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CONFIDENTIAL

29 April 1992

Mr Pat Hennessy
Anglo Irish Division
Department of Foreign Affairs
Dublin

*cc A/As O'Leary
Counselors, A.I.
M. Kelleher
Box. 4*

Dear Pat,

JUDITH WARD APPEAL

Further to your secure fax of 28/4/92, I represented the Embassy at the opening of the Judith Ward appeal at the Court of Appeal today. Deputy McCartan and Senator Costello were present as Oireachtas observers. Also present were many associated with previous miscarriages of justice cases such as Mr Chris Mullin, MP, and previous victims such as Annie Maguire, and Paddy Joe Hill, Gerry Hunter and Billy Power of the Birmingham Six.

Delay Denied

An application for a two month delay by the Director of Public Prosecutions was turned down by the Court. Mr Tim Langdale, counsel for the DPP, argued that the delay was necessary to allow the Crown to commission its own psychological and psychiatric studies of Judith Ward, effectively to counter the study which has been prepared for the defence by Dr McKeith, a psychiatric specialist in the areas of false confession and suggestibility.

There can be little doubt that the Crown fears the impact which McKeith may have on the Court; he is highly respected by the Home Office, who commissioned him to study the Guildford Four and Birmingham Six. His conclusions on Carole Richardson, in particular, were absolutely crucial in persuading the Home Office to refer the Guildford Four case to the Court of Appeal.

I spoke to him at the court yesterday and he told me that he is undertaking a major study of false confession and suggestibility for the Runciman Commission on the operation of the criminal justice system in Britain. This will, of course, underline his stature to the Court. McKeith is also acutely aware of a general prejudice which has operated against Irish people in this country, instancing the pejorative references to Ireland in his school history texts, as well as the atmosphere of fear and anger which the IRA bombing campaign generated in the 1970's and which was so detrimental to those standing trial for alleged involvement in it.

In turning down the DPP's application, Lord Justice Glidewell, presiding, said that he was aware the lack of recent reports on Ward might place the Crown at a disadvantage but it had, on the other hand, psychiatric reports from 1973/4, the authors of which were still alive and could be called to give evidence if necessary. The interests of justice required the urgent hearing of the appeal.

DPP to Contest Appeal

The significance of the request for a delay is that the DPP seems determined to fight the appeal in vigorous fashion. Everyone to whom I spoke seemed agreed that the DPP would not adopt the kind of non-adversarial stance it had adopted in the Birmingham Six case where it did not officially seek to uphold the convictions but instead took the Court through the evidence and invited it to make up its own mind (much of the thrust of the DPP's line was, however, aimed at demonstrating guilt).

In a conversation before the opening of the appeal, Gareth Pierce, Ward's solicitor, described the approach of the DPP as "inept, clumsy" and determined to "fight to the hilt". For example, the defence will call an RUC officer to give evidence to the effect that the RUC advised the British police at the time of her arrest that Ward was unstable and suggestible. The DPP will seek to rebut this by calling witnesses to give evidence that the IRA would have used a person such as Ward.

Pierce told me that so far the DPP is conceding nothing except the unreliability of Dr Skuse, the forensic scientist whose evidence was a main pillar of the prosecution case at the trial but who was subsequently discredited by the Birmingham Six case. Even here, the DPP has added a rider to the effect that Skuse's discrediting does not necessarily impugn the scientific validity of his evidence.

High-Risk Strategy

It seems to me that the DPP is pursuing a high-risk strategy in following this line. Pierce told me that failure by the prosecution to disclose "absolutely vital" evidence at the trial is at the heart of the appeal and that the non-disclosure in this case is much more serious than in the previous miscarriage of justice cases. Mike Mansfield stated in court today that, of the 44 interviews with Ward before her trial, 15 were not placed before the jury. While he could not say how much the prosecution team knew, it must have been aware of the majority of the 15.

The new Lord Chief Justice, Peter Taylor QC, was junior counsel for the prosecution team at the trial. Following the disgrace of his predecessor, Lord Lane, the last thing the system of justice in this country needs is for his successor to be tainted at the outset of his term. One would have thought that the best tactic might have been to quietly concede the case, rather than fighting what may become a very dirty battle over an issue which, even if the Crown were to win, will probably leave lingering doubts and is unlikely to go away. One wonders if the DPP is applying a broad strategic vision to the case or if it is simply displaying a recrudescence of the unwillingness to admit mistakes which marked the earlier approach to these cases.

Gareth Pierce states that she is confident the appeal will be allowed and she seems much more relaxed that she was at the Birmingham Six appeal. A flavour of the Crown's approach has been gleaned in conversations which I have with the Home Office. Officials there have stated that they can see "no hint that the DPP is prepared to concede anywhere".

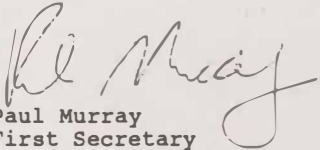
The line from there is that this case is not as "straightforward" as the other miscarriage of justice cases. The DPP will rely heavily on circumstantial evidence, such as the fact that Ward had documents in her possession when arrested, and that there were witnesses who saw her at Euston Station at the time of the bombing there (she is convicted of this as well as of the M62 coach bombing). Some of the evidence on which the DPP will seek to rely strikes me as particularly weak: for example, the fact that there is no evidence of police brutality does not seem very significant in the context of Ward's suggestibility. Overall, the DPP will argue that the "totality" of the evidence gives a different picture from that painted by the defence.

As well as the fact that the judges turned down the DPP's application for delay yesterday, their demeanour was generally felt to be favourable to Ward. Lord Justice Glidewell asked her directly at one point if she was aware of the significance of the decision. He expressed appreciation of the fact that she was very "keyed-up". The other two judges revealed a

sceptical attitude towards the DPP's application for a delay before the decision was taken.

One hopes that this will be reflected in the verdict of the Court: I am, at the same time, conscious of the Maguire case where the bench also seemed initially favourably disposed but where a different attitude became apparent in the course of the hearing.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Paul Murray". The signature is written in dark ink and is positioned to the left of the typed name and title.

Paul Murray
First Secretary