

UNDER/ SEC 681/S.
21 MAY 1997
CENT SEC

Rights & European Division

From Tony Beeton
May 21st 1997

PS/SECRETARY OF STATE (L&B)

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ASST/ SEC 146/S.
22 MAY 1997
C.C.R.U.

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BLOODY SUNDAY - OPTIONS

1. Dr Mowlam has asked to see some options for dealing with 'Bloody Sunday'.

Why do anything at all?

2. There is no doubt that 25 years ago the events of January 30th 1972 in Derry became a potent emblem of nationalist grievance. Time has not changed this. In his recent autobiography Gerry Adams recounted how Martin McGuinness lectured Willie Whitelaw about Bloody Sunday during their secret 1972 talks; twenty years on and McGuinness repeated the performance a number of times during our exploratory dialogue whenever, it seemed, he needed to recover his moral compass. It would be wrong though to think that such attitudes are exclusive to Republicans and their sympathizers - they reach the wider nationalist community, and beyond it too. For many - here and abroad - they remain 'evidence' of British oppression in Ireland.

3. The 25th anniversary of Bloody Sunday this year was marked by a renewed and increased interest in the prospects for securing some kind of change in the Government's position, either unilaterally or through the medium of a new inquiry. This interest was heightened by a number of pieces of supposedly new evidence which were brought forward by journalists and campaigners. Some of the evidence has already been studied by officials (a short summary of that evidence and what has happened to it is attached at Annex A), but the credibility of an in-house review could be a problem in itself. Further evidence is being assembled by the Irish Government, although we do not know when they will be ready to hand it over. There are attractions in being able to make a move of our own *before* the Irish deliver their dossier. Expectations have anyway been further increased by the election of the new

Government, and there would be a political price to pay if nothing were done or said now. It has been argued that the symbolism of Bloody Sunday works to limit the freedom for movement on the issue. Precisely because it is often seen as a Republican issue any change in the Government's position could be read as a concession to them. However, one interesting aspect of the anniversary was the breadth of opinion - including unionists in Northern Ireland and right-wing newspapers in Great Britain - calling for an apology.

4. Because Bloody Sunday is a talisman there have also been people who claim that the right address to it by the Government might have almost magical consequences - an apology, for example, would be sufficient to produce an end to the IRA's campaign. The thesis has not been tested, but it probably overstates the effectiveness of anything the Government could say. That said, it is undoubtedly true that an apology (or something close to it) would have a tremendous impact, and if anything is to be done there is unlikely to be a more opportune moment.

What is to be done? - the options

5. There is one other preliminary point to register before looking at the options. The application by relatives of some of the Bloody Sunday victims for leave to apply for judicial review of the Widgery Tribunal is still pending, although proceedings have been adjourned at their request to enable them to produce further new evidence. It may be that they were waiting for the outcome of the election and are now waiting to see whether the Government makes any move. There is some collateral for this suspicion - the relatives' solicitor, Peter Madden, hinted at a meeting between the previous Secretary of State and John Hume, at which the relatives' evidence was handed over to the Government, that the judicial review case would be dropped if the Government apologized.

6. Our legal advice is that, strictly, the existence of the judicial review proceedings limits our options for the time being. The case is sub-judice. An announcement that the new material is to be reviewed would trespass into the matters before the court in the judicial review case and, wrongly, anticipate the court's decision. So too would a statement now that there would be such a review after the judicial review case has been concluded. This is Catch 22. So finessing this problem is not really an option on its own and ought to be regarded as a key to unlock our ability to pursue any of the other options, either alone or in combination. As the applicants show no sign yet of producing the promised new material to the Court, legal advisers are consulting the Law Officers to see if, notwithstanding the sub-judice status of the case, an announcement of a new inquiry could be the basis for a settlement of the case or could be relied upon to resist the judicial review application. Possibly the only option which escapes the legal bind entirely is to make a statement which depends in no way on the new evidence or Widgery's findings, but its terms would need to be considered carefully to ensure that it did not concede any liability (see below).

7. The various options are listed below with brief arguments for and against, although none are likely to satisfy all the critics entirely:

	FOR	AGAINST
<i>Option 1: do nothing</i>	<ul style="list-style-type: none"> legally safe avoids political risks 	<ul style="list-style-type: none"> possibly unlawful if new evidence pointed to criminal actions politically risky because of disappointed expectations danger of being forced to do something later after judicial review

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Option 2: wait for the outcome of the judicial review (if leave granted)

- legally safe
- provides an independent assessment of Widgery in the light of new evidence presented
- gives cover for decision to do nothing (if Widgery upheld)
- may mean a considerable delay before anything new can be said or done by the Government itself
- the Irish get their dossier in first
- may be difficult to do anything if Widgery upheld

Option 3: persuade the relatives to drop application for judicial review or otherwise finesse sub judice problem

- frees up ability to decide action to take immediately
- raises expectations among relatives
- publicity before able to be clear about action
- risk of new judicial review later

Option 4: set up a new Inquiry

- independent scrutiny of the evidence has credibility
- legal problem with judicial review pending
- outcome beyond our control
- may require further action by Government on basis of report
- undermines Widgery

Option 5: announce intention to set up new Inquiry

- benefits as for *Option 4*
- may make judicial review application disappear
- as for *Option 4*
- delay

Option 6: announce new Inquiry depending on outcome of judicial review

- similar to *Options 4 & 5*
- only need Inquiry if courts decide there is a problem with Widgery
- similar to *Options 4 & 5*
- doubts may remain and Government will have missed opportunity

Option 7: make a statement

- deals directly with the issue
- maximises impact
- could be interpreted as an admission of wrongdoing, leaving Government and individual soldiers liable to criminal or civil responsibility

A little more detail – an Inquiry

8. Before any final decisions Dr Mowlam will probably want to discuss the options (or her preferred ones) in greater detail. For example, a decision to proceed by means of an Inquiry (whether immediate or delayed) would require consideration of the kind of Inquiry we wanted, and the potential consequences of any conclusions it might reach.

9. My assumption is that we would not consider a new Tribunal under the 1929 Act, but would prefer to task a suitable person, probably a senior QC or a judge, to conduct a review of the evidence and to make recommendations. Although there is a case for an international element in any new

consideration of the evidence (which could be accommodated by appointing more than one member of an Inquiry team) I would argue against it as suggesting a lack of confidence in our own system.

10. It might be sensible – particularly if the judicial review had been dropped – to choose a two-stage inquiry. Initially the task would be to review the new evidence to determine whether there was a need for a more wide-ranging Inquiry which would then consider *all* the evidence, including that considered by Widgery.

11. Officials are ready to provide further advice on an Inquiry, including names of those who might be approached, its terms of reference, and the support it would need.

A little more detail – an Apology

12. There is a lot to be said for saying sorry. President Clinton recently showed that Governments can do it as part of an attempt to build better relations between communities, and because it is right. One problem with Bloody Sunday is identifying what there is to say sorry for. It is not clear, certainly not from Widgery's conclusions, that there was any fault on the part of Government in 1972. Nonetheless, it may be that a statement saying sorry as an expression of regret rather than an acceptance of blame could play a part alone or in combination with other options.

13. It might be useful to set out the current public position. Essentially successive Governments – Labour and Conservative – have, since 1972, relied on Widgery's findings (and compensation was paid to the relatives of the 13 people killed in full and final settlement of their claims without any admission of liability). There have been some nuanced shifts in the precise language used and it was such a change which led to John Major's letter to John Hume in December 1992 being seen as significant. That letter defined what remains the current line:

It would not be right for me to seek to cast judgement on the events of 'Bloody Sunday' at this distance in time; nor would it be right for me retrospectively to comment on the actions of the soldiers on that day, or on the guilt or innocence of any individual or individuals involved in those events. The Government made clear in 1974 that those who were killed on 'Bloody Sunday' should be regarded as innocent of any allegation that they were shot whilst handling firearms or explosives. I hope that the families of those who died will accept that assurance.

I am well aware of the depth of feeling that remains in Londonderry about 'Bloody Sunday'. As with every tragedy, the scars are long lasting. All are determined that the lessons of that day are not forgotten.

14. It is worth noting the quotation marks in that text. Governments have not referred to Bloody Sunday without the quotes in the past. It has been felt that adopting that terminology without the qualification would mark a concession to those who blame the Government or who want to single those events out as especially, even uniquely, awful. There is a point there, but it might seem unreal given the more or less universal usage beyond Government, and we could make a change in our practice. It would be noticed, and would be criticized by some.

15. One difficulty with any statement would be in choosing words which picked a careful path between the maximum expression of regret and accepting, or ascribing, liability. An illustrative form of words is attached at Annex B.

Conclusion

16. Deciding on the options to pursue with regard to Bloody Sunday is difficult, and whichever course is chosen will need to be agreed with Cabinet colleagues, particularly George Robertson because the MoD have a strong interest in anything which might be said or done, John Morris, Lord Irvine, and the Prime Minister.

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17. Although I am not making a recommendation in this note, Dr Mowlam may like to know my own judgement on the options. I believe that we should attempt to agree the words of an 'apology' which Dr Mowlam would make anyway. We should also decide to have an independent review of the new evidence and, subject to the lawyers' views on finessing the *sub judice* problem, either make an announcement or indicate to those seeking judicial review of Widgery that we would be able to announce it quickly if they were to withdraw their application.

18. I would be happy to discuss the options further if that would be helpful.

(signed)

Tony Beeton

THE NEW EVIDENCE PRESENTED TO THE GOVERNMENT

Eleven items of supposed new evidence were in the dossier handed to the Secretary of State at a meeting on 14 February with John Hume MP and some relatives of the victims of Bloody Sunday. These include eye witness testimonies, medical notes, statements of soldiers, sound recordings of Army radio messages, video of Channel 4 News reports and *Eyewitness Bloody Sunday*, the recently published book by Don Mullan (this is the same as the material presented to the Court in the judicial review application).

We have completed an initial in-house assessment of this material. The volume of the information means that it has not been possible to investigate fully the significance and accuracy of each claim, but the evidence is focused on four key points:

- that Lord Widgery, under direction from civil servants, read only a small number of the 700 witness statements gathered by the NCCL;
- that recordings of RUC and Army radio traffic made by an amateur radio operator, James Porter, contained reports from soldiers other than members of the Parachute Regiment coming under fire, returning fire and saying that they had hit targets. Porter claims that, although he presented the recordings to the Widgery Tribunal, they were refused as evidence because Lord Widgery considered them to have been made illegally;
- that medical evidence from a local GP, Dr Raymond McClean, who gave medical aid on the day and attended the post-mortems, suggests that the victims Nash, Young and McDaid were killed by soldiers operating on the city walls; and
- that evidence (not yet received in detail) from Robert J Breglio, an independent ballistics Consultant from the USA, concludes that the angles and trajectories of Nash, Young and McDaid's wounds would be consistent with firing from the city walls.

First impressions

There is nothing in this evidence which compels the conclusion that Widgery's findings are unsustainable. Nor is there evidence of criminal acts by the security forces (we have a legal obligation to bring any such evidence to the attention of the police and the DPP(NI) if we find it). However, these can only be *preliminary* conclusions. Making any reliable assessment will be very time consuming, requiring considerable expertise to check fully the specific allegations against what was available to Widgery. For example, apart from Porter's own claim, we have so far been unable to find any evidence that Widgery knew of the tapes or had listened to them. Had he known of them he would have known that they were not necessarily inadmissible. Widgery does mention in his Report that soldiers of the Royal Anglian Regiment and the Royal Artillery believed that they had hit six or seven gunmen on whom they returned fire in other parts of Londonderry, but that nothing more is known about these casualties.

The Irish dossier

We do not know what is in the Irish Government's dossier, or what additional evidence will be brought before the court by the relatives in the judicial review case. We have been asked (by the relatives' solicitor) to consider other television and newspaper reports, e.g. of the testimony of Soldier A and the allegations of a former BBC journalist, Mr Capper. It is quite likely that these will feature in the Irish material. We cannot identify Soldier A, and cannot therefore verify his claims. A quick check of Capper's evidence to Widgery against what is said in the Report does not suggest that his allegations are well founded.

A POSSIBLE STATEMENT ON BLOODY SUNDAY

The events which came to be known as Bloody Sunday happened a long time ago now. There have been many other deaths in Northern Ireland and Great Britain in the quarter of the century since then. One of the most recent only [this week]. None of those deaths has been easy to bear – particularly for the bereaved families – and I think we might all recall John Donne's words '... every man's death diminishes me'. We have been diminished by the [3000] lives lost here. But, as everyone who has suffered a personal loss knows, although the hurt never goes there has to come a time to move on.

I do not know exactly what happened in Derry on that Sunday a generation ago. I do know that chance brought people together with fatal consequences. I do not believe that the soldiers who fired the shots went there intending murder. But clearly it was wrong that people demonstrating for their civil rights were killed. I am sorry that it happened.

I hope others will feel able to accept their own share of responsibility for what happened, and that we can turn to the future together for the sake of all those who have died in the past 25 years. Because together we can make Northern Ireland better.