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FROM: JONATHAN STEPHENS
PS/SECRETARY OF STATE
4 JANUARY 1994

DESK IMMEDIATE

cc:	PS/Secretary of State (L&B)	- B
	PS/Sir John Wheeler (L,B&DFP)	- B/M
	PS/Michael Ancram (L,B&DENI)	- B/M
	PS/PUS (L&B)	- B
	PS/Mr Fell	- B
	Mr Legge	- B
	Mr Thomas	- B
	Mr Bell	- B
	Mr Williams	- B
	Mr Brooker	- B
	Mr Maccabe	- B

MR DANIELL - B

LETTER FROM THE TAOISEACH

I have already circulated the Taoiseach's letter to the Prime Minister of 30 December, which complains about the Caraher judgement.

2. The Secretary of State has drafted his own response, a copy of which is attached.
3. The two sections in square brackets are my own additions:
 - a reference to the Secretary of State's parallel letter to Mr Spring about the Talks process (it would seem odd not to refer to this in a letter to the Taoiseach); and
 - a reference to the Irish Cabinet's pending decision on the future of section 31. Given speculation in today's Irish Times that some Irish Ministers at least think the provision should be abandoned now, it may be worth using this letter to register our interest.

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4. I should be grateful for comments on these points, or any comments which officials may have on the Secretary of State's draft, by lunch time tomorrow, 5 January.

William Chapman Esq
Private Secretary
1 Downing Street

SIGNED

January 1994

JONATHAN STEPHENS
PS/Secretary of State
OAB Ext 6462
4 January 1994

TRALEIGH'S LETTER OF 30 DECEMBER

Sir Patrick has personally drafted the attached draft response for the Prime Minister to send to Mr Reynolds, letter of 30 December. He considers the imputations against the Northern Ireland judiciary, and the Lord Chief Justice in particular, outrageous in general and completely unsustainable in this instance in particular. He suspects they derive from Irish inability to comprehend a criminal justice system which is wholly independent of the executive. He thinks the Prime Minister might care to see the attached copy of a confidential letter to Sir Patrick from the Lord Chief Justice. The Prime Minister should not, however, go into detail in his reply, as this might convey an impression of too close an association with the judgment.

A copy goes to John Severe and Melanie Leach.

JONATHAN STEPHENS

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SOFS/TAT/20345

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DRAFT REPLY FROM THE PRIME MINISTER

William Chapman Esq
Private Secretary
10 Downing Street

January 1994

Government Buildings
DUBLIN 2

January 1994

TAOISEACH'S LETTER OF 30 DECEMBER

Sir Patrick has personally drafted the attached draft response for the Prime Minister to send to Mr Reynolds, letter of 30 December. He considers the imputations against the Northern Ireland judiciary, and the Lord Chief Justice in particular, outrageous in general and completely unsustainable in this instance in particular. He suspects they derive from Irish inability to comprehend a criminal justice system which is wholly independent of the executive. He thinks the Prime Minister might care to see the attached copy of a confidential letter to Sir Patrick from the Lord Chief Justice. The Prime Minister should not, however, go into detail in his reply, as this might convey an impression of too close an association with the judgment.

A copy goes to John Sawers and Melanie Leech.

JONATHAN STEPHENS

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DRAFT REPLY FROM THE PRIME MINISTER

Mr Albert Reynolds TD
Taoiseach
Government Buildings
DUBLIN 2

January 1994

Thank you for your letter of 30 December, and for your kind wishes for 1994. I warmly reciprocate these. Thank you, too, for your generous words regarding my adoption of the Joint Declaration. In my turn, I warmly acknowledge the significance and statesmanship of your explicit recognition, in particular, of various fears and perceptions.

With you, I have found the width of the warm public response to the Declaration encouraging, and although the actions of the Provisional IRA since the ending of their Christmas cease-fire have been inexcusably murderous, and enormously costly in their consequences, the restraint of our own reaction has reflected an understanding of the delicate psychology involved in the exercise to which both our Governments are committed. So

You will, however, readily understand that the limit of what it is possible for us to tolerate, in the sense of keeping the door open, is now being approached. Only by luck have the security forces, and

also civilians, been spared further fatalities. We cannot count on this luck continuing. For our part we shall, as long as is practicable, continue to be measured in our response to further attempts to kill people in Northern Ireland, or to destroy their businesses and jobs. We shall go on preventing the Declaration as a victory for nothing but common sense and democracy. It postulates no looked-for outcome in the general agreement which the two Governments are seeking.

[We shall also emphasise that business continues as usual, particularly as far as the Talks process is concerned. All four constitutional parties have said they are prepared to talk, on the basis of the statement of 26 March 1991, and Patrick Mayhew has written to each leader inviting his party's participation in further bilateral discussions with Michael Ancram as early as next week. Patrick has also written to Dick Spring emphasising the urgent need to make progress on the work which the two Governments commissioned, on 10 September, on an illustrative outcome of the Talks process.

I believe that an intensification of the Talks process will demonstrate to the constitutional parties that we will not allow a political vacuum to develop while we await reaction of the Joint Declaration. It will also remind Sinn Fein that the political situation will not stand still while they decide their reaction. So

I hope you will continue to give the Talks process - and the work involving our two Governments which is crucial to carrying it forward - your personal support and encouragement.]

[I very much agree that neither Government should appear to bribe Sinn Fein. We shall both soon, for example, face political decisions on the future of our respective broadcasting restrictions. It has always been helpful that we have stood together on this issue. Continuing to do so is all the more vital at this critical time.]

I must, however, take issue very strongly with your comments on the judgment of the Lord Chief Justice of Northern Ireland in the Caraher case, especially your reference to 'verdicts which tend almost automatically to exonerate the security forces'. Sir Brian Hutton's judgment extends to 70 pages of typescript, and no conceivable reading of its recital of the evidence, or its consideration and application of the relevant law, can justify such a grave imputation. I attach a copy.

Unhappily your observation reflects earlier press briefing by your Department of Foreign Affairs, before the transcript had even been seen, in which the judgment was described as 'not helping the peace process'. The inescapable implication that the judiciary should be influenced, when trying a case of murder, by considerations affecting a peace process, or any other political process, is totally unacceptable in the United Kingdom. So is the notion, which

seems implicit in your letter, that the timing of such a judgment could properly be similarly influenced. The record of the judiciary of Northern Ireland for impartiality over the last 25 years has been accorded very great admiration and praise.

We ourselves believe it right to make no criticism of a judicial or quasi-judicial decision made by the Irish courts, however unwelcome we may find it. I can cite the respective decisions of the Attorney General of Ireland and the Irish Director of Public Prosecutions in the case of Father Ryan a few years ago, as an illustration. We are both in the business of upholding the rule of law, and the rule of law requires, both in constitutional theory and practice, the separation of the duties of such officers from the executive, no less than those of the judiciary.

I must tell you that I consider there will be nothing at all to discuss concerning the Caraher judgment itself at the next or any Inter Governmental Conference. We remain, of course, content to discuss general questions on the law concerning the use of force.