



With permission, Mr. Speaker, I would like to make a statement on my decision to prosecute Mr. Ponting. On 13 August 1984 certain facts were drawn to the attention of the DPP by the Ministry of Defence. In my absence the DPP consulted my H and L Friend the Solicitor-General the same day. On 16 August 1984 a report by the MOD police was sent to the DPP. My H and L Friend and the DPP considered that report on 17 August and both formed the view that this was a serious breach of duty and trust by a senior civil servant. They decided to consult me and I was telephoned on the same day. The facts as reported by the DPP were explained to me. The nature of the documents which had been communicated was described and I was told that the DPP and the SG advised a prosecution. Having considered the facts myself I too decided that the case fell within my published guidelines and that there should be a prosecution.

Neither I nor the S.G. nor any of my officials sought the view of or consulted any other Minister, nor was the view of any other Minister conveyed to us before the decision was taken.

1. "Don't enter in any way what has been done"



SUPPLEMENTARIES

Tisdale

- Q. You only prosecuted Ponting because you had prosecuted Tisdale.
- A. Consistency is a proper but not the only objective of prosecution policy.

\_\_\_\_\_

100%

- Q. Does not the fact that he was acquitted show that he should not be prosecuted?
- A. This question can only mean that no prosecution should be launched unless the prosecution was 100% convinced. To put such a question shows a total misconception of the duties of the prosecuting authority.

\_\_\_\_\_

P. Hunt

- Q. Does not the acquittal show that Ponting was right in what he did?
- A. The Judge has ruled on the law and the jury have given their verdict.

\_\_\_\_\_

FRANKS

I still believe that the Act is too widely drawn - but so long as it remains on the Statute Book I have to apply the law but I have a discretion which excludes the ~~inappropriate~~ <sup>inappropriate</sup> case. I look at each case on its own facts.



SUPPLEMENTARIES

CART AND HORSES

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

I will continue to apply this law as it is, looking at each case on its own particular facts.

WHY PROSECUTE INSTEAD OF DISCIPLINARY?

In my view the breach of duty and trust was so serious that it should be considered by a Court.

*Why not Discipline*

FRANKS

My duty is to enforce the criminal law. I must not usurp the function of Parliament by effect<sup>ively</sup>~~ing~~ly repealing legislation.



Is it right to invoke S.2 of the Official Secrets Act when there is no breach of security involved?

Wh S.2  
No breach

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.

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?

Repeal S.2

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 other House and was withdrawn.

3



CONSULS.

Q. Why did you not consult other Ministers in the circumstances to inform yourself of considerations affecting the public interest?

A. There is no doubt that I would have been entitled to consult other Ministers to inform myself as to the public interest. I decided, however, in the circumstances that it would not have assisted <sup>me</sup> to reach a decision.

PONTING

Aquittal shows Ponting was right

The Jury acquitted Mr. Ponting of the particular offence of which he was charged. That does not alter the fact that what he did was a breach of the trust in him and therefore wrong.

Repeal of the Official Secrets Act

The Government is considering the implications of the outcome of this case. The fact remains, however, that in 1979 the Government introduced a Bill based on the Franks Report which recommended substantial changes in the Official Secrets legislation but it did not commend itself to Parliament. The Labour Government held office between 1974 and 1979 and signally failed to introduce legislation to implement the Franks Report.

Official Secrets Act "in tatters"

The Judge made a very clear statement of the law in his summing up: the verdict of the Jury does not in itself establish any new rule of law. In any event I cannot imagine any legislation which could justify Mr. Ponting's actions.

A leaker's charter

No responsible civil servant would see this verdict in that way. The position of this Government and previous Governments is absolutely clear: Ministers must be able to trust their civil servants to carry out their decisions and to preserve their confidences. There is no other way in a Parliamentary democracy.

Another Civil Service job for Ponting

Mr. Ponting sent a letter of resignation to the Ministry

of Defence on 10 August last year. I understand the Ministry of Defence will be contacting Mr. Ponting about it.

Verdict proves that Ministers were misleading Parliament

A very considerable amount of information has been given about this operation. But the Government has a duty to protect the security of our Armed Forces in the South Atlantic. Hon. Members Opposite forget that hostilities have not yet been ended by the Argentine Government. I make no apology for playing safe with the lives of our Armed Forces.

Questions about the Belgrano

I have made the position clear time and again. The decision on the sinking of the Belgrano was taken to protect the Task Force and lives of our Armed Forces. Nothing that has emerged since has led the Government to change its view that that decision was correct.

12 February 1985

## PROSECUTION

### General Line

My rt. hon. Friend the Attorney General will be making a statement shortly. I have repeatedly made it clear that decisions on matters of prosecution are not a matter for the Government but for my rt. hon. Friend acting in his quasi-judicial capacity. He believed that there was a serious case to answer under Section 2 of the Official Secrets Act 1911, and I ~~knew~~<sup>now</sup> that even Mr. Ponting's lawyers did not suggest there was not a case to go to the Jury,

### Pressure on the Attorney General to prosecute

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.

### Bernard Ingham's call for a "hanging judge"

There is no question of any Government interference with the judicial process. I understand that the remarks to which reference has been made were misreported.

12 February 1985

## POLITICAL POINTS

### Heseltine/Stanley to Resign

No. Defence Ministers have a duty to ensure that information which might jeopardise our national security remains protected. The Labour Government's own White Paper in 1978 said that:

"the Government has concluded that information relating to security and intelligence matters is deserving of the highest protection whether or not it is classified. This is pre-eminently an area where the gradual accumulation of small items of information, apparently trivial in themselves, could eventually create a risk for the safety of an individual or constitute a serious threat to the interests of the nation as a whole."

That is exactly the principle that guided my rt. hon. Friend.

### Attitude of Opposition

In June 1976 the then Prime Minister said:

"There must be absolute confidence that papers and discussions that take place are kept within the circle to whom they are given."

I said on behalf of the Opposition:

"Is the Prime Minister aware that we fully share his view about the gravity of this matter? It is essential that confidentiality of discussions and documents should be assured."

(Official Report 17 June 1976, Col. 738-739)

Does the Opposition still accept what the rt. hon. Gentleman said when he was Prime Minister? Or are they actually in favour of breaches of trust by civil servants?

J.C.A.D.B.

Mr. Merlyn Rees

I note that on 22 November 1976 the rt. hon. Gentleman said:

"If anybody gives out documents which are secret-defence-confidential or the like, the full panoply of law will be brought into play."  
(Official Report, 22 November 1976, Col. 1887).

Or does the rt. hon. Gentleman recall that it was we on this side of the House who supported the decisions he had to take in the case of ~~A. Gee~~<sup>Agee</sup> and Hosenball in the interests of national security when his own side attacked him? Does he recall saying in the Debate on that case that:

"Some people I know do not think that there is an acceptable way in which security information can be tested in public. They think that there is no alternative but to place the responsibility of testing the information on Ministers themselves before they come to a decision.

What I think all this goes to show is that the final decision, where the issue is a security issue, must remain with the Home Secretary of the day."  
(Official Report, 3 May 1977, Col. 370).

12 February 1985

Criticism

Reply

A political prosecution

Normal application  
of published guidelines

POLITICAL

No communication ~~with~~  
of any Minister's ~~views~~  
~~and~~ views

No contact with any  
Minister.

Pontin's solo called  
"verdict" a wholly  
open political gesture

Misuse of OFSA.

Judge's direction  
~~established that all~~  
~~the ingredients of~~  
~~the offence~~

SPP

In my judgment the  
facts as ~~reported~~ <sup>reported</sup> to me do  
fall within the definition  
of the offence. Nothing  
in Judge's direction is in  
conflict with that opinion  
I additionally considered  
press in public interest.

Your view of public interest  
was conservative interest

It is the interest of the  
country as a whole.

Had I (wrongly) taken  
press interest into account  
I would have con-  
sulted Ministers

You should have consulted  
Ministers, ∴ you knew  
why Pontin said he did it.  
(Ministers protecting position)

No defence in law  
(agree with Judge)

Manner in which it  
was alleged to be done,  
was among the issues  
I satisfied me  
press was in public  
interest.

**Mr. Biffen:** This is a Government motion, and with that go the consequences for the choice of topic and its title. But it is also a matter for discussion through the usual channels, and I am happy to say that that is what happened in this case.

**Mr. Mark Hughes** (City of Durham): Will the Leader of the House discuss with you, Mr. Speaker, whether a preferable motion would be that the House should set up a Committee to draw up the rules for impeachment and a bill of impeachment, because that is the last resort of this high court of Parliament against Ministers of the Crown who have misled the House?

**Mr. Biffen:** I think that I have been helpful to the House in the announcement I made concerning Monday's business, and I have no doubt that the point that the hon. Gentleman wishes to argue can reasonably be made on Monday.

Several Hon. Members *rose*—

**Mr. Speaker:** Order. I will call one more hon. Member.

**Mr. Chris Smith** (Islington, South and Finsbury): If, in the opinion of the Director of Public Prosecutions and, presumably, of the Attorney-General, it was essential, in order that a jury of 12 men and women should have a full view of the circumstances surrounding the sinking of the General Belgrano, for it to see the document known as the "crown jewels", why is it impossible for right hon. and hon. Members to see that document before a debate on the matter?

**Mr. Biffen:** That point has already been made to me, and I cannot add to the answer that I gave.

## Mr. Clive Ponting

4.16 pm

**The Attorney-General (Sir Michael Havers):** With permission, Mr. Speaker, I would like to make a statement on my decision to prosecute Mr. Ponting. On 13 August 1984, certain facts were drawn to the attention of the Director of Public Prosecutions by the Ministry of Defence. In my absence, the Director consulted my hon. and learned Friend—*[Laughter.]*

**Mr. Speaker:** Order. This is not a matter for hilarity.

**The Attorney-General:** I wonder whether some of those who are jeering were on holiday in August last year. In my absence, the Director consulted my hon. and learned Friend the Solicitor-General the same day. On 16 August 1984, a report by the Ministry of Defence police was sent to the Director. My hon. and learned Friend and the Director considered that report on 17 August, and both formed the view that this was a serious breach of duty and trust by a senior civil servant. They decided to consult me and I was telephoned on the same day. The facts as reported by the Director were explained to me. The nature of the documents which had been communicated was described and I was told that the Director and the Solicitor-General advised a prosecution. Having considered the facts myself, I, too, decided that the case fell within my published guidelines and that there should be a prosecution.

**Mr. Dennis Skinner** (Bolsover): When did you ring Thatcher?

**The Attorney-General:** Neither I nor the Solicitor-General nor any of my officials sought the view of or consulted any other Minister, nor was the view of any other Minister conveyed to us before the decision was taken.

**Mr. John Morris** (Aberavon): *rose*—

**Hon. Members:** Apologise!

**Mr. Speaker:** Order. I called the shadow Attorney-General.

**Mr. Morris:** Does the Attorney-General realise that his brief deadpan statement—a 19-line calendar of events—is an insult to the House in the light of the crisis and the operation of this law, its provisions and the activities of Defence Ministers? Would it not also have been right for those Ministers to have lost not a moment in taking the House into their confidence about their personal intentions today? Does not the jury's verdict—a vetted jury, incidentally—reflect the view that Mr. Ponting's evidence either was true or could be true but that it also believed that Defence Ministers blatantly misinformed, or were prepared to misinform, the House? May I first ask—*[Interruption.]*—if the hon. Gentleman will allow me,—we still have freedom in this House—with your permission, Mr. Speaker, and that of the hon. Member for Banff and Buchan (Mr. McQuarrie) in the third row who is laughing, why in general there has been no prosecution for many years under section 2 of the Official Secrets Act when security is not involved and whether there has been a change in policy since the present Administration came into office? Secondly, may I express the hope, and indeed assume, that the Attorney-General will never again authorise a prosecution so long as section 2 continues in

...stence in cases where there are no security ...lications? Thirdly, in agreeing to prosecute, did the Attorney-General bear in mind, first the views expressed by the Lord Chancellor in 1979 about the need to have legislation capable of being enforced and the need to limit the extent of criminality and, as regards continuing the prosecution, the letter of Mr. Sam Silkin to *The Times* on 26 September about the difficulties of getting a true verdict in which he said:

"however careful the trial judge"—

when so many issues might be canvassed—

"and which no intelligent juror could easily dismiss from his mind and conscience?"

He warned the Attorney-General that at that late stage he might reconsider the case and allow events to take their course. Does the Attorney-General now regret not having heeded that advice?

**The Attorney-General:** The right hon. and learned Gentleman describes my statement as an insult to the House and says that I should have dealt with the activities of Defence Ministers. May I remind him and the House of the words that he used only yesterday when making a Standing Order No. 10 application:

"the misuse of section 2 of the Official Secrets Act and whether the Attorney-General, in current circumstances, should have granted his consent to prosecute in the case of the Queen v. Ponting."—[*Official Report*, 11 February 1985; Vol. 73, c. 38.]

That is exactly what I have responded to today. The right hon. and learned Gentleman went on to make a number of points. He referred to the false conclusion by the jury. I do not follow why that amounts to a false conclusion by the jury. The jury's verdict was given on the particular facts of the case and does not establish, as I see it, any rule of law or any precedent in law. I shall continue to apply this law as it is, looking at each case on its particular merits. The right hon. and learned Gentleman then asked me to give an undertaking that I would never again authorise a prosecution under section 2 which does not involve security. That is a remarkable proposition. I have a duty to enforce the criminal law. I have no right, nor must I seek, to usurp the function of Parliament by effectively repealing legislation.

**Mr. Norman St. John-Stevas (Chelmsford):** By refusing to accept the solemn word of the Prime Minister, now corroborated by the Attorney-General, that she took no part in this decision to bring the prosecution, has not the Leader of the Opposition done more to undermine respect for democracy than any other action in this affair and is it not time that he apologised to the House?

**The Attorney-General:** I regret very much what was said and repeated by the Leader of the Opposition. After having heard what I have said, I hope that he will offer the apology that my right hon. Friend deserves.

**Mr. David Steel (Tweeddale, Ettrick and Lauderdale):** May I ask the Attorney-General two questions? He says in his statement that he took the view that there had been a serious breach of duty and trust by a senior civil servant. In that case, why did he not proceed under the Civil Service disciplinary procedures? And was he aware before he took his decision, of the offer that had been made to Mr. Ponting that, should he resign the Service, there would be no prosecution? My second point is that the last sentence of the Attorney-General's statement is very carefully worded, stating that neither he, nor the Solicitor-General

nor any of his officials were in touch with other Ministers before the decision was taken. That is quite consistent with the assurance given to us earlier by the Prime Minister. However, it does not exclude the possibility that Ministry of Defence Ministers were in touch by telephone with the Prime Minister after he took his decision and before he acted on it to get her approval.

**The Attorney-General:** I am quite unable to say what conversations, if any, took place. [HON. MEMBERS: "Oh!"] But it has no relevance. The relevant factor is the decision that I reached, which I reached alone with the Solicitor-General and with the Director of Public Prosecutions and my officials. It was reached without any contact of any kind with any other Minister.

**Mr. David Ashby (Leicester, North-West) rose—**

**Mr. Steel:** What about the first part of my question?

**Mr. Ashby:** Does my right hon. and learned Friend agree that while defendants have a right of appeal against a perverse verdict the prosecution rightly, in my view, and in the view of many of us, does not have the right of appeal against a perverse verdict?

**The Attorney-General:** It would be quite wrong for me to comment in any way upon the verdict. May I deal with the other question that the right hon. Gentleman the Leader of the Liberal party put to me. I apologise for having forgotten it. Section 2 of the Official Secrets Act is not in existence 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 therefore reposed in them. Mr. Ponting was a senior officer and his breach of responsibility and trust was accordingly greater.

**Mr. Tam Dalyell (Linlithgow):** Does the Attorney-General have any criticisms of the Ponting trial judge?

**The Attorney-General:** The only comment I would make about the Ponting trial judge is that I agree with his definition of the law.

**Mr. Douglas Hogg (Grantham):** Will my right hon. and learned Friend agree that before this House proceeds to the beatification of Mr. Ponting we should do well to reflect that if senior civil servants want to stand on principle they would do well to resign their official position, make a public disclosure of what they want to disclose and thus openly invite prosecution rather than act in a covert, underhand and disreputable manner?

**The Attorney-General:** I note what my hon. Friend says.

**Mr. Chris Smith (Islington, South and Finsbury):** Will the Attorney-General expand on his answer to my hon. Friend the Member for Linlithgow (Mr. Dalyell) and tell the House what is his view of the judge's ruling that the interests of the state relate solely to the interests of the Government of the day? Is that not a very dangerous trend in British justice and is it not excellent that 12 ordinary people have said that they want none of it?

**The Attorney-General:** I think that it is a mistake to make the assumption that 12 ordinary people want none of it. There are so many circumstances that may affect a jury, but I have said already and I say it again that I accept that the learned judge was right in the direction of law that he gave.

**Mr. Peter Thomas** (Hendon, South): Could my right hon. and learned Friend tell the House who took the decision that the proper conduct of the prosecution in this case required the disclosure to the jury and to others who are participating in the case of the restricted document known as the "crown jewels"? Who authorised the disclosure and, as the document has been disclosed, can he give any valid reason why the Select Committee on Foreign Affairs, on the same basis as the jury saw that document, should not in accordance with its request be shown the document?

**The Attorney-General:** There was no intention by the prosecution to make any use of the document called the "crown jewels". The defending solicitor asked for a copy, rightly recognising that some of it might be of a very highly confidential nature. When the edited version was looked at, it was quite clear that it would give a very misleading impression. I then sought the authority of those responsible from a security point of view, and in particular the authority of my right hon. Friend the Secretary of State for Defence—because they were all defence matters—and asked whether I could use the whole document. I was then given that authority, which is why the whole of the "crown jewels", rather than a misleading part of it, was put before the jury. I cannot, of course, have responsibility for the Foreign Affairs Select Committee.

**Mr. George Foulkes** (Carrick, Cumnock and Doon Valley): Will the Attorney-General explain why on the one hand he decided to prosecute Clive Ponting for actions which did not prejudice national security while, on the other, he has not decided to prosecute Lord Lewin for revealing top secret information about the towed sonar array, which does prejudice national security?

**The Attorney-General:** As I said in a written answer only a few days ago, which the hon. Gentleman may not have seen, there is an investigation by the DPP into the allegations in respect of Lord Lewin.

**Mr. Kenneth Warren** (Hastings and Rye): Does my right hon. and learned Friend accept that, while I fully understand the need to protect the security of the state, the time has surely come when we should examine, review and reform the Official Secrets Act 1911? Further will he call on the Leader of the Opposition to withdraw his scandalous accusation against the Prime Minister?

**The Attorney-General:** If I may seek the indulgence of the House, when I sought the authority of those responsible for the security side of "the crown jewels", I should have added that the Secretary of State for Foreign and Commonwealth Affairs was also consulted. The reform of the Official Secrets Act cannot be a matter for me but must be a matter for my right hon. and learned Friend the Home Secretary.

**Mr. David Young** (Bolton, South-East): many of us are concerned that the Official Secrets Act is now being used less to protect national security than to protect the faces of Ministers. We in this House are concerned with the quality of information given to us by Ministers. In view of this jury verdict, will those in this House who really believe in law and order ensure that the rights of the House are safeguarded?

**The Attorney-General:** I think I have dealt with that point already, but I shall repeat it again. I found it interesting that the right hon. and learned Member for

Aberavon (Mr. Morris), who shadows me, said on the radio just after one o'clock that, with regard to the leaking, he did not endorse in any way what had been done. I welcome that statement from him.

**Mr. Michael Mates** (Hampshire, East): Will my right hon. and learned Friend confirm that, had Mr. Ponting genuinely felt that any Minister was about to act improperly, he had a perfectly good chain of communication leading to the Prime Minister's Office itself, through which he could properly have registered his complaints and fears without resorting to the lies and deceptions with which he breached the trust placed in him? Did Mr. Ponting take those steps, and what are they?

**The Attorney-General:** My hon. Friend is quite right. There is a recognised procedure, which Mr. Ponting did not follow in this case.

**Mr. Eric S. Heffer** (Liverpool, Walton): Did not two Ministers come here and deliberately tell untruths to the House of Commons? Is it not also true that Mr. Ponting decided that that was not good enough, and that his decision has been upheld by 12 men and women good and true? Is it not clear that if those Ministers involved had any decency whatever, and on the basis of our parliamentary traditions, they would resign from the Government forthwith? Does the Attorney-General also believe that the Government should take no notice of those Conservative Members who now want to introduce legislation that would make it impossible for decent people in future to tell the truth in the House of Commons?

**The Attorney-General:** I am sure that the hon. Gentleman will find that a useful dummy run for the speech that he will make next week.

**Mr. Jonathan Sayeed** (Bristol, East): Does my right hon. and learned Friend agree that this case shows that, despite the scaremongering from the Opposition Benches, jury vetting has a useful part to play?

**The Attorney-General:** I have a feeling that that could be taken in one of two ways. It is of interest that the Crown did not challenge anyone but that Mr. Ponting, through his counsel, at a random selection, removed three potential jurors.

**Mr. John Home Robertson** (East Lothian): Now that the court has specifically found that the disclosure of certain information was not a breach of the Official Secrets Act, will the Attorney-General, in anticipation of next week's debate, confirm that he will not initiate a prosecution against anyone who similarly discloses relevant information to Members of this House?

**The Attorney-General:** I thought I had made it clear, but I repeat that I shall continue to apply the law as it is, looking at each case on its own particular facts.

**Mr. George Walden** (Buckingham): Does my right hon. and learned Friend agree that in the longer term the ideals of more open government are unlikely to be promoted by the surreptitious activities of a distraught civil servant?

**The Attorney-General:** Probably the most important and damaging consequence is the risk that it may result in a loss of confidence between Ministers and civil servants.

**Mr. Robert MacLennan** (Caithness and Sutherland): Does the Attorney-General accept that, in the light of the

dict. his decision to prosecute must be regarded as an effective means of dealing with what he considered to be a serious breach of trust? That being so, where he believes that a risk to public security is involved, will he undertake not to seek to rely on section 2 of the Official Secrets Act—long ago discredited—but on the other specific provisions of the Act which deal with matters of national security?

**The Attorney-General:** The problem is that there are none. For example, in practically every case in which I have granted my consent since 1979, there has either been a breach of security or information has been sent by a police officer to someone else, usually for corrupt purposes. In one case information was provided by an examiner in bankruptcy to a criminal, and that person had no right to be in possession of it. The question put to me must mean that no prosecution should be launched unless there is 100 per cent. certainty of the prosecution succeeding. To put such a question shows a total misconception of the duties of the prosecuting authorities.

**Several Hon. Members rose—**

**Mr. Speaker:** Order. The House knows that there is to be a debate on this matter on Monday—

**Hon. Members:** No, there is not.

**Mr. Speaker:** Order. The Leader of the House has announced a debate. I shall allow questions to continue for another five minutes and I shall then call the right hon. and learned Member for Aberavon (Mr. Morris), the shadow Attorney-General.

**Mr. W. Benyon (Milton Keynes):** What worries so many of us is that the traditional trust and loyalty between Ministers and civil servants is being so gravely jeopardised. Will my right hon. and learned Friend point out to the Opposition leaders that if they were ever to regain power they would require that trust and loyalty which we expect?

**The Attorney-General:** I agree entirely. I was very interested by the passage that my right hon. Friend the Prime Minister read out to the House during Question Time.

**Mr. D. N. Campbell-Savours (Workington):** Did Defence officials tell Mr. Ponting that if he resigned he would not be prosecuted? If so, was that offer made with the knowledge of the Attorney-General, the Solicitor-General or the Secretary of State for Defence?

**The Attorney-General:** I had no knowledge. It was not made with approval by me, by my hon. and learned Friend or by any officials. I do not know, I cannot know what the Secretary of State for Defence said.

**Mr. Mark Fisher (Stoke-on-Trent, Central):** Ask him.

**Mr. Anthony Beaumont-Dark (Birmingham, Selly Oak):** Will my right hon. and learned Friend accept that his hon. Friends on this side of the House applaud the decision he took in the first place to prosecute Mr. Ponting and that we also warmly welcome the fact, which is as helpful to the Civil Service as to anyone else, that he will prosecute in cases where people betray their trust? Will he not agree that if the Ponting ideal of loyalty becomes the norm, it has more dangers for the Civil Service than it does even for the Government?

**The Attorney-General:** I think I have made my view clear that there is a real risk of a loss of confidence between Ministers and civil servants. That is a matter which no doubt will be much more fully aired in the debate on Monday.

**Mr. David Winnick (Walsall, North):** Do we take it from the answers that have been given today by the Attorney-General that he does not accept what has basically been confirmed in the court's decision: that a civil servant's duty first and foremost is to Parliament and not to a Government bent on misleading the House? Does he not accept on reflection that his own reputation and integrity would have been much higher today if he had worked on the same principle as Mr. Ponting?

**The Attorney-General:** I have not, in fact, intended or even contemplated taking any documents out of my office and giving them to the press, to the hon. Gentleman or to anybody else.

**Mr. Home Robertson:** Or to Parliament.

**Mr. Derek Spencer (Leicester, South):** Does not my right hon. and learned Friend agree that the formal admission made by counsel for the defence at the beginning of the trial, together with the summing up of the judge, show that there was a strong prima facie case that would have led even the right hon. and learned Member for Aberavon (Mr. Morris) to prosecute?

**The Attorney-General:** I hope that the sort of approach that I would expect him to give might well have led to that result.

**Mr. Alex Carlile (Montgomery):** The Attorney-General has told us that he was not aware of the offer made to Mr. Ponting that he would not be prosecuted if he resigned. Will the right hon. and learned Gentleman confirm that if he had known of that offer he would not have consented to the prosecution? Will he also tell the House on how many other occasions has an Attorney-General consented to the prosecution under the Official Secrets Act 1911 without reading the papers and after a brief account of the facts over the telephone?

**The Attorney-General:** The Secretary of State for Defence has been kind enough to tell me that he did not know either of any offer that might have been made. If such immunity was offered it would have been offered without my consent. Immunity can only be offered in cases of this sort with the consent of one of the Law Officers.

**Mr. John Stokes (Halesowen and Stourbridge):** Is my right hon. and learned Friend aware that in spite of all the noise we have heard across the House today and in spite of all the excitement in the media, most ordinary people greatly applaud the decision he took? Although Mr. Ponting was acquitted by the jury, they are very distressed about the case and will welcome the debate on Monday on the General Belgrano.

**The Attorney-General:** I thank my hon. Friend for what he has said.

**Mr. John Morris:** On mature reflection was there not an element of undue haste in the decision to prosecute in that information was drawn to the attention of the Director of Public Prosecutions on 13 August, including, as I understand it, the recommendation of the chief of the Defence police not to prosecute, and on 17 August, four

[Mr. John Morris]

days later, the Attorney-General agreed to prosecute? As we understand it, he was on holiday and presumably, as the hon. and learned Member for Montgomery (Mr. Carlile) indicated, had no papers with him. Is that not unique? Does the Attorney-General agree that there is a need for a much more restrictive Act and, in particular, to balance the public interest according to his own words, which I commend to him:

"But the public interest also requires that there is no misuse of secrecy to cover up errors or bungling or to avoid criticism." —[*Official Report*, 15 June 1978; Vol. 951, c. 1258.]

Those were the words of the Attorney-General himself in the House on 15 June 1978.

**The Attorney-General:** I do not think there was undue haste. It was a very lengthy telephone conversation—*[Laughter]*—

**Mr. Speaker:** Order. Mr. Attorney-General.

**The Attorney-General:**—on matters which were in a small compass, which were of no major difficulty and on which I already had the benefit of the very helpful and careful advice of my hon. and learned Friend the Solicitor-General and the very experienced views of the Director of Public Prosecutions. In those circumstances there was in my view no undue haste.

The fact that the decision was taken on holiday is not unique. I suspect there were many occasions on which the right hon. Member for Morely and Leeds, South (Mr. Rees), when he was Home Secretary, had to take decisions about warrants when he was out of the office. I am sure it must have happened in other cases.

The right hon. and learned Member for Aberavon (Mr. Morris), requesting a much more restrictive Act, quoted words of mine which I am not ashamed to agree with. That was tried in 1979 in a Bill in which the incoming Government reacted with great speed to the Franks report, very much unlike the complete lack of action by the Labour Government over the previous six years. That Bill did not meet with the approval of the other place. There was a great deal of criticism gummed together by Fleet street—[HON. MEMBERS: "Oh."]—I am not afraid to take on Fleet street. A lot of it was clearly inspired from Fleet street: there is no doubt about it. One had only to read the articles, press criticism and comment at the time. As a result of that the Bill was withdrawn. At least we tried. It is much more than that lot over there did. Since then, as the House knows, the Prime Minister has said that there is no intent to try to reform it again. That is the position as I know it today.

#### EUROPEAN COMMUNITY DOCUMENTS

*Ordered.*

That European Community Documents Nos. 9219/83 and 11039/84, draft Directive and amendment on air quality standards for nitrogen dioxide, and 11159/83, Communication from the Commission concerning environmental policy in the field of combatting air pollution be referred to a Standing Committee on European Community Documents. — [Mr. Biffen.]

#### References to Members

4.49 pm

**Mr. Ivor Stanbrook** (Orpington): On a point of order, Mr. Speaker. Is it not in accordance with the traditions of the House that we treat each other and speak of each other as hon. Members? When an hon. Member accuses another of dishonesty and the Member accused denies that accusation, and when that denial is supported and confirmed by another hon. Member who is in the best position to make a decision and to give us the truth, is it not right that the Member making that accusation should withdraw it totally at the time?

**Mr. Speaker:** Order. I have listened with great care to what was said this afternoon. It is right that we do not impute dishonour to each other, but what the right hon. Gentleman the Leader of the Opposition said was that he did not himself believe it. That is a different matter.

**Mr. Neil Kinnock** (Islwyn): Further to that point of order, Mr. Speaker. What I said, and *Hansard* will show it tomorrow, was that my words stand unless and until I receive an adequate explanation of the decision, in the circumstances, to prosecute Mr. Ponting when no breach of national security had taken place.