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BIRMINGHAM SIX

The British Ambassador called at 4.45 p.m. today to hand over the text of a letter to the Tanaiste from Mr. Hurd (attached). The Ambassador said the Home Secretary's statement and two detailed memoranda on the Maguire and Guildford Four cases would be provided to the Embassy in London.

In handing over the letter, the Ambassdor drew attention to the Home Secretary's view that his function was to determine whether there is new evidence or new consideration of substance which would justify reference to the Court of Appeal, and that in the absence of such new evidence or new consideration, it would be wrong of him to refer a case to the Court of Appeal because, by doing so, he would be usurping or interfering in the function of the courts. The Ambassador said that the Home Secretary hoped that it would be possible for the Tanaiste to be supportive.

I said that the Tanaiste was pleased by the decision in the case of the Birmingham Six and would welcome it. He was disappointed by the decisions in the other two cases. In his statement however, he would concentrate on the case of the Birmingham Six, and in reference to the other two cases would confine himself to saying that he would continue to urge the Home Secretary to refer them to the Court of Appeal. I let the Ambassador have the text in virtual final form of the statement which the Tanaiste proposed to issue. He felt the statement would be well received in London, but in reference to the Tanaiste's proposed remarks on the Maguire and Guildford Four cases, warned that it would not be "productive" to persist in going over old ground.

I said there were two points in the Tanaiste's mind on these cases. First, while the Tanaiste could understand and accept the argument that the Home Secretary did not wish to be seen to

be usurping or interfering in the function of the courts, the actual wording of Section 17 of the Criminal Appeal Act 1968 did not refer to the necessity for significant new evidence or new consideration of substance. The Section gave discretion to the Home Secretary to refer a case "if he thought fit". The Tanaiste accepted that the Home Secretary and his predecessors had interpreted the Act in a particular way, but there could be exceptional cases and he had hoped that the Home Secretary would avail of his discretionary power in the Maguire case in particular. The Tanaiste had put this point in writing to the Home Secretary.

Second, the case of Mrs. Maguire had touched an even stronger chord here than the case of the Birmingham Six and there would undoubtedly be a disappointed reaction to the decision in her case as well as (though less so) the case of the Guildford Four. Mrs. Maguire had made a very favourable impression on those whom she had met, including the Tanaiste, and there was a very strong feeling in the country that she was the victim of circumstances. The Tanaiste accepted that there was no major new evidence in her case or that of the Guildford Four, but considered nonetheless that the overall circumstances of the cases justified a second look which would be accomplished by sending them to the Court of Appeal.

I asked the Ambassador if the Home Secretary had made any mention of the use of the Royal Prerogative or of early release (in the case of the Guildford Four). The Ambassador did not think so, but speaking from a briefing note said that it would not be appropriate to exercise the Royal Prerogative of Mercy except in cases where it was absolutely clear that the persons convicted were in fact innocent. This was not so in the Maguire case or the Guildford Four case. I mentioned to the Ambassador that of course we had not made such a proposal ouselves because it appeared to be the wish of those concerned (particularly the Maguires) to have an opportunity to establish their innocence rather than to be simply released (in the case of the Guildford Four) or given a pardon.

After the Ambassador had left, I received a call from Ambassador Dorr in London who was in the House of Commons for the Home Secretary's statement this afternoon. The Ambassador said that the Home Secretary had spoken for something over 15 minutes and had then taken questions for half an hour. He had commanded respectful attention in the House and had put over very well his argument that it would be wrong for him to refer a case, in which there did not appear to be any major new evidence or new consideration of substance, to the Court of Appeal. The Ambassador felt that the media reaction in Britain would be favourable. Nonetheless two former Home Secretaries, Mr. Jenkins and Mr. Rees both raised the question of setting up an enquiry into the three cases. Mr Jenkins, referring to the fact that he had been the Home Secretary of the day, spoke of the "climate" in which the convictions had occurred. Mr Hurd had rejected this proposal, describing the "climate" argument as too vague. The Ambassador said that Lord Fitt had been annoyed by the decision on the Maguire case and would seek to raise it in the House of Lords. Sir John Biggs Davison had also been disappointed.

Declan O Donovan
21 January, 1987.

c.c. Tanaiste
Secretary
A-I
A-I Secretariat
Ambassador London
Box

2008p

BRITISH EMBASSY,
DUBLIN
20 January 1987

Mr Peter Barry TD and Tanaiste
Department of Foreign Affairs
Dublin

Rec'd 4.45 pm from
British Ambassador

21/1

Dear Minister,

I transmit with this letter the text of Mr Douglas Hurd's message to you today.

Mr Hurd is making a statement in the House of Commons this afternoon. The original of his letter to you, together with the text of his statement to the House and the other voluminous attachments to his letter, will be delivered to the Irish Embassy in London as soon as he rises to address the House.

Yours sincerely,

N M Fenn

cc : Tanaiste
Secretary
A-1
A-1 Sect.
Box.

In Holstan
for draft reply pl.

21/1

TEXT OF A LETTER DATED 20 JANUARY 1987 FROM THE RIGHT HONOURABLE DOUGLAS HURD MP, SECRETARY OF STATE FOR THE HOME DEPARTMENT, TO MR PETER BARRY TD AND TANAISTE AND MINISTER FOR FOREIGN AFFAIRS

Thank you for your letter of 10 December in which you expressed concern on behalf of the Irish Government about the safety of the convictions in these cases.

As you know, I have been undertaking thorough reviews of all three cases in the light of various representations made to me. I have now completed those reviews and am announcing my decisions in a statement to the House of Commons this afternoon. I enclose a copy of that statement.

I have decided that there are grounds on which I can properly refer the Birmingham Six to the Court of Appeal using my powers under Section 17 of the Criminal Appeal Act 1968, but that no such grounds exist in the Guildford and Woolwich and Maguire cases.

My decision in the Birmingham case is based, first, on fresh information about the scientific evidence given at the trial against Patrick Hill and William Power and, second, on the allegations made recently by a former Police Officer, Mr Clarke, that he witnessed intimidation of five of the six men in Police custody and saw signs of injuries on them.

The effect of my decision is that the cases of the six men concerned are now to be treated for all purposes as if they had lodged appeals in the ordinary way. It follows that their cases are now sub judice and that it would be improper for me to say more about them. The Court is not limited to considering the particular matters which form the basis of my reference and it is open to the men to seek to raise whatever matters they wish.

I have carried out very thorough and detailed reviews of the Guildford and Woolwich and Maguire cases. I have examined carefully all the arguments which have been advanced in the various television programmes, articles and books, including that published by Mr Robert Kee in October. I have had to conclude that there is no new evidence or new consideration of substance which could properly form the basis of a reference to the Court of Appeal.

I believe that it would be wrong for me to depart from the principle which has been followed by previous Home Secretaries that the power of reference under the 1968 Act should not be exercised unless there is some new evidence or consideration of substance which the Court could consider and which casts doubt on the safety of a conviction. Unless this principle is preserved the way would be open to interference by politicians with verdicts which have been reached by a jury, having heard all the evidence, and upheld by the Court of Appeal. There is also the practical consideration that it would be pointless to refer a case to the

Court/

Court of Appeal on the basis of arguments which the Courts have already considered or which plainly had no evidential value. It would be an abuse of the Section 17 procedure to exercise it in this way and could serve only to bring into disrepute the arrangements for considering alleged miscarriages of justice.

In the Guildford and Woolwich case, the arguments about the convictions have turned essentially on the confessions made by the four, the alibis which they put forward and the subsequent claims made by members of the Balcombe Street Gang and Brendan Dowd that they were responsible for the Guildford and Woolwich pub bombings and that the four convicted had not been involved.

It is clear to me that no new evidence or consideration of substance has been offered on any of these matters. The reliability of the confessions was, of course, the focus of the trial: the convictions rested wholly on the admissions made. The matter was also considered on appeal. In the case of the alibis, these, too, were examined at great length at the trial and in Richardson's case, specifically considered on appeal. The claims made by the Balcombe Street men and Dowd formed the main plank of the four's appeal and were examined in detail by the Court of Appeal, which concluded that there had been an attempt at deception.

As regards the Maguire case, the convictions rest almost entirely on the scientific evidence, namely, that thin layer chromatography (TLC) tests on all seven defendants indicated that they had handled nitroglycerine. (I should emphasise here that the criticisms made of the Griess test have no bearing on the reliability of the TLC test). Those who are convinced of the innocence of Mrs Maguire and her co-defendants have, understandably, sought to identify weaknesses in the TLC technique or in the results in the Maguire case. But, having examined this matter very fully, I am satisfied that no new points of substance have been raised and that the scientific evidence remains unshaken.

The two enclosed memoranda on the Guildford and Woolwich and Maguire cases set out in greater detail the reasons why I have been unable to conclude that the arguments which have been advanced provide grounds for a reference to the Court of Appeal.

In reaching these difficult decisions I have, of course, taken fully into account the points which you have put to me on behalf of the Irish Government. I have also been aware that, in making representations to me, you were reflecting the widespread concern in the Republic about the convictions in these cases. I have been grateful for the understanding which you have shown of the importance of my considering each case thoroughly and of the time which this must inevitably take in complex cases of this kind.