

W. Barber
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SECRETARY OF STATE FOR DEFENCE

THE CALCUTT REPORT

1. As you know, I have been considering with the Director of Public Prosecutions and the Treasury Solicitor the apparent inconsistency between the views of Stocker J and Calcutt on the question of the lawfulness of SAC Jones's detention. Stocker J, when considering during the trial the admissibility of confessions made by the accused, seems to have concluded that the requirements of the Rules of Procedure had been complied with (and in particular the charging requirements). Calcutt, on the other hand, comes to the conclusion (paragraph 5.30) that while Jones was lawfully arrested on 6 February there was a failure to charge him within 48 hours in accordance with Rule 4 of the Rules of Procedure and that his detention was unlawful.

2. I understand that it is intended to refer the assessment of the amount of compensation payable to those found to be unlawfully detained to Mr Michael Ogden QC. If we were persuaded that Calcutt was undoubtedly right in relation to the lawfulness of Jones's detention, then the assessment of compensation due to him could also be referred to Ogden. We do, however, have a High Court Judgment on the issue, which was given on the basis of all the relevant facts which were later before Calcutt (although it is true to say that the point of law was not argued before the Court because the defence did not consider the point to be arguable!). I am also conscious of the fact that the judiciary would be extremely critical if the Government were to adopt the view of a Silk in preference to that expressed by a High Court Judge, faced with the same issue and all the relevant facts. Looking at the question of law myself, I am not convinced that Calcutt was right on this issue. There are weighty arguments both ways. The unsatisfactory

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inconsistencies which exist between the various provisions which are applicable to the detention of servicemen make it extremely difficult to reach a firm view.

3. In these circumstances, I would advise that the Government should agree to Ogden assessing the quantum of compensation payable to the four servicemen who were found by Stocker J to have been unlawfully detained. It would not be right - and would cause considerable concern among the judiciary - if Ogden were to consider anew the issue of the lawfulness of Jones's detention. The Government should, as to that issue, state that there is a conflict of view between Stocker J and Calcutt, state that it is inappropriate for Ogden to consider Jones's case at all and indicate that it is always open to Jones to pursue his remedies in the Courts, if so advised. I am attaching a draft passage which you might like to consider including in the Statement.

4. I am copying this minute to the Prime Minister, the Home Secretary and to Sir Robert Armstrong.

M.H.

9 May 1986

DRAFT

PASSAGE TO BE INSERTED (after a passage stating that quantum of compensation is to be referred to Mr Michael Ogden QC)

As regards SAC Jones, before the Trial Judge, Jones's Counsel did not contend that his detention was unlawful. The Judge considered the provisions of the Rules of Procedure and concluded that the relevant Rule had been complied with. The evidence heard by Calcutt was augmented but the facts adduced in evidence were essentially the same. On his construction of the same provisions, he held that the continued detention of SAC Jones had been unlawful.

It is not the practice of the Government to comment upon any part of a Judgment delivered by a Court. In the circumstances, it would be inappropriate to invite Mr Michael Ogden to assess Jones's case. It is of course always open to Jones to pursue his remedies in the Courts, should he be so advised.

[The Secretary of State accepts the need for a careful review of the relevant provisions with the object of establishing whether greater clarity can be achieved. That review has already commenced].

LEGAL PROCEDURE - Peremptory challenges re. jurors:
Dec. 1985

