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W. H. C. Campbell
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17 Grosvenor Place
SW1X 7HR

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14 April 1988

W. H. C. Campbell

cc P.S. Tait's car
PSM
R-6
Mr. Kelly; Mr. Russell?
Mr. McHugh; Mr. Russell
Counselor M
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FOR EXTRADITION
John M. Murray

Dear Assistant Secretary

Lunch with the Attorney General, Sir Patrick Mayhew, QC, M.P.

1. Extradition

Following last Thursday's meeting, and having examined the report from his own side, Mayhew said he will write later this week to John Murray "in a positive way" in order to enable extradition arrangements, on the basis of the Irish law, to proceed. They have, he said, a number of specific cases waiting: when the new procedures are agreed between the two Attorneys, warrants will follow. He will go as far as he can, he said, to meet Irish requirements under the new law and he believes that his response this week will be seen to do that. He would have difficulty naming witnesses for fear of intimidation; he has some difficulty with providing certain kinds of new evidence, and he continues to worry about the real likelihood, as he sees it, of justiciable review in the Irish courts, but he will as far as possible meet the requirements arising under "the fact" of the new law.

He reiterated his feelings about the new law, and reserved, he said, some measure of personal doubt that it will not lead to some difficulty in practice. However, he reiterated emphatically that he views the law as a fact; that he fully respects John Murray's requirements under it and the obligation on the British side to do everything practicable to meet those requirements in order to make extradition work; and that the Irish side was last Thursday acting, in its presentation, on the basis of Mr Murray's considered perceptions of what the law would require from him.

He is under no illusion, he said, that Irish judges and defending Counsel might prove less agile than their British counterparts. He has felt from the beginning that the road taken under the new legislation could lead to judicial

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review of extradition cases in the Irish courts and that there is a ball-of-twine character to what will be legitimately needed by John Murray from him and by the Irish courts from John Murray. It is, however, their determination to act in good faith and to meet as far as is reasonably possible the requirements of the law as represented to them. He had to say, however, that the considerable extension of the requirements represented to him now, as opposed to late last November, when John Murray came twice to see him, clearly bears out his own analysis from the beginning of the dangers inherent in the approach taken by the new law. He is not surprised that John Murray now needs much more than his approach reflected five months ago. He also fully recognises that our Attorney must cover himself vis-a-vis the courts and clever defending Counsel. The essential question is whether the system we are hopefully now setting up in the event ^{may} prove to be resilient to judicial review in the Irish courts.

Ambassador Fenn has, he said, been reporting vigorously from Dublin. Inter alia, Fenn reported that, following Mayhew's two meetings in London with John Murray late last November, Mr Murray allegedly commented (following the first meeting) to the Taoiseach that he had been "sent home with a flea in his ear"; and commented (following the second meeting) to Fenn himself that the British should perhaps remember that they are no longer a colonial power in Ireland. Both reports had, he said, distressed him as he had tried in both meetings to be as objective as he possibly could in his responses to the Irish case as represented to him. He had felt strongly that over lunch in the Garrick Club, and at dinner subsequently, he had established a good personal relationship enabling the sort of frank exchanges which had taken place in November. He regretted if his manner had given an ^{unpleasant} impression and he would be anxious, if that were the case, to try to correct it when an opportunity arose.

He said again that he will act determinedly to make the new arrangements work. If, despite best efforts on both sides, however, difficulties emerge which defeat the purpose of the Act and prevent extradition, they feel they can "bank the cheque" of the Taoiseach's solemn assurance to the Prime Minister that, if with experience the arrangements are less than satisfactory, the Government would bring forward proposals to deal with such a situation.

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Having made this point, Mayhew went on, as it were in a comment on what he had just said, to wonder whether the cheque would in fact prove "cashable". He concluded, however, by saying strongly that at this point the job in hand was to try to make the new arrangements work.

On procedure, he said he did not consider that a further meeting of officials was necessary, or that the two Attorneys need meet just for the purpose of concluding the arrangement. In his view, he said, the test of the arrangements will come when extradition cases begin to flow through the Irish courts and at this point he hopes that his letter to Mr Murray will open the way to proceed to the next phase.

I did not push him to reveal details of his imminent letter to our Attorney General, on the basis that that is, strictly speaking, a matter between them. There may be some reservations on his part, over and above those mentioned above regarding the naming of witnesses, certain raw evidence and the overall worry about the possibility of justiciable review; if so he did not mention them. His overall manner, however, rang distinctly of a determination to conclude the present phase and to get the arrangements into workable order. He seemed pretty confident that his letter would be seen to reflect that.

2. Stalker/Sampson

I set out our very serious difficulties with the substance of the decision by Barry Shaw reflecting his views (I stuck to his version of the way the decision was arrived at in order to encourage the conversation). I pointed to the surely obvious fact that considerable success in developing Garda-RUC co-operation on the ground, and confidence within Northern Ireland in the police and the administration of justice have been seriously damaged. I queried whether consideration of the "public interest" and "national security" could, in Northern Ireland if anywhere, be separated from these essential questions. I had to assume, I said, that there must have been grave reasons to come to that particular decision in order to prevent certain facts emerging in the context of trials of those who perverted the course of justice. Indeed, I said, such an assumption made it difficult for even a good-willed observer not to speculate that there were very dark matters under wraps which required this arrest of the course of justice. I went on to elaborate

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at some length as to the problems thrown up by the decision and the procedures adopted, and said that it had been found to be incomprehensible in Dublin that prior notice and explanations even on a strictly confidential basis had not been considered at the very minimum.

Mayhew listened in a level way to this. He replied by saying he accepted that this decision was "fair game" for criticism. He absolutely accepted that. It had been one of the most difficult decisions taken in his professional career (he then very quickly corrected this to say that the decision was Barry Shaw's but that he could, if he wished, have overturned it). The decision had been months in the making. He wanted to stress, he said, that every aspect of the matter had been given very careful thought. He simply could not have come to any conclusion other than the one he did.

As to procedure, he felt bound - he stressed this - to not make known the content of his statement before it was given to the House of Commons. However - and he stressed this too - he had made sure that Tom King knew about it on the previous Thursday. King also knew that he did not intend to make the statement until Monday (the House is usually virtually unattended on Fridays and he would have been criticised for trying to evade the House if he did it on Friday). Thus, in his view it was very much a matter for Tom King to decide what to do on his own responsibility with the information between Thursday and Monday. King could have informed Dublin, he said, although if there had been a leak there would have been outrage in the Commons. King, he speculated, probably played safe in deciding to do nothing.

As there was an ostensible frankness running through the conversation here, I offered the view that, given the shared feelings of urgency and commitment in Dublin and London which underlay their joint and risky undertaking in the Agreement - aimed inter alia at "bringing in" the minority vis-a-vis the courts, the security forces, etc. - what he had said to me did not, with the deepest respect, mitigate the sense of serious damage done. I said there is now a stronger feeling than before in Dublin that the Northern Ireland problem, and our co-operation, are in practical terms not always or even often nowadays amenable to decision-making procedures in London - the system of separate, autonomous, monolithic decision-making structures of which he and his Department was one. He said he accepted the

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force of this. He also accepted, he said, the need for deeper, pre-emptive co-ordination on matters of great importance to both sides. I asked him whether he could bear this in mind on future occasions when - as may well happen - other sensitive matters with wide implications come up for consideration. He said he could do so in principle but would worry about the potential problem of leaks (he was pretty rough at several points on the subject of leaks from Dublin, and was harsh about the Irish Times headline last Friday detailing the officials' meeting on extradition the previous day). I said I could not defend leaks which, however, were not in short supply from London either. However, I offered the personal view that on matters of grave importance, and in the context of a formal Agreement addressing a very serious problem in Northern Ireland, it seemed axiomatic that we could not proceed on the basis of doing nothing rather than something because something had dangers of one sort or another attaching to it: such an approach would have aborted the process toward the Agreement itself. Mayhew said he accepted this and would bear it in mind for the future.

3. Birmingham Six

On this point he did the running. He made all the expected noises and said that in his view the currency of our case on Stalker/Sampson and other very valid issues was devalued by our position on this matter. There would be no question of acceptance of our position at any level - judicial, Parliamentary or public - in Britain. He reiterated the extremes to which the system had gone to sift again all the old material and to look in detail at new elements introduced. He did not himself pretend to know the ultimate truth in the case, but he was satisfied utterly that the process of law had done everything possible. He felt confident that if, even now, further evidence came forward, the law would not hesitate to look into that too. At the present stage, however, he wanted to register his deep feeling that it was improper for Dublin to impugn the Appeal Court presided over by the Lord Chief Justice.

I took him carefully through the background to the Government's position on this case and to a considerable extent he accepted the distinction between the Government's formal position and the strong tide of feeling running in the Oireachtas and among the public generally as reflected in the

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media and otherwise. He stuck, however, to his view that by raising the matter inter-Governmentally we impugned the Court of Appeal and devalued our arguments on other matters.

4. Gibraltar

He said he was invited to join the group of Ministers set up to decide how to handle this matter as it was emerging: a series of options was being considered as events unfolded. When the question of SAS involvement became a serious element he decided to refuse to be part of the working group. His reason was that if there were deaths it was possible - "not likely, you understand, but possible" - that SAS men could end up in front of the courts being charged by him. He decided therefore to preserve his own independence and stay out of the process of policy preparation.

He was critical of comments from Dublin, and from other sources and in the media generally, about the killing of the three people involved. He stressed, however, that his criticism is based on the fact that such comments preempt the post mortem process. He would expect criticism if the post mortem does not prove comprehensive and leaves serious questions unanswered, but he would have felt, he said, that in the present phase restraint would be more appropriate.

5. General

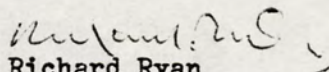
He has been personally outraged, he said, by comments in the media (not just Irish - he mentioned the Guardian and other British papers) that his Anglo-Irish background and his undoubted friendship with members of the Northern Ireland judiciary have impinged upon his consideration of the Stalker/Sampson issue. This made his blood boil, he said. In his view an Attorney General is either known to be honest or he is not. If he is honest, then he will be able - just about - to take certain very difficult decisions; if he is not, controversial decisions will bring him down. He hoped, he said, that behind all the media speculation to the contrary, the authorities in Dublin accepted that, leaving aside the difficulties represented by the conclusion, it was at least arrived at honestly.

He said that, having read a very nasty piece about John Murray by Bruce Anderson in the Sunday Telegraph, he had made his views known to Anderson in a very direct way. He said he told Anderson that he did not know what he was talking about and he asked him to "lay off".

He wondered whether, at an early date once the present extradition matter has been resolved, he and John Murray could envisage meeting over lunch or dinner. He would like to put all the media unpleasantness and the difficulties of recent months behind them.

Finally, he would like to maintain dialogue and he would, he said, bear in mind various points made on the issues discussed.

Yours sincerely


Richard Ryan
Minister-Counsellor