



H. STEEL, CMG OBE
LEGAL SECRETARY

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

11 February, 1985

Dear Sir,

PONTING CASE

As promised, I enclose suggested answers to the questions which we are bound to receive when the Ponting trial is over, perhaps later today. If Ponting is convicted we can almost certainly shelter behind the probability of an appeal, but there will still be awkward questions about the Official Secrets Act itself. If he is acquitted, we shall have a rough time.

As I said to you on the telephone, what I am now sending to you is very much open to suggestions for improvement or amplification. I am copying it, and this letter, to Geoffrey Kenton in the DPP's office and (because I do not know who the proper recipient in MOD is) to Desmond Bowen in Clive Whitmore's office in MOD. Their suggestions, too, will be welcome.

*Yours etc,
Henry Steel*

H STEEL

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THE PONTING CASE

LINE TO BE TAKEN WITH PRESS AND OTHER ENQUIRIES

A IF PONTING CONVICTED

- (i) Unless it has definitely been announced that he will not appeal

In view of the forthcoming appeal [of the possibility that Mr. Ponting will appeal], it would not be proper to make any comment on the case. [This should be the response to all questions about the facts of the case, the decision to prosecute or Ponting's future.]

- (ii) If it has been definitely announced that he will not appeal

- (a) Why was Ponting prosecuted?

[The decision to prosecute was not a matter for the Government but for the Attorney-General, acting in his quasi-judicial capacity.]
The verdict of the jury demonstrates that the prosecution was fully justified.

- (b) Is it right to invoke s.2 of the Official Secrets Act when there is no breach of security involved?

Section 2 is there not only to protect national security. Civil servants, whatever their rank, have a special degree of responsibility imposed on them by the nature of their office and of their duties and by the confidence that is thereby reposed in them. Mr. Ponting was a senior officer and his breach of responsibility and trust was accordingly greater. The Attorney-General considered that this breach could not be allowed to go unpunished.

- (c) Would it not have been sufficient to deal with the case as a disciplinary matter?

The law treats such breaches as criminal offences and the Attorney-General, acting in his quasi-judicial capacity, decided that this was too serious a breach to be dealt with otherwise than under the criminal law.

[If the sentence was substantial:

The Judge showed by his sentence that that view was correct.]

[If the sentence was nominal or light:

The fact that the Judge has not imposed a substantial sentence, for the reasons which he has given, does not mean that that view was not correct.]

- (d) Did not the Franks Report recommend that this sort of case should be dealt with only as a disciplinary offence?

Yes. But that was merely one of a series of recommendations which the Franks Report put forward as part of a wholesale reconstruction of the law relating to the protection of official information. This Government attempted to introduce legislation effecting such a reconstruction but it did not commend itself to Parliament. In the meantime, the law is what it is and the Attorney-General has the duty of enforcing it as it is, dealing with each case on its own merits. He cannot treat it as though it had been amended by the Franks Report.

B IF PONTING IS ACQUITTED

- (a) Questions relating to the propriety of prosecuting him

Draw on A(ii) (a)-(d), as appropriate.

- (b) Does not the fact that he was acquitted show that he should not have been prosecuted?

No. The jury found that he had a good defence to the charge on the facts of the case as they emerged. But even Mr. Ponting's lawyers did not suggest that there was not a case to go to the jury.

- (c) Does the verdict mean that a civil servant may freely disclose information which his Minister wishes to withhold from Parliament/the public?

The Judge stated the law on this point in his summing up and it would be wrong for us to try to gloss it or elaborate on it.

The jury's verdict was given on the particular facts of the case and does not in itself establish any rule of law or any precedent in law.

- (d) Does the acquittal not show that Ponting was right in what he did?

The jury has acquitted him of having committed the particular offence with which he was charged under s.2 of the Act. That does not alter the Government's view that it is thoroughly reprehensible for a civil servant, especially a senior civil servant, to break the trust and confidence that is reposed in him because of his office.

- (e) What will now happen to Ponting? Will he be reinstated?

[Answer to be supplied by MOD.]

C GENERAL

- (a) Was any pressure put on the Attorney-General by other Ministers to prosecute Ponting?

No. The Law Officers did not seek the views of any other Minister, nor did they consult with any other Minister, nor was the view of any other Minister conveyed to them, before they took their decision to prosecute Mr. Ponting.

- (b) Will the Government now repeal s.2 of the Official Secrets Act?/ How do the Government defend their failure to repeal or amend s.2 in view of what they said about it when they were in opposition?

The Franks Report on the Official Secrets Act was published in 1972. It recommended the wholesale reconstruction of the relevant

provisions, including s.2. The Labour Government held office from 1974-1979 and could have introduced legislation to implement the Franks Report during those five years, but they did not. In 1979 this Government introduced The Protection of Official Information Bill which was largely based on the Franks Report. But it did not find favour with the House and was withdrawn. The Prime Minister told the House as recently as 27 March 1984 that the Government had no plans to introduce further legislation.