

Prime Minutes 5

I think an early
meeting on all this
would be valuable.

N. L. W
18.11

SECRET

B.07583

MR WICKS

THE PETER WRIGHT CASE

The proceedings in the Court in Sydney began today. They resume tomorrow (11 p.m. our time today). Sir Robert Armstrong may be called as a witness at any time. The affidavit of the Australian Government has now been read in court; their Cabinet Secretary will appear as a witness on our behalf.

2. The difficult question of discovery of documents, described in my minutes of 13 and 14 November, now stands as follows. We immediately sought leave to appeal against the judge's decision on 14 November that we should discover a wide range of documents relating to (a) our decisions whether to seek to prevent publication of earlier books etc. concerning the Security Service and related subjects, and (b) the Prime Minister's statement in the House of Commons on 26 March 1981 about the case of Sir Roger Hollis. Our appeal on this will be heard on 19 November. Wright's lawyers have now given indications of willingness to drop the demand for category (b). But it is not certain that they will do so. As regards category (a), the number of earlier books and television programmes has been reduced to five.

3. Officials have again considered whether we could discover the material in question. Their views are given in the attached telegram sent this evening to Sir Robert Armstrong in Sydney. Officials have also considered again whether, if the ultimate ruling on discovery is against us, we could persuade the Australian Government to seek public interest immunity in relation to documents which we are ordered to discover. That too is covered in the telegram.

SECRET

4. Important points raised in recent media coverage of the Wright case and related matters are covered in Annex A. Material on these and other aspects of the Wright case has been provided for the Prime Minister's use in question time tomorrow.

Prospects

5. We may soon face a conflict over how best to uphold the principle of confidentiality. It is obviously desirable to take all available steps to win the case in order to strengthen the enforcement of the duty of confidentiality. But if we ultimately face an order to disclose sensitive documents, compliance would breach the very principle which the proceedings were undertaken to maintain.

6. In deciding then whether to abandon the case Ministers would need to consider the immediate and longer term implications. Those implications would be similar to those if the case were eventually lost through an adverse judgement, but they could be more difficult to handle because they would come much sooner - perhaps as soon as next week - and perhaps more dramatically.

7. The main implications would be:

- (a) the Wright book would be free to appear, to considerable publicity, in Australia and other countries, and probably fairly quickly in this country, since the United Kingdom Courts might be loath to restrain publication once copies started to appear in any numbers here, as would happen as people brought them back from overseas;
- (b) it would seem difficult to continue to defend the injunctions against the Observer and the Guardian, or any other newspapers or magazines, from revelation of Wright's allegations;

(c) other ex-members or members of the Security Service or other agencies might well be moved to publish their own accounts, not least to reply to allegations by Wright which they considered wrong or unfair;

(d) the critics of Government policy on preventing publication of documents about security matters would argue that the policy had been shown to be ineffective because it could be by-passed, e.g. by leaving the jurisdiction.

8. In that situation Ministers would need to consider, as a first step, a robust statement about security and confidentiality. It would seem necessary to re-affirm strongly the vital importance to the Defence of the Realm of protecting the confidentiality of security information and operations. The Government would re-affirm its clear responsibility in the public interest to continue to take all available steps to protect our security in this regard. The Wright proceedings could be described as only one example of the duty of Ministers to uphold the principle of confidentiality. Each case or incident was different, and each would be dealt with on its merits. Nobody contemplating the publication of any unauthorised material should be misled into thinking that they would be free from action in the Courts here or abroad if they were to attempt that.

9. Beyond that immediate statement Ministers would need to consider how the duty of confidentiality could be enforced in the new and more difficult circumstances, whether by injunction, the Official Secrets Act, disciplinary proceedings, new instructions to present and former servants of the Crown or other means. There would also be a need to consider how to deal with renewed demands for some kind of Parliamentary or other oversight of the intelligence services. Officials would submit advice.

SECRET

10. I am sending copies of this minute and the attachments 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

17 November 1986

SECRET

TELEGRAM TO SYDNEY

DESKBY 17 2200Z

FOR SIR ROBERT ARMSTRONG FROM MALLABY

THE PETER WRIGHT CASE: DISCOVERY AND PUBLIC INTEREST IMMUNITY

1 Following Marsh's report of proceedings on 17 November, officials have looked again at the questions of discovery and public interest immunity (PII).

DISCOVERY

2 On the categories of documents which the other side are demanding, our views are as follows:

(i) Nigel West's "A Matter of Trust" 1982. To disclose either West's original manuscript or correspondence on excisions from it between the Treasury Solicitors and West's solicitors would be to reveal precisely the passages in the original to which the Crown took exception because they disclosed sensitive material. That would render nugatory our success in obtaining excisions of those passages, which was confirmed in the Consent Order of the Court. The same difficulty arises with regard to meetings between the Treasury Solicitors and West's solicitors. We also should not forget that disclosure of some of these documents might be a breach of confidence owed to a third party, namely West's solicitors.

As to notes of internal meetings (item F) they concerned the formation of policy and the security assessment of passages in the book and therefore cannot be discovered. A claim for public interest immunity before an English Court in respect of all of these documents would probably succeed. The Nursaw affidavit can be discovered and has been sent today to your team in Sydney.

(ii) Chapman Pincher "Their Trade is Treachery" 1981. The documents relevant to our decision not to seek to restrain publication include damage assessments and would raise problems of avowal. They cannot be discovered.

(iii) Chapman Pincher "Too Secret too Long" 1984. The D Notice Committee unsuccessfully sought a copy from the publishers in advance. We obtained one by other means four days before serialisation began.

Nursaw is the A.G.'s formal legal Secretary. His affidavit explained why public interest immunity was being claimed.

The documents on this would raise problems of avowal among other things. Because of the short notice between private receipt of a copy and publication, the Government look no decision on whether to restrain publication. It would therefore be ^{fine} ~~try~~ to tell the court that there are no documents relating to such a decision.

(v) Massiter television interview 1985. See my telegram number 352. On 20 February 1985 the Home Office heard that the IBA had banned the programme. The producers sent the Cabinet Office a copy on 22 February. It was then shown privately to MPs and others, and edited versions appeared in the press on 1 March. On 5 March the Attorney General announced that there would be no prosecution under the OSA. On 6 March the IBA lifted the transmission ban. On 8 March the programme was transmitted. At first we did not consider action to restrain transmission because the IBA already had it banned: later we did not consider it because the substance had appeared in the written media. There are thus no documents relating to a decision not to seek an injunction to restrain broadcast of the programme. As regards ^{(the} possible ^{of Massiter, our} prosecution ^(in the courts) documents would be covered by a different head of public interest immunity, namely non-disclosure of deliberations concerning criminal proceedings.

(vi) Peter Wright Interview on Granada TV 1984. See my telegram number 352. There are internal documents, showing how we heard in advance that the programme was planned and setting out the internal considerations that it raised. They cannot be disclosed.

(vii) Papers relating to the Prime Minister's statement on Hollis in 1981. We understand ^{that} the other side may drop this demand. The Cabinet Office file contains references to different subjects of which you are aware. It also refers to Lord Trend's review, showing that the words of his conclusions were not quite as definite as those which he agreed the Prime Minister should use on 26 March. There is an internal

paper about the contents of "Their Trade is Treachery" confirming many elements and adding many more. Problems of avowal abound. *They want the file*
 There are papers with advice to Ministers on very secret matters. There are drafts, amendments and supplementaries for the statement on 26 March. There is an account of a meeting between the Prime Minister and the Leader of the Opposition on Privy Council terms. These papers cannot be discovered.

- 3 We conclude that we cannot meet even the reduced demands for discovery concerning earlier publications. Some of the arguments used above, such as those concerning criminal aspects of the Massister case, may possibly interest ^{the court}, quite apart from the arguments of public security and interest, not to speak of relevance, which we would put first. We must persist in following ^{a special copy} the order to discover.

PUBLIC INTEREST IMMUNITY

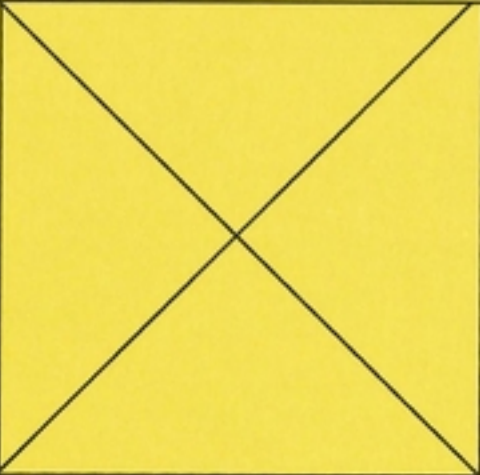
- 4 We agree that this idea must be considered in case we are ultimately ordered to discover. The Australian Government would have to act for us. The arguments would presumably be, first, those of common interests through liaison and, second, that the Australians if faced with similar circumstances would resist discovery of their own documents. Officials here are not hopeful. They believe that ^(would be expected) we would have to show the Australian Government all the documents held by HMG in the categories where discovery orders had been handed down. The same documents might well have to be shown to the Australian judge. It is out of the question for us to show many of the papers described above to the Australian Government, let alone the Court.
- 5 We suggest that it might help to clarify the prospects of persuading the Australians to act ^{on PIT} if you could try ^{discuss} the question ^{with} one of their law officers or their Cabinet Secretary. You could describe orally the papers that would be involved, drawing on this telegram, and see whether they seem likely to entertain the idea of making a claim on our behalf without seeing all our documents in all categories ordered for discovery.

AM



DEPARTMENT/SERIES <i>PREM 19</i> PIECE/ITEM <i>1952</i> (one piece/item number)	Date and sign
Extract details: <u><i>Folio 5</i></u> <i>Annex A to Minute dated 17 November 1986</i>	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>12/9/2023</i> <i>Wayland</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



DEPARTMENT/SERIES <i>Pres 19</i> PIECE/ITEM <i>1952</i> (one piece/item number)	Date and sign
Extract details: <i>Telegram dated 17th of November 1986</i>	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>AC</i> <i>22/05/23</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	