

Overstaken. NAB 7

CDP
23/1

Ref. A085/218

MR BUTLER

with
FERB

I have seen the Lord Chancellor's minute of 21 January about Channel 4's plans to cover the Ponting case.

2. I very much share the Lord Chancellor's apprehensions about this proposal, which seems likely to undermine the fairness and effectiveness of trial by jury, not only in this case but (if it became infectious) in other cases.

3. I think that the Independent Broadcasting Authority has power to ban the transmission of any programme, though I do not know whether this power is in any sense conditional. I should have thought that there was a strong case of public interest for inviting the IBA to consider banning this programme.

REA

ROBERT ARMSTRONG

23 January 1985



10 DOWNING STREET

From the Private Secretary

22 January 1985

Proposed Coverage of the Ponting Case

The Prime Minister has seen the Lord Chancellor's minute of 21 January on this subject and shares his view of the serious implications of Channel 4 Television's proposed method of covering the Ponting trial.

BF

The Prime Minister agrees that the Lord Chancellor should discuss this with the Home Secretary and the Attorney-General. She hopes that this can be done rapidly, and would like to be informed of the results.

The Prime Minister has asked whether this is not a matter for the IBA. The Lord Chancellor will no doubt wish to consider in his talk with the Attorney-General and the Home Secretary whether it should be raised with the IBA and, if so, the precise grounds for doing so.

I am copying this letter to the Private Secretaries to the Foreign Secretary, Home Secretary, Secretary of State for Defence, Attorney-General and Sir Robert Armstrong.

Charles Powell

TPJ

Richard Stoate, Esq.,
Lord Chancellor's Office.

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.



HOUSE OF LORDS,
SW1A 0PW

CONFIDENTIAL

Prime Minister

Prime Minister
Agree to encourage the
Lord Chancellor to discuss this
with the A-G & Home Secretary,
and report further to you?

C.D.P. 21/1

Yes
MB

Is it relevant matter for
the ASA?

Proposed Coverage of the Ponting Case

I wish to share with you and other selected colleagues my anxieties about the serious implications for our whole method of trial by jury in criminal cases raised by a proposal of Channel 4 Television to transmit daily half-hour programmes on the Ponting trial, beginning at the Central Criminal Court on 28th January, using actors to read selections from a transcript of the proceedings taken from shorthand records to be made in court.

Channel 4's motives are quite certainly political and the material will probably be used to attack the Government. But this is not my concern. My concern is about the wider implications. I am informed that the Lord Chief Justice and the Senior Presiding Judge, Lord Justice Watkins, equally have reservations about the possible effect of such broadcasts on the fairness of this and any other trial.

Under the law, there is nothing I can do to prevent Channel 4 people from making shorthand notes in court. I have seen to it that no special facilities or privileges will be afforded to them and they will be treated in exactly the same way as other members of the media. It has also been made clear to Channel 4 that neither I nor my Department have, or is to be represented as having, "authorised" any particular use of the material so acquired. I have also warned the media that nothing that I can do or say can protect them if for any reason they transgress the rules about contempt of court.

Channel 4 claim in their prospectus that "there will be no attempt to dramatise or re-enact the courtroom proceedings". Nevertheless there could in my judgment still be a risk of contempt when Channel 4 come to make their broadcasts, because it will be possible to give a false impression of the proceedings by means of prejudicial selection of passages and the intonation, facial expressions, gestures and other techniques available to the actors. But this is not the whole point, and I proceed on the assumption that no contempt is involved. The jury could not easily be prevented from watching the programmes even if the judge were to warn the jury in appropriate terms. They would then have a selection of the evidence in the forefront of their minds when they come to give their verdict in place of the impartial review of the whole case which it is the function of the summing up to give.

Any question arising from the committal of a contempt is for the courts. I myself cannot and would not wish to intervene. Nevertheless, I thought that you and those to whom I am sending copies of this minute would wish to be aware of this development. If it is, as I suspect, a trial run for a general practice we shall be well on the way to substitute trial by television for trial by jury. Quite apart from this it will be impossible to assess the effect on individual witnesses, jurors, and even judges of the knowledge that this kind of technique in reporting may have. I would like to have a good talk about the implications of this in general with Michael Havers and Leon Brittan. But my own view is that the powers at present available to deal with this kind of thing are unsatisfactory. Trial in camera would prevent the evil but introduce another which would be worse.

I am copying this minute to Geoffrey Howe, Leon Brittan, Michael Heseltine and Michael Havers and to Sir Robert Armstrong.

H: of S^t M.

21st January, 1985