



# An Chartlann Náisiúnta National Archives

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S20574

Meeting between all-party Oireachtas  
delegation and the Home Secretary,  
Home Office, 16 October 1986 at 3.30 pm

Present:

Mr David Andrews TD  
Mr Bernard Durkan TD  
Senator Flor O'Mahony

Rt Hon Douglas Hurd MP,  
Secretary of State  
Mr David Mellor MP,  
Minister of State

Mr B O'Reilly

Mr B Caffarey  
Mr P Stanton

1. The Home Secretary opened the meeting by briefly thanking the delegation for coming. Deputy Andrews expressed appreciation of the Home Secretary's willingness to meet the delegation. They were here to express the concern of Oireachtas Eireann, both Dail and Seanad, at the various cases which had become the subject of public comment. Deputy Andrews understood that the three cases - the Birmingham Six, the Guildford Four and the Maguires - were at various stages of review. He wanted to preface his introduction by stating that both the delegation and the Home Secretary were in common cause against violence and that the delegation's involvement in these cases should be seen in that light. Although the delegation were operating, so to speak, outside their jurisdiction in raising the cases, it had to be said that the people concerned, with some exceptions, were Irish. Deputy Andrews said he felt the innocent were in jail; he wanted to see the guilty in jail instead. He went on to mention that a somewhat larger delegation had visited the Home Office and the prisons in July and had also met Baroness Younger, although only in a listening capacity. Deputy Andrews asked to be informed about the latest position in relation to the Birmingham Six: could a result be expected in terms of weeks or months? He added that, having met Mrs Maguire with Robert Kee in July, the latter's book had given added impetus to the Maguire case and to that of the Guildford Four.
2. Deputy Durkan also thanked the Home Secretary for agreeing to see the delegation. He wanted to explain briefly the bona fides of the people they represented. They were middle of the road politicians with no radical links. There were a lot of questions that had been asked on both sides of the Irish Sea and they needed to be answered. He was not suggesting that all concerned were innocent of all crimes, but he would suggest there was a strong case for review. He believed that the recently published books had come to a number of conclusions which made it necessary to assuage the fears of middle of the road people so that the system of justice could withstand attack.

3. Senator O'Mahony was certain that the delegation's credentials in relation to terrorism were beyond question. They all wanted the perpetrators of terrorist crimes to be brought to justice; equally, however, they all considered that there had been a miscarriage of justice in the three instant cases. While they could understand that such could happen in a serious situation like the aftermath of the bombings in 1974, they would like to see these miscarriages of justice rectified, primarily in order to sustain opposition to terrorism. Deputy Andrews said he would like to conclude on his side of the table by stressing that the delegation were legitimate politicians with a legitimate aim of seeing that justice was done. They were, after all, in common with the Home Secretary and Minister of State, members of the same trade union, so to speak. He asked about the prospective options open to the Home Secretary: could he refer the cases to the Court of Appeal? Could he establish an inquiry outside the framework of the Courts? Or was it possible to refer the cases to a senior legal personage, again outside the formal court framework?
4. The Home Secretary began his response to the delegation's points by saying there was no question about the delegation's jurisdiction or their entitlement to state their views. He entirely accepted their legitimate credentials and indeed understood the concern that had been expressed on both sides of the water. He also felt it was important that he should meet the delegation. The problem as he saw it was that the Home Office was not a court of law. Parliament had given him a power to refer cases to the Court of Appeal and, although that power was widely defined, his predecessors had only exercised it where there was new evidence and where that evidence was significant (i.e. if it had been available to the jury at the time of trial or appeal, it would have led to a different verdict). The reasons for this practice were that firstly it was difficult to say in 1986 that a jury in 1974 was wrong, and secondly it was hardly likely that the Court of Appeal would reach a different conclusion from their colleagues if there was no new evidence. That was the criterion.
5. As regards the cases in point, the Home Secretary said that he had looked at the Maguire case which he considered turned on the forensic evidence. There had up until now been no new evidence, but with the publication of Robert Kee's book the case would be examined again. No conclusion had yet been reached regarding the Birmingham Six case which the police were looking at in the light of Chris Mullin's book. He did not know how long that examination would take. He hoped it would not be very long. On the Guildford Four case, points had been made in Kee's book which made it reasonable to undertake a thorough examination. As a general point, however, the Home Secretary said it was difficult to argue, if the evidence was the same, that a sensible court would have reached a different conclusion.

6. Deputy Andrews said that evidence could itself be flawed. The court system was subject to human fallibility. As a lawyer, he was aware of that. The Home Secretary said that to show fallibility you had to produce new facts or show that if the evidence had been presented in a different way a different conclusion would have been reached. Senator O'Mahony mentioned that two apparently new elements in the Birmingham Six case at least were the doubts cast on the scientific evidence and the affidavits from the warders about the beatings. The Home Secretary was unwilling to prejudge the conclusions of the examination. He would look at it and come to a decision on the basis of a double test: whether there was new evidence and whether it was substantial. The Minister of State added that the question whether the contamination could have come from some innocent source and the question of the alleged assaults had been discussed not only in the Court of Appeal but also in the civil action which went as far as the House of Lords. Deputy Andrews suggested that the civil case dealt with a different issue. The Minister of State argued that it was the same issue. He went on to describe the jury system as the bastion of liberty. It was difficult to controvert the findings of a jury unless there was good reason to do so; in other words, if the jury had known what we know today, would they have reached a different conclusion.
  
7. Deputy Andrews suggested that there were surely other triggers besides new evidence. We could not entirely rely on new evidence. From the books, it appeared that confessions had been beaten out of the men. In addition, there was the Strathclyde University scientist's view of the forensic tests which may also be outside the realm of new evidence but was pertinent nonetheless. The Home Secretary said that of course they would bear it in mind. The Minister of State pointed out, however, that if the judge directed the jury properly it was difficult to overturn a verdict. The authorities had two interests: to ensure firstly that there was no miscarriage of justice and secondly that a decision of a court of law could not easily be set aside. The Home Secretary said that part of the problem was that the examination of the two books was necessarily a painstaking task and that, as a result of the time taken in examining the cases, his office was open to the accusation of stalling. He was anxious not to use his power of referral frivolously. Otherwise, the Courts would say that the Home Secretary was susceptible to political pressure.
  
8. Senator O'Mahony asked whether the public statements by Lord Scarman and Lord Devlin added to the support for a review of the cases. The Home Secretary replied that he and his officials would be influenced by the atmosphere among the public, but they had to turn their minds to the facts and to their substance. Deputy Durkan asked whether the police had carried out tests similar to those used at the time of the trials. The Minister of State said that this issue had been raised at the trial and the appeal and the Home Secretary added that doubts about the forensic tests had not influenced the jury. Mr Caffarey intervened to say that the tests carried out by Dr Caddy of Strathclyde University had been examined by the Forensic Science Laboratory and would constitute part of the internal review. The Minister of State added that,

in the case of the Birmingham Six, the test that had been used at the time of the magistrate's hearing (the purpose of which was to decide whether there was a case to be tried) had been crude; but, in the Maguire case, that crude test had been supplemented by other tests which were not as discredited. Deputy Andrews said that the Kee book had thrown cold water on the TLC test and asked whether the Minister of State had read the book. (The Minister of State had not read the book, though the Home Office officials had). There was another allegation in the book and he merely wished to repeat what Mr Kee had implied: that the police had tampered with the evidence. He said he had no wish to be impertinent; he was merely interpreting Kee's charge. Mr Caffarey said that was a very serious charge.

9. Deputy Andrews said he wished to make another point. He realised the decision which the Home Secretary had to make was a difficult one, and that he would not be intimidated by public opinion when making up his mind. He also realised that the Home Secretary was in effect being asked to challenge the legal establishment. But the Court of Appeal might after all uphold the original decision if the case was referred to it, and nothing would be lost. The Home Secretary said that it was his decision and he would make that decision after considering the results of the internal review. He pointed out that, unless the cases were referred back to the courts, the original verdicts could not be overturned. (Note: This was in reference to the two other options put by Deputy Andrews: an independent inquiry or a senior legal personage). The Home Secretary went on to say that of course the law did not prevent him from referring a case without new evidence, but the Court of Appeal would ask "what the hell was going on" if there were no good grounds for a referral. The Minister of State pointed out that the Home Secretary had made regular use of his power of referral. They did not consider it a sign of weakness, nor were they embarrassed about quashed convictions. Rather, they considered it one of the strengths of the system. The important thing was to have something on which the courts could bite.

At this point, the Home Secretary concluded the meeting and thanked the delegation again for coming to see him. His thanks were reciprocated and the delegation left at 4.10 pm.

#### Comment

The tone of the meeting changed from being initially rather uneasy - when the delegation had to make the running before an impassive and uncommunicative Home Secretary - to a relatively relaxed exchange. The transformation may have been due to an earlier expectation on the British side that the tenor of the delegation's remarks would be impatient and hostile, whereas in fact the points made by all three Oireachtas members were put cogently but politely. In terms of substance, there was not much give on the British side beyond a reopening of the internal review of the Maguire case following the publication of Kee's book and, perhaps, an acknowledgement by the Home Secretary that

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he was not in law precluded from referring the cases to the Court of Appeal even without new evidence. This was balanced by his anxiety not to be accused of frivolous use of his power. The delegation themselves felt it was a neutral meeting, but Deputy Andrews was pessimistic about a positive outcome.

*B. O'Reilly*

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B O'Reilly  
17 October 1986

cc Ambassador  
Staff  
Anglo-Irish Division