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Reference Code:	2016/22/1949
Creation Dates:	24 July 1986
Extent and medium:	4 pages
Creator(s):	Department of Foreign Affairs
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MEETING WITH P.J. McGRORY, BELFAST, 24 JULY 1986

I met P.J. McGrory, the Belfast solicitor, in his office yesterday.

We discussed the verdicts in the McGrady and Black cases and the outlook for the Kirkpatrick case.

McGrady

McGrory reiterated his view that Mr. Justice Gibson's judgement on Gibney was "dishonest". However, Gibney, who has only another twenty months to serve, is in a more relaxed frame of mind than immediately after the announcement and is no longer pushing McGrory to appeal the judgement to the House of Lords. As he indicated in our last conversation (9 July), McGrory himself has misgivings about going to the House of Lords: first, he is doubtful that the defence can present sufficiently impressive legal grounds and secondly, he fears that Lord Hailsham might avail of this opportunity to uphold, rather than to overturn, supergrass convictions.

Black

He is greatly heartened by the positive outcome to all eighteen appeals in the Black case. Although the "vibes were good" all along and the decision did not surprise him, it was still very pleasant news. All of the defendants involved were convicted on the basis of uncorroborated evidence. He regards it as very significant that, despite the high reputation of the trial judge (Kelly) and his known expertise in criminal law, the Lord Chief Justice found it necessary to overturn all of the original judgements. Lowry would, of course, have been under pressure to avoid a verdict on the Black appeal which might force the Catholic member of the appeal court into a dissenting position once again (for the second time in a fortnight). As

the member concerned in this case was Higgins, who is very much his own man", Lowry would have been treading with particular care. Regardless of how it was reached, however, Lowry's decision on Black has greatly strengthened the hand of those seeking an end to the supergrass system.

Kelly, as Lowry recognised in his judgement, made a basic error shortly after the Black trial began. By the end of the 15th day, he had reached the conclusion that Black was "one of the best witnesses I have ever heard". Having reached this very favourable assessment of Black at an unusually early state, Kelly (in Lowry's words) "found it very difficult to attack credence to any evidence which conflicted with Black's or to any interpretation of the evidence which cast doubt on Black's correctness". McGrory believes that Kelly gave in to a private desire to "put away" the undesirables arraigned before him which meant that lavish praise for the witness's creditworthiness was required. With Black's creditworthiness so firmly asserted, however, he had no option but to dismiss even the slightest objections raised by the defence. In his verdict, Lowry tried to "let down Kelly as gently as possible", using very courteous language in explaining his reversal of the earlier judgement. Kelly's basic "human" error, however, made it relatively easy for Lowry to grant the Black defendants' appeal.

Lowry's verdict has also called into question the validity of the Attorney General's statement of 19 March last. The qualification in that statement to the effect that corroboration in the 'looser sense' (supportive evidence) would still suffice for prosecutions seems to have been set aside. As McGrory recalls, there was substantial supportive evidence against all but two of the Black defendants now acquitted, yet this has evidently not been held against them.

The doubts expressed by Lowry in his judgement in regard to the number of defendants and issues dealt with in the Black trial are also of significance. If, however, the defendants charged on the evidence of a supergrass were in future to be tried in separate trials, this could give rise to very serious problems. If several judges were to be involved, there would

be a risk of several conflicting verdicts which would raise doubts about the soundness of each individual decision and considerably heighten the chances of successful appeals. If only one judge were involved the defence, in all cases following the first, could argue that the judge was not approaching their clients' case with an open mind (having had previous experience of the witness). If Lowry decides to bring the mass trials to an end, the effect will be to produce a high number of unsound convictions - to the extent, in McGrory's view, that the "system will be unworkable". In McGrory's view, the prosecution of individuals on the basis of supergrass evidence will probably continue but Lowry may hope to dampen criticism by limiting the number to be tried in any one trial. However, this strategy could have "very fundamental implications" for the supergrass system.

Kirkpatrick

In contrast to Kelly, Carswell did not overestimate Kirkpatrick's credibility. Rather, he questioned it in a number of well-reported instances. This means that the Black outcome cannot be invoked as a precedent for a successful Kirkpatrick outcome.

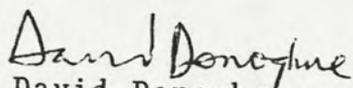
However, McGrory is hopeful that the Kirkpatrick defence can make use of one passage in the Black judgement (P. 37) in which Lowry said that "the (Appeal) Court is bound to take notice when matters which are clearly damaging to the main witness's credibility are not dealt with or are summarily dismissed". A fundamental element in the Kirkpatrick case is that Carswell dealt lightly with, or summarily dismissed, many of the arguments presented by the defence (e.g., the fact that one defendant was in jail at the time of his alleged offence).

McGrory speculated that there could be some advantage in having Kelly on the Appeal Court for Kirkpatrick (a possibility which has been mentioned several times). With his reputation somewhat dented by the overturning of his Black judgement, Kelly might appreciate an opportunity to restore it by acquitting the Kirkpatrick defendants - particularly at the expense of a colleague (Carswell) for whom he is known to have

little time and who is entirely lacking in experience of criminal law.

The Kirkpatrick defendants are, not surprisingly, "euphoric" about the Black outcome. However, a rumour is going around the prison that Lowry has already decided on the composition of the Appeal Court for the Quigley case (due to begin on 9 September): it will consist of himself and two Catholic judges (Higgins and O'Donnell). This will mean that (a) the fifteen Quigley defendants will be acquitted; (b) there will be no Catholic judges left for the Kirkpatrick case, with the result that the Kirkpatrick defendants will lose their appeals. While McGrory has no idea where this rumour has come from, he does not rule out the possibility that, with successive acquittals in the McGrady, Black and Quigley cases, Lowry could decide in favour of holding onto "at least some" of the Kirkpatrick's defendants (notably Steenson).

The latest indications are that the Kirkpatrick appeal (for which some parts of the transcript are still missing) will not begin until "well into October". However, Lowry is determined to conclude it and to pronounce judgement before the end of the year.


David Donoghue.

25 July 1986.

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