

You should not be in the slightest doubt that there are undeclared foreign intelligence officers working in Australia. Some of them use coercion and prey on character or family vulnerabilities and other human frailties in order to enlist Australian residents to work against this country's interests. (*The Age*, 11 September 1986)

the peter wright book

Those of us who are no longer young remember that Botany Bay and Van Diemen's Land were the names which in our youth we associated with expatriated rascaldom . . . Van Diemen's Land has been made sweet as a rose by changing her hated name to Tasmania.

Anthony Trollope, *The Tireless Traveller*
BA Booth ed, Berkeley, 1941

Books about spies, especially those about a country's intelligence service, often create great interest, intrigue and controversy. A book by former British spy Peter Wright is a good example, not because of its content or startling revelations (although not all of these have yet been made public) but because the British Government commenced court action to prevent its publication in Australia. This has turned the book into a potential best-seller. The case in the New South Wales Supreme Court attracted widespread publicity and public interest in both Australia and the United Kingdom and created something of a political storm in England especially for the Prime Minister, Mrs Thatcher. There were allegations that Mrs Thatcher may have misled the Parliament over the reasons why the Government had not attempted to prevent the publication of an earlier book by Chapman Pincher entitled 'Their Trade in treachery' which had apparently been based on information supplied by Peter Wright.

the background. Peter Wright worked for MI5, the British equivalent of ASIO, from the mid 1950s until 1976 when he retired to Tasmania to breed horses. During that time there were a number of well-publicised examples of Russian 'moles' (eg Burgess, McLean, Philby) having penetrated British intelligence services, in particular MI5. Peter Wright was convinced that there were more who have never been exposed. He set about

doing something about it — both before and after his retirement. His activities since retirement have led to the current court case. After 1976 he returned to England a number of times, he appeared before a parliamentary committee, he went on national television calling for an inquiry into MI5, he made information available to a journalist which formed the basis of a book about MI5 and finally he put pen to paper and wrote his memoirs.

The British Government has done little in the past to prevent or restrain the publication of material about the intelligence services. But Peter Wright is a person with intimate knowledge of the workings of MI5 and the British Government decided that the time had come to make a stand. It does not want former intelligence officers to publish material in this way and is seeking to discourage it. The difficulty in the Wright case was that the book was to be published in Australia and action to prevent publication had to be taken in the New South Wales Supreme Court applying the law of that State. Had they chosen the right 'test case' to obtain the principles or guidelines they were seeking?

the legal issues. In August 1986 the British Government sought and was granted an interim injunction in the New South Wales Supreme Court restraining Heinemann and Wright from publishing the book. The parties had agreed when this injunction was granted that in order to limit legal argument there would be no contest over the accuracy of the information contained in the memoirs. Granting the injunction Justice Powell outlined the following issues for determination:

- whether the relationship of Mr Wright and the Crown was one of contract,
- if the contract imposed an obligation of confidence on Mr Wright,
- if the confidence extended to all matters in the memoirs,
- if it was in the Australian public interest that they be published, and

- if the plaintiff could raise an issue of public interest immunity (*Financial Review*, 28 August 1986).

At this hearing Justice Powell also said that the British Government's admissions meant that:

- some of the information in the memoirs was already in the public domain,
- it was already known to hostile powers;
- some of it was out of date to such an extent that it would not damage the interests and activities of the British Crown; and
- that there was evidence of treason, crimes and other unlawful acts by members of the British Security Service.

australia's support for the british case. The Australian Government's decision to support the British Government in this case indicated that it also wished to discourage its former intelligence officers from writing books. Mr Michael Codd, the Secretary of the Department of Prime Minister and Cabinet, gave evidence that the publication of the book could be prejudicial to security and contrary to Australian public interest. He suggested that it could encourage books by Australian agents — which might impair the reputation of Australia's intelligence agencies leading to a loss of confidence in the agencies and a decrease in the quality of information given to Australia. (*Sydney Morning Herald*, 18 November 1986)

There is clearly a need for some balance to be reached between the need to protect personnel involved in security and the potential national security implications with some public accountability of the operations of such agencies. But the evidence of Mr Codd on the potential damage to Australia's reputation by the publication of the book was not favourably received by Mr Justice Powell in the New South Wales Supreme Court. As far as he was concerned the arguments of Mr

Codd only had weight if Mr Wright had been a member of ASIO seeking to release information rather than a member of the British secret service.

the asio connection. It is alleged in the Peter Wright memoirs that the former Director-General of MI5, Sir Roger Hollis was a Soviet spy. Sir Roger, as Director-General in the late 1940's and early 1950's, had a key role in establishing ASIO.

In evidence given in the Supreme Court, Mr Wright suggested that ASIO's operations were still being influenced by the involvement of Sir Roger Hollis despite the assurance of Mr Codd that the influence of Hollis was long past (*Canberra Times*, 9 December 1986). But no suggestion was made during the case that Hollis had a role in the appointment of ASIO personnel and no evidence has ever emerged of interventions by Hollis in its operation or of penetration by foreign agents.

the witnesses. An impressive array of witnesses was produced during the hearing. The principal witness for the British Government was the Cabinet Secretary, Sir Robert Armstrong and he was supported by his Australian counterpart Mr Michael Codd. The defence called former Prime Minister, Mr Gough Whitlam, who expressed the view that none of the current activities of Australia's security and intelligence services would be impeded by any information in the Wright book (*Canberra Times*, 2 December 1986). Rather, publication of the memoirs would be in Australia's public interest. Mr William Schaap, an American lawyer, gave expert evidence on the approach to publications taken by the American Central Intelligence Agency. He pointed out that the CIA had a Publication Review Board which reviewed books which may impinge on security matters, primarily those written by former CIA officers. The only restrictions on publication imposed by the Board related to information which may endanger personnel still undercover or

operations still underway (*Financial Review*, 3 December 1986).

no decision yet. While all the evidence in the case has now been completed no decision is likely until March 1987.

no luck in ireland. Meanwhile, similar action to prevent publication of a book by former MI5 employee, Ms Joan Miller, was rejected by the Irish High Court early in December 1986. The British Attorney-General had been granted a temporary injunction to prevent publication and was seeking to have it made permanent. The court ruled that the publishers had a constitutional right to issue and publish the book entitled 'One Girl's War' by Ms Miller who was personal assistant to the head of MI5 during World War II (*The Age*, 3 December 1986).

more spy books. It has also been reported that another spybook row may be on the horizon. A former MI6 (the British spy network which operates in foreign countries) agent Mr Anthony Cavendish has written a book about his exploits behind the Iron Curtain in the late 1940s and early 1950s. He has supplied the chapters of the book to MI6 for vetting but it seems in light of the Peter Wright case, the Government has decided that the memoirs should not be published on the basis that they breach confidentiality obligations, the same issue being argued in the Peter Wright case.

telephone tapping

'If everyone minded their own business', the Duchess said in a hoarse growl, 'the world would go round a deal faster than it does.'

Lewis Carroll, *Alice in Wonderland*

senate report. The last issue of reform carried a story on public hearings by the Joint Select Committee of the Australian Parliament on the Telecommunications (Interceptions) Amendment Bill 1986 ([1986] *Reform* 171).

The Joint Select Committee has now reported.

unique report. As the Chairman of the Committee Mr SP Martin MP noted in his Preface, the establishment of the Committee was unique in the history of the federal parliament. It was the first occasion since Federation that a Bill from the House of Representatives was referred to a Joint Select Committee.

state interest? Mr Martin also noted

The Committee was surprised at the response of State Governments to invitations to contribute to the Committee's inquiry. Their response . . . can best be described as less than enthusiastic, particularly when the main issue before the Committee involved a significant potential devolution of Commonwealth power to the States.

The major recommendation of the Committee was that the Telecommunications (Interceptions) Amendment Bill 1986 be withdrawn and there be introduced a fresh Act, a complete consolidation and re-enactment of the Telecommunications (Interception) Act 1979.

extension to states, nca etc. On this question the Committee acknowledged the need of State and Northern Territory police forces, the NCA and the NSW Drug Crime Commission for rapid access to information on serious drug crime. However, it considered that the case for these bodies to have the authority to tap telephones themselves had not been made out. There was a need, in order to protect the essential rights to privacy and the malicious use of interceptive material, to restrict the number of agencies legally empowered to tap to the bare minimum. Although these agencies might initiate moves to tap phones, a central agency alone should be entitled to carry out the tap. This agency (The Telecommunications Interception Agency -TIA) should be established within the Australian Federal Police with close links with the NCA, State and Northern Territory