5/15

3112W 3/11/87 Federal

Miss Thompson to see ?pl

Mr J Wolstencroft, DED - M

Mr Brooker, LOB - M

(Separate copies)

cc: Mr Burns
Mr Fell - M
Mr Chesterton
Mr Gowdy, DED - M
Mr Innes - M
Mr R Wilson, DED - M
Mr Bell
Mr Kirk

LETTERS TO CONGRESSMAN KENNEDY AND THE AFL/CIO

1. *You will recall that following his visit to the US in* September, *draft letters were prepared for the* Secretary of State to *send to a number of people whom he had met. These included draft* letters covering (principally) Diplock courts and fair employment to go to Congressman Joseph Kennedy (with whom the Secretary of State had a lively discussion at the Friends of Ireland lunch on 22 September) and Tom Donahue of the AFL-CIO. These drafts were submitted last month (and in the case of Donahue, the letter was actually signed and sent out, although we trapped it in the Washington Embassy). However, the Secretary of State has now asked that the drafts should be reviewed and if necessary revised before he writes finally to Kennedy and Donahue. I attach for information copies of the Donahue letter and the Kennedy draft.

2. The Secretary of State has expressed concern about two specific areas of the drafts. First, he thought that the statistics on the operation of the <u>Diplock Courts</u> were *insufficiently clear. He has also expressed specific concern that the high proportion of persons appearing before Diplock Courts who plead guilty (nearly 90% in 1986) could attract adverse* comment in the US. Since independent witness evidence is presumably less common in scheduled that in non-scheduled trials, it is not immediately obvious why there should be a high proportion of guilty pleas and it could be alleged that undue pressure had been used to secure confessions. Two thoughts occur to me on this. First, it may be that 90% is not an unusually high proportion and that the figure for Crown Courts operating with juries is similar. Second, there may be a high number of cases in which irrefutable physical evidence links the

[redacted]

accused with the crime. I have redrafted the Diplock passage with the aim of clarifying the figures and also, in the first square-bracketed passage, to deal with the point about guilty pleas (draft attached). I should be grateful if LOB could confirm that they are happy with this treatment, if they could supply the missing percentages, and if they could update the statistics on appeals. (Any improvements which LOB wish to suggest in the rest of the drafts would of course also be welcome.)

3. On the employment equality front, the Secretary of State's concern was that the drafts might be "too bullish" and "create expectations which we could not easily fulfil in the field of employment equality. The letters should therefore be toned down in this respect". I should be most grateful if DED (and CPL) could review the drafts with this in mind and let me have any amendments which seem desirable. (With the publication of the SACHR and PSI reports life has of course now moved on in this area and it may be that the drafts need adjusting and updating in any event.) I believe that one particular area which concerned the Secretary of State were the references to our forthcoming legislation: is it appropriate to indicate what this might contain before we have got policy approval from colleagues? As against this, however, DED will wish to bear in mind the Embassy's view that an unequivocal commitment to early and comprehensive legislation "remains the single most important step which we could take to convince American audiences that we are serious about tackling religious discrimination in employment in Northern Ireland" (Sir A Acland's letter of 6 October). It is therefore clearly important not to tone down too far the points we have to make on the legislation. DED will wish to strike a careful balance here.

4. In view of the time that has elapsed since the Secretary of State agreed to write, I fear that it is necessary to set a short deadline. Might I ask for contributions by close of play on 5 November?

Stephen J. Leach

S J LEACH
SIL Division
3 November 1987
sm/2893

DRAFT

DIPLOCK COURTS

In 1986, 596 persons were tried in the Diplock Courts of whom 528 pleaded guilty and 68 not guilty. [The proportion of guilty pleas - 89% - is not unusual: it is similar to that in the ordinary Crown Courts which operate with juries (x%) and reflects the high number of cases in which - through painstaking police work - irrefutable physical evidence can be provided to link the accused with the crime.] Of the 68 not guilty pleas, no fewer than 29 - ie 43% - were acquitted. [This again is comparable with the figure of y% acquittals in the Crown Courts.] Also during 1986 163 appeals were lodged against sentence or conviction in respect of cases tried in Diplock Courts. (Some of these appeals related to cases tried in 1985, but at least 75 concerned cases heard in 1986.) Of these 163 appeals, 145 had been disposed of by Easter of this year, including 43 where the appeal was abandoned. Of the other 102, 52 appeals were dismissed, in 31 the conviction was quashed and in 19 the sentence was varied.

2. These figures surely indicate...[continue as in para 4 of the Donohue letter]

em/2902

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Belfast BT4 3ST

MwL

Tom Donahue Esq
Secretary - Treasurer
AFL - CIO
WASHINGTON

19 October 1987

Dear Mr Donahue,

1. I much enjoyed our meeting on 21 September and the opportunity which this gave to discuss a number of important Northern Ireland issues which are of concern to the AFL - CIO. I am now writing as promised to give some more details of the courts system in the Province.

2. As you will know, trial by jury for certain "terrorist-type" offences was abolished in 1973 on the recommendation of an independent Commission headed by Lord Diplock, an eminent British jurist and Lord of Appeal, who found that under the old system there was a very real threat both of intimidation of jurors and of perverse verdicts by partisan juries. Those dangers are still with us today, and this is recognised by, amongst others, the independent Northern Ireland Standing Advisory Commission on Human Rights. To compensate for the absence of a jury we have however introduced substantial safeguards in the Appeals system, which go far beyond those available in the rest of the United Kingdom. For example, in the so-called Diplock (non-jury) Courts the judge has to set out in writing his reasons for convicting a person and the defence can then draw upon this to form the basis of an appeal. In addition the defence has an unfettered right of appeal against sentence or conviction, in the latter case on points of fact as well as of law.

3. One of your colleagues suggested that the right of appeal was irrelevant because no appeals were ever allowed. This is quite

unfounded. Last year 596 persons were tried in Diplock Courts of whom 528 pleaded guilty and 68 not guilty. Of the latter no fewer than 29 - ie 43% - were acquitted. During the same year 163 Appeals were lodged against sentence or conviction for "terrorist-type" offences, some of which would relate to cases tried the previous year. Of these 163 Appeals, 145 had been disposed of by Easter of this year, including 43 which were abandoned. Of the 102 Appeals that proceeded, 52 were dismissed, in 31 the conviction was quashed and in 19 the sentence was varied.

4. These figures surely indicate that the appeal arrangements are a real safeguard. We have a high standard of justice in Northern Ireland and defendants can expect to be treated fairly. There have been few allegations of miscarriages of justice in individual cases, other than those involving the evidence of "supergrasses" (this is the colloquial term for cases based mainly on the evidence of an accomplice) - and all the cases in this category have now been disposed of, with most of the people convicted being released on appeal.

5. We are, of course, always willing to look closely at reasoned arguments for amending the judicial system but I do not see that at present a convincing case has been made for radical change. Wherever we can identify useful adjustments to the present systems we are happy to make them; for example, we have been able to reduce the length of time it takes to bring people to trial.

6. We also discussed at our meeting the measures the Government is taking to achieve equality of opportunity in employment in Northern Ireland. Our recent action and future proposals tackle the root of this problem - the need for effective practice. Practice is what

matters; and that means giving employers clear and specific guidance on what is required of them. The revised Manpower Guide does that; it spells out the need for religious monitoring of recruitment, selection and promotion; for recording the outcome of such monitoring and taking affirmative action measures where necessary. These measures are detailed in the Guide; they include "outreach" training - open to all and subject to the merit principle at the point of selection - designed to facilitate the access of an under-represented group to employment or promotion opportunities. They also include the use of goals and timetables to increase the candidates of an under-represented group in the employment applicant pool.

7. The Guide sharpens the teeth of the independent Fair Employment Agency (FEA), which is statutorily required to take its recommendations into account in determining whether or not equality of opportunity is being provided. So the more detailed, specific and pro active the Guide - and it is all three - the more incisive and comprehensive is the Agency's scope of invigilation. Though the Guide does not itself have the force of law, it is important to recognise that under the law its sharper content adds to the Agency's cutting edge. Moreover the impact of the Guide will be reinforced by Government backed educational seminars in both the public and private sectors; by the introduction of a private sector support scheme; and by giving the Agency extra resources for its policing work.

8. But effective practice also requires Government sanctions. Future legislative proposals recognise this. They will considerably strengthen existing arrangements. At present Government only accepts tenders from firms which are certified as having signed a Declaration of Principle and Intent to practise fair employment. That Declaration will be replaced with a new Declaration of Practice

and tenders will only be accepted from those who have signed it. The new Declaration has three key features. First, it will commit employers to effective action; specifically to monitoring the composition of their workforce; to recording the outcome of monitoring; and to affirmative action measures. Secondly certification will be limited to a discrete period and require renewal (at present it is open ended). Thirdly, there will be more regular and effective external monitoring of employers' practice.

9. In addition we have it in mind that any firms seeking grant support from Government will be required to have signed, and to be implementing, the new Declaration of Practice. 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 will be placed under a stronger statutory obligation as exemplified in the Declaration of Practice. Furthermore a stronger administrative framework is proposed for enforcement.

10. It is worth pointing out that Brian Lenihan, the Irish Minister for Foreign Affairs, welcomed publication of the Guide and, in particular, the accompanying statement from the Prime Minister. In this, Mrs Thatcher indicated that the British Government will take whatever further steps are required to work for the elimination of discrimination and promotion of equality of opportunity in Northern Ireland. We are <u>fully</u> committed to achieving equality of opportunity in the shortest possible time. We believe, however, that with new investment and the generation of additional employment opportunities, Northern Ireland Law and Government action offers the best prospect of success.

11. We recognise that there are people of good will in the US who see the MacBride Principles as assisting the cause of fair employment. But it is our very clear view (a view shared as you know by Trade Union interests in Northern Ireland, as well as John Hume and other responsible opinion) that the pressure on US companies to adopt the MacBride Principles, with attendant threats of disinvestment and the prospect of being held accountable to a variety of interests with differing objectives, detracts from Northern Ireland as an investment location and damages, rather than assists, our aim of speedy progress on fair employment. As I told you, I want to see more jobs in Northern Ireland, not fewer: I want to promote equality in employment, not equality in unemployment, and action that actually threatens to reduce the number of jobs in Northern Ireland will only add to this difficulty in finding the jobs needed to underpin fair employment policy.

12. I am sorry to have written at such length, but these issues are important to me and to Northern Ireland and I think they deserve a fairly full explanation: if there is anything I have left unclear, or any further information you would like please let me know.

Yours ever,

cc PS/S of S (B&L)
PS/Mr Viggers (B
PS/Sir K Bloomfie
Mr Fell
Mr Burns
Mr Chesterton
Mr Innes
Mr Spence
Mr Bell
Mr J McConnell

AMcI 4513