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IRISH EMBASSY, LONDON.

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SEEN BY
P.S. Tanaiste
P.P. SEAS.

see Mr Waller
Mr de Hove / Mr Rosen
3 Counselors A1,
Box.

In London
To read &
to files.

AD 27/6

CONFIDENTIAL - By Special Courier

13 June 1988

Dear Assistant Secretary

BIRMINGHAM SIX, GUILDFORD FOUR, MAGUIRES

In accordance with instructions (Telex C140 of 23 May) I sought an interview with the Home Secretary to discuss the above cases. You provided an aide-memoire and supplementary speaking notes. I saw the Home Secretary today. As you are aware, on Friday last I received a letter from his Private Secretary, the text of which is enclosed.

As usual, the Home Secretary received me in a friendly way. I explained that in the normal course the Tanaiste would have asked to see him but that he is unfortunately not yet well enough. I made some other preliminary remarks to the effect that he was well aware from his meetings with Irish Ministers and Parliamentary Delegations over the years that we approach this question from a total abhorrence of violent crime and a wish to see those guilty of such crimes put away. I made the point also that there are hundreds of convicted terrorists in prison in Britain, in Northern Ireland and, not least, in the Republic; we are glad of this and do not intervene. However, in the cases in question, Irish public opinion (and parliamentary and political opinion) shares the concern and the continuing conviction expressed - in particular by prominent and respectable people in Britain who do not have any a priori position in favour of the Irish - that the wrong people may be in prison in these cases.

I then summarised the content of the aide-memoire and in the course of the subsequent conversation made all the points contained in the supplementary speaking note.

Mr Hurd said he was not surprised by anything I had said and he was grateful that I had set out our concerns clearly. He said he also had to be very clear in his response. He made the following points in regard to the Birmingham case:

- he had referred the case to the Court of Appeal on the basis of new evidence; after a long and careful hearing the convictions had been confirmed;

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- it follows that the prisoners are properly convicted and cannot be treated differently from other prisoners; to do so would suggest that there is a doubt about their guilt and there is not;
- this does not preclude humanitarian treatment but, he repeated, the only line he could follow was that their treatment cannot depend on some supposed question mark over their guilt;
- it was because of these considerations that he felt I should have the letter which was sent to me on Friday last; it would be a mistake to put it about that diplomatic or political considerations weighed in considering such cases.

He went on to say in regard to the Guildford and Woolwich cases that he had asked Sharples for clarification on a number of points. It will be another few weeks before he will have the further information. Afterwards he will have to find time to reconsider the case and to reach a decision. He could not give me a precise date for his decision but I had the impression it might be a few months. In response to points made by me he said that the views of distinguished people who had made representations to him could not be decisive. The decision on referral must rest on matters not previously before the Court.

In response to what I had said on the Maguire case, Mr Hurd commented that here no serious attempt had been made to bring forward new evidence. In further conversation, in the course of which I elaborated on the points already made and referred to the propaganda value of these cases - which showed no signs of going away - to opponents of the Government, Mr Hurd did not move from the position he had already stated. He said in regard to the Birmingham case that, realistically, he had no further room for manoeuvre and he described the situation in regard to the Guildford case as "fragile".

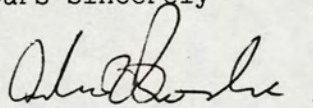
Mr Hurd raised the question of publicity. He said that he realised we have a problem of presentation, and that we would wish to say that we had made representations. However as had been pointed out in the letter sent to me, if it were suggested that diplomatic or political considerations are to be taken account of, he would have to set the record straight.

You will see from the above that there is no give at all at the formal level and indeed a new element of unwillingness to allow any suggestion to be made that high level contacts might lead to progress. This does not mean that humanitarian gestures, such as the McIlkenny release to attend his brother's funeral, may not continue in the Birmingham Six case. However, the Home Secretary, as has been made known to us through many contacts and as he has repeated now, does not at present have the political leeway to make concessions outside the normal framework of prison regimes. He is of course aware that the campaign - led by Chris Mullin and others - will continue but he appears to be quite unconcerned at this. He did not, in fact, seem to be aware of the amendment to the Criminal Justice Bill which is down for this week (Sir John Farr, Chris Mullin and others) to secure an

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independent review tribunal in cases of alleged miscarriage of justice. When I mentioned it as part of the ongoing campaign, however, he was quite confident that it will get nowhere.

Yours sincerely



Andrew O'Rourke
Ambassador

Mr Dermot A Gallagher
Assistant Secretary
Anglo-Irish Division
Department of Foreign Affairs
Dublin 2

P.S. On the Guildford case, Mr Hurd said that he would ensure we are not "surprised" by his decision; that is, he will see that we are told before a public announcement is made.





HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

10 June 1988

Dear Ambassador,

I am writing to confirm that the Home Secretary will be able to receive you and the aide memoire you propose to deliver at 3.30 p.m. on Monday, 13 June.

In view of the Tanaiste's statement of 14 April it may be helpful if I explain the Home Secretary's role in considering alleged miscarriages of justice and the basis on which he will feel able to discuss these issues with you.

It is the Government's view that matters of guilt or innocence, and the consideration of alleged miscarriages of justice, are properly to be dealt with by the courts, free from interference by Ministers. The Home Secretary has the power under section 17 of the Criminal Appeal Act 1968 to refer a case to the Court of Appeal if he thinks fit. In exercising this power he acts in an individual capacity and does not consult other members of the Government. In reaching a decision whether to refer a case to the Court of Appeal his concern is to establish whether there is new evidence or some other consideration of substance in the individual case to justify such a referral. These criteria normally exclude wider political or diplomatic issues. Where a case has been referred to the Court of Appeal and, after full consideration, the appeal has been dismissed, the Home Secretary would not think it right to recommend the use of the Royal Prerogative of Mercy in the absence of any indication to this effect by the court.

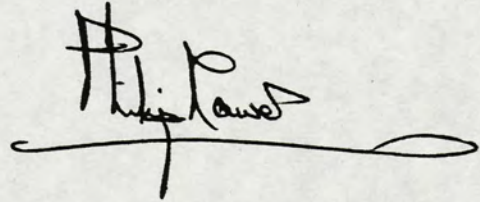
So far as the Guildford and Woolwich case is concerned, you will know that the Home Secretary is at present considering a report by the Avon and Somerset police, together with other matters raised with him by a delegation led by Cardinal Hume. His concern is to establish whether there is, in the matter presented to him, new evidence or other considerations of substance which would justify the referral of the case to the Court of Appeal.

In relation to the Birmingham pub bombings case, you will know that the Court of Appeal has recently fully re-examined it, and the House of Lords decided not to allow an application for leave to appeal on a point of law. In the absence of any further new evidence or other consideration of

substance the Home Secretary would not feel it right to consider intervening at this stage in any way.

In the light of these considerations the Home Secretary will be ready to meet you. If you call on him and the matter were to become widely known, I am sure you will understand that the Home Secretary might then wish to make public the contents of this letter.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Philip Lawton". The signature is written in dark ink and is positioned above a horizontal line that extends to the right.

P J C MAWER

His Excellency Mr Andrew O'Rourke