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Copy P.S. P.S. P.S. P.S.
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Mr. Ambrose
Mr. London
Mr. Washington
Counillor A.I.
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TO HQ FROM BELFAST
26 SEPTEMBER 1988

FOR A-I SECTION FROM O HUIGINN

IMMEDIATE

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RE: PTE. HOLDEN COURT CASE (MCANESPIE)

I SPOKE TO THE BRITISH SIDE ON THE ABOVE IMMEDIATELY ON ARRIVAL HERE AND ASKED WHETHER THERE WAS ANY FURTHER BACKGROUND DETAILS. BRITISH SIDE (MASEFIELD) SAID THAT GIVEN THE INDEPENDENT ROLE OF THE DPP THEY HAD NOTHING TO ADD TO THE FACTS AS THEY HAD JUST EMERGED ON THE MEDIA I.E. THAT AFTER FULL INVESTIGATION BY THE RUC THE FILE HAD BEEN SENT TO THE DPP WHO HAD DIRECTED THAT CHARGES BE WITHDRAWN. MR. MASEFIELD WAS UNABLE TO SAY THE PRECISE GROUNDS ON WHICH THE DPP HAD REACHED THIS DECISION. I ASKED HIM TO CHECK WHETHER IT WAS BECAUSE OF A LACK OF EVIDENCE AND ANY OTHER INFORMATION HE HAD ON THE BACKGROUND TO THE DPP'S DECISION. HE SAID HE WOULD SEE WHAT HE COULD DO ON THIS BUT POINTED AGAIN TO THE DIFFICULTY OF APPEARING TO GO BEHIND THE INDEPENDENT ROLE OF THE DPP. I ASKED WHETHER THERE HAD BEEN ANY DECISION ON HOLDEN'S FUTURE CAREER (I.E. DISCIPLINARY ACTION). AGAIN HE HAD NO INFORMATION ON THIS AS YET. I MADE THE GENERAL POINT THAT IT WOULD BE A SOURCE OF DEEP CONCERN TO THE GOVERNMENT AND TO THE NATIONALIST COMMUNITY THAT YET ANOTHER SHOOTING BY A BRITISH SOLDIER IN CONTROVERSIAL CIRCUMSTANCES WAS FOUND TO HAVE NO LEGAL CONSEQUENCES IN THE COURT AND POINTED TO THE IMPLICATIONS OF THIS FOR

CONFIDENCE IN THE ADMINISTRATION OF JUSTICE. I WILL BE IN CONTACT WITH ANY FURTHER INFORMATION I RECEIVE ON THE CASE.

ENDS

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1990

CODED MESSAGE
IMMEDIATE URGENT
CONFIDENTIAL
DATE 26/9 TIME PS
INITIALS

IMMEDIATE URGENT
CONFIDENTIAL
DATE 26/9/88 TIME 1603
INITIALS

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cd P. S. Troweack. ✓
Mr Nally ✓
Mr Lonsburgh ✓
P.S.S. ✓
A/Sec Gallagher. ✓
Mr Mathew/ Mr Borran D/Justice ✓
Mr O'Donovan ✓
Section 39C ✓
Section. ✓
Courtroom 8! ✓

Sec 3/6

~~Handwritten scribbles and signatures~~

TO HQ FROM BELFAST
26 SEPTEMBER 1988

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FOR B. MCMAHON FROM O HUIGINN

RE: PT. HOLDEN CASE

CODED MESSAGE	
IMMEDIATE URGENT	
CONFIDENTIAL	
DATE..... 26/9/88	TIME..... 1603
INITIALS..... <i>CS</i>	

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FURTHER TO MY TELEX THIS MORNING I AMPLIFIED OUR REQUEST FOR INFORMATION TO THE OTHER SIDE AS FOLLOWS:

- (A) PRECISE TERMS OF WHAT WAS SAID AT COURT.
- (B) THE BASIS FOR A BACKGROUND TO THE DPP'S DECISION AND IN PARTICULAR WHETHER THE DECISION TO WITHDRAW THE CHARGES WAS BASED ON LACK OF EVIDENCE AND WHETHER THERE WERE ANY CONSIDERATIONS OF "PUBLIC INTEREST" INVOLVED.
- (C) WHETHER THERE WAS A POSSIBILITY OF DISCIPLINARY ACTION AGAINST PT. HOLDEN AND IF SO WHEN WILL A DECISION BE TAKEN ON THIS.
- (D) WHETHER THE INQUEST ON AIDEN MCANESPIE WOULD NOW BE HELD PROMPTLY.

I ALSO REFERRED TO THE DELAY ON THE PART OF THE DPP IN REACHING THIS DECISION AND ASKED WHETHER SUCH A DELAY WAS NORMAL IN SUCH CIRCUMSTANCES.

ENDS
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1235

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TELEX

27 September, 1988.

TO: H. Q. FROM: BELFAST
FOR: A/SEC. GALLAGHER FROM: O HUIGINN

Meeting with Secretary of State

1. I had a meeting with the Secretary of State in Stormont Castle this afternoon at his request. Mr. Stewart (Minister of State), the British Joint Secretary and a number of officials were also present.
2. Mr. King spoke of his dismay at the outbreak of further controversy on the McAnespie case. He had considered whether he could have avoided making a statement in response to the Irish Government statement, but reluctantly concluded that the nature of the latter left no choice but to respond. The result was a spectacle of public controversy between the two Governments which gave comfort only to the terrorists and others with an interest in seeing them divided. His frank reaction was that they (i.e. the British) had not helped us, in that they should have provided more background information and possibly more advance warning (but in that respect there was the difficulty of the independent role of the DPP). Equally he had to say we had not helped them through the very strong tone of the statement. He would have thought that a statement expressing concern and referring to our request for information from them would have protected the Irish Government position without raising the temperature to the extent involved in the statement which he frankly felt went far beyond what was called for. He emphasised at this and a number of subsequent points the anger it had caused both to him and to others in the British system. He would be writing to the Tánaiste on the matter. His concern was now to prevent matters getting further out of hand. He would do his best to provide as much background as he could for us and he hoped that both sides could

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refrain from adding any fresh fuel to the public controversy which had erupted.

3. He went on to say that he frankly had not been too surprised at the outcome, given the fact that outside witnesses were such a distance away and the difficulty of securing evidence to challenge the soldier's version of events. He reverted to the point that greater endeavors should perhaps have been made to keep us abreast of developments. His own view of the matter was that the real culprit was the Lance-Sergeant whose task it was to ensure proper handling of weapons at the changeover. (He made clear that his own interpretation is that it was an accident due to careless handling in the bustle of a changeover of personnel). He thought that it was a matter for concern that the DPP's decision had taken so long, but such delays seemed unfortunately a feature of legal proceedings and he instanced the delay in bringing to trial the three suspects accused of conspiracy to murder himself.

4. I said that the tone of the Government statement gave a measure of the depth of anger felt at the decision. It occurred against the background of events of Stalker-Sampson, Private Thain and of course Gibraltar, which was nightly on our screens. The Taoiseach had an unrivalled sense of the public mood and the British side should listen carefully when he said that such events enormously complicated his task of securing effective cross-border security. The public, in the border areas or elsewhere did not think of the niceties of legal points. They considered that Aidan McAnespie had been something of a marked man and had, whether by terrible coincidence or otherwise, been shot dead. There must have been some evidence of manslaughter, since otherwise the police would not have brought charges. That evidence must have been sufficiently strong to have required careful consideration, since it had taken the DPP

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such a long time to reach a decision. This was a case which everyone should have a public interest in bringing to open court, but the contrary decision had been taken. Nationalist opinion would now simply add it to the other cases which they invoked to support the perception that British soldiers on duty are not in practice amenable to the law, with the results the Government statement had pointed to.

5. Mr. King made clear again that he personally had not been surprised at the outcome but he stressed he had had no involvement whatever in it. There had been no "public interest" consideration in the DPP's decision of the kind invoked in the Stalker-Sampson case. It was simply that, as the court had been told, there was not sufficient evidence to warrant proceeding with the case and that was a decision which had been independently reached. We had an inconclusive exchange on whether the time lag in reaching such an apparently straightforward decision had any implications. He said it was a point he would have checked. He felt that we had perhaps read too much into the police decision to lay charges. Their first concern had been the question of intent (i.e. murder charges). When they found these were not warranted they laid manslaughter charges, reflecting the seriousness of the incident but not necessarily implying overwhelming evidence.

6. I asked whether there were likely to be disciplinary charges. Both he and Mr. Stewart thought that was likely rather than otherwise, given that there seemed a clear breach of regulations on the safe handling of weapons. I asked about the inquest. Mr. King said this was something he would come back to us on. He said that we were going to have a difficult Autumn with the various inquests and said wryly he could be forgiven for wondering whether the British would ever come to an end of resurrecting these earlier

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difficulties.

7. In conclusion Mr. King stressed again the difficulty and anger the Government statement had caused, while accepting they had not helped us in the way they had handled matters. He would do his best to provide any information he could (as he recalled, he had tried to be helpful in relation to the post-mortem and the Crowley report). His fervent hope and plea was that both sides should now refrain from making any further difficulty for the other, particularly as regards public statements.
8. I undertook to pass his views on to the Government.

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Post Dinner conversation with Ambassador P
(McAnespie Case)

OIFIG AN ARD AIGHNE
(Attorney General's Office)
BAILE ÁTHA CLIATH
(Dublin 2)

An Taoiseach,
Mr. Charles J. Haughey T.D.,
Government Buildings.

27th September, 1988

in the course of the conversation:-

Taoiseach, Real dismay up North at the Government's statement.

Herewith note of conversation with the British Ambassador
last night.

John A.

cc. Mr. Nally, Mr. Dorr, Mr. Gallagher, Mr. Matthews.

*cc. Gail Rao
Ab. Lavelle
de. J. J. Cobby
i file been prepared
for Justice file).*

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Post Dinner conversation with Ambassador Fenn: 27/9/88

(McAnespie Case)

1. I had a conversation with the British Ambassador after dinner in his residence concerning the Government Statement in the McAnespie case. He made the following points in the course of the conversation:-

(a) Real dismay up North at the Government's statement. Tom King dejected at the reference in the statement to the effect which the decision would have on public confidence in the rule of law. This reference itself would serve to undermine such public confidence.

(b) The decision to withdraw the charge was entirely a matter for the D.P.P. who had a duty to assess the evidence and make a decision as to whether there was sufficient to pursue a prosecution. It would have been improper for the D.P.P. to proceed with the charge for purely political reasons. Implicit in his observation was that an attack on the decision to withdraw the charge was an attack on the integrity of Barry Shaw who had proved himself to be an excellent and independent D.P.P.

(c) There was anger at what Fenn described as a wholly inappropriate reference to the earlier decision not to prosecute the R.U.C. "in the public interest". The "public interest" factor had nothing to do

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with the decision in this case which was based entirely on an assessment of the evidence available.

- (d) It was unfortunate that the statement was issued before responses to the enquiries made through the Secretariat had been received.
- (e) He sought confirmation that the reference in the statement to 'legal arrangements' refers to extradition [confirmed].
- (f) In diplomatic tones he expressed the view that the failure to give adequate advance notice of and the reasons for the Court move was inexcusable. He had told his people so in no uncertain terms. Similarly he felt the statement issued from Belfast was too strong a riposte. He had tried to stop it being issued in those terms but he could not do so.
- (g) He thought it very unfortunate that this incident was affecting relations between the two Governments. Recent Anglo Irish conferences had been very successful, Tom King and Brian Lenihan have established a good relationship. We had been climbing out of the low trough of earlier events (Stalker, Birmingham Six etc.) but now seemed to be slipping back. Both Governments had come through a succession of "knocks" - admittedly most having come from

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their side - "and we have had to build up around them." It was regrettable that this matter was now being treated as another setback. He said that he appreciated that public opinion felt strongly about these matters but a decision must be seen for what it is - a decision by the D.P.P. to withdraw a charge on the grounds of insufficient evidence.

2. In the context of the conversation I made, inter alia, the following points:-

- (a) The Government's statement reflected the strength of its concerns at the implications of the decision to withdraw the manslaughter charge. It was a fact that the decision inevitably affected public confidence in the rule of law. The Government statement acknowledged that fact. The McAnespie case could not be isolated from the series of events over the last twelve months or so (Stalker, Private Thain, Bermingham Six etc. including the current hearings in Gibraltar).
- (b) It was difficult to imagine that the R.U.C. would not have consulted the D.P.P., at least informally, on the basis of the evidence available as to whether a charge as serious as manslaughter should be preferred against a member of the British army. It was not necessary to draw the integrity of the D.P.P. into the matter. People were entitled

to make judgments as to manner in which the D.P.P. exercised his own judgment and the quality of his decisions. The mention of the "public interest" factor in the statement was part of the general reference to previous events in the context of which the McAnespie case had to be considered.

The charge was manslaughter and proof of a sufficient degree of recklessness would be one ground for sustaining the charge. Inevitably questions arise as to why the Courts were not allowed to decide this issue.

- (c) It was not only a question of public opinion being affected by the decision but the Government had to draw its own conclusions from this case concerning the rule of law and its enforcement.
- (d) While I could see no reason for the failure to give advance warning of the decision (the fact that proceedings were pending would not be reason for doing so) the real issue in question was the decision to abandon the prosecution.
- (e) So far as his reference to "knocks" were concerned they had, as he acknowledged, emanated from his side and it was we who have responded in a restrained positive fashion. Yet the sequence was continuing.

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3. Fenn's overall approach gave the impression that he saw this as another incident which would give rise to a passing period of rough weather in Anglo Irish relations. They would make their points, resist ours and in due course get back to business as usual.

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