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FROM: THE PRIVATE SECRETARY

NORTHERN IRELAND OFFICE
STORMONT CASTLE
BELFAST BT4 3ST

Tel. Belfast (01232) 520700

*File
John 13/2.*

John Holmes Esq
Private Secretary to
the Prime Minister
10 Downing Street
LONDON
SW1A 2AA

10 February 1997

Der John,

BLOODY SUNDAY : JUDICIAL REVIEW OF WIDGERY

The High Court in Northern Ireland has received an application by Mary Doherty, next of kin of Gerard Donaghy, one of the Bloody Sunday victims, for leave to apply for judicial review of the Widgery Tribunal. Mr Justice Kerr has had the papers for about a week and has decided that he wishes to have an oral hearing on the application. We are advised by Senior Crown Counsel, Patrick Coghlin QC, that the date for a hearing has yet to be agreed but will take place probably in a week to ten days from now.

The application seeks a declaration that Widgery failed to act fairly and for an Order to quash the tribunal's findings. The grounds are said to be that proper disclosure was not made to the next of kin and their lawyers, nor was the existence of relevant material made known to them at the time; that Widgery failed to consider discrepancies between undisclosed accounts and versions presented to the tribunal; that Widgery failed to consider a large body of eye witness statements (these are the ones at the centre of the recent Channel 4 report and the book "Eye Witness Bloody Sunday: The Truth" by Don Mullan); and that the tribunal was biased, that it was not conducted fairly or in accordance with the

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rules of natural justice and that it failed to take into account all the relevant material.

Patrick Coghlin has advised us that the courts in Northern Ireland set a fairly low threshold for leave and he is pessimistic about the prospects for it being refused. Should leave be granted there would not usually be a very long delay before a court hearing, although the amount of work necessary would probably rule it out before the beginning of May.

Interest in Bloody Sunday has been heightened by the 25th anniversary, and there will be great interest in the application for leave and the full hearing. Were leave to be granted it would doubtless be trumpeted as a huge victory by the campaigners, and we might expect more pressure urging the Government to set up a new inquiry to look at the fresh evidence.

There are, as well as the issues relating to Bloody Sunday itself (clearly the only concern of the applicants), a number of issues which have significant implications for public law and administration. The question of the circumstances in which a tribunal established under the 1921 Act is judicially reviewable is yet to be resolved. There is also a question about the Government's locus in the proceedings. The application in this case names no respondent and, although for pragmatic reasons we are handling the case at the moment, this feature may have implications for the jurisdiction of the Court and raises questions as to how the legal procedures are to be answered. Our legal advisers are considering these matters.

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I am copying this letter to the Private Secretaries to the Lord Chancellor, the Home Secretary, the Secretary of State for Defence, to Sir Robin Butler and to Juliet Wheldon.

Yours ever,

Ken

W K LINDSAY

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