



An Chartlann Náisiúnta National Archives

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CSR
25 FEBRUARY 1991

IMMEDIATE
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TO HQ FROM LONDON
FOR ASSISTANT SECRETARY GALLAGHER FROM PAUL MURRAY
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BIRMINGHAM SIX HEARING, 25 FEBRUARY 1991
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THE AMBASSADOR AND MYSELF ATTENDED THE HEARING OF THE CASE AT THE COURT OF APPEAL THIS MORNING. DEPUTIES ANDREWS, KITT AND BARRY WERE ALSO PRESENT.

THE DPP ANNOUNCED THAT HE NO LONGER REGARDED THE CONVICTIONS AS SAFE AND SATISFACTORY. THE COURT SET MONDAY NEXT, 4 MARCH 1991, AS THE DATE FOR THE MAIN HEARING OF THE APPEAL TO COMMENCE. CURRENT ESTIMATES OF THE LENGTH OF THE MAIN HEARING VARY FROM A FEW DAYS TO A FEW WEEKS.

THE AMBASSADOR HAS ALREADY REPORTED ORALLY ON THE HEARING: THE FOLLOWING ARE WHAT APPEAR TO ME TO HAVE BEEN THE SALIENT POINTS:

CROWN NOT TO CONTEST THE APPEAL

1. AS EXPECTED, GRAHAM BOAL, QC FOR THE DPP, SAID THAT THE CROWN WOULD NOT BE SEEKING TO RELY ON THE EVIDENCE OF GEORGE READE AND THE OTHER OFFICERS WHO QUESTIONED THE SIX IN 1974. WHILE IT WAS FOR THE COURT TO DECIDE ON THE APPEAL, THE DPP DID NOT CONSIDER THE CONVICTIONS SAFE OR SATISFACTORY. THIS IS IMPORTANT AS THE DPP WAS SIGNALLING EARLIER THAT IT MIGHT SEEK TO DIFFERENTIATE BETWEEN THE TWO CONCEPTS AND SEEK TO PROVE THAT THE CONVICTIONS WERE

SAFE BUT UNSATISFACTORY. THE DPP IS STILL GOING TO MAKE A SUBMISSION TO THE MAIN HEARING ON THE DISTINCTION BUT HE CONCEDED BOTH CONCEPTS IN RELATION TO THIS CASE AT TODAY'S HEARING.

ROLE OF THE DPP RELATIVE TO THAT OF THE COURT

2. REFERRING TO THE CASE OF BINHAM, IN WHICH THE COURT OF APPEAL RECENTLY REFUSED TO ACT IMMEDIATELY ON A WITHDRAWAL BY THE DPP AND WAS CRITICAL OF THE DIRECTOR FOR SEEMING TO ABROGATE ITS ROLE, BOAL SET OUT VERY CLEARLY THAT THE CASE COULD ONLY BE DETERMINED BY THE COURT. THERE WAS, HOWEVER, A HINT OF RIPOSTE WHEN HE ALSO OUTLINED THE ROLE OF THE DPP WHICH INCLUDED A RIGHT TO TELL THE COURT OF HIS VIEW AND, IF THE COURT DISAGREED, TO CONTINUE TO CONDUCT THE CASE IN ACCORDANCE WITH HIS VIEWS. IT WAS NOTICEABLE THAT THE DEFENCE COUNSEL WERE VERY CAREFUL TO UNDERLINE ALSO THAT THE DECISION LAY WITH THE COURT. INDEED, MANSFIELD, QC FOR ALL THE SIX EXCEPT HUNTER, TIED THIS IN WITH THE DEFENCE VIEW THAT A FULL REVIEW OF THE EVIDENCE WAS NEEDED. IN OTHER WORDS, THE DEFENCE WANTS A VINDICATION BASED ON A FULL HEARING AND THIS COULD ULTIMATELY PROVE A DOUBLE-EDGED SWORD FOR THE CROWN. INDEED, MANSFIELD WENT ON TO SAY THAT THERE WAS NO "EXCITEMENT" ON HIS PART IF THE NEED FOR SUCH A HEARING MEANT THAT THE MEN COULD NOT BE RELEASED AT THE VERY EARLIEST POSSIBLE DATE.

3. THE NEED FOR A FULL HEARING IN OPEN COURT WAS CONFIRMED BY THE BENCH AS WAS ITS RIGHT TO BE THE SOLE ARBITER OF GUILT AND INNOCENCE. REFERRING, SIGNIFICANTLY, TO THE TWO MAIN PILLARS OF

OF THE PROSECUTION CASE (I.E. ACCEPTING THAT THE CIRCUMSTANTIAL EVIDENCE WAS NOT A MAIN PILLAR AND MAYBE DISCOUNTING THE POSSIBILITY OF SEEKING TO REPRESENT IT AS SUCH), THE BENCH SAID THAT THE FRESH EVIDENCE GATHERED SINCE THE LAST APPEAL IN 1987/8 WAS MORE COMPLEX THAN MIGHT BE IMAGINED.

SKUSE

4. STATING THAT THE SCIENTIFIC EVIDENCE, FOR EXAMPLE, WAS BY NO MEANS STRAIGHTFORWARD, LORD JUSTICE LLOYD REVEALED THAT DR. SKUSE HAD WRITTEN DIRECTLY TO THE COURT STATING THAT HE WISHED TO GIVE EVIDENCE. HE WOULD THEREFORE NEED TO BE CALLED AS A WITNESS. AS YOU CAN RECALL, SKUSE CARRIED OUT THE FORENSIC TESTS ON THE MEN FOLLOWING THEIR ARREST IN 1974 AND, ACCORDING TO BOAL, HAS IGNORED REPEATED ATTEMPTS BY THE DPP TO COMMUNICATE WITH *him.*

5. I WONDER IF THE DPP WAS CAUGHT BY SURPRISE BY THIS DIRECT APPROACH TO THE COURT AS HE SEEMED ANXIOUS NOT TO ENCOURAGE IT. THE FACT, OF COURSE, IS THAT SKUSE'S CREDIBILITY WAS EFFECTIVELY DESTROYED AT THE LAST APPEAL. SKUSE IS, HOWEVER, A BITTER MAN FOLLOWING HIS DISMISSAL FROM HIS JOB BY THE HOME OFFICE PRIOR TO THE LAST APPEAL AND HE MAY PROVE SOMETHING OF A LOOSE CANNON FOR BOTH SIDES IF HE APPEARS AT THE MAIN HEARING. MY OWN GUESS IS THAT STRENUOUS EFFORTS MAY BE MADE TO DISSUADE HIM BEFORE THEN. I WONDER IF THE JUDGES REACTED WITH SOME NAIVETY TO SKUSE'S DIRECT APPROACH. EVEN TODAY THERE MAY HAVE BEEN AN INDICATION OF PULLING BACK WHEN THE COURT FINALLY AGREED THAT THE REGISTRAR OF THE COURT WOULD INFORM SKUSE OF THE DATE OF THE MAIN HEARING AND THAT, IF HE HAS ADDITIONAL MATERIAL, HE SHOULD GIVE IT TO THE DPP.

MAIN HEARING

6. THE JUDGES DISAGREED WITH MANSFIELD'S ASSERTION THAT IT WOULD BE UNNECESSARY TO CALL WITNESSES BECAUSE OF THE CROWN'S ADMISSIONS. THE VARIOUS HOME OFFICE FORENSIC SCIENTISTS WHO HAVE BEEN INVOLVED, AS WELL AS SKUSE AND, POSSIBLY, MR. EVANS, THE CHIEF CONSTABLE OF DEVON AND CORNWALL, WHO HEADED THE POLICE INVESTIGATION INTO THE CASE, SHOULD TESTIFY. MIKE MANSFIELD, WHO HAD EARLIER SUGGESTED NEXT WEDNESDAY OR THURSDAY FOR THE HEARING, ASKED THE COURT TO REVERT TO MONDAY NEXT, TO GIVE THE DEFENCE THE TIME NECESSARY TO COPE WITH THE CALLING OF WITNESSES. 4 MARCH WAS AGREED.

7. MANSFIELD SAID THAT THE "PERFECTED GROUNDS" OF APPEAL, TOGETHER WITH THE DEFENCE REASONING IN SKELETAL FORM, WOULD BE SUBMITTED TODAY. ON THE WEIGHT TO BE ATTACHED TO THE LAST APPEAL JUDGMENT, HE STATED THAT THE PRESENT COURT SHOULD BE BOUND BY ITS LEGAL, NOT ITS FACTUAL DECISIONS. THIS IS, OF COURSE, IMPORTANT IN THE CONTEXT OF THE BUILDING OF PYRAMIDS OF NEGATIVE LEGAL DECISIONS WHICH HAS PREVIOUSLY GONE ON IN THE CASE. INTERESTINGLY, MANSFIELD COMMENDED THE DEVON AND CORNWALL POLICE FOR THEIR INVESTIGATION AND THEIR ASSISTANCE TO THE DEFENCE. IN THIS REGARD, MANSFIELD SHOWED A GREATER SENSE OF COURTROOM DIPLOMACY THAN HAS PREVIOUSLY BEEN THE CASE.

8. GARETH PIERCE TOLD ME AFTERWARDS THAT SHE DID NOT EXPECT THE MAIN HEARING TO LAST MORE THAN A FEW DAYS. HOWEVER, MR. ADAMS, THE RESPONSIBLE OFFICIAL AT THE CROWN PROSECUTION SERVICE,

CAUTIONED ME IN A LATER CONVERSATION THAT THE HEARING COULD LAST AT LEAST ONE TO TWO WEEKS, AND POSSIBLY AS MANY AS THREE.

9. I SAW VARIOUS RELATIVES OF THE SIX AT TODAY'S HEARING, INCLUDING PADDY MCILKENNY, BREA POWER AND MAGGIE MCILKENNY. ALL OF THEM WERE, NATURALLY, IN GOOD FORM AND WERE FRIENDLY. THEY ACCEPTED IN ADVANCE THAT, AS THE APPELLANTS HAVE TO BE IN COURT FOR A VERDICT TO BE RENDERED, THERE WAS NO QUESTION OF THE PRISONERS BEING FREED TODAY. PIERCE CONFIRMED LAUGHINGLY WHAT I ALREADY KNEW TO BE THE CASE: THERE WAS NEVER ANY QUESTION OF THE DEFENCE APPLYING FOR BAIL, CONTRARY TO AN OBLIQUE SUGGESTION FROM AN OFFICIAL SOURCE LAST FRIDAY.