

Ref. A086/3034

PRIME MINISTER

Prime Minister

Agree to have an

urgent meeting about

this?

Yes no

N.L.W

24.10

The Peter Wright Case

Flg A Ministers decided, at your meeting on 6 October, not to refer the allegations of criminal acts and of improper acts in Wright's manuscript to any outside authorities, but possibly to reconsider the question if the judgment in the trial at first instance, which begins in Sydney on 17 November, went against us. Views expressed since 6 October by our Australian Leading Counsel, Mr Theo Simos QC, as well as the great importance of the case to the future of the intelligence services, have led me to reopen this aspect.

Flg B 2. As noted in my minute of 3 October, Counsel advised that we had a better than 50 per cent chance of ultimately winning the case, assuming that Wright's allegations of criminal acts were referred to the Director of Public Prosecutions (DPP) and his allegations of impropriety to some other outside authority. The decisions which Ministers took on 6 October were conveyed to Mr Simos, and he then repeated his advice that we had a distinctly greater chance of winning the case if we announced before the trial a decision to refer Wright's allegations to outside bodies. This is his view even though the trial is now only some three weeks away (however, such an announcement under pressure during the trial would not help our case significantly). An announcement after the trial at first instance would probably not help us to win the case in a higher court, since the proceedings in the Appeal Court and the Supreme Court will be confined to points of law, and new evidence is not likely to be admitted.

3. The arguments relating to the legal proceedings for referring the allegations to outside authorities were set out in my minute of 3 October. The essence is that this move would enable us to counter the argument of the other side that the book reveals many cases of criminal, illegal or improper actions by the Security Service, that the Crown therefore has "unclean hands" and that the public interest in publishing these matters should override and limit Wright's duty of confidentiality to the Crown, on which our whole case rests.

4. Wright's allegations of criminal actions could be referred to the DPP, who is clearly the "proper authority" for purposes of such a reference. The advantages and disadvantages of this were set out in paragraph 8 of my earlier minute. There is a risk that, when interviewed by the police, Wright might make additional and possibly more damaging allegations. The police would decide how far to investigate these allegations and the ones in the manuscript. The DPP, who would treat the investigation like any other, would reach decisions in the light of the staleness and the seriousness or otherwise of the offences alleged. There is a risk that announcement of an investigation by the DPP would be followed by the spreading of rumours and suggestions in the press and Parliament; and Ministers, who would already be inhibited from countering these by the existence of legal proceedings in Australia and in this country, could feel further inhibited by a DPP investigation being in train. That said, Wright's allegations are likely to come out in due course, by "seepage" or through publication of the book if we fail to stop it, and there might well be a need then to refer the allegations to the DPP. If the allegations are to be referred to the DPP, it would be better to make the move now in order significantly to improve our chances of winning the case in Australia.

5. As regards Wright's allegations of civil torts and of improper actions, Ministers were not disposed to refer them to Lord Griffiths, who is the Chairman of the Security Commission, since he might feel obliged to take a strict legal view, without sufficient regard for other considerations such as national security.

6. An alternative procedure might be for the Home Secretary to appoint one or two distinguished persons outside Government - perhaps Privy Counsellors - to look into, and to report privately to him on, the allegations of civil torts and impropriety and what if anything should be done about them. Since the report to the Home Secretary would not be published, the appointed persons could look at the allegations on the basis of the Security Service's records. However, if those persons were seen as close to Government - such as retired Permanent Secretaries - the exercise might be decried as a whitewash; while in reality the Government would not have control over the contents of a report even by such people and would come under strong pressure to publish it after all. There would also be a risk that, once referral to such people had been announced, the Government would be inhibited from defending itself against rumours and suggestions in the media and in Parliament. Against these points, the obvious sensitivity of the subject would enable Ministers to argue that the procedure was the best way of getting an independent view without doing violence to our national security; and Ministers could refuse to publish the report, but indicate readiness to publish the findings and recommendations in so far as that would be consistent with national security (there are precedents for dealing with Security Commission reports in this position).

7. If Ministers preferred to avoid an immediate reference of Wright's non-criminal allegations, even for a private report, there is another possible course which would help our case in Australia to some extent, but less. This would be to refer

Wright's criminal allegations to the DPP before the trial but to take no immediate action on the other allegations. We would take the position in court that Ministers considered that it would be wrong, before the DPP reached decisions, to decide the question of what action if any might be appropriate regarding the allegations of impropriety; until the DPP had reported the scope of the matters remaining for consideration would not be known.

8. Ministers may prefer to decide the question of referral of Wright's allegations later, when the extent can be seen of public interest in the case and of the renewed interest which we must expect in the question of oversight of the intelligence services. If Ministers did prefer this course, I should have to stand, in cross-examination at next month's trial, on the broad principle that it is for Ministers to decide what if anything to do about Wright's allegations and that they prefer to reach decisions after the Australian proceedings are over. One weakness of this argument is that it offends against the principle that the pursuit of criminal offences has priority over the pursuit of civil proceedings. I attach a draft speaking note, which shows the best line that officials can devise for this purpose. I would preface it by saying that I was authorised by Ministers to speak in these terms. But I must confess that my position in court would be more comfortable if there had been a reference, at least of the allegations of criminal acts, to the DPP.

CONCLUSION

9. Ministers are invited to decide between three courses of action:

- a. referral before the trial of the criminal allegations to the DPP and the other allegations to one or two eminent persons outside Government;

b. referral before the trial of the criminal allegations to the DPP, but with no action on the other allegations before the trial;

c. no referral of any allegations before the trial, so that I would speak in line with the attached draft.

10. If Ministers choose course a., it will be necessary to select one or two eminent persons, who would need to be sounded out before the non-criminal allegations were referred to them. I can quickly suggest some names.

11. Although I know that the pressures on Ministers' time are particularly great at present, I think that a further short meeting on this matter would be useful.

12. I am sending copies of this minute to the Foreign and Commonwealth Secretary, the Home Secretary and the Attorney General.

RTA

ROBERT ARMSTRONG

24 October 1986

SUGGESTED LINE TO BE TAKEN BY SIR ROBERT ARMSTRONG IN RESPONSE TO
QUESTIONS ABOUT ACTION ON STATEMENTS IN WRIGHT'S MANUSCRIPT

Sir Robert Armstrong's main argument should be that Ministers can be relied on to do what is necessary about the criminal and other allegations. To give weight to this the points below will need to be brought out. Sir Robert would preface these remarks by saying that he was authorised by Ministers to speak in these terms.

2. The United Kingdom is a Parliamentary democracy with universal suffrage in which respect for the rule of law is fundamental. Government are directly accountable to Parliament. One of the first responsibilities of Government is to maintain the security of the nation. The Ministers of Her Majesty's Government who have responsibility for the Security Service are the Prime Minister and the Home Secretary. The statements in Wright's manuscript which allege illegal or improper actions have been disclosed to the holders of those offices. It is for them to decide what should be done about these statements. They have full power to take any action which they judge necessary. They have the matter under consideration. Their view is that decisions should await the conclusion of these proceedings, in which the Government and the person who has made the statements are adversaries. After the conclusion of these proceedings, Ministers will be in a position to take into account the judgment of this court and any other matters arising out of the proceedings which seem to them to be relevant. In those circumstances, any measures that require to be taken can be more comprehensive and satisfactory. Ministers see no significant disadvantage in this approach, in view of the years which have passed since the events alleged in the manuscript.

3. The Security Service is answerable to the Home Secretary and the Prime Minister for the discharge of the functions laid upon it by the Directive and for the performance of its duties. While

Is this
fairly accurate?
I thought he was for the point in RA?
RTA
will
answer
at meeting
N. C. U

the Home Secretary and the Prime Minister are not involved in the day-to-day direction of the activities of the Service, they may at any time institute such inquiries as seem to them to be required by particular circumstances. Whenever allegations which might appear to have some substance have been made in the past, Ministers of successive Governments (and different political parties) have taken them seriously and ensured that appropriate action was taken. Examples are:

[Examples from the period covered by Wright's book are being prepared by the Security Service.]

4. The Home Secretary and the Prime Minister are fully committed to the exercise of their responsibilities for the Service in this matter. They could in no way have been responsible for the matters alleged in the manuscript, which deals with a period ending in 1976. They have been alerted to these statements and will take such decisions as they see fit in the overall public interest. Their decisions will not be affected by whether or not Wright's book is published.

5. The court should accept that any measures which responsible Ministers consider should be taken will be taken. The statements allege misconduct by servants of the Crown and the nature of the allegations is such that they can only be dealt with by authorities within the United Kingdom. There are no grounds on which the Australian court could conclude that responsible Ministers will fail to take any action which may be required in the public interest.



COMPTON



10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG

THE PETER WRIGHT CASE

As you know, the Prime Minister has agreed to hold a meeting tomorrow with the Foreign Secretary, Home Secretary and Attorney General to discuss your minute of 24 October about the Wright case.

In preparation for this meeting you should know that she has commented as follows against the sentence in the second paragraph of the suggested line attached to your minute which reads: 'they have full power to take any action which they judge necessary'.

'Is this quite accurate; I thought this was for the police or Attorney General?'

You will no doubt be able to answer the Prime Minister's point at tomorrow's meeting.

N. L. W.

N L WICKS

27 October 1986