

FROM: R C WEST
SIL DIVISION
11 OCTOBER 1993

DESK IMMEDIATE

cc PS/PUS (L&B) - B&F
PS/Mr Fell - B
Mr Thomas - B
Mr Bell - B
Mr Maccabe - B
Mr Maxwell - B
Mr Palmer, CSO - T
Mrs Evans, HOLAB - T
(w/o enclosures)

MR WATKINS - B & FAX

SMYTH EXTRADITION: REBUTTAL OF ALLEGATIONS BY BERNADETTE MCALISKEY

1. I would be very grateful for your help in connection with the current extradition hearing in San Francisco of the Maze escaper James Joseph Smyth.
2. As you may be aware, Bernadette McAliskey testified on behalf of the defence on 4 October. I attach part of the transcript of her cross-examination by our Attorney, Mark Zanides, with some notes on the main points made in her testimony. Mr Zanides' cross-examination was designed to get Mrs McAliskey to confirm the various improvements that have taken place in position of Catholics following the introduction of direct rule. In the process, however, Mrs McAliskey made a number of highly inaccurate assertions, which we would like to be able to rebut before the hearing comes to an end within the next fortnight.
3. We would like to be able to rebut authoritatively Mrs McAliskey's assertions that:
 - Northern Ireland has significantly the worst housing stock and worst housing conditions in Western Europe;
 - although considerable amounts of money have been spent on housing, almost every project built has since been demolished on the orders of the Government because of sub-standard quality;

RN/SIL/21998

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11 OCT 1993

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- successive legislation since the Northern Ireland Constitution Act 1973 has merely reaffirmed that discrimination is unlawful (rather than, implicitly, being seriously designed to combat discrimination);
 - despite the bombings, the profit margin and man hours are higher in Northern Ireland than elsewhere in Western Europe; large financial offers are made by the Government to outside investors; they leave when the tax concessions and profit margins are no longer in their favour;

(signed)

- Sinn Fein representatives are not allowed to speak in local Councils;
- areas like West Belfast have been economically punished for voting Sinn Fein; and
- community and self-help groups who employ Republican ex-prisoners are politically vetted and more often than not have their state funding reduced until they are prepared not to employ these people.

4. PUS, in his main testimony, has already set out the basic framework of Government policy and our commitment to tackle discrimination and eradicate disadvantage. However, the NIO team in San Francisco believe it would be helpful to enter a deposition which would rebut, in fairly factual terms, this part of Mrs McAliskey's testimony (I am also following up with the Home Office Legal Advisers the points she makes about ECHR derogations). Unfortunately, we are, in the nature of things, very short of time. If we are to put in such a deposition, it would probably need to be finished (and sworn) by the end of this week.

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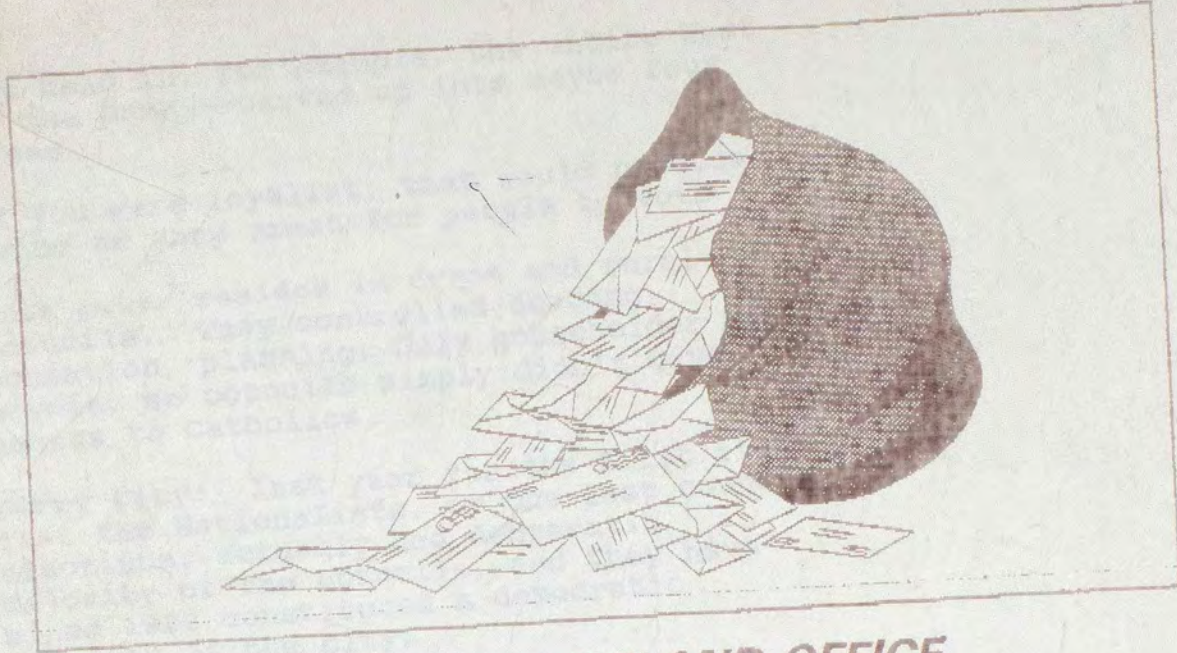
5. Do you think either you or someone in Central Secretariat could provide a deposition of this kind? We will, of course, provide advice - in conjunction with the Crown Solicitor's Office - on its format etc. But I would be happy to discuss further with you what might go into it (and to provide a fuller transcript of Mrs McAliskey's testimony as soon as I can get hold of it).

6. With apologies for the sudden nature of this request.

(signed)

R C WEST
SECURITY AND INTERNATIONAL DIVISION

RN/SIL/21998



**NORTHERN IRELAND OFFICE
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SECURITY AND INTERNATIONAL DIVISION

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From: R. West.

To: Mr Watkins.

MESSAGE

* Urgent *

Number of Pages 26 {including header}

08 < > CONT'D.

was held in, for example, the entire West of the Bann --carved up into maybe four areas

if you were loyalist, that would produce twice as many areas for people to vote

most power resided in urban and rural councils. They controlled housing, education, planning. Only householder had a vote, so councils simply didn't give houses to Catholics.

Derry City: last year for the first time that the Nationalists, or the last council elections, actually had democratic majority of the councils, and they have since 1922 constituted a democratic majority of the city.

Tr. 109:

Discrimination has not ended against the Catholic minority since Stormont Parliament was abolished

members of the Catholic community were statistically twice as likely to be unemployed as members of the majority community; now Catholics are 2.5 x more likely to be unemployed than their counterparts. The imbalance and inequality of employment opportunity has, in fact, intensified

Tr. 110:

four pieces of legislation: Emergency Provisions Act, Public Order Act, Prevention of Terrorism Act; Payment of Debt Act, between them all require Britain to derogate from their human rights obligations in Europe and internationally

also, they grant the same powers not only to the police, but also to the military, as under the old act
~~existed~~

Voting: No Stormont to vote for; local government has now been reduced to garbage disposal; the first stages of planning permission for private housing and facilities

Correction 3785 - some problem with 6823

now that we have our names on paper we have nothing to vote for

people are economically and military and socially punished if they exercise their vote in a manner not pleasing to the government

Westminster: Nationalist population is represented at Westminster by four members of the Social Democrats (4 out of 650)

N.I. is essentially governed by Orders in Council

matters pertaining to N.I. very rarely come onto the floor for democratic discussion even in Westminster. They're done at night by Orders in Council

Tr. 111:
government doesn't recognize Sinn Fein personnel. So if your local councillor is a member of Sinn Fein, government will pretend he doesn't exist

Tr. 113:
xxx Campaign: Stormont abolished in 1972, that meant that British government was directly responsible for interning people without trial.

that left Britain in direct contravention of European Human Rights Convention and they were taken to the European Court, found guilty, and ordered to cease the practice. So they established the Diplock Courts; these were special political courts in which people were tried if the basis of their offense was political

Tr. 114:
Persons tried in Diplock courts were treated differently until an arbitrary decision was taken by the British government

March 2, 1976: Secretary of State stated that any prisoner charged with offenses after that date, but which had occurred before March 2, 1976, would continue to be special category prisoners and have the

N10.

rights of such prisoners

Prisoners brought to court after March 2 for offenses committed after March 2 were deemed to be criminal and would not have the same rights.

Tr. 115:
Prisoners refused ~~to wear their~~ to wear their own clothes. Disciplinary charges were brought. Prisoners lost privileges. Blanket protest. Dirty protest. Hunger Strike started Oct. 1980; 10 prisoners died.

Tr. 117:
the weight of international opinion forced Britain to concede

in November 1980 RUC informed me that I was in imminent danger of assassination from loyalists and they believed the attempt would emanate from Lisburn. They advised me to leave the country.

Tr. 118:
I applied for permission to carry a gun and was refused permission

Jan. 16, 1981: Loyalists came to my home, walked past the British army who were lying outside my door. I saw them the previous night, saw, and said "Have you no homes of your own to go to?"

shooters walked out of the house and the soldiers arrested them as they walked out.

British soldiers came in door and shouted "is there anybody still alive in there?" I shouted "yes." Soldier came in and asked my name. I asked soldier, "Why did you let those people in here?" Soldier said, "We had orders to arrest armed men coming out of this house."

"I have no doubt that whoever ordered him to arrest people coming out as opposed to going into my house knew what those people were coming for."

Tr. 120:

Talk mod

[monetary damages] I was not entitled to damages because I'd done six months in prison.

re damages system: it arises out of the failure of the state to protect its citizens, called a Malicious Injuries Act

if you've been in prison for political offenses then you are not entitled to compensation because it's deemed to be that it's your fault that this happened to you.

[] meant that the state, monetarily was not required--wasn't their fault if somebody came and put a sledge hammer through my door some 10 years later for something entirely different.

Tr. 121:
children compensated: son received ¹1,000;
daughter (4 years old) received ¹1,500;
daughter (9 years old) received ¹12,000:
"that's all it was worth."

recent warnings: RUC came to house 3 days ago. they said "they believed from their intelligence that I was in imminent danger of assassination. They simply said that, you know, as a result of my present profile, my present public profile, actually it's involved with prisoner work the attack on an ex-prisoner -- one attack on an ex-prisoner some months ago, and my publicized appearance here."

RWC

Tr. 123:
re BBC Program. I was basically the onlooker, the person who was making the analysis on the two sides. watching it later on television: "I'm sitting and there's no words coming out of my mouth and paraphrases of what I say is coming across the screen." this happens to members of listed organizations under censorship legislation, but it shouldn't happen to me. I am currently in litigation on that.

the gov't (BBC) position was that because I had issued sounds which may be

interpreted as being words that might be issued by a person who supports some of the organizations who are not allowed to speak

Tr. 124:
it indicated a willingness and a reality that not only are members of certain organizations not allowed to speak, but people who may express an opinion which is somebody else's opinion, may concur with an opinion believed to be held by a member of that organization. They can also be prevented from being heard. Now that means that people like myself cannot discuss freely on the airways or analyze or report freely what's happening.

other members of organizations were not censored (e.g., AFC).

Tr. 125:
she says Catholic nationalists have been subjected to greater restrictions in their personal liberty by the security forces than the Protestant loyalist community

recent experiences that illustrate her opinion:

-- from Dundalk to my home in Coalisland at 8 pm last Thursday evening; came through Nanny, stopped 3 times, asked to identify myself and produce my license, state where I was coming from and going to, and that's lawful for people to ask you that;

-- out of Nanny it's loyalist territory, but it's a main thoroughfare. Very many of my neighbors wouldn't drive it, but I drive if the shortest route home;

-- stopped by Army/Police patrol just outside ~~Marble Hill~~ Told there was a security alert and I would have to divert.

-- soldier said I would have to divert into Richill and Hamiltontown, basically through loyalist territory and to Armagh;

-- in loyalist territory, no soldiers or police officers or control zones, no xxx bars in the villages. It looked like a different country.

-- at Gough Barracks, military stopped her again. came to Nationalist areas of

Armagh, stopped twice again by army and police patrols.
-- through M3, not stopped; outside Coalisland stopped again, on the hill to her home stopped again; every stop was in a nationalist area.

Tr. 128:

Q: has the situation in terms of restrictions on the liberty of Catholics improved in any way during the last 10 years.

A: I remember when things were different but my children (oldest is 22) have not experienced a 'non-militarized society.'

Tr. 129:

"in fact, my children protect the military base in Dungannon." ~~was my son to address the allegation that military forces use children as shields even though it does not have anything to do with safety, security per se.~~

son has no other way of getting to school because the military have sealed off all the roads to the school except the one that goes past the military base; when her son goes to school the military move in and out of the base so that nobody will shoot at them

there was a time in my time when not as many young people got stopped ~~it is not clear if this word~~ on the street

Tr. 130:

young people no longer make complaints when they've been physically attacked to the police unless they need treatment. They just assume the rest of it is normal. "My generation knows it's not normal."

general consensus from government, military, and police has been that the situation is rapidly deteriorating, particularly in terms of loyalist violence, and can only get worse. she believes that in the foreseeable future it will get worse. in fact, the nearer it comes to political resolution, the worse the violence from the unionists is going

to get.

[re persons accused or convicted of offenses against the security forces -- does she know any and has she observed their treatment by the security forces]

Tr. 132:

Seamus Grew came to her house a number of times. The last time he was particularly concerned and informed her that "a police officer had stopped him on the side of the road, and put a revolver to his head and clicked it and said to him, 'Seamus, the next time you hear it, you're dead.'" Grew was killed at the end of the third day, on that Sunday. Police officer was subsequently brought to the court and charged with putting a revolver up to his head and pulling it, and his death has become part of the Stalker investigation.

Desmond Grew: he too was killed, shot along with Martin Kelly. Both men died without witnesses, getting out of a car in which the security forces later said they had reason to believe was involved in some attack. No inquest has yet been held on either of them.

Tr. 134-135:

Ex-republican prisoners against whom the security forces have used anti-Catholic slogans: Sean Lynch, at funeral of wife of Sinn Fein councillor; police drove alongside and told Sean, among other things, "you'll never see your wedding, you baldy bastard. We'll get you before it."

Tr. 135:

People who complain about this kind of activity simply get more harassment.

incidents of treatment of Sinn Fein members by the security forces: Francis Malloy: driving along the road, car travelling rapidly behind them, they held the middle of the road, saw a red light ahead, police officer said, "Well, Francine, take a look at that, 45 miles an hour in a 30 mile speed limit." they all

*see
again in*

got out and laughed, charged him with speeding; he paid the fine.

Tr. 137:

John Daly: John killed, body found in car, hand brake was on and gear in neutral, headlights dipped, window open-- i.e., exactly the position he would have been in had he been stopped on the road at a v.c.p.

RWC

Tr. 138:

Smyth will be restrained or restricted in his personal liberty on account of his race, religion, or political opinion.

OCTOBER 5, 1993: Cross-examination of McAliskey

Tr. 5:

N.I. still has significantly the shortest housing stock and worse housing conditions of the whole of western Europe ~~is this true~~

NIO

considerable amounts of money were spent and almost every project built has since been demolished on the order of the government because of substandard quality

Tr. 6:

the N.I. Constitution Act merely reaffirmed that discrimination is unlawful. Further legislation is now being considered to replace former legislation. Discrimination is rampant.

It is a statistical fact that despite the bombings, the profit margin and the man hours, the profit margin is higher in N.I. than anywhere else in western Europe for outside investment. ~~is this true~~

NIO

Tr. 7:

large financial offers made by the Government to outside investments. They leave when the tax concessions end, the profit margin is no longer in their favor.

NIO

Tr. 9:

re compensation: husband got 250,000; took

him 10 years to receive payment. Court awarded interest, by which time he owed \$70,000 for living 10 years without income; she was given an ~~ex~~ gratia payment without acceptance of liability for the damage done to her. she believes the government paid because the case would not stand at the European Court of Human Rights. received \$20,000 plus interest.

Tr. 11:

re Payment of Debts Act: "it has been incorporated into everyday legislation, used to be part of emergency legislation; it remains on the statute books, it is not ~~xxx~~; part of the civil law as opposed to emergency law. when asked what statute it is part of, she replied, "I'll go and look it up for you and let you know."

she never really states that the U.K. did not derogate: she concluded by saying, "I'm quite sure that had we taken that case, the European Court of Human Rights, they would have derogated."

Tr. 13:

derogate on the "right of silence," on the right of treatment of suspects; on the right of holding people for periods longer than 48 hours. they have derogated on the Public Order Legislation.

Tr. 14:

"The derogation is very simply stated, just so we can clarify our positions, the European Convention on Human Rights lays down a number of protections for citizens in those countries whose governments are signatories The Public Order Act involves legislation as does the Emergency Provision Act and the PTA involves legislative powers for the police which are in contravention of the principles.

more recently, the European Court warned the British government that its consistent pattern of arguing necessity and, therefore, being permitted to be in breach of its convention requirements were beginning to try the patience of the Court, and Britain was specifically asked

then to remove her signature from certain aspects.

Tr. 15:

Britain formally derogated from her obligations under Ms. Thatcher when she removed the right to remain silent in your own defense.

NIO

Tr. 17:

I am saying, and I'm saying with a great weight of evidence behind it, that people are militarily and economically punished for voting Sinn Fein. People are punished on way to polling station, subjected to abuse on their way from the polling station.

Tr. 18:

Sinn Fein ^{public} representatives in district courts often are not permitted to speak. ~~put~~ put the chair outside and when the Republicans go outside they lock the door.

Magherafelt
Council.

members of Sinn Fein who are elected representatives have been shot and killed

people who put up and advocate and work in the electoral process for Sinn Fein are attacked regularly; areas like West Belfast have been economically punished for voting Sinn Fein

NIO
barr local anti

Community and self-help groups who employ republican ex-prisoners are politically vetted and more often than not have their state funding reduced until they are prepared to not employ those people.

NIO

Tr. 36:

Q: the standard for conviction is beyond a reasonable doubt, isn't that right?
A: no, I don't think so.

Tr. 38:

I know from my own experience and observation that nationalist areas are ~~xxx~~ with them, that you can't walk down the street in the nationalist areas without stepping over your British soldier or on armed police officer. And that if

Swan pond

you go into a non-Nationalist area, you wouldn't see them.

The military base in Dungannon was not in operation in 1974

Tr. 39:
[after 1986 attack] they built the base or extended the base nearer the school; it is called the "human shield mentality."

Tr. 40:
the local police station has recently been built up against the wall of the local hospital. Coalisland RUC station has been newly refurbished and built up against the wall of the Catholic Church. there is a deliberate policy to use the civilian Catholic community as protection for themselves: opinion of the Catholic Church, of the protestant people of ~~Cookstown~~, ^{Cough} of the Chamber of Commerce of Cookstown

Tr. 43:
the soldiers who found her did not give first aid; one of the arresters said "F[uck] this for a double cross."

Tr. 44:
soldier of Paratroop Regiment and Argyle and Southern Highlands actually argued over why the paratroops had not given first aid. the soldier from the Argyle said "You had packs." There had already been a delay of 20 minutes because, according to their records, there were no military personnel in the area.

the four members of the Paratroop Regiment outside by house were not officially documented as being there.

~~once sealed~~
~~once rested off~~, the Commander and Chief of Paratroop held a press conference outside the house, where he said that "the paratroopers were on routine foot patrol past the house and they had been unable to get there in time to stop the shooting, but had apprehended the villains."

There was no reason why the Paratroop regiment should have been there.

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BY:US ATTORNEY'S OFFICE 10- 9-93 : 15:49 US ATTORNEY'S OFFICE

hijacked a local person going to their work, ordered him at gunpoint to take them to the phone, they rang HQ in Lesbon.

Tr. 48:
re judgment: it is a sanitized version of what was actually said. The manner of recording testimony is not as up to date as in the U.S. court.

Tr. 49:
[Smallwood] identified as spokesperson for the Ulster Dem. Party

a police officer will refuse to identify himself. I know some senior officers, e.g. Sgt. Sullivan

Tr. 50:
if you go to complain at a police station they ask "can you identify him, could you pick him out?" Some officers would not assist by saying "I know who was out there." All that is left to you.

it becomes impossible to identify the individual police officer so that you can make a complaint against a named person. You simply file the incident.

Tr. 51:
police offer the option of unofficial complaints. If official, it will be out of my hands, it will go to RUC HQ, it will take a period of time, people will have to come in and sign statements. "You know as well as I know that if this is the case, this police officer will annoy these people."

now they take the other approach: "I've had a number of complaints about this man. If you make an unofficial complaint, it doesn't go out of the police station, but it allows me to talk to them. I'll pull them in here, tell them that there'll be no more of that." I would tolerate that for a number of cases, then if nothing is done I make an official complaint. The RUC then deny the unofficial complaints.

by this time your witness has had such

hassles from police that they don't want to go any further, so the case is dropped.

Tr. 53:

the British government took the point of view that Sinn Fein was a political organization which stood for election, put its politics before the electorate, and was elected. So Sinn Fein, as an organization, was not banned.

Tr. 57:

re Noel Little shooting. Police released him. They dropped him at Bxxx's house, and they were shot there in the small why not was hours of the next morning.

Burton's 1/14/77

Tr. 62:

re ex-prisoners: very difficult for them to get work; members of the community who employ them will find themselves visited by the police; it's bad for business

Tr. 63:

re Desmond Grew killing: within minutes of his dying the Unionist politicians were able to have access to his security file; ex-prisoners can't get into this country, so in terms of immigration, their opportunity to immigrate to where they can have a life is very minimal

ASU admission

Tr. 66:

informal complaints issue: says she checks with Sgt. Sullivan

Tr. 69:

there was a striking similarity between the specific details stated by Ken Maginnis and the specific details subsequently stated by the RUC. They were not generalities.