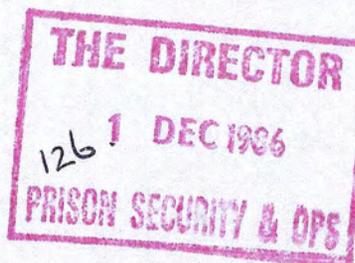


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PS/Secretary of State (L&B) - M cc:



EXTRADITION OF MCFARLANE AND KELLY

This submission reports developments since submission of 21 November. The good news is that it is likely McFarlane and Kelly will be returned tomorrow.

We understand that the European Court of Human Rights will not request a stay of extradition. The Dutch government has robustly and effectively dealt with a certain amount of Parliamentary criticism and the result of the summary hearing against its decision to extradite is to be announced at lunchtime tomorrow. It is expected to be in our favour, and if so the two men will be on their way within hours.

Physical arrangements

Assuming all goes well, McFarlane and Kelly will be handed over to the RUC in the Netherlands at around 1700 GMT tomorrow and arrive at RAF Aldergrove some three hours later. They will then be charged at a special court sitting. The RAF will be transporting them and they have requested that no publicity be given to their involvement.

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Press lines

The event can be expected to generate a good deal of publicity, and it is clearly a success for HMG. It will also be the first time that terrorists have been extradited from a foreign country to Northern Ireland. The attached press lines have therefore been prepared and can be drawn upon freely once the Court has announced its decision. We shall inform recipients of this submission by telephone immediately.

We should however (for obvious reasons) avoid speculating about the time and method of their return to NI until it has happened; and even then we should refuse to comment about the means of travel.

Next steps

The Secretary of State has set the ball in motion regarding the use of the Royal Prerogative to remit the sentences for offences not found by the Dutch courts to be extraditable. We shall be submitting further about this as the need arises. For the time being however we should avoid being drawn in public on the point.

Conclusion

The Secretary of State is invited to note:-

- (i) that McFarlane and Kelly will almost certainly be returned tomorrow evening; and
- (ii) that the attached press lines have been prepared.

1st December 1986

EXTRADITION OF MCFARLANE AND KELLY

Line to take

- Clearly we are very pleased that McFarlane and Kelly have been extradited.
- This result is a major blow to the IRA and demonstrates the value of close international co-operation against terrorism.
- We are most grateful to the Dutch authorities for their help.

But weren't there strings attached?

- The Dutch Government imposed no conditions on the two men's return.
- But the Supreme Court held that certain of the offences were not extraditable; this was for legal and technical reasons.
- None of the offences concerned were held to be political.

What will happen to them now?

- McFarlane will serve the unexpired portion of 5 life sentences imposed in 1976 for murder. He will also be tried for 7 offences allegedly committed during the Maze escape in September 1983.
- Kelly will be tried for attempted murder and ⁹8 other offences allegedly committed during the escape.
- (If asked.) Neither man will be imprisoned for or charged with any of the offences in respect of which extradition was held not to be admissible.

Co-operation with Dutch Authorities

- This has been excellent; contacts between British and Dutch Authorities over this case have made a considerable contribution to closer bilateral co-operation for the future and mutual understanding of the respective laws and procedures of the two countries.

KELLY AND MCFARLANE - BACKGROUND

Both Kelly and McFarlane escaped from HMP Maze in September 1983; Kelly was serving life for explosives offences committed in London in 1973 and McFarlane was serving life for murders committed during the bombing of a bar in Belfast in 1975. Both men had other convictions.

2. They were arrested by the Dutch police on 16 January 1986 following a joint operation by the Security authorities of both countries. The case was heard before the Amsterdam District court on 11 March. On 25 March the court found McFarlane extraditable on the murder convictions; offences committed by both men during the Maze escape were held to be political and therefore not extraditable. Kelly's explosives offences were held to be not extraditable. McFarlane appealed against his extradition and the Dutch Government appealed against the findings of non-extradition.

3. The Supreme Court heard submissions on behalf of both appeals and on 1 July 1986 ruled that it would retry the cases itself using a narrower definition of the political offence exception. On 21 October 1986 it announced its judgement. This was as follows:

- McFarlane. Extradition admissible in respect of the 5 murder convictions but not in respect of 3 convictions for explosives offences arising out of the same incident. On the 17 charges directed by the DPP(NI) arising from the Maze escape, extradition admissible in respect of 7 counts of "unlawfully and maliciously imprisoning" certain prison officers, but the other 10 charges are not extraditable.
- Kelly. Extradition not admissible in respect of his 3 original convictions for explosives offences, nor for convictions arising from an attempted escape in 1983.

extradition for which can not be sought. On the 17 Maze
escape charges, extradition admissible in respect of 1
count of attempted murder of _____ 1 count of
"unlawfully and maliciously causing grievous bodily harm"
to _____ and 7 counts of "unlawfully and
maliciously imprisoning" certain prison officers. The
other 8 charges are not extraditable.

4. These findings were submitted to the Netherlands government
which on 14 November 1986 declared that extradition would be
granted for the offences found extraditable by the Supreme Court.

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