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NO 18

Rec- to Tanaiste

QUEEN ANNE'S GATE LONDON SW1H 9AT

16 January 1989

cc AG; Mr. Wally; PPA; Mr. Russell; Mr. Parnell
(3) Geraldine A1

Dear Brian,

You will be aware that I have had under close review for some time now the case of the 'Guildford Four' who were convicted of offences connected with the pub bomb explosions in Guildford and Woolwich in 1974. We have, of course, discussed the issue on a number of occasions and I am aware of your keen interest in the case. You will wish to know that I have decided, in the light of the material which has been presented to me, to refer the case to the Court of Appeal in accordance with Section 17(1)(a) of the Criminal Appeal Act 1968. I will inform the House of Commons of this decision at 3.30 pm today, Monday 16 January, in a written ... reply to a Parliamentary Question. A copy of this is enclosed. You will see that it explains that the matter will now be treated for all purposes as an appeal by the four persons convicted.

Yours

Douglas Hurd.

Brian Lenihan, Esq, TD
Tánaiste and Minister for
Foreign Affairs
Office of the Minister for
Foreign Affairs
DUBLIN 2

ARRANGED PARLIAMENTARY QUESTION FOR WRITTEN ANSWER

Q. to ask the Secretary of State for the Home Department if he has reached a decision on whether to refer the case of the Guildford Four to the Court of Appeal and if he will make a statement.

ANSWER

On 22 October 1975, Patrick Armstrong, Gerard Conlon, Paul Hill, and Carole Richardson were convicted of murder and other offences connected with the bombing of two public houses in Guildford on 5 October 1974, in which five people died. They were sentenced to life imprisonment. In addition, Patrick Armstrong and Paul Hill were convicted of two murders arising from the bombing of a public house in Woolwich on 7 November 1974. On 28 October 1977, after a hearing lasting 11 days, the Court of Appeal refused applications by all four for leave to appeal.

2. Since then, considerable efforts have been made by many people to establish that these convictions were unsafe. A large number of arguments have been adduced and, in the last two years, much allegedly new evidence has been brought to light.

3. In circumstances such as these a Home Secretary has, broadly speaking, three choices:

a) to take no action and allow the verdicts to stand;

b) to refer the case back to the Court of Appeal;

c) to recommend the use of the Royal Prerogative to pardon.

4. The Home Secretary is an elected politician representing the executive. The judiciary is and must be seen to be independent of the executive. It follows that the power of the executive over decisions of the judiciary needs to be exercised with very great care. Those who are seriously concerned about civil liberties in this country should be particularly chary of urging the Home Secretary to use these powers. I believe that the Home Secretary should only exercise the power of referral within stiff constraints. He should resist the temptation to substitute his view of the case for that of a court of law. The opinions of those who make representations to him, however distinguished, on whether the jury or the Court of Appeal dealt correctly with the evidence before them should not be decisive. Nor should his own personal opinions. This rules out at a stroke many of the matters raised in this case, because they were before the jury or the Court of Appeal. Those who were not in court are not well placed to challenge the decision of those who heard the evidence, except on the ground that there is new evidence or other consideration of substance which was not available at the original trial or appeal hearing. In January 1987 I told the House that in the light of that constraint my view was that there had not been raised any new substantive points which justified action on my part.

5. A large amount of further matter has been produced since then. The question, which I have examined with great care, is whether it is new and substantial, and now justifies my intervention.

6. At this point I should refer to the argument, on law not fact, advanced by Lords Devlin and Scarman when they came to see me on 23 July 1987 and further developed in an article in the Times on 30 November last year. In brief, I understood them to argue that the Court of Appeal was wrong to dismiss as worthless without reference to a jury the confessions to the Guildford and Woolwich bombings by members of the Balcombe Street Gang. These confessions were made between the original verdict and the appeal hearing. Lords Devlin and Scarman believe that the jury should have been given the chance to reach a conclusion on the convictions of the Guildford Four by a previous jury in the light of these confessions, of which that jury knew nothing. I understand that a similar point of law was raised in the context of the Birmingham bombings. The Appeal Committee of the House of Lords, composed of three Law Lords, on 14 April 1988 refused leave to appeal on these grounds. Although I personally would be reluctant to contest an opinion held by Lords Devlin and Scarman, I do not think it would be sensible to base a reference to the Court of Appeal on a point of law which the Appeal Committee had recently declined to consider.

7. I should, however, point out that when a case is referred to the Court of Appeal by the Home Secretary he may cite grounds for such reference but the subsequent hearing is not confined to those grounds. Once a case is referred, it is treated for all purposes as an appeal by the persons convicted, and the defence may thus seek to raise any matters of fact or law which they regard as pertinent.

8. Against this background and after prolonged study and thought,

I have decided to refer this case to the Court of Appeal. It is right that I make clear now that I do not feel justified in recommending the use of the Royal Prerogative to pardon or release them. But I am satisfied that amongst the many matters raised with me since January 1987 there are new and substantial points which clearly, and within the constraint set out above, are best considered by the court.

9. There are three particular matters, to which my attention was drawn:

- a) first, there is the matter of the use of drugs by Carole Richardson, and medical treatment given to her while in custody. There are two points here. Dr Makos, the police surgeon who saw her in 1974, volunteered in August 1987, and repeated to the Avon and Somerset police in November 1987, that he had administered an injection of pethidine to Carole Richardson. Later, in December last year, in a letter and subsequent statement to officers of Avon and Somerset, he withdrew this admission. Dr Makos' recollections may be uncertain or unclear, but it does appear that pethidine might not have been a suitable treatment for someone in Miss Richardson's apparent condition, that is suffering from withdrawal from barbiturates. Even if she was not given pethidine, at least some of her confessions would appear to have been made at a time when she was suffering from withdrawal to a greater degree than has hitherto been thought. The admitted administration of the drug tuinal to

Miss Richardson would appear, in medical opinion now, to have had the effect of prolonging and increasing withdrawal symptoms. The possible effects of these drugs on the reliability of her statements were not adequately exposed to the jury or the Court of Appeal;

- b) second, the alibi given by Maura Kelly in March 1987 for Carole Richardson, alleges that during the afternoon of the Guildford bomb, 5 October 1974, she was visited at the baker's shop where she worked by Richardson and her friend Lisa Astin, at about 2.30 pm. The two left and returned to the shop some time later, when Richardson gave Maura Kelly a doll. When Maura Kelly closed the shop at around 5 pm, the two girls were still with her. She walked with them to the bus stop when they separated. Maura Kelly had left the country before the trial and the defence were unable to call her to give evidence. Neither a jury nor the Court of Appeal have therefore had the opportunity to assess the value of her evidence alongside the alibi presented by Carole Richardson, that during the course of the afternoon she had no opportunity to make any journey to Guildford;
- c) third, the alibi by Mrs Fox for Paul Hill, produced on 15 July 1987 states that on the evening of the Woolwich bombing, 7 November 1974, she was at the flat of Mr and Mrs Keenan, where Paul Hill was living. Mrs Fox says she was with Mr and Mrs Keenan between 7 pm and 10.15 pm. During that period Paul Hill was present except for a

period of about 20 minutes when he left to make a telephone call to his girlfriend. Mrs Fox attended the trial but did not give evidence, and Mr and Mrs Keenan and Paul Hill, who did give evidence, made no mention of her. In statements of 15 July 1987, both Mr and Mrs Keenan now confirm that Mrs Fox had been at their flat that evening.

Paul Hill said he left Mr and Mrs Keenan's flat only to make a telephone call. This was supported by the Keenans in their evidence. The account Mrs Fox offers appears to add weight to the alibi evidence, but neither the jury nor the Court of Appeal have had the opportunity to consider it.

10. Little purpose would be served by setting out in detail here the other points put to me. The three main points I mention seem to me to bear directly on the safety of the convictions. These points were not available to the jury or the Court of Appeal. They need to be tested in court.

11. I am grateful to all those whose genuine concern for justice had led them to take an interest in this case. Among many I would single out Cardinal Hume, with whom I have several times discussed the case and who led the delegation which came to see me in July 1987. I am also most grateful to the Avon and Somerset police, who conducted painstaking and invaluable enquiries into certain of the new matters submitted to me.



No 18

17/1/89
5/2
16/11

Tánaiste
To see
12/11

Richard Ryan telephoned this morning to say that he had just spoken to David Lidington, Political Adviser to Douglas Hurd, about the timing of the announcement on the Guildford Four case.

Lidington said that:

- (a) the decision either has been taken or is about to be taken;
- (b) at present the intention was to put the decision into the public domain through a written answer in the Commons on next Monday;
- (c) that Richard Ryan should telephone him again on Monday morning for confirmation of the above;
- (d) that the British Ambassador in Dublin would be briefed on the matter and would deliver a letter for the Tánaiste on Monday; and
- (e) that the Home Secretary would also be writing to Peter Barry, given his interest in this case. However, this letter would be issued through the normal post.

Lidington gave absolutely no hint of the likely "direction" of the Home Secretary's decision.

We are at the moment preparing alternative draft statements on the above.

DMG
Dermot Gallagher,
12 January, 1989.

cc: PSM
Mr. Nally
PSS
Mr. Mathews/Mr. Brosnan
Dr. Mansergh
(3) Counsellors A-I