



MO 22/5

CONFIDENTIAL

Prime Minister
Two minor glosses by the Law
Officer Department noted in the margin. But this provides a
sound basis for rebutting the suggestions in Mr. Kinnoch's
letter and in The Observer. A more worrying question

MINISTRY OF DEFENCE is: Who leaked to ~~the~~
MAIN BUILDING WHITEHALL LONDON SW1 ~~XXXXXX~~

Flag A

Telephone 01-~~938~~ ~~X02X~~ 2111/3

~~referred~~ The
Observer the minute
attached to the letter

17th September 1984

below?

FERB

17.9.

Dear Robin

PROSECUTION OF MR PONTING: SEQUENCES OF EVENTS

When we spoke on the telephone this morning, you asked for a note setting out the precise sequence of events surrounding the decision to prosecute Mr Ponting under the Official Secrets Act, following the assertions in yesterday's "Observer":

1. After an investigation lasting several days by the Ministry of Defence Police, which included examination of forensic evidence in connection with the use of a photocopying machine, an admission was obtained from Mr Ponting at about 1800 on Friday 10th August. At the same time he offered his resignation in a short hand-written note to Mr Richard Hastie-Smith, our PEO. Mr Ponting's resignation was noted but not in any way accepted and he was escorted out of the building after surrendering his pass and keys.

x | 2. On Monday 13th August, Sir Ewen Broadbent, our Second Permanent Secretary, called on the Director of Public Prosecutions, at about 1100, to advise him that the source of the leak had been found. He put to the DPP the departmental view that there was a choice between proceeding by departmental administrative methods, which could lead to invidious comparison with the Sarah Tisdall case; or by prosecution which could lead to renewed controversy over the Belgrano. Sir Ewen Broadbent also passed on the Chief Constable MDP's view that prosecution was not appropriate. At that stage the DPP noted this view pending discussion with the Law Officers. Later that morning Sir Ewen discussed the case with Peter le Cheminant in the Management and Personnel Office to establish the position with regard to civil service disciplinary proceedings. It was agreed that, as is normal practice, no action should be taken until it was known whether or not there would be a prosecution.

3. At about lunchtime on the same day, Sir Ewen was telephoned by the Solicitor General to establish what security damage, if any, had been done by the leak of the documents concerned. Sir Ewen Broadbent, replied that a detailed assessment was being undertaken

R Butler Esq

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The Solicitor
General does
not recall saying this

but the initial view was that very little damage had been done. In the course of this telephone conversation, the Solicitor General observed that, at that early stage, he favoured prosecution.

4. In the afternoon of 13th August Sir Ewen Broadbent called on my Secretary of State at home to advise him of where matters stood. I attach a copy of the record of that meeting which appears to be the document referred to by the Observer. You will note from this that my Secretary of State expressed the personal view that if the decision were his, he would prosecute Mr Ponting, but that the decision whether or not to do so must rest with the Law Officers. Sir Ewen Broadbent agreed with this view.

5. On 14th August Mr Ponting was seen by Mr Hastie-Smith and advised in writing that as consideration was still being given to possible prosecution and/or departmental disciplinary proceedings, his resignation could not be accepted.

6. The period from Tuesday 14th August to Thursday 16th August was spent by the Ministry of Defence Police in preparing a case file for the DPP. This is done automatically in all cases involving offences under the Official Secrets Act, but the DPP was aware that such a file was being compiled, and indeed asked for it to be completed as a matter of urgency in a conversation he had with the Chief Constable MDP on Monday afternoon the 13th. This file was passed to him on Thursday 16th August.

The decision
was in fact
taken by the
Solicitor General

7. In the course of Friday 17th August the DPP consulted the Solicitor General, who in turn contacted the Attorney General by telephone. He had also received that day a copy of the damage assessment compiled by this Ministry, under cover of a letter from Sir Ewen Broadbent which stated that in narrow security terms no damage had been done, but that there were obviously wider implications connected with breach of trust. In the light of all the information available, the decision to prosecute was taken by the DPP with the agreement of the Law Officers at about 1600 on the same day. Mr Ponting was arrested and charged shortly thereafter.

8. In accordance with my Secretary of State's instructions, Sir Ewen Broadbent arranged for Mr Stanley, the duty Defence Minister, to be briefed on the case on the evening of 14th August. At his request Mr Stanley was provided with some further background material on Wednesday 15th August, and he was kept up to date in a series of secure telephone conversations the first of which took place on the afternoon of 16th August. I understand that at no time did Mr Stanley speak directly to the Law Officers or to the Prime Minister; after the decision had been taken to prosecute Mr Ponting, Mr Stanley was contacted by your office about the background to the case and also spoke to the Lord President.



Comment

Sir Ewen Broadbent did not communicate the Defence Secretary's views on prosecution to the DPP or the Law Officers as there was no need to do so. The position the Department was taking up from 13th August onwards was that the case now lay with the DPP, and the MOD should provide material but not intervene on the expression of views on whether or not to prosecute. As for the DPP's office's statement over the weekend that they did not receive any papers on the Ponting case until 16th August, this, of course, refers to the MDP case papers mentioned in paragraph 6 above. The DPP was aware much earlier (on Monday 13th August) that the source of the leak had been found, and that therefore prosecution was a possibility, and had consequently called for the early submission of the police report.

The Defence Secretary has also asked me to record his own views on the damage assessment referred to in paragraph 7 above. This assessment addresses only the narrow question of the implications for national security of the release of the particular information contained in the documents which were disclosed rather than the wider question of the risk that a process of disclosures on the Belgrano issue could ultimately lead to the compromise of information of the most sensitive kind. It was this security interest that he had very much in mind when originally considering himself whether Mr Dalyell's further questions should be answered and which led him to view with such concern the action taken by Mr Ponting. But none of this of course affects the sequence of events above.

The text of this letter (other than the previous paragraph) has been cleared with the Director of Public Prosecutions to whom I am sending a copy; I am also copying it to Henry Steel (Attorney General's chambers) and Richard Hatfield (Cabinet Office) (without the enclosure)

Yours etc.

Richard Mottram

(R C MOTTRAM)



MO 22/5

14th August 1984

PS/2nd PUSUNAUTHORISED DISCLOSURE OF DOCUMENTS TO TAM DALYELL MP

2nd PUS discussed the results of the investigation into this case with the Secretary of State at his home in Thenford yesterday evening.

2. Sir Ewen Broadbent explained that as a result of some good work by the MOD Police the Head of DS5, Mr Ponting, had signed a confession that he had sent the documents in question to Mr Dalyell. Mr Ponting had subsequently tendered his resignation from the Department and from the Civil Service. He had been suspended from duty and sent home. His motivation in leaking the documents was unclear, but it was perhaps relevant that Ponting had recently gone through a difficult patch in his private life, in the course of which he had become a Buddhist. In the light of his new religious beliefs, steps had been taken prior to the outcome of the investigation to arrange a transfer for him to a Department of State in which he could serve without difficulties of conscience. These personal considerations, did not, of course, in any way excuse his conduct but might be used with advantage by a good defence lawyer if Ponting were to be prosecuted. In the light of his confession, it would clearly be invidious for his wife, currently serving as a Principal in the Department, to continue to work in the MOD. A posting to another Department would be arranged.

3. Continuing, 2nd PUS said that the documents passed to Mr Dalyell included an unclassified draft letter to the MP, prepared by the Head of DS5, which had been the subject of substantial revision before finally being sent, together with a minute from the Head of DS11 to the Secretary of State's office, classified CONFIDENTIAL, discussing the tactics for handling a request for information from the House of Commons Select Committee on Foreign Affairs. Both documents concerned the sinking during the Falklands conflict of the Argentine cruiser BELGRANO. The leaking of the documents could not be held to be seriously damaging in terms of national security, but the revelation of the leak would be embarrassing to the Government. In view of the very limited nature of the potential damage to national security, the Chief Constable of the MOD Police had recommended that Ponting should not be prosecuted under the Officials Secrets Acts.



4. 2nd PUS went on to say that he had discussed the matter that morning with the Director of Public Prosecutions, who had referred the case to the Solicitor-General, who had said that he would need more time and a closer look at the papers before he was in a position to reach a decision. While the case for prosecution under the Official Secrets Acts on grounds of damage to national security was somewhat shaky, it was relevant that the Lord Chief Justice, in upholding Miss Sarah Tisdall's conviction for passing classified documents to the Guardian, had referred in his judgement not only to the damage to national security involved in her action, but also the breach of trust involved. Ponting's actions clearly constituted a grave breach of trust, particularly given his senior rank within the Civil Service. If in the event it were to be decided that Ponting was not to be prosecuted, the question arose as to whether the Department should accept his resignation, or refuse it and dismiss him by administrative action; this latter course could involve a penalty to Ponting's eventual pension rights. In the absence on leave of the Head of the Civil Service, 2nd PUS had discussed this question with Peter Le Cheminant of the Management and Personnel Office. Their conclusion had been that the first step must be to await the Law Officers' decision on whether to prosecute. It was probable that a decision not to prosecute in this case, but rather to accept Ponting's resignation or to dismiss him administratively would be contrasted unfavourably in public with the handling of the Tisdall case, particularly given the disparity in rank of the two individuals.

5. The Secretary of State said that he was shocked by this flagrant breach of confidence by a senior officer who must have been fully aware of the potential consequences of his actions. He had been in no doubt that the decision to prosecute Miss Tisdall under the Official Secrets Acts was right; if the decision were his, he would prosecute Ponting. He would, however, be content to abide by the Law Officers' decision in the case; if they decided not to prosecute, his preliminary view was that Ponting's resignation should be rejected, and that he should be dismissed from the Civil Service by administrative means.

6. In conclusion, the Secretary of State asked 2nd PUS to ensure that the Minister of State in charge of the Department in the Secretary of State's absence on leave was briefed on Ponting's case against the possibility that the news of his suspension might break. In the short term, the line to take in public would be that the case was under consideration by the Law Officers.

D. Brennan

(D BRENNAN)
APS/S of S

PERSONAL AND RESTRICTED
STAFF IN CONFIDENCE

Belgrano: Kinnock accuses Heseltine

by DAVID LEIGH

THE BELGRANO affair took a dramatic new turn last night when opposition leader Mr Neil Kinnock flatly contradicted Mrs Thatcher's version of events.

Mr Kinnock accused the Defence Secretary, Mr Michael Heseltine, of personally over-ruling his own officials' advice that civil servant Mr Dave Ponting should not be prosecuted on secrets charges.

This directly challenges the Prime Minister, who denied in a letter yesterday to SDP leader Dr David Owen that Mr Heseltine had behaved improperly.

The Prime Minister's letter also disclosed that she has ruled out a new Government White Paper on the affair.

What is more likely to provide controversy, however, is the detailed account she gives of how the Ponting prosecution was brought. This account is now being called into question. Mr Kinnock said he regarded the matter as one 'of very grave concern.'

The argument centres on the events of 13 August. It was on this day, says Mrs Thatcher, that the results of the Defence Ministry investigation into the leaked Belgrano documents were sent to the Director of Public Prosecutions. 'The Defence Secretary and I were told of the outcome of the inquiry and that the matter had been referred to the DPP,' she wrote.

A spokesman for the DPP's office has told *The Observer*, however, that the documents were not received until 16 August—three days later.

Mr Kinnock's advisers have been told by senior officials within the Ministry of Defence that on the afternoon of 13 August Mr Heseltine was visited at his Oxfordshire home by the acting senior official at the MoD, Mr Ewen Broadbent.

He had been informed that the Chief Constable of the MoD police had completed his inquiry and recommended that no prosecution should be brought. This was in line with a long-standing convention in the MoD that only cases involving leaks liable to endanger national security should attract a criminal charge.

Mr Kinnock's letter is believed to be based on a minute signed by Mr Dennis Brennan, an assistant private secretary, recording the discussion at Mr Heseltine's home.

Mr Broadbent was the most senior civil servant at the Ministry in the absence on holiday of the Permanent Secretary, Sir Clive Whitmore. Mr Heseltine himself was due to leave for Cyprus the following day.

At the meeting, Mr Broadbent informed Mr Heseltine that the Chief Constable of the MoD police, backed by his departmental superior, did not recommend prosecution as the result of Mr Heseltine's 'leak inquiry.'

Mr Heseltine surprised officials by countermanding their advice and insisting that the Attorney-General, Sir Michael Havers, be called on to agree to Mr Ponting's criminal prosecution. The detailed arrangements were left in the hands of the junior minister, Mr John Stanley. Whitehall sources confirm that Mr Stanley phoned Mrs Thatcher on holiday in Switzerland on the same day.

Mrs Thatcher's letter to Dr Owen, published yesterday and presumably based on a brief from Mr Heseltine, paints a very different picture.

This gives the impression that impartial officials had already themselves referred the case to the DPP as a criminal matter. She says: 'It was made clear to Mr Ponting when he was interviewed on 10 August . . . that the possibility of prosecution was under consideration.'

The Brennan minute, however, discloses that prosecution had been considered but rejected by 13 August. What happened during Mr Ponting's interviews the previous Friday is a matter of evidence not yet tested in court, though Mrs Thatcher makes assertions about what happened.

Mrs Thatcher further claimed last night that Mr Ponting had again been warned, this time in writing on 14 August, that prosecution was 'under consideration.' In fact, this notification must have been as a result of Mr

Heseltine's intervention the day before.

Mrs Thatcher went on to claim that the Attorney-General had acted 'in a totally independent and non-political capacity' in agreeing to prosecute, and claimed to be 'astonished' to be asked to comment on the decision.

She did not, though, deny that Ministers might have made representations to the Attorney-General on the subject, merely stating that the Attorney himself had not sought to consult ministers, and that Ministers did not 'interfere in any way with his discretion.'

Within three days of Heseltine's intervention, the Government law officers—Sir Michael Havers, on holiday in France, and the Solicitor-General, the former Home Office Minister, Sir Patrick Mayhew—complied with Mr Heseltine's request, and authorised a criminal charge.

The DPP's office confirmed last week that normal procedure in the case of proposed extensions in the scope of the law was not followed. The papers in the Ponting case were not sent out to independent counsel for a legal evaluation.

The particular sensitivity of Ministers over-ruling the impartial advice of their officials in the Ponting case is that each Minister involved, if Mr Kinnock's charge is correct, had a

vested political interest in the decision whether or not to prosecute.

Mrs Thatcher herself, Mr Heseltine, Mr Stanley and Sir Michael Havers all figure in the documents disclosing the facts about the Belgrano which form the background to the case.

Mr Kinnock's allegations follow a week in which Mrs Thatcher's press secretary, Bernard Ingham, was disclosed to have talked to government information officers about getting 'a severe judge' for the case.

Mr Kinnock says in his letter: 'Civil servants who must prepare documents for parliamentary answers and other Ministerial statements on this matter are clearly right to believe they have no duty to obscure information or present it in a way which could mislead or misinform parliament and the public.'

Mr Heseltine himself issued a statement last week denying that he had agreed to testify to the Commons select committee on foreign affairs about the Belgrano sinking because of recent *Observer* disclosures.

What his statement omitted to mention was that he had only consented to do so last July because Sir Anthony Kershaw confronted him, at the foreign affairs committee's request, with the contents of the documents Mr Ponting is now alleged to have criminally disclosed. Sir Anthony agreed last night that this was the true sequence of events. Text of letters, page 2.



Kinnock: Grave concern.

'The Observer'
16 September 1984