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SUBJECT

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B. Ingham

10 DOWNING STREET

From the Principal Private Secretary

22 January 1982

Lcc. Master set.

Dear Michael,

LAW OF RAPE

The Prime Minister and the Lord Chancellor had a word this afternoon about the present public concern about rape cases and the law of rape.

The Prime Minister said that there was a great deal of pressure building up in both Parliament and the press for some kind of inquiry. There were those who were arguing for an investigation into the conduct of the Scottish rape case which had been the subject of statements in Parliament the previous day. Others were proposing that there should be an inquiry into the effectiveness of the law of rape generally. What was clear was that the press would go on giving a great deal of publicity to rape cases for some time to come, and the political need for the Government to be seen to be responding to public concern would probably grow. She would like to discuss what the Government should do at a meeting early next week with the Home Secretary, the Lord Chancellor, the Secretary of State for Scotland, the Attorney General and the Lord Advocate, and she had thought it would be helpful for her to have a preliminary word with the Lord Chancellor.

The Lord Chancellor said that while he acknowledged the demands that the Government should do something, it was not easy to see what that something should be. Mrs Justice Heilbron had conducted a review of the law of rape eight or ten years ago. She had come to a number of sensible conclusions which broadly amounted to an endorsement of the present law. It was difficult to see what a new inquiry into the law of rape could add to her findings.

The Prime Minister suggested that Mrs Justice Heilbron might be invited to review her conclusions of ten years ago in the light of developments since then, and to recommend whether there was now a need for changes in the law. It would be necessary to consider how the Scottish law of rape could be taken into account in any such review.

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The Lord Chancellor said that he saw no objection in principle to what the Prime Minister had suggested, though he remained of the view that there was really nothing of substance for Mrs Justice Heilbron to look at and she was likely to produce a mouse. If it was decided to ask Mrs Justice Heilbron to conduct a review, there might be something to be said for the Prime Minister and him seeing her informally at an early stage. His office could make the necessary arrangements.

The Prime Minister said that as far as the Scottish rape case was concerned, she hoped very much that a private prosecution would be brought. This would put a stop, at least for the time being, to demands for a judicial inquiry into the handling of the case. She hoped that there would be no question of a private prosecution failing because the complainer lacked the necessary funds. Her office would arrange a meeting early next week with the Ministers concerned to decide what the next steps should be on both the broad question of the law of rape and on the narrower issue of the Scottish case.

9.30 am
26/1/82 X

I am sending copies of this letter to John Halliday (Home Office), Muir Russell (Scottish Office), Jim Nursaw (Law Officers' Department) and Christine Duncan (Lord Advocate's Department).

Yours ever,

Steve Whitmore.

Michael Collon Esq.,
Lord Chancellor's Department.

Legal Procedure

GLASGOW RAPE PROSECUTION

My Lords,

With your Lordships' permission, I should like to make a statement on the case of alleged rape and serious assault in Glasgow which has been the subject of much recent comment.

In Scotland, the Lord Advocate is answerable to Parliament for the conduct of criminal prosecutions. It is however the practice not to divulge any details of the evidence in particular cases. This is intended for the protection of all the parties involved, and it is particularly important in the present case, where it is possible that the complainer may at some future date make an application to the High Court of Justiciary to bring a private prosecution; it is particularly important in these circumstances that nothing is said that might affect any such application, the interests of the complainer, or the interests of any person who may be accused by her, and who under our legal system is entitled to the presumption of innocence. Subject to these restraints, I wish, however, to be as frank and open as possible about this matter to the House and to the public on account of the anxiety aroused by the case.

In this case the Procurator Fiscal, on receipt of information from the police charged 4 youths with rape and with attempted murder. On reporting the case to Crown Counsel in Edinburgh, they, in the exercise of their responsibility as independent prosecutors, indicted 3 of these youths with one charge of rape and one charge of assault to severe injury, permanent disfigurement and danger to life. The case was put out for a sitting of the High Court in Glasgow in June 1981. When the victim appeared it was apparent that she was not in a fit state to give evidence and on the instructions of Crown Counsel she was examined by a consultant psychiatrist. In the interests of the woman I would not wish to reveal the details of the report save to say that her medical history since the events complained of caused the psychiatrist to conclude that a court appearance at that time would be detrimental to her health and carried a hazard of suicide both before and after the trial whatever the result. Accordingly,

the case was not called.

Thereafter the decision had to be taken whether the trial should be further postponed, or whether the Crown should proceed with the whole, or part of the indictment in the absence of the complainer's evidence, or whether the case should be dropped altogether. In coming to that decision Crown Counsel was principally influenced by the likely effect on her health of the prospect of having to give evidence.

Given that the complainer was not at that stage able to give evidence, the difficult decision arose whether on the remaining evidence available the Crown should proceed with both or one of the charges. The view was taken by Crown Counsel that in the light of all the circumstances in the absence of the complainer it would not have been proper to proceed on the whole or any part of the indictment.

With regard to obtaining the evidence of the complainer in the situation where she was not able to give her evidence in court, it has been suggested that her evidence could have been taken on commission under section 32 of the Criminal Justice (Scotland) Act 1980. In terms of subsection (2)(b) of the section, the application to take evidence in this way may only be granted if the judge is satisfied that there would be no unfairness to the other party or parties. I am of opinion that an application in this case to take the evidence on commission of the complainer would not have been granted.

In the light of the information available to him Crown Counsel considered that the prospect of sufficient improvement in the complainer's health to alter the situation was not sufficient to justify keeping the proceedings alive any further and, accordingly, instructions were given that the case should be dropped. Once that has been done a prosecution at my instance is no longer possible.

Crown Counsel exercise their independent professional judgment in coming to decisions on matters such as those I have referred to but in cases of difficulty they may, and do, refer questions for my decision.

I have decided to instruct that no decision to drop proceedings altogether in any case of murder or rape should be taken before the hearing of evidence has begun without the question being referred to me for decision.

Background Note to the Statement on the Rape Case in Scotland which was not proceeded with.

It is traditional that the prosecution in no circumstances divulge the evidence available to them and despite the fact that evidence has been given in the press as proporting to reflect evidence available to the Crown it is not our intention to refer to it or indeed to reveal it for historic and important reasons. Nevertheless it is perhaps important that we should point out certain facts. The first charge was a charge of rape. In the absence of the complainer's evidence there was no possibility whatsoever of establishing the essential element of rape which was lack of consent which would certainly have been denied by all the accused. The woman was intoxicated, whether or not she was assaulted is a matter of dispute. Even with her evidence it is unlikely that we could have established a charge of rape and had we been able to do so it is even more unlikely that we would have been able to establish a charge of rape against more than one of the accused. The almost inevitable influence is that any serious assault which was committed against her was committed after sexual intercourse and not before and was the act of one accused and had no consent from or consensus with any of the others.

2. It is suggested that we could have proceeded in the second charge which was assault with a razor or knife and not with the first charge. But they were so much a part of one incidence that to charge one and not the other would have been impossible and to charge both in the knowledge that one could never go to the jury would have been highly prejudicial and quite wrong.

3. It has been suggested, correctly, that the Crown cannot now re-indict any of the accused. But there is a remedy open to the complainer to bring a private prosecution. This has been suggested in the press. It is not something in which we could in the circumstances concur, nor I think in the circumstances could we oppose it and I think that it would be a perilous course. Nevertheless, it is open to the complainer if she now wishes to expose herself to the grim experience that would inevitably be hers were she to bring a private prosecution on the matter of these charges and there is a possibility she could succeed. I think it is right that she should be advised that that is a possibility and it is for this reason that we have been cautious, not to say that success on either charge was impossible. What we have said is that in the absence of our evidence success on the rape charge was in our judgement impossible and to proceed on the second charge in its absence would in our judgement have been improper. I should add that the right to bring a private prosecution depends upon an order of the High Court of Justiciary in Scotland. It is normal that this would only be granted with a concurrence of the Lord Advocate. In this case it is clear the Lord Advocate could neither concur nor demur and accordingly it would be for the court to grant that right or to refuse it.