

Britain: Police broke the law in raid on Damian Green's parliamentary office

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The Speaker of the House of Commons, Michael Martin, has made worse what could become a full-blown constitutional crisis in his efforts to excuse himself from blame for allowing the police search of Conservative MP Damian Green's office.

Green, the shadow immigration minister, was arrested by anti-terror police on November 27. He was held for nine hours and his home and computer files searched, in connection with the November 19 arrest of civil servant Christopher Galley in an inquiry into Home Office leaks. He was forced to give fingerprint and DNA samples.

Green was accused by police officers of "grooming" Galley as a mole in order to obtain documents that were potentially embarrassing to the government. The MP's treatment, which has raised constitutional issues relating to interference by the police in the political process, has led to demands for an official inquiry and threats, later abandoned, by the Tories to disrupt Wednesday's Queen's Speech marking the opening of parliament.

Fury over events forced Martin, a Labour appointee, to use the first session of the new parliament to make an emergency statement explaining his actions. Far from diffusing the situation, he created even worse political uproar when he revealed that the police raid on parliament had taken place without them even having a search warrant. All the police had, according to the speaker's account, was written permission from Jill Pay, the Serjeant-at-Arms, to search files and confiscate computer equipment belonging to Green.

Revealing that he had not asked about the legality of the raid, Martin told MPs, "On Wednesday last, the Metropolitan Police informed the Serjeant-at-Arms that an arrest was contemplated, but did not disclose the identity of the Member. I was told in the strictest confidence by her that a Member might be arrested and charged, but no further details were given to me. I was told that they might be forthcoming the next morning.

"At 7am on Thursday, police called upon the Serjeant-at-Arms and explained the background to the case, and disclosed to the Serjeant the identity of the Member. The Serjeant-at-Arms called me, told me the Member's name and said that a search might take place of his offices in the House. I was not told that the police did not have a warrant. I have been told that the police did not explain, as they are required to do, that the Serjeant was not obliged to consent, or that a warrant could have been insisted upon. I regret that a consent form was then signed by the Serjeant-at-Arms, without consulting the Clerk of the House."

Martin continued, "It was later that evening that I was told that the search had gone ahead only on the basis of a consent form. I further regret

that I was formally told by the police only yesterday, by letter from Assistant Commissioner Robert Quick, that the Hon Member was arrested on 27 November on suspicion of conspiring to commit misconduct in public office and on suspicion of aiding and abetting misconduct in public office."

There were gasps of astonishment when Martin spoke. His statement makes Pay's position of responsibility for the security of parliament untenable and does nothing to secure his own, given that he never even asked for a warrant. Moreover, even if he claims that he did not know one was needed, an extraordinary admission in itself, he had not sought the advice of the Clerk of the House, Dr Malcolm Jack, the permanent senior official advising the Speaker. When he was asked when Jack knew the police intended to raid an MP's office, Martin did not answer.

Martin has pledged that police will not be allowed to enter an MP's office in future without a warrant and the approval of the speaker, and announced that he was setting up a committee of seven MP's to examine the issue. A parliamentary debate is scheduled for next Monday. For the government's part, there are indications that Martin may yet be told to fall on his sword and take the blame for the incident. Deputy Labour leader Harriet Harman repeatedly refused on the BBC's flagship *Newsnight* programme to express her full confidence in Martin or Pay. "I'm not saying I have full confidence in anything or anybody," she said.

The next day, Home Secretary Jacqui Smith addressed parliament, stating that she had known of the arrest of a civil servant, but not the planned arrest of an MP. But had she known it would have been "wholly inappropriate" for her to intervene, she insisted. Police were called in by the Cabinet Office because of concern that someone with access to "sensitive material" was prepared to leak it. "The sustained level of leaking that had already taken place clearly suggested that this could go on, would escalate, and that more information of greater sensitivity could potentially leak," she argued.

Whatever the government does now, the crisis must snowball. At issue is not only to what extent there was collusion between government and the police. At the very least there was an extraordinarily pliant response towards an operation that involved anti-terrorist police and the arrest of an MP despite there being no issues of national security involved. Now Martin has raised point blank the question of whether the police acted unlawfully in entering parliament without a warrant.

So extraordinary was his revelation that there were demands that the police should be summonsed before parliament.

The Metropolitan Police have launched their own investigation into the circumstances surrounding the police raid, headed by Assistant Commissioner Robert Quick. A spokesman claimed that "written authority to conduct a consensual search" was enough to legitimise

searching Green's office.

However, the former director of public prosecutions, Sir Ken Macdonald, has said that the police had not followed proper procedures. "They should convey to the individual that consent can be withheld. It doesn't appear to be the case that they did that," he stated. Geoffrey Robertson, QC, said, "It was an unlawful search and Mr Green should be able to obtain substantial damages from the Metropolitan Police."

Several media commentators were clear on the sweeping implications of Martin's speech.

The pro-Conservative *Telegraph* said Martin's statement "raises worrying questions about the police... Mr Green, the victim of their bullying tactics, spoke well yesterday as he gave warnings that while MPs are not above the law, neither are the police nor their political masters."

The *Guardian's* chief political correspondent, Nicholas Watt, wrote that a "constitutional crisis was sparked yesterday" when Martin "all but accused the Metropolitan police of breaking the law".

Its Westminster correspondent David Hencke said that the incident "also suggests that the Metropolitan police seem to have little regard themselves for the niceties of the law of the land".

Columnist Henry Porter added that "No action by the authorities could have better revealed the decay in the chassis of parliamentary democracy. It captures everything—the seeming politicisation of the police, the unprincipled brass neck of the home secretary, the degradation and failure of the parliamentary authorities and the growing confusion in Labour between the roles of the government and state."

The *Independent* asked why Assistant Commissioner Quick, "did not obtain a search warrant," did "not explain to the Serjeant-at-Arms that she could insist on a warrant" why it took him "five days to inform the Speaker of Damian Green's arrest" and "Were his tactics approved by Acting Commissioner Sir Paul Stephenson?"

These are senior figures whose actions are being questioned regarding their legality. Acting Metropolitan Police Commissioner Sir Paul Stephenson has applied to become the new commissioner, as has Quick. Questions were already being raised as to why the raid was authorised against Green, given that it coincided with the final day in office of Metropolitan Police Commissioner Sir Ian Blair. The Conservative mayor of London, Boris Johnson, was instrumental in forcing Blair's resignation.

But perhaps the most trenchant criticism of the arrest of Green in the mainstream media was prior to Martin's declaration, by Philip Stephens in the December 1 *Financial Times*.

The paper's associate editor wrote, "The police are out of control. So is the government... In this respect, regardless of whether ministers played a direct role in Mr Green's arrest, the blame rests squarely with the government."

"If the police think they can discard due process, they have been taking their cue from the government," he continued. "For more than a decade, first Mr Blair, and latterly Mr Brown, has rolled forward the boundaries of the state at the expense of civil liberties... The present government sees no distinction between the rule of law and whatever piece of legislation it can force through parliament. In the criminal justice system, the fragile

balance between the rights of police, prosecutors and accused has been overturned. The presumption of innocence is scorned. Successive home secretaries, including Ms Smith, have mouthed the mantra that the police are always right. Ministers have likewise greatly extended the state's surveillance of law-abiding citizens."

Stephens paints an accurate picture of the erosion of democratic rights under Labour. But, like many of the commentators cited, he portrays the Conservatives as an opposition to this process.

This is wholly untrue. Whatever criticisms have been made of this or that aspect of government anti-terror legislation, the Tories have ended up endorsing their passage into law. Moreover, no one should forget the Conservatives' record on civil rights when they were in office. This is the party of the anti-union laws, which repeatedly sought to silence and imprison whistleblowers whose agenda was not the desire to whip up a scandal over immigration and law and order like the prospective Tory candidate Galley.

In 1985, civil servant Clive Ponting was cleared by a jury of breaking the Official Secrets Act. He had sent two documents to Labour MP Tam Dalyell revealing that the Argentine ship General Belgrano had been sighted a day earlier than officially reported and was outside the exclusion zone when it was sunk with the loss of 360 lives. After his memoirs were serialised, the Thatcher government introduced the 1989 Official Secrets Act removing the public interest defence under which Ponting had avoided imprisonment.

Also in 1985, Cathy Massiter, a former agency intelligence officer, charged in a TV documentary that MI5 had been systematically bugging Arthur Scargill, president of the National Union of Mineworkers; Harriet Harman MP and Patricia Hewitt, as well as the National Council for Civil Liberties and the Campaign for Nuclear Disarmament. The Independent Broadcasting Authority was advised by its lawyers that it risked prosecution under the Official Secrets Act, but no action was taken. However, before the film was aired a report by Lord Bridge was issued exonerating the government of improper use of phone taps.

Sarah Tisdall, a Foreign Office clerk, was sentenced to six months in prison for leaking details of when American cruise missiles would be arriving in Britain to the *Guardian*. There was no threat to national security involved on either occasion. The Tories secured Tisdall's conviction by an appeal to the Attorney General based on the claim that someone who leaked harmless documents might also leak documents that posed a security threat.

This is almost word-for-word the tortuous reasoning employed by Jacqui Smith and the Labour government today. The Tories thus do not constitute any form of political alternative to Labour, whether with regards to democratic rights or its pro-business right-wing economic and social nostrums.



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