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10 DOWNING STREET
LONDON SW1A 2AA

2 October 1986

From the Private Secretary

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Subject,

cc Master

Dear David,

THE ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

The Prime Minister held a meeting this afternoon to consider the proposal in the Northern Ireland Secretary's minute of 18 September to introduce three-judge courts for a limited range of cases in Northern Ireland, together with the comments made by a number of colleagues. The Lord President, the Lord Chancellor, the Foreign and Commonwealth Secretary, the Home Secretary, the Northern Ireland Secretary, the Attorney General and Sir Robert Armstrong were present.

The Northern Ireland Secretary said that lack of confidence in the administration of justice in Northern Ireland was a real problem, which was not limited to the Nationalist community. It was shared to some extent by the Unionists and internationally, with implications for extradition from third countries. The Government were committed by Article 8 of the Anglo-Irish Agreement to seek measures to deal with the problem. It arose most acutely over the admissibility of uncorroborated accomplice evidence ("supergrasses"). He had considered the possibility of action on this point but had concluded that it was vital not to handicap or circumscribe the security forces and prosecuting authorities. He had therefore turned his attention to three-judge courts. Proposals for such courts had been mooted since 1972 and there had been some indirect support for changes in this direction in the report of Sir George Baker. He had concluded there was a case for agreeing to the principle of three-judge courts for certain scheduled offences, while carrying out a detailed study on how this could best be accomplished. This implied no criticism whatsoever of the performance of the Northern Ireland judiciary. While his recommendation stood on its merits, there was also an Irish dimension which was relevant. The Irish Government clearly attached great importance to the issue and doubted their ability to get ratification of the European Convention on the Suppression of Terrorism through the Dail without some progress on three-judge courts.

The Lord Chancellor said that he stood by the views expressed in his minute of 22 September. Ideally he would like to see a return to jury trials but there was no prospect of this. Nor did there appear to be any viable

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alternative to Diplock courts. The united view of all those connected with the administration of justice in Northern Ireland was that there was no juristic case for three-judge courts. Nor would he be in a position to make the necessary practical arrangements to staff them. He regarded the Irish Government's intervention in the matter as ill-considered.

In discussion it was acknowledged that Diplock courts undermined Northern Ireland's reputation internationally and made us vulnerable to criticism in the United States and elsewhere. We should not assume that, just because they existed, they could never be changed. The Irish Government's intervention in support of three-man courts only added to the difficulties of change. There was no evidence to sustain their assertion that a majority of Northern Ireland judges were in favour of three-judge courts. Nonetheless, we should seek ways to let them down lightly, and should consider whether there were other changes in the administration of justice which we could make, which the Irish Government would see as helpful. The Attorney General's intention, already announced, to certify a greater number of cases for jury trial should be helpful in this respect. It might also be possible to adjust procedures for civil cases so as to make more judges and deputies available for trials of scheduled offences, thus reducing the backlog of cases. The Lord Chancellor would examine the scope for this.

The Prime Minister said that there could clearly be no question of agreeing to three-judge courts against the advice of the Lord Chancellor, the Law Officers and the Northern Ireland judiciary. The Irish Government would have to be informed that we were unable to proceed on this point. But in conveying this news, reference should be made to other steps being taken or under consideration to strengthen confidence in the administration of justice, which might be helpful to the Irish Government in securing the ratification by the Dail of the European Convention on Suspension of Terrorism. A message to the Irish Government should be prepared and its text agreed with the Law Officers.

I am copying this letter to John MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), Tony Galsworthy (Foreign and Commonwealth Office), Stephen Boys Smith (Home Office), Michael Saunders (Law Officers' Department) and Michael Stark (Cabinet Office).

Yours sincerely
Charles Powell

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Northern Ireland Office.