

01-405 7641 Ext. 3050

*Communications on this subject should
be addressed to*
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

18th September 1984

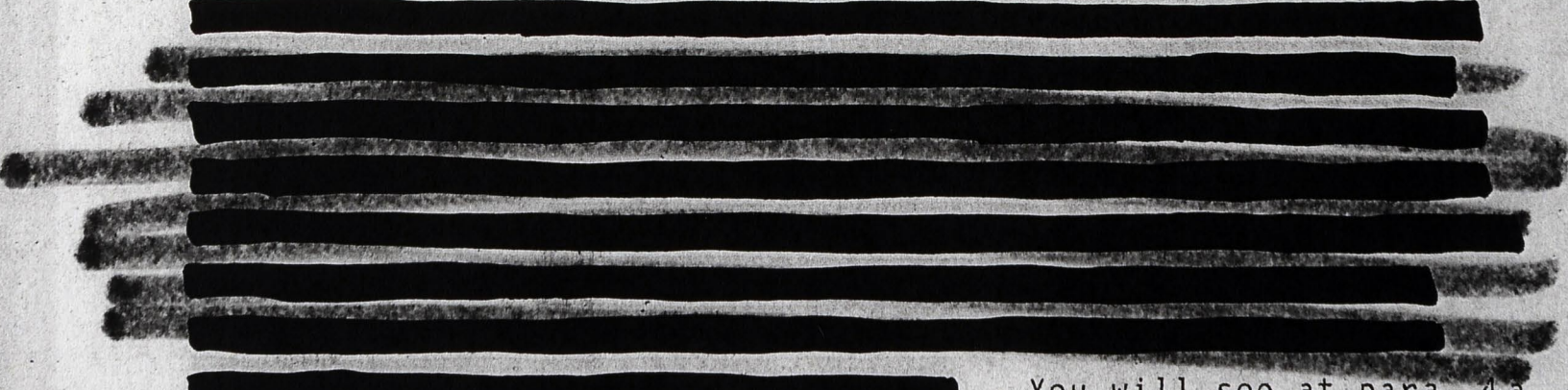
R. Butler, Esq.,
Private Secretary,
10 Downing Street,
LONDON, SW1

Dear Robin,

R. V. PONTING

I refer to our telephone conversation of last night.

The note from MOD basically accords with our view. The only comments on the note we have are these:- At Para. 3. the Solicitor General does not recall having told Sir Ewen Broadbent on the 13th August 1984 that his provisional view was in favour of a prosecution; at paragraph 7 it would be correct to say in the last sentence that the Solicitor General indicated to the Director that he would be prepared to grant his fiat.

 You will see at para. 4a that the then Legal Secretary to the Law Officers set out the sort of considerations he would take into account when advising

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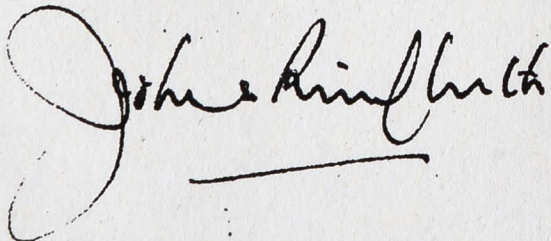
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the Attorney General in Official Secrets cases. This may erroneously form the basis for the so-called convention of which the article in the "Observer" spoke. In any event, if this ever were policy, it appears to have been superseded.

Lastly, I suggest that the Prime Minister's response to Mr. Kinnock should knock on the head the suggestion that the Law Officers consulted or were consulted by any other Ministers. I suggest a sentence - "The Law Officers did not consult any of their ministerial colleagues in reaching their decision to prosecute Mr. Ponting, nor were the views of any of their ministerial colleagues communicated to them."

Yours sincerely,

A handwritten signature in cursive script, reading "J. S. Ringguth". The signature is written in dark ink and is positioned above a horizontal line.

J. S. RINGGUTH

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MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1
Telephone 01-~~938 4028~~ 2111/3

MO 22/5

17th September 1984

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.

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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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.
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)

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