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FROM THE PRIVATE SECRETARY

HOUSE OF LORDS,
SW1A 0PW

8th January, 1982

Prime Minister.

8.1.82

Confidential

Clive Whitmore Esq.,
Principal Private Secretary to
The Right Honourable
The Prime Minister,
No. 10 Downing Street.

Ref: L12/127/08

Dear Clive,

R. v. Allen:
Rape Case at Ipswich

I know from your Press Office that you have been receiving a considerable amount of correspondence concerning the £2000 fine imposed by Judge Bertrand Richards in this case. Jack Ashley MP has written two letters to the Lord Chancellor, and the Lord Chancellor has now replied. I have sent copies of this correspondence to your Press Office, but in case the Prime Minister is interested you may like to have, not only copies of that correspondence, but further particulars.

Some correspondents, though not Jack Ashley, have called upon the Lord Chancellor to dismiss the judge. The only power which the Lord Chancellor has to dismiss a Circuit Judge is contained in section 17(4) of the Courts Act 1971, which allows him to do so "on the ground of incapacity or misbehaviour". The imposition by a judge of a sentence which is widely (and possibly rightly) criticised cannot by any conceivable stretch of the imagination be described as misbehaviour.

In his second letter, Jack Ashley asks the Lord Chancellor to remind Judge Richards of his power under section 11(2) of the Courts Act to vary his sentence within 28 days. In point of fact, that section was repealed on 1st January 1982 by Schedule 7 of the Supreme Court Act 1981, but re-enacted in identical terms in section 47(2) of that Act. But that is a trivial point; what is relevant is that this section was not designed to be used to increase a sentence except possibly in the case of clerical error; it has never, to the knowledge of anyone in this Department, been known to be used except to reduce sentences. Moreover, it would be an abuse of the Lord Chancellor's powers (and indeed a contempt of court) for him to attempt to influence the judge to use the section.

/Contd.

There is no question of the Lord Chancellor convening a sentencing conference. Such conferences are held regularly, convened by the Lord Chief Justice and other senior judges, and it is for them to decide whether or not sentences for a particular crime should be put on the agenda.

The judge has admitted, in a confidential letter to the Lord Chancellor, that his reference to the concept of contributory negligence by the hitch-hiker was inappropriate, and he has apologised for this; and you will see that this is the one point on which the Lord Chancellor's reply to Jack Ashley does impliedly criticise the judge.

Finally, as to the sentence itself. The Lord Chancellor never comments on sentences in individual cases, since to do so would be interference by the executive with the independence of the judiciary. But, in imposing this sentence, the judge was undoubtedly influenced by facts which cannot be made public but of which the Prime Minister may like to be aware. The victim was not a young lady of unblemished reputation. Although aged only 17, she has had sexual intercourse with four boyfriends, has had one abortion, and has suffered from venereal disease. These facts are contained in the victim's sworn statement to the police. The only reason they cannot be made public is that she was not cross-examined on that statement; and the only reason for this is that, after she broke down in tears in court, the defendant changed his plea from not guilty to guilty. I have no idea whether, at the time of the rape, the defendant was aware of the victim's previous sexual experience; but at the time of the trial he was undoubtedly aware of what she would be spared if he changed his plea, and the judge was therefore fully entitled to take his change of plea into account when deciding on the sentence.

I think it very likely that, when Parliament resumes, there will be questions to the Prime Minister concerning this case. I should perhaps emphasise that, while she will wish to emphasise the independence of the judiciary, and may wish to mention the Lord Chancellor's statutory power to dismiss Circuit Judges, she should not of course comment on the particular sentence imposed, still less mention the facts concerning the victim which I have mentioned earlier.

Yours sincerely,

Michael Collon

M.H. Collon

10 DOWNING STREET

*From the Principal Private Secretary*

11 January 1982

Dear Michael,

R. v. ALLEN :
RAPE CASE AT IPSWICH

I have shown the Prime Minister your letter of 8 January 1982 about this case.

She was grateful not only to be shown the exchange of correspondence between the Lord Chancellor and Mr Jack Ashley MP but also to have the further information about the case contained in your letter.

If the Prime Minister has Questions about the case when Parliament resumes, she will follow the line suggested in the last paragraph of your letter.

Yours ever,

Clive Whitmore.

Michael Collon Esq.,
Lord Chancellor's Office.

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
SW1A 0PW

8th January, 1982

The Right Honourable
Jack Ashley, C.H., M.P.,
17 Bridge Road,
Epsom,
Surrey,
KT17 4AW.

Dear Jack:

R. v. Allen

Thank you for your letters of 6th and 7th January and for your advice and various suggestions, which I will gladly bear in mind.

You may be quite sure that I will deal with the matter most carefully and in my own way, with due regard both to the seriousness of the detestable crime of rape and to the limitations on the constitutional position of the Lord Chancellor. In the meantime I am informing myself more fully of the facts of the case and of what transpired at the hearing.

Contributory negligence does not, of course, constitute any defence to rape, nor in my view, in the absence of actual sexual provocation, should imprudence on the part of the victim operate as a factor of mitigation in reduction of sentence.

I do not of course suggest either factor was present in the actual case, and no suggestion of direct provocation was in fact made.

Yrs:

Q.H.

From THE RT. HON. LORD HAILSHAM
OF ST. MARYLEBONE, CH, FRS, DCL.

From: The Rt. Hon. Jack Ashley C.H., M.P.

PCard 81.

HOUSE OF COMMONS
LONDON SWIA OAA

7th January 1982

The Rt. Hon. Lord Hailsham, CH
House of Lords
London SW1A OAA

Dear Quintin,

I was astounded to learn that when Judge Richards spoke of "contributory negligence" in the recent rape case he was relying on an out of date legal text book. He is quoted in the press as referring enquirers to David Thomas's book "The Principles of Sentencing". But in an old edition of that book the term "contributory negligence" was used only in relation to length of sentences, and the phrase was removed from the later edition. The author has assured me that there is nothing in his book which would support the imposition of a fine in this particular case.

I therefore suggest that when you meet Judge Richards to discuss the case you should ask him why he relied on an out of date text book and why he so misunderstood it. I also suggest that you confirm to the Judge that "contributory negligence" has no legal place in determining whether or not a rapist should be allowed to walk free.

Although the prosecution currently has no right of appeal, I believe you should remind the Judge of a little known fact: that under Section 11(2) of the Courts Act 1971 he, and only he, has the power to vary his decision within 28 days. This provision was designed for the rectification of mistakes in sentencing and I should be very interested to hear from you of Judge Richard's response.

Yours,

Jack

From: The Rt. Hon. Jack Ashley C.H., M.P.

LCC Sir Wilfrid Bourne
PCack 7/1

HOUSE OF COMMONS
LONDON SWIA OAA

6th January 1981

The Rt. Hon. Lord Hailsham, CH
House of Lords

Dear Quinton,

The comments, and the sentence of a mere fine, by Judge Bertrand Richards for the serious crime of rape call for urgent action by you. Even though the victim may have been unwise to hitch-hike, the Judge's comment that she "was guilty of a great deal of contributory negligence" will be interpreted as a licence to rape any hitchhiker. The concept of contributory negligence has no validity in the law of rape and the Judge was not only foolish in utterance but wrong in law.

The derisory sentence will give solace and comfort to rapists. It constitutes an insult to women everywhere and is a grave judicial error. Neither the comment nor the sentence can be ignored and I hope you will take the following actions to undo some of the damage and help to avoid a repitition of such preposterous comments and sentences.

Firstly, you should publicly repudiate Judge Richard's injudicious comment. Secondly, you should deplore the inadequate sentence. Thirdly, you should summon Judge Richards and demand his withdrawal of the comment. You should also acquaint him with the gravity of the crime of rape and seek an explanation of his extraordinary sentence. Fourthly, I suggest that you convene an early conference of judges on sentencing policy for rape so that eccentric and damaging judgements of this kind are actively discouraged.

Yours,

Jack