

The defence of public interest law constitutional administrative essay

Law



In this given scenario I have to advise the Attorney General on whether he can bring a successful prosecution against Owen and Jack under the Official Secrets Act 1911 and official secrets act 1989. Owen works as a press officer in Foreign office. One day while he was waiting at Foreign Secretary office read an e-mail about a secret activity of UK government. Then Owen sent a copy of that e-mail to Jack, his MP. For this discloser Attorney General can bring prosecution under Official Secrets Act 1911 and Official Secrets Act 1989. At first we will consider the Official Secrets Act 1911. S 1 of OSA 1911[4] states that " any person for any purpose prejudicial to the safety or interest of the state..... communicates to any other person any secret code word, or passes word, or any sketch plan, model article, note or other document to be or might be or is intended to be directly or indirectly useful to an enemy". According to this section Owens activity can be regarded as an offence, where he communicated the information to Jack. There are some issues to consider deciding whether Owens activity was an offence or not? The issues are: what is meant by a purpose prejudicial to the safety or interest of the state? What is meant by communication? And what types of information are covered? In relation to the first issue, under this Act S 1(2) [5] make it clear that " no specific act showing such a purpose need be proved and indeed it may be inferred from ' the circumstances of the case'. Furthermore, where the communication offence is charged, the burden of proof shifts, and a prejudicial purpose is assumed unless the defendant proves otherwise". In light of this section it can be established that the conduct of Owen is prejudicial to the safety or interest of the state. Here it can be argued from the both point of view whether Owens act was

prejudicial or not? From the AG's point of view it can be argued that the purpose was prejudicial because the communicated information was related to the secret activity of the government and if it is published it may cause harm to the safety or the interest of the state. And from the Owens point of view there was no prejudicial purpose of his act and he did it for public interest because public has the right to know about the governments activity. On the other Owen can also argued that he was not connected with spying. The second issue is what is meant by 'communicates'? S 12[6]of this Act stated that "communications includes 'transfer' or 'transmission'; it is not necessary whether the recipient should read or understand it". From the given scenario it is clear that Owen communicates the information to Jack who is an MP. The third issue is what information is covered? The basic requirement is the information needs to be 'useful to an enemy'. In R v Parrott[7]the d was communicated information to a person in Germany and he argued that, since his country is not in war with Germany on that time therefore Germany was not an 'enemy'. But the court rejected his argument and Phillimor J ruled that, "When the statute use the word 'enemy' it does not mean necessarily someone with whom this country is at war, but potential enemy with whom we might someday be at war". Actually the phrase 'useful to an enemy' indicate the nature of the information rather than the person to whom it is communicated. Owen communicated information with an MP and that information indicated the involvement of UK government with other country about some interrogation techniques which are internationally condemned unlawful. If the information published it will harm the safety or interest of the state. Here Owen can raise the public

interest defence. The UK government has always denied both nationally and internationally any knowledge of or involvement of such activities of its agencies, after seeing the e-mail Owen feels that the public has a right to know what is actually happening in the public's name. Owen communicated the information for the public interest. In *R v. Ponting*[8], Clive Ponting was a senior civil servant at the Ministry of Defence; he sent two documents to an MP in 1984 concerning the sinking of an Argentine navy warship. The document stated that the General had been sighted the ship one day before than officially reported. Here Mr. Ponting argued that the matter was in public interest and he was successful in public interest defence. Again AG can also bring proceedings against Owen under the Official Secrets Act 1989. Under this Act four main categories of information are dealt, namely 1) security and intelligence [s. 1] 2) Defence [s. 2] 3) International relations [s. 3] and 4) Criminal investigation [s. 4] Now it is to be considered under which category the information falls which is communicated by the Owen. His communicated information can be fall under the defence information. S 2 of OSA 1989 covers almost all the information related to the armed forces such as their weapons, their equipment. It also covers defence policy, strategy, military planning and intelligence. Simply it covers all the work of the Ministry of Defence. From the fact it is clear that there was involvement of UK military forces it means this information falls under the defence information. Now it is to be determined whether Owen's was authorized or not? S 5(1) (a) (1) of OSA 1989[9], states " whether the material was acquired as a result of an unauthorized discloser at some stage of a Crown servant or government contractor"? According to the S 12 of OSA 1989[10] it

is clear that Owen was a crown servant and he was not authorized to do so. Hence his disclosure can be regarded as damaging disclosure because it may create danger to the interest of the UK abroad and as well as safety of UK citizens abroad. The communicated information may also fall under International relations category. This category defines in S 3(5) of OSA 1989[11]; it stated " relation between states and international organization or between either or both. It includes matters which are international to other state or organization but which are capable of effecting the UK's relation to with another (not necessary the same) state or organization". Since the interrogation technique regarded as torture and the UK government has always denied both nationally and internationally any knowledge of or involvement of its agencies in such activities. If the information handed to any enemy or published it may create danger to the interest of the UK abroad as well as the safety of the British citizens abroad. It's already established that Owen was a crown servant and he was not authorized to communicate the information to Jack. Under this Act he is not able to raise the public interest defence, because this 1989 Act expressly exclude that defence. The AG can also bring proceedings against Jack for releasing the information in the Parliamentary debate. The released information, by Jack, falls under the information covered by S 2 and S 3 of OSA 1989. This disclosure of information may be danger to the interest of the UK as well as the safety of the British citizens in abroad. But even after the damaging disclosure AG may not be successful in this proceedings, because Jack was an MP. According to the S 12 of OSA 1989, MP's are not included as government contractor. From the above discussion it can be concluded that AG can bring

a successful prosecution against Owen under the Official Secrets Act 1911 and Official Secrets Act 1989. But AG may not be successful against the Jack.