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HR 10/3

PART NUMBER 10

Custody of the private collection of documents of Sir Winston Churchill held in the Chartwell Trust

FILE BEGINS 3 May 1994 ENDS Sept. 94	FILE No. HR 10/3	PART NUMBER 10

INDEX HEADINGS

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			51N	23.9.94	FAX out			
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December 7, 1926.

My dear Churchill,

In your letter of December 2nd. you ask me for information as to General Nivelle's conquest of Lloyd George. You ask if it was a case of "love at first sight" and whether on page 81 of Chapter XI of your new (and most brilliant) volume you have exaggerated.

My first instinct was to reply that, according to my recollection, your story accords with the facts. In fact, my first reaction was that your insight into events of which you were not an inside observer was almost incredible. I know, however, that memory — my memory, at any rate — is an untrustworthy instrument, and I decided, before replying, to consult the records. Beginning with the records of International Conferences, I have then gone on to the printed notes of the War Cabinet, and, burrowing deeper still, I have opened the sealed envelopes in which the most secret notes of transactions relating at the time to future events are kept. I have also consulted my own diary. These enquiries

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have led to some modifications of my first impressions, and will, I think, necessitate some alterations in your text.

On the whole, I think you have given an exaggerated impression of the rapidity with which Lloyd George took his decision. To explain this requires a narrative of what happened.

So far as I can trace, the first intimation that Lloyd George had of the projected offensive was on December 26, 1916. M. Ribot and M. Thomas, with some military and political officers, had come to London, M. Briand at the time being indisposed. On that occasion M. Ribot gave in very general terms some outline of General Nivelle's plans. Here is an extract from my note of the meeting:-

> "M. Ribot then went into the future conduct of the war generally, and dwelt on the necessity of securing some decisive success in the course of next summer. The decisions to be taken at this moment were critical. The new French Generalissimo, General Nivelle, had the idea to break through on a wide front, keeping in reserve an armée de manœuvre to carry on the attack after the line had been broken. For this to be carried out, the British Army must take on a longer offensive line. They must add 30 to 40 kilom. to their present line of 200 kilom. The Xth French Army, which would form the nucleus of the armée de manœuvre, had got to be taken out of the French line. So far General Haig had refused to do more than

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take over a further 6 kilom. until Salonica was evacuated. The question was not only military but political. There was a serious feeling in France, which had shown itself markedly in the recent secret sessions, that the efforts of the two countries were not equal. M. Ribot rendered full justice to all that Great Britain had done, but he said that unpleasing comparisons had been made in France. The requests that the French now put forward were really moderate. No doubt the British military authorities would object; but it was not a question for the General Staffs, it was one for the Governments. He might say quite openly that the Governments, especially the French Government, had hitherto left the conduct of the war too much to the General Staff."

This was on December 26th. Given so strong a hint as this, you, who know Mr Lloyd George so well, will realise that he would set every activity in motion to know more about the matter. And for this he was about to be given unrivalled opportunities. For, less than a week later, Mr Lloyd George started for Rome, picking up French Ministers in Paris and travelling through to Rome in company with them. During this journey, at Rome, and on the return journey, Mr Lloyd George was in continuous converse with M. Briand, M. Albert Thomas and General Lyautey. Before he got back I would wager a good deal there was nothing about General Nivelle and his plans that he did not know.

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At Rome, moreover, Lloyd George made an effort to avert the proposed offensive. He did not do this by a direct attack on the Western Front theory. He presented the Rome Conference with a Memorandum, in which he developed a proposal for a great attack on the Italian front, to be accomplished mainly by Italian troops, supported by a tremendous battery of Anglo-French guns. (Incidentally, he insisted also on plans being made for reinforcements by the Allies of the Italian front, if, as he anticipated, the Germans were to do what in the event they did ten months later at Caporetto — but that is another story.) This plan for an offensive on the Italian Front, if adopted, would, of course, have completely dislocated General Nivelle's plans, and in developing it at the Rome Conference Mr Lloyd George did not hesitate to point out some of his objections to the Western Front theory. The plan, however, was not adopted, but was merely remitted to the Allied Generals for study, and (so far as the offensive project was concerned) nothing resulted. The French Ministers, though outwardly sympathetic to Mr Lloyd George's proposals, were most reluctant to dislocate Nivelle's plans and probably relied on the Generals to turn them down. Mr Lloyd George, therefore, returned to England from Rome without having succeeded

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that part of his plans for the Rome Conference, but at least he had, we may fairly assume, gained a full knowledge of General Nivelle's plan.

The next episode in the story is the arrival of General Nivelle in London, where he discussed matters with the War Cabinet on the afternoon of Monday, January 15, 1917. General Nivelle early made the point that he had not asked for this Conference to be held, and when Mr Lloyd George had invited him he had insisted that Sir Douglas Haig should also be present, and as a matter of fact he was present at the War Cabinet at all the meetings attended by General Nivelle, and at some of the private meetings as well, and, as we shall now see, not only acquiesced in, but was a party by signature to these plans.

The Conference sat all the afternoon of Monday, and in the early evening (exact time not known) Lloyd George stated that the question was too important and complicated to be settled at one Conference and begged General Nivelle to stay another day. The General half-reluctantly consented. That evening, long after the French General had left, as the records show, the War Cabinet were still deliberating among themselves. Next morning (January 16th) the War Cabinet met again at 11 a.m.,

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and after deliberating for some time among themselves they sent for Haig and Robertson, with whom they discussed the matter at considerable length. Then eventually General Nivelle was sent for, and the Agreement, which took the form of a Memorandum signed by Generals Nivelle, Haig and Robertson, was concluded.

Now if we consider these events in full and in the light of Mr Lloyd George's character and methods, I do not think we can say that it was merely a case of "love at first sight". Mr Lloyd George was warned on the matter as early as December 27th -- perhaps earlier, because, as you note in your text, General Nivelle had asked for the extension of the Front as early as December 21st. All the way to Rome, at Rome, and all the way back, in incessant conversation with French Ministers (including MM. Briand, Thomas and General Lyautey) Mr Lloyd George was probing the matter. He proposed an alternative plan, which would have upset General Nivelle's scheme, but failed to secure its adoption. Meanwhile, however, Mr Lloyd George was getting more conversant with the Nivelle plan, and probably this closer knowledge removed some of his instinctive apprehensions and differentiated it from the usual type of Western Front attack, to which he objected as strongly as you yourself. For example,

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as the records show, he had ascertained the point you mention, that it was to be a short and sharp affair. If early success was not achieved, the attack was to be broken off. As you no doubt remember, what was unendurable to Lloyd George was an attack of the type of the Somme or Flanders, going on day after day with hideous losses and no prospects of compensating success. This objection, at least, was absent from Nivelle's new plan. Then the very fact that we were asked to take over some of the line in order to release French troops for the attack, meant the employment of fewer British troops in the subsidiary offensive. Mr Lloyd George believed at that time (as our records show) that our Army was too raw, particularly as regards trained regimental Officers, for great attacks. The French Army, with its much larger percentage of trained Officers, was, in his view, more likely to achieve success. These and many other points were exhaustively weighed in the anxious and prolonged discussions at the private meetings of the War Cabinet during General Nivelle's visit on January 15th and 16th, and it was only after long deliberation with, and with the full acquiescence of, Generals Haig and Robertson that the War Cabinet took their decision. Moreover, it is characteristic of Lloyd George that the decision took the

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form of an Agreement signed by Generals Nivelle, Haig and Robertson, and not the usual form of a mere War Cabinet conclusion.

In short, after these investigations, I reach the conclusion that Lloyd George first sought to avoid the attack altogether. He realised, however, that he could not manage this, since the attack was favoured by Sir Douglas Haig and General Robertson, and strongly pressed by the French Government, with whom the new Prime Minister, as a cardinal point in his policy, was anxious to work in close accord. But even then Mr Lloyd George did not give his consent until he had established that some of his strongest objections to a Western Front attack had been removed, and he fortified his own responsibility by the acquiescence not only of his colleagues but also of both his military advisers, and obtained the signature of the latter to this military agreement.

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I do not say that General Nivelle's personality did not play some part in the decision, but I do not think it was a major part. There is no doubt that both Mr Lloyd George and his colleagues were most favourably impressed by the General -- though as early as January 16th Mr Lloyd George's attention was drawn to a case of leakage of information about the projected offensive, and as the

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result he "took the opportunity of impressing the French Delegates with the great importance of maintaining secrecy upon this Agreement and the whole of the projected operations". But I think Mr Lloyd George was even more favourably impressed by General Nivelle's record than by his personality. Here, for example, is the first reference to this aspect of the subject in the War Cabinet Minutes:-

> "The Prime Minister ..... said that General Nivelle is known to be a cautious General. That is his reputation in France. He is slow at reaching a decision, but he weighs every consideration and his views are considered very sound. His defence of Verdun had been extraordinarily good. He was the one French General who had been almost uniformly successful, and had risen through every stage from Colonel to Commander-in-Chief. He was therefore able to discuss every part of the work as an expert. M. Briand had told Mr Lloyd George about General Nivelle's plan for the attack on Verdun. The General had submitted his plan to the French War Committee: he had told them that he would lose a certain number of men and would capture about 5,000 prisoners. In fact he had lost far less men than he had estimated, and had taken double as many prisoners. This incident created confidence in the man."

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The incident above referred to was the capture of Fort Douamont, and, according to my recollection, M. Briand on the journey to and from Rome and Paris had constantly dwelt on it. As I remember the story, the General had told the French War Committee that at a certain hour he would telephone to say the French had occupied Fort Douamont.

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At that very hour the telephone bell had rung in M. Briand's room and he had received the good news from the General in person.

But even so, I think the personal factor must not be unduly stressed, and that Mr Lloyd George must be given the credit of carefully weighing the whole matter for some three weeks before reaching a decision. I think, therefore, that the marked passage in the copy you sent me, and which I return, will require a certain amount of alteration. In particular, you must delete the last sentence, in which you say that Sir Douglas Haig had not, up till this point, been consulted. I suggest, also, that you should avoid the implication that the British acquiescence was a hasty decision, for I am quite convinced that, so far as Mr Lloyd George is concerned, this was not the case.

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Your paragraph also might perhaps be read to mean that the question of the unified Command was settled at approximately the same time as the decision to take over more of the Front and to sanction the offensive. This was not the case. The question of General Nivelle's Command was not raised at the meetings in London on January 15th and 16th. So far as I can judge from my diary, it did not come up in any form until the middle of February.

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The actual decision was taken at a Conference at Calais on February 27th. Here, again, it is important to note that General Haig was a party to the Agreement, which was signed not only by Mr Lloyd George but also by Generals Haig and Robertson, though undoubtedly this was obtained only as the result of considerable pressure.

I suggest also that in the following paragraph you should avoid giving so strong an impression that General Haig was personally in disagreement with General Nivelle on his main plan. Haig repeatedly told the War Cabinet, both in General Nivelle's presence and privately, that he supported Nivelle's plans in principle, though he was less confident than Nivelle as to how far the break through could be exploited, and he did not want to start so early in the year as the French General.

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I must apologise for this intolerably long letter, but once one begins to go into these matters in detail one is drawn on from point to point, from archive to archive — as I have no doubt you have long ago discovered. I hope, however, that I have given you the material to correct the unavoidable errors in the implications of this paragraph.

Yours very sincerely
M. P. A. Hankey

The Right Hon.
W.S.Churchill,
C.H.,M.P.,

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P.S. I have just read the last chapter of the book and hope to send some comments in a day or two M.P.A.H.

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(145)

December 8, 1926.

My dear Churchill,

I have now finished reading your book. I have read it with the deepest interest and without skipping a line. It has held my attention throughout, and during the last fortnight or so I have read nothing else in my private time, for it has absorbed all my attention.

I very much appreciate the opportunity you have given me to read it through at this stage. At the same time I am bound to put in a caveat that I cannot give any guarantee as to accuracy, and I do not suppose you expect me to do so. My reason for this caveat is that my confidence in my own memory was a good deal shaken by the fact mentioned in my last letter to you on this subject, namely, that I had, on a first reading, passed as correct a paragraph which, when you drew my attention to it, I found required modifications.

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Your volume is so amazingly brilliant that I do not like criticising it. I assume, however, that you did not send it to me merely to provide amusement and interest for my spare hours, and I shall therefore offer such criticisms as occur to me quite candidly, but, I need not say, in the friendliest spirit.

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Taking the arrangement of the book as a whole, I am attracted most by the descriptions of strategical decisions and the tactical operations which they led to. Again and again I find your Chapters on these subjects illuminating matters which had hitherto been obscure. Battles are usually dull reading, but your descriptions are of absolutely absorbing interest. Moreover, your strategical and tactical conceptions in most cases set forth my own views, though in language which I could never emulate.

Your descriptions of the various personalities are also very interesting. You seem to me to have "hit off" the traits of the various characters in a peculiarly happy way, and even where you differ in principle from their views you have given them all the credit they deserved and brought out the strong points in their characters.

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But when I come to the Chapters dealing with the Government's policy, and so forth, I do not find quite the same satisfaction. I think there are too many of your own Memoranda and Minutes. They rather destroy the perspective of your story. The strategical and tactical Chapters are written from a standpoint of lofty detachment. Some of the other Chapters become rather too personal and the perspective is a little upset. The Memoranda and Minutes are brilliant and prophetic, and I do not for a

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moment suggest anything like a holocaust, but merely a diminution in the number. Some of them might go to an Appendix, but some might be left for your future biographer.

As a matter of detail, the second part of Chapter XII, dealing with the munitions programme, does not seem to hitch on very conveniently to the rest of the Chapter which is headed "Thoughts on a Naval Offensive".

One last point about the general arrangement. I should be inclined to end the book at Chapter XXV and to omit altogether the Chapter headed "The Aftermath". Chapter XXV contains a most brilliant description of the end of the War on a note of triumph. It concludes, if I remember right, with a thought-compelling query as to whether these things are to happen again. On that note I would end the volume. "The Aftermath" is too much of an anti-climax. Instead of ending with wedding bells or, shall we say, joy bells, it takes us into the ~~early life~~ special circumstances of a poverty-stricken marriage. I think that "The Aftermath" would come better as the first Chapter of a future book on the reconstruction, - the time for which is not yet ripe.

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Coming now a little more into detail, you asked me to consider whether there were any passages which, in the public interest, ought to be cut out. Personally, though I do not think you will agree, I should prefer, on these grounds, to omit the references to the decoding of telegrams, on the 8th and 9th pages of Chapter V. You have, of course, handled this delicate question with perfect discretion, and if the Admiralty and Foreign Office are satisfied I should not be disposed to object on the ground of the contents of these paragraphs. What I fear is that your mention of this question will lead other people, whose discretion is less sure, to write on this subject. I have some reason to believe, for example, that Sir Alfred Ewing is anxious to publish a book going into the matter in some detail. I have done all I can to dissuade him, and have insisted that before he publishes anything he must at least send it to the Admiralty. He took it rather hardly, and justified his attitude by a reference to your mention of the matter in earlier volumes. As this was some time ago and no book has appeared, I imagine that he took my remonstrances to heart, but I feel sure this would start him off again. I do not mistrust his discretion, but I do not think

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that he has a wide enough knowledge to treat the matter judiciously, and he, in turn, may set someone else off talking or writing.

There are also two points in Chapter XXI in regard to which I have some small doubts. On the 5th page of this Chapter there is a telegram about Chile and nitrates, containing hints at the possibility of a rupture of relations between Chile and Germany. As Chile kept out of the War it might perhaps be better to leave this out, but the Foreign Office would be a better judge of this than I.

Also on the 10th page of Chapter XXI there is a reference to a new gas which we intended to use in 1919. I am not technically well up in gases, but if we wanted to use this gas in the future it might be advisable not to draw attention to it.

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Apart from these points I did not notice anything to which exception could be taken on public grounds.

On the whole, the Chapter which I liked least was Chapter XVIII, "The German Concentration in the West", and more particularly the references to the man-power crisis. Broadly speaking, I feel that the balance and perspective of the early part of this Chapter are not quite right. Five full pages are given to your own

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Memorandum of December 8th and your speech at Bedford on the subject of man-power. No mention is made of the great Inquiry which was being conducted at that time by the War Cabinet. There was, you will remember, a Committee of the War Cabinet, presided over by Lord Curzon, but which, in its crucial stages, was brought into the War Cabinet and dealt with by the Prime Minister himself. A vast amount of material was collected not only from the Government Departments and G.H.Q., but also from bodies like the Supreme War Council. The Report, oddly enough, was never signed, and goes on record as a Draft Report, but its main, if not all its recommendations were carried out. The passage at the bottom of ~~the~~ your 2nd page, for example, gives no impression of this elaborate Inquiry:-

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> "I urged that the Cabinet should send all the men that were needed to re-constitute the Army, and should at the same time forbid absolutely any resumption of the offensive. The Prime Minister, however, did not feel that, if the troops were once in France, he would be strong enough to resist those military pressures for an offensive which had so often overborne the wiser judgment of Statesmen. He therefore held, with all his potent influence, to a different policy. He sanctioned only a moderate reinforcement of the Army, while at the same time gathering in England the largest possible number of reserves", etc.

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I think the whole paragraph is misleading. The Government's policy, as set forth in the Draft Report, is perfectly clear and logical. In view of the collapse of Russia and the certainty that large numbers of Germans would be brought from the Eastern Front, the staying power of the Allies was to be safeguarded until the Americans had arrived in force. Consequently, there was to be no big offensive. For the first six months of 1918 the Allied Armies (in accordance with the recommendations of ~~the Staff of~~ the Supreme War Council) were to act broadly on the defensive, with a view to avoiding casualties. Meanwhile, the arrival of the Americans was to be speeded up, and a number of administrative steps were to be taken to comb out large numbers of men. Without some reference to this War Cabinet Inquiry, the impression is given (unintentionally, I am sure) that the War Cabinet's decisions were taken on rather slender grounds.

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Again, on the 8th page of Chapter XVIII I do not like the references to the reduction of Infantry Divisions from a 13 to a 10 Battalion basis, etc., which, standing by themselves, seem to me to give a wrong impression. The French had long before reduced their Divisions from a 12 to a 9 Battalion basis, and reported that the policy had been a success.

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some strong argument in favour of it was that it reduced the proportion of Infantry to guns, etc. The Germans had also reduced from 12 Battalions to 9. Moreover, the total strength of the British Army had by this time enormously increased, owing to developments in heavy artillery, tanks, trench mortars, machine-guns, gas, etc., which services in the aggregate absorbed a good deal of man-power. Without mention of these circumstances I think the reader is encouraged to infer that this step was taken rather at haphazard, without very full consideration.

I do not like the implication that Mr Lloyd George and the War Cabinet were treating Sir Douglas Haig in rather a curmudgeonly fashion, and, looking back, I do not believe that if we had thrown in our last reserves of man-power at the beginning of 1918 it would have enabled us to withstand the shock and surprise of March 21, 1918. Our casualties would have been greater and we should have been weaker in every way for making good our losses, both of men and munitions. In short, I believe that the policy adopted by the War Cabinet was the best they could do in the difficult circumstances in which they were placed; and when I re-read the Draft Report of the Man-Power Committee in the light of after events I think it was a wise document. That, however, is a personal opinion.

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On the 9th page I altogether dispute the following statement:-

> "There is no doubt that the War Cabinet, in January and February, did not at all realise the dangers which were rapidly gathering and increasing on the British front".

I find that between January 1st and March 21st the increase in the German forces and the probability of attack are referred to no less than 21 times in the War Cabinet Minutes, and this confirms my recollection that the certainty of it loomed in everyone's mind. Mr Lloyd George certainly thought of little else. I remember that/he sent me with General Smuts to look at the (at the end of January)
defensive preparations which were being made, and, besides a short official Report, General Smuts/gave a (and I made)
very full verbal report personally to the Prime Minister. The War Cabinet were constantly pressing the C.I.G.S. in regard to our preparations. I do not think that the Supreme War Council's adoption of plans for reinforcing Allenby's army in Palestine can be taken as sufficient evidence to justify the statement quoted above.

THE CHARTWELL TRUST

The reason why the Supreme War Council wanted a success in Turkey was that they foresaw that for a long time we must be on the defensive on the Western Front. They wanted a success somewhere, and/Turkey seemed ~~the~~ (the elimination of)
to offer possibilities of successful accomplishment.

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But the danger of the forthcoming attack formed the basis of the whole of the discussions at the long five days' session of the Supreme War Council in January and February, 1918. Mr Lloyd George's strongest argument, for example, in urging General Pershing to attach American Battalions to British Brigades was that "the Western Front was in danger". General Foch and Field-Marshal Sir Douglas Haig uttered solemn warnings as to the dangers, which, in one form or another, were repeated by the Generals of all the Allies. The subject came up again at the Supreme War Council in March, when the attack was recognised to be imminent. Minutes of all these discussions, and the important reports of the Military Representatives at Versailles, were circulated to the War Cabinet, and, quite apart from their own discussions, must have thrust the anxieties of the position before their eyes. There are really masses of evidence to show how seriously the attack was taken. For example, my own diary for March 21st opens with the following words:- "The long-expected German attack has come".

The above remarks remind me also of a passage at the end of Chapter X, which I think is not quite just to Mr Lloyd George:-

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"As the reader has perceived, these pages reveal, no doubt, my unceasing condemnation of the proposed offensives in France in 1917; and I cannot acquit the Prime Minister of his responsibility for not having done his best to stop them".

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Mr Lloyd George may have failed to stop these Western offensives, but he cannot be accused of not having done his best to stop them. In my last letter I showed how, at the Rome Conference, he made a tremendous effort to substitute another plan for the Nivelle offensive. He was, however, completely isolated, receiving no support whatsoever from his foreign colleagues. But he did not agree to the Nivelle offensive until he was at least given to understand that it would be of short duration. It is true that he did not succeed in stopping the British offensive, which coincided with Nivelle's offensive, until more men had been lost than was justified, and I have not had time to examine whether he tried; but it is very difficult to stop an offensive when the Generals tell you that one more push is going to bring great results. As regards the Flanders offensive Mr Lloyd George did his utmost to stop it. I have not refreshed my memory on the subject, but the Report of the War Policy Committee of that summer, and still more the Minutes of that Committee, show the desperate efforts which the Prime Minister made to avert what he knew must result in failure. One by one his colleagues deserted him, the soldiers were obdurate and declined to look at

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any other plan, and finally Jellicoe insisted on the clearing of the Belgian coast as a vital necessity. Although he fought to the last, the Prime Minister could not hold out single-handed against all his advisers, and had to yield. Several times he tried to stop the Flanders offensive, but was always faced with the same difficulties. That is my strong recollection. I do not believe any man in his position could have done more, and very few as much, to stop it. He might have resigned, but that would not have stopped the offensive.

There are one or two points of minor detail. Chapter XXl, 3rd page; the fine passage in regard to the action of the Americans in coming so far to plunge into the appalling bloodshed of the War suggests the thought that our Dominions had done the same. Coming from you, I would like to see somewhere in the book a corresponding passage about the Dominions. Your book will be tremendously read, and it would help the Imperial cause if you could find time to write up the Dominions and India a bit. Perhaps you have done it already in earlier volumes. At the moment I do not remember, and my copy is not with me as I write. But in any event I should like to see a passage in regard to that remarkable Constitutional development, the summoning of an Imperial War Cabinet,

THE HARMSWORTH TRUST

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for which the Dominions came from so far to share in the responsibility of the higher direction of the War.

Chapter XXV, 6th page. In speaking of Franchet d'Esperey's army you omit the Serbians. I always understood that the brunt of the fighting in the final advance into Bulgaria was borne by the Serbians, ~~but I do not know how many Divisions they had.~~ I have ~~now~~ ascertained from the Historical Section that the Serbians had 6 Infantry and 1 Cavalry Division.

Chapter XXVI, 13th page. I have suggested that this Chapter should be omitted, but if it stands you should omit Australia from the Dominions which had passed Conscription Acts. Compulsory service in Australia was defeated on a referendum.

That ends my comments on the volume as it stands. As you see, they are very few in number. There are certain matters to which you have not referred, perhaps deliberately. For example, you say very little of Maude's campaign in Mesopotamia, or Allenby's brilliant advance, with the capture of Jerusalem and the subsequent utter defeat of the Turks. I expect you felt that these were "side-shows", not deserving of special description. There are also certain political events, such as the

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Maurice debate, which you pass over, I daresay, advisedly.

And here is one last criticism of a very general character, and one where I daresay you think I have a personal bias. You have spoken very kindly of Mr Lloyd George whenever you have mentioned him. Nevertheless I have a certain feeling of disappointment that he is not more in the picture. My own feeling is that his services were so tremendous as to make the difference not between victory and defeat, perhaps, but between victory and stalemate. For example, his habit of snatching advantage out of disaster always strikes me as one of his outstanding merits. Thus, out of the terrible losses from submarines in the Spring of 1917 he obtained the adoption of the convoy system (for which, however, I think you have given him credit). From the disaster of Caporetto he secured the establishment of the Supreme War Council. From the disaster of March 21st he secured the unified Command. Again, his remarkable power of picking the right man for the right job, and hardly ever putting him in the wrong job, was, I think, a factor in our success. Besides yourself, Marshal Foch, whom he backed from the first, Henry Wilson, and Eric Geddes, are good examples. His extraordinary power of getting his way, and his complete domination of the War Cabinet, to say nothing of his Parliamentary skill, are

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matters which you know better than I. Some of these points you have brought out, but I should rather like to have seen a full page from your inimitable pen setting out the greatness of Mr Lloyd George's achievement. At the present time, when Lloyd-George is in a back-water it would be a generous act on your part.

I have nothing more to say, except to congratulate you on the extraordinary achievement of having completed the only really comprehensive history of the whole War.

Yours very sincerely

M. P. A. Hankey

The Right Hon.
W.S.Churchill,
C.H., M.P.,

TREASURY.

THE CHARTWELL TRUST

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9th December 1926.

It is good of you to have taken so much trouble reading the proofs, and to have written me such careful letters amid all your work. Let me take up seriatim a few of the points.

(1) The Nivelle Offensive. What exactly was the agreement which you say Haig and Robertson signed? If it was simply a Memorandum agreeing to the general strategic plan of the Nivelle offensive being substituted for the Joffre offensive, that would not conflict with what I have learned from other quarters. Naturally G.H.Q. was content that the French should take the lead in the offensive, as Nivelle wished to do. But surely Haig did not commit himself to approval of the form of the Nivelle attack or the expectations based upon it.

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About L.G. I understand your view to be that he was reconciled to the Nivelle offensive because it was, unlike the Somme, to be short and

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sharp. This surely excluded the important question of whether it would be successful. I was not in the Government at the time, but my abiding impression from various talks with him in the early months was that he went frightfully wrong in hoping for success where none was possible.

I am, however, reconsidering the reference in the light of all you say.

(2) I have now completely remodelled the middle chapters of the book, and have relegated to an Appendix an immense amount of Minutes and Memoranda. Two-thirds, I think, have now disappeared. Your impression that there was too much in it is the same as that of the several very good judges who have been kind enough to read the proofs.

(3) I showed the Foreign Office chapter to Tyrrell and made several corrections at his suggestion. He did not query the nitrate telegram, but I will put it to him again.

(4) All references to decoding have been subsequently vagarised by the Admiralty, and they have signified their approval of the final form of

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these passages officially. I think you should tell Ewing that nothing on this subject has appeared in any of my volumes without having previously been submitted to Admiralty censorship. They have stiffened up very much on the subject in the last two years. But of course after Fisher and Bacon and above all what we know the Germans knew, this proceeding is somewhat ostrich-like.

(5) I shall be glad if you will send me a copy of the Man-power Report at the beginning of 1918. Naturally I do not wish to add anything to the length of the book, but only to correct the poise. Nothing will, I think, alter my belief - formed as the events unrolled - that the War Cabinet, whatever may have been recorded in their Minutes, in fact let the Army down, first by not stopping the prolongation of Passchendaele and secondly by not reinforcing it in the winter of 1917. Practically everything I urged in November was done in April. Had it been done in November, the Germans would have had a bloody repulse on the Fifth Army front. A

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very little additional strength - six or seven more divisions in reserve or their equivalent in battalions - would have enabled the Fifth Army to rally effectually along the line of the Somme which was very strong.

When you come to look at the voluminous series of Cabinet Minutes flowing out day after day under your accurate and all-recording pen, you would no doubt sustain an impression that nothing was overlooked. But what mattered was the mergence in action of the discussions and decisions on the various topics. I am sure the broad effect is as I have described it. But I will of course consider very carefully the recasting of various passages in the light of your letters.

(6) At the end of the chapter called "A Political Interlude" I have added a new considerable appreciation of L.G.'s work, and I think I can extend that now by incorporating some of the points mentioned by you in the closing pages of your second letter.

(7) The chapter called "The Aftermath" was sent you by mistake. It forms no part of the present volume

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which ends, as you suggest, with the Armistice.

(8) If you will allow me, I will send you a revise in the course of the next fortnight, so that you can look at in their final form the various points on which you have commented.

(9) I am asking the Prime Minister, as head of the C.I.D., to authorise me to publish such documents as will appear in the final form. I suggested to him, and he agreed, that you should read them through and advise him on the points. He has already read the book, as you know, without any feeling of disquiet. But if the question were raised in Parliament, he must be in a position to say on my behalf that I sought and obtained the necessary permission. I expect I am the first person who has published anything, who has sought such permission. In my opinion it ought to be a rule that sanction should be sought before publication. On the other hand such sanction should not be unreasonably refused in view of the immense amount

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that has already been published by all sorts of persons in the highest stations.

Once more thanking you, believe me

Lt.-Col. Sir Maurice Hankey, G.C.B.

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- PRIVATE -

December 10, 1926.

My dear Churchill,

Your letter of December 9th requires an answer on one or two points.

I am grateful to you for taking my suggestions so kindly.

(1) The Nivelle Offensive. As regards your first point, I think the best thing I can do is to send you a copy of the Agreement drawn up on January 15th and signed on January 16th, 1917. This answers all your points. In Clause 3 you will see that the offensive is described as "The plan drawn up in agreement with Marshal Haig and "set forth by General Nivelle at the Conference of the "15th January". Moreover, in my notes of the War Cabinet's discussions, Haig commits himself again and again in principle to the Nivelle attack, though he is less optimistic than the French General as to the possibility of exploiting the attack.

You will see also from Paragraph 5 of the Agreement that "In case these operations should not give the "expected success which ought to be obtained very rapidly, "the battle would be stopped by a common agreement", etc.

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This was the point, I am sure, which appealed to Lloyd George. I think his feeling was that, given Nivelle's success at Verdun, there was a fair possibility of a big success. And, if success did not come, no great harm would result from a short offensive. As I have explained, he had already tried, at Rome, to stop the offensive, and failed. But I think he had become more or less reconciled to it, and I remember in after years he used to quote the ~~offensive~~ French inquiry by certain Generals as more or less justifying the attempt.

Re your paragraph (4), if I get an opportunity I will certainly be glad to tell Ewing that nothing on the subject of intercepts has appeared without having previously been submitted to Admiralty censorship.

I enclose herewith a copy of the Draft Man-Power Report of 1918. The version I send you is the last one, for it went through many stages, and probably some parts had been carried out before the last version was reached. I think I still differ from you that the anticipation of the reinforcements sent over in April would not have averted the disaster of March 21st. Our defensive arrangements, which you yourself describe so admirably, were to a great extent upset by the intense mist. I believe that was a much more important factor than any

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shortage of men. The machine-gun posts became isolated and, the field of fire being obscured, were unable to carry out their function. The barrages could not be timed, and the whole system of defence was disorganised. However, I am quite content to leave it to you to consider this point. My only wish is not to get you involved in a controversy in which you might be worsted. Remember, if Lloyd George gets into controversy with you I shall be in the embarrassing position of having to give him the documents, and I have no doubt he will consult me. I want, therefore, to show you the other side of the controversy, in order that you may forestall this possibility so far as you can.

Re your paragraph (6), I am glad to hear that you are adding an appreciation of L.G's work. That is the generosity which I expected of you.

If the Prime Minister consults me re the publication of documents, I shall tell him that I cannot see any objection.

I do not know if it has occurred to you, as a Privy Councillor, to ask the leave of the King. I am not sure that it is necessary, and in any event the King could only refer the matter to the Prime Minister. I have a

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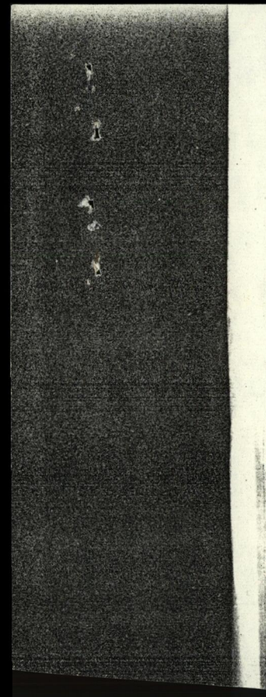
feeling at the back of my mind that the King wouldtake it rather well if you asked him. I only throw out the hint.

Yours very sincerely

M. P. A. Hankey

The Right Hon.
W.S.Churchill,
C.H.,M.P.,
TREASURY.



short- and medium-term considerations". This led him into unnecessary subservience to Roosevelt and, worse still, into appeasement of Stalin ("What would the man of 1938 have said to the Prime Minister of 1944?"). It also led him to neglect domestic politics during the war, so allowing Labour to become identified with the cause of social reform, while he seemed to be trying to block it. As a result, in 1945 the British empire that he had promised to uphold was faced with disintegration; the British independence of which he was ostensibly the supreme champion was fatally compromised; and the socialist policies that he detested came into their own (for a time, at any rate) in Britain.

There are, indeed, strong grounds for criticising Churchill's war leadership after 1940, but is Charmley's critique altogether well-directed? Does he, in particular, believe — as Alan Clark suggested last Saturday — that Britain should have made peace with Nazi Germany in the spring of 1941? If so, he has been careful not to say so explicitly, though one could wish that he had been quite explicit in the opposite sense, because it would

which were disastrous.

If metropolitan France had been liberated and brought back into the war in 1943, and if Churchill had worked closely with de Gaulle instead of quarrelling with him and trying to get rid of him to please Roosevelt (a subject on which Charmley is well-informed), some counterpoise might have been created to American ascendancy within the Western alliance. And if the Western allies had been firmly established on the Continent, preferably already inside Germany, before the Russians had managed to expel the Germans from their own territory, there might have been no question of appeasing Stalin, or of Poland and other East European countries being subjugated.

Charmley makes one passing reference to Churchill's fear, after the fall of Singapore and Tobruk, that the British army might have lost its fighting spirit. But he fails to emphasise the bearing of this fear on his acceptance of advice that invasion across the Channel should be postponed, and alternative ways of winning the war, if possible, found. Though it is widely believed, and not least, apparently, by

against his better judgment.

At that time there was no integrated Ministry of Defence, and the service chiefs had the backing of their huge departments, while he had only a small staff under General Ismay. He kept the chiefs up all hours, and subjected them to interminable monologues, but in the end their views tended to prevail. Thus Alan Brooke was able to inveigle him into the costly sideshow of the campaign in Italy, and Charles Portal (not even mentioned in the book) persuaded him to try to win the war by the indiscriminate bombing of German cities, despite his natural reluctance. Of course the professionals were often right when he was wrong, but on those two issues the verdict of history ought to go heavily against them.

On Gallipoli, Charmley takes a sterner view than Rhodes James, since he does not regard Churchill's role in the affair as having been substantially vindicated in retrospect. On his opposition to Indian constitutional reform in the 1930s the author argues, somewhat perversely, that it was all of a piece with his opposition to appeasement in

correlation. Many who supported Churchill on India did not support him on Europe, and *vice versa* (Macmillan and Boothby, for example). Charmley seems to agree with Churchill that Dominion status would have ensured India's non-participation in the war.

But why? It did not prevent all the self-governing Dominions except Eire from entering the war at the outset, and there is good reason to suppose that a self-governing India would not have acted as Eire did. Jawaharlal Nehru was as strong an opponent of appeasement as his fellow-Harrovian, Churchill, spurning overtures from the European dictators while British leaders were truckling to them. He and many other Indian nationalists were eager to join in the fight for democracy, but were understandably outraged by the British government's declaration of war on behalf of India without reference to the country's elected leaders. Even then, the mistake was not irretrievable, but Churchill's advent to the premiership, so providential in other ways, was a calamity so far as India was concerned.

Despite its considerable length (nearly 650 pages), the book cannot claim to be a full "political biogra-

three pages. The author has, in any case, quite a lot to say about the personal side as well — rightly, because the distinction between political and personal is essentially spurious — but he does not always get it right. He overlooks Churchill's passionate feelings for Pamela Plowden (later Lytton), whom he wanted to marry but who rejected him. He never ceased to show a great *tendresse* for her, to his wife's fury. At one point Charmley casually applies to him, along with other adjectives, the term "epicene", which ought, surely, to be explained and justified.

There is little to complain of at the factual level. Marlborough was not a soldier "of the late sixteenth and early seventeenth centuries", and Admiral Keyes's many decorations did not include the Victoria Cross. Moreover, Charmley is apt to be careless about quotations, getting the words wrong in some and misattributing others, notably the famous words of Clough used by Churchill at the end of his broadcast on 27 April 1941, which he attributes to Longfellow. But on the whole the book is a model of accuracy. Above all, it is intensely readable and a stimulus to thought.

Charmley extract, page 13

places, saints in the slums

RELIGION

Joe Broderick's **Fall from Grace** (Brandon, £6.99) is a rather vulgar book; I very much enjoyed it. It is an account of the life of Eamonn Casey, the Bishop of Galway whose early affair with an American divorcée, Annie Murphy, was revealed earlier this year and prostrated Catholic Ireland. The Casey affair gave anti-clericals in the Irish media a field-day and it reduced the moral authority of the Irish bishops at a time when the country was wracked by controversies about abortions. Unfortunately for the Church, Annie Murphy and her son Peter turned out to have an unforeseeable talent for self-publicity. Only Casey himself could have bettered their performance on the Oprah Winfrey chat show, but Casey had by then already prudently escaped to America. This, I'm afraid, is a story without any heroes.

The author is an Australian expriest with a racy prose style. He is

Roberto Calvi in a fraud that was to cost the Vatican over $500 million. That was money provided by ordinary Catholics that should have been spent on schools, hospitals and the poor. It strikes me as shameful that the money of the faithful has been abused, that the archbishop has never been punished for his conduct, that the finances of the Vatican body which he headed remain opaque. Plainly, Raw's next task is to produce a slim paperback volume, the idiot's guide to the Calvi affair.

After all this, it comes as a welcome relief to turn to a couple of biographies of Mother Teresa. One — **Mother Teresa** (Sinclair-Stevenson, £16.99) — is written by a

Reputation bruised but still intact

John Grigg praises the latest biography of Churchill, but disagrees with those who say that peace would have been preferable to the policy of unconditional surrender

Five years after Winston Churchill's death Robert Rhodes James published a controversial book about his career up to 1939, entitled *A Study in Failure*. In this the basic assumption is that, by contrast with its earlier vicissitudes, his career after 1939 was an overwhelming triumph. Now, from a young historian born in 1955, the year Churchill finally resigned as prime minister, we have a reappraisal of him which concludes that his whole career ended in comprehensive failure, with all that he had stood for and worked for largely in ruins.

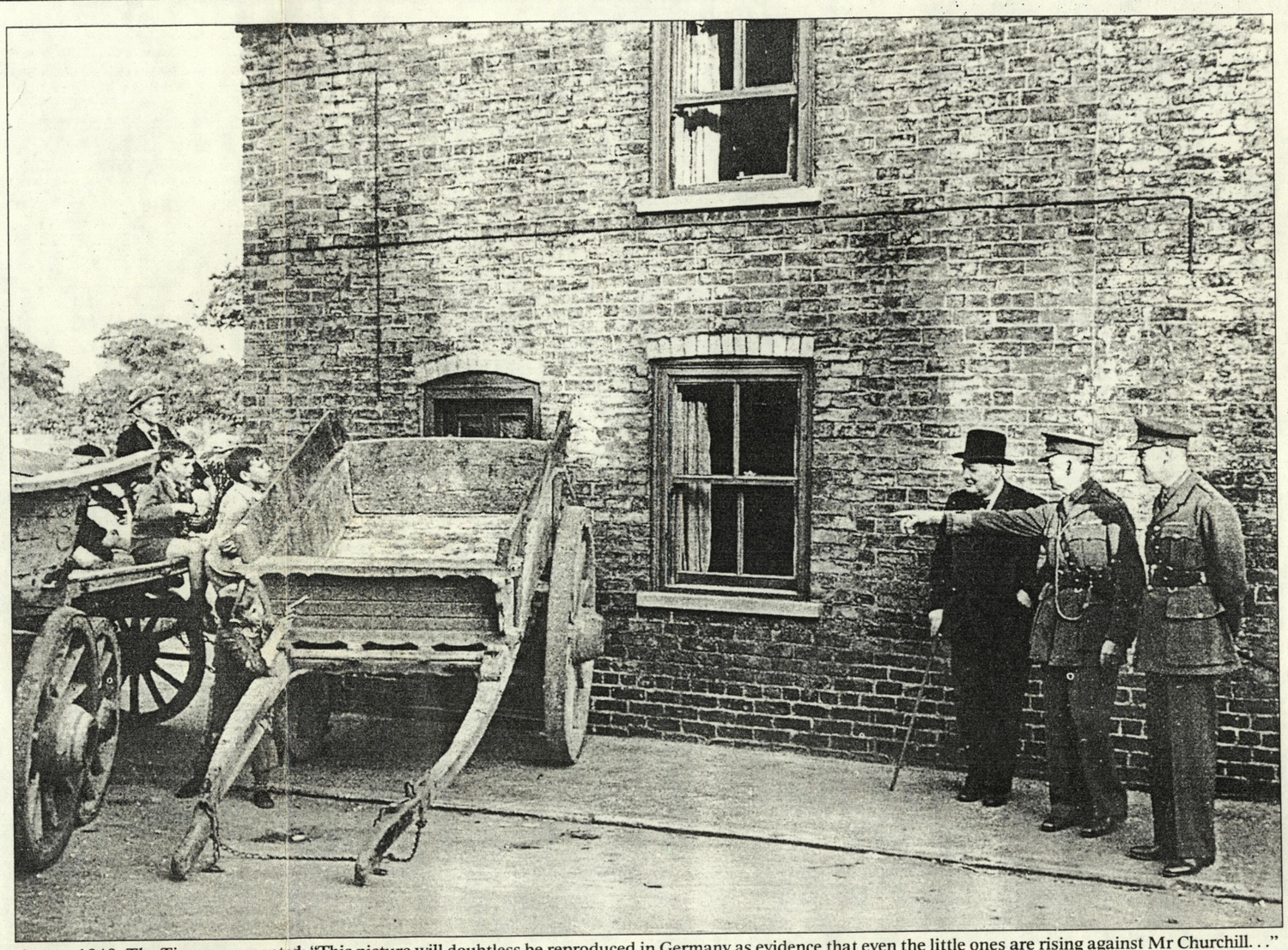
John Charmley is an excellent scholar, and no cheap debunker of the great. He clearly admires Churchill's courage and willpower, no less than his prodigious talents, while recognising that his faults were on the same scale as his virtues. For the opening months of his wartime premiership, in particular, the book has nothing but fervent praise. But thereafter, the author suggests, things began to go seriously wrong.

CHURCHILL
The End of Glory
By John Charmley
Hodder & Stoughton, £30

Alone among the Allied leaders, Churchill "consistently allowed his horizons to be bound entirely by short- and medium-term considerations". This led him into unnecessary subservience to Roosevelt and, worse still, into appeasement of Stalin ("What would the man of 1938 have said to the Prime Minister of 1944?"). It also led him to neglect domestic politics during the war, so allowing Labour to become identified with the cause of social reform, while he seemed to be trying to block it. As a result, in 1945 the British empire that he had promised to uphold was faced with disintegration; the British independence of which he was surely have been mad, as well as bad, to negotiate again with Hitler at any time. The "peace" envisaged by Clark would have enabled him to establish an empire stretching from Brest to Vladivostok, and who can sensibly imagine that he would then have settled down, posing no further threat to Britain or the rest of the world? All that we know of his personality and methods overwhelmingly indicates the contrary.

Charmley's argument suffers from a certain ambiguity on this cardinal point. Moreover, though he writes with force and, at times, brilliance, his treatment of Churchill's war leadership is flawed by over-concentration on politics in the limited sense, with nothing like adequate discussion of major strategic issues which helped to determine the course of politics during and after the war. For instance, he has little to say about the genesis and implications of the Italian campaign, and literally nothing to say about the attempt to defeat Germany by the terror bombing of civilians. Yet both these matters are connected with the delay in mounting a cross-Channel invasion until 1944, the political consequences of which were disastrous.

If metropolitan France had been liberated and brought back into the war in 1943, and if Churchill had worked closely with de Gaulle instead of quarrelling with him and trying to get rid of him to please Roosevelt (a subject on which Charmley is well-informed), some counterpoise might have been created to American ascendancy within the Western alliance. And if the Western allies had been firmly established on the Continent, preferably already inside Germany, before the Russians had managed



August 1940. ***The Times*** **commented: "This picture will doubtless be reproduced in Germany as evidence that even the little ones are rising against Mr Churchill. . ."**

Charmley, that as minister of defence as well as prime minister Churchill dominated his professional advisers on vital issues, in fact they usually got their way, often against his better judgment.

At that time there was no integrated Ministry of Defence, and the service chiefs had the backing of their huge departments, while he had only a small staff under General Ismay. He kept the chiefs up all hours, and subjected them to interminable monologues, but in the end their views tended to prevail. Thus Alan Brooke was able to inveigle him into the costly sideshow of the campaign in Italy, and Charles Portal (not even mentioned in the book) persuaded him

Europe, and that those who advocated compromise on India "went on to apply the same mind-set to Hitler, both before 1939 and in 1940". This is largely a false correlation. Many who supported Churchill on India did not support him on Europe, and *vice versa* (Macmillan and Boothby, for example). Charmley seems to agree with Churchill that Dominion status would have ensured India's non-participation in the war.

But why? It did not prevent all the self-governing Dominions except Eire from entering the war at the outset, and there is good reason to suppose that a self-governing India would not have acted as Eire did. Jawaharlal Nehru was as strong an opponent of appeasement as his fellow-Harrovian,

phy", since the story is brought to an end in 1945, with the next ten years of political activity, including Churchill's peacetime premiership, disposed of in a last chapter of only three pages. The author has, in any case, quite a lot to say about the personal side as well — rightly, because the distinction between political and personal is essentially spurious — but he does not always get it right. He overlooks Churchill's passionate feelings for Pamela Plowden (later Lytton), whom he wanted to marry but who rejected him. He never ceased to show a great *tendresse* for her, to his wife's fury. At one point Charmley casually applies to him, along with other adjectives, the term "epicene", which ought, surely, to be explained and justified.

There is little to complain of at

Sinners in high places, saints in the slums

RELIGION

Joe Broderick's **Fall from Grace** (Brandon, £6.99) is a rather vulgar book: I very much enjoyed it. It is an account of the life of Eamonn Casey, the Bishop of Galway whose early affair with an American divorcée, Annie Murphy, was revealed earlier this year

Roberto Calvi in a fraud that was to cost the Vatican over $500 million. That was money provided by ordinary Catholics that should have been spent on schools, hospitals

Was Britain made to pay too high a price for victory? The final part of a controversial biography

Churchill's failed gamble

John Charmley questions Churchill's judgment in the concluding extract from his book

Paying court to America: Churchill with Roosevelt on the deck of the Prince of Wales — but was Britain's independence and its empire already mortgaged?

The German invasion of Russia [in June 1941] offered Churchill the only road out of the impasse he was in: with "victory" nowhere in sight and the Americans seemingly oblivious to the future of the British Empire, Russia offered him an ally and the hope that German pressure on Egypt and the Suez canal would be lifted. This was why Churchill hastened unheeding to the support of Stalin. It was, of course, necessary to discount, immediately, communism and the Nazi-Soviet pact and to concentrate on the fact that Britain needed an ally, which explains the character of Churchill's rhetoric; but underneath it all was one simple fact: the prime minister's policy of 1940 had, in effect, failed. Far from securing Britain's independence, it had mortgaged it to America. Of real "victory" there was no prospect, and the national unity which Churchill had forged in adversity in 1940 was beginning to buckle under the strain of a never-ending series of defeats.

Like most of his advisers, Churchill held out no great hopes that the Russians would keep the Germans occupied for very long, but every day counted. In his haste to secure short-term advantages, Churchill neglected to ask himself what political implications his generous rhetorical offers of help to the Soviets might carry. As with the Americans, he too readily assumed that the Russians would put aside other considerations in the common struggle; but of all the Allied leaders, he was the only one who consistently allowed his horizons to be bound entirely by short- and medium-term considerations. The result in this instance was that he failed entirely "to profit from a buyer's market".

That there was a "buyer's market" and an opportunity for Britain to regain some sort of initiative is plain. The fear which the Russians had long had, that the British intended to pull out of the war and leave Hitler to deal with them, had been revived with the [illegible] the nature of the post-war world.

Churchill's enthusiasm for the Americans made him a rare bird among the British ruling élite. The feeling of being supplanted by the "much respect or consideration", and his blithe acceptance of the possibility of Britain recognising the Soviet conquest of the three [illegible] could be no doubt of the position Churchill occupied. Churchill valued his correspondence [prior to the Placentia Bay meeting] with [illegible] of "aggressor nations" as a prelude to general disarmament and, at Churchill's insistence, the president [illegible] Japanese action. This, Cadogan believed, would "give the Japanese a jar". However, [illegible]

END OF GLORY

That Churchill was a great man cannot be doubted, but his flaws, too, were on the same heroic scale as the rest of the man. By the end of the war even Churchill was beginning to wonder what he had achieved and he was resting all his eggs in the basket of American help. His attitude was already making Stalin suspicious of British intentions, and the change in his willingness to contemplate satisfaction of Soviet desires said little for his sense of reality.

At the end of the war he was, once again, faced with what looked like an attempt by one power to dominate the Continent, an odd result for so much expenditure of treasure and manpower, and yet again he sought an alliance to prevent it. Churchill had nothing to offer the British people in 1945, and no one has been prepared seriously to argue that he did. His thinking on foreign and domestic policy was stuck firmly in the past.

Surveying the situation in July 1945 it was hard to argue that Britain had won in any sense save that of avoiding defeat. Churchill had destroyed the awful tyranny of Hitler, but what had risen in its place? Perhaps his own comments to Macmillan in Cairo in 1943 about Cromwell indicate a degree of self-knowledge: "he made one terrible mistake. Obsessed in his youth by fear of the power of Spain, he failed to observe the rise of France. Will that be said of me?" If "Germany" is substituted for "Spain" and "Russia" for "France", then the answer to Churchill's question might well be "yes".

In the final volume of his memoirs he strove to avert any such charge, showing how early he had feared the "iron curtain", but it could be said that he was both too slow and too quick to act: too slow in the sense that the time not to make concessions was 1941-3; too fast in the sense that [illegible] having made concessions it

Paying court to America: Churchill with Roosevelt on the deck of the Prince of Wales — but was Britain's independence and its empire already mortgaged?

ket" and an opportunity for Britain to regain some sort of initiative is plain. The fear which the Russians had long had, that the British intended to pull out of the war and leave Hitler to deal with them, had been revived with the flight to England in May of Hitler's deputy, Rudolf Hess. The Soviets saw in Hess's flight the long-awaited sign that the wicked imperialists were about to consummate their design.

Churchill would have been well-advised to have profited from the Russian uncertainty rather than seeking to reassure her that she would not be left alone in the cage with Hitler. Unlike the British and the French, Stalin had not entered the war of his own volition, and unlike the British, he was not the recipient of any tempting peace offers from Hitler. Just as the Soviets had only entered the war when they were kicked into it, so they would remain in it only as long as they could not get out of it.

Churchill's reassurances were to throw away recklessly a card which could have had some value. Eden and Cranborne reminded him on June 22 that "half the country" regarded the Soviet Union as being "politically . . . as bad as Germany", and they took the "Tory standpoint" that aid should be "purely military". This was Stalin's immediate demand, but as the British were in no position to launch an invasion of Europe, they resorted to diplomatic sops, such as promising that they would make no separate peace and offering the Russians a share in their own lend-lease aid.

Churchill was an enthusiastic proponent of this policy, wishing, indeed, to go further than Eden. But as it became clear that Russia would not be making a quick exit from the war, the political implications of a Russian alliance had to be faced. Stalin showed none of Churchill's reluctance to contemplate the nature of the post-war world.

Churchill's enthusiasm for the Americans made him a rare bird among the British ruling élite. The feeling of being supplanted by the Americans as a world power stimulated anti-American feeling in many quarters in Britain.

Churchill's addiction to the American connection had to be tolerated as long as there seemed no alternative to it, but the Russians offered that alternative. The dangers to be apprehended from Roosevelt staying out of the war and dictating a "Wilsonian" peace along the lines of 1919 seemed amply demonstrated by the results of Churchill's first wartime meeting with Roosevelt at Placentia Bay, off Newfoundland, in August [1941]. It aroused fears that Roosevelt's intention was to "put the USA on top". The spectacle of "an American President talking at large on European frontiers chilled" Eden [he noted in his diary]. Yet, both the Atlantic Charter itself, and American diplomacy preceding the meeting between Roosevelt and Churchill, indicated a determination to control the form of the final peace settlement.

The possibility of the British coming to some "deal" with the Soviets was one which perturbed the Americans. Lord Halifax's cavalier dismissal of the people of the Baltic states as not demanding "much respect or consideration", and his blithe acceptance of the possibility of Britain recognising the Soviet conquest of the three Baltic republics, alarmed Roosevelt. He urged upon Churchill the importance of making "no post-war peace commitments as to territories, populations, or economics". The Charter embodied just such a commitment.

> Churchill's addiction to the American connection had to be tolerated but only as long as there seemed no alternative

For Churchill the prospect of meeting Roosevelt had overshadowed everything else: "He is as excited as a schoolboy on the last day of the term," John Colville [private secretary to Churchill 1940-41 and 1943-45] noted. Churchill had taken a good deal of trouble to cultivate Roosevelt, and, to Eden's distress, he was trying to establish a similar relationship with Stalin; he put a great deal of faith, perhaps too much, in the power of personal relationships.

On one level the meeting was an enormous success. Churchill was careful to "give due precedence" to the president, who was, after all, a head of state, and he referred to himself, several times, as "the president's lieutenant". Much of this was the politics of courtship and should be taken with an appropriate pinch of salt, but in part it reflects the crude realities of the situation in which Churchill found himself.

In all relationships there is the pursuer and the pursued, and there could be no doubt of the position Churchill occupied. Churchill valued his correspondence [prior to the Placentia Bay meeting] with Roosevelt so much because he was convinced that through that medium he could secure more from the president than could be obtained by more conventional means. But there is little sign of this. Indeed, for all the Sunday morning prayer meeting and hymn singing on board the "Prince of Wales", and for all Roosevelt's fascination with Churchill, the British came away from the meeting with little more than a propaganda coup: this might be taken as a paradigm of the Churchill-Roosevelt relationship.

What Roosevelt wanted from the conference Roosevelt got. He wanted to still anxieties that America, by supporting Britain, was also supporting her empire. This the Atlantic Charter enabled him to do.

Britain and America eschewed "aggrandisement" for themselves and set their faces against territorial changes imposed undemocratically. They pledged to "respect the right of all peoples to choose the form of government under which they will live" and to restore self-government to those deprived of it. The question of whether this applied to the countries of the British Empire was, to Churchill, self-evidently not worth asking — of course, it did not; but Roosevelt's view was not necessarily the same. If this third clause was to raise a few British eyebrows, the fourth clause, raised British hackles, as it promised access on equal terms, but with "due respect of their existing obligation", to world trade for all people. It was the final clause in which Churchill invested most hopes in the absence of an American declaration of belligerency. This provided for the disarmament of "aggressor nations" as a prelude to general disarmament and, at Churchill's insistence, the president agreed to insert a phrase about the need for a "wider and permanent system of general security". Churchill chose to interpret the last clause as an implicit promise of American entry into the war.

On July 21 the war cabinet approved Eden's arguments that Britain should support whatever policy the Americans decided upon, despite the risk of war with Japan; the argument that America was bound to become involved in such a war was accepted as axiomatic. At Placentia Bay Churchill had persuaded Roosevelt to agree to a declaration committing America to war in the case of any such Japanese action. This, Cadogan believed, would "give the Japanese a jar". However, for all Churchill's faith that Roosevelt would abide by the declaration, once he was back in Washington the president accepted Hull's decision that it was too "provocative", and it was toned down to a general statement about protection of American rights in the Far East. With both Roosevelt and Stalin, Churchill was to find that bowing in the House of Rimmon was almost a full-time activity.

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● *Edited extracts from* Churchill: The End of Glory, *by John Charmley, published today by John Curtis/Hodder & Stoughton, £30.*

Book review, page 37

that he was both too slow and too quick to act: too slow in the sense that the time not to make concessions was 1941-3; too fast in the sense that having made concessions it was foolish to take umbrage so quickly in February/March 1945; but by that stage Churchill was desperate to maintain the American alliance, and this was the only means of doing so.

Churchill stood for the British Empire, for British independence and for an "anti-socialist" vision. By July 1945 the first of these was on the skids, the second dependent upon America and the third had vanished in a Labour election victory. An appropriate moment to stop, for it was the end of glory.

KEY PLAYERS IN A WORLD AT WAR

Anthony Eden (right)
English statesman. Resigned as foreign secretary in 1938 after disagreements with Chamberlain. Became dominions secretary at the outbreak of war and then, in 1940, secretary of state for war and, later in the same year, foreign secretary again. He succeeded Churchill as prime minister in 1955.

Cordell Hull
American statesman. Served as Roosevelt's secretary of state from 1933 to 1944 and attended most of the crucial wartime conferences. He was a strong advocate of maximum aid to the Allies. He received the Nobel peace prize in 1944.

Viscount Cranborne (Robert Cecil)
English Conservative statesman. In 1935 he became foreign under-secretary and resigned with Eden over appeasement of Mussolini. In the Churchill government of 1940 became paymaster general, then dominions secretary until called to the Lords. He was also colonial secretary and lord privy seal.

Harold Macmillan
English statesman. A parliamentary backbencher until Winston Churchill made him secretary to the ministry of supply in 1940. After a brief spell as colonial under-secretary, he became the minister resident at Allied headquarters in 1942. Served as Conservative prime minister from 1957 to 1963.

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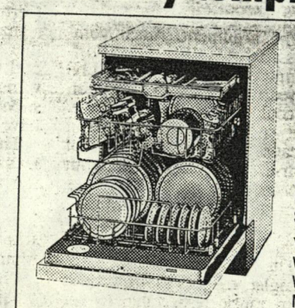

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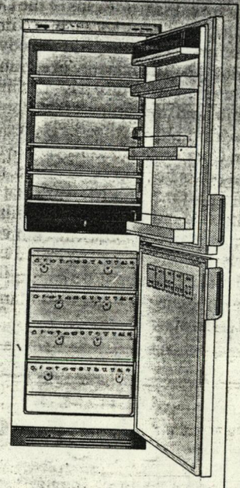

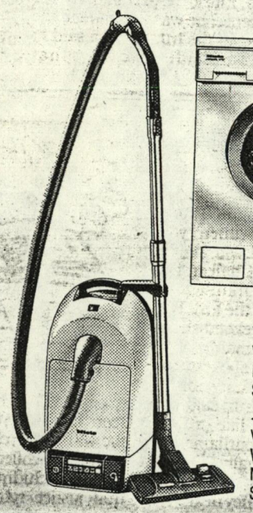

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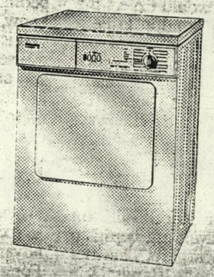

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Daily Mail
27th November 1993
Page 21

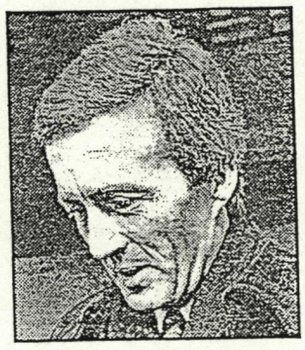
Churchill was a racist says Ponting book

By MICHAEL SEAMARK and BILL MOULAND

A BOOK by Clive Ponting, the former civil servant cleared of leaking Falklands secrets, claims Winston Churchill wanted forcible sterilisation for 100,000 'mentally degenerate' Britons.

It says the wartime hero wanted to send thousands more to labour camps, was a racist, and wanted to launch a nuclear strike against the Soviet Union.

The £20 book, published by the reputable firm of Sinclair-Stevenson, is not due out for six months. But its advance publicity boasts that it will question the competence of the man regarded as one of Britain's greatest leaders.



The 'colossus' and the challenger: Wartime leader Winston Churchill and former civil servant Clive Ponting (right)

The allegations drew immediate condemnation. The grandson who carries on the name, Tory MP Winston Churchill, said: 'These are pygmies who are trying to make pinpricks in the reputation of a colossus in order to draw attention to their pedestrian and meretricious works for financial gain.'

And Churchill expert Andrew Roberts said Ponting, who resigned from the Defence Ministry in 1985 after being cleared of breaching the Official Secrets Act by leaking documents about the sinking of the Belgrano, was 'a bitter and twisted man who blames the Establishment for his treatment'.

Ponting, who lectures in politics at University College, Swansea, studied archive material released in the last 25 years for his book. 'I expect flak,' he said, 'but it's a serious historical work.'

According to the publishers, the book describes a politician who 'disliked democracy', preferring rule by an 'aristocratic elite'.

They promise details of 'his thirst for money and alcohol and the problems of his marriage'.

But Churchill's nephew Peregrine declared: 'This is a piece of muck-raking published on the principle that scandal sells.'

Correlli Barnett, Keeper of the Churchill Archives at Cambridge University, pointed out that enforced sterilisation was approved by 'everybody who was supposed to be enlightened' in Churchill's youth.

Andrew Roberts said: 'He was a racist, but so were his contemporaries.'

Ponting said: 'Mine is an alternative point of view, with all statements backed up by material.'

Comment — Page EIGHT

7

27 Official : War Cabinet 1917 - 1919

28 Acquired Papers 1690 - 1932

29 Miscellanea

N/O

30 Obsolete Lists

THE CHURCHILL ARCHIVES

RELEVANT STATE PAPERS: From Summary List of Classes - Volume 1 of the Winston Churchill Papers - 'CHARTWELL'

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9. Speeches 1897 - 1945

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13 Official : Admiralty 1911 - 1915

14 Official : Duchy of Lancaster 1915

15 Official : Munitions 1917 - 1918

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17 Official : Colonial Office 1921 - 1922

18 Official : Treasury 1924 - 1929

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20 Official : Prime Minister 1940 - 1945

21 Official : Cabinet 1908 - 1915

22 Official : Cabinet 1920 - 1922 and 1924 - 1929

23 Official : War Cabinet 1939 - 1945

24 Official : Committee of Imperial Defence 1909 - 1915

25 Official : Committee of Imperial Defence 1920 - 1922 and 1935 - 1939

26 Official : War Council 1914 - 1919

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HISTORICAL SECTION (MILITARY BRANCH).
COMMITTEE OF IMPERIAL DEFENCE,
AUDIT HOUSE,
VICTORIA EMBANKMENT.
E.C.4.

Telephone: CITY 9941.

29. XI. 26

My dear Chancellor

I enclose a paper which I got from Major Mitchell R.A.M.C. (formerly employed on the history) given percentages of "died of wounds" for the British Forces.

THE CHARTWELL TRUST

Could you kindly let me have the German percentages to copy. I saw the paper at 11 Downing St and gave it back to you without copying it.

Yours sincerely

J. E. Edmonds

(103)

COPY.

...DGE CAMBRIDGE
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A.M.D.2,

War Office,

Whitehall, S.W.1.

25th November, 1926.

Dear General Edmonds,

In reply to your letter of 23rd inst., I attach some figures which I hope will be of some service to you. They are the result of our research into medical statistics.

The figures for 1914-15 may be taken as being as accurate as any we shall get. Those for 1916-17-18 were hastily put together to-day for your requirements and may be subject to certain amendments later, when we have made further investigations.

It would interest me very much to see the figures sent you by the Germans, and as they might prove to be of use in our own volume, I should be very glad if you would let me have a copy at your convenience.

Yours sincerely,

F.G. MITCHELL.

THE CHARTWELL TRUST

Br.-General J.E. Edmonds, C.M.G.,
Historical Section (Military Branch)
Committee of Imperial Defence,
Audit House,
Victoria Embankment, E.C.4.

FIRST REVIEW OF FILES

1. File number HR 10/3 pt 10

2. File Title Custody of the private collection of documents of Sir Winston Churchill held in the Chartwell Trust

3. Date of first review 14-3-95

4. Desk officer's recommendation given on CAB Form 66 *(tick box)*

Destroy at first review	Retain for further review at years (insert number)	Second Review	No CAB form 66 Recommendation given
		✓	

5. Reviewing officer's recommendation *(tick box)*

Destroy at first review	Retain for further review at years (insert number)	Second Review
		✓

6. Reviewing officer's comments on his/her recommendation above:
(Where the reviewing officer's recommendation differs from the desk officer's the reason(s)
should be stated)

File is occasional use

Signature of reviewing officer Richard Ponman

REVIEW OF REGISTERED FILES
DISPOSAL RECOMMENDATIONS

File number ...HR 10/3 part 10.....

File title ...Custody of the private collection of documents of Sir Winston Churchill held in the Chartwell Trust

Desk officer ...Miss P.M. Andrews.....

This file has been closed. Under the Public Records Act 1958, it must be reviewed (normally five years after it has passed out of active use). This review determines whether the file may then be destroyed or will be of further value to the department.

To assist reviewing at the appropriate time, you should now consider the likely future use of the file.

If you decide that the file should be destroyed at the first review, tick box **a** below. If you decide that the file merits further consideration at second review, when the file is 25 years old, please tick box **b** below.

If, however, you consider that the content of the file to be so short-lived that its retention for a further five years would be unjustified, or if there is a reason (perhaps statutory or customary) to retain the file for a period between five and twenty-five years, please indicate the period in box **c** below.

☐ **a.** Destroy at first review, **five** years after closing date

☑ **b.** Consider again at second review, **twenty-five** years after opening date

c. Retain for ☐ years

If you have ticked box **b**, is the file likely to merit permanent preservation? ☑ Yes, or ☐ No

Signature of desk officer ...P.M. Andrews.....

Date ..14.../..03.../..95...

CAB OS89 (4/89)D

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

FOLIO 53

Your ref: 692/3737/HF/L8
Our ref: HO94/792

Ms H Fassnidge
Treasury Solicitors Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

30 September 1994

Dear Hilary

CHURCHILL ARCHIVE

You wrote to me on 19 September enclosing a letter from Goodman Derrick.

I enclose copies of the documents requested by Goodman Derrick. You may be interested to know that had these documents been obtained from the Public Record Office there would have been a charge of 30pence per copy plus a £2.50 administrative/handling fee!

We have, of course, borrowed files from the PRO, as we are entitled to do under the Public Records Act, to assist us with our research for the purposes of the litigation. When our research is completed they will be returned to Kew. You will appreciate, however, that it will be necessary for Mr Chalmers to see them so that he can advise on the matters arising from the questions asked by Counsel and by the Defendants. I would be happy to return the two files mentioned but they will have to be recalled when Mr Chalmers begins his work. May I suggest that you inform Goodman Derrick when forwarding the documents to them that the files will be returned by 12 October.

As to other files, we recall many files from the PRO to assist with all sorts of research; files are coming and going from Kew all the time. A list of files with us at any one time would be misleading as by the time the researcher goes to Kew it will be out of date. We call files up to see if they are of use in any particular task and return them if they are not or when the task is completed.

If you would like to meet to discuss the state of play with regard to the identification of the State Papers I am at your disposal. There has been correspondence during your absence on leave in which such a discussion has been mentioned.

On the question of Mr Chalmers' assistance, so far as a fee is concerned this is now a matter for which departments have delegated authority - there is no need to check with the Treasury any more! There is one complication though. Mr Chalmers telephoned me last week to say that because of the terms of his retirement he is not allowed to earn any money from public sources for six months! It is more complicated than that but that was the essence of his message. Perhaps we could have a word about this at some stage to see how it can be resolved. Mr Chalmers was not saying that he would not help - he is keen to do so. Money is not his prime concern but he is, understandably, a little reluctant to do it for nothing so we shall need to find some way of remunerating him which does not breach his retirement conditions.

Incidentally, he had not received any documentation - I assume you will be sending his "bundle" now that you are back from leave and I assume that will now include the Bradley material which was passed to me by Anthony Lawton in your absence. I must confess that I am at a complete loss to know what the purpose of this material is - what is it supposed to prove or to argue?

Yours ever

Pat

MISS P M ANDREWS

CABINET PAPERS.

Copy

O P I N I O N

OF THE LAW OFFICERS OF THE CROWN

dated

18th June, 1934.

The Treasury Solicitor.

CABINET PAPERS.

O P I N I O N.

OF THE LAW OFFICERS OF THE CROWN.

1, 2 & 3. Such difficulty as there is in answering these questions arises entirely from the minutes of successive Cabinets dealing with the retention of documents. Apart from these decisions, we have no doubt that all papers included in the five groups were recoverable from any Minister or ex-Minister at any time as being the property of His Majesty's Government. So far as group 1 is concerned there might be some original informal draft prepared by a Minister in his home, or some scheme or proposal which never became an official document, but we think once the draft has been initialled for an official purpose it becomes an official document. The other groups are a fortiori cases. The question as to whether any of the documents have become the property of Ministers turns in our view primarily on the construction of the minute which has been adopted at the last meeting of previous Cabinets, with the exception of the 1924-1929 Government. This minute appears to proceed on the principle that ex-Ministers should be able to refer to Cabinet documents either by retaining them or by access to the documents as filed. In our opinion this entitled Ministers to retain possession of the documents if they exercised the right of retention. A distinction might be drawn in the 1924-1929 Government, but as the same practice appears to have been followed we think that those Ministers would be entitled to be treated as if the usual resolution had been passed.

It is no doubt a possible view that this licence

to retain was revocable, but the Cabinet resolution of the 21st March 1934 does not purport to revoke it and the words there used, in so far as they are relevant to the question, support the view that the right to retain was a final right and that the Ministers affected could if they choose decline to return the documents.

4. Strictly construed the minute we have referred to applies, in our opinion, only to Cabinet Ministers. It cannot have been intended that Ministers other than Cabinet Ministers should have access to Cabinet minutes. The position therefore of other Ministers would be that they have retained documents without any express authority. It might be contended with some force, having regard to the express authority given in the case of Cabinet Ministers, that the same authority should be implied from the similar practice adopted towards Ministers who were not in the Cabinet. We think this is a point of considerable difficulty. On the whole we are of opinion that a right of retention could not be claimed, but we think the arguments are so evenly balanced that we would not advise the distinction being taken.

5. We think that persons are not entitled to retain documents of the character in question of which they have obtained possession as executors, administrators or assigns of a Minister. Such persons are clearly outside the purpose of the authority conferred, which would be construed as conferring the right of retention on the Minister only for the period of his life. He would, we think be entitled to destroy the documents if he so desired, but if he had not done so, the right to possession of the documents would on his death revert to the Crown.

6. In our view the appropriate proceedings would be the issue of a Latin Information. An English Information could not properly be used, in our opinion, for this purpose. The difficulty we foresee is in identifying any particular documents as being in the possession of any ex-Minister.

7. In our view an offence would be committed under section 2 of the Official Secrets Act, 1911, if a Minister in future, or an executor or administrator or assign retained any of the documents in question. No doubt in all cases requests would be made for the return of the documents before any proceedings were taken, but the recent conclusion of the Cabinet will make it clear to Ministers that it will be their duty in future to return the documents without any necessity for a request. In the case of executors no doubt requests would always be made as they might well not be familiar with the resolutions of the Cabinet affecting the position and the offence which would be committed by the Minister or executor in question.

(Signed) T.W.H. INSKIP.

" D.B. SOMERVELL.

LAW OFFICERS' DEPARTMENT.

18th June, 1934.

S E C R E T.

The Property in Cabinet Documents.

1. In this Note the expression "Cabinet Papers" covers Cabinet Minutes, Cabinet Memoranda and all Minutes and documents circulated to Cabinet Committees and Sub-Committees, including the Committee of Imperial Defence and its Sub-Committees. All these documents are circulated from the Cabinet Office, and since the War all of them have been headed "This Document is the Property of His Britannic Majesty's Government. Secret. Cabinet," etc.

Cabinet Papers come into existence in three ways :-

(1) A Minister wishing to circulate a document to the Cabinet or to a Cabinet Committee, may arrange for the necessary number of copies to be reproduced in his own Department. Copies are then sent to the Cabinet Office for circulation.

(2) A Minister, however, may send the original of his document to the Cabinet Office for reproduction and circulation. In these cases the number of copies required are reproduced in the Cabinet Office, and the original manuscript is either retained in the Cabinet Office or is returned to its Ministerial author.

(3) In the case of Cabinet and Cabinet Committee Minutes and certain Cabinet and Cabinet Committee Papers, the documents are themselves composed by, reproduced in, and circulated by the Cabinet Office.

2. The question of the retention by Cabinet Ministers of their Cabinet documents on leaving Office, is discussed in the secret memorandum C.P. 69 (34) (copy attached). At their Meeting on March 31st, 1934, the Cabinet decided to approve the suggestions summarised in paragraph 18 of C.P. 69 (34) subject to the substitution in line 1 of (c) of the words 'members of previous Cabinets' for the words 'ex-Cabinet Ministers' and to authorise the Secretary to put the proposals into operation.

3. Before taking steps under this decision to recover Cabinet Papers now in the hands of living ex-Cabinet Ministers and the representatives of deceased ex-Cabinet Ministers, it seems very desirable to know what is the precise legal position in regard to the property in these documents.

4. This question has, so far as I am aware, only been considered on the following occasions in the past :-

(a) As will be seen from paragraph 6 of C.P. 69 (34) and Appendix I to that document, the War Cabinet in 1917 apparently took the view that Cabinet documents were "the property of His Majesty's Government and that the Cabinet should have the right to insist on the return of any confidential Government document". On the same occasion the War Cabinet decided that "upon leaving Office, the normal course should be (for a Minister) to hand over his Papers to his successor and that these documents should be regarded as the property of the Office, and not of the individual". It was also decided that in future "all War Cabinet documents, whether printed or otherwise, should contain a statement that "This Document is the Property of His Britannic Majesty's Government"".

Note. The above decision relating to the handing over by an ex-Minister of his Papers to his successor was applicable only to the War Cabinet and can have no application to post-war Party Administrat--ions. (see below).

(b) As explained in paragraphs 7 - 10 of C.P. 69(34) the practice of the War Cabinet was changed at the first meeting of the first post-War Cabinet on 4th November, 1919. As there stated, the Cabinet on the date in question deleted from the draft Instructions to the Secretary the following paragraph :-

> "Cabinet Minutes and Papers are not the personal property of members, and on a Minister leaving Office it is the duty of the secretary to recover from him, or in the event of his death from his Executors, all Cabinet Papers issued to him from the Cabinet Offices."

Since 1919, the Cabinet of each successive Administration+ at its last Meeting has adopted a conclusion in the following terms :-

> "To adhere to the procedure of their predecessors in regard to Cabinet documents: that is to say, Ministers should retain such Cabinet documents as they desire, on the understanding that as ex-Ministers they could have access to Cabinet Minutes and other documents issued during their term of Office."

(c) In 1931, as a result of certain inter-departmental discussions, the Foreign Office obtained a Report from the Law Officers on the heading of "confidential official documents". This Report reads as follows :-

> "We are of the opinion that the statement that a document is the property of His Majesty is more accurate in law than the statement that it is the property of His Majesty's Government. We think that, from the point of view of possible proceedings under the Official Secrets Acts, the words "Secret and Official" would be the most satisfactory to employ. We are therefore of opinion that the most convenient phrase to employ would be: "Secret and Official. This Document is the Property of His Majesty."
>
> (Sgd.) WILLIAM A JOWITT.
> " E. STAFFORD CRIPPS.

The text of the Case and Report are appended.

No action has, however, been taken on this Report and no change has been made in the heading of confidential official documents.

5. In considering the present question, attention may be drawn to the following considerations :-

(i) For administrative and other reasons it is imperative that the property in all Cabinet Papers of whatever description should be in the same body. Endless

+ With one exception (in 1928).

difficulties would arise if, for example, it was held that the property in Cabinet Minutes was in the "Crown" or the Stationery Office, while the property in a Memorandum circulated by the Home Secretary was in that particular Home Secretary or in the person for the time being filling that office.

(3) It is a well established rule that the Cabinet Papers of one Administration are never shown to the members of a subsequent Administration without the consent of the Prime Minister in Office when the Papers were circulated and the Prime Minister of the subsequent Administration. This rule has been enforced very strictly and consent has only so far been given in two or three unimportant cases dealing, not with policy or politics, but with matters of pure machinery. In our view it is important that the records of each successive Government should be preserved in the Cabinet Office, and there would be grave risk of a Government deciding to have all its Cabinet Papers destroyed on leaving Office unless its members could be assured that in no circumstances would these Papers be open to the inspection of their successors.

6. As will be seen from the attached reply given to Mr. Baldwin to Mr. Lloyd George in the House of Commons on 15th January, 1932, the constitutional position appears to be that the Prime Minister for the time being is the custodian of Cabinet archives, and that it rests with the Prime Minister to advise His Majesty whether permission should be given for the publication of a Cabinet Minute of a preceding Administration. It may be assumed that the approval of His Majesty would also be required before an important Cabinet document or extracts from such a document could be published.

7. The questions which now arise and which, if possible, we should like answered are:-

(a) In whom in law is the property in a Cabinet Paper at the time when the Paper is circulated by the Cabinet Office to members of the Cabinet and other authorised persons?

(b) Under(a) above, can any distinction be drawn between Cabinet Papers prepared by individual Ministers and those Papers which are prepared in the Cabinet Office? e.g. for example, could a Cabinet Minister successfully maintain that the original or copies of a Paper prepared by him were his own personal property whatever may be the position vis a vis himself of Papers prepared by other Ministers or by the Cabinet Office?

(c) (i) Is a living ex-Cabinet Minister who has retained his Cabinet documents on vacating office entitled in law to retain possession of those documents or any of them?

(ii) Does it make any difference in law that he retains them under the express authority of the Cabinet of which he was a member (see page 3 above)?

(iii) If the answer to both (i) and (ii) is in the negative what is the nature of the proceedings which in the last resort might have to be taken to recover the Papers, and by whom should such proceedings be initiated?

Note. It is not, of course, contemplated that drastic action of this kind would ever, in fact, be taken even if it was clear that the ex-Minister had no right of retention.

(d) (i) Are the Representatives or relations of deceased ex-Cabinet Ministers entitled in law to retain possession of Cabinet Papers which those Ministers took away with them on vacating Office? Could such persons or their assignees establish a good title in law to the possession of such Papers, and if not, what is the nature of the proceedings which might, in the last resort, have to be taken to compel such persons to surrender the Papers, and by whom ought such proceedings to be initiated?

(ii) If such persons persist in retaining Papers after they have been duly acquainted with the legal position, do they bring themselves technically within any of the provisions of the Official Secrets Acts?

EXTRACT FROM HANSARD, 15th DECEMBER, 1932.

Col. 535.

"CABINET MINUTES (PUBLICATION).

MR. LLOYD GEORGE (by Private Notice) asked the Lord President of the Council whether the Government are prepared either to publish or consent to publication of the Minutes of the discussion, referred to in yesterday's Debate on the question of the American Debt, which took place in 1922 before the issue of the Balfour Note, when it was expressly stated that the instructions given to the Chancellor of the Exchequer to negotiate a debt settlement with America would be the line which he was to follow?

THE LORD PRESIDENT OF THE COUNCIL (Mr. Baldwin): I am replying to this question on behalf of the Prime Minister, who, I regret to say, is still confined to his room. I learn from the proper constitutional authorities that the publication of Cabinet Minutes would require the approval of the King. The approach to the King should be made through the Prime Minister of the day, as the custodian of Cabinet archives, and it would be the duty of the Prime Minister of the day to advise His Majesty whether permission should be given for publication or not. The Prime Minister is not prepared to advise His Majesty that it would be in the public interest to publish the Minutes to which the right hon. Gentleman refers."

.....

FOLIO 52M

THE TREASURY SOLICITOR

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DX No. 2318 Victoria Fax 071 210 3232 Fax 071 222 6006 Switchboard 071 210 3000 (GTN 210)

Direct Line 071 210 3253

Miss Pat Andrews
Historical & Records Section
Cabinet Office
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: L92/3737/HF/ADL/L8

Your reference:

Date: 29 September 1994

Dear Miss Andrews

ATTORNEY GENERAL -v- MONTROSE AND CHURCHILL

In Hilary Fassnidge's absence on leave until 4 October, I attach, for your information, a copy of Messrs Goodman Derrick's letter of 28 September together with the Affirmation of Professor Anthony Bradley and its Exhibits.

Yours sincerely

Anthony Lawton

ANTHONY LAWTON
Assistant Treasury Solicitor

For attachments to this letter please see Annex

CABINET OFFICE
H94/1253....
30 SEP 1994
OPENS

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NOTE FOR RECORD

I spoke to Paul Jenkins on 27 September to ask how the meeting with Lord Rothschild had gone (Michael Carpenter, who had attended the meeting, was away).

Paul said that the meeting had been quite short. NHMF had got more valuations of the Churchill Archive which seemed to be quite useful. The only outcome from our point of view was that there seemed to be some discrepancy in the various categories of records being referred to; it was not clear that the categories referred to by the valuers, Quaritch, were the same as the categories we referred to. It would be useful if we could marry them up so that we all knew what we were talking about.

I spoke to Michael Carpenter on 28 September to see if he thought a meeting with Nina Veitch would be useful before she disappeared again at the end of the week. Michael was less certain about what we had been asked to do but said that the first thing would be to get hold of a copy of the valuation if NHMF would part with it (I do not see how we can do the work if they don't!). Michael thought that he and I could probably do the work and if we had queries which only Nina could resolve this would be OK on her return.

I left it that he would try to get a copy of the Valuation from NHMF.

PMA

MISS P M ANDREWS
28 September 1994

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

FOLIO 51N

URGENT
YES/~~NO~~

FACSIMILE LEADER

NAME ...MICHAEL CARPENTER.....

DEPARTMENT .....TREASURY SOLICITORS.....

ADDRESS ...QUEEN ANNE'S CHAMBERS.....

..28 BROADWAY LONDON SW1H 9JS.....

..... FAX No ...210 3503.....

FROM .....PAT ANDREWS.....

DOCUMENT REFERENCE/TITLE .....CHURCHILL ARCHIVE.....

.....

.....

TOTAL NUMBER OF PAGES .....3..... DATE ..23-9-94.....

MESSAGE:

Letter, hopefully helpful, for meeting on 26 Sept.

ACKNOWLEDGEMENT REQUIRED YES/ ~~NO~~

CABINET OFFICE
Historical and Records Section
Hepburn House
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ENQUIRIES:
071 217 6050

URGENT
YES/NO

FACSIMILE LEADER

NAME ....PETER ROSE.....

DEPARTMENT .....CABINET OFFICE (OPSS).....

ADDRESS .....70 WHITEHALL, SW1.....

.....

..... FAX No ...270 0618.....

FROM ....P.A.T. ANDREWS.....

DOCUMENT REFERENCE/TITLE ....CHURCHILL ARCHIVE.....

.....

.....

TOTAL NUMBER OF PAGES ...2..... DATE ..23-9-94.....

MESSAGE:

Comments on Line to Take & Q&A brief attached.

ACKNOWLEDGEMENT REQUIRED YES/ NO

FOI'd 51K

H094/773

MR ROSE

CHURCHILL ARCHIVE

You asked for comments on the Line to Take and the Q&A brief on the above topic.

I have consulted Michael Carpenter and we suggest amendments to the first two paragraphs of the Line to Take so that it reads as follows:-

> [The question of "negotiations" does not arise;] - I suggest that DNH be consulted about this phrase - my inclination would be to leave it out - in which case the paragraph would run:-
>
> Litigation to establish the Crown's title to and rights over various papers in the Churchill Archive continues but the possibility of a settlement remains, as is usual with most litigation.
>
> We have served "points of claim" - the detail of our case - and the Trustees have served "points of defence". The evidence on which the Trustees rely has not yet been served.

Mr Carpenter advises that the points of claim and defence are not public documents. If the public wished to see them they would have to apply to the Court for leave to inspect.

The only amendments I would wish to make to the Q&A brief are:-

> A.11 c. amend the phrase about Lord Wilson's papers to read:-
> "Lord Wilson's papers are in the Bodleian Library."
>
> A.15 delete "recently".

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
23 September 1994

CHURCHILL ARCHIVE f:\church.qa

Q.1 What is this litigation all about?

A.1 Among the groups of papers that go to make up the Churchill Archive is a group of so-called "State papers", official documents relating to the periods during which Sir Winston Churchill occupied Ministerial and Prime Ministerial appointments between 1906 and 1945. Ownership is disputed. It is the Government's view that it owns them; the Churchill Trustees do not accept this and it is for this reason that the court is being asked to settle the matter.

Q.2 What does the Archive consist of?

A.2 Personal, political and literary papers, speeches, including drafts of Sir Winston Churchill's war-time speeches, official documents relating to his Ministerial and Prime Ministerial appointments spanning the years 1906-1945.

The Archive as a whole spans the years 1874-1945 (there are no post-war papers in it) and documents Churchill's life as a school boy, as a correspondent in South Africa, as MP for Oldham as well as his appointments as a Minister of the Crown.

Q.3 We thought the future of the Archive had been settled in October - what went wrong?

A.3 The press then reported that agreement had been reached. That report was premature. The NHMF was at that time very hopeful that it could reach agreement with the Churchill Trustees on the matter but, in the course of negotiations, the question of the ownership of part of the Archive, and whether consent for removal from Churchill College was required by the Trustees, could not be cleared up to the satisfaction of both sides. It is these matters which the court is now being asked to resolve. Once it has done so, the position can be reviewed again.

Q.4 Why was the Government prepared to pay initially for papers it now lays claim to?

A.4 The Government has never been prepared to pay specifically for the State papers, as we were hoping to negotiate an overall settlement with the Trustees without the need for litigation at a price which would have been fair for what we were purchasing. In fact, this proved not to be possible.

Q.5 Why is the permission of the Prime Minister needed?

A.5 Sir Winston Churchill drew up a settlement in 1946 which reflected the large volume of State papers in the Archive. Under that settlement, the Trustees undertook not to sell

or otherwise dispose of [the official] papers without the consent of the Prime Minister of the day. The need for the Prime Minister's consent was reaffirmed in 1964 but was written out by the Trustees on a further Re-settlement in 1990. This was done without the consent of the Prime Minister and the Government is not satisfied that such a course was proper. This is one of the matters that the court is likely to be asked to determine.

Q.6 What is the role of the Department of National Heritage?

A.6 The Department of National Heritage was consulted by the National Heritage Memorial Fund on a number of issues, as was also the Cabinet Office in relation to the ownership of the State papers. The Department has a general interest in the heritage importance of the Archive.

Q.7 What were the terms of the offer?

A.7 It would not be appropriate to discuss the details of any offers made in confidence between the National Heritage Memorial Fund and the Churchill Trustees.

Q.8 Can Lottery money be used?

A.8 No Lottery proceeds are yet being generated. When they are, their allocation in the heritage sector will be a matter for the NHMF to decide.

Q.9 Do the NHMF still plan to purchase any of the other papers, once the court case has been decided?

A.9 That is a matter for them.

Q.10 Who are the beneficiaries of any sale?

A.10 We believe that these are members of the Churchill family but you would need to ask the Churchill Trustees for any further detail.

Q.11 What about the papers of other Prime Ministers?

A.11

a. On relinquishing office, Prime Ministers have, by convention, taken with them certain 'personal' papers which have been written, signed, sent or received by the Prime Minister personally. They do not include copies of Cabinet documents. They do, however, include copies of minutes to Ministerial colleagues, telegrams, speeches etc. These papers are 'personal' only because they are written, signed, sent or received by the Prime Minister personally. Many are copies of public records, the counterparts of which remain on official files and are made publicly available in the Public Record Office after 30 years. Those copies which are taken away by outgoing Prime Ministers are subject to the Official Secrets Act and remain Crown copyright.

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b. The final destination of these papers is a matter for the former Prime Minister or his/her Trustees. Most deposit them in University libraries - Eden, Attlee, Chamberlain, for example. (Birmingham) (University College, Oxford) (Birmingham)

c. Lady Thatcher and Sir Edward Heath are ~~believed~~ still ~~to be~~ working on their papers; Lord Callaghan's biographer is working on his; Lord Wilson's papers are ~~destined, it is understood, for~~ the Bodleian Library. Lord Stockton's papers are in the hands of his Trustees.

d. Prime Ministers who have relinquished office since Lord Wilson have been asked to give an undertaking not to allow their 'personal' papers to go out of the country. [NOT FOR USE: Some are still considering this]

e. With the agreement of the present Prime Minister, only papers which are truly personal will, in future, be removed from official custody.

Q.12 Are all the papers in the Churchill Archive 'personal'?

A.12 No. The Archive contains a much wider category of documents than 'personal' papers. Sir Winston Churchill acknowledged that the Archive contained a large component of official papers by including a clause in the 1946 Settlement to provide that the Trustees should not sell or otherwise dispose of any document or information relating to any office, ministry or department of the Government since 1900 without the consent of the Prime Minister of the day.

Q.13 Can the Government prevent sale of Prime Ministerial 'personal' papers in other cases?

A.13 Should other former Prime Ministers wish to sell their 'personal' papers, they could not be prevented from doing so under the Public Records Acts. Powers governing the export of works of art including archives come into play only when such items are 50 years old. The Official Secrets Act continues to apply wherever appropriate.

Q.14 What do other countries do?

A.14 Not our concern and not relevant to the questions being asked in the courts.

Q.15 Is the Archive publicly available?

A.15 Yes. It was made available to researchers ~~recently~~ following the completion of the official biography by Martin Gilbert and we assume it will continue to be accessible during the litigation.

Q.16 Where should interested citizens send donations?

A.16 The Government and the NHMF would like to make it clear that they have not considered, and are not considering, a public appeal. Unsolicited donations may be sent to the National Heritage Memorial Fund which will continue to

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was set up in 1980 under the National Heritage Act as a memorial to those who died in both World Wars. It is therefore appropriate that any private contributions for the purchase of papers such as these should go there.

Q.17 What about the previous donations, particularly of Americans, towards the funding of the Archive Centre?

A.17 We hope that the Archive remains intact at Churchill College. The American generosity towards the College and the Archive Centre is an important factor to be borne in mind.

Q.18 Would the Government rule out another private purchaser in the UK?

A.18 The consent of the Prime Minister would be required and he would want the papers to be kept intact at Churchill College.

Q.19 It has been argued ("The Times") that we do not really need these papers; why are they important and what is wrong with photocopies?

A.19 The Archive contains a number of papers not in the Public Record Office and others on which manuscript notes by Sir Winston might be useful to historians. Before any papers are purchased, expert advice will be taken. If the Archive can be kept intact, this will also provide historical insight into the way Winston Churchill perceived a number of issues.

Q.20 Win or lose, what effect will this have on our prospects for acquiring the remainder of the Archive?

A.20 The Government hopes that the Churchill Trustees will respect the course of action we have taken in asking the court to decide on the matters of ownership and Prime Ministerial permission and will be prepared to resume negotiations whatever the court's decision.

Q.21 How long will litigation take?

A.21 It is impossible to give any sensible estimate but it may become clear as the case develops when we might expect a decision.

Q.22 What will be the likely cost?

A.22 It is impossible to say, but it would be small by comparison with the value of the papers.

Q.23 Where will the case be heard?

A.23 In the Chancery Division in London.

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FROM: PAUL JENKINS
QUEEN ANNE'S CHAMBERS

TEL: 210 3256

DATE: 23 September 1994

MR PHILLIPS

cc. Miss O'Mara
Miss Andrews
Mr Carpenter
Miss Morrison (o/r)

CHURCHILL

We are going to see Lord Rothschild at 9.15 on Monday 26 September to consider how to take forward the opportunity for a settlement afforded by the temporary truce in the litigation. Details of the suspension of hostilities have still to be resolved but we are likely to have until the end of the year to convince the Archive trustees that a deal can be struck.

Background

The possibility of trying again to reach a settlement was first raised by Lord Rothschild. Subsequently we attended a meeting in June with Sir Robin Butler, the NHMF, Winston Churchill MP and Lord Alexander when it was agreed that an attempt would be made to identify, in fairly general terms, the undisputed documents. These would then be valued and we would try again to reach agreement on the remainder. Progress in the litigation would be suspended for a finite period whilst this process took place. Although Sir Robin made it clear at the meeting that we would only agree to this course of action if the Archive trustees undertook not to sell any of the papers in the interim, Winston Churchill subsequently indicated that this was unacceptable. He has now, however, backed down and we have until the end of the year to try and find a solution.

Meanwhile, on the litigation front, the Archive trustees have served their Points of Defence but they have still not served their affidavit evidence in support. This is now long overdue but we have not been pressing them too hard. Once their evidence is received our time for responding will presumably be extended to take account of the attempt at settlement. Until we see their evidence it is difficult for our counsel to advise further on the chances of success on our claim to the State papers. They have, however, recently advised that our claim in respect of the other papers is very weak.

H 94/1223
23 SEP 1994
FILING INSTRUCTIONS
FILE No

Next Steps

At our meeting on Monday, Miss Andrews will be able to report on the progress being made to identify the undisputed documents. The NHMF will then need to value those documents although I understand they already have some further advice from Quaritch which may be helpful. As for the disputed documents, it must be unlikely that the position will have changed significantly since October 1993. The State papers will still form the bulk of the Archive in value terms and we will need to consider with Lord Rothschild how to incorporate them in an overall settlement.

One possibility may emerge when we have received the trustees' affidavit evidence. As I have already mentioned, counsel have effectively written-off our claim to the non-State paper and they will soon be in a position properly to consider the strength of the case against us on the State papers. Earlier advice was that we had a 50/50 chance of winning which in itself provides some scope for buying out the trustees' claim to the State papers. If, however, having seen their evidence we are advised that our case is significantly weaker there will be a commensurately greater value to be placed on buying out the trustees' claim. Assuming we receive their evidence fairly soon, I would hope to have a clearer idea of the strength of our claim towards the end of October.

The other point to explore is the importance which the NHMF feel attaches to maintaining the Archive intact. The advice we have received about our claim over the non-State papers means that if the litigation proceeds we would almost certainly be unable to stop the trustees selling some of the literary papers to fund their case. The NHMF would be free to bid for those papers but, if they were unsuccessful, the Archive would inevitably be dispersed. We established in 1993 that the government would find it difficult to pay too much regard to the interest of Churchill College and the integrity of the Archive but the position of the NHMF is clearly different. We can share with Lord Rothschild the gloomy prognosis for our claim over the non-State papers and this too may help the NHMF bridge the gulf between them and the trustees.

Finally, we will need to consider whether and at what stage to involve the Archive trustees in the process. We will wish to give them the impression of activity. Lord Rothschild may have a view on this and, at the very least, I imagine he would wish to keep Winston Churchill informed of some of our thinking.

PAUL JENKINS

PART 6
50

TO: ALL PRESS OFFICERS 23 September, 1993

c.c. PS/CDL
PS/PS
Andrea McLean, DNH
Anne Shevas, No10
Melanie Leech
Pat Andrews

CHURCHILL PAPERS

Chris Blackhurst, now at the Observer, is a running with a story that Sir Robin Butler is involved in 'negotiations' with the Churchill Trustees over the purchase by the State of papers in the Churchill Archive. He is claiming that an original figure by them of £10 million (to be financed by Conrad Black) for the Crown to purchase the papers has now been upped to £20 million.

LINE TO TAKE

Any speculation of potential "deals" is very premature. Litigation to establish the Crown's title to and rights over various papers in the Churchill Archive continues but the possibility of a settlement remains, as is usual with most litigation.

We have served "points of claim" - the detail of our case - and the Trustees have served "points of defence". The evidence on which the Trustees rely has not yet been served.

[Treasury Solicitor advises that the points of claim and defence are not public documents. If the public wished to see them they would have to apply to the Court for leave to inspect].

On Sir Robin Butler's involvement: it is only natural and proper that as Cabinet Secretary he would maintain a close interest in matters involving the papers of a former Prime Minister.

BACKGROUND

Press notice of 16 December, 1993 and Q&A brief attached.

PETER ROSE
Head of Information
Tel: 270 0516

PR.354

CABINET OFFICE
H 94/1227
23 SEP 1994
FILING INSTRUCTIONS
FILE No

CABINET OFFICE
Office of Public Service and Science

NEWS RELEASE

OPSS 146/93
16 December 1993

CHURCHILL PAPERS

Proceedings were issued today in the Chancery Division of the High Court to establish the Crown's title to, and rights over, various papers formerly in the possession of Sir Winston Churchill. The papers are kept at present in Churchill College, Cambridge and the Government hopes that, as a result of these proceedings, it will be possible for the papers to remain in the College for the benefit of the public and future generations of scholars.

Issued by:

Press Office
Cabinet Office
70 Whitehall
London
SW1A 2AS

Tel. 071 270 0393/0397
Out of hours tel. 0339 1133 and ask for pager number 721338

or Department of National Heritage on tel. 071 211 6266
Out of hours tel. 081 840 7000 and ask for pager number 1577580

Q.1 What is this litigation all about?

A.1 Among the groups of papers that go to make up the Churchill Archive is a group of so-called "State papers", official documents relating to the periods during which Sir Winston Churchill occupied Ministerial and Prime Ministerial appointments between 1906 and 1945. Ownership is disputed. It is the Government's view that it owns them; the Churchill Trustees do not accept this and it is for this reason that the court is being asked to settle the matter.

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a. On relinquishing office, Prime Ministers have, by convention, taken with them certain 'personal' papers which have been written, signed, sent or received by the Prime Minister personally. They do not include copies of Cabinet documents. They do, however, include copies of minutes to Ministerial colleagues, telegrams, speeches etc. These papers are 'personal' only because they are written, signed, sent or received by the Prime Minister personally. Many are copies of public records, the counterparts of which remain on official files and are made publicly available in the Public Record Office after 30 years. Those copies which are taken away by outgoing Prime Ministers are subject to the Official Secrets Act and remain Crown copyright.

b. The final destination of these papers is a matter for the former Prime Minister or his/her Trustees. Most deposit them in University libraries - Eden, Attlee, Chamberlain, for example. (Birmingham) (University College, Oxford) (Birmingham)

c. Lady Thatcher and Sir Edward Heath are ~~believed~~ still ~~to be~~ working on their papers; Lord Callaghan's biographer is working on his; Lord Wilson's papers are ~~destined, it is understood, for~~ IN the Bodleian Library. Lord Stockton's papers are in the hands of his Trustees.

d. Prime Ministers who have relinquished office since Lord Wilson have been asked to give an undertaking not to allow their 'personal' papers to go out of the country. [NOT FOR USE: Some are still considering this]

e. With the agreement of the present Prime Minister, only papers which are truly personal will, in future, be removed from official custody.

Q.12 Are all the papers in the Churchill Archive 'personal'?

A.12 No. The Archive contains a much wider category of documents than 'personal' papers. Sir Winston Churchill acknowledged that the Archive contained a large component of official papers by including a clause in the 1946 Settlement to provide that the Trustees should not sell or otherwise dispose of any document or information relating to any office, ministry or department of the Government since 1900 without the consent of the Prime Minister of the day.

Q.13 Can the Government prevent sale of Prime Ministerial 'personal' papers in other cases?

A.13 Should other former Prime Ministers wish to sell their 'personal' papers, they could not be prevented from doing so under the Public Records Acts. Powers governing the export of works of art including archives come into play only when such items are 50 years old. The Official Secrets Act continues to apply wherever appropriate.

Q.14 What do other countries do?

A.14 Not our concern and not relevant to the questions being asked in the courts.

Q.15 Is the Archive publicly available?

A.15 Yes. It was made available to researchers ~~recently~~ following the completion of the official biography by Martin Gilbert and we assume it will continue to be accessible during the litigation.

Q.16 Where should interested citizens send donations?

A.16 The Government and the NHMF would like to make it clear that they have not considered, and are not considering, a public appeal. Unsolicited donations may be sent to the National Heritage Memorial Fund which will continue to

was set up in 1980 under the National Heritage Act as a memorial to those who died in both World Wars. It is therefore appropriate that any private contributions for the purchase of papers such as these should go there.

Q.17 What about the previous donations, particularly of Americans, towards the funding of the Archive Centre?

A.17 We hope that the Archive remains intact at Churchill College. The American generosity towards the College and the Archive Centre is an important factor to be borne in mind.

Q.18 Would the Government rule out another private purchaser in the UK?

A.18 The consent of the Prime Minister would be required and he would want the papers to be kept intact at Churchill College.

Q.19 It has been argued ("The Times") that we do not really need these papers; why are they important and what is wrong with photocopies?

A.19 The Archive contains a number of papers not in the Public Record Office and others on which manuscript notes by Sir Winston might be useful to historians. Before any papers are purchased, expert advice will be taken. If the Archive can be kept intact, this will also provide historical insight into the way Winston Churchill perceived a number of issues.

Q.20 Win or lose, what effect will this have on our prospects for acquiring the remainder of the Archive?

A.20 The Government hopes that the Churchill Trustees will respect the course of action we have taken in asking the court to decide on the matters of ownership and Prime Ministerial permission and will be prepared to resume negotiations whatever the court's decision.

Q.21 How long will litigation take?

A.21 It is impossible to give any sensible estimate but it may become clear as the case develops when we might expect a decision.

Q.22 What will be the likely cost?

A.22 It is impossible to say, but it would be small by comparison with the value of the papers.

Q.23 Where will the case be heard?

A.23 In the Chancery Division in London.

COLL
49R

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO94/772 ✓

M C Carpenter Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

22 September 1994

Dear Michael

CHURCHILL ARCHIVE

I thought it might be helpful to you, if you are to attend the meeting with Lord Rothschild on Monday, to have a summary of where we are with the various exercises to identify official papers in the Churchill Archive.

Since Sir Robin Butler's meeting with Mr Churchill on 15 June we have been conscious of the possible need to do a "quick" division of the papers into two piles - what Georgina Naylor calls "apples and pears" whilst, so far as possible, carrying on with a more detailed identification subject to the need for further discussions with the Trustees solicitors as proposed in Counsel's Memorandum sent to me by Hilary Fassnidge on 24 May 1994 (L92/3737/HF/L8).

I set out in my letter of 30 June to Miss Fassnidge the small amount of material I thought could possible be claimed as official from Class 1. It may be that Counsel will think that it falls into the grey area and that Class 1 could be relinquished.

Miss Nina Veitch has now completed work on Class 2 and has identified those papers which are official (a list is being prepared). We still need to take a decision on the papers relating to the Dardenelles, official papers handed to Sir Winston by Government sources in the 1930s and to gifts in the wartime period (see paragraphs 4 and 5 of my letter of 8 September to Miss Fassnidge.

We do not lay claim to any papers in Classes 3-7 (Constituency).

Work on Class 8 (Literary) has not been completed. As you know, a proportion of the Class is in the possession of the Trustees. You advised that we should take no action on this pending the outcome of Sir Robin's meeting with Mr Churchill on 15 June. What constitutes an "outcome" from that meeting seems to be a little debatable at present!

I attached Miss Veitch's notes on the part of Class 8 which is still at Churchill College to my letter of 30 June to Miss Fassnidge. My feeling, as I said in my 8 September letter, is that we are unlikely to wish to claim the correspondence in this part of Class 8 but I hope we can discuss this shortly.

Miss Veitch has been working in Cambridge on Class 9 (speeches) this week and is at present writing up her notes. The Class has papers dating from 1807 to 1945. The papers for the period from 1907 to 1929, when Sir Winston was in office, are a mixture of official and non-official and Miss Veitch is now drawing up a list to indicate those which are official. The papers for the period 1929-39 when Sir Winston was out of office we regard as non-official. From the date in 1939 when he became First Lord of the Admiralty to the end of the war we take the view that all his speeches were official and that therefore the notes, drafts and typescripts of these speeches are official. Intermingled with these wartime speeches and, indeed, throughout Class 9, there are Press Cuttings, extracts from Hansard, published material and other ephemera which we would not claim.

Classes 10-27 are designated official in the Catalogue. As Counsel said in their Memorandum "the position is that we claim that they are [State Papers] and at present we have not offered and have not been required to carry out a check to identify any papers therein that are not Relevant State Papers".

We do not claim any papers in Classes 28-30 as State Papers.

I suggested to Hilary that on her return from leave we should meet to discuss the "grey areas" - Dardenelles papers, those relating to gifts, those given to Sir Winston before the War, Literary papers and speeches, before arranging to see Counsel again to get further instructions.

I hope this is helpful.

Yours ever

Pat

MISS P M ANDREWS

FOI 490

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 071 210 3450 Direct Fax 071 210 3503

Office of Public Service & Science Legal Advisor

FACSIMILE

To: Miss Andrews

From: Michael Carpenter

Dept: Cabinet Office

No. of Pages: 4 inclusive

Fax No: 217-6010

Date: 22.9.94

Re: Churchill Archive 'Line to Take'

Attached are a few suggested amendments.

The right of the public to inspect documents (under Order 63, rule 4 of the Rules of the Supreme Court) extends only to a writ of summons or other originating process (such as the originating summons).

There is no right to see points of claim or points of defence. The public would have to apply to the Court for leave to inspect. (See attachments)

If this facsimile does not reach you in its entirety, please contact my secretary on 071-210 3006.

CHURCHILL PAPERS

Chris Blackhurst, now at the Observer, is a running with a story that Sir Robin Butler is involved in 'negotiations' with the Churchill Trustees over the purchase by the State of papers in the Churchill Archive. He is claiming that an original offer by them of £10 million (to be financed by Conrad Black) for the purchase of the papers has now been upped to £20 million.

LINE TO TAKE

The question of "negotiations" does not arise; litigation to establish the Crown's title to and rights over various papers formerly in possession of Sir Winston Churchill continues, but the possibility of a settlement remains as is usual with most litigation.

We have served "points of claim" - the detail of our case - and ~~are awaiting a response of~~ "points of defence", ~~the other side's evidence~~, which the Trustees have served. The evidence only has not yet been served.

It would not, therefore, be appropriate to discuss issues to be determined by the court. (If pressed, as no date for a hearing has been set we recognise that this is not technically subjudice).

On Sir Robin Butler's involvement: it is only natural and proper that as Cabinet Secretary he would maintain a close interest in matters involving the papers of a former Prime Minister.

BACKGROUND

Press notice of 16 December, 1993 and Q&A brief attached.

FR.354

(c) with the leave of the Court, which may be granted on an application made ex parte, any other document.

(2) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Central Office in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement.

Amended by R.S.C. (Amendment. 1969 (S.I. 1969 No. 1105) and R.S.C. (Amendment No. 2) 1982 (S.I. 1982 No. 1111).

63/4/1 Scope of rule.—This rule replaced the former O.61, rr.17 and 18 (derived from C.O.1, rr.46 and 47) and the former O.62, r.2(5) which had provided, in effect, that the indexes and calendars of all documents filed in the Central Office, and the volumes of Chancery judgments and orders preserved in that Office should be accessible to the public on payment of the usual fee.

This rule defines the nature and extent of the right to search for, inspect and take a copy of documents filed in the Central Office and, by virtue of r.11, in district registries. It makes an important distinction between the right of search and inspection enjoyed by a party to a cause or matter which is unrestricted in respect of all documents, including affidavits filed in that cause or matter with a view to its commencement, and the right of search and inspection enjoyed by a member of the public, which is restricted to the documents particularly specified in paras. (1) and (2). The effect of this restriction is to exclude the right of the public to search for and inspect the following documents, namely (i) affidavits; (ii) depositions taken before an examiner, and (iii) judgments and orders given or made in Chambers. The principle on which these documents are excluded from the public right of inspection would appear to be that they are all interlocutory in character and may or may not be used or affect the justice of the case when the cause or matter comes to be heard in open Court. Nevertheless, even in respect of such documents, the leave of the Court may be obtained for search and inspection by a person not a party on an application made *ex parte* or the Practice Master in the Q.B.D., but it is conceived that very cogent reasons would be required before such leave is granted. It is thought indeed that the exclusion of affidavits and the other documents mentioned above from public inspection makes no real change in the present practice; and it is to be observed that this rule has the same effect as the comparable rule in matrimonial proceedings.

In applications under the Inheritance (Provision for Family and Dependants) Act 1975, the evidence should be by way of transcript or note of master's decision (*(Practice Direction) (Family Provision: Application)* [1978] 1 W.L.R. 385; [1978] 2 All E.R. 167).

As to documents filed in the Admiralty Registry, see O.75, r.46, and as to documents filed in the Family Division, see Family Proceedings Rules 1991, r. 10.19, Vol. 2, Pt. 7.

Mandamus is the remedy available to a person refused a sight of a document within the rule (*Ex p. Associated Newspapers Ltd.* [1959] 1 W.L.R. 993; [1959] 3 All E.R. 878).

Where the plaintiff has been declared a vexatious litigant and is subsequently given leave to commence proceedings, the defendant in the substantive proceedings for which leave is given should not be able as of right to search and inspect documents relating to the plaintiff's application for leave. The application documents should be separately filed. The Court file relating to the substantive proceedings should contain only the order giving leave to institute the proceedings, as additional material relating to the application may be privileged and prejudicial. The Court can, however, give leave to the defendant to search and inspect the application file if such leave is considered appropriate in the circumstances (*Re C., The Times*, November 14, 1989).

It is contempt of court for a person who is not a party to proceedings to gain access to documents on a court file, by deception or by taking advantage of a court officer acting under a mistake, which he knows he is not entitled to see, and to publish the information obtained (*Dobson* v. *Hastings*, *The Independent*, November 12, 1991).

Date of filing and inspection of documents filed in other offices (O.63, r.4A)

63/4A 4A. Rules 3 and 4 shall apply in relation to documents filed in Chancery Chambers or in a district registry as they apply in relation to documents filed in the Central Office.

Added by R.S.C. (Amendment No. 2) 1982 (S.I. 1982 No. 1111). Amended by R.S.C (Amendment No. 3) 1991 (S.I. 1991 No. 1884) in force immediately before the commencement of section 40 of the Matrimonial and Family Proceedings Act 1984.

This is a summary of the litigious work in the department. It does not take into account the functional and other ceremonial duties of the Queen's Remembrancer carried out on the non-litigious side.

Crown Office and Associates' Department—The Queen's Coroner and Attorney and Master of the Crown Office is the head of this department. 63/1/4

Filing and Record Department—This was formed by amalgamation of the Filing and Record, Bills of Sale and Enrolment Departments.

Scrivenery Department—This is not part of the Central Office. Its business—that of typing and copying of documents for the Supreme Court Offices—is carried on at Room C22, R.C.J.

Supreme Court Taxing Office—The Chancery Taxing Office was amalgamated with the Central Office by R.S.C., January, 1902 (and see *Covington* v. *Metropolitan and District Ry.* [1903] 1 K.B. 231). By r.1a of the former O.61 (R.S.C.) July 1903 the Chancery Taxing Masters, so transferred, as well as all other Taxing Masters of the Supreme Court, became Masters of the Supreme Court; and by the former O.71, r.1, the Taxing Department of the Central Office became known as the Supreme Court Taxing Office. See now as to the taxing officers and their powers, O.62, rr. 19–28. 63/1/5

Practice master (O.63, r.2)

2. One of the masters of the Queen's Bench Division shall be present at the Central Office on every day on which the office is open for the purpose of superintending the business performed there and giving any directions which may be required on questions of practice and procedure. 63/2

Taken from the former O.61, r.2, as amended by R.S.C. (Revision) 1917.

Practice Master—Pursuant to this rule, one of the Q.B. Masters is on duty as Practice Master during the morning, and another during the afternoon of each day of the week throughout the year (save on bank holidays and days when the Courts are closed) according to a rota arranged from time to time. 63/2/1

The directions of the Practice Masters have, however, no statutory authority (*Hume* v. *Somerton* (1889) 25 Q.B.D. 239, p. 243; see also *Re Langton* [1900] 1 All E.R. 657).

Consent orders—Except in cases where the approval of the court is required and except in cases to which O.42, r.5A, applies, summonses duly issued and indorsed with the consent of all other parties may be left with or sent by post to the Masters' Secretary, Room F214, Royal Courts of Justice, London, WC2A 2LL. They will be placed before a Master with a view to an order and may be collected on the next working day. Such documents will not be acknowledged or indexed and no responsibility of their safe custody will be accepted. If any question arises as to the proper form of order the applicant will be required to see the Master. (See *Practice Note (Central Office: Postal Service)* [1969] 1 W.L.R. 1260; [1969] 2 All E.R. 1140 as amended by *Practice Direction (Q.B.D.: Postal Service)* [1985] 1 W.L.R. 489; [1985] 1 All E.R. 669). 63/2/2

Date of filing to be marked, etc. (O.63, r.3)

3.—(1) Any document filed in the Central Office in any proceedings must be sealed with a seal showing the date on which the document was filed. 63/3

(2) Particulars of the time of delivery at the Central Office of any document for filing, the date of the document and the title of the cause or matter of which the document forms part of the record shall be entered in books kept in the Central Office for the purpose.

Taken from the former O.61, rr.16 and 18, which was derived from C. O.1, rr.15 and 17.

Right to inspect, etc., certain documents filed in Central Office (O.63, r.4)

4.—(1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Central Office, namely— 63/4

(*a*) the copy of any writ of summons or other originating process,

(*b*) any judgment or order given or made in court or the copy of any such judgment or order, and

CABINET OFFICE
Historical and Records Section
Hepburn House
Marsham Street
London SW1P 4HW
Fax: 071 217 6010

ENQUIRIES:
071 217 6050

F.DL.
49P

URGENT
YES/~~NO~~

FACSIMILE LEADER

NAME ... MICHAEL CARPENTER .....

DEPARTMENT ... TREASURY SOLICITORS .....

ADDRESS ... QUEEN ANNE'S CHAMBERS, 28 BROADWAY .....

..... SW1H 9JS .....

..... FAX No 210 3503 .....

FROM .... P.A.T. ANDREWS .....

DOCUMENT REFERENCE/TITLE .... CHURCHILL ARCHIVE .....

.....

.....

TOTAL NUMBER OF PAGES ..... 6 ..... DATE 22-9-94 .....

MESSAGE:
Peter Rose has asked us to clear the attached "line to take" and to up-date, if necessary, the Q+A briefing produced last year. On the line to take I think the first phrase is unnecessary but this is really for DNH.
On the Q+A I wd amend 11a as Wilson's papers are now at the Bodleian + I wd take "recently" out of A.15.
Are there any amendments you think we should make?

ACKNOWLEDGEMENT REQUIRED YES/ NO

FOI 49N

FACSIMILE

INFORMATION DIVISION
OFFICE OF PUBLIC SERVICE AND SCIENCE
70 Whitehall
London SW1A 2AS

TO: Pat Andrews, Historical Records Section

c.c. Melanie Leech

FROM: Peter Rose, Head of Information

TELEPHONE NO: 071-270 0516

FAX NO: 071-270 0618

NO OF PAGES (EXCLUDING COVER SHEET): 0

COMMENTS: **CHURCHILL PAPERS**

Following our discussion this morning, I attach a line to take for use by us, No10 and Department of National Heritage. I would be grateful if you/Michael Carpenter could clear this.

DATE: 22 September 1994

PR.355

CHURCHILL PAPERS

Chris Blackhurst, now at the Observer, is a running with a story that Sir Robin Butler is involved in 'negotiations' with the Churchill Trustees over the purchase by the State of papers in the Churchill Archive. He is claiming that an original offer by them of £10 million (to be financed by Conrad Black) for the purchase of the papers has now been upped to £20 million.

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BACKGROUND

Press notice of 16 December, 1993 and Q&A brief attached.

PR.354

FOI 49H

FACSIMILE

INFORMATION DIVISION
OFFICE OF PUBLIC SERVICE AND SCIENCE
70 Whitehall
London SW1A 2AS

TO: Pat Andrews, Historical Section

FROM: Peter Rose, Head of Information

TELEPHONE NO: 071-270 0516

FAX NO: 071-270 0618

NO OF PAGES (EXCLUDING COVER SHEET): 4

COMMENTS:

Attached is Q&A brief we used at time of start of proceedings last December. Grateful if in addition to discussing line to take with Michael Carpenter you could update Q&A as necessary.

DATE: 22 September 1994

PR.352

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

49

HO94/772 ✓

M C Carpenter Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

22 September 1994

Dear Michael

CHURCHILL ARCHIVE

I thought it might be helpful to you, if you are to attend the meeting with Lord Rothschild on Monday, to have a summary of where we are with the various exercises to identify official papers in the Churchill Archive.

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I hope this is helpful.

Yours ever

Pat

MISS P M ANDREWS

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

Direct Line 0171 210 3450 Direct Fax 0171 210 3503

Office of Public Service & Science Legal Adviser

MINUTE

To:	**Mr Jenkins**	**From:**	**Michael Carpenter**
Room:	**342/3 Tot**		
cc:	**Miss Carolyn Morrison (DNH)** **Miss Andrews (CO)** **Miss Fassnidge**	**Date:**	**20 September 1994**

Churchill Archive: Reply to Winston Churchill MP

1 We discussed the suggested draft reply to Winston Churchill attached to my minute of 19 September, and I attach a revised draft in the light of that discussion.

2 I am taking the liberty of copying this also to Carolyn Morrison with a view to the draft being progressed through DNH. I understand that Sir Robin Butler is out of the country until the end of the month, so that there is no immediate hurry.

M.C.

H 94/1218/K
21 SEP 1994
FILING INSTRUCTIONS
File No

DRAFT LETTER

Winston S Churchill Esq., MP
Squerryes Lodge
Westerham
Kent TN16 1SJ

The Churchill Archive

Thank you for your letter of 12 September.

I, too, trust that I am not being over-contentious in continuing to assert the Government's case. The desirability of maintaining the Archive intact is surely a consideration which the Prime Minister may reasonably take into account in deciding whether or not to consent to the sale of any papers comprised in the 1946 Settlement.

The true construction of the clause in the 1946 Settlement to which you refer is, of course, an issue in the current litigation. I would only remark that the clause refers not only to making any relevant document or information public but also requires the Trustees not to sell or dispose of any such material without the Prime Minister's consent. This would appear to evidence a wider concern by Sir Winston Churchill with the safekeeping of that material.

You remark that the Trustees are being placed in an almost impossible situation, but I should explain that the decision to commence proceedings was not taken lightly. We did, of course, discuss this at our meeting on 16 December last year when you explained that Mr Peregrine Churchill had it in mind to put up some of the papers for sale if no agreement was reached by the end of that year. It was also the case that, immediately prior to the commencement of proceedings those advising the Crown learned of renewed attempts by Mr Montrose, in his capacity as an Archive Trustee, to obtain the removal of documents from Churchill College for the purposes of sale. The decision to commence proceedings must be seen in that context.

However this may be, your undertaking to seek to dissuade the Trustees from selling any papers for the present is most timely and helpful. I remain ready to try to reach an amicable settlement, but I must again seek the abandonment by the Trustees, at least for the time being, of an intention to sell or dispose of any of the papers in the Archive.

H 94/11.15
21 SEP 1994
FILING INSTRUCTIONS
POSTED 47M

THE TREASURY SOLICITOR
Queen Anne's Chambers, 28 Broadway, London SW1H 9JS
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Miss Pat Andrews
Cabinet Office
Historical & Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: L92/3737/HF/L8
Your reference: HO94/710
Date: 19 September 1994

See notes on letter below
Copies of the 2 does also below

Richard
For advice on X plse
Cheeky b....s!
Pat 21/9

Dear Pat

CHURCHILL ARCHIVES

I have recently received a letter from Messrs Goodman Derrick, a copy of which I enclose for your information.

In order to avoid any suggestion that we are deliberately removing from the Public Record Office documents they are entitled to see, I would be grateful if you could let me know whether any files relating to the property or ownership of official papers have been withdrawn from the Public Record Office by the Cabinet Office. If so, it would be helpful if you could let me know what documents have been so withdrawn, the basis on which they were withdrawn and whether it is intended that they should be returned to the Public Record Office at some time in the future. X

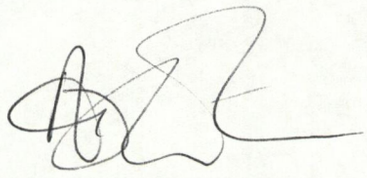
As you will see from the last paragraph of Messrs Goodman Derrick's letter, I am still being pressed to identify Relevant State Papers. I have suggested to Mr Wissun, solicitor at Goodman Derrick, that we should get together some time after my return from leave to discuss with them how long this exercise will take and how much detail should be gone into.

I have spoken with Michael Carpenter and confirm that we will instruct Duncan Chalmers to assist us in this litigation. Michael feels that your suggestion that his fees should be based on Grade 5 salary (presumably mid-point) would seem an appropriate level of remuneration but informs me that there is a Unit in the Treasury which provides guidance on the levels of payments to be made to consultants employed. He says he thinks that a guidance note may even have been prepared. Before I write to Duncan Chalmers I think it would be helpful if I obtained the

Cont .../2

appropriate guidance. Do you have a copy of any note issued or details of the Unit I should contact?

Yours sincerely



HILARY FASSNIDGE
for the Treasury Solicitor

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Nicholas Armstrong
Claire Posner
Susan Smethurst
CONSULTANTS
Lord Goodman CH QC (Hon)
L C B Gower QC (Hon)

GOODMAN DERRICK
SOLICITORS

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Telex 317210
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Our Ref: CXW/YJA/3126d-34
Your Ref: 192/3737/HR/L8

16th September 1994

457 = 1934-36 'Recovery' re Howarth letter (4/3/8 I)
391 - George Lansbury case (1934) RH note also on CAB21/462
1653 (1934-48) Law Officers' Opinion (4/3/8 A)

The Treasury Solicitor
DX 2318
VICTORIA

BY FAX AND POST 071 210 3232/6006

For the attention of Ms Hilary Fassnidge

Dear Sirs

H M ATTORNEY GENERAL -v- MONTROSE AND CHURCHILL

We write further to our telephone conversation.

We recently undertook some research at the Public Record Office, and discovered that certain files have been withdrawn by the Cabinet Office. We assume that these withdrawals were made for the purposes of this litigation, and we would be grateful if you would provide us with copies of the following documents from these files:-

1. PRO Ref: CAB21/391 - "The Property in Cabinet Documents" - undated but probably 21 or 22 March 1934 by Sir Rupert Howarth.

2. PRO Ref: CAB21/457 - Cabinet papers: "Opinions of the Law Officers of the Crown" 18 June 1934. 4/3/8 Recovery Policy but cd incl L.O. Opinion

We believe the entire files under these references have been removed from the PRO and we would like to examine them in their entirety as soon as possible. It would be particularly helpful if these requests can be met before the end of September. It would also be helpful if you could advise us of any other files removed by the Cabinet Office pursuant to this matter in order to spare our researchers unnecessary expense of time and effort at the PRO. We understand that the first file referred to above was removed on 15 June 1994, and the second on 24 September 1993.

We referred also in our conversation to the present position regarding the exercise of identification of "relevant state papers" with reference to the PRO Catalogue. You informed us on 11 April 1994 that this task

Cont'd/...

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The Treasury Solicitor
16th September 1994

would be carried out by Ms Veitch shortly after her return from leave on 14 April. We look forward to receiving further information as to the progress of this exercise once you have met with Ms Andrews in early October.

Yours faithfully

Goodman Derrick

GOODMAN DERRICK

CABINET OFFICE
H .....
20 SEP 1994
FILING INSTRUCTIONS
FILE No .....
47

THE TREASURY SOLICITOR
Queen Anne's Chambers, 28 Broadway, London SW1H 9JS
Direct Line 0171 210 3450 Direct Fax 0171 210 3503
Office of Public Service & Science Legal Adviser

MINUTE

To:	**Mr P Jenkins**	**From:**	**Michael Carpenter**
Room:	**342/3 Tot**		
cc:	**Miss Andrews (CO)** **Miss Fassnidge**	**Date:**	**19 September 1994**

Churchill Archive: Reply to Winston Churchill MP

1 I have seen a copy of Winston Churchill's letter of 12 September to Sir Robin Butler, and I attach a suggested draft reply.

2 It is helpful that Winston Churchill has undertaken to "suggest" to the Trustees that they should refrain from selling any of the papers pending a settlement. However, the rest of the letter and, in particular, the speculation as to why the provision in the 1946 Settlement was inserted, is highly contentious. The relevant clause (clause 11(ii)) prohibits the Trustees not only from making public any document or information but also requires them not to sell or dispose of any such material. Winston Churchill may speculate as to his grandfather's intentions, but the surest indication must be the text he adopted as Settlor.

3 As for maintaining the documents as one Archive, this is essentially a question of the true effect of the 1969 correspondence, and I do not think that much is to be gained by raising this issue at this stage with Winston Churchill. However, it does seem to me to be worthwhile emphasising to Winston Churchill that litigation was brought upon the Crown by the continued threats by the Trustees to sell papers and thus break up the Archive. If they had not made these threats in the course of 1993, they would now be in the position of having to defend the action. Winston Churchill can hardly expect the Crown to acquiesce in the dismemberment of the Archive in order to finance the assertion of claims the Crown does not recognise.

M.C.

DRAFT LETTER

Winston S Churchill Esq., MP
Squerryes Lodge
Westerham
Kent TN16 1SJ

The Churchill Archive

Thank you for your letter of 12 September.

I, too, trust that I am not being over-contentious in continuing to assert the Government's case. The desirability of maintaining the Archive intact is surely a consideration which the Prime Minister may reasonably take into account in deciding whether or not to consent to the sale of any papers comprised in the 1946 Settlement.

The true construction of the clause in the 1946 Settlement to which you refer is, of course, an issue in the current litigation. I would only remark that the clause refers not only to making any relevant document or information public but also requires the Trustees not to sell or dispose of any such material without the Prime Minister's consent. This would appear to evidence a wider concern by Sir Winston Churchill with the safekeeping of that material.

I should also explain that the decision to commence proceedings was not taken lightly. We did, of course, discuss this at our meeting on 16 December last year when you explained that Mr Peregrine Churchill had it in mind to put up some of the papers for sale if no agreement was reached by the end of that year. It was also the case that, immediately prior to the commencement of proceedings those advising the Crown learned of renewed attempts by Mr Montrose, in his capacity as an Archive Trustee, to obtain the removal of documents from Churchill College for the purposes of sale. The decision to commence proceedings must be seen in that context and no doubt the Trustees took into account their ability to fund litigation when they took the action they did.

However this may be, your undertaking to seek to dissuade the Trustees from selling any papers for the present is most timely and helpful. I remain ready to try to reach an amicable settlement, but I must again seek the abandonment by the Trustees, at least for the time being, of an intention to sell or dispose of any of the papers in the Archive.

Internal
13 SEP 1994
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CABINET OFFICE
13293
13 SEP 1994
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FILE No. .....

46

12 September 1994

C. Mr Blythe (TSo
Miss Andrews

C. PS/Mr Phillips

Grateful for advice + draft reply plse.

Martin Freeman
CAPS/Sir R. Butler

Dear Robin,

The Churchill Archive

Thank you for your letter of 3 August. I own to being very concerned at the claim you are making that no papers, not even the papers which are indisputably the property of the Trust, can be disposed of without the consent of the Prime Minister.

It is clear that the reason why my Grandfather inserted this clause, following a precedent that was known to him, was to give the Prime Minister an opportunity to prevent disclosure of secret or confidential material. There is no claim made in the present proceedings that any of the material is secret or confidential and, indeed, virtually all the documents which the Government is claiming return of are copies of material already in the public arena.

You suggest that the Prime Ministerial power should be used with the intention of maintaining the Archive intact. I find this hard to understand. The Trustees are at any time free, so long as they own the papers, to split them up, and have no obligation to maintain them at all as one Archive.

Since you are not suggesting that the Government would be obliged to buy any papers if they vetoed a sale, it appears to be your argument that they can sterilise the right of the Trust to enjoy the commercial benefit of the heritage settled on them by my Grandfather for all time, and without payment.

You do not make plain in your letter whether this claim, which I certainly regard as exorbitant, is being advanced by the Prime Minister personally. I would be grateful if you would let me know whether he has considered the issue and, if so, whether he shares your view that he should be able effectively to deprive the beneficiaries of the value of the Trust property.

In putting these views forward strongly, I do not wish to be over-contentious. But the Trustees are being put in an almost impossible position. They are seeking to meet a claim advanced by the Government in litigation, yet the Government is apparently wishing to resist any move the Trustees might have to make - and I may add, reluctantly - to raise funds to defend their position in the litigation. How, without selling some of the literary properties, do you suggest that the Trustees should fund the litigation?

I remain keen to see whether a sensible settlement can be reached promptly. I agree with you that we should aim to explore the position thoroughly by the deadline of the end of this year. So I shall suggest to the Trustees that they refrain from selling any of the papers during this time so that we may concentrate on achieving such a settlement. I hope I have your personal assurance that you will give every impetus to prompt and speedy action so that we may know, within this timescale, whether a settlement is possible.

Yours ever,

Winston

Winston S. Churchill

Sir Robin Butler, GCB, CVO,
Secretary of the Cabinet and
Head of the Home Civil Service,
Cabinet Office, 70 Whitehall,
London, SW1A 2AS

CABINET OFFICE
Historical and Records Section
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45

HO94/715

Ms H Fassnidge
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

8 September 1994

Dear Hilary

CHURCHILL ARCHIVE

At our meeting last Friday I mentioned to you that Miss Veitch was going to Cambridge again this week to continue work on Class 2 and Class 9 papers in the Churchill Archive. I shall let you have a report on her visit but, in the meantime, you may like to have an update.

I reported in my letter of 30 June the amount of material I thought could be claimed as "State papers" in Class 1. With regard to "Royal" correspondence in that class Miss Veitch confirmed subsequently that the Palace had agreed to it remaining in the Archive and being made available to researchers but she did not know what view they would take of an intention to sell. We shall need to pursue this separately.

The situation with regard to Classes 3-7 (Constituency), 10-27 (Official) and 28 et seq remains unchanged with 10-27 claimed by us at State papers, the remainder not.

Miss Veitch has now identified those papers in Class 2 which are personal and has drawn up a list of those which may be official. Inevitably there are some grey areas on which a decision will need to be taken on whether we claim them or not. For example, Class 2 contains papers on the Dardenelles - they are obviously official, stamped "Property of H..M...G..", many highly classified, <u>but</u> they appear to have been provided to Churchill when he was not in office, presumably to assist him with his appearance before the Enquiry. So, we would have no doubt in saying that these are official papers, what we do not know is whether he had the right to keep them.

Another category of papers in Class 2 relates to gifts sent to Churchill mainly when he was Prime Minister. The gifts were sent <u>because</u> he was Prime Minister and the correspondence relating to them may therefore be said to be official; I would have thought this was pretty borderline but nevertheless correspondence which makes the archive interesting to the public - for example the fact that tubs of honey delivered to Chartwell were vetted by MI5 before guests (personal or official) were allowed to taste the honey and the presentation, from the people of Australia, of a stuffed platypus!

Yet another group of records comprise papers given to Churchill quite improperly in the period before the Second World War. They are undoubtedly official but he did not take them away, they were provided to him, in contravention, no doubt, of the Official Secrets Act.

A few records have been removed from Class 2 as being of continuing sensitivity.

Miss Veitch is checking the remainder of Class 2 and I will report further as soon as possible.

Class 9 too, has now been divided into personal and what may be official. What may be official is also being looked at and a more detailed list produced.

I reported on Class 8 in my letter of 30 June. My feeling is that we will not wish to claim the correspondence referred to and, for the time being, we are taking no action on that part of Class 8 which is in the possession of the Trustees.

I hope this is helpful and I will report again as soon as possible.

I am sending a copy of this letter, as before, to Michael Carpenter.

Yours ever

Pat

MISS P M ANDREWS

PS I should be grateful if you could copy to Michael my letter of 7 September about the Wilson papers etc as, stupidly, I did not keep a note of the enclosures!

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I. Andrews

For your information

With the Compliments of H. Fassnidge

24-8-94

cc: P. ANDREWS

44

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Messrs Goodman Derrick

DX 122 LONDON EC4

Please quote: L92/3737/HF/L8

Your reference: CXW/DJL

Date: 24 August 1994

CABINET OFFICE
H 1144
26 AUG 1994
LING INSTRUCTIONS

BY FAX AND DX

Dear Sir

H.M. ATTORNEY GENERAL -v- MONTROSE

Thank you for your letter of 23 August. I note with disappointment that you will not be able to let me have Professor Hazlehurst's Affidavit by the end of August. I am most concerned that you are unable to let me have Affidavit evidence in answer to an Affidavit which was sworn on 24 February 1994 and of which you had a draft as long ago as 4 January 1994. In view of your difficulties it would appear that the Attorney General may likewise require a considerably extended period of time in which to serve evidence in reply if so advised.

If you are prepared to grant me similar extensions of time I am prepared to extend your time for service of Professor Hazlehurst's evidence until the end of September but would ask that any Affidavit evidence of Professor Sir William Wade Q.C. be served before the end of August. In the interim could I at least have a copy of the unsworn Affidavit of Professor Hazlehurst which I would of course be prepared to treat as a draft only and to raise no point on any differences between the draft and the Affidavit itself when sworn.

I hope that this is acceptable to you.

Yours faithfully

HILARY FASSNIDGE
for the Treasury Solicitor

John Roberts
[illegible] MacKenzie
[illegible]aunsell
Rob[illegible]rrot
Patrick Swaffer
Ian Montrose
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Our Ref: CXW/DJL
Your Ref: L92 3737 HF L8

23rd August 1994

The Treasury Solicitor

Dx No. 2318 Victoria

Dear Sirs

Attorney General v Montrose and Churchill

We regret that, due to professional commitments, Professor Hazlehurst will not be in a position to complete an Affidavit in response to that of Miss Andrews by the end of August. We therefore write to request a further extension of time for service of Affidavit evidence until the end of September, on the understanding that the period within which the Attorney General is at liberty to serve Points of Reply and Evidence in Reply be likewise extended to the end of October.

Yours faithfully

Goodman Derrick

GOODMAN DERRICK

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NOTE FOR RECORD

Hilary Fassnidge telephoned on 24 August to say that she had had a telephone call from Goodman Derrick saying that they could not possibly have their evidence ready by end-August.

She intends to reply asking for some of the evidence and giving them until end-September for the remainder. This would mean technically that our reply would have to be ready by end-October but Hilary intends to indicate that as we have been waiting for six months for theirs, we shall need longer than the stipulated 28 days.

PMA

MISS P M ANDREWS

24 August 1994

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Fax 071 217 6010

42

HO94/670

C D Chalmers Esq
Deputy Keeper
Public Record Office
Kew
Richmond
Surrey
TW9 4DU

10 August 1994

Dear Duncan

You will, I hope, recall that we spoke when we met at Chancery Lane recently about the possibility of you helping us with the thorny questions arising with regard to the Churchill papers on your retirement later this year.

I mentioned this to Sir Robin Butler last week just before he went on leave. He thought it was an excellent idea and asked me to follow it up with you.

What we probably will want to do is to commission you first to advise and help us with the preparation of our case - which we have, of course, done a lot of work on already but have, as you will be aware from the copy of my letter to Nicholas Cox of 1 August which I sent to you, met several stumbling blocks. Secondly, should it prove necessary, we would ask you to appear as an expert witness in our litigation to establish our rights over the Churchill papers.

I am just about to go on leave for ten days - back on Monday 22 August. After that perhaps it would be possible to meet - perhaps over lunch - to discuss the matter in more detail? I will telephone on my return to see if we can find a mutually convenient date.

Yours ever

Pat

bc M Carpenter
H Fassnidge

MISS P M ANDREWS

C. PS/Mr Phillips
Mr Jenkins (TSol)
Miss Anwar

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A094/2421 ✓

3 August 1994

Dear Winston, The Churchill Archives

Thank you for your letter of 12 July.

As I made clear at our meeting on 15 June, the only basis on which the Government would be prepared to consider a suspension of the litigation would be if no attempt was made by the Trustees to sell any of the papers whilst the clock was stopped. It follows that I cannot agree to your second proviso.

As you know the Government's case is that those papers in the Archive to which we make no claim as to title cannot be sold by the Trustees without the consent of the Prime Minister. It is our view that the Prime Minister should have particular regard to the desirability of trying to maintain the Archive intact when considering whether or not to grant any consent and it follows that it would be wrong to agree to your second proviso which might inevitably lead to the breaking up of the Archive. I would also point out that, in terms of trying to reach a settlement, there is a value to be placed on the Archive as a whole, a value which would be diminished if not eliminated by any sale.

In any event, it is not clear to me why you feel the second proviso is necessary. You indicate that any suspension of the litigation should only be to the end of this year at the latest and, even within that period, that it should be determinable by either side at one month's notice. These conditions are acceptable to the Government but the addition of the second proviso seems to suggest that the Trustees contemplate trying to sell papers at less than one month's notice. Is this really the case?

I made clear at our meeting on 15 June that the Government are quite prepared to try and reach an amicable settlement but we are equally clear that if a settlement is not possible we should take all appropriate steps to press our claim and to preserve the Archive intact at Churchill College. Unless you are prepared to abandon your second proviso I fear we must continue with the litigation.

Yours ever,

Robin

Winston S Churchill Esq MP
Squerryes Lodge
Westerham
Kent TN16 1SJ

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HO94/631

Dr N G Cox
Director of Archival Services
Public Record Office
Kew
Richmond
Surrey
TW9 4DU

1 August 1994

Dear Nicholas

CHURCHILL ARCHIVE

As you know, the High Court has been asked to give a ruling on the Crown's ownership of the "State papers" in the Churchill Archive and on whether, given the correspondence between the Trustees and HMG in 1969, the Trustees have the right to sell any of the Archive - whether State papers or not - without HMG's consent.

We are, as you are aware, trying to identify those papers which are State papers and, separately, to establish wich of them are duplicated in the PRO as well as which are top copies as opposed to carbon copies.

In addition, the Trustees, in the run up to the actual Court hearing, have raised several matters relating to HMG's policy and procedures in respect of official papers in private hands. We have undertaken research here and I have asked LCD to look at their files too.

In his Affidavit, Mr Montrose says that it is desirable that issues relating to conventions and practice should be identified and clarified. He believes that at the end of such a process it may well emerge that the Crown has rarely, if ever, intervened, or claimed any rights [over official papers] save on grounds of confidentiality (which are not an issue in this case). He has produced, as exhibits to his Affidavit, the "Guide to Papers of British Cabinet Ministers 1900-51" and says that much of the material in these collections and in 140 (unspecified) further collections must, if the Crown's case is correct, be Crown property (with the implication that we have taken no action to retrieve such property). He also draws attention to the "Guide to Political Papers 1874-1970" deposited by the First Beaverbrook Foundation in the House of Lords Record Office and alleges that these collections too, contain official papers.

As you know, from the conversation which you, Duncan and I were having at Chancery Lane last week, there are doubts as to whether these matters are relevant to our case. Nevertheless, Treasury Counsel have asked us to check what our practice has been and to produce information about collections of papers from which we have sought to retrieve official papers or, where we have not, why we have not. We are attempting to do that from Cabinet Office files but, so far, with little success.

I attach a paper which appears to have been produced for the Wilson Committee and which is the most comprehensive general account of our policy and procedures I have been able to find. It, perhaps unfortunately, shows that, in 1945, the then Prime Minister (Churchill) agreed that Ministers, on vacating office, may retain documents which they themselves had written. It does not mention the disposal of those documents however and, as we know, Sir Winston Churchill put the documents which he retained into a Trust which directed that the Trustees "should not make public, sell or dispose of any document or information relating to the Government since 1900 or any official papers of a general character, without the permission of the Prime Minister..." (seems watertight enough to me, but apparently not!)

I should be most grateful for any advice/information you and/or Duncan, to whom I am copying this letter, can provide on:-

- what steps HMG has taken to recover papers from Ministers/officials at any time,

- what our attitude has been to official papers in private collections - acceptance in lieue of death duties etc.,

and, generally, any thoughts you may have on the question of "strayed" public records or records which, with our consent, are in private collections, to enable me to put the matter into context for Counsel.

I am also sending a copy of this letter and enclosures to Robert Wright, who is already searching LCD files for information on this matter, with the same request.

Yours ever

Pat

MISS P M ANDREWS

cc ME Carpenter
Miss H Fossnidge } T. Sol.

HO94/630

SIR ROBIN BUTLER

THE CHURCHILL ARCHIVE

Following a meeting with Counsel yesterday, which I also attended, Paul Jenkins, Treasury Solicitor, has provided a revised draft reply to Mr Winston Churchill's letter of 12 July (Mr Jenkins' minute to PS/Mr Phillips of 29 July refers).

Although Counsel were pretty despondent about our consent claim - that part of our case which is based upon the 1969 correspondence - this does not affect our claim to ownership of the State papers and I did not think their despondency was quite as strong or as uncompromising as it sounds from Mr Jenkins' minute. Mr Carpenter tells me that Mr Hart and Mr Charles have a tendency to blow hot and cold on such issues depending upon the state of the case at the time. At the moment we are awaiting further evidence from the Trustees. Only when that arrives will we be able to see what exactly their arguments are. It may be that our case will then seem stronger and that Counsels' view will change. We shall not know that until September; we will then, no doubt, go round all the issues again.

In the meantime, despite their despondency, Counsel were, as Mr Jenkins says, content for the points in the draft letter to be made and Mr Jenkins thought that you would wish to make them quite strongly, hence the wording of the draft.

On that, towards the end of the second paragraph, I do not think one can say "which might inevitably lead....." perhaps "would" or "could lead" would be better. Also, would "eliminated" be better than "wiped away"?

You will, of course, be getting advice from Mr Phillips but I hope these interim comments are useful.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
29 July 1994

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CABINET OFFICE
H 94/1056
29 JUL 1994
FILING INSTRUCTIONS

FROM: PAUL JENKINS
QUEEN ANNE'S CHAMBERS

TEL: 210 3256

DATE: 29 July 1994

PS/MR PHILLIPS

cc. PS/Sir Robin Butler
Miss O'Mara
Miss Andrews
Mr Carpenter
Miss Morrison
Miss Fassnidge

THE CHURCHILL ARCHIVE

We saw our counsel yesterday and, as I feared, they have now decided that our consent claim is pretty hopeless. They advise not only that we would lose the claim at a main hearing but also that our case is so weak that we would even fail to show a sufficiently arguable case to obtain an interlocutory injunction. They advised that Churchill College might have a better chance but there are difficulties about involving them not least because we could only frighten them into taking action by telling them how weak our case was and this would inevitably filter through to the Churchill family.

Nevertheless, they are content for us to reject Mr Churchill's second proviso in his letter of 12 July and I attach a draft which reflects their advice on an appropriate response. The inconsistency in Mr Churchill's letter gives some hope that he may back off but, if not, we can press ahead with the litigation nervously in the knowledge that if the Trustees try to sell the papers now with Sothebys we are unlikely to be able to persuade a court to stop them.

Although the draft is fairly straightforward, I appreciate that the advice is not particularly welcome and we should perhaps discuss its detailed implications at some stage.

PAUL JENKINS

DRAFT LETTER FROM SIR ROBIN BUTLER TO WINSTON S. CHURCHILL MP

Thank you for your letter of 12 July.

As I made clear at our meeting on 15 June, the only basis on which the Government would be prepared to consider a suspension of the litigation would be if no attempt was made by the Trustees to sell any of the papers whilst the clock was stopped. It follows that I cannot agree to your second proviso.

As you well know the Government's case is that those papers in the Archive to which we make no claim as to title cannot be sold by the Trustees without the consent of the Prime Minster. It is our view that the Prime Minister should have particular regard to the desirability of trying to maintain the Archive intact when considering whether or not to grant any consent and it follows that it would be quite wrong to agree to your second proviso which might inevitably lead to the breaking up of the Archive. I would also point out that, in terms of trying to reach a settlement, there is a value to be placed on the Archive as a whole, a value which would be diminished if not wiped away by any sale.

In any event, it is not clear to me why you feel the second proviso is necessary. You indicate that any suspension of the litigation should only be to the end of this year at the latest and, even within that period, that it should be determinable by either side at one month's notice. These conditions are acceptable to the Government but the addition of the second proviso seems to suggest that the Trustees contemplate trying to sell papers at less that one month's notice. Is this really the case?

I made clear at our meeting on 15 June that the Government are quite prepared to try and reach an amicable settlement but we are equally clear that if a settlement is not possible we should take all appropriate steps to press our claim and to preserve the Archive intact at Churchill College. Unless you are prepared to abandon your second proviso I fear we must continue with the litigation.

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Re CHURCHILL ARCHIVES

For your information

With the Compliments of

FOLIO 37M

John Roberts
James MacKenzie
[redacted]ery Maunsell
[redacted]n Perrot
Patrick Sweffer
Ian Montrose
Tim Langton

Diana Rawstron
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Michael Collins
Paul Herbert
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Our Ref: CXW/JP
Your Ref: L92 3737 HF L8

20th July 1994

The Treasury Solicitor

DX 2318 Victoria

BY FACSIMILE AND DX

Dear Sirs

H M ATTORNEY GENERAL -v- MONTROSE AND CHURCHILL

We enclose by way of service the Defendants' Points of Defence. Kindly acknowledge receipt.

Further to our recent telephone conversation, we confirm that our Affidavit evidence in answer to the Affidavit of Miss Andrews sworn on 24th February 1994 is still in preparation. This Affidavit will be given by Professor Cameron Hazlehurst. It is envisaged that further evidence on constitutional practice will be given for the Defendants by Professor Sir William Wade QC. We therefore formally request your consent to a general extension of time to serve Affidavit evidence, such extension to terminate on 14 days notice from yourselves. We understand there have been discussions elsewhere which may accord with our request for this extension of the directions timetable.

Yours faithfully

Goodman Derrick

GOODMAN DERRICK

CABINET OFFICE
H 94..1039...
25 JUL 1994
REGD INSTRUCTIONS
REG No. .....

IN THE HIGH COURT OF JUSTICE CH - 1993 - H - No. 8050

CHANCERY DIVISION

B E T W E E N:-

HER MAJESTY'S ATTORNEY GENERAL Plaintiff

- and -

(1) IAN MONTROSE
(2) HENRY WINSTON SPENCER CHURCHILL Defendants

POINTS OF DEFENCE

---

1. Definitions contained in the Schedule to the Originating Summons are adopted herein.

Ownership

2. (1) It is admitted that the 1946 Settlement Papers were in the possession of Sir Winston Churchill on and before 31st July 1946.

(2) It is admitted that the 1946 Settlement Papers include papers created or acquired by Sir Winston Churchill which he would not have created or acquired but for the fact that he held office as a member of the Government of the United Kingdom, a Minister of the Crown or the Prime Minister. It is not admitted that he created or acquired any of the 1946 Settlement Papers "by virtue of" any such office.

3. As a matter of law, evidenced by custom and practice, papers created or otherwise acquired and retained by a Minister of the Crown in the course of his official duties ("Ministerial Papers") have at all material times remained the personal property of that Minister upon his ceasing to hold that office and are capable of being dealt with and disposed of by him in any way in which he thinks fit, subject to any directions to

the contrary given by the Cabinet or the Prime Minister and subject to restrictions on disclosure of information contained in Ministerial Papers under the Official Secrets Acts or other statutes and under the duty of confidentiality applicable to Ministers.

4. The Defendants admit that the following directions (but no others) as to the property in Ministerial Papers were in force during parts of the material time (ie. Sir Winston Churchill's periods of service as a Minister or Prime Minister before the 31st July 1946):

(a) in respect of the period from 17th August 1917 to 4th November 1919, the direction contained in the Minutes of War Cabinet Meeting 217 of 17th August 1917 (set out as Exhibit "P.M.A.2")

(b) in respect of the period subsequent to the 21st March 1934, the direction contained in the Minutes of Cabinet Meeting 11(34) of 21st March 1934 (set out as Exhibit "P.M.A.3"), as modified by the Note of Sir Winston Churchill to the War Cabinet dated 23rd May 1945 and the direction contained in the Minutes of Cabinet Meeting 51(46) of 23rd May 1946 (both set out in Exhibit "P.M.A.8").

c) in respect of records of the Committee of Imperial Defence a ruling of that Committee of 1908.

The Defendants will refer to the documents above referred to for their full terms and effect.

5. The directions referred to in paragraph 4 above had no retrospective effect. Alternatively, any retrospective effect was limited to Ministerial Papers of Ministers holding office at the date of the relevant direction.

6. The Defendants deny that any of the Relevant State Papers, other than those which fall within the directions specified in paragraph 4 above, were at any material time before the date of the 1946 Settlement the property of the Crown, and put the Plaintiff to proof as to which (if any) of the Relevant State Papers fall within these directions.

7. If any of the Relevant State Papers were at the date of the 1946 Settlement or at any material time prior thereto the property of the Crown, such Papers were converted so that a cause of action accrued to the Crown:

(a) by Sir Winston Churchill taking or keeping possession of such Papers on leaving or changing office from time to time

(b) in respect of Papers then in his possession, by his refusal by letters dated 19th November 1934 and 18th June 1935, to return documents to the Cabinet Office

(c) by his execution of the 1946 Settlement on 31st July 1946 and delivery of possession of the 1946 Settlement Papers to the Archive Trustees at that time.

Accordingly, the title of the Crown to such Papers was by virtue of the Limitation Act 1939 or previous Limitation Acts extinguished at the expiration of 6 years from the date of such act of conversion.

8. Sir Winston Churchills' letter dated 19th November 1934 (referred to in paragraph 5(2) of the Points of Claim and paragraph 7(b) above) constitutes a rejection by him of any claim by the Crown to a proprietary interest (legal or equitable) in the Relevant State Papers and not, as alleged in the Points of Claim, an acknowledgement of his trusteeship.

9. It is denied that Sir Winston Churchill was at any time a constructive trustee of the Relevant State Papers or any of them for the Crown. The Defendants will contend:

(a) that if any of the Relevant State Papers were at the date of the 1946 Settlement the property of the Crown, any right of action of the Crown rested exclusively on the Crown's ownership thereof in law and there is no justification for inferring a constructive trust in order to make good the failure of the Crown to take action within the period allowed by the Limitation Acts

(b) that the duties owed by a Minister or the Prime Minister to the Crown are public or constitutional duties and are not fiduciary duties

(c) that any duty (fiduciary or other) as to preservation of secrecy or confidentiality of Ministerial Papers is enforceable by other remedies such that there is no ground for inferring or imposing any constructive trust

(d) that the burden of proof of any unconscionable conduct such as to give rise to any constructive trust on the part of Sir Winston Churchill is on the Plaintiff who is put to pleading and proof thereof.

10. It is admitted

(a) that the Archive Trustees are and were volunteers

(b) that the several Archive Trustees knew as part of their general knowledge the positions as Minister of the Crown and Prime Minister held by Sir Winston Churchill, and that many of the 1946 Settlement Papers would not

have been created or acquired by Sir Winston Churchill but for the fact that he held those positions.

The Defendants do not know or believe that any of the 1946 Settlement Papers were at the date of the 1946 Settlement held by Sir Winston Churchill on express or constructive trust for the Crown and do not admit that any of their predecessors as Archive Trustees had any such knowledge or belief.

11. If Sir Winston Churchill or the Archive Trustees were at any time trustees of any of the Relevant State Papers the Plaintiff's claim is barred by waiver, release, laches and acquiescence. Without prejudice to their right to reply on other matters, the Defendants will rely on the following facts and matters:-

(a) the Crown knew, at all material times after receipt of the above-mentioned letter of 19th November 1934, of Sir Winston Churchill's intention to retain Ministerial Papers and to settle them on trusts continuing after his death

(b) the Crown knew, at all material times, of the general nature of the Relevant State Papers and that he had retained possession of them upon ceasing to hold office as Prime Minister in July 1945

(c) the Crown knew, at all times after 17th December 1951, that the Relevant State Papers were subject to a trust (Exhibit "P.M.A.12" p. 9) and knew, at all times after 27th June 1952, of the existence and terms of the 1946 Settlement (Exhibit "P.M.A.12" pp. 14-17) and that the Archive Trustees were asserting their title to the Relevant State Papers (Exhibit "P.M.A. 12" pp. 33-34, 38-40)

(d) the Crown knew of and encouraged the Archive Trustees' intention to execute the 1963 Settlement prior to its execution (Exhibit "P.M.A.12 pp. 21-23, 38-40, 45-49) and was provided with a copy prior to its execution (Exhibit "P.M.A.12" p.80)

(e) the Crown, at a date which is not known to the Defendants but was described in December 1968 as having been "some years ago" (Exhibit "P.M.A.13" p. 39) removed from the 1946 Settlement Papers all papers which were considered to have a high security content

(f) the Crown took no steps until the commencement of these proceedings on 16th December 1993 to pursue any claim it might have to recover the Relevant State Papers from the Archive Trustees notwithstanding

(i) the death of Sir Winston Churchill in January 1965 and

(ii) the abandonment in or about September 1971 of negotiations as to the final disposal of the 1946 Settlement Papers (Exhibit "P.M.A. 14")

(g) the Crown did not (to the best of the knowledge and belief of the Defendants) enter into any communication at all with the Archive Trustees between September 1971 and March 1989

The delay by the Crown has resulted in a loss of evidence of persons concerned in dealings or communications between the Crown, Sir Winston Churchill and the Archive Trustees for the time being relating to the 1946 Settlement Papers.

The 1969 Correspondence

12. Paragraphs 7 to 9 of the Points of Claim are admitted, save that the quotations set out in paragraphs 7(a) and (b) refer to informal statements by Sir Norman Brook as to the likely attitude of the Crown and not to statements by the Crown.

13. Paragraphs 10(a) and (b) of the Points of Claim are admitted. It is admitted that most (but not all) of the 1946 Settlement Papers are still in the custody of Churchill College, but it is denied that they "should be" in such custody. The transfer of the 1946 Settlement Papers to the Bodleian Library and Churchill College, and their subsequent preservation by those institutions, resulted from arrangements made with them by the Archive Trustees and not from performance of or reliance upon the agreement between the Archive Trustees and the Crown.

14. Paragraphs 11 and 12 of the Points of Claim are denied. The Defendants contend:

(a) that the agreement contained in the 1969 Correspondence was an understanding not intended to give rise to legally enforceable rights

(b) that if the agreement contained in the 1969 Correspondence gave rise to legally enforceable rights, it was intended to continue only for a reasonable time pending negotiation of a final agreement and ceased to have effect or became terminable in 1971 when negotiations for a final agreement were discontinued

(c) alternatively, that the agreement, being based on the assumption that the 1946 Settlement Papers would ultimately be given to Churchill College (see Exhibit "P.M.A.12" p.2) ceased to have effect or became terminable upon that assumption ceasing to hold good

(d) in the further alternative, that the agreement contained in the 1969 Correspondence was intended to cover, at most, the duration of the period (which has now expired) of the writing of the official biography of Sir Winston Churchill and ceased to have effect when that biography was completed

(e) that if the agreement contained in the 1969 Correspondence is still enforceable, it is applicable only to documents contained in the 1946 Settlement Papers which, in the public interest, still need to be kept secret and confidential and that to the best of the knowledge and belief of the Defendants the 1946 Settlement Papers include no such documents.

15. If (which is denied) the 1969 Agreement has the meaning pleaded in paragraph 12 of the Points of Claim, the Defendants will contend that the Archive Trustees at the time of the 1969 Agreement would have been acting in breach of trust in entering into that Agreement, and that the Crown appreciated or should have appreciated that the Archive Trustees were so acting. The Defendants will contend that an agreement that the 1946 Settlement Papers should permanently and irrevocably and without consideration be placed in the custody of the Bodleian Library and/or Churchill College could not have been entered into without disregarding the interests of the beneficiaries under the 1963 Settlement in the 1946 Settlement Papers, which were then and are now of very great value.

16. Paragraph 13 of the Points of Claim is denied.

<u>The 1946, 1963 and 1990 Settlements</u>

17. Paragraph 14 of the Points of Claim is admitted. It is also admitted that clause 2(j) of the 1963 Settlement expressly incorporates Clause 11(ii) of the 1946 Settlement.

18. The Defendants will so far as necessary rely on clause 2(b) of the 1963 Settlement which conferred on the Trustees a power of resettlement "discharged either wholly or partially from the trusts powers and provisions of the [1946 Settlement] and this Deed" and on the corresponding provisions of clause 7 of the 1946 Settlement, as authorising the execution of the 1990 Settlement without the inclusion therein of a clause equivalent to clause 11(ii) of the 1946 Settlement.

19. In any event, Clause 11(ii) of the 1946 Settlement

(i) is as a matter of constitutional law invalid because it attempts to confer rights and impose duties in relation to a private settlement on the holders of the ministerial offices therein specified

(ii) in unenforceable at the suit of the Crown or the holders of any of the specified offices because they have no interest in the 1946 Settlement or rights thereunder capable of recognition by the law

(iii) was (as is apparent from clause 1 of the 1946 Settlement) included for the purpose of preventing disclosure of the contents of documents which, in the public interest, needed for the time being to be kept secret and confidential and had by the date of the 1990 Settlement become obsolete, since by that date (to the best of the knowledge and belief of the Defendants) none of the contents of any of the documents referred to in clause 11(ii) needed to be kept secret or confidential.

SIR WILLIAM GOODHART QC
ANDREW WALKER

SERVED this 20th day of July 1994 by Goodman Derrick of 90 Fetter Lane, London, EC4A 1EQ, Solicitors for the Defendants.

CH - 1993 - H - No. 8050

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

B E T W E E N:-

HER MAJESTY'S ATTORNEY GENERAL
Plaintiff

- and -

(1) IAN MONTROSE
(2) HENRY WINSTON SPENCER CHURCHILL
Defendants

POINTS OF DEFENCE

GOODMAN DERRICK
90 Fetter Lane
London
EC4A 1EQ

Tel: 071 404 0606
Ref: CXW/1696j

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...RTMENT OF ...
...IONAL HERITAGE

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...ondon SW1Y 5DH
...hone: 071-211 6255/6/7

...n Phillips CB, Permanent Secretary

C - PS/Mr Phillips
Mr Jenkins (TSOIs)
Miss Andrews

this page

↓ Provided that I can reply substantively by the end of the month or early August, I should prefer not to send an interim reply which suggests that we are uncertain of our ground.

20 July 1994

PERS
21.7.

Sir Robin Butler

Content to send draft letter at A pl?

MJZ 20/7.

...s' advice to me enclosing a draft
...inston Churchill MP. Mr Phillips
He has also commented that it

jul94\20chur

cc Miss. O'Mara
Mr. Jenkins
Miss. Andrews
Mr. Carpenter
Miss. Morrison
Miss. Fassnidge

DEPARTMENT OF NATIONAL HERITAGE
2-4 Cockspur Street,
London SW1Y 5DH
Telephone: 071-211 6255/6/7
From Hayden Phillips CB, Permanent Secretary

Ms Melanie Leech
PS/Sir Robin Butler
Cabinet Office
70 Whitehall
London SW1

20 July 1994

Dear Melanie

THE CHURCHILL ARCHIVE

You will have seen Paul Jenkins' advice to me enclosing a draft reply for Sir Robin to send to Winston Churchill MP. Mr Phillips agrees that that letter is right. He has also commented that it is clear that Winston Churchill is still trying to negotiate rather than follow up the agreed offer of how we should proceed.

Yours

RACHAEL REYNOLDS
PRIVATE SECRETARY

CABINET OFFICE
H94/1030
21 JUL 1994
FILING INSTRUCTIONS
FILE No

36

FROM: PAUL JENKINS
QUEEN ANNE'S CHAMBERS

TEL: 210 3256

DATE: 19 JULY 1994

PS/MR PHILLIPS

cc: PS/Sir Robin Butler
Miss O'Mara
Miss Andrews
Mr Carpenter
Miss Morrison
Miss Fassnidge

THE CHURCHILL ARCHIVE

Melanie Leech sent me a copy of her letter to you of 14 July in which she requested a draft reply to Mr Churchill's letter of 12 July. Mr Churchill's letter is disappointing and his proposal unacceptable. Sir Robin made it quite clear at our meeting on 15 June that any suspension of hostilities would have to be on the basis that the Trustees made no attempt to sell any part of the papers whilst negotiations were taking place. Nevertheless they now seek to reserve the right to sell some of those papers which we claim cannot be sold without our consent.

I have always been anxious to avoid a premature opportunity to test our consent claim. It is clearly the weakest part of our case and, if it is resolved unfavourably for us before the ownership of the State papers is determined, the risk of the Archive being dispersed will be much greater. Unfortunately however we respond to Mr Churchill's letter we run the risk of triggering a court hearing on the consent issue in the near future and Mr Carpenter and I are agreed that we should discuss the position further with our counsel before responding in detail. In particular I want to be quite clear just how robust our counsel are likely to be if we need to try and obtain an injunction to prevent any sale without our consent. Unfortunately the earliest date for a meeting with counsel is 28 July but we will provide a draft response for Sir Robin to send to Mr Churchill as soon after then as possible. In the meantime I attach a draft holding reply.

Paul Jenkins

PAUL JENKINS

CABINET OFFICE
H94/1021.V.
19 JUL 1994
FILING INSTRUCTIONS
FILE No

DRAFT LETTER FROM SIR ROBIN BUTLER TO WINSTON S CHURCHILL MP

THE CHURCHILL ARCHIVE

Thank you for your letter of 12 July.

As you will appreciate the second proviso in your letter is rather disappointing in the light of our meeting last month when I explained that any suspension of the litigation would only be acceptable to the Government on the basis that no attempt was made by the Trustees to sell any part of the papers whilst the clock was stopped. It is also not clear to me how the proviso is consistent with the observations in the final sentence of your letter. We need to reflect further on the points you raise and I hope to be able to respond more fully by the end of the month.

PREM 35

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref. A094/2088 ✓

14 July 1994

Dear Rachael,

The Churchill Archive

--- I attach a letter with Sir Robin has received from Winston Churchill MP following his meeting with Sir Robin, Lord Rothschild and Mr Phillips on 15 June. I should be grateful for advice on how Sir Robin should reply to Mr Churchill's letter and in particular to the two provisos proposed by the Trustees to the suspension of the litigation proceedings. No doubt you will wish to discuss the draft reply with Mr Jenkins and I am therefore copying this letter to him and to Michael Carpenter and Pat Andrews.

Yours ever,

Melanie

Melanie Leech
(Private Secretary)

Ms Rachael Reynolds
PS/G H Phillips Esq CB
Department of National Heritage

CABINET OFFICE
H Internal...
14 JUL 1994
FILING INSTRUCTIONS
FILE No.

SQUERRYES LODGE
WESTERHAM
KENT TN16 1SJ
0959-56 35 35
0959-56 28 97 (Fax)

11080

12 July 1994

Dear Robin,

The Churchill Archive

Further to your letter of 23 June and my reply of 30th, I am writing in regard to the proposal which you kindly made at the end of our meeting, recorded in paragraph 14 of the Note for the Record, on which I have now had the opportunity of consulting the Trustees.

The Trustees have asked me to thank you for your proposal regarding the suspension of the litigation initiated by the Government through the Treasury Solicitor last December. They are willing to accept this proposal, subject to two provisos:

1. The suspension of 'friendly litigation', following the submission of Points of Defence later this month, is being done with a view to trying to conclude a settlement for the purchase of the Churchill Archive in the reasonably near future and certainly before the end of the year, without resort to further litigation. This suspension obviously cannot be open ended and the Trustees would propose that it can be determined by either side at one month's notice.

2. The Trustees would undertake not to sell any part of the Archive the title to which is conceivably contested, but they must reserve their position in respect of those parts of the Archive which fall incontestably within the Trustees' ownership.

The Trustees have asked me to make it plain that, while they do not accept that any of the documents comprised in the Archive belongs to the Government given the conventions of the day prior to 1934 and the May 1945 Churchill Minute, in the interest of resolving the dispute over 'State' papers, they are prepared to co-operate fully in the exercise proposed by Lord Rothschild in assessing the value of what is indisputably the property of the Trustees.

As you will appreciate, more than three years have now elapsed since the Trustees formally offered the Government the opportunity to acquire the Churchill Archive at their meeting with you in May 1991. Since then, costs have been mounting. The Trustees have no resources available to defray these costs, other than the archives themselves. Accordingly, they have no alternative but to sell some part of the personal papers or one of the early literary properties, by private treaty or at auction, before the end of the year, hence the need for Proviso 2, above. Of course such sale, which the Trustees regret as it would breach the integrity of the collection which they have been at pains to maintain, would not need to proceed in the event that an overall agreement is meanwhile concluded between the NHMF and the Trustees for the purchase of the Archive as a whole.

Finally, I would confirm that, for our part, we stand ready to arrive at a fair compromise that would reflect the Government's claim and, furthermore, that we would agree to the deferment of the greater part of any overall payment until Lottery funds come on stream which, presentationally, would clearly be much more acceptable, both from the Government's viewpoint and our own.

Yours ever,

Winston

Winston S. Churchill

Sir Robin Butler, GCB, CVO,
Secretary of the Cabinet and
Head of the Home Civil Service,
Cabinet Office, 70 Whitehall,
London, SW1A 2AS

Covering CONFIDENTIAL

33

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A094/2042

11 July 1994

C. Miss Andrew

Dear Winston

Thank you for your letter of 30 June and for sending me your comments on the note of our meeting on 15 June prepared by my Private Secretary. I enclose a further copy of the note revised in the light of your comments. As you will see, all of your comments have been incorporated as you wished in the text although in paragraph 8 I have recorded the comment at the end of the paragraph so as to retain the sense of the paragraph. I hope this is acceptable to you.

I should also comment on your amendment to paragraph 5 (and more generally) that the Government would not necessarily accept that Sir Winston's Memorandum was confirmed by the Attlee Government of 1946 but, given the 'without prejudice' nature of our meeting, I have of course no objection to that being recorded as your view.

I am copying this letter and the enclosure to Jacob Rothschild and Hayden Phillips.

Yours ever,

Robin

Winston Churchill Esq MP
House of Commons
London SW1A 0AA

CONFIDENTIAL

Ref. AO94/1784.AMD

NOTE FOR THE RECORD

Sir Robin Butler had a meeting on Wednesday 15 June with Winston Churchill MP, Lord Alexander, Lord Rothschild, Mr Phillips, Ms Nayler and Mr Jenkins to discuss the Churchill Archive.

2. Mr Churchill said that he was present not only in his capacity as a beneficiary of the Churchill Archives Trust, but also as head of the Churchill family. He was concerned that the primary objective of both the family and the Government might be lost and that the Archive might be broken up and/or leave the UK in consequence of the litigation now in train. Lord Alexander had accompanied him at his request as a friend and supporter, not in a legal capacity. Mr Churchill said that it was clear that the Trustees and the Government had been close to agreement the previous Autumn on the disposal of the Archive. The Secretary of State for National Heritage had announced on 11 October 1993 that an offer had been made to the Trustees. However out of the blue the Government had suddenly proceeded to litigate. The Trustees were confident of their position in the litigation but were aware that the litigation was likely to be protracted and expensive and that the outcome was uncertain, not least because it would cover largely unchartered territory. Given the community of interest which he believed existed between the Trustees and the Government to keep the Archive intact, in the UK and at Churchill College, he felt that both parties had a duty to explore the possibility of a settlement before the litigation became too protracted and expensive.

3. Sir Robin Butler said that it had consistently been the government's wish to keep the papers in the Churchill Archive together (and housed at Churchill College). It had supported the NHMF in seeking to negotiate a fair price for the Archive, taking account of the family's interests. It had however to take account of public interest and of the responsibility to account to Parliament for the use of public funds. Any price paid for the Archive had to be fully justified in this context; problems in establishing such justification had arisen largely through the uncertainty over title to the papers. In addition historians had advised the government that many of the documents in the Archive were duplicated in the PRO, implying that the Archive papers' value to the government was correspondingly less. Notwithstanding these factors, the government had been prepared to try to negotiate a (necessarily defensible) settlement with the Trustees. The discussions had broken down latterly largely because it had not been possible to establish with Peregrine Churchill what papers were at his disposal and might be taken out of the Archive if the government did not have funds to make the entire purchase immediately. In addition it was clear that the price the Government felt justifiable for the complete Archive was lower than that which the Trustees were prepared to accept. The Government had therefore been forced back to litigation to try to clarify the question of title although it recognised that it thereby incurred a risk that it might have to pay a higher price for the Archive in the longer term.

4. Mr Churchill said that he accepted that there was an important and legitimate public interest for the government to keep in mind. He stressed there was no element of secrecy or confidentiality attaching to the papers which were 50-100 years old and, in the case of the official papers, copy documents of those already in the PRO which he agreed had little intrinsic value of their own. Indeed the Sotheby's valuation obtained by the Trustees had indicated that the sole value of the official papers (where there were no marginal annotations) was as part of the total Archive.

5. Continuing, Mr Churchill said that the Trustees were enjoined by the terms of the Trust established by Sir Winston Churchill to seek a fair price for the Archive on behalf of the beneficiaries. Sir Winston had not had the chance in his lifetime to make money in the City or in business and had understood that in bequeathing the Archive this was the single most valuable asset he could bequeath and it was with deliberation that he had left it to his heirs, rather than to Churchill College or the British Library. There was no question of the Trustees trying to sell back the Government its own property: any State papers that properly belonged to the State would be returned freely. It was clear that there had been no impropriety by Sir Winston, in terms of the conventions that applied at the time, in taking away certain State papers with him when he left office. Mr Churchill said that he was advised in respect of the pre-1934 papers that the government's claim was tenuous and indeed that certain archives from that period had been sold. He cited the purchase of the Lloyd George Archive by Lord Beaverbrook. Between 1929 and 1939 Winston Churchill had been out of office and the position in respect of the period 1939-45 had been covered by Sir Winston's Memorandum of 23 May 1945, subsequently confirmed by the Attlee Government. The Trustees were therefore confident of their position both as to title and in respect of the 1990 Sotheby's valuation which they understood had been confirmed by NHMF's own valuation from Quarritch. In fact recent market interest in Churchilliana suggested that the Archive may now have increased in value.

6. Mr Churchill said that if the litigation were to continue, the Trustees had indicated they would seek an up-to-date valuation and would be forced to dispose of part of the Archive, either the literary papers or the Jennie papers, by private treaty or public auction to fund the litigation given that they had no other resources at their disposal. Neither the Trustees nor Mr Churchill believed that it was in the national interest to break up the Archive in this way and they were concerned that,

if the litigation continues further, this would be the end result, whichever side won. Mr Churchill had been assured by the Trustees that they were willing to compromise with a view to reaching a settlement. The option remained for the Government to purchase the Archive at a fair price having regard to the 1990 valuation (also confirmed by the NHMF's valuation). The Government should bear in mind that if this window of opportunity were missed, even a positive outcome from the Government's point of view, was likely to lead to the Archive being broken up and/or sent overseas. Alternatively it might have to face the question of whether to buy the Archive at a significantly higher price than had earlier been on offer.

7. Lord Alexander noted that the litigation involved very unusual and complex issues, as much ones of public law (Crossman-type issues) as private law. The government's view of its duty was impeccable but nonetheless each side should try to weigh the alternatives and form a balanced view on possible settlement at as early a stage as possible. There was clearly a question how the accretion factor of papers' status in contributing to the integrity of the Archive should be taken into account on each side. Lord Rothschild noted that the issues appeared to become more difficult as time went by. No single issue had been as time consuming for the NHMF as the Churchill Archive and they had thought it right to devote considerable resources to an Archive of this importance. Considerable efforts had already been made to try to establish which papers had undisputed ownership and which were in dispute but he did not think that a position had yet been reached which was acceptable to both sides. Mr Phillips agreed that it might be possible to agree at a certain level of generality but as more detailed consideration was undertaken it had in the past become clear that there were other unresolved issues which were more difficult.

8. Mr Churchill said that he thought that the provision included in the 1946 settlement that papers should not be disposed of without the authority of the Prime Minister of the

day had been inserted because of Winston Churchill's concern to protect the confidentiality of what were at the time still sensitive papers were he to suffer an early death. Sir Robin noted that the Government had a different understanding and that the Government's understanding appeared to be supported by the exchanges of correspondence in 1964. (Mr Churchill subsequently noted that paragraph 4 of Sir Winston's Memorandum of 23 May 1945 states: "Public disclosure of the contents of War Cabinet documents will be governed by the established rules. In particular, such documents may not be quoted or published without the permission of the Government of the day".)

9. Mr Churchill said that one way the public interest argument might be addressed was by the separation of the documents into two notional piles, with an agreed total value, and agreeing a valuation to discount the total price to take account of the value of what was properly the property of the State. Ms Nayler noted that it was unlikely that the two sides would be able to agree on the size and composition of the piles and that this was one of the purposes of the litigation. It was also likely that there would continue to be a gap between the price the Government thought it justified to pay for those papers clearly not the property of the State and a price which would be acceptable to the Trustees. Mr Churchill commented that there would need to be give and take on both sides.

10. Sir Robin Butler said that he would be happy to consider such an approach. One of the difficulties in discussions with Peregrine Churchill had been in understanding the definition of those documents he had proposed removing from the Archive. In any case, it was clearly preferable to be dealing with the Archive as a whole. Mr Churchill said that Peregrine Churchill's offer to take out some documents for sale at a later stage had been intended to be helpful to the Government and certainly not to introduce any complication. Mr Churchill confirmed that what was now being discussed was the entire Archive.

11. Lord Alexander said that the private law question of the requirement to obtain the Prime Minister of the day's permission to sell documents from the Archive had yet to be explored. He said that it was clear that if the legal proceedings continued the Trustees would have to sell a portion of the papers and would no doubt seek the Prime Minister's permission to do so. Should the Prime Minister refuse such permission, it would be interesting to see his "reasonable grounds" for doing so.

12. Sir Robin Butler said that it was reasonable to ask the Government to specify those documents to which it laid claim and to indicate what it considered to be a reasonable price for the remainder. Mr Churchill said that he hoped that the Government would accept that the Court was likely to apply the conventions prevailing at the time and not the current conventions in respect of the removal of documents and be able to reassess its claim to documents in that light. Sir Robin Butler commented that it was clear from the papers at the time that there was unease about the documents which Winston Churchill had taken away with him.

13. Lord Rothschild noted that several attempts had already been made to establish the relative claims and positions in relation to subsets of the Archive and it may therefore not be possible to make much further progress now. Mr Jenkins noted however that the approach now under discussion was currently already underway as part of the litigation process. It was an extremely complicated process and would not produce results quickly. Sir Robin noted that it was however possible to undertake a "shortcut" to take out the undisputed documents and value them separately, and then to try again to reach an agreement on the remainder. Mr Phillips noted that this would give two opportunities for further negotiations: one following the "shortcut" and the second at the conclusion of the much more detailed analysis currently underway as part of the litigation process.

14. Sir Robin noted that, even while the "shortcut" process was underway, litigation would be continuing. He wondered whether, to meet the Trustees' concerns over funding, it would be possible for them to seek to "stop the clock" on litigation in the meantime. Mr Jenkins noted that the ball was currently in the Trustees' court to produce points of defence: one alternative would be for them not to do so or alternatively a natural break would arise after the points of defence had been submitted. Lord Alexander suggested that lawyers discuss this further; he thought it was helpful however for the points of defence to be submitted so that the government understood the Trustees' position but that it should then be possible to stop the clock on both sides. Sir Robin said that it would be acceptable to the Government if the Trustees wished to stop the clock on litigation after the points of defence had been submitted, provided that, while it remained stopped, no attempt was made by the Trustees to sell any part of the papers. Mr Churchill said that he would convey this to the Trustees.

Melanie Leech

MELANIE LEECH

17 June 1994

FOL 32

HO94/563 ✓

MISS LEECH

CHURCHILL ARCHIVE: MEETING WITH WINSTON CHURCHILL MP AND LORD ALEXANDER

Thank you for sending me a copy of your letter of 5 July to Paul Jenkins and the record of the meeting with Winston Churchill MP and Lord Alexander incorporating Mr Churchill's proposed amendments.

On item ii I would have thought your point about line 11 of paragraph 5 would be well made if the phrase read:-

> "own property; any papers that properly belonged to the State would be returned freely."

though Mr Churchill may not accept such a change.

On item iii it may be too simplistic to say that Sir Winston's memorandum of 23 May 1945 was "subsequently confirmed by" the Atlee Government but Paul Jenkins is checking this in detail.

I do not think I can comment on the other amendments, the hand of Mr Montrose is clear but Paul, I understand, is suggesting a form of words to cover them all so that it is made clear that whilst the amendments may be accepted that does not mean that we accept the content.

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
7 July 1994

CABINET OFFICE
H 94/689
31
08 JUL 1994
FILING INSTRUCTIONS
File No

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

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Ms M Leech
Private Secretary to
Sir Robin Butler GCB CVO
Cabinet Office
70 Whitehall
LONDON SW1A 2AS

Please quote:

Your reference:

Date: 7 July 1994

COVERING CONFIDENTIAL

Dear Melanie,

CHURCHILL ARCHIVE: MEETING WITH WINSTON CHURCHILL MP AND LORD ALEXANDER

Thank you for sending me a further version of the note for the record of the meeting on Wednesday 15 June containing amendments proposed by Mr Churchill.

I agree that only the amendments you have identified should give us pause for thought and I also agree with your observations in paragraphs i and iv. I have no independent recollection of the point you consider in paragraph ii but I am less nervous than you about allowing it to stand. Even if the note was referred to in the court proceedings I do not think anyone could take a point on our failure to challenge Mr Churchill's statement.

I too am quite clear that Mr Churchill did not read from Sir Winston's memorandum and I share your concern that the suggested addition to paragraph 8 changes the balance of the paragraph. I suggest, therefore, that we offer to include the new words in brackets at the end of the paragraph as an afterthought by Mr Churchill.

Finally, like you I am troubled by the reference to the 1945 memorandum which you highlight in paragraph iii. Again, I have no independent recollection of the words used by Mr Churchill but we would not necessarily accept that the memorandum of 23 May 1945 was confirmed by the decision of Attlee's Cabinet on 23 May 1946. Although it is not worth making a tremendous fuss about this point it might provide us with a suitably low-key opportunity to emphasise the without prejudice nature of our meeting. I suggest, therefore, that you comment to the effect that although we do not recollect Mr Churchill suggesting that Sir Winston's memorandum was confirmed by the Attlee government

Continued/.....2

we are of course content, given the without prejudice nature of the meeting, for this to be recorded as his view.

These points apart I have no other comments. Do let me know if you need any further advice or if you feel there would be any awkwardness in responding in the way I have suggested.

I am copying this letter to Rachael Reynolds and Pat Andrews.

Yours ever,

PAUL JENKINS

PRO
30

MISS FASSNIDGE

cc: Ms Andrews
Mr Carpenter

Thank you for your recent note recording your conservation of 28 June with Mr Wissun. I have also seen Mr Carpenter's annotation of 4 July.

The understanding which emerged at Sir Robin Butler's meeting with Winston Churchill and Lord Alexander last month would suggest a temporary truce after service of the Points of Defence. I have yet to see Mr Churchill's response to the note of the meeting but, assuming he accepts it as accurate, there will need to be some discussion between lawyers about the nature and extent of the truce. Mr Churchill, as I recall, was particularly anxious that it was not open-ended but both Hayden Phillips and I stressed that the preliminary work necessary to try and settle the matter might take some time. Sir Robin also made it clear at the meeting that any truce would be on the basis that the trustees would take no steps to dispose of any part of the Archive in the meantime.

I think we need to be ready to discuss these matters with the trustees' solicitors in the near future but before we can have a sensible discussion we need a clearer idea from Pat Andrews about the likely length of time she will require. Pat may in turn, I suspect, want a clearer idea from us of what is required. Might a meeting be a useful idea?

PAUL JENKINS
Room 342/3 Tot
Ext. 3256
6 July 1994

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part 1
29

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A094/2000 ✓

5 July 1994

Dear Paul,

Churchill Archive: Meeting with Winston Churchill MP

and Lord Alexander

Sir Robin Butler has received a letter from Winston Churchill MP containing his proposed amendments to the note for the record of the --- meeting on Wednesday 15 June. I attach a copy of the note for the record amended to take account of Mr Churchill's comments. For ease of reference the amendments are underlined, and you have of course already received a copy of the original version of the note.

I should be grateful for your thoughts on the suggested amendments. A number are unproblematic but there are one or two that caught my eye:

i **Paragraph 5 lines 8 - 9:** I do not recall that Mr Churchill said that Sir Winston had left the Archive to his heirs "rather than to Churchill College or British Library" but, subject to your views, I do not think this amendment causes a problem.

ii **Paragraph 5 lines 11 - 12:** I do not think that Mr Churchill referred to any State papers "that properly belong to the State". If he had done so, I imagine that Sir Robin may have wished to point out that in the government's view <u>all</u> State papers properly belong to the State and I am therefore nervous about accepting this amendment unchallenged in the note of the meeting. I should be grateful for your views.

/iii **Paragraph 5**

Paul Jenkins Esq
Treasury Solicitor's Department

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iii **Paragraph 5 lines 21 - 22:** I should be grateful if you could confirm the accuracy of the proposed amendment quoting Sir Winston Churchill's memorandum of 23 May 1945.

iv **Paragraph 6 lines 16 - 17:** This is not my recollection of what Sir Winston said but, subject to your views, I do not think it necessary to challenge it.

v **Paragraph 8 lines 7 - 11:** During this part of the conversation, Mr Churchill did not in fact refer to Sir Winston's memorandum of 23 May 1945 and it seems to me that to insert the reference as he suggests changes the balance of the paragraph. The amendment has the effect of linking Sir Robin's comment in the subsequent sentence ("Sir Robin noted that the Government had a different understanding ...") directly to the Memorandum's provision on copying and publication of documents where it was in fact said in the context of disposal of the documents.

These are the amendments that struck me; and I should be grateful if you could cast your eye over the others and for your comments.

I am copying this letter and the attachment to Rachael Reynolds (PS/Hayden Phillips) and to Pat Andrews and would, of course, be grateful also for their comments.

Yours ever,

Melanie

Melanie Leech
(Private Secretary)

CONFIDENTIAL

Ref. AO94/1784.AMD

NOTE FOR THE RECORD

Sir Robin Butler had a meeting on Wednesday 15 June with Winston Churchill MP, Lord Alexander, Lord Rothschild, Mr Phillips, Ms Nayler and Mr Jenkins to discuss the Churchill Archive.

2. Mr Churchill said that he was present not only in his capacity as a beneficiary of the Churchill Archives Trust, but also as head of the Churchill family. He was concerned that the primary objective of both the family and the Government might be lost and that the Archive might be broken up and/or leave the UK in consequence of the litigation now in train. Lord Alexander had accompanied him at his request as a friend and supporter, not in a legal capacity. Mr Churchill said that it was clear that the Trustees and the Government had been close to agreement the previous Autumn on the disposal of the Archive. The Secretary of State for National Heritage had announced on 11 October 1993 that an offer had been made to the Trustees. However out of the blue the Government had suddenly proceeded to litigate. The Trustees were confident of their position in the litigation but were aware that the litigation was likely to be protracted and expensive and that the outcome was uncertain, not least because it would cover largely unchartered territory. Given the community of interest which he believed existed between the Trustees and the Government to keep the Archive intact, in the UK and at Churchill College, he felt that both parties had a duty to explore the possibility of a settlement before the litigation became too protracted and expensive.

3. Sir Robin Butler said that it had consistently been the government's wish to keep the papers in the Churchill Archive together (and housed at Churchill College). It had supported the NHMF in seeking to negotiate a fair price for the Archive, taking account of the family's interests. It had however to take account of public interest and of the responsibility to account to Parliament for the use of public funds. Any price paid for the Archive had to be fully justified in this context; problems in establishing such justification had arisen largely through the uncertainty over title to the papers. In addition historians had advised the government that many of the documents in the Archive were duplicated in the PRO, implying that the Archive papers' value to the government was correspondingly less. Notwithstanding these factors, the government had been prepared to try to negotiate a (necessarily defensible) settlement with the Trustees. The discussions had broken down latterly largely because it had not been possible to establish with Peregrine Churchill what papers were at his disposal and might be taken out of the Archive if the government did not have funds to make the entire purchase immediately. In addition it was clear that the price the Government felt justifiable for the complete Archive was lower than that which the Trustees were prepared to accept. The Government had therefore been forced back to litigation to try to clarify the question of title although it recognised that it thereby incurred a risk that it might have to pay a higher price for the Archive in the longer term.

4. Mr Churchill said that he accepted that there was an important and legitimate public interest for the government to keep in mind. He stressed there was no element of secrecy or confidentiality attaching to the papers which were 50-100 years old and, in the case of the official papers, copy documents of those already in the PRO which he agreed had little intrinsic value of their own. Indeed the Sotheby's valuation obtained by the Trustees had indicated that the sole value of the official papers (where there were no marginal annotations) was as part of the total Archive.

5. Continuing, Mr Churchill said that the Trustees were enjoined by the terms of the Trust established by Sir Winston Churchill to seek a fair price for the Archive on behalf of the beneficiaries. Sir Winston had not had the chance in his lifetime to make money in the City or in business and had understood that in bequeathing the Archive this was the single most valuable asset he could bequeath and it was with deliberation that he had left it to his heirs, rather than to Churchill College or the British Library. There was no question of the Trustees trying to sell back the Government its own property: any State papers that properly belonged to the State would be returned freely. It was clear that there had been no impropriety by Sir Winston, in terms of the conventions that applied at the time, in taking away certain State papers with him when he left office. Mr Churchill said that he was advised in respect of the pre-1934 papers that the government's claim was tenuous and indeed that certain archives from that period had been sold. He cited the purchase of the Lloyd George Archive by Lord Beaverbrook. Between 1929 and 1939 Winston Churchill had been out of office and the position in respect of the period 1939-45 had been covered by Sir Winston's Memorandum of 23 May 1945, subsequently confirmed by the Attlee Government. The Trustees were therefore confident of their position both as to title and in respect of the 1990 Sotheby's valuation which they understood had been confirmed by NHMF's own valuation from Quarritch. In fact recent market interest in Churchilliana suggested that the Archive may now have increased in value.

6. Mr Churchill said that if the litigation were to continue, the Trustees had indicated they would seek an up-to-date valuation and would be forced to dispose of part of the Archive, either the literary papers or the Jennie papers, by private treaty or public auction to fund the litigation given that they had no other resources at their disposal. Neither the Trustees nor Mr Churchill believed that it was in the national interest to break up the Archive in this way and they were concerned that,

if the litigation continues further, this would be the end result, whichever side won. Mr Churchill had been assured by the Trustees that they were willing to compromise with a view to reaching a settlement. The option remained for the Government to purchase the Archive at a fair price having regard to the 1990 valuation (also confirmed by the NHMF's valuation). The Government should bear in mind that if this window of opportunity were missed, even a positive outcome from the Government's point of view, was likely to lead to the Archive being broken up and/or sent overseas. Alternatively it might have to face the question of whether to buy the Archive at a significantly higher price than had earlier been on offer.

7. Lord Alexander noted that the litigation involved very unusual and complex issues, as much ones of public law (Crossman-type issues) as private law. The government's view of its duty was impeccable but nonetheless each side should try to weigh the alternatives and form a balanced view on possible settlement at as early a stage as possible. There was clearly a question how the accretion factor of papers' status in contributing to the integrity of the Archive should be taken into account on each side. Lord Rothschild noted that the issues appeared to become more difficult as time went by. No single issue had been as time consuming for the NHMF as the Churchill Archive and they had thought it right to devote considerable resources to an Archive of this importance. Considerable efforts had already been made to try to establish which papers had undisputed ownership and which were in dispute but he did not think that a position had yet been reached which was acceptable to both sides. Mr Phillips agreed that it might be possible to agree at a certain level of generality but as more detailed consideration was undertaken it had in the past become clear that there were other unresolved issues which were more difficult.

8. Mr Churchill said that he thought that the provision included in the 1946 settlement that papers should not be disposed of without the authority of the Prime Minister of the

day had been inserted because of Winston Churchill's concern to protect the confidentiality of what were at the time still sensitive papers were he to suffer an early death. Indeed paragraph 4 of Sir Winston's Memorandum of 23 May 1945 states: "Public disclosure of the contents of War Cabinet documents will be governed by the established rules. In particular, such documents may not be quoted or published without the permission of the Government of the day". Sir Robin noted that the Government had a different understanding and that the Government's understanding appeared to be supported by the exchanges of correspondence in 1964.

9. Mr Churchill said that one way the public interest argument might be addressed was by the separation of the documents into two notional piles, with an agreed total value, and agreeing a valuation to discount the total price to take account of the value of what was properly the property of the State. Ms Nayler noted that it was unlikely that the two sides would be able to agree on the size and composition of the piles and that this was one of the purposes of the litigation. It was also likely that there would continue to be a gap between the price the Government thought it justified to pay for those papers clearly not the property of the State and a price which would be acceptable to the Trustees. Mr Churchill commented that there would need to be give and take on both sides.

10. Sir Robin Butler said that he would be happy to consider such an approach. One of the difficulties in discussions with Peregrine Churchill had been in understanding the definition of those documents he had proposed removing from the Archive. In any case, it was clearly preferable to be dealing with the Archive as a whole. Mr Churchill said that Peregrine Churchill's offer to take out some documents for sale at a later stage had been intended to be helpful to the Government and certainly not to introduce any complication. Mr Churchill confirmed that what was now being discussed was the entire Archive.

11. Lord Alexander said that the private law question of the requirement to obtain the Prime Minister of the day's permission to sell documents from the Archive had yet to be explored. He said that it was clear that if the legal proceedings continued the Trustees would have to sell a portion of the papers and would no doubt seek the Prime Minister's permission to do so. Should the Prime Minister refuse such permission, it would be interesting to see his "reasonable grounds" for doing so.

12. Sir Robin Butler said that it was reasonable to ask the Government to specify those documents to which it laid claim and to indicate what it considered to be a reasonable price for the remainder. Mr Churchill said that he hoped that the Government would accept that the Court was likely to apply the conventions prevailing at the time and not the current conventions in respect of the removal of documents and be able to reassess its claim to documents in that light. Sir Robin Butler commented that it was clear from the papers at the time that there was unease about the documents which Winston Churchill had taken away with him.

13. Lord Rothschild noted that several attempts had already been made to establish the relative claims and positions in relation to subsets of the Archive and it may therefore not be possible to make much further progress now. Mr Jenkins noted however that the approach now under discussion was currently already underway as part of the litigation process. It was an extremely complicated process and would not produce results quickly. Sir Robin noted that it was however possible to undertake a "shortcut" to take out the undisputed documents and value them separately, and then to try again to reach an agreement on the remainder. Mr Phillips noted that this would give two opportunities for further negotiations: one following the "shortcut" and the second at the conclusion of the much more detailed analysis currently underway as part of the litigation process.

14. Sir Robin noted that, even while the "shortcut" process was underway, litigation would be continuing. He wondered whether, to meet the Trustees' concerns over funding, it would be possible for them to seek to "stop the clock" on litigation in the meantime. Mr Jenkins noted that the ball was currently in the Trustees' court to produce points of defence: one alternative would be for them not to do so or alternatively a natural break would arise after the points of defence had been submitted. Lord Alexander suggested that lawyers discuss this further; he thought it was helpful however for the points of defence to be submitted so that the government understood the Trustees' position but that it should then be possible to stop the clock on both sides. Sir Robin said that it would be acceptable to the Government if the Trustees wished to stop the clock on litigation after the points of defence had been submitted, provided that, while it remained stopped, no attempt was made by the Trustees to sell any part of the papers. Mr Churchill said that he would convey this to the Trustees.

MELANIE LEECH

17 June 1994

THE TREASURY SOLICITOR

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FOLIO 28

Miss P.M. Andrews
Cabinet Office
Historical & Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: L92/3737/HF/L8

Your reference: HO94/536

Date: 4 July 1994

Dear Miss Andrews

CHURCHILL ARCHIVE

In Hilary Fassnidge's absence on leave I write to acknowledge receipt of your letter to her dated 30 June with its enclosures, copies of which I note have gone also to Michael Carpenter.

I think it likely that Miss Fassnidge will have informed you that she is now on leave and is due to return on 26 July.

Yours sincerely

Anthony Lawton

A.D. LAWTON

CABINET OFFICE
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CABINET OFFICE

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FOL 27

HO94/536 ✓

Miss H Fassnidge
Treasury Solicitor's Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

30 June 1994

Dear Hilary

CHURCHILL ARCHIVE

At our meeting on 26 May I undertook, inter alia, to discover whether the Bodleian Library still holds any papers from the Churchill Archive. I have now been able to check; they do not.

I also said that I would let you know, on my return from leave, where we had got to on Classes 1, 8 and 9. Because Nina Veitch's leave and mine overlapped I am afraid this has been somewhat delayed. However, between us Nina and I have looked at all the volumes in Class 1 which, from the notes made during our earlier exercise, seemed likely to contain official papers.

On further examination, although the volumes contain quite a sprinkling of correspondence etc on official, headed, paper the content is mainly personal. I attach a list of the volumes looked at from which I think you will see what I mean.

I doubt whether very much in Class 1 could be claimed by us as "State papers" other, perhaps, than Volumes 357, 365, 385 and 390 plus, maybe, one or two other pieces in other volumes. I need, however, to check with Nina what the Palace have said about handwritten letters from the Royal Family.

We have also looked at a sample of volumes from Class 9 (total 212!) These are a complete mixture of extracts from Hansard and printed material but with lots of notes for speeches, many handwritten, some typed. The handwritten notes are on all sorts of different paper, much of it official, some plain, some written on the backs of envelopes (official envelopes!). Examples of contents are attached.

Nina points out that it is clear that WSC thought he had the right to use and publish these speeches. He received considerable payment for each volume of speeches which were then published abroad; Canadian, American, French, Swedish, Turkish etc etc; even braille rights were given.

Whilst my view is that the notes and briefing for speeches made in an official capacity should be regarded as official papers we perhaps need to consider the implications of WSC having apparently been free to sell - there is evidence of Cassels having purchased the rights to at least one of the volumes and they paid out a fee of £3,000. I should perhaps add that if my view is accepted, listing the official material in Class 9 is going to take a long time!

Before she went away Nina also did a lot of work on Class 8 - that part of it which is at Cambridge. I attach her note to me so that you can see her thinking on this Class. As soon as she is back (next week) perhaps we can get together to consider what we say to the Trustees about these three classes.

Michael Carpenter's advice was that we should do nothing about that part of Class 8 which is at Sotheby's (or with the Trustees) until we hear the outcome of Sir Robin Butler's meeting with Mr Churchill on 15 June. Sir Robin has written to Mr C following the meeting - he has, so far as I am aware, not yet had a response.

We are also working away at the papers of other Ministers and other matters raised by Mr Montrose; I shall let you have a report on that just as soon as I can.

I am sending a copy of this letter and enclosures to Michael Carpenter.

Yours ever

Pat

MISS P M ANDREWS

CHARTWELL
CLASS 1

1/39 1903 Letter from Lord Knollys at Buckingham Palace conveying the King's reproof that WSC did not attend levee. WSC not in office at the time.
Not official

1/74 1908 August 1908. Correspondence to and from Board of Trade about whether WSC should subscribe to the local Salvation Army.
Not official

1/80 1908 Copies of letter to and from Solicitors about Lord Randolph's will. All WSC's letters writtern on Colonial Office or Board of Trade notepaper but content obviously not official

1/95 1910 Handwritten letter from WSC to Reginald McKenna dated 2 August 1910 about a report on Lt W O Hozier, WSC's brother-in-law, by the Captain of his ship, Capt Ryan. 2 copies on Home Office paper. McKenna replies on 4 August on Admiralty paper. WSC dated 8 August thanks McKenna for his assistance. Handwritten internal note to First Lord dated 3 August 1910 saying that Ryan's report has been referred to Sir F Bridgeman who agrees with Capt Troubridge's views. Handwritten letter by WSC on Home Secretary crested paper to unknown recipient about George Robbins and his career prospects in his department.
WSC was Home Secretary in 1910 hence, no doubt, use of Home Office and Home Secretary paper, but topics seem to be personal.

25 October letter to WSC in King's own handwriting thanking WSC for letter of sympathy on death of brother-in-law "Frank".

1/99 1911 One Home Office letter, personal in content
Correspondence with Buckingham Palace about tickets for Coronation of George V - private.

1/105	1912	Volume contains only two pieces. A copy of a covering memo from G Bonham-Carter, Adjutant of the Queen's Own Oxfordshire Hussars to "GOO Hussars" attaching a copy of a Confidential War Office letter for information. Secondly the Confidential letter on headed War Office paper from E W D Ward about the need for safe custody of documents in connection with the Mobilization scheme - asking General Officer Commanding to bring the matter to the attention of all officers serving under his command. WSC was First Lord of the Admiralty in 1912 so this correspondence must presumably have been related to his service rather than Ministerial/political career and is probably to be regarded as private.
1/112	1912	Copy of a letter from John Churchill dated 8 December. On Admiralty paper headed GHQ to Lord Rothschild. Content personal.
1/113	1914	Contents private
1/117	1915	Letters from Jack Churchill addressed "My dear" giving detailed account of war activity in 1915, some written on Admiralty notepaper.
1/124	1909	Mainly personal letters dated 1916 but one copy letter dated 3 February 1909 on Board of Trade headed notepaper from WSC to the Prime Minister about numbers of ships and effect on naval policy Probably political rather than official
1/129	1918	Official telegram marked SECRET from WSC to General Birdwood about "Jack". Plain paper, no signature - probably file copy of telegram.
1/132	1919	Copy of handwritten telegram from the King to WSC (not King's own handwriting) thanking him for kind letter of sympathy 23 January 1919.
1/138	1921	Contents private
1/157	1922	Folios 39 and 40 are letters from "Henry" on Buckingham Palace headed notepaper thanking WSC for lending him his polo ponies

1/188 1926 Contains copy letters probably written on official notepaper but top copies sent out eg letter of 4 April 1926 to unknown person begins:-

> "I was so much interested in your book that I have consumed a morning which ought to have been devoted to the budget in dictating this note while the impression was fresh in my mind..."

17 page letter about principles of energy/the relationship between music and mathematics and other topics.

1/200 1928 Handwritten letter on India Office paper from "F" thanking WSC for "charming letter" which was a great comfort - suggesting lunch.

Exchange with PS/King (Stamfordham) about WSC's visit to Balmoral - need to attend Cabinet thus later arriving than intended, need to take and accommodate shorthand writer - Miss Fisher. Stamfordham's letters on B Palace headed notepaper, WSC's are copies and thus on plain paper - not really personal, presumably invited in Ministerial capacity - Chancellor/Exchequer.

1/200 also includes a handwritten letter from Stamfordham expressing birthday wishes from HM King and Queen 30 Nov 1928.

1/256 1934 Folio 94 is a handwritten letter from "Albert" of "55 Broadway" dated 30 November 1934 - regrets for inability to attend party.

1/273 1935 letters to Mrs Churchill in a diary form called "Chartwell bulletins" one passage refers to German air superiority and the misleading of Parliament. WSC was not in office in 1935 so these would be his "personal" views presumably.

1/284 1936 Letters from Buckingham Palace on headed notepaper from "Ellie" in very affectionate terms on receipt of sympathy letters from the Churchills to The Queen on the death of The King. Folio 28 is a typed telegram from Edward RI, "thanks for charming letter".

1/302 1937 Letter from Privy Purse Office, Buckingham Palace, saying HM will grant his patronage to an Exhibition of Marine Paintings 18. 5. 1937. WSC not in office, so personal.

1/324 1938 Typed copy of a letter presumably from WSC, though not signed, to the Duke of Windsor 12 Sept 1938 presenting him with a copy of "Marlborough" and saying things are bad and getting worse (war). WSC not in office

1/351 1939 Folios 65-71 comprise correspondence with Met Police in March 1939 re threatening letter from supposed IRA member. Met Police letters on officially headed paper addressed to Mrs K Hill at Chartwell. WSC not in office.

Folios 106/107 correspondence with HM Office of Works. 15 Oct 1939 from Personal Private Sec, Room 70, West Block 1. REply dated 19 Oct 1939 on officially headed notepaper signed E A Smith for Controller of Supplies about supply of coke to the flat occupied by WSC as First Lord.

1/355 1940 Folio 19 letter from Maj Gen Lauderdale, Director of Mobilization, War Office, Thames House dated 4 April 1940 about Major the Hon A M Bertie who has applied for enrolment in Army Officers' Emergency Reserve - gave WSC as reference.
Folio 20 is a typed reference initialled by WSC dated 6 April on Admiralty-headed notepaper - says has not seen Bertie for many years. He is a brother of WSC's sister-in-law, Lady Gwendoline Spencer-Churchill.

Folio 21 passes this information to the Director of Mobilization.

Folio 22 is an acknowledgement on official War Office headed notepaper dated 11 April 1940 Ref E/73207 M.3. (A.G.12(b)

Folio 54 is a note to Mr Seal on 10 Downing Street paper dated 6 July 1940. Initialled in red by WSC it attaches a note about the Comtesse de Reneville who is British born, lst cousin once removed of WSC married to a French officer and anticipating problems in getting ARP work in this country.

The volume also includes an account in The King's own handwriting of Air Raid Incident at Buckingham Palace 13 September 1940 An envelope annotated in pencil "Published in Vol 2 of War Memoirs".

1/357 1940 Exchanges, some on officially-headed notepaper about the difficulty caused by rationing to the carrying out of official entertainment at Chequers and at No 10. A H Harvey, writing on Ministry of Food paper on 28 June 1940 suggests a system such as that used for Foreign Ambassadors whereby special ration books are issued. OFFICIAL

1/361 1941 Contains a letter from The Queen in own handwriting about arrival of "Tiger". Exchanges with the Palace about grouse, venison, peaches sent by Their Majesties also birthday wishes telegrams.

1/365 1941 Chequers Trust - household accounts - further correspondence about "diplomatic coupons" OFFICIAL

1/369 1942 includes a very long letter from Randolph at Folio 11 about an operation he went on to sink ships in Benghazi. Says he had permission of CO to send account to WSC. marked SECRET and PERSONAL. letter of 15 November 1942 about a conversation Randolph had with "Flandin" - many references also to "Darlan".

1/375 1943 Cipher telegram marked "MOST SECRET" 14 September 1943 at Folio 53 - message to Randolph about not needing a by-election now. Volume contains much correspondence from Randolph who says he censors his own letters!

1/380 1944 Folio 52 is a letter from The Queen in her own handwriting 14 November 1944 thanking WSC for letter of sympathy on death of her father.
Folio 37 is a letter from Princess Elizabeth thanking WSC for birthday present.
Folio 57 is a letter on official paper from Lambeth Bridge House re Plate at 10 Downing St.

1/384 1944 The last three folios are exchanges between Mrs K Hill, Personal Private Secretary and R H Crudass, War Cabinet Offices, sending cheque for Mrs Churchill's return fare to Quebec. Crudass acknowledges receipt on official notepaper on 12 December 1944. Mrs Hill's letter is dated 11 December, her note to WSC asking him to sign the cheque is dated 21 November 1944.

1/385 1944 Contains correspondence between Mrs K Hill, Personal Private Secretary and Col Sir Eric Crankshaw of the Government Hospitality Fund (writing on Treasury Chambers paper) about overseas guests entertained at Chequers on official business. Crankshaw arranges for Treasury Accountant to make payments to the Secretary of the Chequers Trust.
Also contains correspondence with Ministry of Food about "diplomatic food coupons".
OFFICIAL

1/386 1945 Contents private

1/387 1945 Folio 18 letter from Randolph which mentions MULBERRY, PLUTO, OVERLORD dated 5 June 1945. Codenames now all known.

1/390 1945 Official lists of guests on official business at Chequers, diplomatic ration books etc.
OFFICIAL

Class 8 Literary

A great deal of this class was not available being at Sotheby's. Annex 'A' gives a list of those pieces which have gone there, with a brief description of their content according to the PRO Index/Catalogue of the Chartwell Archive.

The pieces still at Churchill College are files of correspondence which are in a very orderly state in regard to years and content. for example when a piece is described as containing business correspondence with Cassells, Butterworth or Scribners, or as containing a record of accounts paid or letters of thanks etc the content is exactly as stated and there is no official content whatsoever. However in the pieces described as containing "various correspondence" there are official letters. But in the main these letters are the sort that officials would write to present day researchers or authors should information be sought, confirmation required or in the vetting of manuscripts written by officials describing official events. The fact that the help to Churchill was beyond what could have been expected then (or now) is beside the point. The correspondence in the 1920s contains comment from people to whom Churchill sent drafts and/or galley proofs for comment. They included Vansittart (PUS) at the Foreign Office who writes at various times that he has read them at home at leisure and shows them to his wife when they are of particular interest. Sir Maurice Hankey from the Offices of the Cabinet writes in a personal vein. Both these men write on official notepaper and the content is typed but the tone is personal and they recall personal memories of events described in the text.

Correspondence with the Committee for Imperial Defence, Historical Section, Military Branch is well to the fore (their Air Branch less so). General Edmonds of the Military Branch is especially helpful and a great deal of his correspondence although on headed notepaper is in manuscript. The Branch do a lot of research for Churchill into published sources in UK and abroad but also obtain information not yet available anywhere (eg in a response to a request from Churchill for numbers of British wounded between 1916 to 1918 they persuade an RAMC historian to calculate these hurriedly). At one point General Edmonds recommends as a research assistant Charles Hordern a retired Army Officer. When Churchill does employ Hordern, General Edmonds finds him a desk in his own office to keep an eye and guide him in the right direction. Charles Hordern not only has this privilege but writes to Churchill on the headed notepaper of the Branch and manages to send typed letters into the bargain! Therefore all such letters signed by Hordern have to be considered personal. In one letter Churchill is asked not to acknowledge the help of the Branch because this would encourage others to seek similar help. So while this correspondence goes well over what would normally be accorded (if at all) the tenor and emphasis is very much inclined to a personal angle and the letters are therefore in my opinion not state records in the fullest sense of that term.

I did however find one War Cabinet document on the "Question of Manpower" Paper C-185 together with a note by the Secretary dated 2 April 1918. This document was in piece 8/203. I have seen it before and there is probably a copy in the official class of that period or later. Nothing else in 8/203 is official.

Examples at Annex 'B' will, I trust, serve to illustrate some of the points made above in that they show the general trend of similar papers. Others throw some light on the practice of the time in regard to clearances and vetting of manuscripts which may help in considering whether my opinion above about state papers is justified or not.

J G VEITCH

27 May 1994

CHARTWELL CLASS 8 LITERARY (WITH SOTHEBY'S)

PIECES

1- 6	Articles	1890-1899	Type Press Proofs Material
7- 9	Savrola	1900	Typescript
11-14	Articles	1900-1901	Type Material Print
17-18	?	1903-1904	? Press
25-26	Lord Randolph Churchill	1906	Proofs Reviews
29	My African Journey	1908	Draft and Proofs
34	Articles	1916-1917	
36-37	Articles	1918-19	
39	Articles	1920	
42	Preface to New Edition of Lord A Churchill	1922	
43	Article Trade Union and Coop Society	1922	
51	Articles	1923-24	
52	World Crisis Preface		Copy
53-74	World Crisis I		Copy
75-95	World Crisis II		Copy
96-109	World Crisis III		Copy
110-132	World Crisis I		Proofs
133-156	World Crisis II		Proofs
157-176	World Crisis III		Proofs
177-179	World Crisis	(Fisher Letters) - etc	Material
180-181	World Crisis I		Notes and Material
182-184	World Crisis II		Notes and Material by Translators
185-191	World Crisis III		Notes and Material
191-192	Miscellaneous		Printed Sources
193	World Crisis I and II		Reviews
194	World Crisis III		Reviews
195	World Crisis		List of recipients

PIECES (Contd)

200	Articles	1924	
202	Articles	1925-1927	
215	Articles	1927	
221	Articles	1928	
231	Articles	1929	
233-244	The Aftermath		Copy
245-252	The Aftermath		Proofs
253-254	The Aftermath ?		Notes and Material
255	The Aftermath ?		Notes and Prints
256-265	The Aftermath		Notes and Material Print Reviews
266	Creed and Failure		Notes
279-283	Articles	1930	
285	My Early Life		Reviews
298-304	Articles		
305	Eastern Front		Copy and Proofs
316-318	Articles	1932	
319	Thoughts and Adventures		Copy
338-340	Articles	1933	
341	The Great War		
342-344	Marlborough III		Copy various Chapters
345-358	Marlborough IV		Copy
359	"		Debris of copy
360-361	Marlborough I		Proofs
362-367	Marlborough III-IV documents		Proofs
368-407	Marlborough IV		Proofs
408-416	" for Professor Trevelyan		Proofs
417-425	" for E Marsh		Proofs
426	" for Major Burns		Proofs
427-428	" for Brig Pahenham Walsh		Profs
429-432	Marlborough I		Notes and Material Transcripts
433-434	"		Transcripts

PIECES (Contd)

435-439	Marlborough II		Notes and Material
440-444	"		Translations
445	"		Material
446-449	Marlborough III		Draft Notes Material Transcript
450-452	"		Translations
453	"		Material
454-459	Marlborough IV		Drafts Notes and Material
460-465	"		Transcripts of Sources
466-472	"		Translations
473	"		Material
474	"		Material for Translation
475-479	"		Maps
480-481	"		Notes Material Printed Sources
498-501	Articles	1934	
518-521	Articles	1935	
522	My Life (News of World)	1935	Copy
523	"		Proofs
524	"		Press Ctgs
525-527	The Reign of George V (Film)		Scenarios
540-545	Articles	1936	
563-577	Articles	1937	
578	Great Contemporaries		Copy
579-587	"		Proofs
588	"		Notes and Material
589	Short Biographies		Copy
590-591	"		Proofs
592	American Impressions		Copy
593	"		Proofs

PIECES (Contd)

609-621	Articles	1938	
623	Articles	1938	Material
640	While England Slept	1939	Alridge edition
641-656	Articles	1939	
665-676	Articles	1940	
677-679	Not Uneventful		Copy
689-697	Articles	1941	
703-706	Articles	1942	
723	Articles	1945	
724-743	English Speaking Peoples		Copy
744-745	"		Additional Copy and Fragments
746-751	English Speaking Peoples	Vol I Book I	Proofs
752-759	"	Vol I Book II	Proofs
760-765	"	Vol I Book III	Proofs
766	"	Vol I	Additional Proofs
767-773	"	Vol II Book IV	Proofs
774-778	"	Vol II Book V	Proofs
779-781	"	Vol II Book VI	Proofs
782	"	Vol II	Additional Proofs
783-786	"	Vol III Book VII	Proofs
787-790	"	Vol III Book VIII	Proofs
791	"	Vol III Books VIII and IX	Proofs
792	"	Vol III Book IX	Proofs
793-797	"	Vol IV	Proofs Newspaper Proofs
798	"	Vol I	Material and Notes
799	"	Vol II	Notes and Material
800	"	Prof Brogan's Notes	
801-802	English Speaking Peoples?		Notes and Printed Material

Annex B

8/40 ff 50

Foreign Office SW1

July 11th 1921

Dear Mr Churchill

I must apologise for not having let you have an earlier reply to your letter of July 5th but it has required a little time to check the facts.

Your collection of what passed with Japan in 1914 is not quite correct. This will be clear to you if you can spare the time to glance through the enclosed précis of the correspondence passed at the time.

From this you will see that every step taken by Japan between August 2nd and her ultimatum to Germany of August 23rd was taken on the basis of the Treaty obligation. It was from us that on August 6th the incentive came for her to take action against Germany. It is true that as the result of subsequent reflection based on what our Minister at Peking said, we later sought to limit her sphere of action and that in this we failed. But it was undoubtedly on our direct request that she took action against Germany in the Far East. Once the push had been given, no doubt public feeling in Japan against Germany was worked up purposely, just as it was here in England. There was naturally a good field for this in Japan, for her treatment at the hands of Germany in 1895 had always rankled with - and rightly so. But it could not be maintained that it was that feeling and not our direct application which brought her into the war. The terms of Japan's ultimatum to Germany did in some respect resemble those within the 1895 memorandum handed to her by Germany, France, and Russia. but there is no shadow of doubt that the reason for Japan's entry into the war was primarily the Alliance and out appeal of August 6th that she should hunt our and destroy Germany commerce raiders. You will probably remember that message was sent after personal consultation between yourself, Lord Gray, and the First Sea Lord. I have shown this correspondence to Lord Curyon,

Yours sincerely

Eyre Crowe

Above followed by précis of telegrams on the matter from August 1st - August 23rd. Then the text of the ultimatum.

8/40

Foreign Office
London SW1

ff 92

10 December 1921

Dear Mr Churchill

You asked about the hour at which the text of the Austrian ultimatum and Serbia was received here on July 24, 1914. I have looked up the papers and I find the text of the ultimatum was personally handed to Sir Edward Grey by Count Mesondorff and the Record of Conversation which took place was ready for telegraphing to Sir Maurice de Bunser at 1.30 PM. This confirms Tysell's recollection that the interview took place about 11.30.

ff 93 Telegram on Official Form but NOT Numbered

From Admiralty — 12.50
To C in C Home Fleet and all Flag Officers concerned — (above time in pencil and circled)

The Conference of Flag Officers ordered to assemble at Portland tomorrow is adjourned to a later date.

LB 24.7.14

Telegram sent

[Appears to be a later copy - not the original]

8/41 The Entente and Morocco
Austria and the Ballians
How much Germany ignored England from 1-21 July 1911
(Memorandum)

My dear Secretary of State

I enclose a memorandum showing quite clearly has how much Germany ignored my England from July 1 to July 21 1911 when Mr Lloyd George made his speech at the Mansion House. It also shows how effectively that speech made the German realise that England was not be ignored in the matter.

I should welcome any statement you could make showing how powerfully the present Prime Minister contributed on that occasion towards clearing up the matter. Nobody at that time could have spoken with greater effect at Berlin than Lord George.

I also enclose a letter to you from Headlam Mosley our Historical Adviser Foreign Office on the origin of the entente together with an article of his in the Encyclopaedia Britannica which you might think it worthwhile to read up at your leisure.

Perhaps you might feel inclined to let Mr Headlam Mosley see the proofs of that part of your book which deals with these matters as sometimes it happens that prominent men like yourself may commit themselves to some apparently quite innocuous statement to which they may expose themselves; they are then seized upon by innumerable people who are watching for any mis-statement that our statesmen make with a view to wide spread mis representation.

When you have the leisure I would very much appreciate an opportunity of discussing with you the Agader Business to which there is a very unpleasant background. Cailleaux who was at that time French Prime Minister, did "the dirty" on us and furnished the Germans with a strong case of which, to my surprise, they made very little use.

Yours very sincerely

W Agsally (?)

ff 17 Mr Lloyd George's speech of July 21 1911 on Agadèr crisis: reasons: (Typed on minute paper)

ffs 71 and 72 FO note marked Private. A Manuscript enclosing note on Delcassé and Algeciras, and Morocco

ff 105 (Typed throughout except where indicated)
NID 0141/22 Question of Censorship of the Naval Official History.

SECRET (faded in red pencil) Admiral Sir George Keys (in pencil)

Concur in the necessity for careful censorship of the Naval Official History. It is of great importance that Admiralty our telegrams should not be quoted verbatim

Sighed M Filymaurice
DNI
24.11.22

Various clues or references have allowed to appear [SIC] in Print particularly Mr Fulson Young's book and the press criticisms of that book. the Magdeburgh incident may be useful to account for such references, but it should be our policy ti disclose as little as possible of our actual procedure or its results.

Intd R K
22 12 22

ffs 133-142 Notes on aircraft carriers by Capt D G Murray Historical Section (Air Branch)

AH 21/6/84 Copy No 4

ff 143 Admiralty
18 December 1922

Dear Bechenham

The Foreign Office have transmitted to me your request for copies of telegrams between Mr Churchill and Admiral Mark Kerr early in the war, in regard to the policy which should be pursued in certain eventualities. The FO point out to me that the telegrams were sent in their most secret cypher, and they therefore ask that we should send only paraphrases. The First Lord is, of course, quite happy to let Mr Churchill have the copies of these telegrams but, in deference to the FO request, I am afraid they must be in the nature of paraphrases.

To make the case rather more complete, I am sending you a copy of Gaselee's* letter to me

Yours sincerely

W A Medrow

*FO letter then copied ref (L 4208/4408/407)1922

8/44 ffs 46

Telegram on Official Admiralty (pink) form

From Admiralty 4.8.14

To All ships

General message. The War Telegram will be issued at midnight, authorising you to commence hostilities against Germany. But in view of the terms of our ultimatum they may decide to open fire at any moment. You must be ready for this.

Above Typed

Please supply exact hour

WSC.

Above in red and manuscript

Please supply exact hour

WSC.

Above typed directly below manuscript entry

8/44 ff 30 11 January 1923

Dear Mr Churchill

I am sending you with this an official letter. It would, of course, simplify matters very much if there was official authorisation that documents or confidential information should be communicated to you. Meanwhile, however, I should like to say that so far as I understand, there does not seem any reason why you should not continue if you desire to do so, to consult me and to send me the proofs of any parts of your book on which I could possibly be useful to you, for of course many of the matters which come up are not secret or confidential, and I should be very glad to continue, as I have hitherto done, to give any help in my power from my knowledge of the published literature. It might however, I understand, be desirable that you should not, even if you were proposing to do so, refer to any assistance I may been to you in the preface of your book, so that it shall not appear that the Foreign Office has in any way responsibility for it.

Yours sincerely

J W Headlam Morley

ff 47 Official telegram on Official (pink) form

From Admiralty

To All C in C's etc Date 4.6.14

I presume you have fully informed French Admiralty of our intentions, and that the closest co-operation has been established at all points with the French Fleet. If not, this should be done immediately.

Intd W S C
4.6

Above Typed: Following in red ink in ,manuscript

i) At what time was this sent

2) Surely it applies to the Mediterranean only. There was no French Fleet any where else

Not signed or initialled.

The comment is then typed below the manuscript version.

Folios 46 and 47 are not the original versions but copies supplied for a book.

8/203 SECRET War Cabinet Document

25/T/74

Final Revise of Draft Report of the Cabinet Committee on Man-Power Paper No G - 185

Note by the Secretary Plus Report. Dated 2 April 1918

In this file there is also a letter to Lt Col Sir Maurice Hankey asking for a copy of a paper of the Committee for Imperial Defence which "I wrote to the Minister of Munitions in Spring 1916 dealing with all kinds of mechanical warfare, tanks smoke screens, searchlights etc. I have several copies of it among my voluminous papers. But the search would be very lengthy and if you have a spare copy I should be grateful for it. Historical Section (Military Branch) respond in a manuscript letter on points" on which the Chancellor asked to be informed.

This file contains letters from WSC to various people asking for confirmation of points in his book: seeks comments on text and advice concerning revision of an earlier text. General Edmonds Military Branch of the Historical Section of Committee for Imperial Defence also comments on text and makes a few pencilled additions acknowledging help from varying sources including serving and retired officers.

ffs 76-78 Foreign Office returns three chapters of the book with corrections to the galley proof. Headlam Morley amends. The test is also revised by the Foreign Office Department of Overseas Trade (Development and Intelligence) but it seems to have been on an unofficial basis.

Maurice Hankey writing from the office of the Cabinet sends a reply about measures of International Organisation taken by Lloyd George after the fall of the Asquith Government.

8/204 Letter from War Office giving figures of War Casualties asked for in writing by WSC. Various letters from British Embassy Berlin on some subject obtaining information from German Official historical sources on their casualties, together with those losses incurred by Russia.

ff 35 C

O'Mally will go through papers of Committee for Imperial Defence more thoroughly and can rough out stories for the various theatres and pass them through Historical Section (Military Branch) to officers who can, from personal knowledge correct them.

ff 99

MOST SECRET 28 November 1926

My dear Chancellor

We have examined carefully the further passages of proofs of "The World Crisis" which you submitted to me on 13th instant. It has been necessary to take into account the line followed by the Admiralty in dealing t=with the proofs of the Official History (Naval Operations) and I find that certain deletions were there insisted upon which have a necessary repercussion on the text which you have submitted. The Admiralty consider the reason for these deletions to be as strong now as it was three years ago when they were made. Moreover, the Historian ought not be laid open to the charge of now having given full presentation of facts that must have been within his knowledge, otherwise the credit of the official history would suffer.

Accordingly in the passage of your text commencing "by the end of these books" the deletion of the following words is thought necessary viz: "over long periods" and "at least" in the first sentence. In the third sentence for "whenever" read "often when" and omit "always". and the following sentence commencing "Plans" to be omitted altogether. The concluding sentence of the paragraph should stop at "information" (the remainder being deleted), and "considerable" should be inserted before "stream".

The last sentence of the paragraph next following, which begins "His intention" is held to be contrary to the facts and credits the Admiralty with more definite information that they really possessed. We should be glad therefore if this also were omitted.

In the next paragraph the reference to the intentions of the Germans should disappear in its present form. It is undesirable that the greater details of our knowledge of German movements should be indicated than have already been given on Page 6 of the Official Narrative of the Battle of Jutland or on Page 323 of "Naval Operations" Volume 3.

In the paragraph dealing with the German's alternatives the whole passage from "had all the Admiralty information" to "had not been passed on" should go, as it is undesirable to refer to the German mine-sweeping signals.

There is one other point. You quote in extenso the Admiralty signal made at 112.35. It is most undesirable that any but the guarded sort of reference to be found in the publication above mentioned* should be made to this signal.

The Admiralty considered it necessary to omit from the Jutland Blue Book and its inclusion or any direct quotation in whole or in part in "The World Crisis" would give rise to most serious comment.

Yours very sincerely

W C Bridgeman

*See pages 326 and 328 of Official History and pages 20 and 30 of Narrative.

ff 102

Historical Section (Military Branch)
Committee of Imperial Defence
Audit House Victoria Embankment
London EC4

29:xi:26

My dear Chancellor

I enclose a paper which I got from Major Mitchell RAMC (formerly employed on the History) giving percentages of "Died of Wounds" for the British Forces. Could you kindly let me have the German percentage to copy. I saw the paper at 11 Downing Street and gave it back to you without copying it.

Yours sincerely

J C Edmonds

ff 103 Typed

War Office

25 November 1926

Dear General Edmonds

In reply to your letter of 23 instant I attach some figures which I hope will be of some service to you. They are the result of our research into medical statistics.

The figures for 1914-15 may be taken as being as accurate as any we shall get. Those for 1916-18 were hastily put together today for your requirements and may be subject to certain amendments later when, we have made further investigations.

It would interest me very much to see the figures sent you by the germans, and as they might prove to be of use in our own volume, I should be very glad if you would let me have a copy at your convenience.

Yours sincerely

F G Mitchell RAMC

ff 104 Table of casualties

ff 105 Admiralty

30th November 1926

My dear Minister,

With reference to your letter of 27th November we shall be happy to concede point (2).

As regards point (1), however, I am afraid it is necessary to insist, as we feel that the psychological effect of what you suggest on foreign intelligence departments would be to make them interested either in securing codes or in breaking codes in the future.

I am grateful to you for having agreed to [?] to the other suggestions of the Admiralty and anxious to meet you as far as I can.

Yours

W C Bridgeman

8/217 ff41-42
(L 4784/544/405)

Foreign Office SW1
1st August 1928

Dear O'Malley

I am sorry to have been a rather long time in replying to your various requests for Foreign Office papers, but I have been a good deal puzzled on the matter, and I now have a clear ruling from the Secretary of State.

I am to communicate to you any Foreign Office documents which were in the ordinary course communicated to Mr Churchill in his capacity as a Cabinet Minister.

It is understood - I think this was already adumbrated in the correspondence between Mr Churchill and Tyrell, but there is every advantage in putting it down in black and white - that you will send us the typescript of the new volume for careful scrutiny, which will naturally be done by Headlam-Morley in conjunction with the Political Departments concerned; and we in out turn undertake to give you all the assistance in our power towards correcting any errors or mis-statements that may appear in the projected work.

The despatch about the evacuation of Odessa was not circulated to the Cabinet, so I do not send it. As for Mustafa Kemal, you had remembered Lindsay's account of a ball he had attended at Angora, but that it so little historical value, and you were more probably thinking of his account of his farewell audience, which contains an admiral description of the man, and I send it herewith. You will see that it wants using with care! - and that there are a considerable number of passages which obviously should not be published in any form.

Yours sincerely

Stephen Gasalee

8/217 ff 43 4th August 1928
(Contd)

Dear Sir

Mr Churchill desires me to say that he has read your letter to Mr O'Malley. He will be delighted for Mr Headlam Morley to see everything relating to Foreign Affairs in his new volume, and looks forward very much to the kind of help he receive on previous occasions. He does not think that any difficulty will arise or that "careful scrutiny by Political Departments" will be required. On previous occasions Sir William Tyrell at Mr Churchill's request was good enough to read through passages about which Mr Churchill felt some doubt, and in practice scarcely any modifications were required. Should any point of doubt arise, Mr Churchill, would in any case have discussed it with Sir Austen, as of course he writes under the restraint and responsibility of a Minister. Mr Churchill has practically all the important material among his papers, which he guards and handles with the very greatest care and discretion.

Yours faithfully

Private Secretary,

Stephen Gasalle

8/218

Foreign Office
SW1

10 December 1928

Dear Mr Churchill

I have received the vast instalment of the Chapters of your book from O'Malley and am returning them to him with a certain number of minor suggestions and criticisms. In this part, so far as I have read, I find nothing which might call for observation from what I may call the Foreign Office point of view.

This applies especially to the chapters on Ireland and the publication of your correspondence with Mr Lloyd George and others there, with which I am of course in no way concerned. If in the later chapters there is anything I will write to you direct.

Yours very truly

J W Headlam Morley

Rt Hon Winston Churchill
11 Downing Street

8/218 (Contd) ff 26

Foreign Office

12 December 1928

Dear Mr Churchill,

I have read carefully and am now returning the four chapters about Russia, which I need not say I have read with great interest.

With regard to the details, I am afraid I can be of little assistance to you; I have no intimate knowledge of these complex Russian affairs and only in one or two places have I made suggestions and criticisms.

Concerning the larger question which is inevitably raised by this authoritative narrative, supported as it is in many places by the inclusion of memoranda and other documents, the view which I take is that in substance the whole is an explanation and a defence of the part which you took and the policy which you advocated while a member of the Cabinet and Secretary of State for War. This policy has in the past been severely criticised and undoubtedly these chapters will, when published be the subject of keen criticism and attack. This is inevitable. It is necessary for your purpose to state, as you do, with the greatness frankness and vigour and without reserve, the view you take about the Bolschevicks; it is equally necessary that you should criticise the policy on actions of the Allied Governments. But in doing so you are within your rights: your exposition of opinions and policy binds no one except yourself. Neither the British Government nor this Office are in any way compromised by what you write, nor, as far as I see it, can there be any objection taken to the publication of documents, all of which, as I understand, came into your hands at the time and are the necessary support of the argument. No doubt you will personally get from Mr Lloyd George (any anyone else) his consent to the publication of his private or semi-official letters to you.

I do not propose therefore to suggest that any further reference either to Lindsay or to Austen Chamberlain is necessary. I shall, however, leave on record here, a note embodying the contents of this letter so that if, as is not improbably, questions were raised in Parliament or elsewhere about these chapters when the book is published, the lines on which an answer could be made would be available.

I have noted in the margin and elsewhere a certain number of passages in which perhaps expressions could with advantage be modified or

softened; I do not know the real history of General Janin's surrender of Kolchak but you will no doubt be careful not to leave this part as it is written unless you are quite certain that the very severe criticism is justified and necessary.

Yours very truly

J W Headlam Morley

8/222

Foreign Office SW1

10th January 1929

CONFIDENTIAL

Dear Winston,

Owing to a few days absence in remote Norfolk I only received the two chapters of your book on my return yesterday afternoon. I read them at once. I should like to have discussed them with Lindsay but he is laid up and you ask pressingly for an immediate reply. I will take the responsibility therefore of giving my opinion without the benefit of Lindsay's advice.

It is a delicate task to be invited to censor a colleague's work and it is a novel one for, as I know, no Minister actually in office has ever yet written a volume on the history of our own days, the events of which are so fresh as still to be matters of international controversy. Frankly I wish the publication of your book could have been delayed until you were out of office, but, as this is impossible, the question I have to ask myself is whether there is anything in what you have written that is likely seriously to embarrass the conduct of our foreign relations. To this, as far as these two chapters are concerned, my answer is no. There is nothing which is so clearly dangerous as to justify me in saying that it must not be published. There is no quotation there or reference to secret documents which have not already been quoted or used by others and much of what you said in criticism of Wilson and of Baker has already been said in other words by the Editor of House's papers. There is, however, one sentence about which you yourself are doubtful, for you have put a marginal note "I am much in love with this, but I expect you will say d-!". I do not feel justified in saying that this sentence should not appear but I suggest for your consideration that it will not make your own task easier in securing such American co-operation as you need in the settlement of the reparation question. Further, have you not found by experience, as I have certainly done, that when, in writing a controversial letter, there has flowed from your pen some phrase you think particularly good, it is generally wisest to cut it our on revision. Although epigram is not much in my line, I often [SIC] once of twice regretted a two epigramic phrase I have never permanently regretted its omission. Ponder this, I beg, and decide for yourself. You will remember your comment to me on the Balfour note: that its' fault was that it was too good. Is not the same true of your own phrase? I return your proof.

Yours sincerely

Austen Chamberlain

It is out (MSS in red)

8/270 On Official Notepaper

Dear Mr Churchill

If you are proceeding with the Eastern Front volume I think I have found a suitable office to assist you and dig the stories out of the German and Italian accounts. He is Lt Col C Hordern retired Royal Engineer Aged 49 passed out at Woolwich and knows Italian German and French. I can put him on to the best accounts and indicate what there is in English. His address is the Army and Navy Club. I suggest £400-£500 a year.

Yours sincerely

J G Edmonds

Churchill engages Hordern and General Edmonds writes again.

"I have provided Col Hordern with a table in my office so I can look after him and let him make use of the books here." Asks for return of papers forwarded earlier.

Col Hordern then writes on Official Notepaper of the Military Branch from March 1930.

8/272 2 February 1930

My dear Edmonds

Herewith the Marne article in the shape in which it has gone to the Printer. I shall get a proof on Thursday. I shall be so glad if you will check it, or strengthen it in any way.

Brigadier General Sir James Edmonds CB CMG
66 Eveyln Garden
London SW7

Edmonds replied on official notepaper headed Historical Branch (Military Branch) Audit House Victoria Embankment EC4

8/287 Churchill requests Vansittart, Foreign Office to loan him copies of Foreign Office Print. Vansittart refers him to British Documents on the Origins of the War.

There are various letters from Historical Branch Military Section, from Hankey at the Officers of the Cabinet who writes he read the extremely interesting proofs at home and so did his wife - Dated 11/8/31. Gasalee of the Foreign Office also writes to Churchill (ref L 6306/161.492 of 212/10/31)

8/287 On Official Notepaper

Historical Section (Military Branch)
Committee of Imperial Defence
Audit House
Victoria Embankment London EC4

21 August 1931

My dear Hordern,

On no account should my name or mention of the Branch appear. We should have all sorts of people clamouring for help, apart from possible trouble in Parliament. Please thank WSC for his kindly thought, but say it is wisest to omit reference to the section and that I was glad to help in any way.

Yours ever

J E Edmonds

Historical Section etc

22nd August 1931

Dear Mr Churchill

On my enquiry here what was the exact form in which General Edmonds would prefer his name printed in the preface it was suggested to me that it was possible awkward questions might be asked if you announce publicly that help had been given by the General and this Official Section. I accordingly sent a copy of the preface to the General and as you will see from the copy of his reply which I enclose he is emphatic that no mention should be made. This leave my name standing alone, which is a little embarrassing, but cannot, I suppose, be helped.

I thin, however, you may perhaps have another look at the preface in this connection and I enclose the copy I sent to the General with his deletion, which he has so made that my own halo is enhanced.

While I cannot bring myself to sacrifice the mention you have so very kindly given me, I equally do not feel I can send the preface to press in this form without your first seeing it again. After all the real help came from Audit House; and I consider that to be named in your book is an honour not be dealt with by anyone but yourself.

I was delighted to hear from Brachen last night that he had been so successful with the serial rights, and I do congratulate both you and him. You may like to know that the first and urgent request from the London General Press is for 50 pulls of the final proof (at their expense). These I hope to be able to

let them have in time, if your final lot of pages come back to me by Monday; failing that, they will (they say) get sooner copies made from the set they now have which I have arranged to correct to date as soon as they let me know what ... they want to use. They tell me in London these will appear in the "Evening Standard".

Meanwhile I am waiting with great interest to see whether the present highly interesting political brings you back again; for your sake I hope not, although from every other point of view I wish it might.

Yours sincerely

Charles Hordern

Copy of Preface follows.

8/288

Office of the Cabinet
2 Whitehall Garden
SW1

August 11, 1931

Dear Col Hondern,

I am returning herewith the proofs of Chapters 1-21 of Mr Churchill's new volume of the World Crisis, together with a letter addressed to Mr Churchill containing my comments. The latter is in a separate envelope but unsealed. I think Mr Churchill will have to deal with it himself, as such comments as I have to make are in the form of suggestions, which may or may not commend themselves to him. In any case none of them are of great importance.

As you will see from my letter to Mr Churchill I have very much enjoyed the proofs and I am rather sorry to have missed the last three chapters.

I leave for the Continent tomorrow and do not expect to be back until about the 4th of September. I expect it will then be too late the last three chapters, or at any rate to make any contribution.

I have in a good many cases marked any printers errors or mis-spellings that I have noticed, as I know from experience it is useful to have an extra eye on such things but naturally I do not pretend to have read it from this point of view.

I have rather missed your maps and I think you must have had a rather hard task in completing them as none of my own maps, or even those of Ludendrof's book were entirely satisfactory.

Yours sincerely

M P A Harhey

Lt Col C Hondern
Army and Navy Club
Pall Mall

(Letter to Churchill is <u>not</u> in file)

CHARTWELL
CLASS 9

9/24	1907	Almost wholly manuscript notes (in various hands) for speeches written on Colonial Office headed paper, crested paper and backs of crested envelopes. 1 page headed 105 Mount Street. Not many dates given but catalogue shows this volume as 1907 when WSC was Under Secretary of State for the Colonies.
9/25	1907	ditto except 1 page from 12 Bolton Street.
9/35 9/36	1910	ditto except notes now on Home Office paper for speeches whilst Home Secretary on Home Rule, Women's Suffrage, House of Lords
9/83A	1928	Notes for speeches whilst Chancellor of the Exchequer. Some ms notes on backs of House of Commons envelopes, some briefing typed on "Board Room, Custom House, crested paper. Some printed material on Racecourse Betting Bill.
9/83B	1928	Volume almost entirely typed draft of Budget speech 1928 - <u>may</u> be the final version, difficult to tell - small plain paper annotated in red, some manuscript towards the end of the speech, also annotated.
9/84	1928	Typed notes on GR headed paper for speech in reply to Mr Lloyd George on local gov ernment finance/rates etc. Not clear who the speech is to be by or its date. Catalogue says Liberal amendment to Address but it refers to the Chancellor of the Exchequer's speech which suggests it is not notes for speech <u>by</u> the Chancellor. Manuscript notes on Treasury headed paper 1 May 1928 on Kerosene Duty Ms notes for 2nd Reading Finance Bill 5 June 28 on 11 Downing Street paper, plus printed material 14 6 28 Speech on Prayer Book measures - ms notes on plain paper 24 7 28 Speech on unemployment, ms notes on envelope backs (House of Commons) and on plain paper, annotated in red. 8 11 28 Unemployment debate, Note on GR paper and on plain paper.
9/142A	1940	typed copies of speeches in House of Commons in 1940, some annotated but they are copies

9/142B	1940	Tribute to N Chamberlain 12 11 40. Top copy amended/annotated on GR paper, 2 carbon copies. Opening of Parliament speech 21 11 40 Top copy on GR paper PM's statement in the House following British advance into Egypt 10 12 40 Top copy annotated in red written on GR paper, Hansard cuttings etc.
9/143	1940	Speeches to non House of Commons audiences. Notes and drafts typed on plain but obviously official paper abou the War.
9/159	1943	Speeches in House of Comons 1943 notes typed on plain paper. Folio 82 is top copy of a letter from Sir L Rowan on 10 Downing St paper attaching a copy of what PM wishes to say about new standing orders - PS/Chief Whip - wants Chief Whip to see it and speak about it to PM.

26

HO94/535

NOTE FOR RECORD

I spoke to Mrs Mary Clapinson at the Bodleian on Thursday 30 June. She confirmed that the Bodleian holds no papers from the Churchill Archive.

Turning to other matters she said that, surprisingly, the Macmillan papers have not yet reached her.

They are working on the Wilson papers and she will send me a list when it is ready.

I mentioned to her the question of the definition of "official or State papers". Mrs Clapinson said that their concern is sensitivity rather than ownership. They start from the assumption that everything that is in a private collection is correctly there! She would certainly say that officially headed documents comprise state or official documents but she had not given any thought to the status of the copy documents.

Although, from our very friendly discussion, I felt that Mrs Clapinson would agree with our definition of official papers (as long as this did not entail the removal of any from any of their collections!) it did not seem to be a matter to which she had given much thought. They contact the Public Record Office if they are concerned about the content of documents which come to them, particularly if they are under 30 years old. I pointed out that not all documents open at the 30-year point. She seemed to be aware of this although I thought I detected a little confusion.

It was left that the list of Wilson papers would be sent to me when it is ready but that if I was in Oxford and would like to call to discuss things generally I would be welcome.

PMA

MISS P M ANDREWS

Historical and Records Section
30 June 1994

PREM 25

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A094/1840

23 June 1994

c- Miss Andrews
Mr Jenkins } TSols
Mr Carpenter

Dear Winston,

I am grateful to you and to Bob Alexander for meeting us last week to discuss the Churchill Archive. As agreed, I am sending you with this letter a record of the meeting. I should be grateful for confirmation that you are content to proceed on the basis of paragraphs 12 - 14.

I am copying this letter to Jacob Rothschild and to Hayden Phillips.

Yours ever,

Robin

Winston Churchill Esq MP
House of Commons
LONDON
SW1A OAA

CABINET OFFICE
H Int
24 JUN 1994
FILING INSTRUCTIONS
FILE No.

Ref. AO94/1784

NOTE FOR THE RECORD

Sir Robin Butler had a meeting on Wednesday 15 June with Winston Churchill MP, Lord Alexander, Lord Rothschild, Mr Phillips, Ms Nayler and Mr Jenkins to discuss the Churchill Archive.

2. Mr Churchill said that he was present not only in his capacity as a beneficiary of the Churchill Estate but also as head of the Churchill family. He was concerned that the primary objective of both the family and the Government might be lost and that the Archive might be broken up and/or leave the UK. Lord Alexander had accompanied him at his request as a friend and supporter. Mr Churchill said that it was clear that the Trustees and the Government had been close to agreement the previous Autumn on the disposal of the Archive. The Secretary of State for National Heritage had announced on 11 October 1993 that an offer had been made to the Trustees. However out of the blue the Government had suddenly proceeded to litigate. The Trustees were confident of their position in the litigation but were aware that the litigation was likely to be protracted and expensive and that the outcome was uncertain not least because it would cover largely unchartered territory. Given the community of interest between the Trustees and the Government he had therefore thought it right to continue to look for a settlement.

3. Sir Robin Butler said that it had consistently been the government's wish to keep the papers in the Churchill Archive together (and housed at Churchill College). It had supported the NHMF in seeking to negotiate a fair price for the Archive, taking

account of the family's interests. It had however to take account of public interest and of the responsibility to account to Parliament for the use of public funds. Any price paid for the Archive had to be fully justified in this context; problems in establishing such justification had arisen largely through the uncertainty over title to the papers. In addition historians had advised the government that many of the documents in the Archive were duplicated in the PRO, implying that the Archive papers' value to the government was correspondingly less. Notwithstanding these factors, the government had been prepared to try to negotiate a (necessarily defensible) settlement with the Trustees. The discussions had broken down latterly largely because it had not been possible to establish with Peregrine Churchill what papers were at his disposal and might be taken out of the Archive if the government did not have funds to make the entire purchase immediately. In addition it was clear that the price the Government felt justifiable for the complete Archive was lower than that which the Trustees were prepared to accept. The Government had therefore been forced back to litigation to try to clarify the question of title although it recognised that it thereby incurred a risk that it might have to pay a higher price for the Archive in the longer term.

4. Mr Churchill said that he accepted that there was an important and legitimate public interest for the government to keep in mind. However there was no element of secrecy or confidentiality attaching to the papers which were 50-100 years old and, in the case of the official papers, copy documents of those already in the PRO. The Sotheby's valuation obtained by the Trustees had indicated that the sole value of the official papers (where there were no marginal annotations) was as part of the total Archive.

5. Continuing, Mr Churchill said that the Trustees were enjoined to seek a fair price for the Archive on behalf of the beneficiaries. Winston Churchill had not had the chance in his

lifetime to make money in the City or in business and had understood that in bequeathing the Archive he was passing on an asset of value to his heirs. It was for this reason that he had made such careful provision for its disposal. There was no question of the Trustees trying to sell back the Government its own property: any State papers would be returned freely. It was clear that there had been no impropriety by Winston Churchill in terms of the conventions that applied at the time in taking away certain State papers with him when he left office. Mr Churchill said that he was advised in respect of the pre-1934 papers that the government's claim was tenuous. Between 1934 and 1939 Winston Churchill had been out of office and the position in respect of the period 1939-45 had been covered by a minute from the Attlee Government. The Trustees were therefore confident of their position on title and in the 1990 Sotheby's valuation. In fact the market interest in Churchilliana suggested that the Archive may now have increased in value.

6. Mr Churchill said that if the litigation were to continue, the Trustees would seek a further valuation and would be forced to dispose of some of the private papers - the literary papers or the Jennie papers - by private treaty or public auction to fund the litigation. The Trustees did not however believe that it was in the national interest to break up the Archive in this way and Winston Churchill had been assured by the Trustees that they were willing to participate in further negotiations to try again to reach a settlement. The option remained for the Government to purchase the Archive at a fair price having regard to the 1990 valuation (also confirmed by the NHMF's valuation). The Government should bear in mind that it might end up bearing the costs of litigation and still find the Archive broken up and/or sent overseas, or face the question whether to buy the Archive at a much higher price than had earlier been on offer.

7. Lord Alexander noted that the litigation involved very unusual and complex issues, as much ones of public law (Crossman-type issues) as private law. The government's view of its duty was

impeccable but nonetheless each side should try to weigh the alternatives and form a balanced view on possible settlement at as early a stage as possible. There was clearly a question how the accretion factor of papers' status in contributing to the integrity of the Archive should be taken into account on each side. Lord Rothschild noted that the issues appeared to become more difficult as time went by. No single issue had been as time consuming for the NHMF as the Churchill Archive and they had thought it right to devote considerable resources to an Archive of this importance. Considerable efforts had already been made to try to establish which papers had undisputed ownership and which were in dispute but he did not think that a position had yet been reached which was acceptable to both sides. Mr Phillips agreed that it might be possible to agree at a certain level of generality but as more detailed consideration was undertaken it had in the past become clear that there were other unresolved issues which were more difficult.

8. Mr Churchill said that he thought that the provision included in the 1946 settlement that papers should not be disposed of without the authority of the Prime Minister of the day had been inserted because of Winston Churchill's concern to protect the confidentiality of what were at the time still sensitive papers were he to suffer an early death. Sir Robin noted that the Government had a different understanding and that the Government's understanding appeared to be supported by the exchanges of correspondence in 1964.

9. Mr Churchill said that the public interest argument could be addressed by the separation of the documents into two piles, with an agreed total value, and agreeing a valuation to discount the total price to take account of the State papers. Ms Nayler noted that it was unlikely that the two sides would be able to agree on the size and composition of the piles and that this was one of the purposes of the litigation. It was also likely that there would continue to be a gap between the price the Government

thought it justified to pay for those papers clearly not the property of the State and a price which would be acceptable to the Trustees. Mr Churchill commented that there would need to be give and take on both sides.

10. Sir Robin Butler said that he would be happy to consider such an approach. One of the difficulties in discussions with Peregrine Churchill had been in understanding the definition of those documents he had proposed removing from the Archive. In any case, it was clearly preferable to be dealing with the Archive as a whole. Mr Churchill said that Peregrine Churchill's offer to take out some documents for sale at a later stage had been intended to be helpful but should not be considered as a complicating factor. So far as he was concerned the Archive as a whole was under discussion.

11. Lord Alexander said that the private law question of the requirement to obtain the Prime Minister of the day's permission to sell documents from the Archive had yet to be explored. Mr Churchill said that it was clear that if the legal proceedings continued the Trustees would have to sell a portion of the papers. They would therefore seek the present Prime Minister's permission to do so. Should the Prime Minister refuse such permission the Trustees would be interested to see his "reasonable grounds" for doing so.

12. Sir Robin Butler said that it was reasonable to ask the Government to specify those documents to which it laid claim and to indicate what it considered to be a reasonable price for the remainder. Mr Churchill said that he hoped that the Government would accept that the Court was likely to apply the conventions at the time and not the current conventions in respect of the removal of documents and be able to reassess its claim to documents in that light. Sir Robin Butler commented that it was clear from the papers at the time that there was unease about the documents which Winston Churchill had taken away with him.

13. Lord Rothschild noted that several attempts had already been made to establish the relative claims and positions in relation to subsets of the Archive and it may therefore not be possible to make much further progress now. Mr Jenkins noted however that the approach now under discussion was currently already underway as part of the litigation process. It was an extremely complicated process and would not produce results quickly. Sir Robin noted that it was however possible to undertake a "shortcut" to take out the undisputed documents and value them separately, and then to try again to reach an agreement on the remainder. Mr Phillips noted that this would give two opportunities for further negotiations: one following the "shortcut" and the second at the conclusion of the much more detailed analysis currently underway as part of the litigation process.

14. Sir Robin noted that, even while the "shortcut" process was underway, litigation would be continuing. He wondered whether, to meet the Trustees' concerns over funding, it would be possible for them to seek to "stop the clock" on litigation in the meantime. Mr Jenkins noted that the ball was currently in the Trustees' court to produce points of defence: one alternative would be for them not to do so or alternatively a natural break would arise after the points of defence had been submitted. Lord Alexander suggested that lawyers discuss this further; he thought it was helpful however for the points of defence to be submitted so that the government understood the Trustees' position but that it should then be possible to stop the clock on both sides. Sir Robin said that it would be acceptable to the Government if the Trustees wished to stop the clock on litigation after the points of defence had been submitted, provided that, while it remained stopped, no attempt was made by the Trustees to sell any part of the papers. Mr Churchill said that he would consult his lawyers further.

Melanie Leech

MELANIE LEECH

17 June 1994

STRICTLY PERSONAL

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

Ref: A094/1799

20 June 1994

Dear Bill,

Many thanks for your letter of 16 June. Co-incidently, I was in Cambridge yesterday and heard that the time for your retirement was approaching, although I was not told who your successor was to be.

From a personal point of view, I am very sorry to hear that you are retiring as Keeper of the Churchill Archives. I greatly enjoyed meeting you in connection with the Centre and I would have liked to have tied up the future of the Churchill Archive before your retirement.

However, if neither of those things can be, I send all best wishes for your retirement and I will look forward to meeting your successor. I will also continue to work for keeping together all the Churchill papers at the Archives Centre.

With best wishes,

Yours ever,

Robin

Correlli Barnett Esq
Churchill Archives Centre
Churchill College
Cambridge CB3 0DS

CABINET OFFICE
H Internal....
22 JUN 1994
FILING INSTRUCTIONS
FILE No

STRICTLY PERSONAL

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

PRO 23

PERSONAL

HO94/502 ✓

C Barnett Esq D Sc MA FRSL FR HistS
Keeper
Churchill Archives Centre
Cambridge
CB3 0DS

17 June 1994

Dear Bill

Thank you for sending me a copy of your letter of 16 June to Sir Robin Butler notifying him of your impending retirement.

I had heard of this sad event but did not know when it was to take effect. I shall miss you greatly and shall hope to see you again before February next.

I am sorry that our contact has been overshadowed by the worry surrounding the Chartwell papers and I do so hope that the matter will be resolved satisfactorily.

All very best wishes for your next venture.

As ever

Pat

MISS P M ANDREWS

CHURCHILL ARCHIVES CENTRE

CHURCHILL COLLEGE CAMBRIDGE CB3 0DS TELEPHONE (0223) 336178

Keeper: CORRELLI BARNETT, D.SC., M.A., F.R.S.L., F.R.HIST.S. FACSIMILE (0223) 336135

FOL 22

PRIVATE & CONFIDENTIAL

CB/js/3400
16 June 1994

Sir Robin Butler, GCB CVO
Cabinet Secretary and Head of
The Civil Service
The Cabinet Office
70 Whitehall
London SW1A 2AS

This is to let you know that, in compliance with the University regulations, I am being retired as Keeper of this Archives at the end of February 1995 (after the mounting of the 1995 Roskill Memorial Lecture).

My successor is Mr Piers Brendon, the journalist and historian, who I hope and believe will work with the Cabinet Office and other Government departments (especially in regard to the future of the Chartwell papers, if that still be not settled) as closely and confidentially as I have.

I myself will be concentrating on my next book dealing with Britain as an industrial society between 1950 and 1955-6.

With all best wishes,

Correlli Barnett

cc: Miss Patricia M Andrews
Mr G Hayden Phillips
Mr Michael Carpenter

CABINET OFFICE
H 94/633
17 JUN 1994
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FILE NO

Patrons: THE COUNTESS OF AVON · LADY MARGARET COLVILLE · THE LORD WOLFSON OF MARYLEBONE, F.B.A.
PROFESSOR THE LORD ADRIAN, M.D., F.R.S. · THE LORD ANNAN, O.B.E. · MR JACK KING, M.A.
THE LADY SOAMES, D.B.E. · THE HON. WALTER ANNENBERG, K.B.E. · THE EARL LLOYD GEORGE OF DWYFOR
SIR KENNETH STOWE, G.C.B., C.V.O. · THE LORD TODD OF TRUMPINGTON, O.M., F.R.S.
MR PEREGRINE CHURCHILL · MR RANDOLPH CHURCHILL

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MR MICHAEL ALLEN, M.A., *Bursar of Churchill College*

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone 071-270 0101 *Facsimile* 071-270 0208

From the Secretary of the Cabinet and Head of the Home Civil Service
Sir Robin Butler GCB CVO

FACSIMILE TRANSMISSION HEADER SHEET

TO: Pat Andrews

FACSIMILE TEL NO: 217 6010

DATE: 20/6

NO OF PAGES INCLUDING HEADER:

FROM: Melanie Leech

MESSAGE (IF REQUIRED): We spoke

C —

FOLIO 21

Ref. A094/WINSTON.LB 1784

See f25 attached

NOTE FOR THE RECORD

Sir Robin Butler had a meeting on Wednesday 15 June with Winston Churchill MP, Lord Alexander, Lord Rothschild, Mr Phillips, Ms Nayler and Mr Jenkins to discuss the Churchill Archive.

2. Mr Churchill said that he was present not only in his capacity as a beneficiary of the Churchill Estate but also as head of the Churchill family. He was concerned that the primary objective of both the family and the Government might be lost and that the Archive might be broken up and/or leave the UK. Lord Alexander had accompanied him at his request as a friend and supporter. Mr Churchill said that it was clear that the Trustees and the Government had been close to agreement the previous Autumn on the disposal of the Archive. The Secretary of State for National Heritage had announced on 11 October 1993 that an offer had been made to the Trustees. However out of the blue the Government had suddenly proceeded to litigate. The Trustees were confident of their position in the litigation but were aware that the litigation was likely to be protracted and expensive and that the outcome was uncertain not least because it would cover largely unchartered territory. Given the community of interest between the Trustees and the Government he had therefore thought it right to continue to look for a settlement.

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to Parliament for the use of public funds. Any price paid for the Archive had to be justified in this context; problems in establishing such justification had arisen largely through the uncertainty over title to the papers. In addition historians had advised the government that many of the documents in the Archive were duplicated in the PRO, implying that the Archive papers' value to the government was correspondingly less. Notwithstanding these factors, the government had been prepared to try to negotiate a (necessarily defensible) settlement with the Trustees. The discussions had broken down latterly largely because it had not been possible to establish with Peregrine Churchill what papers were at his disposal and might be taken out of the Archive if the government did not have funds to make the entire purchase immediately. In addition it was clear that the price the Government felt justifiable for the complete Archive was lower than that which the Trustees were prepared to accept. The Government had therefore been forced back to litigation to try to clarify the question of title although it recognised it might have to pay a higher price for the Archive in the longer term.

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question of the Trustees trying to sell back the Government its own property: any State papers would be returned freely. It was clear that there had been no impropriety by Winston Churchill in terms of the conventions that applied at the time in taking away certain State papers with him when he left office. Mr Churchill said that he was advised in respect of the pre-1934 papers that the government's claim was tenuous. Between 1934 and 1939 Winston Churchill had been out of office and the position in respect of the period 1939-45 had been covered by a minute from the Attlee Government. The Trustees were therefore confident of their position on title and in the 1990 Sotheby's valuation. In fact the market interest in Churchilliana suggested that the Archive may now have increased in value.

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those documents he had proposed removing from the Archive. In addition it was clear whether he had the authority to remove such documents. In any case, it was clearly preferable to be dealing with the Archive as a whole. Mr Churchill said that Peregrine Churchill's offer to take out some documents for sale at a later stage had been intended to be helpful but should not be considered as a complicating factor. So far as he was concerned the Archive as a whole was under discussion.

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undertake a "shortcut" to take out the undisputed documents and value them separately, and then to try again to reach an agreement on the remainder. Mr Phillips noted that this would give two opportunities for further negotiations: one following the "shortcut" and the second at the conclusion of the much more detailed analysis currently underway as part of the litigation process.

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MELANIE LEECH

17 June 1994

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

20

HO94/490 1

M Gilbert Esq CBE MA FRSL
36 Parliament Hill
London NW3 2TN

15 June 1994

Dear Martin

Thank you so much for sending me a copy of your book 'In Search of Churchill' which reached me on my return from leave this week.

I had seen very good reviews of it and look forward enormously to reading it. It is very kind of you.

Yours ever

Pat

MISS P M ANDREWS

19

jun94\14leech

DEPARTMENT OF NATIONAL HERITAGE
2-4 Cockspur Street,
London SW1Y 5DH
Telephone: 071-211 6255/6/7
From Hayden Phillips CB, Permanent Secretary

CABINET OFFICE
H Int
15 JUN 1994
FILING INSTRUCTIONS
FILE No.

CABINET OFFICE
A 9127
14 JUN 1994
FILING INSTRUCTIONS
FILE No.

C - Miss Andrews

RESTRICTED - POLICY

Ms Melanie Leech
Private Secretary to
Sir Robin Butler
Cabinet Office
70 Whitehall
London
SW1

14 June 1994

Dear Melanie

CHURCHILL ARCHIVE: MEETING 15 JUNE

... I attach a note and line to take on the current position between the Government and the Churchill Trustees before Sir Robin's meeting with Lord Rothschild, Winston Churchill MP and Lord Alexander on 15 June. It has been cleared with Pat Andrews and our lawyers but not with Mr Phillips, who is in Birmingham at present.

Yours

Rachael

RACHAEL REYNOLDS
PRIVATE SECRETARY

RESTRICTED: POLICY

CHURCHILL ARCHIVE: MEETING 15 JUNE

This is an update on where matters stand between the Government and the Churchill Trustees before the meeting between Sir Robin, Lord Rothschild, yourself, Winston Churchill MP and Lord Alexander of Weedon.

The Government was asked to serve Points of Claim deriving from the main points in the affidavits produced in support of its claims to ownership of the "State Papers", and to the permission of the Prime Minister being required for any disposal of the papers in the Archive. The Churchill Trustees have a period of 56 days in which to respond, and then we have a period of 21 days in which to respond in turn. This would take us to October at the earliest. If then agreement cannot be reached on how next to proceed, and on a timetable, the Court will be invited to intervene. At present, a low-key and reasonably civilised situation, in which time is on our side.

Winston Churchill MP

We believe he wishes to settle and not break up the Archive. However, Lord Alexander has been, we think, quite bullish about the Trustees' chances of resisting successfully both of our claims. It is unlikely tomorrow that he will try very seriously for a financial compromise, even though there are mounting legal costs, and loss of interest in the money had they settled over a year ago on our offer of £9 million.

We believe little has changed in their views on the quantum value of the Archive, even though they talk of "revaluation upwards." It was £20 million, including State Papers. They were seeking a Private Treaty Sale concession at £12.5m. Winston Churchill may offer to "give" the State Papers, or discount the special price by 10%, but he sees these as only a small proportion of what is theirs to sell. So £10-11 million seems what he has in mind to "meet his needs".

Government analysis of "State Papers"

Following the allegations of Martin Gilbert that most are duplicated in the PRO, and are more accessible there, various inquiries were set in hand. Gilbert promises a paper establishing his points, and will refer to very important letters from WSC to his wife, now the property of Lady Soames.

On HMG's definition, a large population of the Archive is State Papers; WSC took papers without copies being made as is now the requirement, and the 1946 settlement reflected his acknowledgement of this.

About half the Archive has been microfilmed;
90% of the Public and Political;
100% of the Constitutional;
50% speeches pre 1930, nearly 100% post-1930;
10% Personal
nil Literary.

The Cabinet Office are trying to establish from part of the Archive, (Category 2, Public and Political), the proportion of State Papers - ie. "Cabinet Papers and working documents of Government Departments" - and the Trustees are aware of this. They will doubtless dispute whatever definition is given to "working documents".

If an analysis had to cover every paper in the whole Archive, then two years would be required, otherwise the sample technique above could take up to six months.

Line to Take

This is a listening mode meeting. Although Lord Alexander may ultimately be aiming at a settlement, we are still very far apart on what we should be buying, and for how much.

On our analysis, to be confirmed by the work in hand on what we claim to be the extent of State Papers, £7-8m might be justifiable, though on the optimistic side.

The integrity of the Archive matters to Churchill College, but not to HMG if we have duplicates elsewhere. On that basis, we could not expect any Reserve monies - our chance for £2m has gone.

Lottery money will free NHMF to take its own decisions on how far the integrity of the Archive should be reflected in the price, though NHMF will still be concerned to reflect the problem of duplicates in the price, particularly where the duplicates are State Papers.

The Churchill Trustees are demandeur - they are to some extent bluffing by asking Sotheby's to catalogue the literary papers "for sale", though if we have to take out an interim injunction prohibiting sale they may well respond with a request for an undertaking for damages. Given that we are more likely to lose the permission of the Prime Minister claim this could be embarrassing and potentially costly.

Nevertheless we are in a strong position, in the judgement of Counsel, at least, one with a 50% chance of success. The risks of litigation going against the Trustees are just as much a factor for them, and they have more to lose in immediate financial calculations.

DEPARTMENT OF NATIONAL HERITAGE

14 June 1994

EAPhilp14

HO94/485 √

SIR ROBIN BUTLER

CHURCHILL ARCHIVE

During your meeting with Lord Rothschild on 28 March 1994 it was suggested that there might be advantage in arranging a meeting with Mr Winston Churchill and Lord Alexander. You agreed to this subject to support from lawyers and Lord Rothschild offered to facilitate such a meeting. The meeting has been arranged for Wednesday 15 June at 2.45 pm.

You asked to see again the briefing which you had for your earlier meeting with Mr Churchill and the Trustees. This is attached together with a copy of the Memorandum provided by the Trustees in which they originally suggested that the Government should purchase the Churchill Archive.

I understand that Lord Alexander is likely to express the opinion that the Government's case is unlikely to succeed in the Courts. As you know the litigation is under way; we have submitted Points of Claim and the Defendants are now considering their Points of Defence. It would obviously be inappropriate to enter into any kind of discussion with Lord Alexander about the strengths and weaknesses of our case; in any event our "case" is simply to establish whether we have rights over the Archive as a whole and whether we own the State papers.

Mr Winston Churchill is thought likely to say that he wishes to settle and that he does not wish the Archive to be broken up. To this end, he may offer to "give" the State papers to the Government as long as the residual value of the archive is an amount which is suitable to his needs - the amount is thought still to be in the region of £10-11 million.

The Department of National Heritage are providing briefing for you which I understood will advise that the meeting should be simply to hear what Mr Churchill and Lord Alexander have to say but I alsoo understand, from a meeting with Miss Georgina Naylor yesterday, that Lord Rothschild is attracted to the idea of settling the case. He now has Lottery money in his sights and would not be dependant upon the Treasury. He feels, I believe, that a better bargain may be struck now, from his point of view, than if the litigation goes ahead and a year or more is lost, with the archive presumably increasing in value.

Lord Rothschild is concerned, naturally, to know how much of the archive is "non-State", what value can be put on the non-State papers and whether that will meet Mr Churchill's needs. The answer to the first of these questions rests on what is and what is not a "State paper".

As you know, we have defined "relevant State papers" as being Cabinet papers and "the working documents of Government departments" which is in line with the 1946 Settlement of the Archive which referred to "documents or information relating to any office, ministry or department of the British Government since 1900 or any paper of an official character...".

Since your last meeting with Lord Rothschild I have been discussing the definition of State papers with DNH who have now suggested two people who may be able to advise further on this, a recently retired Librarian at Southampton University and Dr Mary Clappinson, the Librarian at the Bodleian who is the person I am also in touch with on the Wilson and Macmillan papers. I shall be following up these suggestions. It may well be useful to involve Dr Clappinson since anything which is decided on the Churchill papers may have implications for the other two archives.

Obviously the width of the definition of State papers which includes the whole of Classes 10-27 in the Archive which are catalogued as "Official" plus proportions of other Classes, considerably reduces the amount of material which the NHMF could justify buying and thus the likelihood that the amount of money sought by Mr Churchill will be available, but then this is exactly why we decided to ask the Courts to decide the extent of our rights over the papers.

Work is continuing on the identification of the State papers although we are hoping that the Defendants will accept that Classes 10-27 are State/Official papers in their entirety.

We are also looking at statements in Mr Montrose's Affadavit relating to other collections of papers of former Cabinet Ministers. Mr Montrose says that given the width of our claim to State papers much of the material in these collections must also be Crown property and that if this is so it is remarkable that the Crown has been so lax in protecting its property over the years. He also says that the actual practice followed in other cases may be relevant to the issue of legal ownership and to other issues; he believes that the Crown has rarely, if ever, intervened, or claimed any rights save on grounds of confidentiality. Counsel have asked us to look into these matters. We have, to date, found little evidence one way or the other and I suspect that Mr Montrose is probably correct to say that such intervention has been rare.

Pat Andrews

MISS P M ANDREWS
Historical and Records Section
14 June 1994

DEPARTMENT OF NATIONAL HERITAGE

2-4 Cockspur Street, London SW1Y 5NH
Telephone: 071-211 6152
Facsimile: 071-211 6170

URGENT FAX

DATE: 14.6.96 NUMBER OF PAGES: 5

TO: Pat Andrews

FAX NUMBER: 217 6010

FROM: CAROLYN MORRISON

MESSAGE:

Urgent comments

Ol

COPIES TO:

17

RESTRICTED: POLICY

From: Carolyn Morrison
Cultural Property Unit

Tel: 211 6152

Date: 14 June 1994

cc: PS/Sir Robin Butler
Miss O'Mara
Ms Hobley o/r
Mr Jenkins (T Sol)
Mr Carpenter (T Sol)
Miss Andrews (Cab Off)

Mr Phillips

CHURCHILL ARCHIVE: MEETING 15 JUNE

You requested an update on where matters stand between the Government and the Churchill Trustees before the meeting between Sir Robin, Lord Rothschild, yourself, Winston Churchill MP and Lord Alexander of Weedon.

As you know, the Government was asked to serve Points of Claim deriving from the main points in the affidavits produced in support of its claims to ownership of the "State Papers", and to the permission of the Prime Minister being required for any disposal of the papers in the Archive. The Churchill Trustees then have a period of 56 days in which to respond, and then we have [a similar period (21 days)] in which to respond in turn. If then agreement cannot be reached on how next to proceed, and a timetable, the Court will be invited to intervene. At present, a low-key and reasonably civilised situation, [in which time is on our side.]

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Of HMG's activities

The Cabinet Office say ~~the majority~~ a large proportion of the Archive is State Papers; WSC took papers without copies being made, eg those relating to Cs period at the Ministry of Munitions in 1915-17 and the 1946 settlement reflects his acknowledgement of this.

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MISS C R MORRISON

f:\Phillips14

DEPARTMENT OF NATIONAL HERITAGE

2-4 Cockspur Street,
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Facsimile: 071-211 6170

CABINET OFFICE
H 94/624 ✓
14 JUN 1994
FILING INSTRUCTIONS
FILE No.

Pat Andrews
Historical Records Section
Cabinet Office
Hepburn House
Marsham Street
London SW1

13 June 1994

Dear Pat,

CHURCHILL ARCHIVES

1. In discussing the problems of defining 'State papers' with Georgina Stonor, she offered two suggestions of people whom she thought to be Britain's experts in this field.

2. Georgina Stonor is the documents expert on the Reviewing Committee on the Export of Works of Art and is a freelance Archivist.

3. She suggested Diana Marshalsey a Librarian at Southampton University, whom she thought was either just retired or on the point of. She was the Librarian in charge of the Parliamentary Collections, including the Hansard Collections, and it was her life's work to collect an immense amount of Parliamentary papers at the University. She also suggested Dr Mary Clappinson, a Librarian at the Bodleian, who is engaged in cataloguing the papers of Barbara Castle and Harold Wilson.

4. Should we be in need of a definition arising from Archival practice either could prove useful to us.

5. I am sending a copy of this letter to Georgina Nayler, Paul Jenkins and Michael Carpenter.

Yours ever,

MISS C R MORRISON

f:\Andrews

FOL 15

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

DX No. 2318 Victoria Fax 071 210 3232 071 222 6006 Switchboard 071 210 3000 (GTN 210)

Direct Line 071 210 3139

Pat Andrews
Cabinet Office
Historical Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: L92/3737/HF/L8

Your reference:

Date: 13 June 1994

Dear Pat

MONTROSE -v- ATTORNEY GENERAL

I enclose a copy of a letter dated 9 June 1994 from Messrs Goodman Derrick.

It would seem to me that the Trustees may be thinking of selling these papers?

Yours faithfully

HILARY FASSNIDGE
for the Treasury Solicitor

CABINET OFFICE
H 94/626
14 JUN 1994
FILING INSTRUCTIONS
File No.

Spoke to M Carpenter on 16/6
He said await development from Sir Robin's 15/6 meeting before taking any action on this. PSIA
20/6.

John Roberts
James MacKenzie
Jeffery Maunsell
Robin Perrot
Patrick Swaffer
Ian Montrose
Tim Langton

Diana Rawstron
Gregor Hamlen
Michael Collins
Paul Herbert
David Edwards
Moray Aitken

ASSOCIATES
Nicholas Armstrong
Claire Posner
Susan Smethurst
CONSULTANTS
Lord Goodman CH QC (Hon)
L C B Gower QC (Hon)

EXH 14

GOODMAN DERRICK
SOLICITORS

90 Fetter Lane
London EC4A 1EQ

Telephone 071-404 0606
Telex 317210
Fax 071-831 6407
DX 122 London

Our ref: CXW/ALB
Your ref: L92 3737 HF L8

9 June 1994

The Treasury Solicitor
DX 2318
VICTORIA

Dear Madam

Montrose ats H M Attorney General

Thank you for you faxed letter of 8 June advising that the notice is too short for you to arrange an examination. Perhaps you would let us know as soon as inspection is available and we shall then be pleased to make appropriate arrangements.

It would certainly be helpful to have this inspection soon so that the question of what "relevant State Papers" (if any) are contained within Section 8 can be definitively resolved.

Yours faithfully

Goodman Derrick

Goodman Derrick

A Member of Omni Juris Consultants EEIG – Registered in France with Member offices in Belgium France Germany Holland Italy Spain Switzerland and United Kingdom

Authorised by the Law Society to conduct investment business

THE TREASURY SOLICITOR
Queen Anne's Chambers
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Telephones DIRECT LINE 071-210 3139
SWITCHBOARD 071-210 3000
GTN 210

FAX NO: 071-210

13-6-94

Pat Andrews

for your information

With the Compliments of Hilary Fassnidge.

CABINET OFFICE
H 94/625/1
14 JUN 1994
FILING INSTRUCTIONS
FILE No.

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

DX No. 2318 Victoria Fax 071 210 3232 071 222 6006 Switchboard 071 210 3000 (GTN 210)

Direct Line 071 210 3139

13

Nessrs Goodman Derrick

DX 122 LONDON

Please quote: L92/3737/HF/L8

Your reference: CXW/ALD

Date: 8 June 1994

Dear Sirs

MONTROSE -v- H.M. ATTORNEY GENERAL

Thank you for your letter of 7 June and offering the use of your offices for the inspection of the documents in Class 8 which were sent to Sotheby's.

It is not possible at such short notice to arrange for the papers to be examined at your offices. It would indeed be much easier if, when you have examined them, they could be returned to Churchill College where we consider they should be in any event. As examination of the other documents is being carried out there this appears to me to be the most efficient way of carrying out the necessary examination.

Yours faithfully

HILARY FASSNIDGE
for the Treasury Solicitor

John Roberts
James MacKenzie
Jeffery Maunsell
Robin Perrot
Patrick Swaffer
Ian Montrose
Tim Langton

Diana Rawstron
Gregor Hamlen
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ASSOCIATES
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CONSULTANTS
Lord Goodman CH QC (Hon)
L C B Gower QC (Hon)

FOL 12

GOODMAN DERRICK
SOLICITORS

90 Fetter Lane
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Telephone 071-404 0606
Telex 317210
Fax 071-831 6407
DX 122 London

Our Ref: CXW/ALD
Your Ref: L92/3737/HF/L8

7 June 1994

Attn: Ms Hilary Fassnidge
The Treasury Solicitor

DX 2318 VICTORIA

BY FAX AND DX

Dear Sirs

Montrose ats H M Attorney General

We write to confirm our telephone conversation today. We repeat our invitation that a suitable representative inspect the Class 8 or "literary" papers in order to clarify any factual disagreement regarding whether any of these papers fall within "relevant State papers" as you have defined them in these proceedings. We have been carrying out that exercise for ourselves, the papers are presently at this firm's offices and we are happy for facilities to be provided for an inspection by yourselves at these offices this week.

We look forward to hearing from you.

Yours faithfully

Goodman Derrick

GOODMAN DERRICK

A Member of Omni Juris Consultants EEIG – Registered in France with Member offices in Belgium France Germany Holland Italy Spain Switzerland and United Kingdom

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CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO94/472

Mrs S Tyacke
Keeper of Public Records
Public Record Office
Kew
Richmond
Surrey
TW9 4DU

26 May 1994

Dear Sarah

I was speaking to the Archivist at Churchill College today and he said that he understood that you would be visiting the College at a date to be arranged, with a representative of the National Heritage Memorial Fund and Miss Wintercorn.

At a meeting in March between Sir Robin Butler and Lord Rothschild officials were remitted to look into the question (again) of the extent to which the documents in the Churchill Archive are copy documents, or top copies, and the extent to which they are replicated in the Public Record Office. I have had meetings to discuss how best this can be done which Nicholas Cox has attended. Admittedly we have come to no earth-shattering conclusions as yet but the work is going on.

This letter is written in great haste before I go on leave for two weeks (back on 13 June) to ask you if you could keep me informed of what NHMF are doing. It sounded, from what the Archivist said as if the NHMF are running on the same track! We do not want to duplicate the work and at the very least I should appreciate an opportunity of discussing the matter with them.

If you wanted a word about this I am at home tomorrow (081 441 3607) and after that in Leeds on 0532 662772.

Yours ever

Pat

MISS P M ANDREWS

File

10

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO94/471 ✓

Miss H Fassnidge
Treasury Solicitor's Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

26 May 1994

Dear Hilary

CHURCHILL ARCHIVE

Help! I cannot find my copies of Montroses exhibits including the Guide to the Political Papers which what we need to base the work upon which we agreed this morning!

Richard Ponman is, as we said, also away next week, so could not start until 6 June. Is it possible to let us have another copy of the exhibits by then?

I am so sorry - I have looked everywhere I can think of. It is now 8.30 pm and I cannot think of anywhere else to look. I will ask Richard to look again tomorrow, Friday and to let you know if he finds anything but, if you do not hear from him could you possibly provide another set? I have a copy of the Affadavit.

Yours Pat

MISS P M ANDREWS

Richard

9

HO94/470

NOTE FOR RECORD

CHURCHILL ARCHIVE

Richard Ponman and I met Michael Carpenter and Hilary Fassnidge, Treasury Solicitors, on Thursday 26 May to discuss the memorandum which Counsel had sent recommending certain action in respect of the Churchill Archive. (see below)

We noted that Counsel were of the opinion that there is no claim in copyright (paragraph 2)

It was agreed that Treasury Solicitors would take up with Churchill College the suggestion made by Counsel that the College should become parties to the proceedings or to issue their own proceedings. (Paragraphs 3-5) Michael Carpenter thought the latter highly unlikely.

Paragraph 6 - Miss Fassnidge said that she would write to the Trustees as suggested about Class 8 (Literary papers).

Paragraph 7 - I agreed to ask the Bodleian if any of the papers remain there. As of 8pm on Thursday 26 May I have not done this. Perhaps Richard could do it on Friday? Name of person to contact will be on Prime Ministers' papers file.

Paragraph 8 - Hilary Fassnidge will write to the Trustees as suggested in (4). In the meantime no work will be commissioned on Classes 2 or 10-27. I must let Hilary know where we stand on Classes 1, 8 and 9 when I return from leave. Nina will write to me this weekend following her visit to Cambridge this week.

Paragraphs 9 - 14 - Mr Montrose's Affidavit.

This is where we must start work. We need to find out if we have any information about the papers of Prime Ministers before Churchill. Suggest we

3 → Pre 1966

Shelley (a) look at the Lloyd George papers and one other - Bonar Law (?)

1934

(b) look at the Howorth list and see whether we have any papers relating to anyone other than Churchill named on that.

9 - don't understand

below

9 and

(c) look at Montrose's Affadavit, paragraphs 14-25 to see what he is arguing. Any comment?

24

(d) paragraph 25 of Montrose's Affadavit refers to the Guide to the Political Papers 1874-1970 which he exhibited with his Affadavit as IM5. I have that somewhere but I cannot find it! If it cannot be found ask Hilary Fassnidge if she can let us have another copy. Where can it possibly have gone to? Have we got a copy of the Guide ourselves - I seem to think we have.

1900-51 Guide to Ex Cabinet Ministers ? (Red Book)

Yes

Is this a particular HOLRO guide only

Received

Categories. Ministers
Non M.

(1) (e) when the Guide is found list I suggest we make a list of the people named in it and indicate on the list what positions they held, if any, in government and when.

(f) Hilary Fassnidge suggested that we should see which of them served in the same departments as Churchill. I am not sure whether this is going to do us a lot of good but we can try.

(g) we need to discover whether we have any papers relating to their papers - all of them. I doubt it!

See also: Precedent Books (2)

(h) We need to look at documents such as Questions of Procedure for Ministers and Heads of Departments Personal Handbooks and any others there may be as far back as they go to see what instructions there are for taking papers away, or not as the case may be, for as far back in history as our records go.

MG Melanie?

I do not think this will be as exhausting a task as it at first seems because I think we will find very little. Whether this is a good thing or a bad thing I cannot at the moment say - probably bad!

Good Luck.

Pat

Pat Andrews
26 May 1994

Instr to Depts on Ministers taking away papers not just Cabinet

PM's Categories
by Convention
when started?

Complications
—
Use of material in private hands

Sales are rare

Retention seems to fade into 'special access' after 15 yrs

HO94/460 ✓

SIR ROBIN BUTLER

Miss Andrews
Content to write
Yes
RBB
23.5

CABINET OFFICE
A 8254
25 MAY 1994
FILING INSTRUCTIONS
FILE No. .....

FOI
8

CHURCHILL ARCHIVE

In my minute of 27 April 1994 (HO94/349) I mentioned that Treasury Solicitors were in correspondence with the Churchill Trustees' Solicitors in an attempt to reach an accommodation on how the litigation should proceed. Agreement has been reached; the action is to proceed by way of "points of claim" and "points of defence". Treasury Counsel have drafted the attached points of claim which, I am told, should be served tomorrow.

I understand that points of claim are not intended to include reasoning but, as the name suggests, simply to set out the basis upon which the case is made. I think the attached does that and, if you are content, I shall advise Treasury Solicitor to go ahead.

The next stage is for the Defendant to serve points of defence and, if they wish, evidence in answer to the Affidavit which I swore on 24 February. 56 days have been allowed for this. We then have a further 21 days to serve points of reply and further evidence in reply.

I have asked how long the whole case is going to take. Treasury Solicitors advise that the earliest the case is likely to come to Court is October; it is, however, more likely to be early next year but much depends on how much detailed information we are asked to provide on the State papers. This is still under discussion.

Are you content, please, for me to instruct Treasury Solicitor to serve the points of claim as drafted by Treasury Counsel?

Pat Andrews

MISS P M ANDREWS

Historical and Records Section
25 May 1994

CABINET OFFICE
H Internal...
27 MAY 1994
FILING INSTRUCTIONS
FILE No. .....

IN THE HIGH COURT OF JUSTICE CH 1993 No. 8050

CHANCERY DIVISION

BETWEEN

HER MAJESTY'S ATTORNEY GENERAL

Plaintiff

and

(1) IAN MONTROSE

(2) HENRY WINSTON SPENCER CHURCHILL

Defendants

POINTS OF CLAIM

1. In these Points of Claim the definitions contained in the schedule to the Originating Summons are adopted.

Ownership

2. At the times that the Relevant State Papers (i) were created and thus acquired and (ii) were otherwise acquired and (iii) were retained by Sir Winston Churchill they were the property of the Crown.

3. Thereafter the Relevant State Papers remained and they are now the property of the Crown.

4. If the Defendants assert and (notwithstanding the denial of such

assertion by the Plaintiff) establish that any dealing with the Relevant State Papers by Sir Winston Churchill or the Archive Trustees constituted a conversion, they are nonetheless not in a position to assert that the Crown's title to the Relevant State Papers has been extinguished by the Limitation Acts because:

(a) at all material times Sir Winston Churchill held the Relevant State Papers as an express or alternatively a constructive trustee for the Crown, and

(b) to the extent that the Archive Trustees have held or hold the Relevant State Papers they have at all material times done so and do so on trust for the Crown.

5. As to paragraph 4(a):

(1) Sir Winston Churchill so held the Relevant State Papers as a constructive trustee for the Crown because when he created, acquired and retained them he did so as and because he was, or had been, a Minister of the Crown and he therefore owed fiduciary duties to the Crown in respect of them, and further or alternatively

(2) Sir Winston Churchill constituted himself an express trustee of the Relevant State Papers then in his possession by his letter dated 19th November 1934 to Sir Rupert Howarth (pages 4 & 5 PMA4).

6. As to paragraph 4(b):

(1) The Archive Trustees are and were volunteers and are thus bound by the trust or trusts in favour of the Crown upon which Sir Winston Churchill held the Relevant State Papers, and

(2) as appears in paragraph 40 of the first affidavit of Patricia Margaret Andrews herein the Crown, in so far as it is necessary for it to do so, maintains that the Archive Trustees knew, as part of

their general knowledge, that Sir Winston Churchill created, acquired and retained the Relevant State Papers as and because he was a Minister of the Crown and that when he did so they were not his property but were, and remained, the property of the Crown and that therefore, whether or not the Archive Trustees knew of the letter referred to in paragraph 5(2) hereof (which is something that is not known to the Crown at present) the Archive Trustees at all material times had, and have, sufficient knowledge to constitute them constructive trustees of the Relevant State Papers for the Crown.

The 1969 Correspondence

7. In 1968 the property at Stour at which the 1946 Settlement Papers were kept was to be sold. Accordingly arrangements needed to be made for the transfer and custody of the 1946 Settlement Papers. To this end discussion and negotiation took place between (inter alia) the Archive Trustees and the Crown (through the Cabinet Office and the Lord Chancellor's Office) as persons interested in the 1946 Settlement papers. It was recognised at the outset of such discussion and negotiation by the Archive Trustees through the letter dated 27th September 1968 from John Colville (one of the Archive Trustees) to Sir Burke Trend at the Cabinet Office (pages 1 and 2 PMA 13) that "as a great many of the papers, perhaps the majority, were written by or to Sir Winston when he was a Minister of the Crown":

(a) the Crown had informed the Archive Trustees that "although the Crown would not wish to demand the papers back they must necessarily take an interest in their disposal and
safe custody", and moreover

(b) the Crown "would certainly wish to intervene if at any

future date any of Sir Winston Churchill's descendants tried to sell any of them".

8. The course of the discussion and negotiation is recorded in the documents forming exhibit PMA 13 and as appears therefrom (i) the Archive Trustees and the Crown were concerned to reach an agreement as to the transfer and as to the future custody, use and disposition of, and future access to, the 1946 Settlement Papers which satisfied and protected their respective interests and concerns in respect thereof and (ii) it ended in the agreement covering such matters between the Archive Trustees and the Crown recorded in, and constituted by, the 1969 Correspondence.

9. Such agreement related to and governed the removal of the 1946 Settlement Papers from Stour and subsequently the Bodleian Library and provided that without prejudice to and until a more formal agreement was entered into between the Archive Trustees and the Crown that:

(a) the Relevant State Papers and the remainder of the 1946 Settlement Papers might not be removed from Churchill College or the Bodleian Library ("the place of deposit") without the prior consent of the Crown (acting through the Lord Chancellor's Office and the Cabinet Office or in some other appropriate manner) unless such removal was for the sole purpose of depositing such papers at the other place of deposit, and

(b) save with the prior consent of the Crown (acting through the Lord Chancellor's Office and the Cabinet Office or in some other appropriate manner) (i) no person (other than those referred to in the 1969 Correspondence) might have access to the Relevant State Papers and (ii) the Relevant State Papers might not be copied (save for the

purposes and on the terms set out in the 1969 Correspondence). No formal agreement as contemplated by such agreement has been agreed and signed.

10. In performance of, and in reliance upon, such agreement as to transfer and subsequent custody, use and disposition of, and access to, the 1946 Settlement Papers:

(a) they were transferred from Stour to the Bodleian and to Churchill College and then from the Bodleian to Churchill College,

(b) Churchill College and the Bodleian have preserved and looked after such papers whilst they were in their custody, and

(c) they are now, or should be, in the custody of Churchill College.

11. Such agreement constituted a contract between the Crown and the Archive Trustees in January 1969.

12. Without prejudice to and until a more formal agreement was entered into between the Archive Trustees and the Crown such contract created once and for all continuing rights as to the future transfer, custody use and disposition of, and access to, the 1946 Settlement Papers which are and remain binding upon and enforceable against the Archive Trustees in contract and further or alternatively in equity as rights and obligations relating to and affecting the documents.

13. Further or alternatively in the circumstances set out in paragraphs 7 to 12 hereof the Archive Trustees are estopped from asserting that transfer, custody, use and disposition of, and the access to, the 1946 Settlement Papers is not governed by the terms of such agreement.

The 1946, 1963 and 1990 Settlements.

14. Clause 11(ii) of the 1946 Settlement provides that the Archive Trustees "shall not at any time make public or sell or dispose of any document or information relating to any office ministry or department of the British Government since the year 1900 or any official papers of a general character without the permission of the Prime Minister of England for the time being and the other Ministers (if any) for the time being representing the office ministry or department concerned".

15. The 1963 Settlement was not a wholly new settlement but took effect under the 1946 Settlement and in any event Clause 2(j) of the 1963 Settlement expressly incorporates clause 11(ii) of the 1946 Settlement into the 1963 Settlement.

16. So long as the trusts of the 1946 Settlement and the trusts of successive settlements which take effect under it (or which as in the case of the 1963 Settlement expressly incorporate clause 11(ii) of the 1946 Settlement) validly continue to have effect Clause 11(ii) of the 1946 Settlement operates as a brake or restraint on the powers of the trustees of such trusts.

17. The 1990 Settlement and its trusts take effect under the 1946 Settlement and further or alternatively the 1963 Settlement and accordingly Clause 11(ii) of the 1946 Settlement continues to operate as a brake or fetter on the powers of the Archive Trustees.

18. Alternatively if contrary to the contention in paragraph 17 and which is denied the 1990 Settlement and its trusts do not take effect under the

1946 Settlement and further or alternatively the 1963 Settlement and constitute a disposition within clause 11(ii) of the 1946 Settlement the 1990 Settlement was not made with the consents referred to in Clause 11(ii) of the 1946 Settlement and is void or should be set aside with the consequence that the Relevant State Papers remain subject to the trusts of the 1963 Settlement and Clause 11(ii) of the 1946 Settlement continues to operate as a brake or fetter on the powers of the Archive Trustees.

Michael Hart QC

A.W.H. Charles.

Served ----------

Settled in consultation with Michael Hart Q.C.

Alan Charles

Lincoln's Inn

25/5/84

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

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Pat Andrews
Cabinet Office
Historical & Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: L92/3737/HF/L8

Your reference: HO94/305

Date: 24th May 1994

Dear Pat,

RE: THE CHURCHILL ARCHIVES

I enclose:-

1. Draft Points of Claim.

2. Joint Memorandum of Michael Hart QC and William Charles.

3. Note of Mark Cunningham relating to the copyright position.

I would be grateful if you could consider the draft Points of Claim at the earliest possible opportunity as I would like to serve them tomorrow.

You will see from Mark Cunningham's note that there is no claim to be made in copyright.

Once Points of Claim have been served I wonder whether it would be sensible for Paul Jenkins, Michael Carpenter, yourself and me to meet briefly to discuss the matters raised by Counsel in the joint memorandum.

Yours sincerely,

HILARY FASSNIDGE
for the Treasury Solicitor

CABINET OFFICE
H 94/5.73 ✓
25 MAY 1994
FILING INSTRUCTIONS
FILE No

RE: CHURCHILL PAPERS

MEMORANDUM

1. We enclose a draft Points of Claim.

2. This makes no reference to any claim in copyright. Our conference with Mr. Cunningham has confirmed our suspicion that there is no such claim.

The Documents in Class 8 which are at Sotheby's

3. As those instructing us know, we consider that the claim based on the 1969 correspondence is a very weak one. In our opinion any contract or estoppel in, or arising out of, the 1969 correspondence would be terminable on reasonable notice unless Churchill College "enter the fray" and provide evidence that would support an argument that no such notice could be served by the Archive Trustees (or the Crown).

4. In our view Churchill College should be formally invited to consider whether they wish to become parties to the proceedings or (and perhaps more appropriately) to issue their own proceedings to establish any rights or estoppel based on the 1969 correspondence or otherwise. If they do not do so we see no realistic prospect that they will be able to retain the papers on the basis of the 1969 correspondence. This means that their prospects of retaining papers would relate only to the Relevant State Papers and would depend on the Crown's other points as to them and the continuation of the Crown's wish that they be kept at Churchill College.

5. Given the weakness of the present claims based on the 1969

correspondence we consider that it would be unwise, and is unnecessary, to make an issue of the present attitude of the Archive Trustees as to the Class 8 papers at Sotheby's.

6. In our view what should be done as to such papers is that the Treasury Solicitor should write to the Archive Trustees (i) pointing out that it is the contention of the Crown that they should be returned to Churchill College and therefore should now be at Churchill College (see para. 10(c) of the Points of Claim), and (ii) making it clear that by inspecting the papers at Sotheby's the Crown is not accepting or acknowledging that the Archive Trustees or Sotheby's may retain such papers but are adopting a pragmatic course having regard to the failure or refusal of the Archive Trustees to return them to Churchill College.

7. We understand that none of the papers remain at the Bodleian. This should be checked. If it is not the case their retention is also covered by the "should" in paragraph 10(c) because, as we understand it, they were to be transferred when they were no longer needed at the Bodleian.

<u>The further Identification of the Relevant State Papers</u>

8. Miss Andrews gives an update on this in her letter dated 6th May 1994. As to that letter:

(1) Class 2 is obviously the biggest problem and we consider that before the 3-4 months work is embarked upon the need for such work should be raised with the Defendants and such work should not be carried out unless (i) the Crown accepts that it is necessary or (ii) it is ordered. This would accord with part of what was said before the Vice Chancellor as to the need to identify each and

every Relevant State Paper or whether the case could proceed by reference to class descriptions with, or without examples. If the latter is the case the 3-4 months work would be unnecessary.

(2) It cannot be accepted that the Defendants accept that Classes 10 to 27 comprise Relevant State Papers. The position is that we claim that they do and at present we have not offered, and have not been required, to carry out a check to identify any papers therein that are not Relevant State Papers.

(3) As to the remaining classes we consider that the course proposed in the letter coupled with our advice in paragraph 6 above is the course that the Crown should take. When this has been done the Defendants should be informed of the results.

(4) It would also be advisable for the Treasury Solicitor to write to the Defendants in the near future giving them an update, dealing with Classes 28 to 30 in accordance with Miss Andrews' letter, telling them what is proposed as to Classes 1, 8 and 9 and raising the "Class 2 point".

Mr. Montrose's Affidavit

9. In the last paragraph of her letter Miss Andrews raises some points as to this.

10. In our view the 1946 Settlement does not, as Miss Andrews suggests, put the Churchill papers into a quite different category to the Lloyd George papers.

11. It is not easy to accurately predict the line that the Defendants will take in respect of the points referred to by Mr. Montrose and his

exhibits. However in our opinion it is likely that they will be used to found an attack on the Crown's contentions that (i) the papers were or remained the property of the Crown when they were acquired or retained by Sir Winston Churchill and (ii) Sir Winston Churchill held them as a constructive trustee. They may also be used as a basis for an acquiescence claim. We think it likely that the points may be that (i) the practice of the Crown over the years and (ii) the special position of the Crown and its Ministers is such, that Sir Winston owned the papers in 1946 or was entitled to dispose of them at that time.

12. We therefore consider that it is essential that the Cabinet Office start work now on the assessment of the assertions made by Mr. Montrose as to ownership and Crown practice (and therefore in particular paras. 9, 14 to 25 and IM2, IM3, IM4 and IM5). If work on this aspect of the case is not started now it is likely that the Crown will have extreme difficulty in meeting time limits as to evidence in reply.

13. In carrying out such work the Cabinet Office should bear in mind that the Crown's main claim is to ownership in equity based on the constructive trust allegation and it seems that the Archive Trustees had not anticipated this claim. It is therefore likely that the Archive Trustees will be looking at past practice of the Crown and its Ministers to attack that claim by, for example, pointing to sales and disposals by Ministers as if they were the owners which were not objected to. Accordingly (i) such examples need to be checked to ascertain their detail and (ii) evidence of Ministers returning papers or acting on the basis that they remained Crown property should be sought.

14. We repeat that we consider that it would be sensible to try and do

some prophylactic work now rather than to wait for and then react to the evidence of the Defendants if they serve any and we would be happy to discuss the work that should be done now in consultation if those instructing us thought that this would be helpful. If the Defendants do not serve evidence we consider that such work would not be wasted because it will become relevant at some stage.

Richard Hunt

5 Stone Buildings,

Lincoln's Inn.

Hugh Cheles

13 Old Square,

Lincoln's Inn.

29/5/94

H.M.'s ATTORNEY GENERAL v. MONTROSE & CHURCHILL

The Copyright Position

N O T E

IN THE H
CHANCEI
BETW

A. Subsistence and Ownership of Copyright.

1. It is plain that the Relevant State Papers ("the papers" will be original "literary works" and that, accordingly, copyright will subsist in them.

2. Such of the papers as were,

> "... made by an officer or servant of the Crown in the course of his duties"

will, pursuant to s.163 of the Copyright Designs and Patents Act 1988 ("the '88 Act") be the subject of Crown Copyright, with Her Majesty owning the copyright. Crown Copyright extends for 125 years after the making of the work (see s.163 (3) (a)). By virtue of Schedule 1 paragraph 4, of the '88 Act, s.163 applies to works in existence before the commencement of the Act (on 1st August 1989) and, hence, to the papers.

B. Is there an existing cause of action in copyright?

3. Nothing in the history of this matter to date suggests that the Crown would be able to succeed with a conventional action for copyright infringement. This is because the acts under complaint (namely the acquisition and retention, in 1946, of the papers) were;

(a) not in themselves infringing acts;

(b) anyway, licensed (and therefore not infringing);

(c) anyway, occurred well outside the period allowed by section 2 of the Limitation Act 1980.

4. The only remaining possibility in relation to past events is an action for delivery up under s.99 of the '88 Act. It appears from s.99 (4) that delivery up is a free-standing statutory remedy that can be pursued independently from an ordinary infringement action. It is also clear (see Schedule 1, paragraph 31 (2)) that delivery up under s.99 is available in respect of works made before (as well as after) the commencement of the '88 Act: it would therefore apply, prima facie, to the papers.

5. As far as is material s.99 provides as follows:

"(1) Where a person -

(a) has an infringing copy of a work in his possession, custody or control in the course of a business, or

(b) ...,

the owner of the copyright in the work may apply to the Court for an Order that the infringing copy or article be delivered up to him ..."

6. There are two reasons why s.99 will not be of assistance in the present case. The first arises out of the requirement that the subject matter of the application must be "an infringing copy". The expression is defined in s.27 (2) as

follows:

> "An article is an infringing copy if its making constituted an infringement of the copyright in the work in question."

It would appear that all of the papers were "made" by Crown servants in the course of their duties and thus with the Crown's permission or licence: it follows that the "making" of the papers was not an infringement of copyright and that, accordingly, the requirements of s.99 (1) (a) cannot be met.

7. The second, and insuperable, obstacle in the way of a successful s.99 application is created by s.113 (1) which provides that

> "An application for an order under section 99 ... may not be made after the end of the period of six years from the date on which the infringing copy or article was made ..."

As all the papers were "made" before 1946, an application under s.99 would be time-barred.

C. Is the proposed sale of the papers actionable?

8. Two sections of the '88 Act warrant consideration as possible sources of a cause of action in relation to the proposed sale. The first is s.23 which provides (as far as is material) as follows:

> "The copyright in a work is infringed by a person who, without the licence of the copyright owner

(a) ...

(b) sells ... or exposes for sale ...

an article which is ... an infringing copy of the work."

As with s.99 the possibility of reliance on this section is precluded by the reference to "infringing copy" and the consequent problems caused by the s.27 (2) definition.

9. The second relevant section is s.18. The material parts are the following

"(1) The issue to the public of copies of the work is an act restricted by the copyright in every description of copyright work.

(2) References in this Part to the issue to the public of copies of a work are to the act of putting into circulation copies not previously put into circulation ... and not to -

(a) any subsequent distribution [or] sale ... of those copies ..."

Though this provision is not caught by the "infringing copy" problem it too is, however, regarded as disclosing difficulties of definition and meaning: these difficulties have not yet been considered by the Courts. My own view is that what is referred to is the <u>first</u> act of putting a work into circulation, and that such an act occurs when the copies in question are (first) made available to the public. If this is right then there will already have been an "issue to the public" by the placing of the papers in

the Public Record Office (see Miss Andrews' Affidavit at paragraph 9): accordingly the proposed sale would not be an infringement, it being within the proviso contained within s.18 (2) (a).

10. For the reasons given above, copyright does not seem likely to provide the Crown with a means of recovering the papers themselves.

Lincoln's Inn.

19 May 1994.

THE TREASURY SOLICITOR

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Direct Line 071 210 3139

Pat Andrews
Cabinet Office
Historical & Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: L92/3737/HF/L8

Your reference: HO94/305

Date: 24th May 1994

Dear Pat,

RE: THE CHURCHILL ARCHIVES

I enclose:-

1. Draft Points of Claim.

2. Joint Memorandum of Michael Hart QC and William Charles.

3. Note of Mark Cunningham relating to the copyright position.

I would be grateful if you could consider the draft Points of Claim at the earliest possible opportunity as I would like to serve them tomorrow.

You will see from Mark Cunningham's note that there is no claim to be made in copyright.

Once Points of Claim have been served I wonder whether it would be sensible for Paul Jenkins, Michael Carpenter, yourself and me to meet briefly to discuss the matters raised by Counsel in the joint memorandum.

Yours sincerely,

HILARY FASSMIDGE
for the Treasury Solicitor

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

CH 1993 No. 8050

BETWEEN

HER MAJESTY'S ATTORNEY GENERAL

Plaintiff

and

(1) IAN MONTROSE

(2) HENRY WINSTON SPENCER CHURCHILL

Defendants

POINTS OF CLAIM

1. In these Points of Claim the definitions contained in the schedule to the Originating Summons are adopted.

Ownership

2. At the times that the Relevant State Papers (i) were created and thus acquired and (ii) were otherwise acquired and (iii) were retained by Sir Winston Churchill they were the property of the Crown.

3. Thereafter the Relevant State Papers remained and they are now the property of the Crown.

4. If the Defendants assert and (notwithstanding the denial of such

assertion by the Plaintiff) establish that any dealing with the Relevant State Papers by Sir Winston Churchill or the Archive Trustees constituted a conversion, they are nonetheless not in a position to assert that the Crown's title to the Relevant State Papers has been extinguished by the Limitation Acts because:

(a) at all material times Sir Winston Churchill held the Relevant State Papers as an express or alternatively a constructive trustee for the Crown, and

(b) to the extent that the Archive Trustees have held or hold the Relevant State Papers they have at all material times done so and do so on trust for the Crown.

5. As to paragraph 4(a):

(1) Sir Winston Churchill so held the Relevant State Papers as a constructive trustee for the Crown because when he created, acquired and retained them he did so as and because he was, or had been, a Minister of the Crown and he therefore owed fiduciary duties to the Crown in respect of them, and further or alternatively

(2) Sir Winston Churchill constituted himself an express trustee of the Relevant State Papers then in his possession by his letter dated 19th November 1934 to Sir Rupert Howarth (pages 4 & 5 PMA4).

6. As to paragraph 4(b):

(1) The Archive Trustees are and were volunteers and are thus bound by the trust or trusts in favour of the Crown upon which Sir Winston Churchill held the Relevant State Papers, and

(2) as appears in paragraph 40 of the first affidavit of Patricia Margaret Andrews herein the Crown, in so far as it is necessary for it to do so, maintains that the Archive Trustees knew, as part of

their general knowledge, that Sir Winston Churchill created, acquired and retained the Relevant State Papers as and because he was a Minister of the Crown and that when he did so they were not his property but were, and remained, the property of the Crown and that therefore, whether or not the Archive Trustees knew of the letter referred to in paragraph 5(2) hereof (which is something that is not known to the Crown at present) the Archive Trustees at all material times had, and have, sufficient knowledge to constitute them constructive trustees of the Relevant State Papers for the Crown.

The 1969 Correspondence

7. In 1968 the property at Stour at which the 1946 Settlement Papers were kept was to be sold. Accordingly arrangements needed to be made for the transfer and custody of the 1946 Settlement Papers. To this end discussion and negotiation took place between (inter alia) the Archive Trustees and the Crown (through the Cabinet Office and the Lord Chancellor's Office) as persons interested in the 1946 Settlement papers. It was recognised at the outset of such discussion and negotiation by the Archive Trustees through the letter dated 27th September 1968 from John Colville (one of the Archive Trustees) to Sir Burke Trend at the Cabinet Office (pages 1 and 2 PMA 13) that "as a great many of the papers, perhaps the majority, were written by or to Sir Winston when he was a Minister of the Crown":

(a) the Crown had informed the Archive Trustees that "although the Crown would not wish to demand the papers back they must necessarily take an interest in their disposal and safe custody", and moreover

(b) the Crown "would certainly wish to intervene if at any

future date any of Sir Winston Churchill's descendants tried to sell any of them".

8. The course of the discussion and negotiation is recorded in the documents forming exhibit PMA 13 and as appears therefrom (i) the Archive Trustees and the Crown were concerned to reach an agreement as to the transfer and as to the future custody, use and disposition of, and future access to, the 1946 Settlement Papers which satisfied and protected their respective interests and concerns in respect thereof and (ii) it ended in the agreement covering such matters between the Archive Trustees and the Crown recorded in, and constituted by, the 1969 Correspondence.

9. Such agreement related to and governed the removal of the 1946 Settlement Papers from Stour and subsequently the Bodleian Library and provided that without prejudice to and until a more formal agreement was entered into between the Archive Trustees and the Crown that:

(a) the Relevant State Papers and the remainder of the 1946 Settlement Papers might not be removed from Churchill College or the Bodleian Library ("the place of deposit") without the prior consent of the Crown (acting through the Lord Chancellor's Office and the Cabinet Office or in some other appropriate manner) unless such removal was for the sole purpose of depositing such papers at the other place of deposit, and

(b) save with the prior consent of the Crown (acting through the Lord Chancellor's Office and the Cabinet Office or in some other appropriate manner) (i) no person (other than those referred to in the 1969 Correspondence) might have access to the Relevant State Papers and (ii) the Relevant State Papers might not be copied (save for the

purposes and on the terms set out in the 1969 Correspondence). No formal agreement as contemplated by such agreement has been agreed and signed.

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11. Such agreement constituted a contract between the Crown and the Archive Trustees in January 1969.

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13. Further or alternatively in the circumstances set out in paragraphs 7 to 12 hereof the Archive Trustees are estopped from asserting that transfer, custody, use and disposition of, and the access to, the 1946 Settlement Papers is not governed by the terms of such agreement.

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Michael Hart QC

A.W.H. Charles.

Served ----------

Settled in consultation with Michael Hart Q.C.

A.W.H. Charles

Lincoln's Inn

25/8/84

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8. Miss Andrews gives an update on this in her letter dated 6th May 1994. As to that letter:

(1) Class 2 is obviously the biggest problem and we consider that before the 3-4 months work is embarked upon the need for such work should be raised with the Defendants and such work should not be carried out unless (i) the Crown accepts that it is necessary or (ii) it is ordered. This would accord with part of what was said before the Vice Chancellor as to the need to identify each and

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exhibits. However in our opinion it is likely that they will be used to found an attack on the Crown's contentions that (i) the papers were or remained the property of the Crown when they were acquired or retained by Sir Winston Churchill and (ii) Sir Winston Churchill held them as a constructive trustee. They may also be used as a basis for an acquiescence claim. We think it likely that the points may be that (i) the practice of the Crown over the years and (ii) the special position of the Crown and its Ministers is such, that Sir Winston owned the papers in 1946 or was entitled to dispose of them at that time.

12. We therefore consider that it is essential that the Cabinet Office start work now on the assessment of the assertions made by Mr. Montrose as to ownership and Crown practice (and therefore in particular paras. 9, 14 to 25 and IM2, IM3, IM4 and IM5). If work on this aspect of the case is not started now it is likely that the Crown will have extreme difficulty in meeting time limits as to evidence in reply.

13. In carrying out such work the Cabinet Office should bear in mind that the Crown's main claim is to ownership in equity based on the constructive trust allegation and it seems that the Archive Trustees had not anticipated this claim. It is therefore likely that the Archive Trustees will be looking at past practice of the Crown and its Ministers to attack that claim by, for example, pointing to sales and disposals by Ministers as if they were the owners which were not objected to. Accordingly (i) such examples need to be checked to ascertain their detail and (ii) evidence of Ministers returning papers or acting on the basis that they remained Crown property should be sought.

14. We repeat that we consider that it would be sensible to try and do

some prophylactic work now rather than to wait for and then react to the evidence of the Defendants if they serve any and we would be happy to discuss the work that should be done now in consultation if those instructing us thought that this would be helpful. If the Defendants do not serve evidence we consider that such work would not be wasted because it will become relevant at some stage.

Richard Hunt

5 Stone Buildings,

Lincoln's Inn.

Hugh Cleaver

13 Old Square,

Lincoln's Inn.

25/5/84

H.M.'s ATTORNEY GENERAL v. MONTROSE & CHURCHILL

The Copyright Position

N O T E

IN THE H
CHANCE

BETW

A. Subsistence and Ownership of Copyright.

1. It is plain that the Relevant State Papers ("the papers" will be original "literary works" and that, accordingly, copyright will subsist in them.

2. Such of the papers as were,

> "... made by an officer or servant of the Crown in the course of his duties"

will, pursuant to s.163 of the Copyright Designs and Patents Act 1988 ("the '88 Act") be the subject of Crown Copyright, with Her Majesty owning the copyright. Crown Copyright extends for 125 years after the making of the work (see s.163 (3) (a)). By virtue of Schedule 1 paragraph 4, of the '88 Act, s.163 applies to works in existence before the commencement of the Act (on 1st August 1989) and, hence, to the papers.

B. Is there an existing cause of action in copyright?

3. Nothing in the history of this matter to date suggests that the Crown would be able to succeed with a conventional action for copyright infringement. This is because the acts under complaint (namely the acquisition and retention, in 1946, of the papers) were;

(a) not in themselves infringing acts;

(b) anyway, licensed (and therefore not infringing);

(c) anyway, occurred well outside the period allowed by section 2 of the Limitation Act 1980.

4. The only remaining possibility in relation to past events is an action for delivery up under s.99 of the '88 Act. It appears from s.99 (4) that delivery up is a free-standing statutory remedy that can be pursued independently from an ordinary infringement action. It is also clear (see Schedule 1, paragraph 31 (2)) that delivery up under s.99 is available in respect of works made before (as well as after) the commencement of the '88 Act: it would therefore apply, prima facie, to the papers.

5. As far as is material s.99 provides as follows:

"(1) Where a person -

(a) has an infringing copy of a work in his possession, custody or control in the course of a business, or

(b) ...,

the owner of the copyright in the work may apply to the Court for an Order that the infringing copy or article be delivered up to him ..."

6. There are two reasons why s.99 will not be of assistance in the present case. The first arises out of the requirement that the subject matter of the application must be "an infringing copy". The expression is defined in s.27 (2) as

follows:

> "An article is an infringing copy if its making constituted an infringement of the copyright in the work in question."

It would appear that all of the papers were "made" by Crown servants in the course of their duties and thus with the Crown's permission or licence: it follows that the "making" of the papers was not an infringement of copyright and that, accordingly, the requirements of s.99 (1) (a) cannot be met.

7. The second, and insuperable, obstacle in the way of a successful s.99 application is created by s.113 (1) which provides that

> "An application for an order under section 99 ... may not be made after the end of the period of six years from the date on which the infringing copy or article was made ..."

As all the papers were "made" before 1946, an application under s.99 would be time-barred.

C. Is the proposed sale of the papers actionable?

8. Two sections of the '88 Act warrant consideration as possible sources of a cause of action in relation to the proposed sale. The first is s.23 which provides (as far as is material) as follows:

> "The copyright in a work is infringed by a person who, without the licence of the copyright owner

(a) ...

(b) sells ... or exposes for sale ...

an article which is ... an infringing copy of the work."

As with s.99 the possibility of reliance on this section is precluded by the reference to "infringing copy" and the consequent problems caused by the s.27 (2) definition.

9. The second relevant section is s.18. The material parts are the following

"(1) The issue to the public of copies of the work is an act restricted by the copyright in every description of copyright work.

(2) References in this Part to the issue to the public of copies of a work are to the act of putting into circulation copies not previously put into circulation ... and not to -

(a) any subsequent distribution [or] sale ... of those copies ..."

Though this provision is not caught by the "infringing copy" problem it too is, however, regarded as disclosing difficulties of definition and meaning: these difficulties have not yet been considered by the Courts. My own view is that what is referred to is the <u>first</u> act of putting a work into circulation, and that such an act occurs when the copies in question are (first) made available to the public. If this is right then there will already have been an "issue to the public" by the placing of the papers in

the Public Record Office (see Miss Andrews' Affidavit at paragraph 9): accordingly the proposed sale would not be an infringement, it being within the proviso contained within s.18 (2) (a).

10. For the reasons given above, copyright does not seem likely to provide the Crown with a means of recovering the papers themselves.

Lincoln's Inn.

14 May 1994.

NOTE FOR RECORD

I spoke to Mr Ridd, Treasury Solicitor, on 19 May to ask if Sir Brooks Richards could telephone him to discuss a particular incident covered in his book which Sir Brooks would like him to pay particular attention to. Sir Brooks would also discuss with him his request for a list of the people referred to who are now deceased!

Mr Ridd agreed to this very readily.

He went on to say that he had seen my name on papers relating to the Churchill archive case. He understood from his staff (including Hilary Fassnidge) that Treasury Counsel had changed their minds in the matter. I said that they seemed to keep changing their minds on various aspects and that I found this very worrying. I hoped that if they changed their minds to the extent that the case became not worth pursuing I hoped that they would let us know. It may be that we would go ahead anyway but I would want to be in a position to tell Sir Robin Butler if things looked like going wrong. Ministers would then have to consider the pros and cons of continuing.

Mr Ridd said that he would bear this in mind and that if I was concerned about any particular aspect of the case I was welcome to contact him.

PMA.

MISS P M ANDREWS

19 May 1994

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

FOI 5

HO94/429 ✓

Miss H Fassnidge
Treasury Solicitor's Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

18 May 1994

Dear Hilary

CHURCHILL ARCHIVE

We have arranged for Nina Veitch to go to Churchill College from 25 - 27 May. She will concentrate initially on Class 9 (Speeches) and that part of Class 8 (Literary) which is at Cambridge. Nina could go back to Cambridge in the following week and if we had answers to the questions I posed in my letter of 6 May we would be better able to plan her work.

Following the agreement reached with the Defendants on how the litigation is to proceed have you any idea how long the case is going to take? It would be most useful to have an estimate of this, however tentative, for planning purposes.

Yours ever

Pat

MISS P M ANDREWS

CABINET OFFICE
Historical and Records Section
Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

Your ref: L92/3737/HF/L8

Our ref: HO94/422

Miss H Fassnidge
Treasury Solicitor's Department
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

17 May 1994

Dear Hilary

CHURCHILL ARCHIVE
H M ATTORNEY GENERAL - v - MONTROSE

Thank you for your letter of 12 May. We spoke and agreed that it was probably not necessary for me to attend the Conference to discuss copyright. It would, however, be useful to have a note of the Conference so that we are kept up to date with thinking on this aspect.

As agreed I attach such documents as I have which refer to copyright - my note of a discussion I had with HMSO on 23 August 1989, a letter to Mr Montrose dated 21 September 1989 and, I see that I also referred to it in an earlier letter of 30 June 1989 so I attach a copy of that also.

I suppose they are not very conclusive but they do at least show that so far as Mr Montrose is concerned he is aware that we believe that we own the copyright in the official/state papers.

Yours ever

Pat

MISS P M ANDREWS

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Churchill's lines of love's labour lost fetch £76,000

BY JOHN SHAW

SEVEN intensely personal love letters from the young Winston Churchill to a society beauty who rejected him sold for £76,757 yesterday at Christie's, South Kensington.

They were bought for more than eight times the pre-sale estimate on behalf of Malcolm Forbes Jnr, the head of the publishing empire that includes *Forbes Magazine*. All seven letters were previously unpublished.

The correspondence discloses the ebb and flow of Churchill's emotion from ardent pursuit to acute despondency. He first met Muriel Wilson (1875-1964), the daughter of a wealthy shipping magnate from Hull, at the turn of the century. Churchill was smitten with her and proposed marriage.

The first letter, undated, was written from an address in Mount Street, Mayfair, about 1904. It appears from the contents that he had just seen her to propose marriage and had been stung by her refusal. "Don't slam the door," he writes. "I can wait — perhaps I shall improve with waiting ... Why shouldn't you care about me some day? I have great faith in my instinct, which was so very strong. Time and circumstance will work for me."

The letter goes on: "I love you because you are good and beautiful and you may be perfectly certain that I am not going to change or try to change." The more he was "opposed", the stronger his feelings would be.

Churchill: stung by refusal of marriage

Churchill continues: "I am not going to be thrust back into my grey world of politics without a struggle." He goes on: "I shall tell Sunny, it would not be honourable for me not to — being as we are such friends — what I feel and intend."

Muriel had another great admirer in "Sunny" Charles, the Duke of Marlborough, Churchill's cousin. She eventually married an army officer, Michael Ward, and died in Hampstead in 1964.

The letter sold for £20,900, a record for a piece of Churchill correspondence. The note was followed by an eight-page letter to Muriel from his home in Wiltshire on Christmas Day 1904. He says: "Of course you do not love me a scrap," but insists on a bond between them and of "a key — if I could only find it, if you would only let me look for it — which would unlock both our hearts".

The correspondence covers a period of both personal turmoil and momentous change for Churchill. He was elected Conservative MP for Oldham in 1900 but crossed the floor of the House over tariff reform to sit with the Liberals in May 1904.

The letters contain an undercurrent of political gossip and he writes: "Two speeches a day — always different — are the most wearing. If I stop working I get gloomy."

Churchill turned his attention to Clementine Hozier (1885-1977) after meeting her at a dance in 1904. Four years later they were married. Correspondence with Muriel continued until at least 1957.

Malcolm Forbes Jnr, 47, said last night from New York that the £76,000 he spent was nowhere near his upper limit. "These letters are extraordinary. They reveal a personal dimension to the man which I'm sure many people did not realise fully."

Suc

TIMES 14-5-94

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

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Direct Line 071 210 3139

Pat Andrews
Cabinet Office
Historical & Records Section
Hepburn House
Marsham Street
London SW1P 4HW

Please quote: L92/3737/HF/L8

Your reference: HO94/305

Date: 12 May 1994

Dear Pat

H.M. ATTORNEY GENERAL -v- MONTROSE
CHURCHILL ARCHIVES

I attended Court this morning with Counsel when directions were agreed as set out in my letter of 28 April 1994 to Messrs Goodman Derrick. Counsel is to settle and lodge a Minute of the agreed terms and tells me that he will omit the words in brackets contained in the paragraph numbered 3 of my letter of 28 April (concerning the extension of time for points of reply and evidence in reply). However, he confirms that this is understood bewteen the parties.

I will now wait to hear from Mr Charles when he and Mr Hart have agreed the points of claim. I understand that Mr Charles has sent a preliminary draft to Mr Hart for consideration.

I have arranged, as requested by Mr Charles, for Mr Cunningham to attend on Mr Charles in conference to discuss whether or not there is a copyright claim which should be advanced by the Crown. Mr Charles feels that it is unlikely but wants to consider the point with Mr Cunningham. The Counsel-only conference was suggested by Mr Charles. If you would like to attend the conference please let me know so that I can inform Counsel's Clerks.

Yours faithfully

HILARY FASSNIDGE
for the Treasury Solicitor

CABINET OFFICE
H 94/544
16 MAY 1994
FILING INSTRUCTIONS
FILE No

CABINET OFFICE

Historical and Records Section

Hepburn House, Marsham Street, London SW1P 4HW
Telephone 071 217 6050
Fax 071 217 6010

HO94/374

Miss H Fassnidge
Treasury Solicitors Department
Queen Anne's Chambers
28 Broadway
LONDON
SW1H 9JS

6 May 1994

Dear Hilary

CHURCHILL ARCHIVE

As you know, at the Conference with Counsel on 19 April 1994 Miss Veitch and I were asked to do more work on the Churchill Archive to further identify official papers. Miss Veitch is on leave at the moment but she put some work in hand before she left and I thought you may find if useful to know how far we have got. Class 1 is, as we have said, mainly personal. 16 pieces (files or volumes) are identified as having some official material in them. Miss Veitch believes that 5 of those may contain material we would wish to claim. This is very much on the margins and, in the light of Mr Charles' views it may be that we should concede that Class 1 is "non-official". This is however something we could check quite quickly during a visit to Churchill College.

Class 2 is a bigger problem. It contains over 63,000 folios (pages) of which very approximately half are what we would regard as official. To look at and list these would take something like 3-4 months, but possibly longer.

We do not claim any material in Classes 3-7 which are the Constituency papers.

May we assume that it has now been accepted by the Defendants that Classes 10-27 comprise official (state) papers given their agreement in their letter of 18 April to the "proposed exercise of identification with regard to classes 1, 2, 9, 28, 29, 30" (and 8, mentioned separately) and that therefore, as you said in your letter of 11 April further identification is not necessary.

Although you listed Classes 28, 29 and 30 for inclusion in the "exercise of identification" you will recall, from your attendance note of our meeting on 12 January, that these do not comprise State Papers. Class 28 is the Acquired Papers which Peregrine Churchill now says are his and not part of the Archive at all but that is a separate matter.

This leaves Classes 8 and 9. Miss Veitch did some more work on 9 before she went away but we have done nothing yet on 8. Goodman Derrick's letter of 18 April 1994 says that there is no objection to Miss Veitch having access to Class 8 but they have also refused to return them to the College. Should we make arrangements to see them at Sotheby's or is this acquiescing in their right to keep the papers out of the Archive?

Miss Veitch will be back on 16 May. Between then and end-May when, as she said at the Conference on 19 April, she goes away again for virtually the whole of June, she and I will visit Churchill College to check on Class 1 and on that part of Class 8 which is still at the College. We will try to finalise Class 9 also. Work on Class 2 and, subject to your advice, on that part of Class 8 currently at Sotheby's, will be done on Miss Veitch's return.

I should be grateful if you would let me know whether this timetable is acceptable.

You have very kindly copied to me your recent exchange of correspondence with Goodman Derrick about Points of Claim etc. I am afraid I do not understand these proceedings and so I rely on you and Michael Carpenter, to whom I am copying this letter, to let me know whether anything is required of me. Assuming Goodman Derrick accept your counterproposal will you need anything from me for the "Points of Claim"?

I mentioned in an earlier letter concerns I had about the relevance of some of the statements in Mr Montrose's Affidavit, in particular his paragraph 9, but he also refers to and produces as an exhibit the Guide to Papers of British Cabinet Ministers 1900-1951 (para 22) and refers to the sale of the Lloyd George papers (para 23). Is it necessary to comment on this - doesn't the fact of the 1946 Settlement put the Churchill papers into a quite separate category, but perhaps even if it does we need to say so, but where?

Yours ever

Pat

MISS P M ANDREWS

CABINET OFFICE
H 94/517
04 MAY 1994
FILING INSTRUCTIONS
FILE No.

THE TREASURY SOLICITOR
Queen Anne's Chambers, 28 Broadway, London SW1H 9JS
Direct Line 071 210 3450 Direct Fax 071 210 3503
Office of Public Service & Science Legal Adviser

MINUTE

To: **Miss Fassnidge** **From:** **Michael Carpenter**

Room: **480 Bdy 1**

cc: **Mr Jenkins**
Mr Jackson (LSLO)
Miss Andrews (CO) **Date:** **3 May 1994**

Churchill Archive

1 You will see from the attached (Annex A) that the request by Correlli Barnett for return of the literary papers presently kept at Sotheby's has draw a refusal from Montrose.

2 This result is probably to be expected, but Counsel may wish to draw on this exchange in settling points of claim. If, as Michael Hart seemed to suggest at the conference on 19 April, the 1969 correspondence may need to be relied on as the basis of a claim in tort, then it may be that this refusal to return the literary papers amounts to an act of conversion.

3 A related point which should, I suggest, be put to Counsel is whether the Crown should now formally indicate to the trustees that they do not have consent to the removal of the literary papers or to their continued retention and that, having refused the request for the return of the papers, they are now in breach of such obligations as arise from the 1969 correspondence.

4 It appears from the correspondence between the Churchill Archive Centre and Montrose (copies of 4, 12 and 18 August 1992, and of 22 and 25 March 1994 attached – B) that whatever consent may have been given by the Crown in 1992, that consent related only to "further inspection and evaluation" by Sotheby's. It is quite clear that the trustees are now holding onto those papers as a bargaining counter and have gone well beyond the earlier consent. Preservation of the status quo, contrary to what Montrose asserts, requires the return of the papers to the Archive. In this connection, I would draw attention to the letter of 4 August 1992 from Montrose to Correlli Barnett in which he refers to the removal being a "temporary withdrawal".

5 It seems to me to be necessary to make some formal protest at the continued retention by the trustees of these papers and I would be interested to know what Counsel think.

Enc

M.C.

A

CHURCHILL ARCHIVES CENTRE

CHURCHILL COLLEGE CAMBRIDGE CB3 0DS TELEPHONE (0223) 336178

Keeper: CORRELLI BARNETT, D.SC., M.A., F.R.S.L., F.R.HIST.S. FACSIMILE (0223) 336135

CB/js/3326

29 April 1994

Mr Ian Montrose
Messrs Goodman Derrick
Solicitors
90 Fetter Lane
London EC4A 1EQ

Dear Mr Montrose

Thank you for your letter of April 26, the contents of which I have noted.

As you and your co-Trustees will appreciate, scholars who come to the Archives Centre may want to look at more than one Section of the Chartwell papers on the same visit, and therefore it will be rather inconvenient for such scholars to have to go to London as well as Cambridge.

We do not keep a record of those scholars that we have had to turn away, but I enclose herewith the names and addresses of four such scholars who have made enquiries about the literary papers during the last month.

May I take this opportunity of renewing my hope that the section of the Chartwell papers at present at Sotheby's may be returned to this Archives Centre as soon as possible.

Yours sincerely

Correlli Barnett

Correlli Barnett

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MR PEREGRINE CHURCHILL * MR RANDOLPH CHURCHILL

CHURCHILL COLLEGE ARCHIVES TRUST

REGISTERED CHARITY NO. 273633

TRUSTEES: PROFESSOR ALEC BROERS, F.R.S., *Master of Churchill College* MR WINSTON CHURCHILL, M.P.
MR MICHAEL ALLEN, M.A., *Bursar of Churchill College*

Readers who have wanted to see Section 8 of Chartwell Papers, at present in Sotheby's since the beginning of April 1994

Mr F M Brick
27 Prentis Road
London SW16 1QB

(returning to USA in June)

Mr A G D Rose
Magdalene College
Cambridge CB3 0AG

Mr Jason Howard
Churchill College
Cambridge CB3 0DS

Dr Frederick Woods
266 Hungeford Road
Crewe
Cheshire
CW1 1HG

(to be an Archives By-Fellow)

James MacKenzie
Jeffery Maunsell
John Roberts
Robin Perrot
[redacted]ick Swaffer
[redacted]Montrose
Tim Langton

Diana Rawstron
Gregor Hamlen
Michael Collins
Paul Herbert
David Edwards
Moray Aitken

CONSULTANT &
FOUNDER
Lord Goodman CH QC (Hon)

CONSULTANT
L C B Gower

GOODMAN DERRICK
SOLICITORS

90 Fetter Lane
London EC4A 1EQ

Telephone 071-404 0606
Telex 317210
Fax 071-831 6407
DX 122 London

Our ref: IM/ep

26 April 1994

Dear Mr. Barnett

I refer to your letter of 25 March which I acknowledged on 5 April.

Having considered the matter with my co-trustee I would advise that we feel that in view of the present situation we should merely preserve the status quo for the time being.

We are concerned however that access should not be denied to scholars, and perhaps you could have a list of those applicants disappointed in their search of the literary papers from the date that they were withdrawn from the College. If you could let me have their names, addresses and telephone numbers we shall contact them to make appropriate arrangements. Again further scholars requiring access in the future should be referred to us, preferably by your supplying me with their details rather than simply passing on my name as a contact point. Hopefully in this way we shall be able to accommodate all reasonable requirements.

Yours sincerely

Ian Montrose

Correlli Barnett Esq.
Churchill Archives Centre
Churchill College
Cambridge CB3 ODS

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B

MOST CONFIDENTIAL

CB/js/3229

22 March 1994

Mr Michael Carpenter
Treasury Solicitor's Office
Queen Anne's Chambers
28 Broadway
London SW1H 9JS

Dear Michael

Following our telephone conversation this afternoon, I have pleasure in enclosing the correspondence relating to the removal of literary papers from the Chartwell collection in September 1992 for the purposes (according to Ian Montrose) of "further inspection and evaluation" at Sothebys.

Although it does not appear on the file, I did in fact consult Pat Andrews on receipt of the Trustees' notices of August 3 and 4, and since the papers were unquestionably personal and literary and were to be removed only for the stated purpose, she gave consent to our letting them go, as I am sure she will confirm. The papers consist of manuscripts, typescripts and proofs of Sir Winston's literary works, but mostly of annotated typescripts and proofs. Any related correspondence remains here in this Archives Centre.

The Chartwell situation has developed greatly since this time in 1992, and on December 16, 1993 I issued a formal instruction to the Archives Centre staff that no papers whatsoever should now be released.

With all best wishes,

Yours ever
Bill

Correlli Barnett

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PROFESSOR THE LORD ADRIAN, M.D., F.R.S. * THE LORD ANNAN, O.B.E. * MR JACK KING, M.A.
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MR PEREGRINE CHURCHILL * MR RANDOLPH CHURCHILL

CHURCHILL COLLEGE ARCHIVES TRUST
REGISTERED CHARITY NO. 273033
TRUSTEES: PROFESSOR ALEC BROERS, F.R.S., *Master of Churchill College* MR WINSTON CHURCHILL, M.P.
MR MICHAEL ALLEN, M.A., *Bursar of Churchill College*

CHURCHILL ARCHIVES CENTRE

CHURCHILL COLLEGE CAMBRIDGE CB3 0DS TELEPHONE (0223) 336178

Keeper: CORRELLI BARNETT, D.SC., M.A., F.R.S.L., F.R.HIST.S. FACSIMILE (0223) 336135

28 MAR

CB/cb Silent Copy for Richard Carpenter

25 March 1994

Mr Ian Montrose
Goodman Derrick
90 Fetter Lane
London EC4A 1EQ

Dear Mr Montrose

You will remember that in September 1992 certain literary files from the Chartwell Papers [copy of Dr Beal's receipt enclosed] were temporarily withdrawn for the purpose of 'further inspection and evaluation' by Sothebys. Now that the whole of the Chartwell Papers has been opened to research at the instruction of the Trustees, may I request that these files be returned to this Archives Centre, in order that they may be made available to scholars and also in order to maintain the integrity of the collection?

Yours sincerely

Correlli Barnett

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PROFESSOR THE LORD ADRIAN, M.D., F.R.S. · THE LORD ANNAN, O.B.E. · MR JACK KING, M.A.
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REGISTERED CHARITY NO. 273633

TRUSTEES: PROFESSOR ALEC BROERS, F.R.S., *Master of Churchill College* MR WINSTON CHURCHILL, M.P.
MR MICHAEL ALLEN, M.A., *Bursar of Churchill College*

CHURCHILL ARCHIVES CENTRE

CHURCHILL COLLEGE CAMBRIDGE CB3 0DS TELEPHONE (0223) 336178

KEEPER: CORRELLI BARNETT, M.A., F.R.S.L., F.R.HIST.S. FACSIMILE (0223) 336177

We hereby acknowledge receipt of the following Chartwell files from the Churchill Archives Centre:

CHAR 8/1-9, 11-14, 17-18, 25, 29, 34, 36-37, 39, 42-43, 51-195, 200, 202, 215, 221, 231-266, 279-283, 298-305, 316-319, 338-481, 498-501, 518-527, 540-545, 563-593, 609-621, 623, 641-656, 665-679, 689-697, 703-706, 723-802 plus 26, 285, 640

136 Boxes collected
16/9/92

.....Peter Beal.....

Dr Peter Beal
for Sothebys
Wednesday, September 16, 1992

Patrons: THE COUNTESS OF AVON · LADY MARGARET COLVILLE · THE LORD WOLFSON OF MARYLEBONE, F.B.A. PROFESSOR THE LORD ADRIAN, M.D., F.R.S. · THE LORD ANNAN, O.B.E. · MR JACK KING, M.A. THE LADY SOAMES, D.B.E. · THE HON. WALTER ANNENBERG, K.B.E. · THE EARL LLOYD GEORGE OF DWYFOR SIR KENNETH STOWE, G.C.B., C.V.O. · THE LORD TODD OF TRUMPINGTON, O.M., F.R.S. MR RANDOLPH CHURCHILL

CHURCHILL COLLEGE ARCHIVES TRUST

REGISTERED CHARITY NO. 273633

TRUSTEES: PROFESSOR ALEC BROERS, F.R.S., *Master of Churchill College* MR WINSTON CHURCHILL, M.P. MR MICHAEL ALLEN, M.A., *Bursar of Churchill College*

18 August 1992

Dear Sir

Churchill Archive Settlement ('Chartwell')

We as trustees of the above settlement hereby confirm that we absolve the Archives Centre from any responsibility for integrity of such files as may be removed in due course by Messrs. Sotheby's for inspection and evaluation in London.

Yours faithfully

Henry Winston Spencer Churchill

Ian Montrose

The Keeper
Churchill Archives Centre
Churchill College
Cambridge CB3 0DS

Lord Goodman CH
James MacKenzie
Jeffery Maunsell
John Roberts
Robin Perrot
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Our ref: IM/ep

18 August 1992

Dear Mr. Barnett

Thank you for your letter of 12 August.

A formal letter dealing with the responsibility for integrity of files is being circulated for signature and should be returned to you shortly.

I have advised Dr. Beal of the contents of your second paragraph.

Yours sincerely

Ian Montrose

Correlli Barnett
Churchill Archives Centre
Churchill College
Cambridge CB3 0DS

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CHURCHILL ARCHIVES CENTRE

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KEEPER: CORRELLI BARNETT, M.A., F.R.S.L., F.R.HIST.S. FACSIMILE (0223) 336177

CB/cb

12 August 1992

Mr Ian Montrose
Goodman Derrick
90 Fetter Lane
London EC4A 1EQ

Dear Mr Montrose

Thank you for your letter of 4 August and its enclosure, about which we subsequently spoke on the telephone.

We will give Beale all the help we can, but, as I said, we would be grateful for advance notice from him as to which files he wishes to have, so that we can have them ready and avoid an awkward rush at possibly a busy time for us.

I would also be grateful for a formal letter from you absolving this Archives Centre from any responsibility for the integrity of the files once they have been removed from the Centre.

Yours sincerely

Correlli Barnett

Correlli Barnett

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5/8/92

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4 August 1992

Dear Mr. Barnett

I enclose a formal notice signed by Peregrine Churchill and myself, and I understand that Dr. Beale is likely to be in touch with you shortly.

Please let me know if there are any other formalities to go through. For the moment can this be treated as a temporary withdrawal rather than permanent, as I very much hope it would not be the latter!

Yours sincerely

Ian Montrose

Correlli Barnett Esq.,
Churchill Archives Centre
Churchill College
Cambridge CB3 0DS

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To: Churchill Archives Centre
Churchill College
Cambridge

Churchill Archive Settlement ("Chartwell")

We hereby authorise and request you to release to Dr. Peter Beale of Sotheby's such files as he may specify relating to the literary papers of Sir Winston Churchill for the purpose of removing the same to the premises of Messrs. Sotheby's in London for further inspection and evaluation.

We shall in due course if you require give further confirmation as to the specific file numbers and documents concerned, but we would hope that this would not delay the release of the documents to Dr. Beale.

Dated this 3rd day of August 1992

Henry Winston Spencer Churchill

Ian Montrose