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FROM: D A LAVERY  
9 JULY 1996

J. McKervill ✓
P. McDiarmid
J. Black ✓ 17/7
A. McVerry ✓

I think there is some  
force in this.

9/10/7.

MR HILL (L&B) - B

cc PS/Secretary of State (B&L) - B  
PS/Michael Ancram (B&L) - B  
PS/PUS (B&L) - B  
PS/Sir David Fell - B  
Mr Thomas (B&L) - B  
Mr Leach (B&L) - B  
Mr Watkins o/r - B  
Mr Bell - B  
Mr Wood (B&L) - B  
Mr Beeton - B  
Mr Stephens - B  
Mr Maccabe - B  
**Mr McKervill - B**  
Miss Harrison (B&L) - B  
Mr Whysall (B&L) - B  
Mr Campbell-Bannerman - B  
Mr Clayton, HOLAB - B  
Mr Lamont, RID - B  
HMA Dublin - B

TALKS: FRATERNAL FALLING OUT

1. This is to offer some views on the matters covered in your minute of 8 July concerning the current status of Mr Malachi Curran as a member of the Labour delegation.
2. We managed to avoid any direct reference to this at today's reconvened non-plenary session. (Although one of Mr Langhammer's assistants was present and did appear to have a private discussion with Senator Mitchell.)
3. While noting your suggestion that "the legal position appears to be that Malachi Curran has been formally and irretrievably removed as an elected delegate and replaced by Mr Langhammer", and with due deference to Mr Clayton who is considerably more expert in this field than I am, it seems to me that there is a respectable argument that an alternative construction of the relevant legislation may be sustainable.

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4. In his letter to the Secretary of State dated 3 July, Mr Langhammer requested that Mr Curran should be replaced as a delegate under the terms of paragraph 18(1)(b) and 19(3) of Schedule 1 to the Northern Ireland (Entry to Negotiations etc.) Act 1996. person is the nominating representative for purposes of Section 5(1).
5. Paragraph 18(1), so far as is relevant, provides as follows:
  9. In the present case, in view of the apparent authority with which '18.(1) - A person's name shall be treated as removed from a party's constituency or regional list....if the Secretary of State receives a written request for removal from - to the capacity in which Mr Langhammer acted when he wrote his letter of 3 July. I would suggest that...(b) the party's nominating representative.' the Secretary of State was in receipt of Mr Casey and Mr Curran's letter of
6. Therefore, it is clear that a validly given written request under paragraph 18(1)(b) removes the person in question from the party's constituency or regional list. However, in order to be valid, the written request must be received from the party's 'nominating representative' and this would seem to necessitate making enquiries from Labour and various
7. Section 5(1) of the 1996 Act defines the 'nominating representative' as follows: 3 July Mr Langhammer did in fact remain the party's nominating representative (in which case the '5.(1) In this Act "nominating representative" in relation to a party means the person who at any time would appear to the Secretary of State to be the leader of the party or otherwise the most appropriate person to act on behalf of the party for the purposes of this Act.' Should the Secretary of State arrive at the latter conclusion, then he would be
8. It is clear that Mr Langhammer was the nominating representative of Labour when he nominated Mr Curran and Mr Casey to be the party's delegates to the all-party negotiations. However, I would suggest that it is a reasonable construction of Section 5(1) that there may be circumstances in which the Secretary of State, when in

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receipt of a written request purported to have been given under paragraph 18(1)(b), may reasonably require to give further consideration to the status of the person from whom that request is received in order to determine whether at that time that person is the nominating representative for purposes of Section 5(1).

9. In the present case, in view of the apparent authority with which Mr Curran and Mr Casey have been conducting themselves from the outset of the negotiations, it might not be unreasonable for the Secretary of State to wish to give further consideration to the capacity in which Mr Langhammer acted when he wrote his letter of 3 July. I would suggest that this proposition applies a fortiori once the Secretary of State was in receipt of Mr Casey and Mr Curran's letter of 5 July challenging Mr Langhammer's right to act as nominating representative.

10. I would argue that, having given such further consideration to Mr Langhammer's position (and this would seem to necessitate making enquiries from Labour and various committees), it would be possible for the Secretary of State to conclude either that on 3 July Mr Langhammer did in fact remain the party's nominating representative (in which case the request conveyed in his letter of 3 July would be effective for purposes of 18(1)(b)) or, alternatively, it would be possible for the Secretary of State to conclude that at that time Mr Langhammer no longer appeared to be either "the leader of the party or otherwise the most appropriate person to act on behalf of the party". Should the Secretary of State arrive at the latter conclusion, then he would be required to cause notice of the change in the party's nominating representative to be published in the 'Belfast Gazette' to comply with Section 5(2) of the Act. However, the publication of a notice in the 'Belfast Gazette' is, in

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my view, no more than a formal expression of the determination which the Secretary of State has a discretion to exercise under Section 5(1) of the Act.

11. Whatever view, the Secretary of State arrives at would, of course, be open to legal challenge.

12. All of this would tend to suggest that it may be desirable for the Secretary of State to take further time to reflect on the status of Mr Langhammer's letter of 3 July and the implications, if any, that letter has for the composition of Labour's delegation. It is to be hoped that the discussions which are now taking place within Labour and its various constituent committees may go some way towards resolving this issue. I would tend to agree with your suggestion, therefore, that we should in the meantime try to hold to the line that Labour's representation is a matter for them to resolve.

(Signed)

D A LAVERY  
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DR/72501