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Background Note on Prisoners in the USA and Related Issues

The main issues in this area at present are:

- Extradition Cases
- Transfer Cases
- Deportation Cases

Recent Developments

- Jimmy Smyth, one of four Maze escapees contesting British warrants for their extradition, was extradited from San Francisco to Britain and returned to prison in Northern Ireland on 18 August. Three other Maze escapees involved in extradition cases in San Francisco are due before the courts in November. They also face a separate legal challenge to their continuing freedom on bail.
- Seamus Moley and Kevin McKinley (sentenced to 19 months imprisonment in June 1995 for arms smuggling) were released and deported to Ireland on 17 July and 27 August respectively under the terms of agreed plea bargaining arrangements.
- In March 1996, after apparently reaching what were reported as "certain understandings" as to how he would be treated by the British authorities, Peter McMullen decided not to contest a warrant for his extradition any further and was escorted from New York to London by Scotland Yard detectives. On 5 August, he pleaded guilty to involvement in an attack on Claro Barracks in Ripon, North Yorkshire in March 1974.
- Michael (Mixie) Martin remains the only prisoner to have been transferred to prison in Ireland from the USA under the Convention on the Transfer of Sentenced Persons. Another prisoner, Martin Quigley, is due for release (and subsequent deportation) in December 1996 and has recently withdrawn his application for transfer to prison in Ireland. Only one application for transfer from the US to prison in this jurisdiction remains outstanding (Peter Eamon Maguire).
- The US authorities have dropped deportation proceedings in a number of cases out of a total of a dozen or so involving former IRA prisoners.

Extradition Cases - Maze Escapees

1. Jimmy Smyth, one of four escapees from the Maze prison in 1983 contesting warrants for their return to Britain, was extradited from San Francisco to Britain and returned to prison in Northern Ireland on 18 August 1996.
2. Smyth, convicted in 1978 of the attempted murder of a prison officer, had been contesting his extradition since his arrest in California in June 1992 for passport violations and had already successfully defeated an application to have him extradited in September 1994. However, that verdict was later appealed by the US Justice Department and subsequently overturned by a three-judge Circuit Court panel in July 1995. His request for a full "en banc" (11 Circuit Court judges) hearing was turned down in January 1996 and efforts to secure an appeal in the US Supreme Court failed on 26 June. On 2 July, a US District Court judge in San Francisco indicated that he would sign the order authorising the extradition and directed that Smyth (who had been free on \$1.5 million bail since 1993) be returned to custody.
3. Smyth later failed in an attempt to appeal the ruling back to the Circuit Court of Appeal. The matter then went before the US Secretary of State Warren Christopher for his endorsement but it was thought that a decision in the case might not have been taken until after the US Presidential election. Smyth's extradition could have been prevented on the direct intervention of President Clinton but this was not forthcoming.

Kevin Barry Artt, Pol Brennan and Terence Kirby

4. Meanwhile, three other Maze escapees - Kevin Barry Artt, Pol Brennan and Terence Kirby - are also currently involved in extradition proceedings in the San Francisco courts. All three cases are scheduled to be heard on 4 November 1996. It is expected that each side will appeal decisions given against them, and it is anticipated that the entire process will take between a year and a year and a half before a final outcome. Artt, Brennan and Kirby will not therefore be extradited in advance of the forthcoming US presidential election.
5. The US authorities are separately disputing the three men's continuing freedom on bail. A three-member panel of the Federal Ninth Circuit of Appeals heard oral submissions from both sides on 15 August and has recently asked for further material in support of the respective arguments. It is not clear when this matter will be decided upon by the Court.

6. Smyth's case was taken ahead of the others and had been seen as a test case likely to influence the outcome of the three other cases. All four cases have been dealt with under the 1986 US-UK Extradition Treaty, seen by many Irish activists in the US as a Reagan/Thatcher deal to 'get at' IRA fugitives there. The cases have, therefore, attracted considerable attention and may become an election year issue within the Irish community in the coming months. Meanwhile, the Consulate in San Francisco is continuing to monitor developments in the outstanding cases.

Peter McMullen

7. This long-running case came to an end in March 1996 when Peter McMullen, after apparently reaching what were reported as "certain understandings" as to how he would be treated by the British authorities, decided not to contest a warrant for his extradition any further and was escorted from New York to London by Scotland Yard detectives.
8. Viewed as somewhat of a maverick after disputes with the IRA leadership in Belfast, McMullen had sought to negotiate for asylum in return for information on IRA activities in the USA upon his arrival there in 1978. His request was turned down by the US authorities but in 1979, McMullen successfully resisted a subsequent request for his extradition on charges of involvement in attacks on Army bases in Britain and Northern Ireland in the early 1970s. Freed on bail while he appealed deportation proceedings then brought against him, McMullen was returned to custody when a fresh request for his extradition was issued under the revised extradition act introduced in the US in 1986.
9. Because of his rift with the IRA, and the fact that he had sought to become an informer, McMullen had become very much the "forgotten man" of those held in prison in the US as a result of the conflict in Northern Ireland. He had also fallen into poor health. On 5 August, he pleaded guilty at York Crown Court to involvement in an attack on Claro Barracks in Ripon, North Yorkshire in March 1974.

Transfer of Prisoners

10. Michael (Mixie) Martin, one of three prisoners jailed in 1995 for his part in the "Tucson Affair" (an IRA attempt to buy arms, including a Stinger missile), became the first

Republican prisoner abroad to benefit from the legislation enacted in 1995 to implement the European Convention on the Transfer of Sentenced Persons, to which the US is a party. He was transferred from a Federal holding facility in Louisiana to Dublin on 31 January 1996 and immediately placed in Portlaoise Prison, where he remained until his release on 18 February 1996.

11. The US authorities moved with unusual speed to process the Martin application (this normally takes a year to 18 months) and this first test of the legislation and the procedures to deal with the transfer of prisoners to this jurisdiction worked well. Embassy Washington developed useful contacts with key US personnel handling this and other prisoner issues, and were able to arrange for officials of the Department of Justice to meet with their US counterparts on 12 March to discuss the operation of the Convention and related matters. The Embassy also arranged for Deputy Éamon Ó Cuív to visit Republican prisoners held in Cumberland and Allenwood prisons (Maryland and Pennsylvania respectively) on 10/11 March.
12. On 6 May, a further meeting between Embassy Washington and US officials was held to review developments concerning Republican prisoners. The main point to emerge was that the US authorities were prepared, in the event that the IRA ceasefire is restored, to move quickly on the applications for transfer to prison in this jurisdiction received from Republican prisoners. A visit to Dublin for an International Bar Association Conference by a US Justice Department official involved in these cases also provided an opportunity for a general discussion on 24 May.
13. Martin Quigley, due for release (and subsequent deportation) in December 1996, has withdrawn his transfer request and there now remains only one outstanding application for transfer to prison in this jurisdiction from Republican prisoners in the USA (Peter Eamon Maguire). Applications for transfer by Seamus Moley and Kevin McKinley were overtaken by events, namely their release and deportation to Ireland in July and August respectively¹.

Deportation Cases

¹Moley and McKinley's came to trial in March 1995. Both pleaded guilty to purchasing 2,900 detonators for the IRA in November 1989 and, under a plea agreement reached in June 1995, received sentences of 19-months and deportation upon release. The two men were also given credit for time spent on remand and good behaviour. They would normally have faced sentences of seven to eight years.

14. Approximately a dozen former IRA prisoners (precise figures are not available), who took up residence in the US in the 1970's/1980's, have been threatened with deportation over the past year and a half or so. The lobby on their behalf is active and very vocal in the US, having succeeded in making this a "family issue" (most of those involved are married with US-born children), as well as a political issue (there have been complaints of FBI harassment). The cases vary considerably from each other and they involve the often complex provisions of US immigration laws.
15. Deportation cases were reviewed in late 1995/early 1996 at senior levels within the US system. As a result, proceedings were dropped in the cases of James Barr and Kieran Staunton, and in another case, Paul Campbell, the threat of immediate deportation was lifted. In a response dated 26 March to representations made by a number of Members of the US Congress regarding this issue, President Clinton rejected the suggestion that "certain Irish nationals are being unfairly singled out for deportation under our immigration laws" and stated that individual cases are dealt with on a case-by-case basis. Separately, at the end of March, a Board of Immigration Appeals ruling issued in the case of Noel Gaynor overturned a previous court decision that had denied him political asylum and a stay on deportation. The Board's decision refers the case back into the immigration courts on grounds generally perceived to be favourable to Gaynor.
16. Despite these positive developments, there is no certainty that the other deportation cases will have a similar outcome. Immigration is a sensitive issue in the US; executive involvement in immigration/ deportation cases can be highly problematic. The ex-IRA prisoners involved in the remaining deportation cases appear to be well represented legally and it would seem that a patient approach, rather than any kind of confrontational action, offers the best hope of a successful challenge to the threat of deportation. Embassy Washington, meanwhile, continues to maintain its contacts with the representatives of those involved, as well as with relevant personnel in the US Justice Department.
17. A list of current US cases is attached.

Security Section,
Anglo-Irish Division,
5 September 1996

USA: Prisoners and Related Issues

A: Extradition Cases

1. Kevin Barry Artt - from Belfast - August 1983: Convicted of the murder of an assistant governor at the Maze prison and sentenced to life imprisonment - Sept. 1983: Escaped from the Maze prison - Arrested in June 1992 - Held in prison pending extradition proceedings against him - Nov. 21: Lost appeal to have extradition proceedings dropped - December 20: Granted bail (\$600,000) by California District Court - US authorities now contesting bail order; preliminary submissions made by both sides to the Court of Appeal in August 1996 - Court has since requested further submissions - Hearing date of 4 November set for extradition case hearing
2. Pol Brennan - b. 1953 - from Belfast - Sept. 1976: Arrested and sentenced to 16 years for possession of explosives - Sept. 1983: Escaped from the Maze prison - January 1993: Arrested in California - Married to US citizen, 1 child - Held in prison pending extradition proceedings - Nov. 21: Lost appeal to have extradition proceedings dropped - December 20: Granted bail (\$500,000) by California District Court - US authorities now contesting bail order; preliminary submissions made by both sides to the Court of Appeal in August 1996 - Court has since requested further submissions - Hearing date of 4 November set for extradition case hearing
3. Terence Kirby - b. 1956 in Belfast - Convicted of the murder of William Creighton (77) in an IRA bomb attack on a petrol station in 1976 - Sept. 1983: Escaped from the Maze prison - settled in San Francisco - Married, 1 child - Held in prison pending extradition proceedings - Nov. 21: Lost appeal to have extradition proceedings dropped - December 27: Granted bail (\$1m.) by California District Court - January 3 1996: Released on bail - US authorities now contesting bail order; preliminary submissions made by both sides to the Court of Appeal in August 1996 - Court has since requested further submissions - Hearing date of 4 November set for extradition case hearing

Also:

- James (Jimmy) Smyth - b. Belfast - 1978: Convicted of attempted murder of a prison officer - Sept. 1983: Escaped from the Maze prison - Settled in San Francisco - Arrested in June 1992 - July 1993: Freed on \$1.5 million bail - Sept. 1994: Request for his extradition rejected by California District Court, but decision appealed by the US Justice Department in March 1995 - July 1995: District Court decision overturned by three judges of the Circuit Court; Smyth to be extradited - Sought to appeal the case to a full hearing of the Circuit Court, and ultimately to the Supreme Court - 9 January 1996: Request for full 'en banc' hearing of the Circuit Court turned down - 26 June: Efforts to secure an appeal in the US Supreme Court failed - 2 July: Ruling in the US District Court in San Francisco directed that Smyth (who had been free on \$1.5 million bail since 1993) be returned to custody and signalled that the order authorising the extradition would be signed - later failed in an attempt to appeal the ruling back to the Circuit Court of Appeal - 18 August 1996: Extradited to London and handed over to the RUC - Returned to Maghaberry prison in Northern Ireland

- Peter McMullen - 49 years old - from Co. Antrim - Former cook in the British Parachute Regiment - Renegade PIRA member - fled to the US after allegedly bombing British army barracks in N. Ireland and England in 1972 - ostracised by the Republican movement - 1978: Surrendered to the authorities in San Francisco - successfully defeated attempted extradition in 1979 but held under the 1986 revised extradition act - 29 March 1996: Reported to have decided not to contest his extradition any further, apparently due to poor medical condition - Handed over to the British authorities - 5 August 1996: Pleaded guilty to three charges of causing explosions with intent to endanger life and one charge of committing an act with intent to cause an explosion at Claro Barracks in Ripon, North Yorkshire in March 1974 - Case adjourned until 30 October awaiting documents from the US

B: Prisoners/Transfer Cases

4. Martin Quigley - from Louth - Arrested in 1989; Sentenced to 8 years for conspiring to obtain anti-aircraft weapons on behalf of the IRA - Currently held in FCI Allenwood Medium, White Deer. Pennsylvania - Scheduled for release in December 1996 - Had applied for transfer to prison in Ireland - 10/11 March 1996: Visited by Eamon Ó Cuiv TD - Has withdrawn application for transfer to prison in Ireland
5. Peter Eamon Maguire - from Monaghan - Arrested in June 1994 and extradited to the USA - Sentenced to 6 years for conspiring to obtain anti-aircraft weapons on behalf of the IRA - Currently held in FCI Cumberland, Maryland - Suffering from a skin cancer condition; Not viewed by the US authorities as giving immediate grounds for concern - Scheduled for release in January 1998 - Has applied for transfer to prison in Ireland - 10/11 March 1996: Visited by Eamon Ó Cuiv TD
6. Richard Johnson - US citizen - Serving 10 years for conspiring to obtain anti-aircraft weapons on behalf of the IRA - 10/11 March 1996: Visited by Eamon Ó Cuiv TD

Also

- Michael "Mixey" Martin - from Co. Down - Married, three children - Dec. 1994: Extradited to the US from London to face arms smuggling charges in Tucson, Arizona - June 1995: Sentenced to 16 months imprisonment under an agreement that he plead guilty to conspiring to buy a Stinger missile on behalf of the IRA in 1990 - September 1995: Re-arrested and returned to jail after being mistakenly released too soon - Has since applied for transfer to prison in Ireland - Eligible for parole in early 1996 - Dec. 18: Embassy Washington informed of decision by the US Justice Department to approve application for transfer to Ireland - Dec. 22: Paperwork on the case received by D/Justice from the US - **January 31, 1996: Transferred to Portlaoise Prison (First prisoner to be transferred to this jurisdiction under the Convention on the Transfer of Sentenced Persons) - Released from Portlaoise on February 18 1996**
- Gerry McGeough - b. 1959, from Co. Tyrone - August 1988: Arrested at the German/Dutch border and charged with involvement in attacks on the British military in Germany

- May 1992: Extradited from Germany to the USA on foot of a 10-year warrant - April 1994: Sentenced to 3 years for conspiring to ship arms to the IRA - Scheduled for release in July 1996 - 7 March 1996: Embassy Washington advised that McGeough would be given credit for time spent in prison in Germany - Release date brought forward to 23 February - March 1996 - Deported to Dublin

- Seamus Moley - from Sth. Armagh - March 1995: Pleaded guilty to charges of smuggling arms to Ireland - June 1995: Sentenced to 19 months imprisonment under a plea agreement - According to lawyers, likely to serve 11 months to a year, with credit for time served while awaiting prosecution and for good behaviour, and to be deported upon release - Held in FCI Oakdale, Louisiana - Had applied for transfer to prison in Ireland - Scheduled for release in July 1996 - 17 July 1996: Released and deported to Ireland
- Kevin McKinley - from Co. Antrim - March 1995: Pleaded guilty to charges of smuggling arms to Ireland - June 1995: Sentenced to 19 months imprisonment under a plea agreement - Likely to serve 11 months to a year, with credit for time served while awaiting prosecution and for good behaviour, and to be deported upon release - Held in FCI Oakdale, Louisiana - Had applied for transfer to prison in Ireland - 27 August 1996: Released from prison and deported to Ireland

C: Deportation Cases

7. Gabriel Megahy - from Belfast, currently living in New York - Arrived in the USA in 1975 - Married to a US citizen with 5 US born children and another on the way - 1982: Convicted of conspiracy to procure surface-to-air missiles for the IRA and sentenced to 7 years - Released in 1988 - Currently facing deportation - Two US Congressmen and two New York judges were among those who testified on his behalf - application was also supported by a further 21 US Congressmen - Freed on \$35,000 bail while awaiting political asylum decision - October 31: Ordered by Federal Immigration judge to be "inextricably linked with the past activities of the Provisional IRA" - Expected to be deported in 1996
8. Noel Gaynor - born Lurgan, Co. Armagh, 1953 - Married to US citizen with 2 US born children - 1976: Arrested and found guilty of involvement with the IRA - Served 14 years in Long Kesh with special category status - 1990: Arrived in USA and applied for residency permit - Arrested 1993, later released on bail - March 1994: Found to be an "excludable alien" on the basis of his conviction in N. Ireland - Currently appealing the decision denying him the right to file for political asylum - Free on \$50,000 bail - End March 1996: Board of Immigration Appeals ruling in his favour; decision to deny him political asylum and a stay on deportation overturned - Case referred back to the immigration courts on grounds generally perceived to be favourable to Gaynor.
9. Brian Pearson - from Co. Tyrone - Married to US citizen with 1 US born child - Feb 1976: Sentenced to 25 years imprisonment - Served in Long Kesh with special category status - Released in 1988, travelled to US - 1992: Applied for "adjustment of status" to allow permanent residence - Jan. 1995: Application denied on the grounds of his conviction in Ireland; Deportation order served - Reapplied for political asylum - 2

August 1996: Case was the subject of a "Master Calendar Hearing" during which initial motions were laid before the judge who is to consider the asylum application - Pearson's lawyers invoked a petition for political asylum and also asked for the judge to review the denial of adjustment of status - US authorities argued the judge did not have the competence to review this decision and could only decide on the asylum petition - Authorities and Pearson's lawyers asked by the judge to lodge arguments for their points of view by 3 September and 30 October respectively - Date of 20 November set for the hearing of testimony in favour of Mr. Pearson's asylum petition.

10. Matt Morrison - from Derry - Married to US citizen with 2 US born children - 1975: Arrested and sentenced to 10 years, served in Long Kesh with special category status - Dec. 1985: Arrived in USA - 1993: Petition for "adjustment of status" denied on grounds of past membership of the IRA; Deportation order served - Appeal pending
11. Charles Caulfield - Married to resident alien with 4 US born children - Former Portlaoise prisoner with political status - Served with deportation notice and awaiting hearing - Currently free on bail
12. Kevin Crossan - Married to US citizen - Former Long Kesh prisoner with special category status, served deportation notice - Currently awaiting hearing
13. Robert McErlean - from Co. Derry - Married to a resident alien - Arrived in the USA in 1986 - March 1995: Arrested by the INS - Released on \$10,000 bail

Deportation proceedings brought against the following have now been dropped:

14. James Barr - born in Belfast, 1956 - Married to US citizen with 1 US born child - Living in New Jersey - No convictions - Arrived in USA in January 1984 - May 1984: Arrested by INS - Extradition proceedings brought against him, but failed; Deportation proceedings brought against him - Sept. 1985: Released on bail - July 1993: Granted political asylum, but is facing appeal of that decision by US authorities - Nov 1995: INS announced that it would discontinue deportation proceedings against Barr, thereby freeing the way for him to apply for permanent residence - July 14 1996: Granted a green card
15. Paul Campbell - from Tyrone - 1973: Sentenced to 6 years imprisonment - Served sentence under special category status in Long Kesh - released in 1976 - 1981: Married with one US born child - 1990: Arrested by INS - Oct 1994: Granted asylum, but suspension of deportation order denied on the grounds that the couple's return to Ireland in 1988 to secure new work visas had violated their 7-year residence in the USA - Deportation proceedings pending - Jan 2 1996: Embassy Washington advised that proceedings against him had been lifted

Security Section
Anglo-Irish Division
3 September 1996