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(No 18 ?)

*Taoreagh*  
*Three people*  
*4/11*  
*Mr B in 'Cory' 11*  
*14/11/88*  
*Mr. Nally*  
*Dr. Mandy*  
*Mr. Russell*  
*Mr. Gallagher*  
*Counsellors AI Box.*

TO HQ FROM LONDON  
FOR A. ANDERSON FROM B. O'REILLY

2 NOVEMBER 1988

C.C. PSM  
PSMS  
PSS

SUMMARY REPORT ON WINCHESTER TRIAL

The trial of Martina Shanahan, Finbar Cullen and John McCann lasted three weeks from 6th to 27th October. The defendants were indicted on two counts: conspiracy to murder the Secretary of State and conspiracy to murder persons unknown. The evidence presented by the Prosecution was not contested. The argument of the Defence was that the evidence pointed to several possibilities and not inescapably to conspiracy to murder. Defence Counsel considered whether to put one or more of the Defendants on the stand and decided against. The accused were found guilty on both counts and sentenced to 25 years.

The following points (contained in C171, C192, C193 and C196 between 13-28 October, 1988) can be made about the conduct of the trial:

- The jury was empaneled in the normal manner but, at request of Defence, had additional questions put to them by the judge, inter alia, asking whether they had close friends or relatives in the security forces. A number of jurors were excused at this stage. Jury members were also asked to excuse themselves if they felt unable to approach the case in a fair and unbiased manner. The judge agreed to exempt the jury from a body search at the request of the Defence.
- Regarding prejudice, the jury were regularly admonished by the judge to disregard all press coverage of the case and not to discuss it with anyone outside the court. In response to concern expressed by the Defence that the prosecution were making unproved assertions (e.g. comparing the case to the Airey Neave assassination) the judge directed the Prosecution to avoid making unproved assertions dressed up as common knowledge. Both prosecution and defence were given

considerable latitude in their questioning and arguments.

- The judge's summing up comprised two parts: directions on points of law and a summary of the evidence. Both were given impartially (please see paragraph 2 of C192 for details) and the minor points which the Defence raised at the end of the summing-up were accepted and corrected by the judge. In the words of one of the solicitors, the Defence had little to complain about. (In this connection, it should be mentioned, that during the course of the trial, the judge's impartiality was acknowledged by some of the defendants' families).
  
- On Friday 21 October, following SOS King's news conference about the end of the so-called right to silence, the Defence claimed that the jury were considerably prejudiced by King's statement regarding the right which the defendants two days previously had chosen to exercise. The judge conceded that there was substance in the Defence claim and on several occasions he repeated that no inference of guilt could be drawn from the defendants' silence.
  
- The jury's deliberations went on for two days. During this time questions were put to the judge which he answered impartially. He gave the majority direction before lunch on the second day and later that afternoon read the Lord Chief Justice's directions to Hung Juries - both of these were calculated to induce a verdict sooner rather than later. The families claimed the judge forced the pace, but most observers would say he acted in accordance with normal procedures.
  
- Overall, the conduct of the trial was fair, but there were extraneous influences over which no judge could

exercise control - except to the extent of directing the jury to disregard them, which the judge did on several occasions. One matter that was crucial was the police choice of the conspiracy to murder charge. Given the strong circumstantial evidence it seemed that some kind of subversion was being planned. The question was whether sufficient numbers of the jury would find the evidence convincing enough to find a conspiracy to murder was the inescapable inference, as required by law.

- The Defence have indicated they will appeal against conviction and sentence. They have said they are pessimistic about the former. The grounds for the appeal are prejudice caused by SOS King's statement, timing and location of the trial and the length of the sentences.

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