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FROM : [REDACTED]
SECURITY AND EXTRADITION UNIT
SIL DIVISION
24 FEBRUARY 1994

ASST SEC 538/2
25 FEB 1994
CENT NEW SEC

Wms myg

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cc	PS/Sir John Wheeler (L&B)	- B
	PS/PUS (L&B)	- B
	Mr Thomas	- B
	Mr Legge	- B
	Mr Steele	- B
	Mr Watkins	- B
	Mr Deverell	- B
	Mr Wood (L&B)	- B
	Mr Leach	- B
	Mr Marsh	- B
	Mr Rickard	- B
	Mr Daniell	- B
	Miss Jude	- B
	Mr Powell, Washington	- B
	Mr Conn, CSO	- B
	DI Hamlin o/r, RUC	- B
	Mr White, DPP	- B
	Mr Ridout, LSLO	- B
	Mr Bentley, HOLAB	- B
	Mr Zanides, San Francisco	- B
	Mr Archer, RID	- B
	Mr Harrison, MOD	- B

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PS/SECRETARY OF STATE (L&B)

EXTRADITION: ARREST OF TERENCE DAMIAN KIRBY

The Secretary of State will be aware that Terence Damian Kirby, one of the Maze escapers in 1983, has been arrested by the FBI in Oakland, near San Francisco. A provisional warrant for his extradition, prepared in Summer 1992, has been served upon him.

2. Mr Kirby, also known as Paul Kerr, was born on [REDACTED] and is therefore 37 years old. He was serving a life sentence for the murder of a garage owner at the time of his escape in September 1983. He was also serving concurrent sentences of 16 years imprisonment for robbery and causing an explosion. These sentences were imposed on 15 December 1978.

3. The circumstances of these crimes were that on 19 August 1976 Kirby and three other men in a hijacked car took part in a robbery on a garage. They held customers at gun point.

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As they left the premises, they shot the garage proprietor in the leg. He died on the way to hospital. Several explosive devices were left in the building, which was extensively damaged by the explosions and fire which followed. Mr Kirby appealed against these convictions. He lost the appeal on 11 June 1980.

4. At an earlier trial in January 1978, he was convicted of assault and false imprisonment, possession of explosives and firearms and IRA membership. I understand that he had been caught red-handed on "active service". He was convicted on the basis of a confession which I am told he did not contest at trial. He was sentenced to 18 and 8 years imprisonment for these offences, to be served consecutively. He is regarded as having been an extremely dangerous terrorist.

5. 

6. At the time of the arrest - on the charge of being a fugitive - Mr Kirby was unarmed. I understand that no force was used in the arrest. It is considered unlikely at this stage that Mr Kirby will be charged with any passport violations, in contrast to the other Maze escapers who have surfaced in San Francisco. He may well have destroyed the evidence in the light of Smyth, Artt and Brennan's convictions on these charges. The arrest occurred at 7.45am yesterday local time - or 3.45pm GMT.

7. Mr Kirby was not legally represented when I spoke to Mr Zanides early yesterday afternoon, San Francisco time. Kirby was later brought before a local magistrate, and then Judge Jensen, his allotted District Court judge. There may be an application for the case to be transferred to Judge Caulfield but if so, this will be vigorously contested. The Secretary of State may recall

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that there was a similar unsuccessful application for Artt's and Brennan's cases to be heard by Judge Caulfield rather than Judge Legge. There might be some logic in Kirby's case being heard by Judge Legge at the same time as he hears the Artt and Brennan cases probably later this year. But I am told defence attorneys do not consider Judge Legge to be a particularly sympathetic judge. Judge Jensen seems to be regarded as sound by Mr Zanides.

8. There are a number of matters about which I will be consulting our lawyers. We have sixty days in which to prepare and submit a full extradition request. The Crown Solicitor's Office will be in the lead on this. We will need to consider whether to seek Mr Kirby's extradition on the basis of his convictions - as we have with Smyth, Artt and Brennan - or on the grounds of his escape. Escape is however not an extraditable offence under our Treaty with the USA: one would instead have to establish Kirby's involvement in the 'serious false imprisonment' of prison officers in the course of the escape. This might not be easy to prove.

9. I suggest that our press line for the time being should be that Mr Kirby's arrest demonstrates our resolve that all escapers from justice in Northern Ireland will in due course be returned there to serve out their sentences.

10. I shall continue to keep the Secretary of State up with developments as they become known to me.

(signed)

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SECURITY AND INTERNATIONAL DIVISION
24 FEBRUARY 1994

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