

Prime Minister

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5/9.

MR. WICKS

The Wright Case

When I saw the Prime Minister on 2 September, we discussed very briefly the developments in the Wright case that had occurred while we were both on holiday last month. I should perhaps report on the position more fully.

2. The case is still at the interlocutory stage. The two sides have been exchanging interrogatories and responses. A number of interrogatories put to the plaintiff (the British Government) by the defendants (the Australian publishers and Mr Wright) related to the various allegations contained in Mr Wright's book. We declined to respond to those interrogatories on the grounds that they were vexatious and irrelevant: our claim is based not on the truth or falsity of the allegations but on the principle of the duty of confidentiality which we assert is owed by Mr Wright and which should restrain him from publication whether the allegations are true or false.

3. The exchange of interrogatories and responses led to a further series of interlocutory proceedings in the New South Wales Court from 12 to 14 August. During the course of those proceedings it was argued, and indeed accepted by both sides, that the British Government's claim on the pleadings could be said to put in issue not merely the principle of duty of confidentiality but also the truth or falsity of the contents of the book. As I say, the issue on which we are standing is the duty of confidentiality, and the issue of truth or falsity of the contents is a side-issue. Indeed, we do not want to have to discuss in court the truth or falsity of the contents of the

book, since that would be to create the very mischief which we are seeking to avoid. It was decided on the advice of our Australian Counsel that, in order to take the issue of truth or falsity out of the proceedings, we should agree for the purposes of those proceedings only and not otherwise that the court should treat the allegations made in the book as being true. Mr Justice Powell's judgment stated that the effect of this admission was to reduce the issues outstanding for determination to the nature and extent of Mr Wright's obligation of confidentiality; the question whether the injunction ought to be refused either on the grounds that it was in the Australian public interest that the manuscript should be published or on the grounds that the Crown did not have "clean hands"; and the question whether it was open to the British Government as plaintiff to raise the issue of "public interest immunity" and (if so) whether it was contrary to the Australian public interest that the information contained in Mr Wright's manuscript be published.

4. As we saw, the reporting of this in the British press left some confusion in the minds of members of the public, and indeed Members of Parliament here, about the Government's position in relation to the allegations in Mr Wright's book and in particular about the allegation that Sir Roger Hollis was a KGB agent. The Law Officers therefore put out a statement here which made it clear that the admission made by the British Government in court had been made for the limited procedural purposes of the action; that this did not imply, and the Government did not admit, the truth of any of the allegations contained in Mr Wright's book relating to the activities or personnel of the Security Service; and in particular that the Government's position in relation to Sir Roger Hollis remained as stated by the Prime Minister in her statement in the House of Commons on 26 March 1981.

5. There the matter rests for the time being. The case is due to come to court for a final hearing on Monday 17 November, when I shall have to go to Sydney to testify to the affidavits which I have sworn.

6. In the meantime, the defendant's solicitor has put out feelers about the possibility of a settlement. He claims to be doing this because it is obvious to him that the British Government will lose the case, and that the British Government will be discredited in the process. He says that he has no desire to bring discredit on the British Government, and that his client (Mr Wright) is a patriotic man and could be persuaded to delete particular passages from the book if he were satisfied that their publication was new and damaging to the national interest. In other words, it is suggested that we should do the same sort of deal with Mr Wright as we did with Nigel West on his history of MI5. The crucial difference is, of course, that Mr West was not and Mr Wright was a member of the Security Service.

7. Our leading Australian Counsel, Mr Theo Simos QC, is coming to London later this month, and will be seeing the Attorney General on Tuesday 23 September. The Attorney General will thus be able to discuss with Mr Simos the future conduct of the the case, including the proposal for a settlement, which the Attorney General is being advised not to pursue: whatever the defendants' solicitor's stated reasons for the proposal, it may in reality reflect a lack of confidence about the outcome of the case.

8. Counsel has given an opinion that it would be of particular material value to our case if the Australian Government were able to intervene to support the argument that it is not in the Australian public interest for Mr Wright's book to be published. Indeed, I think that Counsel may go as far as to say that, given the way that proceedings in the court have developed and the way

that the Judge's mind appears to be working, we are likely to lose unless we have that support. I saw my Australian counterpart when he was here in London at the beginning of August, and left with him a letter formally asking that the Australian Government should consider intervening in support. We have reason to believe that the Australian security and intelligence agencies are keen that the Government should intervene. We know that the matter is under active consideration in Canberra. But I have had no reply and I have sent a polite "chaser" to my counterpart, via the British High Commissioner in Canberra.

9. All this has, of course, been done in close consultation with the Attorney General's Department, the Treasury Solicitor, the Foreign and Commonwealth Office and the Security Service itself.

10. When the House of Commons resumes next month, there may well be parliamentary interest in the case, and questions to the Prime Minister (or the Attorney General) about the reasons for the admission in the New South Wales Court last month that the allegations in Mr Wright's book should be treated as true.

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We are considering how best that information could be made public, in such a way as not to call in question the admission made for procedural purposes in the New South Wales Court. One possibility is an Answer to a question to the Prime Minister. Another possibility, which has some attractions, is that Lady Hollis (who of course was upset by the press reports last month) should write to the Prime Minister for reassurance; the Prime Minister could then reply, standing by her statement on 26 March 1981 and adding the new

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reasons since then which reinforce the conclusions reported in that statement. One of the things we shall discuss with Australian Counsel when he is here is whether this can be done without prejudice to the conduct of the case in Australia. I shall report further if this is a proposal which is thought right to pursue.

MS

for

ROBERT ARMSTRONG

5 September 1986



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MR WICKS

The Wright Case

attached
Further to paragraph 8 of Sir Robert Armstrong's minute of 5 September, the Prime Minister may wish to be aware that news has just reached us that the Australian Government are prepared to intervene in the case by putting in an affidavit or affidavits testifying that it is against the Australian public interest for Mr Wright's book to be published. They would be ready to discuss the wording with us, probably in about three weeks' time. Sir Robert's Australian counterpart takes the view that the New South Wales Court would be unlikely to go against a clear statement by the Australian Government that publication would be contrary to the public interest.

MS

M C STARK

5 September 1986