

To the Attorney General - for information

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We may have to help
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over the sec. i

22 - 1 - 1985

PERSONAL and URGENT

Your reference:
83 / 4 / 3 No.7

Dear Lord Hailsham,

In re: Regina v Ponting

We are greatly disturbed to learn from BBC Radio 4 on 20 - 1 - 1985, solely on the ground of justice, that it has been proposed that the jury to be empanelled in the abovementioned case is to consist solely of those who have been "vetted" by the Security Services and not by representative peers of the Accused, as is usual.

There can be no criticism of the trial for the offence alleged against the Accused, were it undertaken in the course of normal legal procedures. Neither do we in any way condone a breach of the law, if this is proved to be one.

The realm of the Official Secrets Act and its use by a government - any government - to cloak activities essential to be known for the working of any true and effective democracy: rather than its true function to withhold sensitive information from a potential enemy, is greatly to be deplored. During the premiership of Mr. Macmillan we suggested to him that the Act be repealed, a view, we understand, now held in high judicial circles.

In America, providing an example not always to be followed, arrangements are made in serious cases for the Defence to challenge jurors - frequently consuming much time - in order to arrive at an unprejudiced Jury, in the interest of justice.

In this case, however, we see what is in effect an endeavour by the Government to empanel a prejudiced Jury.

Anyone who knows anything of the security services in any country

knows that they all work in the same way in serving their different governments and accountable only to the Head of Government in each case. The effect therefore is that, wherever there is what is called a "show-trial" i.e., one politically motivated with the intention, to paraphrase the old aphorism: "pour décourager les autres", attempts are made to "pick", or its synonym "pack" the jury by the government. This is a practice normally limited to countries other than Britain.

The particular case arises out of a highly controversial war - one in which many lives were lost on both sides - one which many believe was unnecessary and handled disastrously, covered by enquiries which have concealed, rather than enhanced the truth.

The fact that the Security Services are under the sole control of the one whose integrity in this matter is under serious and prolonged challenge, renders this "vetting" of the Ponting jury suspect and tends, sadly, to throw the impartiality and political independence of the judicial process in this case open to question.

There are, therefore, in our view, only, as usual, two alternatives to ensure a just trial in this case: (a) the empanelling of a normal, random representative Jury, or (b) the use of a "Diplock-type" court. One has seen recently in Northern Ireland how justice has been manifested in a difficult situation under the eyes and ears of the Lord Chief Justice of that Province.

As this situation has arisen at such short notice, relatively speaking, we are sending copies of this letter to the Lord Chief Justice, Mr. Justice McCowan, the Attorney General and to the Defence solicitor.

May we suggest, with respect, that in any case the trial be postponed while these suggestions are considered and implemented, in the interest of Justice.

We recall to your memory the legal maxim: "It is not only right that Justice should be done, but that it should manifestly be seen to be done."

As things stand this maxim is in peril.

In His service,



1. The DPP asked me for permission to vet the jury at the end of last week. I consented to this request.
2. The Defence solicitors applied for a copy of a document prepared by Mr Ponting setting out the events leading to the sinking of the Belgrano. They recognised that certain parts of the document might involve intelligence information and were prepared to accept a bowdlerised version.
3. Such a version would be extremely misleading and I sought permission from Ministers concerned with the national security in the document for permission to use the whole document but in camera.

This permission was granted and that led to the certainty that when this document was disclosed in court, it would be necessary for the Court to go into camera. It followed, therefore, that vetting of the jury was necessary.



01-405 7641 Extn

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

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- 3.

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