

PS  
 PS/LADY YOUNG  
 PS/FUS  
 MR BRAITHWAITE  
~~MR O'NEILL~~  
 MR AUST, Legal Advisers  
 MR FREELAND, Legal Advisers  
 ED/MAED (2)  
 ED/MAD

~~RESIDENT CLERK~~

PS/S of S  
 MR LAZARUS, FUS }  
 MR KNIGHTON } DEPT OF  
 MR ~~XXXXXXXXXX~~ } TRANSPORT  
 MR ~~XXXXXXXXXX~~  
 MR ~~XXXXXXXXXX~~  
 MR ROBERTS }  
 MR ~~XXXXXXXXXX~~ } DTP  
 MR ~~XXXXXXXXXX~~  
 MR ~~XXXXXXXXXX~~ (Solicitors)  
 POWELL  
 MR ~~XXXXXXXXXX~~ 10 DOWNING ST  
 MR GARDNER, ~~XXXXXXXXXX~~  
 GENERAL'S OFFICE

LOD

IMMEDIATE

GRS 750

CONFIDENTIAL  
 DESKBY 220900Z  
 FM WASHINGTON 220027Z NOV 84  
 TO IMMEDIATE F C O  
 TELEGRAM NUMBER 3490 OF 21 NOVEMBER.

ADVANCE COPY

LAKER: LEG 2

YOUR TELEGRAM NO 1990.

SUMMARY.

LIMITED PROGRESS IN DEALING WITH STATUS OF PREDATORY BEHAVIOUR ALLEGATION.

2. BEARING IN MIND THE THANKSGIVING HOLIDAY, COUNSELLOR (CAS) ON THE BASIS OF TELECON WITH KNIGHTON (DTP) ARRANGED TO DISCUSS THE MATTER WITH SMALL (STATE DEPT) IN THE ABSENCE OF NILES (STATE DEPT) AND IN ADVANCE OF T U R WHICH DID NOT ARRIVE UNTIL CLOSE OF PLAY.

3. WITH REGARD TO THE PROPOSED RESPONSE TO OUR ENQUIRY (PARA 6 OF T U R) SMALL THOUGHT THAT IT WOULD BE POSSIBLE TO AGREE TO A TEXT ALONG THE LINES SUGGESTED WITH SOME AMENDMENTS. THE MAIN DIFFICULTY CONCERNS THE ADDITION AT D OF PARA 6 OF T U R. TO SAY THAT THE AIRLINE'S STATEMENT HAD QUOTE DISPOSED OF ANY SUGGESTION UNQUOTE WOULD BE REGARDED BY THE JUSTICE DEPARTMENT AS AN INFRINGEMENT OF THE CONFIDENTIALITY OF THE CONSULTATIONS. IT WOULD IMPLICITLY DISCLOSE INFORMATION RECEIVED IN CONFIDENTIAL CONSULTATIONS. HOWEVER, SMALL THOUGHT THAT IT WOULD BE POSSIBLE TO SAY THAT QUOTE THIS STATEMENT WOULD APPEAR TO DISPOSE OF ANY SUGGESTION UNQUOTE. A REVISED TEXT IS IN M U F T.

4. WITH REGARD TO THE GENERAL QUESTION OF GRAND JURY SECRECY AND THE CONFIDENTIALITY OF OUR CONSULTATIONS (.PARA 4 OF T U R) SMALL EXPLAINED THAT EVEN THE LIMITED AMOUNT OF INFORMATION WHICH HAD BEEN GIVEN TO H M G DURING THE CONSULTATIONS HAD INVOLVED USE OF MATERIAL SUBJECT TO GRAND JURY SECRECY. THE GUIDELINES UNDER WHICH SOME INFORMATION HAD BEEN GIVEN HAD TO BE...

BEEN GIVEN TO H M G DURING THE CONSULTATIONS HAD INVOLVED USE OF MATERIAL SUBJECT TO GRAND JURY SECRECY. THE GUIDELINES UNDER WHICH SOME INFORMATION HAD BEEN GIVEN HAD TO BE AGREED BY THE COURT. THE DISTINCTION MADE IN YOUR PARA 4 IS NOT THEREFORE RECOGNISED. MOREOVER, SMALL ADDED THAT IF H M G WERE TO MAKE STATEMENTS ABOUT WHAT HAD TRANSPIRED IN THE CONSULTATIONS THIS WOULD DO SERIOUS DAMAGE TO THE GENERAL PROCESS OF CONSULTING UNDER THE O E C D CODE. OTHER AGENCIES BESIDES THE JUSTICE DEPARTMENT WOULD BE RELUCTANT TO ENGAGE IN THE CONSULTATION PROCESS IF THEY SUSPECTED THAT CONFIDENTIALITY COULD BE BREACHED.

5. WITH REGARD TO THE AIRLINE'S STATEMENT (PARA 5 OF T U R) SMALL AGREED TO TRY AND PERSUADE THE JUSTICE DEPARTMENT TO ACCEPT THE PROPOSED AMENDMENTS. BUT HE EMPHASISED THAT HE THOUGHT THERE WAS LITTLE PROSPECT OF THEIR AGREEMENT. MAYNARD EMPHASISED THE POINTS IN PARA 2. SMALL ARGUED THAT THE JUSTICE DEPARTMENT FELT THAT WHILE THEY HAD NOT UNCOVERED EVIDENCE IN RELATION TO THE PREDATION ISSUE THIS WAS TO SOME EXTENT DUE TO THE EFFECT OF H M G'S USE OF THE P T W A. MOREOVER THE JUSTICE DEPARTMENT WERE ANXIOUS TO AVOID ACCUSATIONS BY THE LAKER LAWYERS AND JUDGE GREENE THAT THEY HAD MADE STATEMENTS THAT UNFAIRLY INFLUENCED THE CIVIL CASE. MAYNARD SAID THAT THE OBJECT OF THE STATEMENT WAS TO COUNTER THE UNFAIR INFLUENCE WHICH HAD ALREADY ARISEN FROM THE WAY IN WHICH THE JUSTICE DEPARTMENT HAD BRIEFED THE PUBLIC ABOUT THE DECISION.

6. SMALL SUBSEQUENTLY REPORTED THAT HE HAD DISCUSSED THE MATTER FURTHER WITH THE JUSTICE DEPARTMENT. THEY REMAINED ADAMANT THAT THEY COULD NOT BE SEEN TO AGREE TO ANY STATEMENT MADE BY THE AIRLINES. IT WAS NOT THEIR NORMAL PRACTICE TO DO SO (E G HAD NOT DONE SO AT THE CONCLUSION OF THEIR LEG 3 INVESTIGATION) AND COULD NOT TAKE THE RISK OF ANTAGONISING JUDGE GREENE. SMALL SAID THAT HE CONSIDERED THAT THE REVISED STATEMENT IN MY SECOND W F T WOULD NOT BE CONTRADICTED BY THE DEPARTMENT OF JUSTICE.

7. ROSDEITCHEN (B A) HAS COMMENTED THAT HIS ADVICE TO HIS CLIENT WOULD BE TO AVOID ANY STATEMENT. HE CONSIDERS THAT IN THE CIRCUMSTANCES SILENCE AND TIME TO ALLOW THE DUST TO SETTLE WOULD BE THE MOST BENEFICIAL OUTCOME FOR B A'S INTERESTS IN THE CIVIL CASE. MAYNARD EXPLAINED THAT THERE WERE OTHER CONSIDERATIONS WHICH NECESSITATED H M G PRESSING FOR A MORE SATISFACTORY STATEMENT IN RELATION TO THE PREDATORY BEHAVIOUR ALLEGATION (PARA 26 OF T U R).

COMMENT.

SMALL'S ATTITUDE HAS BEEN UNUSUALLY HELPFUL AND SYMPATHETIC. WE SHOULD REGARD HIS REMARKS AS REFLECTING A GENERAL STATE DEPARTMENT PERSPECTIVE. WE SHOULD ALSO ACCEPT THAT HE HAS FAIRLY REPRESENTED OUR CONCERNS TO THE JUSTICE DEPARTMENT. WHILE THE TWO STATEMENTS STILL FALL SOME WAY SHORT OF OUR OBJECTIVES THERE IS LIKELY TO BE LITTLE ROOM FOR FURTHER IMPROVEMENT. IN PARTICULAR THE RESPONSE TO POINTS IN PARA 4 OF T U R REPRESENT A UNIFIED STATE AND JUSTICE DEPARTMENT VIEW. AND, WHILE THE OPPOSITION TO THE PROPOSED AMENDMENT IN PARA 5B IS CONCENTRATED IN THE JUSTICE DEPARTMENT, THERE IS A GENERAL PERCEPTION THAT B A'S INTERESTS WOULD BE ADVERSELY AFFECTED BY WHAT JUDGE GREENE MIGHT REGARD AS A PREJUDICIAL STATEMENT BY THE DEPARTMENT OF JUSTICE.

FCO PLEASE ADVANCE TO: KNIGHTON FORTNAM DTP, AYLING HEALEY DTU,  
BRANTHWATE O'NEILL GRAY FCO, AUST LEGAL ADVISORS FCO  
GARDINER LOD

WRIGHT