Letter from Westminster

Intimate body searches—for stilettos, explosive devices, et al

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Labour MPs put up a good fight last week in the Commons committee considering the Police and Criminal Evidence Bill in a bid to persuade the government to take into account the British Medical Association's objections to the proposals for intimate body searches. But it proved to no avail. The most Mr Patrick Mayhew, Home Office Minister of State, would concede was that the third party present at such a search should be of the same sex as the person being searched. "It is in the interests of all concerned that a third party should be there, because it serves as a protection to the suspect and the police officer or doctor carrying out the search," he said. "I propose putting into the Bill at a later stage a provision that if anyone else is present it should be a person of the same sex."

The letter written by Dr John Havard, secretary of the BMA, and Mr J L Bowron, secretary general of the Law Society, to *The Times*, which was published on the day (17 February, p 11) of the committee hearing, was extensively referred to. Dr Havard's argument was that medical practitioners were prevented on ethical grounds from carrying out operations on patients without their informed consent. "Since under the Bill a suspect may be denied legal advice for up to 48 hours, it is difficult to see how any consent given by a suspect to intimate searches and the taking of samples could be informed," he wrote. "The British Medical Association may have to advise its members, including police surgeons, not to carry out intimate searches of a person's body or the taking of body samples without the suspect's informed consent if the Bill is not amended."

Well, the Bill has not been amended. By 11 votes to nine the committee rejected Labour's amendment, which would have ensured that a search of this nature could only be carried out if the person to be searched had first been permitted to contact a solicitor for the purpose of consulting him privately.

The Bill says that such searches may be made only if an officer of at least the rank of superintendent authorises it, and then it must be for "a serious arrestable offence," a term that has a precise legal meaning. Mr Arthur Davidson, Labour's legal affairs spokesman, said that the Bill provided for searches to be carried out by a doctor or police officer of the same sex, and that such searches might be carried out without the permission of the person to be searched. "We regard that provision as an oppressive and objectionable new statutory power," he declared. "It is a serious affront to a person's liberty, and if the medical profession were to agree to carry out such involuntary searches without permission they would do so in breach of their medical ethics." He claimed that a search by a police officer would be a serious affront to the liberty of the subject, and the Law Society recommended that no intimate search should be carried out without the detained person's consent.

Mr Mayhew agreed that this kind of search should be carried

out by a doctor whenever practicable. That should be the rule. He had no criticism to make of the BMA, but indicated that its position appeared to have shifted because it had been consulted by the government when drawing up the clause, which had been prepared to reflect what the government had understood was the result of the consultations. The minister then made clear that if the suspect did not give consent to be examined by a doctor he would be liable to be examined by somebody else. "Whether or not there is consent is essentially a matter between a doctor and his patient, between doctor and suspect," he said. "He is in a better position to determine that matter than anybody else."

Entrenched attitudes and interests

I suspect that that view is not the role that doctors see themselves occupying, and that in a way Mr Mayhew was trying to pass the buck. The debate was one of entrenched attitudes and interests. Mr Alex Lyon, Labour MP for York, claimed that the Bill went further than anything laid down in law, and he saw it as an "open sesame" for the police to search people's bodies whenever they wanted. "That is going far too far," he said. "This is a bad clause. The government should go away and rewrite it."

Mr Ian Mikardo, Labour MP for Bethnal Green and Bow, suggested that Dr Havard's letter backed up the need for select committees to be able to summon expert witnesses before starting work on a Bill. It would have been useful to have Dr Havard and Mr Bowron along. It was clear that if the government did not write in a provision for informed consent the BMA would instruct its members, including police surgeons—who were not police employees but "independent medics"—not to make searches. He warned that unless the government changed its mind searches would be carried out by police officers of body orifices that were considered to be some of the most delicate and vulnerable parts of the human body and that ought not to be "pushed around by inexperienced hands."

Mr Eldon Griffiths, Conservative MP for Bury St Edmunds, however, took the view that things that could be hidden in body orifices were potentially so dangerous—they ranged from stilettos to explosive devices and drugs—that these powers of search were essential. Sir Nicholas Bonsor, Conservative MP for Nantwich, thought that nothing would be gained by adding the words suggested about consent and claimed that it would only mean that the accused person would be able to hold the doctor or policeman responsible on the grounds that consent had been given under duress. All kinds of spurious lines of defence would be opened up that would not be in the interests of the medical practitioner concerned or of medical practice as a whole, he claimed.

Mr Davidson said that he was grateful for the concession Mr Mayhew had made about the third person present being of the same sex, but the doubts and objections Labour had to the proposals for intimate searches had not been lifted. Clearly, it now depends on the impact of any advice the BMA may give to doctors.