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PS/S of S (B&L) - M

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29 APR 1985
STORMONT HOUSE ANNEX

C.C. PS/PUS (B&L) - M
1 Mr. Bloomfield - M
Mr. Brennan
Mr. A.W. Stephens - M
Mr. Buxton - M
Mr. Coulson - M
Miss Elliott
Mr. Lyon

2 SEC/1

MEETING WITH LORD CHIEF JUSTICE

1. The Secretary of State is to meet the Lord Chief Justice in Belfast on 30 April. The main purpose of the meeting is to get across to Lord Lowry the general aims of the Anglo-Irish dialogue, and its limited scope, and thus reassure him that we are not about to implement changes in the judicial system to which he is wholly opposed. His alarm stems from an approach to him about joint North-South courts from the Taoiseach (Dr. Fitz-Gerald has long been an enthusiast for the idea).

Anglo-Irish Talks: General

2. It would be prudent to emphasise to Lord Lowry how sensitive this subject is, particularly during a Northern Ireland election campaign when misrepresentation is even more rife than usual. But the Secretary of State is happy to put him in the picture because of his obvious interest and expertise in judicial arrangements in Northern Ireland and because he was understandably concerned by the Taoiseach's approach.

3. In discussion the Secretary of State may wish to emphasise that the basis of our dialogue with the Irish is as set out in last November's post-summit communique. There is no question of any change in Northern Ireland's constitutional status without the consent of a majority in the North. Nor is there any question of joint authority - i.e. giving Dublin an executive role. And whatever they may be saying in their election campaigns, the Unionist parties generally accept that. But HMG does recognise that the Republic has a legitimate interest in events in the North and that many Northern nationalists look to Dublin as

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the focus of their aspirations. We therefore must listen to what Dublin has to say; and it may be helpful to both sides to introduce into that process more systematic procedures. That is what we are exploring with the Irish - whether more formal consultative arrangements should exist that would institutionalise Dublin's role, without any abrogation of HMG's responsibility for government in Northern Ireland. It is too early to predict the outcome. Doubts still exist because we cannot go beyond a consultative role for Dublin, and the Irish are concerned about being tied more closely to HMG's policy in the North with no actual power in return over that policy.

Joint Courts

4. The Secretary of State will wish to reassure Lord Lowry that the reasons for his opposition to joint courts are well understood. They were itemised in his original letter of 4 March and are similar to those set out in the 1974 report of the Law Enforcement Commission, which led not to joint courts but to extraterritorial jurisdiction. An extract from that report is at Annex A. The Taoiseach sees advantage in joint courts because they would make it difficult for even the most convinced nationalist to argue that there was political bias in the judicial system. However the practical and judicial obstacles are undoubtedly substantial.

5. In fact, the nature of the talks with the Irish - focussing entirely on a consultative role for the Republic - is the assurance to the Lord Chief Justice that no undesirable innovations are at hand. At most we would undertake to consider with the Irish whether new judicial arrangements might be desirable. In any such consideration we should be very much alive to the objections to joint courts. That would be a process similar to that undertaken by the Law Enforcement Commission in 1974, which was a joint North-South body.

Irish Complaints

6. In his letter of 26 March Lord Lowry enquired whether the

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Secretary of State might wish to tell him of any Irish complaints concerning the Judges and the courts, since he might be able to help. If he returns to this theme the Secretary of State may wish to assure him that the dialogue has not been of a kind to generate such complaints. Of course, as Lord Lowry will know, individual cases may prompt comment in the South as elsewhere. Notably Lord Justice Gibson's remarks on the men shot by the RUC in Co. Armagh last year caused something of a furore. But we have certainly not offered the dialogue as a channel of complaints from the Irish, nor has it been used for that purpose.

County Court Judges

7. The LCJ has still not brought the selection of the additional judge to a head (this is the only present vacancy: the appointment of an existing judge sideways to the post of Social Security Commissioner is back in the melting pot). The Court Service would welcome any impetus that we could give to this appointment; the Secretary of State might care to jog the LCJ.

Delays in coming to trial

8. The LCJ might give his view of the practical effect on the timetables of the recent collapse of two major accomplice trials; granted that there are still two big ones running (but one - Budgie Allen, UVF - will probably not survive), the pressure on the courts ought to be much reduced. The LCJ might also mention the courts' willingness of late to insist on cases being brought to trial even though the preferred defence counsel are engaged elsewhere; this is most welcome, so long as it does not provoke protests which the judiciary cannot cope with.

Emergency Provisions Act

9. The LCJ is interested in our proposed amendments. Mr. Buxton has promised to keep in touch with him. The points of interest to him now are ones of fine detail and it is suggested that the Secretary of State should not be drawn on such points. No serious differences are expected with Lord Lowry.

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Mr. Justice Hutton

10. The LCJ might possibly raise the question of Hutton's expenditure on moving his family to Edinburgh, with which the Secretary of State is familiar. Little would be gained by discussion of this.

DC

D. CHESTERTON

29 April 1985