



British Embassy
Washington

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Dear Mary Ann,

JIMMY SMYTH

I promised to get in touch when I had had a reaction from London to the proposal which Tony Lake put to David Logan last week, and which you and I have subsequently discussed.

London have now come back to us. They have asked me to say that they are glad to hear that there are no further obstacles in the way of, or conditions attached to, the extradition of Smyth.

My colleagues have also thought carefully about the suggestion that you might say, at the time of Smyth's extradition, that you hoped that in due course, and in the context of further confidence-building, the British Government might be prepared to count the time spent by Smyth in US jails towards his remission entitlement.

There is a problem with this. The legislation relevant to remission was examined with great care at the time of the Joe Doherty case. At that time, it became clear that the 1953 Northern Ireland Prisons Act severely limits the discretion available to the Northern Ireland authorities, particularly in the case of those (like Smyth) given a fixed sentence. The law says that time spent in custody in another country cannot generally be counted towards remission, except in exceptional circumstances and at the discretion of the Secretary of State. The Court of Appeal ruled, in the Doherty case, that there were no such exceptional circumstances, so the time he had spent in prison in the United States did not count towards remission. The informal view of experts in London is that the Court would probably reach a similar conclusion in the case of Smyth.

So, if you made a statement on the lines we discussed, the British authorities would probably be obliged to point out that, although the Smyth case would be considered on its merits, there was little scope under the 1953 Act to depart from normal procedures. We would prefer not to have to spell this out in public; but it might be difficult, particularly if publicity was given to your statement, to avoid doing so.

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As we discussed, you might wish to make something instead of the fact that the prison authorities have decided not to charge Smyth with escaping from jail. (I will check when this decision was taken.) But it will be important, both to you and to us, to avoid any statement which might be construed, wrongly, as evidence that some kind of deal had been struck between us in exchange for your Government's decision to proceed with the extradition of Jimmy Smyth.

Best wishes,

Peter

Peter Westmacott