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FROM: PAUL JOHNSTON, SIL
5 December 1990

DESK IMMEDIATE

1/16

- cc: Mr Wilson - M
- Mr Bentley - M
- Mr Steele - M
- Ms Mills - M
- Mr Bell - M
- Mr Maccabe - M
- Mr McClelland - M
- Mr Cooke
- Ms Lodge

- 1. MR RICKARD *all 5/12*
- 2. MR MCKERVILL , SPOB - M

RESTORATION OF THE DEATH PENALTY

In advance of a Parliamentary debate on capital punishment (tabled amendment to the Criminal Justice Bill) later this month. The Home Office have asked us to update the attached material which we had previously supplied.

2. The NIO paper, which was reviewed for the last debate in 1988, has stood the test of time relatively well. However, I would be grateful if you and copy recipients could advise me on any revision which might be necessary.

3. It is unclear whether the papers from Mr Prior and Sir John Hermon represent the views of the present incumbents. It would be helpful to know Mr Annesley's views on the death penalty but if this is not possible we may have to be content with saying that previous Chief Constables were opposed to restoration.

4. I know that the present Secretary of State voted against a Lords amendment recommending restoration of capital punishment in June 1988. I intend to submit the revised paper through his weekend box to verify that his views have not changed.

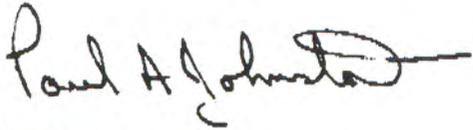
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5. Unfortunately we have been given an extremely tight deadline from the Home Office and I must ask for contributions by 4pm on 6 December.

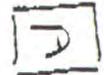


PAUL JOHNSTON
SIL DIVISION
5 DECEMBER 1990
EXT OAB 6494

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F4 in process of updating



IMPLICATIONS FOR NORTHERN IRELAND

Attached are:

(i) a somewhat abbreviated version of a paper prepared by the Northern Ireland Office for the debate in 1983.

(ii) a copy of the letter which the then Secretary of State, Mr Prior, sent to the chairman of his constituency Conservative Association, setting out his own views on the subject, specifically in the Northern Irish context.

(iii) a copy of a confidential paper prepared by the chief constable of the RUC in connection with the 1983 debate - we are assured that it still represents Sir John Herman's views. The general sense of this can be quoted, as it was in Mr Prior's letter, but it would be sensible to consult Sir John if the Home Secretary had any intention of quoting from the paper.

The points which might be distilled from this material are:

- (a) The different scale of the problem in Northern Ireland.
- (b) The risk of creating martyrs
- (c) The risk to public order and of exacerbating the political situation generally
- (d) The implications of there being no jury in the relevant cases, especially given the discretion which the new clause would place on the jury. The idea that the judge - already burdened by having to sit alone and already a target for terrorist attack - should in addition decide between life and death is surely unacceptable.
- (e) The political impact on relations with the Republic of Ireland of a unilateral move to reintroduce capital punishment. Since the last debate on capital punishment the Anglo-Irish agreement has created an expectation of consultation and receptiveness to Irish views on matters of this kind.

1. The scale of the problem in Northern Ireland is far greater. In England and Wales between 1983 and 1986, 6 people were convicted of what could be called terrorist murder and 1 of the murder of a police officer. In Northern Ireland during the same period, 94 people were convicted of terrorist murder.

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These figures indicate that a hanging would not have been a rare occurrence; secondly the higher incidence of the use of the death penalty would have taken place in a much smaller community (population 1.5m), a factor which would be of relevance in assessing its impact on the community.

Community Reaction

2. It is likely that on the Protestant side the reintroduction of capital punishment would be welcomed. The Protestant community as a whole advocates more stringent measures against terrorism and the death penalty is seen as being likely to have a valuable effect on the incidence of terrorism. The measure might be seen as a token of the Government's will to tackle terrorism. A few prominent representatives of the Protestant community have publicly stated their opposition however.

3. The vast majority of the Catholic community would be strongly opposed to the reintroduction of the death penalty. It would be assumed that most of those liable to be sentenced to death would be from the Catholic community and it is likely that vigorous protest action would be mobilised. There would be significant and extensive disaffection with the Government within the Catholic community.

Security Implications

4. The reintroduction of the death penalty and its periodic imposition could prompt public disorder in the Catholic community which would have serious resource implications for the security forces. They would also create an environment of instability in which terrorist organisations would be likely to resort to further violence. Terrorist organisations would be likely to be able to rely on greater support or tolerance from the community; a crucial factor in determining how openly and effectively they are able to operate.

5. It is difficult to conclude whether the reintroduction of the death penalty would or would not have a deterrent effect. Those engaged in terrorism are highly motivated and ruthless and have shown themselves ready to run persistent risks in making their attacks. The risk of arrest and conviction in respect of terrorist offences is not perceived as high and it is not likely that republican terrorists are likely to be influenced by the availability of the death penalty. The possibility of arrest tends to be higher amongst loyalist paramilitaries, who might therefore feel more at risk. Against this, there is the idea that many terrorist prisoners believe that they are likely to be granted an amnesty in due course, so that the prospect of a long sentence does not deter them as it might. The reintroduction of the death penalty might be an important new element here.

Administration of Justice

6. The reintroduction of capital punishment would cause serious difficulty in Northern Ireland in relation to the system of "Diplock" courts which sit without a jury for particular categories of offences ("scheduled" offences). These special courts were established to overcome the difficulties which were encountered in obtaining convictions for serious offences under the jury system because of the risks of intimidation. The late Sir George Baker, in his review of the Emergency Powers Act completed in 1984, took the view that the time was not yet ripe for a return to the jury mode of trial. It would seem undesirable to expect a single judge to decide whether the death penalty should be imposed. Northern Ireland Office Ministers have been looking at the arguments for introducing a system under which cases would be tried by three judges rather than one, but are not persuaded at present that such a change should be made.

7. An alternative approach would be to try all capital cases in Great Britain. This would require legislation. This would be strongly resented in Northern Ireland and would raise security problems of its own. Any trials transferred to England would be held under English law. The law of evidence in this country is different from that in Northern Ireland where special provisions apply to the admissibility of confessions by those accused of scheduled offences. Many convictions of terrorists in Northern Ireland turn on such confessions. The differences between the two sets of law are complex, but they would certainly provide considerable scope for legal argument. They would also bound to be seized on by propagandists in the province as showing that the purpose of transfer was to make convictions more likely.

In Great Britain there would be the risk of attacks on jurors and the administration of justice.

Prisons

8. It is the view of the prison authorities that hangings could provoke ^{the new} considerable and ^{widespread and} extreme reaction in the prisons, ^{coupled with strenuous} particularly bearing in mind that there would almost certainly be a campaign of opposition outside by those to whom terrorist prisoners were affiliated. ^{small probability} This reaction might or ^{could} might not take a violent form, but it would undoubtedly sour relations with ^{and would present major control problems inside and outside the prisons} staff and add to the already considerable problems of control. ^{possibly be a game setback to the successful}

P.F.E.

Reactions in the Republic of Ireland

policy of denying prisoners and their supporters an issue on which to mount a campaign.

9. Opinion in the Republic of Ireland is very sensitive to that in Northern Ireland, and Northern Ireland affairs are closely followed. The level of terrorist violence and position of the nationalist community are seen to be of direct relevance. Any widespread opposition on the part of the minority to the United Kingdom government, or any clear signs that they were being alienated from acceptance of a democratic way forward would be firmly echoed in the Republic. It is also possible that proceeding unilaterally on capital punishment would place such a strain on the relationship with the (newly elected) Dublin Government as to endanger the useful and painstaking work which has been going on under the Anglo-Irish agreement.

S. 1



~~Capital Punishment~~
 NORTHERN IRELAND OFFICE
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 LONDON SW1P 3AJ

SECRETARY OF STATE
 FOR
 NORTHERN IRELAND

J T Griffiths Esq CBE MC
 Chairman
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 Grove Road
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9 July 1983

On Wednesday the House of Commons will again debate capital punishment. As it would not be convenient, on a Private Member's Motion, for there to be a series of speeches from the Government front bench, I feel that it is my duty to my constituents and to the people of Northern Ireland to set out the arguments which will determine my vote. I think my views are well known, and I recognise the strong views in favour of the death penalty held by many people. This is such an important issue that I must set my views out plainly and in full.

As you know, I have opposed the re-introduction of the death penalty over many years with the one exception that in 1975 I voted for its re-introduction for terrorism. I recognised within a short time that this was a mistaken and emotional response and long before I was closely associated with the affairs of Northern Ireland, I had reverted to my former position. Having changed my mind myself, at a time of terrorist brutality, I do appreciate the strong feelings that many people have and they, like me, may not have fully appreciated the true position as far as Irish terrorism is concerned. I hope that my experience and the reasons I give now why there should be no return to capital punishment and in particular for terrorist murder will help to convince my constituents and others that one does not take these decisions lightly or without a great deal of thought.

I shall concentrate chiefly upon the proposal for the re-introduction of capital punishment for terrorist murder and the consequences of such a decision in Northern Ireland. There is no other part of

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the United Kingdom with such experience of terrorism or where the consequences would be of such importance. Parliament, in taking its decision must give the greatest weight to Northern Ireland considerations for it is surely clear that a matter such as this cannot simply be decided for Great Britain and that we must have a uniform law for the United Kingdom as a whole. It is, of course, technically possible for Parliament to legislate to restore capital punishment for terrorist murder in Great Britain but not in Northern Ireland. I recognise that many people who have thought about this have directed their minds mainly to Great Britain and might well conclude that rather different arguments apply in Northern Ireland. It would, however, to my mind, not be possible to single out terrorist murder for capital punishment and then to exclude the area where the main terrorist threat exists, let alone execute Irish extremists who killed in Britain but not those who killed in Northern Ireland.

The statistics show why Northern Ireland considerations are so important. In England and Wales during the 6 years from 1977 to 1982, 4 people were convicted of what could be called terrorist murder and 7 of the murder of police officers. All but one were aged 18 or over. In Northern Ireland, in that same 6-year period, 221 people were convicted of terrorist murder; 34 of them were under 18 years of age. Assuming that people under 18 would not be subject to the death penalty, these figures mean that if capital punishment had existed for terrorist murder during the last 6 years there would have been 19 cases in Northern Ireland for every one in England and Wales. The Home Secretary would have had to consider the question of a reprieve in rather less than 2 cases a year whereas there would have been a continual flow of these cases being considered in Northern Ireland. These figures must be set against a Northern Ireland population of 1 million and an England and Wales population of 50 million.

These statistics demonstrate that Northern Ireland is subject to a terrorist threat of a different dimension from that which has been experienced in Britain. Though international terrorism is a growing anxiety, most recent terrorist activity in Britain has been an extension of IRA terrorism from Northern Ireland. It is therefore sensible, when assessing the likely impact of capital punishment on terrorism generally, to test the arguments in relation to the main form of terrorism we face in the United Kingdom. In the long history of terrorism connected with Irish affairs, executions and deaths in prison have played a prominent part. The IRA have been skilful in turning terrorists into martyrs and drawing strength and support from executions and deaths.

Such considerations could be set aside if capital punishment were likely to deter the terrorists and prevent murder. There is, however, ample evidence that the IRA are not deterred in this way. They are so committed to their cause that they are prepared to risk their own lives as well as to destroy the lives of others.

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Up to April of this year more than 307 have been killed in the course of the present terrorist campaign, some by the security forces, many blown up by their own bombs.

Most terrorists believe they will not be caught. The defeat of terrorism depends upon arresting and convicting the terrorists. As I shall explain below, capital punishment is likely to make it more difficult to secure evidence and less likely that those who can be brought before the courts will be found guilty. If capital punishment had applied at the material time it is likely that a significant proportion of the 331 convicted adult murderers (nearly all terrorists) now serving life sentences in Northern Ireland, would still be at large to commit further crime.

In Northern Ireland intimidation has made the jury system inoperable for terrorist offences. Trials are conducted by a single judge who, in a contested case, must alone decide whether the accused's guilt has been proved. The removal of the accused's protection of jury trial is justified in the special circumstances of Northern Ireland, and Parliament has been content to renew the arrangement year by year. But it could not easily be defended if the judge's decision involved the death penalty, nor is the onus of deciding, in effect, the issue of life or death one which the judges should, in my view, be asked to bear. On the other hand, a restoration of jury trial in present circumstances in Northern Ireland could only increase the probability of terrorists escaping justice - the more so if the jury were looking for a scintilla of doubt in order to avoid conviction for a capital crime.

I am particularly concerned about the effect of capital punishment on the work of the police, especially as regards evidence gathering. Before finalizing my own views, I sought the opinion of the senior officers of the RUC. It is the considered professional judgement of the Chief Constable of the RUC, after consultation with his Chief Officers, that the re-introduction of capital punishment for terrorist murders would make the task of the police in Northern Ireland substantially more difficult. I appreciate that the Police Federation take a different view but I must be swayed by the assessment of those with command responsibilities.

The RUC are largely dependent upon information from members of the public, confessions from the criminal himself, and information provided by former terrorists. They have made remarkable progress in overcoming the ruthless intimidation and exploitation of community loyalties by the terrorists in Northern Ireland. Senior officers believe that if those possessing information about a terrorist crime knew that the consequence of passing it to the police was likely to involve the execution of the terrorist concerned they would be more inclined to remain silent. They are concerned that in practice the death penalty would adversely affect the co-operation which security forces receive not only in Northern Ireland itself but also elsewhere. Though, as I have said, the motives of terrorists are difficult to predict, the existence of the death penalty would surely make confessions less likely and might well increase the reluctance of the courts to accept the uncorroborated evidence of such

/confessions. . .

confessions. The valuable information and evidence which has recently begun to flow from converted terrorists (sometimes described as "supergrass") would be jeopardised if people knew their former colleagues might hang. And even greater pressure would be put on the families of those who did come forward to persuade them to withdraw their evidence.

The police would not only find their task of dealing with the terrorists more difficult. They would have to devote more resources to dealing with public disorder. One of the advances of recent years is that the violent street demonstration or riot is very much rarer than a decade ago. The exception was for a period during the hunger strike. Executions, however well justified, would lead to violent disorder. Over recent years the RUC have been able increasingly to rely on greater community acceptance, or at least greater community opposition to the presence of terrorists. This progress would be set back both by the executions and the measures which the police would be obliged to take to deal with the disorders which would follow them.

Nor might it stop at disorders. So far from deterring terrorism, executions could very well lead to more acts of vengeance, killings and atrocities against members of the security forces and others on a substantial scale.

I have concentrated on Northern Ireland considerations and terrorism because of the profound effect which capital punishment for terrorist murder would have upon the part of the United Kingdom where my responsibilities lie. But I should not want, by silence, to appear indifferent to the more general considerations which persuade many, as they do me, against the restoration of capital punishment in any form: considerations such as the risk of hanging someone who turns out to have been innocent; the effect on our society, from the prison officials and their attendants who conduct the execution, to the public, whether waiting outside the prison gates or reading the details in the Press; and, to my mind, the impossibility of defining categories of murder in a way which public opinion would not think unjust when confronted with individual cases. But for me the crucial test is a simple practical one: whether bringing back capital punishment for terrorism is likely to lead to more or fewer policemen, soldiers and civilians being murdered in Northern Ireland. My considered judgement is that it would make it more difficult to bring terrorists to justice, strengthen their support and de-stabilise society in the Province. Like that of a number of eminent historians, I believe that executions of terrorists in Northern Ireland would serve not as a deterrent but as a new inspiration for the IRA and other extremists. I am not therefore basing my argument on the moral one that it is wrong to take life, but on the practical effect that the policy would have. The decisions to be taken next Wednesday are of vital importance and I wanted you to have a full account of my views.

JAMES PRIOR

PREPARED IN 1953

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CAPITAL PUNISHMENT - ITS PROBABLE EFFECTS ON POLICING IN
NORTHERN IRELAND

The pending parliamentary debate on capital punishment makes it necessary for the Chief Constable to set out the Force view at Command level on this important subject. Every aspect likely to affect policing has been closely examined at the most senior level and there is unanimity in the view now expressed.

No sound reason can be found for the re-introduction of capital punishment that could be supported at the present time either by logic or argument. In the pre 1969 era, murder in Northern Ireland was an infrequent occurrence but as the incidence of all crime was below average for comparable areas elsewhere it could not be argued that this was affected in any way by the penalties imposed. Since 1971 we have been afflicted by a substantial increase in murders as the result of terrorist activity. Though the Security Forces take the brunt of them a considerable number are purely sectarian in nature.

The main perpetrators of these crimes are terrorists claiming political motivation and they are most unlikely to be influenced by any fear of death as a legal consequence of their actions. Indeed they are much more likely to see and use the 'death penalty' as a vehicle by which to extend their political influence and to attract support both nationally and internationally to their 'cause'.

As police officers we are charged with enforcing the law and in so doing with operating within that law. We rely entirely on the goodwill of the community and on the assistance so readily given by way of information even though this can lead to intimidation affecting Court hearings. Anything

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that would undermine or affect this flow of information would be an impediment to our future investigations and would in the longer term have an adverse affect on community confidence. Capital punishment would undoubtedly have this effect.

there are other areas however in which the re-introduction of the death penalty would have a more direct effect on our policing. There are listed briefly hereunder.

1. It would lead to the ending of the present effective liaison and co-operation between RUC and Garda and would pose problems for law enforcement agencies elsewhere in Europe seeking to deal with international terrorism.
2. There would be increased support from America and Europe for PIRA etc and a resultant decrease in the support for Security Forces in Northern Ireland. This would increase the flow of money and guns for use by the terrorists and there would be an increase in recruitment to terrorist and paramilitary organisations.
3. Political and community leaders would become locked in controversy and the already polarised sections within the community in Northern Ireland would be manipulated through organised protests etc to increase community tension. This in turn would provoke confrontation and murderous acts of retaliation - a direct step towards extreme civil strife.
4. There would be mass protest at the various legal stages following a 'capital charge' and this would be aggravated by 'opposition' to the protesters. Police would be placed in an impossible position, making increasingly heavy demands on manpower and resources to the grave detriment of our security effort.

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The recent 'hunger strike' and 3rd Force activity demonstrated how orchestrated protest rallies can be used to stretch police resources and gather support for subversive organisations. In these situations every arrest, even for a very minor charge, alienates a whole family who may not previously have been opposed to the police or law and order.

5. There would be increased pressure on Magistrates, Judges and all legal officers involved in such court cases - all of whom would be in acute personal danger and require additional protection. The Jury system does not operate and the imposition of the 'death penalty' by single Judges would place an intolerable strain on them and counsel involved in such cases.
6. Appeals following court decisions at all levels would delay the progress of a 'capital charge' and this would have a delaying effect on many other charges, effectively clogging the legal system, already stretched to the limit.
7. Present court cases rely to a great extent on 'confessions' following interview and though this has been aided recently by the evidence of Converted Terrorists, confessions would be less likely if there was a mandatory death sentence for certain murders. Indeed the Converted terrorist syndrome would cease to exist and many terrorists would escape the net.
8. It is characteristic of Ireland that many of the witnesses who willingly give helpful information to police would not do so if their information was likely to result in the finality of a death penalty. Again this would influence the detection rate and affect community confidence.

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9. Confession is aided by a feeling in the prisoner's mind that some future amnesty would shorten his term of imprisonment. This hope would disappear on a capital charge.
10. The terrorist has not shown a fear of death in the face of a possible shooting by Security Forces or a malfunction of a bomb. Up until 12 April 1983 there were 307 terrorists killed 'in action' - 116 as the result of premature explosions.
11. Many terrorists are on the fringe of 18 years of age and at present there are 66 young persons convicted and detained during the pleasure of the Secretary of State. The death penalty could be avoided by increasing the 'use' of young persons by terrorist organisations, particularly in shootings.
12. The proposal that the capital charge would relate to the murder of a policeman, prison officer etc could mean that such people would cease to be the primary target and the terrorist would pursue a policy of sectarian killing. This would provoke retaliation and further indiscriminate sectarian killing that would have an emotive and divisive effect on the community - an acknowledged goal of the terrorist.
13. The psychological pressure on CID interviewers would increase with the frequently recurring capital murder investigations. This could result in a lowering of detection rates for murder.

Note: during 1982 there were 12 policemen and 28 soldiers murdered in Northern Ireland.

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14. The present system of interview, charging and processing within the law attracts widespread acceptance. It has been developed to meet the special circumstances pertaining in Northern Ireland and provides necessary safeguards both to the person charged and the public. It has ceased to be an emotive issue and should not be made so by the introduction of capital punishment.
15. It is not clear whether 'capital charges' are proposed for all murders, for all terrorist murders or only in respect of the murder of Police and Prison Officers. If the selective category of Police/Prison officers is used almost all capital charges would affect one side of the community only (RC) and there would be intensive opposition with allegations that it was discriminatory.
- If this same selective category was used it would mean that less value was attached to the life of a prominent member of the community than to that of a Police Officer, Prison Officer or soldier.
16. The most vociferous demands within Northern Ireland for the re-introduction of capital punishment come almost wholly from the more extreme "loyalist" groupings. There is little or no pressure from moderate loyalists and none from the "nationalist" community groupings. This is evidence enough of the inevitability of serious community divisions and sectarian conflict in the present situation.
17. The Police Federation for Northern Ireland, as with their counterparts on the Mainland, support the re-introduction of capital punishment but theirs is a subjective judgement and understandable as their primary concern is the welfare of their members who suffer the greatest casualties.

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- 6 -

Many MPs in Great Britain will consider the whole issue of hanging in the context of "what might be helpful towards reducing violence in Northern Ireland". Their decision could not possibly take account of all the problems likely to result here from a restoration of the death penalty. The considered view now forwarded is that capital punishment should not be re-introduced.

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