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AMBASÁID NA hÉIREANN, LONDAIN

IRISH EMBASSY, LONDON.

17 Grosvenor Place,
London SW1X 7HR.

9 December, 1988.

CONFIDENTIAL - BY COURIER SERVICE

Mr. Dermot Gallagher,
Assistant Secretary,
Department of Foreign Affairs,
Dublin.

Dear Assistant Secretary,

Lunch with the Solicitor-General, Sir Nicholas Lyell QC, M.P.

Lyell argued the British case fluently and very vigorously throughout an extended discussion. He paid very fulsome compliments to both John Murray and Matt Russell who are, he said, excellent legal minds; both command the highest respect in London, he said. John Murray, he argued, is, however, in an impossible situation vis-a-vis the present Irish law. The pressure on this case from the media, arising from major political tension amounting to inter-Governmental crisis (in his view), puts Mr. Murray in a position unheard of in Western European countries. London is confident that he will strive to discharge his responsibilities scrupulously and will come to the only correct - in Lyell's strong view (he explained this very heavily) the inevitable - decision on the warrants. However, he believed that the present environment for the task is most undesirable and is "invidious".

Lyell said that the twenty pages of material provided to fulfil our legal requirements could, in his judgement, leave no doubt as to the British basis for prosecution and the intention to do so. If any other judgement was reached in Dublin, their faith and trust would be pretty well shattered. He foresaw too, in the event of a negative decision, a storm of opprobrium in Parliament directed at Dublin. He and Mayhew would not contribute toward this but he was quite sure that nothing they could do would have any significant mitigating effect on Parliament as a whole. He saw, he said, the distinction between the Attorney General's role and the Government's, and he agreed with me that, not being a member of the Dail, John Murray is even more remote from the political process than is Patrick Mayhew. But all of this would be lost sight of if the warrants fell. As regards Mayhew and himself, he asked what I would expect them to say in reaction to a negative decision. Their integrity and their reputations rested, he said, on getting their position right, as they are convinced they have.

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They would have to defend their position in, of course, as courteous a way as possible, but with as much vigour as the circumstances would require. For the present, however (that is, until they hear the decision), they rest on the view that the decision will be to back the warrants.

He strongly attacked the '87 Act. He said that they warned us consistently, again and again since it arose late last year, that there would be trouble. The 1965 provision for 3-day detention is "wildly flawed". What is specifically needed is a provision that could and would be acted on, enabling interim detention until the Attorney General can indicate his position on the warrants concerned in all cases. Anything less, he argued, is a nonsense.

I elaborated our arguments about the position in practice regarding interim warrants, and also argued that this aspect of this case had become over-heated; after all, Ryan was not a fugitive and may very well not try to become so at any point (speaking personally, I thought that he would not). Also, leaving aside for a moment the wider argument of principle about the three-day provision about which, of course they are entitled to present views, the fact was that under existing law Ryan, if arrested on Friday evening, would have to have been released on Sunday night, and they knew that fact.

Lyell became very warm indeed on the subject of their efforts to make contact from the Friday evening onwards. He would not hear out my protestations about John Murray's absence from Dublin, saying that it was too embarrassing to listen to them. He said he did not believe that an occasion, at which Mr. Murray was speaking to the sort of audience which would want to hear about 1992, could be somewhere that did not have a 'phone. He spoke personally, he said, to the Garda on duty in the Taoiseach's office (where his call was put through) on Friday evening. The Garda told him "I would not like to disturb the Attorney General socializing". It was plain to him, he said, that John Murray just would not be contacted although he knew that attempts were being made to raise a matter of the highest importance and urgency in the minds of a friendly Government. It has had a very bad effect in London, he said, although he stressed that Mayhew and himself, despite their strong feelings about it, have not tried to make the problem worse by disseminating those feelings. Overall, he viewed this aspect as further evidence of the invidious position in which John Murray has been cast by his present responsibilities.

He said that, whatever about the informal nature of this conversation, and our previous conversations, he wanted to leave one formal point with me in the form of a request to be given the absolute maximum possible prior notification of the decision on the warrants, most particularly if the decision was to be a negative one.

He meant this request to be understood, he said, in a positive way : they would wish to have as much time as possible to prepare to contain the problem. I said I would certainly arrange to have this point conveyed to Dublin (Ambassador O'Rourke did so a short while later).

We discussed the Criminal Law Jurisdiction Act. I knew, I said, their general position on it. However, on foot of the fact that they agreed to its usefulness in certain kinds of cases, what, I wondered as a layman, prevented them having Ryan tried in Dublin on foot of at least two of the warrants.

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Further, I asked, why did they seem to have rejected a trial in Dublin in this case by asserting that two of the warrants could not be used for this purpose. Were there not, I asked, other possible pieces of legislation such as for example, the 1861 offences against the Person Act which, when studied by experts, just possibly could fit one or the two of the warrants concerned. Lyell accepted this point, saying they had not looked into alternative legislative possibilities. I also argued, as strongly as possible, that one good warrant is surely enough for a successful prosecution. I mentioned that Mayhew had adhered to his unwillingness to drop two perfectly good warrants, but argued that if the overall purpose is in all the circumstances to secure a successful conviction against Ryan, then it surely hardly mattered where it happened. Lyell said - after we had talked this back and forth for some time - that he agreed with the thrust of the argument. While, in my judgement, he did not go so far in his thinking here as to consider whether they might withdraw these warrants and approach on the CLJA route (although, he said, it is quite a normal thing to withdraw warrants), he did seem to move in his thinking a perceptible distance toward a better attitude to possibilities under the CLJA in this case.

I said I had been rather taken aback by a point made by Mayhew in our two recent conversations, about difficulties with witnesses under CLJA prosecutions in Dublin. What were they, I asked? He said that witnesses would fear for their lives and those of their families. I argued, very strongly, that I could not easily see this - as they had in the Gibralter inquest - as a difficulty of a procedural and technical nature. Why could we not take exactly the same approach to such cases, thereby ensuring safety through anonymity. Lyell said he accepted this and could indeed foresee such a procedure "at some point in the future when such drastic things may have to be done". In response, I argued that the abolition of juries was a most profound departure from normal practice, necessitated by the reality of terrorism. I did not see how, that done, one could not now, whenever necessary, take decisions about procedures to enable CLJA cases to proceed successfully. Lyell said he found this argument persuasive and that he agreed with it.

He said here (although I had not asked him for this information and I made this clear for the record after he made the point) that Mayhew would have been referring to specific witness problems in this case. He did not want to name the witnesses concerned, he said, but he asked me to believe that there are specific problems with particular witnesses who are needed by the Crown. "They would not go to Dublin", he said. Having made it clear that I had not been probing regarding the Ryan case, I said I thought that the general argument, which he had taken, still stood.

On the point of possibly withdrawing warrants and taking the alternative CLJA route (or any other legal route), Lyell corrected my impression that it would be necessary to take this decision before the problem of potential double jeopardy began to grow and become substantive (say before the Irish Attorney indicated his mind on the warrants). He said that in his view this was not so. Rather, he said, our position is based, as he understood it, on the point made by John Murray - which they fully understood in London - that they just can not play ducks and drakes with the law.

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I made strong wider arguments about the Taoiseach's overall strong commitment to the Anglo-Irish process, to the Agreement as a whole, to the extradition process under the law, and to getting over in a good way the various difficulties with which he has been presented, usually from the British side. I situated all this, in graphic terms, in the background climate of very strong public and political opinion on issues arising in the context of British justice in both Northern Ireland and in Britain. I went through this in detail, having told him that I strongly believed he needed to know this in a graphic way because no Government could be expected by another to deliver on issues as though background political realities, unpalatable though they may be to the partner, did not exist.

My argument culminated with the charge that Mates and Mrs. Thatcher have fundamentally worsened the whole climate in which British justice is seen in Ireland. He pointed to Mates's retraction but I said that, if anything, that made it worse as it showed Mates's casual preparedness to cheerfully recant a statement in which he had in all eyes taken visceral pleasure. Sound and sane voices in the Republic were now saying "thank heaven we have safeguards and we will not have them criticised!" Lyell wondered whether malign elements would not exploit this and I said of course they would indeed do so : why should they be blamed for using in their interest weapons handed gratuitously and carelessly to them by the British Prime Minister. Against this background, I argued, he should see the Taoiseach's statement in the Dail (preparedness to look at the law in terms of how it works) for what it was - a very positive and helpful contribution in the most difficult of circumstances.

Lyell said he appreciated these points, and had "taken fully on board the force of the argument". We parted in good terms.

Yours sincerely,

Richard Ryan
Minister-Counsellor