

Robert Wardle
Second
For the Defendant
Exhibit RW4
Dated: 31 January 2008

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/1567/07

B E T W E E N :-

THE QUEEN
on the application of
(1) CORNER HOUSE RESEARCH
(2) CAMPAIGN AGAINST ARMS TRADE

Claimants

- and -

THE DIRECTOR OF THE SERIOUS FRAUD OFFICE

Defendant

- and -

BAE SYSTEMS PLC

Interested Party

WITNESS STATEMENT OF ROBERT WARDLE

I, Robert Wardle, Director of the Serious Fraud Office, Elm House, 10-16 Elm Street, London WC1X 0BJ, SAY AS FOLLOWS:

1. I am the Director of the Serious Fraud Office ("the SFO") and I am the Defendant in this matter. I make this witness statement, further to my witness statement dated 17 December 2007, to address certain matters that were raised by the Court at the Directions Hearing on 21 December 2007 and 17 January 2007. The contents of this witness statement are within my knowledge or belief unless otherwise stated, and are true to the best of my knowledge and belief.

2. Now produced and shown to me marked RW4 pp.1-28 is a bundle of 12 documents. The three documents from BAE are copies of the originals which have been redacted, where necessary, on public interest grounds. The remainder of the exhibit contains transcribed copies of nine documents which have been redacted, where necessary, on the grounds that they contain material that is irrelevant to this claim and on public interest grounds.

Correspondence with BAE

3. At paragraph 9 of my first witness statement I explained that on 10 November 2005 Jonathan Jones of the Attorney General's Office forwarded to me a copy of a letter from BAE to the Attorney General, attaching a memorandum, dated 7 November 2005. I exhibit copies of those documents and further letters between BAE and the Attorney General's Office dated 11 and 14 November 2005 [RW4/1-9].
4. Matthew Cowie, the case controller, wrote to BAE's legal adviser on 15 November 2005, in response to the Memorandum of 7 November 2005, explaining that the economic considerations raised were irrelevant and asking them to supply any material concerning the "national interest" forthwith. A copy of this letter is exhibited at RW4/10-12.
5. At paragraph 13 of my first witness statement I referred to Sir Gus O'Donnell's meeting with the Attorney General on 30 November 2005. The letter from BAE to Sir Gus O'Donnell, which he gave to the Attorney General at this meeting, did not contain any representations regarding the public interest and bore no relevance to the decision which is the subject of this claim. I referred to it in my first witness statement simply because it formed the occasion on which Sir Gus O'Donnell asked the Attorney General whether it would be proper for the government to make any representations as to the public interest considerations raised by the SFO investigation. As the letter is irrelevant, and contains sensitive material, I have not exhibited a copy to my statement.
6. Further to the representations that BAE made in the memorandum dated 7 November 2005, I had a telephone conversation with BAE's head legal

adviser, Michael Lester, on 7 December 2005. I exhibit hereto a copy of my note of that conversation: RW4/13-14. BAE wished to make further representations as to the public interest. As can be seen from my note, I told Mr Lester that any further representations should be submitted in writing the following day. I also told Mr Lester, as my note records, that:

“BAe was a suspect in a criminal investigation and the amount of weight that can be given to a suspect’s representations as to the public interest in continuing an investigation are likely to be much less than those of a Government Department.”

7. As a result of this telephone conversation BAE sent Matthew Cowie an email dated 8 December 2005 attaching a further memorandum of the same date. I exhibit hereto a copy of the email and memorandum: RW4/15-20.
8. As I have explained in my first witness statement, the Attorney General and I concluded in January 2006 that the balance of the public interest was in favour of continuing the investigation.
9. I did not receive any further representations from BAE as to the public interest and the representations made in BAE’s memoranda of 7 November and 8 December 2005 did not influence my decision to discontinue the investigation.

The rule of law

10. I understand that the Court has raised the question whether anyone was standing up for the rule of law. This was always a primary consideration for me, and it was always uppermost in my mind.
11. The investigation and prosecution of serious crime is a major public interest that the SFO exists to promote. My job is to investigate and prosecute crime. The Al Yamamah investigation was a major investigation. The idea of discontinuing the investigation went against my every instinct as a prosecutor: I wanted to see where the evidence led.

12. The public interest in pursuing the investigation was a point that was so central to the task that I was performing that I never felt the need to write notes to remind myself of it. Nevertheless, it was something that was raised and discussed with me. In a “Director Brief” dated 19 December 2005 (which was also submitted to the Attorney General’s Office), Matthew Cowie raised the question whether public interest considerations ought to be considered by the SFO at that stage of the investigation. I exhibit a copy of this document - which has been redacted substantially on relevance grounds (the majority of the note addresses the merits of the investigation) and to a far lesser extent on public interest grounds – at RW4/21-22.

13. The Director Brief stated:

“The SFO must investigate crime. It has a reasonable belief that crime has been committed. It must investigate all reasonable lines of enquiry and do so in the light of our domestic and international obligations. The international obligations currently include Article 5 OECD and are likely, in the near future, to include Article 35 of the UN Convention on Corruption (yet to be ratified). Those international instruments envisage an independent role for law enforcement outside of economic or political considerations. To have any meaningful effect they must have application, regardless of the seriousness of the consequences stated. There are always likely to be economic or political consequences of any major enquiry into defence contracts. That is why such considerations must ultimately be irrelevant to the independent conduct of such enquiries. It is impossible for the Director of the SFO to weigh up these competing public interest considerations.”

14. The Director Brief went on to highlight the importance of giving:

“full consideration to the public interest in the rule of law, the independence of the SFO and MDP and the role of central government, all of which could suffer reputational damage if it emerged that an investigation by the SFO had been cut short”.

15. Although it might appear that Matthew Cowie was questioning whether *the Cabinet* had given full consideration to the rule of law and other matters weighing against the public interest considerations referred to in the Shawcross representations, he and I were fully conscious that the decision as to where the public interest balance lay was not a matter for Cabinet or ministers, but for myself (subject to the superintendence of

the Attorney General). It was for me to give full consideration to the public interest in the rule of law in assessing the public interest. Moreover, whilst I entirely agreed with Matthew Cowie's statement that there were always likely to be economic or political consequences of any major enquiry into defence contracts, and so such considerations are irrelevant, once I received the material advice, I did not consider that it was impossible for me to weigh up the relevant competing public interest considerations.

16. My awareness of the public interest in prosecuting and investigating crime is also evidenced in a note of a meeting that I attended with the Attorney General and Solicitor General on 11 January 2006. I exhibit a copy of that note - which has been redacted to remove irrelevant passages (relating to the merits of the claim), material which is privileged and information which it would be contrary to the public interest to disclose – at RW4/23-24. The note records that the SFO “were very conscious of the competing arguments, namely the public interest in investigation and prosecuting serious crime”.

17. I also received representations on this point from Detective Superintendent Allen of the Ministry of Defence Police, in the form of a letter to the Attorney General dated 11 January 2006 which was copied to me and discussed at the meeting with the Attorney General that day. DS Allen expressly drew attention to the rule of law, the OECD Convention, and the damage that he considered a premature conclusion to the investigation would do to the UK Government’s reputation for leadership and commitment to anti-corruption.

18. The Attorney General and I had been firm in our resolve in January 2006 that the public interest favoured continuing the investigation. My consideration of the public interest in December 2005 and January 2006 was the necessary background to my consideration of the public interest in December 2006. These considerations - that is, the rule of law, the importance of investigating and prosecuting serious crime, and the credibility of the SFO and the law of corruption – remained uppermost in my mind when I took my decision to discontinue the investigation.

19. Nevertheless, from October 2006 onward, I became increasingly concerned by the strength of the national security public interest factors that militated against continuing the investigation. As I explained in my first witness statement at paragraph 19, although the Shawcross representations dated 16 December 2005 raised the *possibility* that Saudi Arabian cooperation with the UK in combating terrorism might be endangered, at that stage there was no suggestion that this danger was imminent. The position changed significantly when actual representations were made by Saudi representatives as to the consequences of continuing the investigation.

20. I instinctively wanted to stand up to such threats. The SFO also initially expressed some scepticism as to the likelihood of damage to UK national security in fact being inflicted, bearing in mind the possible self-interest of some of those in the Saudi regime in promoting the discontinuance of the Al Yamamah investigation. For example, on 27 October 2006, Helen Garlick wrote to Jonathan Jones expressing the view that some caution should be exercised when considering the Saudi representations. She also noted that the Cabinet Secretary had not, by the time of his letter of 29 September 2006, been able to verify or assess the significance of the representations, and so asked for guidance and briefing on the substance of the threat and the risk it entailed: RW4/25-26.

21. It was only following my first meeting with the Ambassador on 30 November 2006 that I seriously began to entertain the thought that the national security public interest might be so compelling that I would have no real alternative. Ultimately, I was convinced by my discussions with the Ambassador and the Prime Minister's minute that there was a very real likelihood of serious damage to UK national security.

22. Following my first meeting with the Ambassador I considered inviting BAE to plead guilty to certain offences, in the hope that it would be possible to avoid serious damage to UK national security without the need to drop the case. But following further discussions with the

Ambassador, and the Prime Minister's minute, it became apparent to me that unless I stopped the investigation it was likely that UK national security would be seriously damaged and lives would be put at risk.

23.I spent a considerable period of time considering the competing public interests, and discussing them with Helen Garlick, Matthew Cowie and counsel. Ultimately, I concluded that the public interest in pursuing the investigation was outweighed by the risk to people's lives. As I have explained in my first witness statement, I initially conveyed this view to the Attorney General at a meeting on 13 December 2006. I exhibit a copy of the minute of that meeting, which has been redacted on relevance and public interest grounds: RW4/27-28.

24.After the meeting with the Attorney General at which I conveyed my preliminary view, I considered the matter further that evening in discussion with my team, and then on my own overnight. As I have already explained, I confirmed my decision on the morning of 14 December 2006. I did not make a separate note of the decision or the reasons for it since the reasons had been discussed in meetings, following which the Attorney General, in a statement prepared with my assistance, had explained my decision and reasons to Parliament. I considered that it was unnecessary to make an additional or separate record of my decision. It also struck me that, as I had had no opportunity to make a written record of my decision until after I had received the Claimants' letter before claim of Monday 18 December 2006, making a written record at that stage might be considered inappropriate.

25.The press release suggested that it had been necessary to balance the need to maintain the rule of law against the wider public interest. As I have explained in my first statement (paragraph 52), the press release was drafted in haste and primarily intended to dispel the erroneous impression that the investigation had been discontinued because of commercial pressure. I read the reference in the SFO press release to "the rule of law" as meaning that it had been necessary to balance the public interest in pursuing a criminal investigation against other public

interests, which reflected the true position, and so I was happy for it to be released.

26.I do not believe that I set aside the rule of law. I had to balance competing public interests. I considered that the risk to national security was such a compelling public interest that it outweighed the public interest in continuing the investigation. Although stopping the investigation went strongly against the grain, I still believe that I made the right decision.

27.I also bore in mind that the subject of the SFO's criminal investigation was BAE: at no stage were any Saudi officials the subject of investigation by the SFO. Whilst the Al Yamamah investigation was an important one, the effect of dropping it was not to discontinue all corruption investigations against BAE. The investigations of BAE's conduct in the Czech Republic, South Africa, Romania and Tanzania have continued.

Statement of Truth

I believe that the facts set out in this statement are true.

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Robert Wardle

Date: