cc PC
Sir Hup

Prime Minister

Ref. A086/ 3423

MR WICKS

Peter Wright Case: Prime Minister's Meeting on 10 December

I suggest that the Prime Minister's meeting should cover the following matters:

(a) State of play and prospects in the proceedings;

(b) machinery for handling such cases in future;

(c) future policy on unauthorised disclosure;

(d) Lord Rothschild.

--- 2. I attach a note on (a); there may be more to add tomorrow. The question how to respond to Mr Turnbull's offer on documents will, of course, have been decided today.

3. Under (b), I can speak about the machinery that I am about to propose to you that we should establish.

4. I envisage that discussion of (c) would be general at this
--- stage. I attach a note about work that officials have in hand, as a starting point.

5. There may well not be much to discuss on (d).

SECAAS

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

RA

ROBERT ARMSTRONG

9 December 1986

SECAAS

State of Play in the Proceedings

Mr Wright's cross-examination took place on 9 December. Counsel had been instructed, notably in a telegram following a meeting of Ministers on the morning of 8 December, that the cross-examination should be comprehensive and rigorous. Counsel seemed to have been convinced by our instructions that it would be possible to achieve this without running the risk either of giving Wright a platform for new or renewed allegations or being drawn into matters concerning the content of Wright's book. He did his best, against a barrage of objections by Mr Turnbull generally upheld by Mr Justice Powell. Mr Simos managed to deal satisfactorily with the key question of confidentiality. He asked whether Wright had kept any documents or material from his time in the Security Service, to which the answer was No. In questions about the genesis of Chapman Pincher's "Their Trade is Treachery", Mr Simos brought out that Lord Rothschild had been involved and that Wright and Pincher had used synonyms in their correspondence; and also that Wright had given a mistaken answer to an interrogatory about his correspondence with Pincher. Mr Simos drew attention to admissions in Wright's latest affidavit that he had received money for "Their Trade is Treachery" and an advance on his new manuscript, although the Judge blocked questioning on this. The Judge also blocked questioning on whether Wright had had any co-author in producing his new manuscript, and on Project Tasmania Associates, a party to the contract about the publication of the manuscript which must represent Wright's interests in publication but perhaps also the interests of others.

2. The cross-examination was briefer than we could have wished, because Mr Justice Powell again displayed bias against the plaintiff. But at least it did not throw up new allegations by Wright. It seems unlikely to have damaged the public impression of our position in the trial.

3. Evidence in the proceedings at first instance could be completed on 10 December. There is likely to be an adjournment on 11 and 12 December when, on present plans, the Appeal Court of New South Wales is due to hear our appeal about discovery. The final submissions in the main case by each side are to be delivered early next week. Mr Justice Powell has said that he would wish if possible to deliver judgment before Christmas. There is still a risk that an arrangement about documents could lead to Sir Robert Amrstrong being recalled for some further cross-examination, but Counsel is hopeful that this can be avoided.

Future Policy on Unauthorised Disclosure

Ministers may wish, probably when the Wright case is over, to make a public statement about policy on unauthorised disclosure. This might say:

- that the Government will continue to uphold the nation's security and that this requires among other things an effective security service and observance of the duty of confidentiality by present and former public servants;

- that present and former public servants may not disclose information deriving from their work (whether in the form of books, articles or radio or television programmes) unless specifically authorised;

- that each case will be considered on its merits, bearing in mind a number of considerations, such as the period from which the information derives and the sensitivity of the information as well, of course, as the important distinction between insider and outsider authors;

- that alterations to a manuscript or proposed programme will when appropriate be considered as an alternative to giving or denying authorisation.

2. Officials are working on a range of issues raised by the Wright case. A paper on Ministerial supervision of the security and intelligence services here and in some other courtries is in preparation. So is a paper on means of enforcing the duty of confidentiality. On the latter, the following considerations have so far emerged.

3. The Wright case is a particularly difficult one, in that Wright worked in an especially sensitive area of government, is retired and lives abroad. Nevertheless, if the Government lost the Wright case there would be repercussions for the Government's authority generally to enforce the duty

of confidentiality. The public attitude to the importance of that duty, which already may be ambivalent, could become more sceptical. The courts in this country, which have been capable of inconsistency in the matter, might become even less consistent. The public attitude to confidentiality in turn affects the sense of loyalty among present and retired public servants.

4. Nevertheless, there is no widespread problem among existing public servants about unauthorised disclosure, despite several significant breaches. The provisions concerning confidentiality in civil servants' contracts and the related disciplinary sanctions seem adequate. There may be occasions when the Official Secrets Act (OSA), despite the weakness nowadays of Section 2, can be used to buttress those provisions. Injunctions can be sought to prevent unauthorised publications.

5. As regards retired public servants, disciplinary provisions do not apply, so that the OSA and injunctions to prevent publication are the main means available. Pensions are liable to forfeiture only if the persons concerned is convicted of treason or an offence under the OSA with imprisonment exceeding ten years or is convicted of another criminal offence in connection with their employment certified by a Minister as "gravely injurious to the State" or "liable to lead to a serious loss of confidence in the public service". Even these narrow provisions are unlikely to apply to somebody outside the jurisdiction. But to alter the arrangements on pensions, even in order to introduce some arrangement for pensioners abroad which would have equivalent effect to that for pensioners at home, would require primary legislation and would probably be controversial.

6. Reform of the OSA, which in principle could strengthen the Government's ability to enforce the duty of confidentiality of former as well as present civil servants, poses formidable difficulties. The Prime Minister announced on 20 November 1979 that the Government would not proceed with a Bill to replace Section 2. A move to do so now would be controversial, especially if there was no accompanying legislation on freedom of information. There would be no prospect of enacting such a measure before the next general election.

7. Retired civil servants living abroad pose the greatest difficulty. Offences under the OSA are not extraditable. To secure an injunction against publication would be even harder in many places, including the United States and the Republic of Ireland, than in Australia. If we lost the Wright case it would become harder still in some countries. The Government might have to rely in some cases on injunctions against distribution in this country of books or programmes issued abroad; this at least should deter some publishers by casting doubt on their ability to sell in the major market for books about British matters.

8. Officials will also consider whether there is scope for treating the security and intelligence services differently from the rest of the public service, because of the special sensitivity of the information and the likelihood that public acceptance of stricter measures to enforce confidentiality may be greater in this field than others. Special contracts might be possible for many staff but the problem here too is not really among existing staff but retired people. Legislation would be needed if special arrangements were to be made about pensions.

7

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M.L. SAUNDERS
LEGAL SECRETARY

SECRET

F

Nigel Wicks Esq.
Principal Private Secretary
Prime Minister's Office
10 Downing Street
London SW1

4 December 1986

Dear Nigel,

File with NCW CP(-3)

Thank you for your letter of 27 November enclosing a draft of a letter clarifying the arrangements for dealing with cases like the Joan Miller case.

I am content with the proposed arrangements.

I think that it may be desirable that the proposed arrangements or similar arrangements should apply also to the following types of case :

(1) Unauthorised publications by present members of the agencies;

(2) radio or television broadcasts by former or present members of the agencies;

(3) publications by "outsiders" containing information attributed to "insiders";

(4) publications by "outsiders" containing material which the Government might wish to restrain on security grounds and where no breach of the duty of confidentiality is alleged.

I take it that "civil action" in line 9 of paragraph 2 of your draft includes any steps which may be taken (contact with the publishers etc.) and which may lead eventually to the institution of civil proceedings.

SECRET

SECRET

I am copying this letter to Sir Brian Cubbon, Sir Patrick Wright, Christopher Mallaby and Trevor Woolley.

Yours sincerely,
Michael Saunders.

M L SAUNDERS

SECRET

SECURITY: Secret Services PE 4

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HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

SIR BRIAN CUBBON GCB
PERMANENT UNDER-SECRETARY OF STATE

4 December 1986

Dear Nigel

FILE (PT3) WITH NCW

Thank you for sending me a copy of your letter of 27 November to Michael Saunders on the arrangements for handling unauthorised publications by former members of the security and intelligence agencies.

I am sure that we need some more systematic arrangements. I also agree that the Secretaries of State need to be involved in the handling of individual cases, from the beginning and directly.

This would be something of a shift from the highly centralised arrangements which have operated hitherto, and Robert Armstrong will have views. We need in any case to ensure that the arrangements provide for proper co-ordination and consistency of policy between the agencies on this matter. This will be something on which the Government will be expected to make a statement when the Wright proceedings in Australia finish. I am also conscious that there are wider issues, affecting the control and oversight of the agencies, which need to be addressed in the aftermath of Wednesday's debate. These too could affect the balance between the Cabinet Office and the Secretaries of State.

N L Wicks Esq CBE

I wonder whether for the present the best course would be to preserve the Ministerial Wright Group under the Home Secretary's chairmanship to oversee all issues arising on the handling of unauthorised publications, and to report to the Prime Minister. It would continue to be supported by a group of officials under Cabinet Office chairmanship. The immediate tasks of the group would be:

(a) to handle day by day the Wright case.

(b) To prepare contingency plans for the total Government position at the conclusion of the Wright proceedings (or indeed the publication of the book if that happens earlier).

(c) To work out a policy (or at any rate criteria or guidelines) for handling individual attempts at unauthorised publication; and to propose what should be said publicly about this at the end of the Wright case.

(d) To consider what further general measures should be taken to strengthen the defences against unauthorised publications - this is already in hand in the Mallaby Group, on the Prime Minister's instructions.

(e) To obtain and examine a comprehensive list from the agencies of all other unauthorised publications believed to be in the pipeline.

The draft you sent with your letter also prompts me to point out that the possible courses of action when we first hear of an unauthorised publication do not always neatly divide into civil proceedings and criminal proceedings, and there may be also other action that could be taken. And while any criminal proceedings are ultimately the sole responsibility of the

Attorney General (and/or the DPP), there is often some initial processing by the Legal Adviser to the Security Service, who would also be concerned with the other action.

It is part of the same picture that there are occasions, and perhaps these will arise more frequently in future, when there will be little or no warning of a book's publication and little or no chance of obtaining a copy of the manuscript in advance. It may still be a matter of Ministers having to consider in great haste and with insufficient facts what if anything can be done, and perhaps only the question of how inevitable publication can be handled. It is important that Ministers are not given too sanguine a view of the timescale against which more systematic arrangements for taking decisions will have to operate, or indeed of the prospects for preventing the publication of unauthorised books.

I am copying this letter to those who were sent copies of yours.

Yours ever
Brian

SECURITY Secret Service PT4