



An Chartlann Náisiúnta National Archives

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FROM JOINT SECRETARY

MR. MILES CAME BACK TO ME BEFORE LUNCH ON THE SUPREME COURT'S JUDGEMENTS IN THE EXTRADITION CASES OF FINUCANE AND CLARKE. HE SAID HIS SIDE HAD REFLECTED FURTHER ON THE JUDGEMENTS. HE HAD "NO PARTICULAR MESSAGE" TO GIVE ME BUT HE SAID THE REACTION ON HIS SIDE WAS "BLOODY HELL", WHICH COULD BE TAKEN AS A GENERAL EXPRESSION OF "DISMAY".

THE TWO MAIN POINTS WHICH AROSE WERE THE PRISON SYSTEM AND THE IMPLICATIONS FOR FUTURE EXTRADITION CASES. IN THE FIRST CASE (PRISONS), THE JUDGEMENTS WOULD NOT APPEAR TO REFLECT THE CHANGES BROUGHT ABOUT IN THE LAST SIX YEARS WHICH WE OURSELVES HAD ACKNOWLEDGED IN THE CONFERENCE. IN THE SECOND CASE (EXTRADITION IMPLICATIONS), HIS SIDE WOULD HAVE TO THINK ABOUT THE JUDGEMENTS, PARTICULARLY THE WALSH JUDGEMENT, AND WOULD COME BACK TO US. MR. MILES SAID THAT THERE HAD BEEN NO MENTION IN HIS SIDE'S INTERNAL DISCUSSIONS OF THE POSSIBILITY OF CALLING A SPECIAL CONFERENCE (AS FINE GAEL HAS SUGGESTED) AND INsofar AS HE WAS AWARE THERE WAS NO INTENTION OF DOING SO. IT WAS PROBABLE HOWEVER THAT THEY WOULD SUGGEST A MEETING OF THE WORKING GROUP DEALING WITH THE CRIMINAL LAW INCLUDING EXTRADITION WHICH HAS NOT MET FOR SOME TIME.

MR. MILES SAID THAT HIS SIDE HAD BEEN STRUCK BY THE VERY STRONG REACTION OF THE FINE GAEL LEADER, WHO HAD DESCRIBED THE COURT'S JUDGEMENT AS NONSENSE AND HE POINTED OUT (IN A GOOD HUMOURED WAY) THAT THE REACTION HE WAS CONVEYING TO ME DID NOT GO AT ALL SO FAR.

IN REPLY, I AGAIN POINTED TO THE RELIANCE IN CHIEF JUSTICE FINLAY'S JUDGEMENT ON THE JUDGEMENT OF HUTTON J IN PETTIGREW AND I AGAIN NOTED ----- THAT MR. JUSTICE WALSH'S JUDGEMENT IN RELATION TO THE CONCEPT OF

POLITICAL OFFENCES HAD NOT TOUCHED THE ACT GIVING EFFECT TO THE CONVENTION ON THE SUPPRESSION OF TERRORISM (MY 238C). I SAID THAT THE ONLY POINT I WOULD ADD HAVING READ CHIEF JUSTICE FINLAY'S JUDGEMENT IS THAT HE SAID HE WAS INFLUENCED IN HIS ASSESSMENT OF THE PROBABILITY OF AN ASSAULT ON FINUCANE BY THE FACT THAT FINUCANE WAS ALLEGED TO HAVE BEEN INVOLVED IN THE ATTACK WHICH LED TO THE STABBING OF PRISON OFFICER FERRIS (WHO SUBSEQUENTLY DIED OF A HEART ATTACK). I ALSO SAID IT HAD BEEN ARGUED BEFORE THE CHIEF JUSTICE THAT THE EXEMPLARY DAMAGES AWARDED BY HUTTON J AGAINST THE PRISON OFFICERS AND THE NIO ITSELF REPRESENTED A DETERRENCE BUT THE CHIEF JUSTICE HAD REASONABLY RESPONDED THAT IT WAS NOT A SUFFICIENT DISCHARGE OF THE COURT'S DUTY FOR IT TO RELY UPON THE VINDICATION OF AN INDIVIDUAL'S RIGHTS BY COMPENSATION AFTER THEY HAD BEEN INVADED.

I SAID THAT, SPEAKING PERSONALLY, I UNDERSTOOD THE POLITICAL PRESSURE ON MR. COPE YESTERDAY AND HAD DRAWN TO THE ATTENTION OF MY AUTHORITIES THAT MR. COPE'S REFERENCE TO THE JUDGEMENT AS MISTAKEN AND MISLEADING SHOULD BE TAKEN AS REFERRING TO THE COURT'S VIEW THAT THERE WAS A PROBABLE RISK OF ASSAULT IF FINUCANE AND CLARKE WERE RETURNED. I SAID HOWEVER THAT THERE HAD BEEN A RATHER HYSTERICAL REACTION IN BRITAIN, BEST REPRESENTED BY THE STAR (ENGLISH EDITION)

WHICH DESCRIBED THE PRIME MINISTER AS ''SPITTING BLOOD''. THE BRIEFING EMANATING FROM LONDON THAT THE PRIME MINISTER WAS ''HOPPING MAD'' AND ''OUTRAGED'' SEEMED VERY EXTREME AND COULD NOT HAVE BEEN GIVEN WITH KNOWLEDGE OF JUDGEMENTS WHICH WERE SOBERLY AND METICULOUSLY ARGUED. WE UNDERSTOOD ALL TOO WELL THE POTENTIAL WHICH EXTRADITION HAD TO RAISE THE POLITICAL TEMPERATURE AND TO CAUSE POLITICAL PROBLEMS FOR BOTH GOVERNMENTS. NONETHELESS, WE WERE SOMETIMES REMINDED THAT GOVERNMENTS SHOULD ACT LIKE GOVERNMENTS AND THIS WAS PERHAPS AN OCCASION WHEN WE SHOULD DRAW ATTENTION TO THE DISTINCTION BETWEEN THE GOVERNMENT AND THE COURTS AND TO THE DESIRABILITY OF EXERCISING RESTRAINT.

P.S. WE HAVE JUST BEEN INFORMED THAT KILFEDDER HAS HAD A PRIVATE NOTICE QUESTION ALLOWED FOR THIS AFTERNOON. THE REPLY FOR MR. BROOKE IS BEING DRAFTED ''ON THE HOOF''. IT IS LIKELY TO REJECT THE COURT'S VIEW OF THE PROBABILITY OF ASSAULT UPON FINUCANE AND CLARKE BUT TO STRESS THE INDEPENDENCE OF THE COURTS IN OUR JURISDICTION.

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TO: HQ FR: BELFAST
 DATE: 14.3.90

FOR: ASS SEC GALLAGHER FR: JOINT SECRET

CODED MESSAGE	
IMMEDIATE URGENT	
CONFIDENTIAL	
DATE 14/3/90	TIME 1828
INITIALS <i>SB Bailey</i>	

THANK YOU FOR YOUR TELEPHONE MESSAGE CONCERNING MR DUKES' COMMENTS ON THE ORDER OF BUSINESS IN THE DAIL YESTERDAY. I HAVE TOLD MR MILES THAT REPORTS IN BRITISH NEWSPAPERS E.G. THE DAILY TELEGRAPH, THE GUARDIAN AND THE INDEPENDENT AS WELL AS THE IRISH INDEPENDENT ATTRIBUTING TO MR DUKES THE VIEW THAT THE SUPREME COURT DECISION WAS 'NONSENSE' WERE INCORRECT. IT WAS CLEAR TO THE TAOISEACH WHO WAS IN THE HOUSE AT THE TIME, THAT MR DUKES WAS REFERRING TO THE ISSUE WHICH HAD LED THE SUPREME COURT TO ITS DECISION I.E. THE ALLEGATIONS OF ILL-TREATMENT AFTER THE MAZE ESCAPE OF 1983 AND THE INABILITY OF THE AUTHORITIES TO OVERCOME THE RESISTANCE OF PRISON OFFICERS TO THEIR ENQUIRIES. I SAID THAT THE REPORTS IN THE IRISH TIMES AND IRISH PRESS ALTHOUGH NOT ABSOLUTELY CLEAR GAVE A BETTER ACCOUNT OF MR DUKES' COMMENTS.

I SAID I WAS PASSING ON THIS MESSAGE IN VIEW OF THE MISUNDERSTANDING ON THE BRITISH SIDE AND IN CASE IT MIGHT FEATURE IN THEIR BRIEFING OR PUBLIC COMMENTS.

MR MILES THANKED ME FOR THE INFORMATION AND SAID IT CERTAINLY MADE GREATER SENSE. HE SAID THAT REFERENCE BY THE BRITISH SIDE TO MR DUKES DESCRIPTION OF THE COURTS DECISION AS 'NONSENSE' WOULD HAVE BEEN NO MORE THAN A DEBATING POINT IN ANY EVENT, BUT HE WOULD ENSURE HIS SIDE GOT THE MESSAGE.

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