


FROM:

APS/SECRETARY OF STATE
24 June 1996

ASST SEC 25 JUN 1996
 DEPT OF JUSTICE
 24 JUN 1996
 CENT SEC
 C 1386

cc PS/Secretary of State (B&L) - B
 PS/Sir John Wheeler (B&L) - B
 PS/PUS (B&L) - B
 Mr Legge - B
 Mr Thomas - B
 Mr Leach (B&L) - B
 Mr Watkins - B
 Mrs Evans, HOLAB
 Mr Wood (B&L) - B
 Mr White - B
 Dr Atkins, HO (JCU)
 Mr Conn, CSO
 DI Hamlin, RUC

201/96

h/k


MR BEETON, REL - B

US EXTRADITION CASES: ARTT BRENNAN AND KIRBY

The Secretary of State was grateful for your minute of 21 June 1996, which set out progress on the three extradition cases. The Secretary of State is content to agree that the order for RUC officers to be made available for depositions should not be met, that serving RUC officers should travel to California and that the confession and notes should be made available for ESDA testing with the caveat set out in paragraph 9(iii), but has asked if there is time to get a quick view from LSLD (Attorney General's Chambers) on this. I should be grateful for your advice on these latter points.

(Signed)

ROBERT CRAWFORD
 SC Ext 28104

TALKS/1522

(201/96)

ASST DC 248/6
SEC 25 JUN 1996
CENT SEC

FROM: TONY BEETON
REL
21 JUNE 1996

UNDER/ SEC 336/6
21 JUN 1996
CENT SEC

- cc PS/Sir John Wheeler (L&B) - B
- PS/PUS (L&B) - B
- Mr Legge - B
- Mr Thomas - B
- Mr Leach - B
- Mr Watkins - B
- Mrs Evans, HOLAB
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in having DA. 24/6

PS/SECRETARY OF STATE (L&B) - B

C

US EXTRADITION CASES: ARTT BRENNAN AND KIRBY

The purpose of this submission is to bring the Secretary of State up to date on the three cases currently before Judge Legge of the District Court in California, and to seek an early decision on responding to court orders relating to the deposition of further evidence.

Update

2. Lawyers for Artt, Brennan and Kirby were due to be in Northern Ireland this week, taking depositions from the RUC amongst others. This has now been postponed because of the illness of Mr Brosnahan (lead Counsel for Artt). The judge declined to let the hearing of the others' case proceed separately; the trial date has been put back to 4 November.

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3. The lawyers for Artt and Kirby are now using Article 3(a) of the UK/US Supplementary Treaty to claim that the charges on which they were convicted were 'trumped-up'. This approach was not used in the Smyth trial and so is new ground. The judge has ordered that deposition evidence should now be taken; his orders extend to the circumstances in which both Artt and Kirby made confession statements, and provide for the non-destructive scientific testing of Artt's confession statement and interview notes. (He declined a request to order the attendance of Artt's trial judge.)

4. Our - and our US lawyers' - interpretation of the Treaty does not allow for a retrial of the original cases. It is accepted international practice that that extradition proceedings should not be used to re-run a trial. Each respondent has been properly convicted, and Artt had an appeal outstanding when he escaped. It would be most undesirable for the respondents to use the extradition process to secure a re-trial in the US courts.

Issues to be resolved

5. However the judge has decided that the court should look at the motives of those involved in the investigation and questioning of Artt and Kirby and this may be difficult to distinguish from a retrial of their cases. Their lawyers have cast a very wide net, seeking evidence of harassment by the security forces over a period long before the respondents were arrested and charged. Some of the

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officers directly involved in the Artt and Kirby cases have left the RUC and may not be traceable or fit to give evidence. Our lawyers are seeking to have the net more closely defined. Meanwhile the question of our willingness to go along with demands for depositions or the production of witnesses and other evidence needs to be resolved.

6. To comply with all the court's directions or orders as they stand might set an awkward precedent. The options available to us in respect of evidence from RUC officers are:

- (a) to refuse the requests, on the grounds that they may open the way to a retrial (and because the court has been provided with a transcript of Artt's trial and the judgement, and because he had not exhausted his rights of appeal when he escaped);
- (b) to allow depositions to be taken in Northern Ireland from RUC officers, including some involved in the original trials, who can give evidence to deal with the trumped up case line of argument;
- (c) to require serving officers who are able and willing to give evidence to travel to the US, either to give depositions or to answer questions in court, seeking the judge's support for confining the questioning to issues relating to the officers' motivation.

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Option (a) may well result in the Judge refusing to extradite the three. It would also, our US lawyers advise, weaken our case if we were to take it to the appeal court; particularly in respect of Artt's confession statement (see below). Option (b) would allow the defence lawyers to ask a whole range of questions to which we could object but there would be no judge present to adjudicate. All the material would be on video tape as well as transcripts. Option (c) would allow some degree of control over the line of questioning and would have the judge present to adjudicate objections.

7. It is impossible to predict the way Judge Legge will regard our response to his order. A decision needs to be made soon: he has ordered that depositions relating to Brennan should be taken during July and the remainder by 31 August. He may accept our offer of some of the RUC officers being made available for depositions in California as part of the hearing.

8. The order for the confession and interview notes in the case of Artt to be ESDA tested raises a more difficult issue. Although the RUC are confident the notes will pass this test, to allow it would clearly come close, at least, to a retrial and we might, on those grounds, refuse to comply. But our US lawyers feel that if the notes and confession are not allowed to be tested Mr Brosnahan will allege we have something to hide, whereas if they are tested and nothing is found that line of attack is denied to him. Moreover if

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the court ruled against extradition an appeal would be more difficult if the UK had refused to produce evidence that might have suggested that Artt was innocent. On balance our US lawyers feel we should allow it to be tested. It might anyway be argued that the confession was the final stage of the trumped-up case trail and we could agree to its testing on that basis. The testing would be carried out in Northern Ireland under RUC supervision.

9. The Secretary of State is invited to agree that:

- (i) the order for RUC officers connected with the original cases to be made available for depositions in Northern Ireland should not be met.
- (ii) Instead those RUC officers who are still serving should travel to California to answer those questions posed by the respondents that fall outside issues pertaining to the conduct of the original trials;
- (iii) the confession and notes should be made available for ESDA testing, with our US lawyers making it clear to the court that this is being done without conceding that it amounts to a re-running of trial evidence, that the British authorities have nothing to hide, and that to challenge the integrity of the handling at the trial of that evidence would not be acceptable.

(signed)

TONY BEETON
RIGHTS AND EUROPEAN DIVISION

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