



## An Chartlann Náisiúnta National Archives

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AM SAID NA HEIREANN, LONDAIN



IRISH EMBASSY, LONDON

*by Mr. Conlon  
at 11.15 am  
on 23/5  
23/5*

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CONFIDENTIAL

22 May 1990

Mr Dermot Gallagher  
Assistant Secretary  
Anglo Irish Division  
Department of Foreign Affairs  
Dublin

*(Handwritten circle around "NSC")*

*cc PSH; AG  
Mr. Nally: PH  
Mr. Nally; 08.02  
C. H. P.  
B. J.*

Dear Assistant Secretary,

**MAY INQUIRY: MAGUIRE CONVICTIONS UNSAFE**

By agreement with the Department, I attended the opening day of the hearing of the scientific/forensic evidence in the case of the "Maguire defendants" (the Maguire family, Guiseppe Conlon, Patrick O'Neill and Shaun Smyth). Substantively, the day was entirely taken up with a statement by the leading Counsel to the Inquiry, Mr David Clarke, QC, which was essentially a review of the scientific evidence in the case. Clarke's conclusion, albeit a provisional one, that it was now "impossible to conclude that any of the convictions was safe and satisfactory", was a major surprise, at this stage of the Inquiry at any rate. (A copy of the advance text of Clarke's statement, which is substantially correct, together with a press release and a table of legal representatives, is attached.] *6 not included in Tot*

Clarke's conclusion was based mainly on an independent scientific study commissioned by the Inquiry, carried out under the direction of Professor Thorburn Burns of QUB. There were two main conclusions:

1. That the TLC tests carried out on the Maguire defendants were not capable of distinguishing between nitroglycerine (NG) and PETN, another explosive substance. Possession of PETN would not be capable of innocent explanation, any more than NG, but the charge on which the defendants were found guilty was specific - unnecessarily - to the possession of NG.

2. That the traces of NG found on the defendants could have been the result of innocent contamination. It would still mean that someone who had been in recent contact with NG had been in the Maguire household but this would not necessarily have been any of the defendants.

There were some other points of interest in Clarke's statement. He merely notes [para 25], without comment, that the police, while swabbing the Maguire house for traces of explosives, omitted the living room and, more surprisingly, the bathroom. This produced snorts of disbelief from some of the lawyers present and I would be surprised if it did not feature in cross examination later in the Inquiry of the police witnesses by defence lawyers, seeking to undermine the integrity of the police approach to the case [the comments of Lord Fitt and Robert Kee recorded below are relevant here].

Clarke concludes that it is difficult to explain the contradictory results of the test from Patrick Maguire's right hand [the dry swab was positive; the ether swab negative]. Thorburn Burns explanation is the use of insufficient ether on the swab; this is another area of possible controversy later in the Inquiry [para 41].

Clarke is more overtly critical of the failure of the prosecution to serve on the defence at the time of the original trial the evidence of Dr Lambourn. This might have supported the evidence of Vincent Maguire that an object he had handled was chalk rather than explosives [paras 57 - 61]. Similarly, he deals with the failure of the prosecution to make available to the defence the "Bryant and Dickson list" of statements not being used generally and, specifically, the statement of Dr Truter on the integrity of the TLC test on which the prosecution case rested. He concludes that Truter should have been notified to the defence even if he does not consider that any prejudice was caused [paras 88 - 100]. The blame here seems to lie with the DPP; as it happens, I spoke to Ms Ann Butler of the Crown Prosecution Service before this part of the statement was reached. At that time, she did not consider that the CPS would come under pressure at the Inquiry but she did predict "fireworks" among the scientists as it progressed.

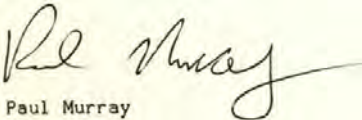
Clarke believes that the evidence of the prosecution scientists, Hills and Elliott might well have been discredited if they had been recalled for cross examination at the trial. He raises the likelihood that the Court of Appeal might have taken a different view of the safety of the convictions if these scientists had been more forthcoming in their evidence [para 74]. This might be seen by some as an attempt to shore up the position of the Court of Appeal, already under pressure as a result of its failure in the Guildford Four and other cases. There have been some calls in the media for the resignation of the Lord Chief Justice, Lane, but Robert Kee told me yesterday that he does not think that he will allow these developments to affect him and that he will finish out the three years or so he has left.

When the session of the Inquiry was concluded, Lord Fitt put himself forward to the media representatives. He said that he was unhappy with the conclusions reached by Clarke; they were all right in so far as they went but there was a cover-up for the police. Fitt went on ~~the~~<sup>his</sup> instance his anti-IRA credentials as proof that he was not anti the police but he did think that the question of the fabrication of the forensic evidence in this case had to be looked into. Robert Kee was present but seemed reluctant to be drawn into this by Fitt. However, when I had the opportunity to speak to him later at a dinner at Mr Hayes's house, he wholeheartedly endorsed Fitt's line. In fact, he went further in alleging that there was no other explanation of what had happened. He sees the "Establishment" as having thrown in the towel on the case but still wanting to extricate itself with a minimum of damage. He states that originally the police, on the basis of Conlon's confession, had charged Mrs Maguire with planting the Guildford bombs. She was only charged with possession of explosives after two months in custody when the original charges were dropped. By this account, the police told Mrs Maguire that they would get her family on possession of explosives charges if they could not bring forward the bombing charges. Kee sees the Guildford and Maguires cases having arisen as a result of desperation on the part of the Surrey police; they felt that they had to match the success of the West Midlands police who seemed to have apprehended those responsible for the Birmingham bombings.

**Birmingham Six**

Kee, incidentally, is pessimistic about the Birmingham Six case, believing that the "Establishment" is determined to fight on in it. I also spoke to Gareth Pierce about the case. She is building up a second dossier of evidence which she does not envisage submitting to the Home Office at this stage. She will keep it in hand for use if she feels the situation requires it. In this connection, she has written recently to Dr O Muircheartaigh of UCG, asking a number of questions about the contents of his paper, which, you will recall, has been copied to her. She has a high opinion of it and sees it as part of the second line of defence that she is now working on.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Paul Murray', with a long, sweeping horizontal stroke extending to the right.

Paul Murray  
First Secretary.