

NATIONAL ARCHIVES

IRELAND



Reference Code:	2015/89/73
Creation Date(s):	30 October 1985
Extent and medium:	3 pages
Creator(s):	Department of the Taoiseach
Access Conditions:	Open
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Birmingham Bombings

I told Mr. Holt of the British Embassy, who called by arrangement this morning that the Embassy in London had raised this matter yesterday with Gerald Clark in the FCO. I said that in response to Press enquiries yesterday correspondents had been briefed on the representations made. I let Mr. Holt have copies of the coverage in the Irish Press and Irish Times whose reports best reflected the briefing given.

I said the ITV World in Action programme shown on Monday evening had made three important contributions. While it was not for us to say what would or would not constitute "new evidence" it appeared to us that the programme had made a powerful case for review. We had noted that the evidence compiled by the programme makers would be presented to the Home Secretary by Sir John Farr M.P.

The elements of new evidence produced by the programme makers were three fold:

- All but Mr. Hill had made confessions. They had claimed later that they had made these confessions under duress and following brutal physical and mental treatment by the police. The programme had provided evidence by an expert that photographs taken of the accused before they left Police custody showed evidence of injury to the face. The programme had also provided statements by prison warders taken at the time by their legal representatives, showing that at least some of the accused were already suffering injuries to the body when they were taken to the prison and that they were then subjected to attacks by the prison warders.

- Perhaps most strikingly, the programme had shown that the forensic evidence in the case was not reliable. Two of the accused had responded positively to forensic

testing, the programme had shown that the positive reaction could well have been caused by contact with simple playing cards or leatherette surfaces. Doubt had also been cast on the ~~content~~ of the forensic testing.
conduct

- The programme had also challenged certain circumstantial evidence. A barmaid who had been employed at the railway station in Birmingham at the time of the bombings had said on the programme that she could not be sure she had seen the men in her bar and that it was in the nature of that type of (transient) bar that she would not remember particular faces. Nonetheless a written statement from her recalling that the men had been in her bar had been entered in evidence in the trial and had had some effect.

- There had been an element of guilt by association in the circumstantial evidence presented at the trial. The programme had contained interviews with George Lynch formerly of Birmingham Sinn Fein, and Joe Cahill, both of whom were clear in their repudiation of the idea that the accused were members of the IRA and of Sinn Fein. I said this was an area in which we had some experience. It was clear to us that the accused could have had ordinary human reasons for attending the funeral of McDaid in Belfast. We were also persuaded that the conduct of the accused since and the attitude of the IRA and Sinn Fein to them amounted to important circumstantial evidence of their innocence.

I let Mr. Holt have a copy of the Minister's Parliamentary reply in the Dail on 6 June. I drew his attention to the fact that the Minister had said that the decision about whether there was a basis for retrial was a matter for the Home Secretary and that such decisions are taken by the Home Secretary when significant new evidence becomes available which has not already been before the courts. The Minister had also

said that if such evidence were to become available in this case, we would examine it carefully with a view to making an appropriate approach to the British authorities. I said it was in line with that Parliamentary reply that the approach had been made in London yesterday.

Finally, I told Mr. Holt that when major publicity of this sort occurred in Britain in relation to an Irish case, there were naturally demands, in Ireland and Britain, to know what the Irish Government were doing about it. In the present case, the Home Secretary of the day, Roy Jenkins, had shown himself to be deeply concerned by the new evidence presented, and had indicated on the programme that he himself, if he were Home Secretary, would wish to refer the matter to the Court of Appeal. This had had a major impact here.

I said the Minister was sure Mr. Hurd would take an interest in this case, and that in reviewing the evidence to be submitted by Sir John Farr would give weight to the arguments for referral to the Court of Appeal, bearing in mind the emotional atmosphere which existed in Britain at the time of the trial.

Declan O'Donovan

30 October 1985.

cc: PSM

PSS

A-I Section

FAX Mr. Ryan, Embassy London.

Mr. O'Brien

Mr. Costello

Mr. McCarroll

P.S.

I also mentioned that Deputy David Andrews had tried to raise the matter in the Dail on the Order of Business this morning. He had been ruled out of order, but we expected that a question would be put down or that a debate would be requested this p.m.