

FROM: J STEPHENS
PRISON REGIMES DIVISION
10 MARCH 1989

TO: Mr Blackwell - BLIS

cc: PS/PUS (L&B) - B
Mr Burns - B
Mr A W Stephens - B
Mr Steele
Mr Thomas - B
Mr Jackson
Mr Maccabe
Mr McMullan
Mr Masefield - B
Mr McVeigh
Mr Marsh - B

FINUCANE EXTRADITION HEARING

1. I observed this hearing on the morning of Friday, 3 March because the Court had asked for some prison documents to be made available which I was able to take down. Having observed the proceedings on Friday morning, I thought it might be useful to note down some of my impressions; I understand that the case had started on Wednesday and submissions were expected to be completed this Monday (the court did not sit on Friday afternoon). I therefore saw only a small part of the proceedings, but it included 2 hours out of Mr Jackson's 6 hours of testimony.

2. Mr Jackson gave evidence from 11.00 am to 1.00 pm; other than 10 minutes at the end, all of this was cross-examination by Mr MacEntee for Finucane. His questioning was concerned entirely with the allegations of assault and brutality by Prison Officers following the Maze escape, and, in particular, Mr Justice Hutton's adverse judgement in the Pettigrew compensation case including his comments that Prison Officers had lied in their testimony to the Court. Mr MacEntee made

much of the fact that the Court had found that Officers had assaulted prisoners and had lied in the witness box, but that as yet no disciplinary action had been taken against any officers in respect of either of these matters. He also passed around the Court the POA's 'white card' which they are advised to produce in the event of an enquiry and which states that they will not co-operate beyond providing a written report. I thought that the tone and approach of Mr MacEntee's questioning was harder and more adversarial than most I have witnessed (including the Pettigrew case itself) in Northern Ireland; Mr Jackson tells me that what I saw was milder than the previous days. Nevertheless, and this was confirmed by 'our' Irish counsel, it was clear that Mr MacEntee was not making a favourable impression on the 3 judges; they regularly interrupted to query whether a question was relevant, repetitious or within Mr Jackson's competence. They reminded Mr MacEntee that he was addressing 3 judges, not a jury. On, I think, 2 occasions our counsel intervened with formal objections on these grounds. Nevertheless, despite their clear weariness with the length, direction and tone of Mr MacEntee's questioning, the judges did generally allow him to continue. The impression was that they thought that Mr MacEntee's questions were adding little or nothing to what the court already knew but that they were wary of preventing him from asking them. Many of the questions were outside Mr Jackson's responsibilities; including, for example, whether promotion procedures took any account of the (in Mr MacEntee's words) known perjurers and brutes in Maze prison. Mr MacEntee tried to make something of the fact that he had only Mr Jackson to question so had to put wide questions to him; while allowing the questions to be put, the judges seemed to be content if Mr Jackson did not know or could not recall the answers. At the end of his testimony the judges wished Mr Jackson a happy retirement. Both counsel and the Irish state solicitor

thought that Mr Jackson's testimony had been very effective and were optimistic about the case as a whole; they said that Mr MacEntee's questioning had not really established anything beyond what was already known in the Russell case and that therefore the judges were very likely to follow that precedent.

3. I should record that I was rather surprised to find myself the only representative of the British Government actually observing the case. I understand that the Embassy had had a presence (George Fergusson) for half a day but they did not have the staff to cover the whole case. What seemed particularly lacking was any representative of the Crown Solicitor's Office in the Court itself. I realise that there were close contacts between the CSO and the Irish State Solicitor and that instructions for the Counsel on behalf of the Irish Government had been agreed with us in advance, nevertheless I think it would have been extremely useful to have an observer from the CSO in Court. Such an observer would have built up his own impressions of how the case was proceeding and being conducted; that could have been of some value if the case had taken an awkward turn and required difficult decisions. In any event, it would have been valuable experience for the next such case; as it is, we are now dependent on second hand reports for this. I think that the case for an observer is even stronger where an official or member of the security forces is actually giving evidence. Faced with a cross-examination from Mr MacEntee, any such witness would find the court a very lonely place. The perception of such a witness would, I suspect, be that there was no-one in court to look after his own interests. Counsel for the Irish Government can of course do this in part but this is not really the same as having the British Government's own representative there. Even if he could not intervene in the proceedings, he could represent the British Government's interests and the witness' interests to the

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Irish Government's counsel. As we know, it was foreseen in advance that the case could have taken a very awkward turn and instructions for the Irish Government Counsel were agreed for this eventuality; it strikes me as surprising that we would have allowed such a vital decision to be taken by the Irish Government's legal representatives, without seeking to have our own independent view on the spot. I appreciate, however, that there may be other considerations.

4. As to security, from what I saw, it would best be described as generally adequate but certainly not over officious. There was a brief occasion when, although surrounded by Garda, we were left standing around within sight of the anti-extradition demonstration and reporters. It may have been then that the photo of Mr Jackson was taken that appeared in yesterday's An Phoblacht. Bearing in mind that security is as much about reassurance as protection, I think it would be possible for a person who was rather concerned about his safety not to be over impressed with the arrangements.

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