

Britain: Two imprisoned for violating Official Secrets Act

Punished for exposing Bush and Blair's crimes in Iraq

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The imprisonment of David Keogh and Leo O'Connor under the Official Secrets Act is a flagrant violation of democratic rights. In part aimed at intimidating opponents of the occupation of Iraq, it is bound up with efforts to conceal the contents of a discussion between George W. Bush and Prime Minister Tony Blair on actions illegal under international law.

The prescriptions on media reporting and comment on the substantive issues raised by the trial are a major infringement on free speech with the same aim in mind. This is made all the more obvious because facts now subject to censorship on the grounds that their dissemination threatens Britain's national security and might endanger lives have been in the public domain for months.

Keogh, a communications officer at the Cabinet Office, was sentenced to six months for leaking a secret document recording an April 16, 2004, meeting between Bush, Blair and senior officials including then-US Secretary of State Colin Powell and the National Security Adviser, Condoleezza Rice. The meeting took place two months before coalition forces relinquished governing authority in Iraq and during Operation Vigilant Resolve, a major US offensive against the Iraqi city of Fallujah.

Leo O'Connor, the researcher who received the memo and secretly handed it his employer, Labour MP Anthony Clarke, was jailed for three months. He and Keogh were both found guilty of "making a damaging disclosure."

The four-page document was marked "Secret and Personal," and was originally sent to then-Foreign Secretary Jack Straw and others on a "need to know" basis. David Perry QC, prosecuting, stated that only a few people had seen the memo, including the PM's chief of staff, Jonathan Powell, his foreign policy adviser, David Hill, his official spokesman, Tom Kelly, and the Joint Intelligence Committee. Sir Nigel Sheinwald, the prime minister's foreign policy adviser, said only eight people had attended the April 2004 meeting "because we knew it would be a

sensitive discussion about Iraq and other matters."

According to a November 22, 2005, report by the *Daily Mirror*, the memorandum purportedly states that Bush told Blair he wanted to bomb the Doha headquarters of Al Jazeera television and was opposed by the prime minister.

In May 2004, Keogh leaked the memo. His hope was that it would lead to questions in Parliament. He also wanted it to be passed on to 2004 presidential candidate John Kerry. However, when O'Connor put it among Clarke's papers, the MP sent it on to Baroness Morgan, the prime minister's director of government relations. For this he received a thank-you note from Blair, who Clarke says told him "sometimes the good stuff has to be done privately."

Within 24 hours of the *Mirror's* article being published, the Attorney General, Lord Goldsmith, invoked the Official Secrets Act to stop further reporting by it and other newspapers on the memorandum. The two defendants had been arrested by police special branch officers shortly after the document was handed to police, but were not charged until November 2005 when it became public knowledge.

The former Labour defence minister, MP Peter Kilfoyle, was reportedly told earlier about the memo's contents and was questioned by the police under caution along with Clarke. No action was taken against them.

A large portion of the trial at the Old Bailey was held behind closed doors, after Mr. Justice Aikens deemed that "some individuals or groups in the Middle East might react very unfavourably to the contents of the letter." He had warned that even implying what was in the memo would be likely to be held in contempt of court.

Despite having been widely reported internationally and available on the Internet, the judge ruled that the *Mirror's* claims could not be repeated in reports of the trial. To make matters more complex, he stated that the contents of the leak to the *Mirror* could be reported—as long as they are not linked to the case and appear on a separate page of the newspaper involved.

At the trial, jurors were shown the memorandum in private. Its contents were not directly referred to by counsel or witnesses in open court.

Aikens has also made an extension of a contempt order to comments made by Keogh in open court, when he was asked what preyed on his mind when he first saw the document. This ruling is being appealed by the *Guardian*, the *Times* and the BBC.

Foreign newspapers are not bound by the contempt orders, and the Internet is not mentioned by the judge.

His decision on the *Mirror*'s claims is made all the more extraordinary because it has played a part in determining the conduct of the trial. Aikens's ruling last year setting out the reasons for allowing evidence to be heard in secret cited the *Mirror*'s statement that the memo recorded a threat by Bush to "unleash 'military action' against Al Jazeera" was "inaccurate about the contents of the letter."

The *Guardian* commented on May 12 on the absurdities resulting from the efforts to suppress discussion of the memo: "Facts that can be freely reported elsewhere in this paper cannot appear in this column.... Allegations based on these papers made headlines round the world. Mr. Justice Aikens knows full well that the horse has long since bolted and that closing the door is futile, yet in an eccentric move he still made a point of trying to push it half shut. He ruled that these claims could be reported, but only in articles not referring to the document. We can neither confirm nor deny whether these claims are referred to in other pages of the *Guardian*."

It continued that the new ruling "suppresses material already available not only abroad but also at home. Even if the aim is to spare American blushes, the ruling hardly makes sense when the allegations are already public knowledge in the US. One specific allegation—that Mr. Bush was considering bombing the Arabic TV channel Al Jazeera—is exempt from the censorship, an extra hole in the gag that only underlines its futility."

Because of these restrictions, nothing else definitive can be stated about the document's contents.

The trial and conviction have been widely denounced as an attempt to conceal the political embarrassment of Bush, when there was in fact no threat to British lives posed by the revelations. Keogh's barrister Rex Tedd QC said, "The real position, I suggest, is that central to any principle of confidentiality is protecting any American leader from public embarrassment by the disclosure of what is said."

Foreign Secretary Margaret Beckett stated last year that the document's disclosure would have a "serious negative impact" on diplomatic relations with the US, which would result in "a substantial risk of harm to national security." For its part, the prosecution had admitted that the leak did not

contain any "actual damage."

However, "embarrassment" is possibly not all that is at stake. Keogh himself described the memo's contents not only as "abhorrent," but also "illegal." Questioned on this, Sir Nigel Sheinwald had insisted that private talks between world leaders must remain confidential however illegal or morally abhorrent aspects of their discussions might be.

Kilfoyle has said he intends to raise questions in parliament next week over what discussions Blair had with Bush about plans to bomb Al Jazeera and what Blair knew of US plans to attack Fallujah at that time. He will also ask Blair about what Bush wanted UK troops to do in Iraq outside the area of initial deployment, in the southeast of Iraq.

He has said there are unanswered questions about the talks between Blair and Bush on the attack on Fallujah and "the subsequent deaths of many hundreds of civilians.... There are documents, there are facts, which I think ought to be in the public domain, because it is more important that the public are aware of these things than they are kept secret.... I think we live in a society and operate under a system that values secrecy to an excessive degree."

Reporting Kilfoyle's intentions, the *Guardian* notes, "It was reported at the time that the US general Mark Kimmitt had demanded the removal from Fallujah of Al Jazeera."

"It has also been widely reported that an American request for British troops to help support the Fallujah operation was on the agenda of the White House meeting. Soldiers from the Black Watch regiment were subsequently deployed to help the US south of Baghdad."



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