



An Chartlann Náisiúnta
National Archives

Reference Code: 2021/93/12

Creator(s): Department of the Taoiseach

Accession Conditions: Open

Copyright: National Archives, Ireland.
May only be reproduced with
the written permission of the
Director of the National
Archives.

AMBASÁID NA hÉIREANN, LONDAIN



IRISH EMBASSY, LONDON

17, GROSVENOR PLACE,
SW1X 7HR

Telephone: 071-235 2171

TELEX: 916104

Fax: 071-245 6961

Box

CONFIDENTIAL

31 October 1991

Mr Sean O hUiginn
Assistant Secretary
Anglo Irish Division
Department of Foreign Affairs
Dublin

DESMOND ELLIS ACQUITTED

Dear Assistant Secretary,

You may be interested in a conversation which I had with Mr Donagh McDonagh, the Attorney General's observer at the Ellis trial, following the acquittal yesterday. McDonagh will, of course, present a report directly to the Attorney General.

In a jury trial, it is impossible to pinpoint why a particular verdict has been arrived at, but the indications in this case are that the jury accepted that Ellis had already served a sentence in Ireland for the offenses with which he was being charged in this country and that the scope of the Act under which he was charged with conspiracy was confined to persons actually in the UK.

Ellis's defence strategy revolved around his appearance in the witness stand where he portrayed himself as a relatively minor figure in the bomb-making process. In this connection, McDonagh felt that he taken a considerable gamble as a reference by the prosecution to the dramatic attempt by the PIRA to get him out of custody in Ireland would have punctured this line. The prosecution counsel, David Jeffreys, had, however, little knowledge of the case beyond his brief on the specific charges and failed to counter on this point.

Ellis also took a gamble in introducing the exhibits from his trial in Ireland to support his contention that he had already served a sentence there for these offenses because, in McDonagh's view, they introduced new leads which the prosecution again failed to exploit.

McDonagh was particularly critical of the trial judge, Swinton Thomas, who had told the defence counsel, Robertson, that he could not see how the wording of the Explosives Substances Act under which Ellis was charged could apply to persons outside the UK at the time of the alleged conspiracy but who nevertheless ruled to the contrary in court. McDonagh's own position was that it was impossible to construe the Act as applying to someone like Ellis, who had not been in the UK at the time of the alleged conspiracy, without "doing violence to the English language".


You may be aware that I passed on McDonagh's view, in advance of the verdict, that there was a "distinct prospect of acquittal". In the earlier stages of the trial, however, he was convinced that there would be a guilty verdict, and that Swinton Thomas, who presided over the so-called Winchester Three trial, would impose a very lengthy sentence. There were echoes of Winchester earlier in the trial when Swinton Thomas agreed that there had been prejudicial media comment but dismissed a defence motion on the ground that it could be dealt with by direction to the jury [this was, of course, the ground on which the Court of Appeal disagreed with him in the Winchester case].

Indeed, McDonagh found it "strange and extraordinary" that Swinton Thomas ruled against the defence on all of a variety of pretrial motions. These could, of course, have been appealed, together with the verdict, had Ellis been found guilty and McDonagh was convinced that Swinton Thomas was in effect passing the buck to the higher courts.

I might add that the Embassy was used as a channel of communication by McDonagh, the AGO, the Department of Justice and Gareth Pierce, Ellis's solicitor, in the course of the trial. Pierce and the Department of Justice were in communication about the provision of evidence from Ellis's trial in our Special Criminal Court. Pierce, incidentally, was seen by McDonagh as having played a role in sustaining Ellis which went beyond the narrow duties of a solicitor.

At one point, McDonagh believed there was a good chance that Ellis would plead guilty in return for a reduced sentence. While this type of plea bargaining does take place in the English system, its weakness is that the trial judge is not bound by any such "understandings" and can, having heard all the evidence, still impose a severe sentence. Pierce's nerve and experience were probably critical in influencing Ellis on decisions such as this.

Yours sincerely,


Paul Murray
First Secretary