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Mr. Lillis, ^{28/4}

The gist of the attached report about the Northern Ireland Supreme Court is as follows:

1. There are able senior Roman Catholic Q.C.'s who want to become judges in the Supreme Court. This fact is known to Lord Lowry.
2. They have been passed over by Lord Lowry who wants to ensure the continuation of the unionist control of the Court of Appeal.
3. Concern about their security is not a matter which would prevent Catholics taking positions as judges.
4. No senior person at the Bar, Catholic or Protestant, is likely to take a magistracy or a County Court judgeship. What matters is the Supreme Court, of which the members of the Court of Appeal form part.
5. Lowry wields his considerable power in defence of the unionist position.

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Daithi O Ceallaigh

27 April 1985.

Note: This is a slightly revised version of the paper circulated to the Taoiseach & the A.G. in London.

cc: Taoiseach, Tánaiste, Minister of Justice, A.G. Secretary, Mr. Rath, Mr. Wood, Mr. Quigley, Ambassador Dorr.

S E C R E T

Meeting with Mr. Charles Hill, 26 April 1985.

Mr. Hill is a distinguished senior Catholic nationalist Q.C. I met him at my request in his home in Belfast last night. I told him that his name was given to me by John Hume. I said that there was little I could tell him about current Anglo-Irish exchanges but that in the conversations about the judiciary it had been suggested that it had proved impossible to convince Catholic Q.C.'s that they should accept judgeships. I wanted, in the strictest confidence, to discuss with him the truth of that allegation, the personalities on the bench, and the situations of senior Catholic Q.C.'s.

Mr. Hill said that he had checked with SDLP sources as to my credentials and that accordingly he would be totally frank. What he proposed to tell me he had not told others, in particular his colleagues. He therefore asked that absolute confidence be observed. Our meeting lasted for over four hours and what follows is an account, re-arranged by me, of the points Mr. Hill made. (I should add that I was stopped by the RUC 150 yards from Mr. Hill's home). I have arranged the material so as to begin at the top of the judicial scale, rather than in the middle, as he did.

He said that the appointments in the Supreme Court are "absolutely appalling". The Supreme Court consists of the Lord Chief Justice, Lord Lowry, Lord Justice Gibson, Lord Justice O'Donnell and Lord Justice Kelly, Mr. Justice MacDermott, Mr. Justice Murray, Mr. Justice Hutton, Mr. Justice Carswell and Mr. Justice Higgins. The first four, Lowry, Gibson, O'Donnell and Kelly, make up the Court of Appeal. (Note: It is necessary to understand that in the Northern Ireland judiciary the Court of Appeal is a higher Court than the Supreme Court as such).

Hill says that to understand the situation it is necessary to examine the nature of recent appointments. A person is appointed to the Supreme Court by the Lord Chancellor (Hailsham?) on foot of a recommendation of Lowry. Of the nine judges two, O'Donnell and Higgins, are Catholics.

The key to understanding Lowry's tactics is that he is trying to secure for the future unionist control of the Court of Appeal. It is that Court which in practice dictates the legal system in Northern Ireland. It is that Court, and particularly the Lord Chief Justice, which guarantees Northern Ireland for the Union. Mr. Hill believes that Lowry's tactics has been to ensure that, should there be a change of heart in London, in for example a Labour Administration, the Court of Appeal would remain firmly in strong unionist hands. Invariably the members of the Court of Appeal are appointed from among the other members of the Supreme Court.

It had not been intended that O'Donnell should become a judge in the Court of Appeal. When the then Catholic member, McGonigle, died suddenly some years ago, Lowry had no choice but to recommend O'Donnell, who was then the other Catholic on the Supreme Court, to replace McGonigle, the reason being that O'Donnell was as competent as any other character. O'Donnell's place was taken, not by a Catholic, but by Hutton, who is very able. (Mr. Hill stressed frequently that the Protestants and Unionists appointed to the Bench are not incompetent; his point was that there are many who are competent and some of them should have been chosen in order to maintain a better balance). Hutton is a favourite son. He was a member of the Northern Ireland team, led by Lowry, which argued for extradition on the Law Reform Commission established as part of the Sunningdale process. He was a UK representative in the Strasbourg case. He is very astute politically and close to the official unionist establishment. He is close to Kelly, who was a unionist Attorney General.

When the next vacancy occurred Lowry chose Carswell. Carswell is again close to the unionist establishment, very close to Lowry, able and a senior figure in the Freemasons. To balance Carswell it was decided that Higgins, a Catholic, who was at the time a County Court Judge (Recorder of Belfast), should be appointed to the Supreme Court. The appointment of the County Court Judge to a position in the Supreme Court had only occurred once before, when a particularly blatant loyalist appointment was made. Higgins is a decent upright judge who works hard and does his duty but he does not compare in ability with the other members of the Bench.

Among the Senior Catholic Q.C.'s are the following;

- Jim McSparrin - he may have been offered a junior judicial position in the County Courts, which is way beneath him. It is possible that if offered a position he would refuse because he lives in the Glens of Antrim and would be open to assassination.
- Michael Lavery - he is bitterly disappointed that he was passed over by Hutton and Carswell. He has made that known to Lowry and Lowry knows he would accept a judgeship in the Supreme Court and was available for the last three appointments. He is as able as Hutton or Carswell.
- Michael Nicholson - Currently chairman of the Bar Council, a 'Castle Catholic'. His father was a prominent Q.C. and "had a good war". Was turned down for a judgeship. Nicholson is very able, was available for the last three appointments and Lowry knew that.

Liam McColum

- he resents the fact that Higgins got a judgeship in the Supreme Court and has made that known. Hill does not think he has the ability of Lavery or Nicholson.

Charles Hill

- Hill did not mention his own name. He did say however, that he had turned down a County Court judgeship because he is too senior at the Bar (see below). When he told Lowry he was not accepting the offer he made clear that he was prepared to do his duty. (I interpret that, to mean that he would accept a position on the Supreme Court).

Hill believes Higgins was chosen because the Unionists have nothing to fear from him. Nicholson in particular is considered too clever and too devious and he is a man determined to influence events. The key is the Court of Appeal. Hutton and Carswell are being groomed to move into it. Higgins is unlikely ever to get an appointment to the Court of Appeal on merit whereas Lavery or Nicholson, had they been in the Supreme Court, could not have been ignored. The membership of the Court of Appeal has therefore become assumed in unionist hands, which would be particularly important should there be a change of government. The price of ensuring places for Hutton and Carswell was the promotion of Higgins.

Hill said that Lowry is fixing the Court of Appeal for posterity. Its importance is great and the whole complexion of the Court is secured. While in theory it is the Lord Chancellor who takes legal decisions about Northern Ireland, he is partly in Lowry's hands. Lowry is very clever and Machiavellian. He ensures that those judgements of his which indicate his liberal side are printed in the law reports while his pro unionist judgements are not. He is seen by all the Bar

as an 'operator' and some of his judgements are legally illogical if politically astute from a unionist point of view.

At a Bar golf outing recently Lowry remarked that he had been at lunch with the Chief Justice and with the Taoiseach. He said there was some discussion of common courts. He "laughed and scoffed" at the idea at a mixed gathering of barristers and said that if it were introduced he would retire. Hill said it is unusual for Lowry to bare himself in this way and that no British Government could introduce common courts if a consequence would be Lowry's resignation.

There is room for another Supreme Court judge at the moment. Hill understands that the Lord Chancellor is not anxious to fill the vacancy because he is conscious of the British Government's attitude in relation to public spending. Gibson is due to retire shortly. Hill said it is necessary for reasons of balance and it is right that those two vacancies should be filled by Catholic Q.C.'s. The next two appointments should be Roman Catholic. (Supreme Court judges can retire after 15 years service or on reaching 70).

Hill said that the obvious person to replace Lowry is McDermott. The two families are close and it was McDermott's father who promoted Lowry. However, he thinks Lowry may ask McDermott to forego the honour in favour of Hutton, who in his early 50s is more than ten years younger than McDermott. Carswell would go into the Court of Appeal and with Hilton and Carswell on the Court of Appeal it would be secured for the next fifteen years.

The other courts are the County Courts (including the Belfast and Derry Recorders) and the Magistrates Courts. No senior Q.C. would take positions in these Courts because they hope for better.

He gave the example of the appointments of Gibson and Donaldson to the County Court shortly after the murder of Doyle, who was a County Court judge. Various senior Q.C.'s had been canvassed by Lowry before he filled the vacancies, including Lavery, McSparrin and Hill. They, and the senior Protestant Q.C.'s had all turned down the offer and Gibson and Donaldson, who were very junior Q.C.'s were appointed. Carswell and Hutton had also turned the offer down. That canvassing was done prior to the death of Judge Doyle. Though the salary of a County Court judges is high by Irish standards their influence - cases limited to £5,000 and any interesting case is reheard in the Supreme Court - is almost nil. The result is that both senior Catholic and senior Protestant Q.C.'s refuse.

The reasons why senior Q.C.'s refuse judgeships in the County Courts (and would not dream of accepting a magistracy) is:-

1. They are very low in the pecking order
2. Although the numbers at the Bar are now high, about 300 in comparison with 70 fifteen years ago, the vast majority are in their mid-thirties or younger. The number of senior Q.C.'s is therefore small and most of them hope for something better than a County Court Judgeship.
3. Financial reasons. Successful Q.C.'s earn large sums of money, at least until they are well into their 50s, and County Court judgeships, except perhaps the Recorders of Belfast and Derry, are unattractive to them.

Hill is convinced that except perhaps in one case (McSparrin) there is no senior Catholic Q.C. who would refuse a judgeship on security grounds. One senior, Tom Cahill, may have refused a County Court judgeship because his wife did not want her privacy invaded by a police guard. Hill does not know of any senior Catholic Q.C. who would refuse an appointment because he might have objections to taking an appointment under the Crown.

When we were discussing Lord Lowry Hill said that he considered the establishment of a "common court" "vital". He would like to see it sitting North and South with three judges one of whom would be from the other jurisdiction. The functions of such a court should be as wide as possible. It established it should be done in such a way that if Paisley were to gain control in the North he could not undo it.

He dislikes the way in which the practice of extradition has developed. He understands the constitutional difficulties but he would have preferred the legislature rather than the judiciary to have determined the practice. He would prefer to see an automatic backing of warrants with supervisory rights for the extraditing state (because of the absence of preliminary investigations and of the presentation of a prima facie case). A "common court" could have an important role in this area.

All Q.C.'s take an Oath of Allegiance and make a declaration. He does not accept that this should be necessary. He recalled that Daniel O'Connell took silk by letters patent and when his (Hill's) turn came to take silk his master, Turlough O'Donnell, and he, enquired but to no avail. Hill took the Oath and adopts the same position as did de Valera, according to himself. He only knows of one nationalist, a pupil of his, who has refused to take silk because of the Oath. It has an importance for unionists, just like the flag.

Dr.

Daithi O ceallaigh

27 April 1985.