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Foreign &
Commonwealth
Office

London SW1A 2AH

19 December 1997

I wrote out -

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See At Flap

Dear John,

Northern Ireland Prisoner Issues: Smyth: Time Served

The Secretary of State for Northern Ireland's minute of 10 December to the Prime Minister asked for comments on the implications of allowing the Republican prisoner James Smyth to set the time he has spent in custody contesting his extradition from the United States against the length of his sentence on return.

We are content with Dr Mowlam's proposal. But you will wish to be aware of a downside which will need to be managed in terms of our relations with the US Department of Justice. The Secretary of State's letter notes that a decision in respect of Smyth would have implications for other cases. These would extend to other prisoners currently contesting extradition from the United States, one of whom (Brennan) has already spent more time in prison than remains outstanding on his sentence. Applying the principle in his case would involve the Department of Justice having to apply to the court in California to withdraw his extradition case. It is at least possible that the court would consider that their time had been wasted in this case and refuse to proceed with the extradition of two other outstanding cases (Artt and Kirby). Our relations with the Department of Justice, whose officials have worked hard on these cases over many years, might be strained, particularly as the US Attorney General was told in November that we intended to hold firm on the extradition cases.

This is not a reason against proceeding. Even in US terms along, we judge that the balance of advantage lies in following the course recommended by the Secretary of State for Northern Ireland. The Washington Embassy has given advice on how we might limit damage in our relation with the Department of Justice. We are following this up with Northern Ireland Office officials

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I am copying this to Ken Lindsay (Northern Ireland Office), Ken Sutton (Home Office) and Jan Polley (Cabinet Office).

yours ever,
Dominick

(Dominick Chilcott)
Private Secretary

John Holmes Esq
10 Downing Street

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