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THE SUTCH CASE

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1. My special assistant and I carefully examined all of the Service's files relating to the Sutch case and, in addition, hold a series of discussions concerning the case with officers of the Service. I also had interviews, at their request, with persons closely associated with, or in sincere support of, Dr Sutch. My purpose in doing these things was not to determine the guilt or innocence of Dr Sutch - that is a matter which had already been decided by the Courts - but, rather, to gain further insight into the work of the Service by looking into a recent case which, over a long period, occupied a great deal of the attention and resources of the Service.

2. I was also concerned to know whether there was any truth in any of the allegations made against the Service both before and after Dr Sutch's trial. Some of these allegations were of a very serious character, and it is clear to me that the fact that they were made had a damaging effect on morale within the Service. These allegations could be summarised as follows:

- that the investigation and arrest of Dr Sutch was undertaken without the knowledge of either Mr Kirk or Mr Rowling, as the case may be.
- that officers of the Service perjured themselves at Dr Sutch's trial.
- that the arrest and prosecution were undertaken at the behest of a foreign power or of one of its intelligence service.

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- that Dr Sutch was "framed" as a result of collusion between the Service and the KGB.

My inquiries have satisfied me that there is not a shred of truth in any of these allegations.

3. I now summarise the sequence of events as shown to me by my investigations.

4. Following a period of intensified surveillance of known or suspected intelligence officers in the Soviet Embassy, a curious and apparently clandestine meeting between Razgovorov - a known intelligence officer - and some other person was observed to take place in Karori on 18 April 1974. He was observed to leave the meeting by taxi. The person concerned was eventually identified as Dr Sutch, and a substantial effort was then made by the Service to follow up this lead. These inquiries in due course enabled the Service to obtain copies of all the taxi chits which Dr Sutch always used to pay for taxis. An observation post was established outside his office. Some preliminary and discreet inquiries were made as to the people with whom Dr Sutch was in contact and who might have access to classified information. Information relevant to Dr Sutch on the Service's files was reviewed and assessed. Further surveillance was undertaken of both Dr Sutch and Razgovorov.

5. The surveillance of the two men and other available evidence strongly suggested that further meetings between them took place over the next two or three months and that

in another instance a meeting had been planned but had been aborted. On 25 July 1974 a further meeting in Kelburn was observed.

6. Following the meeting on 25 July 1974 a written submission on the case was prepared and given to the Prime Minister, Mr Kirk. The submission related the sequence of events from 18 April forwards, indicated that Razgovorov was known to be an intelligence officer and then suggested three possible courses of action:

- (a) the meetings could be allowed to continue with a view to obtaining further and more decisive evidence against Dr Sutch and Razgovorov;
- (b) an attempt could be made to arrest Dr Sutch at his next meeting with Razgovorov;
- (c) Dr Sutch could be invited to offer an explanation and, following an interview with him, Razgovorov, together with Pertsev and Belousov who had also become involved, could be expelled.

The recommendation of the Director of the Service in this submission was in favour of course (c).

7. On 2 August 1974 a meeting was held with the Prime Minister, Mr Kirk, who directed that course (a) should be followed. By this means, he felt, the whole range of Dr Sutch's contacts and the network, if any, for which he was responsible might be revealed. Mr Kirk expressed the view that the Service should endeavour to discover as much as it could about Dr Sutch and his contacts.

8. Sometime in August 1974, by a means to which I shall refer later, the Service received advance warning of a further meeting on 28 August between Dr Sutch and Razgovorov

in the Webb Street-Hopper Street area. The Service made arrangements to establish observation posts in both Webb Street and Hopper Street. The meeting between the two men duly took place on 28 August and was observed by SIS officers.

9. Sometime after this meeting the Service consulted the Solicitor-General as to whether there was sufficient evidence against Dr Sutch to justify a charge under Section 3 of the Official Secrets Act, 1951. The Service then arranged for a meeting on 13 September 1974 in order to brief Mr Rowling who had just become Prime Minister. A written brief prepared for that meeting summarised the events since 18 April and went on to say that although the Service did not know who was providing Dr Sutch with Government information, if indeed anyone was, there was no doubt that he had considerable indirect access to information about Government policies and about Government and official personalities which could be of interest to the Soviet Union. The Service had consulted the Solicitor-General who had indicated that, in terms of the Official Secrets Act, there was sufficient evidence for the case to be terminated, and that the next meeting between Dr Sutch and Razgovorov should provide an opportunity for this. The brief for the Prime Minister went on to propose that the Service and the Police should co-ordinate a plan of action to this end. The brief then went on to say that although there was already positive evidence in terms of the Official Secrets Act, in the absence of overwhelming

evidence against Dr Sutch obtained as a result of his arrest, a prosecution would not necessarily be the wisest course of action. The national interest would best be served by obtaining from Dr Sutch a full and frank account of his association with the Russians in order

- (a) to discover what had been betrayed;
- (b) to identify Dr Sutch's sources of information;
- (c) to identify people whom Dr Sutch might have "talent spotted" for the Soviet Union; and
- (d) to identify Dr Sutch's previous handling officers in the Soviet Embassy.

A prosecution could prevent much of this information from being obtained.

10. The brief expressed the view that it would be proper for the Police to offer immunity to Dr Sutch in return for full co-operation from him. As to the Russians, Razgovorov and Pertsev should be expelled, and Belousov (who had already left the country) should be declared persona non grata.

11. At the meeting with the Prime Minister, Mr Rowling, on 13 September 1974 the full brief was covered, and Mr Rowling was thus informed in detail of what was proposed, and of the reasons for it. He did not demur.

12. On the same day the Police were briefed and, as in the case of the briefing of the Prime Minister, stress was placed by the Service on the point that there would be greater value in obtaining a full statement from Dr Sutch than in securing his conviction on the evidence so far obtained.

13. On 23 September 1974 the Director of the Service had a further meeting with the Prime Minister. The Director explained that a prosecution was a last resort. It was the hope of the Service that Dr Sutch could be induced to co-operate fully with the Service and its planning was directed towards this end. The Prime Minister said that he hoped the action taken would be definitive and not capable of wilful misinterpretation by radical elements.

14. An operational plan and a brief for interviewing Dr Sutch were then prepared. Further meetings were held with the Solicitor-General and Police, culminating in a final meeting on 26 September 1974 - the day on which, according to a warning obtained from the same source - the next meeting between Dr Sutch and Razgovorov was to take place. The conclusion reached at the meeting was entirely consistent with the advice given to the Prime Minister. The primary aim was to apprehend Dr Sutch and to obtain information from him without charging him; a secondary aim was to charge him with a view to obtaining a conviction. It was agreed that the secondary aim should be adopted only if necessary, or unavoidable, and should be deferred for as long as possible.

15. In the early evening of 26 September Dr Sutch was apprehended in the Holloway Road area. Very heavy rain created some confusion for a short period and prevented evidence being obtained as to what, if anything, Dr Sutch had passed to Razgovorov. Dr Sutch was apprehended after

the two men had met and Razgovorov had had the opportunity to go to his car and to talk to his driver who then left the area.

16. Dr Sutch was then taken to the Police Station and questioned. At midnight, after questioning had continued for some hours, and Dr Sutch had consistently denied any association with the Russians, a meeting of officers of the Service, Police and the Solicitor-General was held. The conclusion reached was that the primary objective of apprehending Dr Sutch had not been and would not be achieved, and there was no choice but to charge him. Dr Sutch was advised that in the absence of a satisfactory explanation of his conduct he would be charged. The charge was then drawn up and at 3.35 a.m. he was formally charged.

17. The rest of the story is already within the public domain. The Attorney-General gave his consent to the prosecution; Dr Sutch was tried and acquitted. Criticisms of the role of the Service in the affair of the kind summarised in paragraph 2 above were made. The Service presented a number of submissions to the Prime Minister commenting on developments after the trial and answering the criticisms made.

18. These are the facts as revealed to me by my inquiries. I am satisfied that none of the allegations of the kind I have mentioned has any foundation whatever. There was no plot and no sinister intention on the part of the Service. There was no collusion between the Service

and anyone else. The Prime Ministers of the day - both Mr Kirk and Mr Rowling - were kept informed. The evidence presented in Court by SIS officers was truthful.

19. In the middle of 1975 "Truth" newspaper published a series of articles under the heading of "The Sutch File". Members of Dr Sutch's family alleged to me that these articles contained, inter alia, personal information about him and his affairs which could have been obtained only from the files of the Police and the Service containing the results of the searches of Dr Sutch's house, office, and papers. These members said some of these matters were unknown even to them. They therefore alleged that the Service had given this information to "Truth". In answer to my question, the Service has denied this charge as it did to the Prime Minister on at least two occasions. So has the Editor of "Truth". I have been unable to find any evidence to support it, and I have seen some material on the Service's files which tends to contradict it.

20. If these allegations against the Service are all without foundation, there are one or two aspects of the Dr Sutch case which are disturbing and on which I shall now comment.

21. First, it seems more than likely, from an analysis undertaken by the Service of all the evidence available after Dr Sutch's trial, that his association with the Russians had lasted for a period of years before the meeting between him and Razgovorov on 18 April 1974. If this is



correct, it may reasonably be asked whether a larger concentration of the Service's work on surveillance of the staff of the Soviet Embassy would not have discovered this association at a much earlier stage. This aspect of the case is one of the factors which has led me to make the recommendation contained in Section *B Subsection 2* of this report that there should be a substantial reordering of the priorities of the Service as between counter-espionage and counter-subversion.

22. Secondly, it is questionable whether the Service made a wise decision in waiting so long before notifying the Police, who were brought into a complicated and delicate series of events less than two weeks before a crucial meeting at which damning evidence was expected to be obtained. The Service had to consult the Police at some stage, but the Police may be right when they say, as they do, that they could have been of more assistance if they had been given a full and frank account of the SIS investigation earlier than they were. The Service is afraid of compromising security if delicate information is more widely known. There is a sensitive balance here, which must be struck in the national interest, and both services will have learnt from this episode.

23. Thirdly, there is the matter of the means by which the Service obtained advance knowledge of some of the meetings between Dr Sutch and Razgovorov and of the advice the Service gave to the Prime Minister on this

matter. It was, in large measure, the obscurity on this point which gave rise to the theory that the Service had acted in collusion with the Russians. How else, it was asked, could the Service have had advance knowledge of those meetings?

24. The explanation is, in fact, a good deal simpler. Sometime after the meeting between the Service and the Prime Minister on 2 August, the Service decided that it should obtain access to Dr Sutch's office. One or more officers of the Service entered Dr Sutch's office at night, installed a listening device and tapped his telephone. In the end, neither of these sources provided anything of much value to the investigation. At the same time, however, as the phone was tapped and the listening device put in place, the opportunity was taken to study Dr Sutch's diary. It was the entries in this diary - later produced at the trial - which provided the Service with its advance warning about some of the meetings between Dr Sutch and Razgovorov.

25. Both the entry into Dr Sutch's office and the tapping of his telephone involved clear breaches of the law. Elsewhere in this report (Section C) ~~paragraph~~ I have made recommendations which, if implemented, will mean that, in exceptional circumstances, the Service will be able lawfully to undertake activities of this kind. In August 1974 the Service had no such legal authority; it chose to break the law. While the situation confronting it was admittedly of an exceptional kind, I am unable to accept

that an agency of state may, even in exceptional circumstances, break the law. The existence of such circumstances may point to the need for a change in the law, but until such time as the change is made, agencies of the state have a duty - and indeed a heavier one than that imposed on private individuals - to comply with the law. If a security service acts in conflict with this view it acts in a manner which subverts the very values which it exists to protect.

26. The foregoing paragraph must be read in the light of what took place at the meeting between the Prime Minister, Mr Kirk, and the Director of the Service on 2 August referred to in paragraph 7 above. It was clear that Mr Kirk wanted further evidence obtained, and realised that clandestine methods would have to be adopted. He is reported to have referred to the Service "getting a cleaner". In the light of Mr Kirk's attitude, and of what they conceived to be the necessities of the case, the Service proceeded to obtain information by the various methods I have described. Neither the Service nor the Prime Minister should have been placed in this invidious position, which will not recur if my "warrant system" proposal is adopted.

27. A serious question is also raised by the reports made by the Service to the Prime Minister, Mr Rowling, on the means by which the Service obtained, (and attempted to obtain) advance notice of meetings between Dr Sutch and Razgovorov. In a submission put to the Prime Minister on

4 March 1975 dealing with this and other matters, the Service said:

"During our lengthy discussion of the case with the Prime Minister, the late Mr Kirk, on 2 August 1974, the latter urged us to establish sources as close as possible to Dr Sutch. It was with information from one such source, whose identity must be protected, that we were able to anticipate some of Dr Sutch's meetings with Razgovorov."

28. A few days later, on 10 March 1975, there was a conversation between a senior SIS officer and the Secretary of Foreign Affairs concerning a press statement which the Prime Minister wished to release on the same day. The Secretary of Foreign Affairs explained that a statement had been drafted for the Prime Minister and read it over the telephone to the SIS officer inviting comments on its contents. The statement included the following passage:

"Telephone tapping and the interception of mail is not practised within New Zealand. It was not used in gathering evidence in the case involving Dr Sutch."

No comment was made by the SIS officer on this portion of the statement.

29. On 18 March 1975 a further submission was put to the Prime Minister to enable him to answer a letter from Dr Sutch's wife, Shirley Smith. The point made in the submission of 4 March was repeated, i.e. that on 2 August 1974, in discussion with Mr Kirk, the latter had directed to the Service to establish sources as close as possible to Dr Sutch, and that it was with information from one such source "whose identity must be protected" that the Service was able to anticipate some of Dr Sutch's meetings with

Razgovorov. The submission then said:

"... For your personal information the source was not Miss Arlukiewicz / i.e. Dr Sutch's Secretary at the relevant time / but I strongly recommend that you should decline to be drawn on this topic".

30. Finally, on 29 September 1975, a submission to the Prime Minister relating to a question in the House about the Sutch case once again referred in the same terms to the discussion with Mr Kirk on 2 August 1974 and went on to say:

"The Service accordingly developed sources to assist in this labour. These sources must continue to be protected."

31. In the telephone conversation on 10 March 1975, the Service knowingly permitted the Prime Minister to issue a press statement which it knew to be misleading. The assertion that telephone tapping "was not used in gathering evidence in the case involving Dr Sutch" is strictly correct only if the term "evidence" is interpreted to refer only to evidence tendered in Court. It is doubtful whether many people would have understood the statement in this way. On the other hand, the preceding assertion that telephone tapping is not practised within New Zealand is wholly incorrect. It was practised in the Sutch case and as noted elsewhere in this report (Section B.5) has been practised in a limited number of other cases.

32. In the submissions to the Prime Minister of 4 March, 18 March and 29 September 1975, the Service went further and gave the Prime Minister information which can only be

regarded as gravely misleading. Each submission plainly implied that a person (or, in the case of the submission of 29 September, persons) had supplied advance notice of meetings between Dr Sutch and Razgovorov, and that there was a continuing need to protect that person or persons. In fact, however, the Service would appear to have been concerned with "protecting" the Prime Minister from knowledge of a quite different method used by the Service to obtain the information it needed.

33. This particular aspect of the Sutch case raises important questions concerning the relationship between the Service and the Minister in Charge of it. It points, in my view, to the need for a much tighter degree of Ministerial control over the Service than has existed in the past. The matter of control of the Service is dealt with in detail in Section C of this report.