

PRIME MINISTER

PETER WRIGHT CASE: PUBLIC INTEREST IMMUNITY (PII)

Mr. Mallaby's minute below covers the actual documents which we showed to Mr. Justice Powell. (These were considerably fewer than the large bundle which you were shown the weekend before last.)

His minute gives preliminary views on which of these documents we might be able to show the defence counsel if Mr. Justice Powell's finding on PII went against us. On the top of each set of the documents is a description of the documents, together with a preliminary view on whether they could be discovered to the defence. (The documents are collated in backwards order: the last one in each list is the first in each set.)

There is no need for you to go through these documents in detail tonight. The Judge will, no doubt, agree that PII or legal privilege applies at least to some. We do not know yet which, if any, he will order to be discovered. But you may like to read Mr. Mallaby's minute, together with the summary analysis on the top of each set. Urgent decisions are likely to be needed tomorrow.

N.L.W.

N L WICKS

1 December 1986

SLHACO

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B.07607

HOME SECRETARY

Peter Wright Case: Public Interest Immunity (PII)

This minute seeks to respond to the need expressed by Ministers at your meeting this morning to have further comments on the documents shown to the judge in Sydney, as preparation for the decisions on this matter which will be needed tomorrow.

2. The comments below are based on earlier discussion among all interested Departments and further analysis today by the Cabinet Office and the Home Office. The Security Service are reviewing the documents again this evening; their further comments will be incorporated into the advice to Ministers tomorrow on the actual ruling of the judge.

3. The comments relate to the folder of documents actually shown to the judge, which was attached to my minute to you of 28 November.

4. First, some general considerations. We shall almost certainly be expected to comply with the judge's ruling or to appeal. But we should consider whether it would suit us to try to adjust the ruling by complying in a certain form. The qualification might involve a limited number of deletions from discovered documents; or possibly the condition that the defence could inspect discovered documents and have access to them during proceedings but could not have photocopies, although this would only reduce, not eliminate, the risk of publication. We should also bear in mind the precedent which might be created in other courts overseas by our compliance with a discovery order in Australia. We should make clear, if we comply with the judge's ruling, that we do so on the assumption that the question of discovery would thereby be closed, thus forestalling further demands by Turnbull. If we decided not to comply, we could argue national security as our grounds in relation to the documents on which we have claimed PII. The comments below assume that Ministers will not be willing via discovery to reverse the long standing policy of not avowing the SIS.

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Documents on which we are claiming legal professional privilege ('Part 2' documents)

A.1 Letter from DPP to Attorney General 5.3.85. This is a brief statement that the evidence to prosecute the persons concerned in making the television film "MI5's Official Secrets" featuring Cathy Massiter, is not available and is unlikely to become available and therefore there are no grounds for advising a prosecution under the Official Secrets Act. The reasons why the evidence is not available are not given. This document could be discovered if necessary.

B.1 Letter from Sheldon to the Treasury Solicitor 3.7.84. The last sentence of paragraph 2c. displays the fact that the IBA's lawyers are a source of the Security Service. That sentence would have to be deleted before discovery. So should the signature on the letter.

B.2 Security Service file note 18.7.84. This reveals some reasons why no attempt was made to prevent Wright appearing on Granada Television. With the signature deleted, it could be discovered.

Documents on which we are claiming PII

A. Nigel West's "A Matter of Trust"

(a) West's original manuscript.

To allow publication of the full text would be inconsistent. If discovery could reliably be limited to the defence lawyers, it might be for consideration.

(b) - (d)

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B. Chapman Pincher's "Their Trade is Treachery"



C. Chapman Pincher's "Too Secret Too Long"

Sheldon's minute of 5.9.84 could be discovered with many names deleted. The reference to Sir Anthony Kershaw in paragraph 5 does not seem embarrassing.

The covering letter from Sir John Jones to Sir Robert Armstrong of 26.10.84 could be discovered with the signature deleted. But the enclosure is more sensitive; see especially paragraph 2(b). However, this is not comparable with the last two documents concerning "Their Trade is Treachery".

The minutes of 17.10.84 and 22.10.84 could be discovered with the names of people and organisations deleted. The letter from the D Notice Committee of 29.8.84 could be discovered. Sir Robert Armstrong's letter of 28.9.84 to Sir Brian Cubbon relates an approach by Mr Merlyn Rees, to report information on Pincher's publishing plans. There is nothing here of security sensitivity. But discovery would be embarrassing vis-a-vis Mr Rees and could deter former Ministers from informing Departments when they have information of security interest.

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E. Peter Wright interview on television

Sheldon's letter of 3.7.84 and the MI5 file note of 18.7.84 are also subject to a claim for legal professional privilege; comments are above.

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Minute dated
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Sir Robert Armstrong's minute of 16.7.84 to Number Ten contains plenty of meat, but nothing really sensitive, and could perhaps be discovered at a pinch.

5. I am sending copies of this minute to the Foreign and Commonwealth Secretary and the Attorney General and, with the folder of documents shown to the judge, to Mr Wicks at No. 10.

C L G Mallaby

C L G Mallaby

1 December 1986