

ow

*With the compliments of  
the Legal Secretary*

*by*

*Await comments*

*CAD*  
*16/6.*

*Attorney General's Chambers,  
Law Officers' Department,  
Royal Courts of Justice,  
Strand. W.C.2A 2LL*

01 405 7641 Extn. 3291



M.L. SAUNDERS  
LEGAL SECRETARY

CCBG  
LAW OFFICERS' DEPARTMENT  
ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

A Brennan Esq. CB.,  
Northern Ireland Office  
Whitehall  
London SW1A 2AZ

16 June 1986

Dear Tony,

I am enclosing a copy of a letter the Attorney General has received from the Irish Attorney General.

Whilst Mr Rogers's comments on the Burns case are a matter for the Attorney alone to deal with, you and the other recipients of this letter have a direct interest in his outright attack in writing on the integrity of the Northern Ireland judiciary and in assessing what has motivated this particular letter and what Mr Rogers expects to achieve by writing it.

The Attorney intends to reply robustly to Mr Rogers's letter next week on his return from Oslo. I shall be circulating a draft towards the end of this week.

I am copying this letter to Tom Legg, Charles Powell, Gerald Clark and Michael Stark.

Yours sincerely,  
Michael Samuel ..

M L SAUNDERS



OIFIG AN ARD AIGHNE  
(ATTORNEY GENERAL'S OFFICE)

BAILE ÁTHA CLIATH  
(DUBLIN 2)

11 June, 1986

Sir Michael Havers, Q.C.  
Attorney General  
Royal Courts of Justice  
London WC2A 2LL

Dear Michael,

There are two matters about which I feel I should write to you at this time.

The first is the matter of Brendan Burns about whom Mr. Saunders wrote to Matthew Russell by letter which was received here on the 7th May, 1986. I understand the position to be that you have decided not to seek Burns's return from this jurisdiction on foot of the warrants dated the 20th November, 1985. Mr. Saunders says that in the light of a decision of the Northern Ireland Court of Appeal in R. - v - Martin it was considered that on the basis of the evidence available against Burns the case against him was not strong. A difficulty I have with this is that in an affidavit sworn by Maurice McLaughlin Neilley a Detective Chief Inspector of the R.U.C. he says "there is forensic scientific evidence that the plaintiff was one of the persons responsible for the commission of the said offences".

Burns was arrested in mid-February 1984 on foot of warrants issued by a Justice of the Peace at Newry earlier that month. The District Court at Dundalk made orders for his delivery and he was lodged in Mountjoy on foot of those orders pending the outcome of High Court proceedings wherein he sought a declaration that the offences were political offences within the meaning of the Extradition Act. On the 2nd December 1985 a preliminary order of certiorari was granted by the High Court in Belfast whereby warrants issued by the Justice of the Peace at Newry were quashed. We were first informed of these proceedings on the morning of Wednesday the 4th December, 1985 when in response to a routine enquiry concerning proceedings pending in our Court the following Friday we were told for the first time of this Order and that the Crown would show cause against it. Later that day we were told that the order quashing the warrants had been confirmed.

The events of the 4th December took us entirely by surprise and particularly in meeting habeas corpus proceedings which had been brought by Burns in this jurisdiction.

I have to say that on Wednesday and Thursday the 4th and 5th December, 1985 I personally was left in an impossible position. Burns had been in custody since February, 1984 on foot of warrants which had now been quashed by a Northern Ireland Court. At the same time I was let to believe, by Mr. Neilley's affidavit that he could "connect" Burns with each of the charges set forth in the fifteen warrants that had been issued by the Justice of the Peace at Newry which were in respect of most serious offences against members of the British Security Forces in South Armagh.

In view of the decision of the Northern Ireland High Court we could not resist the habeas corpus application and Burns was freed. For constitutional and legal reasons I directed that he should not be re-arrested on foot of new warrants until a decent interval of time had passed. In the event an attempt to re-arrest him later on the 5th December, 1985 failed when he escaped from a house he was seen to enter earlier in the day. He has been at large since.

I am now in a position where almost six months after these difficult and extraordinary circumstances arising from the issuing and execution of defective warrants at Newry I am told that the case against Burns "was not at all strong". I can well understand how a later judicial decision might affect the judgment made upon particular evidence but having regard to the very positive statements made by Mr. Neilley in the affidavit referred to I have to say quite candidly that I am most surprised at this most recent turn of events.

We both know that these matters are the subject of much public controversy here and the fact that the warrants against Burns have been withdrawn may well become public knowledge and inevitably it will be left to me to field questions which will arise in Government and which will be asked in the media. Obviously, it will be asked how is it that the warrants against Burns have been withdrawn when he spent more than a year and a half in custody on foot of warrants relating to the same offences. It will be difficult to deal with these matters and I feel we may well be confronted with another controversy about the operation of extradition arrangements between our two jurisdictions. This will occur at a most sensitive time. Later this year the Government will seek to enact legislation which will allow the State to accede to the European Convention on the Suppression of Terrorism and the manner in which the Dail receives these proposals will depend in large measure on the state of public opinion here in relation to the operation of extradition procedures.

If a view is established that Burns was the subject of injustice having been detained in custody here for a protracted period on slim evidence then we will be confronted with a very difficult situation.

The detail above is somewhat turgid but I feel it is necessary so that you will understand the position fully. I should say that I would have raised this matter with you at the last meeting of the Conference but Mr. Saunders' letter had not arrived here until the 7th May and I had not had the opportunity of considering this matter fully.

May I turn now to the second matter. It refers to the last meeting of the Anglo-Irish Intergovernmental Conference on the 9th May and in particular to some observations made by me in relation to the three-man Courts. At one point I suggested that we should not assume that if there were three-man Courts there would always be two members of the majority community and one member of the minority on the Court; I said that there was no reason why a three-man Court couldn't have two members of the minority. I went on to express confidence in the way in which the Judiciary would behave.

While I do not wish to impugn the integrity of any members of the Northern Irish judiciary or to suggest any conscious bias on the part of any of its members, I would not like my remarks to have given the impression to your side in the Conference that I had no reservations about the performance of all of the Judges. Naturally, as a lawyer, and holding the office that I do I would be reluctant to undermine the position of Judges or lawyers who seek to administer justice in difficult circumstances, but as you will know from our conversations I have real reservations about some members of the Northern Bench who, I believe, on occasion have, displayed some of the prejudices of their backgrounds. There are particular cases which I could mention to you but about which I think it is unnecessary for me to go into detail because I know you are familiar with them.

I am concerned to make these remarks and to put the record straight on this matter for fear that it would be thought on your side that my utterances constituted a vindication of the Northern Irish Bench as a whole. You know that this is not the case and that I have repeatedly expressed to you my view that members of the Northern Judiciary have at times been less than judicial and have faltered as judges by permitting their background and perhaps their political inclination to influence their judgment.

The observations which I made at the Conference were intended in the context of my assertion that three-man Courts with two members from the majority Northern Irish Community

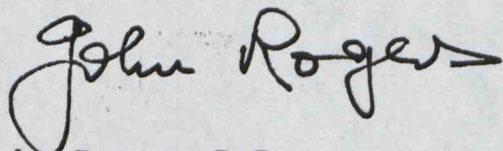
should not be considered the rule and that a three-man Court with two members from the minority community was a real possibility that could readily occur with no danger that those two Judges from the minority community would take a particular view merely because they were from the minority. My concern was to endorse the integrity of judicial office holders in a general way. However, I should say, in parenthesis, that it is my conviction that three-man Courts of first instance in criminal cases would have this particular advantage: that collegiality would force judicial representatives of both communities to arrive at their decisions and judgments having regard to the views taken by their judicial colleagues of the evidence before them. I think the result would be that judgments arrived at would be the better based on law and fact and would be more reliable and less likely to be disturbed on appeal, and that there would be less chance of unwise or insensitive utterances from a Judge who was flanked by two colleagues.

Forgive me for writing at such length but I think it is important as the relationship between us depends entirely on each of us fully understanding the position and difficulties of the other. I hope this letter will help in that process.

Please accept my best wishes and I hope you are keeping well and that you are getting a chance to make a full recuperation from your illness last year.

With kind regards,

Yours sincerely,

A handwritten signature in cursive script that reads "John Rogers". The signature is written in dark ink and is positioned above the typed name and title.

John Rogers S.C.  
Attorney General

