

B/s

DESK IMMEDIATE

POLITICAL AFFAIR  
DIVISION  
18 SEP 1996  
O. BELF-ST

FROM: D A LAVERY  
Central Secretariat  
17 September 1996

cc PS/Secretary of State (B&L) - B  
PS/PUS (B&L) - B  
PS/Sir David Fell - B  
Mr Thomas o/r - B  
Mr Leach - B  
Mr Watkins - B  
Mr Hill (B&L) - B  
Mr Maccabe - B  
Mr Stephens - B  
Mr Whysall (B&L) - B  
Mr Jagelman - B

File - talks.

Mr J. V. V.

C 17/4

PS/Michael Ancram (B&L) - B

#### SUB JUDICE PRINCIPLE

1. This is to let you have the legal advice I had requested as to whether the principle of sub judice might inhibit progressing that part of the Alliance Party representation under Rule 29 which relates to Reverend William McCrea MP.

2. Our advice is that the balance of public interest in this matter appears to be overwhelmingly in favour of progressing with a determination of the Rule 29 complaint and that the principle of sub judice, to the extent that it applies at all, ought not to inhibit this.

3. On the basis of my letter of 16 September, I have now received the attached advice from the Departmental Solicitor. In the interests of expediency, I did not seek Crown Counsel's opinion. I am, however, satisfied that the attached advice is reliable.

4. The main points to emerge from the attached advice are:

- (a) the principle of sub judice applies where a matter is before a court of law (Reverend McCrea has to date, so



far as I am aware, merely threatened but not initiated any civil proceedings);

SUB JUDICE (b) where applicable, the principle of sub judice contemplates the possibility that a reference to current legal proceedings could amount to a contempt of those proceedings by influencing or prejudicing those proceedings;

1. (c) in the present case, it is a matter of balancing the public interest between, on the one hand, progressing with the Rule 29 complaint and, on the other hand, the more general public interest in avoiding taking any steps which could in theory impact on separate civil court proceedings; and

2. On the balance of the public interest in the present case appears to be overwhelmingly in favour of reaching a resolution on the Rule 29 complaint;

3. (If the balance of the public interest in the present case appears to be overwhelmingly in favour of reaching a resolution on the Rule 29 complaint; we have received to be confidential. It is not, therefore, our intention to distribute the text.) (e) (we can, therefore, robustly reject any suggestion that the principle of sub judice might inhibit our ability, if we so choose, to progress the Rule 29 complaint;

(f) we would, however, have to consider carefully whether that part of the Government's determination which relates to Rev McCrea should be published.

5.7 We should be able to so advise the Independent Chairmen. I am attaching a possible line to take which we might offer to the Independent Chairmen.

Signed:

D A LAVERY

## SUB JUDICE PRINCIPLE

## Draft Line to Take for use by the Independent Chairmen

1. Legal advice has now been obtained on the relevance, if any, of the principle of sub judice to that part of the Alliance Party's representation against the DUP which concerns the participation by Rev William McCrea MP in a public rally on 4 September 1996.
2. On the basis of the advice received, we are satisfied that there is no legal or other reason why we should not proceed with the determination of the Alliance Party's representation in its entirety.
3. [If pressed] we consider the legal advice we have received to be confidential. It is not, therefore, our intention to distribute the text of that advice. [The advice received is the property of HMG.]

[17 September 1996] the question of whether there is any such thing as a rule or principle of sub judice. I know it is frequently cited as a cover for avoiding comment on awkward issues, but there really is no rule or principle of sub judice (which simply means, in the course of trial), and what the citation of it reflects is really a fear of prejudicing one's own position in pending proceedings, and more particularly of being in contempt of court. Because something is in the course of trial one needs to be taken to avoid any act or publication of an opinion which would carry a risk of