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364/6
1. Mr. Bloomfield
2. Sec 3

- 1. Mr Brennan *m*
- 2. PS/Secretary of State (B&L) *m*

- cc PS/Dr Boyson (B&L) *m*
- PS/Mr Scott (B&L) *m*
- PS/Mr Patten (B&L) *m*
- PS/Lord Lyell (B&L) *m*
- PS/PUS (B&L) *m*
- ✓ PS/Mr Bloomfield
- Mr Stephens
- Mr Erskine
- Mr Reid
- Mr Hammond *m*
- Mr Carvill
- Mr Chesterton *m*
- Mr Gilliland
- Mr Ferneyhough
- Mr Merifield
- Miss Elliott *m*
- Mr Lyon *m*
- Mr Coulson
- Mr A Wood *m*
- Mr Bickham *m*

SINN FEIN AND INCITEMENT

At his meeting on 11 June, the Secretary of State asked for advice on whether the law on incitement might be extended to include statements in general support of violence.

2. A Working Party on Further Measures to Curb Terrorism discussed this problem intensively last year. Since the origin of the study was the Harrods bombing and a concern on the part of the Government (shared also by the Irish Government) whether Sinn Fein ought not to be proscribed, the Home Office and Law Officer's Department were involved along with the NIO and other interests in the Province.

3. The Working Party's conclusions were summarised in Mr Prior's letter of 19 July 1984 to the Attorney General (copy attached); they were accepted by all concerned, including the Prime Minister. (For greater detail on an intricate problem, I would refer you to Mr Brennan's minute of 14 June 1984 submitting the Working Party's Report itself to Ministers.)

4. It is hard today to resist the Working Party's main conclusion that, to quote from Mr Prior's letter, "While in theory if not in practice there is a gap in the law which could be plugged,

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there is a greater danger that in doing so we should arouse expectations that something could actually be done to stop the offending but unspecified comments, and we should thus be criticised, perhaps quite quickly, for failing to tackle the root of the problem. At the same time, if we were to attempt a provision with any real bite, we should face fierce opposition to its enactment from all sides of the House, especially since the original cause for concern is unlikely to be fresh in people's minds".

5. There have been one or two instances in recent weeks of Sinn Fein Councillors expressing support for the IRA as such - the third class of offensive statement considered by the Working Party, and the one thought to be less difficult to legislate against. However, the instances are not clear cut, and if we were to legislate against such statements, the Sinn Feiners would not have the smallest problem in making their point without falling foul of the new law.

P W J Buxton

P W J BUXTON

17 June 1985

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*Mr Wilson
File*



Secretary of State

Northern Ireland Office
Stormont Castle
Belfast BT4 3ST

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REF. TO *4236*

Mr Merifield
Mr Coulson
Mr Lyon
Mr Wood
Mr Templeton
Mr Hammond (HO)
Mr Bickham

M. McCabe
M. Wilson
M. D. Jones
Mr Hill
07A

The Rt Hon Sir Michael Havers QC MP
Attorney General
Royal Courts of Justice
LONDON
WC2A 2LL

19 July 1984

Dear Michael

WCC:) PS/SOS (B&L)
) PS/Mr Scott (B&L)
) PS/PUS (B&L)
) PS/Sir Ewart Bell

Mr Bourn
Mr Brennan
Mr Angel
Mr Doyne-Ditmas

FURTHER MEASURES TO CURB TERRORISM

You will recall that, following the Harrods bomb and other terrorist outrages at the end of 1983, we were moved to consider whether the law on incitement needed to be strengthened. We ruled out at that time the proscription of Sinn Fein, but considered that the freedom which its spokesmen have to express sympathy and support for violence in public ought to be examined (recent offensive statements by Gerry Adams were particularly in our minds). I set up a working party to go into this problem; as it is one that affects the whole country and not merely Northern Ireland, the Home Office, the Lord Chancellor's Office and your Department were represented, as well as my own, the Director of Public Prosecutions for Northern Ireland, the Royal Ulster Constabulary and the Army.

The Working party distinguished 3 broad classes of offensive statement. There are those which condone or show understanding for violence committed for ostensibly political ends, while implicitly denying direct involvement; there are those which lend express encouragement to that violence, again at one apparent remove; and there are those which give support to particular proscribed organisations. A legislative provision designed to catch the first class of statements would certainly have the broadest effect, and would do most to satisfy the section of public opinion which is outraged by statements sympathetic to terrorism. On analysis, however, the Working Party concluded that the objections and obstacles to the enactment and use of such a provision (or indeed a provision applied to the second class of statements) must override any satisfaction at its passage and occasional successful application. A provision which merely caught the third class of statements would avoid the major difficulties, but its impact on the mischief which caused disquiet would be

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small; it would only be a modest advance on the existing terms of the Northern Ireland (Emergency Provisions) Act 1978.

I am inclined to accept the Working Party's conclusion that there are no means of tackling the problem in a way which has a significant impact but avoids the practical and legal difficulties. The problem is not over a range of remarks of increasing offensiveness which can be caught, so to speak, at any point of our choosing along the spectrum. The apologists for violence are more subtle. They stop short of claiming personal membership of a proscribed organisation; do not support individual acts of terrorism; and do not call on others to commit criminal acts or support proscribed organisations. This means that the law would have to encompass cleverly worded comments, often in coded language, if it were to deal with them. An effective law would also need to encompass those who report the questionable remarks as well as the originators, who will seldom if ever be caught in the act. This leads straight to the difficulties of circumscribing or making criminal the reporting of the reputable media as well as the organs of the paramilitaries themselves. I am persuaded that there is no half-way house, and if those requirements were significantly relaxed the legislation would be largely cosmetic and a pretence. It is relevant that recent discussions with officials of the Irish Department of Justice indicated that they had come to very much the same conclusions in the Republic.

A I conclude that, while in theory if not in practice there is a gap in the law which could be plugged, there is a greater danger that in doing so we should arouse expectations that something could actually be done to stop the offending but unspecified comments, and we should thus be criticised, perhaps quite quickly, for failing to tackle the root of the problem. At the same time, if we were to attempt a provision with any real bite, we should face fierce opposition to its enactment from all sides of the House, especially since the original cause for concern is B. unlikely to be fresh in people's minds." I shall be glad to know whether you and other colleagues share my opinion.

The Working Party considered several other aspects of the law relating to terrorism. Subject to your agreement, I would accept 3 specific improvements which they recommend to the law in Northern Ireland:

(1) Threats of serious violence

It is an offence to threaten to kill, but not merely to threaten

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violence. Though the circumstances in which an offence dealing with threats to do violence could be enforced would probably be few, it seems worth considering its introduction, either in an amended Emergency Provisions Act or direct into the Northern Ireland criminal law by Order in Council.

(2) Meetings in support of proscribed organisations

The provision of the Prevention of Terrorism Act making it an offence to arrange or address a meeting in support of a proscribed organisation does not extend to Northern Ireland. This should clearly be rectified in any suitable vehicle.

(3) Dressing or behaving like a member of a proscribed organisation

These offences against the Emergency Provisions Act (Sections 25 and 26) can only be tried summarily. However they are often associated with more serious offences like possession of firearms at funerals. Sir George Baker's recommendation that they be made triable either summarily or on indictment should be put into effect.

The Working Party also considered problems faced in Northern Ireland over the production of photographic and such like evidence in Northern Ireland. My officials are discussing one aspect of this with the Lord Chief Justice. Another aspect can more easily be considered once the Police and Criminal Evidence Bill has become law.

I shall be glad of your comments on the proposals that I have outlined.

I am sending copies of this letter to the Prime Minister, the Lord Chancellor, the Home Secretary, the Scottish Secretary and Sir Robert Armstrong.

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When this topic raised its head last year I happened to be visiting QUB law dept, and
look minutes or so to check a reference in the "Kenya-type" Penal Code. I failed there, but
saw these formulae in a series of books on European law. I thought they were interesting in an
illustrative sense - I presumed that our lawyers would have had around similarly in their
engines.

4019
11 JUN 1985
N.I.O. BELFAST

LAWS RELATING TO INCITEMENT/CONTEMPT

1. Any person who commits any contemptuous act, either orally or in unpublished drawing or writing, tending to reflect upon the honour or dignity of a judicial or magisterial officer, shall [- 2 years].
- 1A. Contempt by word of mouth, gesture, menacing against magisterial officers or law enforcement commanders [- 3 months].
2. Anybody who publicly in an assemblage or through the dissemination of writing, incites disobedience of a statute or injunction, shall [- 2 years]; ... incites ^{disobedience of} a felony or misdemeanour, shall [- 3 months?].
3. Anybody who approves a felony after it has been committed or attempted, in a fashion that is likely to disturb the public peace shall ...
4. Whoever publicly instigates disobedience of the laws relating to public order or to hatred between social classes ...
5. Whoever intentionally insults and thereby gives provocation to any person intending or knowing it to be likely that such provocation will cause him to break the peace ...
6. Anybody who in a manner likely to arouse anxiety or alarm attacks human dignity by inciting hatred against segments of the population; by inciting measures of violence against them; by insulting, maliciously degrading or depriving them, shall [- 3 years].