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C O N F I D E N T I A L



FROM: K HERRICK
REL DIVISION
15 AUGUST 1996

CC: ~~10/00/30~~ (L&B) -B
PS/Sir John Wheeler (L&B) -B
PS/PUS (L&B) -B
PS/Sir David Fell -B
Mr Thomas -B
Mr Legge -B
Mr Bell -B
Mr Leach O/R -B
Mr Shannon -B
Mr Wood (L&B) -B
Mr Stephens -B
Mr Perry -B
Mr Maccabe -B
Mr White -B
Mr Adams -B
Mr Huggins O/R -B
Ms Jude -B

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1. MR BRETON (This is welcome news. Before we crow however, it is worth noting that the US lawyers are in Belfast again for the next 2 weeks taking depositions in the Artt Brennan and Kirby extraditions. Smyths return should encourage us, but we still have a tough time ahead. ACB 15.8)

2. MICHAEL ANCRAM (L&B) -B

EXTRADITION OF JAMES JOSEPH SMYTH

Michael Ancram will be aware that extradition procedures to return the Maze escapee Jimmy Smyth from the USA have been ongoing since September 1992. It would now appear that he is likely to be returned to Northern Ireland at the weekend.

2. Smyth was convicted in 1978 of the attempted murder of an off-duty prison officer in Belfast in June 1977 and sentenced to 20 years, imprisonment. His case is the first test of the Supplementary Extradition Treaty between the UK and the USA, which was designed to eliminate the 'political offence exception' in cases involving terrorism or violent crime.

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3. Smyth has fought extradition through every court, and procedure, open to him. However on 24 June this year, the Supreme Court instructed the California District Court to certify to Secretary of State Warren Christopher that Smyth was extraditable. HME Washington understand that it is highly likely that Mr Christopher will sign the release warrant on this Friday 16 August. Preparations ~~for~~ are well in hand for his return.

4. British Airways have agreed to allow Smyth to be flown back to Northern Ireland on one of their regular scheduled flights. The two RUC officers who will be responsible for escorting Smyth have flown out to San Francisco in anticipation. Assuming that Warren Christopher signs the warrant on Friday as we believe he will, the plan is for Smyth to leave San Francisco on the Saturday afternoon flight to Heathrow, arriving to Aldergrove at 14.20 on Sunday 18 August.

5. From Aldergrove the RUC will be responsible for his transport to HMP Maghaberry, which is the new committal prison for Northern Ireland. Once he is settled in Maghaberry it will be his decision as to whether or not he petitions to be removed to the Maze to serve the remainder of his sentence there.

6. Once the warrant is signed the US State Department will wish to issue a statement to that effect. Tony Lake raised the possibility with the Embassy that as part of this statement the administration might express the hope that in due course, and in the context of further confidence building, the British Government might be prepared to count the time spent in US jails towards Smyth's remission entitlement. It has been made clear via the Embassy that Government policy on this issue is very clear, and has been tested in the courts. (Most recently the policy was tested in the Court of Appeal in Northern Ireland in the matter of an application by Joseph Doherty for judicial review of the decision not to award him credit for the time he spent in US prisons. The Court ruled that under the provisions of section 38(2) and (3) of the Prison Act (Northern Ireland) 1953:

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"that it was the intention of Parliament that if a person escapes from a prison in Northern Ireland where he was serving a determinate sentence of imprisonment, the time he spends absent from that prison will not count in calculation the time he should spend in prison pursuant to the determinate sentence, unless the Secretary of State directs to the contrary, and we consider it to be clear that it was the intention of parliament that such a direction would only be given in exceptional circumstances. Moreover section 38(3) makes it clear that if after escaping the prisoner is detained in prison or other penal institution outside the UK (as happened to the present appellant) that period of detention will not count in calculating the length of his detention in the prison in Northern Ireland when he is recaptured and returned to that prison")

7. If the US were to say something on this issue HMG would feel obliged to make the legal position clear. In Tony Lake's absence Mary Anne Peters suggested that as an alternative the Administration could refer to the fact that Smyth would not be prosecuted on his return for his part in the Maze escape. This is factually accurate, as under the terms of the speciality clause of the Supplementary Extradition Treaty he cannot be prosecuted for an offence for which he has not been extradited. HMG chose not to add the escape to the list of extraditable offences in the case of Smyth, and though technically it would be possible to arrest Smyth for the escape following his release, the DPP have said that they would not seek to do so.

8. I attach lines to take to be deployed in the event of Smyth being extradited.

(Signed)

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