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<b>Reference Code:</b>	2018/68/58
<b>Creation Dates:</b>	14 April 1988
<b>Extent and medium:</b>	2 pages
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NO. 18

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Confidential

Note of discussion with Ambassador Fenn - 14 April 1988

The British Ambassador, Nicholas Fenn, telephoned me this evening about the Tánaiste's statement issued today, following the decision of the House of Lords not to allow leave to appeal in the case of the Birmingham Six.

Ambassador Fenn asked if he was correct in understanding that the Tánaiste would be seeking a meeting with the Home Secretary, Douglas Hurd; and he asked what channel we might use for this request? I understood that he had instructions from London to ask for clarification on this.

In reply, I noted that the Tánaiste's statement had not specifically mentioned a meeting but had said simply that "the Tánaiste will establish early contact with the Home Secretary". The Tánaiste had however directed that we should request a meeting through the Embassy in London.

Ambassador Fenn said he would let his authorities know this. He said however that he would be very worried lest there be misunderstanding or undue expectation about what is possible from such a meeting. The Home Secretary's position had been very clearly stated in his reply to Sir John Hume M.P. in the House of Commons in January (?). Hurd on that occasion had said the following:

"Where, following a reference by me, the Court of Appeal have considered the issue at length, I would not think it right to intervene in the absence of any indication from the Courts that I should do so."

The statement, which had been somewhat misunderstood in Ireland, remained the position of the Home Secretary. Today's decision by the House of Lords meant they had simply declined to take the case and this did not change anything. He had no instructions but he thought personally that Douglas Hurd might be willing to see the Tánaiste but he would be concerned about the possible exaggerated expectations to which such a meeting could give rise. We should also understand that Douglas Hurd has his own political constraints.

In reply I said that

- (1) we were aware of the Home Secretary's position as stated above.
- (2) We are aware also that the Home Secretary has generally taken the view that he should not use his powers in such cases in any way which would, in effect, substitute the Executive for the Judiciary.
- (3) Nevertheless, as we understand it, the Home Secretary has absolute discretion in regard to referral of such cases and furthermore has wide responsibilities in relation to the handling and treatment of prisoners. When the Tánaiste in his statement said that there were "compelling humanitarian reasons for the Home Secretary to consider using the wide-ranging powers available to him in such cases" he had this wide gamut of powers in mind.
- (4) The Embassy in London will be seeking a meeting for the Tánaiste with the Home Secretary so that he can urge on him the humanitarian reasons to use these powers.



ND  
Secretary  
14 April 1988

cc. PST, A/Sec Gallagher, Mr. Nally.