

CENTRAL CRIMINAL COURT

REGINA

v.

PONTING

OPENING NOTE

Director of Public Prosecutions

22/1/85

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OPENING NOTE

In July 1984, Clive Ponting was a senior civil servant working in the Ministry of Defence in Whitehall.

He joined the Ministry of Defence in 1970 and worked his way up through different departments to become an Assistant Secretary and the Head of one of the major Divisions in the Ministry - Defence Secretariat 5 (D.S.5).

This was a Division that worked in close relationship with the Naval Staff on the day to day activities of the Fleet. It has particular responsibility for the policy and political aspects of the operational activities of the Royal Navy, both in home waters and abroad. Its work involves a good deal of liaison with other Government Departments. Inevitably, it handles a great deal of classified material.

It is obvious that the Head of the Division holds a very responsible position. Ponting was appointed to that post on 12th March 1984.

In July 1984, without anyone's knowledge, he copied 2 documents in the Ministry of Defence and posted them in an envelope with a typewritten address to Mr. Tam Dalyell, the labour M.P. for Linlithgow.

Before doing so, he removed markings on each of them that might reveal their source.

Mr. Dalyell passed both documents on to a Select Committee of the House of Commons - the Foreign Affairs Committee - whose Chairman (Sir Anthony Kershaw) passed them straight back to the Ministry of Defence, calling in person on Mr. Heseltine (Secretary of State) on 26th July 1984.

An investigation was started into the leak forthwith.

In general terms, both documents deal with different aspects of the sinking of the Argentinian Cruiser, the General Belgrano, during the Falklands Campaign.

One document was marked 'Confidential', the other document had no security marking.

The Crown's case is that Ponting communicated the information in each document to an unauthorised person, namely Mr. Tam Dalyell, in breach of the trust imposed on him as a servant of the Crown.

The background - events leading up to the disclosure 6/3/84 Denzil Davies (opposition spokesman on Defence) wrote to the Prime Minister

p.12

16/3/84 Ponting drafted 2 possible replies for the Prime Minister having been asked to advise her on the appropriate reply. In fact the Prime Minister's reply was very different from both suggestions.

p.13-18

19/3/84 Tam Dalyell wrote to Heseltine asking a series of questions about the Belgrano.

p.19

As is well known, Dalyell has a particular and unremitting interest in the fate of the General Belgrano. That vessel was torpedoed and sunk by a British submarine, H.M.S. Conqueror, on 2nd May, 1982 in the early part of the Falklands Campaign.

2/4/82 Argentina occupied the Falkland Islands. Within a few days the first Task Force ships set out for the South Atlantic. By the end of April the leading element of the Task Force had reached the vicinity of the Islands. On 1/5/82 the Task Force commenced an air and sea bombardment of Argentinian Forces around Port Stanley. At that time the Task Force lay approximately to the East of the Islands. The General Belgrano was torpedoed at about 8 p.m. (British time) on 2/5/82. At the time she was approximately South of the Islands. She had reversed course that morning from an easterly to a westerly direction - i.e. towards the mainland. She was just outside the 200 nautical mile Total Exclusion Zone - that had been declared by the British Government around the Islands. H.M.S. Conqueror had been following the General Belgrano for some time having sighted her (visually) the day before. The Rules of Engagement (guidance to British commanding officers in the Atlantic prescribing the circumstances in which they may engage the enemy) had been altered and signalled to the submarine in the early afternoon of 2.5.82 to allow the attack to take place. Dalyell's

... contention is that the Belgrano was not a

threat to the Task Force at the time she was sunk and that she was attacked in order to destroy the projects for peace negotiations based on proposals initiated by the Peruvians late in the day.

Against that background, Dalyell wrote.

This letter arrived on the desk of Ponting's Minister about a week after Ponting's appointment to D.S. 5 from another Department.

22/3/84 Ponting was asked to prepare a detailed chronology of the events leading up to the sinking of the Belgrano.

p.20

This he did. The result was a document that has become known as the "Crown Jewels" which contain a lot of top secret information. There were then a number of high-level meetings on the subject in the Ministry of Defence.

4/4/84 Prime Minister replied to Denzil Davies.

p.22-24

5/4/84 Dalyell wrote to the Prime Minister

p.25

9/4/84 Ponting was asked to draft a proposed reply for the Secretary of State to Dalyell's letter of 19/3/84.

p.29

12/4/84 He drafted a reply and sent it with an explanatory Minute to the Secretary of State. He

- 12/4/84 Prime Minister replied to Dalyell p.36
- 18/4/84 Heseltine decided not to use Ponting's draft and replied in this way. p.37
- 1/5/84 Dalyell is not easily deterred and wrote again. p.38
- 2/5/84 Ponting was asked to draft another proposed reply p.39
- 9/5/84 Ponting received a Minute from APS to Minister of State for the Armed Forces (John Stanley). p.40
- The same day, Ponting drafted his second reply to Dalyell which was the same as his earlier one with a change of date and one addition Ex.4 p.43
- He sent it with an explanatory Minute to the Secretary of State. Ex.9 p.41
- Attaching a proposed Minute for No. 10. Ex.8 P.45
- 10.5.84 The P.S. to Stanley sent a Minute to Heseltine disagreeing with Ponting. p.47
- 11.5.84 Heseltine's P.S. minuted Stanley agreeing with Mr. Stanley's second line. p.48
- 14.5.84 Heseltine wrote to Dalyell. p.49

27.5.84 Dalyell wrote to Heseltine

p.50

11.6.84 Heseltine replied.

p.53

Therefore:-

1. Ponting was fully conversant with all significant events surrounding the sinking of the Belgrano, having himself carried out a detailed review of those events for the Secretary of State. In doing so, he had access to all relevant information including a good deal of top secret material which could not be revealed in public.
2. At no time did he suggest that the Government or the Ministry of Defence had anything sinister to hide.
3. In particular, at no time did he suggest that the Belgrano was sunk for any reason than that it was a threat to the Task Force at the time. *London*
4. The documents show that a difference had developed between himself and other advisers to the Secretary of State upon the question of how much information you continue to reveal to an M.P. pressing the Government in the way that Dalyell was.
5. You may think that one of the questions in this case must be why he chose to leak documents to an M.P. who had been pursuing for some considerable time the particular line of enquiry Dalyell had.

A copy was sent to Ponting on 9/7/84

The disclosure

The envelope with the typewritten address: 'Tam Dalyell M.P., House of Commons, London, S.W.1' was posted in Paddington on 16/7/84. Ex.3

It contained copies (photostat copies) of 2 documents:-

- (1) A copy of Legge's Minute (Ex.5) with identifying detail at the top and bottom of the first page blanked out i.e. all references above the title and below the last line. This was obviously done to hide the source. Ex.2
- (2) A copy of his own (second) draft reply to Dalyell (Ex.4) with a reference marking at the top ('E.32') removed. This marking was placed there by Mrs. Ritchie, his personal secretary, and would have helped reveal the source if left there. Ex.1

The draft reply to Dalyell (Ex. 4) was kept in a float file in a locked container in Mrs. Ritchie's office. Of the staff in DS5 only Ponting and Mrs. Ritchie had access to the file. Mrs. Ritchie marked the document 'E.32' in the top right-hand corner before filing it. It would have been easy for Ponting to copy it at some stage.

Legge's Minute (Ex.5) was received by Ponting on 9/7/84. Ponting signified receipt on the document. All 'Confidential' documents are entered in a Register kept in the department. Mrs. Ritchie passed

the file containing the document to Ponting on 9/7/84 and received it back from him on the 12/7/84 when she passed it on to the D.S.5 Registry. On 16/7/84 it was passed on to the Principal in 'B' Branch and stamped accordingly. Ponting could have copied the document while it was with him or while it was in the D.S.5 Registry i.e. between 9/7/84 and 16/7/84.

The Crown alleges that the information fed to Dalyell in those 2 documents gives a misleading impression when you compare it with the true position as known to Ponting.

Investigation

Despite the attempts to hide the source, police officers under D.C.I. Hughes soon discovered that both documents had "most probably" been copied on a machine in the D.S.5 Registry a Kalle Infotec 8036.

8/8/84 D.C.I. Hughes saw Ponting, as the head of his Division, explained the nature of his enquiries and said it would be necessary to interview members of his staff.

He showed Ponting the 2 leaked documents and said it would be necessary to take possession of the photocopying machine in the D.S.5. Registry.

Ponting was not a suspect at that stage.

Nevertheless, he kept quiet. He knew the police were making enquiries into the documents he had leaked.

10/8/84 He was interviewed at the Ministry of Defence, under caution, by D.C.I. Hughes and D.I. Broome Deps p.44

By then, the officers had recovered the draft reply (Ex.4) from the float file in Mrs. Ritchie's office and Legge's Minute (Ex.5) from the main D.S.5 Registry. It looked as though the copies sent to Dalyell were made from those documents.

Crown's Case

When Ponting joined the Ministry of Defence, he signed a Declaration which drew his attention to the Official Secrets Acts.

Ex.7

It is alleged that:-

- (1) He obtained the information in the 2 documents by virtue of his position as a Crown Servant and
- (2) He communicated that information to a person to whom he was not authorised to communicate it and to whom it was not his duty to do so in the interests of the State.

He did not receive authority to communicate the information and in the circumstances he knew full well that he would not have received authority from his Minister to do so.

It is not suggested that the disclosure in fact damaged National Security.

[Application will then be made to go into camera to deal in opening with the "Crown Jewels"].