

BETWEEN:

SECRETARY OF STATE FOR DEFENCE

Plaintiff

- and -

LINDIS ELIZABETH PERCY

Defendant

CERTIFICATE OF THE RIGHT HONOURABLE
MALCOLM RIFKIND QC MP

1. I am Her Majesty's Secretary of State for Defence and I make this certificate on behalf of the Crown. In forming my views on the matters set out in this certificate, in particular on matters concerning relations between Her Majesty's Government and that of the United States of America, I have consulted with the Secretary of State for Foreign and Commonwealth Affairs.
2. In these proceedings I am seeking damages and an injunction restraining the defendant from trespassing on Ministry of Defence land known as Menwith Hill Station near Harrogate in North Yorkshire. The premises at Menwith Hill are currently used as a field station of the United States National Security Agency, part of the US Department of Defense. The staff are based in this country as members of a visiting force under the NATO Status of Forces Agreement 1951. Also at Menwith Hill are members of the Government Communications Headquarters ("GCHQ") who are integrated into the operations of the field station. Their presence is in accordance with the functions of GCHQ as set out in section 3(1) of the Intelligence Services Act 1994.

3. I am informed that these proceedings have been fixed for a trial beginning on 13 March 1995. I am further informed that during the course of the trial disclosure may be sought of documents and information relating to the activities at Menwith Hill and that witnesses may be asked questions about the nature of those activities.

4. The very nature of the work of the security and intelligence services of the Crown requires secrecy if it is to be effective. It has for that reason been the well-established policy of successive Governments of the United Kingdom not to disclose information about the operations or members of those services and neither to confirm or to deny matters relating to their work. So too the public interest requires that such information be protected from disclosure in legal proceedings, subject to any countervailing public interest in favour of disclosure in the interests of justice. The basis for that protection, which I elaborate below, is essentially twofold: (a) the need to protect the integrity of intelligence operations, (b) the need to protect the future usefulness of security personnel and their safety.

5. The categories of information requiring protection are, more specifically:

(a) the identities and physical appearances of serving and past members of the security and intelligence services, and details of their deployment, training, equipment and techniques;

(b) the locations of premises within the secure site at Menwith

Hill associated with security operations;

- (c) sources of intelligence information, the circumstances leading to the obtaining of that information, the means by which it is secured or produced, and details of its handling;
- (d) other details of the operational activities;
- (e) any facts which would, when taken in conjunction with other information, reveal anything in (a) to (d) above.

6. I am satisfied that these categories of information should be protected from disclosure whether in documentary, oral or physical form. Subject to what I say below, the disclosure of any such information would be likely to cause serious and unquantifiable damage to the functions of the security and intelligence services within the United Kingdom and abroad. It would tend to reveal information that would damage security and intelligence operations and to reveal aspects of the modus operandi of the services which would necessarily render them less effective in the future.

7. One particular aspect concerns the gathering of intelligence information. Any evidence tending to reveal such information or the modus operandi of those who gather it would impair the effectiveness of intelligence operations and make it more difficult to gather such information in the future.

8. Accordingly, subject to what I say below, documentary or other information falling within any of the categories described above belongs to a class of information which should in my opinion

be protected from disclosure for the reasons of public interest which I have given. I am satisfied that the information which should be protected from such disclosure includes information about the personnel, facilities, activities and operations at Menwith Hill.

9. In addition, because so much of the information is about, or supplied by, the United States Government, official disclosure of such information about GCHQ and US activities at Menwith Hill would have repercussions for the coordinated defence effort and would be harmful to the mutual trust that underpins the vital and close signal intelligence cooperation with the United States, of which the operations at Menwith Hill are a key element.

10. The concerns expressed in this certificate do not apply to such limited information of a general nature about Menwith Hill as has already been placed officially in the public domain, in particular through statements to Parliament in the course of debates or in answer to Parliamentary Questions. There is no continuing public interest in the maintenance of confidentiality of such information. In this connection I have been referred to, and have read, a witness statement of Patrick Lamb which has been served on the defendant in these proceedings. I am advised that the information about Menwith Hill which is given in that statement, in so far as it touches upon any of the categories set out in paragraph 5 above, does not go beyond that which has already been placed officially in the public domain. Accordingly I have no objection to the giving of that evidence in the course of these proceedings.

11. My attention has also been drawn to the judgement of Lord Justice Bingham (as he then was) in Makanjuola v. Commissioner of Police of the Metropolis [1992] 3 All ER 617 at 623 and to Lord Woolf's observations on that judgement in R v. Chief Constable of the West Midlands Police. ex p. Wiley [1994] 3 WLR 433 at 450-3. In the light of the principles there set out I have considered whether the public interest in non-disclosure of the categories of information to which I have referred is outweighed by the public interest in the administration of justice in the present case. On the basis of the advice that I have received about the issues in the case, however, I have concluded that the balance of competing public interests comes down clearly in favour of non-disclosure. I am persuaded in this view given that the proceedings to which this claim refers relate to matters of trespass at Menwith Hill Station, to which the detailed nature of the activities undertaken there can have no relevance. Although the information in question covers a wide range from the extremely sensitive to the less sensitive, the public interest in its non-disclosure is in general of very considerable weight. In my view disclosure could be justified only by the most compelling of considerations, and I am not aware of the existence of any such considerations in this case.

12. I therefore consider it my duty to advance a claim of public interest immunity in respect of the information to which this

certificate relates. I recognise, however, that the ultimate decision on disclosure will be for the Court to make in the light of the contentions advanced at the trial.

Signed *Malcolm Rifkind*

THE RIGHT HONOURABLE MALCOLM RIFKIND QC MP

Dated *9th March 1995*