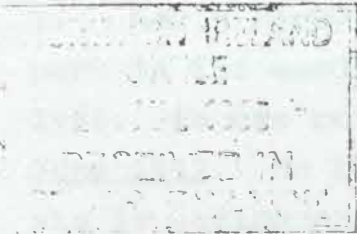


FROM : STEVEN BRAMLEY  
SIL DIVISION  
26 JULY 1995

cc Mrs Collins  
Mrs Madden  
Dr Power JAD 27/7



cc PS/PUS (L&B) - B  
Mr Legge - B  
Mr Thomas - B  
Mr Bell - B  
Mr Daniell - B  
Mr Shannon - B  
Mr Steele - B  
Mr Watkins - B  
Mr Wood (L&B) - B  
Mr White - B  
Mr Huggins - B  
Mrs Miller - B  
Mr MacDonald, Washington - F  
Mr Conn, CSO - F  
DI Hamlin, RUC - F  
Mr Zanides, San Francisco - F  
Ms Criscitelli, Washington - F  
Mrs Evans, HOLAB - F

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

US EXTRADITION : UPDATE

The Secretary of State may not be aware that Mr Mark Zanides, the Assistant US Attorney acting for us in various Maze escaper extradition cases in California, has been visiting Belfast this week. This submission provides a further update on those cases and also describes arrangements within the office for providing support to Mr Zanides.

Smyth

2. We still await the decision of the (three judge) Ninth Circuit Court of Appeals, which heard the UK's appeal in April against Judge Caulfield's refusal to extradite James Joseph Smyth. Smyth was sentenced to 20 years' imprisonment for the attempted murder of a prison officer in 1978. We are cautiously (very cautiously) optimistic about our prospects for success in this case, which could easily go against the UK. It is likely to set the parameters for

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BM/SIL/25742

judicial inquiry into the conditions likely to be experienced by extraditees post-release in Northern Ireland. If the case goes against us, the papers will then be put before the Ninth Circuit sitting en banc (eleven judges). Failure there will lead to the possibility of a hearing before the US Supreme Court (which takes around 200 cases a year, and rejects some 5000 petitions for a hearing).

### Artt

3. Kevin Barry Artt was sentenced to life imprisonment for his part in the murder of an assistant prison governor in the Maze in 1988. He has remained in custody in California since his arrest in June 1992. He is represented by an extremely accomplished attorney, who is acting pro bono publico, James Brosnahan. His co-defendant in the murder case was himself identified by the 'supergrass' Christopher Black. The accomplice then named Artt, and Artt's confession was the only evidence against him. Artt escaped before his appeal could be heard. He is sure to challenge his conviction on the so-called 'Ninoy Aquino' clause of the UK-US Supplementary Treaty on extradition, which permits the defence of trumped-up charges to be raised. The UK will argue that the judge (Judge Legge - described as reasonably sound) should not re-hear the murder case, especially when an appeal in Northern Ireland remains outstanding. There is a prospect that this issue will be split off from the main trial, which will concentrate on prison conditions and post-release treatment. These are issues which are common to Artt's two co-defendants in the extradition proceedings, Paul Brennan and Terence Kirby.

### Brennan

4. Paul Brennan was sentenced to 16 years' imprisonment in 1977 for possession of explosives (he was caught red-handed walking along a street in Belfast with a bomb in his rucksack). He has been remanded in custody awaiting his hearing since January 1993. He had

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only two or three years left to serve on his sentence and was initially inclined to return upon his re-arrest by the FBI, but other counsels have prevailed. His principal arguments will be that he will be mistreated because of his religion and political opinions both by Prison Officers on his return to the Maze and by the security forces after he is released.

#### Kirby

5. Terence Kirby was arrested by the FBI in February 1994 and has remained in custody ever since. He was sentenced to life imprisonment for the murder in 1978 of a garage owner. He also received lengthy determinate sentences for false imprisonment, firearms and explosives charges. His trial judge, Judge Jensen, 'recused' himself by deciding not to hear his case because of his involvement within the US Administration with the passage through Congress of the Supplementary Treaty. His case is now being heard by Judge Legge (as is Brennan's) and his defence will be much the same as Brennan's.

#### Arrangements for Trial Preparation

6. In mid-August there will be a pre-trial status conference to make further arrangements about the hearing of these cases. The prison and post-release issues may be heard first in a trial set down to begin in mid-November. This date may slip. In any event, it is clearly vital that HMG gives Mr Zanides every assistance in preparing his case. As with the Smyth case, I shall be primarily responsible for handling the case within NIO, together with Mr Conn from the Crown Solicitor's Office and Detective Inspector Hamlin of the RUC. Requests for assistance from any of these, or indeed from Mr Zanides and his legal team in the USA, should be followed up directly as a matter of high priority. It would be helpful if any documentation sent to the US could be copied to D.I. Hamlin (or, failing him, to Mr Conn or myself).

Witnesses

7. There will need to be a witness to give first-hand evidence of conditions at the Maze. As in Smyth, this is likely to be a senior Governor at the Maze. Mr Zanides has already conducted discussions with relevant officials, whom we met at Dundonald House yesterday. There will be a need for an official at Prison Service HQ to marshal our case on prisons - to cover oral testimony, statistical evidence and other documentary exhibits. This will be Mr Huggins, who will need to travel to San Francisco with me as part of the NIO team at the hearing. X

8. There may well also be a need (at any rate, it would be helpful) for evidence to be given by a senior NIO official on progress made since the ceasefires. It is too early to make a final decision on this, as PUS agreed with Mr Zanides when they met yesterday.

9. Assistant Chief Constable Raymond White will also be giving evidence. It is not anticipated that there will be any need for military witnesses in these cases.

10. The Secretary of State is invited to note the position and, in particular, to endorse the arrangements recommended at paragraph 6 above.

signed SB

STEVEN BRAMLEY  
SECURITY AND INTERNATIONAL DIVISION  
OAB EXT 6466  
26 JULY 1995