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PERSONAL



H. STEEL, CMG OBE
LEGAL SECRETARY

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

Your Ref: PUS/S85/188

26 February, 1985

Dear Clive,

THE PONTING CASE: ALLEGED OFFER OF IMMUNITY FROM PROSECUTION

Thank you for sending me a copy of your letter of 25 February to Robert Armstrong. I have shown it to the Attorney-General and I have to say that the reaction of both of us is that ^{your draft} will do no good in terms of setting the record straight and may well do some harm in that it will revive the controversy about the Ponting case and will allow the Guardian to have some fun at your expense. The fact of the matter is that neither you nor the Guardian were present at the interview between Richard Hastie-Smith and Ponting and your assertion of what took place at that interview therefore carries no more intrinsic weight than theirs. Nor does it advance matters to say that Hastie-Smith gave his evidence on oath: so did Ponting.

This said, the Attorney-General has asked me to make it clear that he is not, as it were, forbidding you to send the letter: that must be for your own judgment, having regard in particular to your assessment of whether Hastie-Smith would welcome it and whether it will be beneficial in terms of the morale of your Department. But the Attorney-General's hunch (which is his own term) is that the letter would be better not sent.

I am copying this letter to Robert Armstrong, John Bailey and Tony Hetherington.

H STEEL

Sir Clive Whitmore KCB CVO
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*With
the Compliments of
Sir Clive Whitmore KCB CVO
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PERMANENT UNDER-SECRETARY OF STATE
SIR CLIVE WHITMORE K C B C V O

PUS/S85/188

25 February 1985

Dear Robert,

THE PONTING CASE: ALLEGED OFFER OF IMMUNITY FROM PROSECUTION

.... I expect that you saw the Guardian's leaders of 16 February and 20 February entitled respectively "One Friday in August" and "Clive and the Chap Factor" (copies attached). The first of these two pieces was devoted entirely to the conflict of evidence which arose during the Ponting trial over the suggestion that Richard Hastie-Smith offered Ponting immunity from prosecution in return for a confession; and the later of the two leaders returns to the point with the particularly unpleasant sentence "(Any more than one MOD chap would offer another a quiet resignation for a confession, and then signally fail to deliver)."

The tone of both articles makes it plain that, in this conflict of testimony, the Guardian prefers Ponting's version and, in effect, regards Richard Hastie-Smith as having lied during his evidence. I find this situation distressing. Richard has no means of defending himself against this wholly unfounded allegation which so far has gone unchallenged. He is, I need hardly say, most upset himself about the Guardian leaders.

.... I feel strongly that, as Richard's Permanent Secretary, I should write to the Editor of the Guardian restating the essence of the evidence which Richard gave on oath. I recognise that this will not add anything new to what is already in the public domain; will certainly not change the Guardian's view of the issue; and runs the risk of stirring up one aspect of the Ponting controversy which has now lain dormant for a few days. Nonetheless, I feel that I owe it to Richard and to the Department generally to send something to the Editor on the lines of the attached draft.

I should be grateful to know whether you are content for me to proceed. I should of course be glad to have any comments on the draft itself. I hope that you will be able to give me an early response: I have not written before because I wanted to

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see the transcript of Richard Hastie-Smith's evidence but the leaders are now getting rather stale and if I am going to write, I should do so very soon.

I shall of course be seeking the approval of the Defence Secretary for any letter I send.

I am sending copies of this letter to John Bailey, Henry Steel and Tony Hetherington and I should be equally grateful for their views.

Yours truly,

Atlee.

Sir Robert Armstrong GCB CVO
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PERSONAL

THE GUARDIAN
One Friday
in August

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There are a formidable number of matters to be cleared up in Monday's Ponting debate: but let us just take one. A simple matter of fact; or rather of conflicting testimony. On Friday, August 10, Mr Ponting saw two MoD police officers, then Mr Richard Hastie-Smith, Principal Establishments Officer, then the police again. At the end of the day he wrote and signed his confession. Mr Ponting said (on oath at his trial) that he had been told that if he confessed then "it would be the end of the matter." And that (according to Chief Inspector Thomas Hughes) the Prime Minister at that stage knew nothing of the affair and senior MoD officials wished to resolve it "before she found out." Anyway, Mr Ponting confessed. The police and Mr Hastie-Smith (in court) denied this account. Mr Hastie-Smith said that it had been "his personal hope," that there would be no prosecution. "It seemed perfectly possible that that might happen." On Tuesday, August 14, he saw Mr Ponting again and handed him written notification that he could after all, be prosecuted. Mr Ponting alleges that Mr Hastie-Smith then said: "This is not going as smoothly as we had hoped. Ministers are jumping up and down." Asked to confirm this in

court, Mr Hastie-Smith replied: "I don't think I said that. That did not actually accord with the facts." At the end of the evidential day, however, the jury clearly had a choice who was to be believed. Mr Justice McCowan, summing up on the testimony of the MoD police, said baldly: "Isn't it obvious they are liars and tricksters, if Ponting is right?"

Well, we don't know what the jury made of this or other points: we only know their verdict. But, amongst Mrs Margaret Thatcher's voluminous correspondence this week, there is one helpful passage. The Prime Minister notes the clash of evidence (on oath) of Messrs Ponting and Hastie-Smith, and adds: "From his previous experience as Head of the Legal Secretariat at the MoD until March, 1984, Mr Ponting would have been aware that in this kind of case a decision on prosecution would not have been taken within the Ministry. It is, of course, a matter for the Law Officers." Additionally, she declares Mr Hastie-Smith gave Ponting a letter on August 14 "telling him" of the possibility of prosecution.

That second point is, of course, no point at all — for Ponting had confessed three days earlier. But what on earth are we to make of the events of the Friday? Mr Ponting knew that there was a "strong circumstantial" case against him, pre-confession. But circumstantial evidence, in such instances, is in no sense definitive. Anyway, finally, deliberately he confessed. On Mr Hastie-Smith's own evidence "it seemed perfectly possible that that might be the end of the matter." But, pause. The Principal Establishments Officer of the MoD must — even at that stage — have known (in Mrs Thatcher's own words) that "a decision would not be taken within the Ministry of Defence." Automatically, inexorably, it was not "perfectly possible" that that "would be the end of the matter." It was completely impossible.

These are deep waters. Some terrible (August 10) misunderstanding here? Well, nothing can ever be ruled out in this life. But MPs and others will have to make a judgment. If Mr Ponting told it wrong, what was his possible motivation? He signed a voluntary confession. If Mr Hastie-Smith and the MoD police got it wrong, then motivation may be extrapolated to a grave conclusion. We don't know, though: we only know there is a terrible tangle — and that it would be deeply reassuring to straighten it out.

Daily Mail

A clean break

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MR CLIVE PONTING is to publish extracts from the book he has written about the case in a Sunday newspaper.

He has also spoken to a public meeting of the Campaign for Freedom of Information soon after being warned not to make politically sensitive statements without permission.

Since he is so determined to breach the disciplinary rules of the Civil Service he would save a great deal of trouble for everybody were he to resign forthwith.

It would indeed have been better for all concerned if he had taken this course when he decided to break those rules the first time.

EXPRESS OPINION

True Grit, True Brit

HERO-KNOCKING is in fashion. It will get fresh impetus from the TV series on Scott of the Antarctic starting next week.

But heroes are very much with us today. Such as Sir Stuart Pringle, former commandant of the Royal Marines.

When his leg was blown off in an IRA bomb explosion, his first instructions to his son were to look after his mother. Keep away from the car. Call the Colonel.

Despite pain, shock and horrible injuries he put others before self. It is in a proud, indestructible tradition.

And the marvellous thing is that there are thousands, in all areas of life, in the Pringle mould.

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THE GUARDIAN

Clive and the Chap factor

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It's curious, in British public life, how the Cult of the Good Chap (Basil Radford, Naughton Wayne, Charters and Caldicott) lingers on long after it has ceased to serve any relevant purpose. We talk of honour, and breaches thereof, as though Chap's Law still rules OK. And Mr Michael Heseltine (a Chap of rather dubious provenance when real chaps get together over a G & T) devoted the fine fury of his Commons' Ponting assault not to the issues of the matter but to old Clive's deficient chappishness. Here's a fellow, supposedly in sacred trust, writing anonymous letters to an MP telling him what questions to ask for the same fellow to draw up mendacious

answers to. What a bounder! Wouldn't last ten minutes in the Long Room at Lords.

Mr Heseltine has always wielded a nifty hatchet (or a flailing mace) and it was infinitely predictable that, some sixty minutes on, Mr Ponting's rather over-burnished halo would be looking a touch rusty. But turn the chappish arguments back to front for a second. Here's a Secretary of State who has sat back ostentatiously for months, watching one of his senior aides put through the legal mincer. When the crunch came in court, however, the top Secretary isn't there (only his private Secretary). And none of the things that are said later to the House are broached under oath before a jury; nor, of course, is there anything approaching a rigorous cross-examination. Civil servants (before Parliament) are either terribly impressive people whose recommendation carries tremendous weight. Or, when they're Ponting, awful weasels who change their mind for no good reason. Well, who knows? But the Heseltine turn — roundly applauded by Government backbenchers who would never dream of planting a question themselves — is still not quite what a good chap would do. (Any more than one MoD chap would offer another a quiet resignation for a confession, and then signally fail to deliver).

Actually the Chappishness factor seems increasingly to stalk the whole Belgrano episode. Here we are at one minute with the task force on the high seas whilst Francis Pym toils away with diplomatic chaps for peace not war; all in the context of a Total Exclusion Zone publicly promulgated, as though the MCC were altering the LBW laws. The next minute the Belgrano, and hundreds of Argentine sailors, go to the bottom — and the ball was clearly missing the off stump by a mile. So (benignly) we embark on the endless saga of defending the umpire. The ball was definitely hitting the wicket. Well, it certainly could have nicked the stumps. Anyway, the light was appalling. And so on. Yet, as Mr Heseltine significantly told the Commons, all this was a load of toffee in any case — because, through the Swiss, we'd privately told the Argentines we'd sink threatening ships, zone or no zone. We'd told General Galtieri from the start that we wouldn't be chaps. So what on earth was the entire palaver about?

At the end of Monday night, Mr John Stanley (how different the debate might have seemed had he opened the batting?) was feverishly stowing his goodies back in a magic box marked Uttermost Security;

and confusion supposedly diffused was confusion compounded. We don't know what the chaps on the foreign affairs committee will make of all this, but we have to recall that — in the world beyond Westminster — twelve vetted gentlemen and ladies made very little of it all: specifically, on the evidence, that people who said they were chaps would twist the buttons of their blazers if they found themselves in a totally futile, totally self-constructed jam.

DAILY
EXPRESS

Heseltine's blow

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DEFENCE SECRETARY Michael Heseltine has finally demolished the house that Tam Dalyell built—Belgrano Towers.

It always was a squalid and rickety edifice—allegation piled on calumny, loosely held together by political opportunism and malice. It needed no more than a determined knock to bring it crashing down. And that is what Mr Heseltine administered in Monday's Commons debate.

Hopefully this will be the end of a long drawn-out political affair which took us far from the original story — the necessary sinking of the Argentinian warship General Belgrano.

There was a war on. Our men were dangerously exposed. We sank an enemy cruiser.

We lost six ships subsequently, although we won the war.

In the natural confusion of events the Commons was unwittingly "misled" about the date on which the Belgrano was first sighted, and subsequent attempts to set the record straight were hampered by a perfectly legitimate concern for security.

That is all there ever was to this non-issue.

Mrs Thatcher did not order the Belgrano sunk to sink peace talks. Ministers did not wilfully deceive Parliament.

As another well-known Parliamentarian, Cromwell, would say to today's Belgrano bores: In the name of God, go.

DRAFT LETTER FROM PUS TO THE EDITOR OF THE 'GUARDIAN'

In your leader of 16 February headed 'One Friday in August' you suggested that Mr Richard Hastie-Smith, the Principal Establishmer Officer of the Ministry of Defence, might have offered Mr Ponting immunity from prosecution in return for a confession. I should imagine that most of your readers would have drawn the conclusion from your leader that you leant towards the view that Mr Hastie-Smith had made such an offer. Anyone still uncertain about what you were saying would have had his doubts dispelled completely by your leader of 20 February entitled 'Clive and the Chap factor' in which you suggested that a quiet resignation was offered in return for Mr Ponting's confession, and that the bargain was then broken. And you make this allegation against Mr Hastie-Smith who as a serving civil servant has in practice no means of defending himself against it.

Your allegation is false. As the official heading the Department's organisation for managing civilian personnel Mr Hastie-Smith was fully aware that if it was shown that there was a case to be made against Mr Ponting, it could be dealt with either by a prosecution or by departmental administrative procedures but that the choice between these courses was not in the hands of the Department since cases of this kind are automatically referred to the Director of Public Prosecutions for the Attorney General to decide whether or not to institute a prosecution.

I have now had the opportunity to study the transcript of the evidence which Mr Hastie-Smith gave on 1 February in the course

of Mr Ponting's trial. He told the court categorically and on oath that he had not offered Mr Ponting immunity from prosecution when he saw him on Friday 10 August and that he had, on the contrary, explained to him that whether the matter would be dealt with by prosecution or by administrative action was an open question.

In short it is inconceivable that, given his knowledge of the facts, Mr Hastie-Smith would have made any offer of the kind you suggest, and he has confirmed on oath that he did not do so. I hope that this will help you straighten out the "terrible tangle" to which the first of your two leaders referred. I hope too that it might encourage you to retract a false and unjust innuendo against a public servant.