted William Shirer’s condemnation of his anti-Semitism. Seventeen-year-old James Clark, Mrs Eckersley’s son, who had read the news briefly before Steane’s recruitment, told MI5 after the war that Steane was a ‘vain, conceited, non-political ass, who talked loud political nonsense at times, but with no real views’. Wakefield at MI5, in insisting that Steane’s motivation was not to ward off threats but to improve his quality of life, added that ‘There is no reason to think that Steane is politically minded or worked for the enemy from pro-Nazi convictions.’ Even accepting that he was not a politically active Nazi, there was certainly more to Steane’s story than his claimed efforts to keep the Gestapo at arm’s length.

Further significant omissions from his statements may be noted. Thus his previous account to the Americans omitted mention of his contribution to the propaganda film, *Ohm Kruger* (the Allied authorities did not refer to his involvement in other anti-British films in 1941, *Mein Leben für Irland* and *Carl Peters*²⁷). This was remedied in his later statement to Spooner; except that he then falsely stated that he had played no role in the film itself and had only been employed at 350 RM a day for four days to train 20 actors to perform the ‘Changing of the Guard’ routine outside the stage set of Buckingham Palace. In fact he *did* appear in the film (albeit without a speaking part) and was easily identified by James Clark after the war as the actor playing the only British general (a staff officer) who was wearing a kilt. Spooner concluded that Steane was a typical ‘professional’, ‘talkative and not an attractive personality’, who was

making himself a nuisance [to the Americans] owing to his repeated complaints and garrulity... His general attitude is that he has nothing to worry about as what he has done has no propaganda value and altogether he conveys the impression that he, the famous Jack Trevor, is beyond reproach.

By December 1945 the Director of Public Prosecutions (DPP), Sir Theobald Mathew, had not reached a decision on whether to prosecute Steane, who was still being held in American custody. Although Mary Steane was similarly being detained by the Americans elsewhere, one option was to permit him to return to his family's home in Oberammergau within the American zone (assuming he was not a security risk), and where it was thought some scripts of his 'Anzac Tattoos' broadcasts might be located. Alternatively he could be handed over to British custody or even permitted to travel to the United Kingdom. In the event he remained in American custody until about May 1946 when he was placed in a British internment camp.

The British authorities were still trying to digest the gist of the interrogations (we have noted that both Spooner and most of the American interrogators had taken an unfavourable view of him, while another American had been less sure of his criminal behaviour). Certainly Wakefield at MI5 in London was firmly of the view that the local MI5 reports from Germany placed undue emphasis on Steane's more 'innocent' broadcasts such as the 'Anzac Tattoo' sketches. Thus he identified in particular the *Rundfunk* news broadcasts, and the 'D-Day Calling', 'Jerry Calling', and 'Invasion Calling' programmes in 1944 and 1945. It was these which formed the more serious groups of offences since they were unquestionably propaganda material.

But for our purposes, it is the credibility of the claims of physical harm which is of most significance. In an internal memorandum Wakefield noted that the American journalist William Shirer's acid observation on Jack Trevor 'differs significantly from Steane's self-portrait of a loyal Englishman who had been intimidated by the blows and threats of brutal Nazis'. Moreover Wakefield questioned the consistency of Steane's account to his interrogators (that is, *apart* from the suspicious omissions in some of those accounts).

Thus Steane described being badly beaten up by the Gestapo in September 1939 followed by a ten-week period of internment. This was suddenly ended by his being accommodated in the luxury Hotel Adlon (along with other British renegades). Dr Goebbels himself then called the actor to interview and personally offered him radio work. After the previous beating up, Wakefield observes, this would presumably be an offer which he, Steane, could not refuse. But no. 'I will do no such thing,' Steane

insisted he told the *Reichsminister* defiantly. And as a British subject he apparently demanded to be returned to Stalag 13A. The Germans then allegedly responded, ‘Have you heard of the Gestapo?’ To which he was supposed to have answered, ‘Yes...what about it?’ Wakefield concluded that in regard to a man whose teeth had been knocked out by the Gestapo just three months previously, this dialogue was not merely unconvincing. It was ‘frankly incredible’.

Indeed, having seemingly resisted the will of Goebbels, probably the fourth most powerful person after Hitler, Goering and Himmler in the Third Reich, he apparently caved in a week later to von Bockmann, the *Intendant* (general manager) of the German Short-Wave Station. Told by the German, ‘We have methods,’ Steane’s response was not the defiance shown to Goebbels but rather the meek, ‘What have I to do?’ The now ‘rather frightened’ (Steane’s own words) actor nonetheless was able to accept the *Rundfunk*’s seasonal hospitality, becoming drunk in the process before apparently ‘sabotaging’ his voice test after the New Year. Yet this experienced actor managed to botch his sabotage efforts so badly that von Bockmann was in fact delighted with the result. ‘It was just the voice he wanted!’, noted Wakefield; and soon the friend of the confirmed fascist, Margaret Joyce (to whom he sent a wedding anniversary present, inscribed in German), was reading the news.

Moreover this ‘frightened’ and coerced Briton, as he told the court in 1947, had decided in April 1940 to ‘chuck it up’ and face the consequences. Yet the terrible punishment inflicted was not the carrying out of the threats to himself and to his family but the reward of immediate re-employment on ‘non-propaganda’ radio plays, work which one might think more suited his acting skills. All the while his income was handsome and his profitable film career after May 1940 (when the Gestapo, he insisted, had torn his ear in two) continued apace. Yet though he claimed to have suffered five years of threats (as he told Spooner in August 1946) he failed to point to any specific incidents or dates involving violence, threats or bullying after May 1940.

He did, we previously noted, refer to beatings-up between September 1939 (when he apparently lost four teeth and received a ‘slapping’) and May 1940 (the alleged ear incident). But what was the nature of the supposed threats in these first few months of the war? One was apparently uttered ‘politely’ by Goebbels’ men; later, von Bockmann (who was also said to have ‘threatened’ him) ‘spoke to me like a father’; there were further unspecified references to the SS and to the Gestapo in January 1940; and also the words of a *Rundfunk* official who responded with, ‘I suppose you realise what consequences might follow,’ when Steane refused to continue the news broadcasts in April 1940 (the ‘consequences’, we noted, were that he now embarked upon more profitable and congenial radio work).

When he later undertook work of an unquestionably propaganda nature, such as appearing in *Ohm Kruger* and in 'D-Day Calling', he made no mention of threats.

The letters written by his wife to him in December 1939,²⁸ shortly before and immediately after his release from internment, also make no reference to violence or to threats of violence to her husband at the hands of the Gestapo or the SS (which one concedes is not evidence that Steane's claims in this regard were untrue). Mary Steane's worries seemed primarily to be financial, not physical (except in relation to her own headaches and the boys' health). Steane, the 'bread winner' for the family, was unable to earn. The villagers in Oberammergau could not assist in a wartime climate in which even the Passion Play was cancelled. She was at that time temporarily unable to obtain her allowance from Britain, a country which she charmingly described as a 'Beastly Jew-ridden money grubbing country' and whose Navy was too terrified of the *Luftwaffe* to venture out to fight.

What was apparently complicating his release from internment (which Mary appeared to believe was pending) was that he had originally been placed in a concentration camp rather than in a more benign detention centre. However, powerful forces were acting on his behalf. Emil Jannings, the celebrated actor, was, it seems, in touch with Goebbels about his internment, while the Propaganda Minister's chief of the Press Division, Hans Fritzsche (who was later acquitted in October 1946 of war crimes at the Nuremberg Trials) was also active, as was Dr Hans Frohlich, another senior Press Division official ('Frohlich', which means 'joy' in German, was a *nom de plume* adopted, appropriately enough, by William Joyce). As his wife noted, 'You seem to be a very much talked over and much sought over man,' though it is true that a week later when she wrote to him again expressing her happiness at his release, she warned that he had to be 'very careful' as a 'marked man'; and 'you have not been easy to get free.'

During the war his wife remained completely unmolested by the authorities, she continued (after the brief interruption, above) to receive her allowance, via Swiss banks, from the Pentonville Estate, and was only interned at the end of the war. Indeed her own loyalty to the Crown was not free from ambiguity. When interrogated after the war, she explained that at its outbreak she would have attempted to return to the United Kingdom had Germany declared war on Britain, but as it had been the other way, she opted to stay in Germany! The possibility of also prosecuting her was considered though proceedings were never brought.

As to Steane's two sons, when they sought to be repatriated to the United Kingdom in January 1946, according to the British authorities they endeavoured to dissociate themselves from their father's wartime activities. One might therefore infer that they, at least, viewed his conduct as

blameworthy (in the moral sense) and not as evincing an ‘innocent’ intention resulting from violent threats to him.

PROSECUTION?

MI5 had indeed informed the DPP in January 1946 that it was surprising that Steane and his family wished to return to the United Kingdom since they had lived in Germany, off and on, since 1924. ‘However he no doubt considers that the prospect of obtaining lucrative employment and a comfortable life is better here.’ Nonetheless neither Steane nor his wife (the sons were a different matter) were yet in a position to act on their desires. For while they remained in detention camps in Germany, he in US Camp 74, Ludwigsburg, near Stuttgart, and she in US Camp 8, Garmisch-Partenkirchen, the DPP was still making up his mind whether to press charges (he was awaiting further and better particulars regarding the propaganda content of the ‘D-Day Calling’ series of broadcasts, though their defeatist propaganda and their aim of dividing the Allies from each other were clear). A supplementary MI5 report was eventually sent to him in May 1946, detailing some of the propaganda content of the programmes and Steane’s role in *Ohm Kruger* (it will be recalled that James Clark had identified him as one of the actors).

The report did concede that while Steane had been a ‘perfectly willing broadcaster’ whose transfer from news reading to radio acting reflected solely on his performing abilities, nonetheless, ‘There is, however, at present no evidence to prove this [that is, that his account of threats was false], apart from the manifest improbabilities of his own version,’ which version (it should not be forgotten) the trial jury did, of course, later consider and presumably discounted.

Notwithstanding MI5’s slightly pessimistic note the DPP decided, at the end of July, to prosecute and consulted the Attorney-General, Sir Hartley Shawcross, in this regard. Eventually Steane was repatriated aboard the SS *Royal Daffodil* to Britain under military escort on 30 July 1946. According to his own account he was told by the immigration authorities at Dover that his case had been cleared up and that he was free to proceed, his first port of call being the home of his brother-in-law in Suffolk.

Over the next two weeks, he claimed, he had gone to the War Office to obtain an official confirmation of his ‘exoneration’. Instead he received a telephone call from Spooner, by now back with the Metropolitan Police as a detective inspector, to meet him at the War Office. He did so on 13 August and after being cautioned was arrested on a warrant charging him with broadcasting with intent to assist the enemy. Taken to Bow Street Magistrates’ Court where he was formally charged and cautioned he

replied, 'I did not do it with intent to assist the enemy. It was forced on me.' He then made a further statement addressed to 'you and my countrymen' regarding the decision he said he made in the light of the Gestapo threats.

I think that was the most terrible decision for a man to make. If I had been alone I think I would rather have faced all their horrors than to have done what I still consider was under [*sic*] one of the most despicable forms of force that could be used on a gentleman.²⁹

Indeed he specifically stated that following his release from Stalag 13A in December 1939 he was 'hunted and hounded by German Gestapo and SS for five years', until, that is, he reported himself to the occupying American forces in Oberammergau. 'Five years' is certainly an advance on the period from September 1939 until Spring 1940 during which he claimed to have suffered violence and threats. How was this presented at his trial?

THE TRIAL

Steane was eventually brought to trial at the Old Bailey on 14 January 1947. The prosecution relied principally on the statement he made to Spooner in October 1945 and which recounted his broadcasting and film career during the war. That statement also referred to the earlier one he made to the United States CIC interrogators in July 1945. However the earlier document was not produced in court. The prosecution also presented Hammett's evidence regarding the telegram from Emmie Goering mentioned previously. Both witnesses were cross-examined. For the defence Steane and his wife gave evidence.

Naturally the thrust of the defence was the absence of intent to assist the enemy and the duress to which he had been subjected. Steane's loyalty to the Crown was affirmed. 'My husband has never had any pro-German feelings. He is most decidedly not anti-British,' Mary Steane testified.³⁰ As is probably well known the trial judge, Henn-Collins J, directed the jury in terms that intent to assist the enemy *could* (my emphasis) be inferred from the fact that assisting the enemy (even if only in the technical sense, as Steane himself in his statement acknowledged had occurred) was the natural consequence of the defendant's action. The judge spent only ten minutes summing up although the jury, as Wakefield minuted, deliberated for three hours and five minutes before returning a verdict of guilty. Steane was sentenced to three years penal servitude and was transferred to Wandsworth Prison.

In preparation for his appeal, he requested a copy of his statement to the CIC. Yet it is difficult to see what advantage this would have given him as it would only have exposed the uncomfortable gaps in that account when

contrasted with his later statement to Spooner in which, for example, he refers (typically misleadingly) to the propaganda film, *Ohm Kruger*. Thus it could only have harmed his credibility.

Nonetheless the main outlines of the appeal decision and reasoning may be familiar to readers. Where the defence raised the possibility of an innocent intention, the judge could not ignore that possibility simply by directing the jury that a person intended the natural consequences of his action. The trial judge was therefore obliged to put to the jury the alternative possibility of an innocent interpretation. Indeed Lord Goddard criticized the trial judge for not having reminded the jury in his summing up ‘of the various threats to which the prisoner swore he had been exposed’. The misdirection was fatal. Steane’s conviction was quashed (and his statement to the CIC was essentially an irrelevance so far as the successful appeal was concerned).

The immediate reaction by MI5 to Steane’s release was somewhat muted. Wakefield wrote to the organization’s legendary lawyer, Bernard Hill, suggesting that while Goddard’s judgment had contained ‘some curious principles’, the debacle was primarily due to the shortcomings of the DPP’s office or of their counsel. Thus, whereas Goddard had noted that it was ‘no doubt inevitable’ that the CIC statement of 5 July 1945 had not been produced in court (although we observed that it could only have benefited the Crown) copies were in fact available and could have been submitted in evidence.

Wakefield also felt that if the prosecution had produced the information which had been carefully assembled regarding the ‘bitterly anti-British propaganda film [*Ohm Kruger*] accusing the British of having invented “concentration camps”’ it would, he thought (perhaps not wholly convincingly), have cast a clearer light on whether Steane had the intent to assist the enemy. It may also be observed that whereas Goddard had further noted that no record of Steane’s broadcasts had been given in evidence, transcripts of many of them were in fact available. Finally in respect to the radio broadcasts, the MI5 officer was particularly critical of Goddard’s ‘entirely false presumption’ that Steane had been active only from Christmas 1939 until April 1940 after which, the Lord Chief Justice suggested, Steane was engaged only on innocent film-making (we have previously noted the egregious error in this distorted picture).

CONCLUSIONS

What conclusions might therefore be drawn from this wide trawl of evidence which (apart from the broadcasting evidence to which Goddard referred in his judgment in a grossly misleading fashion) was, for the most

part, not before the trial or appeal court? First it should be emphasized that it is not our intention to subject the appeal ruling to critical doctrinal analysis, for this is a task which has been undertaken by a number of present-day commentators. For those writers Goddard's reference to guilty or innocent intention is misconceived, while the evidence of Steane's broadcasting, that is, those acts which had the natural consequence of being 'likely to assist the enemy', *did* entitle a jury to find the necessary intent for the purposes of Reg. 2A.

However, the doctrinal critics concede that in the light of the alleged threats to himself and to his family, a plea of duress could be raised by Steane as an excuse but not as a form of defence which would (like insanity) negate *mens rea* if established on the balance of probabilities. Presumably Steane's best shot at establishing duress was attempted at the trial itself. As Goddard himself noted, 'The matters of these threats depended upon his evidence alone, and while it is fair to say that he does not appear to have been in any way shaken in cross-examination on these matters, the jury were not necessarily bound to believe it.'³¹ Indeed, as is plainly known, the jury did reject his evidence albeit, according to Goddard, on the basis of an insufficient summing-up by the trial judge.

To that extent this article endorses the jury's finding. Steane's claim to have broadcast solely in order to protect his family and himself simply does not accord with the historical record regarding his genuine motivations, habits, activities (and his selective and inconsistent recall of those activities), his outspoken views, family dealings, and choice of (at least some) friends. Moreover it is important to stress that this conclusion applies whether we accept Goddard's legal reasoning regarding the possibility of an 'innocent intention' to be put to the jury (an approach which does possess some merit but which in our view would not have affected the jury's finding) or whether we prefer the analysis of the trial judge (and of modern writers) that, given the evidence of his broadcasting activities, the jury were entitled to find the requisite *mens rea* before going on to consider his evidence regarding duress as an excuse potentially affording a complete defence.³²

In other words while recognizing that historical evidence is not necessarily probative for the purposes of a court of law, we would argue that the historical record casts a significantly different light on Steane's 'heroic' claim to have snubbed Goebbels, to have told his *Rundfunk* bosses where to put their broadcasting schedules, and to have succumbed to threats and violence for the sake of his family with whom it appears he in fact enjoyed an ambivalent relationship.

Thus in regard to his motivations (surely a useful, if not a legally conclusive, indicator of his 'intent'), was he a Nazi? Certainly there is no evidence that he possessed clear convictions supporting the Nazi political

system. On the other hand even if he were far from being a fervent Nazi like William Joyce who did, of course, strive for the defeat of Britain, he did (if Shirer is to be believed) share a core element of Nazi ideology in his expression of anti-Semitic sentiments to SS guards (though no doubt many anti-Semites even fought in the British armed forces against the Nazis). Given his opinions and surrounded as he was by British-born Fascist friends and sympathizers such as Margaret Joyce (with whom he exchanged warmly inscribed photographs), it is difficult to envisage him as an anti-Nazi (even if his anti-Semitic wife insisted in court that he was pro-British).

Thus even if he were to be absolved of the charge of being a fellow-traveller (for lack of hard evidence such as that available against some of his colleagues, for example, their speeches or previous membership of extremist parties such as the British Union of Fascists), his motivation, as fellow-broadcasters attested, was essentially to avoid the harshness of internment alongside other civilian Britons in Germany, to enjoy a comfortable existence outside the camp and to obtain the considerable financial benefits of the work (all the while owing allegiance to the Crown and possessing a (lawfully obtained) British passport which expired in 1944).

As to the alleged violence already perpetrated against him and the threats of future violence it would, of course, have been difficult for Steane to have been able to present the jury with probative evidence (*other* than his sworn testimony from the witness box) to the effect that the events he recounted had actually occurred. Goebbels had, of course, killed himself, while the effort to track down the Gestapo officials who had harmed him, if they were still alive, would have been a daunting task for Steane (apart from questions of the compellability of German witnesses before English courts). While it seems that one potential witness, von Bockmann, the radio station manager, was alive at the time of Steane's trial (he apparently died in 1950), corroboration for Steane's account was clearly lacking. However, the jury were in a position to (and did) judge his and Mary's credibility as witnesses.

Moreover the image he projected of loyalty to his wife and sons for whose protection he was prepared to act against his conscience disguises another reality. For, so far as we can tell, he had chosen to leave his wife and it was she who was pressing him to take up employment after his release from internment in order to provide for her and the boys. If there *had* been any threats of violence, there were no hints of this in Mary Steane's letters to her husband in early December 1939 (his own letters, if any, to her during this period have not been discovered). As to his sons, we noted previously that at the end of the war MI5 considered that they had distanced themselves from their father's wartime activities (though it is theoretically possible that this position was merely to avoid complications in regard to their return to the UK).

Finally it may be noted in a comparative vein that a few of the renegades who faced British justice at the end of the war either for broadcasting propaganda for the Nazis or for having joined the Nazi unit known as the British Free Corps (BFC) or, indeed, for having done both, raised defences similar to those put forward by Steane.³³ So far as is known, however, in no other British case was the possibility of an ‘innocent’ intent put to and accepted by the jury or an appeal successfully upheld on that basis.³⁴ For example, according to a recent account, James Clark had been threatened with execution if he disclosed what he had seen at the German ‘secret station’ HQ, the *Büro Concordia*, when he went there for a (presumably unsuccessful) voice test in February 1940. However there is no indication that such threats were uttered when he had previously broadcast briefly for the *Rundfunk* before Steane took over, nor when he resumed that work following the *Concordia* voice test. At Clark’s post-war trial in December 1945 the judge appeared to accept that Clark ‘had been hypnotised when a callow youth by the trappings and tricks of Nazi propaganda’ and was bound over for two years.³⁵ But that is a far cry from the outcome of Steane’s appeal.

In another case, that of Walter Purdy who had been released by the Nazis from a prisoner-of-war camp in 1943 in order to broadcast German propaganda, the legal issue at his post-war trial was whether the defence of duress was available in respect to a charge of treason. It was indeed so held (Goddard, in suggesting otherwise in Steane’s case, had obviously overlooked the ruling). Yet since Purdy had initially been convicted and indeed had originally been sentenced to death³⁶ his defence was plainly not believed. One or two other members of the BFC who joined that shady organization allegedly did so to avoid facing a German court martial, in one case because of possession of a clandestine radio and in the second case because of his association with German women.³⁷ In other words, the broad character of Steane’s defence had been tried before and had received short shrift. Only in the case of Ralph Powell might it be speculated that, among various possible explanations for not prosecuting him, one of them was the ‘Steane defence’ inasmuch as the famous Boy Scout leader’s nephew had claimed that he had been forced to broadcast because of Nazi threats to his German wife’s family. The explanation failed to impress a sceptical MI5 who noted the German authorities’ view of Powell that he was a ‘weak, non-political character, much influenced by his domineering wife’.³⁸

The object of this article was to revisit the factual circumstances surrounding the well-known case of *R v Steane* and its remarkable outcome, rather than to seek to deepen our understanding of the controversial legal ruling. An historical exploration is, of course, one unconstrained by the legal rules of evidence and procedure. While acknowledging this fact we

nonetheless believe that the exercise can be justified not simply in revealing specific details about the case, such as possible shortcomings in prosecution tactics; but perhaps more importantly in allowing us the opportunity to reach a closer understanding of the ‘truth’ of events which were part of a recent generation’s immediate and unforgettable experience. Confronting the evidence which this study has thrown up (much of which was not available to the jury) the concluding judgement must be that the central character was not Anthony Cedric Sebastian Steane whose conviction was quashed by the Court of Criminal Appeal but Jack Trevor, the actor. It was, indeed, his greatest performance but the script was a work of fiction.

NOTES

1. See, for example, Nicola Padfield, *Criminal Law*, 3rd edn., London, 2002, 41. Lacey and Wells suggest, however, that doubt was expressed during the case as to whether the defence of duress was applicable to the offences in question. See Nicola Lacey and Celia Wells, *Reconstructing Criminal Law*, 2nd edn., London, 1998, 51. Goddard CJ in the Court of Criminal Appeal did state (erroneously: see *Purdy* cited at note 36) that the defence was not available in treason. He did acknowledge, however, that it was available in cases concerning breach of the Defence Regulations, the charge which Steane in fact faced. See [1947] 1 K.B. 997 at 1005. It may be noted that the contemporary note on the case in the *Law Quarterly Review* favoured Goddard’s approach, the editor, A. L. Goodhart observing that, ‘The saying that a man must be taken to intend the natural consequences of his acts is as misleading as are most of the other legal maxims.’ See (1947) 63 *L.Q.R.* 408–9. One might not necessarily take issue with that proposition. However the implication to be drawn from Goddard’s reference to the ‘totality of the evidence’, that is, that Steane had presented substantive evidence of threats and violence (which raised the possibility of ‘more than one view as to the intent of the accused’), is far more questionable and is explored in this article.
2. Card, Cross and Jones, *Criminal Law*, ed. by Richard Card, 15th edn., London, 2001, para. 3.26.
3. Andrew Ashworth, *Principles of Criminal Law*, 3rd edn., Oxford, 1999, 181. More broadly Michael J. Allen, *Textbook on Criminal Law*, 6th edn., London, 2001, 53, states that judicial pronouncements on intention ‘contain inaccuracies, contradictions and ambiguities’.
4. Alan Norrie, *Crime, Reason and History*, London, 1993, 55.
5. [1986] A.C. 112 (H. L.).
6. C.M.V. Clarkson and H.M. Keating, *Text and Materials in Criminal Law*, 4th edn., London, 1998, 143.
7. For references to Denning and Duff see Clarkson and Keating, 143. Norrie (*Crime, Reason and History*, 41) states that ‘His [Steane’s] motive – fear and concern for his family – was morally good.’
8. Much of the following information is contained in his own statements made to Allied interrogators in 1945 and 1946. Copies are in his MI5 file, now in the Public Record Office. See (PRO) KV2/ 622-4. Information in this article not otherwise sourced is from these MI5 files.
9. (PRO) WO339/2668 (Steane’s officer’s file).
10. *The Times*, 15 Nov. 1919.
11. For *Champagne* see, for example, <http://www.johndmorrison.com/hitchcock/champagne1.html>.
12. Ralf Georg Reuth, *Goebbels*, London, 1993, 225–6. The best general account of the Nazi film industry is David Welch, *Propaganda and the German Cinema*, London, 2001. See also Rolf Giesen, *Nazi Propaganda Films*, London, 2003.
13. (PRO) KV2/622, extract dated 28 July 1945, from interrogation on 2 July 1945.
14. William L. Shirer, *Berlin Diary*, London, 1941, 210 (wrongly dated 24–25 Dec. 1939). It was in fact a New Year’s Eve party as an entry in Margaret Joyce’s diary, referring to Jack Trevor,

- confirmed. The British authorities obtained her diary after the war.
15. Shirer, *Berlin Diary*, 412 (26 Sept. 1940).
 16. *Daily Herald*, 15 Oct. 1941. For Reed see W.J. West, *Truth Betrayed*, London, 1987, 107n; Geoffrey Cox, *Countdown to War: A Personal Memoir of Europe, 1938–1940*, London, 1988, 73–4 (Cox later became editor of ITN). Reed himself had some questionable views. See his *A Prophet at Home*, London, 1941, 94. He condemned writers and speakers who warned of the Holocaust in Germany. In his view readers ‘will find that the Jews in Germany have neither been annihilated nor exterminated, but that the great majority of them are still there, trading and practising, and I shall be glad in about five years from now, if anybody is still interested, to substantiate this statement with chapter and verse’.
 17. *Sunday Pictorial*, 20 Feb. 1943.
 18. As Goebbels recorded in his diary. See Reuth, *Goebbels*, 284.
 19. A copy of the list is in (PRO) WO204/12326.
 20. *Star*, 14 Jan. 1947.
 21. On Bowlby see Adrian Weale, *Renegades: Hitler’s Englishmen*, London, 1994, 38.
 22. On Powell see M.A. Doherty, *Nazi Wireless Propaganda*, Edinburgh, 2000, 16–17. Doherty’s reference to Trevor at 11–12 contains minor errors though he does state that Steane had been allowed to leave his camp ‘on the recommendation of a German actor’ (presumably Jannings).
 23. Trevor is also briefly mentioned (with a photograph but with no sources cited) in Horst J.P. Bergmeier and Rainer E. Lotz, *Hitler’s Airwaves*, New Haven and London, 1997, 93–5. The authors do not, however, question Steane’s own explanation for his broadcasting work.
 24. [1947] 1 K.B. 997 at 999.
 25. See note 14, above.
 26. (PRO) GFM33/475, Mary Steane to Anthony Steane, 7 Dec. 1939.
 27. Bergmeier and Lotz, *Hitler’s Airwaves*, 94. Welch, *Propaganda*, discusses the three films and examines *Ohm Kruger* at some length.
 28. See note 26. An earlier letter was dated 1 Dec. 1939.
 29. (PRO) CRIM1/1797, statement of 14 Aug. 1946.
 30. (London) *Evening News*, 15 Jan. 1947. The report placed the ear-ripping incident in May 1941. This was presumably a transcription error.
 31. [1947] 1 K.B. 997 at 1006.
 32. In fact, given qualifying words such as that the jury ‘could’ find the necessary intent, and that a person ‘may’ be taken to intend the natural consequences of his acts, it is submitted that the two positions are not really different from each other.
 33. Others claimed that they only undertook their activities in order to sabotage the German war effort or to send secret messages back to Britain. The claim was valid in only one case, that of J. H. O. Brown. See Weale, *Renegades*, 103–7, 112–13, 199.
 34. Three South African members of the BFC were tried in their own country. Two of them were acquitted on unknown grounds. The third was fined £75 for high treason. He had committed his acts ‘with no wish to injure your own country’. A British BFC member, Harry Batchelor, was acquitted on the basis of improperly obtained police evidence, while a number of its sum total of 27 members were not considered sufficiently important to merit prosecution. See Weale, *Renegades*, 196–7.
 35. Doherty, *Nazi Wireless Propaganda*, 11.
 36. *R v Purdy* (1946) 10 JCL 182. The death sentence was commuted to life imprisonment and he eventually served nine years. See Doherty, 25–6.
 37. Weale, *Renegades*, 137.
 38. Doherty, 17; (PRO) HO45/ 25794. No MI5 file on Powell has been found. Those who benefit from such a defence are expected to have the steadfastness of the reasonable person. The threats (*pace* Goddard’s inclusion of threats of imprisonment at [1947] 1 K.B. 1005) remain those of death or serious injury.