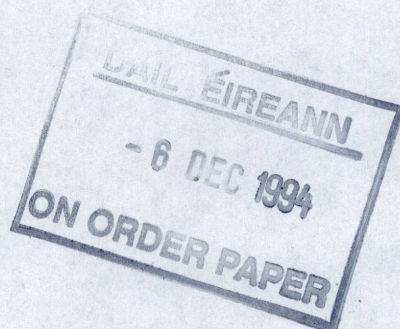


PN. 1272

REPORT OF ATTORNEY GENERAL ON INVESTIGATION

INTO FR. BRENDAN SMYTH FILE.

1 DECEMBER 1994



## INDEX

	Page
INTRODUCTION	1
I. The Smyth Case	2 - 4
II. The Duggan Case	5 - 8
III. Child Sex Abuse Cases	9
IV. Other Cases	10 - 13
V. Procedures in the Attorney General's Office in Relation to Extradition Requests	14 - 15
VI. Dail Questions	16 - 17
VII. The Report of the former Attorney General to the Taoiseach on the Smyth Case.	18 - 21
VIII Suggestion of outside influence.	22 - 23
IX. The Seven Months Delay.	24 - 26
X. Apology of Official A.	27 - 28
CONCLUSIONS	29 - 30
APPENDIX.	

**INTRODUCTION**

This report sets out to establish facts - in so far as that is possible - in relation to the Fr. Smyth case. It is a matter of great concern and regret for me - as it was for my predecessor Mr. Whelehan - that a seven month delay could occur in this Office in the handling of a file in any case, but more particularly in this type of case. It will not happen again. New procedures to ensure that there will be no repetition have been put in place. From now on all extradition cases will receive the personal attention of the Attorney General as soon as they arrive in the Office. All cases involving children will equally receive top priority.

This investigation was carried out at the request of the Minister for Justice on behalf of the Taoiseach. The investigation involved a full examination of the Fr. Smyth and all extradition files since 1987 and the questioning of persons concerned. The investigation was not carried out in an adversarial manner. No attempt has been made by me to draw inferences other than those which appeared to be compelling. The report does contain comment in relation to matters or aspects of the affair which appear to me to call for comment.

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**Eoghan Fitzsimons, S.C.**  
**Attorney General.**

**1st December, 1994.**

I. The Smyth Case

1. The dates between which the offences, the subject matter of the Smyth case warrants were alleged to have been committed were as follows:

Warrant "A".

10th March, 1964 - 12th March, 1971.

Warrant "B".

10th March, 1964 - 12th March, 1971.

Warrant "C".

10th March, 1964 - 12th March, 1971.

Warrant "D".

14th February, 1968 - 16th February, 1976.

Warrant "E".

14th February, 1968 - 16th February, 1976.

Warrant "F".

14th February, 1968 - 16th February, 1976.

Warrant "G".

4th June, 1986 - 31st December, 1988.

Warrant "H".

1st December, 1982 - 3rd December, 1988.

Warrant "I".

1st December, 1982 - 3rd December, 1988.

2. Complaints giving rise to the charging of Fr. Smyth in respect of the above offences were made firstly in March, 1990 by a number of the complainants. The final complainant made a complaint on the 29th January, 1993. Fr. Smyth was interviewed under caution at Grosvenor Road, R.U.C. station on 8th March, 1991. The Statement of Facts indicates that during the course of this interview he admitted the various offences and signed the interview notes. He declined to make a written statement after caution about the matter, saying that he preferred not to go over it all again. He also appears to have admitted the offences in respect of which complaints were later made on 29th January, 1993.
3. On the 8th March, 1991, Fr. Smyth was charged with four offences. He was then released on bail. Subsequently a decision was taken to submit the file to the Northern Ireland D.P.P. for consideration. On 3rd April, 1991 the charges were marked "no appearance" at Belfast Magistrates Court. On 23rd April, 1993 the charges were formally withdrawn at Belfast Magistrates Court.
4. On 23rd April, 1993 the above warrants issued. The

request for extradition was transmitted to the Garda Siochana. The documentation was sent by the Garda Siochana to the Office of the Attorney General arriving on 30th April, 1993.

5. By letter dated 4th May, 1993 the U.K. Attorney General wrote to the Irish Attorney General regarding the extradition request and enclosed a Confirmatory note and Statement of Facts and Law. This letter whilst personally addressed to the former Attorney General was not received by him and was never seen by him. It was transmitted to Ireland in the diplomatic bag in an envelope addressed to an official in the Irish Attorney General's Office (Official A) and was received by him on the 14th May, 1993. From that time until the controversy blew up regarding the case in late 1994 the file remained in the sole and exclusive possession of Official A. He has confirmed this fact. It was never seen by the former Attorney General and he had no knowledge of its existence.
6. The Chief State Solicitor's Office having examined the warrants, by submission dated 31st May, 1993 made a number of recommendations regarding some technical defects which needed amendment. No action was taken in respect of these advices. It was the intention of official A to have them dealt with if and when the Attorney General indicated his intention to send Fr. Smyth back for trial in Northern Ireland.
7. The file indicates that from the point in time when the extradition documents were received, work of a legal nature appears to have been carried out by Official A on a number of occasions and there are documents which could be described as notes or memoranda as evidence of this fact. There is no indication as to when this work was carried out or as to how much time was spent on it. Official A cannot recall the amount of time spent on the file. The issue apparently being addressed was that of lapse of time arising under the section. The only indication that possible "exceptional circumstances" within the meaning of the section were being considered, appears to be a reference in a note to a distinction between (a) delay between charge and trial and (b) delay between crime and charge. It may be that the former was considered as constituting an "exceptional circumstance" within the meaning of the section. Otherwise the file does not appear to me to contain any indication of any matter which could be viewed as an "exceptional circumstance" which could be relied upon by Fr. Smyth. I am informed by Official A that he contemplated the possibility of a case being made on grounds of pure delay - irrespective of the provisions of the section.
8. Apart from the above referred to work, done by Official A, the file was inactive until January, 1994 when a

letter was received from the Office of the U.K. Attorney General indicating that Fr. Smyth had returned voluntarily to Northern Ireland and been in court on the 21st January, 1994. The letter went on to state that the R.U.C. would be requesting the return of the warrants previously sent.

9. In the interim period there had been a number of contacts between the U.K. Attorney General's Office and the Irish Attorney General's Office. On the 20th September, 1993 an official of the U.K. Attorney General's Office contacted Official A. There were further telephone discussions on the 14th October, 1993 and the 18th November, 1993 between another U.K. Official and Official A. On the 6th December, 1993 that same official contacted Official A to inform him that Fr. Smyth was returning voluntarily to Northern Ireland. This duly happened. In the meantime also the Garda Siochana in Dublin had received a letter dated 2nd December, 1993 enquiring about the warrants and asking to hear from the Gardai "in due course". A copy of this letter was sent to the Office of the Chief State Solicitor where it was received on the 17th December, 1993. It is not clear whether or not a copy of that letter was transmitted to the Attorney General's Office.
10. Fr. Smyth was ultimately convicted on a plea of guilty to the various charges and was sentenced to four years imprisonment dating from June 1994.

II. The Duggan Case.

11. By letter dated 7th March, 1990 the Crown Prosecution Service of West Mercia area forwarded draft warrants, affidavits and certificates relating to the extradition of one John Anthony Duggan. The dates during which the offences, the subject matter of the said warrants were allegedly committed were as follows:

Warrant "A".

9th June, 1988 - 6th June, 1989.

Warrant "B".

1st August, 1986 - 6th June, 1989.

Warrant "C".

25th December, 1988 - 7th June, 1989.

Warrant "D".

25th December, 1988 - 7th January, 1989.

These warrants along with accompanying documentation were sent in draft form for the purpose of seeing whether they satisfied the Irish requirements. This is a practice that is carried out in some cases. Documents are furnished, in advance, in draft form or, alternatively simple enquiries made, for the purpose of seeing whether or not it is in order to proceed with an actual formal extradition request. Queries were raised in relation to these warrants and same were notified to the Crown Prosecution Service of West Mercia area by letter dated 23rd August, 1990 from the Chief State Solicitor.

12. Nothing further happened in relation to the matter until an official of the U.K. Attorney General's Office wrote to Official A by letter dated 14th February, 1992. That letter again furnished draft documents relating to the extradition of Mr. Duggan and included draft Statements of Facts and Law together with draft charges. The dates during which these charges were alleged to have been committed were stated in the warrants to be:

Warrant "A".

30th November, 1988 - 1st March, 1989.

Warrant "B".

1st January, 1989 - 16th May, 1989.

Warrant "C".

25th December, 1988 - 7th January, 1989.

Warrant "D".

25th December, 1988 - 7th January, 1989.

Whilst the charges appear to have been the same the dates

of alleged commission of same had been narrowed somewhat when compared with the 1990 draft warrants.

13. In the letter of 4th February, 1992 the U.K. Attorney General's Office raised the question of delay in the following terms:

"The Crown Prosecution Service have nearly completed the preparation of draft documents that will be needed for an application for Duggan's extradition. Before a decision is taken, however, on whether the application should be made, it would be very helpful if you were able to give us a preliminary indication of the view that your authorities might take about two possible arguments that might be considered relevant to the question whether the warrants should be backed. I attach the draft Statement of Facts and Law together with the draft charges for your to consider.

The first argument is that there has been too great an elapse of time in making the application for extradition. Duggan was due to be committed for trial on 23rd February, 1990 but he failed to attend, and returned to the Republic. (He is an Irish citizen.) Draft warrants and supporting documentation were prepared and were approved by the Chief State Solicitor (subject to minor comments) on 23rd August, 1990. The preparation of the draft Statements of Fact and Law has, however, taken some considerable time, and drafts have not yet been submitted to the Attorney for approval.

If Duggan is returned, it will be open to him to argue a preliminary issue that the trial should not proceed because of the elapse of time. The Crown Prosecution Service take the view that such an application is unlikely to succeed. The offences were allegedly committed between 30th November, 1988 and 16th May, 1989, and so the case is not stale. Furthermore, Duggan is aware of the case against him since, as you will see from the draft Statement of Facts he was interviewed by the Police on 6th January, 15th May and 20th June, 1989 about the events in question. The question of delay, however, is one that your authorities may want to consider."

As is apparent from the above, the question of lapse of time was expressly raised by the U.K. Attorney General's Office for consideration by the Irish Attorney General's Office.

14. The Duggan file was passed on by Official A to Official B



in the Irish Attorney General's Office. Official B in a submission to the former Attorney General dated 13th February, 1992 expressly dealt with the issue of lapse of time quoting section 50(2)(bbb) of the Extradition Act, 1965 as amended. Having recited the section Official B in his submission stated:

"In this case it does not appear to me that the lapse of time is such as would render the delivery up of Mr. Duggan unjust, oppressive or invidious. Nor am I aware of any "other exceptional circumstances" accompanying such lapse of time as has occurred which would render the delivery up unjust, oppressive or invidious. It is, of course, possible that Mr. Duggan will argue such a case in court."

This submission was made to the Attorney General after (Official B) had considered the implications of the section and its potential availability to Mr. Duggan to avoid extradition. (Official B's) submission was approved by the Attorney General on 13th February, 1992.

The submission was accepted and signed by the former Attorney General on 13 February 1992.

15. By letter dated 14th February, 1992 Official B wrote to the official dealing with the matter in the U.K. Attorney General's Office and referred to the fact that the issue of lapse of time had been considered in the context of section 50(2)(bbb) of the Extradition Act, 1965 as amended. The English Attorney General's Office was informed, inter alia, that on the facts of the case as presented the former Attorney General did not consider that an argument based upon the section would be of sufficient force to cause him to advise against backing the warrants.
16. In due course the actual warrants were forwarded to the Irish Attorney General's Office. A decision to clear the warrants was made by the former Attorney General on the

3rd March, 1992.

17. By Special Summons dated 6th April, 1992 proceedings were instituted by Mr. Duggan to contest his extradition on the basis of section 50 of the Extradition Act, 1965. Mr. Duggan however, apparently changed his mind about contesting his extradition on the basis of section 50 and his solicitors by letter dated 24th April, 1992 indicated that he wished to return voluntarily to England to face the charges against him. The Special Summons was therefore struck out before the Master of the High Court on 28th April, 1992 with no order being made. Mr. Duggan then returned voluntarily to England by air on 2nd May, 1992. He was later convicted on the 21 day of July 1992 and sentenced to 2 years imprisonment.

### III. Child Sex Abuse Cases.

18. Since 1987, apart from the Smyth and Duggan cases, there have been four other extradition requests in child sex abuse cases. Three of these (Case 5498/90, A. Case 7293/92, G and Case 9115/94, F) were dealt with very expeditiously. The time taken to process the warrants in these cases ranged from approximately three to six weeks. It will be recalled also that the Duggan case was processed most expeditiously. In the fourth case (Case 4992/89, H.) draft warrants were received on 4th July 1989. Various queries arose in relation to this extradition request not dealt with by Official A. None involved a delay issue. Following the raising of quite a number of queries with the U.K. authorities on 30th August, 1989 nothing further happened until the application to extradite was withdrawn on 16th February, 1990. A question would arise as to whether steps should have been taken to follow up on this case having regard to its nature.
19. Reference can be made to the fact that in two of the above referred to four child sex abuse cases there were delays of eight and ten years respectively between the date of alleged initial commission of the offences in respect of which the warrants issued. The files indicate that this Office did not contemplate or consider at any time the possible relevance of the section referred to above to these cases.

**IV Other Cases.**

20. There is another case which should be referred to as it is relevant in the overall context. This is the case of the State (Ellis) -v- O'Dea 1991 1 I.R. 251. Mr Ellis was an alleged subversive whose extradition was sought on the basis of two warrants issued on 24th April 1989. The warrants were in respect of offences allegedly committed between 1st January 1981 and 27th October 1983. The offences were:-

- (1) conspiracy to cause explosions and
- (2) possession of explosives.

Part of the case made on behalf of Mr Ellis was that he should not be extradited due to the lapse of time involved. Mr Ellis relied upon section 50(2)(bbb) of the Extradition Act 1965 as amended. Counsel instructed on behalf of the then Attorney General argued against this case. Mr Ellis failed and the Supreme Court findings on the issue of the section and the manner in which it should be applied to the facts of that case are found in the judgment of Chief Justice Finlay at pp. 258-259. The decision of the Supreme Court in this case was delivered on 14th November 1990. The official in this Office who dealt with the Ellis case was Official A who dealt with the Smyth case.

I did not discover this case until 25th November, 1994. Official A and the former Attorney General were not queried by me about it until 28th November, 1994.

21. On the 29th November, 1994 it was brought to my attention that two other cases had been found in which the section had previously been considered. The discovery of these two cases, following the discovery by me of the Ellis,

case indicated that the scope of previous searches was inadequate and that the factual situation had not been satisfactorily established. In consequence a full scale, page by page, search of all extradition files in this office dating from the enactment of the Extradition (Amendment) Act, 1987 was immediately directed. A team of Officials from this Office was assembled for the purpose and the detailed search carried out. This search revealed a number of cases in which the section had been previously considered in this Office. In the interests of transparency all other files (aside from those in the text of the Report) within the stated period which were inspected are listed in the Appendix attached to this Report.

22. The section was considered in cases as follows:

- (a) Case 2979/89 Ellis. See above.
- (b) Case 8283/87 K. The alleged offences in this case were terrorist type offences which allegedly were committed in 1981. Warrants were dated 26th November, 1987. The section was relied upon by Mr. Kane. The file contains a draft letter approved and amended by Official A dealing with the absence of ministerial power in relation to the section.
- (c) Case 6384/89 M. The offences at issue were terrorist type offences committed in 1980 and 1981. The extradition warrants were dated the 18th August, 1989. The file contains a note dated 14th December, 1989 of Official A discussing one aspect of the section. A submission made by Official A on the 21st January, 1990 comments on a different aspect of the section. There is reference to the section

in advices furnished by John Hedigan, B.L., dated 18th December, 1989 and the section is discussed in an Opinion of (then) Hugh O'Flaherty, S.C., dated 19th March, 1990. This section is relied upon in a notice of appeal and there appear to be four other minor references to it on the file;

- (d) Case 9599/91 McD. In this case the offence of rape was alleged to have been committed on the 15th October, 1989. There was one extradition warrant dated 4th June, 1992. Official A made a submission to the former Attorney General on the 2nd July, 1992. The submission contained a brief discussion of the section with relation to the time scale involved and also the dual requirement of the section i.e., "lapse of time" and "other exceptional circumstances". The former Attorney General agreed the submission on the 3rd July, 1992;
- (e) there are five other files containing evidence that the section was raised as an issue in one way or another. They are as follows:
- (i) Case 6498/87 C.
  - (ii) Case 7438/87 C.
  - (iii) Case 7430/87 F.
  - (iv) Case 5168/91 F.
  - (v) Case 900/93 R.

The first four of these cases involved terrorist type offences. The final one related to armed robbery. On each of the files there are references to the section in different contexts. Whilst some consideration may have been given to the section arising from these

references the files do not, in fact, indicate that this happened. These references are in my view of no significance in the present context. All of these files were dealt with by Official A. There is one further file Case 815/88 McC. in which there is a brief discussion of the section in an opinion of Senior Counsel provided on the 19th November, 1994. These advices therefore post-dated the former Attorney General's Report and consequently this file is not relevant in the current context.

23. I am informed by Official A that when preparing the material for the Dail questions referred to above and for the Report of the former Attorney General that he had forgotten the above cases in which the section was considered. The former Attorney General does not recall the cases which were referred to him (McD. and R.). He was not made aware of or reminded of any of the above cases by Official A when Official A prepared material for him upon which his Report to the Government was based.

V. Procedures in the Attorney General's Office in Relation to Extradition Requests

24. At the present time all requests for extradition whether in actual warrant form or by way of preliminary inquiry go to Official A. That official in practice deals with most extradition cases. Other cases are parcelled out to two other officials in the Office - Officials B & C.
25. The official dealing with the case examines the extradition request (or preliminary enquiry), when made, for the purpose of ensuring that the requirements of Irish Law have been met. These requirements relate in the main to the adequacy and correctness of the documentation supplied, the nature of the offence (it has to be an offence in respect of which our law permits extradition) and the sufficiency of the evidence. Some cases are relatively straight forward. Others can present considerable difficulty. Where an extradition is contested the courts are extremely careful to ensure that all the requirements of the law have been met and that there are no legal obstacles before extradition will be allowed.
26. In the past when extradition requests in respect of alleged subversives were frequent, it was a practice that notice of such requests be immediately given to the Attorney General as soon as they arrived in the Office. Arising from the Smyth affair this practice has been prescribed for all cases. Already I have been notified of a number of extradition requests that have arrived in the Office since my taking-up office. It is to be anticipated that at the conclusion of the Strategic Management Initiative that is presently being conducted in the Office that procedures in relation to the processing of work will be streamlined further.



27. The Office of the Attorney General is not computerised. The filing system is therefore an old fashioned one. Old extradition files are kept in a filing cabinet. There is no indexing system which would immediately provide a summary of the file or the nature of the issues covered by it. If the Office was computerised and file data placed on disk which could be easily accessed, it would have been a very simple task to check whether or not e.g. section 50(2)(bbb) of the Extradition Act, 1965 as amended had previously been considered or dealt with by or on behalf of the Attorney General in previous cases.

**VI. Dail Questions.**

28. On the 25th October, 1994 the Minister for Justice in dealing with questions relating to the Smyth case stated in a course of an answer the following:

"I also understand that this case was the first in which provisions had arisen for consideration since the enactment of the 1987 Act. In addition to the normal requirements of ensuring that the Warrants and ancillary documentation were properly drawn up and there was sufficient evidence in the possession of the requesting authorities to justify extradition as required by the 1987 Act, it was necessary for the Attorney General's Office to consider whether extradition particularly in respect of offences committed up to 30 years ago would be likely to be permitted by the courts who, as Deputy Mitchell will be aware, scrutinise Extradition Applications with great care to ensure that the rights of the accused are fully protected. I understand from the Attorney General's Office that the delay was not unusual given the legal issues and the complexities of the case. These were such that the normal examination of the case by officials prior to seeking a decision from the Attorney General on the request had not been completed at the time his Office was informed that the person had voluntarily returned to Northern Ireland."

The reference in the first sentence of the above passage is a reference to section 50(2)(bbb) of the 1965 Act as amended, being the section at issue. The information on the basis of which this answer was given was furnished by the Attorney General's Office. It was incorrect where the section was concerned and in consequence the Minister inadvertently misled the Dáil when giving the answer.

29. On the 26 October 1994 the Chief Whip, Mr. Noel Dempsey, made statements in the Dail to broadly similar effect. The statements made by Mr. Dempsey were also based upon information provided by this Office. On one view of his answers he could be said to have misled the Dáil. This misleading on his part - as on Minister Geoghegan-Quinn's part - was inadvertent. The blame for the giving of the incorrect answers lay with this Office.
30. Official A who dealt with the Smyth Case provided the material to answer the above questions. At the time of preparation of this material he states that he was not conscious of the existence of the Duggan Case and that he had apparently forgotten or overlooked the other cases. He agrees that the information provided by him was not correct. In this context also it should be stated that Official B who had actually processed the Duggan file states that he did not recall it when the investigation commenced. The file was actually turned up by official C who was assisting in the investigation.

**VII. The Report of the former Attorney General to the Taoiseach on the Smyth Case**

31. This Report was prepared by the former Attorney General and was based to a significant extent upon material provided by Official A. Paragraph 7 of the Report was based upon this material.

At paragraph 7 of the report it was stated, inter alia, as follows:-

".....Work on this file had to be interrupted at different times to attend to priority work including legislation. There were also several legal issues to be considered, of which the most important was the meaning and effect of the prohibition (bbb) section 50 (inserted by the 1987 Act) of the prohibition on extradition where:

"by reason of the lapse of time since the commission of the offence specified in the Warrant ---- and other exceptional circumstances, it would, have regard to all the circumstances, be unjust, oppressive or invidious to deliver him up----"

This provision (which owes it's present form to an amendment introduced by Deputy Seán Barrett) had never had to be applied until this case. My interpretation of its meaning and effect would establish the criteria which would be applied in this Office for future requests, whether for simple burglary or for serious subversive offences."

32. A number of matters arise for comment in relation to the above passage. One of these is the fact that the file does not indicate that any legal issue other than the issue of lapse of time pursuant to section 50(2)(bbb) of the 1965 Act was considered. There is no obvious reference to anything that could be described as "exceptional circumstances", the second requirement to be met under the section. Having said this it must also be stated that Official A has indicated that he intended to consider the possibility of delay alone being relied upon

irrespective of the provisions of section 50(2)(bbb). Other legal issues would be the ordinary legal issues that would arise with every extradition application.

33. The second part of the paragraph which needs to be dealt with is the statement that the provision "had never had to be applied until this case." The use of the term "applied" in this context is curious and not entirely understood. The Court could apply the section. This would only happen if a decision was made by it not to extradite. It is further possible that if an Attorney General was to avail of the section to decline to clear a Warrant that this could be viewed as constituting an application of the provision. Further, as no decision of any kind was taken in relation to the legal issue that was perceived to arise the section was not in any event "applied" in this case. Official A states that the term "applied" was intended to denote "applied within the A.G.'s Office". Whatever view one takes about the meaning of the term "applied" as used in the above passage, the statement made conveyed the impression that this was the first time that the provision was considered, whether by the Attorney General's Office or at all. This impression is reinforced by the further statement at paragraph 10 of the report as follows:

"The result of all this meant that when the request came to this Office it had to be vetted fully and the consequences of the amendment of the extradition code by the 1987 Act had to be addressed for the first time."

34. The Smyth case was not the first time in which the provision was considered. It was considered also in the Duggan case and in the Ellis, K., M. and McD. cases. The latter four cases were discovered by me subsequent to the Taoiseach's speech in the Dail on 16th November, 1994 as outlined earlier in the Report. The former Attorney General states that he had forgotten the cases dealt with

by him when the Report was prepared. He relied upon Official A to provide him with material on the issue. Unfortunately the material was not accurate. Official A states that he was not conscious of the existence of the cases or had forgotten them when preparing material for the former Attorney General in connection with the Smyth case. He makes the point that, even if he was conscious of them, whilst he would have ensured their mention in the Report, he would not have attached great significance to them in the overall context. He makes this point having regard to the differences between the cases and his intention to engage in in-depth legal research in the Smyth case.

35. The provision also fell to be addressed and considered in connection with the case of the State (Ellis) -v- O'Dea (1991) 1 I.R. 251, referred to above. The former Attorney General states that he was not aware of the fact that this case had dealt with the section when he prepared the report. Official A states that he had not thought of the case when preparing material for the former Attorney General in connection with the Smyth case. Work done by Official A on the Smyth file contains references to a number of legal authorities. The Ellis case is not amongst them. A distinction can be drawn between the Ellis case and the Duggan and other cases in the sense that there is no documentation on the Ellis file indicating that the section received consideration within the Attorney General's Office by Official A who dealt with that file. Official A, whilst accepting that if the Ellis case had been thought of, it would have been referred to in the Report, states that as the case had not been considered in the Attorney General's Office, the reference would have been a passing one. The section would of course have been considered and addressed by counsel on behalf of the Attorney General who were entrusted with the task of persuading the Supreme Court

not to accept the argument advanced by Mr. Ellis based upon it.

36. Comment is necessary in relation to the references in the Report to the problems experienced in dealing with the request due to pressure of work as well as due to other work having to take priority. In this regard it is clear that the Attorney General's Office is in need of radical and fundamental re-organisation. There is a large volume of work coming into the Office. The pressure of this work is advanced by Official A as a reason for the delay in this case, particularly since no pressure was being placed on him by the extraditing authority (whether U.K. Attorney General's Office or R.U.C.) in relation to the Smyth warrants. As indicated above the first request for information following delivery of the Warrants in April 1993 was made in a telephone call of September 1993. Official A may have been lulled into considering that there was no urgency about the matter by an assumption he made regarding the place of residence of Fr. Smyth within the Republic at the time. On the basis of the Irish address given in the Statement of Facts he made the assumption that Fr. Smyth was at Kilnacrott Abbey and that therefore the public were safe. It is clear that this assumption was erroneous.

**VIII Suggestion of outside influence.**

37. In the course of the investigation I examined the possibility that the former Attorney General or an Official in this Office had been requested by some outside source or contact to delay the processing of the file. There is no evidence whatever on the file to justify any suggestion of this nature.
38. In connection with rumours that were circulating in Leinster House on the 16 November 1994, I was requested by the Taoiseach to question all professional members of the A.G's Office on the issue of whether or not any outside source (whether person or organisation), had made any contact with any of them with a view to discussing or making representations regarding the Fr. Smyth Case. I have now personally interviewed each official. I received assurances from each which would negative absolutely any suggestion that such contacts have been made. I have also spoken to the former Attorney General on the topic and he confirms that there is no basis whatever for this suggestion in so far as he is concerned.
39. With regard to the suggestion of outside influence being brought to bear and the interviews referred to in the preceding paragraph, it must be remembered that neither the former Attorney General nor any member of the professional staff, other than Official A, knew of the existence of the Smyth extradition request or of the Smyth file whilst Fr. Smyth was in the jurisdiction. In consequence the question of outside influence having been brought to bear on any of them simply does not arise. In so far as Official A is concerned, he has given me his absolute assurances on this issue. He is known to be a person of high integrity and in the absence of any



evidence pointing to a contrary conclusion it seems to me, that his word must be accepted.

40. The professional staff within the A.G.'s Office are of the highest calibre. They serve the State well. Their expert legal advice furnished in relation to every facet of the law ensures that the interests of the State are fully protected in any legal situation. They are people of the highest integrity. On this basis therefore there is no evidence whatever which would justify the suggestion that outside influences were brought to bear in order to delay the extradition of Fr. Smyth. It should be noted that the Duggan case was dealt with expeditiously. In that case the Warrants were processed and cleared with great expedition by the former Attorney General.

**IX The Seven Months Delay.**

41. One of the reasons given for the delay was the need to consider the complex legal issue that was stated to exist, namely that of lapse of time, whether arising under section 50(2)(bbb) of the 1965 Act as amended or otherwise. In recent discussion Official A has informed me that he could have completed his study of that aspect of the case within a period of three working days if he could have had that time without interruptions. He points out however that it is unreal to expect him to have been able to deal with the matter in such a way due to the inordinately heavy demands on his time. He would make the case that because of the great volume of other work that he has to process at all times that there is no reality in the suggestion that he could ever have dealt with the matter in a short three day period. Whilst the delay that occurred was unacceptable Official A states that he has for some time and does cope with a very great volume of work. In this context he makes the point that urgent and pressing demands, often at short notice, from the Government, from Ministers and from their Departments, as well as from the courts can result in work which, on its merits, should be dealt with as a matter of urgency being postponed because the officers concerned are under more severe pressure from other competing sources.
42. The other explanations given by Official A for the delay are
- (a) the erroneous assumption made by Official A that Fr. Smyth was residing at Kilnacrott Abbey and that in consequence he was not a danger to the community at large,
  - (b) the fact that the U.K. authorities and/or R.U.C. did

not press the extradition request and made no contact with the Office of the Irish Attorney General regarding the matter until 20th September, 1993 thereby indicating a lack of urgency insofar as they were concerned and

- (c) pressure of other work which was viewed by Official A as being entitled to have priority.

Official A states that in taking a view as to work priorities, he did so on the basis that in his (now known to be erroneous) view there was no urgency about the Fr. Smyth case. Had it been known that Fr. Smyth was, at large, within the community, he would have given the Fr. Smyth case priority over other cases. Unfortunately the erroneous assumption as to Fr. Smyth's residence meant that a different course was taken.

43. The assumptions made by Official A, both in relation to Fr. Smyth's place of residence within the jurisdiction and as to the absence of urgency, by reason of the failure of the U.K. authorities to press the request together with pressure of other work and the need to consider the legal issue constitute evidence - and the only evidence - as to why delay occurred. The combined effect of them meant that the file was simply not processed and - the legal work apart - lay dormant for the period at issue.
44. With the benefit of hindsight, it is clear that procedures in place in the Attorney General's Office at the relevant time for the processing of extradition cases were seriously defective. Had the new procedure been in place it is unlikely that any delay would have occurred.

Under the new procedure - put in place by the former Attorney General subsequent to the Fr. Smyth controversy

- (i) all extradition requests are notified to the Attorney General as soon as they arrive at the Office.
- (ii) He must now be given details of any special features of such cases and can give immediate directions in relation to them.
- (iii) In all cases involving child sexual abuse or sexual offences generally directions will be given that they be processed with the utmost urgency and with the view to ensuring that the community at large is protected from the activities of any person whose extradition may be sought.

Further, the lesson of the Smyth case has been to demonstrate that all extradition cases must be processed swiftly and efficiently with files not being allowed to lie dormant.

X. Apology of Official A.

Official A has tendered to me a written apology which in all the circumstances seems appropriate for inclusion in this Report. It reads as follows:

"Attorney,

I would like to express to you and to the Taoiseach and the Government my deep personal regret that information regarding a number of extradition cases that has recently been supplied by this Office to your predecessor and to the Government has proved to be incomplete and incorrect.

I wish to assure you that this was entirely due to a failure to identify the files when the information was sought at very short notice. I want to make clear above all else that it most certainly was not due to any deliberate decision on my part or on the part of anyone in this Office.

I also very much regret the embarrassment which this whole affair has caused to the Government and to Mr. Harry Whelehan, S.C.

Both the fact that the files were not discovered at the time the information was sought from this Office and the fact that the Smyth case was not dealt with the expedition which, it is now clear, ought to be afforded to such cases were due to the fact that this Office, which has a small staff, has to deal, on a daily basis, with a huge volume of work of different kinds, and also, as has now been clearly revealed, because this Office's information retrieval system which has remained unchanged for many years, proved inadequate for the demands which recent events made upon it. For that an apology to you, to the Taoiseach and Government and to your predecessor is called for. I willingly offer that apology.

Steps have already been put in hand to rectify these administrative defects. I can offer you my personal assurance that there will not be a repetition of the Smyth case."

CONCLUSIONS

1. The seven months delay was totally unacceptable notwithstanding the explanations given;
2. The only person who knew of the Fr. Smyth extradition request and Warrants was Official A in whose custody the file remained at all times from the date of commencement of the extradition process until the time the controversy arose;
3. There is no evidence that any outside influence was involved in the delay in the processing of the Warrants;
4. Neither the former Attorney General, nor the Government were made aware of the existence of the Fr. Smyth extradition request until the controversy arose in the Autumn of 1994;
5. The Smyth case was not the first case in which section 50(2)(bbb) of the Extradition Act, 1965 as amended was considered;
6. Inaccurate information was given to the Taoiseach, the Minister for Justice and the Chief Whip;
7. The procedures in place in the Attorney General's Office at the relevant time for the processing of extradition cases were seriously defective;
8. Had the new procedure been in place it is clear that no delay would have occurred.

**APPENDIX**

List of extradition files which have been examined in the Office of the Attorney General and in which there is no reference to section 50(2)(bbb) of the Extradition Act, 1965, as inserted by section 2 of the Extradition (Amendment) Act, 1987.

Houses of the Oireachtas



CASES FOR THE YEAR 1987

MCI	54/87
B	1004/87
E	1005/87
B	1098/87
S & P	1129/87
H	1683/87
W	1684/87
M	1671/87
W	2509/87
B	2631/87
H	3770/87
S	4593/87
S	5211/87
P	5279/87
H	5716/87
McD	6499/87
R & D	7235/87
L	7334/87
F	7431/87
B	7432/87
K	7433/87
McN	7434/87
McA	7435/87
S	7436/87
A	7437/87
C	7439/87
C	7440/87
T & C	7897/87
D	8442/87
K	8598/87
McS	(no file number allocated at time) May '87

CASES FOR THE YEAR 1988

F	366/88
O'S	471/88
McC	815/88
W	1398/88
D	2018/88
D & McM	2050/88
F	2854/88
W	3380/88
G	3106/88
P	3533/88
McV	3590/88
B	3641/88
L	5607/88
W	5665/88
D	5857/88
J	6048/88
D	6381/88
G	7480/88
R	8568/88
P	9325/88

Houses of the Oireachtas

CASES FOR THE YEAR 1989

R	457/89
R	1260/89
E	1465/89
B	1481/89
U	1750/89
E	2979/89
L	3283/89
O'H	3763/89
C	4101/89
C	4268/89
C	4522/89
L	4526/89
H	4992/89
S	5943/89
McK	6345/89
G	7295/89
H	7719/89

Houses of the Oireachtas

CASES FOR THE YEAR 1990

H	200/90
H	1667/90
S	1934/90
G	2788/90
H & G	2789/90
G	5370/90
A	5498/90
R	5499/90
M	8178/90

Houses of the Oireachtas

CASES FOR THE YEAR 1991

O'N	293/91
L	559/91
S	3133/91
C	3511/91
S	4214/91
McC	4840/91
S	5500/91
B	6358/91
S	6550/91
T	9265/91
M	9599/91

Houses of the Oireachtas

CASES FOR YEAR 1992

O'S	820/92
MCD	1690/92
M	2655/92
O'C	3218/92
H	5420/92
D	5740/92
V	6153/92
A	7114/92
G	7293/92
P	8559/92

Houses of the Oireachtas

CASES FOR YEAR 1993

M	255/93
A	1328/93
Q	1378/93
B	1385/93
S	1608/93
T	1711/93
M	2760/93
M & O	2827/93
MCA	3018/93
Q	3019/93
S	3195/93
M	4100/93
S	4747/93
B	6438/93
P	6615/93
D	6744/93
D	7145/93
S	7177/93
Q	7366/93
N	8892/93
C	9347/93
D and R	10129/93
K	10256/93
S	10784/93
S (no file number allocated at the time)	July 93

CASES FOR YEAR 1994

MCR	99/94
MCN	408/94
F	795/94
W	798/94
MCS	1028/94
W	1304/94
G	1448/94
D	1774/94
H	2956/94
D	3347/94
M	3974/94
B	4236/94
J	4525/94
C	4787/94
S	4862/94
B	5536/94
B	5593/94
V and V	6218/94
C	7344/94
T	7579/94
O'S and B	7696/94
R	7948/94
L	8504/94
F	9115/94
H	9681/94
L	9852/94
T	10477/94



O'N

11019/94

MCS

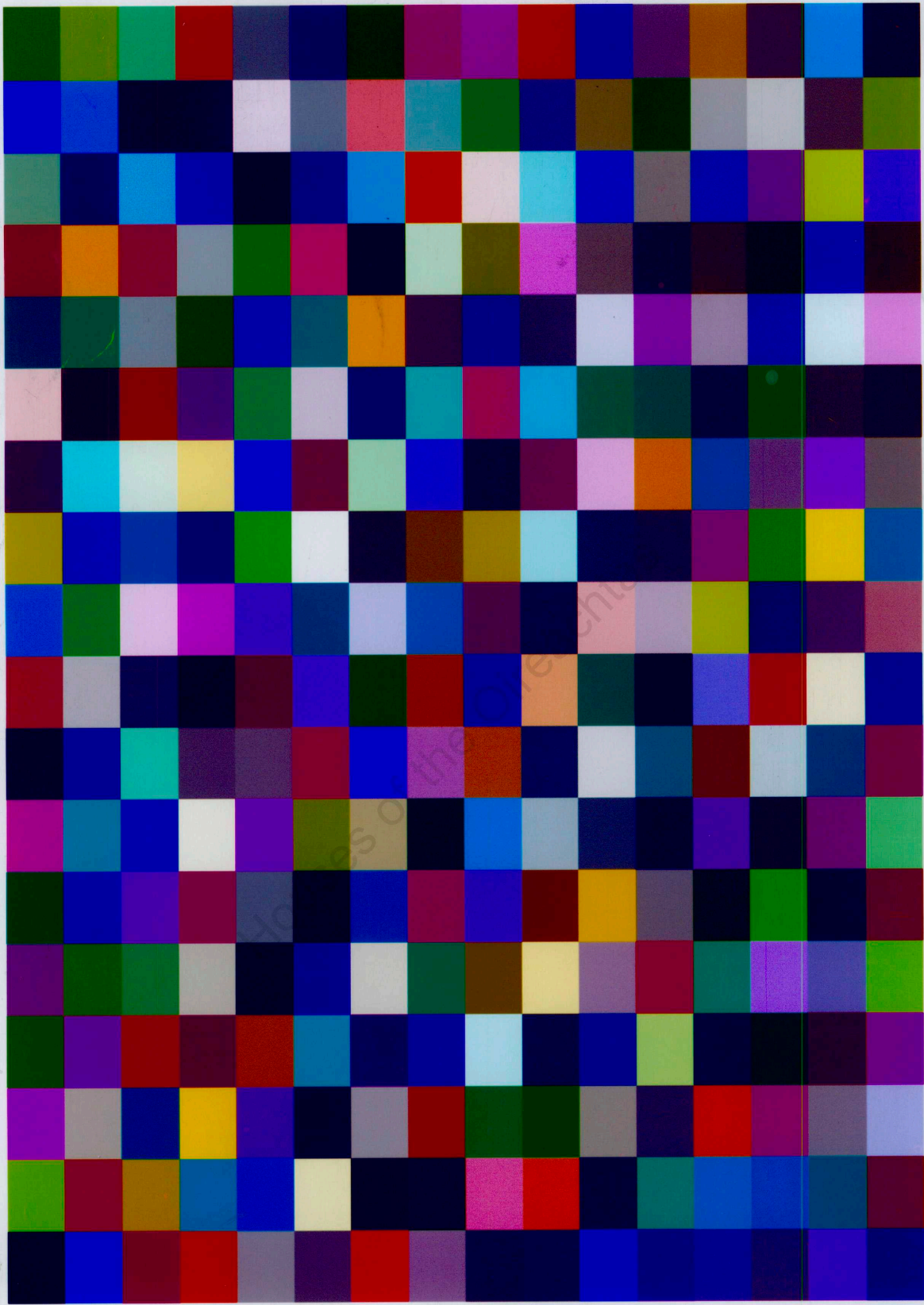
11155/94

Houses of the Oireachtas



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