

Kenneth Baker

would like a
note on

"The handling
of the Ponting
case"

He is appearing

on T.V. South

on 11th March

- would like it

by close of play

on Friday.

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BRIEFING FOR THE MINISTER OF HEALTH RE THE PONTING CASE

The essential point to bear in mind is that the decision to prosecute Mr Ponting was not one for the Government but for the Law Officers acting in their quasi-judicial capacity, and with total independence from the executive.

In his statement to the House on 12 February 1985 (attached herewith) the Attorney General explained how the decision to prosecute was taken. The issue of Ministerial interference with this case has been a live one for some time. The line to take is: neither the Attorney General nor the Solicitor General nor any of their officials sought the view of or consulted any other Minister, nor was the view of any other Minister conveyed to them before the decision was taken.

The decision to prosecute was taken on the basis of the Attorney General's guidelines on the criteria for prosecution, issued in February 1983. The Law Officers firstly had to be satisfied that the evidence was sufficient. No one has suggested that the evidence was insufficient to prosecute Mr Ponting. Indeed, at the trial there was no submission by the Defence of no case to answer. Secondly, the Law Officers had to be satisfied that the public interest merited a prosecution. The Law Officers took the view that the breach of duty and trust by Mr Ponting was so serious that it merited consideration by a court.

The direction of Mr Justice McCowan to the jury on the meaning of the words "interests of the State" has attracted considerable criticism. The Attorney General has said publicly that he agrees with the Judge's directions, and indeed there was authority in law to support the Judge's ruling. However, it would not be proper for the Law Officers or any other Minister to comment on the verdict of the jury.

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The decision to vet the jury and to apply for part of the proceedings to be heard in camera proved to be equally controversial. It was not originally intended to hold any part of the Ponting trial in camera or to vet the jury. However, the Defence asked, as they were entitled to do, for the disclosure to them of certain documents which they thought might be relevant to their case. These included the so-called "Crown Jewels". The Defence asked to see only an expurgated version of the "Crown Jewels", with sensitive intelligence material deleted. The document in this form would have presented a misleading picture, and in these circumstances the Attorney General decided that it would be better to disclose the whole document and indeed for the prosecution itself to put it in evidence. The sensitivity of this document from the point of view of national security justified an application to the court to go into camera when evidence about it was being given. The jury was vetted for the same reason that justified an application being made for the court to go into camera.

LAW OFFICERS' DEPARTMENT

7 March 1985