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FROM: A J WHYSALL
CONSTITUTIONAL AND POLITICAL DIVISION
26 SEPTEMBER 1996

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

NOTE FOR THE RECORD

TALKS: MR MCCREA'S ACTION AGAINST ALLIANCE

TAU received a call this morning from solicitors acting on behalf of the Reverend William McCrea (a Mr Gareth Armstrong, of the Cookstown firm of Millar, Shearer and Black). They wished to know if the proceedings of the negotiations were recorded in any way, and if so whether they could have a copy for 10 September. I said the reply should be that the conference proceedings were not electronically recorded; the noting of the proceedings would be under the control of the Independent Chairmen, to whom enquiries should be addressed, preferably in writing. That response was accepted without demur. (Note: 10 September was the plenary discussion of the complaints against Loyalists. There were only brief references in plenary by Alliance and others to the alleged breaches in connection with other events of the summer: and according to the Chairman's notetakers' record, no explicit reference by Alliance to the Portadown rally, through several others mentioned it).

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2. It is clear, therefore, that Mr McCrea is pursuing his action, though whether he intends to take it to court, or merely to keep it in being for political advantage, is not clear.

3. When Mr McCrea initially issued his press statement indicating that he would be seeking legal redress for the Alliance representations, we made a number of enquiries of HOLAB. Colleagues may be interested in the response. One point was whether the talks enjoyed any degree of privilege in the law of defamation. There is certainly no statutory provision, as there is in respect of the forum; and HOLAB take the view that they do not attract any sort of privilege for any other reason. The second point was the possibility that our own records of proceedings might be subject to discovery in any such litigation. Mr McCrea's action would presumably be against the Alliance Party, or also the Sunday World, which was (from reflection) mentioned in his press notice. HOLAB have advised that the general rule is that discovery only lies against a party to the proceedings, and not against a person against whom no reasonable cause of action can be alleged. There are some narrow exceptions to this rule, but HOLAB do not believe they apply here. So our records ought, in such an action, to be fairly safe.

4. That position may, I imagine, be different in any judicial review arising out of the Government's determination in the case of the other complaint, brought by the DUP against the Loyalist parties. Mr McCartney seems to take every opportunity of alluding to the possibility of an application for judicial review arising out of this, and indeed during the "confidentiality" debate he raised the point that the (Chairman's) records would have no immunity from discovery. Presumably if our own records were sought - and, as Mr Cedric Wilson has gleefully made clear, they know we keep such records - there would be at least no automatic protection for them, since the action would involve the Government.

(Signed)

A J WHYSALL

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