

SUBJECT
cc master



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cc Sir PC.

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

MR. MALLABY

CABINET OFFICE

THE PETER WRIGHT CASE

The Prime Minister held a further meeting this morning to discuss the Wright case. The Foreign and Commonwealth Secretary, the Home Secretary, the Attorney General, and yourself were present. The Lord Privy Seal and the Chief Whip were present for part of the meeting.

It was agreed that the Chief Whip should discuss with the Speaker the most appropriate way of clarifying the distinction between what the Prime Minister meant by sub-judice in relation to the Wright case and the Speaker's statement about the sub-judice rule as it related to the proceedings of the House. The Prime Minister's Chief Press Secretary should brief the Lobby on these lines as well. At this point the Lord Privy Seal and the Chief Whip left the meeting.

You then reported on the latest position on the case. Our leave to appeal on the discovery order had been refused without reasons being given. It was possible, though unlikely, that the defence solicitors might be willing to drop their demands for discovery in order not to delay the main case. We were considering claiming public interest immunity for the relevant documents. Such a claim would probably, but not certainly, have to be made by the Australian government. This was now being discussed with them. It might prove necessary to disclose certain information about the relevant papers to the Australian government and to the judges. On the main case, the burden of the defence's case seemed to be that HMG were inconsistent in permitting the publication of other books on the Security Service while trying to prevent publication of Wright's book. The answer, of course, to this argument was that Wright was under a particular duty of confidentiality as a member of the Security Service.

The following were the main points raised in discussion:

- i) If the public interest immunity claim was unsuccessful or the defence did not drop their request for discovery, it seemed likely that HMG would have to abandon the case; discovery of the relevant documents would breach the very

principle of confidentiality which the case was intended to protect. Abandonment of the case, though highly regrettable, could be defended in these circumstances. It would be important to ensure that we did not let down the Australian government who were supporting us on the main case. They should recognise the impossibility of our position if documents had to be discovered.

ii) It was unclear which information would need to be disclosed to the Australian government and judges, in support of a claim for public interest immunity. It might be possible to confine the information to a summary of papers or to an acceptable selection. There were over-whelming difficulties in disclosing the relevant files to anyone outside the British Government's service.

iii) If Wright's book was published, the Government would need to make an early firm statement on the lines that many of its so-called revelations were rehashes of old stories; there were now new rules governing the operations of the intelligence services which were working satisfactorily; and that the Government were considering further how to ensure the maintenance of the essential duty of confidentiality laid on public servants, especially those involved in sensitive work. The objective should be to mobilise the wide-standing public support for the central principle of confidentiality of the operations of the Security Service, which was essential to the security of the realm.

iv) More generally, it was felt that there was a need for some strategic machinery to assist Ministers to take an over-view of the management of episodes like the Peter Wright case and to create a firm foundation on which to base general Government policy in this area, for example on disclosure of information about the activities of the intelligence services. For example, it was necessary to examine the possibility of a new form of contract between employees and their agencies which could be enforced to prevent unauthorised disclosure. The Official Secrets Act might be made more effective by drawing it more narrowly. It might be possible to make more information available about the operations of the Security Service so as to bring home to the public the importance of maintaining confidentiality about its activities.

Summing up the discussion the Prime Minister said that our aim should be to secure public interest immunity in respect of the relevant documents, so long as this did not involve the disclosure outside the British Government of sensitive documents and information. We should try to secure the immunity by offering summaries or general descriptions of the documents concerned. The Group would need to meet urgently if public interest immunity could not be secured and the discovery order went ahead. But it looked as if there were very good reasons for dropping the main action in these circumstances. The Cabinet Secretary should arrange for the establishment of some Cabinet machinery which would provide an over-view for the management of episodes like the Peter Wright case and for the establishment of the foundation for a future

policy referred to in the discussion. This machinery might comprise a committee at official level which supported a committee of Ministers under her Chairmanship, consisting of the Home Secretary, the Foreign Secretary, the Attorney General, the Secretary of State for Defence, and the Lord President in view of his previous responsibility for security matters as Home Secretary.

I am sending a copy of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary, the Home Secretary, the Attorney General, Sir Percy Cradock and Mr. Woolley (Cabinet Office).

N. L. W.

N. L. WICKS

19 November 1986

LINE TO TAKE WITH LOBBY ON MI5 ETC

1. The Prime Minister never challenged the Speaker's interpretation of the rules of the Commons; indeed she accepted his ruling.
2. Our understanding is that the Speaker is undoubtedly correct in interpreting Erskine May to say that proceedings in a court outside this country are not sub judice for the purposes of Commons procedure - ie that questions on the Australian case are not prohibited in the British Parliament.
3. But that was not the Prime Minister's point: her point is that a case is being heard in the Australian courts to which the British Government is a party and that it would be "most unwise, indeed rash of me as Prime Minister of the UK to comment on a case to which the Attorney General is party in Australia" (Col 437, November 18). In other words, the case is sub judice in Australia and that while there is nothing under the Speaker's ruling to prevent British MPs asking questions upon the case, British Ministers, as representatives of the Government which is a party to the Australian case, are undoubtedly inhibited from commenting upon it.
4. As the Prime Minister said (Col 437, November 18): "I would have thought that most people would understand that".
5. In any case the Prime Minister, like all her predecessors, "adheres to the normal practice of not commenting on security matters". (Col 437, November 18).

6. In short, there is nothing to prevent British MPs from asking questions but there are reasons, both in Australia (court proceedings) and in the UK (long standing practice on security issues) why the Prime Minister is, and will be, restricted in her Answers.

PRIME MINISTER

cc Mr. Wicks

SUB JUDICE

The Chief Whip saw the Speaker this evening. The Speaker understands the difference between something being sub judice, and something being sub judice under the rules of the House. He accepts that what you said was perfectly correct and a reasonable position for the Government to take. He knows that you were not challenging his ruling.

EDP

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(C.D. POWELL)

18 November 1986

DCABNX

Mr. Speaker: Order. The Prime Minister is about to make a statement.

Mr. Kinnoek: On a point of order, Mr. Speaker. It is clear that inadvertently—and I am certain that was the case—the Prime Minister referred to the matter being heard in Australia as a matter of sub judice that affects the proceedings of this House. The acknowledgement has been made that that is not the case. However, the Prime Minister's answers to questions influenced the direction of questions. I think that the Prime Minister would now want to avail herself of an early opportunity to say that the matter is not sub judice in this House so that the subject need not be raised in the same form again, thereby allowing questions to be raised.

The Lord Privy Seal and Leader of the House of Commons (Mr. John Biffen) rose—[*Interruption.*]

Mr. Speaker: Order. I have called the Leader of the House.

Mr. Biffen: Further to that point of order, Mr. Speaker. In making your judgment on this matter would you kindly take account of the fact that the United Kingdom Government are a party to the case in Australia and indicate how that relates to the sub judice rule?

Mr. Speaker: I prepare myself very carefully for question time every day and for every eventuality, and I took this matter into account today.

Mr. Williams: Further to that point of order, Mr. Speaker. I am grateful to you for a very helpful and clear ruling. Will you now indicate whether, in your experience, it is not the case, when an hon. Member has found that he or she has misled the House—even if inadvertently—that Member would normally make an apology to the House?

The Prime Minister: Further to that point of order, Mr. Speaker. I made it clear in my answer that the Attorney-General has accordingly applied in the Supreme Court of New South Wales for an injunction to prevent the publication of the Wright book. You have ruled that the matter is not sub judice in this House, but I must submit that it would be most unwise—[*Interruption.*]

Mr. Speaker: Order. This is an extremely important matter. [HON. MEMBERS: "Hear, hear."]

The Prime Minister: It would be most unwise, indeed, rash of me as Prime Minister of the United Kingdom to comment on a case to which the Attorney-General is party in Australia. I would have thought that most people would understand that. If not, perhaps they would understand the comments of a previous Labour Prime Minister who said:

"I shall adhere to the normal practice of not commenting on security matters."—[*Official Report*, 29 June 1978, Vol. 952, c. 631.]

Mr. Kinnoek: Further to that point of order, Mr. Speaker. It is easily seen that the Prime Minister's response does not satisfy the House. That places you in an invidious position, especially since your judgment was so unequivocal and clear. Can I suggest that a period of further reflection is given to the matter because the alternative is obviously the continued distraction of the House on the matter when we have other serious business to transact? It will be necessary to give further attention to this, taking account of the matter of national security

raised by the Prime Minister, in order to discover whether that is the valid question under consideration or whether it is a more politically partisan question.

Mr. Speaker: Order. I think that the Leader of the Opposition has made a wise judgment on this matter. The two matters are not connected, but they are relevant.

Mr. Beith: Further to that point of order, Mr. Speaker. The position remains that a challenge has been issued to the Chair. The Prime Minister gave her interpretation and her assumption that the matter was sub judice. You gave your ruling and the Leader of the House then challenged that ruling in polite terms.

Mr. Biffen indicated dissent.

Mr. Beith: The Leader of the House effectively asked you to review your ruling. I see no reason why you should be asked to alter your ruling. Therefore, we cannot move forward until the Government make it clear that they accept your authority.

Sir John Biggs-Davison: Further to that point of order, Mr. Speaker. You have ruled that the sub judice rule does not apply and we accept that absolutely — [Interruption.] But for the future, Her Majesty's Government of the United Kingdom are party to a case in a court before one of Her Majesty's Australian judges. How do Her Majesty's Government or any party to such a case obtain justice if the sub judice rule does not apply?

Mr. Speaker: Order. We have a full day ahead of us and I hope that I can clear up the matter. I said to the House that under our rules the matter before a court in another country was not sub judice. Whether it is a matter of national security is a completely different issue and a perfectly legitimate one to call in aid.

Mr. Andrew Faulds rose—

Mr. Skinner rose—

Mr. Gow: Further to that point of order, Mr. Speaker. Would it not be for the convenience of the House if you could explain how it is that a matter before one of Her Majesty's judges in Australia in a case to which Her Majesty's Government are party is not sub judice under the rules of the House?

Several Hon. Members rose

Mr. Speaker: Order. I shall take all the points of order together.

Mr. Faulds: On a point of order

Mr. Speaker: I have not called the hon. Gentleman yet.

Mr. Faulds: I was on my feet first.

Mr. Speaker: Order. I decide the order in which I take these questions.

Mr. Campbell-Savours: Further to that point of order, Mr. Speaker. I put it to you that the people of Australia are having reported to them our proceedings, and questions on the Order Paper, in detail. It is most important that the position is clarified because today in Australia there are calls for the resignation of Sir Robert Armstrong in so far as yesterday he had to admit in a court of law in Australia that he deliberately misled the court by submitting in affidavits some days ago inaccurate information. I and my hon. Friends have pressed for a

statement on this matter from both the Attorney-General and the Prime Minister, but none has been made. I again ask that a statement be forthcoming. The people of Australia—

Mr. Speaker: Order. Hon. Members cannot ask for statements through me.

Mr. Hickmet: Further to that point of order, Mr. Speaker. I speak for Glanford and Scunthorpe, not Australia. In considering the representations made by my hon. Friend the Member for Eastbourne (Mr. Gow), will you also consider that, notwithstanding the fact that this case is in front of one of Her Majesty's judges in Australia, it might finish up before the Privy Council?

Mr. Faulds: I am most grateful to you, Sir. Further to that point of order, Mr. Speaker. It is clear that you made a ruling that the matters in Australia were not sub judice as far as this House is concerned. We are not asking the Prime Minister to make a statement on those matters. We are asking her to withdraw the incorrect assertion that she made that these matters were sub judice, and she should be required by you, Sir, to do that.

Mr. Skinner: Further to that point of order, Mr. Speaker. As I see it, the issue is relatively simple. In the past 10 minutes there have been a series of incidents in which you and one Member of Parliament, who happens to be the Prime Minister, have been in dispute. Normally, when a Member of Parliament challenges the authority of the Chair, he has either to withdraw or leave. Why is it that a Back Bench Member of Parliament can be called upon to withdraw when he challenges the authority of the Chair, but the Prime Minister is allowed to get off the hook? This is a classic example of where you need to show your authority, Mr. Speaker, and if you fail to do so, do not expect any of us to have to bow to the Chair.

Mr. Speaker: Order. It is very unlike the hon. Gentleman to threaten me. The Prime Minister has not challenged what I have said.

Mr. Campbell-Savours: She has.

Mr. Speaker: Order. We have a heavy day in front of us. I think that we should have some quiet reflection on this matter.

Mr. Campbell-Savours: Name her.

Mr. Speaker: Order. We can return to this matter on another day.

The Prime Minister: Further to that point of order, Mr. Speaker. I accept your ruling on sub judice as far as the House is concerned. Therefore, any questions can be

asked. I know of no rule, which means that I am circumscribed in the way in which I answer questions and as you said, I can invoke security, and have done so.

Several Hon. Members rose—

Mr. Speaker: Order. I shall take one more question, Mr. Lofthouse.

Mr. Lofthouse: Further to that point of order, Mr. Speaker. As one of the questioners whom the Prime Minister misled by her answer—[*Interruption.*]

Mr. Speaker: Order. This seems to be an attempt to carry on Question Time.

Mr. Lofthouse: As one of the questioners whom the Prime Minister misled—[HON. MEMBERS: "She did not mislead you."]
—I should gladly accept an apology—or is the Prime Minister above this House and above you, Mr. Speaker?

Mr. Speaker: Order. The Prime Minister has made her position very clear. I shall take one further point of order.

Mr. Gow: Further to that point of order, Mr. Speaker. I wonder whether I could revert to, and add to a point of order that I put to you previously? It would be of assistance to the House if you could please explain to us why it is that proceedings in a case which is before one of Her Majesty's judges in Australia, a case to which Her Majesty's Government are a party, are not sub judice for the purposes of this House? May I make a further submission to you, Mr. Speaker.

You have said quite rightly that this is a very important matter. We all know the basic reason for the existence of the sub judice rule. It exists so that no influence of an improper or outside kind shall be brought to bear upon the courts.—[HON. MEMBERS: "We know that."] That is the whole purpose of the sub judice rule. Even if it is correct, as you have said, Mr. Speaker, that, in accordance with past precedent, a case of this kind—

Mr. Winnick: Get to the point!

Mr. Gow: — does not fall within the sub judice rule, would you be prepared to consider whether, in this particular case, the sub judice rule ought to apply?

Mr. Speaker: Order. I carefully calculated that a question of this kind might arise today. Therefore I was prepared with the answer that I gave. Australia is an independent country. I shall of course reflect carefully, as I always do in exchanges of this kind, upon whether the rulings that I have given are right. If I find that I was wrong, I shall gladly and certainly return to the House and make a further statement.