

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.



HOUSE OF LORDS,
SW1A 0PW

21st January, 1982

CONFIDENTIAL

The Right Honourable
The Prime Minister

Dear Margaret,

The Judge Richards Affair

Though I cannot recommend any effective action (except perhaps from our back bench) I would like to share with you my concern about the implications of the Early Day Motion standing in the names of Jo Richardson, MP and over 90 other Labour Members calling upon me to exercise my statutory powers to remove Judge Richards.

Obviously, this Motion has been prompted by the rape case in which the Judge's sentence and his comments attracted such adverse comment in many quarters. I am troubled on two grounds. First, readiness on the part of MPs to put down a Motion of this nature following what can, at the most, be criticised as a single unwise decision strikes at the root of the independence of the judiciary. If a Judge is going to have to consider, every time before he gives judgment or imposes sentence, that his whole future may be called in question simply because an unpopular decision may give rise to public clamour followed by political pressure for his removal, he is not going to feel, or to be, truly independent in the exercise of his judicial functions. That would not only constitute a serious erosion of our liberties, but would have a very adverse effect on the whole of the judiciary: I have already had not only the Richards case (which has caused the judge great personal anguish), but also the Maw sisters' case, where the late Mr. Justice Smith was pilloried for exactly the opposite fault (i.e. for passing an allegedly too severe sentence) and put under pressure which, I am sure, contributed to his untimely death. Parliamentary hounding of Judges is not going to improve the quality of justice or make it easier for me to get the best people to accept office.

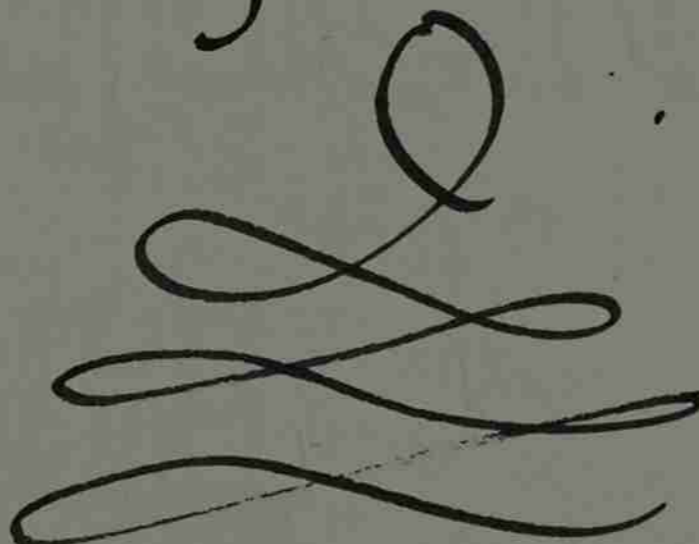
Secondly, the Motion is urging me to do something which is not only grossly unfair to the Judge, but also illegal. It would be unfair to penalise a single error by the abrupt termination of a Judge's office with all the implications for his professional and personal future: any employer who sought to dismiss an employee after many years of distinguished service on such flimsy grounds would rightly be made by the courts to pay compensation for grossly unfair dismissal. It would be illegal for me to act in

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this way, since, in the case of a Circuit Judge, the Lord Chancellor can exercise his powers only on the same grounds as Parliament can carry an address to the Sovereign to remove a Judge of the Supreme Court. Not by the wildest stretch of the imagination can one injudicious comment and one over-lenient sentence amount to "incapacity or misbehaviour" and, if a Lord Chancellor purported to deprive a Judge of his office in these circumstances, it is clear to me that, not only would he be exceeding his power, but his action could be challenged in the courts and the challenge would certainly succeed.

On both these grounds, I think the presence on the House of Commons' Order Paper of this Motion is highly undesirable and sets a precedent which ought not to be followed. I should, therefore, like to see my arguments advanced publicly in some way. My difficulty is that I cannot properly do this, because it would not be appropriate for a member of the House of Lords to criticise openly the contents of the Commons Order Paper. I thought, however, that it was right that you, the Home Secretary, the Lord President, the Attorney General, the Chief Whip and the Chairman of the Party (to whom I am sending copies of this letter) should be aware of my very real concern. I hope very much that you or they may be able to find some way of bringing my points home to the House of Commons (or at least our own side of it) without breaking any of the conventions or resurrecting an issue which has already done a great deal of harm to the administration of justice.

yrs.

A handwritten signature in black ink, consisting of several loops and flourishes, positioned below the closing "yrs.".