

LOOSE MINUTE

D/HIS/5/2/78

PS/Minister of State

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- Head of DCS (CS)

23/1

THE AUBREY, BERRY, CAMPBELL DEFENCE COMMITTEE

1. Thank you for your minute D/HIS/5/2/78 of 22 March 1978 in which you asked for advice on the content of the note circulated by the Aubrey, Berry, Campbell Defence Committee.

2. The Minister may be interested to see the attached background note on the case progressed last year by the Security Service (who are handling the case). Detailed charges against the trio fall mainly under section 1 of the Official Secrets Act. Berry is charged with communicating information which might directly or indirectly be useful to an enemy; Campbell is charged with obtaining and receiving information; and Aubrey with aiding and abetting Campbell. They appeared at a 10 day hearing at Tottenham Magistrates Court in November 1977 and were committed for trial at the Old Bailey on 5 September this year.

3. A number of MOI expert witnesses will be appearing at the trial. They will include Major General Sturge (ACDS(S)) who will give evidence on the alleged threat to the Defence Communications system and a Colonel in the Intelligence Corps (who formerly worked in DE 24) who will be called as an expert on SIGINT aspects. This Colonel has already given evidence at the Magistrate's Court hearing when the court directed that his name should not be disclosed (although it had to be revealed to the Defence). The name was subsequently published, however, in both 'The Leveller' and 'Peace News' and these publications are shortly to be prosecuted for contempt of court.

4. As the case is, of course, sub judice, the Security Service advise that, should the Minister be questioned on it in the House, he should be recommended to take the line that it would not be proper for him to make any comment.

30 Mar 78

I G McEWEN  
DD HQ Sy 3

SECRET

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FOS  
2nd FUS 30  
DGI  
ACDS(S)  
DMSI  
Sec DPBC  
D HQ Sy  
D Sy(A)  
Head of DIS(CS)  
GCHQ  
Box 500

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2WW

TELEPHONE OF HIS MAJESTY'S GOVERNMENT  
DIRECTOR GENERAL OF DEFENCE INTELLIGENCE SERVICES 2111/3

CONFIDENTIAL

MO 23/1

3rd August 1978

FCO, PUSD  
(Mr Hervey)

*Dear Sam,*

RETAINED UNDER  
SECTION 3(4)

THE ABC CASE

I understand that Defence Counsel for Messrs Campbell and Berry have been making some tentative proposals in connection with the forthcoming High Court case, whereby the SIGINT charges under Section 1 would be dropped in exchange for pleas of guilty under Section 2, and the prosecution against Campbell on the defence communications charges would not be proceeded with in exchange for an undertaking or injunction against disclosure in terms satisfactory to the prosecution.

As you know, my Department's interests in this case are to prevent such recurrences but with the minimum publicity for the related activities. If, therefore, you feel that such an accommodation could inhibit Campbell and others in the future, whilst serving to remind Berry and others that obligations of secrecy cannot be broken with impunity, and all without protracted publicity, then I would certainly not oppose the pursuit of some accommodation.

As regards the security aspect of the material collected under the communications charges, I would be quite content that the most obviously innocuous material should be returned to Campbell, but not more than this.

/ I realise ...

The Rt Hon Samuel Silkin QC, MP

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I realize that this is all rather tentative at the moment, but from my point of view it does seem to offer some advantage in prosecuting defence interests.

I am sending a copy of this letter to David Owen.

*Yours*

*Fm*

Fred Mulley

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MO 23/1

Copy to:  
PS/PUS  
PS/2nd PUS  
DPR(Army)  
DCPR

Acting Head DIS(CS)

ABC CASE - BBC PROGRAMME

Thank you for your minute of 4th September which warned of the BBC's intention to devote a television programme to the ABC Case. The Secretary of State agrees that such a programme could be damaging, and that we should make every effort to persuade the BBC to drop it, or - failing that - to direct its attention to those questions which would cause us least embarrassment. S of S has noted that 2nd PUS has approved an approach to the BBC by DPR(Army), and he is content for that to proceed.

6th September 1978

(R T JACKLING)  
APS/SECRETARY OF STATE  
218 2111/3

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AUS(CM)(B)/7/2

PS/S of S

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23/2

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D Sy(A)  
Head of DIS(OS)  
Box 500 ( )  
Intelligence Co-ordinator GCHQ (  
FCO (Mr Hervey, PUSB)

REMOVED UNDER  
SECTION (4)

THE ABC CASE

1 On the 2 August 2nd PUS recommended that prosecuting counsel should explore further with defending counsel the latter's suggestion that there might be an accommodation whereby the defendants pleaded guilty to offences under Section 2 of the Official Secrets Act 1911 and the prosecution dropped charges under Section 1 of the Act. S of S accepted this recommendation and informed the Attorney General that he would be prepared to agree to such a move if the Attorney General thought it was consonant with the prevention of activities similar to those of Campbell and Berry in the future. Prosecuting counsel only had time to make encouraging noises to defending counsel. The defendants themselves did not agree with the idea and there was a press conference at which the defendants said they would have nothing to do with an accommodation and suggested that it was the idea of the prosecution in the first place. The whole idea of an accommodation was therefore dropped.

2 In the absence of 2nd PUS on leave this minute outlines briefly what has happened in the trial so far and explains why the point has been reached at which the question of the desirability of continuing with the 9th charge (which is against Campbell only and concerns the collection of information useful to an enemy) has come to the crunch. This charge is under Section 1 only and there can be no question of proceeding with it under Section 2.

3 So far the prosecution have deployed their case and called witnesses in evidence to particular parts of their case. On behalf of Campbell, Lord Hutchinson his defending counsel has cross questioned the witnesses and has concentrated on drawing attention to occasions when details of establishments have been published either in the press or, more damagingly, in quasi-official publications like the Royal Air Force Year Book. Mr Leonard, the prosecuting counsel has come to the view that there have been so many published references to the information Campbell has acquired and the conclusions he has drawn from it that the chances of success with the 9th charge are not good. His recommendation is that the 9th charge should be dropped before the first of the three Ministry of Defence expert witnesses begins to give evidence. There are indications that, if the 9th charge is dropped, the defendants may plead guilty to some of the other charges under Section 2. There is to be a conference with the Attorney General late this afternoon, 18 September, to decide what action to take.

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4 ACDS(S) is the Ministry's expert witness in respect of the 9th charge. He confirms that if the case depends on proving that actual damage has occurred or that Campbell is in possession of information which has not already been published elsewhere, there is little chance of succeeding. The rationale for denying journalists the right to investigate Government affairs, including defence, is subtle and complex. Much is included in ACDS(S)'s notes for his evidence, a copy of which is available if required. On the way this case has developed Prosecuting Counsel, and the Director of Public Prosecutions do not consider that the jury in this particular case will be impressed by these somewhat abstruse arguments. Reluctantly we and the Security Service can find no grounds for disagreeing.

5 It is understood that, if the 9th charge is proceeded with, Campbell will give evidence himself and that his defending counsel expects him to be in the witness box for up to a month. It seems probable that he will produce more and more published information in open court to demonstrate how much is already available. This has been the tactic of the defence so far. It could be that this will draw attention to more information about defence which we should prefer not to be given such a public airing.

6 On the other hand, if the 9th charge is dropped, it will greatly weaken our ability to stop damaging publication of information collected in the way that Campbell did if such a case arises again as it almost certainly will. Furthermore the outcome of the ABC case as a whole is bound to have some relevance to the future of the Official Secrets Acts, as the Home Secretary is reported to have said.

7 Prosecuting Counsel seems to believe that the case for the 9th charge is lost. If this is true, the Ministry has nothing to gain from its continuing and may be embarrassed by more revelations. I do not know whether S of S will wish to express a view to the Attorney General or whether he will be consulted. In either case it is recommended that he should agree that the 9th charge should be dropped.

18 September 1978

H L THRETT  
AUS(CH)(S)  
NB 8115  
Extn 3359

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PS/2nd FUS

23/1

Copy to:  
 PS/S of S  
 PS/FUS  
 DUS(CK)  
 AUS(CK)(B)  
 DNSI

THE ABC TRIAL

1. DNSI's observer at the trial informed us last night that after defence counsel had completed their cross-questioning of Col Johnstone and prosecuting counsel had also addressed a few questions to him the judge sent the jury out and a bout of legal argument began. This centred on the interpretation of Section 1 of the Official Secrets Act 1941. He suggested that in order to prove an offence the prosecution would have to prove a element of calculation or intention on the part of the defendants to achieve something prejudicial to the safety or interests of the State. Prosecuting counsel maintained that it was sufficient for them to do something which "might be" so prejudicial. There was a debate on the real meaning of the words "might be" with the judge going so far as to question whether they had any meaning at all.

2. I have not seen the transcript and clearly this is a difficult subject to follow and report. However, it was quite clear that the judge believed that the charges under Section 1 were inappropriate. He did not say that there was not evidence to support the charges.

3. I understand that there was a meeting with the Attorney General last night and it was decided that it would not be appropriate to drop Section 1 charges but that if in view of the way his mind was turning it would be appropriate to leave them "on the file". The effect of this is that they would only be withdrawn if the charges under Section 2 failed.

4. My latest information is that the prosecution have indicated that the charges are to be left on the file and that at the request of the defence there has been an adjournment until Thursday 26 October. Prosecuting counsel said that he had spoken to the Attorney General and that it had been decided not to pursue the Section 1 charges. He would not find it necessary to call Mr C and some others as witnesses. The judge apparently said that he would not impose immediate prison sentences whether the defendants pleaded guilty or were found guilty of the Section 2 charges. The implications of his remark are not fully understood. He could be referring to suspended sentences. He could also be implying that in his opinion there is no answer to the Section 2 charges and therefore there is no question of their being found not guilty. The jury were brought back in and the judge instructed them not to return verdicts on the Section 1 charges.

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5. We understand that Berry was overheard to hint that he would plead guilty. It was also thought that Aubrey would do the same. Campbell's position is not clear.

6. It is possible that the judge might have in mind that a suspended sentence is a good way to muzzle the defendants in future but this is speculation. There seems to be disappointment that Berry at least will not obtain a prison sentence but here again it seems best to await the verdict and sentence.

*D R E Hopkins*

24 October 1978

D R E HOPKINS  
D of HQ Sy



SECRET/HVCCO

Secretary of State  
 DUS(CM)  
 AUS(CM)(B)  
 D HQ Sy  
 D Sy(A)  
 Head of DIS(CS)

FUS

Private Secretary

## ABC CASE

1. The trial is likely to end on 13 or 14 November.
2. There were originally 9 charges against the three accused, 8 of which related to SIGINT and one to Defence Communications (Campbell only). The latter charge was dropped when the earlier trial was abandoned. On 24 October the Attorney-General agreed to the dropping of the SIGINT charges under Section 1 of the Official Secrets Act against Berry (the ex-soldier) and Campbell after the Judge had indicated that he was unhappy about the use of Section 1 in this case.
3. The trial resumed on 26 October with the charges under Section 2 (communicating or knowingly receiving classified information) against all three defendants. (A charge under Section 7 in respect of Aubrey has also now been dropped.) The Judge has made it clear that even if the defendants are found or plead guilty he is only prepared to impose suspended rather than custodial sentences.
4. It seems that the Judge has strong feelings about the conduct of the case, and indeed about its outcome. He has indicated for example that in his view Berry has shown no defence to the charge against him under Section 2.
5. It at present seems quite possible that Berry will be found guilty. The outcome in regard to Campbell is more uncertain, but the Security Service profess to be confident that the Prosecution have shown that Campbell must have known that he was receiving classified information.
6. Whatever the verdict, what has been admitted by official representatives in open court is likely to make it more difficult to continue to refuse to acknowledge that we undertake SIGINT in peacetime or that GCHQ is involved. PQs about GCHQ are likely to increase. Depending on the amount of public interest, I think we may well have to re-examine the desirability or otherwise of admitting that GCHQ is involved in SIGINT. If it were decided to do so,

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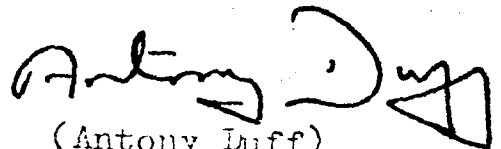
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it would be important to decide also to refuse all comment on GCHQ's work on the grounds that details of secret work must remain secret.

7. If Aubrey, Berry and Campbell are acquitted, our major difficulty may lie in the documents produced in the case, particularly the information in the tape of the interview after which they were arrested. The formal position is that unless directed otherwise, the property of the accused has to be returned to them if they are acquitted. The Security Service are urgently examining the possibilities of obtaining a contrary direction by the Judge.

8. Even if it were possible to retain the tape in the event of an acquittal, Berry and Campbell could not be prevented from publishing a version of their conversation reconstructed from memory, and a lot more besides. In that event, I think our reply to questions would have to be that we never comment about intelligence matters.



(Antony Duff)

9 November, 1978.

cc Mr. Whyte

SECRET/HVCCO

LOOSE MINUTE

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D/DPR/222/4

PS/S of S ✓

*Sp*  
*To note.*  
*R*

Copy to:  
PS/PUS  
PS/2nd PUS  
DMSI  
Head of DIS(CS)  
CPR

ABC CASE - BBC PROGRAMME

Reference A: MO 23/1 dated 6 Sep 78

1. The BBC has decided to cancel the showing of a TV programme which would have given details of SIGINT operations, including reference to activities in Northern Ireland. Some filming had already taken place and I understand that the decision to drop the programme was referred to the Director-General.

2. The completion of the ABC trial will be covered in BBC TV News and a short feature is planned. It will be factual and restricted to the court proceedings. A more comprehensive programme is now being prepared by Panorama examining the legal and information aspects of the trial. No doubt the Official Secrets Act will come in for some criticism, but I believe it unlikely that embarrassing details of SIGINT will be included.

3. I will endeavour to obtain further details of the Panorama programme and keep you informed.

*D Boorman*

D BOORMAN  
Brigadier  
DPR(Army)

14 November 1978