



# An Chartlann Náisiúnta National Archives

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SECRET

*Return to 10/12/88*  
*See Valley*

*M. King*  
*25/12*



Report of Meeting between the Ministers of Justice and Energy and the Secretary of State for Northern Ireland and Mr John Stanley, 10 February, 1988

1. The meeting lasted for just over 2 hours and covered both Stalker/Sampson and the Birmingham Six case in considerable detail. The Minister for Justice, Mr Gerard Collins, T.D., and the Minister for Energy and Communications, Mr Raymond Burke, T.D., were accompanied by Mr Dermot Gallagher. The Secretary of State, Mr Tom King, M.P., and the Minister of State, Mr John Stanley, M.P., were accompanied by Mr Mark Elliott.

2. The meeting began with the Secretary of State stating that it was not possible to respond positively to some of the original demands put forward by the Irish side. He was pleased that both sides agreed that the meeting should be informal. If there had been a Conference, he could not have postponed his envisaged statement on Stalker/Sampson to Parliament the following day - there were some backbenchers who were always lying in wait with arguments about the rights of Parliament being ignored, etc. He now hoped that the Conference could be held in Belfast on Tuesday. He would then make his statement to Parliament on Wednesday. The Minister for Justice agreed that an informal meeting was best. He also laid emphasis on the confidentiality of the meeting and said that we would not be speaking to the press afterwards.

3. Mr King made the point that, since the Conference last week, the Stalker book had been published and there had been a number of interviews with him, including that on the Late Late Show. Stalker had done a lot of good work and all of this had been available and helpful to the DPP, to Sampson and to McLachlen. Some of the things Stalker had said, such as that there had been no official shoot to kill policy and also his views on publication and prosecution, were relevant to the meeting. He would have to say however that, when Stalker speculated that the Cabinet had sat down and decided to remove him, this was nonsense. Mr King then referred to the Peter Taylor book on Stalker and, in particular, to the publication of a letter there from the six Assistant Chief Constables in Manchester in which they expressed regret about some of the critical remarks Stalker had made (copy attached).

He was not denigrating the work of Stalker but just saying that some of his speculation was nonsense. There had been no Cabinet discussion on this issue. In fact, it had been highly embarrassing for him, as Secretary of State, when Manchester had decided to suspend Stalker. He referred here to recent comments of Merlyn Rees about the Stalker suspension and said that, in such circumstances, there had to be the fullest investigation. He then proposed that the meeting go on to take up first what he called the difficult areas.

#### Birmingham Six

4. The Birmingham Six case was not a matter for the Conference. It was not a North/South issue but, if anything, an East/West one. He had of course made Douglas Hurd aware of our concerns. He had received a letter from Hurd about the issue and would give us a copy of this. In this letter, Hurd set out the background to the case and went on to say that he must accept the view that the Court had taken. There were no grounds for the Royal Prerogative of Mercy in the absence of any indication from the Court to this effect. He added that, given that an appeal may be pending, the issue was in fact publicly sub judice.

5. Mr King emphasised that the appeal hearing had been heard by the Lord Chief Justice, accompanied by two of the most senior judges in Britain. Their verdict had been unanimous. It was hard to make a claim for clemency in such circumstances and the verdict in effect "boxes him (i.e. Hurd) in for now". However, when questioned closely later by the two Ministers on whether this remark was meant to signal that something might be possible at a later stage, Mr King backed away from his earlier statement and said that he could go no further than what was in the Hurd letter. He concluded the discussion on this issue by handing over two copies of the judgement of the Appeal Court to the Ministers.

#### Publication of Stalker/Sampson Reports

6. The Secretary of State said that the two reports in question were not Government reports but police investigations carried out at the request of the Chief Constable and sent to the DPP. Such reports are never published and Stalker in his book had in fact said that they should not be published.

Some 30 police officers, who had witnessed possible criminal acts, had been interviewed at great length. Overall, about 600 statements had been taken, some of them under caution. This is largely what was in the reports though there was also comment, analysis and narrative attached to them. He again emphasised that reports of this kind, dealing with criminal investigations and containing statements (some of which were made under caution and the publication of which could put lives at risk) could not be published. Dublin must have a similar rule about the publishing of reports compiled in such circumstances.

7. The Attorney General moreover had already drawn attention to the absence of any formal evidence of a shoot to kill policy. No offence had been disclosed except that of perverting the course of justice. The Irish request was in effect seeking to revoke the decision of the DPP, with which the Attorney General concurred. The Cabinet had noted this but it was simply unrealistic and impossible for Government Ministers to over-ride decisions of the prosecuting authority. To do so would lead to anarchy. There could be no right of Ministerial direction of the Courts. At this stage, he quoted from Stalker's book in support of the policy of not proceeding with prosecutions at this stage and added that this was the "statement of a man who knew more about this than most".

#### Consultation

8. In making his judgement, Mr King said that the Attorney General did not just look at the question of national security but took all relevant considerations into account, including that of the public interest. The British side noted our concern that we had not been consulted and that this was a negation of the Anglo-Irish process. However, the honest answer was that the Anglo-Irish process could not cover judicial decisions - you cannot sit on the bench beside judges! The prosecuting authorities in Britain had an independent role which was not only outside the reach of the Irish Government but outside his own reach. At the same time, the Attorney General had a duty to acquaint himself with all relevant matters in arriving at his assessment of the public interest. Admittedly, there was a public presentational problem here as the Attorney General also had a duty not to disclose the names of those he consulted in arriving at this assessment.

However, from his knowledge of the Attorney, he was certain that he would have informed himself fully of all relevant issues and would have looked at the public interest in the widest possible sense. He would simply say "it was incredible if there was not among those the sort of considerations you would be concerned about". The Minister for Justice asked Mr King to explain what precisely he was signalling here. Mr King became somewhat confused at this stage and, in effect, took refuge in references by Stalker to an obvious interest and concern in Dublin about the role and performance of the RUC in the protection of nationalists against Loyalist mobs during the marching season and the importance (presumably he meant for the Anglo Irish Agreement) of the morale of the RUC not being undermined. The Minister for Justice again asked if the Secretary of State was saying that the Attorney General had given Irish Government interests due consideration. Mr King said that the Attorney General, who was also Attorney General for N.I., had familiarized himself with all issues. Mayhew was very familiar with the Anglo Irish Agreement and with the interest and aspirations of Dublin. While there was a propriety about who the Attorney General could formally or informally consult, it would be wrong to say that he was not aware of the interests we had and of the need to weigh these. Mr King said he could not ask the Attorney General whom he consulted, but quite bluntly he would say that it was inconceivable that he would not have attempted to have regard to the interests of Dublin. At a later stage, however, it became clear that he (King) had been consulted and that it was he who had interpreted our concerns to Mayhew. The Minister for Justice added at that stage "regrettably unsuccessfully"! The Secretary of State went on to say that the interests of Dublin were wider than the narrower one of prosecution at all costs and the interests of the nationalists were also wider than "a full steam ahead" approach to prosecution. He again repeated that there was a distinction between the areas where the Irish Government had locus under the Anglo-Irish Agreement and the judicial area, where indeed he himself had no locus.

#### Disciplinary Measures

9. The Secretary of State said that he was restricted in what he could say at this stage but that he would say more at the Conference on Tuesday. However, things were moving ahead fast on this front. There were, at the same time, two quite different time-frames in this area. The first concerned the

institution of charges, how many personnel would be involved, who they were, etc. There was then the actual disciplinary process and the length of this could depend on questions such as how much time the people concerned would request in order properly to prepare and defend their cases. He would have more to say on all of this on Tuesday.

10. There were also two different disciplinary structures. The Chief Constable was responsible for determining and hearing cases up to and including Chief Superintendent level. The Police Authority were responsible for more senior ranks i.e. above Chief Superintendent. He then went on (and this may be significant as he had not been so specific previously) to list the three ranks concerned, i.e. Assistant Chief Constable, Deputy Chief Constable and Chief Constable. Under both structures, there was a right of appeal to the Secretary of State (which he could delegate to John Stanley if he wished).

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McLachlen Report

11. Mr King said he also hoped to have a lot to say about the McLachlen report on Tuesday. The report would deal with the structures of the RUC and related matters. The "heart of the issue" was the Special Branch operating as a force within a force, outside proper supervision. He was working very hard to see how he could give the fullest possible information on this. He added that, while the report included top secret references to some intelligence matters, he would give us the fullest possible background on it and would hope to place an edited version of it in the Commons library at a later stage. He also said that a number of the recommendations in the structures area had already been acted on.

12. At this stage, Mr King referred approvingly to an editorial in that day's Irish Times which he said spoke of the real concern to see the officers involved neutralized, the tackling of the problem of structural changes in the RUC and the importance of insuring that there could be no repetition of the affair.

Incursion

13. On Tuesday also he would give us a full report on the 1982 incursion and seek to give certain assurances about this aspect. He added that he would give us a paper on the issue that would go further than anything he would say in Parliament. He asked that this paper be treated in confidence.

Extradition

14. Mr King said he would like to see this issue resolved. The Tanaiste had written a helpful letter to the Secretary of State. He knew that the Attorney General hoped to be able to respond positively to us. The right way forward now would be to have a meeting of officials to thrash out what pieces of paper were required. It would be helpful if such a meeting were to take place in the near future.

Summary

15. Mr King at this stage attempted to sum up his approach. He emphasised that the people who might have been responsible for perverting the course of justice were liable to full disciplinary procedures; the individuals concerned would be dealt with; there was no possibility of a repetition of this affair; and a full explanation of the incursion would be given.

16. The Minister for Justice (with active support from the Minister for Energy) said that in effect the British Government were saying no to the Birmingham Six, no to prosecution, no to publication, no to consultation.

17. When the Secretary of State argued that the Birmingham Six was a matter for the Home Secretary and not for him, Mr Collins said that they were all here not as individuals but as representatives of sovereign governments and he was not going to be "fobbed off" with the argument that this was a matter just for Douglas Hurd. Mr King tried to maintain that the prerogative of mercy was exercised exclusively on the advice of the Home Secretary, who might consult colleagues but who was quite independent in this field. The

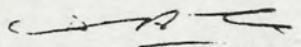
Minister said the same situation applied in Ireland but, and they should be honest and realistic about this, he would consult and take the advice of his Government colleagues in such circumstances. Such decisions were part of the collective Government process.

18. The discussion then turned back to the disciplinary process and Mr King made the point again that there were two stages involved. The first stage, the institution of proceedings, was one he would try and influence as far as he could and he hoped that this would be got on with in "weeks not months". He would hope, therefore, that we would see something on this at an early date. He hoped to have more information on this for us on Tuesday.

19. As regards the second stage, if charges were brought, it would not be possible to "hammer them through". He would not have quite the same direct control over the timing involved as this would be subject to the rights of the defendants, etc. In reply to a question from the Minister of Justice about the rights of individuals if they were charged and dismissed, Mr King said that they could appeal to him. He was, however, somewhat vague about the defendants' rights to a judicial review of the decisions in their cases. He thought that this might be restricted to a point of law. In further reply to the Minister, who specifically asked if the "public interest" would be invoked if, for example, Deputy Chief Constable McAtamney were to be charged, Mr King said he did not believe that the "public interest" could be invoked in disciplinary procedures. He hoped to have more information on this by Tuesday. He added that the inquests on the six cases would start next month.

20. The two Ministers also made the point strongly that the British had not understood the importance of the Birmingham Six case. The Secretary of State asked if by any chance their deep belief was wrong, and that these people were actually responsible for the worst outrage Britain had every seen, what should happen to them. Should they stay inside or be released? The Minister for Justice replied that, on the evidence presented in Court, they should be released. The Secretary of State said he had not yet read the judgement but that the overwhelming majority of people in Britain believed they were guilty. The Ministers replied that this surprised them given that 130 members of Parliament had signed a motion asking for an independent review of the cases.

21. The Minister for Justice said that the primary duty for the Minister for Energy and himself was to obtain the views of the British side on the proposals put to them and to report back to the Taoiseach. He had to say, however, that he totally rejected the view that the main problem was a presentational one. Nothing could be further from the truth. What had happened was a serious breach of the Anglo Irish Agreement. It had done massive damage to confidence in the administration of justice in the North and the British Government were doing nothing to restore that confidence. In addition, the British Attorney General had not taken a range of relevant and serious concerns properly into account when making up his mind on prosecutions. If we were to cooperate as we wanted to, and yet retain the confidence of people in the security forces, the public would have to have confidence in the system in Northern Ireland. Everything smacked of a massive cover-up. A high percentage of people in Ireland believed this cover-up went all the way to the Cabinet. This was having a massive impact on confidence. The presentation to date by the British Government had done more to help the paramilitaries, and to feed their coffers, than anything that had happened for a long time. He said this with deep sorrow. Both he and the Minister for Energy would be reporting fully on the meeting to the Taoiseach that evening.

  
Dermot Gallagher

10 February, 1988