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Prime Minutes<sup>2</sup>

to note

CONFIDENTIAL

B.07577

N.L.W.

MR WICKS

Dad news no

13-11

THE PETER WRIGHT CASE

This minute describes the problem about discovery of documents which has arisen in the case in Australia.

2. We have already provided or are providing certain documents to the court, for instance the security instructions issued to members of the Security Service when Wright was a member of it, showing that unauthorised disclosure was explicitly a disciplinary offence as well as being liable to prosecution under the Official Secrets Act.

3. In our view, we are not required by the rulings made hitherto by the judge to discover further documents. But Wright's lawyers are pressing for much more. The two areas which give us especial difficulty are -

(a) damage assessments, briefs, memoranda, submissions relating to the publication, or consideration of preventing publication, of a number of earlier books, articles and television programmes concerning the Security Service and related subjects;

(b) all briefs, memoranda, submissions and files relating to the Prime Minister's statement in the House of Commons on 26 March 1981 about the case of Sir Roger Hollis.

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4. We are resisting these demands, standing firmly on the position that they are irrelevant to the case, which concerns Wright's duty of confidentiality to the Crown. In particular, our technical admission of the allegations in Wright's manuscript means that the question whether Hollis was a spy, like all matters in the book, is not part of the subject of the proceedings; and that papers leading up to the Prime Minister's statement in 1981 are therefore irrelevant. Among the other points we can add is that even Wright in his book does not claim that a case against Hollis can be proven, so that discovery of the innumerable files which might be considered relevant would anyway not provide conclusive evidence.

5. On (a) above, we have considered whether to suggest a narrower definition of the documents to be discovered. But this is not a way out: whatever description we proposed, there would always be at least one document falling within it which included material we could not reveal. We are considering with our Counsel whether, as a fallback if our arguments about irrelevance appear to be failing to sway the judge, Counsel could make a statement in lieu of discovery which would show when we knew about the various earlier books, etc. and state that we did not authorise publication of any of them. This approach could turn out to present more disadvantages than advantages.

6. On the category of documents at (b) above, there are a few uncontroversial documents among those that lead up to the Prime Minister's statement in 1981 on the Hollis case. But one may not provide only selected documents within a requirement set by the court, and our files contain many that cannot possibly be disclosed.

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7. It is not open to us to claim public interest immunity in the courts in Australia. We have considered the possibility of asking the Australian Government to make such a claim on our behalf. Sir Robert Armstrong will no doubt consider this idea further in the light of his discussions in the coming days with the Australian Law Officers and Cabinet Secretary. But it seems most unlikely that they would agree unless we first showed them a comprehensive set of documents on the Hollis case. This we cannot do, the more so since the judge might also have a right to see any documents which we showed to the Australian Government.

8. The next hearing about discovery takes place in Sydney in the early hours of 14 November our time. If the Judge rules against us and requires discovery of documents which we cannot disclose, we shall appeal against his ruling to the New South Wales Court of Appeal. Our appeal would probably be heard on Monday 17 November. If we appealed further to the High Court of Australia, that could not be heard until 24 November. There is thus a possibility that the start of the main proceedings, presently scheduled for 17 November, will be postponed.

9. If we were to face a ruling in the High Court in Australia that we must discover documents which are sensitive the question whether we should continue with the case in Australia would have to be considered. An urgent submission would be made to Ministers.

10. On another aspect of the case, the Australian Government have not yet committed themselves finally to intervening in the case on our behalf. All the signs are that they intend to do so, once the issue of discovery is settled.

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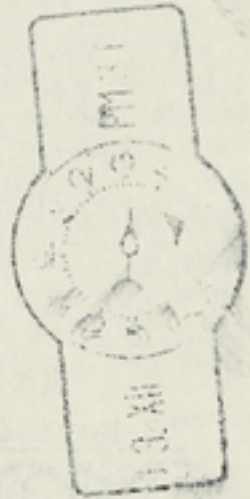
11. I am sending copies of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary and the Home Secretary, and to Michael Saunders in the Law Officers' Department.

*C L G Mallaby*

C L G Mallaby

13 November 1986

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Prime Minister 2  
to note

B.07579

N.L.W.  
14.11

MR WICKS

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THE PETER WRIGHT CASE

Since my minute of yesterday, the situation in the case has developed further.

2. The Court in Sydney ruled today that we should discover virtually all the documents described in my earlier minute, i.e. documents referring to a number of earlier books and television programmes concerning the Security Service and related subjects and documents leading up to the Prime Minister's statement in the House in 1981 about the case of Sir Roger Hollis.

3. The Australian Government have just provided us with an affidavit sworn by their Cabinet Secretary about Australia's national interest in connection with the case. It will be served to the Court first thing on Monday. (Until it is actually served, we are saying in public only that we are optimistic that the Australian Government will intervene.)

4. Early on Monday we shall also seek leave to appeal the Court's ruling about discovery.

5. The initial feeling of our Counsel in Sydney is that the Australian Government's intervention will considerably strengthen our chances of success in appealing against the ruling at first instance on discovery.

6. I am sending copies of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary and the Home Secretary, and to Michael Saunders in the Law Officers' Department.

C L G Mallaby

14 November 1986

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