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FILE TITLE:	SERIES
SITUATION	IRELAND
	PART: 87
PART BEGINS: 24 DECEMBER 2000	PART ENDS: 22 JANUARY 2001
	CAB ONE:

PART CLOSED

LABOUR ADMINISTRATION

PREM 49/2067

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TSO.PLO.2/97.PAASO06914

PART

87

CLOSED

DATE CLOSED	22 JANUARY 2001

Series : **IRELAND**

File Title : **Situation**

Part : **87**

Date	From	To	Subject	Class	Secret
19/01/2001	FA/APS	NIO	(T) - David Trimble	C	0
19/01/2001	FA/APS	NIO	(T) Telephone Conversation with Seamus Mallon	C	0
19/01/2001	MOD	FA/APS	Northern Ireland:Normalisation	R	0
19/01/2001	Ireland/HMA	NIO	Meeting with the Taoiseach	C	0
19/01/2001	NI/Assembly	SS/NIO	Suitable potential trustees for the Northern Ireland Police Fund:Letter	U	0
20/01/2001	NIO	Ch.Staff	Northern Ireland - Sequence and Public Handling	C	0
21/01/2001	FA/APS	NIO	(T) Telephone Conversation with David Trimble	R	0
21/01/2001	NIO	FA/APS	Telephone conversation with David Trimble	C	0
22/01/2001	PM		To Billy Armstrong MLA: Belfast Agreement	U	0
22/01/2001	FA/PS	NIO	Ahtisaari/Ramaphosa	S	11
22/01/2001	FA/APS	AGO	OTRs	C	0
22/01/2001	FA/APS	Ch.Staff	Meeting with the Irish: 22 January	C	0
22/01/2001	NIO	NIO	Friday's Discussions at Chequers	C	0
22/01/2001	NIO	FA/APS	Prime Minister's Telephone Conversation with David Trimble: Robert	C	0

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Date	From	To	Subject	Class	Secret
28/12/2000			NI bureau - US visits to new administration	C	0
28/12/2000	NIO	NIO	Yesterday's talks with Sinn Fein and the Irish	C	0
02/01/2001	PM	First Min/NI Assembl	RUC Widows	U	0
03/01/2001	Ch.Staff	PM	Northern Ireland - Conversation with Dermot Gallagher	R	0
05/01/2001	NIO	NIO	Discussions with Trimbles Office	U	0
05/01/2001	NIO	SS/NIO	Political Update	C	
08/01/2001			Reuters News Report - Sinn Fein Set for New Government Talks	U	0
08/01/2001	FA/PS	SS/NIO	(M) Ahtisaari/Ramaphosa	S	1
08/01/2001	FA/APS	NIO	(T) Telephone Conversation with Taoiseach	C	0
08/01/2001	Ch.Staff	SS/NIO	OTRS: Pre-Conviction Pardons	U	0
08/01/2001	NIO	FA/PS	Organised Crime: Successes	U	0
08/01/2001	AG	SS/NIO	On the runs	C	0
09/01/2001	SS/NIO	Ch.Staff	McGuiness transcript	C	0
09/01/2001	Ch.Staff	PM	Northern Ireland - Deal Negotiations	C	0
09/01/2001	NIO	NIO	USA: Designation and CT Co-operation	C	0
09/01/2001	FA/APS	NIO	Northern Ireland: Discussions with Irish	C	0
09/01/2001			Reuters News Report - Blair & Mandelson Split over Ulster Security -	U	0
10/01/2001	NIO	NIO	Meeting with David Trimble,10 January	C	0
10/01/2001	SS/NIO	PM	Policy Proposals for Reform of the Criminal Justice System in Northe	R	0
10/01/2001	SINN FEIN	PM	Francisco Notarantonio	U	0
11/01/2001	NIO	FA/APS	Sinn Fein Ministers' participation in North-South bodies	U	0
11/01/2001	Ireland/HMA	NIO	my visit to Northern ireland 9-10 Jan	C	0
12/01/2001	HO	FA/PS	Claims for compensation from prisoners involved in the escape from	C	0
12/01/2001	NIO	NIO	Meetings with gerry Kelly and david Campbell	C	0
12/01/2001	NIO	FA/PS	Ahtisaari/Ramaphosa	S	89
12/01/2001	FA/APS	NIO	(T) conversation with the Taoiseach	C	0
12/01/2001	FA/PS	PM	Northern Ireland policing: John Hume	C	0
12/01/2001	NIO	Ch.Staff	The Cases of Finucane,Hamill, and Nelson:Draft Letter to Seamus M	U	0
13/01/2001	Ch.Staff	PM	Jim Steinberg and his meeting with sinn fein	C	0
13/01/2001	NIO	SS/NIO	Northern Ireland update	C	0
13/01/2001	Ch.Staff	PM	Northern Ireland	C	0
15/01/2001	FA/APS	PM	Telephone Call with Gerry Adams 16 January	C	0
15/01/2001	US /HME	FA/APS	Sawers / Berger meeting 15 /1	C	0
16/01/2001	FA/APS	NIO	Northern Ireland: Discussions with the irish Government	C	0
16/01/2001	Ch.Staff	PM	Northern Ireland	C	0
16/01/2001	FA/APS	NIO	(T) telephone conversation with Gery Adams	C	0
16/01/2001	NIO	NIO	Political Talks - Executive Manoeuvrings	R	0
16/01/2001			Article Belfast Republican press "Bridging the gap"	C	0
16/01/2001	HO	FA/PS	Article about Bertie Ahern	C	0
17/01/2001	NIO	NIO	Where do yesterday's discussions leave us?	C	0
17/01/2001	NIO	NIO	Briefing on normalisation for the PM	C	0
17/01/2001	FA/APS	NIO	(M) Meeting with the UUP	C	0
17/01/2001	FA/APS	NIO	(M) Meeting with the SDLP	C	0
17/01/2001	Ireland/HMA	SS/NIO	Where do yesterday's discussions leave us?	C	0
17/01/2001	NIO	FA/APS	Briefing for Northern Ireland Discussions	C	0
17/01/2001	FA/APS	NIO	Letter from Northern Ireland Politicians	U	0
18/01/2001	NIO	NIO	Today's Hillsborough Discussions (Part Two)	C	0
18/01/2001	LP	SS/NIO	Northern Ireland Justice Bill	U	0
18/01/2001	NIO	NIO	Today's Hillsborough Discussions (Part One)	C	0
18/01/2001	FA/PS	FCO	(T) - US President -NI	C	0
18/01/2001	FA/APS	NIO	(T) Conversation with the Taoiseach	C	0

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MT
cc: JP
JS

Mr Michael Tatham
Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1A 2AA

file Yes.
faxed? No

22 January 2001

Dear Michael,

PRIME MINISTER'S TELEPHONE CONVERSATION WITH DAVID TRIMBLE: ROBERT HAMILL CASE

I mentioned in my letter of 19 January that you would find it helpful to read the Hobson judgement alongside the report by Anthony Langdon of 15 August 2000, a copy of which was sent to you a few months ago (I attach a further copy). For instance, in paras 30 and 31 Mr Langdon observes that while the judge's criticism of Constable Neill was a distinct plus for the campaigners, the trial did not hear all the relevant evidence and there are several arguments (which he lists) that weigh in favour of the attack happening after the police officers got out of the landrover (a central plank of the campaigners case is that the officers sat in the landrover while the attack took place).

In particular Mr Langdon's conclusions (paras 56 to 59) are relevant to any consideration of the judgment:

- the court trying Hobson only heard a small selection of the evidence;

INVESTOR IN PEOPLE

/LMcC

- the story of the Hamill party and the story of the police were both given for the prosecution, so that the two could not be properly tested against each other;

- no supporting evidence was presented about the possible preliminary incident; and

- the RUC version is generally more credible than the version by the campaigners.

Mr Langdon comments that "it is not at all clear to me that these events are in themselves demonstrably so important as to cry out for an inquiry" (para 64). In the section on a comparison with the Lawrence case, he observes that in the Hamill case the normal procedures are nowhere near being exhausted. Any decision to support the suggestion of an inquiry would require every effort to be made to find a basis on which the Attorney General would be content.

If you require any further information please let me know.

Yours ever,

Paul

P G PRIESTLY

/LMcC

FROM; ANTHONY LANGDON
15 AUGUST 2000

MR WATKINS

cc Mr Pilling or
Mr Jeffrey
Mrs Evans HOLAB
Mr Lindsay
Mr McCourt

Hamill

1 I attach a note. I have written it in a frankly personal style, as I think that will be the easiest format to use at this stage.

2 Readers should also have
- the report 'See no Evil, Hear no Evil' produced by the Committee on the Administration of Justice (CAJ) in June. This is the fullest statement of the Hamill inquiry campaign.
- the judgement in the trial of Paul Hobson in March 1999.

3 I have spoken to the Chief Constable, the Chairman of the Independent Commisssion for Police Complaints (ICPC) and the head of the regional CID, DCS McBurney, and Inspector Irwin (Portadown CID), who have been involved with the case from the beginning. I have deliberately not contacted the DPP's people. Taking the view that I represented the Secretary of State, the ICPC gave me the run of their papers (which amounted to several thousand pages). They include a large number of statements taken by the police for various purposes, records of police interviews with suspects and others, and police reports to the ICPC. **Public reference cannot be made to these papers.**

4 You may think that the note gives too much emphasis to the totally different perceptions of the police and the campaigners, but I think that this is the aspect that strikes me most forcefully about the whole thing.

5 As regards the circumstances of the affray itself, I have had the advantage of ICPC's papers and of their careful correlation of statements. The general competence of the police investigation was not within ICPC's remit and for a period the ICPC detached itself from the investigation of the conspiracy allegation against Atkinson. While in Part I I have made some comments about these things, I am conscious that they are very superficial. I am not an expert on police procedures and I have had very little material to go on.

6 I would suggest that it would be sensible to get an informed police view on the general competence of the investigation, including the Atkinson aspect, before the idea of an inquiry is given any more serious thought. I do not know how these things are done, but I assume that HMIC would be the place to start.

AJL

ANTHONY LANGDON

The Death of Robert Hamill

Note by Anthony Langdon

1 Part I of this note comments on the facts surrounding Robert Hamill's murder and the handling of the case by the police and other public bodies, while Part II considers the main issues that are relevant to the idea of a public inquiry into the case. I have summarised my conclusions at paragraphs 53-63 and 86-90.

Part I: Analysis and comment

Background

2 In Portadown in the early hours of 27 April 1997 Robert Hamill, a Catholic aged 25 , was set upon, knocked unconscious and trampled by a crowd of Protestant youths. A police patrol vehicle was parked about 20 yards from the scene. The patrol crew were led by a Constable Neill, who was the only regular police officer in the party; the others were Reserve Constables Atkinson and Sharpe and Woman Reserve Constable Cornett. At some point the crew dismounted from the vehicle to control the crowd, but there has been intense speculation about precisely what they did and when they did it.

3 Hamill suffered brain injury in the attack; he never regained consciousness and he died in hospital on 8 May 1997. Even before his death his sister Diane Hamill, acting through the late Rosemary Nelson, had complained to the ICPC alleging that certain police officers had witnessed the assault on her brother and had not intervened as quickly as possible. Very soon after Robert's death Diane Hamill began to call for a public inquiry and to express complete lack of confidence in the ICPC. Her calls for an inquiry have achieved great political resonance; they have been adopted by Amnesty International in an international campaign; and they are now publicly supported by the Taioseach.

4 The behaviour of the police at the scene of the crime is only part of the story. Within three days of Robert's death the police did arrest six suspects and charge them with murder, but the charges against five of them had to be dropped when the key witnesses retracted their statements. One of these statements had additionally asserted that one of the prime suspects had said that Reserve Constable Atkinson (who had been one of the patrol crew) had telephoned his house after the affray and advised him to destroy his clothing. A telephone call from Atkinson's house to the suspect's was indeed made at the time in question, but Atkinson explained it by an innocent story that was backed by his wife and by friends.

5 The sixth defendant, Hobson, was tried by a Diplock court in February and March 1999, when he was acquitted of murder but convicted of affray and sentenced to four years imprisonment. Although the trial judge, Lord Justice McCollum, made some remarks that were helpful to the RUC he made several criticisms too, and he also made it clear that he had considerable doubts about the evidence that had been given by Constable Neill.

6 In June the Coroner decided not to hold an inquest on Hamill because the key witnesses feared to give evidence, and he told the Hamill family solicitors a great deal about the withdrawn statements, including the allegation against Reserve Constable Atkinson. The campaigners are now pressing for a public inquiry that would cover the entire story. They claim that this shows similar failings to those displayed in the case of Stephen Lawrence, and Imran Khan, the Lawrences' solicitor, has been closely involved with them. A detailed log of the sequence of events is at Annex 1.

7 Matters currently stand as follows.

a The RUC are considering the ICPC's recommendation that a disciplinary charge of neglect of duty should be brought against Neill for stopping the vehicle in a position that prevented the crew from observing the place where Hamill was attacked.

b The allegation that Atkinson colluded with one of the prime suspects to destroy evidence is again being investigated by the RUC, who have some new leads. The fact of this new investigation was conveyed by the Chief Constable to Diane Hamill's solicitor Barra McGrory on 4 August. Mr McGrory said that the family would respect confidentiality.

8 The two issues at 7a and b above are separate, but there is clearly some read-across between them. If Atkinson's subsequent collusion were established, then the police officers' accounts of their behaviour in the incident would need to be re-appraised, at least to the extent that great doubt would be cast on Atkinson's claimed inability to identify the people he saw jumping on Hamill.

Witness A and Witness B

9 The main evidence against the murder suspects and the original (albeit hearsay) evidence against Atkinson is contained in a statement by the young woman Witness A that she subsequently withdrew after schemes by the RUC to find her a career away from Portadown had collapsed. Additionally Witness B (who was a male lesser participant in the disturbance in which Hamill was killed) identified some suspects, but then backed down and claimed that his statement was hearsay only. Both the DPP and the Coroner decided that they could not proceed without these witnesses. I am sure that the witnesses will not revert to their original evidence and if they should give testimony it is hard to see that there could be any way to protect their identities effectively. In particular, Witness A is now living with the previous boy-friend whom she incriminated, and she is pregnant with his child. In fact, it seems to be quite widely known (to Diane Hamill as well as among the Protestant community) that these witnesses made the statements that they did, and it appears that they are not in danger for as long as they continue to disown what they told the police.

The ICPC

10 Diane Hamill's original complaint and the contemporary RUC press releases about the incident were the only things within the ICPC's remit; the Commission has not concerned itself with the general adequacy of the murder investigation. For the purpose of its inquiry the ICPC first instituted a 'supervised investigation' by the police for the purpose of satisfying itself that adequate police investigations had been performed in respect of the criminal aspects of the complaint against police officers. The documentation for that investigation consisted of the police papers for the murder investigation plus further interviews with the police officers involved plus further (unimportant) statements from the 2 members of the public who were the only ones to respond to the ICPC's appeal for witnesses. After the Hobson trial the papers were automatically returned to the ICPC to consider recommending disciplinary action.

11 Although the complaint was made by Diane Hamill, advised by Rosemary Nelson, the Hamill family have not cooperated with the ICPC. Rosemary Nelson forwarded certain statements made to her that alleged that the police stayed in the landrover throughout the attack and long afterwards. The makers of these statements refused to be interviewed by the police, though one or more of them appeared on a documentary on the case by UTV in December 1997.

12 It may be helpful if I say something here about my impressions of the ICPC handling of this supervised investigation, which was but one among some 400 on its books at the time. At the outset the supervising member of the Commission was Mr Kevin Murnaghan a well-known solicitor, respected by both communities. Mr Murnaghan attended police interviews and reconstructions, but his minutes on the file are mostly confined to brief compliments to the thoroughness of the case officer Mr Greg Mullan. Those compliments seem well deserved, as Mr Mullan assiduously correlated all the available statements etc and I could not really see anything at all to fault in his analyses. Mr Murnaghan died in March 1998 and was succeeded as supervising member by Mr Brian Reed, who took a very close interest in the question of the RUC press releases, on which he minuted clearly and cogently. More recently, consideration of the discipline aspects has required 2 different members to be involved - Miss McNally, who evidently took a harsh view of the whole case and claimed to have spent *5* days studying the papers, and Mr Shillington. Miss McNally did, in fact, wish to include a recommendation for a disciplinary charge in respect of failure to supply first aid, though she was dissuaded from that. I think that her inability to find any other additional grounds for charges is an added reassurance that the existing material does not, in fact, contain unsuspected surprises. I do think, however, that Mr Murnaghan's minuting would look very cursory if the ICPC books were opened to the public and that the way in which the Commission handled the conspiracy allegation against Atkinson could also be made to look vulnerable. I will return to the last point when I discuss the Atkinson dimension generally.

The allegations

13 We must now go through the main points one by one. Some are detailed and complex, but I will deal with others quite briskly.

(a) The fatal affray

14 I think that just about everything in this paragraph is common ground among all the parties. The police patrol led by Constable Neill was tasked to keep public order in the centre of Portadown, with particular reference to an area around Magowan Buildings and Woodhouse Street, which is a short distance from the murder site at the junction of Thomas Street and Market Street. The latter was a well-known flashpoint for sectarian trouble at the weekends because the Catholics returning from St Patrick's Hall in Thomas Street crossed the path of Protestant coach parties returning down Market Street from their own drinking expeditions. The police landrover driven by Neill was initially parked in a place to observe that junction as small groups of Protestants drifted down Market Street but Neill thought that things were quiet where he was and he began to move off to explore the scene elsewhere. A Catholic, Thomas Mallon, waved down the crew and told them that his friends were coming down Thomas Street but Neill drove the landrover a little further away from the flashpoint junction, turned the landrover somewhat across the street and stopped, with the occupants' view of the junction restricted to whatever they could see through the observation slits in the side of the vehicle. The reason why he made these moves was that the known Protestant troublemaker Stacey Bridgett, carrying a bottle of cider, and his friend Dean Forbes had squared up to Mallon in a threatening way, and the patrol moved closer to this incident in order to stop it it developing. They succeeded in this. Mallon (congratulating himself on having had a lucky escape from Bridgett) made his way home down Woodhouse Street opposite Thomas Street, and Bridgett and Forbes (who were both among the 6 people later charged with Hamill's murder) came to the passenger side of the landrover, chatting up the woman reserve Cornett in the passenger seat and having an inconsequential conversation with Neill. The street seems to have been fairly noisy with shouting that was normal at that time of night and the landrover engine was kept running.

15 This may be the best place to mention the large amounts of beer or cider that the young people on both sides of the sectarian divide had been drinking. Practically everyone on the streets by that time of night must have been quite drunk. The pathological report on Hamill shows that he was 'moderately intoxicated'.

16 According to the police officers in the landrover the next thing that happened was that a man (who must have been either Colin Prunty or Colin Hull) began to pull Neill out of the landrover shouting things like 'You watched that happening and you did nothing'. The officers got out and Neill, Atkinson and Cornett have remained adamant that there were no bodies on the ground at that point. The statements of the fourth member of the crew Reserve Constable Sharpe are generally vaguer, though he was clear that he heard aggressive shouting as he opened the door of the vehicle. Neill and Atkinson say that when they got out they saw a crowd of 40 to 50 Protestants confronting a group of 8 to 12 Nationalists; there was taunting and cat-calling going on, and almost immediately a number of fights broke out. They intervened to stop the fighting and Cornett called for reinforcements at 1.45:37. Within a couple of minutes the police did see two bodies on the ground and Cornett called for an ambulance at 1.48. At the Hobson trial Neill gave

evidence that he thought he could remember seeing Hamill and another man running towards each other (presumably in the first moments after Neill had got out of the landrover).

17 Within the next ten minutes various police reinforcements arrived, riot guns were issued though not used, and the ambulance arrived at 1.58. From the arrival of the first reinforcements there are several police reports giving a clear picture that the police on the spot were energetically trying to press the Protestants away from the injured men, though it seems clear that some of the Protestants were still trying to get past the police and take a kick at Hamill, whose breathing was rasping and difficult. Neill and Atkinson give a confused account of a number of running fights and of their using their batons against Protestants. At one point Atkinson saw out of the corner of his eye three men jumping on Hamill, at another Neill saw Hobson aim a kick at him. Inspector McCrum, who came from the nearby police station and took charge, found about 30 Protestants and only 3 or 4 Catholics, with continuing disorder and police being assaulted. He implemented a plan to keep Catholics and Protestants apart and to herd the Protestants up to West Street, and this seems to have been accomplished without further trouble over the next 45 minutes. By 3.0 the area was deserted.

18 The attack on Hamill and his friend Gregory Girvan must have taken place at some time between about 1.40 and Cornett's radio call for an ambulance at 1.48. The two men, entering Market Street from Thomas Street, had undoubtedly been attacked by a crowd of Protestants and kicked while they were on the ground. The attack seems to have been quite short, though savage. The Hamill party are adamant that the junction was quiet before the attack, and that a crowd of 30 or so aggressors suddenly came 'out of nowhere'. They make different estimates of how long it was after the attack until the police came out of the landrover, but they are all quite clear that no police reached the crowd until the attack was over.

19 In addition to the Hamill party's account that the attackers 'came out of nowhere' and the police officers' story of confronting groups exploding into violence there are several statements from witnesses, not called at the Hobson trial, about scuffling or fighting at the Thomas Street junction before the main attack took place. One of these statements has a man wearing a leather coat (as Hamill was wearing) running down Thomas Street and punching a Protestant in the face, and the (self-confessedly drunk) victim of that assault confirms that he was indeed punched.

20 The actions of the patrol crew are fairly clear for the earlier and later periods of the incident but there are questions and inconsistencies about the middle period. It will be simplest to take these periods separately.

Initial period; positioning the landrover etc

21 Lord Justice McCollum singled out for criticism two of the police actions described in paragraph 14, that is, the ignoring of Mallon's warning and the placing of the landrover in an even more disadvantageous observation position. It is precisely these

actions on which the ICPC base their current recommendation that Neill should be suspended and charged with neglect of duty. It is obvious with hindsight that Neill's action in moving away from the flashpoint area and having a chat with Bridgett and Forbes had disastrous consequences, but his story is that the street seemed peaceful enough until violence flared. However bad Neill's lapse of judgement in allowing Bridgett to distract him, there is no evidence whatsoever of deliberate planning by the police. If Neill does face a disciplinary charge I imagine that his defence will be eloquent on the oversimplication of our reconstructions focusing solely on the Thomas Street junction, how many calls there are on the attention of a patrolling officer, and how the fatal flashpoint site is not the only such point in Portadown (indeed, Neill was originally briefed to watch a different nearby place). It might also be that Neill would have access to all the statements taken in the investigation, in which case he could present his actions in a more favourable light than that in which they appeared at the Hobson trial.

22 There is a very small point that I may as well mention here for completeness. Neill has said that his intention was to 'drive around by the centre of town' or some such phrase, and the campaigners have castigated him for apparently preparing to leave the flashpoint area altogether. DCS McBurney explained to me that what Neill in fact meant was that after Mallon had warned him he intended to drive back to the flashpoint junction by turning round the block, which would have taken him only 30 seconds or so, but that he was then distracted by Bridgett. I accept that.

The later period

23 The patrol's own story is that as soon as they were alerted they dived into the mêlée and tried to separate the factions and pull out the outnumbered Catholics. There is absolutely no doubt that very soon after the reinforcements arrived that is exactly what was happening. A powerful piece of support for the police is the evidence of Colin Prunty who was with the Hamill party and himself 'ploughed' into the crowd of attackers; he says that after the attack was over 2 police officers appeared and broke the crowd up. On the other hand Witness A says that she saw police at the back of the crowd and doing very little to stop what was happening as various Protestants were attacking Hamill.

24 A distinction can be drawn between Neill and Atkinson, who seem to have been active; Cornett, who seems to have been quite terrified and to have stayed in or near the landrover; and Sharpe, who may have kept to the fringes. Sharpe has now retired from the police service, and cannot be made subject to any disciplinary recommendations that the ICPC might otherwise have contemplated, while Cornett is currently negotiating retirement on medical grounds. I believe that the weight of the evidence is that Neill and Atkinson, at all events, did get involved in controlling the disorder very soon after they were alerted to it. I know from their file that this is the conclusion that the ICPC reached, in both the criminal and disciplinary phases of their investigation. The Hobson trial judge commented that 'it appears that once the police officers did intervene they acted resolutely'.

The immediate period of the murder

25 The manifest difficulty with the police officers' story is that common sense seems to dictate that the man who began to pull Neill out of the landrover, shouting that 'you watched that happening and you did nothing' must surely have been referring to the attack on Hamill. In that case the police must be lying, or badly mistaken, when they say that there were no bodies on the ground when they got out of the landrover and that violence did not explode until shortly after their emergence. This is one of the strongest points in the CAJ report. Defence counsel in the Hobson trial made a lot of sarcastic play with the issue at Neill's expense, and Neill was left lamely speculating that the man who rushed up to the landrover must have been motivated by some other incident of which he (Neill) was unaware.

26 Lord Justice McCollum said several things about this crucial question of timing, but it is not clear to me that his comments fit together very coherently. He began by saying that to resolve the issues necessary for the trial it was immaterial whether the Hamill party were correct in their evidence of an unprovoked attack, or whether police witnesses were correct in suggesting that some kind of confrontation took place before any serious injuries were sustained. Nevertheless, he felt that he had to comment on this and other related points and he later said that he was 'unable to resolve the question whether the police officers remained in the landrover during the attack', although he was 'satisfied that the officers came across the road shortly after the attack'. He then went on to say that the latter conclusion raised a reasonable doubt 'whether Constable Neill was being truthful when he described the scene as he looked across the street after dismounting' and he commented that if Neill's evidence were untruthful 'the purpose of it is obviously to protect his own and his fellow officers' position in the face of criticisms that have been publicly made against them'.

27 Just for completeness it may be worth noting that the judge balanced the above harsh comments with some observations that were doubtless intended to be more welcome to the police. In particular he recognised that when the police officers intervened they acted resolutely to protect the Catholics. He also speculated – in what seems to me to have been an unsupported manner - that once the landrover had taken its final position it would have been impossible in any event for the officers to have dismounted in time to prevent a sudden short attack.

28 Colin Hull and Dermott McNeice in their untested statements to Rosemary Nelson of 15 and 19 May have the police inside the landrover until the ambulance arrives, and I think that these are the only statements that go so far in supporting the basis of the complaint made by Diane Hamill on 6 May. In my opinion there is an overwhelming weight of evidence that the patrol had exited the landrover well before the ambulance arrived.

29 Quite apart from the major timing question hanging over Neill's evidence, it must be said that some other aspects of his story at the Hobson trial do cause one to raise an eyebrow. In particular, defence counsel had some fun with his claim to have taken the same individual to safety in Woodhouse Street no less than 3 or 4 times. This does seem

somewhat bizarre, but it is conceivable that some excitable and drunken person might have kept dashing back into the mêlée. Neill's and Atkinson's evidence conflicts in many details, but I am not sure that this goes beyond what could be expected where two people are being cross-examined about a confused fracas.

30 The judge's criticism of Neill was a distinct plus for the campaigners. On the other hand, the Hobson trial did not hear all the relevant evidence and there are several arguments, as follows, that weigh in favour of the murderous attack happening after the police officers were out of the landrover, as in the Neill account.

a The strongest single point is that forensic examination showed Bridgett's blood on Hamill's trousers. While this of itself was insufficient to found a murder charge against Bridgett, the simplest explanation is that the blood was transferred during the attack. Bridgett does not appear to have been bleeding when he was chatting at the landrover, though several people saw him bleeding from the nose or mouth later in the evening. (His own account, for what it is worth, is that he was punched in the face moments after he left the landrover after the crew had got out.) The obvious inference of all this is that Bridgett must have attacked Hamill after he had finished chatting to the patrol crew.

b More generally, the placing of Hamill's disablement before the patrol dismounted is not compatible with Witness A's identification of Bridgett and Forbes among those who were jumping on Hamill. It is simply impossible to imagine that they would have been comfortably chatting to the landrover crew only moments after carrying out a violent assault. Strictly speaking, Witness A's statement has had of course, no probative force ever since she retracted it. But the police had no reason to doubt that she had identified the right people.

c The implication of the judge's comments was that Neill was at pains to protect himself from the campaigners' assertion that he had stayed in the landrover and witnessed the assault on Hamill. But if he had wanted to increase the plausibility of his story that the attack took place after he had exited the landrover and was fighting the crowd, he would surely have tried to downplay and obfuscate whatever it was that Prunty/Hull had shouted to him, and this would have been quite easy, as both Prunty and Hull were quite drunk. Instead of that, Neill gives a vivid account of the man accusing him of sitting there and watching 'it' happen, and he stuck doggedly to that account through many interviews and cross-examination in court.

d Neill, Atkinson and Cornett gave their first statements early the following morning when the CID were brought in and they were called back from their homes. If the story of seeing no bodies at the outset was a fabrication, they must have jointly concocted it very rapidly indeed.

e If the bodies really were on the ground when the crew exited, why did Cornett not call for an ambulance straightaway, instead of waiting for another few minutes after her first call for help?

f Neill lamely postulated at the Hobson trial that there must have been some other violent incident that had precipitated Prunty/Hull to rush up with his accusation 'you sat there and did nothing', and he suffered for this at the hands of defence counsel and, as we have seen, those of the judge. In fact, however, there was independent evidence that there

had been a prior confrontation at the Thomas Street junction (see paragraph 19) but this was not called at the trial and Neill may not even have been aware of it.

31 There is room for debate about exactly how long and violent the disturbance was, though it is relevant that the Diplock court had no problem in convicting Hobson of affray. Neill and Atkinson paint a fairly lurid picture, with Catholics needing to be pulled out and protected from Protestants, and this idea of 'two factions' is one of the things to which the CAJ object. On the other hand, some accounts such as that of Halley (see below) imply that the situation was simply one of the police containing a threatening crowd of Protestants. Given the evidence of Prunty, for example, there can be no real doubt that some Catholics must have got involved with the Protestant crowd; the weight of evidence is that there was indeed a widespread violent fracas for some minutes after Cornett's first call at 1.45:37; but that by 1.55 or so the police seem to be succeeding in keeping the Protestants back.

32 It will help the reader to focus if at this point I summarise in my own words the RUC story of the incident, as explained to me by DCS McBurney, and set it against the campaigners' version.

a The RUC believe that there was undoubtedly a preliminary fight at the Thomas Street junction, and that Hamill was almost certainly involved. They point out that Prunty and his girlfriend were able to cross Market Street with no trouble shortly ahead of Hamill. Whatever happened it was enough for Prunty/Hull to come rushing back saying that the police should have stopped it. Thereafter, things happened in the general way that Neill described, and the fatal attack on Hamill happened very swiftly while Neill and Atkinson were robustly trying to control the crowd (and whatever Atkinson may or may not have done the next day, he did his duty bravely on the street).

b The campaigners say that Hamill and Girvan were set upon without the slightest provocation and that if the patrol did not actually witness the attack without intervening as Diane Hamill originally alleged, then at the very least their negligence was appalling. Having ignored the fatal attack while chatting with Bridgett and Forbes, Neill makes up a nonsensical story of seeing no bodies when he exited the landrover, and invents a sectarian conflict when there was none. Thereafter for several days the RUC persist in that story through press releases.

33 The issues of whether there was a preliminary skirmish and whether the main attack took place after the crew dismounted are inter-related.

- In my opinion the evidence in statements made to the police of a preliminary confrontation is quite strong. If only because of various witnesses' timings, I think that Hamill must have been in the area of such a preliminary confrontation at the relevant time. (Furthermore, and this is simply my speculation, I think that it is inherently likelier that something happened to attract the attention of the 'dribs and drabs' of Protestants drifting down the street, rather than that a crowd of 30 suddenly appeared without warning. It just seems more credible to me that there was a scuffle and the little knots of Protestant youths then rushed to the scene of the action and brutally piled in with their bestial howling of 'kill the Fenian bastard' etc.)

- In my opinion the arguments, summarised in paragraph 30, in favour of the murderous attack happening after the crew had dismounted are cumulatively very strong.

34 It is important to remember that the whole event from the postulated initial incident to Hamill's disablement would have occupied very few minutes. One point that tells against the police version is that if it was the preliminary fracas that caused Prunty/Hull to shout at Neill about police inactivity, then even this incident must have gone very badly for Hamill. It does not follow from this, however, that Hamill's body was on the ground when Neill exited the landrover. There are anomalies in either of the stories set out at paragraph 32, but on balance I conclude that there was a preliminary incident, that Hamill was not disabled until after the crew had dismounted, and that whatever happened in the early morning on 27 April 1997 is therefore likely to have been closer to the police version than to that of the campaigners. I shall comment more generally on this conclusion at the end of this part of the note.

Constable Halley

35 Constable Halley came up with the reinforcements. She gave evidence at the Hobson trial and was castigated by the judge and by the CAJ for not taking a note when Prunty told her that Lunt, whom she had apprehended and released, had been involved in the attack on Hamill. The DPP has since explained to the Hamill family solicitors that, unbeknown to the judge, Prunty's evidence against Lunt had indeed been followed up, and was to have been used in support of a murder charge against Lunt, but then had to be discarded because he (Prunty) got into a muddle and identified the wrong person. As regards Halley's decision to release Lunt, the fact is that she had not seen him do anything worse than running away and having a bottle in his hand, and at the time the pressing priority was presumably to hold back the Protestant mob from further attacking Hamill and Girvan. Although Halley's action has been held up by the trial judge and by CAJ as one of the worst pieces of police incompetence in this whole affair, I am not sure that the evidence justifies such strong denunciation.

36 It is certainly true that if Halley had reported Prunty's advice straightaway the police might have found forensic evidence on Lunt. But I think that the failure to do this is part of the wider picture of the police attitude to evidence in the days immediately following the affray, which is the subject of the next section.

37 One feature, which speaks for Halley's independent-mindedness is her insistence at the Hobson trial (transcript p 378 et seq) that fighting was not going on when she arrived on the scene around 1.55 and that she was not even aware that any Nationalists were present. What she saw was simply police officers holding back a crowd that was trying to get at Hamill and Girvan on the ground.

b) The murder investigation

38 Amnesty International allege that the police did not preserve the murder site and Jeremy Corbyn has asked a question about this. The CAJ do not make a point of that, but

claim that 'the failure to arrest and detain those involved in the attack on the night in question clearly led to potentially incriminating forensic evidence being lost to the prosecution' and that the police 'only became proactive in the case when Robert died'. The obvious point here is that, failing hard observation evidence of the crime, the only evidence that is of much use in this sort of case is forensic evidence of contact with the victim. Classically, the police are looking for bloodstains on the shoes and trousers of suspects. Even quite naive criminals, however, are likely to take some steps to destroy such evidence, so the police have to act very quickly if they are to get that kind of thing. On the other hand, it is fair to add that a riotous situation of the kind in which Hamill was killed is far more difficult to investigate than an isolated attack like the one on Stephen Lawrence.

39 What happened in this case was that once the streets had been cleared at about 3.0 all the police officers went home to bed. Two or three hours later Inspector McCrum telephoned the hospital to enquire after Hamill and was told that his injuries were life-threatening. McCrum then alerted the CID, who moved in by about 7.0, sealed the area for forensic examination and had all the officers immediately called in to the police station to make statements. Some forensic evidence (eg fingerprints on broken bottles) was discovered in the street, but it did not prove very useful.

40 The CID fairly soon had the names of a number of people who had been seen in the crowd, but none of them except Hobson had been seen doing anything to Hamill. They believed that it would be counter-productive to call any of these people in for questioning until there was something more concrete to confront them with, and they therefore set about finding witnesses, with house-to-house enquiries in the neighbourhood and following up all leads that were suggested to them. By 5/6 May they felt that they had just enough to call in several of the 6 final suspects for questioning, but this did not get anywhere. On 9 May Witness B was persuaded to incriminate some of the suspects and on 10 May Witness A, who had been brought to the police station by Andrea McKee, made her vital statement after lengthy interviewing by a very skilled detective. The suspects were then arrested within hours by a team of 30 officers, their effects were seized for examination, and they were charged with murder.

41 A key question in this is whether the police under-rated the severity of Hamill's injuries despite Inspector McCrum having been told that they were life-threatening, and whether the investigation would have moved any more quickly if it had been treated as a potential murder investigation from the beginning. Both Mr McBurney and the Chief Constable have stressed to me that Hamill's death might have been caused by oxygen starvation during the time before the ambulance arrived, and I think that this assertion simply has to be dismissed out of hand, since the pathologist was questioned in depth at the Hobson trial and was clear that Hamill died of brain injury. What I guess may lurk under this hypothesising by the police is the feeling that they may be criticised for treating a murder as though it was just an assault, and that they will be told that they should have done more to establish Hamill's condition while he was lying in hospital. So far as I can judge, the police were indeed surprised when Hamill died, but judging from the Hobson

trial transcript so may have been the hospital doctors. Inspector Irwin told me that the hospital practice was to keep people with head injuries under sedation and to try to bring them into consciousness every 3 or 4 days, and that the police inquiries about Hamill's progress coincided with periods when he was under sedation in any event.

42 My own feeling is that, on the face of it, the police do not come out of this too badly, and that they were genuinely prioritising and making progress with the investigation, albeit that they thought they were dealing with a serious assault rather than a murder. However, it is impossible to disprove the assertion that they would have got results more quickly if they had used the number of officers that would be deployed for a murder, or that they might have got solid evidence if they had tried much earlier to seize the suspects' effects for forensic tests.

(c) Atkinson

43 On 10 May Witness A alleged that Hanvey had told her that Atkinson had telephoned to advise him to destroy his clothes and that he was constantly passing on advice about the progress of the police investigation. Atkinson was not interviewed about this until 9 September, when he was first asked to produce the record of his telephone billing. The matter was not then pursued until 9 October, when Atkinson produced the story (see Annex 1) which the police were unable to disprove despite their scepticism

44 A good deal of time seems to have been spent by the police in unsuccessfully trying to prove that Hanvey had, in fact, got rid of clothing. Mr McBurney stressed to me that there would have been no point in simply confronting Atkinson with the allegation and obtaining his telephone billing records at the outset. He pointed out that the evidence of billing records cannot be destroyed and that, once again, good police work meant building up a case before the main suspect was confronted. In this particular case he had been disappointed that it had not been possible to nail Atkinson, since the latter's story had not rung true. But he had noted that Mr and Mrs McKee did not seem a well-matched couple and he had said at the time to Inspector Irwin 'They have got away from us for now, Michael, but once this couple separate - as they will do - we will take them by the throat'. The McKees did, in fact, separate, and Mr McBurney planned to reopen his inquiries under cover of the inquest. When the inquest was aborted, he decided that he had to act proactively, and Mrs McKee, who had returned to her native Wales, was interviewed there on 20 June.

45 I am not able to pronounce on whether the allegation against Atkinson was pursued with sufficient energy. Part of me feels that the telephone evidence should have been obtained and Atkinson confronted quickly, before he had time in which to organise a cover story. On the other hand, Mr McBurney's account may well represent conventional and sound detective practice. Mr McBurney's hunch, incidentally, is that it is unlikely that Atkinson himself would have telephoned the Hanvey household if only because he was not on good terms with the menfolk there. He thought that a more likely scenario was that he told his wife all about the riot and that she - a gossipy woman - picked up the phone and warned her friend Mrs Hanvey.

46 There is one more point in all this. When the police were preparing to interview Atkinson for the second time the ICPC decided, and minuted their file, that the collusion allegation was 'outside its remit'. Mr Mullan explained to me that this tactical decision, with which the late Mr Murnaghan was strongly identified, may have been poorly expressed on the file. The thinking behind it was that the allegation would be bound to come back to the ICPC in due course (as it did) and that the immediate priority was to dispose of the Diane Hamill complaint so that the papers could go to the DPP. I think that this rationale is quite understandable, but I also believe that the ICPC could have argued that there was a read-across between the collusion allegation and the complaint, as described in paragraph 8. I cannot usefully speculate on the difference that might have been made if the ICPC had pressed the police to give more urgency to the Atkinson investigation, but if there were an external inquiry this issue could doubtless consume some time and argument.

(d) Press releases

47 The Hamill campaign has consistently made a lot of the changes in the RUC press releases, which are set out in the CAJ report. The essential point is that 'a clash between rival factions' in the first release changes to a statement in the fourth release that 'two couples....were set upon by a large crowd'. The CAJ believe that the first releases represent a misleading account of events, whilst the fourth acknowledges that there was no confrontation before the fatal attack. The attack on Hamill coming without any kind of preliminary provocation is, of course, a feature that would strengthen the parallel that CAJ argue between this case and the Lawrence murder.

48 The RUC basically say that their concern was to get something out immediately in order to appeal for witnesses and that the change in the third release was out of a scrupulous regard not to cause offence. They offered to brief their press officers to be careful to consider the wording of releases so as to reduce the risk of misinterpretations and the ICPC accepted that as fair and appropriate.

49 This is, no doubt, a feature that could have been handled more sensitively, but I myself cannot see it as a deep failure, or as persuasive evidence of a particular mind-set. I think that there <u>was</u> fighting between two rival factions, even if one faction was vastly larger and vastly more culpable than the other. It would have been better to say from the start that the conflict involved a large crowd of Loyalists and a small group of Nationalists. Nevertheless, the police were obviously correct to make it clear that this was an incident across the sectarian divide, and I do not think it is too naive to believe them when they say that their immediate purpose was to get witnesses rather than to apportion blame.

(e) The DPP

50 The CAJ report asks all sorts of questions about why the DPP did not pass on various information to the victim's family earlier. I do not think that this assertion is central and I have not tried to get the DPP's comment on it.

51 The point that does occur to me about the DPP's decisions, rather, is why none of the suspects except Hobson was charged with affray when it became clear that Witness A's evidence would not be available to support murder charges. This was a deliberate decision by the DPP and it may have been based on a straightforward appraisal of the evidence. On the other hand, police officers identified a number of people doing various things in the crowd, and I am a bit surprised that lesser charges could not be proved against any of them except Hobson. We could only pursue this by asking the DPP's people, and I am very disinclined to appear to be questioning their prosecuting decisions.

(f) The video

52 Just for completeness, Inspector Irwin assured me that there is absolutely nothing in CAJ's assertions about witheld video evidence. Nobody ever told Diane Hamill that there was a tape that showed the landrover in its original position. What she was told was that this camera was empty at the time, but that this was all that it would have shown had it been working.

Conclusions to Part I

53 Views about what happened on 27 April 1997 could hardly be more polarised. The chairman of the ICPC, for example believes that the Hamill family were done a dreadful wrong for which the police are in some sense to blame, and that some way should be found to expose the police attitudes that he believes to be illustrated by this case. At the other end of the spectrum, senior police officers see Neill as a reliable, brave and decent officer who has been shamefully pilloried through no fault of his own. There is absolutely no middle ground here.

54 It is important to remember that what I have called, for convenience, the 'RUC story' is simply the view of events that is taken by senior RUC officers. The only version on the public record is the partial one that was aired in the Hobson trial and which ended in the judge's criticisms of Neill. Equally, the campaigners have not presented their own alternative version of events; they simply criticise the police story.

55 The very idea of a person being killed so close to a police patrol, the general success of the Hamill campaign in putting across their interpretation, Lord Justice McCollum's criticisms of the police in the Hobson trial, the serious questions hanging over Atkinson, and the police's trying to tell me that Hamill may have died because of something other than his injuries all predisposed me at the outset to think that this was a pretty bad business.

56 One does not lightly disagree with a Lord Justice of Appeal who has had the inestimable advantage of seeing and hearing those witnesses who appeared before him, but I have concluded that several of Lord Justice McCollum's comments should be treated with caution. The fact is that the court trying Hobson only heard a small selection

of the evidence and most of the points listed in paragraph 30 did not figure in the trial at all. The story of the Hamill party and the story of the police were both given for the prosecution, so that the two could not be properly tested against each other, and no supporting evidence was presented about the possible preliminary incident. The result of all this was that Neill was left floundering and appeared to be fantasising when in fact there was material that could have buttressed his story.

57 For the detailed reasons rehearsed above, I believe that the totality of evidence points to a preliminary skirmish (contrary to the assertions of the Hamill campaigners) and to Hamill being disabled after the patrol crew had dismounted (which is against the findings of Lord Justice McCollum). Exactly how quickly the crew then intervened is another matter. The police version has Neill and Atkinson trying to control the crowd when Hamill received the fatal injuries. That may well be right, but a hostile questioner would still want to know how a man could be killed so close to an officer (Neill) without his seeing anything of it, while another officer (Atkinson) did see the attack but cannot recognise any of the participants, despite himself living in the heart of the Portadown Protestant community. And if we are to put any weight on Witness A's identification of Bridgett as one of the murderers, then it would be illogical to dismiss her assertion that the police were not doing much to stop what was happening.

58 If I am right in concluding that the version at paragraph 32a is generally more credible than the one at 32b, then it may be felt that there is something disproportionate about the extreme persistence and vehemence of the campaign led by Diane Hamill (who was not herself present at the events in which Robert died). It is possible that the Hamill family's resentment was fuelled by some episode of which we know nothing or that, for example, the police officers took their time walking over to the crowd (though all the action has to be fitted into a few minutes and the police officers do seem to have been robust and active when they reached the crowd). Alternatively, it may be thought that the very fact of having a close relative kicked to death so close to a police patrol is enough to make anyone resentful. Whatever else may be said the one thing that is apparent is that the presence of the police patrol vehicle on the street did nothing to inhibit violence breaking out.

59 The evidence that would, on the face of it, go furthest to support Diane Hamill's complaint is in the statements by Hull and McNeice that were taken by Rosemary Nelson a few days after Hamill's death. These statements have the police in the landrover throughout the attack, and staying there until the ambulance arrived. This is contradicted by so much other evidence that I am absolutely clear that the statements cannot be believed. Hull and McNeice have refused to be interviewed by the police.

60 My impression is that the general handling of the original investigation was competent, and nothing can dislodge the fact that 6 suspects were charged soon after Hamill's death. But liaison with the hospital may have been imperfect and it is quite possible that the police could have got a gloomier assessment of Hamill's health if they had pressed for it. In that case the police would probably have been able to justify

deploying more resources, though I do not think it necessarily follows that the investigation would then have been more successful. I am not able to say whether it might have been practicable for the police to seize the suspects' personal effects at an earlier point, or what evidence might have realistically been found had they done so.

61 I was rather surprised that Atkinson was not confronted with the collusion allegation for 5 months, though that may simply reflect my lack of knowledge about police work. The senior officer in charge of the case can explain his approach clearly and confidently and would make a strong witness. The ICPC's decision to detach itself from this phase of the investigation, however, was unfortunately minuted on their internal file, and the decision itself may be debatable.

62 I have not pursued the CAJ complaints about the DPP, which do not strike me as very telling. If there were an external inquiry, however, it might just possibly get interested in why it was that the DPP did not bring lesser charges against any of the rioters except Hobson.

63 The alleged deficiencies of the RUC press releases do not appear to me to be very significant.

Part II: An inquiry?

General

64 The decision whether to hold an inquiry into a controversial public issue is very much a matter for Ministers' general political judgement. In the present case a careful application of the police complaints machinery has simply led to the possibility of a disciplinary charge of neglect of duty in respect of the siting of the landrover, while a criminal investigation is in train in respect of a separate act of alleged collusion after the public disorder. Setting aside the question of intervening in ongoing complaint and investigation procedures (which I shall return to below) it is not at all clear to me that these events are in themselves demonstrably so important as to cry out for an inquiry. But the Secretary of State is entitled to take a wide range of issues into consideration including, I think, the effect that the campaign itself may have in destabilising confidence in the policing of Portadown and in the administration of justice in Northern Ireland. So I think that it would almost certainly be proper for him to make a decision in favour of an inquiry provided that he did so on the basis of a proper appreciation of the relevant considerations.

65 The courts would not claim that they had a right to require a Minister to exercise his discretion so as to hold an inquiry. They would, however, undoubtedly be available to review the decision-making process once a Minister took a decision against holding an inquiry (or, indeed, if the decision was to set one up). As the recent judgement in the Shipman case showed, the courts would also be prepared to review the correctness of the procedural arrangements that a Minister decided an inquiry should adopt. In the Shipman

case the court decided that the Health Secretary had acted irrationally in requiring the inquiry established into Dr Shipman's murders to meet in private and the case demonstrated that if a question of this kind should go to court, then the judiciary are likely to have a strong inbuilt preference for inquiry proceedings to be conducted in public and for funding to be provided for the legal representation of witnesses.

66 The upshot of all this is, I think, that any decision on holding a special inquiry should be reached after an impeccable procedure and expressed with care to minimise the risks of judicial review. In practice, I think this means expressing decisions – especially negative decisions – in fairly general terms and avoiding unnecessarily detailed expositions that may leave room for allegations of irrationality.

Comparisons with the Stephen Lawrence case

67 In the present case the campaign for an inquiry is partly based on the comparison with the case of Stephen Lawrence. It is indeed obvious that there are some similarities between the two cases. The crimes were racist/sectarian; in each case a number of suspects were identified but not tried; in each case the suspects were not pursued for forensic evidence in the first hours; and in each case there is an assertion of collusion between police and suspects' families. On top of that the initial circumstance of the Hamill murder happening so close to a police patrol is so inherently shocking that no doubt the natural sympathy of most people would instinctively be engaged on the victim's side.

68 Having said that, I do not think that the resemblances between the cases are so overwhelming that Ministers should ever feel that they have no practical option but to follow the Lawrence precedent. In particular, the huge difference is that in the Hamill case suspects were charged with murder within two days of the victim's death, and the withdrawal of the crucial witness statements cannot reasonably be blamed on the police. I also know from my direct official experience how difficult is the investigation of a riot involving many participants and it does not seem to me, on the face of it, that any deficiencies there may have been in the police investigation of the Hamill case were remotely on the level of the mistakes after the Stephen Lawrence murder. Furthermore, I understand that in setting up the Lawrence inquiry the Home Secretary was greatly concerned about the widespread perception of racist attitudes in the Metropolitan Police, and that he felt that it would be beneficial for the matter to be studied in depth, since there had been no such study for many years.

69 If Ministers reach a decision at some future time not to hold an inquiry into Hamill, then they will have to be prepared to deal with the alleged precedent created by Lawrence. If and when Ministers arrive at that position I think that, for the reasons given above, it would be very important that they dealt with the point in general terms and that anything they said was carefully vetted by LAB. Apart from the risk of providing material for judicial review, an attempt to rebut the campaign's proposition in detail would mean that the campaigners were being allowed to dictate the terms of the debate,

and it could well have the perverse effect of appearing to confirm the validity of the comparison that the campaign is drawing.

70 In any event it is important to remember that the Lawrence Inquiry did not abort the complaints procedures, much less criminal investigations. The way in which it was handled was unusual in that the announcement of the inquiry was made before the Police Complaints Authority (PCA) had reported (see at Annex 2 the Home Secretary's written answer making the anouncement). By that time, however, it was already known that the PCA would be making a very critical special report covering an adverse investigation report by the Kent Police, and the political judgement was made that the matter could not be allowed to rest there. In the Hamill case, on the other hand, the normal procedures are nowhere near being exhausted.

Disciplinary and criminal inquiries, and their conflict with special inquiries

71 I understand that the current position in the Hamill case is

- that the ICPC recommendation for disciplinary action against Neill has been sent to Counsel, whose views are awaited
- that, notwithstanding their earlier apparent lack of interest in the conspiracy allegation against Atkinson, the ICPC are now firmly involved with the RUC investigating officers in the management of the current investigation
- that the RUC complaints and discipline people are believed to want to hold over the consideration of further action against Neill until that can be dealt with in the light of the outcome of the investigation of Atkinson. (In other words, the read-across with the Atkinson conspiracy allegation appears to be accepted by the RUC as regards disciplinary aspects, at least.)
- that the above proposition has not yet been put by the RUC to ICPC, who will have to think carefully before deciding whether to accept the RUC approach, or to press for early action on Neill
- that the DPP has already been involved in the reopening of the Atkinson allegation, and ICPC intend to keep him involved.

72 The central problem in situations of this kind is the conflict between public inquiries and the criminal process of investigation, prosecution and trial. This can arise at several levels. In general, a public inquiryinherently risks being held to prejudice the fairness of any subsequent trial of individuals who had been held up to criticism. Specifically, the taking of evidence from the same individuals about the same matters under two different procedures would be likely seriously to compromise each of them, and to act to prevent prosecutions. The Attorney General can always be expected, therefore, to oppose any idea for a public inquiry until the criminal process has run its course. In addition to his general concern to protect the integrity of criminal process, the Attorney General also has a special function in cases of this kind, which is to consider giving an undertaking that evidence which a witness gives at an inquiry, or which comes to light as a result of a line of inquiry which was taken up because of evidence he gave, will not be used against him in criminal proceedings. An inquiry into matters such as the policing of the Hamill killing would certainly require an undertaking of that kind, and I

think that it is equally certain that the Attorney General would not give it until the criminal process was exhausted.

73 In theory it might be possible to make an advance announcement of the intention to hold an inquiry at the end of the investigation and prosecution process, in a way that would have some analogy to the Home Secretary's announcement of the Lawrence Inquiry. That too would present the Attorney General with some profound problems and I believe that it would be contemplated, if at all, only in circumstances far more exceptional than the Hamill case. Additionally, it would be taking a political risk to commit oneself to a particular course of action some time ahead, when many significant developments could happen in the interim. For these reasons I will not address the possibility of an advance announcement in the rest of this note.

74 It will be seen from paragraph 69 that disciplinary procedures and criminal investigations are completely intermingled in the Hamill case. If it is accepted, as I think it must be, that current criminal investigations have a strong inhibiting effect on the possibility of inquiries, then there is no need to consider the question in respect of disciplinary procedures. For completeness, though, it should be stated that, although the public prejudice point might be less relevant to disciplinary proceedings before an expert tribunal, many of the more detailed arguments applying to the criminal dimension would also apply to disciplinary procedures. Insofar as anyone subject to disciplinary procedures could argue that the fairness of their treatment was affected by a decision to hold an inquiry, they could seek a remedy through judicial review.

75 Until the current disciplinary and criminal aspects are concluded, then, I believe that Ministers will have no choice but to continue to take the line that normal complaint and investigation procedures are still in train. (There will be a handling point here, since the existence of the criminal investigation of Atkinson has been revealed to the Hamill family solicitor, but cannot yet be mentioned publicly.) In the meantime, however, Ministers may want to consider what would be involved in setting up an inquiry, and the following paragraphs consider this.

Form and feasibility of an inquiry

76 The Hamill case would certainly not comprise a 'definite matter of urgent public importance' such as to qualify for the conferment of powers under the Tribunals of Inquiry (Evidence) act 1921. A non-statutory inquiry without powers to compel witnesses would certainly not be acceptable to the campaigners when a statutory machinery with compulsion powers lay ready to hand. Everything points to the conclusion that if an inquiry were to be held, it would have to be under section 44 of the Police (Northern Ireland) Act 1998, which empowers the Secretary of State to set up an inquiry into 'any matter connected with the policing of any area'. This is the NI analogue of section 32 of the equivalent England and Wales statute under which the Lawrence Inquiry was held. (If at the end of the day a Police Act inquiry was judged to be too problematic but Ministers nevertheless wanted to show some movement towards open-mindedness, then one could perhaps try to think of some special procedure involving a

Wise Man of some kind, though that would not be very likely to look more attractive under closer inspection.)

77 Only four inquiries have been held since 1964 under the England and Wales power and the Home Secretary can be expected to be concerned to ensure that the NI power is not used in a way that extends the currently accepted criteria. These were announced by the then Home Secretary (Mr Waddington) in 1990. Since these criteria would contemplate an inquiry 'for circumstances....where there has been serious public disorder', it would be possible to mount a reasonable argument that the Hamill case was above the threshold, but if the Secretary of State were minded to pursue the idea of an inquiry he would want to bear in mind that the Home Secretary has a legitimate interest in the decision.

78 Under section 44 an inquiry may be held in public or in private as the Secretary of State may direct. In this case it would clearly have to be in public, under a judge, with legal representation for all or most witnesses, as in Lawrence. As stated in paragraph 72, I think that an inquiry would also need to obtain from the Attorney General a limited form of undertaking against prosecution, again as in Lawrence. It is extraordinarily hard to make sensible estimates of the cost and duration of such an inquiry, but the Lawrence Inquiry (which admittedly had to consider a series of bungled investigations and was encouraged to address issues of racism very widely) was in existence for about 18 months, sat in public for 69 days and cost more than £4.2m.

79 For the reasons indicated above, a public inquiry is not an effective machinery for pursuing criminal allegations against individuals, and that is manifestly true of inquiries under the Police Act. Thus, an inquiry's remit would have to be a 'matter of policing' and not be a criminal inquiry into who killed Hamill. Exactly similar issues were fully examined in connection with the Lawrence Inquiry, when the Divisional Court ruled that no questions were to be asked seeking to establish the innocence or guilt of Stephen Lawrence's five suspected murderers, since they were not on trial in the inquiry but the police were. In the same way, an inquiry into Hamill would have to be into the policing of the killing and not into the identity of the killers.

80 In one important way, an inquiry into Hamill would be much more complicated than Lawrence, since there is dispute about the facts of what actually happened at the murder scene as well as about the adequacy of the action that the police took subsequently. I therefore think that an inquiry would combine characteristics of the Lawrence Inquiry and of the Saville Tribunal.

81 All the above points would influence the terms of reference, which would also need to be framed in the light of the outcome of the criminal and disciplinary processes. I do not believe, however, that it would be possible to do much to limit the scope of an inquiry by drafting the terms of reference with some special cunning; in my view the presiding judge would come under great pressure to regard the remit expansively and there would be every chance that he would agree to do so. It would certainly be most

unsafe to assume that an inquiry would feel that the fact of the Patten report somehow debarred it from considering wider issues to do with sectarianism in the police, and I assume that it would be politically impossible to attempt overtly to write this aspect out of the terms of reference.

82 It is under-stating the obvious to say that an inquiry would have a hard time getting true evidence from both sides of the divide. Whatever powers the inquiry might have, many of those who originally made statements to the police might simply find that their memory failed them.

83 There is manifestly a special problem with Witnesses A and B. The inquiry would have power to require the withdrawn statements to be produced and to compel the authors to attend and be examined about them. The two witnesses would undoubtedly repudiate the statements and their probative value as regards their contents would therefore be approximately zero. Nevertheless, that might not matter too much if the inquiry's concern was the adequacy of the police investigation rather than who killed Hamill. Where the inquiry would get into very deep water would be in ensuring the protection of the witnesses. In particular, Witness A's relations both with Atkinson's friends and with one of the suspects would clearly make it difficult for an inquiry to take evidence and produce a full report without revealing her identity. On the other hand, her identity does seem to be known already to Diane Hamill and experienced lawyers can be imaginative in solving problems of this kind. At this stage the point should simply be noted as one of obvious difficulty rather than as an insurmountable road-block.

84 An inquiry could be quite inflammatory in that the allegation would be bound to surface that Robert Hamill was involved in, and may have precipitated, a violent incident that led to the subsequent widespread affray. The Catholic community would presumably greatly resent this, and accuse the police of fabricating material to blacken Hamill's name.

85 To leave the most obvious point to last, it is not useful to attempt to predict the findings of an independent inquiry. Once a subject is handed over to a judge he will take it wherever he believes the interests of justice require, and this can lead to some surprising places. For all the reasons in Part I think that the totality of the evidence, properly considered, tends to support a rather more understanding approach to Constable Neill's account of himself than he has, perhaps, received so far. But this was a confused riotous situation that will probably always continue to leave room for plenty of different perceptions, and the Atkinson dimension still has a long way to run.

Conclusions to Part II

86 Disciplinary procedures and criminal investigations are currently being pursued in an intermingled way in this case and Ministers are effectively debarred from setting up an inquiry for as long as they are in train. The idea of announcing in advance the intention to hold an inquiry when all other procedures are exhausted involves some deep legal issues

and is probably politically unattractive. But if the Secretary of State is interested in that possibility, a more detailed paper could be developed with LAB.

87 The only form of inquiry that could be seriously contemplated would be one held under section 44 of the Police (Northern Ireland) Act 1998 conducted in public under the chairmanship of a judge. The Home Secretary has a legitimate interest in the possible knock-on effect on the use of his equivalent powers. Neither an inquiry under these powers nor any other form of public inquiry is an effective means of pursuing criminal allegations against individuals. The costs of an inquiry could be significant.

88 Obtaining and assessing reliable evidence would be likely to present some of the problems being encountered by the Saville Tribunal. There would be a special problem in dealing with the withdrawn statements of Witnesses A and B.

89 The terms of reference of any inquiry would need great care, but it would not be possible to restrict an inquiry from considering wider issues of alleged sectarianism in the police.

90 If Ministers eventually decide against appointing an inquiry they should explain their thinking in general terms so as to minimise the risks of judicial review. They should be particularly careful to avoid being drawn into detailed comparisons with the Lawrence case.

AJL

ANTHONY LANGDON

15 AUGUST 2000

ANNEX 1

Sequence of events

Sunday 27 April 1997

Around 1.45 am Robert Hamill, going home from a dance with Gregory Girvan and Girvan's wife and sister, is set upon, knocked unconscious and kicked by a crowd of about 30 Loyalist youths. Girvan is also knocked unconscious. Both are taken to hospital by ambulance, together with another man. Girvan's injuries prove not to be serious, but though Hamill has few external injuries he has difficulty in breathing and is moved to the neuro-surgical unit in another hospital. The place of the attack is about 200 yards from a police station. There is also no doubt that an armoured police landrover containing 4 armed officers led by Constable Neill and including Reserve Constable Atkinson was parked about 20 yards from the site of the attack throughout the period, and that the officers did not intervene before or during the attack. Exactly when the officers did dismount, and what action they then took, are matters of dispute.

Around 6.0 (?) Inspector McCrum telephones the hospital to ask after Hamill and is told that his injuries are life-threatening. McCrum alerts CID who seal the scene of the crime and call in all officers at the incident to make statements.

RUC issue a press release saying that Hamill's injury was following a clash between rival factions, and that police had moved in to separate the groups.

At 8.37 a 1 minute 35 seconds telephone call is made from the home of Reserve Constable Atkinson to the home of Allister Hanvey, a Protestant youth.

30 April 1997

RUC issue further press release claiming that landrover crew had immediately intervened to gain order and prevent assaults, but that numbers against them were too great.

2 May 1997

Another short telephone call is made from Atkinson's home to Hanvey's.

5/6 May 1997

Some of the main suspects inconclusively interviewed by police.

6May 1997

Diane Hamill complains to ICPC alleging that certain RUC officers witnesed the assault and did not intervene as quickly as possible.

7 May 1997

Further RUC press release saying that it now appears clear that two couples were set upon by a large crowd.

8 May 1997

Robert Hamill, who had not regained consciousness, dies in hospital. Post mortem reveals widespread axonal brain damage. [At Hobson trial, see below, the pathologist was extensively cross-examined and the defence (transcript p 437) invited the judge to consider the possibility that there was a *novus actus,* but the judge concluded that 'there was no reason to doubt that the fatal injury was sustained as a result of the violent assault'.]

9 May 1997

Witness B makes a statement implicating some Protestant youths in the riorting.

10 May 1997

Witness A, Hanvey's ex-girlfriend, makes a statement that she saw Hanvey and four other named youths kicking and jumping on Hamill, and that a number of police behind the crowd were not doing much to stop what was happening. She also stated that she had told Hanvey that she was informing the police, and that Hanvey had told her that Reserve Constable Atkinson had telephoned him at about 8 on the morning of the attack, advising him to destroy the clothing that he had been wearing that night, and that Atkinson had subsequently telephoned to keep him abreast of police investigations.

10 May 1997

Police charge Allister Hanvey, Dean Forbes, Stacey Bridgett, Wayne Lunt and Paul Hobson with murder.

11 May 1997

Police charge Rory Robinson with murder.

13 May 1997

Diane Hamill, Robert's sister, holds press conference, calling for an independent inquiry, and for suspension of officers in landrover. She says that the family may not cooperate with the Independent Commission for Police Complaints(ICPC), in which they have no confidence. (Irish News 14 May)

May 1997 onwards

Hamill family constantly taunted and jeered at by Loyalists gloating over Robert's murder.

9 September 1997

Atkinson interviewed by police investigating Diane Hamill's complaint. ICPC member Kevin Murnaghan present.

9 October 1997

Atkinson re-interviewed by police, ICPC not present. He says that Andrea McKee and her husband James McKee (who is the uncle of witness A and the proprietor of a martial arts club frequented by Allister Hanvey) were spending the night of the attack at his home and that Mr McKee telephoned the Hanvey house to check on witness A's safety as soon as he heard that there had been trouble on the streets the night before. The second phone call from Atkinson's house was supposed to have been made by Mrs Atkinson to discuss martial arts business.

Dates between 14 and 30 October 1997

Witness A withdraws statement and witness B changes story, asserting that everything in his earlier statement was hearsay.

30 October 1997

DPP drops charges against Robinson, Hanvey and Forbes because witness testimony against them was 'no longer available'.

19 November 1997

DPP drops charges against Bridgett and Lunt.

21 November 1997

Dr Mowlam sees Diane Hamill, accompanied by Paul Mageean of the Committee on the Administration of Justice (CAJ), standing in for her solicitor Rosemary Nelson. Diane Hamill hands in petition signed by 20,000 people calling for suspension of the officers at the scene of the crime and for an independent inquiry. She mentions press reports alleging contacts between some of the police officers and suspects.

15 December 1997

Diane Hamill holds press conference, with Paul Mageean and Rosemary Nelson, appealing for funds to finance the private prosecution of the suspects who had been released and also the establishment of an independent and international inquiry. Comparisons drawn with Lawrence case.

23 December 1997

Chief Constable, writing to comment on draft letter for Dr Mowlam to send Diane Hamill, says that it was now accepted that the use of the words 'two rival factions' in the first press release was not appropriate.

16 January 1998

ICPC issues statement of satisfaction with the police's conduct of the criminal aspects of the investigation.

22-25 February 1999

Trial of Paul Hobson before a Diplock Court for murder of Hamill. Prosecution add charge of affray at outset of trial.

25 March 1999

Judgement delivered by Lord Justice McCollum who acquits on the murder charge and convicts on the charge of affray and sentences Hobson to 4 years. The main points are as follows.

- The only real evidence against Hobson was the identification evidence of Constable Neill. This was insufficient to link Hobson with the fatal attack on Hamill, but adequate for a conviction of affray (if only because Neill claimed that Hobson fought him in a later phase of the disturbance.)
- The defence offered no evidence. The – very different – stories of the police witnesses and the accounts given by Hamill's party were given in the same interest and were not tested against each other.
- The judge said that he was 'unable to resolve the question whether the police officers remained in the landrover during the attack', though he was 'satisfied that the officers came across the road shortly after the attack'. The second conclusion caused him to express doubt about the truth of Neill's account of what he saw when he dismounted, and he speculated about Neill's motives for lying.
- The judge's criticisms of the police officers were balanced by some reassuring comments. He noted that the scene was peaceful immediately before the attack, and commented that it was not established that a prolonged beating took place. He therefore concluded that 'even if alerted at the earliest moment by the occurrence of the attack itself it is unlikely that they would have been able to dismount and intervene in time to save Mr Hamill'. He also found that once the police officers did intervene they acted resolutely, and that it was only the presence of the police that prevented further attacks on the Catholics.
- In addition to the matters that were strictly necessary for his judgement the judge made some additional comments, as follows

(a) The police officers apparently ignored a warning from a member of the public that people (ie Hamill's party) were coming down the street from the Catholic area that led to the flashpoint road junction where Hamill was, in fact, killed.

(b) After that warning the landrover was moved to a position that greatly reduced the officers' ability to keep the flashpoint junction under observation.

(c) A woman constable had failed to take details when a man (Colin Prunty) had told her during the fracas that a Loyalist (Wayne Lunt) whom she had apprehended and released had, in fact, been involved in the attack. [The judge appears to have regarded this as the main police dereliction and to have assumed that further charges could have been sustained if this potential witness had been followed up. That view was, in fact, mistaken. Unbeknown to the judge, Colin Prunty's identification evidence against Lunt had been followed up by the police

but it could not be used simply and solely because he had subsequently wrongly identified another person in place of Lunt.]

22 April 1999

Diane Hamill gives evidence to the US Congressional House International Relations Committee.

25 August 1999

Mr White, DPP's office, writes to Hamill family solicitors to explain why charges had been dropped against the 5 defendants. This letter gives full details about Colin Prunty's confusion over his identification of Lunt (see above). It also makes it clear that the main evidence against the other 4 had been contained in statements by civilians who had since refused to give evidence or had changed their account, and that the evidence of a bloodstain from Bridgett on Hamill's clothing was insufficient to support a charge.

30 September 1999

DPP decides not to proceed against any of the police officers in the case.

October 1999

Amnesty International issue report calling for independent inquiry and criticising police for failing to intervene, provide first aid, investigate properly, preserve the scene of the crime or secure forensic evidence, and for putting out misleading press statements.

All these points are embodied in a pamphlet issued in early 2000 by the Robert Hamill campaign.

By June 2000 the NIO had received 18,000 letters stimulated by the Amnesty International report.

11 January 2000

Coroner for Greater Belfast talks with Hamill family solicitor and discloses contents of statements by witnesses A and B in great detail. [Whether he disclosed their identities and/or gave the solicitor copies of the statements is not known.] The Coroner had himself interviewed the witnesses and believed that they were extremely afraid. He was unsure how to proceed, as an inquest without these witness statements would not fully represent the circumstances of Robert Hamill's death.

8 February 2000

Coroner writes to Hamill family solicitor to say that he will proceed to hold an inquest without the evidence from witnesses A and B since their personal safety must outweigh the desirability of the inquest receiving their evidence.

5 May 2000

ICPC recommend RUC to charge Constable Neill with neglect of duty, and to suspend him meanwhile.

8 May 2000

Hamill family hold press conference addressed by Imran Khan (Lawrence family solicitor) who claims many points of similarity with Lawrence case

7 June 2000

Coroner, having received representations from Hamill family solicitors, announces that he will not convene an inquest because of his concerns for the safety of certain witnesses whose lives would be placed in danger if their evidence were to be given at, or placed in documentary form before, an inquest. Without those witnesses' evidence, however, an inquest would give a 'seriously incomplete' account of the circumstances of Robert Hamill's death.

Taoiseach sees representatives of Hamill family and CAJ and makes public call for an independent judicial inquiry

8 June 2000

Diane Hamill, speaking on RTE1, says 'I'm aware of the content of some of the statements of the witnesses. I've been made aware of the history of some of the witnesses as well'.

19 June 2000

Secretary of State sees representatives of CAJ who leave copy of their report 'See no Evil, Hear no Evil' which argues for an inquiry because of

- the siting of the landrover and ignoring of the warning that Catholics were approaching
- the release of Lunt and failure to make a note of Prunty's advice about his involvement in the murder
- the failure to obtain forensic evidence by detaining suspects on the night in question
- the press releases
- the delay in making arrests
- the alleged links between a police officer and a suspect
- the assertion that the complaints system did not amount to an exhaustive investigation
- the DPP's delay in telling the Hamill family about the rationale of the decisions to drop the murder charges.
- the video

20 June 2000

Andrea McKee makes a statement to police saying that she and her husband were not at Atkinson's house on the night of the attack, and it was only following an approach from Atkinson that her husband had said that he made the phone call to Hanvey's house.

30 June 2000

Taoiseach makes personal request for Prime Minister to see Hamill family.

ANNEX 2

Announcement of Lawrence Inquiry

House of Commons, Written Answers, 31 July 1997, cols 580/1

Mr. Straw: I have decided to establish an inquiry under section 49 of the Police Act 1996. The terms of reference of that inquiry will be:

> to inquire into the matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes.

I have appointed Sir William MacPherson of Cluny, formerly High Court judge of the Queen's Bench, to conduct this inquiry. He will be supported in carrying out this inquiry by Mr. Thomas Cook, former deputy chief constable of West Yorkshire, the Right Reverend John Sentamu, Bishop of Stepney, and Dr. Richard Stone, chairman of the Jewish Council for Racial Equality. Under section 49, the inquiry will have the powers to summon any person to give evidence, to require the production of documents and to take evidence on oath.

The handling of this case by the Metropolitan police is the subject of complaints made by the Lawrence family which are currently under investigation in accordance with police complaints procedures. That investigation is being supervised by the Police Complaints Authority. The authority expects the investigation to be completed in September and to report the outcome in October. Under section 97(2) of the Police and Criminal Evidence Act 1984, the authority may make a report to the Secretary of State on any matters coming to its notice to which it considers that his attention should be drawn by reason of their gravity or of other exceptional circumstances. The authority intends to produce a report on this case under that special provision. Under section 97(5) of the 1984 Act, that report must be laid before Parliament and published.

The inquiry under the Police Act will begin when the Police Complaints Authority report has been completed. That will allow the inquiry to consider any issues emerging from the investigation supervised by the Police Complaints Authority. The inquiry's statutory powers will also allow it to require the production of any evidence gathered during the course of the Police Complaints Authority investigation. My right hon. and learned Friend the Attorney-General has also confirmed that the full co-operation of the Crown Prosecution Service will be given to the inquiry.

I believe that the establishment of this inquiry following the completion of the investigation supervised by the Police Complaints Authority will allow the concerns of the Lawrence family and others to be fully addressed, and will identify the lessons to be learned from this tragic case which will be relevant to the future handling by the criminal justice system of racially motivated crimes.

Free (In DLO Inbox). Mfj

cc: NIO
NIE

10 DOWNING STREET
LONDON SW1A 2AA

22 January 2001

THE PRIME MINISTER

Dear Billy,

Thank you for your letter of 19 December in which you raised a number of issues relating to the implementation of the Belfast Agreement.

First and foremost let me assure you that I stand by the pledges I made in Coleraine in May 1998 – that those who use or threaten violence should be excluded from the government of Northern Ireland. That is why we included specific provisions in the Northern Ireland Act 1998 for exclusion of individuals or parties from the Northern Ireland Executive if they fail to live up to their commitment to exclusively peaceful means. This commitment is given in the Pledge of Office which was agreed by all of the parties to the Agreement and sworn by all Northern Ireland Minister on taking up office. I am happy to restate my pledges. I believe it is vital that we make progress on decommissioning in order to build confidence across the board. We are moving forward and, while it may be slower than we would like, I do not think that necessarily calls anybody's commitment to peace into question.

We should not lose sight of the gains we have made. The Agreement is founded on the principle of consent, which is now accepted by all the political parties in Northern Ireland and by the Irish Government. This means that

Northern Ireland will remain part of the United Kingdom for as long as a majority in Northern Ireland wishes. The Irish Government amended the Irish Constitution accordingly. The Agreement swept away the Anglo Irish Agreement, replacing it with a new British-Irish Treaty which strengthened the ties between Ireland and the United Kingdom. Most important of all, all the people of Northern Ireland gained the Assembly and the return of power to the hands of locally elected representatives.

You also raised the participation of Sinn Fein Ministers in the North-South bodies. This is a matter for the First Minister, the Deputy First Minister and the Northern Ireland Executive. It will be for the Executive Committee to resolve the issue once a decision has been given by the courts.

As to your comments on normalisation, the Government is fully conscious of the need to protect the community from terrorist activity and we will only take further measures when it is safe to do so. We all want to see the normalisation of security arrangements in Northern Ireland, but never at the risk of endangering life or property. The Secretary of State is in regular contact with the Chief Constable who advises him on such matters and takes all decisions in light of his advice.

We all have a shared interest in building democracy, maintaining the rule of law, driving violence out of the system and maintaining the ceasefires. There is more work to do to reach our goal of leaving behind Northern Ireland's troubled past, to make progress on decommissioning and to remove paramilitary influence from the streets. This Government will continue to do all it can to

ensure that these aspirations become a lasting reality for everyone in Northern Ireland.

yours ever,

Tony

Mr Billy Armstrong MLA

CONFIDENTIAL - PERSONAL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

22 January 2001

Dear David

OTRs

As the Attorney General will know from his conversation with Bill Jeffrey on Friday evening, OTRs featured prominently in discussions which the Prime Minister had with Sinn Fein during the course of the day. In the course of these discussions, the Prime Minister decided that, as part of a wider understanding intended to lead to the IRA putting weapons beyond use, he should offer to make a public statement on OTRs. The offer was, of course, conditional on the IRA fulfilling their part of the deal.

I enclose the text which the Prime Minister gave to Gerry Adams. I gather that Bill Jeffrey read it over to the Attorney on Friday. Although the Prime Minister is committed to it if the deal comes to fruition, he would nevertheless welcome any comments the Attorney may have both on the proposed statement itself and on its wider implications.

I am copying this letter to Paul Priestly in the Northern Ireland Office.

Yours ever

Michael

MICHAEL TATHAM

David Brummell
Law Officers' Department

CONFIDENTIAL - PERSONAL

The Government recognises the difficulty in respect of those people against whom there are outstanding prosecutions for offences committed before 10 April 1998. At present, they face the possibility of extradition or prosecution even though the offences if proven were committed before the key date for the early release scheme under the GFA. The Government is committed to dealing with this difficulty as soon as possible, so that those who, if they were convicted, would be eligible under the early release scheme, are no longer pursued.

File

From: Michael Tatham
Date: 22 January 2001

JONATHAN POWELL

cc: Bill Jeffrey, NIO
William Fittall, NIO

MEETING WITH THE IRISH: 22 JANUARY

As memory joggers, I thought it would be useful to record the main points from this evening's meeting with Irish officials.

Sinn Fein Meeting with Taoiseach

The Irish claimed the Taoiseach had pressed Adams hard. Adams' main concerns had been public presentation (crucial to his being able to sell the package to his people); policing (the Irish had told him there was no room to move on substance, but possibly on language); demilitarisation (Adams said this needed tweaking); and time frame.

Time Frame

The Irish encouraged us to hang tough on this. There was some discussion of the Easter target. Jonathan Powell said there was nothing sacred about the Easter date (!). It was simply a handy formula for avoiding hinting at an election date and for averting an undesirable scenario in which movement came right on the eve of elections (when it would be less helpful all round).

Gallagher said there was some Republican resonance to Easter but this ought not to be a big factor either way.

Policing

We agreed there should be 3 elements to the policing package: a revised implementation plan (shown in advance to Sinn Fein and SDLP); a general all-embracing statement on policing (responding to both Sinn Fein and SDLP concerns); and a private reply to Sinn Fein on their 20 points.

Inquiries

A familiar exchange with the Irish pressing us to be more forward and us explaining the difficulties. O'Ceallaigh said this would certainly get SDLP over the hurdle. The Irish urged us to consider saying we could envisage a modest inquiry at a certain stage if required. They said they would offer us a form of words.

The deal

We agreed that when/if this was all wrapped up it should be on a round table basis.

Sequencing

We agreed the sequence should start with a two governments statement followed by simultaneous statements from the IRA and Chief Constable. Thereafter the weight would be carried by the IICD.

BIC

The Irish asked to tick off Trimble for playing silly games on this.

Implementation Committee

We agreed that the two governments statement should contain an oblique reference to consultation with individual parties. We would keep tight the existence of the implementation committee but prepare a sensible reaction for if its existence became public.

Diane Steel

pp **MICHAEL TATHAM**

FROM: **WILLIAM FITTALL**
Associate Political Director (L)
22 January 2001

JP
cc: JS
MT
AC

PS/Secretary of State (L&B) cc See Copy Distribution Below

FRIDAY'S DISCUSSIONS AT CHEQUERS

The sequence of events was roughly as follows. At 10.40 am Jonathan Powell, Bill Jeffrey, Michael Tatham and I met Dermot Gallagher, Martin Mansergh, Daithi O'Ceallaigh, Tim Dalton and Ted Barrington plus Jim Steinberg, Dick Norland and Kai Fort to consider a text which we had prepared overnight and which the Prime Minister had cleared, setting out the possible elements of a package. The Irish made a few drafting suggestions, most of which we accepted. They noted that we had adopted a very minimalist position on policing and saw little prospect of this being acceptable to Sinn Féin. While we were meeting the Prime Minister was given an oral briefing by Robin Masefield on the document received from Sinn Féin on Thursday evening setting out 20 requests on policing reform.

2. The Prime Minister broke off to speak to David Trimble at about 11.00 am. Michael Tatham has recorded this separately. The read-out we received at the time was that Trimble had, unprompted, stressed the importance not only of early positive reports from the IICD but an actual beginning to putting weapons beyond use before the election. He wanted there to be no private assurances to Sinn Féin on policing, flags and emblems. He underlined the extreme sensitivity for him over any inquiry into the Hamill case. He confirmed that he would rather have Sinn Féin on the Policing Board than not, even though he thought they would only sign up in order to obtain information and create mischief. On OTRs, he rather favoured a truth and reconciliation commission approach. On the NSMC he would be happy to lift the sanction if the deal was done, though he could not do so in an unqualified way. He also confirmed that nominating Bairbre de Brun to the BIC in Dublin would be too difficult for his party in the absence of a prior deal, though he noted what the Prime Minister said about the downside of creating a further upset on the brink of a big deal.

3. We resumed with the Irish and the Americans at around 11.30 am to have a further look at the draft documents on the elements of a deal. The Prime Minister briefly joined this meeting. He

observed that a potential sticking point would be what the British could put on the table as a second tranche of normalisation beyond the three installations already being offered conditionally. From discussions the previous day he thought that Sinn Féin would want specificity over what a rolling programme would look like. Martin Mansergh observed that it was a pity that Sinn Féin had spoken against the Crossmaglen police station idea. The Prime Minister did not rise to this.

4. The Prime Minister and Jonathan Powell then saw Adams, McGuinness, Kelly and one other (Green, McAteer, Howell and Macauley were also in the building). The Prime Minister debriefed Jonathan Powell, Michael Tatham, Bill Jeffrey, Robin Masefield and me at the end of the 40 minute meeting which had been entirely about policing. The Prime Minister said that he had done most of the talking, working through the Sinn Féin 20 point list and explaining in most cases why we could not agree to their proposals. There had been no serious exchange, no one on the Sinn Féin side appearing to be on top of the details.

5. The Prime Minister said that he had held out the prospect of a review of the legislation after a year to see whether it was achieving its objectives. He had also indicated to Sinn Féin that he had some sympathy for their arguments on the disqualification rules in respect of DPPs, though he had made it clear that they could not be changed straight away. He had also indicated that it might be possible be produce a good practice code on the setting up of inquiries. His general message to Sinn Féin, however, was that he was not prepared to concede anything which would make it impossible for the Chief Constable to manage his force effectively. Operational independence was essential. In a subsequent informal exchange over lunch with Tim Dalton the Prime Minister said that it would be enormously helpful if the Irish could brief Sinn Féin on how operational independence worked in the Republic, in order to wean them away from the idea that an effective police service could be at the beck and call of local councils. Sinn Fein were hooked on the unworkable left using Labour party ideas of the early 1980s.

6. The Prime Minister confirmed, in discussion with us, that he had made it quite clear to Sinn Féin that he was not prepared to contemplate legislation in the short term. He was not sure, however, whether this had really registered.

7. After a short lunch break the Prime Minister and Jonathan Powell resumed discussions with Gerry Adams and Martin McGuinness at 1.25 pm. The meeting lasted an hour. At the end of it the

Prime Minister had a brief discussion with the British side before giving a more extensive debrief in the presence of the Irish and the Americans. He reported that Sinn Féin had indicated their keenness to be away by 5.00 pm. Although, privately, he was himself keen to finish before then he had, for tactical reasons, made it clear that he was prepared to go on longer if necessary. On the substance he said that Sinn Féin had pressed for an early public commitment on OTR legislation. He had made it clear that this would probably be a step too far. Otherwise Sinn Féin had not raised any particular points on the draft. Neither had they indicated whether it had the potential to trigger the implementation of an agreed modality scheme before the election. He had continued to underline the importance of this. His assessment remained that their disinclination to commit to the early sealing of the first three dumps was entirely political – since the dumps were compromised there could not be an insuperable, internal management issue for them.

8. The Prime Minister said that Sinn Féin had not returned to the policing points which had been discussed during the morning. He confirmed to the Irish and the Americans that there were four or five specific policing points where there was some scope for movement from us but that the proposal for a review after a year was the most significant concession which he could offer.

9. In an informal discussion while the Sinn Féin delegation were considering their position, Dermot Gallagher asked the Prime Minister whether there was any potential for progress over the issue of House of Commons facilities. The Prime Minister confirmed that he had had a conversation with the Speaker. Because of his strong family nationalist background the Speaker was nervous that any decision which he took was open to misinterpretation. Nevertheless, if the process was moving forward he was in principle prepared to be helpful, at the right moment, without requiring the House of Commons to vote on the issue.

10. In a discussion of modalities the Prime Minister said that he would, if necessary, be prepared to return to Northern Ireland on Sunday night to continue further intensive negotiations on Monday, given the need to sort something out before the BIC.

11. The Prime Minister and Jonathan Powell resumed discussions with Adams, McGuinness and Kelly at 3.25 pm. The discussion continued until 4.35 pm when the Prime Minister and Jonathan Powell debriefed the British team. He had had a long exchange with the Sinn Féin team on policing issues when a number of points he had made during the morning meeting had been challenged. He

went through with us at some length the shape and content of a paper which he wanted to be prepared urgently for handing to Sinn Féin dealing with their 20 issues point by point. He wanted the tone to be conciliatory but for no new points of substance to be conceded, beyond the promise of a review of the legislation after a year. He observed however, that he thought our position was somewhat vulnerable in respect of:

- the disqualifications provisions for DPPs, where he thought it hard to defend the necessity of the statutory prohibitions when they did not apply to elected representatives. He accepted however that there could be no question of changing the arrangements for the foreseeable future;

- appointments to the Board, where Sinn Féin had insisted that we would need to advertise again, if they and the SDLP came to support the policing service, in order to attract republicans and nationalists to apply. We explained that, without opening ourselves up to legal challenge, we would have to re-run the whole exercise, thereby delivering the delay and the establishment of the Board that we had so far resisted. In view of that the Prime Minister accepted that we had to stand firm.

12. While Robin Masefield and I went off to draft the document the Prime Minister and Jonathan Powell debriefed Bill Jeffrey on how the normalisation and OTR notes needed to be recast in light of the discussion with Sinn Féin. He confirmed that he also wanted to list the installations which would eventually disappear if the ultimate reduction in installations from 64 to around 20, as set out in the MOD statement of 29 September, were achievable. The GOC had undertaken to provide this list at his discussion with the Prime Minister and the Chief Constable on Thursday evening and it eventually arrived at Chequers late on Friday afternoon from the Secretary of State for Defence's office. after clearance by the CDS.

13. At the mid afternoon meeting the Prime Minister had agreed with Sinn Fein to continue discussions through the evening rather than breaking, as a originally proposed, by around 5.00 pm.

14. The period between around 5.00 pm and 9.30 pm when the Prime Minister resumed discussions with the Sinn Féin team was the most fragmented of the day as the various texts were put together and cleared with the Prime Minister. At around 6.30 pm the Irish handed the British their own version of a

possible text on policing. They said that they had not handed it to Sinn Féin and would not do so unless the British thought that would be helpful. It was, in fact, highly prejudicial (25% reduction in Special Branch to be urgently agreed, full time reserve to be phased out by 2004, Gough to be closed by April, commitment to future legislation, unacceptable terms of reference for the review). With the Prime Minister's agreement I told the Irish that it went much further than we would be able to agree and would not help discussions with Sinn Féin. We would share with the Irish the document which we were preparing on the Prime Minister's instructions. The Irish acquiesced.

15. The texts were largely ready before a supper break was taken at around 8.00 pm. At around this time there were also conversations between the Prime Minister and President Clinton and between President Clinton and Gerry Adams. The Prime Minister also had further tactical discussions with the Irish, American and British teams before finally resuming discussions with Sinn Féin on the basis of the British text at 9.30 pm. Points worth noting were:

- the Irish stressed the importance for Sinn Féin of the proposed implementation committee. It needed to be led from No 10 and the Taoiseach's office because Sinn Féin attached importance to having a direct line into the top. Gallagher noted that the idea of an implementation committee was something which Sinn Féin had been persuaded of from South African experience;

- in private exchanges with Bill Jeffrey and with me the Prime Minister went through more thoroughly than he had done previously the balance of arguments in relation to OTRs. He acknowledged that he had not previously focused on the conceptual difference between mitigating penalties, as under the early release scheme, and treating crimes as if they were not crimes. He still judged, overall, that the interests of the peace process justified not proceeding with prosecutions and extraditions for old offences, but he recognised that there were issues of principle which would be vigorously argued in Parliament if legislation was brought forward and that careful thought would be needed both on the timing of a policy announcement and of legislation itself;

- the Prime Minister accepted advice from the Secretary of State (relayed by Bill Jeffrey following one of four telephone conversations with the Secretary of State in Paris during the day) that the policing paper should be treated as private to Sinn Féin at this stage. Some of

the introductory language, and the tone in which the proposed review was mentioned, was not right for a public document just at the moment. The Prime Minister also agreed with the Secretary of State that the Attorney General should be informed of the words which were being shown to Sinn Féin on OTRs. At the Prime Minister's request Bill Jeffrey spoke to the Attorney General at around 9.50 pm.

16. The Prime Minister and Jonathan Powell spent about 40 minutes with the Sinn Féin team from 9.30 pm. Afterwards the Prime Minister debriefed the British, Irish and American teams. He said that Sinn Féin had raised a lot of nit-picking details on the texts and were clearly reluctant to commit. Moreover they had still failed to indicate, despite repeated Prime Ministerial pressure, whether they would be prepared to start to implement a scheme agreed with the IICD before Easter.

17. The Prime Minister and Jonathan Powell, this time with Dermot Gallagher, had a further quarter of an hour with the Sinn Féin team from 10.15 pm. In the debrief afterwards we were informed that Adams had indicated an unwillingness to give a considered view on the substance of the British package before there had been a discussion of its public presentation. The Prime Minister had indicated that there would not be time to resolve that and all the sequencing issues that evening and in any event what he wanted to know first before discussing those was whether Sinn Féin thought that deal was possible on the basis of the package which had been tabled. He had gone to his bottom line and they were mistaken if he thought that more would be forthcoming.

18. After a further 10 minute adjournment the Prime Minister, Dermot Gallagher and Jonathan Powell had a final half hour discussion with the Sinn Féin team from 10.40 pm. The Sinn Féin team then left for their overnight accommodation – booked and paid for by the Irish at short notice at the Crown (!) Hotel, Amersham. In a hurried conversation with Dermot Gallagher on the way out Gerry Adams said that there needed to be further discussion on the public presentation of any deal and that we had not offered enough detail on Patten.

19. In a final debrief to the British, Irish and American sides the Prime Minister and Jonathan Powell expressed considerable frustration at the chiselling and unforthcoming approach which the Sinn Féin team had adopted throughout. Jonathan Powell reluctantly concluded that he did not think that Sinn Féin were serious and had misjudged the opportunity which the Prime Minister's intensive involvement in the issues over the past 36 hours had provided. Dermot Gallagher was less pessimistic.

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He thought that Sinn Féin now understood HMG's bottom line and that with further pressure from the Taoiseach something could perhaps be done. Jim Steinberg helpfully observed that it would be important for the Taoiseach to hold over Sinn Féin the prospect of public denunciation if they continued to hang tough (Gallagher hedged).

20. Gallagher agreed to speak further to Adams before they set off for their Ard Comhairle in Dublin the following morning and would then discuss the next steps with Jonathan Powell. Gallagher also reported that Sinn Féin were anxious to avoid a crisis on Tuesday over the BIC and would be happy for the meeting to be postponed, since it looked unlikely that a deal could be reached by then (the Sinn Féin team had been talking of needing about a week to "clear their lines with the IRA").

Reflections

21. A few final thoughts on the overall balance sheet from the (publicised) Hillsborough and (unpublicised) Chequers discussions:

- without committing themselves to any new positions Sinn Féin were successfully able to explore a number of potential areas of British flexibility. They secured a more forward statement on OTRs than we have previously given them in writing, a long list of security installations which would eventually be destroyed (though this is highly aspirational and conditional), and the prospect of a review of the policing legislation. Above all they showed, yet again, that they can command the Prime Minister's undivided attention for a substantial period of time;

- in substance they gained virtually nothing, however on policing. The Prime Minister's hope was that by getting into all the substance of the issues himself and taking Sinn Féin through the arguments he would dispel the notion that if they simply dug in for longer they could expect more by way of concessions. On normalisation the package is also consistent with what had previously been tabled, though in discussion the Prime Minister clearly indicated more potential flexibility over sequencing than had previously been avowed;

- the discussions were ultimately inconclusive because they were unable to get down to the issues of sequencing and public presentation. Having indicated that he was prepared, within limits, to be flexible, the Prime Minister was unwilling to negotiate on these until Sinn Féin

confirmed that building blocks provided the potential basis for a deal. It appears that at no stage did Adams and his team concede this (without, of course, definitely saying that they did not);

- the Prime Minister was, throughout, conscious of the importance of not conceding issues to Sinn Féin on policing which would alienate Seamus Mallon or elements in the wider package which would make life even more difficult for David Trimble. It was the Trimble factor which made the Prime Minister insistent throughout that he wanted a deal which would secure the actual putting of some weapons beyond use by Easter;

- the extent to which the Prime Minister succeeded in conscripting the Irish and the Americans into the home team was, for most of the time, impressive. Nevertheless the Irish could not resist the temptation to press proposals on policing which were wholly unrealistic. More generally, they paid little more than lip service to the need to secure a package which Trimble could live with. Policy remains the issue where Dublin will back Sinn Fein on demanding more, even if, on the substance, Dublin have more sympathy for the SDLP's shopping list. Our lack of room for manoeuvre here may yet prove the sticking point.

(Signed)

WILLIAM FITTALL
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Distribution List

PS/Mr Pilling (L&B)
Mr Jeffrey
Mr Watkins
Mr Alston
Mr Kelly
HMA, Dublin
Mr Masefield
Mr Tatham, No 10

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APDL/265

18.30.

Policing

1. The Prime Minister and the Taoiseach in their joint letter to the party leaders on 5 May 2000 stated that legislation to implement the Patten Report would be enacted by November, 2000.

2. HMG accepts that doubts remain among the nationalist parties about some aspects of the approach which has been taken in some instances in seeking to give effect to the Patten Report and that this, in turn, means a lack of confidence that the ensuing police force will enjoy cross-community support.

3. In an effort to meet these concerns there have been intensive discussions and the following proposals are put forward in an effort to meet them.

[For example

- Following consultation with a fully constituted Board, HMG will implement the Patten recommendations in respect of flags, badge and emblems. Once policing arrangements are finalised and agreed, it will seek further applications for independent membership of the Board and will take all applications into account in making decisions on appointments.

- HMG undertakes to publish an Implementation Plan which ,when finalised, will include agreed timeframes as follows:

  - Special Branch and CID to come under one ACC by April 2001
    Adequate rotation of tenure to be operational by August 2001.

(9)

Timeframe for reduction of 25% of numbers to be urgently agreed.

- Full-time reserve to be phased out by 2004. Severance arrangements to be accelerated.

- Part-time reserve to be rapidly expanded from low-recruitment areas.

- Gough Holding Centre to be closed by April 2001.

- Research into alternative to PBRs to be accelerated.

- Refocus on Patten concept of community policing.

- Regulations to be reviewed to expand scope of Ombudsman's retrospective inquiry powers.

- ~~Clarification of role of validator of recruitment to ensure 50/50 recruitment operates equitably~~. All sections of the community will be actively encouraged to join the new service.

- In relation to appeals by the Chief Constable against decisions by the Board to hold enquiries a good practice code will be developed by April 2000 establishing parameters within which the Chief Constable should exercise his right of appeal against decisions by the Board to hold enquiries.]

(10)

4 All parties recognise that in the particular circumstances of Northern Ireland the task of creating a police force which will gain the support of the communities here is an extremely complex one and the Government has put in train elaborate and detailed procedures to bring this about. The scale of the changes involved is unprecedented and there can be genuine differences of opinion about the likely efficacy of particular detailed measures. In those circumstances, HMG accepts that it would be desirable for a special structure to be put in place to ensure that all the diverse components involved are operating in practice to bring into being effectively the policing envisaged by the Patten Report.

5 To achieve greater confidence in the measures which are being taken HMG now proposes to put in place after a period of 12 months an Independent Policing Review Group with the following terms of reference:

"To review the effectiveness of the measures implemented in the light of the Patten Report so as to give effect to it in the context of providing a police service acceptable to both communities, having particular regard to:

- the operation of the Oath
- the operation of the tripartite arrangements
- the operation of the Board's and of the Ombudsman's powers of enquiries
- the role and functions of District Policing partnerships. The review will specifically address, independent membership of the DPPs, the consultative role of the Belfast sub-groups, and

(12)

funding to enable DPPs to purchase additional services . In default of other sources of funding the Government will provide the necessary funding.

- the need for consultation by the Chief Constable of appropriate statutory bodies on registration of interests
- the role of the Oversight Commissioner. In this context the government accepts the approach outlined in his first report."

6. The Independent Policing Group will be appointed after consultation between both Governments and will comprise no less than three persons one of whom will be an expert in the field of human rights and another of whom will have knowledge of best international policing practice.

7. The Group will consult broadly including with the political parties, the Chief Constable, the Ombudsman, the Police Board, the Oversight Commissioner and the Human Rights Commission.

8. HMG will take whatever steps may be necessary - including legislative change - following its study of the review so as to ensure that in practice its intention of giving effect to the Patten Report is being achieved.

9. HMG is prepared to bring forward this review if earlier evidence emerges of difficulties with the implementation of its proposals in the light of the assurances which it has given.

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File.

10 DOWNING STREET
LONDON SW1A 2AA

S 11 /01

From the Private Secretary

22 January 2001

Dear Paul,

AHTISAARI/RAMAPHOSA

Thank you for your letter of 12 January. I have held off talking to Ahtisaari again while the intensive negotiations with Northern Ireland parties continued.

Ahtisaari rang me again today to find out where things stood in advance of Ramaphosa's planned meeting with the Sinn Fein leadership later this week. He will be travelling to France for that tomorrow (Tuesday). I cautioned that intensive talks were still going on and that he might want to check with the Sinn Fein leadership which of them would be available for the meetings in France, as many of them were likely to be here in London tomorrow.

I said that one element in the negotiations was a proposed implementation group, comprising senior officials from the British and Irish Governments and involving Sinn Fein representatives, which would meet privately to monitor implementation of commitments made, including on security normalisation. This was a development of his and Ramaphosa's idea. It stopped short of contacts at the level of security forces. But we saw advantage in Ahtisaari and Ramaphosa continuing to press their idea with Sinn Fein. We also saw advantage in having available points of contact between the Republicans and the police in Northern Ireland (who of course were responsible for security) who could be backed up at any meetings by the local Army Brigadier. There were some points we would need to preserve: it would be important for us to present any such discussions as being with a Sinn Fein representative and not simply with the IRA who were, of course, a proscribed organisation; and the police would have to be in the lead on the security side for us. The idea could be taken forward in the context of building on the implementation group now being discussed.

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Ahtisaari was encouraged by all of this and was content to go into his next meetings with Sinn Fein on that basis.

He probed how far we were getting in the negotiations, and I said we were looking at a wide-ranging set of proposals, including on arms, though everything was subject to "consultations" in Northern Ireland. We did not expect an agreement in the next few days. He asked if what we were discussing had any implications for his and Ramaphosa's work. I said it might do in the sense that their existing work might be completed, allowing them to move on to the next stage. He was keen to be reassured that we were not adding to their mandate or giving them responsibility for progressing the inspections process. I assured him that we were not.

We left it that Ahtisaari would contact me again if there were any significant developments following his meeting with Sinn Fein.

I am copying this letter to Jonathan Powell.

Yours ever,

JOHN SAWERS

Paul Priestly
NIO

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FROM: THE PRIVATE SECRETARY

File

NORTHERN IRELAND OFFICE
CASTLE BUILDINGS
BELFAST BT4 3SG

Rec'd by Fax

Mr Michael Tatham
Principal Private Secretary
10 Downing Street
LONDON
SW1A 1AA

21 January 2001

Dear Michael,

TELEPHONE CONVERSATION WITH DAVID TRIMBLE

Thank you for your letter of 19 January reporting on the Prime Minister's discussion this morning with David Trimble.

On the Hamill issue, you asked for a copy of the judgment by Lord Justice McCollum in the case of Paul Hobson (one of Hamill's killers). This is attached. The judgment should be read alongside the report on the Hamill murder by Anthony Langdon, which you already have.

Yours ever,

Paul

P G PRIESTLY

INVESTOR IN PEOPLE

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REGINA

-V-

PAUL R M HOBSON

before

THE RIGHT HONOURABLE
LORD JUSTICE McCOLLUM

on

THURSDAY, 25TH MARCH 1999

at

BELFAST CROWN COURT

Transcribed and supplied by: A Graham
Official Court Reporter

cCC2773

IN THE CROWN COURT OF NORTHERN IRELAND

THE QUEEN

v

PAUL RODNEY MARC HOBSON

McCOLLUM LJ

The defendant is charged on two counts. The first is for the murder of Robert Hamill on 8 May 1997 and the second, added at the commencement of the trial by leave of the court, is for unlawfully fighting and causing an affray on 27 April 1997 in the County Court Division of Craigavon. The charges arise out of a violent incident which occurred in Portadown on 27 April 1997 which resulted in serious injuries being sustained by Robert Hamill. After lying unconscious in hospital for several days he died on 8 May 1997.

Eye-witnesses to differing aspects of the event were called by the prosecution and their evidence reflects two different views of precisely what occurred. On the one hand a group of people who had been patrons of St Patrick's Hall, Thomas Street, Portadown gave evidence of an unprovoked attack upon them at the junction of Thomas Street and Market Street as they returned towards their homes. The evidence of police witnesses suggests that some kind of confrontation took place before any serious injuries were sustained.

To resolve the issues which I have to decide in this case, it is immaterial which version is correct, but the incident has given rise to some public controversy and I feel that it is appropriate that I should analyse as best I can the evidence given and throw whatever

light is possible upon the occurrence of the events which led to the tragic death of Robert Hamill. It must be recognized however that the differing accounts have not been tested against each other since they have both been presented in the same interest during the trial.

It is well recognised that there is sharp inter-communal division in Portadown and the nature of the incident in this case was undoubtedly sectarian. It is difficult to label the protagonists in this kind of situation without giving offence to some, but for the sake of description I shall describe the group coming from St Patrick's Hall as the "hall patrons" and those whom they encountered as "loyalists", and persons including the hall patrons and others who were allegedly in confrontation with the loyalists as "nationalists". This is not meant to reflect any precise political affiliation on the part of either group.

The junction of Thomas Street and Market Street, Portadown has been described as a "flash point" at weekends, the reason being that it forms a crossroads where the two communities cross each other's paths when returning from their weekend evening entertainment. Nationalists attend St Patrick's Hall in Thomas Street and many of them, when walking home, make their way along Thomas Street across Market Street and into Woodhouse Street in order to gain access to the area where they live. Loyalists attend Portadown Rugby Club and the Coach Inn at Banbridge from which latter premises they return in buses which deposit them at the Bridge Street end of Portadown from which they make their way home along High Street and into Market Street.

The junction referred to is recognised by the police as being a potential trouble spot. On the evening in question, four police officers were on duty in a land rover patrolling within the central area of Portadown which was enclosed by security gates, and the

junction of Thomas Street/Market Street was one of the points of concern for them and indeed was a focal point of their patrol.

The police version of events at the time of the attack was given by Reserve Constable Atkinson and Constable Neill.

According to the former, the land rover stood parked in the lay-by outside the Alliance & Leicester Building Society facing towards High Street at about 1.30 am (this was position LR1 on map Exhibit No 4(2)). The only people on the street were those making their way "in dribs and drabs" from the High Street direction.

The land rover moved from its position, and when it reached a position close to the entrance to Woodhouse Street (LR2) a person crossed the front of the land rover from its right. In cross examination he amended this to say the vehicle was in position LR3 at that time. Constable Atkinson did not describe any initial exchange between this man and any of the officers, but saw two men come from the High Street direction who had an exchange of words with that person. Constable Cornett opened the front passenger door and told them to carry on.

He next recalled the driver's door being opened and Constable Neill seemed to be pulled out of the vehicle. He got out of the rear of the vehicle to assist and saw the constable and another man confront each other, but was unaware of what words were exchanged. It was then apparently that he noticed that young people were standing on the street cat-calling each other and exchanging sectarian remarks, about fifty loyalists and twelve nationalists in number. Seeing one particular exchange in which three or four loyalists were engaged with a nationalist, he and Constable Neill ran to extricate the nationalist from the crowd.

After bringing him to Woodhouse Street, he turned round and saw two persons lying on the ground; there was no-one with them. He observed that the groups were fighting and that bottles were being thrown and he ran over to the two people and helped keep the loyalist crowd back from them. An ambulance was sent for. He and Constable Neill removed a man from the crowd and took him to the rear of the land rover. At that stage his jacket was grabbed by the man who had crossed the land rover initially and who had had the altercation with Constable Neill, and there was a struggle between them. He had a glance across the road and saw three persons jumping on one of the prone figures. He ran over to that person and stayed with him for several minutes, so far as he could judge. A police car arrived to assist and he saw Woman Constable Halley, one of that team, removing a person to the back of the land rover. This person was wearing a red, white and blue scarf. An ambulance arrived and stayed for 15-20 minutes.

In cross examination he said that he did not hear what the man who crossed the front of the land rover said because of the noise of the engine and agreed that if he had heard that people would be coming from St Patrick's Hall that he would be more anxious to keep an eye on the two potentially rival crowds crossing.

He said that 3-4 minutes passed between the man being confronted by the other two and Constable Neill's door being opened; he could not recall if he looked towards Thomas Street during that time. The view in that direction would have been through the side slots of the land rover.

One of the two persons lying on the ground (Mr Girvan) was lying outside the bakery at number 7 and when the ambulance came it stopped short of where he was.

Constable Neill was driver of the police vehicle and described being parked in the lay-by at about 1.30 am. He said the town had been very quiet that night, but that

situation changed within a few minutes when people started coming up from High Street. He said there was a fairly steady flow of people, in groups of two or three, "walking up in dribs and drabs". He decided to drive down to a point near the barrier in High Street to have a look there, but just as he moved into position LR2 a man walked across the road in front of them and mouthed something at them. He had come across from the Thomas Street side heading towards Woodhouse Street. Reserve Constable Cornett opened her door and asked the man what he had said and he understood that he said that there were some people coming down from St Patrick's Hall to Thomas Street. The witness looked up Thomas Street, but there was no sign of anybody coming down so he went to move off. Two males approached from the High Street direction and approached the man that had spoken to the police officers "and they sort of squared up to each other" and he moved the land rover into LR3 position. Constable Cornett opened the door and told the men to move on.

The two men moved off towards the Alliance & Leicester premises on the corner of Woodhouse Street and the man walked down Woodhouse Street. The constable's explanation for taking up position LR3 was that he was past the point of turning into Woodhouse Street when the two men approached the other one and he took up position LR3 "so he could still see what was going on".

He said that the crowd making its way along Market Street was exhibiting "a bit of joviality and a bit of shouting and that, but nothing excessive".

The two individuals who had spoken to the man then engaged in conversation at the land rover for a minute or so discussing where they had been for the evening and then the driver's door of the vehicle was opened. The person who did so started to pull the witness down and was shouting at him to the effect "You sat there and did nothing. You

sat there, you watched that happening and you did nothing". Constable Neill did not know what he was talking about and could not see anything that could have explained the remarks.

The witness got out of the land rover and there was a female somewhere behind the man, she was also shouting to the same effect. At that stage the witness saw a crowd of approximately 40 people at the junction of Thomas Street and there was a lot of cat-calling going on between a group of loyalists and a group of nationalists, which was the smaller of the groups with about eight to ten in that group. When the three officers got out of the land rover a number of fights broke out across the street. He made his way towards a fight outside Eastwood's Clothing and took one person out of it that was fighting with the other three or four. He took him back over to Woodhouse Street. There he told the man to go home and as he was talking to him someone punched the man in the face from behind the officer. This was a male in his late teens, early twenties. The constable took that man back to the land rover where bottles were being thrown, one smashing on top of the land rover. There was still fighting going on across the street, with greater numbers involved.

He saw Reserve Constable Atkinson involved in one of the fights around the central reservation area and he went to assist him. He did not know whether it was at that stage that he saw a body lying on the road. It had not been there earlier, and the first time he saw it was after he had been in Woodhouse Street with the man he had brought across the street. He helped to extricate Reserve Constable Atkinson from the struggle that he was engaged in and then made his way over to the person lying outside Eastwood's, that was Robert Hamill. He said he was lying on the road on his back and there was liquid around his head which he at first thought was blood. His breathing was "like rasping". It sounded

as if he had possibly been stabbed. He was alone at that stage. He then realised that he had seen somebody coming down from the church, down Market Street towards Thomas Street. The two people seemed to be making their way towards each other, one had a bit of a bottle or a bottle in his hand, but he did not see the result of that.

His recollection was unclear, but he could remember being involved in a fight convenient to that area probably before he went to Mr Hamill. He seemed to amend this to say that he thought it was after he had made his way to Mr Hamill.

When asked about this he answered "I thought it was before because I remember seeing a person standing at the head/shoulders area of Mr Hamill". This person was standing over him and he appeared to be shouting or saying something to him as he was lying there. He saw this person swing his foot towards Mr Hamill in the area of his head and shoulders, he saw that clearly. The person was in his twenties, he had short hair and a goat beard, he had a round face and he would have been about 5' 8"/5' 10". The lighting in the area was good. He could not say whether the foot struck Mr Hamill or not.

At that time the witness was trying to split up another fight. He saw the other person, Mr Girvan, who was lying outside No 7, the home bakery. He was not aware of the ambulance arriving, but was there when it was present. Later he saw the same person that had been swinging a foot towards Mr Hamill. He was in a fight. The witness went to assist Reserve Constable Atkinson and the same person was involved in the fight. It was possibly close to the traffic light on the central reservation. It was only a matter of a few minutes between the two incidents. This person was in the middle of the fight. The witness was trying to pull him out, but he was not letting go and he struck him with his baton. He later identified the man he had seen at Lurgan RUC Station on Saturday 10 May, and identified him in court as being the accused.

Constable Halley had been on uniform mobile patrol with Constable Orr in a police car and received a transmission from Constable Cornett at 01.47 am. They arrived at the scene at approximately 1.55 am. Approaching the scene she observed a male youth carrying a Buckfast bottle. He ran towards the church. She observed a large crowd of 40-50 persons and two men lying on the road. The crowd was close to them. Police officers were present trying to push the crowd away from the men. She saw the crew of a land rover and Reserve Constable Silcott. The ambulance had not arrived at that point. The two men on the ground were at the junction of Thomas Street, but she could not say how close to each other. She saw again the male youth she had seen earlier, his name is Wayne Lunt. He turned and ran off and she grabbed him by the arm. He was kicking out at her and kicked her on her legs. At 1.57 am she placed him in the land rover. After he left the land rover she went over to assist the police in pushing back the crowd. Two males approached her, one she described as very irate and abusive. He asked her why she let the man leave the land rover "as he was one of the ones that did it". She did not record that and did not get his name and address.

Mr Gregory Girvan said that he, his wife, Joanne, her sister Siobhan and Robert Hamill left St Patrick's Hall shortly after the music had stopped. As they approached the junction of Thomas Street and Market Street he noticed a couple of people "knocking about" at the corner, but he did not pay any attention to them. All he could remember after that was wakening up in Craigavon Hospital when he had a cut to his head and a couple of marks to his face.

He, his wife and Robert Hamill had been drinking at the dance and he had "had a few pints".

Mrs Joanne Girvan is the wife of Gregory. She said that the music at the function stopped at 1.00 am and they decided to leave early to relieve her baby-sitter. In her view they left the hall about 1.20 am. As they approached the junction she saw a couple of people, whom she assumed had come from the hall, walking across into Woodhouse Street. She also saw a police jeep with its back doors facing the town clock. It was to the Bridge Street side of Woodhouse Street.

As she came out into the junction of Market Street she can only remember Gregory lying unconscious and Robert across the road a wee bit lying down. She knew that he was hurt. He did not get up and was lying dead still. A crowd had come out from nowhere, numbering about 20-30. She never looked up to see them. She kept her head down and kept herself over Gregory. Both men were outside Eastwood's with Robert more towards the centre of the road.

The first thing that she became aware of was the ambulance coming up towards them and then a police officer came over to her and told her to put Gregory in the recovery position. Siobhan was with Robert. She said she was reassured approaching Market Street by the police presence. She did not see any police personnel out of the land rover. She said that when the ambulance came, a police officer was out of the jeep then, but that was after the attack was over.

Miss Siobhan Girvan thought that they had left the hall at about 1.20 am or 1.25 am. Approaching Market Street junction there were two people at the bottom of Thomas Street and a police jeep. It was across the road to the right of Woodhouse Street. As they got out onto Market Street a crowd came from nowhere and just started attacking. They had just reached the junction of Thomas Street and Market Street. She could not say whether the crowd came from the right or left. She saw Robert lying on the ground and

people were kicking at him. There were at least 20 or 30 of them. She took her coat off and put it over his head. They were also shouting "die you bastard". She remembers turning round and seeing Gregory lying with Joanne over him.

After putting a coat under Robert's head she ran over to the police jeep and asked that they should get out and help them. She was not aware of anyone in the jeep at that stage. She ran back to Robert. An ambulance arrived. She had no alcohol taken. She saw nothing in the nature of fighting between the two groups, but what occurred was simply an unprovoked attack on the two men. She was not aware of any taunting or cat-calling. The police who were in the land rover remained in the land rover for at least 5-10 minutes after the end of the attack.

Mr Colin Prunty had also been to St Patrick's Hall and left it with his girlfriend. He saw Robert Hamill and Mr & Mrs Girvan and Siobhan Girvan walking in the same direction along Thomas Street. They were behind him. He did not see anyone as he approached the junction with Market Street. Robert Hamill was in front of him, although the others were behind, and as he walked into the junction "a whole squad" appeared out of nowhere and jumped him. He heard "Get him, get him" being said. He noticed the police land rover just outside the Halifax Building Society. It was partly on the diagonal. It happened very quickly and his impression was that the people who jumped Robert came from the left-hand side. Robert was dragged to the ground and they started kicking him and beating him. About 20 or 30 people were involved. Some were saying "Kill the fenian bastard".

Mr Girvan ran down to try to help and was knocked straight to the ground. The witness ran down to try to help. He ran into the middle of the crowd. There were no

licemen around at that stage. They came to the scene after Robert had got beaten up. Two policemen came to the scene. They broke the crowd up and took one fellow away.

When they broke the crowd up they were still kicking at Robert, but he also said that once the kicking had stopped the police came on the scene then and confirmed that the police broke the crowd up when the kicking had stopped. He saw the police grab a fellow and bring him down towards the land rover. He was wearing a Rangers scarf. He was in the crowd that was kicking Robert. He later saw the man at the back of the land rover. The witness complained to a police woman that that person had been released.

Mr Hamill was taken by ambulance to Craigavon Area Hospital where he was seen by Mr B K Low who was casualty officer on duty. He found no open injury but that Mr Hamill had difficulty in breathing and a decision was made that he should be transferred to the Neuro-Surgical Unit in the Royal Victoria Hospital. There he came under the care of Mr Fannin the Consultant Neuro-Surgeon.

Mr Fannin's notes was referred to by Dr Patel who give evidence indicated that Mr Hamill was being treated for a relatively minor brain injury and indeed following the death of Mr Hamill, Mr Fannin commented that it was felt that he had sustained a relatively minor head injury but suffered a sudden and unexpected deterioration in his condition on 8 May.

It appears that there was little evidence of direct violence to the head. The postmortem was carried out by Dr Jack Crane, the State Pathologist and he commented as follows:

> "Death was as a result of the head injuries which he had sustained. Externally his injuries appeared trivial; there was a small area of abrasion on the left side of the forehead, a bruise on the upper eyelid of the left eye and a small spot of abrasion close to the left nostril. Even internally the injuries did not seem particularly severe with only two areas of

bruising on each side of the undersurface of the scalp and a small almost hairline fracture in the front part of the skull running into the roof of the left eye socket. Detailed examination of the brain however and in particular its microscopic examination revealed widespread damage within its substance of a type known as diffuse axonal injury. This condition, most frequently encountered in acceleration/deceleration injury as a result of a road traffic accidents is also well recognised as occurring as a result of repeated blows to the head such as by punching or kicking and this would seem the most likely mechanism of injury in this case. It was ultimately the effects of the brain injury which were responsible for his death in hospital.

He had also sustained some other injuries although none of these were serious enough to have played any part in his death. There was a fading bruise on the front of the abdomen and some further bruising in the muscles of the abdominal wall which could have been due to blows during the assault. There were numerous bruises on the left upper limb, particularly on the forearm and hand which could have been sustained if the arm was struck whilst raised in aid of defensive gesture. A few further bruises were located on the right upper limb but some of these were probably related to injections given whilst in hospital. A fairly large area of bruising overlying the right side of the pelvis was due to blunt force and might have been caused by a kick".

On his initial admission to hospital an analysis carried out revealed an alcohol concentration of 221 mg per 100 ml such a level would leave no doubt that he was moderately intoxicated at the time of the incident also it was well recognised that alcohol intoxication exacerbates the effects of head injuries and may well have played a part in the fatal outcome in this case.

The injury to the brain would therefore appear to have been caused by a jolting type of injury rather than by direct contact but there was no reason to doubt that the fatal injury was sustained as a result of the violent assault referred to by the other hall patrons.

There is a fundamental difference between the evidence of the police witnesses and the patrons of St Patrick's Hall in that the police witnesses say that there was a

confrontation between groups of people hostile to each other before anyone was knocked to the ground whereas the patrons from St Patrick's Hall say that there was an unprovoked attack on the deceased and Mr Girvan as soon as they had reached the junction of Thomas Street and Market Street.

Both police officers who were present say that Mr Girvan was lying outside the bakery at number 7 but this view is not supported by any other witness including Mr Morrow the ambulance driver who puts the men in the position described by the other hall patrons. It is impossible to determine what significance, if any, is to be attached to this difference of recollection.

Apart from the issue of identification which I shall return to, the prosecution, in order to establish the charge of murder, has to prove either that the accused inflicted injuries to the deceased which caused or contributed to his death or that by his conduct as witnessed by Constable Neill he aided and abetted those who had caused such injuries.

In relation to the first proposition, Constable Neill specifically denies seeing the accused make physical contact with Mr Hamill so it is impossible for me to be satisfied beyond a reasonable doubt that the accused personally inflicted any injury upon Mr Hamill, although it is probable that he intended to and did strike him. In relation to the second proposition, Mr Prunty says that the police had not come on the scene until after Robert had been beaten up and Miss Girvan said that the police in the land rover remained there for at least 5-10 minutes after the end of the attack and Mrs Girvan said that the police officer who came over to her, the only one that she refers to as having crossed the road, came over after the attack was over.

Constable Neill was ambivalent as to whether he saw the person standing over Mr Hamill before or after he had gone to check Mr Hamill. He first referred to finding

Mr Hamill still breathing and discovering that the fluid around him was alcohol. He then said he was involved in a fight convenient to that area and at first said that that was "possibly before" he had checked Mr Hamill.

He then said "I think it was probably before because I can't remember; actually it was after that I think I went to the body, Mr Hamill and he was lying there". He then said he thought it was after he made his way to Mr Hamill that he witnessed the incident involving the accused.

Constable Neill had seen Mr Hamill on the ground from across the street so he had to cross over to him. The evidence of the hall patrons suggests that Mr Hamill was lying on the ground after the attack for a considerable time before any police officer approached him and Constable Neill's evidence does little to dispel that impression.

There must, therefore, be a reasonable doubt as to whether what was seen by Constable Neill occurred quite some time in terms of minutes after the physical attack on Mr Hamill had ended and it could not, therefore, be said that the accused aided, abetted, counselled or procured the attack or that he participated in it jointly with those who inflicted the fatal injuries on Mr Hamill. The probability is that the fatal injuries had been inflicted and the attack had ceased before the event witnessed by Constable Neill, who first saw Mr Hamill on the ground from Woodhouse Street, with no-one attacking him.

The situation was a confused one and the attack on Mr Hamill and Mr Girvan was quickly executed; both Miss Girvan and Mrs Girvan say that the attackers "came out of nowhere". It is not surprising that it is difficult to extract a coherent account even from the eye-witnesses. The consequence must be that I am not in a position to be satisfied beyond a reasonable doubt of the guilt of the accused on the first count and indeed proof of his involvement in the murder falls far short of the required standard.

According to Constable Neill he saw the accused twice on that evening, once as he stood over Mr Hamill and swung his foot towards him and later when he was in the fight involving Reserve Constable Atkinson.

The lighting was good in the street and Constable Neill described the person who swung his foot at Mr Hamill as being in his 20s with short hair and "a goat beard". He would have been about 5' 8" or 5' 10" and appeared to be wearing a waistcoat or a sort of a leather fronted coat with cloth arms on it. Constable Neill was about 20-30 feet away from him at that time.

A matter of a few minutes later while trying to extract Reserve Constable Atkinson from a fight with some persons, the witness was trying to pull one person out when he realised it was the same person as he had seen. He struck him with the baton at that stage. Obviously the Constable must have been close to the person when he was in a position to strike him with his baton.

Constable Neill was cross examined to the effect that he had not mentioned the height that he saw in his earlier statements but I do not see the height of the accused as being a particular distinguishing feature and I do not find it surprising that it was not mentioned in the earlier statements. It appears also that he variously described the attacker as being in his late 20s, his 20s and then simply in his 20s.

All of those descriptions are referred to a person in his 20s and I do not think that the distinctions in the description of age are significant.

The constable also had some difficultly in describing the sort of top that the man was wearing referring it to as a waistcoat or casual top "like a leather waistcoat with cloth arms" and it was certainly not established to my satisfaction that the accused had any

garment answering that description. However, I do not attach a great deal of importance to the description of clothing attempted by the constable.

In my view reliable identification is based on the features of the person to be identified rather than on his clothing. I am satisfied that Constable Neill did concentrate on his features and that he has made a reliable identification.

He next saw the person on Saturday 10 May at Lurgan RUC Station and was able to identify him, it being the defendant, Mr Hobson.

Mr Orr applied for a direction citing the well known cases of R v Galbraith and R v Turnbull. However, I consider that the opportunity for observation was good and I could not really see any feature in the case which might give rise to a doubt as to whether the identification was an accurate one. In the event the accused did not give evidence from which I draw the inference that he felt unable to give evidence which would distance him from the events witnessed by Constable Neill, and Constable Neill's evidence is fortified to that extent.

I am satisfied beyond a reasonable doubt, therefore, that Constable Neill has accurately identified the accused, Paul Rodney Mark Hobson as being the person standing over Mr Hamill and later involved in the struggle with Reserve Constable Atkinson. In considering the nature of the second count I can do no better than to quote from the recent judgment of the Lord Chief Justice in the case of Henry and others:

> "Affray is a common law misdemeanour, whose elements relevant to the present case are that unlawful fighting is used by one or more persons against another or others in a public place in such a manner that a bystander of reasonably firm character might reasonably be expected to be terrified: Smith & Holgan Criminal Law, 5th Edition, page 738.
>
> Lord Hailsham of St Marleybone LC warned in Taylor v Director of Public Prosecutions (1973) AC 964/987 that the requirement of terror rather than mere fright should not be

> watered down. It is not necessary, however, to call a witness to say that he was put in terror."

I would also adopt, as an indicator of the conduct that may amount to affray, the remarks of Stuart Smith LJ in R v Herron and Spencer (1989) 11 Cr App R (S) 226 at 228:

> "However, in cases of violent crowd disorder, it is not only the precise individual acts that matter. It is the fact that he is taking part in violent disorder, threatening violence against other people, and is part and parcel of the whole threatening and alarming activity".

While those remarks were made in the context of an appeal against sentence following conviction of violent disorder under Section 2(1) of the Public Order Act 1986, the words are equally applicable to the common law offence of affray.

In this case, whether the matter commenced as an unprovoked attack on the patrons from St Patrick's Hall followed by a struggle between the attackers and the police to keep the attackers away from the prone figures of Mr Girvan and Mr Hamill, or whether events started with a confrontation between rival groups, I have no doubt that any bystander of reasonably firm character would be expected to be terrified by the actions of the accused as described by Constable Neill.

The attitude and gestures of the accused in relation to Mr Hamill gave every appearance of being threatening and hostile and undoubtedly would have caused active encouragement and support to others engaged in fighting at that time and the struggle with Reserve Constable Atkinson in which Constable Craig intervened was part of a sectarian confrontation or attack. I am satisfied that any bystander would have been justifiably terrified, and indeed the situation required the police officers present to call for supporting units.

I am, therefore, satisfied that the accused is guilty of affray and accordingly convict him on the second count.

Considerable publicity was given to the events which gave rise to this case, and while it is not for me to reach a conclusion on matters that are not central to the issues tried by me it does appear to be appropriate to make some comments.

It is clear from the description given by Mrs Girvan, Miss Siobhan Girvan, Mr Prunty and Mr Girvan that the attack on Mr Girvan and Mr Hamill was a very sudden one and that Mr Hamill was brought to the ground and attacked within a very short timescale.

I am unable to resolve the question whether the police officers remained in the land rover during the attack. On the evidence of the hall patrons this would not be entirely surprising and would not necessarily reflect on the officers' commitment to duty since according to that evidence the scene was peaceful immediately before the attack as the patrons approached the Thomas Street/Market Street junction.

The only issue which might reflect on the officers and about which no evidence exists is whether they failed to anticipate the attack in the event that there was any preparation or assembly before it. Even if alerted at the earliest moment by the occurrence of the attack itself it is unlikely that they would have been able to dismount and intervene in time to save Mr Hamill.

It appears that once the police officers did intervene they acted resolutely and were able to keep the loyalist crowd away from the two men on the ground and to prevent any further serious injury. The nationalists were heavily outnumbered by the loyalist crowd and it was only the presence and intervention of the police that could have been responsible for the prevention of further attacks upon them.

The fatal injuries sustained by Mr Hamill and the injuries sustained by Mr Girvan, from which he made a speedy recovery, do not establish that a prolonged beating took

[redacted]ce and indeed the fatal injury could have been caused by one blow or a blow combined with a heavy fall.

I am satisfied that the officers came across the road shortly after the attack and that the evidence which suggests otherwise is explained by confusion and distress on the part of the hall patrons.

In my view the hall patrons were not in a position to be clear about the timing or extent of the police intervention and the evidence of Mr Morrow the ambulance driver shows that there was an active police presence when he arrived. The female witnesses were distraught during the attack and in no position to make accurate observations and Mr Prunty was engaged in trying to protect the injured men. He seems to place the arrest of Lunt at a fairly early stage in the exchanges, when it is clear that it did not take place until after the arrival of Constable Halley.

I recognise that this raises the reasonable doubt as to whether Constable Neill was being truthful when he described the scene as he looked across the street after dismounting from the land rover. If that evidence is untruthful the purpose of it is obviously to protect his own and his fellow officers' position in the face of criticisms that have been publicly made against them and I am satisfied that no such consideration applies to his evidence implicating the accused which I accept as truthful and accurate.

However, there are three items of comment which I regard as appropriate on matters which lie outside the immediate scope of this trial, but the factual basis for which is not disputed.

1. It is obvious that the man who first approached the land rover felt that he had some information or warning of significance to impart.

He may have thought, correctly, that the timing of the proposed departure from the location was inappropriate, since the arrival of hall patrons was imminent, or he may have noticed some assembly of hostile loyalists preparing to attack the patrons.

The officers showed no interest in the significance of his message. Reserve Constable Atkinson admitted that he could not recall looking to see if any group was coming from the hall during the three to four minutes between the man's approach and the door of the land rover being opened and all of the occupants of the land rover appear to have become distracted from their observation of Thomas Street by a casual conversation with the two loyalists who had confronted the man.

2. It seems unfortunate, once the driver had realised that this individual thought it necessary to inform the police of the arrival of the patrons from St Patrick's Hall, that the land rover was then placed in a position in which none of the officers in the vehicle had a view of the junction of Thomas Street and Market Street except through the side slot of the vehicle. Placing the vehicle at a right angle to Market Street would have provided a clear view towards the junction, either to those in the front through the windscreen or those at the rear looking out through the rear doors, and even if parked in its first position or at a normal alignment to Market Street the driver would have had a good view, but the angle at which the vehicle was parked would appear to have been the least advantageous one for the purpose of observation of what has been admitted to be the location in which trouble was likely to flare up in the very situation which had just been reported to the officers.

3. It would also appear that Mr Prunty's observation, if correct, would have provided a prima facie case of serious involvement in the attack on Mr Hamill against the man arrested at the scene and taken to the land rover. It may be understandable that

Constable Halley did not personally follow up the remarks made to her by Mr Prunty, but it seems very strange that she did not regard him as a potential witness and that the facts were not placed before the officers investigating the case. Indeed on the basis of Mr Prunty's police statement there appears to have been sufficient material available on the papers in the case to merit serious investigation of that man's involvement and it should have been easy to relate Mr Prunty's observation of the man to the arrest of him by Constable Halley.

SENTENCE:

LORD JUSTICE McCOLLUM: Well, this was a very serious incident. It appears to me that a greatly outnumbered group of people, who had been peacefully attending Saint Patrick's Hall in Thomas Street, were in the event, at the very least, confronted by a much larger crowd of people and that there was a very vicious assault on the deceased, which resulted in his death.

Because of the state of the evidence I was unable to link the accused with that and direct assault but nonetheless by his gestures over the prone figure of Mr Hamill he associated himself with the kind of attack that had been made, and he was then involved in fighting with the police. Obviously the evidence all goes to show that the police involvement was to prevent further attacks on the patrons from Saint Patrick's Hall, so it was part of a sectarian confrontation and attempts by him to continue the attack.

I would regard this type of case as a very serious case indeed and I regard it as an entirely different kind of case from that with which the Lord Chief Justice dealt, where a situation arose completely unexpectedl and a number of people got involved, mainly through the influence of drink. This is the kind of offence that in my view must be dealt with as a very serious matter by the courts and I regard the appropriate sentence as one of 4 years imprisonment.

RESTRICTED

File
5cc JPO
JS
MT
AC

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

21 January 2001

Dear Paul,

TELEPHONE CONVERSATION WITH DAVID TRIMBLE

The Prime Minister spoke briefly to David Trimble this afternoon. They agreed to meet on Tuesday to discuss in detail where things stood. The Prime Minister mentioned that he also planned to meet Seamus Mallon that day.

The Prime Minister suggested that in the current circumstances it made sense to postpone Tuesday's meeting of the BIC. Trimble said he appreciated the advantages of doing this. It would prevent his hand from being forced either way. The Prime Minister said we would try and fix a new date quickly.

Comment

We and the Irish have since agreed that the BIC will now meet instead on 5 February. This will be announced by No. 10 and the Taoiseach's office during the course of tomorrow. In the meantime I have asked Constitution Secretariat in the Cabinet Office to start discreetly standing down participants for Tuesday.

I am copying this letter to Sir Ivor Roberts (Dublin) and Mark Taylor (Constitution Secretariat, Cabinet Office).

Yours ever

S Macleod

AP **MICHAEL TATHAM**

Paul Priestly
NIO

RESTRICTED

DOWNING STREET

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GOC – CC calls

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• Choreography – OTRs or [illegible] (D.C. [illegible])

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From: Bill Jeffrey
Date: 20 January 2001

JONATHAN POWELL **cc: Peter Mandelson**

NORTHERN IRELAND – SEQUENCE AND PUBLIC HANDLING

I attach a possible sequence which we could play into the next round of discussions with Sinn Fein. I have shown it to Peter Mandelson who is content. There are a few points to note.

First, it doesn't cover Patten. We could do so if we wanted to, but it would complicate things. There is a separate, difficult discussion to be had with Sinn Fein about how much of yesterday's Patten commentary should surface publicly, a point which concerns Peter greatly. We will also need to tie the SDLP in. My guess is that we will need a separate Government statement, which addresses both Sinn Fein and SDLP concerns, and includes willingness to review the legislation after 12 months operation.

We could, as previously envisaged, start the process with a Government statement reaffirming previous commitments. At the moment, I have included this under Step 2, because – without being silly about it – Sinn Fein will chisel as usual and we need something in reserve. But we could advance it ahead of the IRA statement if need be.

The really difficult questions are about OTRs and normalisation. There will be strong pressure from Sinn Fein to front load these, and I'm not sure how much the Prime Minister has already promised. But we need to remember that

Trimble's period of maximum vulnerability will be end-January/early February, when his opponents will try to harden the policy and get him out of the Executive. If at that stage we have already announced OTRs and started to pull down all three installations, and all that is visible on the other side of the balance is the fact of re-engagement, we could have a problem.

Also, my reading of Ronnie Flanagan's position on Thursday, supported by Joe Pilling's conversations with him yesterday, is that Ronnie's red lines (which Peter would support) are:

- no unconditional early announcement; and

- no start on actual demolition until the IRA have committed themselves publicly to do the deed on the required timescale.

The second of these is very difficult, because they probably won't commit themselves publicly. I have therefore suggested that we use de Chastelain as the trigger. If he said that he now believed they were going to put weapons beyond use in accordance with the agreed scheme, that might provide enough cover for Ronnie. The other possibility might be for Ronnie to share in the private understanding with Adams about product before Easter – perhaps for Adams or P O'Neill to sign a letter which Ronnie (and perhaps Trimble) could be shown. But we need something. (Incidentally, Peter's view is that it will be politically very difficult if Trimble is not in on the ultimate deal, since part of the purpose will be to boost his confidence and readiness to do battle in the coming weeks.)

On OTRs, I am sorry if I laboured the political sensitivity of a public statement yesterday. But I do think that even the words we ended up with will be seen as announcing an amnesty and going well beyond anything in the original Agreement. To extinguish all possibility of prosecution and conviction, never mind the two years in prison that all the early release people served, and to do so in as high profile cases as Quinlivan and McCauley, strikes me as quite a big deal. It will be justified if we get what we are looking for, but I would have thought much easier to defend later in the sequence than earlier.

BILL JEFFREY

1 IRA statement announcing re-engagement with IICD for the purpose of agreeing how weapons will be put completely and verifiably beyond use. IICD reports re-engagement and discussions underway. Trimble lifts North/South sanction.

2 [Immediately after IRA statement.] Chief Constable announces demolition of supersangar at Newtownhamilton Police Station adjacent to helicopter landing site, work to begin within days. Announces also that further significant progress with decommissioning would enable the demolition of the tower on Sturgan Mountain and one of the two towers on Camlough Mountain. British Government repeats assurance on normalisation given on 5 May.

3 IICD reports agreement reached with IRA on scheme for putting weapons beyond use. Commission now believes IRA will put weapons beyond use before long in accordance with the agreed scheme.

4 [Immediately after IICD report.] Chief Constable announces demolition of two towers on Sturgan Mountain and Camlough Mountain – work to begin within days.

5 [Immediately after IICD report.] British Government announcement on OTRs.

6 IICD report IRA weapons put beyond use in accordance with agreed scheme.

NOTE

Dates for steps 1, 3 and 6 all to be agreed in advance of step 1, with the date for step 6 being before Easter 2001.

IMPLEMENTATION GROUP

Creation of an informal Implementation Group; to comprise senior officials from Irish Government and British Government.

Remit:

To meet privately to liaise and exchange information on an ongoing basis, and monitor the implementation of commitments made, including on policing, security normalisation, OTRs and the issue of arms.

To report progress and identify outstanding commitments.

To agree, where possible, actions and remedies to meet outstanding commitments and report differences to Ministers.

To meet fortnightly and more regularly as required.

To report to the British Prime Minister and An Taoiseach, not later that 72 hours after each meeting.

Representatives of Sinn Fein to be involved in meetings.

A dedicated representative from the two Governments and Sinn Fein to liaise and exchange information on an ongoing basis, between meetings.

Further steps in normalisation will be taken:

- Demolition of the supersangar at Newtownhamilton police station adjacent to helicopter landing site (grid reference 93102780).

- Demolition of tower on Sturgan Mountain (grid reference 01622562, 4.5km SW of Bessbrook, 2.3km WNW of Camlough) and one of two towers on Camlough Mountain (grid reference 04942509, 3.5km south of Bessbrook, 2km SE of Camlough).

The British Government repeats the assurance on normalisation given on 15 May. It is our intention to continue with this process until complete normalisation is restored in Northern Ireland. But it can only be on the basis of a continuing implementation of the Good Friday Agreement and the assessment of threat and danger to the community and people in Northern Ireland. Provided this threat is reduced, we will carry out a progressive rolling programme reducing levels of troops and installations in Northern Ireland. Ultimately, the "normal" state of Northern Ireland would mean the following:

The following locations would have been vacated, returned or demolished:

(a) Army Bases. The Army would move out of the following bases:

- Bessbrook
- Dungannon
- Raithfriland
- Clogher

- Clooney Base
- Ebrington Bks
- Magherafelt
- Grosvenor Bks
- Coleraine (Laurel Hill House)
- Girdwood Park
- Moscow Camp and Airport Jetty
- Military Hospital
- Malone Road
- Steeple Bks

The evacuation of some of these locations, such as Ebrington Barracks, for practical reasons, may take some time to complete.

(b) Surveillance Towers. All surveillance towers would be demolished and vacated.

(c) Joint Military/Police Locations. No further army presence in police stations.

All helicopter use would be for training.

There would be a number of overseas deployments and training opportunities, which would reduce the size of the garrison in situ at certain times.

Most training within Northern Ireland would be focused in Magilligan and Ballykinler Training Areas.

The Government is fully committed to a new beginning in policing through the establishment of a policing service supported by both traditions and all sections of the community in Northern Ireland.

The Government acknowledges that concerns have been expressed on this score, and will want to keep the effectiveness of the new arrangements under close review. In particular, after the first 12 months of operation, it will review the way the legislation has operated to make sure it is consistent with the objectives of the Patten report.

The Oversight Commissioner – the former head of the US Drugs Enforcement Agency, Tom Constantine - will monitor progress with implementation; will report at least three times a year; and will be able, at any point, to draw attention to shortcomings in implementation, and make recommendations. This could include recommendations for changes in the legislation, if the Commissioner concluded that aspects of the Act were inhibiting the new beginning in policing.

Once it starts work, the new Policing Board will also be able to form views on the legislation, and make recommendations to Government. In both cases, the Government will take such recommendations seriously and consider them with an open mind. In the light of the first 12 months' experience of its operation, it will, in any event, want to review the effectiveness of the legislation in bringing about the new beginning for policing and a police service acceptable to all parts of the community. This is what the Government seeks, what Patten recommended and what Parliament intended.

The position on the specific points in the Sinn Fein papers (numbers as there) is as follows:

2. The Policing Board will have unprecedented powers to hold the Chief Constable to account. The Board determines objectives for the policing of Northern Ireland (Section 25) and issues the policing plan (Section 26). While Section 33 provides that the police shall be under the direction and control of the Chief Constable, he must have regard to the policing plan. This reference to his operational responsibility is the same as that for Chief Constables in England and Wales in the Police Act. The Commissioner of the Garda Siochana is also in operational control of his force.

Section 59 also provides for the Board to require reports for the Chief Constable on any matter connected with policing. The Board can then initiate an inquiry.

3&4 In respect of the grounds on which the Chief Constable could question the requirement for a report, the Secretary of State will give further thought to how these provisions in the law might be operated, including consideration of a good practice code. This will set out matters such as how the Secretary of State might respond to the Board, for example in giving his reasons, and when he might expect to discuss issues with it.

Patten did not recommend that the Board should be able to establish inquiries into past actions by the police, but we will allow information about things that happened before the Board was set up to be considered if they are relevant to a current inquiry.

5. The Government shares the view of Sinn Fein that the District Policing Partnerships are a very important component of the accountability arrangements and that they should have a key role in developing community policing. Under devolved government, rate-raising powers lie with the Assembly and it would be for the Northern Ireland administration to agree whether a new rate power should be given to district councils. It could agree the District Policing rating power if it wishes but it must be its own decision not the UK Government's. We want to see close co-operation between police commanders, district councillors and all others who can contribute to delivering effective community safety and crime reduction. To make local commanders accountable to the DPPs would, however, go beyond Patten.

In respect of the provision that those with criminal convictions should not be able to serve as independent members of DPPs, we will keep this under review and hope to see a time when implementation of the Agreement is sufficiently advanced for this issue to be less sensitive.

6. In addition to the DPP for Belfast there will be four sub-groups, one for each police district. The provision enabling the Chief Constable to decide the number of police districts (not exceeding four) is consistent with the position elsewhere in the UK and Ireland that internal police management structures are a matter for the Chief Constable. If he were to propose changing his stated intention that there will be four police districts at some stage in the future, he would speak to the Policing Board and any district council affected.

The simple point however is that there are now four such districts. There is no intention to change the number. The sub-groups will have the same primary function as the DPPs themselves.

7. The Government will make regulations under the Police Act changing the circumstances under which the Ombudsman may deal with complaints dating back more than two years. Subject to finalisation, she will be able to do so,

(a) either if the complaint is not substantially the same as one previously received and she believes there may have been a criminal or disciplinary offence and she considers it is grave or exceptional, or

(b) there was new evidence (even if the complaint had been considered before) and she believes there may have been a criminal or disciplinary offence and she considers it is grave or exceptional.

Of course if it had already been subject to disciplinary proceedings, she would not investigate that part of it again. It is important that she should not be inundated.

8. The Patten recommendations in respect of covert policing have already been largely implemented. The Regulation of Investigatory Powers Act came into force on 2 October 2000. It makes provision for the regulation of covert policing techniques. There will be a Code of Practice on the use of such techniques. There will be a Statutory Surveillance Commissioner

with oversight responsibility for the police in Northern Ireland. A Complaints Tribunal has also been established.

9. The Government has accepted all of Patten's recommendations on community policing. Police officers have a statutory duty to carry out their functions in co-operation with and with the aim of securing the support of local community. To go beyond this and require them to win community support would, so we are advised, be impossible as an enforceable legal obligation.

10. There are a series of Patten recommendations related to normalisation. They include the appearance of police stations and making the appearance of police vehicles less forbidding. There has already been progress in several of these areas, as set out in the Implementation Plan. We confirm the implementation of these recommendations will be subject to the scrutiny of the Oversight Commissioner.

11. The Government is pressing on with the Patten recommendations in relation to plastic baton rounds. It launched a research programme – the first phase will finish later this month. The terms of reference are attached. The next phase will involve preparation of research proposals. This too is an area that will be subject to scrutiny by the Oversight Commissioner.

12. Section 55 requires the Chief Constable to ensure that, as far as practicable, police officers' unique numbers are clearly visible at all times when they are on duty and in uniform. This will apply also to protective

public order clothing. As failure by an officer to comply could be a disciplinary offence, the term "as far as practicable" recognises that there will inevitably be exceptional circumstances when an officer may not be able to comply, for example if he has been injured. Again, if there are practical problems here, this could be part of the review.

13. The Government and the Chief Constable have accepted all of the Patten recommendations in relation to Special Branch. The Chief Constable has announced his firm intention to bring Special Branch and the Crime Department under a single ACC from 1 April and to proceed with support unit redeployment as soon as he is able. We can confirm that he intends to introduce a tenure policy this autumn.

14. We are fully committed to phasing out the Full Time Reserve as soon as the overall manpower position in the light of the prevailing security situation permits. We want to start the process, if possible, once the first new recruits start operational service in early 2002. The timescale is inevitably bound up with some difficult contractual issues which require further discussion with the Police Federation: reservists have three year contracts but have in many cases been in service now for long periods and may have legal entitlements which will need to be taken account of in the phasing out process.

15. The 50/50 requirement is necessarily expressed in terms of Catholics and others. But it is of course our wish to attract officers of all political persuasions, including Nationalists and Republicans, into the Police

Service and this is something which will be taken into account in the recruitment publicity arrangements.

16. The Act requires all police officers to inform the Chief Constable of their membership of organisations which might be regarded as affecting their ability to discharge their duties effectively and impartially. The Chief Constable will issue public guidance, having first consulted the Policing Board and the Human Rights Commission on what should be in it. Under the Act, the Ombudsman has full access to this information. This goes well beyond any comparable requirements for the Garda Siochana or any police services in Great Britain.

17. The Government has made clear that the Police Service of Northern Ireland is the name that will be used for all operational and working purposes, including whenever and in whatever circumstances the police interface with the public. The Government is aware that concern has been expressed that the name may not be used in this manner. It will keep this under review. It will also expect the Oversight Commissioner to include the issue in his regular reports and will be willing to return to it if necessary.

18. On badges and flags, the Secretary of State will consult the Board and others, as required in the legislation, before reaching a decision. The aim is to secure consensus in the Board. If this is not achieved he has made it clear that he would not propose a solution which would deter recruits or be objectionable to a substantial part of the community: the Government's bottom line will be the same as Patten's.

19. Section 70 of the Act provides for the RUC GC Foundation. Regulations will in particular provide for the Foundation to undertake joint initiatives with the Widows Association, the Disabled Police Officers Association and associated organisation.

20. The Oversight Commissioner, Tom Constantine, has already circulated a full report setting out the methodology by which he and his team will carry out their task. He will shortly be finalising a full range of performance indicators, that will set out the benchmarks against which progress will be measured.

His terms of reference which have been published, require him to monitor and review progress achieved in implementing change; receive reports, information and explanations, as required, from the agencies responsible for progress; and provide public assurance about the progress of the implementation process.

In his work, he will conduct meetings with Government, the Chief Constable, the Policing Board, and, in due course, the District Policing Partnerships. His reports after each periodic review will be published. He will also meet the Police Ombudsman and other relevant organisations or agencies, including the political parties and community leaders.

Top: COS
FAPS
FA/EAPS
AC/Press

OFFICE OF THE FIRST MINISTER & DEPUTY FIRST MINISTER

From the First Minister
Rt Hon David Trimble MP, MLA

Rt Hon Peter Mandelson MP
Secretary of State for
Northern Ireland
Northern Ireland Office
Castle Buildings
BELFAST
BT4 3SG

19 January 2001

Dear Peter,

In recent correspondence, the Prime Minister asked me to think of any suitable potential trustees for the new Northern Ireland Police Fund and to communicate these to you or Adam Ingram.

I would ask you to consider the following:

Mr Ken Maginnis MP
Lady Sylvia Hermon
Mrs Bertha McDougall

The first two nominees I am sure are well known to you for their expertise on policing and security matters. Mrs McDougall is spokeswoman for the Forgotten Families Organisation, which represents widows of RUC officers murdered prior to 1982. I would be grateful if consideration could be given to these individuals.

I am copying this letter to the Prime Minister and Rt Hon Adam Ingram MP.

David Trimble

RT HON DAVID TRIMBLE MP, MLA
First Minister

Parliament Buildings, Stormont, BELFAST, BT4 3XX, Northern Ireland
Tel: (028) 90521013 Fax: (028) 90521963

SKP 23/1/01

FAXED TO Z300 ON 19.1

file

SUBJECT MASTER

Filed on:

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

19 January 2001

FAXED 19/1

Dear Paul

TELEPHONE CONVERSATION WITH SEAMUS MALLON

The Prime Minister spoke by telephone to Seamus Mallon this afternoon to discuss SDLP concerns on Patten.

The Prime Minister said he had fully absorbed the SDLP messages from Wednesday's dinner. He wanted to discuss outstanding SDLP concerns on policing. Mallon grumbled that a discussion of such importance ought to take place face-to-face. The Prime Minister said he simply envisaged a broad discussion which could be followed up shortly with a proper meeting. Mallon said he would not be able to make any commitments over the phone and without the detail to hand.

The Prime Minister said that meeting some of the SDLP concerns would mean legislative amendment. It was a given on our part that we would not go down this route. In any case, it was not politically feasible. But we might be able to meet SDLP concerns by offering, within a specified time (say, one year) of legislation coming into effect, an operational review into whether the objectives of Patten had been met. The review could be based on the Oversight Commission's reports. It would provide scope for remedy if, for example, nationalist concerns about the name proved well-founded. This was an overall approach which should significantly help the SDLP.

The Prime Minister and Mallon then ran through specific SDLP concerns..

Gough Holding Centre

The Prime Minister said the advice he had received was that it was not practically possible to close Gough before the autumn. Mallon disputed this: in their discussions with the police the SDLP had picked up indications that it could be done sooner. This was of huge psychological importance. It must be possible to bring forward the date – there was no shortage of police stations. The Prime Minister said normal police stations did not have special custody suites which met Terrorist Act provisions. Mallon repeated his view that earlier closure of Gough was feasible and

should be one of the earliest deliverables on their list. The Prime Minister said he would look further into this.

Special Branch/Crime Branch

The Prime Minister said the Chief Constable had indicated that this step would take place by 1 April. Mallon admitted this sounded like progress but he had the impression that there were bits of detail outstanding. The Prime Minister said the main SDLP concern had clearly been met. We were ready to clarify any points of detail.

Support Units/Tenure Policy

The Prime Minister said we were looking at how we might refer to a breakdown of support units in the Implementation Plan. On tenure policy we might be able to indicate a maximum of 5 - 7 years. There were limits to the degree of detail we could establish at this stage, but we were looking constructively at this.

Full Time Reserve

The Prime Minister said all new recruits would be part-time. The Full Time Reserve was to be phased out. It was hard to give a precise timetable at this stage. We were waiting for a response from the Police Federation. The pressures on the Chief Constable in respect of manpower shortages were also a factor. Mallon simply commented that the SDLP had spoken to the Chief Constable about ways to move forward on this.

Part Time Reserve

The Prime Minister said there seemed to be little gap here. We envisaged the first trainees joining by the end of 2001 so that after training they would be able to start policing with the new regulars. We would aim to target recruitment from nationalist areas.

Garda applications

The Prime Minister said we were waiting for a memorandum from the Irish. He saw no reason why we should not make good progress. Mallon said his impression was that this was nearly tied down.

Name

The Prime Minister referred back to what he had said earlier about a review which would be able to look at this issue if SDLP fears materialised.

Badge/Emblem/Flags

The Prime Minister said Mallon already knew what our aim was. The Secretary of State had provided a helpful form of words. It was difficult for us to go further than this prior to the Board considering the question. Mallon said he needed something firmer now along the lines of "no agreement in the Board, then Patten". The Prime Minister explained there were important Unionist-handling reasons why this would be unwise. We could reuse the existing language but not offer anything firmer. Mallon said this was an issue which would need further discussion.

Inquiries on Finucane, Nelson and Hamill

Mallon said this was absolutely crucial. It would make all the difference in terms of public perceptions on the nationalist side. The Prime Minister said this was not part of Patten. We had indicated that we would consider inquiries once existing investigations were complete. But it was wrong to link the question of specific inquiries with Patten. Each of these cases were different and needed to be treated on their own merits. He did not believe that all three lent themselves to a public inquiry, certainly not in the Hamill and Nelson cases. There was a real prospect that the on-going investigations would establish what had happened in all three cases. The Bloody Sunday Inquiry demonstrated that public inquiries could all too easily spiral out of financial control, provide little illumination and stir up bad feelings on all sides. Mallon said he was confident that inquiries into these three cases would yield a real dividend. There were different types of inquiry: we did not have to follow the Bloody Sunday model in each case. The Prime Minister said we could discuss this further but he had a real and deep reluctance to move on this issue.

The Prime Minister concluded that this had been a useful first discussion. They would need to follow-up face to face shortly. Mallon said he would be available when required. He wanted to crack the policing blockage and see some movement; but on the right basis without ambiguities. A further discussion was needed during which he would have all the details in front of him.

Mallon said in the event of re-legislation on policing he was concerned at the possibility of our accepting amendments under pressure from Sinn Fein which had previously been rejected when tabled by the SDLP. He was not closing the door on this but it would be a matter of great sensitivity. The Prime Minister said he was firmly seized of the point Mallon was making. Whatever was done on policing would be done with careful regard to the SDLP's position and interests.

The Prime Minister mentioned that he was seeing Sinn Fein today to keep up the pressure for movement on decommissioning. It was unclear how far we would get.

We were insisting on serious re-engagement followed by further progress leading to decommissioning. Mallon said he agreed with the need for a stepped approach on this issue.

Yours ever

Michael

MICHAEL TATHAM

Paul Priestly
Northern Ireland Office

P 1 of 1

PERSONAL AND CONFIDENTIAL

FROM: HMA
DUBLIN

TO: Mr Jeffrey

DATE: 19 January 2001

Cc: PS/SoS (B&L)
PS/PUS
Mr Fittall
Mr Watkins
Mr Kelly
Mr Powell, No 10 — fax
Mr Tatham, No 10 — fax

Top. JPO
CC JS
MT
AC

MEETING WITH THE TAOISEACH

1. I had a short meeting with the Taoiseach this morning. He was upbeat about the progress being made. It was hard pounding but he felt a way forward could be found. It was clear that Sinn Fein were now interested in the big deal. When he had spoken to them last week, they had suggested that they were no longer interested and were only prepared to go for the mini package. He had told them that if that was the way they wanted to play it, the next time he went to South Armagh and was asked about the towers and why they were not being demolished, he would say that it was because the IRA refused to decommission. The more he thought about it the more ridiculous their position seemed. And it was now clear that they too saw how illogical their posture was.

2. On policing he said that he remained very concerned about the SDLP. While on holiday in Lanzarote, he had had three long meetings with Seamus Mallon. It was clear that he was going to stick to his "7 points". When I mentioned the Sinn Fein shopping list, he said that he "couldn't give a shite" about Sinn Fein's policing agenda. The important thing was to meet the SDLP's requirements and get them to come on board. He knew that this was the Prime Minister's top priority.

3. On the BIC, he said that we were in a real bind. He personally couldn't care less where the meeting was held but others would not agree to a move. We would all have to keep plugging away and hope that sufficient progress was made in other areas to resolve this difficulty.

Signed Ivor Roberts

Ivor Roberts

PERSONAL AND CONFIDENTIAL

CONFIDENTIAL - PERSONAL

Faxed to N10 JND 19/1

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

19 January 2001

Dear Mr Priestly

TELEPHONE CONVERSATION WITH DAVID TRIMBLE

The Prime Minister spoke to Trimble this morning from Chequers.

Decommissioning

The Prime Minister explained in broad terms where things stood. He was about to have private discussions with Sinn Fein aimed at firming up a deal involving both decommissioning and policing. We were trying to pin Sinn Fein down to commitments on re-engagement, reaching an agreement on modalities and providing a private date for putting weapons beyond use. The private date should precede elections. We expected today's discussions to generate proposals on which Sinn Fein would consult with their people over the weekend. Trimble said he would need something to happen on putting weapons beyond use before the elections. This could make a big difference. Early positive IICD reports would also be very important for him.

Policing

The Prime Minister said he had had long discussions with the SDLP on Wednesday night about policing. The SDLP were now under considerable pressure on this issue (yesterday's Irish News editorial had been very helpful). Though they denied it, their concerns were basically political – the fear of being outflanked by Sinn Fein (Trimble commented that if the SDLP remained stubborn they would be in danger of being outflanked by Sinn Fein on the other side). The Prime Minister said that Sinn Fein and the SDLP had produced lists of desired changes. The problem was that these were either insubstantial or showstoppers. We had undertaken to talk through these but we had clear red lines: there could be no legislative amendments; and we had to end up with a police force that could operate in a fully effective way without being subject to unreasonable

constraints. Trimble asked that he be kept closely informed of any developments on Patten. He would want to know if there were any private assurances given on flags/emblems. The Prime Minister said we would keep Trimble informed of developments.

Trimble was optimistic about the prospects for securing Sinn Fein support on Patten. Sinn Fein would play hard ball for as long as possible but ultimately they would not be able to resist the temptation to put their people onto the Board, if only to extract information and make mischief. They would not want to be left outside. On balance, Trimble believed it was better to have them inside rather than out on policing (although some within the unionist community might struggle to come to terms with this). The Prime Minister said having Sinn Fein on board would stop them from preventing Catholic recruitment. Trimble did not foresee a major problem with Catholic recruitment. He reported a conversation with Dennis Faul in which the latter said there would be lots of interest in joining the police force from Catholics in Counties Antrim and Down. Catholic recruitment from Counties Armagh and Tyrone would follow subsequently.

Hamill

Trimble mentioned the Hamill case in the light of coverage of yesterday's meeting between the Prime Minister and Hamill's sister. He urged the Prime Minister, before taking any decision on an Inquiry, to read the judgement made in the case of Hobson (one of Hamill's killers). This set out the facts clearly and pointed up some of the inaccuracies in the claims made by relatives and supporters of an Inquiry. (Comment: I would be grateful if you could send a copy of this to us.) Trimble emphasised that a further Inquiry on a nationalist case would be very sensitive for the unionist community. There were sixteen unsolved murders in North Armagh to which nobody was paying much attention. The Prime Minister reassured Trimble that we were not about to announce an Inquiry into the Hamill or Finucane cases. Trimble commented on the fact that alleged injustices on the nationalist side received far more attention than comparable cases on the unionist side. Some kind of Truth and Reconciliation Commission might help even the balance. The Prime Minister suggested that Trimble think further about this and let us know if he developed any specific ideas.

Institutions

The Prime Minister said that, in return for the steps they were being asked to take, Sinn Fein were looking for a statement from Trimble that he would not use the institutions as a political tool by taking unilateral action against Sinn Fein. Trimble replied (tongue in cheek) that he would be happy to reciprocate Sinn Fein's good faith. More seriously, he said he had been expecting such a demand and was ready to respond. But he would not be in a position to give any qualified assurances. He would put a line out to Sinn Fein and discuss with them the sort of things he could do or say in the context of a deal along the lines discussed. The Prime Minister said that if his discussions today were productive, Trimble might need to have this conversation with Sinn Fein over the weekend.

BIC

The Prime Minister said it would be good to conclude a deal by Monday, not least to avert the impending mini-crisis over the BIC. Trimble explained his position over De Brún's participation: because of the venue in Dublin, many unionists would see no distinction between the BIC and the NSMC. Moreover De Bruin's participation in the BIC would be seen by many as a signal that he was on the point of conceding on the NSMC. The Prime Minister said we could be on the brink of a deal by Tuesday. It would be crazy to let this unsettle everything. Trimble repeated that this was a real problem for him, made worse by the refusal of Mallon or the Irish to help him through it.

SDLP

This led Trimble into a moan about Seamus Mallon. He was becoming increasingly difficult. The realisation that he was now unlikely ever to lead the SDLP was eating away at Mallon's soul. It would be a good thing if he were to retire: Durkan, Farren or Brid Rogers would all be more pragmatic.

Yours ever

Diane Sleel

pp **MICHAEL TATHAM**

Paul Priestly
NIO

RESTRICTED

MINISTRY OF DEFENCE
WHITEHALL LONDON SW1A 2HB

Telephone 020 721 82111/2/3

SECRETARY OF STATE
MO 19/3K

Faxed
19th January 2001

Dear Michael.

NORTHERN IRELAND: NORMALISATION

I enclose a note on the MOD's long-term vision for military garrisoning in Northern Ireland, which I understand Jonathan Powell requested at the Prime Minister's meeting with the GOC and the Chief Constable yesterday. I understand the note is intended for use as background information for the Prime Minister in the continuing negotiations on the peace process.

In the time available, it has not been possible to clear the note with the Defence Secretary, who is seeing this in parallel, or the Chief Constable, who of course has lead responsibility for advice on the terrorist threat and on the level of army support to the police required to counter it. The long-term military posture envisaged in the attached note remains subject to those considerations.

I am copying this letter to the Private Secretary to the Northern Ireland Secretary.

Yours ever,
David.

(D P WILLIAMS)
Private Secretary

Michael Tatham Esq
10 Downing Street

RESTRICTED

Recycled Paper

TOWARDS A 'NORMAL' MILITARY GARRISON IN NORTHERN IRELAND

1. Last September, as part of the Normalisation 2 announcement, the Ministry of Defence looked at the force levels that might be needed in Northern Ireland in the longer term. The conclusion was that a garrison numbering approximately 8000 would be appropriate when military support to the police was no longer required. This garrison would be engaged in normal training and administration.

2. On 29 September 2000 the MOD announced the following:

> This latest step in the process of normalisation [further reductions in military bases] is consistent with the Ministry of Defence's policy for support to the Civil Power in Northern Ireland. The Army's counter-terrorist and public order role will cease when the police no longer require routine military support to maintain law and order, as envisaged by the Good Friday Agreement and endorsed by the Patten Report. Thereafter, Service personnel based in Northern Ireland will be those required for duties in a normal peaceful society[1] and as part of a wider pattern of Armed Forces activity to meet the UK's Defence Policy and commitments for the 21st Century, arising from the Strategic Defence Review. The detailed nature of this long term presence will require careful study and will need to take account of practical factors which apply throughout the United Kingdom, such as training needs, facilities and availability of accommodation. Ultimately we expect the number of regular service personnel permanently based in Northern Ireland to be about 8,000[2], a comparable sized garrison to that which exists in a similar sized area such as Yorkshire. Military forces will be engaged on normal peacetime duties, such as training for operations and preparation for deployment overseas to places like Kosovo or on UN peacekeeping missions, as happened in the 1960s[3]. Some of this training will take place elsewhere in the United Kingdom and abroad.

3. Within the context defined above, the army presence in Northern Ireland will be reduced in line with the threat assessed by the Chief Constable at the time. When the police have no more requirement for army support, the garrison size and role will mirror that of the remainder of the UK. The changes, in terms of the Army end-state and reductions in Army locations are set out at Annexes A & B respectively

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Notes:

1 Including specialist support such as bomb disposal and search and rescue.

2 Tri-service including the Joint Helicopter Force based at RAF Aldergrove, part of the UK wide Joint Helicopter Command.

3 HQ 39 Inf Bde deployed to Aden and the Holywood Battalion to British Guiana for operational tours.

ANNEX A

ARMY END-STATE

1. Garrison Routine. The garrison would be involved in normal training and administration. In particular:

   a. All helicopter use would be for training.

   b. There would be a number of overseas deployments and training opportunities, which would reduce the size of the garrison in situ at certain times.

   c. Most training within NI would be focused in Magilligan and Ballykinler Training Areas.

2. Garrison Numbers. The numbers would be as follows:

Around 8,000 regular service personnel permanently based in Northern Ireland consisting of a number of infantry battalions and supporting units.

ANNEX B

REDUCTION IN ARMY GARRISON – LOCATIONS

1. By the time the Army have reverted to routine garrison duties in NI, the following locations would have been vacated, returned or demolished:

a. Army Bases. The Army would move out of the following bases:

- Bessbrook
- Dungannon
- Rathfriland
- Clogher
- Clooney Base
- Ebrington Bks
- Magherafelt
- Grosvenor Bks
- Coleraine (Laurel Hill House)
- Girdwood Park
- Moscow Camp and Airport Jetty
- Military Hospital
- Malone Rd
- Steeple Bks

Note that the evacuation of some of these locations, such as Ebrington Barracks, for practical reasons, may take some time to complete.

b. Surveillance Towers. All surveillance towers would be demolished and vacated.

c. Joint Military/Police Locations. No further army presence in police stations.

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
2 CARLTON GARDENS LONDON SW1Y 5AA

CS
cc: MT
JRo
PJ

18/01/01

Dear Peter,

NORTHERN IRELAND JUSTICE BILL

Thank you for your letter of 10th January that sought policy clearance for your proposed legislation to reform the criminal justice system in Northern Ireland.

Following the announcement in the Queen's Speech that we would issue a draft Bill, and the commitment made by the Prime Minister and the Taoiseach to publish it in April, we need to make rapid progress. Your proposals will take some time to draft. Therefore it is absolutely essential that you deliver instructions to Counsel as soon as possible.

I understand you have put in a formal bid for this Bill for the 2001/2 Session. LP will consider this in due course along with the other candidates and bearing in mind the Government's priorities for the Session.

Taking your proposals through will be a significant project. I note from your letter that the issue of symbols will, as ever, be an emotive one, and there are other points that are likely to raise handling difficulties. LP Secretariat are giving a presentation in Belfast to your officials who are working on this and other Northern Ireland Office Bills. I hope this will help build good relations to support this Bill and others in the future.

I am copying this to the Prime Minister, members of IN and LP, Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret

MARGARET BECKETT

The Rt Hon Peter Mandelson MP
Secretary of State for Northern Ireland

FAXED JPo cc. JS MT

FROM: William Fittall
Associate Political Director(L)
18 January 2001

cc PS/Mr Pilling
Mr Jeffrey
Mr Watkins
Mr Kelly
Mr Powell, No 10
Mr Tatham, No 10

PS/Secretary of State (B&L)

TODAY'S HILLSBOROUGH DISCUSSIONS (PART TWO)

After over an hour of discussions with Adams, McGuinness and Kelly the Prime Minister and Jonathan Powell emerged at 1.20pm to brief the Irish, the Americans and ourselves. The Prime Minister said that the discussion had been dispiriting. Essentially Sinn Fein wanted him to make all the moves which he was prepared to make for the big deal in return for the small deal.

2. In particular Adams had been unwilling to indicate any kind of time-frame for implementing an agreed decommissioning scheme. In contrast all the normalisation measures needed to be made up front. In addition they wanted the Government to reconsider their list of 20 points on Patten. The Prime Minister had indicated that he was prepared to look at the Sinn Fein policing points, since he had not personally gone through them before. But he had made it clear that the normalisation demands were simply not on if the only IRA commitment was to re-engage with de Chastelain.

3. Continuing the Prime Minister said that now that was the moment for the Americans and the Irish to bring real pressure to bear on Sinn Fein. Their demands on normalisation were completely unrealistic. And the emerging shape of the deal would be extremely unattractive to Unionists. The Prime Minister was increasingly coming to the conclusion that a smaller deal might be all that could be achieved, but even that would require substantial pressure on Sinn Fein. It was agreed that Gallagher and Steinberg would talk further to Sinn Fein. Gallagher returned to say that Adams had changed his position and believed that he could secure an indicative timescale for implementation of any decommissioning scheme. Sinn Fein would also be willing to join the Policing Board if their 20 points were satisfactorily dealt with.

4. The Prime Minister and Jonathan Powell resumed discussion with Adams, McGuinness and Kelly at 2.10pm. During an adjournment at 3.00pm the Prime Minister briefed the British team which was subsequently joined by the Irish and the Americans. The Prime Minister confirmed that Adams was now talking about a private indication of a timescale for implementing the decommissioning scheme. But he now not only wanted normalisation up front but more normalisation than HMG had already put on the table. He had asked whether we could look out something additional outside Armagh, perhaps in Tyrone. The one silver lining was that Sinn Fein wanted us to drop the Crossmaglen Police Station proposal.

5. The Prime Minister confirmed that he was prepared to work through the Patten points in further discussion with Sinn Fein - now scheduled for tomorrow at an unpublished meeting at Chequers. But the Irish needed to understand that he was not prepared to concede anything which would compromise the operational independence of the police. It was not sensible to expect the Northern Ireland Police service to be subject to constraints or political oversight which would be unacceptable elsewhere

in the United Kingdom or in the Republic. The Secretary of State added that most of the Sinn Fein points went beyond or were contrary to what was recommended in Patten. The Prime Minister noted that one point which Sinn Fein had conceded was the impossibility of our resolving the badge and flags issue now.

6. On OTRs the Prime Minister said that he had reiterated to Sinn Fein that he was prepared to resolve the matter by legislation after the election if there were still outstanding cases by then. He also had no difficulty with the proposed Implementation Committee. Getting an assurance from Trimble that he would not merely lift the NSMC ban but not reimpose it over the coming months would be difficult.

7. In terms of process it was agreed that:

- the Prime Minister would see the Chief Constable and the GOC before he left Northern Ireland (to be recorded separately);

- that the Secretary of State would talk to Seamus Mallon on the phone. During his conversation Mallon expressed concern over rumours which Sinn Fein were putting out to the affect that the Government was now prepared to amend the Policing Act to meet their concerns. This undermined the SDLP's position;

- further efforts should be made to defer a crisis over the nominations to the BIC meeting scheduled for Dublin on Tuesday, while efforts continued with a view to clinching a deal with Sinn Fein by Monday.

8. In a final exchange before the Irish left at 3.45pm the Secretary of State explained to them and the Prime Minister his present thinking on inquiries Dalton had said that Sinn Fein and the SDLP would both require

a commitment to an inquiry for the three cases if current investigations did not yield fruit in, say, a year. The Secretary of State revealed to the Irish and Steinberg that he had himself had a private study done of the Hamill case which had revealed that the sequence of events was not quite what the campaign alleged. In the case of Nelson we knew which organisation and almost certainly which individual had been responsible for the murder but the difficuly was securing the evidence. Investigating officers still had hope of a successful conclusion, but perhaps using DNA techniques. There was no remote suggestion of collusion in this case. As to Finucane, the issues were much more murky and elaborate, but the bottom line was that if the Stevens Inquiry did not illuminate the matter nothing else was likely to.

(Signed)

William Fittall
11 Millbank ☎ 6469 (Castle Buildings ☎Ext.22885)

FROM: William Fittall
Associate Political Director(L)
18 January 2001

cc PS/Mr Pilling
Mr Jeffrey
Mr Watkins
Mr Kelly
Mr Powell, No 10
Mr Tatham, No 10

PS/Secretary of State (B&L)

TODAY'S HILLSBOROUGH DISCUSSIONS (PART ONE)

Jonathan Powell, Bill Jeffrey and I met Jim Steinberg, Dick Norland, Kai Fort and Dermot Gallagher, Martin Mansergh, Tim Dalton and Daithi O'Ceallaigh at 9.30 this morning to begin considering possible texts against the possibility of a mini or maxi deal. We tabled the key texts document which Bill Jeffrey had circulated yesterday. The Irish handed over an alternative draft.

2. Steinberg said that Adams had been encouraged by his discussions with the Prime Minister last night and was keen to explore a big deal. He realised that we would require certainty from the Provisionals over timing and Steinberg was not sure how much certainty the provisional leadership would in practice be able to deliver at this stage. Separately Daithi O'Ceallaigh reported that Seamus Mallon had been confused by how own discussion with the Prime Minister last night and had been surprised that the lack of focus on the SDLP's detailed concerns on policing. Dermot Gallagher reported that the Taoiseach had confirmed overnight that he was certainly interested in a big deal but only if there was early certainty that it was possible.

3. We then proceeded to work through some detailed points on the draft British statement. Our discussions were interrupted after about half an hour when the Prime Minister joined the meeting following his discussions with the Alliance Party and the Women's Coalition. He said that these discussions and his meetings with the Loyalists yesterday evening had brought home to him very vividly the urgency of resolving the policing issues. The law and order situation in many local communities was now difficult. They saw their experienced police officers leaving over the next few months. Delaying policing reform because of Nationalist hesitations would simply fuel Unionist anxieties and make Trimble's position impossible.

4. Against that background he thought it was absolutely crucial to get the SDLP to commit to the new policing service. The key to this was to get Sinn Fein, if not to endorse the new service then at least not to oppose the SDLP for doing so. This would only be achievable if we could construct a wider deal on decommissioning, normalisation and OTRs.

5. Continuing, the Prime Minister said that he was willing to be flexible over the sequencing of normalisation and was also willing to signal a preparedness to introduce legislation if it was necessary to tackle the OTR problem. But this had to be on the basis that Sinn Fein would re-engage with de Chastelain, agree modalities within weeks and then go on from there to implement the scheme.

6. Martin Mansergh said that it would be very dangerous to try and steam roller Sinn Fein on policing. They were not ready to back the new service. And it would be an even greater error to isolate Sinn Fein from the SDLP. Dermot Gallagher agreed. It was "unwise politics to divide the two parties."

7. The Prime Minister said that he was not trying to isolate Sinn Fein. He was prepared to look at a two stage approach for establishing the Policing Board if that would help them, though Mallon had appeared opposed to that last night, and it might cause more problems that it solved. His judgement was that if the two Goverments were prepared to bring collective pressure to bear on Sinn Fein and the SDLP, with private assurances over how the symbolic issues would be resolved if the Policing Board or shadow Board failed to reach agreement, the parties might yet agree to nominate to the Board in the near future.

8. Tim Dalton said that Sinn Fein were unlikely to agree to move on policing unless they had a conditional commitment to further legislation down the track. The Prime Minister dismissed this. He had never heard Sinn Fein raise any detailed points on policing. Their concerns were of a broader political kind. Dermot Gallagher said that the important thing was not to rush things. Could we not delay the proposed recruitment programme? Absolutely not, said the Prime Minister, we had to press on. Where there might be more flexibility was over the 1 April target date for transferring all of PANI's powers to the new Policing Board.

9. Daithi O'Ceallaigh said that he was sure that the SDLP would need something on enquiries if they were to move. The Prime Minister said emphatically that he was not going to have another Saville type enquiry lasting 5 years and costing £100 million. After about 20 minutes the Prime Minister (and the Secretary of State who had joined the meeting after about 5 minutes) left for officials to ponder further.

10. At 11.40am, following the Prime Minister's meetings with the DUP and the Hamill family, the Prime Minister and the Secretary of State had a further 25 minutes stocktaking with the Irish, the Americans (minus Kai Fort) and ourselves (supplemented by Adam Ingram, Alastair Campbell, Tom Kelly and Michael Tatham).

11. The Prime Minister repeated his earlier analysis adding that he had never witnessed the DUP so cocksure that they would smash Trimble at the forthcoming elections. He regretted that he had not previously understood the depth of the problem within the Unionist community – partly because Trimble, including at yesterday's meeting, had not been ringing the alarm bells sufficiently. The reality was that the whole peace process was heading for a smash after the election unless its mood could be turned round. He had rapidly to devise a strategy for this. Policing was as important to it as decommissioning.

12. The Prime Minister said that in his judgement Trimble needed Nationalist backing for the new police service and the sealing of dumps (not just re-engagement nor even agreement on modalities) before the election.

13. Dermot Gallagher, reporting on a private conversation with Adams who was by this time back in the building with a Sinn Fein delegation, said that Adams now very much wanted to do the big deal. But he had very difficult management problems.

14. The Prime Minister said that if this was so we needed to identify clearly what the elements of a big deal would be. The key elements would need to be:

- HMG to proceed with the normalisation proposals which it had already revealed. It was prepared to be flexible on sequencing but only if there were certainty of what PIRA would deliver and when. It was also prepared to move further on OTRs, including legislation if that was what was required. On policing we would be prepared to look at a phased approach to giving the Board all its powers and give a private understanding on

symbols. This would mean running d'Hondt and making appointments to the Board but with the understanding that the Board would not be given its full powers and responsibilities until a later date to be determined;

- the IRA would need to agree to re-engage straight away with the purpose of agreeing a new decommissioning scheme and putting it into practice. There would need to be a clear understanding about the timing for this process and a commitment to implementing the scheme before any possible election date in May. Sinn Fein would also need to agree to nominate representatives to the preparatory policing board. Provisional movement would also be expected to help in efforts against republican dissidents;

- the SDLP would need to nominate to the Policing Board. If a two stage process was the best way of attracting Sinn Fein, Mallon would need to be won over to this (the Unionists would also have to acquiesce, which could not all be taken for granted).

15. All of this would, in the Prime Minister's judgement, have some prospect not only of enabling Trimble to lift his current NSMC sanctions but of rallying pro-Agreement support in the run up to the election. The discussions adjourned at this point for the Prime Minister and Jonathan Powell to meet Gerry Adams, Martin McGuinness and Gerry Kelly.

(Signed)

William Fittall
11 Millbank ☎ 6469 (Castle Buildings ☎Ext.22885)

File

NOT in MTX

CONFIDENTIAL - PERSONAL

SUBJECT MASTER
Pt 87
Filed on

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

18 January 2001

Dear Paul

TELEPHONE CONVERSATION WITH TAIOSEACH

The Prime Minister spoke by telephone to the Taioseach this evening at about 1900 (immediately after landing at Northolt) to debrief on today's discussions.

The Prime Minister said it was clear that Sinn Fein wanted a full deal based mainly around re-engagement leading to decommissioning; demilitarisation; and Patten. Further work was needed on teasing out the detail and the sequencing. Sinn Fein were trying to get significant movement on demilitarisation whilst retaining as much vagueness as possible on commitments relating to putting weapons beyond use. We would be aiming to pin them down. Trimble would need to be able to point to concrete progress by the time of elections. The deal would involve Sinn Fein and the SDLP signing up to Patten implementation. Sinn Fein had referred to a list of outstanding concerns on Patten. These were mostly flimsy, but we had said we would go through the list with them. It had been hard going with Sinn Fein but the session the Irish team had held with Sinn Fein over lunch had clearly been helpful. Further such pressure from the Irish would be badly needed. Without this, Sinn Fein would keep trying for a deal which would allow them to pocket progress on normalisation whilst stalling on putting weapons beyond use. The Taioseach said he had given Sinn Fein just such a message last week: if they were after a full deal they needed to deliver on decommissioning.

The Prime Minister set out next steps. He would meet with the Irish team at Chequers at 1000 followed by a meeting with Sinn Fein. We would need to consider carefully how to handle Mallon and Trimble (Sinn Fein were looking for an undertaking from the latter not to disrupt the future operation of the institutions). We would try and engineer a Clinton/Adams phonecall to maximise the pressure on Sinn Fein. We expected Sinn Fein would use the weekend to

consult while we would need to bring on board Trimble and Mallon. On an optimistic scenario we might be able to put together a deal on Monday. That should certainly be the target given the potential difficulties next week (BIC, NSMC court judgement).

The Prime Minister mentioned he had met with his security advisers who were preoccupied by the activities of dissident Republicans. The bomb discovered this week was significantly larger than anything hitherto produced by RIRA. We needed to keep up our guard and disrupt RIRA activities to the maximum extent possible. The Taioseach muttered cryptically something about ongoing plans.

The Prime Minister said he had been struck in his meetings by the extent of loyalist disillusionment. Frustration over policing was a significant element in this. It was important to do everything possible to reverse this trend.

The Prime Minister ended by repeating the importance of the Irish applying pressure on Sinn Fein. It would be particularly useful if they could emphasise the following messages: the need for a clear timeframe on putting weapons beyond use; the importance for moderate unionism of doing something concrete before elections; and the need for a realistic approach to Patten implementation. The Taioseach said he planned to speak to Adams later this evening. He and the Prime Minister agreed to talk again tomorrow.

I am copying this letter to Sir Ivor Roberts (Dublin) and Sir Christopher Meyer (Washington).

Yours ever
Signed : Michael Tatham
18/01/2001

MICHAEL TATHAM

Paul Priestly
NIO

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

bcc: JPo
MT
AW
AC

From the Private Secretary

18 January 2001

Dear Sherard,

PRIME MINISTER'S TELEPHONE CALL TO PRESIDENT CLINTON

The Prime Minister spoke to President Clinton late last night. My apologies for the late arrival of this record.

Clinton began by expressing his frustration over the Middle East peace process. The last few months had exposed to him the limits of Arafat's ability to reach a deal. He had been given the best offer he was going to get. Its rejection raised a question mark over the whole Oslo process. The Palestinians were worse off than they were seven years ago and this was only adding to the political problems. He thought the economic backdrop was an important difference between the peace processes in the Middle East and Northern Ireland and he was much more confident that the Northern Ireland process would succeed so long as there was continued, albeit slow, movement forward on the political front.

The Prime Minister described where things stood on Northern Ireland. The SDLP were proving very difficult, mainly because of the threat of being outflanked politically by Sinn Fein. We were in a bizarre position on policing: a few months ago, the Nationalists had been pressing us to move quickly and the Unionists were dragging their heels. The position now was reversed, and it was made worse by the fact that Protestant policemen were leaving the RUC and the force was not in a position to recruit Catholics to replace them.

The Prime Minister described the recent moves in the negotiations. There had been a possibility of a deal involving demilitarisation in return for Sinn Fein genuinely putting arms beyond use. Sinn Fein were initially interested but were now backtracking and wanted a more limited deal involving only their re-engagement with de Chastelain. That ruled out further demilitarisation which was difficult anyway but even more so when there was a continued threat from dissident Republicans. He hoped to get Adams back to the position he was in before Christmas, but he had to accept that that required genuine

decommissioning in return for further normalisation. It would be useful to have US help. He added that the IRA themselves were still procuring weapons and targeting opponents, which was a further complication.

Clinton suggested that if Sinn Fein could not be got back to the broader deal, then we should try to match their limited offer with a limited one of our own. The key was to keep nudging the ball forward.

The Prime Minister said we would do that. But it was not ideal. A limited agreement would leave Trimble exposed and vulnerable. If there was an election this summer, Trimble would be going into it with the Agreement three years old and with nothing on decommissioning but promises. Trimble would get slammed and we would not have a peace partner. He needed something concrete from Sinn Fein/IRA to be able to go into the election confidently with the institutions up and running.

Clinton said he would discuss this with his people. The Prime Minister encouraged him to call Adams, which Clinton said he would do.

Clinton added that he was prepared to continue to help on Northern Ireland after he left office, providing the new Administration were content. The Prime Minister lodged that, and thanked Clinton for making Jim Steinberg available – he was playing a valuable role.

I am copying this letter to Paul Priestly (Northern Ireland Office) and to Christopher Meyer (Washington).

Yours ever,

JOHN SAWERS

Sherard Cowper-Coles
Foreign and Commonwealth Office

ADAMS
26/01

MT

FAXED

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

17 January 2001

Dear Kirsten

LETTERS FROM NORTHERN IRELAND POLITICIANS

I attach two letters from opposite ends of the political spectrum in Northern Ireland: one from Ian Paisley protesting indignantly about a recent statement by Lord Saville; and one from Gerry Adams calling for an independent international inquiry into the murder of Francisco Notarantonio.

I would be grateful for a draft reply to each of these letters by midday on 26 January.

Yours ever

Michael Tatham

MICHAEL TATHAM

Kirsten Macfarlane
NIO

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MT
~~MJP~~
JS
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Michael Tatham
10 Downing Street
LONDON
SW1A 2AA

17 January 2001

[Dear Michael]

BRIEFING FOR NORTHERN IRELAND DISCUSSIONS

I attach as promised a very short briefing note for the Prime Minister's meeting with Trimble at **3.30pm this afternoon**. Also attached is some briefing for the SDLP dinner tonight plus some material on OTRs.

Bill Jeffrey will be circulating separately some further material on a possible deal in the light of yesterday evening's meeting. We shall also let you have before the breakfast meeting tomorrow some material on normalisation measures already under way.

I understand that David Lavery and David Campbell are now on their way over to London in order to join Trimble and Taylor at the 3.30pm meeting.

[Yours

William]

WILLIAM FITTALL
Associate Political Director

cc PS/Secretary of State (L&B)
PS/Mr Pilling (L&B)
Mr Jeffrey
Mr Watkins
Mr Powell, No 10

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APDL/262

PM's MEETING WITH TRIMBLE AND TAYLOR

Objectives

- To establish their assessment of the balance of forces within the UUP and the consequent chances of keeping the party within the Executive over the next few weeks;

- To test their reaction to the implications and shape of the limited deal, which appears to be the most that the Provisionals will contemplate;

- To take the UUP's temperature on policing reform;

- To resolve the handling of next Tuesday's BIC meeting scheduled for Dublin;

- To test how strongly the UUP will press for a change in the date of the District Council elections scheduled for 16 May.

Lines to take

- You launched a short consultation exercise with the UUP grass roots last Friday. What is your expectation of the likely outcome? What is the minimum that it is going to take to persuade the party to stay in the Executive for the time being? What are the chances of a further UUC meeting over the next few weeks?

- Discussions over decommissioning continue. I am due to see Adams first thing tomorrow morning. We have been pushing very hard for a big deal which would resolve the weapons issue once and for all. That now looks very unlikely. But still prospect that we may get early, serious re-engagement with de Chastelain with a view to agreeing a decommissioning scheme. We have made it clear that the sort of normalisation measures that might be possible in South Armagh once weapons start to be put beyond use are not possible simply on the back of re-engagement. How helpful to you is re-engagement with regular progress reports from de Chastelain?

- I am planning to have some straight talking with Seamus tonight over policing reform. But the signs are that he will not nominate to the Policing Board this side of the election, for fear of Sinn Féin. In that case I shall have to make it clear that we shall push on with as much of the reform package as we can in the absence of the new Policing Board. Our overriding requirement has to be to maintain an effective policing service to protect the people of Northern Ireland. Continued uncertainty and the maintenance of the present recruitment freeze are not options;

- Want to go ahead with BIC next Tuesday but not at the price of a major row over the nomination of Bairbre de Brun. Since the main subject is drugs it seems very difficult to exclude her. Would nominating her for the British/Irish Council really be as sensitive as allowing her to attend a North/South Ministerial Council meeting? The BIC is, after all, a body which the UUP was particularly keen to establish. Understand you would nominate if meeting was in London (? or elsewhere in Britain) rather than Dublin. Would Mallon accept this? If so I shall need to see urgently if Bertie will agree to the change – it is the Irish turn;

- Understand that the Executive is discussing the proposed public administration review tomorrow. Prepared to look at the possibility of changing the District Council election date in the light of that, but only if you can agree a common position with the SDLP. Otherwise, getting the necessary measures through Parliament would be exceptionally difficult. Is postponement of the elections really a runner given that the review has yet to start, never mind produce agreed proposals? Moving the elections to 3 May, the same date as the English local elections, would be less contentious, though requires primary legislation and would clearly only be of practical benefit if that turned out to be the date of the general election.

PM's MEETING WITH SDLP

Objectives

- To establish whether, as the Irish have told us, the SDLP have firmly decided not to nominate to the Policing Board this side of the election;

- To explore what the SDLP will need in order to nominate, whether now or later;

- To secure the SDLP's acceptance that the Government will have to press ahead with much of the policing reform, whether or not the Board can be established in the short term as originally planned;

- To explore the SDLP's assessment of the prospects for preventing the collapse of the Executive.

Lines to take

- Concerned by the conflicting signals we have been receiving. Discussions on the policing implementation plan seem to have resolved most of the outstanding differences and I understand you have had two very constructive discussions with the Chief Constable over the past 10 days. Yet Irish and American officials told us bluntly yesterday that there was no way that you or Sinn Féin were going to nominate to the Policing Board this side of the general election. Where does the truth lie? Have you taken a final decision? If not when will you? The present timetable for establishing the Policing Board will be unsustainable unless decisions are taken this month;

- Understand you still have points of detail on timing of Special Branch reorganisation, closure of Gough Holding Centre (for interviewing terrorist suspects), run down of full time reserve and recruitment of part time reserve. You also want reassurances on getting to the bottom of the Finucane, Nelson and Hamill cases if the present investigations fail to establish the truth. But none of these, nor the symbolic issues (where we have made it clear that Patten is the default) look like show-stoppers given flexibility on both sides. Our problem is that there is little to be gained in continuing to try and resolve these now if nomination this side of the election is off the table;

- It will be a very serious blow to the Good Friday Agreement if you do stay out. While decommissioning matters even more to the unionists, an SDLP refusal to back the new police service will play very badly for Trimble and pro-agreement unionists. You have said in the past that the Good Friday Agreement is "Sunningdale for slow learners", but isn't one of the lessons of Sunningdale that progress is only possible when we can maintain a critical mass of moderate unionist support. That is now perilously close to disappearing. If unionists see nationalists boycotting the policing institutions they may conclude they can boycott the political institutions;

- If we cannot establish the Policing Board we shall press on with 50/50 recruitment and as much of the reform package as we can. The police cannot live with continuing uncertainty or a recruitment freeze for any longer.

- [If pressed on future legislative change] Cannot give a commitment now to amending the legislation which has only just reached the statute book. But the American Oversight Commissioner, Tom Constantine, is there to make sure that the reforms work out as they are intended. We have made it clear that we are prepared to deal with any unexpected difficulties which arise.

- More generally how do you see the prospects of keeping the Executive in place over the coming weeks? A further return to direct rule will be much more damaging than last February's suspension, hence all the efforts to get further movement out of the IRA on decommissioning.

OTRs

Background

Sinn Féin first raised this issue in November 1999 and returned to it at the Hillsborough discussions in May 2000. Assurances were given that the Government would do what it could to resolve the issue, but at that time the scale and nature of the problem had not been fully scoped. Sinn Féin originally mentioned a dozen or so cases. They then presented a list of 36 cases which subsequently grew to 41. They included sentenced cases – where arguably there were anomalies to address in view of the early release scheme – and individuals still wanted for trial. The latter raise much more difficult issues because the Good Friday Agreement made no provision for amnesty. So cases have to be considered within the normal law and the discretion of the independent prosecutors.

2. The Secretary of State's statement of 29 September dropped extradition in sentenced prisoner cases. The prosecuting authorities have been reviewing the evidence against all those wanted for trial, including sentence prisoners for escape related offences. Separately, Sir Quentin Thomas has just completed an unannounced review of policy options for wiping the slate clean.

3. The Irish have pressed that we should drop extradition in pre-conviction cases. The Secretary of State wrote to the Attorney General and the Home Secretary about this on 14 December. The Attorney has sent an interim reply recording a number of objections. The Home Secretary's response is awaited. Since there is no Secretary of State involvement in extradition cases with the Irish Republic it will be impossible to change the policy without the Attorney General's consent. Sir Quentin Thomas' report concludes that it would create more problems than it would solve.

4. The state of play on the 41 Sinn Féin cases is currently as follows:

- **8 free to return** (of whom 3 on lifer licence)
- **20 sentenced cases** (DPP/AG has just decided not to prosecute for escape related offences in 12 of these cases – Irish and Sinn Féin do not yet know this – and it should now be possible to let most or all of these return, in most cases on licence)
- **5 pre-conviction extradition cases** (including Quinlivan and McAuley, the Brixton escapers)
- **8 other pre-conviction cases** (including Rita O'Hare, where extradition either not attempted or already unsuccessful).

Lines to take

- **We have approached this subject constructively and in good faith.** The cases have turned out to be far more numerous and complex than was realised when Sinn Féin first presented this as a small residual problem affecting perhaps a dozen people;

- **Of the 41 cases 8 are now fully resolved**, with the individuals free to return to Northern Ireland (in 3 cases on life licence). And, of the remaining 33 cases, the 20 sentenced prisoners had the threat of extradition lifted from them by Peter Mandelson's statement of 29 September;

- The cases are complex and contentious – for example we had to use the Royal Prerogative to deal with some of the sentences in the four cases which were resolved just before Christmas. Each case has to be looked at individually to see whether there is still a case for prosecution and, if not, whether the sentences can be dealt with under the early release arrangements or in some other way;

- [new point to be deployed at right moment] The Attorney has just completed his consideration of 12 of the 20 sentenced cases and it should now be possible to allow many of these to return in the next few weeks. That will mean we shall have resolved nearly half the cases on the Sinn Féin list – substantially more than the number of cases which was initially mentioned. And we shall go on case by case, trying to resolve more of them. Without legislating for a general amnesty, we cannot, however, set aside the discretion of the independent prosecuting authorities;

- [if pressed on remaining extradition cases] cannot give any guarantee on this. Prosecuting authorities will keep evidence in individual cases under review;

- [if pressed on legislation] prepared to reaffirm what Peter Mandelson said some months ago about willingness to address anomalies. But the only circumstances in which legislation for a general amnesty could be got through Parliament would be in the context of an end game deal which resolved the guns issue once and for all.

JS
cc: JPo (Belfast)

CONFIDENTIAL AND PERSONAL

From: **Ivor Roberts**
HMA Dublin

Date: **17 January 2001**

cc: **Mr Jeffrey**
PS/PUS
Mr Watkins
Mr Fittall
Mr Kelly
Mr Powell, No 10

To: **Secretary of State**

WHERE DO YESTERDAY'S DISCUSSIONS LEAVE US?

1. It is not easy to offer helpful advice at this distance from the negotiations but I am prompted to do so by Bill's minute to you and No 10's grim account of yesterday's meeting with Irish officials and Steinberg which was, as Bill Jeffrey suggests, an egregious example of the Irish behaving badly. There is no indication that they are in any way engaged in putting pressure either on Sinn Fein over decommissioning or on the SDLP over policing. We are, in respect of decommissioning and the fragility of the institutions, in a depressingly, and remarkably, similar position to the one we found ourselves in twelve months ago.

2. I have been too perhaps naively optimistic that it was possible to press the IRA to go for the big decommissioning deal in a way which would take the issue off the negotiating table for good. Whatever its internal risks for the IRA, the removal of that incubus alone would seem to have some attractions, at least for Sinn Fein. But for this to have worked would have required intense pressure on Sinn Fein not only from the Irish government but also from the US. But nothing suggests that anything like this has happened or is likely to happen. And without Sinn Fein feeling isolated and exposed, they(/IRA) have clearly resiled from the risks of going for the pre-Christmas deal.

3. It is, I suppose, just possible that the Prime Minister might be able to pressure the Taoiseach into supporting a forward position on decommissioning which would place clear water between Ahern and Gallagher. Perhaps the strongest argument to put to Ahern s that if we are left with a collapse (even managed) or suspension in circumstances where Trimble's and UUP concerns are simply set aside, the chances of any Unionist re-engagement (post-elections) with the current peace process without product on the table would be nil.

4. But even if, as seems more than likely, Ahern is not willing to put his shoulder to the wheel either on decommissioning, or on policing with the SDLP, at the very least we should look for some guarantee that, if the institutions are in baulk, we will not have to take the strain exclusively ourselves. This argues ideally for some joint statement either by you and Cowen or by the Taoiseach and the Prime Minister (at the very least a publicly

CONFIDENTIAL AND PERSONAL

agreed line) which avoids the blame game but concedes that with a failure to make any real progress, the reality is that we will have jointly to manage a collapse in a way which kept the institutions intact. It will go against the grain, particularly with the electoral clock ticking here as well as in the UK, for Fianna Fail Ministers, when the going gets rough, to stand with us. But a pan-nationalist orchestrated campaign to blame us for alleged failures to meet our May obligations (cf. last February's antics) would be very tempting for Sinn Fein and Fianna Fail in the hope that we would be sufficiently softened up to prove an easy touch post elections.

(SIGNED)

Ivor Roberts

Faxed to DCO for distribution 18/1

CONFIDENTIAL

SUBJECT MASTER

Filed on 1 Feb 01 PT 87

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

17 January 2001

Dear Paul

MEETING WITH SDLP

The Prime Minister and your Secretary of State met with an SDLP delegation over dinner at Hillsborough this evening. The SDLP delegation consisted of Seamus Mallon, Mark Durkan, Brid Rogers, Eddie McGrady and Alex Atwood. Adam Ingram, Bill Jeffrey and myself were also present on our side. The Prime Minister left the dinner for about 15 minutes to take a telephone call from President Clinton.

The Prime Minister said that his discussions earlier today with the UUP, UDP and PUP had left him with a vivid impression of the downbeat mood amongst loyalists. This added to the importance of making progress on policing. Mallon began with an emphatic denial that the SDLP stance on policing was determined by the party's fear of being outmanoeuvred by Sinn Fein. They had stood up to Sinn Fein for 30 years. Nothing would be easier for the SDLP than to proceed with nominations. The reason it did not do so was not political gamesmanship but its concern to ensure that new policing arrangements were properly established from the outset.

Mallon then elaborated a model of a circle containing all the parties and the four issues of demilitarisation, policing, decommissioning and the institutions. At the moment, all the players except the SDLP were moving in and out of the circle at will. In reality, the only way forward was for all the issues to be tackled within the circle on a collective basis. (This was a theme to which Mallon and Durkan returned repeatedly during the discussion.)

The Prime Minister said he very much wanted to settle all four issues together but it was not clear that this would be possible. If it was not, the thing to do was to move as far as possible on as many issues as possible. The Secretary of State briefly ran through how we saw things standing on each of the issues. On decommissioning, Sinn Fein were talking in terms of serious re-engagement accompanied by a private timescale. We had pressed them to move further towards actually putting weapons beyond use but this appeared to be beyond them for now. On demilitarisation, we were looking hard at what could be done, including in South Armagh. We were also considering how to reduce the level of helicopter traffic.

The prospects for progress were not however helped by dissident Republican activities. It was a fact (the Secretary of State emphasised he was speaking in confidence) that the recent discovery of a large bomb in Middletown had directly resulted from surveillance from two of the towers (Mallon rather gracelessly disputed this, claiming that Middletown lay outside the range of any of the towers). On the institutions, we genuinely believed that Trimble did not want to fight elections outside the Executive. And we did not think he would sustain his current stance on the NSMC simply for its own sake. Taken together this all added up to a significant opportunity for progress but it would require all the parties to be forthcoming. That applied in particular on the issue of policing. It would be difficult to keep the UUP on-side without progress here.

Mallon complained that the current approach involved dealing with particular parties on particular issues outside the circle. A collective, connected approach was the only way forward. The current approach left the SDLP as the only Party without some control over events. They alone had no escape hatch. The Secretary of State pointed out that the UUP had much less freedom than seemed at first sight. They would pay a huge price in terms of public perceptions if they abandoned the Executive. The Prime Minister said that Sinn Fein also faced the prospect of paying a heavy price for obduracy – if the circumstances necessitated, he would be ready to make clear that it was Sinn Fein's refusal to move further on decommissioning that had prevented the implementation of concrete proposals on demilitarisation in South Armagh.

The Prime Minister and Secretary of State tried to interest Mallon in a two-step approach to moving forward on policing. The SDLP could make nominations to the Policing Board on a conditional basis as an initial step. They need not commit finally until after outstanding issues such as flags and emblems had been resolved. Mallon initially misunderstood this proposal and argued that it would be an impossible situation for the SDLP to urge Catholics to join a police force to which they themselves were not fully committed. The Prime Minister assured Mallon that we envisaged decisions being taken on the outstanding issues in February/March – well before the start of a recruitment process in April. Mallon said that we could split the processes of demilitarisation or decommissioning into any number of steps. But for the SDLP there was only one possible step on policing. He could not conceive of the circumstances in which the SDLP would agree to a two-step approach. Durkan added that this would amount to the SDLP acting on policing in the way that Trimble had acted on the institutions – giving conditional consent and creating a situation of permanent uncertainty.

Mallon questioned the Prime Minister and Secretary of State closely on our discussions with Sinn Fein over policing. The Prime Minister said Sinn Fein struck

us as having no agenda of substance or detail on Patten. They were simply playing political games. We did not think they would move unless under pressure from the SDLP and Irish. However, if others in the nationalist community moved, we sensed they would find it awkward to be the only ones holding back. The Secretary of State said he had not yet had a serious negotiation with Sinn Fein on Patten. On countless occasions he had listened to a litany of points clearly drafted by others and then found Sinn Fein representatives unable to answer any detailed questions on substance. Mallon asked if we had reached any understandings with Sinn Fein on legislative amendments. The Prime Minister and Secretary of State both gave categorical assurances that we had not and would not.

Durkan returned to the theme of the circle and collectivity. The process should involve a more substantial cross-party approach. Understandings needed to be clear and transparent. Deals needed to have common ownership. The Prime Minister said he took the point about collectivity and openness. We would try and move forward on that basis. But we also had to be realistic: getting all the parties together and trying to thrash things out would not be productive.

Mallon ended by saying that the SDLP had already once almost sacrificed itself for peace. It should not be expected to sacrifice itself again unnecessarily. If it was being expected to take risks, at the very least it should be in a position where collectivity was the basis for taking the process forward. The Party would always act with honour. If it were to move forward, it would do so meaningfully - not in a series of steps that would undermine the Party's moral authority.

Comment

Despite Mallon's opening remarks, it became increasingly clear during the course of the meeting that the SDLP's problems over policing and demilitarisation were essentially political ones: concern at being outflanked by Sinn Fein; and not wanting to see Sinn Fein take the credit for progress on demilitarisation and an overall deal based around a decommissioning/demilitarisation trade-off.

Yours ever

O'Brien

pp **MICHAEL TATHAM**

Paul Priestly
NIO

CONFIDENTIAL - PERSONAL

SUBJECT MASTER
filed on

10 DOWNING STREET
LONDON SW1A 2AA

17 January 2001

From the Private Secretary

FAXED at 0900

Dear Paul

MEETING WITH UUP

The Prime Minister met a UUP delegation in the House this afternoon immediately after PMQs. The UUP delegation consisted of David Trimble, John Taylor, Reg Empey (for the first ten minutes only), David Campbell and David Lavery. Jonathan Powell, William Fittall and myself were present on our side.

The Prime Minister said he was concerned about the current situation. Time was moving on and the window offered by the last days of Clinton's presidency was coming to an end. We were applying a great deal of pressure on Sinn Fein but they were proving difficult. We were determined however to move things along. The Prime Minister was not hopeful this would happen in the next 24 hours but he wanted to go to Belfast in order to take the temperature of all the parties. Trimble said he was not optimistic. He was hearing that Sinn Fein had been thinking about a move but had run into short term problems with this on their side. They were now in waiting mode until after the elections. We should not be drawn into paying too high a price for a deal because of our eagerness to close it before Clinton's departure. The Prime Minister said our objective should be to get Sinn Fein into a position where they would pay a heavy price for an obdurate stance.

Policing

Trimble said he hoped the Prime Minister would work hard to persuade the SDLP to move forward on policing. The UUP's position would be much easier if they were able to show that the pain they had taken on this issue had actually got them somewhere. The Prime Minister said he planned to do exactly that. His strong sense was that the issue was now purely a political one for the SDLP. They were extremely wary of being outflanked by Sinn Fein. Taylor

complained that the Taoiseach was not being as helpful as he might on policing, citing interviews he had given during his tour of Cyprus and Malta. The Prime Minister said we sensed the Irish were waiting for the optimum moment before applying their pressure. We were meanwhile working hard to line up the Church and GAA. Taylor commented that the SDLP were miscalculating on this issue. Their appeal lay in the distinction between them and Sinn Fein. And the signs were that there was a surprising level of interest amongst the Catholic community for joining the police. Trimble reported rumours of Sinn Fein gearing themselves up to ask for a special policing regime in South Armagh.

Re-engagement/Decommissioning

The Prime Minister said that before Christmas Adams had seemed to be moving quite far down the road to decommissioning. It seemed he had since been pulled back and was now much less amenable. We needed to establish exactly where he was at and force him to recognise the need to tell the IRA they were in danger of being saddled with the blame for a breakdown. The Prime Minister said he believed emphatically that we could not afford to let this issue drift until after the elections.

Trimble responded with two points:

- he had made clear that he would lift the NSMC sanction in return for substantial re-engagement. But this would only get Sinn Fein as far as an initial meeting. Without re-engagement leading to clear further progress the sanction would be reapplied for the subsequent NSMC meeting. We needed to be clear, therefore, on the limited value of short term progress;

- if there was no progress by the end of January, he would have no choice but to ratchet up the pressure on his side. He would try and do this without bringing everything crashing down but he would have limited room to manoeuvre.

John Taylor mentioned the likelihood of a further special UUC; Trimble said this was a possibility but not certain. Taylor said the bomb discovered yesterday highlighted the need for substance on decommissioning. Trimble added that this was a significant development since it was the first RIRA home-made bomb over 500lbs. The Prime Minister said he had told Adams forcefully that there needed to be a clear dividing line between IRA and RIRA. We would not countenance a situation in which the British Government was normalising in

the face of evidence of an accommodation on the ground between the two paramilitary groups. This was an area where the Taoiseach was ready to help.

Court Case

Trimble said the judgement would be soon although he had not yet received the normal two days notice (he asked David Lavery to make discreet enquiries about when and how the judgement would issue). The Judge of First Instance was a North Lurgan Catholic. His personal sympathies would incline him towards Sinn Fein's position but he held ambitions to be appointed the first Roman Catholic Lord Chief Justice and this might inform his approach. In any event if this court case was lost, Trimble was confident his position would prevail in the House of Lords. He would take it that far if necessary. Trimble agreed with the Prime Minister that the short term consequences of a negative (for him) judgement would be bad. He would be under extra pressure to be tough towards Sinn Fein. The Prime Minister said this added to the importance of making progress quickly so that some of the heat was taken out of the NSMC issue was defused.

BIC

Trimble said he could only agree to de Bruin participating if the BIC were held in London. He hoped we could help on this, including by persuading Seamus Mallon that this was the right course. He was clear that he would not let de Bruin participate in a BIC in Dublin. Jonathan Powell made clear that this would create problems: it would be logistically difficult to shift venue given all the players involved; but more importantly it was doubtful that the Irish would accept a BIC on these terms.

I am copying this letter to Sir Ivor Roberts (Dublin).

Yours ever

pp Helena Hopkins

MICHAEL TATHAM

Paul Priestly
NIO

CONFIDENTIAL

18/1/01 17 JAN 2001

FROM: MARGARET O'MARA
ASSOCIATE DIRECTOR POLICING & SECURITY
17 JANUARY 2001

cc PS/Mr Pilling (B&L)
Mr Jeffrey
Mr Watkins
Mr Fittall
Mrs Madden

JP
cc: JS
HT
AC
BUP

PS/SECRETARY OF STATE (B&L)

BRIEFING ON NORMALISATION FOR PRIME MINISTER

Mr Fittall asked me to let you have a note of the current position which could be given to the Prime Minister, as background in particular, to his meeting with Gerry Adams early tomorrow morning.

2. I attach the material below. It includes lines to take on the issues Sinn Fein are most likely to raise.

[Signed]

MARGARET O'MARA
☎ Ext 27012

CONFIDENTIAL

Troop reductions

Now less than 13,500 troops serving in Province, lowest figure since 1970.

Only 15 battalions serving under General Officer Commanding, Northern Ireland. These include four roulement battalions, only one of which serves in Province at any one time.

In 8 out of 12 police divisions, Army now offer no routine military support.

In longer term, Army have announced number of regular service personnel permanently based in Northern Ireland will be about 8,000, in no more than 20 bases.

Patrol Levels

For Province as a whole, reduced by around 60% since Good Friday Agreement.

In South Armagh, patrols are of shorter duration and numbers in each patrol have been halved from 24 to 12.

Helicopter flying hours

Number of operational helicopter hours flown in Province has reduced by over 30% since 1992. Reached their lowest level in 1999 but rose by 4% last year.

Similar pattern in South Armagh, where peaked in March 2000.

Line to take

Most significant reductions have coincided with PIRA ceasefires but flying hours have increased when violence has resumed. Increase in 2000 a direct result of dissident republican campaign.

Despite initial increase in 2000 in South Armagh, flying hours have fallen continuously since May to 1999 levels. Army have already taken steps to counter intrusive activity (eg by restricting night time and Sunday flying) and are considering scope for more.

Military bases

Army has withdrawn from, closed or demolished 42 bases since 1995, 34 of which owned solely by Army and 9 shared with police. Reduces total from 105 to 63.

Since Good Friday Agreement, 15 have been demolished and a further 10 closed. Include

- vacation of Templer House and Broadway in Belfast
- vacation of Fort George in Londonderry
- closure and demolition of Cookstown Army base
- demolition of 6 patrol bases in County Fermanagh

and in South Armagh

- removal of Cloghoge checkpoint
- closure and demolition of Borucki sangar, Crossmaglen.

In longer term, Army have announced number of military bases in Northern Ireland will reduce to no more than 20. Includes sites in Londonderry, Belfast, Coleraine and Dungannon.

Cloghoge

There are two installations at Cloghoge - R16 and R14. Security forces only ever intended to remove R16 but Sinn Fein have subsequently accused Government of bad faith because only one installation demolished.

Line to take

Genuine misunderstanding here. Been very careful to avoid any repetition by offering photographs and grid references of installations under discussion.

Fort George

Complaints that Army have not yet withdrawn from site.

Line to take

Army withdrew on 8 November 2000 but site has not yet been released to Londonderry Harbour Commissioners because it was found to be contaminated. At Commissioners' own request, Army are resolving that

before finally signing off. (Commissioners are being given option of dealing with problem themselves and netting off cost from their payment to Army.)

Patrol bases in County Fermanagh

As announced, patrol bases being demolished in two tranches of three

- Kilvilly, Rosscor Bridge and Wattle Bridge were demolished before Christmas
- work began on 14 January on Clonatty Bridge, 15 January at Annaghmartin, and will begin on 19 January on Mullan Bridge.

Removal has taken slightly longer than originally announced because some sites found to be contaminated with diesel oil.

Line to take

Three bases already demolished. Work just begun on remaining three.

[IF PRESSED: Work has taken slightly longer than expected, simply because sites found to be contaminated with diesel oil. Expect last base, Mullan Bridge, to be demolished by end May.]

Police

Castlereagh Holding Centre, Belfast, closed end 1999.

Strand Road Holding Centre, Londonderry, closed October 2000.

Solicitors now allowed to be present during interview of terrorist suspects held in one remaining holding centre at Gough, Armagh.

Future of Gough will be covered in updated Patten Implementation Plan.
[FOR INFORMATION: Discussions are continuing on this but we do not want to reveal our hand on Gough to Sinn Fein at this stage.]

CONFIDENTIAL & PERSONAL

fax to Hillsborough

FAXED - C: JS MT - AC -

FROM: BILL JEFFREY
Political Director
17 January 2001
JC:683(B)

cc Mr Pilling
Mr Watkins
Mr Fittall
Mr Kelly
Mr Powell, No 10
Sir Ivor Roberts, Dublin

Secretary of State

WHERE DO YESTERDAY'S DISCUSSIONS LEAVE US?

Yesterday afternoon was the Irish at their worst, with no pretence that they were doing anything other than pressing for the best possible terms for Sinn Fein, and something close to indifference to Trimble's problems.

2. In a sense the overall position is not surprising. The odds have always seemed to me to be stacked against the big decommissioning deal, and even more heavily against a big deal which Trimble could use publicly on the timescale we are talking about. It has also become increasingly clear that the realpolitik of policing is that the SDLP are scared of jumping for fear of losing out electorally to Sinn Fein, and have for some weeks been casting around for excuses for inaction. It is the combination of the two, taken together with a perceptible hardening of attitudes on the unionist side as the weeks have gone by, that is now so dangerous. What was disheartening about the Irish yesterday was that there was no sign that they recognised the danger or, if they did, were prepared to do anything about it. The focus – as at the same time last year - was entirely on what we could do for Sinn Fein.

3. The prospect we now face is of Sinn Fein keeping just on the right side of the argument (at least among their own people) by getting the IRA to talk to de Chastelain, but with no confidence that it will lead to anything substantial during the pre-Election period; Trimble having to hold the line on that basis; and his having to do so at a time when he and his key pro-Agreement supporters are enraged by Mallon's refusal to sign up on policing after all the pain they feel they have endured on the subject.

4. This is not a promising prospect. Is there anything we can do to avoid it?

5. A lot will depend on how the Prime Minister gets on with Trimble this afternoon. Trimble may say, as he said to you and me last week, that serious reengagement by the IRA with de Chastelain would enable him to lift his North/South sanction, but that whether it could stay lifted, and whether the UUP could stay in the Executive, would depend on progress after that. In that case, I think the best we can do is to stick to our current course, but to focus very directly on the quality of the reports which de Chastelain would be able to make in the period up to the General Election. There should obviously be a first report confirming that he had had a serious discussion with the IRA about modalities, but we could do with another one around the end of the month (ie when Trimble's Executive meets) to the effect that good progress is being made and he expects agreement soon, and a third in February/March confirming agreement. If you agree, this may be something to be fed into the Prime Minister's and Jonathan's discussion with Adams and further contacts with the Irish. There would no doubt be an attempt to exact a price.

6. If the real prognosis on the Unionist side is even gloomier, I can see only two more radical options. The first would be to try to change the dynamic on policing altogether. The Prime Minister could confront the Taoiseach with the argument that, unless the nationalist parties sign up

for Patten in the next few weeks, the implications for the Agreement as a whole are too serious to contemplate. We simply can't sustain a situation in which unionists are expected to take the electoral risk of remaining in the political institutions when nationalists are not prepared to take the electoral risk of joining the policing institutions. There is a lot in this line of argument, and there would be no harm in deploying it with the Irish. But I doubt frankly if erecting it into a make-or-break issue with them would work. And in the end – although the SDLP's position is an irritant for Trimble – getting them on board for policing wouldn't cure all his ills. Unionists are still more interested in weapons. Also, Mallon's political sense that it would be suicide for constitutional nationalists to get too far adrift of Sinn Fein on policing might just be right.

7. An alternative way of changing the dynamics on policing would be for you to give the impression that you are still prepared to put the SDLP to a decision in the next few weeks by running d'Hondt – rather as Mallon himself used to argue that Mo Mowlam should run d'Hondt to find out where Trimble really stood on joining the Executive. There was a moment shortly before Christmas when the Irish and nationalists may have thought you were mad enough to do that, but we lost it when we agreed to defer until this month. In current conditions, your bluff would certainly be called, and you yourself are clear that you don't want, by accident, to create a unionist-dominated monster. I would therefore rule this out.

8. The second option is not to do a deal on the terms currently on offer. If we know that the best we can do is to give Trimble a hospital pass which (at lease internally) exonerates Sinn Fein, do we really want to be a party to it? Would it not be in the better long term interests of the process to have a managed collapse, or – if Trimble could bear it, which he probably couldn't – a review which straddled the Election with the institutions intact?

9. My own reading of the situation is that we have not yet reached that point. If we can do a deal with a strong de Chastelain reporting thread over the next month or so, as described in paragraph 5 above, it might still be enough to get us through. It is also hard to look even the most minimal Sinn Fein gift horse in the mouth, and the Irish will always argue that any progress on weapons is better than none. But I do think we should keep in mind the risk that all we achieve is a "unionist veto" collapse rather than a collectively managed collapse, and that we should certainly not pay too high a price for a minimal Sinn Fein gift horse.

10. For the moment, therefore, my advice would be:

- that we should push for the mini-deal with the best de Chastelain reporting thread we can achieve, but not be prepared to pay over the odds for it;

- that we should leave the Irish in no doubt about the damage a nationalist boycott of the policing institutions will do, but not attempt to turn it into a make or break issue;

- that we should constantly assess the risk that the product of all our efforts will be so minimal as virtually to guarantee a unionist-led collapse, and be ready to change course if necessary.

(Signed)

BILL JEFFREY
11 Millbank ☎ 6447 (Castle Buildings ☎Ext.28142)

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

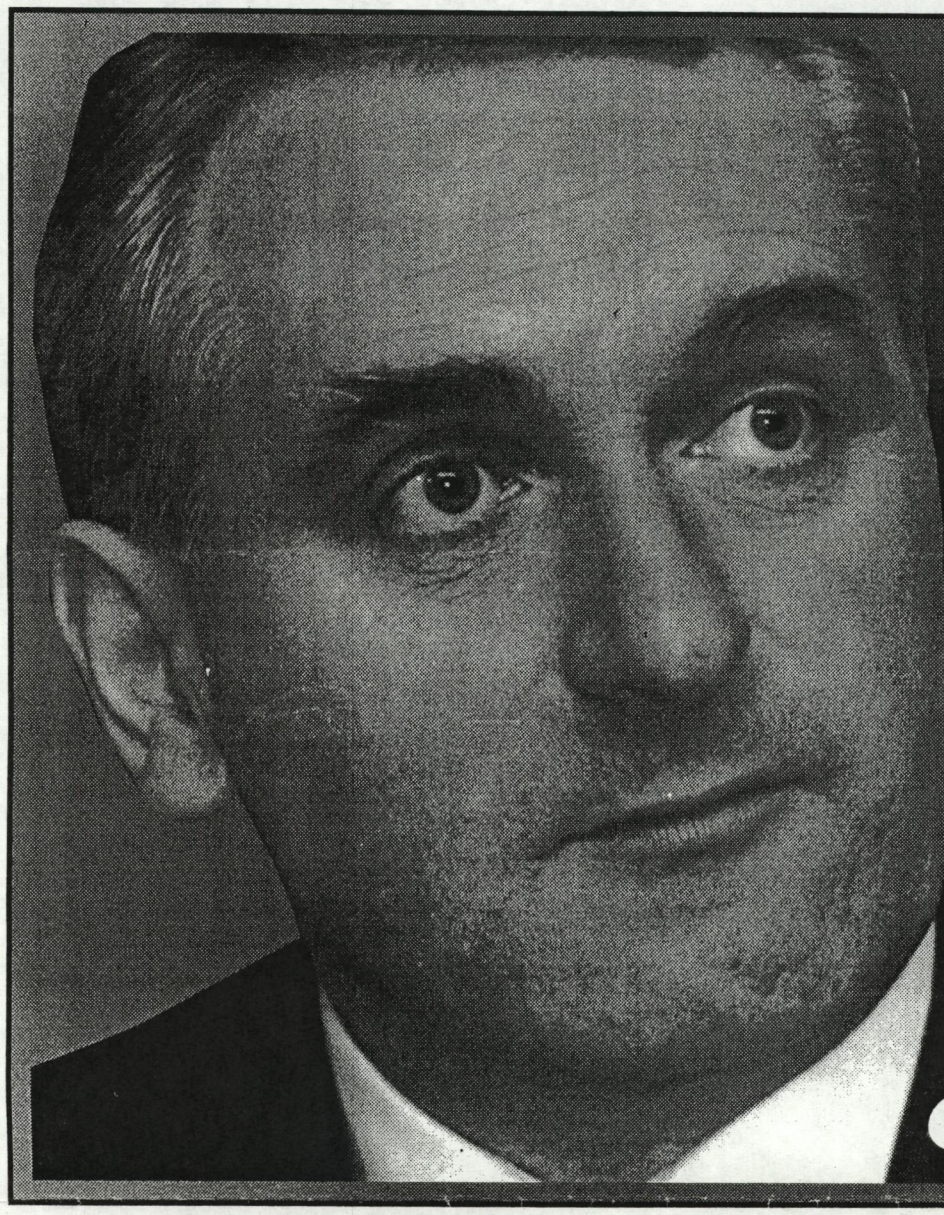
FAXED

John Sawers Esq
10 Downing Street
London SW1

16 JAN 2001

The Home Secretary has asked me to pass this to you to see.

HILARY JACKSON



Ahern's funding move against Sinn Féin

BY MÍCHEÁL MacDONNCHA

IN AN ATTEMPT to target contributions to Sinn Féin, Taoiseach Bertie Ahern has announced plans to ban 'foreign' fundraising by political parties in the 26 Counties. Announcing the proposals, Ahern said the government is "studying whether ring-fencing Irish political fundraising will include reciprocal arrangements with the United Kingdom".

Ahern's proposed ban would mean that contributions could not come from outside the 26 Counties. This would obviously affect Sinn Féin as the only all-Ireland party and as a party which enjoys widespread support among Irish exiles. Other proposals from the Taoiseach include limiting donations to a party from any one source to £20,000 in one year and to a candidate to £5,000 in one year. Clearly this would not end corporate funding of the *big parties*.

Responding to the Ahern plan, Sinn Féin President Gerry Adams said:

"While Sinn Féin welcomes aspects of the proposed anti-corruption plans the proposals on foreign fund-raising smack of political opportunism from two government parties running scared of the increasing support enjoyed by Sinn Féin.

"Sinn Féin has spoken out strongly against the corruption which has permeated political and business life in Ireland for decades. It is a scandal that parties have been bankrolled by banks and other financial institutions and by big business. Such a relationship has not just bought individual votes in council chambers; it has ensured government policies that favour big business above all else, with banks free to fleece their customers and with the lowest corporation tax in Europe.

"But attempts to link this issue to that of foreign fund-raising has nothing to do with the Taoiseach's stated concern for an even playing pitch in Irish politics. It has all to do with the growth of Sinn Féin.

"The effect of the Taoiseach's plan would be to set back efforts to create an even playing pitch in Irish politics and is entirely at odds with the all-Ireland dimension of the Good Friday Agreement.

"It would disenfranchise Irish emigrants and members of the Irish diaspora around the world as well as Irish citizens in the Six Counties. Am I, as a President of Sinn Féin who happens to reside in Belfast, now to be prohibited from donating to my own party?

"The Taoiseach states that control and transparency of political donations from abroad would be impossible. The very opposite is the case. The Friends of Sinn Féin organisation in the USA have shown how this can be achieved. They file a record of all monies collected, the names and addresses of each donation of $50 or more, and an account of all expenditures, including amounts remitted to Ireland recorded with the US Justice Department every six months.

"The government's proposal would deny Irish emigrants, already denied the opportunity to vote, and members of the Irish diaspora in the United States the right to contribute to the political party of their choice. While this would affect other parties, for example the SDLP, it is clearly aimed at Sinn Féin.

> This plan would disenfranchise Irish emigrants and members of the Irish diaspora around the world as well as Irish citizens in the Six Counties

That the government is studying whether ring-fencing Irish political fundraising will include arrangements with the British Government is particularly reprehensible.

"Sinn Féin is committed to bringing about fundamental social and economic change in Ireland. We are not involved in politics for economic or personal gain. Indeed within our own party we operate on an egalitarian basis all of our elected representatives, MPs, TD, Ministers and Assembly members receive the same subsidy and donate the remainder of their salary to the party.

"The government talk a lot about the need to encourage the participation of the Irish Diaspora in the political, economic and social life of the Irish nation.

These proposals are entirely at odds with such an objective.

"I feel personally insulted that these anti-Sinn Féin proposals should be introduced under the guise of dealing with corruption in public life."

Speaking on RTÉ radio on Monday, Bertie Ahern suggested that Gerry Adams had not been following the debate on party funding in the 26 Counties. In response to this, Sinn Féin TD Caoimhghín Ó Caoláin said:

"As someone who was directly involved in the debate and who fully briefed my party on it I share Gerry Adams' anger at the government's approach and his view that the attempted restriction of donations from outside this State is a piece of political opportunism aimed at Sinn Féin.

"Proposals to restrict donations to registered voters in the 26 Counties were contained in the Labour Party Bill which was debated in the Dáil in May. At that time I supported a government amendment on the basis that there would be a process of consultation with all the parties, including Sinn Féin, on the issue of donations to political parties. No such process of consultation has taken place.

"As I stated in the Dáil I am in favour of ending corporate donations to political parties. While the Taoiseach's statement contains no proposal to end corporate donations — companies are to be allowed to give up to £20,000 in one year to a political party — it does propose banning donations from outside the State, no matter how small. This discriminates against Irish citizens and is specifically aimed at Sinn Féin, the only All-Ireland party. Despite such moves I am confident that the growth in support for Sinn Féin will continue unabated."

SUPPORT FOR TEACHERS

IN A STATEMENT of support to secondary teachers demonstrating in Dublin on Tuesday, Sinn Féin TD Caoimhghín Ó Caoláin said:

"The issue on the streets of Dublin today, and in classrooms around the country, is the quality of education and the future of our children. The most important element of our education infrastructure are well trained and highly motivated teachers. To maintain that standard it is essential that teachers are properly paid. There is no more important workplace than the classroom or the hospital ward. Education and health must be absolute priorities of government.

"The government must act decisively to stem the flow of talented people from the education sector and to re-establish the attractiveness of teaching as a profession. This is an investment in our children and in our future.

"I have urged the Minister for Education Michael Woods TD and his Cabinet colleagues to show flexibility and imagination in this dispute. To date such an approach has been lacking and the government has shown an inflexibility which has justifiably angered teachers.

"It would be inexcusable if the government allowed the teachers dispute to remain unresolved into the New Year and in the run-up to examinations.

"The bottom line is that the teachers deserve to be paid."

On Monday night, South Dublin County Council unanimously backed a Sinn Féin motion calling on the government to open pay negotiations with the secondary teachers "with no preconditions". The motion was tabled by Sinn Féin Councillors Seán Crowe and Mark Daly. Crowe who attended Tuesday's solidarity march by secondary teachers in Dublin said: "Poorly paid teachers will lead to a deterioration in our education system. We do not want to go down the 'yellow pack' road of the American and English education systems with poor public and rich private schools. Without negotiations there can only be losers."

file. JPO/AC cc: JS MP Bill J. R. Masefield

BRIDGING THE GAP

****

INTRODUCTION

To bridge the gap between the Act/Implementation Plan and Patten would require amending legislation (including amendments to relevant schedules and codes) and amendments to the Implementation Plan.

This text identifies the disparate shortcomings which, together, constitute the gap between the British Government's plans for the RUC and the Patten recommendations on policing.

The text – Amendments to the Police Act - also identifies the key amendments required to bring the Police Act into line with the core elements of the Patten report. If adopted, additional ancillary or consequential amendments would, of course, be required.

1. NEW OATH

Patten said that every member of the new police service should take a human rights oath. In the Act this is restricted to new recruits. This is essential for a new start. The British government suggest that getting officers to sign the Code of Ethics is equivalent to swearing a new oath. This is not so.

2. TRI-PARTITE ARRANGEMENTS

Too much power has been reserved to the British Secretary of State.. The Chief Constable retains too much discretion as against the Board. In addition, Patten is quite clear that the Chief Constable should have "operational responsibility" not "operational control" (recommendation 24). Detailed amendments in respect of these powers are contained in the "Amendments to the Police Act" section of this paper.

3. CHIEF CONSTABLE'S REPORTS TO BOARD

Patten said: "*The Board should have the power to require the Chief Constable to report on any issue pertaining to the performance of his functions or those of the police service. The obligation to report should extend to explaining operational decisions. The grounds on which the Chief Constable might question this requirement should be strictly limited to issues such as those involving national security, sensitive personnel matters, and cases before the court*". (para 6.22, *emphasis added).*
The Act widens the exceptions and, for example, extends "personnel" matters to "personal" issues.

4. BOARD INQUIRIES

Very detailed procedural hurdles have to be crossed before the Board can initiate inquiries. Patten recommended that the Chief Constable should have to account for every aspect of her/his conduct of office. A close analysis of these procedural hurdles indicate that it will be virtually impossible for human rights concerns to be the subject of inquiries. In addition, abuses by RUC officers and concerns over past policies and

practices are specifically outwith the Board's powers. This confirms the atmosphere of impunity which has been provided to RUC personnel.

5. District Policing Partnerships

Patten recommended that DPPs should have a power to raise up to 3p in the pound on the rates for local community safety. This is not in the Act. In addition, the Act disqualifies anyone who has been sentenced to a period of imprisonment from being an independent member of a DPP. This is an addition to ensure that former POWs are not able to participate in local accountability structures and is an extension from the Patten recommendations.

6. Police Districts

The Act gives the power to the Chief Constable to decide how many districts there should be in Belfast. Patten clearly stated there should be 4 sub-groups for Belfast. In addition, it was clear that Patten intended the sub-groups to have similar functions in areas of Belfast to the sub-groups in other council areas of the 6 counties. This has not been provided for in the Act. Finally, Patten wished that police districts be "co-terminous" with DPPs areas of responsibility. The provision giving the Chief Constable the power to decide the number of districts is not in Patten.

7. Time Limit for complaints & references to ombudsman

Under the arrangements flowing from the Act, the conduct of police officers will not be investigated by the Ombudsman if the actions took place more than one year before the coming into force of the legislation. There are some exceptions if new information or evidence comes to light or the matter has not before been the subject of a complaint. These provisions are additions to the Patten recommendations which saw the Ombudsman as a powerful tool for reassuring the community.

8. Covert Policing

This has not been addressed in the Police Act. Patten called for the appointment of a Commissioner for covert policing. The criterion that a Diplock judge be appointed will not assist in winning nationalist and republican confidence in the independent accountability mechanisms for the force.

9. Community Policing

Patten said that "policing with the community should be the core function of every member of the police service" under the new policing arrangements. The Act reformulates this as a requirement on the community to assist the police rather than a duty on the police to win community support and perform their policing role *with* rather than *on* the community.

10. Demilitarisation

Patten recommended that the appearance of RUC barracks and vehicles be made less forbidding. Ancillary recommendations refer to a reduced role for the British Army, the closure of interrogation centres, the creation of a routinely unarmed police service and the early phasing out of reliance on emergency legislation. There has been little

movement on these recommendations and further movement is dependent on the Chief Constable's analysis of "the security environment". The oversight commissioner should be given an explicit role in monitoring the civilianisation of police buildings, vehicles and related matters.

11. PLASTIC BULLETS

While not calling for a ban on the use of plastic bullets as called for by Sinn Féin, Patten did call for "an immediate and substantial" research programme to find alternatives. This is not reflected in the Act or in the implementation plan, and the terms of reference and composition of the review group are seriously deficient. The terms of reference for the research programme do not relate specifically to recommendations 67- 70 of the Patten Commission. The steering group have not drawn up a timetable for the introduction of interim procedures in Patten recommendation 71.

12. IDENTIFICATION OF POLICE OFFICERS

Patten wished all officers to be clearly identifiable by name, station and number when on duty – including in public order situations. The Act only requires that numbers be displayed "as far as practicable".

13. SPECIAL BRANCH

The Patten Report made a number of recommendations designed to reduce the negative impact of this "force within a force". It was to be amalgamated with CID; tenure arrangements were to be restricted; and support services were to be dispersed throughout the main body of police officers. In the implementation plan, the British Government said that it accepted these recommendations but implementation would depend on the security environment. Once again, as with the Full-time Reserve, there is no statutory basis for achieving the recommendations nor is there any urgent timeframe in the implementation plan.

14. POLICE RESERVE

Patten called for the phasing out of the full-time reserve. This is not provided for in the Act. Though the first implementation plan indicated that the proposal was accepted, this is qualified by a clause which says implementation will depend on the security situation.

15. RECRUITMENT ARRANGEMENTS

Patten was very clear that the new police service would be judged on the basis of its success in attracting new nationalist and republican members. The Act only makes provision for special arrangements in respect of catholic recruits. Creating a police service within which nationalists and republicans can serve is a key benchmark for success.

16. Registration of Interests

Patten called for the holding of a centralised register and that the information should be held by the Ombudsman. These have been resisted in the legislation.

17. Name of the Police

The name recommended by Patten for the new service was the "Northern Ireland Police Service". The Act makes the name the "Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary)". The inclusion of a reference to the RUC is not in Patten.

18. Flags and Emblems

Patten was clear that there should be no reference to either the British or Irish states in the new police emblems. This is not provided for in the Act, which leaves the matter to the new Policing Board.

19. Police Memorials

Nowhere in the Patten report was there reference to an RUC George Cross Foundation. In the Act, this Foundation is given a statutory basis which can only be undone by primary legislation, and this Foundation's principle function is to address ongoing and future professional development and innovations in policing, not memorials or acts of remembrance.

20. The Oversight Commissioner

The Patten report wished the Oversight Commissioner to be responsible for overseeing the implementation of the Commission's own recommendations. In the Act, the Commissioner is responsible for overseeing the government's own plans.

AMENDMENTS TO THE POLICE ACT

Core Amendments to bring the Police Act into line with the Patten recommendations.

1. NEW OATH

CLAUSE 38 ATTESTATION OF OFFICERS

38(1) The following oath shall be taken individually by all new and serving police officers

Delete 38(2)(a)

38(2) The Chief Constable shall take such steps as he considers necessary to ensure that all police officers understand the oath and understand the need to carry out their duties in accordance with it.

2. TRIPARTITE ARRANGEMENTS

The following amendments are required to rebalance the tripartite arrangements outlined in Patten.

CLAUSE 12 ACCOUNTS AND AUDIT

12(3) The statement of accounts shall contain such information and shall be in such form as the Secretary of State may determine in consultation with the Board.

CLAUSE 20 POLICE DISTRICTS

SEE AMENDMENTS BELOW

CLAUSE 24 - THE BRITISH SECRETARY OF STATE'S LONG TERM POLICING OBJECTIVES

24 (2) The Secretary of State may not determine or revise any objectives under this section without the agreement of the Board, and after consultation with

(a) the Chief Constable;
(b) the Ombudsman;
(c) the Oversight Commissioner
(d) the Human Rights Commission and
(e) non-governmental organisations, community groups concerned with safety issues and statutory groups with an interest in policing.

CLAUSE 27 - CODES OF PRACTICE ON EXERCISE OF FUNCTIONS

27(2) Before issuing or revising a code of practice under this section the Secretary of State shall seek the agreement of the Board, and consult with

(a) the Chief Constable
(b) the Ombudsman
(c) the Oversight Commissioner
(d) the Human Rights Commission and
(e) non-governmental organisations, community groups concerned with safety issues and statutory groups with an interest in policing.

CLAUSE 33 – GENERAL FUNCTIONS OF THE CHIEF CONSTABLE

33(1) The Chief Constable shall have operational responsibility for the police

33(2) In discharging his functions, the Chief Constable shall adhere to the plan except with the approval of the Policing Board.

33(3) The Chief Constable shall comply with

(a) any code of practice issued under section 27
(b) section 32
(c) reports published by the Oversight Commissioner under section 68

CLAUSE 53 – GUIDANCE AS TO THE USE OF PUBLIC ORDER EQUIPMENT

SEE AMENDMENTS BELOW

CLAUSE 54 – FLAGS AND EMBLEMS
SEE AMENDMENTS BELOW

CLAUSE 59 – GENERAL DUTY OF THE CHIEF CONSTABLE TO REPORT TO BOARD
SEE AMENDMENTS BELOW

CLAUSE 60 – BOARD INQUIRIES
SEE AMENDMENTS BELOW

SCHEDULE 1 PARAGRAPH 8 – INDEPENDENT MEMBERS
Paragraph 8(2) Before making any appointment under paragraph 6(1)(b), the Secretary of State shall consult for a period not longer than three months -

(a) the First Minister and deputy First Minister;
(b) district councils
(c) the Equality Commission; and
(d) such other bodies as he considers appropriate.'

Delete paragraph 8(4)

SCHEDULE 1 PARAGRAPH 9 - REMOVAL OF MEMBERS FROM OFFICE
Delete paragraph 9(1)(a)

SCHEDULE 4 PARAGRAPH 2 – TERMS OF REFERENCE
2(1) On appointing the Commissioner, the Secretary of State shall give him written terms of reference agreed with the Board.
(2) The terms of reference shall, in particular, describe the changes in policing in Northern Ireland published in the report of the Independent Commission on Policing for Northern Ireland, the implementation of which it is the general function of the Commissioner to oversee.

3. CHIEF CONSTABLE'S REPORTS TO THE BOARD

At Clause 59(3)(b) replace "**because it relates to an individual and is of a sensitive personal nature**" with:
"(b) because it relates to a sensitive personnel matter".

Delete 59(d)

4. BOARD INQUIRIES

60(1) delete "after consultation with the Chief Constable"
Delete 60(3)(d)
60(9) The Board may, after consultation with the Secretary of State, appoint any other person to conduct an inquiry under this section.
Delete 60(11), (12) and (13)
60(15) Replace "Board" with "Secretary of State"
60(17) delete "so far as it appears to it consistent with the public interest"

5. DISTRICT POLICING PARTNERSHIPS

CLAUSE 16 - GENERAL FUNCTIONS OF DPPS
Clause 16 (1) (c) insert -
"(c) to obtain a 3 pence levy in every pound of local rates raised by the Council, to be used by the DPP to facilitate enhanced community based policing;
(d) to make arrangements for obtaining the views of the public about matters concerning the policing of the district;
(e) to assist the police in making arrangements for obtaining the cooperation of the public in the prevention of crime;
(f) to act as a general forum for discussion and consultation on matters affecting the policing of the district; and
(g) such other functions as are conferred on it by any other statutory provision."

CODES OF PRACTICE FOR DPPS
Delete Clause 19(2)

At Clause 19(3), the list of consultees should be amended to read :

(a) district councils;
(b) the Secretary of State;
(c) the Chief Constable;
(d) the Police Ombudsman
(e) the Northern Ireland Human Rights Commission;
(f) the Equality Commission; and
(g) such other persons as the Board shall determine."

Replace Clause 19(4)(b) with "a duty to hold all meetings of the district policing partnership in public."

At Clause 19(4)(c) after "the arrangements for enabling questions on the discharge by members of the police service of their functions and operations in the district to be put by members of the district policing partnership" insert "and by members of the public".

DISQUALIFICATION
Delete Schedule 3 paragraph 8(2)

6. POLICE DISTRICTS

20(1) Each district, other than the Belfast district, shall be a police district.

Clause 20(2) after "In the district of Belfast there shall be" insert "four police districts;" and delete "such number of police districts (not exceeding four) as may be determined by the Chief Constable;"

Clause 20(3), after "the Chief Constable shall" insert ", after consultation with the District Policing Partnership"

7. TIME LIMIT FOR COMPLAINTS & REFERENCES TO OMBUDSMAN

Clause 65 be deleted in full.

8. COVERT POLICING

This has only been referred to in the Implementation Plan. The Act should specify under Clause 3, the central role of the Board in monitoring and regulating covert policing through a mechanism agreed by the Board and in accordance with Patten's recommendations, most importantly, the centrality of human rights and openness in policing.

Insert at Clause 3 (3) (c) (ii) "trends and complaints in the workings of the RIP Act (2000)"

9. COMMUNITY POLICING

Clause 3(3)(e) should read "make arrangements for ensuring that policing with the community is the core function of every police officer"

CLAUSE 22 – THE LOCAL POLICING PLAN
Clause 22(3), replace "take account of any views expressed" with "shall have due regard for their comments."

Clause 22 after "be appropriate" insert "(4) When publishing the local policing plan, the district commander should indicate what representations were made to him/her by the district policing partnership, and the extent to which those views have been taken into account in the final plan".

CLAUSE 23 - OTHER COMMUNITY POLICING ARRANGEMENTS

Clause 23(1) "A district policing partnership shall, in accordance with the Code of Practice issued by the Board, make arrangements for facilitating consultation on local policing arrangements"

Clause 32(5) "Policing with the community shall be the core function of every police officer"

10. DEMILITARISATION

This matter, encompassing several of Patten's recommendations, appears nowhere on the face of the Act. Amendments should be placed to the Act specifying the role of the Oversight Commissioner in ensuring, within a fixed timetable, under the influence only of the Board, that Patten's requirements on demilitarising police buildings and equipment, and ensuring a routinely unarmed police service, and the closure of interrogation centres.

11. PLASTIC BULLETS

53(1) The Board may issue, and from time to time revise, guidance on the use by members of the police force of equipment designed for use in maintaining or restoring public order.'

53(2) Before issuing or revising any guidance under this section the Board shall consult

(a) the Secretary of State

(b) the Chief Constable

(c) the Police Ombudsman

(d) District Policing Partnerships

(e) the Human Rights Commission

(f) any other person or body appearing to the Board to have an interest in the matter".

12. IDENTIFICATION OF POLICE OFFICERS

55(2) The Chief Constable shall ensure that the name and local district of each police officer is so displayed on his uniform as to be clearly visible at all times when he is on duty and in uniform." with the consequential deletion of "as far as practicable."

13. SPECIAL BRANCH

The changes to Special Branch, as required by Patten, appear nowhere on the face of the Act. Amendments should be placed in the Act specifying the role of the Oversight Commissioner in ensuring the dissolution of Special Branch, within a fixed timetable, under the influence only of the Board, and in accordance with Patten's concerns.

14. POLICE RESERVE

Clause 37, insert new sub-clause, 37(2) "Any person appointed to the Northern Ireland Reserve shall serve on a part-time basis only".

15. RECRUITMENT ARRANGEMENTS

44 (1) The Secretary of State shall, with the agreement of the Board, issue regulations prescribing the arrangements to be made, by the Chief Constable or a person appointed under section 43(1), for the recruitment of persons for appointment

46 (1)(a) One half shall be persons who are treated as nationalists and Roman Catholics

This will require consequential amendments eg: 46(4)(a); 46(5)(a)

16. REGISTRATION OF INTERESTS

Clause 3(3)(c)(vii) trends and patterns in membership of the police and the police support staff of notifiable memberships under section 51

Clause 51(2) after "Chief Constable" insert "and Ombudsman"

Clause 51 (5) be amended to read "Each police officer shall be required to inform the Chief Constable and the Ombudsman.." and continues as stated in the Act

Clause 51 (8) Information shall be maintained in a central register of notifiable memberships. A copy of this register shall be maintained by the Ombudsman.
Clause 51(9) Information contained in a register of notifiable memberships shall only be disclosed if the person making the disclosure is a person to whom this subsection applies and the disclosure is made –" and continues as stated in Act

17. NAME OF THE POLICE

The name recommended by Patten for the new service was the "Northern Ireland Police Service". The Act makes the name the "Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary)". The inclusion of a reference to the RUC is not in Patten.

Clause 1(1) and clause 1(3) delete "(incorporating the Royal Ulster Constabulary)"

18.. FLAGS AND EMBLEMS

54(1) The Secretary of State may make regulations –
(a) prescribing the design of a new emblem for the police entirely free from association with the British and Irish states
54(2) The Secretary of State may make regulations –
(a) prescribing the design of a new flag for the police entirely free from association with the British and Irish states
54(3) Before making any regulations under this section the Secretary of State shall consult
(a) the Chief Constable
(b) the Police Ombuds person
(c) the Human Rights Commission
(d) the Equality Commission
(e) any other person or body appearing to him to have an interest in the matter".

19. POLICE MEMORIALS

Delete Clause 70

20. THE OVERSIGHT COMMISSIONER

THE COMMISSIONER
Clause 67 (3) after "implementation of changes in policing of Northern Ireland" insert ", published by the Independent Commission on Policing
Delete "(including in particular, those resulting from this Act)"
Clause 67 (5), after "shall" insert "be renewable at five-yearly intervals", and leave out to end of line.

Delete Clause 67(6).

REPORTS BY THE COMMISSIONER
Clause 68 (1), after "implementation of changes" insert "published by the Independent Commission on Policing", and after "terms of reference".

At Clause 68 (4) delete "; and (b)"
Insert new sub-clause "68 (5) The Commissioner shall arrange for the report to be published in such manner as appears to him to be appropriate"

Fde

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

16 January 2001

Dear Mr. Priestly

NORTHERN IRELAND: DISCUSSIONS WITH THE IRISH GOVERNMENT

Jonathan Powell, Bill Jeffrey, William Fittall and myself met an Irish team (consisting of Dermot Gallagher, Tim Dalton, Daithi O'Ceallaigh, Martin Mansergh and Ted Barrington) for nearly two hours this evening. Jim Steinberg and Dick Norland from the US Administration were also present.

What follows is not a verbatim record, but a summary of the main points and conclusions.

Re-engagement

Dermot Gallagher set out a possible basis for re-engagement by Sinn Fein based around the commitments of the May statements. This consisted of four elements:

- a general pledge to fulfil the commitments of the May statements;

- re-engagement in a positive and serious manner on the basis of the 6 May (P O'Neill) statement;

- re-engagement with the stated purpose of allowing the IICD to discharge the mandate given to it in the 5 May statement (by the two governments);

- a timescale, privately offered, by which agreement would be reached on a scheme for putting weapons beyond use.

The Irish were uncertain about the acceptability to Sinn Fein of the final element. Steinberg said Adams appeared to envisage a timeframe determined by events (eg progress on OTRs) rather than dates. Tim Dalton said the moment of

actual re-engagement would be determined by the lifting of Trimble's block on Sinn Fein participation in the NSMC.

Gallagher said that in return for re-engagement, Sinn Fein would be looking for movement on three main issues - demilitarisation, OTRs and policing - and possibly also something on an implementation committee and the stability of the institutions.

Demilitarisation

Steinberg was clear that Sinn Fein realised they would get nothing in South Armagh for a deal of this nature (Gallagher said McGuinness had given the opposite impression yesterday but this was probably an opening position). They would want modest movement elsewhere. Tim Dalton suggested this might take the form of reductions in troop levels/patrolling or dismantling of non-South Armagh installations. Steinberg said Sinn Fein were after a sense of progress, rather than anything specific.

We indicated that, subject to Ministerial approval, we would look at the possibilities for a combination of positive language and limited steps outside South Armagh to dispel any impression of demilitarisation being in baulk.

OTRs

William Fittall painstakingly took the Irish through the different categories of OTR cases, mentioning that there might be the prospect of movement within the group of 20 former extraditees for whom questions of prosecution and unserved sentences were not yet resolved. Gallagher pressed for a rapid resolution of these twenty cases. We explained this was a matter for prosecutorial discretion and not therefore in our gift. Tim Dalton said some prospect would need to be held out for progress on the thirteen individuals still wanted for trial (he was clearly agitated over the prospect of Quinliven's case coming before the Irish courts in a matter of weeks). Steinberg said the aim should be to get as close as possible to a sense in which the mutual commitments of the May statements seemed to be being honoured. That should involve a statement by the UK acknowledging the anomaly on OTRs and looking at how it might be addressed.

Bill Jeffrey said there were two possible approaches to OTRs. One, currently in hand, was to whittle away at the cases on an individual basis

(recognising that we could not coerce the Attorney General). The other was to enact legislation but we were not ready to do that in the context of a deal along these lines. This was a bright red line for us. Jonathan Powell concluded that we could look at the scope for language acknowledging the anomaly and committing us to further work on individual cases. Any such language would need to be carefully drafted so as not to prejudice the ongoing legal processes.

Policing

The Irish delivered a stark message. They saw no hope of winning round the SDLP. O'Ceallaigh said that even if we met every single one of their remaining concerns, the SDLP would not put forward nominations for political reasons. In response to pointed questioning from Bill Jeffrey, Gallagher admitted that the Irish were not pressing the SDLP or Sinn Fein on policies ("no point damaging our credibility with them"). The Irish said Sinn Fein and the SDLP were in lockstep on policing. Despite the slightly warmer vibes after recent SDLP meetings with the Chief Constable, there was no prospect of separating the SDLP from Sinn Fein.

Gallagher said the best way forward in the immediate negotiations would be a public statement by the British Government acknowledging that neither community were yet fully behind the policing proposals. Given the importance of community support, the present proposals should therefore be subject to further consultations after which the British Government would take appropriate measures. This would need to be accompanied by a private undertaking to Sinn Fein that concerns would subsequently be met (Sinn Fein would need the prospect of (post-election) legislation to come on board). Jonathan Powell said such a private undertaking was out of the question.

Steinberg glossed this a bit. In its public statement, the UK would simply be saying that its objective was to implement Patten; this meant securing the participation of the two communities; and consultations were the route to that goal. Sinn Fein (and the SDLP) would say in turn that their objective was genuine community policing as set out in Patten and they would support "such a force". This was basically an expedient substitution of process for substance. Neither side would be committing themselves to anything new. But the formula might prevent policing becoming a sticking point in this deal.

Bill Jeffrey pointed out the implications for Trimble of the current SDLP/Sinn Fein stance. It would bring moderate unionists to the point of despair

if it was evident that, even after concessions to the nationalist community, SDLP/Sinn Fein were not committed to the next step on policing. It would not be easy to keep Trimble on board in these circumstances. We were not so relaxed about the consequences of giving up trying to persuade the SDLP to proceed with nominations. It might be possible to find language about the need to carry on discussions aimed at resolving outstanding concerns in the event of there being no nationalist nominations. But it would be extremely damaging if there was any suggestion of putting policing reform on ice. We would need to press on with implementing these aspects which were not in dispute. Jonathan Powell set out in clear terms our red line on policing: we would make no further concessions without a Sinn Fein/SDLP commitment to put forward nominations for the policing board.

Stability of Institutions

Steinberg said Sinn Fein needed security against the prospect of being constantly subject to unilateral decisions by the UUP. He had ridden them off the idea of trying to extract a direct commitment from Trimble. What was needed was a formula from the two governments stating that in the event of any party acting unilaterally outside the GFA, the governments would take whatever steps they could to sustain the functioning of the institutions.

Implementation Committee

Steinberg envisaged this as a minor sop to Sinn Fein. Mansergh said it would amount in practice to no more than giving a formal label to the kind of discussions we were already having.

The Way Forward

Familiar hand-wringing from Gallagher about there not being enough in the deal to balance the IRA commitment to re-engagement. Jonathan Powell firmly rebutted this pointing to Sinn Fein's transparent use of bait and switch tactics. The only thing we had taken off the table was South Armagh demilitarisation. Sinn Fein/IRA in contrast had resiled dramatically from the comprehensive pre-Christmas proposals and were now simply offering re-engagement.

Jonathan Powell said we would consult Ministers overnight on the substance of this meeting. The Irish should certainly not expect UK Ministers to

be any more forthcoming than their officials. Subject to Ministerial views, we were probably looking at the Prime Minister travelling to Hillsborough tomorrow evening in time for discussions with some of the parties (probably the UUP and SDLP). There could then be an important meeting between the Prime Minister and Adams on Thursday morning at which, on an optimistic scenario, an agreement in principle might be reached on the possible terms of a deal. The Prime Minister would then (possibly after meetings with the smaller parties) return to London (with officials, if necessary, remaining at Hillsborough to flesh out the deal).

Steinberg and Gallagher advised Jonathan Powell to have a separate meeting with Adams tomorrow in order to ensure that we were in the right ballpark for a deal before deploying the Prime Minister. The Irish were themselves meeting Sinn Fein at 1600 tomorrow (at a midway point between Dublin and Belfast).

British-Irish Council

Bill Jeffrey flagged up the uncertainty over whether Trimble would agree to Bairbre de Bruin's presence at the BIC on 23 January. It would be a stupid move on Trimble's part to block de Bruin's participation (but also a measure of how beleaguered he felt). The Irish were pretty horrified by this possibility. Mansergh said (and the rest agreed) that Trimble was the demandeur on the BIC. If he played games like this, his bluff should be called and this meeting of the BIC postponed. On a more positive note, we argued that good progress towards a deal this week would clear away the problem.

I am copying this letter to Sir Christopher Meyer (Washington) and Sir Ivor Roberts (Dublin).

Yours sincerely

Pamela Green

for MICHAEL TATHAM

Paul Priestly
Northern Ireland Office

From: Jonathan Powell
Date: 16 January 2001

PRIME MINISTER

cc: Alastair Campbell
John Sawers
Michael Tatham

NORTHERN IRELAND

We met the Irish and Americans this evening.

The Irish have now dropped their objection to you going to Belfast tomorrow. The sort of sequence we are now looking at is you flying to Belfast, leaving at 5.30 pm after tea with Kissinger, seeing the UUP at 7.00 pm and having dinner with the SDLP at 8.00 pm. The Irish and Americans are very keen that I see Adams that evening alone to see if we have a deal before you then see him for breakfast on Thursday. Jim Steinberg wants President Clinton to call Adams that evening to lean on him before he sees you. Thereafter you would see the small parties, do your interviews and return to London. We and the Irish and Americans would remain in Belfast on Thursday with the hope of securing a deal by Friday which you and Bertie could return to endorse. We need to decide first thing tomorrow morning whether you want to do this.

The deal on offer is reportedly on the following lines: Sinn Fein would pledge to fulfil their May statement; re-engage in a positive and serious way with the IICD with the purpose of agreeing a new decommissioning scheme. Some sort of timescale would apply to agreeing a decommissioning scheme, possibly tied to things such as us resolving the OTRs.

In response they are asking that:

(a) we find some military installation elsewhere in Northern Ireland we could remove or a reduction in troop levels or patrolling. We might be able to offer the Newtonhamilton sangar. Bill is consulting Ronnie overnight.

(b) Trimble to drop the Fatwa on North/South bodies;

(c) OTRs: Sinn Fein want some sort of commitment from us to resolve the anomaly. This is tricky given the legal position but the NIO are working on words. We have 12 cases in our back pocket where we could let people return to Northern Ireland, but on the remaining 21 cases there is nothing we can do immediately.

(d) Policing: they want a statement that since the proposals have not been accepted by both communties we will review the situation and consult the parties with the aim of taking steps to secure their agreement. Sinn Fein would also like us to agree privately what steps we will take towards them. I said this was out of the question. The Irish say that Sinn Fein would be prepared to say that they would support the police force and participate in the Policing Board if the changes they want were made. This will be difficult for Peter but the Irish were categoric that the SDLP will not sign up for Patten at this stage. No amount of pressure would make them do so. Trimble will also be tricky but I think we should make it clear that we are consulting both communities on changes to Patten. That

should meet his point. In the meantime the Chief Constable can get on with the practical steps of implementing the remainder of Patten (see the attached note from Peter – some difficult questions here);

(e) Sinn Fein also want an assurance about the stability of the institutions if this agreement goes ahead. We can probably find some words on this.

(f) Sinn Fein still want an implementation committee.

At the end of all this the Irish said that they thought that what we were prepared to give was too little for a deal. After all all we have been asked was to fulfil what we offered in May on OTRs. I gave them a fairly robust response about Sinn Fein's bait and switch tactics.

In many ways your most difficult meeting tomorrow will be with David Trimble when you have to lower his expectations on decommissioning but still persuade him to lift the ban on North/South bodies. He is currently threatening not to agree to Bairbre de Bruin attending the British Irish Council in Dublin on Tuesday. If he goes ahead with that it will precipitate another crisis.

pp **JONATHAN POWELL**

Top: COS
FAIPS
FAEAPS
AC/Press

PRIME MINISTER

NORTHERN IRELAND: POLICING REFORM

Despite some discouraging signs it is still worth pulling out all the stops to try and get the SDLP to nominate to the new Policing Board this month. I shall need your help in working on Mallon and Hume. An SDLP refusal would be a further blow to moderate unionism and increase the risk of the early collapse of the Executive. But we need a credible plan B ready for announcement the moment that the SDLP say "no", if our efforts fail.

We cannot simply agree to an indefinite moratorium. Our overriding responsibility is to maintain an effective police service. But we must also minimise irritation to the SDLP. This means that creating the new Board without nationalist political membership would be a serious mistake. So my plan B is to proceed with as much of the reform package as we can in the absence of the new Board, including 50/50 recruitment. Leaving ourselves at the mercy of the present Police Authority for Northern Ireland would involve unacceptably high risk. I should need therefore to bring an order before Parliament (requiring affirmative resolution) giving power to establish an Interim Policing Commission from 1 April. None of this is easy and it will be far better if we can get the SDLP on side now. But this fallback – which will need at least tacit SDLP assent – would enable us to retain the initiative, safeguard effective policing over the coming months and pave the way for the final transition once election paralysis has disappeared.

CONFIDENTIAL

/LMcC

SKP 16/1/01

Detail

There are conflicting indications of the SDLP's intentions. Mallon seems to be steeling himself to say "no". But others in his party are less sure. Ronnie detected more positive signs at a meeting with the SDLP last Wednesday and again yesterday. And the Catholic Church is now being more constructive following extensive contact with them. Dublin have had their mind on Sinn Féin for the past few days but my sense is that we still have a narrow window of opportunity over the next couple of weeks to make a final effort to get the SDLP on board.

We have been working hard through contacts and the media. **I shall need to play you in with both Hume and Mallon** over the next few days to give them the confidence and assurances they need to take a big political risk. From my conversation with Trimble last Wednesday there is no doubt that SDLP intransigence would make it even harder or impossible for him to sustain support within his party for staying within the Executive. A green delay is not the same as an orange moratorium.

So, the stakes are high. But the SDLP may prove stubborn. So we need a fallback. Our primary responsibility is to protect the people of Northern Ireland by maintaining an efficient and effective police service. This rules out an indefinite moratorium. As 500 RUC officers leave under the early severance scheme over the next three months we are going to be assailed by press stories about declining police numbers, increasing weaknesses in key specialist areas, low morale etc. The RUC has not had a recruitment campaign since 1998 and the Chief Constable's assessment, which I share, is that the next tranche of recruits must join in September/October. This means starting to advertise in April.

INVESTOR IN PEOPLE

CONFIDENTIAL

/LMcC

We need to press on in a way which avoids unnecessarily alienating the SDLP. Triggering d'Hondt simply to produce a Policing Board with nine unionist political nominees and one from the Alliance would undoubtedly do so. Instead I think that we and the Chief Constable should proceed with as much of the reform package as we can in the absence of the new Board. This would include the introduction of the new name, district commands, the restructuring of headquarters, the severance scheme, the brigading of Special Branch and Crime Department and, crucially, the start of recruitment on a 50/50 basis. There are a number of changes which are of particular importance to nationalists which could be part of the package – regulations on lateral entry for Garda officers, the closure of the Gough Holding Centre, preparations for the part time reserve, running down the full time reserve and redeploying some Special Branch support functions.

What would have to wait, in the absence of the Board, is the creation of the district policing partnerships and the introduction of the code of ethics. More problematically, the legislation also requires me to consult the Board before determining the badge and the flag. This would mean introducing the new policing service on the basis of the old symbols. That would deter Catholic recruitments. Instead I believe I would need to take additional powers – this could be by order in council subject to affirmative resolution rather than primary legislation. These would enable me to regulate the symbolic issues after consultation with the Chief Constable, the police staff associations and the political parties. However this would result in pre-Election pain for unionists.

INVESTOR IN PEOPLE

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/LMcC

I believe I should, in any event, need an order in council to create interim accountability arrangements after the proposed abolition of the Police Authority for Northern Ireland on 31 March. Keeping PANI in being for a few more months would be undesirable. We would be placing many elements of the reform package in the hands of such current members of the Authority who chose to stay on – under present legislation we could not require them to step down in favour of a new team. This would undoubtedly taint many elements of the new reform package in the eyes of nationalism. My preferred option, therefore, is to create an interim Police Commission, by order in council, which would have PANI's powers and any others needed to enable it to implement change. In the time available it would not be possible to follow normal public appointments procedures. I should need to talk this through with Dame Rennie Fritchie to explain the very unusual circumstances we face. I shall also need to square Opposition party spokesmen. A small, judiciously selected Commission with an explicitly interim function is likely to be less difficult for the SDLP than retaining PANI or introducing a unionist dominated Policing Board. We may both need to co-opt the SDLP (and possibly the church through Archbishop Brady) to this fallback plan at the right point.

Do you agree? I think we need the fallback in place for announcement the moment the SDLP confirm that they will not nominate to the Board for the time being, if that is their decision. There is a lot of contingency work to put in hand.

Kirsten McFarlane

PETER MANDELSON

16 JANUARY 2001

(approved by the Secretary of State and signed in his absence)

INVESTOR IN PEOPLE

CONFIDENTIAL

/LMcC

RESTRICTED

Top JPo
cc JS
AC

FROM: WILLIAM FITTALL
Associate Political Director (L)
16 January 2001

PS/Secretary of State (L&B) cc See Copy Distribution Below

POLITICAL TALKS – EXECUTIVE MANOEUVRINGS

I thought I had better check with OFM/DFM where we stood on two issues which could have a bearing on the conduct of any high level political negotiations involving the Prime Minister and the Secretary of State over the next few days – **arrangements for next week's BIC and the planned all day meeting of the Northern Ireland Executive this Thursday.**

2. Tony McCusker of OFM/DFM told me that active discussions were continuing behind the scenes on who should represent the Executive at the BIC meeting on 23 January. Mallon's clear view is that it is inconceivable that Bairbre de Brun should not be nominated given that drugs is the main topic for discussion. As of last night Trimble was still very reluctant to nominate her (she is correspondingly keen to attend). But Mallon is playing it in a measured way. He has not yet signed the nomination papers himself and has signalled to Trimble that he would like to be helpful. There is a general understanding that the issue has to be resolved one way or another before the Executive meets this Thursday morning.

3. If Trimble concludes that he cannot, politically, nominate de Brun, Tony McCusker thought that there was some possibility of Trimble, with Mallon acquiescence, pressing for next Tuesday's meeting to be postponed – overtly for non-Northern Ireland reasons (the last minute non-availability of the Prime Minister, for example). We noted that this would be a pretty unwelcome outcome given the difficulty of setting up BIC meetings with representatives of all the devolved administrations, the islands and Dublin. But it would be better than a blazing row just as we were trying to deliver a wider political deal.

4. Tony McCusker confirmed that we do not yet know when judgement will be given on the North/South Ministerial case. The next planned sectoral meeting of the NSMC is on 30 January

(waterways). Other sectoral meetings are currently being scheduled in preparation for the next plenary on 2 March.

5. As to the Executive, Tony McCusker confirmed that, exceptionally, this week's meeting was scheduled to begin at 11.30am on Thursday. The members are then due to adjourn to the Culloden Hotel for lunch and a discussion of the proposed review of public administration. The expectation was that this would go on till about 4pm. I said that it was helpful to know this given other political exchanges which were going on though, given the inhibition from No 10, I did not reveal the looming timing clash which, subject to the outcome of this afternoon's meeting with the Irish at No 10, we could be facing.

William Fittall

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Mr Tross, Cabinet Office

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SUBJECT MASTER

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

16 January 2001

Dear Paul

TELEPHONE CONVERSATION WITH GERRY ADAMS

The Prime Minister spoke to Adams by telephone this morning.

Adams began with his usual refrain about the situation being a mess. He sensed the UK Government had no room to manoeuvre. That was also his position. He was baffled and intrigued by why and when the situation had got lost. He felt the problem had set in over the summer between June and September. We had now ended up stuck again on the issue of guns, a reversion to the John Major era. The only way of moving forward was to get back onto OTRs, demilitarisation and Patten.

Adams said it might well not be possible to get the IRA to re-engage with de Chastelain (for reasons he would prefer to explain face to face). His understanding however was that even if the IRA could accept re-engagement, the UK side would demand a specified timetable for implementing and agreeing a scheme. This showed no understanding of the psychology of the people involved. Progress to date had been achieved on the basis of understandings. A formalistic approach that pandered to "Generals" would get nowhere.

The Prime Minister said he was also baffled and intrigued. He could not understand what had happened between the pre-Christmas negotiations and now. We had been under the impression that Sinn Fein were ready to consider a comprehensive package. The reason we ended up coming back to guns was because this was the issue which Sinn Fein/IRA seemed unable to move forward.

Adams said he was not in reality the problem in respect of a comprehensive package. He had been made the problem because he had not been given the manoeuvring space to deliver others. Adams then complained in familiar terms about the UK's alleged failure to follow up on the May agreements. It was as though the May deal had never happened. Perhaps the

Prime Minister had overstretched himself and agreed to a deal which he was unable to deliver through his system. That seemed to be the cause of the current problems. If nothing now happened on demilitarisation in South Armagh, the process would be banjaxed.

The Prime Minister said demilitarisation could happen but only in the context of movement on decommissioning. Adams said the terms that had been proposed by Jonathan Powell were not realistic and would not work. There had to be more of a political process. The Prime Minister said there needed to be a context in which each side felt it could move because of the clear prospect of movement from the other (Adams acknowledged this).

Adams and the Prime Minister discussed when they should meet. The Prime Minister said that time was short. Adams agreed that the final days of the Clinton Presidency should be used to get a good wind behind the process. He was ready to come over to London on Thursday. The Prime Minister said he had been thinking of going over to Belfast. Adams warned that a bout of summitry might raise expectations. Without the solid prospect of a deal, this could end up being counterproductive (including for Trimble). But he acknowledged the need to get things sorted out quickly (and implied he would if necessary engage with the Prime Minister in Belfast). The Prime Minister said he would reflect: he would either see Adams in Belfast later this week or, failing that, in London on Thursday.

Yours ever

Michael

MICHAEL TATHAM

Paul Priestly
NIO

BRITISH EMBASSY WASHINGTON TUE 16 JAN 01 03:16 PG.06

RESTRICTED

MT
cc: JPO
JS
Press

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15 January 2001

Michael Tatham Esq
APS/No 10

Dear Michael,

NORTHERN IRELAND: SAWERS/BERGER MEETING, 15 JANUARY

1. John Sawers discussed Northern Ireland with Sandy Berger on 15 January.

2. John explained that we were very keen to get a deal by the end of the week, not least given the end of the current Administration. We had hoped for something substantial, but Sinn Fein found the decommissioning issue too hard for now. Instead, we were pressing for a mini-deal - a Sinn Fein commitment to re-engage with de Chastelain on an agenda designed to reach agreement on modalities for decommissioning. Jonathan Powell would be in Dublin for talks with the Irish on 16 January. The Prime Minister stood ready to follow up if necessary later in the week.

3. John added that Jim Steinberg had been playing a useful role, making clear to Sinn Fein that unless they were ready to move on re-engagement there could be no deal.

4. Berger noted that Sinn Fein were more apprehensive than the Unionists about the prospects of a Bush Administration. But they needed to understand that Clinton, even as a private citizen, would be capable of taking a shot at them if they did not re-engage.

5. John agreed. The trouble was that Sinn Fein was offering very little right now. The US could help by keeping up the messages to Sinn Fein, and by stiffening the Irish. A deal was still possible this week. Berger said he intended to call Gerry Adams sometime this week to press him to re-engage.

Yours ever

Peter Gooderham

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CC: Bill Jeffrey Esq, Northern Ireland Office
Bob Peirce

From: Michael Tatham
Date: 15 January 2001

PRIME MINISTER

cc: Jonathan Powell
Kate Garvey

I have set up a phone call with Gerry Adams tomorrow morning. He will phone in between 0900-0945.

Following today's talks with the Irish, he is apparently thinking in terms of coming over to London to see you on Thursday. His thinking is that we could pre-cook a deal with Sinn Fein then that we then take to the other parties subsequently. You should make clear that you want to see faster progress and that you are ready to go over to Belfast on Wednesday night. (Peter and Bill Jeffrey think it is worth trying to press the Irish/Sinn Fein to move at this pace.)

E. McGrail

MICHAEL TATHAM

From: **Jonathan Powell**
Date: **13 January 2001**

PRIME MINISTER

cc: **Peter Mandelson**
Bill Jeffrey
John Sawers
Alastair Campbell
Michael Tatham

NORTHERN IRELAND

Following our telephone call, Jim Steinberg called me after his meeting with Sinn Fein. He confirmed what the Irish had said. A bigger deal including decommissioning was no longer on offer. They were prepared however to consider a smaller deal involving re-engagement with the IICD, agreeing that the purpose of the re-engagement was agreement on modalities of decommissioning, and agreement to a timetable by which there would be agreement on modalities.

He had explained that we would be able to offer very little on the other side for this deal. Adams appeared to accept this. He was going to see Peter tomorrow and then wanted to see me before engaging with talks with you on Wednesday/Thursday, which would need to involve the other parties.

Steinberg thought it was important that we made clear to the Irish before they see Steinberg again on Monday what it was we could and could not offer on our side for such a mini deal. In my view it should be the following:

(a) **Security normalisation**: nothing in South Armagh. But it may be worth looking at if there was something easy we could do elsewhere in the Province that we were planning to do anyway. Steinberg thought that would help in securing a deal.

(b) **OTRs:** we can offer to let the 12 former extradition cases return to the UK now that charges have been dropped. We could also consider dropping the other 4 extraditions. We have made it plain too we could not consider legislation in the context of a mini deal.

(c) **Patten**: this is the most difficult. But it must be possible to find some language that does not commit us to do anything in particular other than what we are doing at the moment.

(d) Removing the sanctions on North/South bodies will depend on how we approach Trimble. I think you should think about speaking to him on Tuesday.

The problem with all this is that the Irish and the Americans will now want to persuade us to move as far as possible on our side of the deal having secured a step forward from Sinn Fein. But as long as we are clear about our bottom line that should be not too insuperable.

I am contactable on mobile 'phone.

Monica.

pp **JONATHAN POWELL**

FAXED

cc: MP
JS

From: Bill Jeffrey
Date: 13 January 2001

FAXED

PETER MANDELSON

cc Jonathan Powell

FAXED

NORTHERN IRELAND UPDATE

I met Jim Steinberg, Dick Norland and the Irish in Belfast yesterday evening after Jim's discussion with Sinn Fein. Gallagher, Dalton, O'Ceallaigh and Mansergh had all travelled North for the occasion.

Jim's main conclusion was that the most Sinn Fein could do was to get the IRA to re-engage with the de Chastelain Commission with a view to agreeing modalities or putting weapons beyond use. They weren't prepared, even privately, to say how the putting beyond use would be done or when, but they clearly thought that they could deliver the first step. They were conveniently forgetting the more advanced position they had taken before Chirstmas.

Gallagher – who had spoken to Adams after the meeting with Steinberg – said that was his conclusion too. Adams and McGuinness had obviously been reined in over Christmas. The activists were some months behind them. He thought we should now aim for a medium size deal, with positive re-engagement and if possible a private understanding about when agreement on modalities would be reached.

Steinberg said that Sinn Fein were going to consider their position overnight, but, after initially being rather detached, Adams had agreed to a further meeting

today. He had warned Sinn Fein that if they were offering less they should expect much less from us, particularly on demilitarisation.

I reserved the Prime Minister's and your position. Gallagher would know from the Prime Minister's conversation with the Taoiseach yesterday that he still wanted a more comprehensive deal, and feared that without one Trimble would be unable to hold the position. I would need to consult you and Jonathan would need to consult the Prime Minister before we could agree to lower our sights. I also reinforced what Steinberg had said about less or less. The package we had put together had assumed the big deal. The normalisation element would only be justified in response to a significant reduction in the assessed threat. The same was true of OTRs legislation, although we continued to work on individual cases.

Dalton's advice was to keep pushing for a big deal on the basis that that maximised the chances of getting a worthwhile smaller one.

On the specific issues:

- Steinberg had told Adams that, on the less ambitious scenario, he could imagine us offering a few modest steps and saying that there would be a phased programme of demilitarisation, but not going further than that if they weren't willing to do so;

- Gallagher had picked up the Prime Minister's reference to something on OTRs perhaps being possible even on a smaller deal. I said I was sure that wouldn't include legisation. The general feeling was that OTRs were significant to Sinn Fein more because of

their sense of having been let down on them than because of the intrinsic importance of the issue;

- Steinberg thought Patten was going to be most difficult. Sinn Fein understood that we were not going to legislate before the election and wanted us to commit ourselves now to specific legislative changes after a review. He had told them that wasn't on. The most he could imagine us doing was reaffirming the kind of police service we wanted to see, and expressing willingness to review the outstanding issues in dispute.

The Irish met Sinn Fein again this morning. O'Ceallaigh told me that the mood was better than before. He and Gallagher now thought there were the makings of a deal with three elements on the IRA side: serious engagement with de Chastelain; acknowlegement that the purpose was to agree a scheme; and a private understanding about the time scale. The Irish had been clear that we could offer nothing on South Amagh in return, and had warned that the situation would be very bad if nothing happened. Adams had been worried about Trimble's ability to hold his party even if the IRA did move. Jonathan has had a similar account from Gallagher, and has kept the Prime Minister in the picture.

The plan now is to have a couple of days of negotiations next week, probably Wednesday and Thursday, with Trimble and the SDLP involved in the latter stages. Steinberg is leaving tomorrow morning, but will be back mid-week. The Irish are meeting Adams again on Monday afternoon, and the SDLP on Tuesday. Adams is also meeting Hume on Monday. I don't yet now how Steinberg got on with Adams this afternoon.

My guess is that, as so often in the recent past, the Irish focus is principally on Patten, and that that is why they are dampening Sinn Feins expectations on demilitarisation and OTRs, and telling us they are doing so. I suspect they will be looking for a more advanced statement from Patten that we will find comfortable. I will reflect on this over the weekend, but my main thought now is the obvious one that we could go further if we knew that the SDLP and Sinn Fein were ready to join the Policing Board now, even on a conditional basis.

When you meet Adams tomorrow morning, I think you should:

- express disappointment that a big deal doesn't appear to be on. You and the Prime Minister had set some store by it as a way of putting the whole process on a more secure footing once and for all. The Prime Minister may still want to press for it when he again engages personally in the coming week;

- emphasise that the ideas we have been putting to Sinn Fein in recent weeks were predicated on a big deal, and in particular significant demilitarisation in South Armagh – though it remains our intention – could only be justified as part of such a deal; likewise with OTRs legislation;

- make the point that re-engagement with de Chastelain on the basis described by the Irish is in the IRA's and Sinn Fein's own interests;

- try to discover what Adams will be looking for, particularly on Patten, without giving anything away. As you said to me earlier today, there is no difficulty about us continuing to keep the whole scheme, in a sense, under review, and having a open mind on some of the details, but there are some issues, such as the Board setting up retrospective inquiries, on which we should not give any impression of flexibility.

Monica Jeffrey

pp BILL JEFFREY

NORTHERN IRELAND OFFICE
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email: william.fittall@nio.x.gsi.gov.uk

cc: JS
MT
AC
GS.

Jonathan Powell
Chief of Staff to the Prime Minister
10 Downing Street
LONDON SW1A 2AA

12 January 2001

Dear Jonathan

The Secretary of State wants to send Seamus Mallon the attached draft letter over the weekend setting out more fully than previously the Government's position on possible inquiries in the cases of Finucane, Hamill and Nelson. We are still clearing the text with the Chief Constable so there may be one or two small further drafting changes but they are unlikely to change the message.

The significance of the letter is that over the past few days SDLP contacts have been consistently stressing the importance of this issue if the party is to agree to support the new policing service. Mallon came back from holiday last night and the Secretary of State's judgement is that now is the moment to strike a more positive note. As you will see, the intention is not to shift, in substance, from the Government's current position that any question of an inquiry into one or more of these cases cannot sensibly be addressed until the present investigations and any criminal and disciplinary proceedings flowing from them are completed.

When the SDLP raised the inquiry issue with the Prime Minister during the Clinton visit he responded somewhat sharply so the Secretary of State thought you ought to have the chance to see what he intends to send before it issues tomorrow.

Yours

WILLIAM FITTALL
Associate Political Director

APDL/253

Seamus Mallon MP MLA
Parliament Buildings
Stormont
Belfast BT4 3XX

January 2001

I have been thinking further about what you have said to both the Prime Minister and me about the need to establish the truth in the cases of Pat Finucane, Robert Hamill and Rosemary Nelson if nationalists are to feel confident about supporting the new Police Service for Northern Ireland. A number of your colleagues have been reinforcing the importance of this issue in various discussions and contacts which have taken place over the past few days.

As the Prime Minister and I have made clear, we want the truth to be established and we want those responsible for misconduct or criminal offences, including the deaths, to be brought to justice. That is why we are so anxious not to do anything which could possibly damage any prosecutions or disciplinary proceedings which might result from the separate investigations of Sir John Stevens, Nuala O'Loan and Colin Port. These each offer a realistic prospect both of establishing what happened and of ensuring that justice is done. Agreeing to separate inquiries or reviews at this stage would undoubtedly be prejudicial.

I fully understand, however, the concern that you and your colleagues have about the difficulty in which you would be placed if, for whatever reason, these investigations failed to achieve their objectives. Whilst wishing to make a fresh start in policing I accept that aspects of the past need to be addressed before we can draw a line under them. For that reason we have not ruled out the possibility of a subsequent inquiry in any of these cases. In assessing the need for this the Government would attach great weight to being able to reassure the people of Northern Ireland that the truth was definitively established about incidents of particular concern involving the police.

At this stage it is too soon to conclude what form any inquiry subsequent to the investigations might take. There would in principle be a range of options, up to and including a tribunal of inquiry, depending on the powers which any inquiry might need and the extent to which the focus was on the actions of specific individuals.

I wanted to give you now this more detailed account of my thinking and to set out how the Government intends to proceed in relation to these cases. I stand ready to discuss any thoughts or proposals you have on how best to carry this forward, including further ways in which we can meet the concerns of you and your colleagues, consistent with not prejudicing the present investigations.

PETER MANDELSON

From: THE PRIVATE SECRETARY

SECRET - PERSONAL

NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4QE

John Sawers Esq
Private Secretary
10 Downing Street
LONDON

12 January 2001

Dear John

AHTISAARI/RAMAPHOSA

You wrote to me on 8 January, reporting Martti Ahtisaari's conversation with the Prime Minister that day, in which he asked whether we could agree to the formation of a working level group between the IRA and British side, as proposed by Cyril Ramaphosa, to work on implementation issues. Ahtisaari added that he thought it would be in our interest to involve the military in this. You said that the Prime Minister had indicated in response that he was in favour of the idea in principle and that he had subsequently asked for my Secretary of State's thoughts on how we might best exploit this opening.

We too see some advantage in making contact at local level in order to dispel any possible misunderstandings of normalisation announcements, although you will be aware that, in the recent round of negotiations, we have been doing all we can, by way of offering photographs and grid references of the installations under discussion, to avoid any basis for subsequent charges of bad faith.

What we propose is that Sinn Fein should field a representative who could from time to time meet, say, one of the police's Assistant Chief Constables in charge of a region in which recently announced normalisation measures were taking place, together with the local Army Brigadier. This would fit well with the steps we are taking more generally towards normalisation.

SECRET - PERSONAL

From: THE PRIVATE SECRETARY

SECRET - PERSONAL

NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4QE

FAXED

cc (for) Richard, ab Cheques. 89.

cc: JP

I have done nothing on this as yet. Once your negotiations are over, Bill should or Jonathan should bring Ahtisaari up to speed. You might check whether the MA/CR idea is featuring at all in the present talks.

John Sawers Esq
Private Secretary
10 Downing Street
LONDON

12 January 2001

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AHTISAARI/RAMAPHOSA

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SECRET - PERSONAL

SECRET - PERSONAL

However, my Secretary of State would stress three points.

First, while we would be under no illusions in practice that we were engaging with the IRA, it is important that we should be able to present this as discussion with a Sinn Fein representative, as we currently do in the case of conversations with Adams and Kelly. The IRA remain a proscribed organisation and should not be seen to be talking with impunity to the main agents of law enforcement in the Province. (News of any such meetings would be bound to become public knowledge.) Indeed, it would be wrong of us to expect the police or the Army to engage in discussions with those known only as IRA members.

Second, although Ahtisaari laid emphasis on military involvement and you will see we are proposing that the Army should participate in any meetings, the primacy on matters of security must lie with the police. In that respect, the situation in Northern Ireland is, of course, different from that in South Africa.

Third, my Secretary of State would not want such meetings to become formalised or be scheduled at regular intervals or have any connotation of the security forces being accountable to Sinn Fein for security policy or action. He believes they should take place ad hoc, as the situation requires, and be presentable – if they become public knowledge – as briefing of the kind that would be offered to any political party. So, for example, if the current normalisation package went ahead, the Assistant Chief Constable in South Region and the Brigadier of 3 Brigade might meet a local Sinn Fein representative, to clarify any issues surrounding the demolition of the super sangar at Newtownhamilton. (If the Ramaphosa model is to succeed, it is important that local representation on our side is matched by local representation on the other.) This approach should not only ensure that such meetings are genuinely relevant but also that they are confined to actual briefing and do not develop into local negotiations.

SECRET - PERSONAL

The Chief Constable would be happy to proceed in this way and we believe the GOC would too, although we have not yet discussed it with him. We suspect Sinn Fein might be less willing, despite Adams' comments to Ramaphosa. The leadership are generally wary of the kind of delegation this approach implies and we wonder whether Adams was seeking to hide behind his statement that the Army would be reluctant to talk directly to the IRA. However, that makes it all the more attractive to attempt to put them on the back foot by responding positively to Ahtisaari.

I am copying this letter to Jonathan Powell, as you did yours.

Yours sincerely
Kirsten McFarlane

pp PAUL PRIESTLY

SECRET - PERSONAL

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Yours sincerely
Kirsten McFarlane

pp PAUL PRIESTLY

CONFIDENTIAL AND PERSONAL

cc SA/PS
SA/EARS
A&Press

FROM: BILL JEFFREY
Political Director
12 January 2001
ID.669(B)

Cc Mr Pilling (B&L)
Mr Watkins
Mr Fittall
Mr Kelly
Mr Maccabe
Ms Bharucha
Mr Powell, No 10
Sir Ivor Roberts (Dublin)

PS/SECRETARY OF STATE (B&L)

MEETINGS WITH GERRY KELLY AND DAVID CAMPBELL

I met Gerry Kelly at Parliament Buildings for about an hour this morning. He was as unyielding as Irish accounts of their recent discussions with Sinn Fein had led me to expect. His basic line was that the May agreement had to be the basis of any progress. There was no way the ideas we had put to Sinn Fein before Christmas would run. For Adams and McGuinness to go back to the IRA with a proposal for them to commit themselves to put weapons beyond use, on a timetable, in return for less than had been offered in May, was insulting to the IRA. We had reneged on the May commitments. The Police legislation was unsatisfactory. There had been far too little demilitarisation.

2. I said that I did not accept that we had reneged on our part of the May deal. Despite the differences on detail, we were implementing Patten. The specific normalisation measures which had been promised had been delivered. The May statement had been clear that the follow-through on normalisation was subject to the security threat. Even so, we had indicated that progress by the IRA on putting arms beyond use could reduce the threat sufficiently to enable some significant further measures of normalisation in South Armagh.

3. Kelly said that part of the problem was lack of trust. The Secretary of State was not trusted by republicans. He and others who had met him had been impressed by the Prime Minister, and had, to an extent, sold him to republicans as someone likely to change things. They had also sold the May deal hard. The perception now was that the Prime Minister had reneged on that deal. Other events fed the sense of mistrust, including the confusion over Cloghoge and Fort George, and the grudging approach to OTRs. Although he understood the issue about the Attorney General's position, he himself had become convinced that we were handling OTRs in an entirely tactical way. That impression had been reinforced by the fact that, after all his arguments that both Sloan brothers should have been in the pre-Christmas batch of returners, we had in the end, even on our own logic, favoured the wrong brother. (Note: I would be grateful if Anita Bhuracha could look into this). We should not over-estimate Adams' and McGuinness's influence. They were important figures, but republicans were hard-headed and knew their own minds.

4. I asked whether Kelly was saying in effect that there was no possibility of movement. Was it this specific sequence that was the problem? As the Irish had probably told him, we had given some thought to it since the pre-Christmas discussions. Kelly said rather enigmatically that I should look at the IRA statement in May. What we had proposed went beyond what had been agreed in May. The IRA had twice allowed the dumps to be inspected in the interests of the process, despite the fact that we had reneged on our part of the deal. He and Adams both thought that it was in the IRA's best interests to re-engage with de Chastelain, but they were unable or unwilling to do so. They had said that they would get in touch with the IICD, but were now being presented with a list of requirements without even having discussed the matter with the Commissions.

5. I asked whether the IRA leadership's position had anything to do with a feeling that Trimble was no longer worth supporting, or was determined to bring down the institutions anyway. For what it was worth, that was definitely not my impression. From a number of discussions, I sensed that although there were other voices within his party, Trimble wanted to go into the Election with the institutions intact, and to speak up for the Agreement. If the IRA gave him straw, he would make such bricks as he could. Kelly said that Trimble had handled things badly even from his own point of view. The six-point plan had been crude. Every time he came under pressure, he moved closer to the DUP position. Even so, the republicans' difference was not with Trimble (nor, he added with de Chastelain) but with the Government.

6. I called on David Campbell after the meeting with Kelly. Without going into as much detail as is recorded here, I told him where things now stood. Although there was no sign of movement, I was not despondent, and did not think Trimble should be either. Sinn Fein were doing what they always did, and were playing it long and hard, no doubt in the hope that they could secure more concessions from us. I was sure Trimble was right to create a breathing space of a couple of weeks as he proposed to do at this afternoon's meeting of his party officers. He would be well advised to try and see Steinberg during the course of the day to ensure that his own position did not go by default.

7. Campbell said that Trimble would handle the party officers as he had described to the Secretary of State, resting on the fact that negotiations were still going on and they should therefore not jump to conclusions. He thought it would be quite a difficult meeting, because the UUP review group had just had a meeting with de Chastelain and were in a negative frame of mind. He would let me know how it went. (De Chastelain himself, to whom I spoke later, confirmed that his meeting with the UUP review group had not been easy. They had claimed that the

Commission had now no credibility whatsoever, and was being less pro-active than they had been led to expect by the Secretary of State).

Comment

8. Kelly's position was no great surprise, and the meeting may have taken place solely for the purpose of Sinn Fein being able to say that they had met the British Government this week, as announced by Pat Doherty. Although he did not say that simple re-engagement with the Commission was on – and I was at pains not to ask him directly, since our objective is still a bigger deal – some of what he said could be construed as an objection to the IRA being asked to give a commitment at this stage as to the outcome of re-engagement, rather than to reengagement as such. But I would not read too much into this, since Kelly is not that subtle.

9. I expect to meet Jim Steinberg early this evening to hear how he got on with Sinn Fein this afternoon, and will report separately.

(Signed)

BILL JEFFREY
11 Millbank ☎ 6447 (Castle Buildings ☎Ext.28142)

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

CONFIDENTIAL

John Sawers Esq
Private Secretary to the Prime Minister
10 Downing Street
LONDON
SW1A 2AA

I told Home Office that I was sure the PM would back Jack Straw's decision. Better for the courts to force us into paying compensation than for us to meekly acquiesce.

Dear John,

CLAIMS FOR COMPENSATION FROM PRISONERS INVOLVED IN THE ESCAPE FROM WHITEMOOR PRISON ON 9 SEPTEMBER 1994

The Home Secretary has asked me to alert you to his decision to defend this case which will be heard on Monday 15 January despite some late advice from Counsel that we should settle.

2. Three of the six prisoners who attempted to escape from Whitemoor Prison in 1994 (Gilbert McNamee, Liam McCotter and Andrew Russell) allege that they were physically assaulted upon their recapture and again upon arrival in the segregation unit. NcNamee and McCotter were convicted of PIRA terrorist offences. They were subsequently repatriated to Northern Ireland and released under the terms of the Northern Ireland (Sentences) Act. The convictions for which McNamee's was held in Whitemoor were subsequently quashed by the Court of Appeal. Russell was and still is serving sentences for various armed robberies. A fourth prisoner (also a PIRA terrorist) Patrick McHugh (Magee) also has a claim for compensation which will be heard on 25 January where an application to strike out the claim will be made on the grounds that the matter has not been pursued by the claimant for some time (he, unlike the other three is not legally aided).

3. Ministers had agreed to defend the case. However the Home Secretary then received urgent advice late yesterday evening (copy attached) which detailed a number of concerns Counsel had raised following his viewing of enhanced CCTV footage of the escape which has only just become available and following a statement made by one of the prison officers present in the emergency control room at the time the then Director General and Head of Security of the Prison Service (Derek Lewis and Phillipa Drew) arrived at the prison.

4. The enhanced footage could lead the court to conclude that there is no credible explanation for some of the injuries suffered by the prisoners. The Prison Service's view is that the prisoners' injuries were sustained during the escape attempt (eg falling from the wall).

5. The statement from one of the prison officers present in the emergency control room could be regarded as inconsistent with the Prison Service's evidence as to how the police took possession of the tapes which recorded the escape. The officer's statement challenges the view that the police took possession of the tapes from the recording machines in the control room. He claims that he was requested to hand over the tapes to the then Director General of the Prison Service when he arrived in the control room. However the Prison Service believes that these accounts can be reconciled and steps are being taken to contact Mr Lewis and obtain his account. The footage on the tapes is not unbroken and is interspersed with other footage.

Treasury Solicitors have told our legal advisers that there is some indication that the footage had been edited.

6. The Home Secretary has discussed Counsel's concerns with Home Office legal advisers and the Director of High Security Prisons prisons and concluded that on public policy grounds we should continue to defend the case. His view is that these prisoners were among the most dangerous and violent men held in the Prison Service estate at the time. The officers who recaptured them were bound to be highly apprehensive and in fear of their lives during the operation. Whether or not they knew that an officer had been shot during the escape, they could have had a reasonable expectation that the prisoners were armed. The officers had demonstrated great bravery in their actions. The Home Secretary hopes that the court will take this into account when reaching a view on whether reasonable force was used during the operation. He is very doubtful that even if we did settle the case, the concerns raised by Counsel over some of the evidence could be kept confidential.

7. I have attached a note summarising the Home Secretary's discussions with legal advisers and officials which also sets out some further actions. Pam Teare in our press office will be drawing up lines to take and will keep No 10 and NIO press offices informed.

8. I am copying this letter to Paul Priestly (NIO) and Richard Abel (Cabinet Office).

Yours ever,

Steph

STEPHEN HARRISON

From: Stephen Harrison
PS/Home Secretary

Tel 020 7273 2095

cc: Paul Boateng
Lord Bassam
Sir David Omand
Martin Narey
John Warne
David Seymour
Phil Wheatley
Brodie Clark
Steven Bramley
Clare Checksfield
Pam Teare
Lindsay French
Justin Russell
Ed Owen

12 January 2001

Peter Atherton

CLAIMS FOR COMPENSATION FROM PRISONERS INVOLVED IN THE ESCAPE FROM WHITEMOOR PRISON ON 9 SEPTEMBER 1994

The Home Secretary discussed your submission of 11 January with you and Steven Bramley this morning. The Home Secretary decided as a matter of public policy that we should defend this case. The following further actions were agreed:

(i) you will contact Derek Lewis and Phillipa Drew to obtain their recollection of events in the control room regarding the handling of the video footage of the escape. You will also speak to the secretaries to the Learmont/Woodcock Inquiries to determine whether they had access to the same video footage as was now before the court;

(ii) the Home Secretary agreed with Steven Bramley that there was a need to identify an audit trail of the handling of the video footage. I would be grateful if Sir David Omand (or in his absence John Warne) can provide advice as to whether this should be commissioned as a Prison Service investigation or whether it should be conducted by someone outside the Prison Service (supported by appropriate technical advisers from the Prison Service as necessary);

(iii) Pam Teare will provide lines to take for use during the hearing and after the verdict;

(iv) you will speak to Treasury Counsel to set out your description of a possible scenario on the handling of the tape in the control room which Counsel could use in the hearing if necessary.

2. The Home Secretary's view is that the prisoners were among the most dangerous and violent men held in the Prison Service estate at the time. The officers who recaptured them were bound to be highly apprehensive and in fear of their lives during the operation. Whether or not they knew that an officer had been shot during the escape, they could have had a reasonable expectation that the prisoners were armed. The officers had demonstrated great bravery in their actions. The Home Secretary hoped that the court would take this into account when reaching a view on whether reasonable force was used during the operation. Even if we did settle the case,

he did not think that the concerns raised by Counsel over some of the evidence could be kept confidential.

3. Steven Bramley explained that the claimants were unaware of Officer Brown's statement about the handling of the tapes in the control room. He also said that the enhanced images produced from the video footage could lead the court to conclude that there was no credible explanation for some of the injuries suffered by the prisoners eg McNamee's head wound.

4. On the handling of the tapes in the control room, you said that Brodie Clark, the governing Governor at the time, had no recollection of Officer Brown's description of events. You thought it inconceivable that a Director General and Head of Security on arrival at a prison following such events would not ask to see the video footage. It did not appear that a log was kept on the movement of the tapes. Steven Bramley noted that the footage handed over to the police was not unbroken and was interspersed with other footage. Treasury Solicitors had told him that there was some indication that the footage had been edited. You explained that there may be operational reasons for the format of the tapes (eg old footage may not have been wiped before the tapes were used to record the incident in question). It was possible that Officer Brown was asked to secure the tapes and hand them to the Director General who then returned them after viewing them. The police could then have taken possession of them. Officer Brown's account was not necessarily inconsistent with the police evidence. You could confirm that there were no editing facilities in the emergency control room.

5. In a subsequent discussion without the Home Secretary you agreed to speak to Kathryn Barlow at Treasury Solicitor's to explain your possible construction of events in the control room from the facts available and your operational experience.

Stephen Harrison

STEPHEN HARRISON

CONFIDENTIAL

Gary

ATN

Steven Bradley

From: Peter Atherton
Director of High Security Prisons
Room 521 Cleland House
020-7217-6397

11 January 2001

cc: Paul Boateng
Lord Bassam
Sir David Omand
Martin Narey
Phil Wheatley
Brodie Clark
Brian Butler
George Houghton
Clare Checksfield
Lindsay French
Ed Owen
Justin Russell
Bob Perry
(Whitemoor)

Home Secretary

CLAIMS FOR COMPENSATION FROM PRISONERS INVOLVED IN THE ESCAPE FROM WHITEMOOR PRISON ON 9 SEPTEMBER 1994

Issue

Whether to settle these proceedings prior to the trial which is due to commence on Monday 15 January given the further advice now received from Counsel.

Timing

2. Extremely urgent. Treasury Solicitors cannot guarantee to successfully withdraw from the case unless a decision is made by mid-morning on Friday 12 January.

Recommendation

3. Counsel is now very pessimistic about the chances of successfully defending this case. His firm recommendation is to settle these proceedings before trial. To do otherwise would make public allegations that the Prison Service has mistreated prisoners and cast doubt on the integrity of Prison Service evidence. Treasury Solicitors hold some hope of negotiating a confidential settlement to reduce the possibility of adverse publicity.

Summary

4. Since the previous submission to Paul Boateng of 4 January relating to this trial Counsel has had the opportunity to review all the evidence including: video

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footage of the escapes, the forensic pathologists reports both from the claimants and our own expert and some new evidence. It is clear that it is now difficult to counter the claimants Forensic Pathologist evidence that the injuries sustained by the escapees were consistent with blows such as from batons, punches and kicks.

5. Counsel has also discovered that there is a vital 8 minutes of video footage missing from the recordings of the escape which would have revealed how the officers apprehended the escaping prisoners. This had not previously been known to me.

6. Finally, an officer has come forward with new evidence that he was instructed to secure the video tapes from their recording machines shortly after the escape had concluded and pass them to the then Director General. This conflicts with police evidence on how they had secured the video tapes.

Consideration

7. Three of the six prisoners who escaped from Whitemoor in September 1994 have brought action against the Prison Service alleging that they were assaulted by staff during and after their recapture.

8. The previous submission of 4 January to Paul Boateng was very optimistic about the chances of successfully defending this case. Since this submission was made Counsel has held a case conference at Whitemoor and has reviewed more of the evidence available to the claimants including video footage of the escape and the forensic pathologist reports. In the light of this evidence Counsel has "very grave concerns as to the prospects of defending this action successfully". Counsel expresses four main concerns:

(a) Mr McNamee

9. In the case of Mr McNamee our own Forensic Pathologist has reported that the injuries caused to him were consistent with those from a blunt instrument such as a baton and blows such as from kicks and punches. The other explanation put forward by the Pathologist was that the injuries could have been consistent with a fall. Prison Service evidence was that Mr Mcnamee was the last prisoner over the perimeter wall and fell whilst climbing down from the wall. This was the position until recently.

10. Whilst the video does show that the last man over the wall landed heavily Counsel, having reviewed the video evidence is clear that Mr McNamee was not the last person over the wall, there is no footage of him falling and furthermore he was clearly shown running along the perimeter road after climbing the wall and showed no indication of injuries at that time. He was being pursued by officers with batons drawn. After he was re-captured he showed a clear head injury. Whilst there is still the Prison Service evidence that McNamee was "rugby tackled" when captured and the possibility that the injuries were sustained then, Counsel is clear that the judge is unlikely to be convinced by this line of argument given the

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nature of the injuries and the inconsistencies in evidence relating to the fall from the wall.

(b) Mr Russell

11. The submission of 4 January highlights the concern in this case. Our own Forensic Pathologist has difficulty in explaining Russell's injuries. Bruising and grazing are said to be consistent with a blunt impact such as a punch or with a hard surface more in keeping with a direct blow such as a kick. As with McNamee, the video evidence shows no evidence of injury after the outer perimeter wall has been scaled which rules out this as a source of injury. Counsel's view is that "in the absence of some alternative reasonable explanation, and bearing in mind the expert evidence, a judge is likely to find, on a balance of probabilities, that the injuries were caused in a manner in which Russell alleges."

(c) Missing 8 minutes of video footage

12. Having looked at police evidence from the criminal prosecution of the escapees and the video footage counsel has noted that there is an 8 minute section of video footage missing. This has only just come to my attention. The explanation of this from the Prison Service is that this section of footage was recorded by an inexperienced operator who failed to press the necessary buttons and activate the relevant camera. By an unfortunate coincidence this is precisely the video footage that would have recorded the recapture of McNamee and Russell and the actions by the Prison Officers. Counsel is concerned that the Judge would find the Prison Service explanation unconvincing when taken together with the all the other facts and that this casts yet more doubt on the Prison Service defence.

(d) Statement made by Officer Brown.

13. In the last few days a Prison Officer has come forward to say that shortly after the escapes he was instructed by the Governing Governor at Whitemoor to secure the video tapes of the incident and hand them to the Director General at the time who had arrived at the prison. This conflicts with police evidence that they took the original video tapes from the machines after ascertaining from each camera operator that the tapes were the originals and had not been removed. This new evidence has not been explored in detail and the Governing governor at the time has no recollection of this happening but if it came out as evidence at court it would create a further severe difficulty for the defence of the case. This is not covered in the account by Counsel attached and Treasury have asked Counsel for a further urgent submission on this aspect but this has not yet arrived.

14. Given the above facts the very firm advice of Counsel is not to proceed to trial. This is galling in the extreme in the light of the broader circumstances of the escape, not least the fact that a Prison Officer was shot. There is an argument therefore for contesting the case but we could only do so in the expectation that we would lose.

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Handling Issues

15. A decision not to proceed to trial might be expected to have adverse public reaction. Treasury Solicitors are, however, optimistic of securing a settlement where the terms of settlement are confidential. There is no guarantee of this however and the fact that the trial was not proceeding would be public knowledge.

PETER ATHERTON

CONFIDENTIAL

From: Allen Chapman
Directorate of High Security Prisons
Room 618
Cleland House

Tel: 7217 6459

4 January 2001

cc Home Secretary
Lord Bassam
Sir David Omand
Martin Narey
Phil Wheatley
Peter Atherton
Clare Checksfield
Brodie Clark
Steven Bramley
Brian Butler
George Houghton
Ted Kirby
Lindsay French
Ed Owen
Justin Russell
Bob Perry, Whitemoor

Paul Boateng

CLAIMS FOR COMPENSATION FROM PRISONERS INVOLVED IN THE ESCAPE FROM WHITEMOOR ON 9 SEPTEMBER 1994

Issue

Whether to accept the offer of the three claimants to settle the claims for sums of compensation in advance of the trial proceedings. In the case of two this is for £17,500 each with the third seeking a sum of £7,500, all with costs.

Timing

2. Urgent. The trial of the case is due to commence on 15 January. A decision before then is required in order for appropriate instructions to be given to Counsel. The delay in submitting this note is regretted, but we have been awaiting final advice from Counsel on the case, which I now understand will not be forthcoming until early next week.

Recommendation

3. That you advise whether the case should continue to be defended at trial, or that we should seek to settle the matter with an offer of sums of compensation commencing, hopefully, at a lower level than that being sought by the three claimants. Either course of action is likely to create publicity. Our view and, I understand that of the staff at Whitemoor, is that the case should proceed to trial.

Summary

4. The submission of last November (copy attached at Annex A) outlined the latest position with regard to the claims made by four of the six persons who attempted to escape from Whitemoor prison in September 1994. The trial, which is due to commence on 15

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January 2001, will now deal only with three of these claims (Russell, McNamee and McCotter). The claim from the fourth person (Magee) is due to be heard at the Central London County Court on 25 January, where an application to strike out will be made on the grounds the matter has not been pursued by the claimant for some time.

5. The evidence acquired during the preparation of the case offers a strong defence to the claim. The only possible difficulty it appears we may have is in respect of a recent review of the injuries sustained by the three claimants, undertaken on our behalf by Dr David Rouse, a Home Office pathologist. His report (Annex B) suggests that some of the bruising to the face sustained by one of the three prisoners (Russell), is suggestive of this being caused by a punch rather than by other means. Similar type injuries do not appear in respect of the other two claimants.

6. Advice of Counsel, relayed by the Treasury Solicitor, is that the court could find that facial injuries received by Russell were caused by the deliberate actions of staff and award compensation accordingly.

7. Offers to compromise these cases have been made recently by those acting for the three claimants. In the case of Russell and McNamee, the sum sought in each case is £17,500 plus costs. In respect of McCotter, a sum of £7,500 plus costs is sought. Each claim includes an element for exemplary and aggravated damages.

Consideration

8. Only four of those who attempted to escape from Whitemoor in September 1994 have so far made claims. These are Patrick McHugh (Magee), Gilbert McNamee, Liam McCotter, and Andrew Russell. All except Russell were members of the IRA. The claims submitted allege that, upon their recapture after escaping over the wall at Whitemoor, all were physically assaulted by staff. The claims also allege that, upon arrival in the segregation unit, they were dragged from the van and assaulted before being placed into bare and dirty cells and stripped naked.

9. A medical review of the reported injuries of McNamee and McCotter undertaken by Dr David Rouse, a Home Office pathologist, has concluded that all are consistent with either the escape attempt itself or the subsequent detention of the men. There is no suggestion of injuries being sustained as a result of punches or other examples of unlawful force. In the case of Russell who, like the other two had various recorded injuries, Dr Rouse has concluded that one, namely a bruise to the right eye, is more likely to have been caused by a punch (Item 7, page 4 of the report). A mark on the face (Item 8) may also have been caused by contact with a hard object such as a kick. Dr Rouse does not, of course, attempt to speculate on whether the punch/kick was deliberate or accidental.

10. In the light of the report of Dr Rouse, the view of Counsel is that there is a possibility of the court finding that Russell was the subject of an assault by staff and award compensation accordingly. Counsel is, however, satisfied that the same possibility does not exist in the case of the other two.

11. The original claims submitted by all three were for compensation payments of £50,000 each. Recently Russell and McNamee have offered to compromise their claims for a sum of

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£17,500 each. McCotter has made a similar offer to compromise the claim, but in his case, for a sum of £7,500. No reason for this level of offer has been given, but it is assumed that those representing the three accept that there are some weaknesses in what is being alleged by them. The issue for decision is whether to agree to a settlement in advance of the trial and attempt to seek to negotiate a lower sum, despite the adverse publicity this course of action will attract, or to pursue the matter to trial and await the decision of the court, which again might well find against the prison service, at least in respect of one claim. It is important to note that, in the cases of McNamee and McCotter, the likely value of the respective claims purely for personal injury (ie excluding and claim for exemplary or aggravated damages) would be very modest and probably be no more than £2,500 each. In the case of Russell, a pure personal injury figure (erring on the side of caution) would be no more than £5,000.

12. Of the three cases, only that of Russell contains an element of doubt and that is in respect of one particular injury only. It is considered that to seek a settlement at this stage could imply the acceptance of the allegations made by all three against staff. Furthermore, it may well send the wrong message to staff who, during the course of this incident, placed themselves at considerable risk in bringing this escape attempt to a successful conclusion. One member of staff did, of course receive a gunshot wound during the escape. By taking the matter to court, it is accepted that the prison service do run the risk of losing. However, even if that was the result it will at least offer the service an opportunity to put their side of the argument in public.

13. The trial is expected to last for up to three weeks, and Whitemoor have made arrangements for the attendance of the relevant staff (some of whom are reported to be a little concerned about their safety) to attend the hearings in London. Despite that concern, the staff are firm in their willingness to give evidence in court and defend their actions. Arrangements for counselling services to be provided to staff are also in hand.

14. It is our view that after so much effort in preparing this case for trial, these proceedings should be allowed to continue and the claims be defended, without any attempt to offer any form of compromise.

Handling

15. Given the location of the trial, which will be in London, the background of the claimants and the incident itself, this case will generate media interest especially when judgement is delivered. Lines to take will be prepared in due course.

Allen Chapman

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Annex A

From: Allen Chapman
Directorate of High Security Prisons
Room 618
Cleland House

Tel: 7217 6459

27 November 2000

cc Home Secretary
Lord Bassam
Sir David Omand
Martin Narey
Phil Wheatley
Peter Atherton
Brodie Clark
Brian Butler
George Houghton
Clare Checksfield
Lindsay French
Ed Owen
Justin Russell
Bob Perry, Whitemoor

Paul Boateng

CLAIMS FOR COMPENSATION FROM PRISONERS INVOLVED IN THE ESCAPE FROM WHITEMOOR ON 9 SEPTEMBER 1994

Issue

None. This note is for information only.

Timing

2. Routine.

Recommendation

3. That you note a date has now been fixed for the commencement of the trial of three of those claiming compensation for injuries sustained during their attempted escape from Whitemoor prison.

Summary

4. The submission of last December (copy attached) reported that two claims for compensation had been received and two more were expected. Of these four, three are listed for trial at the High Court commencing 15 January 2001. The claim from the fourth person is due to be heard at the Central London County Court on 25 January, where an application to strike out will be made.

5. The claims, which will be strongly defended, are bound to lead to media interest. The receipt of the initial claims caused press interest at the time.

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Consideration

6. Only four of those who attempted to escape from Whitemoor in September 1994 have so far made claims. These are Patrick McHugh (Magee); Gilbert McNamee, Liam McCotter; and Andrew Russell. All expect Russell were members of the IRA. The claims allege that, upon their recapture, all were physically assaulted by staff. The claims also state that, upon arrival in the segregation unit, they were dragged from the van and assaulted before being placed into a bare cell and stripped naked.

7. The subsequent report into the escape, conducted by Sir John Woodcock, referred to the bravery of those involved in the detention of the six, given that one prison officer had been shot and further rounds fired from a gun. Subsequent police enquiries revealed nothing untoward regarding the conduct of prison staff.

8. The claims from McNamee, McCotter and Russell are due for trial at the High Court commencing 15 January 2001. It is expected that the proceedings may continue until 2 February 2001. It is understood the plaintiffs have submitted 15 witness statements in support of the claim. It is possible that some 35 witnesses (including police officers) will be called on behalf of the Prison Service. Final decisions on the number of witnesses to be called will be taken closer to the hearing.

9. In respect of the claim from McHugh (Magee), he did lose his legal aid earlier this year and has since failed to contact the court. An application has therefore been made to the Central London County Court to have the claim struck out on the basis the claimant has taken no steps in the matter and is outside the jurisdiction of the court. That hearing has been listed at the County Court for 25 January 2001.

10. A further submission reporting developments will be made closer to the hearing date.

Handling

11. Given the location of the trial, the background of the claimants and the incident itself, this case will generate media interest especially when judgement is delivered. Lines to take will be prepared in due course.

Allen Chapman

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THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

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Allen Chapman Esq
Director of High Security Prisons
Support Unit
Room 618
Cleland House
Page Street
LONDON SW1P 4LN

Please quote: L98/5641L/KYB/C2

Your reference:

Date: 10 January 2001

ALSO BY FAX ON 7217 6133

Dear Allen

RE: RUSSELL, McNAMEE AND McCOTTER -v- THE HOME OFFICE

I write further to the conference with James Turner QC of Counsel at HMP Whitemoor on 8th January. I enclose herewith a copy of Mr Turner's Advice faxed to me this morning. You will note that since the conference the Claimants have made available to us the compilation video and enlarged stills taken from that video. Certain matters revealed by those stills have considerably deepened Mr Turner's concern on the question of liability and this is reflected in the enclosed Advice. Mr Turner firmly advises that these claims should be settled without a hearing.

I do, however, emphasise that I have asked Mr Turner to prepare a supplemental Advice dealing in further detail with what I believe to be very significant difficulties in the Home Office's evidence as to the completeness or otherwise of the video evidence which is available. My concerns in that regard were deepened by information provided at the conference by Mr Rhett Brown. Katherine Awadalla and myself spent a substantial part of yesterday looking through various items of documentation to see whether they supported Mr Brown's account of events on the night of 9th September 1994, or not. Regrettably, I fear that the documentation available strongly suggests that Mr Brown's account raises even more difficulties for the Home Office so far as video evidence is concerned.

Therefore, subject to Counsel's supplemental Advice, which I will forward to you as soon as it is received, I think it very likely that the arguments in favour of settling these claims before trial have become imperative, rather than merely sensible. I have enclosed a copy of my letter to Counsel requesting a supplemental report, which I trust indicates the nature and extent of my concerns.

Barrie McKay - Head of Personal Injury Group
Lee John-Charles - Team Leader

INVESTOR IN PEOPLE

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IN THE HIGH COURT OF JUSTICE Case No. HQ0001951
QUEEN'S BENCH DIVISION

Between:-

(1) ANDREW GRAHAM RUSSELL
(2) LIAM McCOTTER
(3) GILBERT THOMAS PATRICK McNAMEE

Claimants

-and-

THE HOME OFFICE

Defendant

OPINION

1. In this matter the Home Office faces claims for damages (including aggravated and exemplary damages) made by the three Claimants in respect of allegations of assault, trespass to the person and misfeasance in public office by prison officers. The claims relate to the aftermath of the armed escape by six prisoners from Whitemoor prison during the evening of 9 September 1994. The Claimants were three of the escapees. Each of them alleges that after recapture he was unlawfully beaten by prison officers and that he was further beaten and badly treated upon his return to the prison.

2. I have been retained as leading counsel for the Home Office for the trial of this matter, with Mr Nicholas Ainley, who has dealt with previous aspects of the matter, as my junior. The trial is fixed to commence next Monday and it is estimated that it will last for three weeks. It is only relatively recently that I

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have been supplied with what were regarded as the core papers in the case, and even more recently that I have been supplied with the reports of the forensic pathologists who have been instructed (one for the Claimants and one for the Defendant), and with a considerable quantity of other documents that I asked to see after I had read the core papers. I spent all day on Monday of this week visiting Whitemoor prison in order to view various relevant locations and to conduct a consultation. Yesterday afternoon, for the first time, I was able to watch a compilation of video recordings of parts of the escape, made by security cameras at the prison, and to see a number of enhanced still photographs produced from the video recording on behalf of the Claimants. Mr Ainley was with me when I viewed the video recording and saw the enhanced still photographs.

3. In the light of what I have now seen I have very grave concerns as to the prospects of defending the action successfully, certainly in respect of some of the allegations made by the Claimants Russell and McNamee. I shall explain my concerns in relatively summary form below.

4. At the time of their escape from Whitemoor all of the Claimants were serving very long sentences of imprisonment and had been categorised as requiring detention in conditions of the highest security. Russell was (and still is) serving sentences for various armed robberies and had previously escaped from another prison. McNamee and McCotter had been both convicted of IRA terrorist offences. At some time after their recapture they were repatriated to Northern Ireland and, as I understand it, then released under the "Peace Agreement". However, the conviction(s) in respect of which McNamee had been held at Whitemoor were subsequently quashed as unsafe by the Court of Appeal because of concerns about information that had not been made available to his lawyers at his trial.

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5. Certain basic facts are not in dispute. After the six escapees had successfully scaled the perimeter wall of the prison, and slid down a rope to the ground outside, they were pursued by prison officers, some of whom had dogs. At a fairly early stage in this chase, whilst still running alongside the perimeter wall of the prison, McNamee was separated from the others and was brought to the ground by some of the prison officers. His hands were then put in handcuffs behind his back, he was escorted back into prison through the main gate and taken to a cell in the segregation unit. The pursuit continued in respect of the other five escapees and police officers arrived to assist. The five prisoners ran some distance across open country before they were eventually confronted by a group of police officers and prison officers near a disused railway bridge. At that point Russell, McCotter and one other (Magee) effectively gave up the chase. At the insistence of the officers they lay down on the ground, their hands were handcuffed behind their backs and their shoes were removed. They were then watched over by prison officers before being eventually placed in a police van and transported back to the prison, where they, like McNamee, were placed in individual cells in the segregation unit. (It should be noted that Magee has also brought proceedings in respect of the manner in which he alleges that he was treated, but his claim has not been joined in the present proceedings and it is currently the subject of an application to dismiss for want of prosecution, it having been dormant since he lost legal aid cover. In the course of the escape, whilst still inside the prison, he had fired a gun, resulting in a relatively minor injury to a prison officer when the bullet ricocheted.)

6. The remaining two escapees were recaptured by the police some time later, with the assistance of thermal imaging equipment and a helicopter. They were taken to, and held at, a police station for some time before they were also returned to the prison and housed in the segregation unit. No complaints in respect of mistreatment have been made by them, and in the present proceedings the Claimants seek to rely upon this fact (and upon the absence of

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any unexplained injuries sustained by those two other escapees) as demonstrating a distinction between the alleged general behaviour by prison officers and the behaviour of police officers towards those who had escaped from the prison.

7. I turn now from the matters that are agreed to those that are in dispute. McNamee alleges that he was brought to the ground by a hard blow, from what he believes to have been a truncheon, to the back of his head. He alleges that it was after this that he was handcuffed and that he was then hit and kicked numerous times, the most significant of which blows was from a solid object to the front left of his head. However, the prison officers who were involved in, or who witnessed, the recapture of McNamee dispute his version of events. The accounts that they give are not all entirely consistent with each other, but none of them refer to any blows being struck with a truncheon and some of them specifically deny that any truncheon was used on McNamee. Different degrees of struggle are described by them, but in essence the common theme of their statements is that McNamee was rugby tackled to the ground, where a Stanley knife was found in his possession, and after which he was subjected to only approved control and restraint methods, then handcuffed and escorted to the prison. It is accepted by many of the prison officers that when McNamee was lifted from the ground he was bleeding heavily from the head, but at least one of them asserts that his head had appeared wet during the chase and it is suggested that he must have injured his head in the course of the escape. Indeed, certain officers say that McNamee was the last man down from the perimeter wall and that he fell heavily; the suggestion being that this is how his head was injured.

8. Russell alleges that when he was recaptured and handcuffed by the prison officers he was punched and kicked, most significantly to the area of his right eye, and was assaulted in a variety of other ways. He alleges that he was

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further assaulted by prison officers in the van on the way back to the prison and still further assaulted on entering the segregation unit. However, the prison officers concerned in the recapture of Russell, his transportation back to the prison and his entry to the segregation unit all deny that he was struck at all and they assert that the only force used upon him at any time was in accordance with proper control and restraint methods.

9. McCotter alleges that when he was handcuffed on the ground after his recapture he witnessed assaults taking place upon Russell. He does not allege that he was assaulted himself whilst awaiting transport back to the prison, but does allege that he was then struck on various parts of his body on a number of occasions by prison officers whilst in the van that took him back to prison. He alleges that he was further assaulted on entering the segregation unit. However, the prison officers concerned in the transportation of McCotter back to prison and his entry to the segregation unit all deny that he was struck at all and they assert that the only force used upon him was in accordance with proper control and restraint methods.

10. All three Claimants make various complaints about the manner in which they were treated in the segregation unit, which complaints include further allegations by McNamee of blows being struck. However, the officers who dealt with the Claimants in the segregation unit all deny any impropriety. It is an agreed fact that the Claimants were held in handcuffs for some hours even after they had been housed in the segregation unit, but this is explained by the need to ensure that any traces of material relating to the use of firearms that might remain on the hands or clothes of the Claimants should be preserved until swabs had been taken for the purpose of testing by forensic scientists.

11. If matters stopped there and it was simply a case of whether the prisoners should be believed rather the prison officers I would not envisage a great deal

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of difficulty in successfully defending the case. Unfortunately, however, there is other support for certain of the Claimants' allegations.

12. It is common ground that when the Claimants were seen by a G.P, who was called to examine them soon after their return to the prison, they were found to have sustained certain injuries. Those injuries were also seen by Dr Jerreat (the forensic pathologist instructed on behalf of the Claimants) a few days later, on 13 September 1994, and some of the injuries can be seen on photographs taken by the police, also on 13 September 1994. Many of those injuries are clearly explicable by reference to the escape (e.g. bad rope burns on the hands and miscellaneous relatively minor scratches, bruises and grazes). Other injuries are equally explicable by what, in the particular circumstances, might well be regarded as a reasonable degree of force used in connection with the recapture as described by the various prison officers (e.g. grazes to faces, handcuff bruises to wrists, and bruises caused by gripping). However, there were other injuries that are not so easily explained.

13. In respect of Russell, Dr Jerreat identifies a number of injuries, some of which have, in his opinion, most likely been caused by punches, or possibly kicks. Most of such injuries relate to Russell's right eye and the surrounding area of his face. Those injuries can be seen clearly in the photographs that were taken by the police. Dr Rouse, the forensic pathologist instructed on behalf of the Home Office, having seen the report of Dr Jerreat and the police photographs and the pleadings, has provided "innocent" explanations for certain of Russell's injuries, but in respect of others has made the following remarks in a recent report:-

> The bruising to the right eye is consistent with blunt impact contact such as from a punch. In view of the sparing of the eyebrow ridge itself this bruising is not likely to result from a flat surface impact such as the ground. The bruising to the left eye whilst

consistent with an additional blow is more likely to result from tracking across the midline from the bruising to the right eye.

The area of bruising to the right cheek represents a further area of blunt impact. However the area of abrasion just lateral to the right nostril suggests contact with a hard surface such as from a kick.

The grazing and bruising to the right shoulder is consistent with contact with a hard surface and whilst theoretically possible that it occurred during a fall to the ground is more in keeping with a direct blow such as from a kick.

14. What is said by both forensic pathologists in respect of the certain of Russell's injuries is therefore consistent with what has been alleged by Russell himself, although Dr Rouse does also point out that he would have expected rather more injuries than were found if the whole of Russell's account was correct. The difficulty that presents itself in putting forward a defence to Russell's allegations is that there is no positive explanation to be found in the defence evidence, as to how Russell could have sustained the relevant injuries. There is no suggestion that he had any injuries prior to the escape. The enhanced photographs of the escapees, taken from the video film of events outside the perimeter wall, do not disclose any injuries to Russell. Therefore, he must have sustained those injuries at some time between the start of the pursuit outside the perimeter wall and the time that he was seen by the G.P. who was called to the prison a relatively short time after his recapture. The accounts given by defence witnesses of Russell's apprehension, return to prison and treatment in the segregation unit provide no explanation as to how the relevant injuries could have been caused. Those injuries must have been caused in some way, and in my opinion, in the absence of some reasonable alternative explanation, and bearing in mind the expert evidence, a judge is likely to find, on a balance

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of probabilities, that they were caused in the manner in which Russell alleges. The alternative would be to engage in a significant degree of speculation (e.g. that his eye impacted somehow with an object on the ground when he was being restrained while awaiting transport, or accidentally injured in the course of transit) and/or to conclude that the prison officers used more force than they admit to having used and that they did so with reasonable cause, which is contrary to the evidence of the defence witnesses.

15. The report of Dr Rouse in respect of Russell has not been served on the Claimants but his report in respect of the other Claimants has been served. If he is called as a defence witness it is inevitable that he will be asked about the injuries to Russell. If he is not called as a defence witness the evidence of Dr Jerreat will be the only expert evidence from a forensic pathologist.

16. In respect of McNamee, Dr Jerreat also identifies a number of injuries, some of which, in his opinion, were consistent with blunt impacts from objects. In particular, he describes two injuries to the scalp, each of which had required six sutures and which he has said "were linear lacerations with no significant associated grazing. They were most likely to have been caused by blows from an instrument such as a baton." These injuries are clearly shown in the photographs taken by the police. In respect of ten other injuries Dr Jerreat has said that they "were typical of impacts by blows from punches, kicks or the tip of a baton. I found no evidence of parallel linear bruises that could be the result of a blow from the shaft of a baton."

17. Dr Rouse, the forensic pathologist instructed on behalf of the Home Office, having seen the police photographs in respect of McNamee and the pleadings, but not having seen the report of Dr Jerreat, has provided "innocent" explanations for certain of McNamee's injuries, but in respect of others he made the following remarks in his original report (dated 13 December 2000):-

The linear cuts to the forehead and scalp result from a blow by or onto a linear object such as a police type baton. These would result from two separate blows by such an implement. In the absence of underlying skull fracture or loss of consciousness the amount of force involved could be no more than a moderate strength blow (in a scale of mild, moderate and severe).

The two separate areas of bruising to the thigh are caused by blunt trauma impact to this region. This would be consistent with blows such as from punches, kicks or the use of an implement or as a consequence of a blow by an object as a police style baton (end strike not full length).

The injuries are consistent with a total of two rod like blows to the head, a further two blows to the thigh and further evidence of restraint marks to the arms. The medical evidence would not support the allegations of a more extensive assault involving repeated blows to the head or trunk involving kicks or baton blows.

18. In a subsequent report dated 22 December 2000 (which has been served), made after he had been told of the suggestion that McNamee had been the last man to descend from the wall and had fallen part of the way, Dr Rouse amended the first of the above quoted passages from his original report so as to read:-

> The linear cuts to the forehead and scalp result from a blow by or onto a linear object such as a police type baton. These would result from two separate blows by such an implement. <u>It is also possible for such injuries to result from a fall onto a surface with an edge</u>. In the absence of underlying skull fracture or loss of consciousness the amount of force involved could be no more than a moderate strength blow (in a scale of mild, moderate and severe). [Underlining indicates amendment, but not in the

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report.]

19. What is said by both forensic pathologists in respect of the certain of McNamee's injuries is therefore consistent with what has been alleged by McNamee himself. In what other way could those injuries have been caused? The defence witnesses do not suggest, for example, that it was necessary to strike McNamee on the head with a baton in order to apprehend or control him and there is no suggestion that he had any injuries prior to the escape. The only positive explanation, on the defence evidence, as to how McNamee could have sustained the relevant injuries is that they were caused in some way during the escape, and in particular by a heavy fall as the last man from the wall. This is the basis upon which the defence has been put to date, in accordance with evidence from certain of the defence witnesses. However, the video recording, and the enhanced still photographs from that recording, which Mr Ainley and I have now seen, seem to me to me to demolish that theory.

20. The video recording and the still photographs, in my opinion, clearly show that McNamee was not in fact the last man to descend from the perimeter wall, but that he was one of the first three. This conclusion accords with the opinion expressed by Detective Inspector Deane, who made a statement to interpret the video recording in criminal proceedings that were instituted against the escapees. In any event, the video recording does not suggest to me that the last man to descend from the wall (whoever he may have been) hit his head. Furthermore, the balding head of McNamee can be seen in the video film when he was running along the outside of the perimeter wall, and can be seen even more clearly in the enhanced still photographs. No injury to his head is apparent. A number of prison officers wielding truncheons can be seen in pursuit of him! The actual recapture of McNamee is not shown on the video recording, but his return to the prison, escorted back along the outside of the perimeter wall is shown. The fact that his head has been injured by that time

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is clear. Therefore, the head injury was sustained during an eight minute period outside the prison wall that has not been video recorded. I have to say that I find it to be a very unfortunate coincidence that the actual recapture of McNamee has not been recorded, although the scenes that immediately precede and follow that incident have been recorded. I have seen a statement from a prison officer who was in charge of the Emergency Control Room, from where the video recording was controlled, which asserts that another officer, who was new to the system, failed to press the necessary buttons and so failed to activate the necessary camera, but I am concerned that a judge may find this explanation unconvincing in the light of the fact that the progress of the escape had been recorded smoothly from various different successive cameras along the route up to that point. The Claimant's will no doubt assert that the non-recording of the relevant incident was either deliberate or that it was recorded and subsequently edited out of the recordings that have been produced.

21. The accounts given by defence witnesses of McNamee's apprehension appear to provide no positive explanation as to how the relevant injuries could have been caused. Those injuries must have been caused in some way, and in my opinion, in the absence of some reasonable alternative explanation, and bearing in mind the expert evidence, a judge is likely to find, on a balance of probabilities, that they were caused in the manner in which McNamee alleges. The alternative would be to engage in a significant degree of speculation (for example, that he hit his head twice on the edge of the concrete path in the area where he was brought down) and/or to conclude that the prison officers used more force than they admit to having used and that they did so with reasonable cause, which is contrary to the statements of the defence witnesses.

22. In respect of McCotter Dr Jerreat describes a number of injuries in respect of which it is not to difficult to see "innocent" explanations, but he describes certain miscellaneous (and seemingly minor) injuries to McCotter's legs as

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being typical of blunt impacts by kicks. Those injuries to the legs do not appear to have been photographed and Dr Rouse (who had not seen Dr Jerreat's report on McCotter) therefore makes no reference to them. The existence of such injuries would provide some support for the allegations made by McCotter, but as against this, and as noted by Dr Rouse, the injuries that were found to not appear to bear out the number of kicks and punches that he claims to have suffered. It must also be borne in mind when considering minor bruises and abrasions to legs that McCotter had scaled two walls and run across rough countryside before his recapture and had then been transported back to prison in the back of a police van. If McCotter's allegations stood alone I would not envisage great difficulty in defending his claim successfully. However, if the claims of McNamee and Russell were to be found credible to any significant extent by a judge (as I consider they may well be, on the basis of the evidence available), then that may have an impact on the perception of the judge of the credibility of McCotter.

23. In the circumstances explained above it is my firm view that it would now be sensible to try to settle these proceedings. My advice is that offers in the sum of £5,000 each, together with assessed costs, should be made to Russell and McNamee, but, in the first instance, no offer of settlement should be made in respect of the claim by McCotter. If the offers made to Russell and McNamee were to be accepted (and the Claimant's lawyers will be obliged to consider each offer independently for the purposes of reporting to the Legal Services Commission) I would hope that the Legal Services Commission might then revoke McCotter's legal aid on the basis that the cost of a trial would be wholly disproportionate to any damages that are reasonably likely to be recovered by him. However, if the absence of an offer to McCotter should prove to be a sticking point I would have thought that it would make commercial sense to make an offer of up to £1,000 to him, plus costs, on a nuisance value basis. I do not envisage that the additional costs that would then be assessed as payable

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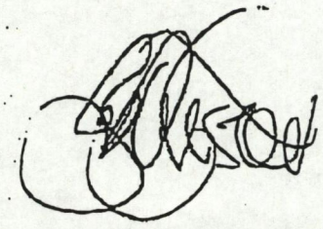
in respect of his claim would add an enormous amount to the costs that would be recoverable in respect of the claims by the others.

24. I consider that the suggested sums of £5,000 are somewhat higher than the amounts that would be awarded on a simple compensation basis for the relevant "unexplained" injuries, but in suggesting those sums I bear in mind the claims for aggravated and exemplary damages and the commercial realities of life, in the context of the additional cost of a three week trial and the desirability of providing the Home Office with some protection in that regard. I also bear in mind the lack of time to engage in further negotiation, given the imminent trial date.

25. I realise that there may be a reluctance on the part of the various bodies and authorities concerned to be seen to be making payments to those who have escaped from prison and that there may be concern as to the possibility of adverse publicity in this regard. However, consideration should also be given to the undesirability of a judge making findings of fact in favour of the claimants and against the defence witnesses and ordering the payment of damages, with all of the adverse publicity likely to be generated by that situation.



1 King's Bench Walk,
Temple,
London EC4Y 7DB.

JAMES TURNER Q.C.

10 January 2001.

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I have read the above Opinion and discussed it with James Turner. I agree entirely with his analysis and with the Advice that he gives.

NICHOLAS AINLEY

5 Essex Court,
Temple,
London EC4Y 9AH.

10 January 2001.

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THE TREASURY SOLICITOR

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The Clerk to James Turner QC
1 Queens Bench Walk Chambers
LDE 20

Please quote: L98/5641L/KYB/C2

Your reference:

Date: 10 January 2001

Dear Mr Turner

STRICTLY PRIVATE AND CONFIDENTIAL

RE: RUSSELL, McNAMEE AND McCOTTER -v- THE HOME OFFICE

I write further to our telephone conversations this morning and specifically our discussion concerning your advice dated 10 January 2001. I enclose herewith further documentation recovered from the *Magee* file. Please refer to the index to those documents herewith.

In our discussion this morning, I explained to you my concerns regarding the further information provided to us at the conference 8 January 2001 relating to the non-existence of video evidence. As a direct result of the information given to us, Katherine Awadalla and myself have carefully considered the enclosed material. The following points appear to be highly pertinent:

(i) The existence of the ECR Contingency Plan and ECR Log Sheets, the latter kept by Prison Officer Marcia Whitehurst (now deceased). It is noted in particular that the log sheets record the arrival of Governing Governor Brodie Clark and the Director General of the Prison Service, Derek Lewis and the opening of the Command Suite. The log also records the arrival of Mr Rhett Brown and the absence of Mr Webster.

(ii) The record of interview with Prison Officer Barry Comer which confirms that on the night of 9 September 1994 he took over duties in the ECR from Prison Officer Bart. Mr Comer also comments on what became of the various tapes made of the escape that evening.

(iii) The record of interview with Prison Officer Michael Fitzgerald outlines the use of the 'Diamond' system and confirms that there were 6 recorders available for use.

Barrie McKay - Head of Personal Injury Group
Lee John-Charles - Team Leader

INVESTOR IN PEOPLE

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(iv) The transcript of the evidence of Prison Officer Neil Pearson given on 22 January 1997 at the Prosecution deals in detail with the question of availability of video evidence. It also shows that the possible involvement of Governor Sydney was a matter under scrutiny at the time of the Prosecution. Counsel will recall that the Claimants' solicitors in the civil proceedings have persistently requested information as to the involvement of Governor Sydney on the night in question.

(v) In the inter party correspondence during the Prosecution and in Prison Officer Comer's Police statement dated 15 January 1996, it is categorically stated that "all video tapes recorded at the time of the incident were seized by the Police".

(vi) The Judgment of Mr Justice Maurice Kay deals substantively but very briefly with the alleged non-disclosure of video evidence and held that this issue would be available for address by the Defence in cross-examination.

(vii) Copies of contemporaneous notes taken by Board of Visitor's members, as previously discussed.

(viii) Copies of police photogarphs of the scene of the escape, some dated 11 September 1994 and others undated.

(ix) Further copies of photographs of inmate injuries (date and provenance unknown, found on the *Magee* file).

(x) Copy of extracts from Gatekeeper's log for 8 and 9 September 1994 which suggest that Mr Brown was not on duty at the Prison during the day of 9 September 1994 and fail to record his return to the Prison later on that evening.

In light of the above, the Home Office is concerned as to the position to be taken on the question of non-disclosure of video evidence and kindly requests that you re-visit your advice specifically to comment in detail on that point. The Home Office also requests that you reconsider the emphasis that you would now wish to place on the need to settle these proceedings without trial.

Your advice received this morning has been despatched to the relevant quarters with an urgent indication that it should be placed before Ministers today. I look forward to receiving your supplemental advice which the Ministers are expecting.

Yours sincerely

KATHRYN BARLOW
for the Treasury Solicitor

Enc

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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

CASE NO HQ0001951

BETWEEN

ANDREW GRAHAM RUSSELL (1)
LIAM McCOTTER (2)
GILBERT THOMAS PATRICK McNAMEE (3)

Claimants

and

THE HOME OFFICE

Defendant

FURTHER BUNDLE OF DOCUMENTS TO BE PLACED BEFORE COUNSEL

Counsel has herewith:

1. Statement of Marcia Whitehurst made to the Police on 20 September 1994
2. ECR Contingency Plan dated 9 September 1994
3. ECR Log sheets dated 9 September 1994
4. Record of an interview with Prison Officer Barry Comer dated 20 October 1994
5. Record of an interview with Prison Officer Michael Fitzgerald dated 1 November 1994
6. Correspondence between the Crown Prosecution Service and Messrs Birnberg & Co regarding the disclosure of security video tapes
7. Witness statement of Prison Officer Barry Comer dated 15 January 1996
8. Judgment of Mr Justice Maurice Kay dated 16 July 1996
9. Copy of contemporaneous notes taken by Mrs Veronica Troughton, Board of Visitors, dated 9 September

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10. Copy of log sheets completed by Mr Savage, Mr Gunn and Mr LeFevre, all Board of Visitors

11. Copy of Police Photographs of the scene of the escape, dated 11 September 1994

12. Copy of Police Photographs of the scene of the escape, undated

13. Photographs of McNamee and Russell, undated

14. Copy of Police Photographs of McNamee (Mr Turner only)

15. Copy of extracts from the Gatekeeper's Logs dated 8 and 9 September 1994

16. Copy of excerpt of transcript from the Prosecution, namely evidence of Prison Officer Neil Pearson given on 22 January 1997.

From: John Sawers
Date: 12 January 2001

PRIME MINISTER

cc: Jonathan Powell
Michael Tatham

NORTHERN IRELAND POLICING: JOHN HUME

Peter Mandelson has suggested you call John Hume early next week to seek his help over policing. Peter is dealing with Seamus, and feels constrained from talking to John Hume in parallel. If we are to make progress on the Policing Boards, John Hume will need to play his part.

Do you want us to set up a call?

Yes let me see him in NI.

John Hume in Strasbourg during PM's visit to Belfast. Phone call.

JOHN SAWERS

CONFIDENTIAL AND PERSONAL

SUBJECT MATTER

bcc JPo
JS
AC
File

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

12 January 2001

Dear Paul

TELEPHONE CONVERSATION WITH THE TAOISEACH

The Prime Minister and Taoiseach spoke by telephone early this afternoon.

The Taoiseach reported back on Irish contacts with Sinn Fein yesterday. There had been a first meeting between officials and Sinn Fein into which the Taoiseach had been brought at a later stage; and a meeting later in the evening (again including the Taoiseach) with Rita O'Hare.

The meetings had been difficult. The Irish had been unable to drag Sinn Fein any further forward. Sinn Fein were still fixated on the May statements. The Taoiseach sensed Adams had not been able to make any progress with the IRA. Adams was evidently in a tighter corner in this respect than he had bargained for.

The crux of the current problem was that the IRA would not re-engage with de Chastelain without having secured something beforehand. But the UK (understandably) could not offer much in return simply for re-engagement. Moreover the Taoiseach had pressed Adams and Rita O'Hare on whether re-engagement would lead to quick movement on the dumps: they indicated that it would not. The most Adams could currently offer therefore was reengagement once he had secured movement on OTRs and other issues. This reengagement might lead to actual decommissioning but over a timescale that was so long as to offer no help to Trimble and to cause big problems for the British and Irish Governments. The Taoiseach had told Adams he had no scope for pressing for more from the UK on this basis.

The Taoiseach sensed a defensiveness on Adams' part about Sinn Fein's failure to honour the May commitment on re-engagement. This was a weak spot on which pressure should be applied.

The only encouraging aspect of the discussions was that when the Taoiseach spoke about finding a fallback holding strategy to see the process through the elections and marching season, Adams had made clear that this was not what he wanted.

Meanwhile, Steinberg was currently in talks with Adams; Gallagher would be joining them later on. Adams had met with "his people" in Dublin yesterday and in Belfast today. It was possible he was holding something back, but it was not obvious what. The picture was gloomy.

The Prime Minister said that Sinn Fein had effectively taken their pre-Christmas proposals back off the table. Either they were being reined back by the IRA or they had calculated they would be better off fighting elections outside the Executive (the Taoiseach doubted the latter interpretation; this was certainly not where Adams was). In response to a question from the Taoiseach, the Prime Minister said it might be possible to exchange movement on OTRs for re-engagement but this would anyway not be enough for Trimble. Trimble's political strategy was based around the promise of securing something tangible on decommissioning. If he were to fight an election (inside or outside the Executive) without any decommissioning, he would be electorally extremely vulnerable. Trimble could easily work out the ground being covered in our current discussions with Sinn Fein. He would know (as would Jeffrey Donaldson) that if nothing was forthcoming on decommissioning, it was because we had failed to move Sinn Fein. This would considerably strengthen his opponents within the UUP. The situation was getting to the point where it was hard to challenge Trimble's arguments about the unreasonableness of working alongside a party that retained its own army - particularly given the information we had about continuing IRA targeting and procurement (the Taoiseach acknowledged this).

The Prime Minister said his assessment was that the only thing that might shift Sinn Fein/IRA was to make them realise that they stood to be blamed for the Executive going down. That was pretty much the reality. Whatever Martin McGuinness claimed, it was not the British Government that had been intransigent. We had delivered on disqualifications (at some political cost) and shown flexibility on OTRs and facilities. We had even tabled proposals for demilitarisation. It needed to be brought home to the IRA that they faced paying a heavy political price for their obduracy. At present Sinn Fein/IRA had the comfort of being generally aligned with the SDLP, Irish and US. If they felt there was a real danger of being isolated, they might reconsider. The position

could be retrieved. The fact that Adams had initially tabled decommissioning proposals indicated there was a debate going on within Sinn Fein/IRA. In the last couple of weeks the debate had swung towards the hardliners. We needed to provide a basis on which Adams could swing the debate back in the right direction. The best means was for Adams to be able to argue convincingly that Sinn Fein's current stance would lead to isolation and blame.

The Taioseach agreed both that the situation had rolled back since Christmas and that it could be changed again for the better. He would contact the Prime Minister again (possibly over the weekend) to debrief on the latest contacts with Sinn Fein.

British Irish Council

The Taioseach said he would like to announce the forthcoming BIC (on 23 January) over the weekend. This might increase the pressure a little bit. The Prime Minister said this was fine (I have alerted Constitution Secretariat in the Cabinet Office).

I am copying this letter to Sir Christopher Meyer (Washington) and Sir Ivor Roberts (Dublin).

Yours ever

Michael

MICHAEL TATHAM

Paul Priestly
NIO

From: THE PRIVATE SECRETARY

Ref 12/1

NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4QE

Top-MT
cc JS
JPo
AC
GS

Michael Tatham Esq
PS/Prime Minister
10 Downing Street
LONDON
SW1A 2AA

11 January 2001

Dear Michael

Billy Armstrong, MLA and member of the Ulster Unionist Party, has written to the Prime Minister about media reports that Martin McGuinness is intending to seek the Prime Minister's active support for the removal of the block placed by the First Minister, David Trimble, on Sinn Fein Ministers' participation in North-South bodies. He also points to comments made by Gerry Adams on 18 December 2000 in which he called on the Irish Government to institute proceedings against the Assembly in the European Court.

Mr Armstrong is on the Executive Committee of the UUP, but is aligned with the anti-Agreement side of the party. He is a member of both the Orange Order and the Royal Preceptory and has served as a part-time RUC reserve constable for 14 years.

Mr Armstrong says that, rather than supporting Sinn Fein and their judicial review of David Trimble's block on Sinn Fein Ministers, the Prime Minister should give positive direction to the peace process by giving no more concessions to republicans who have yet to deliver on decommissioning. He reminds the Prime Minister of his personal hand-written pledges to the people of Northern Ireland in May 1998 (a copy is attached at Annex A) as well as the undertakings given by the various local political parties at Hillsborough in May 2000. Mr Armstrong also calls for the watchtowers along the border to be maintained as, in his view, they are the only defence against republican terrorists

INVESTOR IN PEOPLE

While we understand that Martin McGuinness *has* sought the Prime Minister's active support for the removal of the block placed on Sinn Fein Ministers' participation in North-South bodies, the Prime Minister has made no commitment to intervene. Gerry Adams is also on record criticising the Secretary of State for not intervening. It has always been the Governments' view that the block on Sinn Fein Ministers is a matter for the First Minister, the Deputy First Minister and the Northern Ireland Executive, and it is for them to resolve once the court makes a decision.

With regard to the undertakings given by the various local parties in May 2000, Mr Armstrong is referring to the British and Irish Government's joint statement of 5 May 2000 which outlined the steps needed to ensure the full implementation of the Good Friday Agreement and called on paramilitary organisations to respond positively and demonstrate their commitment to decommissioning. It was this statement and the response of the pro-Agreement parties, as well as the IRA, that enabled the Secretary of State to reinstate the Assembly and the Executive on 29 May 2000.

I attach a draft reply for the Prime Minister's consideration and signature. This reaffirms the Prime Minister's commitment to the promises made in his pledges of 20 May 1998. It also points out that David Trimble's ban on Sinn Fein Ministers is a matter for the Assembly to resolve and that the British and Irish Governments will continue to take all the necessary steps to facilitate the decommissioning process. Finally, it reassures Mr Armstrong that any further progress on normalisation will depend on the ongoing assessment of the security threat.

Yours ever

Kirsten McFarlane

KIRSTEN McFARLANE

INVESTOR IN PEOPLE

Tatham/KMcF/11 01

Annex A

Prime Minister's Pledges

- No change in the status of Northern Ireland without the express consent of the people of Northern Ireland.

- Power to take decisions returned to a Northern Ireland Assembly, with accountable North-South Co-operation.

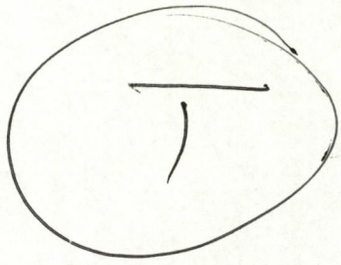
- Fairness and Equality guaranteed for all.

- Those who use or threaten violence excluded from the Government of Northern Ireland.

- Prisoners kept unless violence is given up for good.

- Whatever the Referendum result, as Prime Minister of the United Kingdom, I will continue to work for stability and prosperity for all the people of Northern Ireland.

INVESTOR IN PEOPLE



DRAFT LETTER FOR CONSIDERATION AND SIGNATURE BY THE PRIME MINISTER

Billy Armstrong Esq MLA
Room 378
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

Thank you for your letter of 19 December 2000 in which you raised a number of issues relating to the implementation of the Belfast Agreement.

First and foremost let me assure you that I stand by the pledges I made in Coleraine in May 1998 - that those who use or threaten violence should be excluded from the government of Northern Ireland. That is why we included specific provisions in the Northern Ireland Act 1998 for exclusion of individuals or parties from the Northern Ireland Executive if they fail to live up to their commitment to exclusively peaceful means. This commitment is given in the Pledge of Office which was agreed by all of the parties to the Agreement and sworn by all Northern Ireland Ministers on taking up office. I am happy to restate my pledges. I believe it is vital that we make progress on decommissioning in order to build confidence across the board. We are moving forward and, while it may be slower than we would like, I do not think that necessarily calls anybody's commitment to peace into question.

We should not lose sight of the gains we have made. The Agreement is founded on the principle of consent, which is now accepted by all the political parties in Northern Ireland and by the Irish Government. This means that Northern Ireland will remain part of the United Kingdom for as long as a majority in Northern Ireland wishes. The Irish Government amended the Irish Constitution accordingly. The

INVESTOR IN PEOPLE

Agreement swept away the Anglo Irish Agreement, replacing it with a new British-Irish Treaty which strengthened the ties between Ireland and the United Kingdom. Most important of all, all the people of Northern Ireland gained the Assembly and the return of power to the hands of locally elected representatives.

You also raised the participation of Sinn Fein Ministers in the North-South bodies. This is a matter for the First Minister, the Deputy First Minister and the Northern Ireland Executive. It will be for the Executive Committee to resolve the issue once a decision has been given by the courts and I do not intend to intervene.

As to your comments on normalisation, the Government is fully conscious of the need to protect the community from terrorist activity and we will only take further measures when it is safe to do so. We all want to see the normalisation of security arrangements in Northern Ireland, but never at the risk of endangering life or property. The Secretary of State is in regular contact with the Chief Constable who advises him on such matters and takes all decisions in light of his advice.

We all have a shared interest in building democracy, maintaining the rule of law, driving violence out of the system and maintaining the cease-fires. There is more work to do to reach our goal of leaving behind Northern Ireland's troubled past, to make progress on decommissioning and to remove paramilitary influence from the streets. My Government will continue to do all it can to ensure that these aspirations become a lasting reality for everyone in Northern Ireland.

INVESTOR IN PEOPLE

From: Ivor Roberts
HMA Dublin

Date: 11 January 2000

cc: PS/SofS (L&B)
PS/PUS
Mr Jeffrey
Mr Fittall
Mr Maccabe
Mr Waterworth
Mr Brett, EUD(B)
Mr Sawers, No 10
(via EUD(B))
Mr Arthur (via EUD(B))

cc JRO MT

To: Mr Rankin

MY VISIT TO NORTHERN IRELAND, 9-10 JANUARY 2001

1. I paid a useful and timely visit to the North on 9 and 10 January. I began with a call on the Archbishop of Armagh, Dr Brady, whom I had not met before. Compared with the ascetic and academic Archbishop of Dublin, Dr O'Connell, Sean Brady comes over as a warm and open human being. We went over the course on policing. I found him surprisingly open-minded and prepared to accept that our positions on inquiries into Hamill, Finucane and Nelson were based on our wishes not to prejudice prosecutions. On the other hand, he slightly gave the impression of being largely in listening mode and unwilling to project a strong policy line himself. He said that, as a Southerner, he was still learning a great deal about the North (after six years in Armagh!) and had still not come to terms with the amount of distrust and bitterness between the communities, and of course the suspicion with which the RUC was viewed by the nationalist community.

2. The boardroom lunch with the Managing Director, Editor and senior correspondents from the Belfast Telegraph was a frank and open two-way exchange covering the waterfront. The general editorial line was strongly behind the peace process and broadly helpful to HMG on policing and decommissioning. They took a sensible position on Patten, accepting that the legislation in its final form was fair all round and the SDLP would be mad not to sign up for it. This set the scene for my next meeting, with Eddie McGrady of the SDLP, who was clearly uncomfortable with the party line. He read unconvincingly from his briefing note, only departing from it to agree with most of what I said. He then disarmingly said that he was no longer really involved in the decision-making process on the Policing Bill. It is clear that, if it was left to Mr McGrady, he would be nominating to the Policing Board already. It was hard to detect any difference between his views and those of, say, Maurice Hayes.

3. I had asked for a call on Jeffrey Donaldson, as I had not met him previously. He presented his most constructive side. He had not signed up to the Good Friday Agreement because there had been no firm linkage between decommissioning and prisoner releases. On the other hand, he was not anti an agreement, just anti the GFA.

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12-JAN-2001 10:29 FROM EUDB TO 902078399044 P.01

That said, he wanted a multi-party Executive and fully accepted the inclusive approach. His problem was with the party leadership, who had abandoned the party's commitment to a "no guns, no government" policy. I said that it was not for me to comment on intra-party matters but he should know that the perception of him in the Republic was of an unreconstructed figure who opposed the Good Friday Agreement because he did not believe in power-sharing. Donaldson acknowledged that his image was poor. He hoped to come South more regularly in the future to try to set the record straight.

4. I asked him how he saw the next steps. He said that there would be a meeting of party officers on 12 January and he would take stock thereafter. He felt that if the party went into the election campaign inside the Executive but with no evidence of decommissioning, it would be annihilated in the subsequent poll. I said that my impression was that David Trimble himself would not wish to take the party into an election on the basis that there had been no progress on decommissioning. He said that he thought that was the case but he would wait to hear what Trimble had to say on Friday. He gave no indication that he was about to call an Ulster Unionist Council meeting (comment: but then he would hardly tell me that, would he?).

5. The dinner which the Secretary of State hosted at Hillsborough and included Maurice Hayes, Peter Quinn (GAA) and the Headmaster of St Malachy's, is being minuted separately by Paul Priestly. It was an exceptionally interesting and possibly constructive occasion.

6. At lunch yesterday, Stephen King (Trimble's Parliamentary Assistant) told me that Trimble's understanding was that Donaldson would present 60 signatures and call a Council meeting fairly quickly after the officers' meeting on Friday. He said that it was very hard to concentrate on any long-term thinking when the prospect of bi-monthly Council meetings was ever-present. Each one of them cost £3000 to stage. King was very concerned about the electoral prospects in the absence of real progress on decommissioning. Although the party might well win South Antrim back from the DUP, there would certainly be losses elsewhere, including very possibly John Taylor's seat. The local elections would be even more devastating. He expected Sinn Fein to do spectacularly well in these at the expense of the SDLP. I asked him about the prospect of Arlene Foster being chosen as the UUP candidate in Fermanagh South Tyrone. He said that he believed that to be unlikely but he agreed that she was being talked up. On policing, King said that it was ironical that the SDLP and Sinn Fein were jibbing at nominating. His overall assessment of the Patten legislation was that it had been a fair draw all round. It had, of course, never occurred to the Ulster Unionist Party not to nominate to the Policing Board. The SDLP were damaging themselves unnecessarily as they had always done better by distinguishing themselves from Sinn Fein. Their present policy seemed to be to want to go into the Policing Board only with Sinn Fein approval. This would not win them electoral support.

7. I called finally on the Revd Tim Bartlett at St Mary's University College in the Falls Road. We have met several times now and he was particularly candid. He said that behind the scenes the Church was now actively encouraging the SDLP to sign up to the Policing Boards. They were also trying to nudge Sinn Fein in the same direction. They did not believe that it would be helpful to go public at this stage but their efforts with the SDLP would continue, the Church had not despaired of getting the SDLP to come on board. If they did so, the Church would warmly welcome and support their decision.

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12-JAN-2001 10:29 FROM EUDB TO 902078399044 P.02

8. I said that it was of course very important for the SDLP to come on board. On the other hand we also wanted Sinn Fein to nominate. It was hypocritical of Sinn Fein to demand demilitarisation in South Armagh while holding off from encouraging nationalists to join the new police force. In the absence of any military presence in South Armagh, the place would become even more bandit country. Bartlett then said that of course the IRA could police South Armagh themselves. I said that we were well aware of how the IRA policed areas under their control. We also knew from the O'Connor case how they dealt with dissident republicans. Any more repeats of the O'Connor case could have huge political implications. If Sinn Fein meant what they said about a new beginning in policing, they had to accept that Patten was going to be as good as they would get, that it met all the Patten bottom lines (as Patten and Hayes had said) and that the nationalist community deserved a better lead from their political representatives.

9. Bartlett said that, as the Secretary of State would have found when he addressed St Malachy's, the mood of students and principals was against Patten. I said that this was because the remorseless rhetoric from Sinn Fein and the SDLP had done an enormous amount of damage. If people were told twice a day that Patten had been gutted, they were more likely to believe it than to judge for themselves by a careful reading of the detailed legislation. Bartlett conceded the point. He thought the rhetoric had got out of hand and that it made it much harder for the SDLP now to row back. He also accepted that the nationalist community had assumed that the Patten report was a bible in itself which would be implemented word for word. He understood perfectly that a report was just that and needed to be turned into appropriate legislation. It was also not reasonable to expect every single aspect of it to be accepted without qualification. That said, there was a great deal of suspicion of HMG which meant that any tinkering with the report was bound to fuel concern that the government was not sincere in accepting the basic premises of the report. I said that the Secretary of State himself had conceded that he had not got it completely right initially in the draft legislation, which was why he had readily accepted scores of amendments from the SDLP. It was hard to understand why the SDLP were not making more of their own successes. Bartlett agreed and said that he would continue to work on the SDLP. He would also welcome an early opportunity of seeing the Secretary of State again and said that he would find it helpful to keep in regular touch with me.

10. I have briefed you orally on my useful discussions with Chris Maccabe.

COMMENT

11. Much of the above will be familiar territory to copy addressees but it was helpful to pick up again on the atmospherics and to make some calls where I had not previously been. Father Bartlett continues, I believe, to be an influential figure, although I suspect that he is capable of speaking out of both sides of his mouth. If the Secretary of State can find time to see him soon, I think it would pay dividends.

(SIGNED)

Ivor Roberts

RESTRICTED - POLICY

JS
cc: JPO
MT
DN
PU
PCSS.

PRIME MINISTER

POLICY PROPOSALS FOR REFORM OF THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND

I am writing to seek your and colleagues' agreement on policy proposals for reforming the Criminal Justice system in Northern Ireland. I intend to include these provisions in the Justice (Northern Ireland) Bill, for which we have an advanced drafting slot. You and the Taoiseach set out a timetable which committed us to publishing draft legislation and an Implementation Plan in April, although this would necessarily slip if there were a spring election. I would be grateful for any comments by 24 January.

Policy on the Review has been developed in close cooperation with all the agencies involved in criminal justice in Northern Ireland. The Review covers areas which are the responsibility of myself, the Lord Chancellor and the Attorney General. Derry, Gareth and I are in agreement on the proposed approach, subject to further discussions in due course on one or two implementation issues.

The Criminal Justice Review was established under the Good Friday Agreement, and reported in March 2000. The Review had 294 recommendations, many of them technical or not requiring legislation. Its key recommendations are

- The creation of a separate and independent prosecution authority to take on all prosecution work including that currently carried out by the RUC, (broadly along the lines of the

CPS in England and Wales.)

- Measures to improve the transparency of the judicial appointments process, including the establishment of a Judicial Appointments Commission for Northern Ireland after the devolution of justice functions.

- The removal of royal symbols inside courtrooms but their retention on the outside of courthouses. Policy on flying flags to be in line with that for the Northern Ireland Civil Service.

- The establishment of a court-based system of restorative justice.

- A Northern Ireland-wide community safety strategy including a power for local authorities to raise 3p in the £ on rates towards community safety initiatives. Replacing the District Police Partnerships established under the Police Act with Community Safety and Policing Partnerships with a broader remit.

- Creation of an Independent Law Commission and Criminal Justice Inspectorate.

Other recommendations cover prisons, a statement of rights, principles and objectives for the Criminal Justice system, proposals to improve cooperation between Northern Ireland and the Republic of Ireland and re-organising the Probation Board as a Next Steps Agency (currently an NDPB).

After the Review's publication, I announced a six-month consultation period, which ended in September 2000. Opinions on symbols have

divided along predictable lines, but there was otherwise broad support for the Review's recommendations.

The Review concluded that criminal justice functions should be devolved as soon as possible. The consultation exercise revealed considerable support for this approach, although in practice it is probably some time off.

I intend to implement the Review in full, subject to two minor qualifications. On Community Safety, I believe that the power to levy 3p in the £ on rates falls at least as much in the transferred field as the reserved. I do not therefore intend to legislate unless the devolved Executive requests it. In addition, I do not believe it would be right to create CSPPs on the basis of the current fragmented local government structure, and intend to defer final decisions on local structures until the Executive has completed the review of local administration in Northern Ireland. I also intend to leave the decision on the future of the Probation Board to the devolved Administration after the devolution of criminal justice functions. I believe these minor variations are wholly justifiable.

There may be some Unionist and Conservative opposition particularly to provisions in the Bill on symbols. In general, however, I expect this aspect to be considerably less controversial than in the Patten legislation.

<u>Fair treatment and non-discrimination</u>

This Bill and the Review in general included numerous provisions in areas like equity monitoring which should improve the transparency and evenhandedness of the Criminal Justice System. The legal advice

which I have received is that proposals are consistent with the Human Rights Act.

The Review will cause a very significant programme of work for the NIO, the Director of Public Prosecutions, the Court Service and the RUC and other statutory agencies in Northern Ireland. However, nothing in this Bill will have any impact on organisations other than public authorities, and I have been advised that no regulatory impact assessment is necessary.

I would be grateful for your and colleagues' agreement to proceed on these lines. I am copying this minute to members of IN Committee, to the President of the Council and to Sir Richard Wilson and First Parliamentary Counsel.

PETER MANDELSON

10 JANUARY 2001

DCO

Michael Fallon
for sake of
reply from NIO

16/1

cc: JS
AC

Gerry Adams MP
Sinn Féin President

January 10th

Hon. Tony Blair
Prime Minister
10 Downing St.
London

A Chara Tony

On October 9th 1987 65 year old Francisco Notarantonio was shot dead by a loyalist death squad as he lay in bed in his home in Whitecliff Parade, in the Ballymurphy area of West Belfast.

It was widely accepted at the time by his family and community that his killers had operated in collusion with elements of the British Forces.

In recent months reports have emerged in the media linking the British Army's Force Research Unit (FRU) with the loyalist gang which carried out his murder.

This is not the first time that the FRU have been linked to killings in the north of Ireland.

I believe a full public independent inquiry into Francisco Notarantonio's death is essential if this family are to know the truth of their father's murder and the identities of those who planned, facilitated, and carried out his killing.

The Notarantonio case also raises again the role of the FRU. Allegations, accusations and speculation abound about this organisation. Its role in the Pat Finucane case, its suspected role in many other killings, and its running of agents, spies and death squads are common currency.

There is also a need for a full independent internationally based inquiry into the role of the FRU.

I would ask that you give this your urgent and serious consideration.

I look forward to your reply.

Is mise le meas

Gerry Adams MP, MLA

PRIME MINISTER'S
CORRESPONDENCE SECTION
RECEIVED
16 JAN 2001

53 Falls Road Belfast
Sinn Féin, ~~53 Bóthar na bhFál, Béal Feirste, Eire,~~ BT12 4PD
Web:http://www.sinnfein.ie

CONFIDENTIAL

JPO
cc: JS
MT
Press

From: PS/Secretary of State
10 January 2001

cc: *See Copy Distribution List*

Mr Jeffrey

MEETING WITH DAVID TRIMBLE, 10 JANUARY

The Secretary of State met with David Trimble in the House of Commons on 10 January to review recent political developments. Trimble was accompanied by David Campbell. You and I were also present.

Recent Developments

2. The Secretary of State noted that the SDLP were continuing to refuse to come on board on Patten. They were immobilised by fear of Sinn Fein. Seamus Mallon had told the Taoiseach that the SDLP would not move unless there was a radical shift in Sinn Fein's position. The SDLP were terrified of making a false move and being outflanked by Sinn Fein. John Hume might be prepared to take a different approach and we were considering whether and how he might be engaged. But this was tricky because of the difficulties in the Mallon/Hume relationship.

3. David Trimble said continued delay would make it more difficult for the SDLP to move. If the Irish assessment that the SDLP would not move before a general election was correct, the UUP would be put in an impossible position and it was unlikely the party would be able to sustain the NI Assembly.

4. The Secretary of State said he was endeavouring to bring the SDLP up against the realities of the situation and to make clear how little separates the SDLP and HMG. The SDLP needed to be disabused of the idea that by holding back the Government would park Patten. They could not be given a veto. Nor could we leave the RUC in limbo. We had to provide for proper and effective policing in Northern Ireland. David Trimble noted that this meant HMG would proceed with the implementation of Patten in the absence of nationalist support for future policing arrangements. This would be the worst of all worlds for the UUP.

INVESTOR IN PEOPLE

5. The Secretary of State said the SDLP and Sinn Fein were holding out in the hope that HMG would make further legislative changes. The Government was not prepared to go down this road nor to accede to a review or a consultative exercise about the implementation of Patten, as the Irish and Sinn Fein were suggesting.

Decommissioning/Normalisation

6. The Secretary of State explained that the Government was pursuing the possibility of a comprehensive deal which would provide for IRA re-engagement with de Chastelan and discussion of modalities for decommissioning, leading to actual decommissioning. In return, HMG would undertake some serious normalisation – including in South Armagh. Sinn Fein were being difficult while the Irish remained optimistic that such a deal was possible.

7. David Trimble confirmed that a deal involving actual decommissioning in return for concessions on normalisation which the UUP could live with would provide a basis on which he could manage the UUP. The Secretary of State asked whether in the event of a small deal IRA re-engagement with de Chastelan would be enough to keep the UUP on board. David Trimble was doubtful, especially in the absence of any positive movement by the SDLP on policing. IRA re-engagement with de Chastelan would not count for much by itself. It might enable him to allow a single meeting of the NSMC to take place. But he would be forced to reimpose the sanction in the absence of a process leading towards actual decommissioning. You pointed out that Sinn Fein would want certainty that IRA re-engagement would be sufficient to lift the sanction completely. David Trimble reiterated that serious engagement would be enough to lift the sanction, but this would not be sustainable in the absence of a serious process, leading to actual decommissioning. Moreover, in the absence of such a process, de Chastelan would be forced to make negative reports to the two governments. The UUP would inevitably be forced to respond to such reports. Sinn Fein therefore needed to understand the requirement for a serious process of engagement.

INVESTOR IN PEOPLE

Developments with the UUP

8. David Trimble said the UUP Parliamentary Party had met earlier in the day. He had been asked by Jeffrey Donaldson what he intended to do about the proposed review in January. He intended to discuss the way forward at a party officers' meeting on 12 January and intended to propose a consultation exercise within the party culminating in a special meeting of the Party Executive at the end of January. He hoped this would persuade Jeffrey Donaldson to stay his hand and not requisition a meeting of the UUC. He doubted whether it would be possible to manage on this basis much beyond the end of January.

9. You outlined the further engagement which was likely with the Irish and Sinn Fein over the next few days. David Trimble asked to be kept in touch with developments.

Timing over local elections

10. David Trimble said he was no closer to reaching an understanding with the SDLP about postponement of the local government elections or timing the elections to coincide with the general election. The NI Executive was due to consider again the proposed review of public administration on 18 January and he hoped to be clearer about the way forward after the discussion. The Secretary of State emphasised that primary legislation would be required to achieve these changes. As such we needed to establish very urgently whether the UUP were serious and whether there was a realistic prospect of SDLP support. David Trimble said we should plan on the assumption that he would want either postponement or a combined poll. The Secretary of State reiterated that either change would require SDLP support.

Electoral Abuse

11. The Secretary of State said we could not contemplate new legislation on electoral fraud in advance of the general election. However, we intended to publish a White Paper before the election and to come forward with a number of administrative changes for countering electoral abuse. He would be happy to consider any ideas for such changes which David Trimble wished to put forward.

INVESTOR IN PEOPLE

Snippets

- David Trimble said that Reg Empey would stand as the UUP candidate in East Belfast. He hoped that David Ervine would stand for the PUP in the constituency and that the Alliance would withdraw. This would give the UUP a very good chance of taking the seat from Peter Robinson.

- David Trimble referred to an article in The Sunday Times on 7 January which suggested that the Decommissioning Commission would be wound up in June 2001 if there had been no progress on IRA decommissioning. The article suggested that the Irish Government had started consultations with paramilitary groups about how the weapons issue should be pursued thereafter. David Trimble said we needed to tackle the Irish on this subject. If Sinn Fein believed that decommissioning could be pushed into a post – June scenario, they would be inclined to do nothing.

- David Trimble said a debate was continuing within the UUP about the best posture for the party to adopt in advance of the general election. The dissidents were continuing to argue that the party should face the election outside the NI Executive.

P G PRIESTLY

P G PRIESTLY
PS/Secretary of State
☎ (B) 28110
(L) 6462

cc: PS/Secretary of State (L&B)
PS/Mr Ingram (L&B)
PS/Mr Howarth (L&B)
PS/Mr Pilling (L&B)
Mr Watkins
Mr Alston
Mr Fittall

INVESTOR IN PEOPLE

CONFIDENTIAL

Mr Kelly
Ms Bharucha
Mr Masefield
Mr Waterworth
Mr Powell No. 10
Sir Ivor Roberts, HMA Dublin

INVESTOR IN PEOPLE

Northern Ireland Office
Castle Buildings
Belfast BT4 3SG

JB
~~CJS~~
MT
AC

Jonathan -

I have only just read the McGuinness transcript. I am worried about what he is doing — there is a full report on P.A — partly because it is setting me up with the Guardian etc but, more so, because it is exposing T.B. "Secret discussions, TB's promises, accepts that Security should be withdrawn, Nationalists + republicans provide Security, only Mandelson is standing in the way."

I think you need to restrain Sinn Fein on this before it seeps into British media.

John

Media Monitoring Unit

SECRETARIAT
- 9 JAN 2001
NORTHERN IRELAND

MARTIN McGUINNESS. GMU. 9 JANUARY 2001

INTERVIEWER

Gerry Adams said before Christmas that the talks had broken down and weren't going anywhere, do you think they can go somewhere now?

MARTIN McGUINNESS

Well that was the case then and over the course of the Christmas holiday we maintained contact with both the Irish Government and the United States Government, and yesterday we initiated an effort to try and get discussions with the British Government off the ground, and I'm very hopeful that we can see some sort of a serious negotiation take place towards the end of this week or the beginning of next week.

INTERVIEWER

At the weekend you said Peter Mandelson had told you in a recent meeting that he believed Mr Blair shouldn't have made the promises he did in May. What, first of all, did the Prime Minister promise you?

MARTIN McGUINNESS

Well I think that this has been one of the most perplexing aspects of what has happened over the course of recent months. I think everybody knows that there was a very serious discussion and negotiation which took place at Hillsborough in May 6th of last year. And in the course of those discussions the British Prime Minister effectively signed up to the implementation of the Patten proposals and to a meaningful process of demilitarisation.

INTERVIEWER

What did he promise you on South Armagh? Let's get specific about this, what did he promise you on South Armagh?

NB – This transcript was typed from a transcription unit recording and not copied from an original script. Because of the possibility of mishearing and, in some cases, the problem of identifying individual speakers, the Media Monitoring Unit cannot totally vouch for its accuracy.

MARTIN McGUINNESS

Well in relation to that whole business on May 6th many promises were made in relation to a meaningful process, an ongoing process of demilitarisation, not just in South Armagh but all over the Six Counties.

INTERVIEWER

What were you promised?

MARTIN McGUINNESS

Well I'm not going to go into the specific details but I certainly know that publicly we took issue with the fact that the British Government and a statement later by the RUC Chief Constable, Ronnie Flanagan, they specified that there would be a demilitarisation in the shape of the removal of the Cloghogue Army base, for example, on the Newry Road, that hasn't happened. Now, from our perspective, we want to see the British Government face up to the need to demilitarise not just South Armagh, although that is the worst afflicted area at the moment, but indeed many other parts of the Six Counties, we want to see the paraphernalia of war removed. And we want to see the British Prime Minister effectively facing down the securocrats within the British establishment, both in London and at the NIO, who have been attempting to derail the peace process.

INTERVIEWER

Well what's Peter Mandelson saying?

MARTIN McGUINNESS

That's why, that's why, let me finish this point, that's why this issue of who's in charge is very, very important.

INTERVIEWER

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Well what's Peter Mandelson saying that Mr Blair shouldn't have promised? What's he saying to you that Mr Blair should not have promised?

MARTIN McGUINNESS

Well, I specifically, in the course of a number of very important discussions with both the United States Government and the British Government, and indeed the Irish Government, have made the case that I believe the best defenders of the Good Friday Agreement in the South Armagh area for example, are the people, the nationalists and the republicans of South Armagh, that in my opinion those people are more effective than having a million British soldiers on the streets and lanes and roadways of South Armagh. The British Prime Minister accepted my arguments, the United States Government accept my arguments, the Irish Government accept my arguments, the British Prime Minister accepted my arguments in those discussions. Peter Mandelson told me he doesn't accept my arguments and that's where the difficulty lies.

INTERVIEWER

And why does he say he doesn't accept your arguments, what reason does he give?

MARTIN McGUINNESS

Because he believes that the British Army and the presence of thousands of British soldiers and helicopter flights and army lookout posts and spy posts, are the best way to defend the Good Friday Agreement in that area.

INTERVIEWER

And if a bomb gets through, if a bomb from dissident republicans gets through, and it goes off and people are killed, he gets the blame, doesn't he, if he's taken away security?

MARTIN McGUINNESS

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And the British have told us that a bomb did get through to the town of Omagh and 31 people lost their lives. Now, we need to face up to the reality here, that there is a major conflict between what many leading players within this process are saying about how we defend the Agreement and how we demilitarise and what the British Secretary of State is saying, and that is why the conflict which even exists between the British Prime Minister and the British Secretary of State needs to be resolved as a matter of urgency.

INTERVIEWER

Ok.

MARTIN McGUINNESS

Let's not just focus on the issue of demilitarisation Seamus ...

INTERVIEWER

I want to go on to policing, right I want to ask you about that. Is there any point is setting up a Policing Board here if you and the SDLP haven't nominated representatives to it.

MARTIN McGUINNESS

Well I think it's become very, very clear to everybody that there's little likelihood of either the SDLP or ourselves doing that until such times as we get all of this right. And that's why we have made the case, and will be making the case in the course of any discussions which take place in coming days, that there is a dire need now for amending legislation to ensure that there is the full new beginning to policing that everybody was promised at the time of the Good Friday Agreement. And I think that in the course of our discussions we will be dealing with this issue, with the issue of demilitarisation, and of course we will also deal with what was also a very important part of the May 6th talks of last year, how we put in place a process which as a result of the fulfilling of the context which was promised at the time, will see a situation where the armed groups will face up to the need to put weapons beyond use. We're not running

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FROM: WILLIAM FITTALL
Associate Political Director (L)
9 January 2001

Mr Pilling (L&B)

cc PS/Secretary of State (L&B)
PS/Mr Ingram (L&B)
PS/Mr Howarth (L&B)
Mr Jeffrey
Mr Watkins
Mr Alston
Miss Bharucha
Mrs Madden
Mr Powell, No 10
Director, T Branch
Mr Peirce, Washington
Mr Mason, Washington

USA: DESIGNATION AND CT CO-OPERATION

Summary

US keen to aim to complete preparation of dossier by mid-February. Strong steer that they would prefer to designate a loyalist group at the same time. Surprisingly reassuring briefing on the volume and nature of the material required from us. We and Dublin agreed a US request to provide first draft on RIRA within a fortnight. Difficult issues about "aliases" and treatment of 32 County Sovereignty Committee exposed inconclusively. Exploratory discussion of enhanced US counter-terrorism support helpfully played away some of the wilder notions, leaving NSC to reflect whether more focused trilateral look at technical options would still add value.

Detail

Designation

2. A mega-Washington meeting with 28 in the room: 21 US, 3 Irish (led by Michael Flahive from the DOJ), Anita Bharucha, Bob Peirce, Peter Mason and me. There was a slight air of unreality about the occasion with the declared need for speed belied by the imminent change of Administration and frank US admissions that they had no idea what the new team would make of any of this.

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3. We spent over two hours on designation and a final fifty minutes on CT co-operation. Helpfully Ed Hull, acting CT Co-ordinator in State, who lead on the designation process, said that the US regarded the NI peace process as a vital US interest and were likely therefore to conclude that any group threatening the peace process and not on ceasefire met the statutory designation test of "threatening US interests". There was no need to produce evidence of fund raising or other terrorist related actions in the US.

4. We explored how many designations should be sought. Hull said it would help if a loyalist group could be included at the same time as RIRA and came close to implying it was a prerequisite. I said that there were really three options: RIRA; RIRA and one: or RIRA, CIRA plus the two loyalist organisations specified under our Sentences Act as not being on ceasefire – the Red Hand Defenders and the Orange Volunteers.

5. With support from Michael Flahive – who was helpful throughout the meeting – I said that the key priority identified by the two Governments was RIRA because they posed easily the most potent threat to the peace process. In principle we favoured designating all four groups but not if trying to do this in one meant delaying the process for RIRA (the Americans agreed it probably would). The difficulty with the loyalists was that the groups which had caused most trouble in recent months were still, formally, on ceasefire. The two specified groups were very small and, in the big picture, pretty inconsequential. But I agreed we would reflect further.

6. The Americans said they were only looking for about 10 pages from us per group, perhaps focusing on just 5 incidents or so over the past 3 years. An incident was not necessarily an attack – a weapons find, procurement, training, acts preparatory all counted. This material would contribute to the US "administrative record", a classified document which would go to the US Secretary of State, with the concurrence of the AG and Treasury Secretary, under cover of a memorandum and recommendation from the State CT Co-ordinator. Once the decision to designate was taken and announced at a press conference it came into effect straightaway. There was no Congressional scrutiny. But the body concerned or individuals could challenge the decision before 3 federal court judges on the DC circuit (only one tier below the Supreme Court). This was the potentially tricky bit.

7. Only 2 of 31 designation decisions had been challenged, neither successfully, but a RIRA decision would be – big time. The process had been designed by Congress to load the dice in favour

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of the executive (but see below). The court got two versions of the administrative dossier, one containing the sensitive material and the other not. While the court was pretty uncomfortable about this, it accepted that it was necessary to safeguard national security. Moreover the test was whether the Secretary of State had applied him/herself reasonably, not to prove beyond reasonable doubt that group X had done Y. Thus it was reasonable for the Secretary of State to act on the basis of apparently well founded material from reliable overseas partners such as the British and Irish. There was no question of UK or Irish officials being cross-examined.

8. This all sounded too good to be true and much less gloomy than the message you had had in October when ,essentially, the Americans were trying to warn us off for wider reasons. We eventually unearthed a potential pitfall. The Americans admitted that their ability to rely on material non-disclosable to the appellant was being tested in an alias case concerned with the MEK (an Iranian Group). There was very sound precedent for excluding non US citizens overseas from the protection of the Constitution and. so far, the view had held that US based groups that were aliases of overseas groups could be designated as foreign even if they included US citizens. But this might be successfully challenged. And it was also possible that the reliance on potential material in such cases would be overturned, in which case the legislation might become inoperable.

9. Two conclusions flowed from this:

(a) while classified material **should** be used, we should so far as possible ensure that the redacted version was persuasive in its own right;

(b) we needed to think particularly carefully about the aliases of RIRA, particularly where these were used in the USA.

10. On the second of these it emerged that the Americans assumed that when designating RIRA they **would** include the 32 County Sovereignty Committee as an alias. Otherwise they would not in reality catch any current fund-raising in the US – designation would purely be symbolic. Had they designated PIRA during the breakdown of the first ceasefire they would, they said, have included Provisional Sinn Féin as an umbilically linked organisation.

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11. This prompted an exchange in which the Irish and we pointed up the awkwardness (though not necessarily impossibility) of designating a group which was not actually unlawful in our jurisdictions. We agreed that this required more thought. The next step was that in preparing our submissions to the Americans we should set out what we each knew about the extent to which RIRA received funding through cover organisations.

12. We agreed that we and the Irish should submit separate but complementary contributions to the US dossier. The Americans said that they should be signed by someone reasonably (though not excessively) senior who could vouch for the quality of the material assembled from a range of sources. **You** will want to consider who this should be in our case. While Liaison and T Branch will assemble the intelligence based material and Anita Bharucha co-ordinate the broader assessment, I wonder whether, by analogy, with our specification work, **David Watkins** should sign it off (even if not published, the name is likely to get out, which argues against a Security Service name).

CT Co-operation

13. Hull stressed this was all exploratory. The US already had longstanding CT working groups with the UK. Would a trilateral group involving the Irish help? Could we use "public diplomacy" in a more co-ordinated way to stigmatise opponents of the process? Could we do more to track dissident funding? Norland said that he did not want to suggest that the US/Israel arrangements – involving the CIA on the ground in the Middle East – were a precedent but he wondered whether there were ways that US intelligence assets could help both by satellite monitoring of the sealed arms dumps and by enabling us to remove some of our existing security infrastructure.

14. Flahive said he was open to suggestions but what precisely did the US have in mind. I said that we did not have the monopoly of wisdom and were open to consider any offers the US felt able to make. More trilateralism on specific problems would be welcome. As to the arms dumps the real problem was not how best to verify sealed dumps – there were lots of options and the Decommissioning Commission would no doubt have a view – but how to persuade PIRA to seal them and to put arms verifiably beyond use as promised.

15. But on normalisation the hard fact was that we had to be driven by a prudent assessment of the threat. We had already massively scaled back our security infrastructure and patrolling levels. The assets now in place in South Armagh were there to save lives through the provision of real time

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surveillance and intelligence. If we could change the threat through getting PIRA to reduce its capability, improving the local attitude to the police and/or bearing down on the dissidents then we could change our security posture. If the US had kit or techniques that could help on either side of the border and which they were willing to share we would be keen to hear about it. But it was unrealistic to expect that there was anything which would quickly or adequately substitute for the existing South Armagh towers.

16. Mary McArthy, from the intelligence co-ordination side of the NSC, agreed with me that it was highly unlikely that the Americans had anything that could substitute for what we had developed over thirty years of managing the problem. Technical people could have a look at options but there were unlikely to be any quick fixes.

17. There was a bit more in this vein, with Norland and Hull stressing that the Americans wanted to help but without showing any sign that they had pre-cooked anything worthwhile for us within the US intelligence community. Peter Mason, who knows Mary McArthy well, will talk further to her about all this later in the week but we helpfully left the ball in the NSC's court.

18. Once the penny **had** dropped that none of this is going to play for real in the current negotiations and once the intelligence specialists get at it in Washington, I suspect that the Americans will lose interest. Outside the meeting I did, however, encourage Mary McArthy privately to see whether there was anything more the US could do to enhance Irish intelligence gathering capabilities south of the border. This was not a substitute for what we had to do north of the border. But the better the Garda's intelligence attack on the dissidents the better. Help with a US label was still sometimes more acceptable to the Irish than help from the RUC or the Security Service, good though co-operation was.

19. The Americans showed some ambivalence over whether they wanted a high or low profile press line. The Irish and we thought it would be counter-productive to try and pump up a big story (particularly since the Americans did not want to avow specifically that we had discussed designation!). We agreed a for use if asked line, confirming that the meeting of counter-terrorism experts proposed by the President had now happened, that options for further pressure to bear on those opposed to the peace process had been discussed, and that the designation request from the two Governments was now a matter for the US authorities.

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Next Step

20. I have now agreed with Nick Alston that his team will circulate a first draft of material on RIRA and one of the loyalist organisations by the middle of next week. T Branch will also check that the Garda are up to speed. Anita/I will keep in touch with Flahive to ensure complementarity between our RIRA material. For the sake of continuity I suggest I diary in a stocktaking discussion next Thursday with the key players to review issues thrown up by the draft.

William Fittall

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File

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

9 January 2001

Dear Paul,

NORTHERN IRELAND: DISCUSSIONS WITH IRISH

Jonathan Powell, Bill Jeffrey and myself met an Irish team led by Dermot Gallagher over lunch in No 10 today. The rest of the Irish team consisted of Tim Dalton, Ted Barrington, Martin Mansergh, and Daithi O'Ceallaigh.

Sinn Fein

Gallagher gave a read-out of yesterday's talks with Sinn Fein. His overall message was not encouraging. Sinn Fein had been uncompromising and opaque. They gave the impression of having moved into pre-election mode. Gallagher also guessed that Adams' consultations over the Christmas break had not been easy. On the positive side, Adams had spoken of the IRA's voluntary disbandment and how this might be achieved. But he had kept coming back to the May agreement, with the message that there was no prospect of arms being put beyond use unless the UK kept its side of the bargain.

Gallagher said Adams had referred to recent articles in the Andersonstown News and Ireland on Sunday as evidence of a growing view within the nationalist community that Trimble was not worth saving. Trimble's partisan speech at the Odyssey had caused a lot of bad feeling. Gallagher said he had firmly disabused Adams of the idea that life might be easier without Trimble.

Adams had described two strands of thinking on his side. Some were ready for further rapid movement (with an eye on the forthcoming change of US administration); others wanted to "batten down the hatches" in the run-up to election (Sinn Fein had been unclear what this meant but they appeared to envisage having the NSMC block removed, without necessarily their re-engaging with de Chastelain). Gallagher said he had counselled strongly against battening down the hatches. In Northern Ireland it was not possible to freeze a situation; lack of forward movement inevitably led to backward slippage.

UUP

Bill Jeffrey briefed the Irish on our assessment of Trimble's position. Trimble had been lying low recently but had a meeting scheduled with his party officers on Friday at which he would need to present a plan for handling the period between now and the next executive meeting in early February. He would want to know where things stood in order to judge the handling of that first meeting. Trimble wanted to avoid a UUC before the AGM scheduled for March but it was not clear if that would be possible. If he sensed his opponents would succeed in forcing a UUC, Trimble might try and pre-empt them by announcing one on his terms (in which case it might happen very quickly). Trimble was not sighted in detail on the current discussions but was aware they were going on and would be hoping for an agreement. His expectations would be quite high – anything less than a breakthrough on decommissioning would disappoint him. Re-engagement with the IICD would be helpful to him (as long as it was not bought at an excessive price), but would probably not be enough to sustain him through till the election.

Policing

Jonathan Powell said we were prepared to decouple policing from decommissioning/demilitarisation in the hope that progress on the latter issue would generate a better climate for movement on the former. But if we were to have an effective police force we needed to start pressing ahead with implementation by the end of the month.

Gallagher said it was clear that Sinn Fein could not carry the strain of simultaneous movement on policing and demilitarisation. On Patten, Sinn Fein were in a bind: they had created the mood in their community that Patten had not been properly implemented; this could only be altered by changes to the Patten legislation; but Sinn Fein recognised that this was unrealistic before the election. The answer to this (which it was clear the Irish and Sinn Fein were both seeking) was to park the policing issue "constructively" by means of a consultation period on controversial aspects of Patten implementation straddling the elections. In the meantime the Chief Constable could press ahead with the practical aspects of implementation. The optimum scenario would be for the UK to present this as its own initiative rather than as a reaction to nationalist demands. Tim Dalton added that Sinn Fein had implied a subsequent recoupling of policing with decommissioning in that they had spoken of needing assurances on the outcome of the consultations on Patten before they would commit to concreting the dumps.

Daithi O'Ceallaigh said that trying to force Patten implementation without the SDLP and Sinn Fein lined up would be disastrous. The tone of recent reporting in the UK media had been very unhelpful (Mansergh disagreed: the SDLP would relish the impression this gave of their standing up to the Secretary of State). The Irish side generally teased us about the official provenance which they attributed to today's Times editorial. Bill Jeffrey said it was unrealistic for the SDLP to hold up progress and expect to be immune from criticism. We were not issuing ultimatums but simply pointing out the serious problems that would follow from an absence of movement.

Jonathan Powell said there were problems with the suggestion of constructive parking. One of the main ones was that, as currently envisaged by Sinn Fein, it would delay decommissioning until after the elections which defeated the whole purpose in respect of propping up Trimble. It also allowed Sinn Fein to have their cake (by decoupling decommissioning from policing when it suited them) and eat it (by demanding to know what we would do on Patten before agreeing to a package on democcissioning). It also put a difficult burden on the RUC who were already suffering from the existing uncertainty. It made sense for now, as the Prime Minister and Taoiseach had agreed yesterday, to go for a deal on decommissioning and use the changed atmospherics this generated to tackle policing.

Decommissioning/Demilitarisation

Jonathan Powell repeated the Prime Minister's message to the Taoiseach that we had tabled our bottom line on demilitarisation. No amount of cajoling or pressure would extract anything further. We could however look imaginatively at the sequencing and choreography to try and find a way of getting round Sinn Fein's concerns. Gallagher was emphatic that for Sinn Fein there was no question of movement on the dumps ahead of movement on the towers. Tim Dalton suggested a process of overlap with the start of demilitarisation preceding IRA decommissioning but not being completed until after action on the dumps.

Subsequent discussion led to broad agreement on the sequence set out in the attachment to this letter. We said we would aim to clear this with the Secretary of State and Prime Minister and send an approved version to Dublin later this evening allowing the Irish to put this text to Sinn Fein at their 1100 meeting tomorrow morning. Gallagher said he felt a deal on these lines would

inevitably straddle the elections. Jonathan Powell said the aim should be to make progress on decommissioning by the UUP AGM in March.

There was agreement on the need for Bill Jeffery and Tim Dalton to talk this sequence through with de Chastelain (who would end up taking a lot of the strain if such a sequence came to fruition).

Mini Deal

The Irish probed our thinking on a 'mini deal' which would sideline movement on the dumps and involve serious re-engagement with IICD in return for further steps on OTRs and removal of the NSMC block. Jonathan Powell said this might not help Trimble very much given the higher expectations on his side. It was also a means of buying another month rather than a strategy to see us through till the elections. The Prime Minister was likely to want to keep energies directed at the bigger deal. Gallagher said this was also the Taoiseach's preference (comment: though Gallagher himself seemed more equivocal).

Gallagher spoke of the need for a monitoring group to audit last year's May agreement even in the event of a mini-deal. Jonathan Powell said a mini-deal would inevitably mean further intensive handling by the two Governments in the same format as today's discussions.

OTRs

A very brief exchange. Jonathan Powell said we were trying to whittle down the numbers. Bill Jeffrey said there might be movement soon on some of the remaining 18 extraditees. We could try and use this to improve the atmospherics although realistically Sinn Fein were likely simply to pocket this (Gallagher agreed). The Irish reminded us of the importance of Rita O'Hare.

UK Contact with Sinn Fein

Jonathan Powell said we assumed from the Pat Doherty statement yesterday that Sinn Fein now wanted to talk to the British Government. Gallagher said Sinn Fein had confirmed this in yesterday's meeting. The Irish said they would explore timing and logistics with Sinn Fein tomorrow morning. We agreed that a change of context from the unproductive pre-Christmas meetings would be helpful. The ideal would be meetings towards the end of this week in London (the US Ambassador's Residence was a possibility). It would be

good to keep the meeting private though it would not be particularly serious if word got out.

I am copying this letter to Sir Ivor Roberts (Dublin).

Yours ever

J.T.L. Priestly

for

MICHAEL TATHAM

Paul Priestly
NIO

POSSIBLE SEQUENCE

1. British Government statement restating commitment to fulfil May agreement and indicating significant steps by the IRA to put weapons beyond use would alter the assessed security threat, and enable further steps to be taken to normalise security in South Armagh.

2. IRA statement announcing serious reengagement with IICD to agree how weapons will be put beyond use.

3. IICD reports re-engagement.

4. IICD reports agreement on how weapons are to be put beyond use by a new scheme on decommissioning to be put to the two governments and then implemented.

5. Statement by Chief Constable on steps of security normalisation to be taken as IRA puts weapons beyond use.

6. IRA Statement to confirm that steps to put weapons beyond use are going ahead.

7. Commence demolition of one of three previously identified installations in South Armagh.

8. IICD reports that weapons put beyond use in inspected dumps.

9. Completion of demolition of identified towers in South Armagh.

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ULSTER Talks Substitute
BLAIR AND MANDELSON `SPLIT OVER ULSTER SECURITY' _ McGUINNESS<
By Ian Graham, PA News.<
Prime Minister Tony Blair and Ulster Secretary Peter Mandelson are in conflict over reducing the military presence in Northern Ireland, Sinn Fein's Martin McGuinness claimed today.<
He said Mr Mandelson was out of step with his boss and the Irish and United States governments on the need for demilitarisation.<
``The conflict between the British Prime Minister and the British Secretary of State needs to be resolved as a matter of urgency," said Mr McGuinness, Education Minister in the power-sharing Stormont administration.<
Renewing his call for a reduction in border bases and army presence, he said: ``I believe the best defenders of the Good Friday Agreement in the South Armagh area are the people, the nationalists and republicans of South Armagh.<
``These people are more effective than having millions of soldiers on the streets.<
``The British Prime Minister accepts my arguments, the US government and the Irish government accept my arguments.<
``Peter Mandelson told me he does not accept my arguments and that is where the difficulty lies, because he believes the British army and the presence of thousands of soldiers and helicopter flights and spy posts are the best way to defend the Good Friday Agreement."<
Mr McGuinness said there was need to remove the paraphernalia of war and Mr Blair needed to ``effectively face down the securocrats" within the British establishment in London and the Northern Ireland Office.<
Sinn Fein is due to resume dialogue with the Government in a bid to break the impasse over IRA decommissioning, demilitarisation and policing which is threatening the peace process.<
Mr McGuinness said Sinn Fein was ``not running away" from the decommissioning issue and wanted to discuss how to put in place a process whereby arms can be put beyond use.<
``If this is of concern to the unionists as they tell us it is, then we want to sort that out with the unionists, we want to work with them and the British government and everyone else to ensure we have the fullest implementation of the Good Friday Agreement."<
Mr McGuinness, speaking on BBC Radio Ulster, said he was ``very hopeful" there would be serious negotiation towards the end of the week or early next.<
Sinn Fein would express ``wide-ranging" concerns about Government plans for police reform which, he said, did not match up to the Patten Report proposals.<
There was little chance of either his party or the SDLP nominating members to the new Policing Board which will oversee the new police service until the concerns were met.<
``I think it has become very, very clear to everybody that there is little likelihood of the SDLP or ourselves doing that until such time as we get all of this right."<
There was a ``dire need" for amending legislation to alter the Policing Act to ensure that there is the full, new beginning that everybody was promised in the Good Friday Agreement, said the Mid Ulster MP.<
Meanwhile, the nationalist SDLP were meeting today with the Northern Ireland Security Minister Adam Ingram to discuss the policing issue.<
The party is also due to discuss policing reforms with the RUC Chief Constable Sir Ronnie Flanagan tomorrow.<
Ahead of the discussions, a senior party member said there was still time to get the policing reforms right.<
North Belfast MLA Alban Maginness said more progress could be achieved in securing nationalist support for police reforms.<
Mr Maginness said: ``The series of discussions initiated by the SDLP reflects how central the policing issue is and how critical is the need to get policing right.<
``Progress was made in the Police Bill and further progress can realise the new beginning for policing that we all seek. The (British and Irish) governments and the police know the outstanding issues and with will and imagination they can be resolved."<
The SDLP's talks with Mr Ingram come amid renewed pressure on them to break ranks with Sinn Fein and nominate members to the Police Board which will hold the new Police Service of Northern Ireland accountable.<
The party has so far refused to nominate members to the Police Board despite appeals from Mr Mandelson who yesterday warned them their failure to support the new police service could ``torpedo" the peace process.<
end
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From: Jonathan Powell
Date: 9 January 2001

PRIME MINISTER

cc: John Sawers
Michael Tatham

NORTHERN IRELAND

Bill, Michael and I met the Irish today. The Irish were obviously a bit battered by a tough meeting with Sinn Fein yesterday and they tried to steer us towards a mini-deal: re-engagement with De Chastelain in return for dropping the ban on North South bodies and whatever we could do on individual OTRs. I said you wanted to go hard for the bigger deal including decommissioning. They accepted that. They said that in the case of a mini deal, Sinn Fein would want an implementation committee to look at the May agreement. I said that if we went for the mini deal we would be in permanent negotiations because it would not carry us through to May and we would need to carry on talking about decommissioning and demilitarisation.

On police, the Irish said that Sinn Fein could not agree to Patten now. They wanted to put it off till after the election in the hope that we would change the legislation then to meet some of their points on accountability. I probed a bit. The Irish say that if we try to force the issue with Sinn Fein and SDLP now they will just refuse. But they accept the Chief Constable will have to press ahead with implementing all the parts of Patten he can. This is more or less what Peter wants. They want a review or consultation exercise in the meantime so that we are talking to the Parties about what changes they want. This is likely to be good news for the Unionists.

On demilitarisation we agreed the attached sequence with the Irish. They will put it to Sinn Fein tomorrow morning.The Irish then introduced a new wrinkle. They said that Sinn Fein had made it clear that they would not actually concrete over the dumps until Patten had been resolved, ie after the election. They also said that although Sinn Fein wanted to decouple Patten from the deal they wanted guarantees on where we were going with it before they would agree a deal on decommissioning. I reacted quite strongly. They could not decouple Patten and ask for assurances that we would agree to the amendments to the legislation they wanted. As the Teashop said to you yesterday any further concessions on Patten should only be forthcoming if Sinn Fein agreed to nominate to the Policing Board. I also said that putting off decommissioning until after the election

undermined the whole point of the bigger deal. Trimble needed decommissioning to get through the election without quitting the institutions. The Irish then reverted to the idea of a mini agreement.

Although this looks bleak I think there may be a way through. If we can do a deal on decommissioning and demilitarisation now using the dates proposed by the Irish in December, ie concreting over the dumps by 1 May, that may change the mood on Patten in both communities. But we will still need to find some dramatic step we can take that convinces the nationalist/republican community that we have taken a step towards them on Patten. Could we consider a legislative amendment following consultations with the parties to meet some points from the Unionists and some from Catholics plus a decision on the badge and flags?

The Irish hardly raised OTRs. We said we would do what we could on individual cases. In fact Gareth has finally allowed us to agree that 12 of those against whom we have dropped extraditions should return to NI. We should play this card at the appropriate stage in the negotiation plus dropping the other 4 extraditions if we are going for the bigger deal. That would still leave Rita O'Hare and a number of others, but would at least be a sign of good faith.

The Irish are seeing Sinn Fein tomorrow morning. Sinn Fein have announced publicly that they are meeting us later in the week and we anticipate meetings here or in Belfast on Thursday or Friday. Steinberg will come over on Thursday. Trimble will see Adams tomorrow and Adams will see the Teashop on Thursday. I have made it clear to them that I will be in Washington on Sunday and Monday and therefore unavailable on those days.

Peter is worried about McGuiness on the media today saying there is a division between you and him, and that you are soft on terrorism (see attached note). We have rebutted the former but he is worried that the latter will stick on you here in the Mail and Telegraph.

Tim Dalton told me after the meeting that RIRA had ceased using Liam Campbell after his release and the new RIRA chief of staff was McMullan in South Armagh.

JP

JONATHAN POWELL

POSSIBLE SEQUENCE

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7. Commence demolition of one of three previously identified installations in South Armagh.

8. IICD reports that weapons put beyond use in inspected dumps.

9. Completion of demolition of identified towers in South Armagh.

The Rt Hon the Lord Williams of Mostyn QC

9 BUCKINGHAM GATE
LONDON SW1E 6JP

020-7271 2460

The Rt Hon Peter Mandelson MP,
Secretary of State for Northern Ireland,
Northern Ireland Office,
11 Millbank,
London,
SW1P 4PN.

8th January 2001

Dear Peter,

ON THE RUNS

The Director of Public Prosecutions for Northern Ireland has concluded his consideration of a further twelve names from the Sinn Fein list. The individuals concerned are: Dermot Joseph McNally [10], Seamus Campbell [12], Seamus Joseph Clarke [13], Anthony Kelly [14], John Gerard Fryers [26], Dermot Finucane [28], James Pius Clarke [29], Terence Damien Kirby [30], Paul Brennan [31], Kevin Barry John Artt [32], Patrick John McIntyre [35] and Anthony McAllister [36].

On 20th April 1984 a direction to prosecute a number of persons (including the above, who were then unlawfully at large) issued for offences arising out of an escape from HM Prison Maze on 25th September 1983. After the trial of a number of persons in pursuance of this direction, the Director carried out a review of the cases in 1988. Further directions issued in respect of the above named persons in respect of offences of hijacking, false imprisonment (and in respect of one person, firearms offences) and escape. In consultation with me, and having taken the advice of counsel, the Director has reached an evidential conclusion in relation to charges other than escape. He has concluded that

The Rt Hon the Lord Williams of Mostyn QC

there is no longer sufficient evidence to meet the required Test for Prosecution. In relation to charges of escape, he has concluded in relation to each of the names listed above, that the public interest does not require their prosecution. The Director has issued a further direction to the Chief Constable accordingly. The unexpired portion of their sentence remains outstanding.

Although it is not thought that there are any outstanding matters in relation to any of the persons named above, the Director has instructed his staff to conduct a search of all papers relating to the individuals. I will write further when this has been completed and will enclose with that letter an updated schedule setting out the position in relation to all the names on the list.

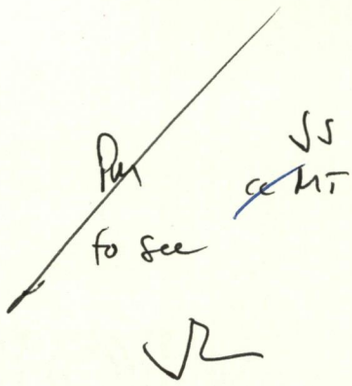
I have copied this letter to Jack Straw and Jonathan Powell

Yours ever,

Goldie

AAA H[redacted]NNN NOL
HSA1476 3 HHH 524 PA SNAPFULL
i ULSTER Talks Nightlead
SINN FEIN SET FOR NEW GOVERNMENT TALKS<
By Dan McGinn, Ireland Political Editor, PA News<
Sinn Fein and the Government are to hold fresh talks this week to try and secure the Northern Ireland peace process, it emerged tonight.<
Republican leaders are to resume dialogue with the Government on policing, demilitarisation, decommissioning and devolution, the party's vice president Pat Doherty confirmed.<
The talks were suspended on December 21 after Sinn Fein's Gerry Kelly bitterly complained of ``militarists'' dictating the British Government's policy on policing reform and the scaling down of army bases in the province.<
With the prospect of a General Election and local government election looming, Mr Doherty said there was limited time left for progress.<
He hoped the Government would show more flexibility on policing and demilitarisation than it had in the discussions before Christmas.<
The West Tyrone MLA said: ``The nearer you move to elections, the bigger they are a factor.<
``Elections are only a number of months off. We have a renewed opportunity and we hope that the British respond to that renewed opportunity.''<
The Government is also set to meet the province's largest nationalist party, the Social Democratic and Labour Party tomorrow in a bid to persuade it to break ranks with Sinn Fein and endorse policing reforms.<
Nationalists and republicans claim the Police Bill has fallen short of their expectations.<
SDLP policing spokesman Alex Attwood said his party was determined to achieve a new beginning to policing in the province.<
With the SDLP under pressure to endorse the new service and nominate members to the Police Board to which police chiefs will be answerable, the West Belfast MLA vowed: ``The community requires proper policing and requires it now.<
``In the coming days, the SDLP will single-mindedly keep its eyes on the prize - an agreed police service with the allegiance of all.''<
The SDLP was warned, however, by Northern Ireland Secretary Peter Mandelson not to spurn the opportunity presented by the new police service.<
``I think it would be more than a setback for the Good Friday Agreement. It would be a torpedo through the peace process and I don't think that's one anyone would want to be responsible for.''<
Democratic Unionist MLA Nigel Dodds claimed Mr Mandelson's remarks demonstrated the ``one-sided nature of the peace process'' by signalling the SDLP could torpedo the peace process over policing.<
However, the leader of the cross community Alliance Party Sean Neeson warned the SDLP and Sinn Fein that their ``arrogance'' over policing could destroy the Good Friday Agreement.<
Meanwhile pro and anti-Agreement Ulster Unionists were tonight preparing for another showdown in the party as the race got under way to succeed Ken Maginnis as the candidate for Fermanagh and South Tyrone at the next General Election.<
Mr Maginnis' election agent and pro-Agreement Ulster Unionist vice chairman James Cooper declared his candidacy.<
He will be opposed by anti-Agreement standard bearer, Arlene Foster - a close ally of Lagan Valley MP Jeffrey Donaldson.<
end<

081737 JAN 01<



From: THE PRIVATE SECRETARY

NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4QE

John Sawers
Interesting how much key focus on combatting the UK strategy focusses much more on class A

John Sawers Esq
Private Secretary
10 Downing Street
London SW1A 1AA

8 January 2001

Dear John

ORGANISED CRIME: SUCCESSES

I wrote to you on 4 December about the Task Force set up under Mr Ingram to co-ordinate action at a strategic level against organised crime in Northern Ireland. While it will take a little while for the work of the Task Force itself to bear fruit, I thought you might nonetheless like to hear of some of the successes of the police and Customs (often working in co-operation, and with other enforcement agencies too) since it was set up.

Oils

This is a key area for Customs, who seized over 2.5 million litres of fuel in 2000 - more than double the seizure rate for 1999. They seized about 750,000 litres in October and November alone, when they scaled up their efforts, in line with their departmental oil strategy. Over the same two months, they dismantled 7 fuel laundering plants across Northern Ireland, which they estimate would have had an annual production capacity of approximately 22 million litres, with a potential duty loss of about £12 million.

INVESTOR IN PEOPLE

From: THE PRIVATE SECRETARY

NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4QE

Rec'd already?

cc: LV
DL

Top - JS
c JPO
MT

Copy MT
To see. Some stepping up evident here.
But our effort on oil and tobacco needs to be kept up. More custodial sentences would be especially welcome.
J

John Sawers Esq
Private Secretary
10 Downing Street
London SW1A 1AA

8 January 2001

Dear John

ORGANISED CRIME: SUCCESSES

file

I wrote to you on 4 December about the Task Force set up under Mr Ingram to co-ordinate action at a strategic level against organised crime in Northern Ireland. While it will take a little while for the work of the Task Force itself to bear fruit, I thought you might nonetheless like to hear of some of the successes of the police and Customs (often working in co-operation, and with other enforcement agencies too) since it was set up.

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There were two prosecutions for oils offences in October and November, one of which resulted in a 7 month custodial sentence for a man found guilty of smuggling fuel. This is the first occasion when the courts have handed down a jail sentence for oil smuggling.

Cigarettes

Customs have seized around 12.5 million cigarettes and 700 kgs of hand-rolling tobacco in Northern Ireland since the beginning of October. About 7.5 million of these relate to a joint Customs and police operation at premises in Magherafelt in early October. A further 4.25 million cigarettes within the total were seized at Belfast International Airport, 900,000 of which were taken from passengers returning from the Canaries at the beginning of October - the largest seizure of cigarettes from a single flight at any regional airport in the UK.

Alcohol

The police detained 15,000 litres of brandy in suspicious circumstances in Londonderry. They were subsequently seized by Customs' Excise Fraud team after follow-up enquiries.

INVESTOR IN PEOPLE

Counterfeit goods

The police have searched premises for counterfeit goods and seized them from local markets. Finds have covered videos, music and PlayStation CDs, DVDs, clothing, jewellery, cigarettes and tobacco. The police have also found a production unit manufacturing counterfeit video cassettes.

For example, in a search of a house in County Armagh at the beginning of December, the police found 36 video recorders, a computer, 24 CD writers and two colour photocopiers and also recovered thousands of videos and CDs. They assess the total value of the items seized at over £100,000. The four occupants of the house made off but were arrested in a vehicle which was found to be stolen. Two of those arrested are known to have strong associations with Republican paramilitaries.

A trader at Kilkeel Market was stopped in possession of £43,730 of counterfeit goods at the end of October and goods worth £151,343 were seized when a trader was stopped last month near Jonesborough Market. On top of that, police, trade mark managers and Customs officers seized £331,000 of goods from Nutts Corner Market in November during an all day operation. That was filmed by the "Insight" UTV crew and there has been some positive feedback from the public after the showing of the programme.

INVESTOR IN PEOPLE

Drugs

As my earlier letter indicated, action to tackle the drugs problem is being taken forward in a different context but you may nonetheless be interested to know that

- 22½ kilos of cannabis and 9 ounces of cocaine, with a total street value of around £281,000, were seized in Lisburn in October, together with around £60,000 in cash, thought to be the proceeds of drug trafficking. Two people were arrested and subsequently charged;

- in two separate operations in Belfast in November 3 kilos of heroin, with a street value of £1 million, were seized and four people were arrested, three of whom were subsequently charged. In a follow-up operation, around £25,000 in cash, believed to be the proceeds of drug trafficking, were seized. One person was arrested for money laundering offences and released for report to the DPP and 20 kilos of cannabis and 10,000 ecstasy tablets, with a street value of £300,000, were seized. Two people were arrested and subsequently charged;

- two cannabis factories were located and searched in Castlewellan and Newry in November. This led to the recovery of cannabis plants, with a street value of £210,000. Two people were arrested and subsequently charged;

INVESTOR IN PEOPLE

- 5 kilos of cannabis were initially seized in Bangor in November and a further 6 kilos in a follow-up operation. The total street value of the drugs seized was £110,000. £8,000 in cash, believed to be the proceeds of drug trafficking, was seized too. Five people were arrested, three of whom were subsequently charged.

I am copying this letter to Tom Scholar at the Treasury.

Yours ever

Kirsten McFarlane

KIRSTEN MCFARLANE

INVESTOR IN PEOPLE

FILE

CONFIDENTIAL - PERSONAL

SUBJECT MASTER

FAXED 9/1

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

8 January 2001

Dear Paul

TELEPHONE CONVERSATION WITH TAOISEACH

The Prime Minister spoke by telephone to the Taoiseach (who was in Malta) at 1700 this afternoon.

Decommissioning/Demilitarisation

The Prime Minister said it was essential that Sinn Fein were put under intensive pressure on decommissioning. Realistically, this had to come from the Irish. There was some scope (but not much) for negotiations over the choreography, but we could not give any more on the substance than what was on the table. (The Prime Minister repeated this message at the end of the call.)

The Taoiseach took the point. His team would be meeting Adams for the first time since Christmas at 1730 today. The Irish had tried to get in touch with Adams over the Christmas break but Adams had not wanted to talk until after he had fully consulted his own people. Dermot Gallagher would debrief Jonathan Powell tomorrow. The Taoiseach hoped things could be put in place on decommissioning/demilitarisation by the end of this week. The outlines of the deal were clear. With a bit of goodwill it ought to be possible to work through the sequencing issues.

Policing

The Taoiseach then turned to policing. He had spoken to Seamus Mallon over the holiday period (they had both been in Lanzarote) and pressed him hard on policing. Despite the congenial environment, Mallon had been unyielding and had made it clear that without Sinn Fein movement on policing, he would continue to stay put. Mallon had implied however that a change in the overall context might present some prospect for progress. The Prime Minister said that both Sinn Fein and the SDLP were paralysed by tactical gamesmanship: Mallon

did not want the SDLP outmanoeuvred by Sinn Fein; Sinn Fein did not want Mallon to get the credit for any further concessions. Meanwhile, the only gambit left was on flags/emblems. The Taoiseach said we should not move on flags/emblems until the nationalist groups were better lined up.

The Taoiseach said he was increasingly convinced that the decommissioning/demilitarisation tangle essentially boiled down to military issues rather than political ones. The best way forward was to reach an understanding on the military side and then revert to the politics of policing in the changed atmosphere. This approach might deliver the improved context about which Seamus Mallon had spoken. The Prime Minister agreed, adding that in the meantime we should be working on other elements of the nationalist community such as the Church. We were now in a paradoxical situation in which Sinn Fein and the SDLP were effectively delaying policing reform. The RUC Chief Constable had been extremely accommodating about Patten but he was under huge pressure and badly needed the uncertainty to end. If it continued indefinitely, there was a risk of people simply giving up on Patten. This would be disastrous since without policing reform, there could be no long term settlement.

US Role

The Taoiseach said he saw no problem with Steinberg's proposed involvement later in the week. The Prime Minister said if the UK and Irish could agree a joint position, it would be helpful to have the US present putting pressure on the others.

I am copying this letter to Sir Ivor Roberts (Dublin).

Yours ever

Michael

MICHAEL TATHAM

Paul Priestly
NIO

From: Jonathan Powell
Date: 8 January 2001

FAXED

SECRETARY OF STATE FOR NORTHERN IRELAND

OTRS: PRE-CONVICTION PARDONS

The Prime Minister has seen your note of 18 December and is content with your advice.

FAXED FAXED

I am copying this minute to Jack Straw, Gareth Williams and Sir Richard Wilson.

JONATHAN POWELL

File

SECRET - PERSONAL

FAXED to all via Brent 9/1

SOURCE MASTER

Filed on:

10 DOWNING STREET
LONDON SW1A 2AA

S 01 /01

From the Private Secretary

8 January 2001

Dear Peter,

AHTISAARI/RAMAPHOSA

Martti Ahtisaari came to see the Prime Minister this afternoon. He had said in advance he wanted to have a private word, but had given no details about what. It turned out to be entirely about Northern Ireland. He began by showing the Prime Minister a note of a meeting he and Ramaphosa had had with Adams and Kelly at the end of November. The main points in it were:

- a wish on the part of Sinn Fein to have more time to brainstorm with Ahtisaari and Ramaphosa on the military aspects of the Northern Ireland peace process. To this end, they have agreed to meet on 24 and/or 25 January, probably in France.

- Ramaphosa proposed once again his idea of working level groups between the IRA and the British side on the detailed implementation of agreements. Adams cautioned that the British Army were unlikely to be willing to speak to the IRA direct. But he was interested in looking at new ways for the Republicans and the British side to work together on implementation issues.

Ahtisaari said he would welcome advice from us on whether we could agree to such a working group. He thought it would be in our interests to involve the military. He believed there was advantage to us in drawing the IRA into detailed implementation issues, which could in time go into ensuring security in areas such as South Armagh.

The Prime Minister said he was in principle keen to draw in the IRA directly. He would be in favour of setting up a working group, but we would have to reflect following further exchanges between us and the Republicans in the coming days. He said we would get back to Ahtisaari at the end of this week.

AB

Ahtisaari said he would be in London on 23 January and would be available for a further discussion then. He was very keen to have a clear picture of how far we would be willing to go before he had a further discussion with Adams.

Comment

Ahtisaari was keen to keep these details to a very tight circle. He did not leave behind his note. The Prime Minister would welcome your thoughts on how best to exploit this opening. He remains keen to do so if we can.

I am copying this letter to Jonathan Powell here and to Bill Jeffrey.

Yours ever,

JOHN SAWERS

Secretary of State for Northern Ireland

CONFIDENTIAL AND PERSONAL

FROM: BILL JEFFREY
Political Director
Date: 5 January 2001
BJ/CW 659 (L)

JB

ejs

c.c. PS/Mr Pilling
Mr Watkins
Mr Fittall
Mr Powell, No. 10

SECRETARY OF STATE

POLITICAL UPDATE

Welcome back.

Sitrep

2. Not much has changed since you left.

- The Americans have stirred themselves. Steinberg has been in touch with Jonathan, and is willing to be involved next week, Norland admitted to me yesterday that this is a last throw as 20 January approaches. The original idea was for Jim to meet Adams in Dublin on Monday and be available "for consultation" on Tuesday if we and the Irish re-engaged with Sinn Fein then. But we heard yesterday that Adams will be out of contact "consulting people" on Tuesday and Wednesday morning. Since Jim has to be in New York on Wednesday evening, the plan is now for him to drop in at the end of the week. Jonathan and I plan to meet Irish officials in London on Tuesday, and – if you and the PM agree – get back down to business with Sinn Fein on Wednesday afternoon or Thursday morning. The Americans have offered Winfield House as a venue.

- The Irish remain upbeat. Gallagher told me over the holiday period that he still thought the Sinn Fein leadership were in the market for a decommissioning deal on the lines we have been discussing, but could not deliver support for Patten on the same timescale. He has been taking the same line with Jonathan, and (we gather) with the Americans. Whether it reflects his real view or is just a tactic designed to encourage us to give it our best shot, I find it hard to judge. Dalton is more sceptical.

- Trimble has all but disappeared from view. His next milestones are a meeting of his party officers a week today, 12 January, followed by a meeting of the Executive in early February. When I met Campbell and Lavery this morning they warned that he was going to have to take a higher profile from next week onwards. He was keen to avoid a meeting of the UUC before the AGM in March, as – they thought – was Donaldson. On Friday, Trimble would need to put some kind of plan to his party officers, reflecting whatever progress we had made during the week. He might opt for a round of consultations with the grass-roots ahead of the Executive meeting in February. It was always possible that 60 renegades would call a Council meeting. Some of the young hardliners were losing touch even with Donaldson. But they would be hard put to make it stick without Donaldson's support.

- David Watkins has had a useful meeting with the Chief Constable. Ronnie is sore about the fact that the Crossmaglen option has been played in as an addition to the three installations. When it first came up at Nice, he

understood it to be an alternative. He can live with it, but thinks that in practice it will be fraught with difficulty. The good news is that he is willing to look creatively at the sequencing issue on which --ostensibly – our discussions with Sinn Fein broke down on 22 December. His first thought is that we could respond to IRA re-engagement with de Chastelain by announcing the Newtownhamilton change, and holding out the prospect of further changes in South Armagh as a response to further progress by the IRA. He has also thrown in the idea of using Mallon (the constituency MP) as a salesman for the normalisation package.

- Ronnie is predictably very concerned about the prospect of delay in policing reform. You now have a note on the options from David Watkins, and, from William Fittall, a draft note to the Prime Minister. My own comments are below.

- The intelligence picture on the Provisionals is mixed. There are a few recent straws in the wind suggesting an ultimate willingness to put weapons beyond use by dumping on their terms, but very much as a bottom line. There are also signs that they expect the institutions to collapse, and are mainly concerned about not being blamed.

- The Prime Minister is due to speak to the Taoiseach on the telephone on Monday. Jonathan is suggesting a discussion on Northern Ireland in the margins of the political meeting you are attending on Sunday afternoon. This will be a chance to tee the Prime Minister up for the Taoiseach call.

Comment

3. I would like to be proved wrong, but I remain sceptical about whether Sinn Fein are really up for a big deal, by which I mean one in which the IRA not only re-engage with de Chastelain but are privately committed that within a reasonable time modalities will be agreed and the contents of the first dumps put beyond use. I think it is more likely that they want to test the limits of what we have to offer and to attempt to secure it in return for no more than re-engagement with de Chastelain, with actual delivery by the IRA dependant on further normalisation, progress on Patten etc. But I may be wrong (Jonathan is more optimistic). Provided we hold firm to the line that the normalisation measures we have already identified are only on offer as part of a bigger deal, I agree that we should carry on trying.

4. On weapons, I think we should now get the argument more on to sequencing, building on David Watkins' discussion with the Chief Constable. I attach a possible sequence which, if you agree, I will discuss with Jonathan ahead of Tuesday's meeting with the Irish. As set out, it has the advantage that, if a big deal proved beyond Sinn Fein, steps one to three could conceivably constitute a small deal, although we would need to check that the Chief Constable was content on Newtownhamilton.

5. I would present a sequence of this kind as our best and final offer on the weapons/'demilitarisation' nexus, partly because - short of a Ministerial decision to overrule the Chief Constable - that is what it would be. If it is not enough for Sinn Fein, I would be inclined to turn the argument back on them. The complete absence of meaningful contact between the IRA and the de Chastelain Commission over a period of eight months since it was promised is not easy for them to defend.

6. There are two other issues which are worth highlighting here. The first is the mood within unionism. Robert Crawford's recent conversation with Jack Allen confirms the Campbell/Lavery assessment that, although others are more gung ho, Donaldson is not keen on calling a meeting of the UUC before the Election. He probably calculates that a damaging confrontation with the leadership so close to the Election would be counter-productive. Instead, he may try to get the Party's policy changed at the February meeting of the Executive.

7. I may (for a change!) be being over-optimistic, but I have felt for some time that, with the scent of an Election in their nostrils, the collective instinct of unionism may be to hunker down and try to find some common ground. That would not necessarily mean the withdrawal of UUP Ministers from the Executive. Campbell told me today that, although Taylor favoured fighting the Election from outside the Executive, he (Campbell) thought it would be a great mistake. As you yourself remarked after the last UUC, the current position, with Trimble talking tough and acting tough on North/South, though uncomfortable and unsustainable in the longer term, may be sufficiently stable to get us past the Election with the institutions intact. This would be second best to a comprehensive big deal, but by no means the worst outcome.

8. The conclusion I draw from this is that, in the next week or so, one of our objectives should be to avoid destabilising unionism unnecessarily. It is just possible that a deal with Sinn Fein which appeared to have achieved too little at too high a price could, from that point of view, be worse than no deal at all.

9. The second big issue is Patten. The notes you have had from David and William deal with the substantive question of what the Government could do to preserve effective policing in Northern Ireland and maintain some momentum behind the change programme, if neither the SDLP nor Sinn Fein were willing to nominate to the Policing Board during January. There is, however, also a political dimension, on which my own view goes as follows:

- We should not run d'Hondt if our considered view is that doing so would produce a Policing Board with no political representatives of nationalism;

- By the end of this month, you will need to make a choice between, on the one hand, calling the nationalists' bluff by forcing the issue and, on the other, adopting one of the options discussed in the notes you have had;

- That choice can only be made at the time, and we should do our best, in the negotiations, to create conditions in which you can confidently run d'Hondt and set the Board up, at least in shadow form; but

- In the meantime, we should leave the Irish and the nationalist parties in no doubt that simply deferring Patten and letting things fester is not an option; and, without being too specific, we should leave them in some doubt about whether, in the end, you will force the SDLP and Sinn Fein to a choice by running d'Hondt. (Keeping the Irish in particular in a state of anxiety about this strikes me as being in our overall interest, and giving us some much-needed leverage. They breathed an almost audible sigh of relief when the

Prime Minister agreed not to force the issue before Christmas.).

Your discussion with the Prime Minister

10. Against that background, I think your main messages for the Prime Minister on Sunday should be:

- Don't forget we are at our bottom line on security normalisation. Ronnie's willingness to consider sequencing gives us a little flexibility but not much. Irish officials probably assume we have something in reserve. You must disabuse the Taoiseach.

- Bear in mind also the need to manage unionism. Trimble needs movement from the IRA, but he doesn't need unsettling concessions from us to Sinn Fein or any sense that we have paid too high a price. We should both keep close to Trimble in the coming week.

- On Patten, we have two interests. The first is substantive. We cannot let nationalist prevarication get in the way of providing the Northern Ireland public with an effective policing service, or put the Patten reforms completely on ice. (I am sending you separate advice on this.) The second is tactical. We should keep the Irish and the nationalist parties in some uncertainty about whether we intend to force the issue at the end of January. Both point towards your warning the Taoiseach that we have to get on with Patten, and cannot simply put it in baulk for months while the nationalists make up their minds.

- Subject to these points, let us see how we get on with Sinn Fein and the Irish later in the week; aim for a big deal; but be ready to consider a more modest one if that is all that is achievable at a reasonable price.

[Signed]

BILL JEFFREY
11 Millbank ☎ 6447

POSSIBLE SEQUENCE ON DECOMMISSIONING/NORMALISATION

1. British Government makes statement restating its commitment to fulfil May agreement and indicating that significant steps by the IRA to put weapons beyond use would alter the assessed security threat, and enable further steps to be taken to normalise security in South Armagh.

2. IRA statement announcing re-engagement with de Chastelain Commission for the purpose of agreeing how weapons are to be put beyond use in accordance with earlier IRA statements, followed by IICD report confirming that constructive discussions are going on.

3. Chief Constable announces demolition of supersangar at Newtownhamilton, adjacent to the helicopter landing site; indicates that substantial steps by the IRA to put weapons beyond use would enable further normalisation measures in South Armagh.

4. *[By 1 March 2001]* IICD reports successful completion of discussions with IRA on how weapons are to be put beyond use – if necessary recommends new decommissioning scheme for adoption for the two Governments.

5. *[By 1 May 2001]* IICD reports that inspected dumps have been completely and verifiably put beyond use. Simultaneously, Chief Constable announces demolition of tower on Sturgan Mountain and one of two towers on Camlough Mountain, and demolition work begins.

FROM: WILLIAM FITTALL
Associate Political Director (L)
5 January 2001

JP
CJS
MT
AC

PS/Secretary of State (L&B) cc See Copy Distribution Below

DISCUSSIONS WITH TRIMBLE'S OFFICE

Bill Jeffrey and I met David Lavery and David Campbell for just under an hour in London today. Bill talked them through, in general terms, what had happened on Thursday 21 December and the possible running order for meetings next week. We got some interesting views and information from them. We also agreed that the Secretary of State and Trimble should meet before Friday, possibly on Wednesday in London. There might then be a Lavery/Campbell/Powell/Jeffrey conference call on Thursday.

2. David Campbell said that Trimble's relatively low profile recently would have to come to an end next week in the run up to the meeting of party officers on Friday. Trimble's preference remained to avoid a UUC meeting if at all possible and there were signs that Donaldson was also edging away from calling a further UUC meeting, though there was sufficient young Turks and other disaffected individuals to collect the necessary 60 signatures without Donaldson's support. Much turned on Willie Ross and Martin Smyth. Ross was also starting to panic a bit and could see the case for avoiding a further deepening of splits.

3. The dilemma for David Trimble was that if a UUC became inevitable he would want to take the initiative and call it on his own terms rather than have it forced on him. His present thinking was that he would need to present a plan at the officers meeting next Friday for consulting the party grass roots over how the party should position itself in the run up to the election. Part of his difficulty was that John Taylor now thought that the UUP would do better, in the absence of significant movement from PIRA, to fight the election from outside the Executive. This was not Campbell's view, nor he thought Trimble's. But, in deciding tactics, he needed a realistic assessment of whether a breakthrough was likely. Jonathan Powell had surprised him (Campbell) by sounding pretty upbeat on Wednesday. Did we share the same view?

4. We stressed that everything was still to play for. There were broadly three possible outcomes: an ambitious deal of the kind which we had been pursuing before Christmas; a slightly less ambitious deal but which nevertheless secured some form of movement over weapons; and no deal. We were still aiming for the most ambitious of these but the relative odds were very hard to assess.

5. In reply to a question Campbell confirmed that if the leadership decided to pull out of the Executive they would have to call a Council meeting – this was not a decision which the Executive alone could take. In considering tactics the leadership would also have to have an eye to their AGM which was in the latter part of March.

6. We said that a particularly difficult issue for Ministers this month was policing reform. We simply could not afford to let matters drift on indefinitely. On the other hand, triggering d'Hondt and ending up without any nationalist political nominees was, to say the least, seriously unattractive. Lavery and Campbell did not offer any thoughts on the issue beyond noting that David Trimble still expected to be consulted further before the independents were appointed (we explained that this was in baulk given the uncertainty over the political members).

7. Other matters which were touched on were:

- neither of them had any intelligence on when the **NSMC judicial review judgement** was likely to be handed down. The only commitment the judge had given was that it would be between the start of term (Monday 8th) and the next meeting of the NSMC later in the month. Campbell and Lavery said they had been surprised by press speculation that Sinn Féin might be deferring decisions on the wider issues until the judgement was given. Campbell confirmed that Trimble had not yet focused on who would be nominated to the **BIC meeting on 23 January.** Mallon had conceded the principle of nominating someone other than the Departmental Minister when he, Trimble and Foster (rather than a DUP Minister) had represented the Executive at the NSMC and BIC meeting on transport before Christmas. Campbell's feeling was that Trimble would not want to nominate Bairbre de Brun though David Lavery seemed to see the advantages of an alternative approach. They confirmed that Trimble was unlikely to want to insist on a meeting of the BIIGC on the same day as the BIC;

- Campbell pulled a very long face about the stories concerning **an Irish passport office in Belfast** and asked us to convey to Dublin that Trimble would be completely opposed to anything that was outside normal consular arrangements. He would see this as a litmus test of the constitutional settlement. If the Irish tried to go ahead on a different basis he would feel compelled to treat it as a clear breach of the Good Friday Agreement, with consequences for the operation of the North/South Ministerial Council. Bill Jeffrey reassured him on where matters stood and undertook to register the point with Daithi O'Ceallaigh;

- Campbell stressed that a **decision to release Adair from prison** would play extremely badly with moderate unionist opinion. We said that we had not abandoned hope of a successful outcome and in any event would seriously consider a judicial review if we lost;

- David Lavery revealed that the Executive did not discuss the paper on the **proposed review of public administration** on 21 December but had deferred the discussion to a specially convened awayday at the Culloden Hotel in the afternoon of Thursday 18 January. Lavery confirmed that Mallon's delaying tactics were almost certainly driven by his concern over the possible postponement of the district council elections rather than the details of the review itself. We noted that, with the passage of time, it became even more difficult to contemplate postponing the elections. Campbell said that Trimble's mind was moving towards **aligning the Northern Ireland elections with the English elections on 3 May** (and therefore possibly the general election). We repeated the familiar point that even this "modest" change would not really be deliverable without support at least from the SDLP and, ideally some other parties too. Campbell said that Trimble had gone off the border poll idea, at least for now;

- David Lavery underlined the symbolic importance which David Trimble attached to maintaining the momentum visibly on **tackling electoral fraud**. We said that our difficulties with the business managers caused by the absence of a slot in this session's programme were exacerbated by the difficulty of demonstrating that early legislation would make any

difference to this year's elections. David Lavery responded positively when we floated the possibility of a fairly early white paper.

William Fittall

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CONFIDENTIAL

From: **Jonathan Powell**
Date: **3 January 2001**

PRIME MINISTER

Cc: **Peter Mandelson**
Bill Jeffrey
John Sawers
Michael Tatham

NORTHERN IRELAND

I spoke to Dermot Gallagher this evening.

Gallagher said he had been contacted by Jim Steinberg yesterday evening, who had proposed that he come back to London or Belfast for talks with the two Governments and Sinn Fein on Monday or Tuesday. I agreed with Gallagher that we should steer Steinberg to Tuesday. He will arrange this.

I also suggested that in advance you should speak to the Taoiseach. He said Sunday would be best. The Taoiseach is in Spain until Saturday evening and then in Cyprus from Monday. I will fix the call.

Gallagher said he was relatively optimistic. Sinn Fein had just not been in a position to do a deal before Christmas. He believed they would now do a deal on decommissioning for security normalisation leaving the policing issue until later. I pushed him on the policing issue. He a said that Sinn Fein/the IRA simply could not bear the weight of both issues at once. The benign mood created by solving decommissioning might help sort out Patten.

I suggest we discuss this with Peter on Sunday in the margins of the strategy meeting.

Signed : Jonathan Powell
03/01/2001

JONATHAN POWELL

10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

2 January 2001

Dear David,

I undertook to write to you in response to concerns raised by the group of RUC widows which you introduced to me on 11 December.

I appreciate that these women feel a strong sense of injustice over the changes in pension compensation arrangements which were made in November 1982. The pension recalculations made at that time were, of course, applicable to police widows across the United Kingdom. However, in recognition of the particular financial difficulties which some RUC widows have had to face, the Patten Commission recommended the establishment of a fund to help address any hardship that existed. The Government's response was to appoint former senior Northern Ireland Office civil servant, John Steele, to examine further Patten's recommendation for a fund, to consult widely and to come up with proposals.

On receiving John Steele's report, the Government immediately accepted it as the basis on which to take forward Patten's recommendation. John Steele has recommended that each widow should receive £1,000 for each year of widowhood, until the date for the setting up of the fund. In addition, he recommended the trust fund should make regular payments to widows to ensure

they had a reasonable standard of living. These payments were to be on the basis of means-testing, taking into account all their circumstances.

While this may not meet fully what this group is seeking, I hope they will accept that not only is this an acknowledgement by the Government of the great sacrifice given by their husbands and their families, but also of the Government's genuine desire to address their concerns. I believe we have been generous and sincere and I have every expectation that these payments can be made in the early months of next year.

Thank you for your interest in this very sensitive matter. Officials in the Northern Ireland Office are currently examining John Steele's report with a view to setting up the new Northern Ireland Police Fund by next April. If you can think of any suitable potential trustees who meet the criteria set out in John Steele's report, Peter or Adam would like to hear from you.

Let me know if problems remain.

Yours ever

Tony

The Right Honourable David Trimble MP MLA

CONFIDENTIAL & PERSONAL

Top JPS
dc 55

FROM: PS/Secretary of State (B)
28 December 2000

cc: *See Distribution List*

Bill Jeffrey - O

YESTERDAY'S (21 DECEMBER) TALKS WITH SINN FEIN AND THE IRISH

The Secretary of State was grateful for your note of 22 December recording your impressions following talks with Sinn Fein and the Irish on 21 December.

2. The Secretary of State has made the following comments:

- *We should continue to play for the big plan while laying the ground for a smooth, uneventful landing on a lesser deal if this is necessary.*

- *How can we exert pressure on Dermott Gallagher to bring him up to the mark?*

- *Patten implementation is an essential goal.*

Signed

SARAH TODD
Private Secretary
☎ 28111

cc: PS/Secretary of State (B&L) – O
Mr Pilling – O
Mr Watkins – O
Mr Fittall – O
Mr Powell, No.10 - Fax

INVESTOR IN PEOPLE

northern IRELAND

Mr Loughran, OFM/DFM

NT
cc. JS
JP
poem

US VISITS TO NEW ADMINISTRATION

Issue: Numerous requests for early meetings with the new Presidential team will be received in Washington in the coming weeks. What is the best way to ensure that the interests of the Northern Ireland Executive are not lost sight of among competing requirements?

Recommendation: That co-ordinating machinery is set up in OFM/DFM to monitor centrally requests for official visits to the US, and allocate priorities which can be played into the Embassy system via the NI Bureau; but that for the immediate future, calls on the new Administration should not actively be promoted.

1. As might be expected, the arrival in Washington of a new Presidential team will provoke numerous requests for early meetings as new players are identified and contacts sought. That creates a very real risk of overlapping and possibly conflicting requirements, both in terms of visits by members of the Northern Ireland Executive and Assembly, but also in relation to political delegations from other parts of Britain and Ireland. Recent newspaper reports that the First Minister would be paying an early visit to Washington have been followed by suggestions that the Secretary of State is anxious to pay a call in January. Meanwhile, plans are being worked up (in response to invitations from US bodies) for the Assembly's Business Committee and Committee of the Center to make US tours in the next few months; and Sir Reg Empey is considering a programme built around his attendance at the American Ireland Fund dinner here in mid-March. Other proposals may well emerge in the course of the next few months.

2. The attitude of the Bush Presidency towards Northern Ireland will not be known for some time, but the British Government may well want to adopt a strategic approach to its presentation of the case; and it may be that the Prime Minister will wish to be the first personally to raise the matter of Northern Ireland with President Bush, putting the issue in the context of the overall UK-US relationship. While it will probably take place sooner rather than later, the timing for such a visit is not yet known.

3. Some co-ordination of the various representational efforts will obviously be required. It seems probable that there will be a request for information on all visits to Washington proposed for the immediate future to be collated and evaluated, so that some kind of objective overview becomes possible, and consistent advice offered. Regional Ministers will not wish to be obliged to seek permission from London to visit the US, but

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neither will they want to cause embarrassment to the new Administration by requesting visits at times that are judged here to be inopportune.

4. For the same reason, it also seems sensible to anticipate that the Administration will take a measured approach to developing its trans-Atlantic linkages, and will look to the Embassy here for guidance as to how requests for meetings might be assessed. That, too, points up the necessity of the Executive in Belfast having its own considered visits strategy in place, so that bids for early visits can be played in at the appropriate time. It is not an exaggeration to say that if we get our approach to Bush's people wrong at this stage, it could poison the wells for the next four years. And in this context a wrong approach would be one that the Embassy felt unable to endorse.

5. Accordingly, it is strongly recommended that some kind of machinery should be created within OFM/DFM that will consider the question of US visits over the next six months, and seek to establish a strategic framework within which the objectives of such visits can be clearly identified and prioritised. From this end, the Bureau will contribute reports and analysis of appointments to the Administration, establish links with new contacts, and (where relevant) advise on how members of the Executive might open lines of communication with their opposite numbers when they have been nominated. The Bureau will also ensure that the case for early visits from Northern Ireland remains high on the agenda, and is given appropriate priority by the Embassy in any advice to the Administration.

6. For the moment, however, caution must be the watchword. The signals now being received from the Bush camp are that they would prefer no visitors until after inauguration on 20th January. Even after that, pending Senate confirmation of appointments, visits may still have to be very carefully considered. The transition team have indicated that they expect President Bush to be fully occupied by domestic matters throughout February.

7. The Ambassador has seen the above, and agrees with the line suggested. Perhaps we could have an early word about how to take matters forward.

8. I am copying this to John Sawers in No 10, and to Jeremy Cresswell in the FCO.

P. Smyth.

Peter Smyth

Director, Northern Ireland Bureau

28th December 2000