

It was important to remember that the decision ruling out such documents was the decision of the Judge. It was the Judge who was in control of the trial, not the Executive.

It was not out of place to indicate the sort of grounds which would not afford to the Minister adequate justification for objecting to production. It was not sufficient that the documents were "State documents," or "official" or were marked "confidential". Nor that, if they were produced, the consequences might involve the department or the Government in Parliamentary discussion or in public criticism, or might necessitate the attendance as witnesses or otherwise of officials who had pressing duties elsewhere. Neither would it be a good ground that production might tend to expose a want of efficiency in the administration or tend to lay the department open to claims for compensation. In a word, it was not enough that the Minister or the department did not want to have the documents produced. The Minister ought not to take the responsibility of withholding production except in cases where the public interest would otherwise be damnified--for example, where disclosure would be injurious to national defence, or to good diplomatic relations, or where the practice of keeping a class of documents secret was necessary for the proper functions of the public service.