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FROM: D A LAVERY
CENT SEC
26 September 1996

cc	PS/Secretary of State (B&L)	B
	PS/Michael Ancram (B&L)	B
	PS/PUS (B&L)	B
	PS/Sir David Fell o/r	B
	Mr Leach	B
	Mr Watkins	B
	Mrs Evans, HOLAB	B
	Mr Hill	B
	Mr Maccabe	B
	Mr Stephens	B
	Mr Carter, HOLAB	B
	Mr Dickinson, TAU	B
	Mr Jagelman	B
	Mrs McNally	B
	Mrs McEvoy, TAU	B

Mr Whysall (B&L)

TALKS: MR MCCREA'S ACTION AGAINST ALLIANCE

1. I was interested to see your Note for the Record recording an approach from Messrs Millar, Shearer and Black on behalf of the Reverend William McCrea in relation to possible litigation.
2. I was particularly interested to see your account of some preliminary views by HOLAB. While there is nothing quite as unhelpful as lawyers offering conflicting opinions, I am not sure that, on the information currently available to me, I would necessarily be entirely confident that our records of the relevant proceedings will, as you suggest, prove to be "fairly safe" from discovery.
3. HOLAB are undoubtedly right that discovery in a non-personal injury action only lies against a party to the proceedings. However, that is not to say that there may not be other means of securing the same result. I would have thought that there must be quite a high degree of probability that in any proceedings of the type currently being contemplated by the Reverend William McCrea it would be possible for the plaintiff to issue a subpoena duces

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tecum requiring an appropriate Government official to produce our records in court . I think this is covered by Order 38 Rule 11 of the Rules of the Supreme Court (RSC Order 38 Rule 13 in England and Wales). Therefore, although these records are probably not discoverable in a technical sense, and are probably not amenable to production prior to trial, nevertheless I am reasonably sure that we could be compelled to produce them at court.

4. I was also interested in HOLAB's suggestion that the proceedings in the all-party negotiations are not covered by privilege. While it is undoubtedly correct that the 1996 Act is silent on this point (whereas the Act expressly provides for proceedings at the Forum to be privileged), I would have thought that there would be at least an arguable case that the proceedings at the negotiations would be covered by qualified privilege. Essentially, this would mean that a remark made in the course of the negotiations would not be actionable unless motivated by malice.

5. All of this may, however, be largely academic as it remains to be seen whether the Reverend William McCrea intends to litigate (as opposed to threatening to litigate). The same may well go for Mr McCartney's threatened application for leave to apply for judicial review.

[signed DAL]

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