

Prem 19/2508

SECRET

CONFIDENTIAL FILING

SECURITY OF THE SECRET SERVICES
CHAPMAN PINCHER'S BOOK 'THEIR TRADE
IS TREACHERY' AND RELATED PAPERS
INCLUDING SIR ROGER HOLLIS, THE
PETER WRIGHT CASE, THE JOAN MILLER
BOOK 'ONE GIRL'S WAR'

SECURITY

PART 1: MAY 1979

PART 9: SEPT. 1987

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
24.9.87							
25.9.87							
28.9.87							
30.9.87							
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30.10.87							

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PREM 19/2508

PART 9

ENDS.

PART 9. ends:-

Berne tel. no 30.10.87.

PART 10. begins:-

NLW to PM 3.11.87.

UNCLASSIFIED

073752
MDLIAN 5832

UNCLASSIFIED
FM BERNE
TO ROUTINE FCO
TELNO 200
OF 301055Z OCTOBER 87

MY TELNO 166. SPYCATCHER.

1. COPIES ARE NOW AVAILABLE IN BERNE.

RICH

YYYY

DISTRIBUTION

41

MAIN 26

PETER WRIGHT CASE
LIMITED
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MR LITTLEFIELD PUSD
PUSD (E206)
HD/WED
HD/PUSD
HD/SPD

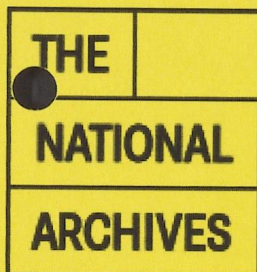
HD/NEWS
HD/INFO
PS
PS/PUS
MR BOYD
MR MCLAREN
MR DARWIN LEGAL ADVISERS
MR GILLMORE

ADDITIONAL 15

PS/SIR R ARMSTRONG CAB OFF
SIR C FIGURES CAB OFF
MR MALLABY CAB OFF
MR DINWIDDY CAB OFF
MR J BAILEY TRESY SOLICITORS
MR INGLESE LAW OFFICER DEPT
PS/HOME SECRETARY
SIR B CUBBON PUS, HOME OFF

MR CHILCOTT HOME OFF
MR NURSAW HOME OFF
MR MOWER HOME OFF
LEGAL ADVISERS(SEC. SERVCS)
DIR.GENERAL (SEC. SERVCS -)
(- BOTH VIA PUSD E203)
MR ~~WICKS NO.10~~ DOWNING ST
PRESS OFFICE NO.10 DOWNING ST

NNNN



DEPARTMENT/SERIES <i>PREM 19</i> PIECE/ITEM <i>2508</i> (one piece/item number)	Date and sign
Extract details: <i>Letter dated 30th October 1987</i>	
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PW file

Statement by No 10 for the Press Association

The Peter Wright Case in Australia

A Judge of the High Court of Australia today refused to restrain publication of "Spycatcher" pending the High Court's hearing in mid-October of the Government's application for leave to appeal. Mr Wright and his publishers have given undertakings that he will not make any disclosures in addition to those in the book and that proper accounts will be kept of profits made from the book.

2. In appeal proceedings the Government will continue its efforts to uphold the principle that Mr Wright owes a lifelong duty of confidentiality to the Crown. That principle is essential to the effectiveness of the Security Service and its vital role in defending the United Kingdom against espionage, terrorism and other threats. Publication of Mr Wright's book in certain countries does not alter the principle.

3. The Government also plans, in appeal proceedings, to seek by means of its application for an account of profits to ensure that Mr Wright and his publishers do not profit financially from his breach of confidentiality in writing "Spycatcher".

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10 DOWNING STREET

From the Principal Private Secretary

30 October 1987

Joe Armstrong

FORTHCOMING BOOK BY CHAPMAN PINCHER
OD(DIS)(87)80

This is to confirm my telephone conversation this morning in which I said that the Prime Minister was content with the course of action proposed in this paper regarding the reply to Mr Chapman Pincher concerning his forthcoming book "A Web Of Deception - The Truth About The Wright Affair".

I am sending a copy of this letter to the Private Secretaries to members of OD(DIS), the Lord Advocate and Sir Robert Armstrong.

Nigel Wicks

N L WICKS

C. L. G. Mallaby, Esq., C.M.G.
Cabinet Office

[Handwritten flourish]

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From: THE PRIVATE SECRETARY

CONFIDENTIAL



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

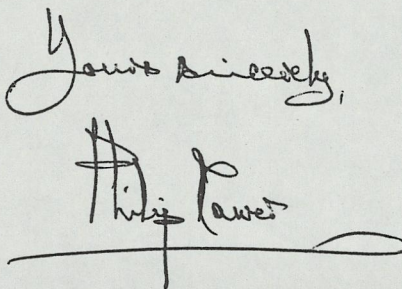
30 October 1987

Dear Sir,

OD(DIS)(87)80:
FORTHCOMING BOOK BY CHAPMAN PINCHER

I am writing to confirm my telephone call conveying the Home Secretary's agreement to the recommendations in this paper.

2. Copies of this letter go to the Private Secretaries to the Prime Minister, other members of OD(DIS), the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely,


P J C MAWER

Bruce Dinwiddy, Esq

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FILE
DAS



10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

30 October 1987

Dear Philip,

WRITTEN QUESTION BY LORD JENKINS

I have shown the Prime Minister your letter of 29 October about the suggested Answer to Lord Jenkin's Question, in which, among other things, he seeks an undertaking that the British Security Services will in no circumstances be prepared to attempt the assassination of any person in the future.

The Prime Minister is content generally with the substance of your draft reply, subject to the views of other Ministers concerned, but she thinks that the Answer should be extended to read:

"It has been the practice of successive Governments not to comment on security matters but I can say there is no question of Her Majesty's Government permitting any of its servants to commit murder."

The addition of the words underlined make it easier to answer subsequent follow-up Questions. For example, if Lord Jenkins were to ask for a denial that the British Security Services undertook burglaries, that Question could be answered simply by reference to the Answer above, rather than by giving the Answer:

"It has been the practice of successive Governments not to comment on security matters."

which might be open, in comparison with the earlier Answer about assassination, to unhelpful interpretation.

Copies of this letter go to the Private Secretaries to the Foreign and Commonwealth Secretary, the Secretaries of State for Defence, Scotland and Northern Ireland, and to Sir Robert Armstrong and Sir Antony Duff.

Yours truly
Nigel Wicks

N L WICKS

P. J. C. Mawer, Esq.
Home Office

CONFIDENTIAL

dg

PRIME MINISTER

OVERSIGHT OF THE SECURITY SERVICE: MEETING WITH SIR JAMES
CALLAGHAN ON 3 NOVEMBER

Two glosses from the Home Secretary on Sir Robert Armstrong's
minute below for your meeting with Sir James Callaghan:

(i) Mr. Hurd believes that the Home Secretary's involvement
in, and oversight of, the Security Service has moved on
considerably since Sir James Callaghan's time. The
Interception Act 1985 gives him a greater grip on all
interception matters, for example, through the procedure for
signing warrants. The Home Secretary has a regular series of
meetings with, and pays visits to, the Security Service.

(ii) The Home Secretary wonders if the tone of the brief
treats Sir James too much as an uninformed and misguided old
man, rather than a potential ally who, with guidance, could be
brought to give at least some support to the Government's view
on oversight. Maybe, but I would not personally hold out
great hope of persuading Sir James to stand up in public to
defend present arrangements.

N.L.W.

(N.L. WICKS)

30 October 1987

DCAACL

PRIME MINISTER

WRITTEN QUESTION BY LORD JENKINS

I wonder whether the answer to Lord Jenkin's Written Question referred to in the Home Office letter below might not be:

✓ "It has been the practice of successive Governments not to comment on security matters but I can say there is no question of Her Majesty's Government permitting any of its servants to commit murder."

I suggest the addition of the words underlined because they make it easier to answer subsequent follow up questions. For example if Lord Jenkins were to ask for a denial that the British Security Services undertake burglaries, that question can be answered simply by reference to the answer above rather than by giving the answer:

"It has been the practice of successive governments not to comment on security matters."

Content with the revised formulation?

N.L.W.

Y
10 OCT

N.L. Wicks

29 October 1987

From: THE PRIVATE SECRETARY
CONFIDENTIAL



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

29 October 1987

Dear Nigel,

WRITTEN QUESTION BY LORD JENKINS

Lord Jenkins has tabled the following question for answer on 3 November:

"To ask Her Majesty's Government whether they will undertake that British Security Service will in no circumstances be permitted to attempt the assassination of any person in future and will suggest to the US Government that a similar undertaking should be announced on their behalf."

The proposed reply-which has been approved by the Home Secretary and will be tabled, if the Prime Minister agrees, by Lord Caithness-is:

"There is no question of Her Majesty's Government permitting any of its servants to commit murder."

Although it is standard practice not to comment on allegations or questions concerning the security and intelligence agencies, the Home Secretary considers that it would be unwise to leave a question of this gravity unanswered. If the reply given encourages further questions about the actions of the agencies, we would propose to revert to the normal practice of offering no comment.

The reference to "murder" rather than "assassination" in the draft reply avoids the necessity of an explicit caveat for wartime actions.

I should be grateful for any comments on the drafts not later than lunchtime on Monday, 2 November.

Copies of this letter go to the Private Secretary to the Foreign Secretary, the Secretaries of State for Defence, Scotland and Northern Ireland, and to Sir Robert Armstrong and Sir Antony Duff.

Yours sincerely,

P J C MAWER

Nigel Wicks, Esq, CBE

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PRIME MINISTER

STAFF COUNSELLOR FOR THE SECURITY AND INTELLIGENCE SERVICES.

Robert Armstrong has now cleared with Sir Philip Woodfield his terms of reference which you agreed earlier this week. I now attach a draft Written Question, which will be tabled tomorrow, for answer on Monday.

On the draft question, I suggest that it should be amended to read:

To ask the Prime Minister what proposals she has for the appointment of a Staff Counsellor for the security and intelligence services; and if she will make a statement.

Content?

On the draft answer, you will see that it includes the name of the Staff Counsellor. Sir Robert Armstrong and the Home Secretary are keen for Sir Philip's name to be made public. As you know, I am doubtful. We do not publish the name of the Director General of the Security Service, even though his name usually leaks. Obviously, the Staff Counsellor's name needs to be well publicised within the Service, but publication outside is not necessary for him to carry out his functions; and publication could make it harder for him to avoid publicity for his work. Do you want to include the name of the Staff Counsellor in the Answer?

N.L.W.

N L WICKS

29 October 1987

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PM
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10 DOWNING STREET

From the Principal Private Secretary

29 October 1987

Dear Michael,

I have shown the Prime Minister the Solicitor General's minute of 28 October, covering a letter from the Clerk of the House setting out the rulings to be given in the event of attempts being made to publish or summarise "Spycatcher" in the House.

The Prime Minister is grateful to the Solicitor General for achieving this outcome.

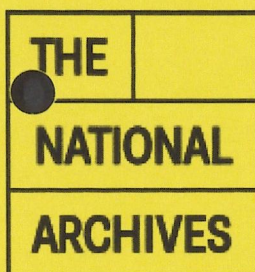
I am copying this letter to the Private Secretaries to other members of OD(DIS), to Alex Allan (H. M. Treasury), Alan Maxwell (Lord Advocate's Office) and Trevor Woolley (Cabinet Office).

N. L. Wicks

N. L. Wicks

Michael Saunders, Esq.,
Law Officers' Department.

ls



DEPARTMENT/SERIES <i>PREM 19</i> PIECE/ITEM <i>2508</i> (one piece/item number)	Date and sign
Extract details: <i>Note dated 29th October</i> <i>1987</i>	
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Ref. A087/3067

MR WICKS

Staff Counsellor for the Security and Intelligence
Services

Thank you for your minute of 28 October.

2. Sir Philip Woodfield is content with the terms of reference as now drafted and I will write to him accordingly today. He is also content that the appointment should be announced on Monday 2 November. I attach a draft Parliamentary Question and Answer for this purpose.

3. I am sending copies of this minute and of the enclosures to the Private Secretaries to the Foreign and Commonwealth Secretary and the Home Secretary.

RA

ROBERT ARMSTRONG

29 October 1987



CABINET OFFICE

70 Whitehall London SW1A 2AS

01-270 0101

From the Secretary of the Cabinet and Head of the Home Civil Service

Sir Robert Armstrong GCB CVO

Ref. A087/3066

29 October 1987

My dear Philip,

I enclose herewith your formal letter of appointment as Staff Counsellor for the security and intelligence services.

You will see that you are being asked to send the Prime Minister and to each of the Secretaries of State as appropriate not less frequently than once a year a report or reports on your functions and activities.

This has been worded in this way because there may be cases in which you report on your activities in relation to one Service in a way which should be given very restricted circulation. I envisage, that when you are preparing your report or reports for Ministers, you will be consulting with the Secretary of the Cabinet to make sure that any sensitivities of that kind are taken into account in the preparation and distribution of your reports. The good offices of the Secretary of the Cabinet will, of course, be available for this purpose.

I am also enclosing herewith a copy of the Question and Answer by means of which the Prime Minister hopes to announce your appointment on Monday 2 November.

Yours are
Robert

Sir Philip Woodfield KCB CBE
5 Erskine Hill
London
NW11

PERSONAL AND CONFIDENTIAL



per

CABINET OFFICE
70 Whitehall London SW1A 2AS
01-270 0101

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robert Armstrong GCB CVO

Ref. A087/3073

29 October 1987

Dear Philip,

Tony Duff and I (and others) have discussed with you recently the possibility of your accepting an appointment as Staff Counsellor for the security and intelligence services.

After further consultations with the heads of the agencies, and with the agreement of the Prime Minister, the Foreign and Commonwealth Secretary and the Home Secretary, I am now writing to invite you formally to accept appointment as Staff Counsellor for the security and intelligence services.

Your terms of reference will be:

- "a. to be available to be consulted by any member of the security and intelligence services who has anxieties relating to the work of his or her service;
- b. to arrange and maintain procedures which will enable you to be approached and consulted, securely and in confidence;
- c. to keep confidential the identity of individuals who approach you when they so request it, unless security considerations determine otherwise;
- d. to inquire as you see fit into all matters which are put to you, having satisfied yourself that all appropriate internal management procedures have been exhausted;
- e. to examine any internal documents (while maintaining their confidentiality) which are relevant to the questions

/raised in

Sir Philip Woodfield KCB CBE
5 Erskine Hill
London
NW11

PERSONAL AND CONFIDENTIAL

PERSONAL AND CONFIDENTIAL

raised in each case, having access when you wish to the management of each service (including its permanent head) in pursuit of your inquiries;

- f. to seek to resolve problems by discussion and advice;
- g. to make such recommendations to the head of the service concerned or the Secretary of the Cabinet as you consider appropriate;
- h. to report as appropriate to the head of each service;
- j. to send to the Prime Minister and to each of the Secretaries of State as appropriate not less frequently than once a year report or reports on your functions and activities.

You will receive an annual retainer of £5,000, plus a fee of £100 a day for time spent on the duties, plus expenses necessarily incurred in the course of discharging your duties.

You will make arrangements with the head of each service to ensure that the fact of your appointment, the nature of your role and your terms of reference, and the means by which you can be approached for consultation are made known to members of the service.

I very much hope that you will be able to let me know that you are willing to undertake this appointment on the terms and conditions proposed.

Yours ac

Robert Armstrong

In the debate which followed my announcement of the Government's acceptance of the Security Commission's recommendations in their report on the case of Michael John Bettaney, I undertook to consider a suggestion that there would be advantage in designating someone, not himself a member of the Security Service, to whom a member of the Security Service could turn if he or she had anxieties relating to the work of the Service.

The House will wish to know that Sir Philip Woodfield, KCB, CBE, has been appointed as a Staff Counsellor for the Security and Intelligence Services. He will be available to be consulted by any member of the Security and Intelligence Services who has anxieties relating to the work of his or her Service which it has not been possible to allay through the ordinary processes of management-staff relations. He will have access to all relevant documents and to any level of management in each Service. He will be able to make recommendations to the head of the Service concerned. He will also have access to the Secretary of the Cabinet if he wishes and will have the right to make recommendations to him. He will report as appropriate to the heads of the Services and will report not less frequently than once a year to me and to my Rt Hon Friends the Foreign and Commonwealth Secretary and the Home Secretary as appropriate on his activities and on the working of the system.

SECURITY: Pneler Holler Wight

pt 9



01-936 6269

ROYAL COURTS OF JUSTICE

LONDON WC2A 2LL

1. *NE/A.*

2. *Prime Minister*

PRIME MINISTER

*A reasonable outcome for
the Solicitor's persistence in
fighting this with the Clerk.*

PUBLICATION OF EXTRACTS FROM "SPYCATCHER" IN HANSARD

*N.L.W.
28.10.*

I **enclose** a response from the Clerk of the House to my latest letter, in which he sets out suggested rulings to be given in the event of attempts being made to publish or summarise "Spycatcher" in the House.

The suggested rulings are not entirely clear, but they do represent a significant improvement and my interpretation of them is that the following will be ruled out of order:-

- (1) quotations from the book
- (2) summaries of the book's contents
- (3) attribution of information to Wright.

I believe that in all the circumstances this is the best that we can achieve with the Speaker. Provided these rulings are enforced, our position for the forthcoming trials should be protected.

I am copying this to the other members of OD(DIS), to the Chancellor of the Exchequer and the Lord Advocate and to Sir Robert Armstrong.

ML.

ms

28 October 1987

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Communications on this subject should
be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

28 October 1987

J Nursaw Esq CB
Legal Adviser
Home Office
Queen Anne's Gate
LONDON S W 1

NBP
m

Dear Jim,

PETER WRIGHT CASE : "DEAR COLLEAGUE" LETTER

As I mentioned in OD(DIS)(0) yesterday, the Attorney General would like to send out an up-dated "Dear Colleague" letter to backbenchers. I attach a draft of what he has in mind to say.

The Attorney General would like to associate the Home Secretary with the letter. May I ask you, therefore, to confirm that the Home Secretary would in principle be content to be associated with it. Should the draft require further amendment we will, of course, clear it with the Home Secretary before the letter issues.

Copies of this go to Bruce Dinwiddy, David Hogg, Peter Torry, Nigel Wicks and Trevor Woolley. If the letter is to issue from Central Office next week, I must ask for comments by midday on Monday, 2 November.

Yours ever,

Anthony

A M C INGLESE

THIS IS A COPY. THE ORIGINAL IS
RETAINED UNDER SECTION 3 (4)
OF THE PUBLIC RECORDS ACT

PETER WRIGHT CASE

Further to our letters of August, the Home Secretary and I thought that colleagues might want to be kept up to date on what is happening on the Peter Wright case.

The Government remains committed to take action wherever it is sensibly open to it to enforce the duty of confidentiality owed by Mr Wright. The reason is clear. If the Government is found to have no remedy against him, then not only will this pave the way for "Spycatcher Mark II" but there will be no deterrent against other members or former members of the Security Service who will inevitably seek to publish accounts of their own work without authority. *it will be hard to prevent + to*

Legal action is now pending in several countries.

England and Wales

The trial of the Government's action against the Observer, Guardian and Sunday Times newspapers has been set down for next month before the Vice-Chancellor. We have now reached the stage here where the parties will be calling evidence in support of their case. The Government will be seeking a declaration of right against the newspapers that they would be in breach of confidence if they published material attributed to Mr Wright. We shall also be seeking a continuation of the injunction, upheld last July by the House of Lords pending the trial. Further, we shall be seeking an account of all profits made by the defendants from the publication by them of material in breach of Mr Wright's duty of confidentiality.

Colleagues may have noted the application earlier this month to the Chancery Division by Derbyshire County Council, who wanted to lend the book at their libraries. The Court held that this was at present prohibited by the injunction, and refused to grant an exemption for it.

Australia

In Australia we are now awaiting the hearing of our appeal before the High Court of Australia. There is no further appeal from that Court. The hearing is unlikely before March 1988. We go into the appeal with reasonable prospects of success. Although we lost before the New South Wales Court of Appeal, colleagues will note that the Court was divided. The Chief Justice found for us on the principle of the duty of confidentiality. He would have ordered the defendants - Wright, and Heinemann of Australia - to account to us for their profits arising from publication of the book. He considered, too, that the trial judge, Mr Justice Powell, was wrong in not ordering an injunction to restrain publication of the book.

But the book has now been published in Australia and we face an up-hill struggle in seeking an injunction to restrain further publication there. If, however, we obtain a declaration of right on the principle of confidentiality, and an account of the profits made by Wright and Heinemann then this would be a signal victory. It would make it clear to publishers and authors alike that profits were not to be made from breaches of confidentiality of the this kind.

Hong Kong and New Zealand

In August the Government obtained interlocutory injunctions to prevent the serialisation of "Spycatcher" in newspapers in Hong Kong and New Zealand. The action in New Zealand is due for trial in November and raises the same issues as the English action. The Hong Kong newspaper, the South China Morning Post, recently sought from the Privy Council leave to appeal, but were turned down. The Hong Kong action has not yet been set down for trial.

More than ever, therefore, with all these various actions going on, it remains necessary to bear in mind the essential basis of the Government's case: members of the Security Service are under a duty not to speak or write about their work without authority. The upholding of this duty - against Mr Wright and those others who would be encouraged by his example to breach it - is essential to the effectiveness of the Security Service in defending the realm against terrorism, espionage and subversion.

CONFIDENTIAL



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204 A7W

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

STAFF COUNSELLOR FOR THE SECURITY AND INTELLIGENCE SERVICES

Following the Prime Minister's discussion with you about your minute of 19 October, you have suggested that (j) in the Staff Counsellor's terms of reference should read:

"To send to the Prime Minister and to each of the Secretaries of State as appropriate not less frequently than once a year a report or reports on your functions and activities."

You would then explain to Sir Philip Woodfield, the Staff Counsellor, that the good offices of the Secretary of the Cabinet would be available to him to ensure an appropriate distribution of his report.

The Prime Minister agrees that (j) in the terms of reference should read as you suggest and you should talk to Sir Philip as you propose about the distribution of his report. She agrees, too, that in the last line but one of the draft announcement we should add the words "as appropriate" after the words "Home Secretary".

Directly Sir Philip has accepted his terms of reference, I should be grateful if you could let me have a final version of the Parliamentary Question and Answer.

I am sending a copy of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary and the Home Secretary.

N. L. WICKS

28 October 1987

Amor

CONFIDENTIAL



File 46
LO 4A114

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

I have written to you today about the terms of reference of the Staff Counsellor of the Security and Intelligence Services. As you will see, the Prime Minister has accepted the advice in your minute of 27 October. You suggested that the Parliamentary Question should be answered before the Prime Minister sees Sir James Callaghan on Tuesday, 3 November. This means that a suitable Question has to be tabled on Friday this week for answer on Monday. I should be grateful if you could let me have a draft Question and Answer so that this timetable can be met.

N. L. WICKS

28 October 1987



27 October 1987

IN CONFIDENCE

THE CLERK OF THE HOUSE
HOUSE OF COMMONS
LONDON SW1A 0AA

01-219 3300

Dear Mr Solicitor General

Thank you for your letter of 26 October, which was most helpful in clarifying the distinction between attributed and unattributed use of material in the "Spycatcher" book.

You may care to know that the following rulings will be suggested to Mr Speaker should there be attempts to publish or summarise the book as such.

ORDER. THERE ARE ACTIONS RELATING TO THE PUBLICATION OF THE BOOK FROM WHICH THE HON. MEMBER IS QUOTING THAT ARE CURRENTLY SUB JUDICE, AND AN INTERIM INJUNCTION IS IN FORCE TO PREVENT PUBLICATION OF EXTRACTS BEFORE THE CASE IS DECIDED. MEMBERS SHOULD REFRAIN FROM ATTRIBUTING MATERIAL TO THE BOOK, TO AVOID ANY PREJUDICE TO THE OUTCOME OF THE CASE.

If asked if information or allegations derived from the book may be used without attribution:

THE CHAIR IS NOT SEEKING TO PREVENT THE USE OF INFORMATION IN MEMBERS' POSSESSION. IT IS PUBLICATION OF THE BOOK AND SUMMARIES OF IT THAT IS SUB JUDICE.

Yours sincerely,

Clifford Boulton

C J BOULTON

Sir Nicholas Lyell QC MP
Solicitor General
Royal Courts of Justice
London WC2 2LL

PRIME MINISTER

STAFF COUNSELLOR FOR THE SECURITY AND INTELLIGENCE SERVICES

Robert Armstrong, in his minute at Flag A suggests a revised procedure for the Staff Counsellor to submit his reports to Ministers. I think this meets both yours and Robert's concerns. The terms of the relevant part of the draft Answer (which you otherwise approved) would read:

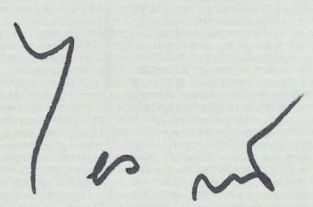
'He will report as appropriate to the heads of the Services and will report not less frequently than once a year to me and to my Rt. Hon. Friends the Foreign and Commonwealth Secretary and the Home Secretary as appropriate on his activities and on the working of the system'.

The full text of the draft letter to Sir Philip Woodfield and the draft Answer to the PQ are at Flag B.

Content now for Sir Robert Armstrong to write to Sir Philip Woodfield, the proposed Staff Counsellor, in the terms you have already agreed, but including term (j) set out in Robert Armstrong's minute at Flag A.

Directly Sir Philip has formally agreed to serve, we will arrange a suitable Parliamentary Question to which you can give the Written Answer. Robert Armstrong suggests that it would be useful to have the question answered before you see Sir James Callaghan on Tuesday 3 November.

Content to proceed in this way?



N.L.W.

N.L. WICKS

27 October 1987

Ref. A087/3039

MR WICKS

Staff Counsellor for the Security and Intelligence Services

Thank you for your minute of ~~23~~ ^{file with NEW} October.

2. I suggest that j. in the Staff Counsellor's terms of reference should read:

"To send to the Prime Minister and to each of the Secretaries of State as appropriate not less frequently than once a year a report or reports on your functions and activities".

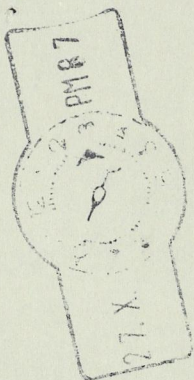
3. I would then explain to Sir Philip Woodfield that the good offices of the Secretary of the Cabinet would be available to him to ensure an appropriate distribution of his reports.

4. If that is agreed, I would suggest that in the last line but one of the draft announcement we should add the words "as appropriate" after the words "Home Secretary".

RIA

ROBERT ARMSTRONG

27 October 1987



SECURITY: Secret Service PTA



Draft of 5 October 1987

Letter from Sir Robert Armstrong to Sir Philip
Woodfield KCB, CBE, 5 Erskine Hill, London, NW11

Tony Duff and I (and others) have discussed with you recently the possibility of your accepting an appointment as Staff Counsellor for the security and intelligence services.

After further consultations with the heads of the agencies, and with the agreement of the Prime Minister, the Foreign and Commonwealth Secretary and the Home Secretary, I am now writing to invite you formally to accept appointment as Staff Counsellor for the security and intelligence services.

Your terms of reference will be:

- "a. to be available to be consulted by any member of the security and intelligence services who has anxieties relating to the work of his or her service;

- b. to arrange and maintain procedures which will enable you to be approached and consulted, securely and in confidence;
- c. to keep confidential the identity of individuals who approach you when they so request it, unless security considerations determine otherwise;
- d. to inquire as you see fit into all matters which are put to you, having satisfied yourself that all appropriate internal management procedures have been exhausted;
- e. to examine any internal documents (while maintaining their confidentiality) which are relevant to the questions raised in each case, having access when you wish to the management of each service (including its permanent head) in pursuit of your inquiries;
- f. to seek to resolve problems by discussion and advice;

CONFIDENTIAL

It is proposed to announce your appointment in
--- a statement on the lines of the draft attached, on
which I should welcome your comments.

I very much hope that you will be able to let
me know that you are willing to undertake this
appointment on the terms and conditions proposed.

CONFIDENTIAL

SECABZ

- g. to make such recommendations to the head of the service concerned or the Secretary of the Cabinet as you consider appropriate;
- h. to report as appropriate to the head of each service;
- j. "To send to the Prime Minister and to each of the Secretaries of State as appropriate not less frequently than once a year a report or reports on your functions and activities".

You will receive an annual retainer of £5,000, plus a fee of £100 a day for time spent on the duties, plus expenses necessarily incurred in the course of discharging your duties.

You will make arrangements with the head of each service to ensure that the fact of your appointment, the nature of your role and your terms of reference, and the means by which you can be approached for consultation are made known to members of the service.

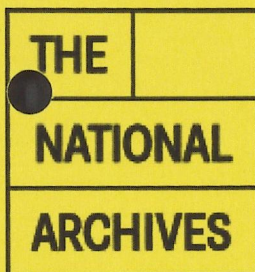
Draft of 5 October

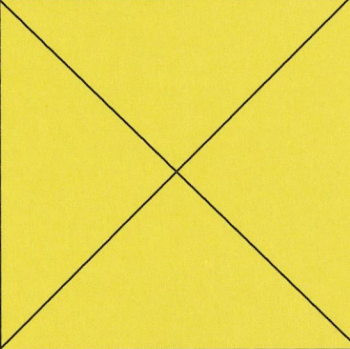
DRAFT STATEMENT

In the debate which followed my announcement of the Government's acceptance of the Security Commission's recommendations in their report on the case of Michael John Bettaney, I undertook to consider a suggestion that there would be advantage in designating someone, not himself a member of the Security Service, to whom a member of the Security Service could turn if he or she had anxieties relating to the work of the Service.

The House will wish to know that Sir Philip Woodfield, KCB, CBE, has been appointed as a Staff Counsellor for the Security and Intelligence Services. He will be available to be consulted by any member of the Security and Intelligence Services who has anxieties relating to the work of his or her Service which it has not been possible to allay through the ordinary processes of management-staff relations. He will have access to all relevant documents and to any level of management in each Service. He will be able to make recommendations to the head of the Service

concerned. He will also have access to the Secretary of the Cabinet if he wishes and will have the right to make recommendations to him. He will report as appropriate to the ~~heads of the Services~~ ^{as appropriate} and will report not less frequently than once a year to me and to my Rt Hon Friends the Foreign and Commonwealth Secretary and the Home Secretary /on his activities and on the working of the system.



DEPARTMENT/SERIES <i>PREM 19</i> PIECE/ITEM <i>2508</i> (one piece/item number)	Date and sign
Extract details: <i>Letter dated 26th October 1987</i>	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>Ally</i> <i>19/05/23</i>
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NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	

*Prime Minister**I have marked where
I think the brief goes
too far.**N.C.U.**28.10.*

Ref. A087/3006

MR WICKS

Oversight of the Security Service
Prime Minister's meeting with Sir James Callaghan
on 3 November

Aap

In your minute of 16 September, you requested a brief for the Prime Minister's use when Sir James Callaghan calls on 3 November to discuss the targeting, structure and oversight of the Security Service.

- 2. I attach a brief, prepared in consultation with the Director General of the Security Service. It covers the question of an inquiry into allegations of a plot against the Wilson Government, as well as the subject of oversight.
3. I suggest that the Prime Minister should begin the meeting by asking Sir James to explain his views, on which she could then comment.
4. The Prime Minister will no doubt wish at the outset to remind Sir James that the meeting is on Privy Counsellor terms. Sir James may suggest that the meeting should be publicised. The Prime Minister might seek to persuade him against this, on the grounds that it does nothing but harm to give a further boost to the media campaign about the Security Service. If Sir James is adamant that the meeting should be announced, the Prime Minister might seek agreement to a brief statement: "Sir James Callaghan called on the Prime Minister on 3 November, at his request, for a discussion about the oversight of the Security Service. There was a full exchange of views".

- 5. I attach as background a note of the main points made by Sir James Callaghan and also Mr Merlyn Rees in the BBC television programme "State of Secrecy" on 14 September. Paragraph 4 gives the fullest and most up to date account we have of Sir James's views on oversight of the Security Service. He favours an oversight body reporting to the Prime Minister and consisting of Privy Counsellors including politicians, people with experience of security and intelligence work and perhaps a judge, which would oversee the targeting and management of the Security Service in detail; its findings would probably not be disclosed to Parliament. Sir James has spoken on the subject on earlier occasions, notably when giving evidence to the Treasury and Civil Service Sub-Committee of the House of Commons on
- 12 February 1986, when he admitted to being "very mixed up" about the question whether the security services were sufficiently accountable to Ministers and Parliament and said that in his experience the services "would not be out of control" in the sense that they would not undertake actions which they believed would be rejected if put to Ministers. Speaking in the House after the Prime Minister's reply on 6 May
- concerning the allegations of a plot against the Wilson Government, Sir James advocated "some oversight body which would review the work of the Service, its targeting, its management, its structure and its staff counselling".

6. I am sending a copy of this minute and attachment to the Private Secretary to the Home Secretary.

RA

ROBERT ARMSTRONG

26 October 1987

OVERSIGHT OF THE SECURITY SERVICEOversight: General

After Sir James has explained his views on oversight, the Prime Minister might respond by drawing on the following points:

I would not make this point but to say you do not favour oversight

a. Note that Sir James does not favour Parliamentary oversight of the Security Service. If there were to be any oversight body, the Prime Minister would be inclined to share his view that it should be a body within the ring fence of confidentiality reporting to Ministers, and including (and chaired by) non-political people. That would probably be the least damaging form of oversight; it would avoid some of the problems. But by no means all; and the Prime Minister takes the view that it is Ministers who must maintain oversight of the work of the Service, which is finally responsible to them.

b. The Prime Minister realises that when Sir James was Prime Minister he took a considerable interest in the Service. But she thinks that Ministers and senior officials overseeing the work of the Security Service are nowadays probably more closely informed than ever before, especially since the appointment of Sir Antony Duff. Sir James says that Ministers have no time and are physically separated from the Security Service; but Ministers make the time, and so do senior officials, and we do not allow physical separation to impede a close relationship. The Home Secretary's duty to supervise the issue and renewal of interception warrants is now a statutory duty, and he maintains a systematic and close control. He regularly meets the Director General, as does the Prime Minister. The Commissioner appointed under the Interception of Communications Act, reporting to the Prime Minister, provides an additional element of oversight.

c. The Prime Minister is about to announce [has just announced] the appointment of a Staff Counsellor for the Security and Intelligence Services; this will provide not only a safety valve for any problems of conscience or propriety which staff may have about the tasks they are asked to undertake but also an assurance to Parliament that there are built-in protections which would make it difficult for the management to ask staff to do things they should not ask them to do, even if the management were inclined to do so.

d. It is greatly in the interest of the Director General and the Security Service never to abuse the system. If they did they would lose the trust of Ministers, with grave implications for their position and effectiveness. As Sir James said himself to the House of Commons Sub-Committee on the Treasury and Civil Service a year ago, the Security Service would not undertake actions that they believe would be rejected if put to a Minister.

e. Provided that Ministers are satisfied that the Service has behaved with propriety and within its Directive, there are advantages in not riding it on too close a rein. There is a danger that its effectiveness will be constrained if it is supervised too closely. The addition of an oversight body could increase that danger. And too close supervision could provide opportunities for, or even result in, politically motivated direction by the Government of the day.

f. Trust exists between Ministers and the Director General and the Security Service itself. As Sir James Callaghan said on the recent BBC programme, the problem is a loss of trust between Parliament - or rather some people in it - and Ministers on these matters. A relatively small number of MPs try systematically to undermine that trust.

We in Government and Opposition who have held responsibility for the Service can and should do much to counter that, and to assert the justification for trust. The achievements of the present Director General are widely recognised, and Sir James Callaghan has rightly expressed confidence in him.

g. Would the vocal minority in Parliament be stilled by an oversight body within the fence of confidentiality, such as Sir James proposes? The complaint that the Service was not accountable would not go away, and the new complaint would be voiced that the oversight body was not accountable to Parliament.

Targeting and Management of the Security Service

These are matters which, in Sir James's view, should be overseen by a new body. The Prime Minister could draw on the following points:

i. Ministers are paying increasing attention to the direction and priorities of the Security Service's work.

ii. It is not necessary, and could be dangerous, for Ministers to be too involved in details of targeting. Existing arrangements - including the control of interception - provide as much oversight of targeting as is needed.

iii. The Security Commission's report following the Bettaney affair identified weaknesses in vetting and in the management of the Security Service. The Director General made it a first priority to overcome these deficiencies. The Security Commission, reviewing the subject in 1986, were impressed by his achievements. They reported that they approved of his more open style of management and the

changes he had introduced in vetting and in the procedures affecting the appraisal, posting and promotion of staff (stated in the Home Secretary's speech in the House of Commons on 3 November 1986, Col 1943).

Staff Counsellors

The announcement of the appointment of Sir Philip Woodfield as Staff Counsellor for the Security and Intelligence Services may have been made before Sir James Callaghan calls on the Prime Minister. The Prime Minister could make use of the announcement in order to show that staff who are worried about their tasking or their work have recourse to an outside authority and also as an example of the particular interest taken by Ministers in the management of the security and intelligence services. The Prime Minister could say, in particular:

- a. This announcement deals [will deal] with the point you have made in public about staff counselling in the Security Service.
- b. [As the announcement says,] the Staff Counsellor will report to the Director General (and to the heads of the other Services), to the Cabinet Secretary and to the responsible Ministers; he will be bound to report to Ministers on his activities at least annually.
- c. The arrangement will reinforce the oversight exercised by Ministers and give them even greater reassurance that the Director General is complying with the Maxwell Fyfe Directive.
- d. Hope that Sir James Callaghan, as a former Prime Minister and Home Secretary who has been responsible for the Security Service and has its best interests at heart

will help to ensure that this step helps to restore trust between Parliament as a whole on the one hand and Ministers and the Security Service on the other.

Legislation on the Security Service

Sir James Callaghan has not himself advocated legislation to place the Security Service on a statutory basis. Indeed, he said in the BBC television programme that he was not aware of the Service undertaking illegal operations during his time as a Minister. But Mr Merlyn Rees (as the attachment records) has advocated legislation. If Sir James unexpectedly raises the matter, the Prime Minister (bearing in mind recent discussion among Ministers) may wish merely to take note of Sir James's remarks. She could perhaps ask how Sir James thinks legislation would help and what in his view it would involve.

Allegations of a plot against the Wilson Government

Following the Prime Minister's reply in the House of Commons on 6 May, Sir James Callaghan said that her remarks "will have gone some way to reassuring the public about what has happened". He said that there was a conflict of evidence between what Mr Peter Wright had said and what he himself had been told by the Director General of the Security Service in 1977, and he strongly implied that he believed the latter. But he said that it would be "better to clear the matter out of the way so that there can be public confidence, and the Security Service may know that it has confidence". He added, "I believe that the Rt Hon lady is missing a very good opportunity both to close an unhappy chapter and to open a fresh one". In the BBC programme on 14 September, Sir James argued again for an independent inquiry, on the grounds that some of the allegations made since 1977 had not been covered by his inquiries then. He

*I am
sure you
will
not want
to get
involved
in any of
this.
Enough
to refer
to what
you told
Parliament*

admitted that he was not confident that an inquiry would be successful (in establishing what had happened). The Prime Minister could draw on these points:

a. The Prime Minister accepts Sir James Callaghan's statement in 1977 and his reaffirmation of it in his letter of 20 February 1978 to Cranley Onslow.

b. Given the renewed interest in the matter, the Director General of the Security Service nevertheless conducted early this year a thorough investigation into all the allegations. People talk as if this inquiry consisted only of interviewing a few former members of the Service. That is not so. As the Prime Minister told the House on 6 May, there was a comprehensive examination of all the papers relevant to that time as well as interviews with officers in post in the relevant parts of the Security Service at that time, including officers whose names have been made public.

c. It is true that Peter Wright was not interviewed. He would certainly have refused to come to this country without an immunity from prosecution which the Attorney General would certainly not be prepared to grant him. It really would not be worth sending somebody out: his story is totally inconsistent with all the other evidence available, and according to someone who has recently seen and talked with him he is no longer capable of distinguishing between fact and fantasy.

d. The Director General's conclusions were absolutely clear: he gave the Prime Minister his personal assurance that the stories were false, and she reported that to the House. In particular, the Director General reported that

all the officers interviewed had categorically denied being involved in or being aware of any activities or plans to undermine or discredit Lord Wilson or his Government.

e. So the Director General's inquiries confirm Sir James's own findings in 1977. His inquiries and those of the Director General are surely enough to dispose of these far-fetched stories. Much better now to let the dust settle. To call for an independent inquiry keeps the matter alive and helps to undermine the trust of Parliament and the public in the Security Service, which Sir James and the Prime Minister both know to be important for the effectiveness of the Security Service and for national security.

Cabinet Office

26 October 1987

"State of Secrecy" on BBC 1: 14 September 1987
Points made by Sir James Callaghan and Mr Merlyn Rees

Sir James Callaghan

1. Asked whether he felt, with hindsight, that as Home Secretary, Foreign Secretary and Prime Minister he had been in full control of the security services and had been given sufficient information, Sir James said that at the time he had felt that he was, but now was not so confident. He did not believe that anything had been deliberately concealed from him.

2. Asked about his investigation into the allegations of attempts to undermine Lord Wilson's Government, Sir James said that he had not been aware, at the time, of some of the allegations made since 1977. He implied that he meant principally allegations by Wright. His inquiries in 1977 had covered the allegation that No 10 and the Prime Minister's room at the House of Commons had been bugged although "we did look at other things, but nothing came out of it". He was not sure that he believed the story of a plot against the Wilson Government but, if people who "knew about such things" would co-operate "we might get a little closer to the truth". "I do not think it is sufficient...for the Director of MI5 to say I have talked to those who have been accused". Therefore "an attempt should be made" but "I am not confident that it will be with success".

3. Sir James Callaghan said that, in contrast to the remarks noted below by Mr Merlyn Rees, he was not aware at all of the security services breaking the law. "I certainly had nothing put in front of me that would have broken the law".

4. Sir James said that there was a case for "some further measure of control" of the security services, although there were difficulties. Later he rejected the word "control", preferring "oversight". The Director of MI5 should direct, the Minister should control and another body, with more time than the Minister, should have oversight, going into matters in more detail than Ministers and perhaps learning things that were more secret than Ministers knew. It should have a small staff of high quality. Members of MI5 who were unhappy about what they were being asked to do should have recourse to this body. It should look into targetting and management. One purpose would be to restore trust between the security services and Parliament and the people, after the revelations of recent years. But its findings should not go to Parliament, or not necessarily so: the Americans had wrecked their system by allowing codeword intelligence to be discussed in the Congress. A self-denying ordinance would thus be required from Parliament, so that it would not press for information on certain matters. The members of the oversight body should include Privy Councillors, among them politicians; people who have been concerned with intelligence; and perhaps a judge. Such a group would be well qualified to ask probing questions and make the Director of MI5 account for what he was doing.

Mr Merlyn Rees

5. Mr Merlyn Rees said that the security services had no legal backing for their work; there was no system of warrants and anyone who was caught was on their own. "We need to look at the legal basis of the security services."

together with Sir Robert Armstrong. I have great admiration for, but divided responsibilities. How-
arren Fisher, whose name may you, he would see off any prime he thought that there was an fected the Civil Service that had fully handled.

ing spoken rather glowingly of Armstrong, what do you mean sh"?

laghan.) Namely, where the ster takes on appointments, the Arts and Culture gets man- ch I think is absurd, and the kes a third aspect of the matter into three like Gaul. I think it brought together again.

ld you agree with me that there situation where it is acceptable rvant to behave as Mr Ponting

aghan.) I think Mr Ponting did rough his line of thinking to the e should have done. I do not as in as strong a position as ave been if there had been a l Head of the Civil Service to sit outside the Government policy- chinery.

n trying to get to this business of I have asked other people this quating it to a solicitor's clerk ou were prepared to bid 50,000 e but would go to 60,000 if that clerk went and told the ould have thought neither you licitor would be happy with that that would warrant immediate

'aghan.) It would depend upon ncy payment!

get my point?

'aghan.) I accept it, yes indeed.

w can an office be run with the at people were stuffing pieces of envelopes and sending them ly?

'aghan.) It should not happen t operate your office on the back ice, which I have described this afternoon. We should have nery in Government that was necessary for anyone to do so

12 February 1986]

Rt Hon JAMES CALLAGHAN, MP

[Continued]

[Mr Howell Contd.]

if anybody did so, they would be behaving in an unreasonable way.

758. Are you in favour of repeal of Section 2 of the Official Secrets Act?

(Mr Callaghan.) I have given evidence to Franks many years ago saying no. In those days, whenever Franks was, 12 or 13 years ago, in those days it was not used. I thought it was better to leave it on the Statute Book rather than try—You will get into great difficulties if you repeal it. The situation has now changed my view. I have changed my view. If you have to have this as a first qualification, if you will prepare what the Civil Service Trade Unions call a Code of Ethics for civil servants, I do not know whether that is the right term, something that will delineate both the kind of problem you have been raising and what Mr Howell has been raising and what should be the practice of the Civil Service in certain situations; if you can devise that by discussions with the unions, the unions should be part of those because they are the people who are going to have to work it and between the Government and Unions and bring in Parliament so Parliament is satisfied. Once you have got that in place then I would repeal Section 2 of the present 1911 Act. I think that is the right way round, I would not repeal it until you have got a better defined code than you have at the present time. I think Sir Robert's code is perfectly good, it is a standard traditional code. It is a basic document on which a number of appendages have to be hung. I think sometimes some of us in Parliament mistake this, we think abolishing Section 2 will provide more information; it will not necessarily, it may mean there will be as much or less information depending on what is in your code. There is going to be a lot of discussion and I might say, as on many of the questions this afternoon, whether organisation of the Civil Service or practice of the Civil Service, there is no perfect solution, they have all got advantages and disadvantages and sometimes I see us going round in circles, going back to solutions that we have tried and abandoned thirty years ago but we seem to come back to them again. I suppose every generation has to learn from its own mistakes.

Chairman

759. Are you satisfied the security services are sufficiently accountable to ministers and Parliament, but primarily ministers and the Prime Minister?

(Mr Callaghan.) I am not sure what its accountability is to Parliament, I am not sure about ministers. I find it a difficult question to answer, I really do. They are run—the security services and MI5 and MI6—as separate departments. They are not in the Minister's office, as it were, not in his headquarters. There is, therefore, all the difficulty of physical separation. When the Minister has to up sticks to ask questions and go somewhere else, that makes for remoteness. There is not immediate day to day closeness. Some Ministers do not want to know a lot: home secretary or foreign secretary, Prime Minister, others want to know a great deal about what is going on. I am going to give you a very unsatisfactory answer, I do not know. I am certain there must be a very high degree of responsibility among those who serve in MI5 or MI6 because they have great powers, considerable powers and I think the ethos of those particular services is probably as important as the degree of accountability that you can visit upon them. I am very, very mixed up about this, I do not think I can help you with this.

760. There are allegations that the services are out of control. There are allegations in respect of Sir Harold Wilson they were actually plotting against Sir Harold Wilson and the Labour Government and the allegation about them being out of control comes up from time to time; are you satisfied the Prime Minister has sufficient control of them?

(Mr Callaghan.) I think that depends on whether the Prime Minister exercises such control. I do not know what the word "out of control" means, honestly I really do not. If it means do they take initiatives of their own kind without clearing everything with a minister, if it means that, the answer is yes, of course they do take such initiatives. If it means they undertake actions that they believe would be rejected if put to a minister, I would say that within my experience that is not so to that extent, therefore they would not be out of control. They sometimes put to a minister actions which they think he will regard as repugnant but nevertheless they hope he will agree and the answer will be yes. Then it depends on the minister, whether he is sufficiently alert to say no to those particular questions.

761. Could I move on to relations between the Opposition and the Civil Service, you mentioned when the Opposition

10 pm

State Security

Mr. Neil Kinnock (Islwyn) (*by private notice*) asked the Prime Minister if she will make a statement in response to the statement made this morning by the right hon. Member for Cardiff, South and Penarth (Sir J. Callaghan) calling for a review by a senior judge of the findings of the 1977 inquiry into allegations about the operations of the security services in the mid-1970s, taking into account information reportedly contained in a book written by Mr. Peter Wright, examining both him and those officers who have been implicated by Mr. Wright or named by others, and providing the means to gain an independent verdict on the past, and to safeguard the future.

The Prime Minister (Mrs. Margaret Thatcher): The right hon. Member for Cardiff, South and Penarth (Sir J. Callaghan) has today called for an inquiry into recent allegations about the Security Service in relation to the Government led by the right hon. and noble Lord Wilson of Rievaulx between 1974 and 1976.

Allegations of this nature first gained currency 10 years ago, in July 1977. They were summarised in a speech in the House on 28 July 1977 by my right hon. Friend the Member for Blackpool, South (Sir P. Blaker). The allegations ranged widely, but were to the effect that the Security Service had sought to discredit the duly constituted Government of the day, and in particular its Prime Minister; or that some members of the Security Service had conspired together to do so.

On 23 August 1977, the right hon. Gentleman, the then Prime Minister, issued a statement in which he said that he had conducted detailed inquiries into the recent allegations about the Security Service and he was satisfied that they did not constitute grounds for lack of confidence in the competence or impartiality of the Security Service, or for instituting a special inquiry.

On 8 December 1977, he told the House that Lord Wilson associated himself with that statement, and therefore there was no reason to carry the matter any further. I accepted the right hon. Gentleman's statement and conclusions without question. I believed them, and I still believe them, to be correct.

Early in 1978, a book was published, entitled "The Pencourt File", which contained fuller accounts of these allegations. My hon. Friend the Member for Woking (Mr. Onslow) has let me see copies of correspondence which he exchanged with the right hon. Gentleman the then Prime Minister. My hon. Friend drew the right hon. Gentleman's attention to the contents of the book, and in particular to a number of statements attributed in the book to the then Sir Harold Wilson. My hon. Friend urged the then Prime Minister to arrange for a full inquiry to be undertaken by the Security Commission.

In his reply dated 20 February 1978, the then Prime Minister said:

"So far as I can see, there are no significant statements about matters of national security in this book of which the authorities were not aware when I issued a statement on allegations about the Security Service on 23 August last; I put the statement in the *Official Report* on 8 December."

He concluded:

"I have nothing to add to it."

In recent weeks these allegations have been given renewed currency in press reports which the right hon. Gentleman, in his statement issued this morning, says go into greater detail than the 1977 inquiry knew about.

It would not be appropriate for me or other members of this Administration to see papers relating to that time, and we have not asked to do so. I can, however, tell the House that the director-general of the Security Service has reported to me that, over the last four months, he has conducted a thorough investigation into all these stories, taking account of the earlier allegations and of the other material given recent currency. There has been a comprehensive examination of all the papers relevant to that time. There have been interviews with officers in post in the relevant parts of the security service at that time, including officers whose names have been made public.

The director-general has advised me that he has found no evidence of any truth in the allegations. He has given me his personal assurance that the stories are false. In particular, he has advised me that all the security service officers who have been interviewed have categorically denied that they were involved in, or were aware of, any activities or plans to undermine or discredit Lord Wilson and his Government when he was Prime Minister. The then director-general has categorically denied the allegation that he confirmed the existence within the security service of a disaffected faction with extreme Right-wing views. He has further stated that he had no reason to believe that any such faction existed. No evidence or indication has been found of any plot or conspiracy against Lord Wilson by or within the security service.

Further, the director-general has also advised me that Lord Wilson has never been the subject of a security service investigation or of any form of electronic or other surveillance by the security service.

The right hon. Member for Cardiff, South and Penarth, in a statement he issued on 22 March this year, declared that he had every confidence in the integrity and ability of the present director-general of the Security Service. So have I. I accept the assurance and the advice which he has given me.

This latest investigation, taking account of recently published material, confirms the conclusions reached and announced by the right hon. Gentleman in 1977, which I then accepted without question. That was in accordance with the tradition of bipartisan Front Bench support for the security and intelligence services and the work that they do. Like the right hon. Gentleman in 1977 and again in 1978, I do not propose to institute any other inquiry into these matters. In the light of the director-general's assurance and advice, I do not believe that any further inquiry would be justified.

So, once again, as in 1977, detailed inquiries have confirmed the conclusion that there are no grounds for lack of confidence in the competence or impartiality of the Security Service or for instituting a special inquiry.

It is time to stop raking over the embers of a period over 10 years ago and to assert confidence, as I readily do, in the Security Service's strict adherence to the directive under which it carries out its duties, and in its skill and loyalty in carrying out the tasks which it is called upon to undertake in the defence of our security and freedom.

Mr. Kinnock: I share the confidence that the Prime Minister and my right hon. Friend for Cardiff, South and

Penarth (Sir J. Callaghan) have in the director-general of the Security Service and in his efforts in conducting an internal inquiry and examination into these matters, including the references to recently available information. That is all the more reason for thinking that there is nothing at all to fear from an independent review of that inquiry by a judge.

When the right hon. Gentleman, who was Prime Minister at the time of the 1977 inquiry, now seeks a review of that inquiry because there is, as he says, a direct conflict of evidence, it is unreasonable, unjust and unwise of the Prime Minister not to make a positive response to that very serious request. Does not the Prime Minister realise that such a refusal can only fuel suspicions of every description and that the resulting circumstances will not assist national security or the people engaged in maintaining national security?

Why does not the Prime Minister accept that allegations and assertions of criminal activity or criminal intentions that, as my right hon. Friend has said, go into greater detail than the 1977 inquiry knew about, have a significance which does not end with a change of Government or the passage of years? Why does not the Prime Minister recognise that those allegations and assertions—whether they relate to people still working or now retired, or to people living or dead—can do no good for either the reputation of the morale of the services and, therefore, must be dealt with in the manner suggested by my right hon. Friend in order to establish whether Peter Wright's version of events is fact, falsehood, fantasy, or a concoction of all three?

Mrs. Thatcher: If the right hon. Gentleman accepts the integrity and loyalty of the director-general of the service, he should accept his advice. There has never been such a detailed statement as I have made. I have tried always to make detailed statements, going further than any previous Prime Minister. When the previous Labour Prime Minister made a statement about the Security Service, he knew that he could rely upon the bipartisan support of Her Majesty's loyal Opposition. I wish we could do so today.

Sir Peter Blaker (Blackpool, South): Is my right hon. Friend aware that her very full statement will be warmly welcomed by Government Members, as will the decision? If in spite of my request in my speech on 28 July 1977 and, as the former Home Secretary, the right hon. Member for Cardiff, South and Penarth (Sir J. Callaghan) has asserted, the inquiry then conducted was narrow and went into the allegations of bugging only and not into the wider allegations, all of which are referred to, does not that show that there must have been incompetence, negligence or a cover-up by that Government?

Mrs. Thatcher: My right hon. Friend has heard the very detailed statement I have made. I have confidence in the director-general of the Security Service and in the Security Service. I believe that the majority of people have more confidence in the Security Service of this country than in some of the politicians in the Opposition who try to undermine the service.

Sir James Callaghan (Cardiff, South and Penarth): I am very grateful to the Prime Minister that the statement I issued this morning has given her the opportunity to tell us about the director-general's investigation. I ask her whether she would have told the House about that if I had

not issued that statement. It is all very well for her to be convinced about these matters and for me to be convinced about them, but it is important also that the public should have confidence in the service.

What the right hon. Lady has said this afternoon will have gone some way to reassuring the public about what has happened. What I have said in my statement is quite clear: there is a direct conflict of evidence between what Mr. Peter Wright has said and what I was told by the director-general of the Security Service in 1977. I have my own view about whom I believe, and I have expressed that in my statement by saying that, strangely enough, Mr. Wright has offered no explanation for his failure to come forward in 1977 to tell the inquiry what he then knew, despite a public invitation that I issued to witnesses to do so. So I have my own view about the situation.

In my judgment, it would be much better to clear the matter out of the way so that there can be public confidence, and the Security Service may know that it has confidence. If there were to be an independent inquiry from outside the Security Service, I believe I know what conclusion would be reached. Because of that, and because I certainly have nothing to fear from such an inquiry, I believe that the right hon. Lady is missing a very good opportunity both to close an unhappy chapter and to open a fresh one.

I beg the right hon. Lady not to close her mind to that even now. If she does not do so these allegations, and in some cases inventions, about the Security Service will carry on and the contents of the book will continue to be dribbled out in one country or another. Every time that happens there will be a fresh spate of allegations and charges. The Security Service and everybody else will still rest under those allegations. The right hon. Lady is stubborn in not yielding to the suggestion that an independent group should consider these matters objectively, and report to her and to the House.

I believe that my next suggestion will carry with me some Conservative Members who are chuntering: the Government should also consider for the future some oversight body which would review the work of the service, its targeting, its management, its structure and its staff counselling—and if anything was needed, goodness knows, that is. The right hon. Lady did not refer to that.

Is the right hon. Lady aware that she has given a partial reassurance by the statement she has made which was drawn out of her by my press comment this morning? [HON. MEMBERS: "No."] Yes. I ask the right hon. Lady once again to consider whether she cannot on some occasions be wrong. Would it not be better for her to accept some good natured and well intentioned advice that is offered to her?

The Prime Minister: I am grateful to the right hon. Gentleman for saying that, in his view, my statement goes, in his words, some way to reassure. I believe that for reasonable people it will go the whole way to reassure. Secondly, when the right hon. Gentleman was responsible for the security services, on that day 10 years ago when he appeared at this Dispatch Box and answered, he refused to institute an inquiry. He was right to refuse, and he knows that he was right to refuse. That is the tragedy of it. He knows that tradition has been for all Prime Ministers to refuse such requests. Let me quote Harold Macmillan:

"It is dangerous and bad for our general national interest to discuss these matters. Otherwise we would risk destroying services which are of the utmost value to us."

anc

[The Prime Minister]

That, I believe, is correct.

Ten years ago the right hon. Member for Cardiff, South and Penarth (Sir J. Callaghan) made a much shorter statement than mine. He was right not to allow an inquiry then. If every Prime Minister says, "This is the result of my inquiry; I will not have a further inquiry," and 10 years later reopens the matter, there will be no assurance whatsoever in anything said from this Box.

Sir Humphrey Atkins (Spelthorne): Does my right hon. Friend accept that those hon. Members on both sides of the House who know the present director-general will agree with her and with the right hon. Member for Cardiff, South and Penarth (Sir J. Callaghan) that he is a man of exceptional intelligence and integrity? Has she had any communication from the right hon. Member for Cardiff, South and Penarth about whether, if the inquiry were held in private—I assume that that is what he wishes—those who share the Opposition Benches with him would accept the result of the inquiry?

The Prime Minister: Some people would never be satisfied and would go on raising matters again and again. Some people—I totally exclude the right hon. Member for Cardiff, South and Penarth (Sir J. Callaghan) from this—wish to undermine the security services. This is their way of doing it. I have made it clear that I do not intend to institute a further inquiry. It is not necessary; it is not justified.

Dr. David Owen (Plymouth, Devonport): If Parliament is to accept that the security services return to the previous situation when there were no questions and debates in the House, surely it has to be satisfied as to its objective scrutiny. Is not that the fundamental point? Will the Prime Minister at least look deeper into the more profound matter of parliamentary scrutiny of the security services? If she were to give a little ground over that matter, on which there is a great deal of bipartisan support, many of us—I can speak only personally—would accept the word and integrity of the present director-general. He does not come from the security services and, to that extent, is outside it. I personally accept his judgment on this particular, though narrow, issue.

The Prime Minister: I am grateful to the right hon. Gentleman for what he said about accepting the assurance of the director-general and, therefore, accepting what I have said from the Dispatch Box. My right hon. Friend the Home Secretary dealt with the other matter from the Dispatch Box, in reply to a debate on security matters.

Mr. Cranley Onslow (Woking): Bearing in mind the contrast between the position taken by the right hon. Member for Cardiff, South and Penarth (Sir J. Callaghan) when he had all the power and authority of a Prime Minister—I was content to accept that fact at the time—and his equivocal attitude now, does my right hon. Friend think that the only possible explanation is that he has unhappily been leaned on by a shadow Cabinet that is desperate for some political advantage?

The Prime Minister: I have said that I accept the advice that I have been given. I take the opportunity of reasserting total confidence in the Security Service. I have nothing further to add.

Mr. Merlyn Rees (Morley and Leeds, South): The Prime Minister has reminded the House that, in July 1977, two articles appeared in *The Observer* and thus were public knowledge. They were mentioned on the Floor of the House by the right hon. Member for Blackpool, South (Sir P. Blaker) and, I believe, two other hon. Members. The matters that were raised on the Floor of the House and were inquired into were public knowledge. If there is nothing new in Mr. Wright's book, why not let it be published?

The Prime Minister: The right hon. Gentleman is well aware that, if we did not contest the case of a former member of the service who, owing a lifelong duty of confidentiality to the Crown, wished to give an account of anything it suited him to say, there would be no security services left in the kingdom.

Sir Edward Gardner (Fylde): Will my right hon. Friend confirm that all the events that are the subject of the present allegations took place under a Labour Government, were inquired into by a Labour Prime Minister, and that all the personalities involved were either Labour supporters or, even Ministers? Is it not a fact, therefore, that the Government have nothing to fear from having an inquiry? Are not the difficulties of an inquiry that, if it is to be a public inquiry, the interests of the Security Service will seriously be put at risk, and, if it is to be a private inquiry, it is unlikely to satisfy anybody and might be misunderstood as a cover-up?

The Prime Minister: I confirm that the events referred to took place before my time in office as Prime Minister. I therefore have no responsibility for them. I have responsibility for the morale of and confidence in the Security Service, and I gladly reassert that confidence. I had hoped that, in a bipartisan spirit, the whole House would do so, because we owe a great deal to those who work in those services.

Mr. Michael Foot (Blaenau Gwent): I think that the Prime Minister is making a grave mistake in not responding to the appeal of my right hon. Friend, and I still hope that she will, in a few days, change her mind on this subject, as she has changed it already, but what will she and her Law Officers now do about the newspapers in this and other countries that continue to discuss the matter? Are we to have an endless series of prosecutions against three newspapers in this country which are determined to continue discussing the matter freely, as they have done over the past few weeks? Does she think that that will be a service to our security services?

The Prime Minister: There are those who wish to undermine the security services, and they will go on and on regardless of any inquiry. Their purpose is different from ours, which is to uphold the security services. The security and intelligence services deserve our recognition and gratitude.

I have made a longer statement about this matter, in more detail, than any previous Prime Minister. I ask the House to accept it with the bipartisan attitude that Ministers in the previous Labour Administration expected and received from us.

Several Hon. Members rose—

Mr. Speaker: Order. I must have regard for the subsequent business of the House. The private notice question is an extension of Question Time, and we have

[Mr. Dalyell]

of Lord Glenamara, who was Ted Short. The Prime Minister will not even refer that matter to the Security Commission. In the absence of a public inquiry, some of us would like to debate why these matters should not be referred to the Security Commission under the chairmanship of Lord Griffiths of Govilon. Furthermore, why is it that the cases of Colin Wallace and Fred Holroyd cannot be referred to the Security Commission?

It is very important that we should have a debate, because in public print the Prime Minister has been personally involved on account of the information that was acquired from Colin Wallace by Airey Neave in relation to "Clockwork Orange 2". There should be a parliamentary explanation of these matters. Perhaps there is an explanation. Our fellow citizens have been reading about the involvement of Airey Neave in all these matters. That is an added reason why there should be a public inquiry.

Finally, I have to persuade you, Mr. Speaker, that the matter is definite. We had to wait until this new information was winkled out of the Prime Minister—indeed, chiselled out of her—by my right hon. Friend the Member for Cardiff, South and Penarth (Sir J. Callaghan), who had every justification for saying that, until he made his statement, the House of Commons and the British people would have been told little about it. There is much new information. If, therefore, it is to be treated properly, Parliament ought to have a debate on the matter.

Mr. Speaker: The hon. Member for Linlithgow (Mr. Dalyell) asks leave to move the Adjournment of the House, under Standing Order No. 20, for the purpose of discussing a specific and important matter that he thinks should have urgent consideration, namely, "the refusal of the Prime Minister to initiate an independent inquiry."

I have listened with care to what the hon. Member has said, but I regret that I do not consider the matter that he has raised is appropriate for discussion under Standing Order No. 20. I cannot therefore submit his application to the House.

Mr. Andrew Faulds (Warley, East): On a point of order, Mr. Speaker. Would you care to contemplate, Sir, why some hon. Members are less entitled to raise points of order than others? I was on my feet for 10 minutes.

Mr. Speaker: The hon. Gentleman is very frequently called on points of order.

BILL PRESENTED

SECRETARY OF STATE FOR EDUCATION AND SCIENCE (QUALIFICATIONS FOR OFFICE)

Mr. Barry Sheerman, supported by Mr. Terry Davis, Mr. Frank Dobson, Mr. Allan Roberts, Mrs. Ann Clwyd, Mr. Willie W. Hamilton, Mr. Dennis Canavan, Mr. Roland Boyes, Mr. George Park, Mr. Geoffrey Lofthouse, Mr. Allen McKay and Mr. Allan Rogers, presented a Bill to provide that no person shall be appointed to the office of Secretary of State for Education and Science whose children are being, or have been, educated at private schools: And the same was read the First time; and ordered to be read a Second time upon Friday 8 May, and to be printed. Bill [151.]

STATUTORY INSTRUMENTS, &c.

Ordered,

That the draft Water (Fluoridation) (Northern Ireland) Order 1987 be referred to a Standing Committee on Statutory Instruments, &c.

That the draft Job Release Act 1977 (Continuation) Order 1987 be referred to a Standing Committee on Statutory Instruments, &c.—[Mr. Ryder.]

SECURITY: Secret Service PT8





01-4057741XPM

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

C J Boulton Esq.
The Clerk of the House
House of Commons
London SW1A 0AA

NEA,
to see.
N.C.J.
25.10
26 October 1987

Dear Boulton,

Thank you for your letter of 23 October and your explanation of factors influencing your advice to Mr Speaker on the question of "whether the use of material in Wright's book would be in breach of our subjudice rule".

I emphasise the words underlined since in deciding the issue it is essential, I believe, to identify precisely where the line should be drawn.

My submission to you is not that all discussion of the allegations in Wright's book should be prohibited, nor that Hon. Members should be prevented from questioning Ministers about their responsibilities in respect of the issues they raise. General discussion and indeed detailed questioning on issues such as whether or not the security service set out to de-stabilize the Wilson Government; or whether the security service are or are not permitted to bug and burgle their way across London can be raised without breach either of the sub judice rule or, if discussed by the press, without infringing the terms of the injunction.

What is not permitted by the injunction is either direct quotation from the book or summaries of its contents attributed to Wright. In our submission neither is essential to proper discussion in the House nor to a fairly formulated question to a Minister. Freedom of debate will not be



- page two -

stifled thereby and it is no part of our objective that it should be.

What we are deeply concerned about is that unless a firm ruling is given advantage is likely to be taken of Parliamentary Privilege so to quote and make use of "summaries from the book in the course of a speech or a succession of speeches that the injunction is effectively set at nought. Such speeches can of course be reported verbatim and no doubt would. It is this which would cause "real and substantial danger of prejudice to the trial of the case", to quote once again Erskine May Page 429; and surely falls within your own formulation, namely, that "the primary purpose of the sub judice rule is to avoid even the appearance that Parliament is seeking to influence the outcome of cases before the Courts."

May I therefore respectfully submit once again that if Mr Speaker should be asked the question whether an hon. Member may quote from the book the answer should be in the following terms:

"No. Questions may be asked and issues raised by the book may certainly be discussed by hon. Members but quotations from and summaries of the book itself are out of order. It would be in accordance neither with the letter nor the spirit of our sub judice rule that our proceedings should be so used as to set at nought rulings of the Court expressly designed to secure a fair trial."

Yours sincerely
Richard Lusk.



THE CLERK OF THE HOUSE
HOUSE OF COMMONS
LONDON SW1A 0AA

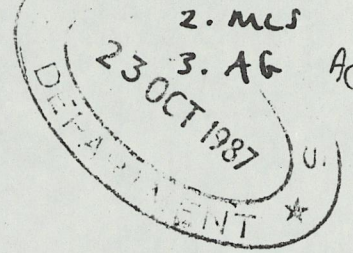
01-219 3300

23 October 1987

Amu
23/10

1. SG
2. MJS
3. AG

Ack



Dear Mr Solicitor General,

Thank you for the further information you have sent me to assist in our consideration of whether the use of material in Wright's book would be in breach of our sub judice rule. I shall, of course, discuss it with colleagues and put it to Mr Speaker.

As we see it, the primary purpose of the sub judice rule is to avoid even the appearance that Parliament is seeking to influence the outcome of cases before the courts. For that reason we prohibit references to the merits of the arguments and evidence being adduced, or to the motives of those who have instituted proceedings. I am sure that you will appreciate that to extend such a prohibition to the use in Parliament of facts or allegations in the possession of Members, for the purpose of questioning Ministers about their responsibilities, would be a very grave development indeed.

Our opinion already tendered to the Chair was that the use by Members of this information for Parliamentary purposes could not be equated with the conduct of newspapers "being left free to disseminate generally the disclosures made by Mr Wright" and that the sub judice rule was not strong enough (or, indeed, intended) to produce such a result.

If, on further consideration, we were to change our advice, I think that Mr Speaker would have to consider very carefully the exercise of the discretion he possesses under the rule to permit the use of material derived from Wright, because of the unforeseen consequences for freedom of debate produced by such an application of it.

Yours sincerely,

Clifford Boulton

C J BOULTON

Sir Nicholas Lyell QC MP
Solicitor General
Royal Courts of Justice
London WC2A 2LL

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053063
MDLOAN 1484

CONFIDENTIAL
FM FCO
TO PRIORITY SINGAPORE
TELNO 352
OF 231800Z OCTOBER 87

YOUR TELNO 433: SPYCATCHER

1. GRATEFUL IF YOU WOULD INSTRUCT YOUR LEGAL ADVISERS TO WRITE AGAIN TO MPH BOOKSHOPS NOTING THEIR STATEMENT OF 8 OCTOBER THAT THEY HAVE SOLD OUT AND ADDING THAT WE ASSUME THAT MPH HAVE NO INTENTION OF RESUMING SALES AND WOULD INFORM US IF THEY HAD ANY OTHER INTENTION. PLEASE STRESS TO YOUR LEGAL ADVISERS THAT THE LETTER SHOULD BE IN NO STRONGER TERMS AND SHOULD NOT ENTER INTO WHAT ACTION SHOULD BE TAKEN IF MPH WERE TO RESUME.

2. AS REGARDS THE QUESTION OF INITIATING LEGAL ACTION, BEFORE PUTTING A RECOMMENDATION TO MINISTERS WE NEED A FIRMER ASSESSMENT FROM YOUR LEGAL ADVISERS OF OUR PROSPECTS OF SUCCESS BASED ON A FULL READING OF THE PAPERS SOME OF WHICH HAVE SO FAR NOT BEEN AVAILABLE TO THEM. WE ARE THEREFORE SENDING TO YOU BY BAG ON 26 OCTOBER COPIES OF TWO AFFIDAVITS BY SIR R ARMSTRONG AND AN AMENDED STATEMENT OF CLAIM AND FURTHER AMENDED DEFENCE IN THE AUSTRALIAN PROCEEDINGS. WE WOULD BE GRATEFUL FOR A FURTHER VIEW FROM YOUR LEGAL ADVISERS AS SOON AS THEY HAVE BEEN ABLE TO STUDY THEM.
HOWE

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DISTRIBUTION

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MAIN

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PETER WRIGHT CASE
LIMITED
DEP.HD/PUSD
MR LITTLEFIELD PUSD
PUSD (E206)
HD/PUSD
HD/SPD
HD/NEWS

HD/INFO
HD/SEAD
PS
PS/PUS
MR BOYD
MR MCLAREN
MR DARWIN LEGAL ADVISERS
MR GILLMORE

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ADDITIONAL 15

PS/SIR R ARMSTRONG CAB OFF
SIR C FIGURES CAB OFF
MR MALLABY CAB OFF
MR DINWIDDY CAB OFF
MR J BAILEY TRESY SOLICITORS
MR INGLESE LAW OFFICER DEPT
PS/HOME SECRETARY
SIR B CUBBON PUS, HOME OFF

MR CHILCOTT HOME OFF
MR NURSAW HOME OFF
MR MOWER HOME OFF
LEGAL ADVISERS(SEC. SERVCs)
DIR.GENERAL (SEC. SERVCs -)
(- BOTH VIA PUSD E203)
MR WICKS NO.10 DOWNING ST
PRESS OFFICE NO.10 DOWNING ST

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053036
MDLOAN 1472

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TO PRIORITY GIBRALTAR (PERSONAL FOR GOVERNOR)
TELNO PERSONAL 66
OF 231800Z OCTOBER 87
INFO PRIORITY MADRID

SIC
YOUR TELNO 184: SPYCATCHER

1. IF WE WERE TO UNDERTAKE LEGAL PROCEEDINGS THE FIRST REQUIREMENT WOULD BE TO KNOW AGAINST WHOM TO PROCEED. GRATEFUL FOR ANY FURTHER PRECISION YOU CAN PROVIDE CONCERNING THE INDIVIDUALS REFERRED TO IN YOUR TUR AS BRINGING IN QUOTE THE ENTERTAINER UNQUOTE. CAN YOU CONFIRM THE REPORT IN MADRID TELNO 689 THAT THE NEWSPAPER HAS BEEN BANNED ENTRY BY THE CUSTOMS AUTHORITIES. IS IT STILL BE DISTRIBUTED.

HOWE

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DISTRIBUTION

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MAIN 32

PETER WRIGHT CASE
LIMITED
DEP.HD/PUSD
MR LITTLEFIELD PUSD
PUSD (E206)
HD/PUSD
HD/SPD
HD/NEWS

HD/INFO
PS
PS/PUS
MR BOYD
MR MCLAREN
MR DARWIN LEGAL ADVISERS
MR GILLMORE
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ADDITIONAL 15

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MR MALLABY CAB OFF

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SIR B CUBBON PUS, HOME OFF

LEGAL ADVISERS(SEC. SERVCS)
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(- BOTH VIA PUSD E203)
MR WICKS NO.10 DOWNING ST
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SUBJECT
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DCA

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

STAFF COUNSELLOR FOR THE SECURITY AND INTELLIGENCE SERVICES

The Prime Minister discussed with you briefly this morning your minute of 19 October about the reporting arrangements for the Staff Counsellor.

The Prime Minister said that she understood the reasons underlying your proposal, but she thought it important for the Staff Counsellor's reports to go direct to the relevant Ministers. One possibility would be for the Staff Counsellor to produce a general report which would be sent to the Prime Minister, Foreign & Commonwealth Secretary and the Home Secretary, with subsidiary detailed reports on SIS and GCHQ matters going to the Prime Minister and the Foreign & Commonwealth Secretary and the report on the Security Service going to the Prime Minister and the Home Secretary. It could be made clear to the Staff Counsellor that the good offices of the Cabinet Secretary would be available to ensure his findings were properly segregated into the right report. You undertook to consider some such approach and to advise the Prime Minister further.

I am not, at this stage, sending a copy of this minute to the Private Secretaries to the Foreign & Commonwealth Secretary and the Home Secretary.

N.L.W.

(N.L. WICKS)

23 October 1987

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10 DOWNING STREET

From the Principal Private Secretary

22 October 1987

The Prime Minister was grateful for the reports from the Solicitor General and the Lord Privy Seal, in their minutes of 21 October, about discussions with the Clerk and the Speaker concerning Spycatcher. The Prime Minister has noted the position and would be grateful to be kept in close touch with further developments.

I am sending a copy of this letter to the Private Secretaries to members of OD(DIS), the Chancellor of the Exchequer, the Lord Advocate and Sir Robert Armstrong.

N L WICKS

Michael Saunders, Esq.
Law Officers' Department

CONFIDENTIAL

AB



01-936 6269

ROYAL COURTS OF JUSTICE
LONDON WC2A 2LL

22 October 1987

C J Boulton Esq CB
Clerk of the House
House of Commons
LONDON SW1A 0AA

Dear Boulton,

You will recall that one of the points which I made yesterday when we discussed with the Speaker the application of the sub judice rule in the "Spycatcher" case was that the question whether the book, or excerpts from or summaries of it, can be published at all is the issue in the whole case and that such publication is precisely what the House of Lords has granted an interim injunction to prevent, on the basis that to allow such publication before the case is decided would do irreparable harm to one party and therefore to the administration of justice. As I said, the purpose of the sub judice rule in the House is identical to the purpose of the courts in granting an interim injunction, namely to prevent "real and substantial danger of prejudice to the trial of the case" (Erskine May, page 429).

In this connection I believe that the Speaker may be assisted by looking at the speeches of the majority of their Lordships (and I attach a copy of the Law Report with some passages sidelined for ease of reference). May I refer him in particular to two passages, which I believe are most helpful.

In the first passage, at page 351, Lord Brandon says:

"6. The effect of discharging the temporary injunctions now

If the temporary injunctions are discharged now, so that the newspapers are left free, subject to any questions of copyright, to disseminate generally the disclosures made by Mr Wright in Spycatcher, there will be no point in the Attorney General proceeding to trial. All possible damage to the British security service will indeed then have been done. His arguable case will have been completely destroyed, by summary process at an interlocutory stage and without his ever having had the opportunity of having it fairly tried on appropriate evidence.



7. The effect of continuing the temporary injunctions until trial

If the temporary injunctions are continued until trial, and the Attorney General's claim to final injunctions then fails, the newspapers will be free to publish Mr Wright's disclosures as they please. They will certainly have been delayed in exercising rights which will, in that event, have been vindicated. Mr Wright's disclosures, however, relate not to recent events but to events many years in the past. That being so, a further delay in the exercise of the newspapers' rights will in no way be equivalent to a complete denial of those which the Attorney General may have.

8,9. The potential injustice of the two available courses to either party and the choice between them

For the reasons which I have given the choice lies between one course which may result in permanent and irrevocable damage to the cause of the Attorney General and another course which can only result in temporary and in no way irrevocable damage to the cause of the newspapers. In that situation it seems to me clear that the second of the two courses should, in the overall interests of justice, be preferred to the first."

In the second Lord Templeman, at page 357 says:

"I reject the allegation that the press are being gagged or censored or submitted to Soviet discipline. The Millett injunctions were not imposed by the government: the injunctions were imposed and are being continued by independent and impartial judges because they consider that despite the importance of the right of freedom of expression it is necessary in the national interest to prevent the security service being harmed now and in the future. The imposition of restraints on the press in the exercise of a judicial discretion in conformity with the convention [the European Convention on Human Rights] is an expression and not a negation of democracy in action."

Yours sincerely

Nicholas Lord.

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01-936 6269

PRIME MINISTER

ROYAL COURTS OF JUSTICE

LONDON WC2A 2LL

Prime Minister

An interview report.

Very troublesome unless the Clerk in the Speaker change their position. N.C.U.

PUBLICATION OF EXTRACTS FROM "SPYCATCHER" IN HANSARD

21.10 mr

Benn.

I have seen the minute of today's date from the Lord Privy Seal to yourself and before he left for Bristol at 10 a.m. I discussed the matter with the Attorney General and officials.

At 11.30 a.m. today I called on the Speaker to urge him not to implement the second part of the ruling proposed to him by the Clerk of the House which had been faxed to us this morning:- "If asked whether the book may be quoted in the House, you may care to say:

I do not propose to prevent Members from referring to events mentioned and allegations contained in the book - so long as they choose an occasion when it is otherwise in order to do so.

(Mr Benn used material from the book on 13 July col 718, without intervention from the Chair.)"

I pointed out that:

- 1) The question whether the book or excerpts from or summaries of the book can be published at all is the issue in the whole case.
- 2) Such a publication is precisely what the House of Lords has granted an interim injunction to prevent - on the basis that to allow such publication before the case is decided would do irreparable harm to one party and therefore to the administration of justice.
- 3) To allow the reading of extracts or summaries of the content of the book in the House would be to allow what the defendants are

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expressly enjoined not to do - and what if done by anyone else outside the House could be a criminal contempt, as held by the Court of Appeal in The Independent case.

I pointed out that the purpose of the sub judice rule in the House is identical to the purpose of the courts in granting an interim injunction namely to prevent "real and substantial danger of prejudice to the trial of the case" - see Erskine May page 429 and that he and the House were therefore bound by the rule.

I reminded him that as far as we are aware all detailed consideration of the contents of "Spycatcher" was heard in camera in Australia, and drew his attention to the precise wording of the injunction as modified by the House of Lords pointing out in particular that the reporting of material referred to in the Australian proceedings had been narrowed by the House of Lords to "the disclosure or publication of any judgment given in open court ...": a significant change which among other things justified the Speaker in altering his ruling of 13 July since the change had been made thereafter.

The Clerk of the House sought to draw a distinction between reference in the House to the position of what he called irresponsible newspapers in the United Kingdom and the right of Members of the House to quote from a book widely available elsewhere; and the Speaker expressed concern about the 'credibility' of his position given that 'practically everyone he met' had already read the book. I replied that most people in this country had not read the book and that every newspaper, bookshop, and library was at risk of contempt proceedings if they published extracts, quoted from, sold or stocked the book and that the High Court had just reconfirmed the position vis-a-vis Derbyshire County Council in respect of libraries last Friday. If the book were quoted in the House every newspaper in the country including the Guardian and Observer would immediately be able to publish such material in plain frustration of the purpose of the injunction. I concluded by urging a point which the Attorney General regards as of particular importance namely that if the Speaker gives the green light to this kind of publication, it may frustrate any attempt made by the Government in future to restrain ex-members of the Security Service from publishing in breach of their duty of confidence.



The Speaker said that he recognised the seriousness of the matter and that he would consider further what he should say.

At 1 p.m. the Clerk of the House rang me to say that on reflection the Speaker had decided to 'soften the initial part of his statement' on this aspect as follows:

'If asked whether the book may be quoted in the House, you may care to say:

I hope that Members will do nothing that prejudices the trial which is now sub judice. The Chair will not however prevent the use in our proceedings of information or allegations derived from the book.'

I thanked him but said that unless the Speaker was willing to enforce the first sentence of his ruling by ruling a Member out of order if he did attempt to quote from the book, the ruling was not strong enough and of little or no use. I also felt that it would leave the Speaker in an impossible position. I re-emphasised in the clearest terms that in my opinion any quotation from "Spycatcher" or attribution to Wright in the House which would contravene the injunction if made outside the House was in plain breach of the sub judice rule; that from the point of view of his 'credibility' the Speaker was not only entitled to enforce but had a duty to enforce the sub judice rule; and that in so far as he was given any other advice it was wrong.

The proper answer to the question whether the book may be quoted in the House is 'No'.

The Clerk of the House said he would consider the matter further.

I am copying this minute to the other members of OD(DIS), to the Chancellor of the Exchequer and the Lord Advocate, and to Sir Robert Armstrong.

M.L.

21 October 1987

CONFIDENTIAL



PRIME MINISTER

PUBLICATION OF EXTRACTS FROM 'SPYCATCHER' IN HANSARD

I have seen the Home Secretary's minute of 20 October to you about distribution by HMSO of documents containing the proceedings of the European Parliament when Labour MEPs read brief extracts from 'Spycatcher' into the record.

Paragraph 10 of that minute referred to the risk that extracts from 'Spycatcher' might be included in reports of the UK Parliament's proceedings. They might be worked into speeches, Questions or Early Day Motions on the Order Paper. In the past, we have been able to rely on the House authorities to invoke the sub judice rule to prevent such abuses. However, the Speaker gave a ruling on 13 July which is likely to be unhelpful. I attach a copy of it (Official Report, Cols 703-708). In particular he said:

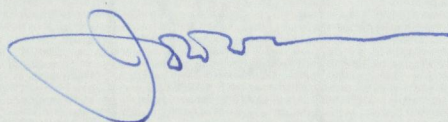
"... it is legitimate to raise anything that has come out in the Australian courts, but what should not be raised under our sub judice rules is the action that is pending before the British courts ... anything that has come out in the Australian courts is perfectly in order, and I do not think the House needs to be too inhibited."

I understand the Clerks are advising the Speaker that he should rule out of order references to the Government's cases in the UK courts and discussion of the merits of those cases, including the propriety of extracts from Wright's book being published in the newspapers, as being sub judice. However, he is likely to rule that references to proceedings in Australia, and to events and allegations described in the book and made public in Australia, are in order, provided they are relevant. He would allow the book to be quoted in the House, provided it was otherwise in order.

The potential damage to the Government's position in its legal action has been pointed out clearly and fully to the House authorities, but so far they refuse to change their stance. I

believe that we must do all we can to bring home to the Speaker the potential consequences of the line he is taking, and I have suggested to the Attorney-General's office that he should consider urgently whether he should see the Speaker himself today.

I am sending copies of this minute to the other members of OD(DIS), to the Chancellor of the Exchequer and the Lord Advocate, and to Sir Robert Armstrong.

A handwritten signature in blue ink, consisting of a large, stylized initial 'J' followed by a series of loops and a long horizontal stroke.

JW

21 October 1987

Sub Judice Rule

3.31 pm

Mr. John Morris (Aberavon): I beg to ask leave to move the Adjournment of the House, under Standing Order No. 20, for the purpose of discussing a specific and important matter that should have urgent consideration, namely,

"Government policy in the light of the imminent publication in the United States of the 'Spycatcher' book by Mr. Peter Wright."

The matter is specific because the book is already on its way to American bookstalls and, indeed, because of the time factor, may already be there. It is only hours before it is here.

The matter is important because the Government have spent a great deal of taxpayers' money—if I may coin a phrase—in the courts of Australia, the Republic of Ireland and those within this jurisdiction, although, curiously, not in the courts of America. The capacity of the Government and their legal advisers to suffer judicial black eyes seems virtually inexhaustible.

The matter is urgent because the present Lord Chancellor, before his translation, like a bishop, to higher things, said that he was eagerly looking forward to explaining the Government's policy once the fetter of the sub judice rule was removed. The book, which has been the subject of so much litigation—I have nothing against work creation, even for lawyers, either by the Manpower Services Commission or by any other body—will be on our shores in a matter of hours. Whether or not the Government are right in the latest twist of litigation, the time has surely come to justify the value, or acknowledge the futility, of it all.

The House, traditionally, since at least the time of King Charles, has been the holder of the nation's purse strings. It is sufficiently important that the time has come when we should have the opportunity of saying, "Enough is enough" and when the world of "Alice in Wonderland", where the whole world, except a Briton who does not leave these shores or buy a copy from a traveller from America, can read the book in question is clarified. The time has come to justify this futile, farcical performance.

Mr. Speaker: The right hon. and learned Member for Aberavon (Mr. Morris) asks leave to move the Adjournment of the House under Standing Order No. 20 for the purpose of discussing a specific and important matter that he believes should have urgent consideration, namely,

"Government policy in the light of the imminent publication in the United States of the 'Spycatcher' book by Mr. Peter Wright."

I have listened with care to what the right hon. and learned Gentleman said, but I regret that I do not consider the matter that he has raised is appropriate for discussion under Standing Order No. 20 and I cannot, therefore, submit his application to the House.

Mr. D. N. Campbell-Savours (Workington): On a point of order, Mr. Speaker. I want to raise a point of order that relates to the sub judice rule as it affects our proceedings. You will know that yesterday, following the decision of *The Sunday Times* to print extracts of the Peter Wright memoirs, the Attorney-General announced that he intended to bring an action against *The Sunday Times* for criminal contempt.

The House will recognise that the Government's handling of the affair has allowed moneybags Mr. Murdoch to move in with a big wallet to turn an issue of principle, an issue of official secrecy and open government, into a Fleet street scoop—

Mr. Speaker: Order. What is the point of order? If the hon. Gentleman is successful and in order, he may be able to raise this subject on the summer Adjournment motion.

Mr. Campbell-Savours: This morning I tabled four questions, three of which related to discussions and communications between *The Sunday Times* and the Government last week. I did that in the knowledge that Mr. David O'Callaghan of Turner Kenneth Brown, Solicitors for *The Observer*, telephoned Mr. David Hogg, the Deputy Treasury Solicitor, on Friday and told him that *The Sunday Times* had purchased the serialisation rights—

Mr. Speaker: Order. The hon. Gentleman must not, under the guise of a point of order, make a contribution which may well be in order at a later stage, but not now. I can deal with the sub judice rule if the hon. Gentleman will give me that opportunity.

Mr. Campbell-Savours: Mr. Speaker, I—

Mr. Speaker: Order. I am not prepared to give the hon. Gentleman the opportunity to make a speech which he could make later.

Mr. Campbell-Savours: I have also tabled a written question to the Secretary of State for answer this Wednesday. I have asked whether the Government intend to issue an amendment to the general import licence, so as to render—

Mr. Speaker: Order. The hon. Gentleman must not raise matters of that kind. If he is concerned about questions that have not been accepted by the Table Office, he can ask for them to be referred to me.

Mr. Campbell-Savours: *rose*—

Mr. Speaker: Order. I am dealing with one thing at a time. The hon. Gentleman can ask the Table Office to bring his questions to my attention. It is not in order for the hon. Gentleman to raise this matter on the Floor of the House in this way. Does he want to know about the sub judice rule?

Mr. Campbell-Savours: Mr. Speaker, I tabled questions before the application was made to the courts. I put it to you, that my questions are critical, because they deal with public concerns and anxieties. Is your ruling, or any ruling that you may make, likely to affect my right as a Member of the House to table questions to which the public want to know the answers?

Mr. Speaker: I can deal with that. As the House knows, I have consistently ruled that there can be no question of proceedings in the Australian courts being treated as falling within the ambit of the sub judice rule of this House. The same would apply to any proceedings in the United States courts, although I have no knowledge of any such proceedings.

With regard to the publication of Mr. Wright's book in this country, I have to rule that that subject cannot be raised in the House at this juncture. There are four relevant groups of cases pending in the United Kingdom courts,

all are inter-related. In particular, the appeal of the Attorney-General against the High Court judgment in the case of the Attorney-General v. *The Independent*, the *London Evening Standard* and the *London Daily News* is now being heard in the Court of Appeal. That case raises exactly the same issues as will apply in *The Sunday Times* case. In those circumstances, the House will not expect me to exercise my discretion by allowing reference to be made to any of those specific cases in the House, or in questions or motions.

3.38 pm

Mr. Tony Benn (Chesterfield): You said earlier, Mr. Speaker, that it might be in order to raise certain matters arising from the submission of my right hon. and learned Friend the Member for Aberavon (Mr. Morris) for an emergency debate on the summer Adjournment motion, which is the next topic for business. That is, in a sense, an Adjournment debate. As you cited the cases about the sub judice rule, may I remind you, of the plea that you made in another place when you were re-elected, when you said that you had made claim

"by humble petition to Her Majesty, to all ancient and undoubted rights and privileges," their relating to the House of Commons.

I have consulted "Erskine May", which states:

"any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence."

I am putting it to you, Mr. Speaker, very gravely, that from what has come out, whether we read it in an American bookshop, *The Sunday Times* or *The Independent*, we now know that senior officials of MI5, in association with Jim Angleton of the CIA, tried to destroy an elected Prime Minister of this country during the 1970s. We also know that when such a charge is made in the United States, Congress brings it out into the open, whereas a British Government use legal devices to suppress the prosecution of a criminal offence brought to public attention by a public servant.

With great respect, Mr. Speaker, no one wants to discuss the vendetta between the Government and the author of this book, but I submit that if you were to rule that in the debate on the Adjournment we could not discuss what has now come into the public domain, the House would be subordinate to what the Attorney-General wishes to do in his legal capacity. I seriously ask you to allow the House to discuss a matter which not only prima facie led to the obstruction of a previous Government, of which I was a member, but which, if it is not discussed now, would make a mockery of us compared with the American Congress, which is bringing covert action of this kind into the public domain because it is manifestly in the public interest.

Mr. David Winnick (Walsall, North): On a point of order, Mr. Speaker. The Attorney-General has informed us that the further appeal in Australia is to be heard on 27 July. As you know, that is after we begin the summer recess. That means that the case will continue in Australia and be concluded, yet the House of Commons will be unable to comment in any way whatever.

I wish to take up the point made by my right hon. Friend the Member for Chesterfield (Mr. Benn), because

if MI5 officials were involved in destabilisation, in trying to destroy an elected Government and in smearing the Prime Minister of the day, such allegations should be debated by the House. These allegations may not be true and may simply be part of Mr. Wright's imagination, but if they are correct, it could well be that some of the officials in MI5 who took part in such subversive and criminal activities are still in MI5.

If Parliament is told that it cannot discuss the matter, we shall go into recess for three months and the case will be heard during that time. That means that while the country and the press will no doubt have an opportunity to discuss the matter, Parliament will be silent on the fundamental issue of parliamentary democracy. If we cannot even debate serious allegations from a former senior official of MI5 that the Government of the day were subject to destabilisation, that makes a mockery of our parliamentary democracy and our parliamentary system. I therefore ask you, Mr. Speaker, whether we can have a statement from the Attorney-General at the first opportunity, and certainly before the House goes into recess.

Mr. Tony Banks (Newham, North-West): Further to that point of order, Mr. Speaker. Perhaps hon. Members now appreciate my request for a shorter recess. I fully understand the principle on which you say that if something is sub judice we should not discuss it, but surely the sub judice rule is designed to protect the rights of citizens who may appear in court and who would not want to have his or her case in any way jeopardised by talk inside the House. I am sure that hon. Members on both sides of the House would support that. However, the Government are now deliberately using the sub judice rule as a means of gagging the House to prevent its debating something of great importance. It becomes absolutely perverse when we know that this matter is being discussed in other countries and that the books will turn up on these shores. Therefore, there might now be a case for you to reconsider the sub judice ruling in respect of this case, because it seems to Opposition Members that the Government are manipulating the office of Speaker by getting you to defend a principle that allows them to gag the House.

Mr. Speaker: Order. I am bound by the resolutions of the House. Let me repeat that matters are sub judice if they are awaiting trial, or under adjudication by any court exercising a criminal jurisdiction in courts martial, and should not be referred to in any motion—including a motion for leave to bring in a Bill—in debate, or in questions to Ministers. I am bound by the resolutions passed on 23 July 1963. If the House wants to change the resolutions, it is a matter for the House. I have already said that I am not prepared to exercise my discretion in this case.

Mr. Merlyn Rees (Morley and Leeds, South): On a point of order, Mr. Speaker. The book which is now to be published in the United States and which, apparently is now being distributed, will arrive in this country shortly. I am concerned only with whether, in view of what you have said and ruled, the book will be made available in the Library and who has control over that.

The book will be available to most of us very soon. I accept that security and the national interest matter. As you will know, Mr. Speaker—because you will have

[Mr. Merlyn Rees]

read the report of the Select Committee on Privileges—we gave some thought to what is the security of the state and to who makes the judgment, the Government or others, in approaching you on such matters as the Zircon film. I have studied carefully the statement by the Prime Minister on 6 May, which I have in front of me. The right hon. Lady accepted the information given to her that the allegations made by Mr. Wright were untrue. If we are discussing something that is untrue, how can it be against the national interest for people to read it? So that we can make our judgment, will the book be available in the Library, although we cannot discuss it here?

Mr. Speaker: I have no idea. That will be a matter for the Librarian.

Dr. David Owen (Plymouth, Devonport): Further to the point of order, Mr. Speaker. As I understand your ruling, you are not prepared to accept the use of Standing Order No. 20 or any reference to the case in the debate on the Adjournment. However, would you be prepared to reconsider your decision on how the House might debate the issue if, as the right hon. Member for Morley and Leeds, South (Mr. Rees) said, the book comes into the country tomorrow and is then widely available, but the Government refuse to ban it or to take action in the United States courts? In those circumstances, would you be prepared to examine the whole issue afresh, including what you have said about the sub judice rule affecting not only the particular case in which the Attorney-General is now involved, but the three other cases? That strikes many of us as going very wide of the issue.

Mr. Andrew Faulds (Warley, East) *rose*—

Mr. Speaker: Order. I shall take the right hon. Member for Chesterfield (Mr. Benn) first.

Mr. Benn: Further to the point of order, Mr. Speaker. I accept that you are in a difficulty over the sub judice rule. May I put it to you, however, that, according to a proper interpretation of that rule, it might be wrong for hon. Members to comment during the summer Adjournment debate on the conduct of the editor of *The Sunday Times* in publishing extracts from the book, but it could not be wrong for hon. Members to bring to the Chamber matters which are already in the public domain through *The Sunday Times*, and which we expect to appear in their full form?

I am only anxious, Mr. Speaker that we should not make a fool of Parliament by an interpretation of a rule

that would deny to us uniquely what everyone else in the world is freely discussing, when it affects one of our former Prime Ministers and present Members of the House. May I invite you, Mr. Speaker, to narrow your interpretation and say that no one can refer to whether *The Sunday Times*, *The Independent*, *The Guardian* or the *London Daily News* is criminally culpable, but make it abundantly clear that we are allowed to speak about matters which touch upon Parliament, and which are now available to everyone—including yourself, Sir—and rule accordingly?

Mr. Faulds: Further to that point of order, Mr. Speaker. In view of your pronouncement a few moments ago, I shall now proceed to the Library and ask for a copy of this book to be made available to me, on the presumption that neither the Prime Minister nor any of the Law Officers can forbid the Library to get hold of it.

Mr. Speaker: That is a hypothetical question, but may I say—

Mr. D. N. Campbell-Savours (Workington): Further to that point of order, Mr. Speaker.

Mr. Speaker: No.

Mr. Campbell-Savours: Why not?

Mr. Speaker: Because I am on my feet.

As the book is about to be published in America, I accept that this matter creates considerable difficulty for the House. I have already ruled that it is legitimate to raise anything that has come out in the Australian courts, but what should not be raised under our sub judice rules is the action that is pending before the British courts. I said at the beginning of my statement that anything that has come out in the Australian courts is fair game.

Mr. Benn: Or in *The Sunday Times*?

Mr. Speaker: That is before the courts in this country, but anything that has come out in the Australian courts is perfectly in order, and I do not think that the House needs to be too inhibited.

Mr. Campbell-Savours: Further to that point of order, Mr. Speaker.

Mr. Speaker: No.

Mr. Campbell-Savours *rose*—

Mr. Speaker: Order. If the hon. Gentleman wants to be called in the debate, I am not prepared to hear a speech from him now by way of points of order.

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cc: Mr. Ingham

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

21 October 1987

Dear Philip,

PETER WRIGHT CASE: PUBLICATION OF PROCEEDINGS OF THE EUROPEAN
PARLIAMENT CONTAINING EXTRACTS FROM "SPYCATCHER"

The Prime Minister has seen the Home Secretary's minute of 20 October reporting the outcome of his discussions with Ministers about whether anything can be done to prevent distribution by HMSO of the issue of the Official Journal of the European Communities recording the proceedings of the European Parliament when Labour MEPs read two brief extracts from Spycatcher into the record.

The Prime Minister agrees with the Home Secretary's advice for dealing with the relevant issues of the Official Journal. She agrees, too, that officials should take the public line suggested in paragraph 5 of OD(DIS)(87)75.

I am sending copies of this letter to the Private Secretaries to the members of OD(DIS), to Alex Allan (Chancellor of the Exchequer's Office), Alan Maxwell (Lord Advocate's Office) and Trevor Woolley (Sir Robert Armstrong's Office).

Yours truly

Nigel Wicks

N. L. Wicks

Philip Mawer, Esq.,
Home Office.

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FM FCO
TO IMMEDIATE AMMAN
TELNO 308
OF 201900Z OCTOBER 87

SPYCATCHER

1. WE UNDERSTAND THAT SPYCATCHER HAS NOW GONE ON SALE IN AMMAN. WE WOULD BE GRATEFUL FOR ANY DETAILS YOU CAN PROVIDE OF WHEN IT WENT ON SALE, THE NUMBER OF BOOKSHOPS INVOLVED WHETHER THERE IS E G A SINGLE DISTRIBUTOR, AND THE APPROXIMATE EXTENT OF THE SALES.
2. WE IMAGINE THAT LEGAL PROCEEDINGS IN JORDAN TO TRY TO RESTRAIN SALES OF THE BOOK WOULD BE DIFFICULT AND UNLIKELY TO SUCCEED BUT WOULD BE GRATEFUL IF YOU WOULD CONSULT YOUR LEGAL ADVISERS DISCREETLY AND LET US HAVE THEIR ADVICE, TOGETHER WITH YOUR OWN ASSESSMENT OF ANY OTHER FACTORS WE SHOULD TAKE INTO ACCOUNT.

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DISTRIBUTION

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MAIN 31

PETER WRIGHT CASE
LIMITED
DEP.HD/PUSD
MR LITTLEFIELD PUSD
PUSD (E206)
HD/PUSD
HD/SPD
HD/NEWS

HD/INFO
NENAD
PS
PS/PUS
MR BOYD
MR MCLAREN
MR DARWIN LEGAL ADVISERS
MR GILLMORE

ADDITIONAL 15

PS/SIR R ARMSTRONG CAB OFF
SIR C FIGURES CAB OFF

MR CHILCOTT HOME OFF
MR NURSAW HOME OFF

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MR MALLABY CAB OFF
MR DINWIDDY CAB OFF
MR J BAILEY TRESY SOLICITORS
MR INGLESE LAW OFFICER DEPT
PS/HOME SECRETARY
SIR B CUBBON PUS, HOME OFF

MR MOWER HOME OFF
LEGAL ADVISERS(SEC. SERVCS)
DIR.GENERAL (SEC. SERVCS -)
(- BOTH VIA PUSD E203)
MR WICKS NO.10 DOWNING ST
PRESS OFFICE NO.10 DOWNING ST

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PRIME MINISTER

PETER WRIGHT CASE: PUBLICATION OF PROCEEDINGS OF THE EUROPEAN
PARLIAMENT CONTAINING EXTRACTS FROM SPYCATCHER

The Home Secretary, in his minute at Flag A, concludes that there is nothing to be done to prevent HMSO distributing the proceedings of the European Parliament containing the two brief extracts from Spycatcher. He suggests that in response to criticism we should say that:

"Proceedings of the European Parliament are subject to privilege; that their reporting is governed by well-established rules; and that HMSO is fulfilling its obligation to the European Communities in distributing the proceedings regardless of their contents."

Though HMSO distribution of the proceedings is embarrassing, I agree with the Home Secretary that nothing can be done to prevent it. Agree with the Home Secretary's advice? Yes *ms*

More concerning is the advice given by the Clerk to the Speaker which would, in effect, permit MPs to refer in debates, and we think in EDMs, to the events mentioned and allegations contained in Spycatcher. (The text of the Clerk's advice to the Speaker is at Flag B). The Lord Privy Seal and the Chief Whip are discussing this advice with the Speaker's office and the Lord Privy will minute shortly.

N.L.W.

N. L. Wicks

20 October 1987

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PRIME MINISTER

PETER WRIGHT CASE: PUBLICATION OF PROCEEDINGS OF THE
EUROPEAN PARLIAMENT CONTAINING EXTRACTS FROM "SPYCATCHER"

In line with Mr Bearpark's minute of 12^{at 11ap} October, I have consulted other interested Ministers about whether anything can be done to prevent distribution by Her Majesty's Stationery Office (HMSO) of the issue of the Official Journal of the European Communities which will record the proceedings of the European Parliament (EP) for the week of 14 September when Labour MEPs read two brief extracts from "Spycatcher" into the record.

2. The daily records of the proceedings are already available in London from the EP's Information Office and they can be seen in the House of Commons Library. But the scope for embarrassment if HMSO, as a Government Department, appeared to be flouting our efforts to prevent distribution of "Spycatcher" is obvious. There must be a slight risk that distribution by HMSO could be cited against us in the various legal proceedings in the Peter Wright affair.

3. Our freedom for manoeuvre is limited. As officials have pointed out, 120 copies of the journal of the European Communities are sent to subscribers in this country direct from the publisher in Luxembourg. HMSO acts as ordering agency for these subscriptions, but is not involved in their distribution. In a list of agents at the back of the journal, HMSO is listed as the United Kingdom agent (there is also a sub-agent, a commercial firm). The President of the EP assured Mrs Crawley MEP during the proceedings on 14 September that the record for that day (including the extract from "Spycatcher" which she had just read) would be available in the United Kingdom. Direct distribution to regular subscribers in this country could only be stopped by request to the publishers in Luxembourg. There is little chance that they would agree. Interruption of distribution, if it did ensue, would be in breach of HMSO's contract with subscribers, and one or more might sue for damages. For us to bring about interruption of distribution might

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also be a breach of our obligations under Articles 5 and 142 of the Treaty of Rome, and MEPs or the European Commission (or any person with an interest) might seek to bring an action against us in the United Kingdom or European courts. It would be embarrassing to lose such a case, and the legal advice is that on more general grounds it would be preferable not to have Article 5 tested in this country. Colleagues concluded on balance that we should not seek to prevent direct distribution from Luxembourg to the United Kingdom.

4. HMSO itself takes only 10 copies of the journal, in order to meet ad hoc requests; it can obtain additional copies if needed. Ad hoc requests are rare; indeed any made for this particular issue (notwithstanding the cost of £20 a copy) would probably be deliberately aimed at embarrassing the Government.

5. For HMSO to refuse to supply copies on request would pose fewer problems than would an attempt to interrupt distribution of the journal from Luxembourg. But even this could be regarded as a breach of HMSO's obligations as the United Kingdom agent of the publishers, and there would be a risk of legal action. The HMSO staff concerned belong to SOGAT, and any move by HMSO could possibly become public through the trades unions. Such a move could be considered inconsistent with Lord Plumb's assurance about distribution of the journal in this country, mentioned in paragraph 3. Although proceedings of the EP are not exempted from our injunction restraining British newspapers from publishing material from Peter Wright's book, proceedings of both Houses of the British Parliament are so exempted, and we might be criticised for ignoring the spirit of that exemption.

6. I do not think that the two small extracts from "Spycatcher" read into the record of the EP would justify our instructing HMSO to take the conspicuous step of breaking off at short notice its longstanding arrangement with the publishers in Luxembourg to act as their British agent. But there is one way - a very contrived one - whereby HMSO could avoid responding to requests for this issue of the journal. The 10 copies HMSO receive from Luxembourg could be bought by a Government Department. If requests for copies were received from the public, HMSO could reply that their stock was exhausted. If asked to order more copies from Luxembourg, they could

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procrastinate, referring the matter if necessary to Ministers again. If asked, for instance in Parliament, who had bought the first 10 copies, we could if necessary say that it had been a Government Department.

below. 7. Such an elaborate strategem would run the risk of seeming ridiculous in the light of the two brief extracts from "Spycatcher" that are in question. I think it would be preferable to take no action, and, if asked, to take the line that officials suggested in paragraph 5 of OD(DIS)(87)75. This was a trivial manoeuvre by the Labour MEPs which would only cease to be trivial if we gave it another round of publicity.

8. We should, however, instruct HMSO not to display copies of the relevant issue of the journal, let alone promote its sale in any way.

9. Although the EP Rules Committee upheld the Presidency's decision that written explanations of vote attaching extracts from "Spycatcher" were out of order, and informal representations have been made to the Presidency about ruling out of order any further extracts, MEPs may yet renew their attempts to get extracts from "Spycatcher" included in the EP record. But no attempt was made in the October session, which took place last week.

10. Compared with the short extracts so far read into the EP record, it would be far more embarrassing if extracts were included in reports of proceedings of Parliament in this country. Before the Recess, the House of Commons authorities took steps to prevent this, because the question of publication of "Spycatcher" was sub judice. The Guardian/Observer hearing is due to start on 16 November, so the authorities should maintain that position. But officials are considering whether action should be taken to head off any tendency on the part of the authorities of the House to take another view, e.g. because many copies of "Spycatcher" have now reached this country.

1. I am sending copies of this minute to the other members of OD(DIS), to the Chancellor of the Exchequer and the Lord Advocate, and to Sir Robert Armstrong.

JP
James

APPROVED BY THE HOME SECRETARY
AND SIGNED IN HIS ABSENCE

CONFIDENTIAL

20/10/87

SECURITY: Secret Service PTG.



Mr Speaker

SPYCATCHER

If you are asked what aspects of this matter are sub judice and may not be referred to you may care to say:

ACTIONS BROUGHT BY THE ATTORNEY GENERAL AGAINST THE OBSERVER AND GUARDIAN NEWSPAPERS HAVE BEEN SET DOWN FOR TRIAL ON 16 NOVEMBER. I WILL NOT BE PREPARED TO ALLOW REFERENCES TO BE MADE IN THE HOUSE, OR IN QUESTIONS OR MOTIONS, TO THOSE ACTIONS - THAT IS, TO THE PROPRIETY OR OTHERWISE OF EXTRACTS FROM MR WRIGHT'S BOOK BEING PUBLISHED BY NEWSPAPERS IN THIS COUNTRY, OR THE MERITS OF THE ACTIONS BEING BROUGHT BY THE ATTORNEY GENERAL AGAINST SUCH NEWSPAPERS.

AS HAS ALWAYS BEEN THE CASE, REFERENCES TO PROCEEDINGS IN AUSTRALIA ARE NOT COVERED BY THE SUB JUDICE RULE.

If asked whether the book may be quoted in the House, you may care to say:

I DO NOT PROPOSE TO PREVENT MEMBERS FROM REFERRING TO EVENTS MENTIONED AND ALLEGATIONS CONTAINED IN THE BOOK - SO LONG AS THEY CHOOSE AN OCCASION WHEN IT IS OTHERWISE IN ORDER TO DO SO!

(Mr Benn used material from the book on 13 July col 718, without intervention from the Chair.)

CJB

20 October 1987

From: THE PRIVATE SECRETARY

✓



CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

20 October 1987

Dear Nigel,

STAFF COUNSELLOR FOR THE SECURITY
AND INTELLIGENCE SERVICES

FILE WITH IN
Sir Robert Armstrong copied to me his minute to you of 19 October and I have seen Tony Galsworthy's letter of the same date expressing the Foreign Secretary's preference for the formulation proposed by the Prime Minister concerning the Staff Counsellor's reports. The Home Secretary shares the Foreign Secretary's preference.

Copies of this letter go to Tony Galsworthy (FCO) and Trevor Woolley (Cabinet Office).

Yours sincerely,

P J C Mawer

P J C MAWER

N L Wicks, Esq., CBE.

CONFIDENTIAL

SECURITY. Secret Sewia PT9

CONFIDENTIAL



Foreign and Commonwealth Office

London SW1A 2AH

20 October 1987

Dear Philip

Peter Wright Case: Publication of Proceedings of
the European Parliament containing Extracts from Spycatcher

WITH COP/NUM?

Christopher Mallaby sent us a copy of his minute to you on 16 October enclosing a draft minute to the Prime Minister on the above. The Foreign Secretary agrees with the recommendation in the draft minute.

I am sending copies of this letter to be Private Secretaries to the other members of OD(DIS), to Christopher Mallaby and to Trevor Woolley.

Yours ever

(R N Culshaw)
Private Secretary

P Mawer Esq
PS/Home Secretary

CONFIDENTIAL

Ref. A087/2918

MR WICKS

Staff Counsellor for the Security and Intelligence Services

Mr Bearpark's minute of 12 October.

2. The reason for the procedure proposed in sub-paragraph (j) of the proposed terms of reference in the draft attached to my minute of 8 October was simply that it might not be appropriate for all the Staff Counsellor's reports to go to both Secretaries of State: it might not always be appropriate for the Home Secretary of the day to see reports (or sections of reports) relating to the SIS, or for the Foreign and Commonwealth Secretary of the day to see reports (or sections of reports) relating to the Security Service. The procedure proposed would enable the Cabinet Secretary of the day to consider, in respect of each report, whether it was for any reason desirable to restrict circulation accordingly. I do not envisage this happening very often, but I think it as well to provide for it. The Prime Minister of the day would of course get all reports.

3. I hope therefore that the Prime Minister will be content to leave the terms of reference as they stand, with the omission of the word "general" as she proposes.

4. I am sending copies of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary and the Home Secretary.

RA

ROBERT ARMSTRONG

19 October 1987

CONFIDENTIAL



Foreign and Commonwealth Office

London SW1A 2AH

19 October 1987

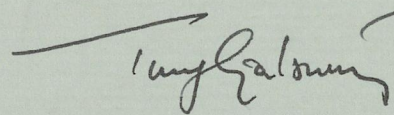
~~NW~~ - 15 see 8/10
MST 19/10

Dear Charles,

Staff Counsellor for the Security and Intelligence
Services

Sir Robert Armstrong sent me a copy of his minute of 8 October to Nigel Wicks. We have also since seen Andy Bearpark's minute of 12 October to you conveying the Prime Minister's comments. The Foreign Secretary is content with the revised drafts but prefers the formulation proposed by the Prime Minister concerning the Staff Counsellor's reports.

I am sending copies of this letter to Nigel Wicks, No 10 and Philip Mawer, Home Office.

Yours ever,


(A C Galsworthy)
Private Secretary

C D Powell Esq
10 Downing Street

CONFIDENTIAL



SECURITY

WRIGHT

PT 9

CONFIDENTIAL



file SH

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

14 October 1987

Dear Philip

**ATTORNEY GENERAL v OBSERVER
ATTORNEY GENERAL v GUARDIAN
ATTORNEY GENERAL v TIMES NEWSPAPERS**

Thank you for your letter of 13 October. I am writing to confirm that the Prime Minister has seen the Attorney General's minute of 12 October to the Home Secretary, and agrees with his advice. The Attorney General's office are already aware of this.

I am copying this letter to the Private Secretaries to members of OD(DIS), Alan Maxwell (Lord Advocate's Department) and Trevor Woolley (Cabinet Office).

*Yours
Andy*

P. A. BEARPARK

Philip Mawer, Esq.,
Home Office

CONFIDENTIAL

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File - 1

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GRS 37

CONFIDENTIAL
FM UKDEL VANCOUVER
TO IMMEDIATE CABINET OFFICE
TELNO 0001
OF 140630Z OCTOBER 87

FOR BEARPARK FROM WICKS

YOUR TELNO 28

THE PRIME MINISTER AGREES WITH THE ATTORNEY GENERAL'S
ADVICE IN TELEGRAM UNDER REFERENCE.

CHOGM

YYYY

UZLNAN 0114

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Doc - 3
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FOR BEARPARK FROM WICKS

YOUR TELNO 28

THE PRIME MINISTER AGREES WITH THE ATTORNEY GENERAL'S
ADVICE IN TELEGRAM UNDER REFERENCE.

CHOGM

YYYY

UZLNAN 0114

NNNN

NKLW 8
ra**THE TREASURY SOLICITOR**

Queen Anne's Chambers

28 Broadway London SW1H 9JS

Telephones Direct Line 01-210 3313
Switchboard 01-210 3000

Telex 917564 GTN 210

Fax No. 01-222 6006

B Dinwiddy Esq
Cabinet Office
70 Whitehall
London SW1A 2AS

Please quote

Your reference

Date

13th October 1987

Dear Bruce,

Sir John Bailey met William Armstrong today in connection with Chapman Pincher's book "A Webb of Deception - The Truth about the Wright Affair". Chapman Pincher himself did not attend, although he had been expected to do so. It was agreed that the meeting would be regarded as informal and confidential.

Sir John drew Mr Armstrong's attention to those disclosures in the book which appeared to be in breach of confidence, to the names which we wished to have removed and he suggested that the publishers should consider with their lawyers whether parts of the book were in contempt of the Order of the House of Lords dated 30th July 1987.

It was made clear that we were not by our action authorising or authenticating the contents of the book.

Mr Armstrong said that Chapman Pincher was favourably disposed to making amendments and he would bring our requests to his attention; he would also arrange for their lawyers to look at the book again in relation to the contempt point.

We were left with the impression that Chapman Pincher would contact Sir John Bailey by telephone on Thursday of this week to discuss the proposed deletions. Mr Armstrong said that the book was due to be printed next week and published in early November.

Finally, Mr Armstrong raised the question of publication of the book in Australia and asked what the Attorney General's attitude would be if this were to happen in the light of what we had said about contempt. Sir John replied that it would be a matter for the Attorney General but he reminded Mr Armstrong that both he and Chapman Pincher remained in the jurisdiction.

The meeting was a low-key affair and we would hope that Chapman Pincher will agree to make deletions. The matter will need to be reviewed on Thursday, 15th October.

Copies of this letter go to those named in the attached list.

Yours ever,

D A Hogg

COPIED TO:

T Woolley Esq (Private Secretary to Sir Robert Armstrong)

Mr Nursaw

Mr Saunders

Mr Noble

Mr Wicks

THIS IS A COPY. THE ORIGINAL IS
RETAINED UNDER SECTION 3 (4)
OF THE PUBLIC RECORDS ACT

010
From: THE PRIVATE SECRETARY



CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

13 October 1987

Dear Lady,

ATTORNEY GENERAL v OBSERVER
ATTORNEY GENERAL v GUARDIAN
ATTORNEY GENERAL v TIMES NEWSPAPERS flap

I am writing to confirm our telephone conversation in which I told you of the Home Secretary's endorsement of the Attorney General's advice conveyed in his minute to the Home Secretary of 12 October about the handling of certain aspects of these proceedings. I mentioned that, while he appreciates the difficulty because of the Prime Minister's absence in Vancouver, the Home Secretary thinks her view should nevertheless be taken on the Attorney General's proposals, not least because of her close interest in the conduct of the case. I understand that the Attorney General's office would appreciate as early an expression of the Prime Minister's view as possible, but they will be in touch with you direct about this.

Copies of this letter go to the Private Secretaries to the other members of OD(DIS), and of the Lord Advocate and Sir Robert Armstrong.

Yours sincerely,
P J C Mawer

P J C MAWER

P A Bearpark, Esq.,

CONFIDENTIAL

CONFIDENTIAL



File PA
Sent to FCO
by Tube

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

13 October 1987

I should be grateful if you could
send the enclosed telegram message to
Nigel Wicks in Vancouver as soon as possible.

(P. A. BEARPARK)

Lyn Parker, Esq.,
Foreign and Commonwealth Office.

CONFIDENTIAL

TELEGRAM

TO: Wicks

FROM: Bearpark

This telegram contains text of minute from Attorney General to Home Secretary. Latter accepts Attorney's advice, but wishes confirmation that PM is content. Attorney anxious to proceed as quickly as possible. Grateful for clearance by telephone if possible.

MESSAGE BEGINS

(Text as in attached copy minute)



10 DOWNING STREET

LONDON SW1A 2AA

*From the Private Secretary*MR. WOOLLEYCABINET OFFICE

STAFF COUNSELLOR FOR THE SECURITY AND INTELLIGENCE SERVICES

The Prime Minister saw Sir Robert Armstrong's minute of 8 October on the above subject over the weekend. She has queried why it would be appropriate for the counsellor to report to herself, and the relevant Secretaries of State, through the Cabinet Secretary. Her view is that the report should be sent to the relevant Ministers, ie herself, and the Secretary of State for Foreign and Commonwealth Affairs and the Home Secretary. Advice on the report would then be given by the Cabinet Secretary.

She has therefore asked that sub-paragraph (j) of the proposed terms of reference be amended to read "To send to the Prime Minister and Secretaries of State for Home and Foreign Affairs not less frequently than once a year a report or reports on your functions and activities." You will see that she has also omitted the word "general", because there seems no point in constraining the activities of the staff counsellor, and secondly to make it consistent with the draft statement.

I am copying this minute to the Private Secretaries to the Foreign and Commonwealth Secretary and the Home Secretary.

P. A. Bearpark12 October 1987



HOME SECRETARY

ATTORNEY GENERAL -v- OBSERVER

ATTORNEY GENERAL -v- GUARDIAN

ATTORNEY GENERAL -v- TIMES NEWSPAPERS

1. We have now received a response from the Guardian and Observer following our approach to them as set out in my minute to the Prime Minister of 5 October. Colleagues will recall that the purpose of the approach was to avoid our having to give discovery in the above actions.
2. As regards the defence of iniquity, the Guardian and Observer say that they would settle for an agreement that neither side will call witnesses, or tender documents in evidence, for the purpose of proving the truth or falsity of the contents of Wright's book; provided that the defendants should not be prevented from tendering the book in evidence. The agreement would extend to not cross-examining for this purpose any witness called for any other purpose.
3. What the Guardian and Observer propose is essentially what was agreed in Australia, but without the admission as to the truth of the allegations in the book, which we are all agreed we want if possible to avoid.
4. I believe that the response of the two newspapers is acceptable. It would have the desirable effect of dispensing with the issue of discovery of documents on the iniquity point. It would also, however, give rise to two particular consequences, to which I draw colleagues' attention. First, it would enable the newspapers to put the book in evidence, without having to call as witnesses members or ex-members of the Security Service to prove its contents. This is a net advantage, since it is impracticable to prevent the book being put in evidence. Second, although it would allow us to rely on the fact that there was



an investigation by Lord Trend into Sir Roger Hollis, and additionally an inquiry by the Director General into alleged subversion, as constituting evidence of Government's reaction to allegations of iniquities, we would not be able to rely on their helpful conclusions in so far as they tended to discredit the book. This is a disadvantage, but not a serious one. I believe that it would be an acceptable part of the price to pay for dispensing with the need for discovery of documents.

5. As regards the defence of acquiescence, the Guardian and Observer do not accept our offer of a Statement of Facts limited to "Wright-sourced material" (ie, the Wright TV interview and 'Their Trade is Treachery'). They maintain that the Government's failure to prevent the publication of other, non-Wright material would be relevant to the Judge when deciding whether, in his discretion, he should grant an injunction to the Crown. What the two newspapers would like, therefore, is the full Statement of Facts which was provided in the Australian proceedings.

6. I remind colleagues of what I have said previously, that it is imperative that there should not be any avoidable delay in the hearing of this case in England. The longer the delay before there is a substantive judgment, the more "seepage" there will be from other jurisdictions. I believe that to accept the newspapers' response would realistically represent the best deal we could get in this case, being one which still avoids the obligation to give discovery of documents on this point. Without a deal, the time that will elapse before the hearing will enlarge to a very dangerous extent.

7. I recommend, therefore, that we should accept the response of the Guardian and Observer on the iniquity and acquiescence points. I would be grateful for authority to respond to the two newspapers on these lines as soon as possible. If colleagues agree, the next stage will be to seek to achieve a consistent result with the Sunday Times.

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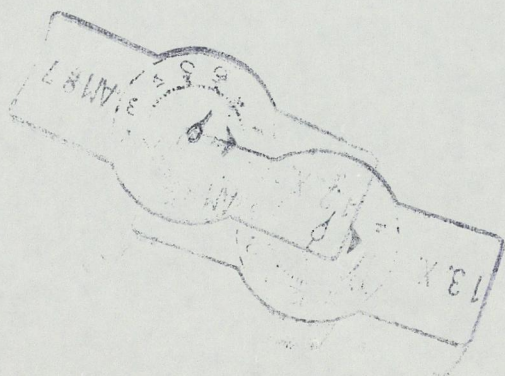
8. I am copying this to the Prime Minister and to the other members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong. In view of the fact that I am not recommending the making of any admissions of fact, you may think that it will not be necessary to trouble the Prime Minister in Vancouver.

B. M.

12 October 1987

CONFIDENTIAL

SECURITY
WHICH
PT 9



CONFIDENTIAL

file PM



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

MR. B. H. DINWIDDY
CABINET OFFICE

**PETER WRIGHT CASE: PUBLICATION OF PROCEEDINGS OF THE EUROPEAN
PARLIAMENT CONTAINING EXTRACTS FROM "SPYCATCHER"**

The Prime Minister has seen the paper OD(DIS) (87) 75 on the above subject. She has asked that the Home Secretary, in consultation with other interested Ministers, should consider, while she is at CHOGM, whether anything can be done to prevent distribution of the relevant material. Her view is that we must do everything possible to ensure that one hand of Government does not distribute what the other hand is trying to stop. I am copying this to the Private Secretaries to members of OD(DIS).

PM

P. A. BEARPARK
12 October 1987

CONFIDENTIAL

801

CONFIDENTIAL



File PM

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

MR. B. H. DINWIDDY
CABINET OFFICE

THE PETER WRIGHT CASE: POSSIBLE SALE OF
"SPYCATCHER" IN NORTHERN IRELAND

The Prime Minister has seen the paper
OD(DIS) (87) 76 on the above subject.
She is in agreement with the proposed
action.

I am copying this to the Private Secretaries
to the members of (OD)DIS.

ms

P. A. BEARPARK
12 October 1987

CONFIDENTIAL

SP

010
From: THE PRIVATE SECRETARY



CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

12 October 1987

Dear Mallaby,

12/11

OD(DIS)(87)76 - THE PETER WRIGHT CASE:
POSSIBLE SALE OF "SPYCATCHER" IN NORTHERN IRELAND

I am writing to confirm my telephone call late last Friday afternoon conveying the Home Secretary's acceptance of the advice contained in OD(DIS)(87)76 about the action to be taken in the event of distribution of copies of Peter Wright's book in Northern Ireland.

Copies of this letter go to the Private Secretaries to the other members of OD(DIS).

Yours sincerely,

P J C MAWER

C L G Mallaby, Esq

CONFIDENTIAL

PRIME MINISTER

The OD(DIS) paper below reports that HMSO will be distributing, in December, material from the official journal of the European Parliament which contains verbatim extracts from Spycatcher.

The extracts are very small (see annex to the paper). But there seems to be a real possibility that Labour MEPs will seek to read into the record further extracts from the book.

We risk looking very foolish indeed if such extracts are distributed by the Government Agency, HMSO. There may indeed be great difficulty, as the OD(DIS) paper suggests, in doing anything about it. But I believe that further thought needs to be given to possibilities here.

I therefore suggest that you should ask the Home Secretary, in consultation with other interested Ministers, to consider, while you are at CHOGM, whether anything can be done to prevent distribution of the relevant material.

Agree the Home Secretary to consider this matter and report?

N.L.W.

N L WICKS

9 October 1987

Yes - we must do everything we can to ensure that our hands are clean. The Home Secretary does not distribute what the other hand is trying to stop.

CONFIDENTIAL

PRIME MINISTER

STAFF COUNSELLOR FOR THE SECURITY AND INTELLIGENCE SERVICES

When you saw Robert Armstrong's original draft announcement (by Written Parliamentary Answer) and draft letter to Sir Philip Woodfield, the Staff Counsellor, you commented:

- (i) you thought that the House of Commons would expect the Staff Counsellor also to report to the relevant Secretaries of State and the Prime Minister (besides reporting to the Cabinet Secretary);
- (ii) the draft Written Answer was, in your view, too detailed.

In his minute below, Robert responds to your two points.

On brevity, he has much reduced the draft answer though he has, following the Home Secretary's suggestion, retained the first paragraph referring to the House of Commons debate on the Security Commission's report on Bettaney. Though this paragraph is not essential, there seems to be no great harm in retaining it. Agree it should be retained?

As to whom the Staff Counsellor should report, Robert has accepted your point that the Counsellor should report also to yourself and to the relevant Secretaries of State. But Robert suggests that the Counsellor should send to the Secretary of the Cabinet a general report (my underlining) or reports not less frequently than once a year, on his functions and activities for onward transmission to the Prime Minister and the Secretaries of State. Three points to note here:

- (a) Robert suggests that the Staff Counsellor should send his report to Ministers via the Secretary of the Cabinet (rather than sending it direct). I see no objection to this. I hope we can rely on the Staff Counsellor's

Why. He
needs reports
to Ministers
and submit
on them
is given by
the Cabinet
Secretary

strength of mind to stop the Cabinet Secretary or the Heads of the Agencies seeking, at that stage, to modify any of his conclusions.

(b) His report is now* to be a "general" report. I doubt the need for the word "general". It should be up to the good sense of the Staff Counsellor to decide the contents of his report without, being fettered by such words as "general". So, agree the omission of the word general?

(c) You will see that the reporting arrangements, given to the Staff Counsellor in paragraph (j) of his letter of appointment, are described in different terms in the draft Written Answer. The Written Answer does not refer to the report being submitted to Ministers through the Secretary of the Cabinet. I don't think this matters. More important, the Written Answer does not make any reference to the fact that the Staff Counsellor is required to make a "general" report. It is undesirable for there to be a divergence between the Staff Counsellor's actual terms of reference and what Parliament is told are his terms of reference. All the more reason to omit the word "general" from the Staff Counsellor's terms of reference in paragraph (j) of his letter of appointment.

The Report must be submitted to Ministers

Finally, the Home Secretary suggests that the name of the Staff Counsellor should be made known in the announcement, since it would certainly leak. This is not a compelling argument. We do not publish the name of the Director General of the Security Service, even though his name usually leaks. My personal inclination would be not to publish the Staff Counsellor's name. Obviously, it needs to be well publicised

* Robert's original terms of reference, when he proposed that the Staff Counsellor should report to the Secretary of the Cabinet, and not to Ministers were: "to report as appropriate to the head of each Service, and at least annually to the Secretary of the Cabinet".

CONFIDENTIAL

- 3 -

within the Services, but publication outside is not necessary for him to carry out his function; and it is likely to make it harder for him to avoid publicity for his work. There is also the risk of the possibility that members of the public with a grievance against the Security Services will write to him.

Obviously, he can reply that investigations of such grievances are not part of his terms of reference. But it seems better to me if the Staff Counsellor can avoid any discussion with those outside the Services regarding his functions. 1 agree *ms*

What are your views?

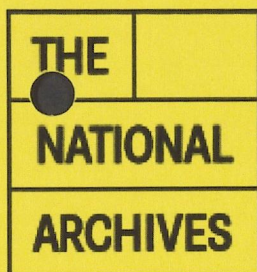
N.L.W.

N L WICKS

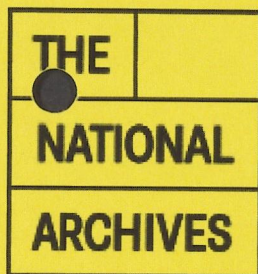
9 October 1987

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CONFIDENTIAL



DEPARTMENT/SERIES <i>PREM 19</i> PIECE/ITEM <i>2308</i> (one piece/item number)	Date and sign
Extract details: <i>Letter dated 8 October 1987</i>	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>Angus</i> <i>19/05/23</i>
TEMPORARILY RETAINED	
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NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	



DEPARTMENT/SERIES <i>PREM 19</i> PIECE/ITEM <i>2308</i> (one piece/item number)	Date and sign
Extract details: <i>Report dated 5th October</i> <i>1987</i>	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>Asps</i> <i>19/08/23</i>
TEMPORARILY RETAINED	
MISSING AT TRANSFER	
NUMBER NOT USED	
MISSING (TNA USE ONLY)	
DOCUMENT PUT IN PLACE (TNA USE ONLY)	

Ref. A087/2872

MR WICKS *or,*

Prop Pk. 8.

Staff Counsellor for the Security and Intelligence Services

Thank you for your minute of 21 September.

- 2. I attach revised drafts of the proposed letter to Sir Philip Woodfield and of the proposed draft announcement.
3. In the draft letter to Sir Philip Woodfield, the last item of the proposed terms of reference has been expanded into two items, one of which is a requirement to send to the Secretary of the Cabinet a general report or reports on his functions and activities, for onward transmission to the Prime Minister and the Secretaries of State. I have worded it like this, because there may be cases in which the Staff Counsellor reports on his activities in relation to one Service in a way which should be given very restricted circulation.
4. There are indications that the remuneration proposed is inadequate for this purpose; it is now proposed that Sir Philip Woodfield should be offered an annual retainer of £5,000, plus £100 a day for time spent (plus expenses).
5. As to the draft announcement, the Home Secretary thought that it would be useful to retain the first paragraph (which was in square brackets in the earlier draft) referring to the House of Commons debate on the Security Commission's report on Bettaney. That paragraph has accordingly been retained.
6. The Home Secretary also thought that the identity of the Staff Counsellor should be made known in the statement, since it would certainly leak. I have amended the draft statement accordingly.



7. I have shortened the succeeding paragraphs of the draft, and have omitted the final paragraph of the earlier draft.

8. I am sending copies of this minute to the Private Secretaries to the Foreign and Commonwealth Secretary and to the Home Secretary.

RA

ROBERT ARMSTRONG

8 October 1987

Draft of 5 October 1987

Letter from Sir Robert Armstrong to Sir Philip
Woodfield KCB, CBE, 5 Erskine Hill, London, NW11

Tony Duff and I (and others) have discussed with you recently the possibility of your accepting an appointment as Staff Counsellor for the security and intelligence services.

After further consultations with the heads of the agencies, and with the agreement of the Prime Minister, the Foreign and Commonwealth Secretary and the Home Secretary, I am now writing to invite you formally to accept appointment as Staff Counsellor for the security and intelligence services.

Your terms of reference will be:

- "a. to be available to be consulted by any member of the security and intelligence services who has anxieties relating to the work of his or her service;

- b. to arrange and maintain procedures which will enable you to be approached and consulted, securely and in confidence;
- c. to keep confidential the identity of individuals who approach you when they so request it, unless security considerations determine otherwise;
- d. to inquire as you see fit into all matters which are put to you, having satisfied yourself that all appropriate internal management procedures have been exhausted;
- e. to examine any internal documents (while maintaining their confidentiality) which are relevant to the questions raised in each case, having access when you wish to the management of each service (including its permanent head) in pursuit of your inquiries;
- f. to seek to resolve problems by discussion and advice;

g. to make such recommendations to the head of the service concerned or the Secretary of the Cabinet as you consider appropriate;

h. to report as appropriate to the head of each service;

j. *The Prime Minister or his 1st Secy*
to send to the Secretary of the Cabinet *for the*
and Mr. Aldous
not less frequently than once a year a
~~general~~ report or reports on your
functions and activities, for onward
transmission to the Prime Minister and
the Secretaries of State.

You will receive an annual retainer of £5,000, plus a fee of £100 a day for time spent on the duties, plus expenses necessarily incurred in the course of discharging your duties.

You will make arrangements with the head of each service to ensure that the fact of your appointment, the nature of your role and your terms of reference, and the means by which you can be approached for consultation are made known to members of the service.

CONFIDENTIAL

It is proposed to announce your appointment in
--- a statement on the lines of the draft attached, on
which I should welcome your comments.

I very much hope that you will be able to let
me know that you are willing to undertake this
appointment on the terms and conditions proposed.

CONFIDENTIAL

SECABZ

Draft of 5 October

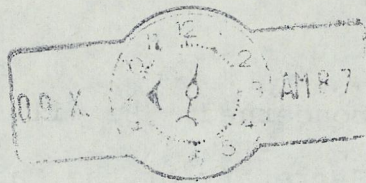
DRAFT STATEMENT

In the debate which followed my announcement of the Government's acceptance of the Security Commission's recommendations in their report on the case of Michael John Bettaney, I undertook to consider a suggestion that there would be advantage in designating someone, not himself a member of the Security Service, to whom a member of the Security Service could turn if he or she had anxieties relating to the work of the Service.

The House will wish to know that Sir Philip Woodfield, KCB, CBE, has been appointed as a Staff Counsellor for the Security and Intelligence Services. He will be available to be consulted by any member of the Security and Intelligence Services who has anxieties relating to the work of his or her Service which it has not been possible to allay through the ordinary processes of management-staff relations. He will have access to all relevant documents and to any level of management in each Service. He will be able to make recommendations to the head of the Service

concerned. He will also have access to the Secretary of the Cabinet if he wishes and will have the right to make recommendations to him. He will report as appropriate to the ~~heads of the Services~~ and will report not less frequently than once a year to me and to my Rt Hon Friends the Foreign and Commonwealth Secretary and the Home Secretary on his activities and on the working of the system.

SECURITY: Wright Pt. 5



CONFIDENTIAL



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

MR. MALLABY,
CABINET OFFICE

FORTHCOMING BOOK BY CHAPMAN PINCHER

THE PETER WRIGHT CASE: LATEST DEVELOPMENTS AND NEXT STEPS

The Prime Minister has read the two OD(DIS) papers dealing with the Forthcoming Book by Chapman Pincher and Latest Developments and Next Steps in the Peter Wright case. She agrees with the conclusions in paragraph 12 of OD(DIS)(87)72 and in paragraph 19 of OD(DIS)(87)73.

I am copying this minute to the Private Secretaries of members of OD(DIS).

CHARLES POWELL

8 October 1987

CONFIDENTIAL

Be LB
cc Sir PC

LB

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October 1987

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

SUB-COMMITTEE ON DEFENCE, INTELLIGENCE AND
SECURITY INFORMATION POLICY

THE PETER WRIGHT CASE: LATEST DEVELOPMENTS AND NEXT STEPS

Note by the Secretaries

N.C.W.

7.10.

The attached note by officials outlines the latest developments on several aspects of the Peter Wright case. The Attorney General minuted separately to the Prime Minister on 5 October about the forthcoming trial in this country of the case against newspapers, touching also on the preparations for the trial in New Zealand.

2. The points for decision by Ministers are summarised in paragraph 19. It has just been learnt that following the lifting of the Injunction in Australia the 'Dominion' in New Zealand is considering applying to have the injunction against it lifted. In order to hold the position there our lawyers in New Zealand would need to take immediate action against Heinemann (New Zealand). Private Offices are requested to inform Mr Dinwiddy (270 0071):

- a. by 1 pm on Thursday 8 October if any Minister dissents from the recommendation in paragraph 19b;
- b. as soon as possible this week of Ministers' reactions to the other recommendations.

Signed ROBERT ARMSTRONG
C L G MALLABY
B H DINWIDDY

Cabinet Office

7 October 1987

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THE PETER WRIGHT CASE: LATEST DEVELOPMENTS AND NEXT STEPS

Note by Officials

Further proceedings in Australia

Following the lifting of the injunction in Australia on 29 September, serialisation of "Spycatcher" began in 'The Australian' newspaper on 3 October. Heinemann (Australia) are reportedly planning to publish the book in Australia by 19 October.

2. Our Counsel in Australia, Mr Simos, does not doubt that at its hearing on 14 October the High Court of Australia will grant us leave to appeal. On the principle and an account of profits, he advises that at the appeal hearing itself we have reasonable prospects of success. In particular, there are reasonable chances of persuading the High Court that Wright owed an equitable obligation of confidence and a fiduciary duty to the Crown. Mr Simos does not expect the Court to accept McHugh's argument, in the New South Wales Court of Appeal, that the action is not justiciable in Australia.

3. Mr Simos also advises that, subject to review shortly beforehand, we should argue on 14 October for immediate reimposition of the interim injunction. But he considers that there is no more than a slim chance that the Court will agree to this. Our agents in Australia believe, however, that not to argue for the injunction could be detrimental to our appeal on the principle and an account of profits. Officials endorse this, and recommend that, subject to review by them with Mr Simos just before 14 October, the claim for restoration of the injunction should be maintained.

4. Ministers should be aware that, consistent with normal practice in the Australian courts, the Government has accepted liability for damages relating to the appeal to the High Court. We have given similar undertakings at earlier stages, and if we ultimately lose the case and the other side can show financial loss they will have a claim for damages against us in addition to a claim for their costs.

New Zealand

5. It has been reported in the New Zealand press that 3,000 copies of "Spycatcher" to be printed in Australia will be imported by Heinemann (New Zealand) for distribution in New Zealand. We do not know how soon

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these would be available, but our lawyers in New Zealand advise that we should seek an undertaking from Heinemann (New Zealand) not to distribute the book there. Otherwise, the relief we are already seeking against the 'Dominion' would be rendered futile and we should be unlikely to get an injunction. They believe that, if Heinemann (New Zealand) refused to give an undertaking, we should be able to obtain an interim injunction, on the basis that the date for the substantive hearing of the case against the 'Dominion' is barely 5 weeks away (16 November) and the court would not wish to be rendered powerless by distribution of "Spycatcher" in the meantime. Officials accordingly recommend a letter to Heinemann (New Zealand), and if necessary an application for an injunction. (If we failed to obtain an injunction, we would still seek a declaration on the principle and an account of profits, which would be more readily quantifiable for Heinemann (New Zealand) than for the 'Dominion'.)

6. Our lawyers in New Zealand consider that the loss of the injunction in Australia will have only a marginal impact on the proceedings in New Zealand against the 'Dominion'. The final court of appeal of New Zealand is the Privy Council, where our lawyers believe that the decision of the House of Lords in the Guardian/Observer case is likely to be more persuasive than the decision of the Court of Appeal of New South Wales. Moreover, they expect their Chief Justice to give greater weight to the judgment of Chief Justice Street than to the judgments of Kirby and McHugh. Mr Simos, for his part, has advised that it would have an adverse but not critical effect on the Australian proceedings if the claim for an injunction in New Zealand were dropped.

7. Preparations are in hand for the trial of the case against the 'Dominion' on 16 November. That is also the date now set for the start of the trial of the Guardian/Observer case in this country. The Government witness, Sir Robert Armstrong, cannot be in both places at once. If, however, proceedings have to be taken in New Zealand against Heinemann (New Zealand), it is possible that the cases against Heinemann and the 'Dominion' would be drawn together and considered at the same hearing. In this event the date of the joint hearing might slip until after the trial in this country. Moreover, discussions on eg discovery could cause a delay in the Guardian/Observer hearing. Officials consider that the Government should aim to avoid asking for the date in New Zealand to be changed, particularly because the Chief Justice (who is thought likely

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to be best disposed towards our position) would probably not be available to hear the case at another time. If necessary, we should seek a postponement in this country, in order to separate the dates of the two hearings.

8. The authorities in New Zealand, after consulting the Prime Minister, Mr Lange, have confirmed that the New Zealand Government are willing to support our case on the principle and an account of profits, but not an injunction. Our High Commissioner at Wellington has been instructed to ask if they would swear an affidavit accordingly, as similar as possible to that which the Australian Secretary of the Cabinet, Mr Codd, gave in the proceedings in New South Wales.

Hong Kong

9. The South China Morning Post (SCMP) have petitioned the Privy Council for special leave to appeal. The application will be heard on 19 October. The Attorney General has decided that the Government should be neutral on the matter.

10. A bookshop in Hong Kong was found on 30 September to be selling "Spycatcher", without advertisement and with only a few copies openly on display. This was the first occasion that the book had been found on sale in Hong Kong since the Hong Kong Court of Appeal restored the injunction against the SCMP on 8 September, although a few bookshops are believed to have sold small quantities before then. To ignore further sales in Hong Kong might damage our case against the SCMP and would be inconsistent with our general position. Our agents in Hong Kong have advised that it would be better to launch separate proceedings on the grounds of breach of confidence and fiduciary duty relying on the Court of Appeal's decision, than to institute contempt proceedings through the Hong Kong Attorney General. Officials endorse this, and recommend that our agents be instructed to write to the bookshop, drawing attention to the injunction against the SCMP and seeking an assurance that the shop will desist from sales. If the shop declined to give this, we should need to apply for an injunction.

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the position on the undertakings given earlier to the Australian courts

11. The formal order following the ruling by Mr Justice Deane of the High Court of Australia on 29 September has not yet been drawn up, because Turnbull is disputing the draft prepared by our lawyers and the matter may have to be referred back to the Court. But only Wright and Heinemann (Australia) have apparently given undertakings not to disclose material other than that in 'Spycatcher' pending the Government's appeal. Wright's lawyer, Turnbull, is therefore now free to disclose any other material he may have received from Wright. Once the terms of the Court's order are known, officials will consider a possible letter to Turnbull, asking him to confirm that he will not disclose further material from Wright.

12. Greengrass, co-author of "Spycatcher", remains bound not to disclose information obtained during the New South Wales proceedings in camera. He also accepted, in March, that he was bound by the terms of the injunction against newspapers in this country. 'Time Out' has reported that Greengrass is writing a novel which avowedly makes use of his knowledge (from Wright) of the Security Service. Greengrass may be careful to avoid breaching his undertaking by revealing actual material, as distinct from general knowledge, from Wright. Moreover, officials doubt that it would be wise to take legal action against a novel. And Greengrass may publish any book first in the United States.

Implications in other countries of the lifting of the injunction in Australia

13. Subject to the High Court of Australia's decision on 14 October on our application for reimposition of the injunction, Heinemann (Australia) are free to publish or sell "Spycatcher" virtually anywhere except this country, and possibly North America, New Zealand and Hong Kong. There are press reports of plans to publish or distribute the book in Europe, notably Ireland, where the book reportedly could be on sale in mid-October.

14. Officials advised in January that, in light of experience with Joan Miller's book, there was little chance of obtaining an injunction against Wright's book in the Irish Republic (paragraph 8 of OD (Dis) 167) 3). Officials consider that there is no chance of successful action in Ireland. Although any organised distribution, advertisement or sale of the book in England ..

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and Wales is a contempt of the injunction against newspapers, and on any significant scale can therefore probably continue to be deterred, widespread sale in Europe (including eg airports) will inevitably increase the numbers of the book in this country.

Possible further proceedings in other countries

15. Officials will continue to submit recommendations as appropriate for legal action against publication, serialisation or sale of the book in any countries where according to the local legal advice such action has a reasonable chance of success. Other countries in which action may need to be considered include:

- Italy, where the book is reportedly on sale and local legal advice is being urgently clarified;
- South Africa, where the book is reportedly to be on sale soon and the preliminary local legal advice is being clarified;
- Pakistan, where the book is reportedly to be on sale in October and local legal advice is being sought; and
- Singapore, where the High Commission's legal advisers have requested the two groups of shops selling the book to desist from further sales. Up-to-date legal advice on the scope for further action is being obtained.

Possible further book by Wright

16. According to two recent reports, including one in a British newspaper, Wright is writing a second book.

17. Until our appeal to the High Court of Australia is concluded, Wright will remain bound not to disclose new material. But his previous undertakings to the courts of New South Wales did not prevent him (or Heinemann) from making advance arrangements at that time for the publication of another book. He could, for example, already have passed material to Greengrass (paragraph 12 above), or arranged for publication in the United States. Greengrass, for his part, could have passed on extra information from Wright before he accepted that he was bound by the terms of the injunction against newspapers in this country.

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18. Officials recommend that an assurance should be sought from Wright that he is not preparing another book and did not, before giving his present undertaking to the High Court of Australia, disclose other material in breach of his duty of confidence. If Wright declined to give such an assurance, this should be drawn to the attention of the Australian courts where it could help our case, and officials should submit advice on whether a fresh injunction should be sought against him. Depending on Wright's response, further action may also need to be considered in respect of Greengrass.

Summary of Recommendations

19. Officials recommend that -

- a. At the hearing before the High Court of Australia on 14 October we should (subject to review by officials with Counsel shortly beforehand) argue for immediate reimposition of the interim injunction restraining publication of "Spycatcher" in Australia. (Paragraph 3)
- b. An undertaking should be sought from Heinemann (New Zealand) that they will not distribute "Spycatcher" in New Zealand. Failing this, we should apply for an injunction. (Paragraph 5)
- c. If necessary, in order to separate the dates of the trials in New Zealand and this country we should seek to have the Guardian/Observer case postponed. (Paragraph 7)
- d. An assurance should be sought from the bookshop in Hong Kong that they will desist from selling the book. If they decline, we should apply for an injunction. (Paragraph 10)
- e. Our agents in Australia should seek an assurance from Wright that he is not writing another book. (Paragraph 18)

Cabinet Office

7 October 1987

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CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

—
SUB-COMMITTEE ON DEFENCE, INTELLIGENCE AND
SECURITY INFORMATION POLICY—
FORTHCOMING BOOK BY CHAPMAN PINCHER

Note by the Secretaries

*One Minute
Agree the conclusion
in § 12?**(It looks right)**Yes no**N.L.W.
7-10.*

Officials, having studied the manuscript, have prepared the attached note about Chapman Pincher's forthcoming book. It recommends that the Treasury Solicitor should seek deletion of five short passages which involve minor purported breaches of confidence by former members of the security and intelligence services, one of them presented as new information from Peter Wright.

2. Private Offices are requested to inform Mr Mallaby (telephone 270 0360) or Mr Dinwiddy (telephone 270 0071) as soon as possible on Thursday 8 October, of their Ministers' responses to the recommendation.

Signed ROBERT ARMSTRONG
C L G MALLABY
B H DINWIDDY

Cabinet Office

7 October 1987

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FORTHCOMING BOOK BY CHAPMAN PINCHER

Note by Officials

The Scope of the Book

Pincher's book, entitled "A Web of Deception - the Truth about the Wright Affair", extends to 245 pages in typescript. The subject is Pincher's involvement with Peter Wright, and the Wright affair, from their first meeting in 1980. Pincher argues that there was no MI5 conspiracy behind the production of his book "Their Trade is Treachery" (TTIT). Pincher suggests that Lord Rothschild, when convinced that Wright was determined to publish a book, thought it better that Pincher be involved and therefore introduced the two. The book argues strongly that Wright's motive from the start was to make money. It also says that Wright (contrary to a statement he made on oath in the Supreme Court of New South Wales) has kept notes of his interrogations of Anthony Blunt. In describing how the Government saw a synopsis and the text of TTIT before publication, the typescript in its present version describes the person who provided this material to the Government as "the arbiter" without giving the name. In describing the proceedings before Mr Justice Powell, the book is critical of almost everyone involved, including the judge himself. (Pincher says that Wright's assertion in Court in Sydney that Lord Rothschild had told him that the Prime Minister had visited his London flat and talked about intelligence matters had since been shown "with evidence from the diaries of Number 10" to be false.) There is a description of the police investigation of Pincher earlier this year in connection with a possible breach of the Official Secrets Act (OSA). The book concludes with comments on the Wright affair. The main conclusion is that the story demonstrates "the perils of the fetish of secrecy" in Government. Pincher argues for oversight of the security and intelligence services and suggests that the salaries of members of those services, the and arrangements for payment of their pensions and also their contracts may need review. In one of many points designed to establish that Pincher, despite his role

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1. Originally surfacing material from Wright, is a patriotic citizen, he stated that "the Government had no alternative [to bringing an action against Wright in Australia] and it would have happened even if Labour had been in office".

2. The book contains no significant new revelations, But it will probably attract some attention, because it is by Pincher and because it attacks Wright.

Points to note in the book

3. Officials have found five items in the book which purport to be breaches of confidence by named former members of the security and intelligence services, all minor ones.

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OF THE PUBLIC RECORDS ACT

Pincher says that Wright gave him the man's name, but it does not appear in the new book. This item was not included in TTIT. Thus it is not covered by the exemption from our injunction against the Guardian and the Observer for material already published in that book. In other words, it is a purported new revelation from Wright and a purported breach of confidence similar to the material in "Spycatcher" itself.

(b) Pincher writes that Sir Arthur Franks, after his retirement, told him that a prosecution under the OSA relating to TTIT "had never been feasible or seriously contemplated" and that the secret services had been relieved that the book contained nothing unknown to them.

(c) Pincher also writes that Sir Arthur Franks told him that the Government had had the text of TTIT weeks before publication. As in (b) this is a purported disclosure by Sir Arthur Franks, before the Sydney trial, of a story which came out at that trial; Sir Arthur was aware of the TTIT affair, which took place some months before he retired.

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07/10/87

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(d) Pincher attributes to _____ (a member of MI5 in the early 1950s) a story, which we think has not been published before, of MI5 had a plan, never carried out, to poison trees in Kenya during the Mau Mau insurgency.

(e) Pincher attributes to Sir Maurice Oldfield a story that Lord Wilson sent for him in 1975 to complain of a plot by MI5 against Lady Falkender that Oldfield had confirmed this in MI5 and that there had been eavesdropping against Lord Wilson. Later in the book Pincher discounts this story.

4. We have found in the book no names of members of the security and intelligence services which have not been previously published. But there are references to names that have appeared only occasionally, notably those of _____. There are many passages in the book where Pincher asserts that a particular action was taken in MI5 or a particular view was held, but no sources are given or hinted at, and all or most of these passages may represent deductions or speculation by Pincher. For example, Pincher writes "as Scargill's MI5 file recorded, he had been trained by Frank Watters, a dedicated Communist...". That Scargill was trained by Watters, who was a Communist, is presumably known and the mention of an MI5 file speculation.

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5. There are also several points from Wright's affidavit in the Australian case which concern his time in the Security Service. These are probably in contempt of our injunction as amended by the House of Lords. The most significant of them attributes to Wright a claim that Lord Rothschild had been involved in an MI6 plot against the Iranian Prime Minister Mossadeq, a claim which Rothschild, according to Pincher, has denied.

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6. The book says that Gordievsky told his British debriefers that he was given no information about Hollis by the KGB and was not aware that the KGB had ever had a British source at such a high level. Stories of this kind have appeared in the media. So have suggestions that Gordievsky was brought out of the Soviet Union by the British, another point in Pincher's new book.

7. Pincher alleges that some material about Hollis which was included in early drafts of "Spycatcher" did not appear in the United States edition, and suggests that if published it would embarrass the Prime Minister in relation to her statement in the House of Commons on Hollis in 1981. We have checked the typescript of "Spycatcher" which we obtained from the Sydney court against the book as published in the United States, and have found no deletions which would support Pincher's suggestion.

Argument

8. The publishers of Pincher's new book have said that he would consider sympathetically any points of detail we might raise and that these could possibly be incorporated into the proofs. Against this background, we could be open to criticism if we ignored the specific, though minor, purported breaches of confidence noted in paragraph 3. We think that Pincher would probably agree, because he likes to claim to be responsible and patriotic, to delete or amend some or all of those points. If so, we should be in a stronger position in answering questions about the new book. We should also have acted fully consistently with our policy of enforcing the duty of confidentiality of present and former members of the security and intelligence services.

9. A disadvantage of seeking deletions of passages in the book on the ground that they represent purported breaches of confidence would be that, if the deletions were refused and we did not seek an injunction, we could be accused of having concurred in breaches that we ourselves had identified. The points at issue are not important enough to enable us to get an injunction to restrain publication of the book in its present form. It would accordingly be against our interests to take the

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matter to court. If asked why we had not gone to law, we would rely on our discretion whether to seek injunctions in the light of all the circumstances.

10. It would be advisable, if we seek deletions, to do so in oral discussion rather than through a formal letter from the Treasury Solicitor, so that whatever changes we secured could more easily be represented as a success. We would also draw attention to the terms of our injunction against the Guardian and the Observer, as amended by the House of Lords (C.P. paragraph 5 above). A formal letter could be sent later, (a) to record the conclusions of the negotiation, (b) to repeat what we had said about the terms of our injunction, and (c) to say that many of the allegations in the book either did not correctly represent the matters with which they purported to deal or were mere speculation. Point (c) echoes a letter which we wrote to the publishers about Pincher's last book "Traitors" but on that occasion we did not seek deletions. It would annoy Pincher, if made after he had agreed to deletions, but would be justified by the contents of the book.

11. The alternative course would be to take no action except to send a letter making only points (b) and (c). If asked why we had done nothing about the book, we would say that we had taken action to obtain the book and, having studied it, had found that it contained no new information of any significance and that we had made clear to the publishers that much of it was incorrect or speculation. We might be asked why we had not taken action with regard to the purported new revelation from Wright (paragraph 3(a) above), and would have to reply that the point attributed to Wright had been unspecific and of no significance.

Conclusion

12. Officials conclude that the balance of advantage lies with seeking in discussion with the publishers deletion or amendment of as many of the points in paragraph 3 as Pincher and they can be persuaded to accept, but that we should not go to law about this book.

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10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

7 October 1987

JA
cc LPO
FCO
HO
MOD
LPSO
LAdv. Dept
CO

Dear Michael,

ATTORNEY GENERAL - v - OBSERVER
ATTORNEY GENERAL - v - GUARDIAN
ATTORNEY GENERAL - v - TIMES NEWSPAPERS

The Prime Minister has seen the Attorney General's minute of 5 October in which he suggests the Government's course of action for these three cases.

Subject to the views of other Ministers, the Prime Minister is content with the Attorney's proposals. I am copying this letter to the Private Secretaries to other members of OD(DIS), Alan Maxwell (Lord Advocate's Department) and to Trevor Woolley (Cabinet Office).

Nigel Wicks

(N. L. WICKS)

Michael Saunders, Esq.,
Law Officers' Department.

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ccu

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

7 October 1987

Dear Michael,

**ATTORNEY GENERAL V OBSERVER
ATTORNEY GENERAL V GUARDIAN
ATTORNEY GENERAL V TIMES NEWSPAPERS**

The Prime Minister has considered the Attorney General's minute of 5 October, dealing with a number of points relating to the above actions. She accepts the various recommendations made by the Attorney.

I am copying this minute to the Private Secretaries to the members of OD(DIS), Alan Maxwell (Lord Advocate's Department) and Trevor Woolley (Cabinet Office).

Yours sincerely,
C D Powell
C D POWELL

Michael Saunders, Esq.,
Law Officers' Department

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NIGEL

MESSAGE FROM CHRISTOPHER MALLABY

The notes on Chapman Pincher should,
I suggest, not be shown to the Prime Minister
overnight because the lawyers have found
another objectionable element in the text.
I shall amend it in the morning and circulate
it around 1000.

SARA

6 October 1987

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Mr Wicks



CABINET OFFICE

With the compliments of

C. L. G. MALLABY

This is an advance copy of
an OD (DIS) note
issuing to others at
0800 on 7 October

C. L. G. Mallaby G/H

70 Whitehall, London SW1A 2AS

Telephone 01 ~~233~~ 270 0360

faxed to Blackpool at 1945 on 6/10/87.

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FORTHCOMING BOOK BY CHAPMAN PINCHER

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The Scope of the Book

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3. Officials have found five items in the book which purport to be breaches of confidence by named former members of the security and intelligence services, all minor ones:

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10. It would be advisable, if we seek deletions, to do so in oral discussion rather than through a formal letter from the Treasury Solicitor, so that whatever changes we secured could more easily be represented as a success. A formal letter could be sent later, (a) to record the conclusions of the negotiation and (b) to say that many of the allegations in the book either did not correctly represent the matters with which they purported to deal or were mere speculation. This echoes a letter which we wrote to the publishers about Pincher's last book "Traitors" but on that occasion we did not seek deletions. Point (b) would annoy Pincher, if made after he had made deletions, but would still be justified.

11. The alternative course would be to take no action except to send a letter making only point (b). If asked why we had done nothing about the book, we would say that we had taken action to obtain the book and, having studied it, had found that it contained no new information of any significance and that we had made clear to the publishers that much of it was incorrect or speculation. We might be asked why we had not taken action with regard to the purported new revelation from Wright (paragraph 3(a) above), and would have to reply that the point attributed to Wright had been unspecific and of no significance.

Conclusion

12. Officials conclude that the balance of advantage lies with seeking in discussion with the publishers deletion or amendment of as many of the points in paragraph 3 as Pincher and they can be persuaded to accept, but that we should not go to law about this book.

THIS IS A COPY. THE ORIGINAL
RETAINED UNDER SECTION 3 (4)
OF THE PUBLIC RECORDS ACT

CONFIDENTIAL

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*unfaxed to Blackpool
1710 on 6/10*

147206
MDHIAN 6111

CONFIDENTIAL
FM SINGAPORE
TO DESKBY 060900Z FCO
TELNO 407
OF 060730Z OCTOBER 87
INFO PRIORITY KUALA LUMPUR

OUR TEL 360: SPYCATCHER

1. WE LEARNT TODAY THAT COPIES OF THE VIKING EDITION OF SPYCATCHER HAVE BEEN ON SALE SINCE THE WEEKEND AT MPH, ONE OF THE TWO LARGEST BOOKSTORE CHAINS HERE, AND AT A BOOKSHOP CALLED QUOTES THE WORD SHOP END QUOTES, WHICH HAS TWO BRANCHES IN SINGAPORE. WE DO NOT YET KNOW HOW MANY COPIES MAY HAVE BEEN SOLD, OR HOW MANY HAVE BEEN IMPORTED. (BUT ONE BRANCH OF MPH HAS ALREADY SOLD OUT.)
2. OUR HONORARY LEGAL ADVISERS ARE ADDRESSING A LETTER TO THE MANAGING DIRECTOR OF MPH AND QUOTES THE WORD SHOP END QUOTES IN SIMILAR TERMS TO THAT SENT ON 28 AUGUST TO QUOTES TIMES THE BOOKSHOP END QUOTES. THE LETTER STATES THAT LEGAL PROCEEDINGS MAY BE TAKEN IF THE COPIES ARE NOT WITHDRAWN FROM SALE.
3. WE WERE ALERTED TO THE SALE OF THESE COPIES BY A STRAITS TIMES JOURNALIST, WHO IS LIKELY TO SEEK FURTHER COMMENT FROM US. WE SHALL DRAW ON YOUR GUIDANCES 73 AND 75 TO CANBERRA TO EXPLAIN HMG'S GENERAL POLICY. IF ASKED WHAT ACTION WE ARE TAKING, WE WILL FOR THE MOMENT REFER PRESS ENQUIRERS TO NEWS DEPARTMENT, AS REQUESTED IN FCO TEL 221 TO ACCRA. BUT THIS LINE WILL BE DIFFICULT TO MAINTAIN FOR LONG. LORD GLENARTHER IS LIKELY TO BE QUESTIONED ON THE SPYCATCHER ISSUE WHEN HE SPEAKS TO THE FOREIGN CORRESPONDENTS ASSOCIATION ON 8 OCTOBER. THE BBC STRINGER HAS ALREADY TOLD US HE KNOWS OF OUR LEGAL ADVISERS' LETTER TO QUOTES TIMES THE BOOKSHOP END QUOTES. IF ASKED TO COMMENT I NOW, THEREFORE SEE NO (NO) REASON NOT (NOT) TO CONFIRM BOTH THAT LETTER AND THOSE NOW ISSUING TO MPH AND QUOTES THE WORD SHOP END QUOTES.
4. AS YOU KNOW, OUR LEGAL ADVISERS BELIEVE THERE IS A GOOD CHANCE OF A FAVOURABLE COURT DECISION BOTH ON AN INTERIM INJUNCTION AND ON THE SUBSTANTIVE ISSUE. GRATEFUL TO KNOW WHETHER YOU WISH OUR LEGAL ADVISER TO INSTITUTE LEGAL PROCEEDINGS IF MPH AND QUOTES THE WORD SHOP END QUOTES CONTINUE TO SELL SPYCATCHER. YOU MAY WISH ALSO TO CONSIDER

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147206
MDHIAN 61

WHETHER ANY LEGAL ACTION SHOULD ALSO REQUIRE MPH AND
QUOTES THE WORD SHOP END QUOTES TO ACCOUNT TO HMG FOR PROFITS
ON ANY BOOKS ALREADY SOLD.

5. WE HAVE ALSO BEEN ASKED BY QUOTES TIMES THE BOOKSHOP
END QUOTES, WHO ARE AWARE THAT MPH IS SELLING THE VIKING
EDITION, WHETHER THE BRITISH GOVERNMENT'S POSITION REMAINS AS
IN OUR LEGAL ADVISERS' LETTER OF 28 AUGUST. WE HAVE CONFIRMED
THIS. QUOTES TIMES THE BOOKSHOP END QUOTES ALSO ASK HOW
WE RECONCILE THIS WITH THE THE FACT THAT COPIES OF SPYCATCHER
ARE OPENLY AVAILABLE FROM BOOKSELLERS IN THE UK. GRATEFUL
FOR GUIDANCE.

6. FCO PLEASE ADVANCE TO PUSD AND NEWS DEPT.

PIKE

YYYY

DISTRIBUTION

40

MAIN

25

PETER WRIGHT CASE
LIMITED
DEP.HD/PUSD
MR LITTLEFIELD PUSD
PUSD (E206)
HD/PUSD
HD/SPD
HD/NEWS

HD/INFO
PS
PS/PUS
MR BOYD
MR MCLAREN
MR DARWIN LEGAL ADVISERS
MR GILLMORE

ADDITIONAL 15

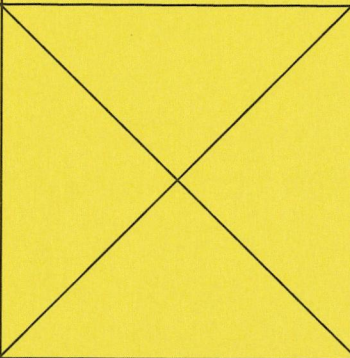
PS/SIR R ARMSTRONG CAB OFF
SIR C FIGURES CAB OFF
MR MALLABY CAB OFF
MR DINWIDDY CAB OFF
MR J BAILEY TRESY SOLICITORS
MR INGLESE LAW OFFICER DEPT
PS/HOME SECRETARY
SIR B CUBBON PUS, HOME OFF

MR CHILCOTT HOME OFF
MR NURSAW HOME OFF
MR MOWER HOME OFF
LEGAL ADVISERS(SEC. SERVCs)
DIR.GENERAL (SEC. SERVCs -)
(- BOTH VIA PUSD E203)
MR WICKS NO.10 DOWNING ST
PRESS OFFICE NO.10 DOWNING ST.

PAGE 2
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ARCHIVES	

DEPARTMENT/SERIES <i>PREM 19</i> PIECE/ITEM <i>2508</i> (one piece/item number)	Date and sign
Extract details: <i>FCO tel no. 273 dated 5 October 1987</i>	
CLOSED UNDER FOI EXEMPTION	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	<i>22/9/2023</i> <i>Wayland</i>
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PRIME MINISTER

ATTORNEY GENERAL -v- OBSERVER;
ATTORNEY GENERAL -v- GUARDIAN;
ATTORNEY GENERAL -v- TIMES NEWSPAPERS

Last Friday, the Vice-Chancellor gave directions in relation to the forthcoming trial of the Government's actions against the Guardian and Observer. He directed that the trial should commence on 16 November, despite having been informed that that was the date fixed for the commencement of the proceedings against the Dominion newspaper in New Zealand. If there is no slippage of the timetable either in New Zealand or here, I anticipate that the Judge would almost certainly accede to an application for another date for trial in London, given that Sir Robert Armstrong cannot be in two places at once.

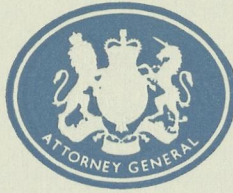
The Vice-Chancellor also allowed an application by the Sunday Times to be joined in the proceedings against the Guardian and Observer. Our Counsel supported this application by the Sunday Times. As that newspaper has a contractual relationship with Wright/Heinemann, its participation in the proceedings may well be helpful to us.

As the Sunday Times is not itself bound by any injunction, it had sought a declaration from the Court that the Guardian and Observer injunctions should be discharged or varied; it would then no longer be at risk of contempt proceedings. The Vice-Chancellor suggested that it would be much tidier if the Crown were to seek an injunction against the Sunday Times, which would then find itself in exactly the same position as the Guardian and Observer.

I see no disadvantage in following the suggestion. The slight advantage is that we would be plaintiff in all three actions. I therefore recommend that a writ be served on the Sunday Times seeking an injunction in the same terms as that binding on the Guardian and Observer. This writ will in no way affect the contempt proceedings which I have already brought against the Sunday Times.

1 FAXED TO BLACKBOL AT 2-30 ON 6/10/89

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In my view it is imperative that there should not be any avoidable delay in the hearing of the case in England. We badly need to have a substantive judgment in our favour in this jurisdiction. The longer the delay before there is a substantive judgment, the more "seepage" there will be from other jurisdictions. This "seepage" may well have an effect on our ability to keep the interlocutory injunctions in place. One way of keeping the delay to the minimum is to confine the argument on discovery and to limit the number of contested issues before the Court.

The solicitors acting for the Guardian and Observer have written to the Treasury solicitor, asking us to make the same admissions and to provide the same agreed Statement of Facts as we did in the Australian proceedings, in the interests of expediting the trial. I do not recommend that we should agree to this suggestion.

In the Australian proceedings, we made an admission as to the truth of the allegations in Wright's book for the purposes only of those proceedings, in order to circumvent problems of discovery and cross-examination in relation to the defence of iniquity. We agreed with the defendant a Statement of Facts in relation to earlier publications, in order to avoid the discovery of sensitive documents relating to the defence of acquiescence. Before we made any admission or agreed the Statement of Facts, we had unsuccessfully argued before the Australian Courts that the truth or otherwise of Wright's allegations was not relevant to the issues before the Court, and that the attitude of the Crown to earlier publications was similarly not relevant. It was also a material factor in our thinking before making admissions or agreeing the Statement of Facts that a claim for public interest immunity for a class of documents could not succeed in Australia.

We clearly should not make admissions or disclose documents, unless there are real advantages to us in so doing. Having discussed the matter with Treasury Counsel, I see no advantage in agreeing to what is suggested by the defendants at this stage. I would recommend that our first response to them in relation to

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faxed to Blackpool at 2.30 on 6/10/87

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iniquity should be that we deny the relevance of the truth or otherwise of Wright's allegations for the proceedings. Even in the defendants' pleadings, they do not assert the truth of Wright's allegations. Their argument is directed more at the lack of investigation of those allegations. If pressed, we would also contend that the various Governmental documents concerning investigations into Wright's allegations are not relevant; what is relevant is the fact that there have been investigations.

Turning to the defence of acquiescence, I do not think that we can justifiably contend that the Government's actions in relation to Wright-sourced material is irrelevant. By "Wright-sourced material", I mean the Wright television interview, and "Their Trade is Treachery". We can, I believe, maintain strongly that the Government's actions in relation to other publications, unconnected with Wright, are of no relevance to the issues in these proceedings. I would therefore propose that we should provide the defendants with a limited Statement of Facts, culled from the Statement we agreed in Australia.

By making this response to the defendants, I would hope that we would avoid unnecessary admissions and over-generous Statements of Facts, whilst at the same time not prejudicing an early trial of the action. We would be arguing on the basis of relevance, as we did initially in Australia. I cannot predict what will be the reaction of the Guardian and Observer and of the Sunday Times, who will also receive our response. It may be that they will be so keen on an early trial that they will not press the matter further.

It would not be profitable to explore now in detail the various courses of action which might be open to us if they wished to fight us on discovery. I should however point out that one course of action which could be open to us, perhaps after seeking a court hearing on relevance, is to make a claim for public interest immunity in relation to the documents of the Security Service and documents relating to matters of security. There would, it seems to me, be serious dangers associated with making such public interest immunity claim in this case. Much of the material covered by the claim would have already been

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Fixed to Rockport at 2.30 on 6/10/87

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made public in the Australian proceedings. The Court might at the end of the day order the production of the documents in question, having determined that the requirements of justice required their disclosure. Moreover, there could be cross-examination of the Minister signing the certificate claiming immunity.

If we are not to prolong the procedural battle for many months by making such a claim, thereby running the serious risks I have identified, a far less dangerous course than claiming public interest immunity could be to make, expressly for the purpose of this action alone, certain admissions, and to widen the proposed Statement of Facts relating to acquiescence. But I would suggest that we defer these questions until we have seen the defendants' response to our first approach.

We should respond to the defendants' solicitors as soon as possible. I should therefore be grateful for your authority, and that of other colleagues to whom this minute is copied, for an approach to the defendants on the lines I have indicated.

Very similar issues arise in the New Zealand proceedings. We are still awaiting legal advice from New Zealand as to possible defences to discovery. I would hope that we might be able to maintain a similar opening stance in New Zealand to that indicated above in relation to England. But we will not wish to prejudice the date fixed for the hearing in New Zealand, as that is the date on which the Chief Justice has indicated he would be available to hear the case. Our agents in New Zealand consider that our best chance of winning the case is to have it heard before him. I understand that officials will shortly be submitting a paper to you and other Ministers on the litigation in Australia, New Zealand and Hong Kong.

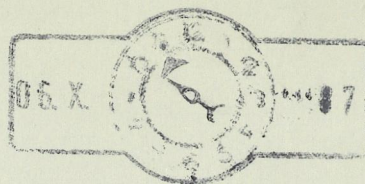
I am copying this minute to other members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

P. M.

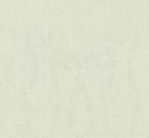
5 October 1987

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Security : SS
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Prime MinisterPRIME MINISTER

ATTORNEY GENERAL -v- OBSERVER;
 ATTORNEY GENERAL -v- GUARDIAN;
 ATTORNEY GENERAL -v- TIMES NEWSPAPERS

*This looks scrupulously
robust.**Agree subject to the
views of other Ministers?**Yes, N.C.W.
b.10*

Last Friday, the Vice-Chancellor gave directions in relation to the forthcoming trial of the Government's actions against the Guardian and Observer. He directed that the trial should commence on 16 November, despite having been informed that that was the date fixed for the commencement of the proceedings against the Dominion newspaper in New Zealand. If there is no slippage of the timetable either in New Zealand or here, I anticipate that the Judge would almost certainly accede to an application for another date for trial in London, given that Sir Robert Armstrong cannot be in two places at once.

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I am copying this minute to other members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

P. M.

5 October 1987

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Prime Minister 1
to see. 6

SECRET

B.0279

S. Jan. so good
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N. L. W
2.10

MR WICKS

Forthcoming book by Chapman Pincher

Following your letter of 30 September, the Treasury Solicitor wrote to Sidgwick and Jackson to request a copy of the text of Pincher's forthcoming book. The person who had told us of the book's existence had earlier been informed that we would write such a letter and had said that he did not object.

2. Sidgwick and Jackson have this afternoon sent us the manuscript. They say that they do not think that any of it will offend against the principle of confidentiality; that they might accept amendments of detail but not major changes; that the book will be published shortly; and that there will be no serialisation this weekend.

3. The book will be studied over the weekend, and officials will report again.

4. I am sending copies of this minute to the Private Secretaries of the Foreign and Commonwealth Secretary and the Home Secretary, and to the Legal Secretary to the Law Officers.

C L G

C L G Mallaby

2 October 1987

SECRET

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File

MJ282L

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

2 October 1987

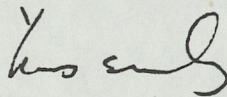
Dear Michael,

"PETER WRIGHT" LITIGATION: CHOICE OF AUSTRALIAN LEADING
COUNSEL

The Prime Minister has seen the Attorney General's minute of 1 October in which he reports that following his discussion with Gavan Griffith, the Solicitor General of Australia, Griffith would not now recommend that Theo Simos, QC, should be replaced as our Leading Counsel in the "Peter Wright" litigation.

The Prime Minister is content to follow the Attorney General's advice that we should keep Simos.

I am copying this letter to Tony Galsworthy (Foreign and Commonwealth Office), Philip Mawer (Home Office) and Trevor Woolley (Cabinet Office).


Nigel Wicks

N.L. Wicks

Michael Saunders Esq
Law Officers' Department.

CONFIDENTIAL

8/10

CONFIDENTIAL

134006
MDLIAN 9260

Paul Hunter

CONFIDENTIAL
FM WELLINGTON
TO PRIORITY FCO
TELNO 434
OF 010400Z OCTOBER 87
INFO ROUTINE CANBERRA

ms

YOUR TELNO 262

1. I SAW HENSLEY AND SMITH YESTERDAY AS ARRANGED AND AFTER SOME FURTHER DISCUSSION ON THE BASIS OF YOUR TELNOS 265 AND 266 I ASKED THEM TO SOUND OUT PRIME MINISTER LANGE.

2. HENSLEY CAME BACK TO ME LATE LAST NIGHT. LANGE'S REACTION (WHICH HENSLEY SAID WAS ONE HE PERSONALLY AGREED WITH) WAS THAT ON THE TWO ESSENTIALLY LEGAL POINTS THE NEW ZEALAND GOVERNMENT WOULD

(1) BE PREPARED TO INDICATE ITS SUPPORT FOR OUR CASE ON WRIGHT'S DUTY OF CONFIDENTIALITY AND WOULD

(2) ALSO SUPPORT ANY ATTEMPT TO PREVENT WRIGHT AND HIS PUBLISHERS FROM DERIVING FINANCIAL GAIN FROM THE PUBLICATION LOCALLY OF INFORMATION WHICH WAS THE ABSOLUTE PROPERTY OF HMG. PRIME MINISTER LANGE REGARDED THESE AS IMPORTANT ASPECTS OF PROTECTION OF THE PUBLIC INTEREST. I INFER FROM THIS THAT LANGE ACCEPTS THAT IT WOULD BE IN THE NZ PUBLIC INTEREST TO ESTABLISH THAT SUCH ACTIVITIES WILL NOT REPEAT NOT BE CONDONED HERE. BUT ON THE THIRD QUESTION, THAT OF FORMALLY SUPPORTING OUR ACTION ON THE GROUNDS OF NEW ZEALAND ITSELF SUFFERING CONSEQUENTIAL INTELLIGENCE DAMAGE FROM PUBLICATION, HENSLEY SAID MR LANGE WOULD NOT, IN THE LIGHT OF THE PROCEEDINGS IN AUSTRALIA, BE PREPARED TO AUTHORISE AN AFFIDAVIT IN SUPPORT. GIVEN THE WORLDWIDE CIRCULATION OF THE BOOK ALREADY, THEY WOULD NOT TESTIFY THAT NEW ZEALAND 'S OWN INTELLIGENCE SYSTEM WOULD BE ENDANGERED BY PUBLICATION HERE.

3. HAVING READ THE NSW APPEAL JUDGEMENT THIS LEADS ME TO WONDER WHETHER, IF WE PROCEED WITH LEGAL ACTION IN NEW ZEALAND, WE SHOULD NOT DO BETTER, GIVEN THE NEW ZEALAND GOVERNMENT'S LINE, TO CONCENTRATE ON WRIGHT'S FAILURE TO HONOUR HIS DUTY OF CONFIDENTIALITY AND HIS AND HIS PUBLISHER'S IMPROPER GAINS THROUGH PUBLICATION AND SALE OF HMG'S PROPERTY.

O'LEARY

YYYY

PAGE 1
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1340
MDLIAN 9260

DISTRIBUTION

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MAIN 25

PETER WRIGHT CASE
LIMITED
DEP.HD/PUSD
MR LITTLEFIELD PUSD
PUSD (E206)
HD/PUSD
HD/SPD
HD/NEWS

HD/INFO
PS
PS/PUS
MR BOYD
MR MCLAREN
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ADDITIONAL 15

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MR WICKS NO.10 DOWNING ST
PRESS OFFICE NO.10 DOWNING ST

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PRIME MINISTER

"PETER WRIGHT" LITIGATION: CHOICE OF AUSTRALIAN LEADING COUNSEL

1. In Canberra Telegram.603 Sir John Leahy, the British High Commissioner in Australia, reported a conversation he had had with Gavan Griffith, the Solicitor General of Australia, in which the latter had criticised the performance of Theo Simos QC as our Leading Counsel in the 'Peter Wright' litigation and had suggested that consideration be given to dispensing with Simos' services and appointing a new Leader to conduct our appeal to the High Court of Australia.

2. I spoke by telephone with Gavan Griffith early yesterday morning in order to probe his reservations about Simos. He was critical about Simos' advice in relation to certain interlocutory matters and of his presentation of the Government's case before Mr Justice Powell but agreed that Simos had achieved a well structured presentation before the Court of Appeal of New South Wales.

3. Griffith accepted that there was a risk that if we were to change our Leading Counsel at this stage and, in particular, if we were to replace Simos with a Leader from the English Bar, the High Court might infer that we were unable to attribute our failure in the lower Courts to any possible

- 1 -

CONFIDENTIAL

1
Prime Minister
I suggest that your
reply that you are
content to follow the
AG's advice that

Yes not

Simos should be retained.
Agree request?

N. L. W

1-10

CONFIDENTIAL



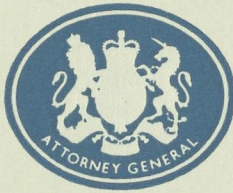
insufficiency in our own case, and accordingly assumed inadequacy on the part of our Australian advocate. Moreover, when I intimated to Griffith that his assessment of Simos was at sharp variance with that of John Laws, our first Junior Treasury Counsel who had been present in Court throughout the hearing of the appeal, he came off his expressed view and concluded instead that, on balance, we would be better advised to retain Simos for our appeal to the High Court.

4. On the merits generally, Griffith was very critical of the judgments of the majority of the Court of Appeal and considered that they provided good material for an appeal to the High Court. He had been surprised by Mr Justice Deane's refusal on Tuesday to extend the order restraining the publication of "Spycatcher" but, rather to my own surprise, did not regard that refusal as fatal to our chances of getting the order renewed on the hearing of our application for special leave to appeal on 14 October, even if Heinemann were to publish, or permit serialisation by newspapers, before our application could be heard.

5. In summary, Griffith's view is that we have a serious appeal to present in the High Court with which we should certainly be justified in pressing resolutely ahead, and that he would not now recommend that Simos be replaced, in the light of John Law's opinion and the lateness of the hour. I myself am sure we should keep Simos.

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6. I am copying this minute to the Foreign Secretary, the Home Secretary and Sir Robert Armstrong.

AM

1 October 1987

CONFIDENTIAL

SECRET



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

30 September 1987

Dear Nigel,

FORTHCOMING BOOK BY CHAPMAN PINCHER

The Home Secretary has seen a copy of the Attorney General's minute to the Prime Minister of 28 September recommending that no action should be taken in the case of this intended publication. As I told you over the telephone, the Home Secretary concurs with the Attorney General's advice.

Copies of this letter go to Michael Saunders (Attorney General's Office), Tony Galsworthy (FCO), and Christopher Mallaby (Cabinet Office).

Yours sincerely,

P J C MAWER

Nigel Wicks, Esq, CBE

SECRET

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10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

30 September 1987

Dear Michael,

FORTHCOMING BOOK BY CHAPMAN PINCHER

The Prime Minister discussed this afternoon with the Foreign Secretary, the Home Secretary and the Attorney General the advice in the Attorney General's minute of 28 September that we should do nothing about Chapman Pincher's forthcoming book. Mr. Mallaby was also present.

The Prime Minister said that the Government had suffered because of the decision to take no action on Pincher's earlier book, 'Their Trade is Treachery'. The Australian Courts, let alone ordinary people, had not been satisfied with our explanations of why we had not acted. There would be further criticism on the same lines if no action was taken against Pincher's forthcoming book and it contained damaging disclosures. Our position in the Australian and other courts might be weakened if it was alleged that we were, once again, acquiescing in the publication of insiders' information through a third party's book.

In discussion, it was argued that our actions should be guided by our fundamental objective which was to protect confidential information and the effectiveness of the Security Services. Thus, we had to be concerned not only about publications by insiders, but by publication of insiders' disclosures through books published by third parties. Even if these disclosures were untrue, it would not prevent demands for enquiries into their truth. The present weapons for preventing unauthorised disclosures were clearly inadequate and work was already in hand to seek to remedy the deficiencies. But this did not absolve the Government from taking action against Pincher's forthcoming book.

But such action, if pursued to Court, could require the Government to authenticate sensitive information in the book alleged to come from insiders. The Security Service, it was thought, had always been reluctant to risk this. Such authentication could lead to disclosures even more damaging than those in the book concerned. Nor was it certain that the Courts would agree to hear such sensitive information in camera. On the other hand, it was not certain that it would be necessary to authenticate particular allegations in the course of proceedings to obtain an injunction. We could say in Court that while we were not admitting whether particular pieces of information were true or false, there was enough

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material in the book of a nature to lead an ordinary person to believe that it was true; and that if it were true, it could only have been obtained through breach of confidence.

It was pointed out that the Government and the Security Services could be put in a most difficult position if action was taken which resulted in another protracted legal case. Though the Government might well be successful in securing an interim injunction, it could run into grave difficulty in the substantive case. Pincher might try to subpoena Ministers and members of the Security Services. His lawyers might argue that since we had not tried to prevent publishing 'Their Trade is Treachery', we were estopped from preventing publication of information of a similar class in his new book. It would, no doubt, be published somewhere and receive wide publicity. The Government would look impotent and the Security Service might be more damaged by action which failed than by the Government doing nothing in the first place.

In further discussion it was pointed out that while we had had a full text of 'Their Trade is Treachery', we had only 3 chapters of Pincher's latest book. Our immediate objective therefore should be to obtain a full text so that we could check whether it contained damaging disclosures by insiders. If it did not, the book could be published with the Government making clear that it was in no way authorised. If it contained damaging disclosures, the Government would need to consider action, first by negotiating with Pincher, and then by taking legal action.

Summing up the discussion, the Prime Minister said that the Treasury Solicitor should send a letter to the publishers of Pincher's forthcoming book requesting, in suitable terms, that a copy be made available to the Government. Ministers would then decide the next steps in the light of advice on the contents of the book. Meanwhile, officials should consider as a general principle whether it was necessary to be ready to authenticate in a Court action information allegedly made by insiders, or whether a formula could be devised for use in court which would avoid the need for such authentication and which avoided the presentational disadvantages of the formula used in the Wright case. The Security Service should be asked whether they could accept that there could be a case for submitting evidence to a court that an allegation was true and could only have come from an insider. Consideration also needed to be given to the prospects of securing a court's agreement that such evidence should be given in camera.

I am copying this letter to Tony Galsworthy (Foreign and Commonwealth Office), Philip Mawer (Home Office) and Christopher Mallaby (Cabinet Office).

Trs only
Nigel Wick/B

N. L. WICKS

Michael Saunders, Esq.,
Law Officers' Department

SPYCATCHER'S



Only in the latest American edition of 'Spycatcher' is Paul Greengrass credited with co-authorship. Here he speaks for the first time about Peter Wright and the skeletons in MI5's cupboard, the agonising year of litigation and his plans for revenge.



It is not difficult to picture the scene. It's a recent Thursday morning and in the Cabinet Office the weekly meeting of the Joint Intelligence Committee is beginning. Seated around the table are the heads of GCHQ and the intelligence services, along with Cabinet Secretary Sir Robert Armstrong. In the chair is Mrs Thatcher. Sir Robert is reporting on the legal battle over Peter Wright's 'Spycatcher'.

The appeal court decision should be handed down in a couple of weeks, Prime Minister, but I'm afraid we may have another problem on our hands shortly. It appears that this fellow Greengrass, who wrote the book for Wright, is writing another. It concerns intelligence matters and I think we may safely assume it will be embarrassing.

Mrs Thatcher purses her lips. 'Does this mean another battle through the courts?'

'I think not, Prime Minister. He apparently intends to dress it up as a novel. I'm afraid there's nothing we can do.'

'Nothing at all?'

'Nothing at all, Prime Minister.'

Meanwhile, somewhere in West London, Paul Greengrass is indeed holed up, penning 'my total revenge on Mrs Thatcher' for the agonising year which he and Peter Wright have been put through in their endeavours to get 'Spycatcher' published. And on the back of 'Spycatcher' his planned thriller has aroused considerable interest amongst publishers on both sides of the Atlantic.

Greengrass was the 'World In Action' producer who, three years ago, first tempted Wright out into the open, to speak publicly about his conviction that former M15 chief Sir Roger Hollis had been working for the Soviets. That ground-breaking programme — the first time that a senior intelligence officer

had broken ranks to discuss openly one of the skeletons behind M15's bulging cupboard door — led to 'Spycatcher' which Greengrass wrote with information provided by Wright. The book, in turn, led to the epic Australian courtroom tussle, and now to Greengrass's planned revenge. And he is relishing the prospect.

Skeleton Cupboard

The writing of 'Spycatcher' was the fruit of a relationship between the two men which began back in 1982 when the cupboards containing the skeletons were first being opened — Nigel West's 'Matter of Trust' had just been injunctioned, Anthony Blunt had been exposed as a spy, Chapman Pincher's book on Hollis had appeared and a whole bevy of lesser spies had been named publicly as the media took up where Mrs Thatcher's denunciation of Blunt had left off. 'World In Action', like many others, was out in the field, hunting for a breakthrough. It was Greengrass who was assigned to go to Tasmania and search out Peter Wright, known to be one of the old guard M15 officers convinced of Hollis's guilt and of the lasting nature of Soviet penetration of the intelligence service.

'I just turned up on him. I drove to Cygnet, this dusty old town in the middle of nowhere about two hours from Hobart. It's a classic one horse town and at the bottom of Wright's road was an ex-serviceman's club and a telephone box. I called him up and he sounded absolutely stunned. But he invited me up to his little shack, gave me a glass of sweet sherry and said, "What have you come for?"'

'I said it was very simple. I wasn't there to Hoover him for information. I just wanted him to go on the record. That was all I was interested in. He huffed and puffed and said "Good lord" and the rest of it — but we both knew that he was not going to go to his grave without having his say. He was always going to go public.'

Wright, with a little help from Lord Rothschild, had already been the source for Chapman Pincher's enormous tome accusing Hollis of treachery, but the experience had left him deeply frustrated and not a little bitter. Pincher's conclusion, that the whole business was in the past and everything was now well with M15, could not have contradicted more fundamentally what Wright himself believed.

Despite this, Greengrass's initial efforts to get him to speak out failed. Wright would do it if both sides of the Hollis case could be presented — something Greengrass himself wanted very much to do — but no one could be tempted out from the

BY ANDREW BELL

▷ **Tracy Daugherty: 'Desire Provoked'** (Cape, £10.95)
You want weird? We gottit! Saussure, structuralism, Hegel, maps, feminism, Jung, Wittgenstein, spaghetti, Greenham and Greenland, jazz and punk rock, and still stranger things. Light blue touch paper and retire to admire an assured and provoking, sez we, first novel.

Tobias Wolff: 'The Barracks Thief' (Cape, £8.95)

The backwaters of Vietnam are the setting for this beautiful and sparsely-written first novel; a trio of grunts thrown together guarding an ammo dump discover friendship, loyalty and betrayal. Wolff's control of language has been compared to Carver, although Carver hasn't got such a cute mustache.

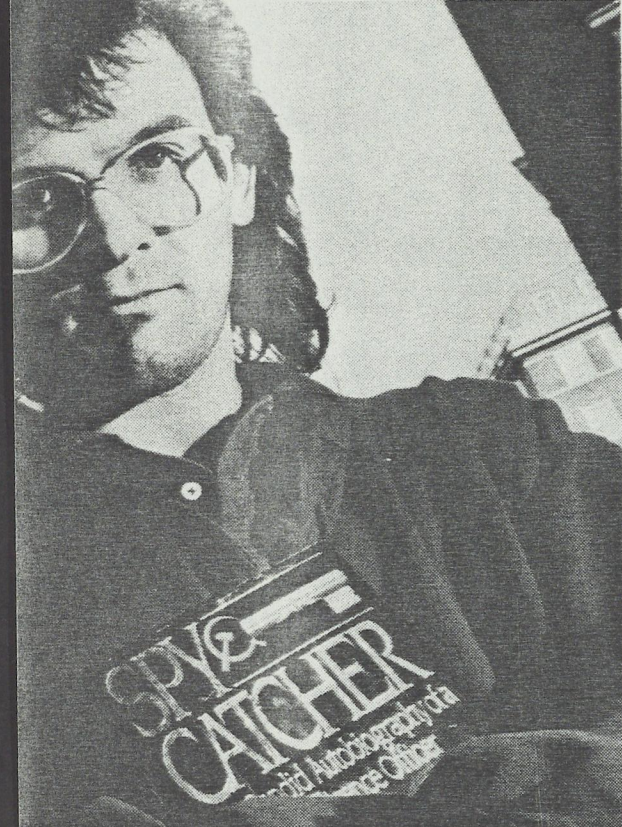
Rupert Thomson: 'Dreams of Leaving' (Bloomsbury, £11.95)

Thomson's ambitious and highly-praised debut scores a first; neither title nor name appear on the cover. The action cuts between modern-day London and the fictional realm of New Egypt, where an abandoned child sets out on a journey that defies nutshelling. Comparable to Marquez in parts.

Bruce Chatwin: 'The Songlines' (Cape, £10.95)

Chatwin's latest mixes journalism, diary, fact and fiction, launching off from the idea of the aborigine songlines — invisible maps across Australia, and also the route of rite-of-passage walkabouts — to muse on travelling and arriving, and whether home really is where the heart is.

REVENGE



Paul Greengrass and 'Spycatcher' in the shadow of MI5's Curzon St HQ. Now he plans his revenge

pro-Hollis faction to speak publicly on his behalf. The programme was shelved, to be resurrected a year later in the wake of the arrest of Michael Bettany. Wright was fascinated by the affair — the first time that a serving MI5 officer had been charged with espionage — and when Greengrass put it to him bluntly that if he did not reconsider now, he would probably die without his case being heard, he agreed to go solo. Neither man anticipated the obdurate and spiteful response which would come from Whitehall, and which would lead, last week, to the picture of a profoundly patriotic and conservative old man standing before the television cameras denouncing 'those bastards' in a Conservative British government.

Mole-Hunter

The picture that Greengrass paints of the former mole-hunter is of a man whose total belief in the guilt of Hollis led him to undermine equally totally his belief in himself and the value of his life's work for the service.

'The essence of the man is that he was very gifted, in some ways a progressive, in some ways always a dissenter. His early life meant that there was always something of a chip on his shoulder, but he was basically a moderniser, a technician who in the early '50s and '60s was totally in sync with the organisation he served. People who knew him talk of a very gifted guy, not a genius and often a bit irrational, but on song with bright ideas and bags of drive.

'This culminated in — and here I have to be especially careful what I say — very real triumphs for Peter Wright and MI5. He was responsible for hugely successful operations which represented major achievements for British counter intelligence.'

Then he became involved in the mole hunt, and in particular, with the soul searching which accompanied MI5's efforts to establish if former director Hollis had been a spy. Wright's ultimately obsessional belief in Hollis's guilt led to a devastating personal reappraisal of his own successes.

'They had to look at Hollis in terms of second guessing what had previously been considered successes. If Hollis, at the head of the service, was a spy, then none of these successes were successes at all. They all had to be redefined as failures. Wright, convinced of Hollis's guilt, had to go through the psychologically crippling process of destroying his own life's achievements. In his retirement he has to believe that they

were fuck-ups. And that's what's driven him. That's what led to his great unburdening.'

And here, Greengrass believes, lies the true indictment of MI5's staggering incompetence. It reduces essentially to a problem of personnel management, and the way that this good and faithful servant, bursting with secrets and primed to explode, was simply driven out into the cold upon retirement, and his old comrades ordered to have nothing to do with him. And to cap it all, they reneged on a promise that a pension anomaly which arose when he transferred into MI5 from another department would be sorted out. It threatened to make his retirement an impoverished affair.

'All old men become obsessive about their pensions. As they approach retirement it can become positively corrosive and that's why an enlightened company has a progressive pensions policy. Wright was not at all out of the ordinary in this. The people who didn't understand it were MI5.'

Michael Hanley, MI5's director when Wright retired, is the man who has to carry the responsibility for 'Spycatcher'. In the intelligence community everybody blames Hanley, who knew what sort of man Wright was and was fully aware of the damage he could do if he went rogue on them. 'All he had to do,' says Greengrass, 'was take him aside when he came up for retirement and say "we appreciate what you've done. We know you don't agree with the verdict on Hollis but it's been made and we can't go on raking over it for ever." And then, even if they couldn't have solved his pension problem they should have put him on some small retainer to come into the Melbourne office twice a year and write historical reports for the archives. It would simply have been saying to him that he still belonged, that he was still one of them. And then Peter Wright would have gone to his grave not saying a word.'

Pre-Emptive Strike

We are speaking on the morning that news arrives from Melbourne that the British government has lost its appeal to stop the publication of 'Spycatcher' in Australia. It's not, however, the end of the story. Later in the day Thatcher announces a further appeal. But even if Wright wins at that stage and Australians at least are able to walk into their local bookstores and pick up a copy, the whole story will still not have been told. We will still not know the exact circumstances in which the Hollis story first came to be, as revealed by Chapman Pincher, at the instigation of Wright. Greengrass is convinced that this was a controlled pre-emptive strike by a soon to retire generation of MI5 chiefs who were about to lose control of the keys to the skeleton cupboard. This, he is convinced, explains why Pincher was able to publish his book with impunity.

If they had really wanted to keep the secrets secret, then within five minutes of the manuscript of Pincher's book being leaked to them, they could have launched a Zircon-style operation and known who the source was and stopped the whole thing. There was a conscious decision to let it go ahead and it stands in total contrast to the attitude they took towards Wright.'

It is this double standard, and the contortions which the government indulged in through its legal representatives and Sir Robert Armstrong that makes Greengrass angry enough to want to get his own back. It was only the government's monumental dishonesty which forced him, Wright and their lawyer Malcolm Turnbull into an exhausting year-long David and Goliath guerrilla war through the Australian courts, at enormous personal cost to them all. Originally their counsel had given them a 1 per cent chance of success.

Greengrass, now out of television journalism and about to embark on a drama career (with 'Resurrection', a Channel 4 play about a Falklands deserter which is also likely to upset Downing St), is already anticipating the sweet taste of revenge as he settles down to write his novel, 'The Paladin Foundation'. It is a fictionalised account of MI5 coup plots, whose characters will include a retired spy full of secrets to tell and a political establishment headed by a Cabinet Secretary trying to thwart him.

So will it be based on yet more secrets from Peter Wright? 'Of course not,' he insists, with a grin as broad as Sir Robert Armstrong's back. 'No, seriously. I've no intention of breaking the undertakings I gave to the court in Australia. It's a fictional plot woven upon a framework of actual events, and it will be up to the reader to draw a line between fact and fiction. And that's one reason why the government will be able to do nothing. If they try to stop it they will end up having to explain where that line is to be drawn. I can't see them doing that, can you? I'm afraid that this time she's just going to have to grin and bear it.' □

'Spycatcher', by Peter Wright and Paul Greengrass, is not published by Heinemann.

Paperback Fiction

Carrie Fisher: 'Postcards from the Edge' (Picador, £3.50)

Our extract tells only the half of it. Fisher's *roman à clef*, based on her own experience of cocaine madness and subsequent recovery is a sharp and often wildly funny dissection of the West Coast analysis set.

Adam Mars-Jones & Edmund

White: 'The Darker Proof' (Faber, £3.95)

Probably the most extraordinary fiction event of the year; six stories, four from Ad, two from Ed, dealing with the subject of AIDS. No shocks and no weepy passages, just six intimate glimpses into life, and death, with and after AIDS, returning the humanity to statistics.

Randall Jarrell: 'Pictures from a Institution' (Faber, £4.95)

Rare reprint of Jarrell's 1954 novel, a scathing satire on campus life and the campus novel, set in a young ladies' college. A comic rediscovery to compare with Nigel Kennedy's 'Cards of Identity' and Kennedy Toole's 'Confederacy of Dunces'.

Paul Rudnick: 'Social Disease' (King Penguin, £3.50)

A New York Party Novel with a difference in that the author isn't a dyspeptic yuppie writing from a mixture of cocaine and bile. Rudnick's satire of party victims is good-natured while never losing sight of its target. The dialogue is a scream.

THE BEANO
Rory Robinson



Rory Robinson: 'The Beano' (Faber, £9.95)

Rolling mischief with working class nostalgia, as novelist and playwright Robinson launches out on a manic romp based on a brewery works outing to Scarborough. Realistic detail supports some hilarious and pointed social satire.

Lisa Tuttle: 'A Spaceship Built of Stone and other stories' (Women's Press, £4.50)

Leading feminist SF writer Tuttle presents a new collection of her stories. Far from misty-eyed visions of future matriarchies, but a look, alternately sad and chilling, at humanity's worst tendencies taken to their logical conclusions.

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PETER WRIGHT CASE - HIGH COURT APPEAL

1. THE LOCAL MEDIA HAS REPORTED PROMINENTLY THE DECISION THIS MORNING BY A JUSTICE OF THE HIGH COURT TO LIFT THE INJUNCTION ON PUBLICATION OF 'SPYCATCHER' ON THE GROUNDS THAT PETER WRIGHT IS AN ELDERLY MAN IN POOR HEALTH WHO HAS ALREADY BEEN PREVENT FROM PUBLISHING BY A SERIES OF INJUNCTIONS FOR OVER TWO YEARS AND THAT THE CONTENTS OF THE BOOK ARE ALREADY WELL KNOWN THROUGH ITS PUBLICATION IN THE UNITED STATES. PRESS REPORTS HAVE SUGGESTED THAT COPIES OF THE BOOK COULD BE AVAILABLE IN AUSTRALIA BY THE END OF THIS WEEK.
2. WE HAVE HAD A NUMBER OF REQUESTS FOR COMMENT FROM THE MEDIA BUT HAVE CONFINED OUR REPLIES TO EXPRESSING DISAPPOINTMENT WITH THE DECISION AND SAYING THAT ANY FURTHER STEPS WOULD BE CONSIDERED IN LONDON.

MACKILLIGIN

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DISTRIBUTION

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PETER WRIGHT CASE
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(- BOTH VIA PUSD E203)
MR WICKS NO.10 DOWNING ST
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1530 Wed 30 Sep.

Tu 30/9

PRIME MINISTER

FORTHCOMING BOOK BY CHAPMAN PINCHER

In his minute below, the Attorney General recommends that we should do nothing about Chapman Pincher's forthcoming book which was reported in Mr Mallaby's minute below. The Home Secretary agrees with the Attorney General.

The Attorney rejects the course, described in paragraph ten of Mr Mallaby's note, that the Treasury Solicitor should write to the publishers reminding them of the Wright injunction and pointing out that anyone receiving information in breach of confidence is under an obligation not to disclose it further.

I must admit to some doubts about the Attorney's advice to do nothing. It is the right course if there is nothing in the book which purports to coming from "inside information". But if the book does include "inside information" we will once again be exposed to the criticism that we acquiesced in the publication.

Are you content with the Attorney's advice to do nothing?

OR

Would you like a short meeting with the Home Secretary, Foreign Secretary and Attorney before making a final decision? ✓

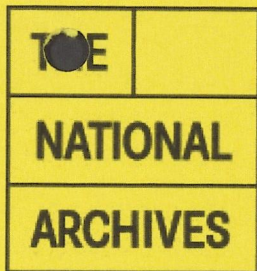
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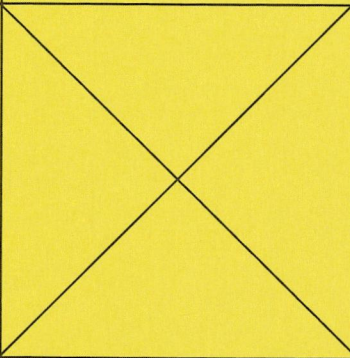
N. L. W.

N L WICKS

29 September 1987

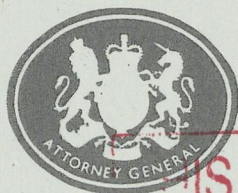
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PRIME MINISTER

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FORTHCOMING BOOK BY CHAPMAN PINCHER

at flap
I have seen a copy of Mr. Mallaby's minute of 23 September to Mr. Wicks enclosing a note by a restricted group of officials.

I have taken account of the limited references to "Their Trade is Treachery" in the recent judgments of the New South Wales Court of Appeal, and have come to the conclusion, in this delicately balanced choice of options, that the wisest course is to do nothing.

I admit to being influenced by the hunch that Pincher and the publishers are trailing their coats in order to gain publicity: hence their letting have three chapters, in the sure and certain hope that he would then put us on notice of impending publication - as he had done before, and has duly now done again.

If the Treasury Solicitor were to write to the publishers, the situation might become very difficult to control, and lead either to damaging litigation or a humiliating climb-down, either of which would be heavily exploited by Pincher.

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I believe that we have sufficient reasons, identified in paragraph 6 of the note, to enable us later to justify taking the course I recommend.

I am copying this minute to the Foreign and Commonwealth Secretary, to the Home Secretary and to Mr. Mallaby.

A. M.

28 September 1987

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AND TO PRIORITY WELLINGTON, GOV HONG KONG (PERSONAL), WASHINGTON
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AND TO ROUTINE COLOMBO, COPENHAGEN, DAR ES SALAAM
AND TO ROUTINE DUBLIN, FREETOWN, GABORONE, THE HAGUE
AND TO ROUTINE HARARE, HELSINKI, ISLAMABAD, KINGSTON
AND TO ROUTINE KUALA LUMPUR, LAGOS, LISBON, LUSAKA
AND TO ROUTINE LUXEMBOURG, MADRID, NAIROBI, NEW DELHI
AND TO ROUTINE NICOSIA, OSLO, PRETORIA, SINGAPORE
AND TO ROUTINE STOCKHOLM, TEL AVIV, TOKYO, VALLETTA
AND TO ROUTINE VIENNA
AND TO SAVING STRASBOURG, BIS NEW YORK, UKMIS NEW YORK
AND TO SAVING ABIDJAN, ABU DHABI, ACCRA, ADDIS ABABA
AND TO SAVING ADEN, ALGIERS, AMMAN, ANGUILLA, ANTANANARIVO
AND TO SAVING ANTIGUA, ASCENSION ISLAND, ASUNCION, BAGHDAD
AND TO SAVING BAHRAIN, BANDAR SERI BEGAWAN, BANGKOK, BANJUL
AND TO SAVING BEIRUT, BELGRADE, BELMOPAN, BMG BERLIN
AND TO SAVING BOGOTA, BRASILIA, UKDEL NATO BRUSSELS
AND TO SAVING BUCHAREST, BUDAPEST, BUENOS AIRES, CAIRO
AND TO SAVING CARACAS, CASTRIES, DAKAR, DAMASCUS, DHAKA
AND TO SAVING DOHA, DUBAI, EAST BERLIN, UKDIS GENEVA
AND TO SAVING UKMIS GENEVA, GEORGETOWN, GIBRALTAR, GRAND CAYMAN
AND TO SAVING GRAND TURK, GUATEMALA, HAMILTON, HANOI, HAVANA
AND TO SAVING HOLY SEE, HONIARA, ISTANBUL, JAKARTA, JERUSALEM
AND TO SAVING JOHANNESBURG, KABUL, KAMPALA, KATHMANDU, KHARTOUM
AND TO SAVING KINSHASA, KUWAIT, LA PAZ, LIBREVILLE, LILONGWE
AND TO SAVING LIMA, LUANDA, MANILA, MAPUTO, MASERU, MBABANE
AND TO SAVING MEXICO CITY, MOGADISHU, MONROVIA, MONTEVIDEO
AND TO SAVING MONTSERRAT, MOSCOW, MUSCAT, NASSAU, NUKUALOFA
AND TO SAVING PANAMA CITY, UKDEL OECD PARIS, PORT LOUIS
AND TO SAVING PORT MORESBY, PEKING, PORT OF SPAIN, PORT STANLEY
AND TO SAVING PRAGUE, QUITO, RABAT, RANGOON
AND TO SAVING REYKJAVIK, RIO DE JANEIRO, RIYADH, ST GEORGE'S
AND TO SAVING ST HELENA, ST VINCENT, SANA'A, SAN JOSE, SANTIAGO
AND TO SAVING SAO PAULO, SEOUL, SOFIA, SUVA, TARAWA, TEGUCIGALPA
AND TO SAVING TEHRAN, TORTOLA, TRIPOLI, TRISTAN DA CUNHA, TUNIS
AND TO SAVING ULAN BATOR, VICTORIA, UKDEL CSCE VIENNA
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AND TO SAVING WARSAW, UKDEL WASHINGTON, YAOUNDE, MANAGUA

PETER WRIGHT CASE

INTRODUCTION (UNCLASSIFIED)

1. THE NEW SOUTH WALES COURT OF APPEAL IN SYDNEY DECIDED ON 24 SEPTEMBER BY A TWO TO ONE MAJORITY (WITH THE CHIEF JUSTICE DISSENTING) AGAINST THE GOVERNMENT'S APPLICATION FOR AN INJUNCTION TO PREVENT PETER WRIGHT AND HEINEMANN (AUSTRALIA) FROM PUBLISHING INFORMATION DERIVED FROM HIS SERVICE AND AGAINST OUR APPLICATION FOR AN ACCOUNT FOR PROFITS. THE GOVERNMENT HAVE ANNOUNCED THAT IT WILL BE APPLYING ON 28 SEPTEMBER FOR AN EXTENSION OF THE INTERIM COURT ORDER RESTRAINING PUBLICATION OF SPYCATCHER AND THEREAFTER FOR LEAVE TO APPEAL TO THE HIGH COURT OF AUSTRALIA.

LINE TO TAKE (UNCLASSIFIED)

2. THE GOVERNMENT IS CONTINUING WITH THE CASE BECAUSE OF THE VITAL IMPORTANCE OF UPHOLDING THE PRINCIPLE THAT PETER WRIGHT AS A FORMER MEMBER OF THE SECURITY SERVICE OWES A LIFELONG DUTY OF CONFIDENTIALITY TO THE CROWN. THIS PRINCIPLE IS ESSENTIAL TO THE EFFECTIVENESS OF THE SECURITY SERVICE. IT IS NOT A MATTER OF ATTEMPTING TO KEEP SECRET THE CONTENTS OF ONE PARTICULAR BOOK.

ADDITIONAL POINTS (UNCLASSIFIED)

3. (PUBLICATION OF THE BOOK IN US/CANADA). THE GOVERNMENT WAS ADVISED THAT LEGAL ACTION TO PREVENT PUBLICATION IN THE US/CANADA WOULD NOT SUCCEED. PUBLICATION OF THE BOOK THERE HOWEVER IN NO WAY AFFECTS THE PRINCIPLE OF WRIGHT'S DUTY OF CONFIDENTIALITY. IT IS UNACCEPTABLE THAT HE OR ANY PUBLISHER SHOULD SEEK TO DEFEND A FURTHER BREACH OF THAT DUTY BY RELYING ON AN EARLIER ONE.

BACKGROUND (CONFIDENTIAL) (FOR YOUR OWN INFORMATION)

4. PETER WRIGHT WAS A MEMBER OF THE SECURITY SERVICE FROM 1955 TO 1976 AND SPYCATCHER PURPORTS TO BE A DETAILED ACCOUNT OF HIS WORK FOR THE SECURITY SERVICE DURING THIS TIME. THE GOVERNMENT LOST THE FIRST ROUND IN THE NEW SOUTH WALES

SUPREME COURT ON 13 MARCH. THE NEW SOUTH WALES APPEAL COURT CONSIDERED THE MATTER IN JULY AND ISSUED JUDGEMENT ON 24 SEPTEMBER. ALL THREE JUDGES ACKNOWLEDGED THAT WRIGHT OWED A DUTY OF CONFIDENCE AND THE CHIEF JUSTICE HELD THAT THE GOVERNMENT WAS ENTITLED TO AN ACCOUNT OF PROFITS AND, SUBJECT TO UP TO DATE EVIDENCE OF THE AUSTRALIAN GOVERNMENT'S ATTITUDE, TO AN INJUNCTION RESTRAINING PUBLICATION. THE REASONS GIVEN BY THE OTHER TWO JUDGES FOR TURNING DOWN THE GOVERNMENT'S APPLICATION WERE WIDELY DISPARATE. ONE HELD THAT OUR ACTION WAS AN ATTEMPT TO SECURE THE INDIRECT ENFORCEMENT IN AUSTRALIA OF THE PENAL OR PUBLIC LAWS OF THE UK. THE OTHER DECLARED THAT OUR APPLICATION NECESSITATED DETERMINING THE BRITISH PUBLIC INTEREST WHICH WAS NOT A MATTER JUSTICIABLE BY AN AUSTRALIAN COURT. IF OUR APPLICATION FOR LEAVE TO APPEAL TO THE HIGH COURT OF AUSTRALIA SUCCEEDS THE CASE MAY NOT BE HEARD BEFORE FEBRUARY 1988.

BACKGROUND (RESTRICTED)

5. LEGAL ACTION ELSEWHERE. ON 30 JULY THE HOUSE OF LORDS BY A THREE TO TWO MAJORITY UPHELD AN INTERIM INJUNCTION RESTRAINING THE OBSERVER AND GUARDIAN (AND ALSO EFFECTIVELY OTHER NEWS MEDIA) FROM PUBLISHING EXTRACTS FROM SPYCATCHER. IN DUE COURSE THERE IS LIKELY TO BE A SUBSTANTIVE HEARING QUOTE ON THE MERITS UNQUOTE.

6. EARLIER THIS MONTH THE COURT OF APPEAL IN HONG KONG BY A TWO TO ONE MAJORITY UPHELD THE INJUNCTION RESTRAINING THE SOUTH CHINA MORNING POST (IN WHICH RUPERT MURDOCH HAS AN INTEREST) FROM PUBLISHING EXTRACTS FROM SPYCATCHER. THE COURT LATER REFUSED THE PAPER LEAVE TO APPEAL TO THE PRIVY COUNCIL BUT THE PAPER HAS INDICATED THAT IT WILL NOW SEEK LEAVE DIRECT FROM THE PRIVY COUNCIL.

7. IN JULY THE GOVERNMENT OBTAINED AN INTERIM INJUNCTION RESTRAINING THE DOMINION NEWSPAPER IN NEW ZEALAND (ANOTHER MURDOCH PAPER) FROM SERIALISING SPYCATCHER. THE DOMINION HAS PRESSED FOR A TRIAL ON THE MERITS AND THIS IS LIKELY TO TAKE PLACE IN NOVEMBER.

8. THE SUNDAY TIMES HAS ALSO MADE AN APPLICATION TO THE ECHR IN STRASBOURG ON THE GROUNDS THAT THE HOUSE OF LORDS INTERIM INJUNCTION VIOLATES ARTICLE 10 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS CONCERNING FREEDOM OF EXPRESSION. THE EUROPEAN COMMISSION OF HUMAN RIGHTS ARE LIKELY TO TAKE A PRELIMINARY LOOK AT THIS APPLICATION IN OCTOBER.

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Ref. A087/2771

MR INGHAM

c Mr Wicks

I understand that your Office has been advised that the 'Mail on Sunday' is intending to run a story speculating that Peter Wright may have his CBE taken away from him.

2. Arrangements do exist which permit the awards to individuals to be cancelled. Normally the recipient of the award has been convicted of a criminal offence and received a sentence of imprisonment exceeding three months. The only exception which springs to mind is the case of Anthony Blunt, who was stripped of his knighthood although he was never convicted of a criminal offence. There are no plans at present to consider action of this kind in respect of Mr Wright.

3. In response to press inquiries, I suggest that you take the line that the Sovereign may cancel awards that have been bestowed on individuals, but that we do not comment on particular cases. Unattributably, you might volunteer that in the past this has tended to occur in cases where the recipient of an award has been convicted of serious criminal offences (without specifying the criteria). The impression should not be conveyed that it is likely to happen in Wright's case.

Traver Woolley

T A WOOLLEY

25 September 1987

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FM FCO
TO DESKBY 250830Z CANBERRA
TELNO 502
OF 241800Z SEPTEMBER 87
AND TO IMMEDIATE UKMIS NEW YORK

UKMIS NEW YORK FOR PRIVATE SECRETARY

YOUR TELNO 602 (NOW REPEATED TO UKMIS NEW YORK): PETER WRIGHT
CASE

1. NO 10 WILL BE ISSUING THE FOLLOWING STATEMENT THIS EVENING:
QUOTE. THE GOVERNMENT WILL ON MONDAY NEXT BE APPLYING FOR AN
EXTENSION OF THE ORDER OF THE NEW SOUTH WALES COURT OF APPEAL
RESTRAINING PUBLICATION OF SPYCATCHER, AND WILL INFORM THE COURT
OF OUR INTENTION TO SEEK LEAVE TO APPEAL TO THE HIGH COURT OF
AUSTRALIA. UNQUOTE. IT HAS BEEN AGREED THAT WE SHOULD NOT
MAKE ANY FURTHER COMMENT OR STATEMENT AT THIS STAGE.
2. FOR YOUR OWN INFORMATION THE ATTORNEY GENERAL INDICATED
THAT HIS MAIN REASONS FOR ADVISING THAT WE SHOULD SEEK LEAVE
TO APPEAL TO THE HIGH COURT WERE FIRST, THAT THE CHIEF JUSTICE
IN HIS JUDGMENT HELD THAT POWELL J OUGHT TO HAVE FOUND IN
FAVOUR OF OUR CLAIM, BOTH AS TO AN INJUNCTION RESTRAINING
PUBLICATION OF SPYCATCHER AND AS TO AN ACCOUNT FOR PROFITS AND
SECONDLY, THE WIDE DISPARITY BETWEEN THE GROUNDS ON WHICH THE
TWO MAJORITY JUDGMENTS ARE FOUNDED. AS REGARDS THE LATTERS
MCHUGH DECIDED THE ISSUE ON A PURELY
JURISDICTIONAL GROUND WHILE KIRBY'S MAIN ARGUMENT WAS THAT
OUR ACTION WAS AN ATTEMPT TO SECURE THE INDIRECT ENFORCEMENT
OF THE PENAL OR PUBLIC LAWS OF THE UNITED KINGDOM.

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15pm
HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

24 September 1987

Dear Michael,

PETER WRIGHT CASE - AUSTRALIAN PROCEEDINGS

The Attorney General copied to the Home Secretary and other members of OD(DIS) his minute of today's date to the Prime Minister recommending that we announce immediately our intention to seek leave to appeal against the adverse judgments in the New South Wales Court of Appeal. The Home Secretary endorses the Attorney General's recommendation. He believes that the terms of our announcement should be kept short, and need not refer to the reasons for our decision.

Copies of this letter go to the Private Secretaries to the Prime Minister and other members of OD(DIS), and of the Lord Advocate and Sir Robert Armstrong.

Yours sincerely,

P J C Mawer

P J C MAWER

Michael Saunders, Esq

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10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

24 September 1987

Dear Richard,

"PETER WRIGHT" LITIGATION: GOVERNMENT WITNESS

The Prime Minister has seen the Attorney General's minute of 23 September in which he advises that Sir Robert Armstrong should be asked to give evidence for the Crown in the pending substantive hearings in New Zealand, Hong Kong and in this country.

The Prime Minister agrees with the Attorney General's advice. She is grateful to Sir Robert for his willingness once again to testify.

I am sending a copy of this letter to the Private Secretaries to members of OD(DIS), to Alan Maxwell (Lord Advocate's Department) and to Trevor Woolley (Cabinet Office).

Yours truly
Nigel Wicks

(N. L. WICKS)

Michael Saunders, Esq.,
Law Officers' Department.

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10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

24 September 1987

Dear Michael,

THE WRIGHT CASE: APPEAL TO THE HIGH COURT OF AUSTRALIA

The Prime Minister has seen the Attorney General's minute of today in which he recommends that there should be an immediate announcement of our intention to seek leave to appeal to the High Court of Australia in the Wright case.

The Prime Minister agrees that there should be an immediate announcement. But she thinks that it would be wrong to set out in the announcement the reasons why we have concluded that we should appeal. She suggests that the announcement should read as follows:

"Having studied the judgements, the Government will on Monday next be applying for an extension of the order of the New South Wales Court of Appeal restraining publication of "Spycatcher", and will inform the court of our intention to seek leave to appeal to the High Court of Australia."

I am sending a copy of this letter to the Private Secretaries to members of OD(DIS), to Alan Maxwell (Lord Advocate's Department) and to Trevor Woolley (Cabinet Office).

Nigel Wicks

(N. L. WICKS)

Michael Saunders, Esq.,
Law Officers' Department.

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MR WICKS

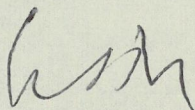
Peter Wright Litigation: Government Witness

22 attached
The Attorney General sent Sir Robert Armstrong a copy of his minute of 23 September to the Prime Minister, in which he recommended that Sir Robert should be asked to give evidence for the Crown in the substantive hearings concerning Peter Wright in New Zealand, Hong Kong and this country.

2. Sir Robert Armstrong was aware, before he went on holiday a week ago, that the Attorney General would be recommending in this sense. He authorised me to tell you that he is willing to be the Government witness in New Zealand in November and also in the other two cases even if hearings take place after his retirement from the public service at the end of the year.

3. In the judgments handed down this morning by the New South Wales Court of Appeal, two of the judges contradict Mr Justice Powell's criticisms of Sir Robert as a witness. The Chief Justice (whose judgment was the dissenting one) said "I see not the slightest justification for casting aspersions on the credit of Sir Robert Armstrong; and I specifically reject the claim... that Sir Robert Armstrong deliberately set out to mislead the court", and he referred to "highly persuasive evidence" from Sir Robert. Mr Justice Kirby found that Sir Robert told the truth before the court and that the criticism of Mr Justice Powell that Sir Robert had no personal knowledge or expertise in matters of security was a misconceived criticism.

4. I am sending copies of this minute to the Private Secretaries of the other members of OD(DIS) and of the Lord Advocate, and to Sir Robert Armstrong.



C L G Mallaby

24 September 1987

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THE PETER WRIGHT CASE: APPEAL HEARING

1. AS I REPORTED TO NO 10 PRESS OFFICE ON THE TELEPHONE AND AS YOU WILL NO DOUBT HAVE HEARD ALREADY ON THE NEWS, THE NEW SOUTH WALES COURT OF APPEAL DISMISSED OUR APPEAL WITH COSTS THIS MORNING. IT WAS A MAJORITY DECISION, THE CHIEF JUSTICE ENTERING A MINORITY JUDGEMENT. OUR COUNSEL IMMEDIATELY RAISED THE QUESTION OF EXTENDING THE RESPONDENTS' UNDERTAKINGS UNTIL WE HAD HAD TIME TO CONSIDER THE QUESTION OF AN APPEAL. THE COURT AGREED TO HEAR AN APPLICATION ON THIS MATTER THIS AFTERNOON.

2. THEY HAVE NOW DECIDED TO GRANT AN INTERIM ORDER RESTRAINING PUBLICATION UNTIL 1600 (LOCAL) ON MONDAY. OUR COUNSEL CAN THEN APPLY TO A SINGLE JUDGE OF THE HIGH COURT (I.E. FEDERAL) FOR A FURTHER EXTENSION WHICH WOULD GIVE US TIME TO CONSIDER ASKING FOR LEAVE TO APPEAL TO THE HIGH COURT. OUR LAWYERS HAVE ALREADY ESTABLISHED THAT THERE WILL BE A HIGH COURT JUDGE IN SYDNEY ON MONDAY.

3. THE CHIEF JUSTICE SUMMED UP HIS MINORITY JUDGEMENT BY SAYING THAT, AS THINGS STOOD, HE WAS OF THE VIEW THAT THE BRITISH GOVERNMENT WAS ENTITLED TO HAVE AN ORDER MADE NOW FOR AN ACCOUNT OF PROFITS AND OTHER RELIEF INCIDENTAL TO THAT ACCOUNT. HOWEVER, OUR CLAIM FOR AN INJUNCTION TO RESTRAIN PUBLICATION OF 'SPYCATCHER' SHOULD BE RELISTED FOR FURTHER HEARING IN 28 DAYS' TIME SO AS TO AFFORD THE BRITISH GOVERNMENT AN OPPORTUNITY OF ADDUCING UP-TO-DATE EVIDENCE OF THE CURRENT ATTITUDE OF THE AUSTRALIAN GOVERNMENT IN RELATION TO ACTUAL PUBLICATION OF 'SPYCATCHER'. (ELSEWHERE IN HIS JUDGEMENT HE MAKES IT CLEAR THAT HIS REASON FOR SAYING THIS IS ESSENTIALLY THE PUBLICATION OF SPYCATCHER IN THE UNITED STATES AND ITS CONSEQUENT WIDE CIRCULATION). HE WENT ON TO STATE THAT 'IN THE ABSENCE OF UP-TO-DATE EVIDENCE BEING ADDUCED BY THE UK GOVERNMENT OF SUPPORT FROM THE AUSTRALIAN GOVERNMENT FOR THE GRANTING OF AN INJUNCTION FORBIDDING PUBLICATION IN AUSTRALIA, I AM OF THE OPINION THAT AN INJUNCTION SHOULD NOT

BE GRANTED''.

4. NEITHER OF THE OTHER TWO JUDGES EXPLAINED HIS REASONS IN COURT FOR DISMISSING THE APPEAL. A QUICK PERUSAL OF THEIR WRITTEN JUDGMENTS SUGGESTS THAT THEY EACH HAVE A DIFFERENT EMPHASIS.

5. JUDGE KIRBY'S 'PRIMARY CONCLUSION' IS SUMMED UP IN THE FOLLOWING PASSAGE:

'WHEN THE TRUE NATURE OF THE CLAIM BY THE UNITED KINGDOM IN THIS CASE IS ANALYSED, IT IS NOT THAT OF A PRIVATE CLAIM BY AN ORDINARY FOREIGN LITIGANT TO ENFORCE, IN EQUITY, THE DICTATES OF CONSCIENCE UPON THE CONDUCT OF MR WRIGHT AS A PERSON BREACHING HIS DUTY OF SECRECY. IT IS, INSTEAD, AN IMPERMISSIBLE EFFORT BY THE UNITED KINGDOM GOVERNMENT TO EXERT IN AUSTRALIA, WHERE WE HAVE QUITE DIFFERENT PENAL AND

PUBLIC LAWS RELATING TO SECRECY, SECURITY AND INTELLIGENCE THE SOVEREIGN POWER OF THE UNITED KINGDOM EXERTED AGAINST A FORMER SECURITY AGENT. THE COURTS OF ENGLAND HAVE LONG HELD THAT THEY WILL NOT LEND THEIR JURISDICTION TO THIS END. SO SHOULD THE COURTS IN THIS COUNTRY. ACCORDINGLY, ALTHOUGH FOR A DIFFERENT REASON THAN POWELL J. GAVE, THE APPEAL SHOULD BE DISMISSED''.

HE GOES ON TO SAY THAT EVEN IF THIS PRIMARY CONCLUSION WERE INCORRECT, IT DOES NOT ALTER HIS CONCLUSION THAT THE APPEAL SHOULD BE DISMISSED.

6. JUDGE MCHUGH PLACES THE MAIN EMPHASIS ON THE NATURE OF MR WRIGHT'S OBLIGATION OF CONFIDENTIALITY. HE SUMS HIS VIEW UP AS FOLLOWS:

'THE CLAIM FOR BREACH OF CONTRACT FAILS BECAUSE THERE WAS NO CONTRACT. THE CLAIM FOR BREACH OF AN EQUITABLE OBLIGATION OF CONFIDENCE FAILS BECAUSE IT IS NOT JUSTICIABLE. THE CLAIM FOR BREACH OF FIDUCIARY DUTY FAILS BECAUSE ITS SUCCESS WAS DEPENDENT ON THE FATE OF THE ACTION FOR BREACH OF CONFIDENCE''.

7. BOTH THE CHIEF JUSTICE AND JUDGE KIRBY REJECT IN FORTHRIGHT TERMS THE CRITICISMS MADE OF SIR ROBERT ARMSTRONG'S EVIDENCE IN THE SUPREME COURT, AND TO A LESSER EXTENT THE

CRITICISM OF WHAT HIS AUSTRALIAN OPPOSITE NUMBER, MR CODD, HAD TO SAY. THE CHIEF JUSTICE ADDED THAT HE SPECIFICALLY REJECTED THE CLAIM IN THE NOTICE OF CONTENTION FILED ON BEHALF OF MR WRIGHT IN THE APPEAL THAT SIR ROBERT ARMSTRONG HAD DELIBERATELY SET OUT TO MISLEAD THE COURT AND THAT AS A CONSEQUENCE HIS EVIDENCE SHOULD HAVE BEEN GIVEN NO CREDIT WHATSOEVER.

8. IT IS WORTH NOTING THAT BOTH THE CHIEF JUSTICE AND JUDGE KIRBY SUGGESTED THAT THE QUESTION WHETHER PUBLICATION OF THE BOOK IN THE UNITED STATES INVOLVED ANY BREACH OF UNDERTAKINGS GIVEN TO THE COURT BY MR WRIGHT AND HEINEMANN WAS A MATTER WHICH MIGHT REQUIRE CONSIDERATION, JUDGE KIRBY ADDING THAT 'IT SHOULD BE LEFT TO THE APPELLANT, SHOULD HE CHOOSE TO DO SO, TO RAISE THIS QUESTION FOR THE DETERMINATION OF THE COURT IN THE NORMAL WAY BY FILING OF A SUMMONS'.

9. ON LEAVING THE COURT I ANSWERED QUESTIONS FROM A BATTERY OF JOURNALISTS ALONG AGREED LINES. ON THE ADVICE OF OUR LAWYERS I WAS CAREFUL NOT TO LEAVE ANY IMPRESSION THAT WE WOULD BE UNLIKELY TO APPEAL. HAVING ALREADY EXPLAINED THAT THE NEXT STEP WAS FOR THE BRITISH GOVERNMENT TO STUDY THE DOCUMENTS IN LONDON AND THAT I COULD NOT ANTICIPATE WHAT THE DECISION WOULD BE, I WAS ASKED WHETHER THERE WAS A POSSIBILITY THAT WE MIGHT DECIDE TO CUT OUR LOSSES AND TAKE THE CASE NO FURTHER. TO THAT I ANSWERED 'I CANNOT AT THIS STAGE EXCLUDE ANYTHING. ALL I WILL SAY IS THAT I THINK YOU KNOW US AND THAT WE DO NOT GIVE UP EASILY'. WHEN ASKED WHAT WOULD BE THE POINT OF CONTINUING I REPLIED: 'THERE IS A VERY IMPORTANT POINT OF PRINCIPLE THAT WE WANT TO SEE UPHOLD, WHICH IS MR WRIGHT'S OBLIGATION OF CONFIDENTIALITY. IF WE DECIDE TO GO AHEAD WITH AN APPEAL, IT WILL BE BECAUSE WE THINK THAT POINT SHOULD BE TAKEN AS FAR AS POSSIBLE'.

COMMENT

10. ANY COMMENT THAT I MAY MAKE IS, OF COURSE, STRICTLY THAT OF A LAYMAN. BUT I THINK WE MAY TAKE SOME COMFORT FROM THE CHIEF JUSTICE'S MINORITY JUDGMENT. IT WILL SURPRISE NO-ONE HERE IF WE CARRY ON TO THE HIGH COURT.

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PRIME MINISTER

From an immediate reading of the judgments in the New South Wales Court of Appeal, now summarised in Canberra Telegram 602, it is plain that there are compelling grounds for an appeal to the Australian High Court. Not only did the Chief Justice hold that Powell, J. ought to have found in favour of our claim, both as to an injunction restraining publication of "Spycatcher" and as to an account for profits: there is wide disparity between the grounds on which the two majority judgments are founded. That of McHugh JA, for instance, decides the issue on a purely jurisdictional ground, which he described as a "threshold question". That of Kirby P. holds that our action was an attempt to secure the indirect enforcement of the penal or public laws of the United Kingdom. He also held that the United Kingdom would suffer no detriment from publication. He held that the evidence of the Secretary to the Australian Cabinet that the Australian public interest would be damaged by publication could be "disregarded".

Officials will be analysing the judgments fully in the course of the day. I believe, however, that our interests will be best served by an immediate announcement to the following effect:-

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"The Government has noted the terms in which the Chief Justice of New South Wales has held that Mr. Justice Powell was wrong in rejecting the United Kingdom's claim for an injunction restraining the publication of "Spycatcher", and for an account of profits; and it has also noted the differing grounds upon which the two judgments which were adverse to the United Kingdom's appeal were respectively founded. Accordingly, the Government will on Monday next be applying for an extension of the Order of the New South Wales Court of Appeal restraining publication of "Spycatcher", and will inform the Court of our intention to seek leave to appeal to the High Court of Australia."

I would regard it as being against our interests to make any further comment at this stage.

I am copying this minute to the other Members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

P.M.

24 September 1987

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PRIME MINISTER

In his minute below the Attorney General advises that Sir Robert Armstrong should be asked to give evidence for the Crown in the pending substantive hearings in New Zealand, Hong Kong and in this country.

I am sure that this is right, and know that Robert Armstrong agrees. He is very ready to step into the breach once again. Since the UK case is not to be heard until next year, he would not be Cabinet Secretary when he was the Government's witness. Nevertheless, I think there is a strong case, for the reasons outlined by the Attorney, for Robert being the Government witness in all the Wright cases. If there was a further case like the Wright case, I think we would need to think very carefully before putting the new Cabinet Secretary into bat as Government witness but that is a question for the future.

So agree with the Attorney's advice that Sir Robert should give evidence for the Crown in the New Zealand, Hong Kong and UK cases?

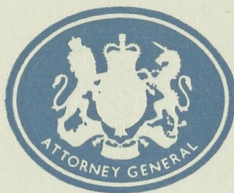
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23 September 1987

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Yes - I am very grateful to Sir Robert for his willingness once again to testify.



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PRIME MINISTER

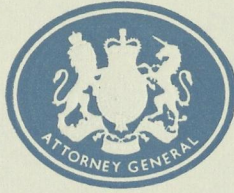
"PETER WRIGHT" LITIGATION: GOVERNMENT WITNESS

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In his minute of 15 September to Mr Wicks, Sir Robert Armstrong informed you that a decision would be needed in due course about who should be the Government witness in New Zealand, in this country and in Hong Kong. As the substantive hearing in New Zealand is expected to take place in mid-November, I think it would be wise for us now to take a decision as to who should be the Government witness.

The following factors suggest that the Government witness should be Sir Robert Armstrong.

- (i) In my view and that of the Treasury Solicitor, to whom I have spoken, Sir Robert would make the best witness for the Crown. It is noteworthy that the Australian Solicitor General, after the conclusion of the hearing in Sydney, wrote specially to me to say that he could not recollect a better witness, and that the giving of evidence was a splendid job performed under adverse and often very trying circumstances. He confirmed this when he saw me in July.
- (ii) To choose a different witness for the Crown, particularly in a hearing before Sir Robert's retirement, could lead to an inference being drawn that the Government had concluded that he was the wrong witness for the hearing in Sydney.



(iii) The Chief Justice in the New South Wales Court of Appeal indicated that the evidence given by Sir Robert was essentially a matter for the Executive and that it was entirely appropriate to have an Executive witness.

(iv) It is very difficult to see who else could give evidence of this kind with such authority. There would be significant dangers in exposing a member of the Security Service to cross-examination and it might moreover create an unfortunate precedent for the Director General of the Security Service to be the Crown witness. I suggest that it would be unreasonable to ask Sir Robert's successor to perform this task soon after taking up his post.

I therefore advise that Sir Robert Armstrong should be asked to give evidence for the Crown in the pending substantive hearings in New Zealand, Hong Kong and in this country. We will obviously need to consider in the New Year who should be the Crown witness in any future litigation of this kind.

I am copying this to other Members of OD(DIS), to the Lord Advocate and to Sir Robert Armstrong.

P.M.

23 September 1987

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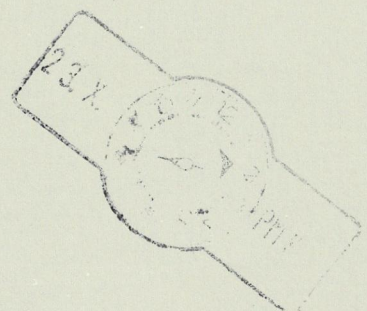
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10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

23 September 1987

Dear Alan,

**THE PETER WRIGHT CASE:
LENDING OF "SPYCATCHER" BY PUBLIC LIBRARIES**

The Prime Minister has seen the Lord Advocate's minute of 22 September in which he records his opinion that the chances of obtaining interdict, in the Scottish Courts, against those libraries lending out "Spycatcher" are insufficient to justify instituting proceedings against them. She has also seen the Attorney General's minute of the same date in which he records his view that in the light of the Lord Advocate's assessment, he reluctantly but firmly believes that the balance of advantage to the Government lies in not taking proceedings against the District Councils in Scotland.

The Prime Minister agrees, in the light of the advice of the Lord Advocate and the Attorney General, that we should not take action in Scotland to stop the Scottish libraries lending out "Spycatcher".

I am sending a copy of this letter to the Private Secretaries to members of OD(DIS) and to Sir Robert Armstrong.

*Yours sincerely
Nigel Wicks*

(N. L. WICKS)

Alan Maxwell, Esq.,
Lord Advocate's Department.

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PART 8 ends:-

ATT. GEN TO PM 22.9.67

PART 9 begins:-

NLW TO PS/LOCAL ADVOCATE 23.9.67

