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FROM: D COLEMAN  
SIL DIVISION  
5 JUNE 1992

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- 1. MR MARGETTS (JM 5/6)
- 2. MR RICKARD (As amended SLR 8/5)
- 3. PS/MINISTER OF STATE (L&B)

- cc PS/S of S (L&B) - B
- PS/PUS (L&B) - B
- PS/Mr Fell - B
- Mr Ledlie - B
- Mr Thomas (L&B) - B
- Mr Steele - B
- Mr Bell (L&B) - B
- Mr Alston - B
- Mr Cooke
- Mr Leach - B
- Mr Archer, RID - B
- Mr Powell,  
Washington (BY FAX)

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**MINISTERIAL CASE 2901: JOSEPH P KENNEDY II**

Congressman Joseph Kennedy II wrote to Kenneth Baker, the then Home Secretary on 24 April, following up a number of points arising from a meeting of the Congressional Human Rights Caucus last September. The main focus of this hearing concerned allegations of illegal shootings by the security forces in NI.

2. A holding reply was sent to Mr Kennedy on 13 May 1992.

3. The attached draft reply reaffirms the Government's commitment to providing the best possible protection for human rights in NI. It points out that members of the security forces must operate within the law at all times and are answerable to the courts for their actions.

4. Finally, turning to the specific points raised in Mr Kennedy's letter, the draft reply emphasises:-

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- i. the Government's belief that independent judicial enquiries into shooting incidents involving the security forces are neither necessary nor appropriate;
- ii. that the Government will carefully consider any recommendations arising from the Royal Commission on the criminal justice system;
- iii. that the possibility of reviewing the law governing the use of force by the security forces in NI is currently being reconsidered; and
- iv. that although the Fergal Caraher case is sub judice there is no reason to suppose that justice will not be done.

5. I apologise for the slight delay in submitting this draft reply.

(Signed)

D COLEMAN  
SECURITY AND INTERNATIONAL DIVISION  
5 JUNE 1992

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Hon Joseph Kennedy II  
Congress of the United States  
House of Representatives  
Washington DC 20515-2108

Letter drafted for signature by Mr Mates

Thank you for your letter of 24 April 1992 to the then Home Secretary Mr Kenneth Baker. This has been passed to me for reply as the Minister with responsibility for security in Northern Ireland.

Your letter referred to last September's Congressional Human Rights Caucus which heard allegations of illegal shootings of civilians by the security forces in Northern Ireland. I believe that the British Embassy in Washington provided the Caucus, at that time, with a memorandum which outlined the rules governing the use of force by the security forces in Northern Ireland and the procedures for conducting investigations into shooting incidents. However, I am glad to have this opportunity to set out again Her Majesty's Government's position on the various issues raised in your letter.

I can reaffirm at the outset that the Government is committed to providing the best possible protection for human rights in Northern Ireland and is constantly considering ways of improving the protection afforded. Therefore, as one would expect, the

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Government's policy in countering terrorism and crime generally in Northern Ireland, as in the rest of the United Kingdom, has as one of its guiding principles that members of the security forces must operate at all times within the law, and are answerable to the courts for their actions. The Criminal Law Act (Northern Ireland) 1967 provides that 'any person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspect offenders'. This is the same law as applies in the rest of the United Kingdom. The police and army in Northern Ireland are issued with specific instructions on opening fire, designed to keep them wholly within the law, and it is made clear, in particular, that firearms must only be used as a last resort. There is no 'shoot to kill' policy in Northern Ireland, except that operated by the terrorists.

Unfortunately - and all deaths as a result of the security situation in Northern Ireland are tragic - incidents do occur in which people are killed or injured by the security forces. Every such incident is fully and impartially investigated by the Royal Ulster Constabulary. In incidents involving police officers or members of the army the police investigation report, together with any forensic or pathology reports is sent to the independent Director of Public Prosecutions. He can (and regularly does) direct that further investigations be carried out. If he directs that a prosecution should be brought, it is then for the Courts to decide whether the actions were in fact lawful.

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In addition, from 29 February 1988, the Independent Commission for Police Complaints has been required to supervise the investigation of those complaints concerning death or serious injury where a police officer is alleged to have been involved, and may at its discretion supervise the investigation of any other complaints involving police officers. Where the Commission decide to supervise, they have very significant powers which enable them, in effect, to direct and control the investigation. Furthermore, even where the Commission chooses not to supervise complaints, the RUC's report of the investigation is submitted to it and the Commission must issue a 'certificate of satisfaction'. The Commission may ask for further enquiries or investigations to be carried out.

Turning to the specific points you raised in your letter, the Government does not believe that independent judicial enquiries into shooting incidents where the security forces have been involved are either necessary or appropriate. Indeed, setting aside established judicial procedures on an ad hoc basis can only undermine those procedures. The Government believes that the existing independent elements - police investigation, involvement of the DPP and prosecution in the courts - ensure that justice is done, and is seen to be done, in a way which is fair both to the accused and to the injured parties.

You also referred to the public being denied timely access to information about circumstances of the death or wounding of a person

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caused by the security forces. I can see that, were it possible, the the release of information discovered in a police investigation, as that investigation was proceeding, would be welcomed by some; but it is not free from danger. There is a substantial risk of prejudicing any future prosecutions; and there may indeed be a risk of a trial by public media. The piecemeal release of information could, in itself, be misleading.

You also referred to extending the mandate of the Royal Commission on Criminal Justice to Northern Ireland. The Royal Commission was set up in March 1991 to review the criminal justice system and to make whatever recommendations it considers appropriate. Although the review will not specifically cover Northern Ireland (or Scotland for that matter), the Government will carefully consider any recommendations to see how and where they should be applied.

I note that you suggest the introduction of specific statutory rules to govern the use of 'lethal force' by the security forces. The possibility of reviewing the law governing the use of force by the security forces in Northern Ireland is currently being considered. However, as you clearly appreciate, this is a difficult area and any such review would most likely involve an examination of the general criminal law of the United Kingdom as a whole, and not just as it applies to the police and army in Northern Ireland in their anti-terrorist roles.

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The existence of criminal charges arising from the death of Fergal Caraher, and the injury of his brother Michael, bind me to make no specific comments on the case; it is sub-judice. However, have full confidence that justice will be done. The courts are there to ensure that it is done.

Equally I cannot accept, as your letter might seem to imply, that some kind of double standard operates and soldiers are not convicted if they use force unlawfully. There have indeed been relatively few convictions of security force personnel for the unjustified use of lethal force; but there have been some. Restraint, discipline and proper behaviour is both expected, and obtained, from policemen and soldiers. Where the policemen or soldiers do act unlawfully they are liable to prosecution.

Since 1969 the security forces have been responsible for some 312 deaths. However over 2000 civilians and over 900 members of the police and army have been killed at the hands of terrorist organisations; and very many more injured, maimed, intimidated and exiled. It is the terrorist organisations which represent far and away the greatest threat to justice and to human rights generally in Northern Ireland.

The Government's security policy is to deal with terrorism and terrorists within the law. The law used for this purpose is the ordinary criminal law, which has been temporarily supplemented by a

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number of additional provisions, the purpose of which is the better protection of the lives and liberties of all those under threat from terrorism. It is, and will continue to be, applied impartially to members of the public and to the security forces alike.

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