NATIONAL JUDICIAL ACADEMY

Managing Media in Adjudicating Terrorism Cases

READING MATERIALS

Workshop on Adjudicating Terrorism Cases (P-1163)

THE CONTEMPT OF COURTS ACT, 1971

7. Publication of information relating to proceedings in chambers or *in camera not contempt except in certain cases.—(1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera except in the following cases, that is to say,—*

(*a) where the publication is contrary to the provisions of any enactment for the time being in force;*

(*b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;*

(*c) where the court sits in chambers or in camera for reasons connected with public order or the security of the State, the publication of information relating to those proceedings;*

(*d) where the information relates to a secret process, discovery or invention which is an issue in proceedings.*

(*2) Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or in camera, unless the court has expressly prohibited the 4*

publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

10. Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and

practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

15. Terrorist act.—4[(*1)]* Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security 5[, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

5[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in

connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or 6[an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.

44. Protection of witnesses.—(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the court so desires.

(2) A court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the court;

(b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

Substantial Probability of Prejudice *from* Reasonable Likelihood of Prejudice

In its 1986 landmark decision *Press-Enterprises Co. v. Superior Court of California,* 478 U.S. 1 (1986). however, the US Supreme Court made it clear that a heightened standard of proof would be required to limit the media's access to courtroom proceedings. This case involved media coverage of a murder trial in which a nurse was accused of administering lethal doses of a heart drug known as lidocaine to twelve patients. The Supreme Court overturned the District Court's decision to close the preliminary hearings to the public and to seal the transcripts of the proceedings. The Court established that it is necessary to show a "substantial probability of prejudice" before media coverage may be limited. This standard replaced the previous requirement of merely proving a "reasonable likelihood of prejudice."

The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offences

Good Practice 8: Develop and Articulate Media Guidelines for the Court and Parties

Trials involving the prosecution of terrorism offences are generally high profile by their nature, inviting scrutiny from the general public and the media.20 As a general rule, timely access to accurate

information of court proceedings increases transparency and public confidence in the fairness of the justice system. The judiciary should develop rules and procedures for media coverage of public judicial proceedings, with good practices including the following:

- **Providing the trial judge with latitude to control the conduct of the proceedings to:**

(i) maintain decorum and prevent distractions;

(ii) guarantee the safety of any court official, party, witness, or juror(where applicable); and

(iii) ensure the fair and impartial administration of justice in the pending case. Where the media is seeking special or additional coverage of the case, the court should establish a consistent policy that requests by representatives of the media for such coverage are made in writing to the trial judge, prior to the scheduled trial date or specific trial event. Written requests for specific or enhanced coverage may be supported by affidavits as appropriate.

- **Notification that the media has requested such coverage should be provided by the court to the attorneys of record in the case, with the parties provided an opportunity to object**
- **Before denying, limiting, suspending, or terminating media coverage, the trial judge may hold a hearing, if such a hearing will not delay or disrupt the judicial proceeding or receive affidavits to consider the positions of the partiesAny finding that media coverage should be denied, limited, suspended, or terminated should be supported by a finding of the court that outlines the underlying justifications for its actions**
- **The court may prohibit the use of any audio pickup, recording, broadcast, or video close up of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client, and between counsel and the presiding judge held at the trial.**

- **When more than one request for media coverage is made and the trial judge has granted permission, the court may request that the media select a representative to serve as a liaison and be responsible for arranging "pooling" among the media if such is required by limitations on equipment and personnel as a result of courtroom space limitations or as directed by the court.**
- **Where non-print media is covering a trial, the judge may impose additional guidelines which limit the use of photographic and audio equipment to that which does not produce distracting sound or light and may limit or prohibit the use of moving lights or flash attachments**

The US Constitution

Article [I] (Amendment 1 - Freedom of expression and religion)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

Article [VI] (Amendment 6 - Rights of Accused in Criminal Prosecutions)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence

Article XIV (Amendment 14 - Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection)

1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of India

19. (1) All citizens shall have the right— (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; 1 [and] (g) to practise any profession, or to carry on any occupation, trade or business.

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 4 [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and Protection of certain rights regarding freedom of

speech, etc. integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
(5) Nothing in [sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,— (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

In its General Comment 32, the Human Rights Committee of the UNO has noted that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Trials of civilians by military or special courts are not prohibited in all circumstances, but should be exceptional: it means they should be limited to cases where States can show that resorting to such trials is necessary and justified by objective and serious reasons, and where, with regard to the specific class of individuals and offences at issue, the regular civilian courts are unable to

undertake the trials. Persons charged with criminal offences, including terrorism-related crimes, are entitled to the usual series of specific due process rights, including that all persons should be equal before the courts and tribunals, the right to be presumed innocent, the right to a hearing with due process guarantees, to be tried within a reasonable time, to be tried by a competent, independent and impartial court or tribunal, and a right to have a conviction and sentence reviewed by a higher court or tribunal in conformity with international human rights law. Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which both aim at ensuring the proper administration of justice, set out the bedrock norms applicable in all trials, whether of alleged terrorists or otherwise

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Article 14 International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on 19 December 1966

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Landmark Judgment for Reading

Attorney-General -v- Leveller Magazine Ltd. And Others; Attorney-General -v- National Union Of Journalists; Attorney-General -v- Peace News Ltd. And Others

Court: House of Lords

Date: 1 February 1979

Coram: Lord Diplock, Viscount Dilhorne, Lord Edmund-Davies, Lord Russell of Killowen and Lord Scarman

References: [1979] 2 WLR 247

JUDGMENT

February 1, 1979.

LORD DIPLOCK.

My Lords. in November 1977 three defendants, two of whom were journalists, had been charged with offences under the Official Secrets Act. Committal proceedings against them were being heard before the Tottenham Magistrates' Court acting as examining justices. The proceedings extended over a considerable number of days. On the first day, on the application of counsel for the prosecution, some of the evidence was heard in camera pursuant to section 8 (4) of the Official Secrets Act 1920.

On the third day, November 107 counsel for the prosecution made an application that the next witness whom he proposed to call should, for his own security and for reasons of national safety, be referred to as "Colonel A" and that his name should not be disclosed to anyone. The magistrates, upon the advice of their clerk, ruled, correctly but with expressed reluctance, that this would not be possible and that although the witness should be referred to as "Colonel A," his name would have to be written down and disclosed to the court and to the defendants and their counsel. The prosecution decided not to call that witness and the proceedings were adjourned.

The hearing was resumed four days later on November 14. The prosecution called, instead of "Colonel A," another witness. Counsel for the prosecution applied for him to be referred to as "Colonel B," and that his name be written down and shown only to the court, the defendants and their counsel. This was said to be necessary for reasons of national safety; risk to "Colonel B's" own security was not relied on. Counsel for the defendants raised no objection to the course proposed; the magistrates assented to it and the witness then gave evidence in open court. He was throughout referred to as "Colonel B"; his real name was never mentioned. For the purposes of the proceedings for contempt of court with which the Divisional Court and now your Lordships have been concerned, it must be taken, although initially there was conflicting evidence as to this, that the magistrates gave no express ruling or direction other than that the witness was to be referred to in court as "Colonel B" and not by his real name and that his real name was to be written down and disclosed only to the court, the defendants and their counsel.

In the course of the cross-examination of "Colonel B" questions were put the effect of which was to elicit from him (1) the official name and number of the army unit to which he belonged and (2) the fact that his posting to it was recorded in a particular issue of "Wire," the magazine of the Royal Corps of Signals which is obtainable by the public. These answers enabled his identity to be discovered by anyone who cared to follow up this simple clue. The line of questioning which elicited this information was pursued without objection from counsel for the prosecution, the witness or the magistrates; and the answers which made his identity so easy to discover were included in the colonel's deposition read out to him in open court before he signed it.

In the issue of "Peace News" for November 18 these two pieces of information about "Colonel B" elicited in open court were published; and in

the issue for December 16, the name of "Colonel B" was disclosed and an account was given of his military career. In the January and March 1978 issues of another magazine. "The Leveller," the name of "Colonel B" was published. Finally, in the issues of the "Journalist" for March and April 1978 published by the National Union of Journalists, "Colonel B" was again identified by name.

All this occurred before the trial of the defendants at the Central Criminal Court began.

On March 22, 1978, the Attorney-General brought in the Divisional Court proceedings for contempt of court against Peace News Ltd. and Leveller Magazine Ltd. and persons responsible for the publication in those periodicals of the articles which published the real name of "Colonel B"; and on April 18, 1978, he brought similar proceedings against the National Union of Journalists in respect of the articles appearing in the "Journalist." In each of these proceedings the statement filed pursuant to R.S.C., Ord. 52, r. 2 contained an allegation that at the committal proceedings in the Tottenham Magistrates' Court on November 14, 1978, not only had the magistrates permitted "Colonel B" not to disclose his identity but their chairman had also given an express direction in open court that no attempt should be made to disclose the identity of "Colonel B." Before the three motions, which were heard together, came on for hearing, an affidavit by the clerk to the Tottenham Magistrates' Court was filed, denying that any such explicit direction had been given by the chairman of the magistrates and stating that the reason why such a direction was not given was because he had advised the magistrates that they had no power to do so. In view of this evidence the hearing of the motions proceeded on the basis that no explicit direction had been given to those present at the hearing that no attempt should be made to disclose the identity of "Colonel B"; and that what had happened at the committal proceedings in relation to the witness being referred to only as "Colonel B" was as I have already stated it.

My Lords, it is not disputed that the disclosure of "Colonel B's" identity by the appellants was part of a campaign of protest against the Official Secrets Act. It was designed, no doubt, to ridicule the notion that national safety needed to be protected by suppression of the colonel's name. The only question for your Lordships is whether in doing what they did the appellants were guilty of contempt of court.

The Divisional Court found contempt of court established against all appellants but made orders only against the National Union of Journalists and the two companies. The National Union of Journalists was fined

£200. Peace News Ltd. and Leveller Magazine Ltd. were each fined £500. Against these orders these appeals are now brought to this House.

In the judgment of the Divisional Court delivered by Lord Widgery C.J. it is pointed out that contempt of court can take many forms. The publication by the appellants of the witness's identity after the magistrates had ruled that he should be referred to in their court only as "Colonel B" was held by the Divisional Court to fall into a class said to be exemplified in Attorney-General v. Butterworth [1963] 1 Q.B. 696 and Reg. v. Socialist Worker Printers and Publishers Ltd., Ex parte Attorney-General [1975] Q.B. 637 and variously described in the course of the judgment as "a deliberate flouting of the court's authority," "a flouting or deliberate disregard outside the court [of the court's ruling]," a "deliberate intention of frustrating the arrangement which the court had made to preserve Colonel B's anonymity" and finally a "deliberate flouting of the court's intention." I do not think that any of these ways of describing what the appellants did is sufficiently precise to lead inexorably to the conclusion that what they did amounted to contempt of court. Closer analysis is needed.

The only "ruling" that the magistrates had in fact given was that the witness should be referred to at the hearing in their court as "Colonel B" and that his name must be written down and shown to the court, the defendants and their counsel but to no one else. that it was also the only ruling that they intended to give is apparent from the fact that they had been advised by their clerk that il was the only ruling that they had power to give, however much they might have preferred to give a wider one. None of the appellants committed any breach of this ruling. What they did, and did deliberately, outside the court and after the conclusion of "Colonel B's" evidence in the committal proceedings, was to take steps to ensure that this anonymity was not preserved.

My Lords, although criminal contempts of court make take a variety of forms they all share a common characteristic: they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it.

Of those contempts that can be committed outside the courtroom the most familiar consist of publishing, in connection with legal proceeding that are pending or imminent, comment or information that has a tendency to pervert the course of justice, either in those proceedings or by deterring

other people from having recourse to courts of justice in the future for the vindication of their lawful rights or for the enforcement of the criminal law. In determining whether what is published has such a tendency a distinction must be drawn between reporting what actually occurred at the hearing of the proceedings and publishing other kinds of comment or information, for prima facie the interests of justice are served by its being administered in the full light of publicity.

As a general rule the English system of administering justice does require that it be done in public: Scott v. Scott [1913] A.C. 417. If the way that courts behave cannot be hidden from the public ear and eye this provides a safeguard against judicial arbitrariness or idiosyncrasy and maintains the public confidence in the administration of justice. The application of this principle of open justice has two aspects: as respects proceedings in the court itself it requires that they should be held in open court to which the press and public are admitted and that, in criminal cases at any rate, all evidence communicated to the court is communicated publicly. As respects the publication to a wider public of fair and accurate reports of proceedings that have taken place in court the principle requires that nothing should be done to discourage this.

However, since the purpose of the general rule is to serve the ends of justice it may be necessary to depart from it where the nature or circumstances of the particular proceeding are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice or would damage some other public interest for whose protection Parliament has made some statutory derogation from the rule. Apart from statutory exceptions, however, where a court in the exercise of its inherent power to control the conduct of proceedings before it departs in any way from the general rule, the departure is justified to the extent and to no more than the extent that the court reasonably believes it to be necessary in order to serve the ends of justice. A familiar instance of this is provided by the "trial within a trial" as to the admissibility of a confession in a criminal prosecution. The due administration of justice requires that the jury should be unaware of what was the evidence adduced at the "trial within a trial" until after they have reached their verdict; but no greater derogation from the general rule as to the public nature of all proceedings at a criminal trial is justified than is necessary to ensure this. So far as proceedings in the courtroom are concerned the trial within a trial is held in open court in the presence of the press and public but in the absence of the jury. So far as publishing those proceedings outside the court is concerned any report of them which might come to the

knowledge of the jury must be withheld until after they have reached their verdict; but it may be published after that. Only premature publication would constitute contempt of court.

In the instant case the only statutory provisions that have any relevance are section 8 (4) of the Official Secrets Act 1920 and section 12 (1) (c) of the Administration of Justice Act 1960. Both deal with the giving of evidence before a court sitting in camera. They do not apply to the evidence given by "Colonel B" in the instant case. Their relevance is thus peripheral and I can dispose of them shortly.

Section 8 (4) of the Act of 1920 applies to prosecutions under that Act and the Official Secrets Act 1911. It empowers but it does not compel a court to sit to hear evidence in private if the Crown applies for this on the ground that national safety would be prejudiced by its publication. Section 12 (1) of the Act of 1960 defines and limits the circumstances in which the publication of information relating to proceedings before any court sitting in private is of itself contempt of court. The circumstance defined in section 12 (1) (c) is

"where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published; ..." So to report evidence in camera in a prosecution under the Official Secrets Act would be contempt of court.

In the instant case the magistrates would have had power to sit in camera to hear the whole or part of the evidence of "Colonel B" if this had been requested by the prosecution; and although they would not have been bound to accede to such a request it would naturally and properly have carried great weight with them. So would the absence of any such request. Without it the magistrates, in my opinion, would have had no reasonable ground for believing that so drastic a derogation from the general principle of open justice as is involved in hearing evidence in a criminal case in camera was necessary in the interests of the due administration of justice.

In substitution for hearing "Colonel B's" evidence in camera which it could have asked for the prosecution was content to treat a much less drastic derogation from the principle of open justice as adequate to protect the interests of national security. The witness's evidence was to be given in open court in the normal way except that he was to be referred to by the pseudonym of "Colonel B" and evidence as to his real name and address was to be written down and disclosed only to the court, the defendants and their legal representatives.

I do not doubt that, applying their minds to the matter that it was their duty to consider - the interests of the due administration of justice, the magistrates had power to accede to this proposal for The very reason that it would involve less derogation from the general principle of open justice than would result from the Crown being driven to have recourse to the statutory procedure for hearing evidence in camera under section 8 (4) of the Official Secrets Act 1920, but in adopting this particular device which on the face of it related only to how proceedings within the courtroom were to be conducted it behoved the magistrates to make it clear what restrictions. if any, were intended by them to be imposed upon publishing outside the courtroom information relating to those proceeding and whether such restrictions were to be precatory only or enforceable hv the sanction of proceedings for contempt of court.

My Lords, in the argument before this House little attempt was made to analyse the juristic basis on which a court can make a "ruling." "order" or "direction" - call it what you will - relating to proceedings taking place before it which has the effect in law of restricting what may be done outside the courtroom by members of the public who are not engaged in those proceedings as parties or their legal representatives or as witnesses. The Court of Appeal of New Zealand in Taylor v. Attorney-General [1975] 2 N.Z.L.R. 675 was clearly of opinion that a court had power to make an explicit order directed to and binding on the public ipso jure as to what might lawfully be published outside the courtroom in relation to proceedings held before it. For my part I am prepared to leave this as an open question in the instant case. It may be that a "ruling" by the court as to the conduct of proceedings can have binding effect as such within the courtroom only, so that breach of it is not ipso facto a contempt of court unless it is committed there. Nevertheless where (1) the reason for a ruling which involves departing in some measure from the general principle of open justice within the courtroom is that the departure is necessary in the interests of the due administration of justice and (2) it would be apparent to anyone who was aware of the ruling that the result which the ruling is designed to achieve would be frustrated by a particular kind of act done outside the courtroom, the doing of such an act with knowledge of the ruling and of its purpose may constitute a contempt of court, not because it is a breach of the ruling but because it interferes with the due administration of justice.

So it does not seem to me to matter greatly in the instant case whether or not the magistrates were rightly advised that they had in law no power to give directions which would be binding as such upon members of the

public as to what information relating to the proceedings taking place before them might be published outside the courtroom. What was incumbent upon them was to make it clear to anyone present at, or reading an accurate report of, the proceedings what in the interests of the due administration of justice was the result that was intended by them to be achieved by the limited derogation from the principle of open justice within the courtroom which they had authorised, and what kind of information derived from what happened in the courtroom would if it were published frustrate that result.

There may be many cases in which the result intended to be achieved by a ruling by the court as to what is to be done in court is so obvious as to speak for itself; it calls for no explicit statement. Sending the jury out of court during a trial within a trial is an example of this; so may be the common ruling in prosecutions for blackmail that a victim called as a witness be referred to in court by a pseudonym (see Reg. v. Socialist Worker Printers and Publishers Ltd., Ex parte Attorney-General [1975] Q.B. 637); but, in the absence of any explicit statement by the Tottenham magistrates at the conclusion of the colonel's evidence that the purpose of their ruling would be frustrated if anything were published outside the courtroom that would be likely to lead to the identification of "Colonel B" as the person who had given evidence in the case. I do not think that the instant case falls into this class.

The ruling that the witness was to be referred to in court only as "Colonel B" was given before any of his evidence had been heard and at that stage of the proceedings it might be an obvious inference that the effect intended by the magistrates to be achieved by their ruling was to prevent his identity being publicly disclosed. As I have already pointed out however the evidence that he gave in open court in cross-examination did in effect disclose his identity to anyone prepared to take the trouble to consult a particular issue (specified in the evidence) of a magazine that was on sale to the public. This evidence was elicited without any protest from counsel for the prosecution; no application was made that this part of the evidence should be heard in camera, no suggestion, let alone request, was made to members of the press present in court that it should not be reported; and once it was reported the witness's anonymity was blown.

In these circumstances whatever may have been the effect intended to be achieved by the magistrates at the time of their initial ruling, this, as it seems to me, had been abandoned with the acquiescence of counsel for the Crown, by the time that "Colonel B's "evidence was over. I see no grounds

on which a person present at or reading a report of the proceedings was bound to infer that to publish that part of the colonel's evidence in open court that disclosed his identity would interfere with the due administration of justice so as to constitute a contempt of court. Indeed the natural inference is to the contrary and it may not be without significance that no proceedings were brought against "Peace News" in respect of the issue of November 18 in which this evidence was published, without actually stating what would be found to be the colonel's name if the particular issue of "Wire" were consulted. But if there was no reason to suppose that publication of this evidence would interfere with the due administration of justice, how could it reasonably be supposed that to take the final step of publishing the name itself made all the difference?

My Lords, I would allow these appeals upon the ground that in the particular and peculiar circumstances of this case the disclosure of "Colonel B's" identity as a witness involved no interference with the due administration of justice and was not a contempt of court.

The difficulty that has arisen, as my noble and learned friends Viscount Dilhorne and Lord Edmund-Davies point out, is because the proceedings were launched upon the basis that at the conclusion of "Colonel B's" evidence the chairman of the examining magistrates had "stressed that no attempt should be made to disclose the identity of Colonel B." At the hearing, however, the proceedings, if persisted in, had to be conducted on the basis that no such explicit statement had been made. So everything was left to implication except the actual ruling as to how the witness was to be referred to in court and as to the persons to whom alone his real name and identity were to be disclosed.

My Lords, in cases where courts, in the interests of the due administration of justice, have departed in some measure from the general principle of open justice no one ought to be exposed to penal sanctions for criminal contempt of court for failing to draw an inference or recognise an implication as to what it is permissible to publish about those proceedings, unless the inference or implication is so obvious or so familiar that it may be said to speak for itself.

Difficulties such as those that have arisen in the instant case could be avoided in future if the court, whenever in the interests of due administration of justice it made a ruling which involved some departure from the ordinary mode of conduct of proceedings in open court, were to explain the result that the ruling was designed to achieve and what kind of information about the proceedings would, if published, tend to frustrate

that result and would, accordingly, expose the publisher to risk of proceedings for contempt of court.

VISCOUNT DILHORNE.

My Lords, the question to be determined in this appeal is whether the appellants were, as the Divisional Court held, guilty of contempt of court in publishing in "Peace News," "The Leveller" and the "Journalist" respectively, the identity of "Colonel B."

In the statements dated March 17 and April 17, 1978, filed pursuant to the rules of court in support of the Attorney-General's motions and which stated the grounds for the motions, it was alleged that they had revealed his identity after he had been referred to as "Colonel B" in the committal proceedings and

"(b) The said 'Colonel B' had properly been permitted not to disclose his identity when giving evidence to the said magistrates, [the chairman directing in open court that no attempt should be made to disclose the identity of 'Colonel B']. (c) [The appellants were at all material times well aware that the aforesaid direction had been given.] (d) The said disclose of the identity of 'Colonel B' tended and as

calculated to prejudice the due administration of justice: it was intended to [flout the aforesaid direction and] make it difficult for witnesses in the position of 'Colonel B' to give evidence in open court."

The motions were supported by an affidavit sworn by Miss Anne Butler, a member of the Director of Public Prosecutions' office. In it she said that at the conclusion of the hearing on November 14, 1977, the chairman of the magistrates had "stressed that no attempt should be made to disclose the identity of 'Colonel B.' "In this. according to Mr. Pratt, the clerk to the magistrates, she was mistaken. In an affidavit sworn by him on April 27, 1978, he said that he had no recollection of that being said and in fact did not agree that it had happened. Paragraphs 3 and 4 of his affidavit read as follows:

"3. The Official Secrets Act provides for exclusion of all or part of the public and, in fact, the public was excluded during the playing of the tape hut I am not aware of any other provision relevant to these proceedings enabling an order to be made such as is referred to or implied in Anne Butler's affidavit and that was the reason why the magistrates did not make any order such as she refers to - because I advised them that they had no power to do so. 4.

I am not aware of any provision enabling my court to purport to impose any restriction on anything said in court in the presence of the public in the proceedings. ..."

At the hearing of the motions, the contention that the appellants had published "Colonel B'.s" name in breach of a direction given by the chairman was abandoned and the Crown sought leave to amend the statements filed by the deletion of the words which I have enclosed in square brackets. Leave to do so was refused.

Breach of the chairman's direction was clearly the main plank in the Crown's case when the proceedings were initiated. Abandonment of that contention meant that the Crown was consequently limited to establishing that the appellants had been guilty of contempt in publishing" Colonel B's "name after he" had properly been permitted not to disclose his identity when giving evidence."

That they had done so after he had been given that permission was not in dispute. The question is whether, in all the circumstances of the case, that amounted to a contempt.

From his deposition it appears that at the commencement of his cross-examination "Colonel B" gave the following evidence:

"I have been with the Ministry of Defence for some three years. I left earlier this month. My posting was Colonel, General Staff, in the Defence Intelligence Staff. The Defence Intelligence number is D.I.24 Army. I realise that it may have been published in various publications but I am now aware it was published in 'Wire,' December 1971 - January 1975."

"Wire 'is the Royal Corps of Signals magazine. Among the appointments listed in this issue was that of Colonel H. A. Johnstone M.B.E. as "Col GS DI 24 (Army) 11.74."

I do not know to what issue in the case the questions which elicited this information about "Colonel B's" career were directed. I assume that they were relevant to some issue. We were not told that any objection was made to them and it does not appear that any application was made for the hearing of his evidence in camera once the line the cross-examination was taking became apparent. However relevant the questions may have been, the answers given in open court made it possible for anyone who wished to do so to find out who "Colonel B" was. He had only to look at that issue of "Wire." In the issue of "The Leveller" of March 13, 1978, it was said that

these answers given in open court enabled that paper and "Peace News" to "deduce his identity."

Unless the magistrates had power to prohibit and had prohibited it, the publication of this evidence could not be a contempt of court. It was not suggested that there had been any such prohibition or that the magistrates had power to impose one. If publication of the evidence could not be a contempt of court, was it a contempt to publish what could be deduced from that evidence, namely, the identity of "Colonel B"? In my opinion the answer is in the negative unless the magistrates had power to prohibit and had prohibited any attempt being made to ascertain his identity and the publication of his identity. The abandonment of the Crown's allegation that the chairman had given the direction alleged meant that it could not be contended that the publication of his identity by the appellants was in breach of a prohibition.

It follows that in my opinion the appellants were not guilty of contempt in disclosing his identity and on this ground I would allow these appeals.

If the magistrates had power to direct and had directed that "Colonel B's" name should not be published and such a direction was operative not only within but outside the court, then the case might be different. In Reg. v. Socialist Worker Printers and Publishers Ltd., Ex parte Attorney-General [1975] Q.B. 637 the Crown did not contend that the court had any power to make orders affecting the press or other media in their conduct outside the court and in the present case the Crown. rightly in my opinion, did not contend that examining magistrates had any such power. In Taylor v. Attorney-General [1975] 2 N.Z.L.R. 675, where the judge in a trial for offences under the Official Secrets Act 1951 of New Zealand made an order "prohibiting the publication of anything that may lead to the identification of officers of the New Zealand Security Service," the Court of Appeal of New Zealand held that he had power to make that order and that it operated outside the court. It is not necessary to express an opinion on whether that case was rightly decided. It suffices for me to say that in my opinion the courts of this country have no such power, except when expressly given by statute. Although in Scott v. Scott [1913] A.C. 417, 438 Lord Haldane expressed the view that in exceptional cases publication of what had occurred in camera might be prohibited for a time or altogether, that view was not endorsed by those sitting with him, Lord Loreburn saying, at p. 448, that the court did not possess any such power and Lord Shaw of Dunfermline, at p. 476, regarding its exercise as not only "an encroachment

upon and suppression of private right, but the gradual invasion and undermining of constitutional security."

As there is no statutory provision which gives to a court power to make an order applying to all members of the public prohibiting the publication of information which might lead to the identification of a witness such as "Colonel B," it follows that in my opinion the advice given by Mr. Pratt to his bench was right and that if the chairman had given any such direction, it would not have operated to convert conduct which otherwise did not constitute a contempt into one.

Were it not for the evidence given by "Colonel B" in open court from which his identity could be ascertained without difficulty, I would have been in favour of dismissing these appeals. It must have been clear to all in court and to all who learnt what had happened in court that the object sought to be achieved by the justices allowing "Colonel B" to write down his name was the preservation of his anonymity. Knowing that but believing that concealment of his name was not necessary in the national interest, the appellants disclosed his identity. But the effect of what the magistrates had permitted to be done was destroyed by "Colonel B's" evidence in open court, which, as I have said, made it possible for anyone who wished to do so to find out who he was.

If he had not given that evidence, then the appellants would have frustrated the object which the magistrates by their ruling sought to achieve. True it is that no warning was given that anyone who published his name might be proceeded against for contempt of court. In Reg. v. Border Television Ltd. Ex parte Attorney-General The Times, January 18, 1978, and Reg v. Newcastle Chronicle & Journal Ltd. Ex parte Attorney-General (unreported), heard together by the Divisional Court on January 17, 1978, it was held that in those cases no warning was necessary. While I do not think that it was strictly necessary for the magistrates to give such a warning in this case, I think it very desirable that in future cases where a court takes the course that the magistrates took in this case, a warning that publication of the witness's identity might lead to proceedings for contempt should be given. Such a warning will make it clear that it is not just a request not to publish that is being made, a request usually made when the identity of a person is inadvertently disclosed and one that is usually complied with.

In the Newcastle Journal case the fact that the defendant at a trial had pleaded guilty to four counts in an indictment was published during the course of her trial on the remaining 16 counts in that indictment. In the

Border Television case there had been publication of what had happened in the course of a trial within a trial when the jury had been sent out so that they should not hear what was discussed. Each publication was held to be a contempt of court.

For conduct which frustrates what a court has done to be a contempt of court, the action taken by the court must be within its powers and the question which has troubled me is whether in this case the magistrates had jurisdiction to allow "Colonel B" to conceal his identity when the application was made on the ground that to reveal it would prejudice national safety. Section 8 (4) of the Official Secrets Act 1920 gives a court power to sit in camera if it appears that the publication of any evidence or statement would be prejudicial to national safety. This subsection does not require the application for a sitting in camera to be supported by evidence and in my opinion a court is entitled in the exercise of its discretion to make an order under it excluding the public in the light of the information given to it and the reasons advanced for taking that course. But the terms of that subsection cannot in my opinion be construed as giving power during a sitting in open court to permit or to direct that a witness's identity should not be disclosed.

Proceedings in the courts of this country are normally conducted in public. The courts have, however, inherent jurisdiction to sit in camera if that is necessary for the due administration of justice: see Scott v. Scott [1913] A.C. 417; Reg v. Governor of Lewes Prison Ex parte Doyle [1917] 2 K.B. 254, per Lord Reading C.J., at p. 271; Attorney-General v. Times Newspapers Ltd. [1974] A.C. 273, per Lord Reid, at p. 294. In Scott v. Scott Lord Loreburn said, at p. 446:

"... in all cases where the public has been excluded with admitted propriety the underlying principle, as it seems to me, is that the administration of justice would be rendered impracticable by their presence, whether because the case could not be effectively tried, or the parties entitled to justice would be reasonably deterred from seeking it at the hands of the court."

It cannot be said that disclosure of "Colonel B's" name would have rendered the trial of the three accused impracticable, nor is it in my opinion the case that its disclosure would have reasonably deterred the Crown from instituting prosecutions for offences under the Official Secrets Act which ought in the national interest to be brought. The likely result if the magistrates had refused the application made by the Crown would have been an application that the court should sit in camera for his name to be

given, the rest of his evidence being given in open court, and the likely consequence in future cases that there would be more applications for sittings in camera. So in the present case the administration of justice was not rendered impracticable on either of the two grounds mentioned by Lord Loreburn. Nor do I think that it can be said that the writing down of "Colonel B's" name involved less derogation from the open administration of justice than the giving of his name in camera with the rest of his evidence being given in open court.

If the criteria which apply in relation to the exercise of the court's inherent jurisdiction to sit in camera apply in relation to allowing or directing a witness to write down his name, then I do not think that those criteria are satisfied in this case, but I have come to the conclusion that they do not apply.

Judges and justices have a wide measure of control over the conduct of proceedings in their courts. On occasions for a variety of reasons witnesses are allowed to write down a piece of evidence instead of giving it orally and I know of a number of occasions when in Official Secrets Act cases witnesses have been allowed to conceal their identity. In my opinion it is within the jurisdiction of the court to allow this in the exercise of control over the conduct of the proceedings just as a judge is entitled to send a jury out in the course of a trial and to have a trial within a trial.

In cases where a court permits this and takes every step within its power, short of sitting in camera, to preserve the anonymity of a witness. a person who seeks to frustrate what the court has done may well be guilty of contempt. The giving of evidence in open court by the unnamed witness from which his identity can be deduced is not likely to occur often and it was the giving of that evidence which frustrated the magistrates' efforts to conceal "Colonel B's" identity. As I have said it is only because that happened in this case that I think that the appeals should be allowed.

In my opinion Reg. v. Socialist Worker Printers and Publishers Ltd. Ex parte Attorney-General [1975] Q.B. 637 was rightly decided. There there was a deliberate attempt to frustrate the effect of the court's direction that the names of the persons who alleged that they had been blackmailed should not be disclosed. The giving of that direction was a proper exercise by the court of its jurisdiction to control the conduct of the proceedings. It is generally, if not invariably, recognised that the disclosure of the identity of witnesses alleged to have been blackmailed is likely to deter others blackmailed from seeking the protection of the courts.

In the course of the argument section 12 (1) of the Administration of Justice Act 1960 was referred to. As that subsection deals only with the publication of information relating to proceedings in private, it has not, in my opinion, any relevance to this case.

For the reasons I have stated I would allow these appeals with costs here and in the Divisional Court.

LORD EDMUND-DAVIES.

My Lords, it is manifest that this appeal is of considerable public importance. The salient facts have been related in the speech of my noble and learned friend Lord Diplock and I shall not repeat them. Although I regard the proper outcome of these benighted proceedings as clear, the hearing in your Lordships' House has ranged over such a wide area that I do not propose to restrict myself simply to indicating how they should be disposed of. There has been much discussion of many aspects of the confused and confusing law relating to what, as the noble and learned Lord, Lord Cross of Chelsea, complained in Attorney-General v. Times Newspapers Ltd. [1974] A.C. 273, 322, is still unfortunately called "contempt of court" which were not touched upon when that appeal was heard in your Lordships' House. Though not strictly necessary for present purposes, in these circumstances it would, as I believe, be unfortunate if we withheld such views as we have formed regarding them, and I do not propose to do so. This seems all the more desirable in view of the fact that it was only 18 years ago that, for the first time, a general right of appeal in cases of civil or criminal contempt of court was created (see Administration of Justice Act 1960, section 13) and there has been comparatively little judicial comment on the topic meanwhile.

"The phrase 'contempt of court' does not in the least describe the true nature of the class of offence with which we are here concerned. ... The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice. ... It is not the dignity of the court which is offended - a petty and misleading view of the issues involved - it is the fundamental supremacy of the law which is challenged." (Johnson v. Grant 1923 S.C. 789, 790, per Lord President Clyde.)

When contempt is alleged the courts have for generations found themselves called upon to tread a judicial tightrope, for, as Phillimore J. put it in Re.r v. Blumenfeld Ex parte Tupper (1912) 28 T.L.R. 308, 311:

"The court had to reconcile two things - namely, the right of free speech and the public advantage that a knave should be exposed, and the right of an individual suitor to have his case fairly tried. The only way in which the court could save both was to refuse an unlimited extension of either right. It became, then, a question of degree."

This dilemma most frequently arises in relation to press and other reports of court proceedings, for the public interest inherent in their being fairly and accurately reported is of great constitutional importance and should never lead to punitive action unless, despite their factual accuracy, they nevertheless threaten or prejudice the due administration of justice.

It is of paramount importance to examine at the outset the statement filed pursuant to R.S.C., Ord. 52, r. 2 in support of the present proceedings for contempt brought against Leveller Magazine Ltd., Peace News Ltd., the National Union of Journalists and various individuals. Taking as a typical example that filed on April 17, 1978, in relation to the "Journalist," we find the following assertions:

"(b) The said 'Colonel B' had properly been permitted not to disclose his identity when giving evidence by the said magistrates, the chairman directing in open court that no attempt should be made to disclose the identity of 'Colonel B.' (c) The said National Union of Journalists was at all material times well aware that the aforesaid direction had been given. (d) The said disclosure of the identity of Colonel B' tended and was calculated to prejudice the due administration of justice: it was intended to flout the aforesaid direction and make it difficult for witnesses in the position of 'Colonel B' to give evidence in open court."

The basis of these assertions unquestionably was the earlier affidavit of a Miss Butler, a member of the Director of Public Prosecutions' staff, that, the examining magistrates having ruled that "Colonel B's" name should be written down and shown only to the court, defence counsel and the defendants, on the Crown's contention that disclosure would not be in the interests of national security:

"At the conclusion of the proceedings on that day the chairman of the justices reminded the court of his earlier ruling and stressed that no attempt should be made to disclose the identity of 'Colonel B.'"

The words which I have emphasised undoubtedly constituted the "direction" relied upon by the Attorney-General in his motion to commit.

But before it was heard. Mr. Pratt. the clerk to the justices, swore an affidavit in which he said:

"The Official Secrets Act provides for exclusion of all or part of the public ... but I am not aware of any other provision relevant to these proceedings enabling an order to be made such as is referred to or implied in Anne Butler's affidavit and that was the reason why the magistrates did not make any order such as she refers to - because I advised them that they had no power to do so."

Confronted by this latter affidavit, during the hearing of the motion counsel for the Attorney-General sought leave to amend his grounds by substituting the word "procedure" for the word "direction" in paragraphs (c) and (d) of the Attorney-General's statement. But the Divisional Court refused leave to amend. As I see it. it follows that the whole proceedings thereafter must be regarded as having taken place upon the basis that a committal was sought upon the single ground (a) that the magistrates had given a direction that no attempt must be made to disclose the identity of "Colonel B," and (b) that deliberate publication of his identity by the defendants sprang from their determination to disregard that direction. That, and that alone, was the case which the respondents were called upon to meet. And, whatever view one may hold of their behaviour generally, in my judgment it is irrefutable that the respondents destroyed that case. Or perhaps it would be more accurate to say that it had already been destroyed by affidavit, for at no time during the hearing did the Attorney-General contend that the magistrates had in fact given the direction deposed to by Miss Butler. Yet the Divisional Court seemingly attached no importance to this decisive fact. Lord Widgery C.J. said [1978] 3 W.L.R. 395, 400:

"Central to all the respondents' arguments was the contention that this type of contempt requires a direction or mandatory order of a court and breach of that order, whereas here it is said that there was no order against disclosure, but merely a request."

After considering the challenge to Miss Butler's evidence, he continued, at pp. 400-401:

"In view of that conflict of evidence, counsel for the Attorney-General has not sought to rely on any disregard of such a statement, but relies on the earlier ruling in conformity with which it is said Colonel B gave his evidence. Indeed, if the chairman of the justices did say what Miss Butler says he said, its direct authority would only have gone to those within the court. The relevant ruling for present purposes was when the court gave

permission for Colonel B to write down his name, in accordance with the same decision it had made for Colonel A. It is the authority of that ruling which is for consideration. If it was an effective ruling, a later so-called 'direction' would have added nothing to it, and consequently can be ignored."

A little later, dealing with the power of a court to allow a witness to write down his name, to order a witness to leave the court and so on, Lord Widgery C.J. added, at pp. 401-402:

"They are matters on which the court gives a ruling or a decision. The court may add something which can be called a formal direction, but no such formality is required. All such rulings are given, and only purported to be given, to those in court and not outside it. flouting in court of the court's ruling will be a contempt. Equally, a flouting or deliberate disregard outside the court will be a contempt if it frustrates the court's ruling. ... The fact that the justices' ruling had no direct effect outside the court does not prevent the publications here in question from being a contempt if they were made with the deliberate intention of frustrating the arrangement which the court had made to preserve Colonel B's anonymity. It is this element of flouting the court which is the real basis of the contempt here alleged. It can be sustained without proof that something like a direction or a specific order of the court has been breached."

Yet a little later, Lord Widgery C.J. added, at p. 402:

"The contempt here relied upon is the deliberate flouting of the court's intention. The public has an interest in having the courts protected from such treatment and that is the public interest on which the Attorney-General relies."

My Lords, I have to repeat with the greatest respect that the Attorney-General had moved to commit the defendants upon an entirely different basis and upon that basis alone. The basis having in effect been abandoned by the Attorney-General in my judgment it was not open to the Divisional Court (and particularly after refusing to allow him to amend his grounds of application) to entertain an entirely different case upon which to commit the respondents for criminal contempt.

This is no mere judicial quibble. Persons charged with criminal misconduct are entitled to know with reasonable precision the basis of the charge. If proceedings such as the present were tried on indictment and the statement of the charge "Criminal Contempt," it would be impermissible to

present a case wholly different from that outlined in the particulars of the charge and then to urge that the departure was immaterial, since the new misconduct relied upon was, like the old, simply another variety of criminal contempt.

Nor, my Lords, would it be acceptable were the Attorney-General to urge, in effect, that no injustice has here been done since the wishes of the court were clear and the determination of the respondents to flout or disregard those wishes equally clear. Mr. Sedley rightly observed that, if no direction was in fact given, thinking cannot have made it so, and the appellants were correct in thinking that by publishing they were breaching no ruling of the court. I have to say respectfully that I am uneasy at the view expressed by Lord Widgery C.J. that "the deliberate flouting of the court's intention" is sufficient to constitute criminal contempt, for as O'Connor J. said in P. A. Thomas & Co. v. Mould [1968] 2 Q.B. 913, 923:

"... where parties seek to invoke the power of the court to commit people to prison and deprive them of their liberty, there has got to be quite clear certainty about it."

In the absence of any such ruling as that deposed to by Miss Butler, but denied by the clerk of the court, was it the unmistakable intention of the magistrates in the present case that no one should behave as these defendants later did, particularly when those magistrates were specifically advised by their clerk that they had no power to make any order restricting the publication outside their court of "Colonel B's" identity In such circumstances "intention" and "preference" seem indistinguishable. The latter would have been manifested by the expression of a mere request that no such publication should take place, and when the magistrates elected to discontinue sitting in camera and thereafter did no more than rule that in their court the name of the witness should be written down, their "intention" regarding what must or must not be done outside court was, in my judgment, indeterminable. Indeed, it was ex hypothesi non-existent, since they had been advised that they could in no way control such conduct. They might well have preferred that no publication of "Colonel B's" name should take place anywhere or at any time, but it is going too far to say that they had manifested an intention to do all they could to guard against it by ruling as they did. "No man should be condemned by an implication," observed my noble and learned friend, Lord Diplock, in the course of counsel's submissions. Condemnation is even more objectionable when the implication underlying the court's conduct is a matter of reasonable conjecture by reasonable people, and I have already indicated why I

consider that such omission was fatal in the circumstances and should lead to these appeals being allowed.

I should add that I am for a like reason not wholly satisfied about the ratio decidendi of the Divisional Court in Reg. v. Socialist Worker Printers and Publishers Ltd., Ex parte Attorney-General [1975] Q.B. 637 in contempt proceedings following upon a blackmail prosecution in which the trial judge had directed that the victims who gave evidence should be referred to in court by letters, notwithstanding which the defendants proceeded to publish their names. I have ascertained that the ipsissima verba of the statement filed by the Attorney-General pursuant to R.S.C., Ord. 52, r. 2 were that:

"... the said witnesses be referred to by letters ... the said publication tended and was calculated to prejudice the due administration of justice by causing victims of blackmail to fear publicity and thus deter them from coming forward in aid of legal proceedings or from seeking the protection of the law and/or by holding up to public obloquy witnesses who had given evidence in criminal proceedings."

One of the two grounds upon which the Divisional Court granted the application to commit was (in the words of Lord Widgery C.J., at pp. 649-650):

"... that by publishing the names of these two witnesses in defiance of the judge's directions the respondents were committing [a] blatant affront to the authority of the court. ..."

If there was any "direction" it was at best implicit. And it should be observed that no publication of the victims' names took place until the judge was about to sum up, and there was accordingly no question of the administration Or justice in that case being prejudiced by their being deterred from giving evidence for the prosecution. So the basis of the decision seems to be that publication was objectionable on the general ground that in any and every blackmail case the administration of justice in future prosecutions will be interfered with if victims' names are published. But, while many (and perhaps most) would accept this, is it necessarily so? I certainly recall one eminent judge (now retired) who in such cases scrutinised with very great care counsel's request that the victims should remain anonymous and emphatically rejected the idea that in every such case the administration of justice would automatically be prejudiced by publication. Counsel for two of the appellants in the present case submitted that it does not follow that everything done which had the effect of

deterring possible witnesses necessarily constitutes a contempt, the proper test being whether it is a prohibited act calculated to deter. The time may yet come when this House will be called upon to adjudicate upon the point.

Neither in Reg. v. Socialist Worker Printers and Publishers Ltd., Ex parte Attorney-General [1975] Q.B. 637 nor in the instant case did the court give any direction against publication purporting to operate outside the courtroom. It has to be said that hitherto the view seems to have been widely accepted that no such power exists. Thus, in the Socialist Worker case the present Attorney-General submitted, al p. 639:

"The trial judge did not give any express direction about revealing the names of the witnesses in the press. Indeed, he had no power to make orders affecting the press or other media in their conduct outside the court."

He nevertheless added:

"The direction could only protect the witnesses effectively if their names were not revealed subsequently. Hence the direction was concerned with publication outside as well as inside the court."

Defence counsel likewise submitted, at p. 640: "A trial judge has no power to order the press not to publish matters elicited at an open trial.'

In the present appeal, again, appellants and respondents alike concurred in submitting that (as, indeed, Lord Widgery C.J. had himself observed: see [1978] 3 W.L.R. 395, 401), the magistrates' court had no power to direct that there should be no publication in the press or by any other means of the identity of the "Colonel B" who had given evidence before them. Lord Rawlinson Q.C., for the Attorney-General, told your Lordships in terms that the court could not direct the outside world, but added that is ruling nevertheless extended outside its walls. For myself I found this difficult to follow, particularly as no illustrations were forthcoming of what learned counsel had in mind. After considerable reflection I have come to the conclusion that a court has no power to pronounce to the public at large such a prohibition against publication that all disobedience to it would automatically constitute a contempt. It is beyond doubt that a court has a wide inherent jurisdiction to control its own procedure. In certain circumstances it may decide to sit wholly or in part in camera. Or witnesses may be ordered to withdraw, " lest they trim their evidence by hearing the evidence of others" (as Earl Loreburn put it in Scott v. Scott [1913] A.C. 417, 446). Or part of a criminal trial may be ordered to take place in the absence

of the jury, such as during the hearing of legal submissions or during a "trial within a trial" regarding the admissibility of an alleged confession. Or the court may direct that throughout the hearing in open court certain witnesses are to be referred to by letter or number only. But it does not follow that were a person (and even one with knowledge of the procedure which had been adopted) thereafter to make public that which had been wholly or partially concealed, he is ipso facto guilty of contempt. Nothing illustrates this more clearly than the hearing of evidence in camera,

"... it [being] plain that inherent jurisdiction exists in any court which enables it to exclude the public where it becomes necessary in order to administer justice." (Rex v. Governor of Leave.s Prison, Ex parte Doyle [1917] 2 K.B. 254, per Viscount Reading C.J., at p. 271).

It might be thought that disclosure of that which had been divulged only in secret would in all cases constitute the clearest example of contempt. Thus we find Oliver J. saving in Rex v. Davies, Ex parte Delbert-Evans [1945] 1 K.B. 435, 446:

"... everything the public has a right to know about a trial ... , that is to say, everything, that has taken place in open court, may be published, and beyond that there is no need or right to go." (The italics are mine.)

But Scott v. Scott [1913] A.C. 417 has long established that this is not so. And the Administration of Justice Act 1960 provides in terms by section 12 (1):

"The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases ..."

Five types of proceedings are then set out, ending with

"(e) Where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published."

Section 12 (4) provides:

"Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section."

I am in respectful agreement with Scarman L.J. who said in In re F. (orse. A.) (A Minor) (Publication of Information) [1977] Fam. 58, 99 that this last obscure subsection

"... was enacted to ensure that no one would in future be found guilty of contempt who would not also under the pre-existing law have been found guilty."

And what appears certain is that at common law the fact that a court sat wholly or partly in camera (and even where in such circumstances the court gave a direction prohibiting publication of information relating to what had been said or done behind closed doors) did not of itself and in every case necessarily mean that publication thereafter constituted contempt of court

For that to arise something more than disobedience of the court's direction needs to be established. That something more is that the publication must be of such a nature as to threaten the administration of justice either in the particular case in relation to which the prohibition was pronounced or in relation to cases which may be brought in the future. So the liability to be committed for contempt in relation to publication of the kind with which this House is presently concerned must depend upon all the circumstances in which the publication complained of took place.

It may be objected that, in an area where the boundaries of the law should be defined with precision, such a situation confronts those engaged in the public dissemination of information with perils which cannot always he foreseen or reasonably safeguarded against. To retort that this has always been so affords no comfort, but intelligent anticipation of what would be fair and what would be unfair can go a long way to ease the burden of the disseminators. They would themselves be in all probability the first to resist court "directions" as to what they may or may not publish, and I have already expressed my disbelief in their general validity. But the press and others could, as I believe, be helped were a court when sitting in public to draw express attention to any procedural decisions it had come to and implemented during the hearing. to explain that they were aimed at ensuring the due and fair administration of justice and to indicate that any who by publishing material or otherwise acting in a manner calculated to prejudice that aim would run the risk of contempt proceedings being instituted against them. Farther than that, in my judgment, the court cannot go. As far as that they could, as I believe, with advantage go. The public and the press would thereby be relieved of the burden of divining what was the court's "intention," for this would have been made clear and it would be up

to them to decide whether they would respect it or frustrate it. Even so, ignoring the warning by disobedience or otherwise would not of itself necessarily establish a case of contempt. But the knowledge that the warning had been given should prove at least a guide to possible consequences and would render it impossible for the person responsible for publication to urge (as was done in Reg. v. Socialist Worker Printers and Publishers Ltd. Ex parte Attorney-General [1975] Q.B. 637, 646A-B) that he was under the impression that the court had merely requested that there be no disclosure of certain specified matters, or that, as the editor of the "Journalist" said in the present case:

"... my understanding was that [Colonel B] had been permitted to write his name down rather than give it in evidence but that there was no direct [intimation] . ... that his name should not be published."

Were such intimation as I have in mind given by the court, the possible plea of a publisher that he had no knowledge of it would be of little moment. In such cases as the instant one, we are concerned not with improper publication by a private individual (as to whom nothing presently arises) but with people controlling or connected with powerful organs of publicity who, for reasons of their own (one of which may be no more than the desire to boost sales), decide to take the course of defiant dissemination of matter which ought to be kept confidential. It is incumbent upon such people to ascertain what had happened in court. They have the means of doing this, and they cannot be heard to complain that they were ignorant of what had taken place. Perhaps the time has come when heed should be paid to the view expressed in the Phillimore Report on Contempt of Court (1974) (Cmnd. 5794), at p. 60, in reference to Reg. v. Socialist Worker Printers and Publishers Ltd., Ex parte Attorney-General [1975] Q.B. 637:

"We incline to the view that the important question of what the press may publish concerning proceedings in open court should no longer be left to judicial requests (which may be disregarded) nor to judicial directions (which, if given, may have doubtful legal authority) but that legislation ... should provide for these specific circumstances in which a court shall be empowered to prohibit, in the public interest, the publication of names or of other matters arising at a trial."

Although it should be unnecessary, perhaps I ought to add that nothing I have said should be regarded as implying that there can be no committal for contempt unless there has been some sort of warning against publication. While, for the reasons I have indicated, it would be wise to warn, the court is under no obligation to do so. And there will remain cases

where a court could not reasonably have considered a warning even desirable, such as where the later conduct complained of should not have been contemplated as likely to occur. Reg. v. Newcastle Chronicle & Journal Ltd., Ex parte Attorney-General (unreported), January 17, 1978, is an example of such a case. There the Divisional Court rightly held contempt proved where, during the course of a trial on an indictment containing 20 counts for dishonesty, a newspaper reported that on arraignment on the first day the defendant had pleaded guilty to four of the counts and that the trial was proceeding only on the remaining 16. Lord Widgery C.J. rightly commented:

"It is to be observed that the learned trial judge gave no sort of warning to representatives of the press in his court that the evidence would contain matter which should not be reported. I do not think that there is any obligation on the judge to give a warning to the press, or indeed to anybody else, when the matter complained of and relied upon is so elementary and well understood as this one. Certainly it does not seem to me to be an unfair burden on the newspaper reporter to say that he ought to know (and, knowing, ought to practise in his profession) that any reference to additional offences committed by the accused is something which ought to be kept out of the jury's ears unless there is some clear exception which covers the matter."

My Lords, I said at the outset that 1 should digress, and I fear I have done so at some length, but I comfort myself by the reflection that I am not alone among your Lordships in this respect. Let me now return to the matter in hand and say that, for the reason earlier indicated, I hold that all these appeals should be allowed.

LORD RUSSELL OF KILLOWEN.

My Lords, I propose to state briefly my conclusions on the questions relevant to this case. From what happened in connection with the deposition of "Colonel B," and from the opening sentence of that deposition itself, it was clear that the examining magistrates decided that his identity should have strictly limited publication. Contempt of court in its essentials consists in interference with the due administration of justice. It is true that in this case the application by the Crown to which the magistrates acceded was based upon the suggestion that revelation of the witness's identity would be inimical to national safety, and no specific mention appears to have been made of the requirements of the due administration of justice. But this was a prosecution under the Official Secrets Act. In my opinion it really goes without saying that behind the application (and the decision)

lay considerations of the due administration of justice. In the first place an alternative to the via media adopted would be an application that "Colonel B's" evidence be taken in camera, and in principle the less that evidence is taken in camera the better for the due administration of justice, a point with which journalists certainly no less than others would agree. In the second place a decision on anonymity - the via media - would obviously, and for the same reasons, be highly desirable in the interest of the due administration of justice as a continuing process in future in such cases. In the third place it appears to me that the furtherance of the due administration of justice was the only ground to support the decision of the magistrates.

I arrive therefore at the conclusion that it should have been apparent to the appellants, from the very form of the deposition of "Colonel B," that the magistrates had arrived at a decision on his anonymity designed to promote not merely national safety but the due administration of justice. (Incidentally I reject entirely the specious suggestion that there was here merely a polite request to the press not to publish the identity.)

I do not, my Lords, regard as of any relevance the question whether the magistrates had any power or authority directly to forbid all publication of "Colonel B's" identity. The field in which contempt of court, or as I prefer to describe it improper interference with the due administration of justice, may be committed is not circumscribed by the terms of an order enforceable against the accused. I find no problem in the concept that a decision or direction may have no immediate aim and no direct enforceability beyond the deciding and directing court, but yet may have such effect in connection with contempt of court. Merely to state, as is the law, that in general contempt of court is the improper interference with the due administration of justice is to state that it need not involve disobedience to an order binding upon the alleged contemnor.

Where then, in the light of these principles, stands the present case? I dismiss at once the fact. which I am prepared to assume, that the motive which induced the appellants to publish the identity of "Colonel B" was that they considered the Crown's view that its revelation would endanger national safety to be nonsense. Their motive is irrelevant to guilt if they intended to do that which amounted in law to interference with the due administration of justice and therefore contempt.

It is at this stage that I feel great concern with this case. There can be no doubt that the publication in toto of "Colonel B's" deposition was permissible without contempt of court. In it was to be found a reference to

a particular edition of the Royal Corps of Signals publication "Wire" in which "Colonel B" admitted in his deposition that his name in association with his stated then current posting was to be found. (I believe that the reference to the particular edition was due to a question by the clerk to the magistrates and not to cross-examining counsel.) This edition of "Wire" was available to the public, including anyone who read a report of the deposition, which of course was freely reportable; no doubt it was also deposited in the British Museum. No objection was raised by the prosecution to this part of the deposition, nor by the magistrates.

The position therefore was that, notwithstanding the decision of the magistrates designed to preserve the anonymity of "Colonel B," his deposition itself revealed at one simple remove his identity. Publication in full of his deposition, given as it was in open court, could not have been a contempt. It would have told the world (if interested) where to look for "Colonel B's" identity. Would it have transgressed the limits of the permissible if the publication of the deposition had been accompanied by a re-publication of the stated edition of "Wire," or the relevant extracts from it? I do not think so. The substance of the magistrates' decision would not have been breached. The gaff was already blown by the deposition, to the publication of which no objection could be taken.

For these reasons, which depend entirely upon the totally revealing content of "Colonel B's" deposition, I would allow these appeals. I see to sufficient justification for holding that the direct short cut to breach of the decided anonymity of "Colonel B" is to be regarded in the particular circumstances of this case as a contempt of court.

If, my Lords, I may summarise:

(1) The decision of the examining magistrates should have been recognised by the appellants as one designed to preserve the anonymity of "Colonel B."

(2) That decision should be taken as made in the interests of the due administration of justice, both in that case, and in the due administration of justice as a continuing process.

(3) No specific warning of a risk of contempt of court by ignoring the decision should be necessary to found such a charge. though it might be useful.

(4) There was no justification for thinking that this decision involved merely a request.

(5) But for the substantially self-identifying content of "Colonel B's" legitimately reportable deposition I would have been for dismissal of these appeals.

(6) Because, and only because, the properly reportable deposition of "Colonel B" really in itself revealed his identity, without protest from either magistrates or prosecution, I would allow these appeals, with costs here and below.

LORD SCARMAN.

My Lords, when an application is made to commit for contempt of court a journalist or editor for the publication of information relating to the proceedings of a court, freedom of speech and the public nature of justice are at once put at risk. The general rule of our law is clear. No one shall be punished for publishing such information unless it can be established to the satisfaction of the court to whom the application is made that the publication constitutes an interference with the administration of justice either in the particular case to which the publication relates or generally. Parliament clearly had the general rule in mind when in 1960 it enacted that even the publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court save in specified exceptional cases: section 12 (1) of the Administration of Justice Act 1960.

The law does not treat any, or every, interference with the course or administration of justice as a contempt. The common law rule which was affirmed by this House in Scott v. Scott [1913] A.C. 417 is that the interference must be such as to render impracticable the administration of justice or to frustrate the attainment of justice either in the particular case or generally.

Further, since such interference is a criminal offence, the court to whom the application to commit is made must be satisfied beyond reasonable doubt that the interference is of such a character. If the court is not sure, the application must be dismissed.

Three questions arise for consideration in this appeal. (1) Did the examining justices have power to sit in private to take the evidence of the witness described in court as "Colonel B"? (2) Did they have the power, without going into private session, to require evidence as to the identity of the witness to be written down and not to be mentioned in open court? (3) If either of the first two questions be answered in the affirmative, was it a

contempt of court to publish information relating to the identity of the witness?

Since the history of the case is fully set out in the speech of my noble and learned friend Lord Diplock, I propose to refer only to those facts which I consider to be critical.

This is an appeal from an order of the Divisional Court of the Queen's Bench Division (Lord Widgery C.J. presiding). The court found, upon the application of the Attorney-General. that the criminal offence of a contempt of court had been established against the appellants. The alleged offence consisted of publication in three newspapers - "Peace News," "The Leveller" and the "Journalist" - of the true name of a witness who, using the pseudonym "Colonel B," had given evidence for the prosecution in committal proceedings against three men accused of offences under the Official Secrets Acts. His identity was not disclosed in those proceedings, though he gave his evidence orally in open court. The examining justices had ruled that his name should be written down and shown to the defence hut not mentioned in court. The justices gave no direction prohibiting publication of the name, since they were advised by their clerk that they had no power to do so. In finding the contempt established the Divisional Court held that it consisted of a flouting of the authority of the court in that the appellants, with notice of the proceedings and the ruling, had caused the witness's name to be published in the three newspapers. The court, accepting that a contempt could not be shown unless the publications frustrated a decision of the court, the object of which was to avert the risk of interference with the administration of justice either in the particular case or generally, found that this was the object of the ruling and that the appellants' publications had frustrated it. In adopting this criterion for determining a contempt of court, the Divisional Court followed the decision of the Court of Appeal in Attorney-General v. Butterworth [1963] 1 Q.B. 696, where, however, the facts were very different.

The powers of the court - the first question

The committal proceedings being in respect of offences alleged under the Official Secrets Acts, the examining justices had power to exclude the public from any part of the hearing, if, upon the application of the prosecution, they thought a public hearing prejudicial to national safety: Official Secrets Act 1920, section 8 (4). They had exercised this power in respect of certain tape-recordings, but they did not use it (though it was open to them to do so) in respect of Colonel B's evidence. The public were not excluded when he gave evidence. The subsection, therefore, does not apply. The only

relevance of the subsection is that it indicates that Parliament considered it necessary to augment, in official secrets cases, whatever common law powers a court had to sit in private by one the exercise of which would not be dependent upon the court's assessment of the danger of publicity to the administration of justice. The exercise of this power would, of course, enable contempt proceedings to be brought, if there were publication of the matter kept private: see Act of 1960, section 12 (1) (c).

Examining justices also have the power to sit in private if the "ends of justice" appear to them to require it: Criminal Justice Act 1967, section 6 (1). As they chose to sit in public, this statutory power cannot be invoked to support their ruling.

Examining justices also have the common law power, which belongs to all courts, to sit in private in the exceptional cases specified in Scott v. Scott [1913] A.C. 417.

In Scott v. Scott your Lordships' House affirmed the general rule of the common law that justice must be administered in public. Certain exceptions were, however, recognised. The interest of national security was not one of them; indeed, it was not mentioned in any of the speeches. The House was divided as to whether protection of the administration of justice from interference was an exception. A majority held that it was - though their respective formulations of the exception differed markedly in emphasis. Earl Loreburn held the underlying principle to be that the public were to be excluded if "the administration of justice would be rendered impracticable by their presence" (p. 446). Viscount Haldane L.C. thought that

"to justify an order for hearing in camera it must be shown" (my emphasis) "that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made (p. 439).

Lord Halsbury - maxime dubitans (p. 442) - agreed with the Lord Chancellor, while also, in effect, agreeing with Lord Shaw of Dunfermline who thought the ground put forward by the Lord Chancellor was "very dangerous ground" (p. 485).

While paying heed to the dangers of extending this sensitive branch of the law by judicial decision, I think it plain that the basis of the modern law is as Viscount Haldane declared it was. It follows: (1) that, in the absence of express statutory provision (e.g., section 8 (4) of the Act of 1920), a court cannot sit in private merely because it believes that to sit in public would

be prejudicial to national safety, (2) that, if the factor of national safety appears to endanger the due administration of justice. e.g., by deterring the Crown from prosecuting in cases where it should do so, a court may sit in private, (3) that there must be material (not necessarily formally adduced evidence) made known to the court upon which it can reasonably reach its conclusion.

"The device" - the second question

In the present case the justices, instead of sitting in private, adopted the device of allowing a piece of evidence to be written down and requiring it not to be mentioned in open court. If they took this course in the interest of justice, they adopted what Lord Widgery C.J. described as a convenient device, for it achieved a result, i.e., no mention of the name in open court, which otherwise would only be achieved by the court going into camera. In other words, it was a substitute for sitting in private. I agree with Lord Widgery C.J. in believing this device to be a valuable and proper extension of the common law power to sit in private, and to be available where the court would have power at common law to sit in private but chooses not to do so. I think Reg. v. Socialist Worker Printers and Publishers Ltd., Ex parte Attorney-General [1975] Q.B. 637 (a blackmail case) was correctly decided.

I turn now to the third question.

The law of contempt of court has been, throughout its history, bedevilled by technicalities. One of them was raised in this appeal. Can a court make an order, or give a ruling, which is binding on persons who are neither witnesses nor parties in the proceedings before the court? It is a misconception of the nature of the criminal offence of contempt to regard it as being an offence because it is the breach of a binding order. The offence is interference, with knowledge of the court's proceedings, with the course of administration of justice: see In re F. (orse. A.) (A Minor) (Publication of Information) [1977] Fam. 58. It was for this reason, no doubt, that Lord Widgery C.J. in this case stressed the element of "flouting" the authority of the court. Though I would not have chosen the word, I think it does reflect the essence of the offence, namely that the conduct complained of, in this case the publication, must be a deliberate frustration of the effort of the court to protect justice from interference.

In the present case the examining justices took a course which was a substitute for sitting in private. If, as I think, the device is an acceptable extension of the common law power of a court to control its proceedings by sitting in private, where necessary, in the court's judgment, to protect the

administration of justice from interference, section 12 (1) of the Administration of Justice Act 1960 is relevant. For the principle governing contempt of court when a court sits in private must also govern the situation where the common law device is used in substitute for private session. The subsection is in these terms:

"The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say - (a) where the proceedings relate to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant; (b) where the proceedings are brought under Part VIII of the Mental Health Act 1959, or under any provision of that Act authorising an application or reference to be made to a Mental Health Review Tribunal or to a county court; (c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published; (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings; (e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published."

The subsection confers no new powers upon the court. It leaves the common law and statutory powers of sitting in private exactly as they were. Paragraphs (a), (b), (d), and (e) add nothing to the common law. It would be strange if the exception stated in paragraph (c) should prove alone to have made a fundamental modification in the law. I do not so interpret it. It provides for the case where at common law or by statute the court may sit in private for reasons of national security. The statutory power which the justices had under section 8 (4) of the Act of 1920 is not relevant, because the justices chose not to sit in private. The common law power is relevant, because the device employed was within the inherent power of the court at common law.

But since the common law power to sit in private arises only if the administration of justice be threatened, the third question becomes one of fact. What was the reason for the justices' ruling? If it was to avert an interference with the administration of justice, was there material upon which the ruling could reasonably be based? The third question cannot therefore be answered without considering the facts. Here I find myself in a state of doubt.

I do not think that the Attorney-General has discharged the burden of proof upon him. Uncertainty surrounds, and continues to surround, the ruling made by the justices and its object. First, one cannot be sure that they took into account all the matters to which it was their duty to have regard if they were giving notice in open court that to protect the administration of justice the name of the witness was not to be published. The justices clearly had regard to national security, but did they understand that, in exercising their common law power, the national security risk must be shown also to be a risk to the administration of justice and assess the degree of the latter risk? Did they address themselves to that question at ail? It cannot be said with any certainty that they did, or that the Crown adduced any material, by way of evidence or otherwise, to show that the national security issue was such that publication of the colonel's name would endanger the due administration of justice.

Secondly, there was, and remains, considerable doubt as to the nature of the "ruling." Was it a decision, an indication, or only a request? As all know who have experience of the forensic process in this country, courts frequently allow a witness to write down his name or address or to give some other specified evidence (e.g., a medical or welfare report) in writing and make it clear that they do not wish the matter to be mentioned in open court. A court may do so only to save a witness or a party from distress or pain, e.g., in a personal injury or matrimonial case. On the other hand, a court may, as the Attorney-General contends in this case, have in mind that publication outside, as well as inside, the court is to be prevented as an interference with the administration of justice. Unless the ruling in this case is to be interpreted as a decision taken to prevent interference with the administration of justice, the publication of information as to "Colonel B's" identity would be no contempt. If, upon its proper interpretation, the "ruling" was no more than an indication or request, publication would be no contempt. It is only if the ruling must be read as a prohibition of publication in the interests of the administration of justice, i.e., as falling within paragraph (e) of section 12 (1) of the Act of 1960, that the appellants can, in my judgment, be found guilty of contempt. After a careful study of the case and listening to full argument, I remain unsure as to the nature and object of the ruling.

I would summarise my conclusions thus. If a court is satisfied that for the protection of the administration of justice from interference it is necessary to order that evidence either be heard in private or be written down and not given in open court, it may so order. Such an order, or ruling, may be the foundation of contempt proceedings against any person who, with

knowledge of the order, frustrates its purpose by publishing the evidence kept private or information leading to its exposure. The order or ruling must be clear and can be made only if it appears to the court reasonably necessary. There must be material (not necessarily evidence) made known to the court upon which it could reasonably reach its conclusion, and those who are alleged to be in contempt must be shown to have known, or to have had a proper opportunity of knowing, of the existence of the order (see In re F. (a Minor) (Publication of Information) [1977] Fam. 58).

Neither the Crown nor the examining justices made clear what they were seeking to do or upon what grounds the court was being asked, and decided, to act. That certainty which the criminal law requires before a man can be convicted of a criminal offence is lacking. I would, therefore, allow the appeals.

ORDER

Appeals allowed with costs.
