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Extradition File

OIFIG AN ARD AIGHNE
(Attorney General's Office)
BAILE ÁTHA CLIATH
(Dublin 2)

29th January, 1988

Sir Patrick Mayhew Q.C.,
Attorney General,
Royal Courts of Justice,
WC2AA 2LL,
United Kingdom.

Dear Patrick,

I refer to yours of the 22nd ult. and the 15th inst. in connection with extradition matters.

The absence of any information concerning the evidence on which the decision to prosecute is founded continues to pose a serious problem. The continuance of this problem appears to be due in part to a serious misunderstanding of what took place at a meeting between Ambassador Fenn and the Taoiseach on 24 November last, and in part due to policy considerations on your side.

I had hoped that significant progress would be made in relation to these matters at a meeting between Brian Lenihan and Tom King which had been scheduled for last week. Unfortunately, as a result of Brian Lenihan being indisposed, the meeting had to be cancelled but he had written to Tom King clarifying what had been said at the November 24 meeting. In the light of your reference to this meeting I should perhaps also clarify what was said. Mr. Dermot Nally, the Secretary

to the Government, who was present during the discussion in question, has noted the following two statements made by the Taoiseach at separate stages of the discussion:

"All we want is a statement of the facts.
We want to take a minimalist position."

"All we are concerned about is a minimalist position. The Attorney will form an opinion. It will be his business how he forms that opinion. What is needed is nothing more than the facts: we need a simple statement of the facts. If these are in the certificate, there is no going beyond the certificate."

These statements are consistent with the position outlined by me in December. I am sure you will agree that the over-riding consideration is compliance with the provisions of the 1987 Extradition Act so that extradition requests are processed in accordance with law. The law requires that I form an opinion as to the sufficiency of evidence and clearly contemplates that that decision can only be arrived at on the basis of appropriate information received by me concerning the evidence.

Each case must be dealt with in the light of the

provisions of the 1987 Act. Subject to that, I am, as I have already indicated, anxious to adopt the most flexible approach as will assist in the smooth and effective processing of extradition requests. The provision of a summary or synopsis of the evidence (and which is the least which must be furnished in order to comply with the law) is by no means a difficult undertaking and far less onerous, for example, than the material which must be supplied by the British authorities to the U.S. authorities under the relevant extradition treaty between the two countries. Under that treaty the U.S. Courts may examine in depth the evidence on foot of which any British extradition request or warrant is based.

Any legal process, and extradition can be no exception, is subject to the scrutiny of the courts. Both international law and our own domestic law have always required that extradition should only be sought when there is a clear intention to prosecute based on existing sufficient evidence. It has always been open to a person whose extradition was sought to challenge it on the grounds either that there was no genuine intention to prosecute on the part of the requesting State or that there was not then in existence sufficient evidence to justify such an intention. The likelihood

of this issue being raised is not increased by the new Act. Neither does the Act create any basis on which the Courts could go behind the warrant to examine the evidence on which it is based.

I must confess that I am unable to appreciate why the new arrangements should be thought to give rise to difficulties of such a nature as to prevent any attempt at making them work.

As I have previously said, reasonable co-operation the extradition arrangements will work and without it no extradition arrangements between any two countries would be effective. The commitment which the Taoiseach gave to the Prime Minister when they met in Copenhagen, in order to meet the concerns expressed on your side, that the satisfactory working of the new arrangements would be reviewed is now enshrined in the legislation itself. The Taoiseach also expressed confidence that we could make the new arrangements work and said that they should be given the opportunity to do so. The Prime Minister responded by indicating that the new system would be given a chance. It would be most unfortunate if it were found that the new procedure had not worked because

it had never been given a chance to work in the first place.

Anthony Kelly, to whom you have referred, was charged with serious offences subsequent to his arrest and for which he has since been sentenced to seven years imprisonment. It was in this context that the warrants in respect of him were not endorsed.

There are also warrants which have not been endorsed in respect of one James (Seamus) Joseph Clarke who is awaiting trial here. Whether and when the extradition process will be initiated in this case will obviously depend on the outcome of his trial and sentence, if any.

I am informed that these are the only instances of warrants which had been received prior to the coming into effect of the 1987 Act remaining unendorsed.

Warrants, or draft warrants, have also been received by the Gardai earlier this month in the cases of Michael Purcell, Oliver O'Shea and Patrick Brogan and are being examined. At least some of them fall within the scope of the new Act.

No confirmatory note or statement of law of the kind referred to in your letter of 22 December

has been received in any of these cases, nor any summary of the evidence.

With regard to the case of Philip Kelly the warrant and confirmatory note furnished by you were received prior to his release just before Christmas.

I had earlier drawn your attention to the need for material concerning the evidence in this case since the new Act applied to it. Thus, when the period of his imprisonment for the local offence expired there was no lawful ground for his continued detention.

I still hope and expect that the differences which exist in relation to these matters can be resolved.

In the light of the commitment given by the Prime Minister to the Taoiseach in Copenhagen, the reasons which I have stated, including the mutual interest of both countries, I hope that it will be possible to put into operation the arrangements now in place so that the effectiveness of the extradition process may be continued and maintained.

Yours sincerely,

John L. Murray S.C.
Attorney General