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LEGAL SECRETARY.

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

17 March 1983

G L Angel Esq
Northern Ireland Office
Great George Street
LONDON S W 1

N.B. P.D.

AM 18/3

Dear General,

EXTRADITION FROM THE REPUBLIC OF IRELAND

I am writing to report the outcome of the meeting which the Attorney General had with his Irish opposite number, Mr Sutherland, on Tuesday morning. Mr Sutherland was accompanied at the meeting by Mr Quigley and our own Attorney General was supported by David Haggan and myself.

The Attorney General opened by giving Mr Sutherland a brief account of the various cases which seemed to us to offer possibilities for putting McGlinchey to the test. These are the ones summarised in David Haggan's minute of 10 March, a copy of which I enclose. It was common ground that our aim should be to proceed first with a case whose facts were such that it fell easily and relatively uncontroversially within the principles enunciated in the Chief Justice's judgment in McGlinchey and which therefore gave the Irish courts the chance to reaffirm those principles and consolidate them by a decision which clearly relied on them. After some discussion of the relative pros and cons of the various cases, it was agreed that the most suitable for the purpose which I have just described was Shannon since, even on the most restrictive interpretation of McGlinchey, it would be difficult for the defence to argue that Sir Norman Stronge and his son were legitimate targets and that the murder was therefore (in the words of the Chief Justice) "what reasonable, civilised people would regard as political activity".

The two Attorneys General agreed that the next step (assuming, of course, that the Shannon case fulfilled our expectations) should be to proceed with another case which would put McGlinchey to the real test, ie a case in which we should seek the return of persons accused of attacks on security forces. This would reveal whether the Irish courts would follow the hint given by the Chief Justice in McGlinchey ("It should not be deduced that if the victim were someone other than a civilian who was killed or injured as a result of violent criminal conduct chosen in lieu of

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what would fall directly or indirectly within the ordinary scope of political activity, the offence would necessarily be classified as a political offence or an offence connected with a political offence") or whether they would fall back on a distinction - which we should regard as very unsatisfactory - between cases where the victims were "innocent" and those where the victims were "legitimate targets". It was noticeable that Mr Sutherland seemed far from confident that the Irish courts would, when it came to the crunch, press the Chief Justice's line of thought to its logical conclusion.

In the light of these considerations it was agreed that Burns would be an ideal case for the purpose of putting McGlinchey to the full test but it was common ground that it would be bad tactics to let the difficulties of Burns spoil our chances of getting a favourable decision in Shannon and that we should therefore hold Burns back until there was no risk of the court deciding to take the two cases together. Mr Sutherland's first suggestion was that we should not start the proceedings in Burns until Shannon had been finally disposed of. But when he revealed that he did not expect that to be for at least 12 months, we persuaded him that it would be safe to go ahead with Burns once Shannon had got passed the High Court, ie without waiting for the appeal to the Supreme Court. I should add that Mr Sutherland promised to do his best to expedite the proceedings in Shannon, in which he said he would probably conduct the Government's case himself, and he said that he was confident that the courts would cooperate.

We did not press to a conclusion the question of when we could start proceedings in the other cases listed in David Haggan's minute or in cases where the fugitives were wanted by the English police - indeed, we did not even mention to Mr Sutherland that there were such cases in the offing - but I think that we are free to consider moving in those cases more or less simultaneously with Burns, though we should not spring them on Mr Sutherland without warning. However, we can look at this again when the time comes: it is obviously going to be several months before Shannon is sufficiently far down the track to make it safe to contemplate activating other cases. As regards Gilmore, it was agreed that the fact that one of the offences for which he was sentenced was membership of the IRA (a political offence if ever there was one) made his an unsuitable case to put to the Irish courts while we were still trying to build on McGlinchey and get it accepted. It was therefore agreed that unless

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matters had proceeded too far (which did not seem likely), the RUC should be asked to withdraw their warrant in Gilmore's case and instead, and simultaneously, to invite the authorities of the Republic to proceed against Gilmore under their extra-territorial legislation for the offence of escaping from custody. Mr Sutherland promised that he would do his best to facilitate this operation so far as the Irish side is concerned and would also try to hold up any action on the warrant in the meantime. David Haggan has already had an informal word with the Chief Constable of the RUC and we hope that it will be possible for the Attorney General and the Chief Constable to have a more considered discussion early next week (when the Chief Constable is over here on other business) at which they can also discuss what needs to be done to get Shannon moving.

Finally, there was a brief discussion of the Castleblaney case. The Attorney General made it clear that there was no question of our attempting to avoid our obligation to have the warrant for the return of the four Constables backed and executed. He did suggest to Mr Sutherland that the charge of possession with intent to endanger life was perhaps excessive on the facts as we believed them to be but Mr Sutherland in turn indicated that the Irish authorities were less inclined than we were to assume an innocent explanation for the incident - they obviously suspect an attempt at a "snatch" operation - and he therefore felt unable to intervene. He gave what I took to be a hint that if the four defendants were prepared to plead to the charge of possessing firearms "in such circumstances as to give rise to a reasonable inference that they had not got them in their possession for a lawful purpose", that might be an acceptable way of disposing of the case. But he was pretty unspecific about this and the Attorney General made it clear in any event that any plea-bargaining would have to be conducted with the defendants and their legal adviser and that we could not get involved in any way. More, I think, to tease us than for any serious purpose, Mr Sutherland floated the idea that we might deal with the four Constables ourselves under our own extra-territorial legislation but the Attorney General made it clear that, though the thought had also occurred to us, we had firmly ruled it out.

We agreed a defensive press line with Mr Sutherland (which was passed to your Office by telephone) but we have had no press enquiries and, rather to our surprise, it seems that his presence in London went unnoticed.

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I am copying this letter and its enclosure to Patrick Eyers (FCO), David Goodall (Cabinet Office) and John Coles (No 10). I am also sending a copy to Ken Dowling (DPP) with a copy of my letter to John Coles of 9 March which explains the background to Mr Sutherland's visit. I am sorry not to have kept him in touch at an earlier stage, especially since the result of the discussions is, as I have explained above, that he will have to ask the Metropolitan Police to hold off even longer on the cases about which he wrote to me on 19 January. I hope that this will not be embarrassing or inconvenient.

I am also sending a copy of this letter, without enclosures, to Barry Shaw though I hope to have the opportunity to put him in the picture orally when he comes to see the Attorney General later today.

*Yours etc,
Henry*

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ATTORNEY GENERAL

LEGAL SECRETARY

EXTRADITION

The cases thought suitable to test "McGlinchey" and discussed at our meeting with the Director on 4 March are -

- (1) SHANNON Shannon, who is known to be in the Republic of Ireland, is wanted primarily for the murder of Sir Norman and Mr James Stronge at Tynan Abbey on 21 January 1981. At the scene the four occupants of a Lada car fired a number of shots at the police. Spent cases found at this scene matched a spent case found in the library of the Abbey where the Stronges were shot, and Shannon's fingerprints were found on the inside of the Lada car. A copy of the Director's papers is attached flagged A.
- (2) BURNS Burns has been described as the most dangerous and activist terrorist in South Armagh. He is presently living in Dundalk.

He is wanted in connection with three incidents, to which he can be connected by fingerprint evidence -

1. an explosion at Warrenpoint RUC station on 19 April 1981
2. an explosion which caused the death of 5 soldiers at Newry on 19 May 1981
3. an explosion at Crossmaglen on 2 October 1982

Please see the papers flagged B.

As police and soldiers are involved it was thought that the question of testing "McGlinchey" in this case should be discussed with the Attorney General (RI).

- (3) GILMORE Gilmore was sentenced in June 1979 to a total of 12 years imprisonment on a large number of charges, and subsequently escaped to the Republic. He has been located and warrants were sent to the Garda on 12 February 1983.

One of the offences was membership of a proscribed organisation (the IRA) and to this Gilmore pleaded guilty and was sentenced to a term of 5 years imprisonment concurrent. See the papers flagged C.

- (4) O'HARE and McNAMEE Terrorists exchanged shots with a military patrol in Keady, County Armagh and later, after escaping in a lorry, were involved in an exchange of shots with Desmond Gibson, a Prison Officer, who fired at them with a lawfully held shotgun. Later the same day O'Hare and McNamee were admitted to Monaghan Hospital suffering from gunshot wounds. They arrived in a vehicle containing the body of one Peadar McElvenna who had died from gunshot wounds prior to his arrival at hospital.
Please see the paper flagged D.
- (5) DARCY The Darcy brothers are wanted on a charge of possession of firearms in suspicious circumstances. They "jumped bail" and are in the Republic. Both Darcys verbally admitted involvement in the removal of 2 guns after the arrest of a suspect.
Please see the paper flagged E.
- (6) McSHANE McShane is wanted for a number of serious charges - armed robbery, possession of a handgun in suspicious circumstances, conspiracy to murder security forces, conspiracy to cause an explosion, possession of explosive with intent, possession of a handgun with intent, possession of firearms in suspicious circumstances. McShane made a number of written statements of admission. On the trial date McShane failed to answer his bail.
Please see the papers flagged F.

D.A.H.

D A Haggan
10 March 1983



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