

SECRET  
PERSONAL  
DEDIP  
TO FLASH CABINET OFFICE  
TELNO 007  
OF 241210Z NOVEMBER 86  
INFO FLASH 10 DOWNING STREET (FOR WICKS)  
INFO FLASH FCO (FOR PS/FOREIGN AND COMMONWEALTH SECRETARY)  
INFO FLASH HOME OFFICE (FOR PS/HOME SECRETARY)  
INFO FLASH LOD (FOR PS/ATTORNEY GENERAL)  
INFO FLASH SNUFFBOX (FOR DUFF)

FLASH

FOLLOWING FOR MALLABY, CABINET OFFICE, FROM ARMSTRONG

THE WRIGHT CASE

1. WE HAD A QUIET BUT REASONABLY GOOD DAY IN COURT TODAY. TURNBULL LOOKED TIRED AND PERFORMED BELOW FORM. HE STARTED BY TRYING TO DEMONSTRATE PINCHER'S AUTHORITATIVENESS AS A SOURCE ON SECURITY AND INTELLIGENCE MATTERS, MAINLY BY QUOTING PINCHER'S OWN CLAIMS (IN HIS BOOK INSIDE STORY) THAT HE HAD BEEN USED BY THE SECURITY SERVICE AS A TRUSTED CONDUIT PIPE IN 1956 AND 1961. THE JUDGE MADE CLEAR HIS VIEW THAT THE FACT THAT THE SECURITY SERVICE MADE USE OF PINCHER'S CONTACTS IN 1956 AND 1961 DID NOT PROVE THAT HE WAS USED TO GET THE HOLLIS STORY OUT INTO THE OPEN IN 1961. THE JUDGE'S INTERVENTION PREVENTED ME FROM DRAWING ATTENTION TO PINCHER'S RECENT DENIAL, IN A PUBLIC STATEMENT, THAT HE WAS SO USED. I HOPE TO HAVE ANOTHER OPPORTUNITY TO GET THAT OUT.
2. TURNBULL THEN TURNED TO OUR FAILURE TO TRY TO PREVENT THE PUBLICATION OF TOO SECRET TOO LONG. I SAID THAT WE EXPECTED THAT THIS WOULD BE LARGELY A REPETITION OF THE THEME OF THEIR TRADE IS TREACHERY, THAT WE ASSUMED THAT PINCHER WOULD TRY TO GET HOLD OF ADDITIONAL CONFIDENTIAL INFORMATION, THAT WE DOUBTED WHETHER HE WOULD GET ANYTHING NEW THAT WOULD SIGNIFICANTLY ADD TO THE DAMAGE CAUSED BY THE EARLIER BOOK, AND DID NOT THEREFORE SEEK TO RESTRAIN PUBLICATION SEMI COLON AND THAT THE ASSESSMENT OF THE BOOK AFTER ITS PUBLICATION PROVED THAT OUR EXPECTATION WAS CORRECT.
3. THERE WERE SOME DESULTORY QUESTIONS ABOUT THE EXTENT TO WHICH BLUNT COOPERATED WITH THE SECURITY SERVICE'S INQUIRIES AFTER HIS CONFESSION, DESIGNED NO DOUBT TO SUGGEST THAT THE PRIME MINISTER'S STATEMENTS IN NOVEMBER 1979 WERE MISLEADING. THESE QUESTIONS, AND A SUBSEQUENT SET OF QUESTIONS ABOUT MY THIRD AFFIDAVIT, WERE NOT TOO DIFFICULT TO ANSWER, I HOPE CONVINCINGLY. AT THE VERY END OF THE AFTERNOON TURNBULL RAISED THE SUBJECT OF GORDIEVSKY. I MADE IT CLEAR THAT I WAS NOT PREPARED TO ANSWER ANY QUESTIONS ON THAT SUBJECT IN OPEN COURT.

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5. ~~LATER THIS EVENING TURNBULL TELEPHONED SIMOS TO SUGGEST THAT A MEETING SHOULD BE HELD THIS EVENING BETWEEN TURNBULL, SIMOS AND ME TO WORK OUT A SOLUTION. PART OF THE SOLUTION WOULD BE THAT MRS THATCHER WOULD RECOGNISE THE PROBLEM WITH, QUOTE OLD SPOOKS WANTING TO TELL THEIR STORIES UNQUOTE AND THAT SHE WOULD REFER THE WHOLE MATTER TO A COMMITTEE OF INQUIRY WITH A VIEW TO ENDING UP WITH THE AMERICAN SYSTEM (TO WHICH TURNBULL HAS SEVERAL TIMES REFERRED - SEE PARAGRAPH 13 BELOW). IF MRS THATCHER WOULD DO THIS, QUOTE SHE WOULD BE A CHAMPION OF FREEDOM OF INFORMATION AND FREEDOM OF SPEECH AND THE AMERICANS COULD NOT COMPLAIN. ANY ORDERS FOR COSTS COULD BE KEPT CONFIDENTIAL. TURNBULL WOULD TO HIS BEST TO SAY THAT SIR ROBERT ARMSTRONG DID A SPLENDID JOB (VERY GOOD OF HIM, I MUST SAY) AS AGAINST THE POSSIBILITY THAT THE JUDGE MIGHT SAY THAT HE WAS NOT AN ACCEPTABLE WITNESS. KERRY PACKER COULD MEDIATE IF THAT WERE NECESSARY UNQUOTE.~~

6. I HAVE ASKED SIMOS TO SEND A RETURN MESSAGE TO THE EFFECT THAT I HAVE NO INSTRUCTIONS TO DISCUSS A SETTLEMENT AND I MUST CONSULT LONDON.

7. THE LAST WORDS SPOKEN BY THE JUDGE THIS AFTERNOON WERE TIMEO DANAOS ET DONA FERENTES. WE CERTAINLY NEED TO VIEW TURNBULL'S PROPOSITIONS IN THAT LIGHT. BUT I FEEL BOUND TO REPORT THEM TO YOU, AND TO SEEK INSTRUCTIONS AS TO WHETHER AND IF SO HOW I SHOULD RESPOND.

8. FIRST, AS TO THE FUTURE. TURNBULL INDICATED THIS AFTERNOON THAT HE EXPECTED TO FINISH HIS CROSS-EXAMINATION OF ME IN OPEN COURT TOMORROW (TUESDAY) BY MID-MORNING. HE WOULD THEN HAVE QUESTIONS TO PUT TO ME IN CLOSED SESSION SEMI COLON HE EXPECTED TO BE FINISHED WITH THAT (AND THEREFORE ME) BY WEDNESDAY LUNCHTIME. WE KNOW THAT HE WANTS FOR HIS OWN REASONS TO FINISH WITH ME IN THAT SORT OF TIMESCALE BECAUSE HE WANTS TO CALL CODD BEFORE CODD DEPARTS FOR THE COMMONWEALTH SENIOR OFFICIALS MEETING IN DACCA AT THE BEGINNING OF NEXT WEEK. WHO KNOWS? I COULD YET BE HOME BY CHRISTMAS.

9. I HAVE BEEN DISCUSSING WITH JOHN BAILEY TURNBULL'S POSSIBLE MOTIVES IN REVIVING THE IDEA OF A SETTLEMENT. WE THINK:

- TURNBULL PROBABLY THINKS THAT WE SHALL WIN OUR PII CLAIM, ON APPEAL IF NOT WITH POWELL J, THOUGH HE HAS MADE IT CLEAR THAT HE WILL OPPOSE IT.

- HE MAY BE LESS CONFIDENT THAT HE WAS ABOUT WINNING THE MAIN CASE. THE JUDGE'S INTERVENTIONS TODAY AND AT THE END OF LAST WEEK SHOULD HAVE MADE HIM MORE DOUBTFUL ABOUT SUCCEEDING EVEN AT FIRST INSTANCE. THIS WOULD DIMINISH HIS PERSONAL ENTHUSIASM FOR CONTINUING SEMI COLON HE IS CLEARLY VERY INTERESTED IN PROMOTING HIS OWN IMAGE. AND HIS CLIENTS MIGHT WELL NOT WANT TO SPEND MONEY ON AN APPEAL IF THEY LOST AT FIRST INSTANCE.

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- HE MAY BE GENUINELY CONCERNED ABOUT WRIGHT'S STATE OF HEALTH, AND THINKS THAT THE BEST SERVICE HE CAN DO HIS CLIENT IS TO BRING THE CASE TO A CONCLUSION WHICH ENABLES A BOOK OF SOME KIND TO BE PUBLISHED SOONER RATHER THAN LATER.

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10. ON THE OTHER HAND HE MAY SIMPLY BE TRYING TO TEST WHETHER POLITICAL AND MEDIA PRESSURES IN LONDON, OF WHICH HE IS CLEARLY WELL AWARE AND WHICH WE HAVE NO DOUBT ARE AT LEAST IN PART STIMULATED AND ORCHESTRATED FROM HERE, ARE WEAKENING THE GOVERNMENT'S RESOLVE TO GO THROUGH WITH THE CASE. HE MAY THINK THIS A GOOD MOMENT TO PUT THAT TO THE TEST, SINCE MEDIA INTEREST IN LONDON WILL PROBABLY DECREASE WHEN MY CROSS-EXAMINATION IS FINISHED AND IN THAT EVENT THE PRESSURES MAY EASE OFF.

11. I DO NOT KNOW WHETHER THERE IS ANY BASIS ON WHICH A SETTLEMENT COULD CONCEIVABLY BE MUTUALLY ACCEPTABLE. WE HAVE TAKEN OUR STAND ON THE ABSOLUTE DUTY OF CONFIDENTIALITY OWED BY FORMER MEMBERS OF THE SECURITY SERVICE TO THE CROWN SEMI COLON AND IT IS PRETTY WELL ESTABLISHED HERE NOW THAT OUR PRIMARY CASE FOR SEEKING TO RESTRAIN PUBLICATION OF WRIGHT'S BOOK IS BECAUSE IT IS BY AN INSIDER. AS THE CASE HAS PROCEEDED, THAT HAS INCREASINGLY COME TO BE SEEN AS AN ABSOLUTE BAR TO PUBLICATION. FOR INSTANCE, PARAGRAPH 3 OF MY THRID AFFIDAVIT DATED 11 AUGUST 1986 STATED THAT INFORMATION ABOUT THE WORK OF THE SECURITY SERVICE SHOULD BE DISCLOSED ONLY BY WAY OF OFFICIAL PUBLICATION, AND THAT INDIVIDUALS WHO DO NOT HAVE ACCESS TO ALL RELEVANT MATERIAL AND WHO ARE NOT AWARE OF ALL THE RELEVANT CONSIDERATIONS AFFECTING DECISIONS ON DISCLOSURE, ARE IN NO POSITION TO JUDGE WHAT MAY BE DISCLOSED WITHOUT RISK AND SHOULD NOT BE PERMITTED TO PUBLISH INFORMATION ABOUT SUCH MATTERS. ON THE OTHER HAND OUR FORMAL CLAIM IN THIS CASE IS FOR AN ORDER RESTRAINING THE DEFENDANTS WITHOUT THE PRIOR PERMISSION OF THE PLAINTIFF FROM DISCLOSING OR PUBLISHING. IN OTHER WORDS THE CLAIM SEEMS TO CONTEMPLATE THE POSSIBILITY OF PUBLICATION WITH PRIOR PERMISSION SEMI COLON AND THERE ARE PRECEDENTS FOR PUBLICATION WITH PERMISSION, EG MASTERMAN'S DOUBLE CROSS SYSTEM, THOUGH IN THAT CASE PERMISSION WAS MOST RELUCTANTLY GIVEN.

12. WHAT THE DEFENCE WOULD NEED OUT OF ANY SETTLEMENT WOULD BE EARLY PUBLICATION OF A BOOK. THE PUBLISHERS NEED IT FOR FINANCIAL REASONS, WRIGHT NEEDS IT FOR PERSONAL AND ALSO NO DOUBT FINANCIAL REASONS. INCIDENTALLY TURNBULL SEEMED TO DISCLOSE TODAY THAT WRIGHT HAD BEEN PAID FOR HIS CONTRIBUTIONS TO THEIR TRADE IS TREACHERY, APPARENTLY OUT OF THE ROYALTIES ON THE BOOK.

13. IT IS THEREFORE ARCUABLE THAT IF WE COULD SETTLE FOR PUBLICATION OF A BOOK WITH PERMISSION, WE COULD CLAIM A VICTORY, IN THAT WE HAD ESTABLISHED A PRINCIPLE THAT SUCH BOOKS COULD BE PUBLISHED ONLY WITH PRIOR PERMISSION, AND THEY COULD CLAIM A VICTORY, IN THAT WE HAD BEEN FORCED BY THESE PROCEEDINGS TO ABANDON THE PRINCIPLE THAT NO INSIDER SHOULD EVER PUBLISH A BOOK AND TO ALLOW WRIGHT TO PUBLISH.

14. THAT TURNBULL MAY BE THINKING IN THESE TERMS IS SUGGESTED BY THE FACT THAT HE HAS REFERRED IN COURT MORE THAN ONCE, AND

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AGAIN THIS EVENING, TO THE PRACTICE IN THE CIA OF ALLOWING FORMER MEMBERS TO PUBLISH WITH CIA AGREEMENT. HE HAS SAID THAT THE CIA HAS A MANUSCRIPT REVIEW COMMITTEE WHICH HAS SCRUTINISED AND CLEARED FOR PUBLICATION (SUBJECT TO AMENDMENTS WHERE NECESSARY) 400 SUCH BOOKS. HE HAS SUGGESTED THAT THE CIA, AS OUR MOST IMPORTANT LIAISON SERVICE, COULD HARDLY OBJECT TO OUR FOLLOWING THE PRACTICE THEY FOLLOW.

15. A SETTLEMENT ON THE BASIS DESCRIBED WOULD CONSTITUTE A SIGNIFICANT CHANGE OF POLICY. I UNDERSTAND THAT MINISTERS HAVE TAKEN THE VIEW THAT POLICY IN THIS AREA WILL IN ANY CASE NEED TO BE REVIEWED AS A RESULT OF THIS CASE. THEY MIGHT WELL BE RELUCTANT, HOWEVER, TO APPEAR TO BE PUSHED INTO A CHANGE OF POLICY IN ORDER TO GET A SETTLEMENT IN THIS CASE.

16. IF WE HAVE ANY INTEREST AT ALL IN THE POSSIBILITY OF A SETTLEMENT, THE QUESTION ARISES ON WHAT TERMS WOULD WE BE PREPARED TO ALLOW WRIGHT TO PUBLISH. WE SHOULD NEED TO TEST THE REALITY AND EXTENT OF THE DEFENCE'S WILLINGNESS TO SETTLE BY PITCHING OUR TERMS HIGH. I DO NOT FAVOUR TURNBULL'S IDEA OF A COMMISSION OF INQUIRY SEMI COLON OR OF KERRY PACKER AS A MEDIATOR. I SUGGEST THAT, IF WE WERE PREPARED TO SETTLE AT ALL, THE TERMS WOULD HAVE TO BE:

- AGREEMENT NOT TO PUBLISH WITHOUT PRIOR PERMISSION,
- AGREEMENT TO MAKE WHATEVER DELETIONS OR CHANGES WE REQUIRED IN THE INTEREST OF NATIONAL SECURITY,
- US TO BE THE JUDGES OF WHAT WAS LIKELY OR LIABLE TO DAMAGE NATIONAL SECURITY,
- IN PARTICULAR, NO PUBLICATION OF MATTER NOT ALREADY WITHIN THE PUBLIC DOMAIN, OR OF MATTER PUT INTO THE PUBLIC DOMAIN BY AN OUTSIDER CONFIRMATION OF WHICH IN PUBLICATION BY AN INSIDER WOULD IN OUR VIEW BE LIABLE TO DAMAGE NATIONAL SECURITY.

17. WE SHOULD ALSO HAVE TO REQUIRE CHANGES IN THE ACCOUNT OF THE ALLEGATIONS AGAINST HOLLIS AND OF THE INVESTIGATIONS THEREOF, TO DELETE MATTER NOT ALREADY IN THE PUBLIC DOMAIN, AND TO DELETE OR AMEND STATEMENTS WHICH WERE UNTRUE, INACCURATE OR UNJUSTIFIABLY TENDATIOUS.

18. THESE WOULD BE STIFF TERMS, AND I SHOULD NOT EXPECT TURNBULL TO ACCEPT THEM. HE COULD SIMPLY DISMISS THEM AS TOTALLY UNREASONABLE. IN THAT CASE WE SHOULD NOT HAVE LOST MUCH - AND WE MIGHT EVEN GAIN A POINT OR TWO - BY HAVING TRIED. HE MIGHT ON THE OTHER HAND SEEK TO NEGOTIATE ON THE TERMS THEMSELVES, IN WHICH CASE WE SHOULD NEED SOME BOTTOM LINES. OR HE MIGHT SEEK TO TAKE US INTO A DETAILED NEGOTIATION ON THE TEXT ON THE BASIS OF OUR TERMS, WITHOUT PREJUDICE TO HIS RIGHT TO REJECT THEM AT THE END OF THE DAY. WE SHOULD CERTAINLY NOT GET DRAWN INTO THAT.

19. THERE IS NOT MUCH ENTHUSIASM HERE FOR STARTING DOWN THIS COURSE. WE DO NOT TRUST OUR GREEK. IF WE GET BY ON OUR PII CLAIM, WE HAVE A REASONABLE HOPE OF WINNING THE MAIN CASE, AN APPEAL IF NOT AT FIRST INSTANCE. WE THINK THAT THE DEFENCE ARE FINDING THE GOING HARDER THAN THEY EXPECTED. IT IS FEARED THAT, IF WRIGHT WAS ALLOWED TO PUBLISH WITH PRIOR PERMISSION, THERE WOULD BE A QUEUE OF OTHER WOULD-BE AUTHORS, NOT ONLY FROM THE SECURITY SERVICE, APPLYING FOR PERMISSION. IT IS CLEARLY EASIER TO STAND ON PRINCIPLE OF ABSOLUTELY NO PUBLICATION

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BY INSIDERS THAN ON A SYSTEM OF PUBLICATION ONLY WITH PRIOR PERMISSION. THOSE WHO HAD TO VET MANUSCRIPTS AND NEGOTIATE CHANGES WOULD HAVE A DIFFICULT AND UNREWARDING TASK, IN WHICH THEY COULD FIND THEMSELVES HAVING ALWAYS TO DISCUSS QUESTIONS OF CONTENT AND INCREASINGLY HAVING TO DEAL FROM WEAKNESS. CONSIDERABLE ADDITIONAL RESOURCES WOULD BE REQUIRED FOR VETTING AND CLEARING MANUSCRIPTS.

20. ON THE OTHER HAND - TO BE DEVIL'S ADVOCATE FOR A MOMENT - EVEN IF WE WERE TO WIN THIS CASE WE SHOULD NOT NECESSARILY STOP THE PUBLICATION OF WRIGHT'S BOOK. THERE ARE ALREADY REPORTS THAT THE MANUSCRIPT IS IN THE HANDS OF AN AMERICAN PUBLISHER, AND IT IS POSSIBLE TO IMAGINE OTHER JURISDICTIONS IN WHICH IT WOULD BE EVEN MORE DIFFICULT TO SEEK TO RESTRAIN PUBLICATION. THE POSSIBILITIES OF PUBLISHING OUTSIDE THE JURISDICTION HAVE BEEN HIGHLIGHTED BY THIS CASE. IT IS ARGUABLE THAT THE INTERESTS OF NATIONAL SECURITY WOULD BE BETTER SERVED BY A SETTLEMENT WHICH GAVE US A REASONABLE PROSPECT OF BEING ABLE TO CONTROL THE CONTENTS OF THIS AND OTHER SIMILAR PUBLICATIONS THAN BY A VICTORY IN THE CASE WHICH LED TO A SUCCESSION OF BOOKS PUBLISHED OUT OF OUR CONTROL IN OTHER COUNTRIES. WE SHOULD HAVE TO EXPLAIN WHY WE HAD SETTLED NOW AND NOT EARLIER. THE ANSWER WOULD HAVE TO BE TO THE EFFECT THAT OUR DISPLAY OF DETERMINATION IN PURSUING THE CASE HAD PRODUCED A SETTLEMENT ON MUCH BETTER TERMS THAN WOULD HAVE BEEN AVAILABLE HAD WE NOT SHOWN THAT DETERMINATION AND SETTLED EARLIER.

21. IF THE ANSWER TO TURNBULL IS TO BE THAT WE ARE NOT INTERESTED IN THE POSSIBILITY OF SETTLING ON ANY TERMS, THAT CAN BE GIVEN AT ANY TIME. IF THE ANSWER IS TO BE THAT WE SHOULD BE PREPARED TO CONSIDER TERMS FOR A POSSIBLE SETTLEMENT, WITHOUT PREJUDICE TO OUR RIGHT TO CONTINUE TO FIGHT THE CASE IF NO SETTLEMENT IS POSSIBLE, I SHOULD PREFER NOT TO GIVE ANY INDICATION OF THIS UNTIL MY CROSS-EXAMINATION IS FINISHED. I DO NOT WANT TURNBULL TO THINK THAT HE HAS SCARED ME OFF.

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