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IRISH EMBASSY, LONDON.

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9/23

cc: PS4
PPS
Mr. Wally
Mr. de la...
Councillor AI
Mr. O'Hara

20 November 1987

Dear Assistant Secretary

Birmingham Six Hearing

We have already sent some reports on views expressed to us on the progress of the case and you have asked for an update, particularly in the light of the forensic evidence.

You appreciate, I know, that assessments by lay observers are of doubtful value. It is not possible for such observers to assess the impact the evidence is having on the minds of the judges - this may be difficult ^{even} for those who are immersed in the case.

However, for what it is worth, our collective view of the forensic evidence (after discussing ~~ing~~ together our impressions of the different sessions we have attended) is that while the appellants' counsel raised considerable doubts about the value of the evidence put forward in 1974 by the principal forensic expert Dr Skuse, they did not altogether destroy his credibility. Furthermore, the Crown had a good witness on Wednesday, 18 November in Dr. Hayes, whose evidence was that the famous playing cards did not react positively for nitro-cellulose. (The appellants' lawyers placed considerable weight on the possibility that nitro-cellulose on playing cards, or other substances, could have been the cause of a positive test for nitro-glycerine in Morcambe Police station immediately after the arrests.) ~~And~~ Another Crown witness, Dr Drayton, also came across to us as credible. Our overall impression is that the appellants may not have cast sufficient doubt on the original evidence.

Ms Gareth Pierce, solicitor for some of the Six, after Dr. Hayes's evidence, appeared rather agitated, and asked me what I thought "about all these establishment forensic scientists combining against us". I replied that I thought I should not comment.

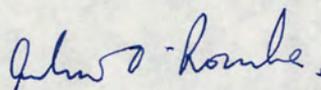
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The lawyers involved in the case are no doubt in a better position to assess the way the case is going. I have some hesitation in being too closely associated with them - in practice with the appellants' legal advisers only, because the Crown side show no willingness to talk to observers or press. However, since we need information, we are taking advantage of ~~casual~~ ^{casual} meetings which are possible before and after sessions to see what we can gather. I think we should however take account, in assessing what we are told, of the possibility that our informants may not be altogether disinterested - they have political affiliations as well as professional and perhaps personal interests which may colour what they say to us.

In short, I think it would be unwise to base conclusions about the likely outcome either on our impressions of what is going on, or on the views conveyed to us by parties to the case, who have axes to grind. The fact of the matter is that nobody can say at this stage how it will all turn out - and in any event the final chapter may not be this Appeal. If it fails, the appellants' lawyers will I am sure try again.

A further report by Richard Ryan, who attended the court this morning, is attached.

Yours sincerely



Andrew O'Rourke
Ambassador



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SECRET - BY COURIER SERVICE

*cc Ops
POS
Mr Wells
Dr. Mansfield
Mr O'Sullivan
residence
Crawley St*

20 November 1987

Dear Assistant Secretary

The Birmingham Six Court of Appeal

The report below is quite long but, because of the sensitivity, and trying to avoid any subjective sediment getting in through summarising or giving impressions of what was said, I felt I should give as close to a verbatim report as possible.

In summary, however, I believe that

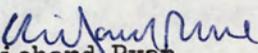
- Gifford, Mansfield and Ferguson are still pessimistic;
- they believe that the judges want to turn the Appeal down and their approach continues to be a search to find ways to do so;
- the judges feel the defence ^(the B.6 case) has failed on the beatings issue, and they ^(the judges) are more worried about the forensic side;
- Mansfield (the forensic man) will "widen" the forensic side as much as possible to sow doubts where he can on the forensic question;
- the judges are under pressure from the legal Establishment to reject the Appeal; from the media/public to accept it; and from the political Establishment (Mrs Thatcher) to give a decision, if it is a positive, before 1 December; if negative, after that date (I believe there are no concrete grounds for this last view (Mansfield's));

.../

- overall, they feel that things look sticky but, particularly on the forensic side, there is a lot still to play for;
- there is a doubt threshold which, if it can be crossed, (basically, Mansfield's job on the forensic side), and be seen by reasonable people (through the media) to have been crossed, will make a negative judgement very difficult to sustain.

Finally, Gifford, Mansfield and Ferguson have agreed to meet me again toward the end of the Court of Appeal. Gifford stressed to me the vital need to keep our meetings totally confidential. I agreed fully on this point.

Yours sincerely


Richard Ryan
Counsellor

SECRET - BY COURIER SERVICE

20 November 1987

Dear Assistant Secretary

The Birmingham Six Court of Appeal

You requested an update assessment of the prospects in the Court of Appeal. I sought and had this morning a private meeting in their room at the Old Bailey with the defending Counsel: Lord Gifford, Michael Mansfield and Richard Ferguson. During our meeting the solicitor Gareth Pierce came into the room. She did not remain or hear our conversation, and she was cautioned and agreed to forget that we were all together.

Lord Gifford said

- He would attach the utmost importance to the confidentiality of anything he said and that it would be best if such meetings were not known to take place (he had no personal difficulties about meeting me but for serious reasons - political, the prisoners' own best interests, tactical - felt that it was vital it should not leak). I gave that assurance.
- He believes even more strongly than previously that the judges are seeking any means to discredit witnesses and evidence which could prevent them rejecting the Appeal.
- They are in his view satisfied to disregard the evidence of Clarke (former P.C., defence witness of beatings). They ^{have} ~~has~~ more difficulty with Mrs Lynas (who was a policewoman, perjured herself but returned to attest beatings). On the latter the judges were grateful for a Crown witness, P.C. Collett who tried to discredit Lynas.

.../

- Their negative attitude continues in particular on the forensic side.
- The Defence will continue to sow as much uncertainty and doubt into the judges' minds as possible (bearing in mind media pressure on the judges consolidating these doubts), aiming at a re-trial decision.
- The judges want to turn down the Appeal. If they can not, a re-trial is the easiest option for them (in Gifford's view there is no chance of an acquittal): the judges would simply set aside the last judgement, order a re-trial and would be prevented from commenting on substance. The difficult thing for the judges would be (as they would have to do) to justify rejecting the Appeal in a comprehensive way, both orally and in writing. They want to do that, but can they credibly get away with it if enough doubts (based on new material/evidence/witnesses not introduced at the original trial) can be sown? That is what he and his colleagues are trying to do.
- It is very hard, in the thick of day-to-day battle, to assess what the result will be. He remains pessimistic.

Mansfield said

- The gloves are now coming off (the judges). Despite press presence, the judges are beginning to show scorn for defence theories (the "master plan" of the police cover-up, and the forensic arguments).
- The Crown asked for 6 witnesses to answer the beatings allegations. Only I was allowed. It bears out his theory of last week that the judges feel they may have enough already to reject the Appeal.
- The Crown/judges are weakest on the forensic argument and they know that.
- On the beatings, the judges suspect Clarke and feel the revenge theory (he was fired from the police) will sustain their rejection of the major element he represented for the defence (and in Hurd's analysis of the case).
- On the "master plan", the judges will not buy it. It is too "global" and too hard for them to swallow (a bit like what the Germans did to the Jews: it is, until proved, inconceivable). In Hill's case it is clear that there was such a conspiracy theory, but the judges will resist it with all their power.

- (later, privately) Gifford is in his view naive to think that he can get these judges in this case to admit that British police could engage in such a conspiracy (which, of course, Mansfield believes did happen). He intends to "widen" the relevance of the forensic argument as much as he can: this is in his view the only area where there is a hope of success. Skuse (the scientist) was pretty well blown out of the water and even the judges could see this. But Skuse was one of the main prosecution planks in the first trial.

- The wide media coverage is making things more difficult for the judges. They don't like it. It will make them much more careful. There is a public groundswell in favour of the appellants which they don't like either. All of this makes him convinced that steady erosion of the scientific evidence is the only real hope.

- Apart from public media pressure (for the appellants) he believes there are two other pressure sources. There is pressure from the highest levels of the legal profession to turn the Appeal down, to deny that there could have been a flaw in the justice system. There is also in his view political pressure from the highest level. Its form in his view is to get the judges to conclude before 1 December if their decision is positive, and after the 1 December if negative. Mansfield sees this as a lever (in either direction, depending on the decision) in the Anglo-Irish problem over the Convention. (Comment: I probed Mansfield as hard as I could on this. I believe he does not have hard grounds for this view, and that it is his own speculation. Also, he seemed to think that the deadline on the Convention is in fact 1 December. I did not explain Dail procedures to him.) He said "You must not assume that the Establishment works openly. I am sure that the judges will have had a signal". In summary, then, he said, there is media/public pressure which is helpful; (legal) Establishment pressure to turn it down; (political) Establishment pressure to give a positive judgement before 1 December and a negative judgement after 1 December.

- (I asked his view on the Crown Counsel's own attitude.) The Crown Counsel is a middle-of-the-road man. He will represent his position robustly but will not, in the circumstances, go overboard with his case.

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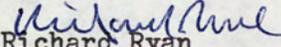
Ferguson said

- he is more than convinced that the case will fail.

- (separately, privately) Gifford's hopes of getting the Bench to accept a giant conspiracy theory reflect a confidence in the judges' disposition to be persuaded which he would not share.

They agreed that we could have a further such meeting toward the end of the matter. (Note: this report is a fairly verbatim record. I have avoided introducing impressions. It is not entirely satisfactory but perhaps represents the Counsels' own difficulties at this stage in guessing the outcome with confidence. They all agree that the judges' want the Appeal to fail; that they are not worried too much about the beatings aspect; that they are worried about the forensic side where the defence, while gloomy overall, feels that the only hope of success lies; that consistent pressure on this side might just unsettle the judges enough to win a re-trial.)

Yours sincerely


Richard Ryan
Counsellor