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CONFIDENTIAL

12 May 1992

Mr Pat Hennessy
Anglo Irish Division
Department of Foreign Affairs
Dublin

JUDITH WARD FREED ON BAIL

Dear Pat,

Judith Ward was freed on bail yesterday by the Court of Appeal after counsel for the Director of Public Prosecutions had conceded that her confessions could no longer be relied on and that the remaining evidence was insufficient to sustain the conviction. The court then decided that the conviction must be found unsafe and unsatisfactory. Lord Justice Glidewell said that while the court would in due course allow the appeal, it was not in a position formally to quash the conviction until all the evidence had been heard. The formal quashing should come at the end of the hearing.

I represented the Embassy at the hearing. Deputy Peter Barry, who was in London for a meeting of the Anglo-Irish Parliamentary Tier, attended in the afternoon. Otherwise the court was packed with members of the media and previous miscarriage of justice victims such as Annie Maguire and some of the Birmingham Six.

The DPP's concession on the confessional evidence was made following the evidence last week of Drs Mc Keith and Bowden for the defence who had testified to Ward's unstable mental state in 1974. Thus, the previous refusal of the court to allow the Crown the necessary time to have its own experts examine Ward, obviously with a view to refuting McKeith and Bowden, proved critical to this early decision on the principle of the case.

Having made this concession, the DPP was then concerned to wrap up the rest of the case as quickly as possible ("damage limitation" was a term much used around the court). Mr Langdale, for the DPP, argued that it would "serve no useful purpose" for the court to examine in detail the other two grounds of appeal, the forensic evidence and the non-disclosure of evidence by the prosecution to the defence at the time of Ward's trial in 1974.

More substantively, he argued that (1) non-disclosure did not necessarily result in a material irregularity and therefore a miscarriage of justice (the Maguire case was cited in support of this) and (2) the scientific evidence, other than that of Dr Skuse, was sound.

Langdale also indicated that the Crown would call evidence to the effect that the IRA would have used a person such as Ward in the early 1970's (an old argument this, premised on the view that the PIRA was a very different organisation in the early 1970's, and one which was made to me by the Home Office in relation to the Birmingham Six, prior to their appeal).

This could, however, merely cause further problems for the Crown: Barrie Penrose of the *Sunday Express* told me that he had tracked down a former RUC Chief Superintendent, the superior in 1974 of the RUC officer, McFarland, who testified in court last week that the IRA would never have used Ward, who said that Ward's haversack had been crammed with cuttings about the bombings she was alleged to have committed. The RUC officer had no doubt that it was this newspaper information which provided the basis for her confessions.

Lord Justice Glidewell, presiding, rejected utterly the DPP's submission that no useful purpose would be served by examination of the other evidence: the court was, he said, "clearly and firmly" of the view that all the evidence must be heard and was "urgently concerned" with the issues arising from it. The outcome of this case and "other cases of the recent past" (a clear reference to the Guildford Four, Birmingham Six and the Maguires, among others) would be helpful in pointing the way forward for the administration of justice in the future.

Indeed, the court seemed even more eager than the defence to delve into what could prove to be the explosive area of non-disclosure. When Mike Mansfield, QC, for the defence, said that he would not be seeking to identify who exactly was in possession of non-disclosed documents, only that the Crown side had them, Lord Justice Steyn countered that individual culpability could be relevant: there was a distinction between "oversight" and "deliberate suppression".

Lord Justice Glidewell indicated that the court would seek to establish if non-disclosed documents had been given to the DPP and thus to counsel for the prosecution. He added that if

there was no realistic explanation as to why evidence was not disclosed, it would be open to the court to draw "adverse conclusions". This could, of course, touch on the role of the present Lord Chief Justice, who was number two on the prosecution side at Ward's trial.

In general, it would be hard to fault the behaviour of the bench yesterday. As he had done previously, Glidewell showed a human concern for the appellant which was not evident in previous miscarriage of justice appeals. He set no conditions for Ward's bail and made it clear that the court wished to be satisfied where she would stay once released only to protect her personal interest.

The "negative body language" the bench has displayed towards the Crown has been underlined by its decisions, which have consistently favoured the appellant. The judges have made plain their keen awareness of recent miscarriages of justice cases and their concern for "the future".

Media representatives experienced in the miscarriage of justice area were recalling the Maguire case where, when the appellants turned down the offer of an accelerated appeal, they lost most of what they had gained in the May Inquiry by a very narrow approach by the Court of Appeal to the bulk of the evidence. It would, however, require a complete *volte face* by the Court for a similar outcome to mar this appeal. Indeed, the bench has already signalled that it will not follow a negative approach by stating that it intends to allow the appeal <u>on all grounds.</u>

Yours sincerely,

Paul Murray
First Secretary