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24th December, 1985

David Norgrove, Esq.
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Dear David

ROSKILL REPORT

The Prime Minister, accompanied by other Ministers, is to see Lord Roskill and Lord Benson to discuss Lord Roskill's report on 31st December. This letter offers advice on the handling of the meeting. The Home Secretary and other Ministers have not yet had an opportunity to consider the issues, but this letter draws on some preliminary conclusions reached at a meeting of officials of the main Departments involved which took place yesterday.

Background

The report offers a useful and vigorous range of proposals for facilitating and making more effective the investigation, prosecution and trial of fraud cases. None of the recommendations seems obviously misconceived. Some, however, are concerned with complex issues of organisational efficiency with which the Committee have not been able to deal fully within the time available; and they imply a change in priorities which may have implications for the handling of other types of case. Three points are likely to give rise to controversy on civil liberty grounds:

58-60

(i) the proposed requirement on the defence to disclose its case before the trial (Recommendations 58-60);

(ii) abolition of the right of peremptory challenge of jurors (Recommendation 78);

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(iii) trial otherwise than by jury in certain "complex" cases (Recommendation 82).

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But overall the recommendations seem to provide a basis for substantial and worthwhile legislation in next season's Criminal Justice Bill.

Points for discussion

Against this background, the Prime Minister might wish

(a) to thank Lord Roskill and Lord Benson, as representatives of the Committee, for the hard work involved in the production of a report covering such wide ground to a strict

timetable;

(b) to give a general welcome to the report, and to assure Lord Roskill and Lord Benson of the importance which the Government attaches to a vigorous and sustained attack on fraud;

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(c) to inform Lord Roskill and Lord Benson that, as an earnest of this, the report is to be published very soon. The Home Office will keep Lord Roskill in touch with the arrangements - timing, press release, interviews etc. It is a matter for judgement whether there would be advantage in discussing some of the details with Lord Roskill and Lord Benson at the meeting (see below for outline of timing options);

(d) to point out that, even though the report is likely to be widely welcomed when it appears, there will in due course be criticism on civil liberty grounds of the proposals which would restrict jury trial and the defendant's right of silence; and to seek Lord Roskill's and Lord Benson's estimate of the weight of this criticism and the importance which they attach to these particular recommendations;

(e) to suggest to Lord Roskill and Lord Benson that they will need to find ways of putting over publicly - not merely at the outset but continually until the legislation has been passed - the positive arguments that support the Committee's recommendations;

(f) to explore in particular the likely reactions of the legal profession and the way in which these may be reflected in the debates in both Houses;

(g) to raise with Lord Roskill and Lord Benson the question how far it is realistic and sensible to treat fraud cases as raising issues distinct from those arising in other criminal cases. The Committee themselves seem clearly to be of the view that many of the changes which they propose could be of value in criminal cases generally, and the arguments which they produce in favour of these changes do not identify very good reasons for confining the changes to fraud cases. Nor do they offer a readily usable definition of what constitutes a "complex" fraud case. On the other hand, the opposition to such changes would be greater if they were to be applied to a wider range of cases. This comment applies particularly to the proposal that the prosecution should be able to avoid committal proceedings and that in some cases the right to trial by jury should be curtailed.

I hope that the above may suffice to get a good discussion going. It would seem advisable to avoid saying anything to Lord Roskill and Lord Benson that Ministers would not wish to have repeated outside.

E. R.

Timing of Publication

Your letter of 18th December recorded the Prime Minister's view that the publication of the Roskill Report should be accompanied by a Government statement setting out a clear timetable for handling the report and announcing the Government's intention to legislate in the light of it. The Prime Minister also said that publication should take place before the Second Reading of the Financial Services Bill but not during the Recess. Since the Ministerial meeting on 18th December, there have however been developments which you and I have discussed. I have also been in touch with the Private Offices at the Lord Chancellor's Department and DTI.

The nub of the problem is that Lord Roskill has an unmoveable engagement in court from Monday 13th to Wednesday 15th January. On the assumption that he would not wish the report to be published when he was unavailable to the press, we cannot publish the report before the Second Reading of the Financial Services Bill (already announced for Tuesday 14th January) unless we publish while Parliament is in Recess.

Ministers will have to decide therefore whether to:

(a) publish the report on Monday 13th notwithstanding Lord Roskill's non-availability. This is difficult to contemplate unless Lord Roskill gives his consent.

Another disadvantage of this option is that it would involve the Home Secretary in making the Roskill statement immediately before the Second Reading of the Public Order Bill that afternoon;

(b) publish Roskill while Parliament is in Recess and have a Parliamentary statement on the first available day. The disadvantages of this are that it would make the Parliamentary and public handling of the report that much more difficult. A further consideration is that while the Commons resumes on Monday 13th, the Lords is not back until the 14th. Publishing when Parliament is in Recess and having no statement does not seem an option;

(c) Publish Roskill as soon as Parliament is back and Lord Roskill available (Thursday, 16th would be the first possible date) and move back the Second Reading of the Financial Services Bill. This would involve a change in the business which has already been announced;

(d) keep the Second Reading of the Financial Services Bill as announced, but publish Roskill either later that week or early the following week, but in any event before the Bill went into Committee.

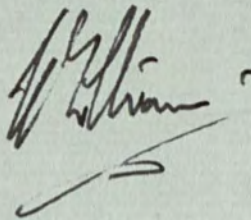
From the Home Office point of view, either option (c) or (d) would be much preferable to either of the other two. But

E.R.

there are other considerations which no doubt Ministers will wish to consider collectively.

Copies of this go to the Lord Chancellor's Department, Treasury, DTI and the Law Officers' Department and to the DPP.

Yours ever

A handwritten signature in dark ink, appearing to read 'W. R. Fittall', with a long, sweeping underline stroke.

(W. R. FITTALL)