

Paying the police: ‘Greengate’ and parliamentary privilege

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On 27 November 2008 the Sergeant at Arms of the United Kingdom House of Commons, Ms Jill Pay, signed a ‘consent form’ to permit the Counter Terrorism Command of the Metropolitan Police to search the office of then Conservative Shadow Minister for Immigration, Damian Green, in Portcullis House on the parliamentary estate. Earlier that day Green had been arrested in his Ashford constituency in Kent. The police had warrants to search his home, his constituency office and his second home in London: they did not seek a warrant to search his parliamentary office. A week earlier a junior civil servant in the Home Office was also arrested and made certain admissions of leaking documents to an MP whom, it was said, had ‘groomed’ him to do so.¹ The actual arrest of Mr Green proved more difficult than first anticipated. Police officers staked out his home in a rural area of Kent and waited for him to emerge. When after some hours he failed to do so they phoned the then leader of the opposition, David Cameron, to enquire of his whereabouts. They did not tell Cameron, who gave them Green’s mobile phone number, that they intended to arrest the MP. Green was at a meeting in his constituency where he was eventually detained at about 1.50pm. It transpired that the police had the wrong house under surveillance. Green was informed that he was arrested not pursuant to the *Official Secrets Act* but on suspicion of an offence under the 18th century common law crime of ‘misconduct in public office’ (*R v Bembridge* 1783) which attracts a maximum penalty of life imprisonment.²

Coincidentally, on the same day as Green’s arrest, Mr Justice Southwell sitting at Kingston Crown Court threw out charges of ‘aiding and abetting willful misconduct in public office’ filed 19 months earlier against *Milton Keynes Citizen* journalist Sally Murrer.³ Thames Valley police had alleged that Ms Murrer had induced one of their officers to leak confidential documents to her. Even though the material was described as ‘incomprehensibly trivial’, and had never appeared in print, the police ‘bugged her phones, ransacked her home and office, confiscated her computers,..., [and] humiliated her with a strip search.’⁴ She also said that ‘I was told five times

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that I would go to prison for life'.⁵ Damien Green claimed that he too was similarly threatened by police.⁶ The case against Murrer failed because the judge ruled that the police had breached Article 10 of the European Human Rights Charter which protects the right of journalists to freedom of expression from interference from the state.

The search of Green's parliamentary office while he was detained elsewhere and questioned by the Metropolitan Police naturally raised serious questions of parliamentary privilege — especially since the police removed from the Palace of Westminster his computer hard drive, phone records and other material that his lawyers claimed were undoubtedly privileged. Also controversial was the police failure to secure a warrant for the parliamentary search. At later parliamentary inquiries officers claimed that they did not need a warrant because they believed that access would be granted,⁷ but a very senior officer told a parliamentary committee that it was 're-explained to the Sergeant at Arms why they could not seek a warrant, because a magistrate or judge would not give us a warrant because clearly they would believe Parliament would surely agree'.⁸ For her part, Ms Pay, while apologizing to MPs for the way the matter was handled, denied that she was 'mislead', 'tricked' or 'bamboozled' by the police into signing the consent form, she did say 'I think I was pressured'.⁹ What is clear was that the interaction among the Sergeant, the Clerk of the House of Commons and Speaker of the House of Commons, Michael Martin, was less than adequate. Notably none of them was aware of the existence of a memorandum written by the then Commons Clerk, Sir William McKay, in 2000 which established detailed protocols for police searches on the parliamentary estate and gave the Speaker alone the right to grant permissions and challenge warrants.¹⁰

The Speaker came under increasing pressure from MPs for failing to uphold the privileges of the House. On 3 December 2008 he made a statement in the Commons in which he declared: that he did not know that the police did not have a warrant; that the police failed to explain to Ms pay that she was not obliged to sign the consent form and that a warrant could be insisted upon (the police denied this); he regretted that 'a consent form was signed by the Sergeant at Arms, without consulting the Clerk of the House'; and guaranteed that in future a warrant would be required for all searches on the parliamentary estate.¹¹ Some members were less than impressed with one describing the police's behavior as 'deplorable' and another insisting that they be called before the bar to explain themselves.¹² Speaker Martin then announced the establishment of a committee of 'seven experienced parliamentarians to look into this matter', but when the government tabled a motion that the committee would not be able to meet (other than to elect a chair) until the police had completed their inquiry, no Conservative or Liberal Democrat MP would serve on it. Controversially, Speaker Martin persistently refused to allow the Green case to be given precedence and referred to the Committee on Standards and Privilege.¹³ Greengate and his alleged mishandling of the parliamentary expenses scandal so compromised Martin's position that by May 2009 there was cross-bench

support for a vote of no confidence in him which he defused by resigning — the first Speaker to do so for centuries.¹⁴

The origins of Greengate are to be found in increasing concerns from 2004 about the number of embarrassing leaks emanating from inside the Home Office which totaled 31 by November 2008. When that department was unable to stem the leaks it asked the Cabinet Office for assistance. On 8 October 2008 the Director of Security and Intelligence at the Cabinet Office wrote to Robert Quick the then Assistant Commissioner for Special Operations in the Metropolitan Police requesting his agreement to an inquiry into the leaks. Notably his letter claimed that:

We are in no doubt that there has been considerable damage to national security already as a result of some of these leaks and we are concerned that the potential for future damage is significant. The risk of leaking is having an impact on the efficient and effective conduct of Government business, affecting the ability of Ministers and senior officials to have full and frank discussions on sensitive matters and undermining necessary trust.¹⁵

The Cabinet Secretary, Sir Gus O'Donnell defended this letter before a parliamentary committee on 11 December 2008.¹⁶

However, when it examined the matter the Home Affairs Committee of the House of Commons did not accept the claim that the leaks were damaging to national security. It stated that the Cabinet and Home Office officials conveyed 'an exaggerated impression of the damage done by the leaks' and that the letter to the police was 'hyperbolic' and 'unhelpful'.¹⁷ Most of the leaks related to information about illegal immigrants wrongly given clearance by the Security Industries Agency some of whom worked for the Metropolitan Police and one of whom was employed to guard the Prime Minister's car.¹⁸ In his review of the police operations in arresting Galley and Green, former senior officer, Sir Ian Johnston, said that: 'I regard the leaks for which Galley can be clearly held responsible in law, as amounting to "embarrassing matters" for government. I do not think, ..., that the leaks in themselves are likely to undermine government's effectiveness'.¹⁹ The relative mundanity of the material allegedly leaked by Galley probably explains why he and Green were not pursued under the *Official Secrets Act 1989* which has a much more limited application than the crime of 'misconduct in public office'.²⁰

During the various parliamentary inquiries into the circumstances surrounding the arrest of Damien Green there was much discussion of the political morality of civil servants leaking confidential information to the media. It proceeded along the 'conventional lines' explained by Professor Rod Tiffen of Sydney University:

On the one side are those who view the disclosure of information through leaks as substantially damaging important public interests, such as national security or the integrity of the policy process, or the privacy of individuals. On the other are those who see leaks as benefiting democracy, as holding power-holders to proper account and frequently disclosing official folly and wrong-doing.²¹

The many serving and retired senior civil servants who gave evidence to the various parliamentary committees were united in the view that leaks from inside government are always acts of moral turpitude and are not vindicated by any benefit they might sometimes have for the ‘public interest’. The Secretary of the Home office, Sir David Normington, insisted that: ‘From my point of view that [leaking] is despicable, it is disloyal, it is completely undermining the work of the Home Office and it is completely unacceptable’.²² The Head of Cabinet Intelligence, Sir David Omand, explicitly drew attention to the ‘ethical dimension:

... what I would call a genuine leak, that is where an individual wishes to benefit, and continue to benefit, from paid employment, from taking the taxpayers’ money and serving the State whilst simultaneously undermining their [Civil Service] code and undermining confidence by slipping information unauthorized into the hands of whether it is Parliament or journalists.²³

Sir David requested the committee in its report to send a clear message to public servants that leaking was a serious breach of the Civil Service code to which another witness (Professor Peter Hennessy of the University of London) added ‘May I respectfully suggest that you also send a message to ministers and special advisers along the same lines.²⁴ Thereby reminding us of American journalist James Reston’s famous quip the ‘the ship of state is the only known vessel that leaks from the top’.

Greengate revealed a degree of politicization of sections of the British police service that would surprise many Australians. Acting in his role as Chairman of the Metropolitan Police Authority, Tory Lord Mayor of London, Boris Johnston, removed Sir Ian Blair as Chief Commissioner in October 2008 — a decision that was later controversially criticized by the permanent head of the Home Office Sir David Normington.²⁵ Johnston was also criticized for discussing Green’s arrest with the Acting Commissioner, Sir Paul Stephenson.²⁶ In his testimony before the Home Affairs Committee on 3 February 2009, the Lord Mayor stated that he had been informed of the pending arrest before it had occurred and said that he had told Sir Paul Stephenson that:

... this thing could ‘go off like a rocket’ and that we would need to have a pretty good reason to think that the arrest of an MP in the House of Commons was not a disproportionate response to a leak inquiry.²⁷

Subsequent questioning of Johnston implied that he had misused his position of MET Chair to share information concerning Green’s arrest with members of the Conservative Party. These inferences and Johnston’s denials were to become the substance of an incendiary telephone conversation between Johnston and the Labour Chair of the committee Keith Vaz MP, part of which reads:

KV: Did you tell Cameron (then leader of the opposition)? [about Green’s impending arrest]

BJ: The key point that is not getting across — I didn’t give any f***ing information to Cameron.

KV: So you didn’t tell him

BJ: Nothing he did not already know.²⁸

The police officer in charge of the investigation of Damien Green was Bob Quick, by now the MET Assistant Commissioner in charge of specialist operations and counter- terrorism. On 23 December 2008 a newspaper revealed that his wife was operating a limousine hire company from their home address, the location of which could easily be accessed via an advertisement on the internet and that Quick and his family had to be moved to a safe house.²⁹ Whereupon Quick made the quite astounding allegation that the story:

[Was] an attempt to undermine an investigation which is legitimate. The Tory Machinery and their press friends are mobilized against this investigation in a wholly corrupt way, and I feel very disappointed in the country I am living in.³⁰

Quick soon apologised for his intemperate remarks but not before they further poisoned relations with the Conservative Party and some senior officers of the police service — a relationship described by one observer as 'trench-warfare'.³¹

In April 2009 Bob Quick resigned his position after he inadvertently allowed the photographing of highly sensitive documents connected to an anti-terrorist operation unrelated to the Green affair.³²

Despite earlier rumours that the police were considering dropping the cases, Galley and Green had their bail extended in February 2009 because, according to a joint statement from the MET and the Crown Prosecution Service:

The bail date for Christopher Galley and Damien Green has today been extended from February 17 to April because issues of parliamentary privilege raised by Damien Green have yet to be resolved.

The CPS has considered all the material already submitted and intends to make a decision on whether to charge Christopher Galley and Damien Green as soon as reasonably practicable after receiving any further available evidence.³³

On 16 April 2009 the Director of Public Prosecutions, Keir Starmer, concluded that 'there is no realistic prospect of a conviction against either Mr Galley or Mr Green for the offences alleged against them. In reaching his conclusion he noted that the threshold at which misconduct by a public official becomes a criminal offence 'is a high one'. He also noted that 'the information contained in the documents was not secret information or information affecting national security'. 'Much of it was known to others outside the civil service,...'.³⁴

Given all of the above, it was perhaps surprising that no action for breach of parliamentary privilege was taken against any person — despite the fact that very early in the affair the Speaker had directed the MET to return to Mr Green certain materials over which his lawyers had claimed privilege. Also the fact that he was arrested means that Green is not entitled to a visa waiver to enter the United States, which could be argued may limit his capacity to discharge his duties as a member of parliament. We know that modern parliaments are reluctant to utilize their full powers to enforce their privileges, especially where criminal sanctions may arise — whether this is desirable in all cases is a moot point. In the Green case a

complicated factor was the fact that the Sergeant at Arms had signed a consent form to permit the police entry to the Palace of Westminster. Of course by May 2009 many members of Parliament were under close scrutiny as a consequence of the publication in the *Telegraph* newspaper of leaked details of their expense claims which provoked a public scandal and severely compromised the parliament in the eyes of the electorate.³⁵ To have moved on anyone in connection with the Green case in such an environment would, as Sir Humphrey may have said, been ‘a courageous decision’. The only penalty meted out was that Christopher Galley was sacked from the civil service for serious misconduct. ▲

Endnotes

- ¹ *Guardian*, 3 December 2008
- ² House of Commons Committee on Issue of Privilege, *Police Searches on the Parliamentary Estate*, London, 15 March 2010, p 18
- ³ *Milton Keynes Citizen*, 28 November 2008.
- ⁴ Nick Cohen, ‘Why doesn’t anyone say: “Not in Britain”?’, *Observer*, 30 November 2008.
- ⁵ *BBC News*, 28 November 2008.
- ⁶ *The Guardian*, 17 April 2009.
- ⁷ House of Commons, Home Affairs Committee, *Policing Processes of Home Office Leak Inquiries*, 10 February 2009, p 5.
- ⁸ Chief Superintendent Bateman, House of Commons, *Select Committee on Issue of Privilege*, 23 September 2009, p 16.
- ⁹ *Committee on Issue of Privilege*, 7 December 2009 p 73.
- ¹⁰ *Police Searches on the Parliamentary Estate*, *op cit*, p 62.
- ¹¹ *House of Commons Hansard Debates*, 3 December 2008, Cols 1–3.
- ¹² *Ibid*, Cols 4,5 & 6.
- ¹³ *Police Searches on the Parliamentary Estate*, *op cit*, p 48; *Independent*, 5 February 2009.
- ¹⁴ *The Times*, 13 May 2009; *BBC News*, 14 May 2009
- ¹⁵ *Police Searches on the Parliamentary Estate*, *op cit*, pp 7–8.
- ¹⁶ House of Commons, Public Administration Committee, *Leaks and Whistleblowing in Whitehall*, 11 December 2008, pp 5-6.
- ¹⁷ *Policing Processes of Home Office Leaks Inquiry*, *op cit*, 5–8.
- ¹⁸ *Reading Evening Post*, 23 February 2009.
- ¹⁹ *Guardian*, 12 October 2009.
- ²⁰ House of Commons Library Standard Note SN/PC/02023, *Official Secrecy*, 30 December 2008, p 6.
- ²¹ Rodney Tiffen, *Why Political Plumbers Fail — Hypocrisy in Leak Control*, undated typescript, p 1.
- ²² *Home Affairs Committee, Evidence*, 20 January 2009, p 2.

²³ *Public Administration Committee, Evidence*, 22 January 2009, p 4.

²⁴ *Ibid*, 22 January 2009, p 23.

²⁵ *Daily Mail*, 9 June 2009.

²⁶ *Evening Standard*, 2 December 2008.

²⁷ *Home Affairs Committee, Evidence*, 3 February 2009, p 18.

²⁸ *The Independent*, 12 February 2009.

²⁹ *Mail on Sunday*, 21 December 2008.

³⁰ *The Times*, 23 December 2008.

³¹ Tony Travers, 'A vicious standoff', *The Guardian*, 23 December 2008.

³² *House of Commons Hansard Debates*, 20 April 2009, cols 21-26.

³³ *The Guardian*, 17 February 2009.

³⁴ The Crown Prosecution Service, *Decision on prosecution-Mr Christopher Galley and Mr Damien Green*, 16 April 2009, pp 6 & 9.

³⁵ *Telegraph*, 7 January 2010; *The Times*, 16 May 2009.