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Mr Brennan - BLIS

cc PS/PUS (B&L) BLIS

1. PS/Mr Bloomfield  
Mr A W Stephens  
Mr Innes  
Mr Chesterton BLIS  
Mr Elliott  
Mr Ferneyhough  
Mr Hammond - BLIS  
Miss Elliott - BLIS  
Mr Spence  
Mr D J R Hill  
Mr Casey

2 Dec 3 1986.

MEASURES AGAINST SINN FEIN

1. I attach a first draft of the paper commissioned at your meeting of 27 October. I believe it is likely that PUS may wish to discuss it at a meeting early next week and it is possible that the Secretary of State will wish to see it in its raw form somewhat earlier.
2. I should, therefore, be grateful for your comments and those of copy recipients as soon as time can be found to focus on the issues (which hasn't been too easy here in recent days!).

*Brian Blackwell*

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Law and Order Division

18 November 1986

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MEASURES AGAINST SINN FEIN

Background

1. Sinn Fein was deproscribed together with the UVF by HMG in May 1974 with a view to encouraging the more extreme republican and loyalist elements of Northern Ireland's political spectrum to participate in the Constitutional Convention elections in the hope - which was unfulfilled - that the provision of constitutional democratic means of obtaining redress for perceived injustices and grievances would drain away support for the use of violence in pursuit of political ends.
2. Sinn Fein remained deproscribed but peripheral to the main political conflict here until the wave of Catholic sympathy for the 1980 and 1981 Hunger Strikes mobilised a substantial electoral base within the nationalist side of the community for candidates calling for support for the demands of the hunger strikers. By the time of the 1982 Assembly elections the leadership of PIRA/Sinn Fein were able to exploit that nationalist electorate through election by proportional representation in order to gain five seats for Sinn Fein in the NI Assembly on an abstentionist policy, winning just over 10% of the total votes cast.
3. In the UK General Election of 1983, Sinn Fein candidates secured 13.4% of the total vote in Northern Ireland and Gerry Adams was returned as the member for Belfast West. He has not taken his seat at Westminster. The PIRA/Sinn Fein leadership then decided to contest the 1985 District Council elections on the basis that they would take up their Council seats and participate in Council business in the interests of the nationalist community. They won 59 seats - 11.8% of the total vote and an estimated 38% of the nationalist vote. There is no

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Substantive evidence that their support is likely in the foreseeable future to fall below about 30% of the nationalist electorate. For the present, therefore, their policy of the "Armalite and the ballot paper" is likely to remain.

The Problem

4. The presence of Sinn Fein members on district councils has outraged and incensed unionist councillors

Furthermore, they have used their elected office to make statements of explicit support for the terrorist activities of PIRA. The unionist reaction to the malign presence of Sinn Fein in District Councils had substantially disrupted the working of those Councils prior to the signing of the Anglo-Irish Agreement and had posed severe difficulties for the SDLP. Their potential for disrupting any agreement between the constitutional NI parties to return to any form of elected devolved government remains very high and has been facilitated by the recent historic decision to end the policy of abstentionism with regard to the Irish Parliament, the Dail.

5. The fact that since 1981 HMG is seen to have done nothing while Sinn Fein has become a significant disruptive political force in Northern Ireland and has provided a platform for statements which support, encourage and "justify" the terrorist acts of the Provisional IRA, has enraged and frustrated the whole unionist community who see it as a palpable illustration of the Government's lack of will to defeat terrorism and restrain those who offer support for proscribed organisations or of the use of violence for political ends.

Tackling the Problem

6. The true facts are that within the Government considerable effort has been expended into examining what measures could be

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ken against Sinn Fein which would be both effective and politically acceptable in the wider national and international arenas. The issues were exhaustively examined by a Working Party in 1986 chaired by Mr Brennan which included representatives of the Home Office, the RUC, the prosecuting authorities and the Legal Advisers. The Working Party concluded that it would be technically possible to formulate a new offence in various ways so as to bear upon generalised statements of support for terrorism. In essence the options are as follows:

- a. to introduce a very general provision bearing upon support for terrorism which amounts to condonation;
- b. to introduce a narrower provision focused not upon general support for terrorism but rather upon words used to show active support or some other effort of promotion for terrorist violence; or
- c. to introduce a provision which focused upon statements that denote, whether actively or passively, some support for particular proscribed organisations rather than generalised support for terrorism.

7. The Working Party identified considerable technical and practical difficulties with all of these options which in essence reduced down to an inability to define an effective provision which would not be so wide in its application that it would strike at the heart of the right to freedom of speech and freedom to report. Ministers at that time decided against pursuing a narrow provision which would be likely in practice to prove ineffective against Sinn Fein spokesmen or others whose statements professed support for terrorism or the use of violence for political ends.

8. Subsequent to this decision and in the face of the growing disruption of local political dialogue and action caused by the unionist reaction to the presence of Sinn Fein members on district councils, the Secretary of State took to H Committee

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In 9 July 1986 a Memorandum proposing to require all candidates at future local government and Assembly elections in Northern Ireland to make a declaration abjuring support for terrorist methods in furthering their cause. The Secretary of State sought H Committee colleagues' endorsement for the need for such a measure and their agreement that, if the right political moment presented itself he should publish a consultation paper. H Committee noted the Secretary of State's position and invited him to return to them with his proposal if and when he considered the time was right.

9. When, as part of their work in preparing the EPA Amendment Bill, officials renewed consideration of measures against those who support proscribed organisations or the use of violence for political ends, consideration was given to the proposition that, in the event of Ministers deciding to proceed with a new offence, it would be helpful if conviction for such an offence were to carry disqualification from elective office. It can be argued that this would achieve much the same effect as a declaration on non-violence and if it is possible to draft a new offence that carries disqualification, it should be no more disadvantageous than a new offence that does not. The Legal Advisers have been consulted and see no difficulty in including such a provision within the scope of the EPA Amendment Bill

#### The Arguments

10. There is no disputing the malign influence of Sinn Fein on the political scene in Northern Ireland nor the danger to the constitutional, democratic resolution of problems posed by the way in which spokesmen freely use the broadcasting and press media and the public platform to express support for proscribed organisations and the use of violence for political ends in the island of Ireland. In the case of Sinn Fein it is the Provisional IRA's alter ego pursuing the same set of aims via a different medium. Public statements of support for PIRA activities by Sinn Fein spokesmen foster more acts of terrorism because the support of elected representatives tends to

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"legitimise" PIRA's terrorist acts, not only internally but also internationally; and such statements - made openly and loudly - boost the terrorists' morale and determination. Furthermore, and importantly, the propaganda effect of such statements substantially increases the effectiveness of individual PIRA attacks in raising the level of terror and tension in the community: and they may also be used (as is the case in the current PIRA campaign of intimidation) to amplify and reinforce terrorist tactics.

11. The political effects of Sinn Fein's statements are to cause deep repugnance to most law-abiding people in the United Kingdom but to cause particular offence to the unionist people of Northern Ireland who have borne the brunt of PIRA's campaign of murder and destruction for 15 years. Anything which could be done to curb the present freedom of speech enjoyed by Sinn Fein spokesmen would, in the longer term, make it easier for unionists to return to constructive business in the District Councils. There can be little doubt that the Government's failure to take steps to clip Sinn Fein's wings has been a major factor - pre-dating the Anglo-Irish Agreement - in the unionist community's total loss of confidence in the Government's will to defeat terrorism, and in Government policy generally.

12. There are those such as the Chief Constable who argue that the Government's policy decision in 1974 was wrong and that since a political party like Sinn Fein is not a constitutional party and is subverting the constitutional democratic process, the Government should not tinker at the periphery of the problem but tackle it head on by re-proscribing Sinn Fein and all parties and organisations like them such as the UDA. It is not the purpose of this paper to argue the advantages and disadvantages of proscription, but the democratic argument in favour of measures against Sinn Fein which fall short of proscription is that the Government is seeking to prescribe a framework which encourages all political parties to conduct lawful constitutional debate but which constrains those who

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ish to support the destruction of the constitutional process by the use of physical violence. Total success is impossible, no legislation could entirely prevent expressions of support for violence being made in coded language but it is nonetheless desirable to erect barriers to the ability to give explicit support for proscribed organisations or for the use of physical violence for political ends.

13. The increase in the pressure on the Government to do something about Sinn Fein and similar organisations does not diminish the difficulty of identifying a politically acceptable measure that would be effective. The introduction of legislation which appeared to interfere with rights of free speech might arouse strong opposition in Parliament from civil libertarians without effectively reducing the ability of Sinn Fein or other extremists to indicate support for terrorism.

14. There are the problems of deciding whether a new offence should apply to the media ie to the reporters of statements. If it did not, the offending statements could still be widely disseminated. There would be evidential problems over newspaper reports of statements and, in any case, many reputable newspapers often quote terrorist spokesmen directly in order to illustrate repugnance. However, editorial expressions of support are a different matter and might well fall within the scope of a new offence. The broadcasting media could, of course, provide direct evidence of statements breaching any new provisions.

15. The most serious political danger arising from seeking to introduce a new offence would be that it would raise public expectations that, finally, something effective was being done against Sinn Fein and their like. If, in the event, there was no significant result in terms of prosecutions, the extremists would be seen to have gained a further victory in terms of the inability of democratic governments to deal effectively with terrorists and their supporters, and the spiral of violence would continue.

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The New Offence

16. If, after careful consideration of the arguments and in the knowledge that most Cabinet colleagues would not be easily persuaded, Ministers wish to explore the feasibility of drafting an appropriate provision then as a minimum consideration could be given to the third of the options identified by Mr Brennan's Working Group, which would catch statements of support for a proscribed organisation. That was dismissed at the time on the grounds that it did not go far enough, that it would have little or no practical effect, and that it would raise expectations that could not be fulfilled. But despite the familiar argument that the terrorists' spokesmen would find little difficulty in adjusting to the need to avoid falling foul of the new law and therefore the new offence would be widely seen to be futile, it would at least demonstrate that the Government was prepared to act within the law against the extremist spokesmen on both sides of the community; it would make those spokesmen think a little harder before they spoke; and it should effectively prevent the most provocative statements of overt support for proscribed organisations.

17. It would be desirable to go further, but the difficulties mount incrementally with each step that is taken. It would be desirable to inhibit the current freedom of extremist spokesmen to express support for or to incite acts of unlawful physical violence committed for political or sectarian ends within the island of Ireland, but no one has yet identified a formula which would achieve this without giving rise to difficulties of one sort or another. Ministers need to decide where the balance should be struck and whether, since doing nothing has become increasingly indefensible, the Government could, by justifying the application of the new provision by the uniquely difficult security and political situation currently existing in Northern Ireland, live with some of the difficulties that have been identified. In the light of the current pressures upon the Government within Northern Ireland to deal with Sinn

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rein, Ministers may wish to consider whether the arguments for and against taking up the second of the options identified in Mr Brennan's Working Group are more evenly balanced than they were, and that something along those lines offers a way forward. A survey of statements made by extremist spokesmen from both sides of community over the last two years or so has demonstrated how difficult it would be to catch these spokesmen or their reporters even with a new measure along the lines of the second option. Attached at Annex A are some of the statements that might be caught by such a provision.

18. It follows that if Ministers decide to proceed with a new offence and included a penalty of disqualification from elected office in an Assembly or district council in Northern Ireland the effect of that penalty on extremist membership of such bodies would be of the same order as the effectiveness of the new offence itself. The main difficulty in providing for such a penalty would be the anomalous position of a provision which disqualified persons for supporting proscribed organisations or terrorist acts but did not disqualify persons for membership of a proscribed organisation or for committing terrorist acts where they were not convicted for membership of a proscribed organisation.

#### Conclusion

19. It is morally and politically desirable that the Government should take measures against those such as Sinn Fein spokesmen who express support for proscribed organisations or for the use of unlawful physical violence for political ends, and against those who stand for election in order to subvert the constitutional democratic process. There are, however, considerable technical and practical difficulties in the way of taking effective measures without unacceptably restricting the rights to freedom of speech and freedom to report and the right

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the freedom of choice of elected representatives. Ministerial colleagues may be reluctant to agree to measures that would be wide enough to be effective; and a measure which was narrowly drawn might be disregarded and therefore in effect undermine the rule of law. The balance is finely drawn and must depend in the final analysis on Ministers' judgement.

Law and Order Division  
18 November 1986

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ANNEX A

STATEMENTS SUPPORTING THE USE OF VIOLENCE

Most of the recent reported statements which, in context, appear to condone violence would be unlikely to be caught by a new offence of expressing support for the use of violence because they are phrased to appear to be the speaker's comment or prediction rather than incitement or a direct expression of support; eg

"The IRA are political soldiers who use armed means to resist armed aggression" (Gerry Adams, The Guardian, 22 May 1985).

"I believe the Ulster people, if they have to - and I trust they never will have to - will fight, and if necessary die, to keep the Province out of a United Ireland" - Peter Robinson, 15 October 1986.

2. However, the following statements might be caught:

Sinn Fein elected representatives

"I don't believe the IRA are committing atrocities. Where I live, they are tackling British forces and I believe they have the right to do that" (Jim McAllister, former Assembly member, Belfast Telegraph 9 May 1985).

"The people I am asking to vote for me know that I am unambiguous in my support for the armed struggle and as a member of Sinn Féin I have made no secret of that fact" (Gerry Doherty, Derry City Councillor, Belfast Telegraph 10 May 1985).

"If an employee or member of the council or whatever is a member of the British forces and if he is regarded by the IRA as being a legitimate target .... then certainly I would have no other option than to accept the fact that the

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"IRA have every right to do whatever they do." (Seamus Kerr, Chairman, Omagh District Council, Newsletter 7 June 1985).

"These civilians, whether pushing pens or pushing brooms ... are as culpable in their employment practices as they would be if they were directly involved in the manufacture of plastic bullets." (Mitchall McLaughlin, Derry City Councillor, AP/RN 31 July 1986).

"We are a socialist republican movement, a movement that supports the use of armed struggle in the six counties. Our attitude to armed struggle is clear and unambiguous and people can either accept it or reject it, but they cannot deny it .... the Irish are a subject people who have the right to be free and have the absolute right to oppose in arms the occupying forces of Britain" (Martin McGuinness AP/RN 26 June 1985).

"My position very simply is that the IRA have the right to engage in armed struggle ...." (Gerry Adams, The Phoenix, 7 June 1985).

"We defend the use of force today against the same enemy and in the same cause as that which made the Easter Rising a necessary and morally correct form of struggle" (Gerry Adams, Irish Times, 31 March 1986).

"Mr Vincent McCaffrey (SF) said there was "no alternative but to use the gun in this part of Ireland" because people were not allowed to express themselves peacefully" (Newsletter report of Fermanagh Council meeting, 16.5.86).

"Tommy Carroll, SF Armagh Councillor said "those who helped the "forces of repression" in Ireland should desist in the face of warnings" (Belfast Telegraph 24 June 1986)

"I support the IRA in their struggle for Irish freedom" (Geraldine Ritchie, Down District Council, Belfast Telegraph 19 August 1986).

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Loyalists

Many of the Loyalist statements are couched in vague terms of 'organisation' or 'resistance', which could be taken to imply support either for violence or for civil disobedience or political activity. The more outspoken remarks include:

"Rattling desks won't smash Sinn Fein. They won't be smashed within the council chamber or within the law. They will be smashed by shooting them outside the chamber and outside the law". (George Seawright, Sunday World 9 June 1985).

"If the Provisional republican movement declare war on loyalists then they make themselves legitimate targets for the same kind of action ... I have always supported the right of loyalist paramilitaries to attack Republican targets" (Seawright, Newsletter, 28 September 1985).

"We must prepare ourselves to rebel against a Parliament which is prepared to push us down the road to a United Ireland ... Peter Barry is a legitimate target and must be removed from Ulster " Jack McKee 18 June 1986).

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