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AMBASÁID NA hÉIREANN, LONDAIN



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*Mr. McIlkenny
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Confidential

29 August 1990

Mr. Dermot Gallagher
Assistant Secretary
Anglo-Irish Division

*cc DSM
Mr. McIlkenny; per
Mr. McIlkenny; Mr. Kavanagh
Cassidy H1
Mr. McIlkenny*

Dear Assistant Secretary

Media comments on the Birmingham Six development

I spoke today to a number of key media contacts about the Home Secretary's decision to refer the case back to the Court of Appeal.

The following points of interest arose:

- The news came as a complete surprise to all of them. While one had a hint from a Birmingham police source yesterday afternoon that an unspecified development was imminent, none of them were prepared for today's announcement. It was widely expected that nothing would happen until the Devon and Cornwall team had sent its report to the Home Secretary.
- One contact has learned that it was not even an interim report which prompted the Home Secretary to act but merely a memorandum of one or two pages which was sent to the Home Office last week by the Chief Constable of the Devon and Cornwall Constabulary.
- My contact's understanding is that, when the ESDA technique was applied to the McIlkenny confession, the Devon and Cornwall team were so seized by the results that they brought them immediately to the attention of their Chief Constable. The latter, in turn, wrote immediately to the Home Office and the West Midlands police. The fact that the Devon and Cornwall team decided not to wait until the completion of their report before presenting this new evidence suggests that considerable significance is attached to the latter by Devon and Cornwall.
- The disputed statement, my contact understands, relates to an interview which McIlkenny insists never took place. He has always maintained that he signed an initial statement after ill-treatment at the hands of the police and that the police fabricated a further

section of his statement. The ESDA test has apparently shown that the two sections of the alleged confession were written at different times.

- If it can be demonstrated that the investigating officers invented an interview with McIlkenny (which contained, furthermore, an invented reference to Power), then the credibility of all other statements taken by the police from the Birmingham Six must be questioned. Assuming that the contested McIlkenny interview appeared also in the Reade Schedule, the credibility of this document is presumably also undermined.
- My contacts understand that, in addition to the McIlkenny material, other (unspecified) material will be going to the DPP.
- The DPP has already appointed a team of lawyers (headed by a senior Treasury Counsel, Graham Boal) to examine all the papers and advise him on whether or not the convictions can be sustained.
- In the meantime, Devon and Cornwall will continue their own inquiry and their report is still expected around the end of September or beginning of October. It is also open to the DPP to request Devon and Cornwall to pursue specific points of interest to him.
- As regards the likely outcome, all of my contacts believe that a decision by the DPP not to contest the appeal is likely and that the Birmingham Six will be released within a matter of months.
- While the Home Office line today has been to discourage comparisons with the Guildford case and to anticipate a full appeal hearing, it is noted nonetheless that David Waddington's public comments following his announcement have gone very far in the direction of admitting that the convictions are unsafe. Compared with the Home Secretary's comments when the Guildford appeal was announced, Waddington "went much further" with his comments today. The successive hints that the Home Office was actively seeking a basis for a fresh referral, and the speed with which Waddington reacted to the new evidence, all point to an acceptance by the Home Office that the convictions are unsafe.
- While the DPP's line today has been to argue that the Birmingham case is more complex than the Guildford one, the general view in media circles is that, with both the forensic evidence and the circumstantial evidence now in serious doubt, it will be virtually impossible for the DPP to sustain the Birmingham convictions. A Guildford-type outcome now seems inevitable.

Yours sincerely

David Donoghue

David Donoghue
Press and Information Officer

Statement by the Taoiseach, Mr. Charles J. Haughey, T.D.

I warmly welcome today's announcement by the British Home Secretary that the case of the Birmingham Six has been referred back to the Court of Appeal.

The Government have consistently conveyed to the British authorities over a period of years their serious concern about the soundness of the convictions of the Six, who have now spent almost sixteen years in prison, and have pressed strongly for a complete review of the case.

The Home Secretary's statement today makes it clear that while his decision was made on the basis of a particular issue in the case, the effect of that decision is that the whole case is now once more before the Court of Appeal where it will be treated as an appeal to the court by each of the six men. It will therefore be open to each of the six to raise with the Court of Appeal any matter which they consider relevant to their appeal.

This is very good news and it will be warmly welcomed by the six men themselves and by all of those who have shared the concern of the Irish Government about the disturbing features which their case had in common with the cases of the Guildford Four and the Maguire family which date from about the same period.

In welcoming on behalf of the Irish Government today's announcement by the Home Secretary I express the hope that in the interest of justice the protracted case of the Birmingham Six is now close to an early and satisfactory resolution.

29 August, 1990.

29 August 1990

Immediate

To: HQ

From: London

For: Nason/Grogan (Anglo-Irish)

From: J. Hayes

Birmingham Six

The following summary of conversations which I had earlier today, 29 August (in Mr. Murray's absence on leave) with Gareth Pierce, solicitor to the six, and Bob Baxter, Head of the Miscarriages of Justice section of the Home Office, provide some initial reaction, and some detail of the background, to the Home Secretary's decision to refer the case to the Court of Appeal.

1. Attitude of the DPP

The case is now in the hands of the DPP and the critical factor will be his attitude to the appeal. Gareth Pierce initially believed that the crown prosecution would have no option not to follow the path of the Guildford Four and withdraw its case. However, following a conversation this afternoon with her contact in the DPP's office, she is less certain. Her contact, she said was "extremely bullish" and insisted that the DPP "is not planning to throw in his hand just yet".

In conversation with me, Pierce made much of the parallels with the Guildford Four. Bob Baxter, on the other hand, emphasised very particularly the differences between the two cases, in particular, the fact that in the case of the Birmingham Six confessional evidence was supported by forensic material and by considerable circumstantial evidence. It would, he said take the DPP some considerable time to reach a view in the case of the B6. In the first instance he would have to assess the significance of the new material unearthed by the Devon and Cornwall Police. If he

Mr. Murray
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found it was so damaging to police evidence as to make the confessional evidence in the case no longer reliable and if the other evidence in the case was not in his view sufficient to stand on its own then clearly he could decide not to defend the appeal. It would be very wrong however to assume at this early stage that this would be the DPP's inevitable conclusion. It could be, Baxter surmised, that the DPP would wish to instigate his own police inquiry into other aspects of the case before coming to a decision. Despite the initial reaction of the DPP's office as conveyed to her Gareth Pierce still believes there is a chance that the case could go the way of the Guildford Four. One way or the other however, she expressed herself as very confident of the outcome of the Appeal. If the DPP decides to contest it however she felt it will take at least six months for the case to come to hearing.

2. Significance of the new material

Pierce believes firmly that the Devon and Cornwall Inquiry has unearthed a great deal more than the discrepancies in the McIlkenny interview record referred to in today's Home Office statement. Baxter, on the other hand, is adamant that this was the only piece of new evidence available to the Home Office. It had been submitted to the Home Office he said as an interim report by the Devon and Cornwall police and the Home Secretary concluded that there was no point in waiting for other material to emerge since that single piece has sufficient in itself to merit a referral to the Court of Appeal.

In Baxter's personal view in this new material was "potentially quite a serious development for the credibility of police evidence in the case". It raised the unwelcome spectre of "an entire record of fabrication" suggesting that three police officers lied to the Court and it cast, he said "a very serious shadow over the evidence of all police

officers in the case".

Although believing that there was even more damaging evidence which had not been made public, Pierce's assessment of the discrepancies in the record of the McIlkenny interview echoed the views put forward by Baxter and encourage d her in her optimistic view of the outcome of any appeal.

3. Bail

Pierce has been in touch with the Six on a number of occasions today, cautioning them in particular not to expect instant results. She told me that she is considering an application for bail, depending on how the DPP decided to proceed. Baxter, in his conversation with me, felt that a bail application was inevitable although, in his view, the DPP would oppose it on a number of grounds and it was by no means certain that it would be successful. Baxter confirmed that the referral to the Appeal Court would of itself carry no implications for the men's existing prison regime.

4. Composition of the Appeal Court

According to Pierce, if the case came to full appeal, they would ask Lord Lane to disqualify himself from the hearing. She felt that he would in any case have no option but to volunteer this.

5. Political fallout

Procedurally, the matter is now in the hands of the DPP and, as emphasised in the Home Secretary's statement, "the case is now sub judice". The Home Secretary has given a number of media interviews this morning but Baxter was adamant that between now and the outcome of the case Waddington would refuse any further comment, either in the House or

elsewhere. There is no doubt that the timing of today's announcement was designed to minimise the Home Secretary's exposure to critical parliamentary and media reaction.

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