

RESTRICTED.

F.R.

2/10

17
492/12

- 1. Mr. Bell
- 2. PS/SofS (L&B) M

RFB 23/12

I agree that a Minister
shd. meet Mr K (HOB,
DFP, CPL may wish to
note that they may be
asked for briefing at
short notice),



- cc: PS/Ministers (L&B)-M
 PS/PUS (L&B) - M
 PS/Sir K Bloomfield-M ✓
 Mr Burns (X)
 Dr Quigley-M
 Mr Fell - M
 Mr McAllister-M
 Mr Chesterton
 Mr Spence - M
 Mr Elliott - M
 Mr Hewitt - M
 Mr Hunter, DFP-M
 Mr Kirk
 Mr F G McConnell
 Mr J McConnell - M
 Mr A Wood - M
 Mr Leach o/r
 Mr Cowper-Coles (Washington)
 Mr Dew, RID, FCO
 Mr Higson, RAD, FCO

RECEIVED
 29 DEC 1987
 MUFAX ROOM
 STORMONT HOUSE ANNEX

CONGRESSMAN JOE KENNEDY

Joseph P Kennedy (Democrat - Massachusetts, and son of Robert Kennedy) is visiting Northern Ireland in the first week of January. The Washington Embassy report that on present plans he will arrive in Belfast at mid-morning on 4 January and stay for two days, returning to the US via Dublin. He will be accompanied by his principal aide, Chuck McDermott. This submission suggests that the Secretary of State or another Minister should meet him if possible during his visit.

2. The Secretary of State will recall Congressman Kennedy's performance at the Friends of Ireland lunch in Washington on 22 September. Replying to what Mr Kennedy had to say, Mr King invited him to visit Northern Ireland. He also undertook to write to him on the various issues he had raised. (Copies of the Secretary of State's letter and of Mr Watkins's note of the lunch are attached.)

3. We do not know whether Mr Kennedy's visit is as a result of Secretary of State's invitation. According to the Embassy, Seamus Mallon, MP is taking a hand in arranging it - but Central Secretariat report that Bob Myers, US Consul-General in Belfast,

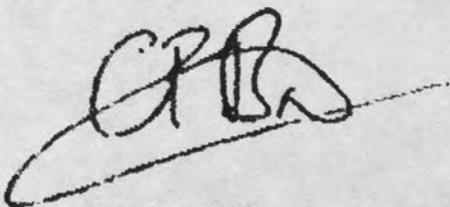
E.R.

also seems to be involved. Mr Myers has suggested that Mr Kennedy could, during his visit, open an International Fund project (though it may be that nothing suitable is available - Mr Hunter may wish to advise Central Secretariat).

4. Mr Kennedy is a very junior Congressman (a 'first-timer' - he entered in 1986) and despite his illustrious connections his influence should not be exaggerated. Nevertheless, the Secretary of State - or another Minister in Secretary of State's absence - could usefully offer to see him if that can be arranged. (Mr McDermott has passed on Mr Kennedy's thanks for Secretary of State's 'thoughtful' letter to him. There will apparently be a reply shortly.) It would perhaps be better for a meeting to take place towards the end of Mr Kennedy's visit when he has had a chance to see the Province for himself.

5. SIL will pass on further information as it becomes available. And the Washington Embassy have a contact point in Central Secretariat for use if SIL staff are unavailable over the Christmas holidays.

6. If Secretary of State is content, the next move will be for Central Secretariat to pass the offer of a Ministerial meeting to Mr Myers. May we ask them to do that, please? Ministers will not need briefing on generalities. But Mr Hewitt, Mr Hunter and Mr Kirk might wish to provide something nearer the time on the administration of justice, equal opportunities/community relations, and the International Fund.



C F BONE
SIL Division

23 December 1987

13962.

noon Tuesday 22 September

LUNCH GIVEN BY REP BRIAN DONNELLY (D - MASSACHUSETTS) AND ATTENDED BY REP FOLEY (D - WASHINGTON) AND MEMBERS OF THE FRIEND OF IRELAND

There were probably some 20 congressmen in attendance at the beginning of the lunch, but most were called away to a vote in the House and many did not return. The number who attended throughout was around 10.

2. Invited to address the meeting, the Secretary of State described political developments since the Agreement, pointed to economic problems throughout the island of Ireland, emphasised the value of the International Fund and described policy developments on fair employment and the risks which flowed from the MacBride campaign.

3. First on his feet after the speech during which he had visibly psyched himself up for an attack, Congressman Joe Kennedy vehemently made a number of points. HMG was always soft on Protestants and hard on Nationalists, for example, we had been most reluctant to pass minimal fair employment legislation, while we had refused to proscribe the UDP (sic). Without legislation even what we had done on fair employment would be fruitless. Another gross abuse was the Diplock court procedure. He rejected the Secretary of State's argument about automatic right of appeal by saying that only 3% of cases ever actually went to appeal. In sum the Secretary of State's arguments were dismissed as "baloney" (sic). The Secretary of State, who did not hesitate to counter-attack, invited Mr Kennedy to visit Northern Ireland and undertook to write to him on the points he had raised, the letter would also attach a copy of the Tanaiste's statement welcoming the Guide to Effective Employment Practice. I enjoyed the good fortune to be seated beside Mr Kennedy who at one point turned on me about the performance of the RUC. In the course of the discussion I adduced as collateral the view expressed about the force by Mr Hume. At this Mr Kennedy dismissed Mr Hume and his opinions. Mr Hume cut no ice with him - the only thing which was

of interest to him was action which appealed, not to Nationalists on the ground in Northern Ireland, but to his constituents in Boston. This was most revealing, as it demonstrated the real nature of the interest of the more extreme Irish-American leaders. In general, our team had the distinct impression that congressman Kennedy was not supported by his other colleagues amongst the Friends who were visibly embarrassed by his intervention.

4. The open discussion then flowed into quieter waters. Points raised were as follows:

- the International Fund needed a wider spread of contributors;
- our fair employment policies needed statutory support. In response the Secretary of State said that our policy already had teeth by way of contract compliance, the conversion of intent to practice etc;
- the percentage of Catholics in public service. Mr Pepper, an octogenarian who had sat in both the Senate and House and who charted experience of religious tension within the US as recently as the Second World War, asked about the prospects for greater rapprochement between the two communities; and
- RUC code of conduct.

Conclusion

6. The outstanding feature of this discussion was the Kennedy outburst which most found highly revealing.



Northern Ireland Office
Stormont Castle
Belfast BT4 3ST

Congressman Joseph P Kennedy II
House of Representatives
Washington DC 20515

24 November 1987

I was glad to be able to meet you at the lunch which the Friends of Ireland kindly organised on 22 September. I am writing now to follow up the points which you raised about the Diplock Courts, the UDA and our policies on employment equality.

First, the Diplock Courts, in which those accused of terrorist-type offences are tried by a judge sitting without a jury. As you know, this procedure was introduced in 1973 on the recommendation of an independent Commission chaired by Lord Diplock, an eminent jurist and Lord of Appeal, to deal with the dangers of intimidation of jurors and of perverse verdicts by partisan juries. These arrangements are deliberately temporary - we want to return to jury trials as soon as the situation allows this; the legislation therefore has to be renewed each year by Parliament if it is to continue in force. For the time being, however, a review conducted in 1984 by Sir George Baker, a former and distinguished High Court Judge independent of the Government, concluded that it was not yet possible to return to trial by jury for terrorist offences: the independent Northern Ireland Standing Advisory Commission on Human Rights (SACBR) supported this view.



As I told you at the Friends of Ireland lunch, there are a number of powerful safeguards to compensate for the lack of a jury in the Diplock Courts. For example, the judge has to set out in a written judgement his reasons for convicting a person, where that is his decision. This is unique in the British judicial system. (In a jury trial the jury only states its finding, and does not give the reason for its decision.) This means that the defence has a full explanation of the Court's decisions, and the fullest information on which to base any appeal. Normally an appeal against a criminal conviction can be made only if there is a point of law at issue, or additional evidence. In the case of convictions in a Diplock Court, however, a convicted person has an unlimited right of appeal against sentence or conviction, on points of fact as well as of law.

This brings me to your suggestion that only three per cent of cases from Diplock Courts go to appeal. I am not sure where your figures came from; they are very wide of the mark. In the first six months of this year, there were 77 cases in which people convicted of "terrorist type" offences appealed against conviction or sentence. The figure was much the same for last year when 163 appeals were lodged over the 12 months. As, since 1980, an average of 600 people per year have been convicted of such offences, this suggests an appeal rate in the region of 25 per cent. You might also like to know that of the 163 appeals lodged in 1986, the conviction was quashed in 32 cases and in another 19 the appellant's sentence was reduced. (Of the remaining appeals, 44 were abandoned and 60 dismissed; 8 remained to be dealt with). These figures show quite clearly that the appeal system is used to a substantial degree and that it is effective. A higher proportion of people convicted of "terrorist type" offences rather than ordinary "non-terrorist" offences appeal against conviction but that is to be expected since the right of appeal for "terrorist type" offences is unlimited (as mentioned above).



There have been very few allegations of miscarriages of justice in individual cases, except in cases where the prosecution was based on the evidence of accomplices. All the cases in this category have now been disposed of; in many of them the Court of Appeal quashed the conviction.

On a point of detail that you raised, I confirm that 4 of the 10 current High Court judges in Northern Ireland are Catholic (Catholics form about 38% of the population).

You also raised the question of proscribing the Ulster Defence Association. I do not think that proscription of this organisation would be right - but it is of course something I keep under review. Proscription (which makes mere membership of the organisation a criminal offence) is only used against organisations which are actively and mainly engaged in terrorism. Hence the Ulster Volunteer Force is proscribed, as is the IRA. But organisations which are not actively and mainly engaged in terrorism are not proscribed: Sinn Fein, for instance is not proscribed (despite its support for the IRA's campaign of violence), nor is the UDA. But members of either of these organisations, or of any other organisation are charged and prosecuted if there is evidence of them committing any substantive criminal offence. A number of members of the UDA (and for that matter a number of members also of Sinn Fein) have been convicted in the courts. My professional advisers and I do not think that proscribing the UDA would make it any easier to prevent terrorism, but that judgement is of course subject to regular reassessment.

As for equality of opportunity in employment, discrimination in jobs is illegal. The Fair Employment Agency, created by legislation in 1976 and independent of Government, has powers to



tackle discrimination and to promote equality of opportunity in employment. The Agency must investigate any individual complaint brought to it. It can issue directions in the event of unlawful discrimination and seek enforcement through the Courts. The Courts can award damages and compensation, and issue injunctions. The Agency can also investigate, on its own initiative, any company or undertaking in either the public or private sectors to ensure that it is affording equality of opportunity. It can also issue directions to ensure that employment procedures afford equality of opportunity, and, where necessary, seek their enforcement through the Courts.

More recently, as I told the Friends of Ireland, we have taken major extra steps to tackle discrimination in jobs. In September I published a revised Guide to Effective Practice. It will add to the Agency's cutting edge and have an immediate impact on employers for three reasons:

- first, because the PEA is statutorily required to take the Guide's recommendations into account in determining whether or not equality of opportunity is being provided;
- second, because the more detailed and specific the Guide, the more incisive and comprehensive is the Agency's scope for action;
- third, because from the date of publication on 15 September last the Agency can immediately use the Guide's recommendations as the touchstone of good practice.

But the Government also recognises that policy change is needed to ensure more effective practice. That is why we have published our own set of proposals; consulted widely on them; and indicated that, in determining the content of future legislation, we shall



take into account the very comprehensive report on fair employment recently published by the Standing Advisory Commission on Human Rights, Northern Ireland's foremost human rights body. Our own proposals, complemented in very large part by the Standing Advisory Commission's report, are designed to improve and reinforce existing good practice. For example, at present the Government only accepts tenders from firms which are registered as having signed a Declaration of Principle and Intent to practice fair employment. It is proposed that in future a commitment to the principle of equality of opportunity will not be sufficient: tenders would only be accepted from firms which have formally registered themselves as actively practising equality of opportunity. Registration would commit employers to the types of effective action spelt out in the Manpower Guide, ie, monitoring the composition of the workforce, recording the outcome of monitoring, making regular returns to the appropriate enforcement body so that progress can be measured and, where necessary initiating affirmative action. Registration as a fair employer would no longer be open ended (as it is at present) and firms which register would be subject to more regular, systematic and effective external monitoring of their practice by the enforcement body.

In addition we propose that any firms seeking grant support should be treated in the same way as those tendering for Government work. So, in effect, those seeking to do business with Government or to receive financial support from it would be required to be actively practising equality of opportunity in employment. And to complement economic sanctions in the private sector - which is heavily reliant on Government support and business - the public sector would be placed under a statutory obligation to practise the same comprehensive equality of opportunity measures. Furthermore a stronger administrative framework is proposed for enforcement.



This represents a very positive commitment to ensuring equality of opportunity in employment. The Irish Deputy Prime Minister and Minister for Foreign Affairs, Brian Lenihan has welcomed the steps, particularly the accompanying statement from Margaret Thatcher indicating that the British Government will take whatever further steps are required to eliminate discrimination and promote equality of opportunity in Northern Ireland. I enclose copies of Mrs Thatcher's message and of Mr Lenihan's remarks.

I hope this answers some of your concerns. As I said at the Friends of Ireland lunch, I should be delighted if you were able to visit Northern Ireland and see for yourself what we are trying to do. In the meantime, do not hesitate to let me or our Ambassador, Anthony Acland, know if you would like any more information.

I am sending a copy of this letter to Congressman Donnelly as Chairman of the House Friends of Ireland group.

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 [Handwritten signature]

13/5/75 (A)
 13/5/75 (B)
 13/5/75 (C)
 Mr. Fall
 Mr. Jones
 Mr. (Christie)
 Mr. Acland
 Mr. Hill
 Mr. [unclear]