

FROM:

RET

CP7466

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



PRIME MINISTER

Prime Minister

CP7
2019

HOUSE OF LORDS.

LONDON SW1A 0PW

17
CCPC
BLUP

I do not see how we can possibly proceed against this minute

Administration of Justice in Northern Ireland

WITH COP.

1. I am frankly appalled at the suggestion of three judge Courts of first instance contained in the Northern Irish Secretary's minute to the Prime Minister of 18 September. From the point of view of the administration of justice in the Province I can imagine no more disastrous step and the fact that it is blatantly, and to my mind cynically, proposed as a political sop to the Dail only makes it more certain that its reception and the political consequences would be disastrous. I feel it necessary to summarise some of the main objections to it which I have not been given the opportunity to discuss with the Northern Irish Secretary for the reasons contained in para 4 of the minute. My objections are as follows.

2. Despite what is suggested in the Secretary of State's minute there is no juristic case for three judge Courts at all. The suggestion has been considered carefully over a period of years by such different characters as Lord Gardiner, Lord Diplock and Sir George Baker. It has been turned down on its merits every time. It is bitterly opposed by almost all, and, I believe, every member of the Northern Irish Judiciary, Catholic and Protestant, who, in addition to objections on its merits, would regard it as a slight upon their own integrity since in their opinion (and mine) it could only be viewed as an admission that the existing arrangements are unsatisfactory.

3. The High Court and Court of Appeal in Northern Ireland consist of 3 Lords Justice of Appeal, the Lord Chief Justice and 5 puisne judges of the High Court (nine in all). Of the nine in this category only two, Higgins J and O'Donnell LJ, are Catholic. The existing Diplock Courts and supergrass trials have put a heavy strain on them, not diminished by their hitherto resolute,

but now declining, opposition to the abolition of civil juries. The County Court Bench (13 in all including the Recorder of Belfast) is, owing to recruitment difficulties, predominantly Protestant (12 out of the 13 are non-Catholic). (Catholics are particularly the targets of the IRA). There are heavy arrears of civil and ordinary criminal work in all courts. The introduction of three judge Courts would throw the entire system into disarray. Cases would take longer. Limited judge power would be wasted. In the light of the judge power available the Appeal system would be virtually impossible to operate. So far from being an argument for three judge Courts, the Black trial (a successful appeal against a decision of Kelly J in a supergrass case) referred to by the Secretary of State highlights the success of the present arrangements. It would be difficult to run an appeal system with such a small judiciary since a five judge Court would almost certainly be necessary to hear an appeal from a three judge Court, and in any event with such a close knit judiciary the whole appeal system would be made to look ridiculous. Incidentally the Black case is a good example. Before one High Court judge it took, I believe, in the neighbourhood of one hundred days (that is nearly half a judge's time for a year). Before three (multiplied of course because that was only one case out of many) the logistics are horrendous.

4. Politically and from the point of view of sectarianism the three judge Courts would certainly be disastrous. It would hardly be possible to run it except on the basis of two Protestants and one Catholic (if one could be found) and on the operation of the law of chance it would not be long before the Catholic judge would find himself in a minority of one to two. The fat would then be properly in the fire, and the situation would only be slightly better if a Protestant defendant found himself convicted by a divided Court with the Catholic judge forming part of the majority.

5. I believe that the Northern Ireland Secretary has underestimated the hostility with which this change will be treated by Unionists already deeply antagonised by the agreement, and the serious effect that this added source of tension between the two communities would have on sectarianism generally.

6. It is the opinion of the Lord Chief Justice (which I share) that far from increasing the security of judges in cases involving special risk, the three judge system would only put three judges at personal risk instead of one.

7. I must add that I consider that this proposal is based on a misunderstanding of the nature of the dynamic in Irish nationalism. In 1921 we signed a Treaty which we have honoured in spirit and in letter. That Treaty envisaged a Common Sovereign (George V), common membership of what has since become the Commonwealth, Treaty Ports and a permanent Border, (subject to minor adjustment which proved impossible). Irish Nationalists have never recognised the Treaty which they regard as having been made under duress. Their constitution claims all 32 counties. They have successively become a republic, left the Commonwealth, recovered the Treaty Ports, established neutrality in the War against Hitler and never ceased to interfere in Northern Irish affairs. Each concession is regarded as a jumping off place for further demands with little enough given in return. No one wishes more than I to live on good neighbourly terms with the Republic. No one wishes more than I better relations between my fellow citizens in the North, and, incidentally, no one could be more opposed than I to the foolish uncouth and boorish tactics of the present day Unionist Party. But to go down this sort of road simply to gain a temporary advantage in the Dail is neither sensible nor politically or morally justified.

SECRET

8. I am copying this minute to the Lord President, the Foreign and Commonwealth Secretary, the Home Secretary and Sir Robert Armstrong.

H: of S: M.

22 September 1986

SECRET



M 2 p H

RECEIVED



10 DOWNING STREET

Prime Minister

Northern Ireland Courts

You asked to see
Lord Lowry's note. You
will find it attached
to the Lord Chancellor's
minute which ^{pretty concise} has
just come in (a
vigorous piece!).

You ought also to
read Tom King's note,

if you can. I have
arranged a meeting CDP 22/9.
for 2 October.



10 DOWNING STREET

~~CF~~

Northern Ireland

Please keep this

on file, for

the PM's near

discussion with

the Northern Ireland

Security.

CDP.

(N. Ireland. 16/9.
LCS n Note 21.8.86 was
attached but removed from file →
CDP 22/9)

SECRETNon-jury trial of Scheduled OffencesINTRODUCTION

1. The mode of trial since 1973 has been by a single judge without a jury. Two-judge or three-judge courts ought to be resisted on three grounds, judicial, administrative and political, as set out below. I also refer to the following appendices:
 1. Diplock Report 1972 paragraph 39;
 2. Gardiner Report 1975 paragraphs 30-33;
 3. Baker Report 1984 paragraphs 109-126;
 4. Note dated 23rd May, 1973;
 5. Note dated 15th November, 1983;
 6. Copy letter L.C.J. to P.U.S., N.I.O., dated 4th August, 1986.

JUDICIAL GROUNDS

2. Our system is unsuitable for collegiate trial of fact, including rulings on admissibility and procedure. This drawback is greater if the presiding judge, as he should be, is merely first among equals.
3. Single judge trial is accepted in civil cases, where serious imputations are often made and very important issues must be resolved on a balance of probabilities, which increases the difficulty.
4. In a jury trial one judge already takes sole responsibility for two issues which may decide the outcome:
 1. the existence of a case to answer; and
 2. admissibility of evidence, including the statements of the accused.He should continue to do so in a non-jury trial.
5. The different views which the members of a plural court could take on the matters in paragraph 4 would create irreconcilable difficulties in considering the evidence.
6. The need for the "safeguard" of a plural court is negated by the paucity of examples of allegedly wrong or doubtful convictions and also by the unfettered right of appeal.
7. The argument of "safety in numbers" applicable to a lay jury, does not apply to a judge whose full-time duty is to reach conclusions upon evidence.



8. There is no true parallel between trial and appeal, where the matters for decision are legal propositions and the trial judge's performance.

9. Sole responsibility for a conviction is probably a greater protection for the accused than shared responsibility.

10. Trial by a plural court could result in superficial treatment of some issues or, alternatively, agonising and lengthy discussion, and could make it difficult to produce a judgment based on reasoning in which all or a majority concur. This could also lead to less detailed written judgments which would be less open to analysis on appeal to the detriment of appellants.

ADMINISTRATIVE GROUNDS

11. To provide enough plural courts would place an intolerable strain on judicial resources and eventually on the quality of the Bench. ~~Nearly all the appointments~~ would of necessity be in the High Court, since not enough competent persons would be available for the county court. This fact would accentuate the depletion of the Senior Bar and would imperil its ability to provide adequate representation for those accused of scheduled and other offences. Good cross-examination is a crucial factor in relation to admissibility of confessions and to the evidence of informers.

12. With the great increase in civil business, the manpower situation is even worse than when Diplock, Gardiner and Baker discussed the problem.

much longer

13. Trials would take longer and this would exacerbate the problem.

14. To remove some offences from the schedule would not help, unless they were made summary offences, because the same judges, counsel and courts would be required. And the kind of offence which might be descheduled is at present the subject of a short trial or a plea of guilty.

15. The suggestion that plural courts would be safer for judges is unwarranted and, with regard to cases which may involve special risk, it would be pointless to endanger more than one judge.

16. To confine plural courts to a limited category would not make sense, since the political demand would centre on the complex or



important case, which would be just the least suitable for this mode of trial.

POLITICAL GROUNDS

17. Plural courts would not increase public confidence (assuming for the sake of argument that confidence is lacking in persons whose confidence could by any means be either won or restored). Their adoption would promote argument as to whether cases had been properly tried up to the present and would lead to speculation as to the motives inspiring the composition of each judicial "team" and about the real or supposed differences of opinion among the judges constituting each court.

18. It would be a political mistake to use plural courts as a means of "reassuring the minority" while disregarding the effect on the majority and also a mistake to think that, because Mr. Paisley in Committee voted for three judges in 1973, the majority would be politically content with that now, having regard to the clamant demands of Mr. Mallon and the Government of the Republic for three judges.

19. To acknowledge a deficiency in the one-judge system, and thereby to admit that H.M. Government was wrong in 1973 and 1975 (and indeed in 1978 when renewing the Northern Ireland (Emergency Provisions) Act), would be a pointless concession of which full advantage would be taken.

20. "Public confidence" (an elusive concept) could actually be reduced by the judicial and political shortcomings of the plural method which I have listed.

21. It would be confusing the shadow with the substance to concede three-judge courts in the hope of winning a supposedly valuable benefit from the Government of the Republic. They will confer no benefit (since it is scarcely in their power to do so) that would not be far outweighed by the detriments listed above.

CONCLUSION

22. Single-judge trial has served us reasonably well for 13 years. It could be regarded as folly, both judicial and political, to change it in the face of the decision in 1973 and the advice consistently tendered to H.M. Government.

23. The administrative arguments, even if not the most important, are by themselves well-nigh conclusive against a change.



24. No judge has asked to be relieved of the "burden" of sitting alone. There is, indeed, acute awareness of the different burdens which sitting in a plural court would involve.

25. The justice of the present system, having regard to the usual level of acrimony of political argument here, has scarcely been called in question, but a change would not only put its justice in issue but lead to a whole new set of complaints and problems.

Lowry.

21.8.86

Appendix 1 (to LCS N. Ireland rpt to 20.8.86)

Diplock paragraph 39

39. We have considered carefully whether trial without a jury of cases on indictment ought to be undertaken by a single judge or by two or more sitting together. We think that in any event the jurisdiction should be confined to those judges who are already qualified to sit on trials upon indictment and are experienced in this class of judicial work; that is to say, members of the Court of Appeal and the High Court and Judges of the County Courts. The total strength of the Appeal and High Court benches is seven. There are the same number of County Court Judges. This, in itself, would render impracticable trial by a plurality of judges in any significant number of cases—and terrorist crime at present constitutes the bulk of the calendar of indictable crime. But we should in any event recommend trial by a single High Court Judge or, in the less serious cases, by a single County Court Judge, in preference to a collegiate trial. Non-jury trials in civil actions are always conducted by a single judge alone. Our oral adversarial system of procedure is ill-adapted to the collegiate conduct of a trial of fact. In criminal proceedings, in particular, immediate rulings on admissibility of evidence and other matters of procedure have constantly to be made by the single judge when sitting with a jury. It would gravely inconvenience the progress of the trial and diminish the value of oral examination and cross-examination as a means of eliciting the truth, if a plurality of judges had to consult together, albeit briefly, before each ruling was made.

Appendix 2
Gardiner paragraphs 30-33

30. The next question is whether a trial without a jury should be held, as it now is under section 2 of the 1973 Act, by a single judge. The Diplock Commission considered this, and concluded in paragraph 39 of their Report that they favoured a single judge court. We did, however, consider two suggestions which were put to us by various witnesses: namely, that the court should consist of a plurality of judges, or that it should consist of a judge and two lay assessors.

31. On the first of these suggestions we were given no convincing reasons why a plural court would be preferable. We agree with the Diplock Commission who said in paragraph 39 of their Report:

"Our oral adversarial system of procedures is ill-adapted to the collegiate conduct of a trial of fact. In criminal proceedings, in particular, immediate rulings on admissibility of evidence and other matters of procedure have constantly to be made by the single judge when sitting with a jury. It would gravely inconvenience the progress of the trial and diminish the value of oral examination and cross-examination as a means of eliciting the truth, if a plurality of judges had to consult together, albeit briefly, before each ruling was made."

There is also a practical reason for adhering to the present system of a single judge. The provision of six courts, each consisting of three judges, would require 12 more judges; as this is more than half of the present strength of Queen's Counsel at the Northern Ireland Bar, from whose ranks judges are normally appointed, this would be an unacceptable weakening of the Bar at a time when its numerical strength is barely adequate to meet the many demands upon it. We conclude that any substantial increase in the number of judges for the purpose of constituting plural courts would be likely to produce further difficulties and delays and so defeat its purpose.

32. The other proposal for a court consisting of a single judge and two assessors recognises the difficulties mentioned above. However, it has its own problems, and those urging the appointment of assessors did not agree on either the source from which assessors should be drawn or what the respective functions of the judge and the assessors should be. It was suggested that Justices of the Peace should be empanelled for this purpose. But Northern Ireland Justices of the Peace have neither the jurisdiction nor the experience of their counterparts in England and Wales, and could not be made to accept a function for which they have not been appointed. Moreover, assessors, from whatever source obtained, would presumably be selected from a list on a rota system in much the same way as juries, and would be exposed to exactly the same pressures that made the jury system inappropriate. Our conclusion is that a trial with assessors is not a practicable proposition.

33. While recognising that the need to decide all the relevant issues of fact and law is an onerous task for a single judge and that a judge sitting alone may on occasion make an error, we consider that the appeal without leave provided for by section 2(6) of the 1973 Act offers a reasonable safeguard in this connection. We recommend that the courts under section 2 of the 1973 Act should continue to be constituted by a judge sitting alone.

appendix 3

Baker paragraphs 109-126

This assumes miscarriages of justice:

- (d) The burden on the judges, especially in the so called "supergrass" cases. They are not complaining;
- (e) The return of juries would emphasise the responsibility of the citizen in the administration of justice. This is a sentiment with which few would quarrel but the question is can it be done now? The answer from many sources is "No".

I agree. Would there be juries in any trials if Sinn Fein came to power?

One suggestion made for the first time at a late stage is that juries should be brought from the mainland to try scheduled cases. This, although intended to be helpful, seems to me to be so impracticable and open to so many objections that I dismiss it without further discussion.

Composition of the Court

109. Turning now to the proposals for the composition of the court with personal experience of having sat in England and Wales in courts of five judges, three judges, two judges and single judges, with or without juries; with assessors hearing appeals on the taxation of costs; and with magistrates, I have an open mind and no strong objection to any. Normally with magistrates at Quarter Sessions, now the Crown Court, the chairman conducts the trial itself with a jury, then all confer on sentence. But there is a jurisdiction, namely appeals from the decision of magistrates at Petty Sessions, which are by way of rehearing of the evidence and which all present participate in the decision.

110. "Strong objection" means what it says; I have always had a slight bias against two judge courts but recognise that it is probably based on a somewhat disastrous King's Bench Divisional Court which, before 1939 heard County Court appeals, coupled with waste of time, money and effort if in a civil appeal there is disagreement and a rehearing before 3 judges is ordered. Nowadays because of the need to conserve judge power and to cope with a backlog of cases, two judge courts often comprise the majority of those in the English Court of Appeal Civil Division. The concern for Northern Ireland is of course about the composition of the Court for the trial of serious crime including the long "supergrass" cases, which is a rather different problem. There is an underlying and widespread feeling of unease about trial by judge alone which gives rise to the suggestions that the non-jury court should be composed of:

- (i) three judges;
 - (ii) two judges;
 - (iii) a judge with assessors or RMs
- rather than a single judge.

111. These suggestions were canvassed in 1973. The then Attorney General, Sir Peter Rawlinson, answered them in detail.¹ Nevertheless an amendment moved by Mr Merlyn Rees MP² that the court should consist of a presiding High Court judge and two other persons who might be High Court or County Court judges or practising barristers or solicitors of not less than 10 years

¹ Parliamentary Debates, Standing Committee B, 1972-73, Vol 2, 15 May 1973, Cols 126-133.
² Parliamentary Debates, Standing Committee B, 1972-73, Vol 2, 21 May 1973, Col 188.

standing was carried by 13 to 11 (12 opposition members and Dr Ian Paisley MP against 11 government supporters).

112. But the Diplock recommendation¹ that trials of scheduled offences should be by a judge of the High Court or a County Court judge sitting alone with no jury was restored at the Report Stage of the Bill by omitting Mr Merlyn Rees' amendment and enacting Section 2(1) of the EPA 1973 which has stood without amendment for over 10 years and is now Section 7(1) of the EPA 1978. I note in passing that there is no definition of "Court" save that it is "without a jury". This seems to be because the trial on indictment of a scheduled offence is held only at the Belfast City Commission—a single judge court. As Dr Paisley voted for the amendment it is not surprising that the DUP submission to me, while recognising the immense difficulties of having juries, to whose return they look forward, and understanding the need for trial by judge alone, believe that as an additional safeguard consideration should be given to a panel of three judges.

Three or Two Judge Courts

113. Diplock had concluded that the strength of the NI Appeal and High Court Bench, namely 7, with the same number of County Court judges "in itself would render impracticable trial by a plurality of judges in any significant number of cases". He added that our oral adversarial system is ill adapted to the collegiate conduct of a trial of fact and gave instances of procedural difficulties which would gravely inconvenience the progress of the trial. Gardiner also considered a court with a plurality of judges. He agreed with Diplock's conclusion pointing out that to man with three judges the five non-jury courts then sitting or the six which they hoped would sit continuously would require 12 more judges which was over half the strength of Queens Counsel at the NI Bar. They concluded that any substantial increase in the number of judges for the purpose of constituting plural courts would be likely to produce further difficulties and delays and so defeat its purpose².

114. With diffidence, I had some doubt about procedural problems other than delay so I have ventured to consider the only three judge courts for the trial of criminal offences of which I have heard, excluding Courts Martial of three or five officers sitting with a Judge Advocate, namely:

(a) In India

In 1917 a Committee was appointed under the presidency of Sir Sidney Rowlatt, a judge of the English High Court, to consider criminal conspiracies connected with revolutionary movements in India and to advise how they could be dealt with effectively. They recommended "that provision should be made for the trial of seditious crime by benches of three judges without juries or assessors and without preliminary commitment procedures or appeal". *The Anarchical and Revolutionary Crimes Act 1919* (Government of India) established such a court when necessary to try offences connected with any anarchical or revolutionary movement. The majority opinion of the court prevailed. I have no information about how often such courts sat or whether they were considered successful, nor have I been able to discover any procedural difficulties anticipated or real.

¹ Recommendation (g), page 3, Cmnd 5185.
² Para 39, Cmnd 5185.
³ Para 31, Cmnd 5847.

(b) *In the Republic of Ireland*

Article 38 of the Constitution of 1937 provided that Special Courts might be established in certain circumstances. *The Offences Against the State Act 1939, Part V, Section 35(2)* enabled the Government to make a proclamation "if and whenever and so often as (it) is satisfied that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order . . ." bringing Part V into force and then declaring certain offences to be scheduled offences¹. The Attorney General may request that non-scheduled offences shall be tried by the Special Court. Appeal lies to the Court of Criminal Appeal.

The Special Court consists of an uneven number (not less than 3) of members as the Government shall from time to time determine² appointed from judges of the High Court or Circuit Court, justices of the District Court, barristers or solicitors of not less than 7 years standing or officers of the Defence Forces not below the rank of Commandant. Verdicts are by a majority so if a third of the panel thought the accused not guilty he is still convicted. Disclosure of whether or not a verdict is unanimous is forbidden³. The Court has control of its own procedure for all purposes and may make Rules therefor.

A national emergency was declared by Dail Eireann in 1939 and has existed ever since. The earlier courts consisted exclusively of military officers but now in a Special Criminal Court set up by order of 31 May 1972 (proclamation 26 May) the norm is a 3 judge court with a High Court judge presiding and judges of the Circuit Court and District Court. Sometimes two Circuit judges sit with a judge of the District Court or a High Court judge with two District Court judges. I have set out this detail because many witnesses have urged me to consider the Dublin three judge court. They ask "if it works there why not in Belfast?"

A paper delivered as a public lecture at Trinity College Dublin by (now) Senator Mary Robinson, Professor of Penal Legislation, Constitutional and Criminal Law and Evidence and later published⁴ was critical of several aspects of the court, recommending that membership should be confined to the judiciary, that it should be scrutinised continually especially in respect of the trial of persons having no connection with any unlawful organisation or subversive group and that it should sit in one division only and always be presided over by a High Court judge. I omit reference to her arguments about its constitutional legality but note that she says in relation to the court ruling on admissibility of statements and then the weight to attach to them "... one cannot but be impressed with the way in which the court has discharged this difficult dual function. Indeed the present Special Criminal Court operates very well when sitting in one chamber presided over by a High Court judge and covered adequately by the press". There was no mention of any of the difficulties over procedure feared by Diplock and Gardiner nor did I hear of any during my visit to Dublin. Unfortunately it was not possible to see the court in action as it was not sitting but I was told it worked well and posed no problems although there was still some disquiet among law abiding thoughtful citizens. But the real point of difference is that the volume of work is and always has been entirely different

¹ Section 36(1).

² Section 39(1) (3).

³ Section 40(1).

⁴ Dublin University Press 1973, *The Special Criminal Court*.

from that for the non-jury courts in Belfast. There has never been more than one court sitting at a time. There is no backlog of work but relatively few (under 60) cases were tried in 1982.

115. The strength of the NI Bench and Bar is now in January 1984:

The Lord Chief Justice (LCJ)

3 Lords Justices (LJJ)

5 High Court Judges (HCJ)

The Recorders of Belfast and Londonderry and 9 other County Court Judges (CCJ)

28 Queens Counsel

Junior Barristers

33 over 10 years standing

41 over 7 years standing

128 under 7 years standing

17 Resident Magistrates (RM)

10 Deputy Resident Magistrates

116. The trial on indictment of a scheduled offence must be held at the Belfast City Commission¹. The judges of the Belfast City Commission for such trials are the LCJ, the LJJs, the HCJs, the Recorders and, at the request of the LCJ, CC judges who all in fact take a turn and try about two thirds of all scheduled offences except murder trials. In 1978 the Lord Chancellor undertook that deputy judges would not be employed on scheduled cases. The LCJ and the three LJJs have to man the Court of Appeal for its civil appeals. The HCJs can sit in the Court of Appeal in a criminal cause or matter. They are also responsible for the work of the Queens Bench, the Chancery Division and the Family Division with one judge having particular responsibility for each of the latter two. Then there is the Crown Court whose jurisdiction to try non-scheduled offences with a jury can be exercised by the LCJ, LJJs, HCJs and CCJs. The CCJs have also to dispose of the work in the County Courts. There is a provision which would allow the appointment of two more High Court judges². Several witnesses have urged that this be done immediately to keep up with the work as it is, and reduce delays. (Since this was written one of the two has been appointed). But as has been for long the complication in England, there is little available court accommodation and problems with what there is in that there are not enough large courts. The pattern in recent times has been for two courts to sit at the Crumlin Road hearing long scheduled cases and one to take pleas of guilty and short trials of scheduled offences. There is support for a fourth court to sit. Of the longer trials one at least has been a "supergrass" case lasting for months with many accused—there were 38 in the Black case. When I visited the courts at Crumlin Road two courts were engaged on "supergrass" trials although one had had to be adjourned for that particular day so that court was not in session.

117. In 1980 there were four or five courts normally in session in the Crumlin Road Courthouse³. Many counsel are involved and have commitments in such cases which must be expected to cover the whole of 1984. A two judge court

¹ EPA 1978, Section 6(1).

² Section 2(1) Judicature NI Act 1978.

³ "Ten Years On", page 58.

would require three more judges, and three judge courts, six more. The LCJ submits, and I accept, that to provide even three new judges would so deplete the senior bar, that even allowing for the appointment of some new QCs the Bar's ability to provide counsel for the defence of persons charged with scheduled offences could not be guaranteed. Seven were called within the Bar in March 1983 and it has to be emphasised that there are only 33 juniors of over 10 years standing. As the figures show the explosion in the strength of the junior bar has been more recent in Northern Ireland than in England hence the 128 under seven years standing. Finally expert cross-examination is especially vital to test witnesses on the *voir dire* (the trial within a trial on the admissibility of statements) and also the evidence of informers. The alleged terrorists realise this for not only do they now recognise the court but they seek the services of the supposedly best counsel. Much delay has to be attributed to attempts to permit them to have counsel of their choice by adjourning or delaying trials at their requests¹.

118. Nor must the effect of the depletion of the senior bar on the ordinary criminal work and the civil work of the courts be overlooked. The wave or its ripples will affect them all. Would it be possible to have more judge power from Great Britain? This suggestion had no support. There were many objections on the English side that there are not enough judges to cope with the work there and even retired judges are fully engaged. Three additional LJs have recently had to be appointed. There was so much opposition in Northern Ireland to the idea that I have not even asked for an opinion from Scotland. The main points were:

- (a) trial by "Brits" even as a junior member of a collegiate court would cause massive reaction by both Republicans and nationalists. They would not have the feel of the local community and might unwittingly cause chaos in sensitive areas. I appreciate this fear after considering Northern Ireland for this Report over six months. Even the use of an English Circuit judge to take jury trials, releasing a Northern Irish Circuit judge to sit on a scheduled case court would be highly unpopular.
- (b) English judges would be regarded as prime targets, security would be difficult and it would be wrong to ask them to take the risk.

119. I have already referred to the absence of any evidence of procedural difficulties in the Special Court in Dublin. This is not to say that they would never arise. The single judge in Northern Ireland always writes his judgement and gives his reasons stating the law as he has applied it to the facts he has found. Another judge while reaching the same conclusion may take a different route, adopt different reasoning or not find exactly the same facts. Are there to be three judgements from which it will be obvious that there has been some disagreement, or only one? Two judges would have to be unanimous for a guilty verdict but what of three? Suppose two consider there is a *prima facie* case or that a statement is admissible, the third does not; what then? How and by whom are the teams to be picked and will a very junior judge never be in danger of being over-awed by the forcefully expressed views of an experienced senior? From my own past experience as junior in a two judge court I know how worrying and difficult it was to stand firm against such psychological pressure

¹ Para 176.

and the relief when a new court supported my view. There are those who think that the existence of sole and undivided responsibility backed as it is by an unfettered right of appeal to a three judge appeal court assures that the interests of the accused receive the maximum consideration. Conversely the sharing of responsibility would not necessarily promote his interests to the same extent. At present the case of a person accused of a scheduled offence is heard by four judges—the trial judge and three in the appeal court. A plurality of trial judges could well make the manning of a three judge appellate court impossible. Of course procedural difficulties may be overcome. Administrative rules are servants not masters. But would the court be a better court or only a different court? Of one thing I am certain: in Northern Ireland a plural court be it with judges or assessors would be subject to as much if not more criticism than the trial by judge alone. No judge is in favour as far as I am aware and most counsel and other lawyers with whom I have spoken are against. One has described any such change as “a recipe for disaster”; others consider that a change from trial by judge alone would tend to destroy public confidence in the judiciary—a cherished aim of the terrorists—and would be pointless and harmful. The LCJ considers that no valid compromise is possible between the trial of scheduled offences by judge alone and trial by jury.

120. That judges have been and probably will be terrorist targets is not a factor which has been put in the scales. In any event two or three judges would be no less vulnerable than one.

121. In 1975 Gardiner reported “... we were given no convincing reasons why a plural court would be preferable”. If the single judge courts work well then it must be for those who advocate change to a tribunal other than a judge and jury to produce good reasons. The onus here is on the “reformers”. While many organisations and indeed lay individuals, with some academic lawyers and a few in practice, advocate a plural court or alternatively a court composed of a judge and assessors being laymen or RMs, there are only two arguments in support:

- (a) Judges are case hardened;
- (b) It would look better.

Case hardening

122. This is one of those much used expressions, which by repetition is given validity. I understand it to mean that the judge has heard it all before; therefore he does not believe the accused; therefore he is or becomes prosecution minded or more prosecution minded. I accept at once that it is possible. There were some metropolitan magistrates in my early days at the Bar who were to be avoided if at all possible even in, or especially in motoring offences. Juries have been known to step up their conviction rate after hearing a few cases and recently a junior barrister in England has been publishing his ideas that English judges are prosecution minded. Whatever the facts, to which I shall come in a moment, it is a poor argument for a plurality of judges. Two or three case hardened judges would be no better and indeed worse than one; doubling or trebling would be no remedy for this alleged judicial condition.

¹ Para 31, Cmnd 5847.

123. Of the fact of "case hardening" I have discussed the possibility with many Northern Ireland judges. The most important point to emerge is that while none acknowledges that it has happened even to one of his brother judges, the danger is well recognised and I am convinced that each one is continually thinking of the possibility and warning himself against leaning or even appearing to lean to the prosecution or against the defence. There is a more positive approach than that of the English judge who of course does not have the same problems. So it may well be that those who with perfect honesty and real belief advance case hardening as an argument are, on analysis, saying no more than that an experienced judge knows what is likely to happen in given circumstances or when and where a defence is likely to run into difficulties. That is not to say that any Northern Ireland judge ever takes over the prosecution. They do not and indeed when sitting alone are very careful never to assist the Crown, even on a technicality.

124. Some seek to support the allegation of case hardening by statistics. The argument is that a fall in the acquittal rate must be caused by the judges who have not found so many, or proportionately so many, not guilty, and the reason they have found more accused guilty is because they the judges are case hardened. Even in 1979 when on one view of the statistics (set out in full at Appendix H) acquittals had been falling and on another view steady save for 1977, it was accepted that a possible reason was the greater care by the prosecuting authorities in the preparation or selection of cases¹. This must be so. Presumably those who base an argument on a fall in the acquittal rate must accept that a rise in the rate, as has happened in 1981 and 1982, heralds a new era. I do not believe the figures prove or even tend to prove anything.

125. The relevant figures taken from Appendix H are those which relate to actual contested trials in scheduled cases, that is disregarding pleas of guilty. They are:

<i>Year</i>	<i>Found Guilty</i>	<i>Acquitted</i>	<i>Proportion of Total (ie those found Guilty and those acquitted) who were acquitted</i>
1973	37	23	38.33%
1974	350	155	30.69%
1975	323	86	21.03%
1976	255	68	21.05%
1977	371	57	13.32%
1978	189	48	20.25%
1979	137	38	21.71%
1980	78	19	19.59%
1981	68	35	33.98%
1982	82	44	34.92%
1983 to 1 October	46	19	19.23%

Column 4 is of course the vital column. The real question must be whether anyone or any appreciable number of accused have been wrongly convicted. This is wider than but would include those who are or may be innocent. One

¹"Ten Years On", page 61.

QC told me of a case in which he would have expected a jury to acquit. He put it no higher than that. Other persons have said there have been such cases and have promised to send me details. They have not done so. So I have heard of no instances of a person being wrongly convicted nor has the LCJ.

126. It is unnecessary to say more about the suggestion that a plural court would look better. It is no more than a cosmetic argument, and although honest, I would ask "look better to whom?" Even critics at the UN do not apparently attack the one judge courts. There is much to be said for the wisdom of Lord Falkland who said in 1641 "If it is not necessary to change it is necessary not to change".

Appendix 4

APPENDIX A

CONFIDENTIAL

Trial of Scheduled Offences One Judge or Three

INTRODUCTION

1. In view of the success in Committee of the opposition amendment, it may be helpful to set out my views in a more discursive way. I consider that the amendment is misguided and that if trial by a single judge is not restored the general administration of justice will suffer. I now proceed to analyse the main points.

ACHIEVING A JUST RESULT

2. I consider that the single judge method is much better forensically and it is notable that, even in the most important civil cases, trial by a single judge at first instance has been in modern times the completely accepted alternative to trial with a jury.

He will have to give a reasoned judgment which, like the decision of a judge sitting alone in a civil case, will be more open to review on appeal than the verdict of a jury.

The fact that he must exercise sole responsibility and that he is seen to be doing so is the best possible guarantee that an accused of whose innocence a reasonable possibility exists will not be convicted.

I have not heard it suggested that judges sitting alone will be unfair or that they are more likely to reach wrong conclusions than three judges. I think this is a point which requires emphasis.

I would also draw attention to the intellectual difficulty, (which is not shared by the members of a jury or court-martial), of reaching joint conclusions and embodying them in the kind of judgment which must be given in order to afford a fair chance on appeal. There is the further practical difficulty of reaching an agreed text within an acceptably short time. The difficulty will be psychologically increased by the need or desire to defer to the views of colleagues of different judicial rank or different background.

SAFETY OF THE JUDGES

3. This is relevant, partly because of the responsibilities of the security forces. It is, in my opinion, a mere assumption that the

degree of risk, (whatever it may be now), will be appreciably increased by non-jury trial or that there will be a greater risk to a judge sitting alone. This purported analysis of the terrorist mind does not convince me at all. If the terrorist reaction to the carrying out of one's judicial duties is rational, which I doubt, who is to say that the presiding judge who delivers the judgment of the Court or pronounces a 10 or 15 year sentence will be any safer than a single judge who does the same thing? Or that either would be in greater danger than a judge imposing sentence now or even than a judge who virtually decides the case by admitting a confession after saying in open Court that he disbelieves the accused's allegations of torture?

On the contrary, assuming that only a minority of cases put the trial judge at risk, three judges will be in danger in those cases (and the security forces will have three to think about). Furthermore, if a Catholic judge is sitting with two Protestants and an I.R.A. terrorist is convicted and sentenced, will not that judge be vulnerable as "a lackey of a foreign power" to a greater extent than if he were trying the case on his own and seen to be giving his own impartial rulings, findings and sentence?

In any case the safety of the judges, while important, is not the paramount consideration, and ought to be a factor only if the risk occasioned by a single judge trial is significantly greater.

PUBLIC CONFIDENCE

4. The public may be divided into a small section which assumes that the judges, even if they are sometimes wrong, are honest, a happily even smaller section which assumes that they are dishonest and a large section which is composed of people who either take no interest in the question or could be persuaded one way or the other. The last is the subsection to think about. The abolition of jury trial admittedly will focus rather more attention, (I advisedly put it that way) on the actions of the judge and thereby lead to more speculation about his probity. I do not think that the "speculators" will give any more or less credence to a judge whose motives they

suspect, whether he is sitting by himself, or as presiding judge or as a member of a Court of three. Indeed, if a Court of three fails to reach agreement, political and religious differences will be highlighted and commented on as never before.

It is too much to expect that all the members of a Court of three, even when they agree, will always reach their conclusions by the same route, and for the purpose of appeal it may be necessary to indicate the differences in approach. This would be far more likely to undermine confidence than single-judge decisions and the alternative of not announcing reasons is unacceptable, because it takes away many of the benefits of an appeal. It would also reduce public confidence.

To say that it is a big step from jury trial to single-judge trial and that therefore three-judge trial is an acceptable compromise is, to my mind, an example of confused thinking. One must go back to paragraph 2 above and answer the question, "Given that juries are suspended, is trial by a single judge as good a method as any other of ensuring a just result?" I submit that it is and that no-one has credibly argued the contrary.

The next argument against single-judge trial is that it involves "too great a responsibility". This argument must, for the moment, be considered by itself and not as part of the "just result" or "safety" argument. Of course the trial and possible imprisonment of one man by another is a grave responsibility, but it must remain a grave individual responsibility even if it is borne by three judges or twelve jurors; it cannot be lessened appreciably, if at all, through being shared. If one man is thought capable of reaching the right decision, then he must and can accept responsibility. It is necessary, also, to appreciate the kind of decision which the tribunal of fact must make. If the decision is whether to declare war, or enter Europe or dissolve Parliament, there are innumerable points to consider and the decision one way or the other may lead to triumph or disaster. There are many other important decisions in business and private life which may have an irrevocable effect. Most of these are preceded by discussion and possibly by agonies of doubt. The decision-making process in a criminal trial is quite different: the case must be decided on the

evidence alone, and if there is any reasonable doubt the accused must be acquitted. I say all this to emphasise my view that the responsibility of a single judge would be by no means intolerable. One must also remember the responsibilities which both High Court and County Court Judges are expected to discharge as a matter of course. I would never underrate the importance of the result of a trial on indictment, but there are other issues of fact which have to be decided by a single judge and which are no less important to the individual.

There is another undesirable feature of three-judge Courts, so far as public confidence is relevant. The composition of each Court will involve a degree of selection and "team-building" by the Lord Chief Justice which I regard as very likely to attract comment and as tending to undermine confidence. Hitherto judges have taken their turn and there has been no selection of judges. This has worked well at High Court and County Court level.

ADMINISTRATION OF JUSTICE

5. If the advocates of three-judge Courts had a better case, particularly on the "justice" issue, I should be diffident about pointing out the very disrupting and delaying effects of yielding to their arguments. It is obvious that, even if additional or deputy judges are appointed, one cannot get through the same number of cases if the judges have to sit in threes, and it is equally clear that any method of recruitment will be a severe strain on the ability of the profession to carry out its duties, including the duty of providing adequate defence of the accused. I need not dwell on the arrears of civil work or on the desirability of speedy criminal trial, particularly if the chance of bail is to be reduced.

CONCLUSION

6. I would urge that, since a bi-partisan approach to this Bill has proved impossible, the original formula of single-judge Courts, as recommended by Lord Diplock's Commission, should be restored, unless the Government has been actually persuaded that three-man Courts are to be preferred. The issue is not something, (like capital

punishment or even trial by jury), on which the instinct of the ordinary member has to be given free rein, as perhaps expressing vicariously the feelings of the country as a whole, and I do not believe that the average member of the public in Northern Ireland has any preference as between single-judge and three-judge trial.

7. I apologise for the length of this Note and can only make the excuse that I think the subject is of importance to the working of the Courts and the administration of justice in Northern Ireland.

23rd May, 1973.

R.L.

Appendix 5

One Judge or Two in Diplock Courts?

Memorandum by Lord Chief Justice of Northern Ireland

INTRODUCTION

1. This memorandum proceeds on the basis that jury trial cannot yet be restored and that the only practical alternatives are trial by one judge or two.
2. One-judge trial has been successfully used for ten years and therefore the onus to justify a change is on the advocates of two-judge trial.

POSSIBLE REASONS FOR A CHANGE

3. I have not since 1973 heard any reasons advanced in support of a change and, when I do, I may have further comments. One thing, however, is clear: if the idea is to introduce two judges because the judiciary has become "case hardened", then it is misconceived, because, if one of two judges is thus afflicted (or both), plurality will certainly not provide a remedy for this judicial condition.
4. If it could be credibly demonstrated that, after trial at first instance and, if necessary, resort to the Court of Appeal, there are even a few innocent persons who have been convicted pursuant to trial in the Crown Court, then (without prejudice to its being a better method) there might be an argument for a different method. But I believe that over the last ten years mistaken convictions in Diplock courts cannot be proved (or even reasonably inferred), and certainly not in numbers which would justify departure from a tried and tested method.
5. It was originally suggested that courts of two or three judges would be safer for the judges. This is not the most important consideration and in any case this suggestion is a mere assumption. No judge is asking the Government to act upon it. If there are a few cases which involve a greater risk, it is better that only one judge incurs that risk.
6. Another suggestion in 1973 was that the responsibility of single-judge trial was too onerous. Ten years later no judge is asking to have that responsibility reduced. I would add that the strain of trying to persuade a colleague or of accommodating one's own ideas to his on a

question of fact could more than outweigh any alleged benefit of sharing responsibility.

7. It is, I submit, a mistake to say that public confidence would be increased by the adoption of two-judge courts. In the first place, it would immediately lead to argument as to whether the cases had been properly tried up to the present, and secondly, the pairing of judges together (with the accompanying speculation on the motives of the L.C.J. when "picking the teams"), real or supposed differences of opinion shown on the Bench and differences of reasoning in support of the same opinion (if detected) would tend to destroy public confidence.

GENERAL ARGUMENTS

8. It should not be forgotten that Lord Diplock's commission recommended single-judge courts and that, after Mr. Merlyn Rees's amendment in favour of three-judge courts had been carried in Committee (13 to 11, that is 12 opposition members and the Rev. Ian Paisley against 11 Government supporters), the single judge was restored at the Report stage. There is no reason in 1983 after ten years' practical experience of the method to say that Lord Diplock and the Government were wrong.

9. At present, and also in a jury trial, the single judge takes responsibility for ruling on two crucial points in cases where they arise -

- (1) the existence of a prima facie case; and
- (2) the admissibility, when contested, of the accused's statement.

More generally, in important civil cases (often more difficult because the decision depends on the balance of probabilities) trial by a single judge is the long accepted method. True, in a criminal trial liberty is at stake, but the decision is easier because of the need to be satisfied beyond reasonable doubt.

10. I believe that the existence of sole responsibility has ensured, and will continue to ensure, on questions of fact, as it has done (with or without a jury) on questions of law, such as admissibility of evidence or whether to find a prima facie case, that the interests of the accused receive the maximum of consideration and conversely that the sharing of responsibility would not necessarily promote the interests of the accused to the same extent.

11. Two judge trial could result in superficial consideration of the issues or, in the alternative, agonising and lengthy discussion, and will in many cases make it difficult for the court to produce a judgment based on reasoning in which both members of the court concur, even if they are satisfied of the guilt of the accused.

PRACTICAL CONSIDERATIONS BASED ON NUMBERS

12. It should go without saying that no-one holding a lower judicial appointment than county court judge should sit. Resident Magistrates are not even entrusted by Parliament with bail applications and in 1978 the Lord Chancellor undertook that deputy judges would not be employed on Diplock work. To appoint four or five adequate new High Court and county court judges would deplete the Senior Bar so badly that, even allowing for a few new silks (the last call of seven juniors within the Bar having been made in March 1983), the Bar's ability to provide for the defence of persons accused of scheduled offences could not be guaranteed.

To clarify the last point, I would state that expert cross-examination is vital for the purpose of testing police witnesses at a trial within a trial and also with a view to querying the evidence of informers.

13. I respectfully consider that, as a possible solution to the shortage of judges for two-judge courts, it would be pointless and harmful to try to cut down the number of Diplock trials. To remove some lesser offences from the schedule (a very reasonable object in itself) would not do much, because it will be found that the kind of offence which could realistically be removed from the schedule is at present largely the subject of a short trial or a plea of guilty. To go further in the search for a reduced trial programme would unsoundly sacrifice Diplock trial to the false ideal of a two-judge court.

OTHER PRACTICAL POINTS

14. As far as I have discovered, the two-judge suggestion is not the monopoly of one group or party and I believe that it can without risk be resisted on its merits. I further suggest that no change ought to be recommended unless it is thought likely to remedy a deficiency which is perceived to exist in the present arrangements.

15. Applying this test, two judges will be no better than one, since both methods dispense with a jury and with all forms of lay participation (as they must).

16. But to appear to acknowledge a deficiency in the one-judge method will greatly strengthen the foreseeable campaign for more radical changes, once the two judge method is seen to be no better or possibly worse.

17. The making up of two-judge courts will involve an element of selection which could easily invoke political comment and speculation from which hitherto we have been mercifully free.

CONCLUSION

18. In case it may be helpful, I enclose at Appendix A my note dated 23rd May 1973 [which between Committee and Report stage I submitted to the Attorney General and copied to the Lord Chancellor, the Secretary of State for Northern Ireland and the Lord Advocate.] Appendix B is an extract from the Report of the Gardiner Committee (paragraphs 30-33) endorsing the one-judge method.

19. To put the matter shortly -

(1) We now have ten years' experience of single judge trial which, I submit, has served us well both practically and politically (so far as non-jury trial can ever be accepted)

(2) The discontent about informer evidence will not be removed by two-judge courts.

(3) Two-judge trial would not be more just, and certainly not better for the accused.

(4) It would also be unworkable from the numbers standpoint.

(5) So far from satisfying its advocates, two-judge trial could fuel the campaign to destroy the Diplock method, and this result may even be the objective of some campaigners.

(6) The case for a change has not been made out.

15 November 1983.

Lowy.

Appendix 6



ROYAL COURTS OF JUSTICE
BELFAST
BTI 3JF

4th August, 1986

SECRET

Dear PHS,

Having regard to our talk last Monday, I am concerned lest, despite the views of the Lord Chancellor and the Law Officers and the vigorous attitude of the Secretary of State at the Inter-governmental Conference in May (of which he was good enough to tell me), officials might still be prepared to entertain the idea of 3-judge Diplock courts.

I shall not rehearse arguments with which you are familiar: see the Diplock Report paragraph 39, Gardiner Report paragraphs 30-33, Baker Report paragraphs 109-121 and my own notes "One judge or three" dated 23rd May, 1973 and "One judge or two" dated 15th November, 1983. See also the Attorney-General's letter to me dated 31st October, 1983, containing this paragraph:

"Both Patrick and I are in complete agreement with you that there is no place for 'lay assessors', magistrates or a plurality of judges in the trial of scheduled offences, and we welcome your assurance that the judges, who bear the burden and heat of the day in these matters, do not seek any change."

(We still do not seek any change.)

I assume that 3-judge courts are not in reality thought likely to promote, on the part of nationalists, increased confidence in the Diplock process, if that is lacking, and that the question among officials is whether it might be expedient to give the Fine Gael Government a symbolic political victory on a point which has recently been their sole court concern. An inducement to make this concession may lie (1) in the probability that concessions about the R.U.C. and U.D.R. would arouse greater reaction and (2) in the fact that Mr. Paisley voted with Labour for 3 judges in 1973. The first point is no doubt right but the second does not, I believe, now hold good: to concede Irish Government demands would be seen as giving in to Barry and Mallon over the heads of the Lord Chancellor, the Attorney-General and the L.C.J.

A look at recent statements in the Press confirms this reading of the situation. The "Irish Times" of 13th June contained a piece by Conor O'Clery which ended thus:

"The reform of the Diplock courts in Northern Ireland will dominate to-day's meeting between Mr. Scott and Mr. Dukes."

/It is

It is understood that the Northern Secretary, Mr. King is not dogmatically opposed to the Irish argument for increasing the number of judges in Diplock courts from one to three. This reform (sic) is being strongly resisted by the legal establishment in the North, led by the Lord Chief Justice, Lord Lowry, who has the strong backing of the Lord Chancellor, Lord Hailsham. According to sources in London, the key to this problem lies with Mrs. Thatcher who will have to be persuaded that it is in British interests to face down Lord Hailsham." (my emphasis.)

I refer also to Mary Holland in "The Observer" of 20th July, starting with the headline "Diplock Courts to be axed", and continuing:

"The controversial Diplock courts in Northern Ireland are to be replaced this autumn by three-judge courts to try terrorist crimes.

"The new courts, agreed in a reform package by British and Irish government officials, will replace the present system in which a judge sits alone without a jury. The news comes in the wake of the collapse last week of the latest supergrass trial."

After listing other proposed changes, the article continued:

"The news of the reform package, which will please the Catholic community and anger Protestants, comes at a time when officials in London and Dublin are trying to repair the damage done to The Anglo-Irish agreement by the decision to allow Orange marches to pass through Catholic areas of Portadown last weekend."

And Conor O'Clery wrote in the Irish Times last Friday (1st August):

"The prospect of an 'autumn package' of reforms from the Anglo-Irish Intergovernmental Conference has distinctly improved since the Minister for Foreign Affairs, Mr. Barry, and the Northern Ireland Secretary, Mr. Tom King, met in London on Tuesday evening.

"Mr. King, who seemed anxious before the July 12th marching season to dismiss the significance of the Anglo-Irish Agreement, is now more enthusiastic that it should work to the advantage of both sides, according to sources in London.

"Despite reports to the contrary in the British press, some of the key issues between the two Governments are still open for continued negotiation. These include the Diplock courts, which at present have only one judge, sitting without a jury. The Irish Government has argued that three judges would make the courts more acceptable.

"The Lord Chancellor, Lord Hailsham, has been opposed to such a reform, but it was learned yesterday that he is still involved in exchanges about the judicial system and that the door has not been closed on such a development, though it will involve a major concession on his part." (My emphasis.)
(The rest of the article deals with marches.)

These mixtures of fact and fiction (as I believe them to be), which seem to be inspired by "hand-outs", are alarming to me and evoke a strong judicial reaction of concern here.

If you are pursuing political extradition as a desired consequence of Ireland's signing the European agreement, you may on past form expect them to seek 3-judge courts as the "only hope" of getting the legislation through. I would advise you to approach such a proposition with very great reserve, determined not to mistake the shadow for the substance. You will also recall that the Supreme Court, when extraditing Shannon (accused of murdering Sir Norman Stronge), rejected the argument against extradition which was based on the likelihood of "unfair trial".

I know that you and your colleagues are searching for the right answer and, in my turn, I am trying to help, not hinder. But I earnestly beg you not to be tempted by the misguided plan of trying to persuade Ministers to reject the advice about the make-up of the courts which has been consistently tendered to them since 1972.

I am convinced that, quite apart from the cogent judicial and administrative considerations, the political effect of introducing 3 judges would be very damaging indeed to the Bench and to criminal justice here and therefore could not be responsibly recommended.

In view of our serious and helpful discussion and your great courtesy to me, I think it only right to send my letter to you, but I feel confident that you will take an early opportunity of showing it to the Secretary of State, as I would wish.

With kind regards,

Yours sincerely,

Robert A. Lowry

Sir Robert Andrew K.C.B.,
Permanent Under Secretary,
Northern Ireland Office,
Stormont Castle,
Belfast,
BT4 3ST.

151K
NOV 2 1936

The rest of the letter
has been
sent to
you
by
mail

These articles of
which seem to be
a strong judicial
action of course

If you are pursuing political activities as a result of
of Ireland's attitude the European agreement, you may on that
point than in your 3-10-36 article as the "only" one, at least the
legislation thereon. I would advise you to approach your
with very great caution, however not to discuss the matter for the
moment. You will also recall that the European Court, when
discussing the matter of entering the European Court, when
against activities which was based on the likelihood of "unfair trial".

I know that you and your colleagues are searching for the right
moment that, in my view, I am trying to help, not hinder. But I earnestly
trust you not to be misled by the standard plea of trying to persuade
Ministry to reject the advice about the nature of the course which
has been consistently followed to that time 1931.

I am convinced that, quite apart from the moral, political and
analytical considerations, the political aspect of introducing
I should be very anxious indeed to be heard and to explain
locality and therefore could not be responsibly recommended.

In view of our common and rightful interests and your great
country to me, I think it only right to send my letter to you, but I
feel confident that you will take an early opportunity of showing it
to the Ministry of State, as I would wish.

With kind regards,

John G. ...

Mr. Robert ...
Northern Ireland Office
Belfast
207 207