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File A11

SUBJECT



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From the Principal Private Secretary

27 January 1982

cc. report set.

Dear John,

RAPE

The Prime Minister, Home Secretary and Lord Chancellor met Dame Rose Heilbron this morning to discuss the present public concern about rape cases and the law of rape.

The Prime Minister said that public concern about the handling of rape cases by the police and the courts had reached a point where the matter was now a political problem to which Ministers had to be seen to be responding. There was a wide spread feeling that in rape cases the innocent were frequently pilloried and the guilty allowed to escape. Ministers had to see that the rule of law was upheld, that law abiding citizens received the protection they expected and that the guilty were convicted and punished. Public concern about rape had developed quickly because a few really bad cases had happened to come together and the press had given full publicity to these and the subsequent public disquiet. We had to expect that rape cases would continue to receive headline treatment in the press for the foreseeable future. The Government had to decide how to respond to the general concern, and she had thought it would be helpful to talk to Dame Rose now in the light of her extensive experience on the question of rape.

The Prime Minister went on to say that following the report in 1975 of the Advisory Group on the Law of Rape, the Sexual Offences (Amendment) Act 1976, which implemented many of the Advisory Group's recommendations, had been passed and it was generally felt that the substantive law of rape was now satisfactory and did not need fundamental revision.

In discussion there was agreement that the present situation had not come about because of any defect in the law of rape and that there was no case for major changes in the law. It was pointed out, however, that it was important not to say in public that there was absolutely no need to improve the law of rape, since to do so would call into question the work now being done by the Criminal Law Revision Committee

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on the law of sexual offences generally, including rape. The line to follow in public was that the recent cases which had given rise to public concern had not revealed any fundamental flaw in the law of rape and the law as it stood was perfectly adequate to deal with them.

The Prime Minister said that the event which had triggered the present public disquiet was the sentence given by Judge Richards in the case of R. v. Allen and in particular his remarks about contributory negligence. Ministers had been very grateful for the Lord Chief Justice's prompt statement making it plain that, except in wholly exceptional circumstances, those convicted of rape should always receive custodial sentences. There was, however, still some pressure for mandatory custodial sentences. The Government were not disposed to accept this argument, since judges had to be allowed some discretion.

Dame Rose Heilbron said that she doubted whether the judiciary would welcome mandatory custodial sentences for those convicted of rape. The Home Secretary added that he thought that some of the pressure in the House of Commons for mandatory prison sentences was diminishing and he expected to be able to resist any amendments to the Criminal Justice Bill designed to make custodial sentences mandatory. A strong argument against mandatory sentences was that they would probably lead to more acquittals and to even fewer women than now being ready to take rape cases to the police.

The Lord Chancellor said that as regards the question of contributory negligence, he had put the record straight immediately in his letter to Mr Jack Ashley MP which had been published. The Prime Minister said that she nonetheless thought there was a case for getting the position on the record in Hansard.

Dame Rose Heilbron said that she thought that many of the present difficulties centred on the handling of rape cases by the police. She had the impression herself that the approach which the Advisory Group on the Law of Rape had advocated in their report and which had informed the subsequent legislation had still not percolated through to some police forces. Her misgivings had been considerably reinforced by the recent television programme showing how the Thames Valley Police had dealt with a woman who had complained that she had been raped. The Times of the previous day had carried an interesting article about the way in which the police in New York handled rape cases. She wondered whether the police in Britain could establish groups of officers who were given special training in how to handle the very difficult circumstances which almost invariably surrounded any rape case.

In discussion there was general agreement that the police frequently showed a degree of insensitivity in the way they dealt with allegations of rape. This was particularly true of

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the way they conducted the questioning of the complainant. On the other hand, it was very difficult for them not to become case-hardened, and given the difficulty of securing a conviction for rape, they felt bound to do all they could to satisfy themselves that a prosecution was likely to stand up in court. Nonetheless, there was a good case for considering further whether the police should train a certain number of officers with the appropriate personal qualities to handle rape cases. The Home Secretary was already thinking of sending out to the police new guidelines on the handling of rape cases and this might be a suitable way of inviting the police to provide special training in this difficult area.

Dame Rose Heilbron said that a related problem was the question of the part played by corroboration in dealing with rape cases both by the police and the courts. Corroboration was a rule of practice in England and Wales, and the need for corroboration was more strongly emphasised to juries in rape cases than in almost any others. Yet juries were also told that if they were satisfied that the complainant was telling the truth, then corroboration was not necessary. There was some inconsistency here. The Advisory Group on the Law of Rape had been aware that there were problems about corroboration but they had not had time to look into them. Moreover, the police when conducting the initial investigations into a rape case often did not take it as seriously as they might because they could not immediately see that the corroboration which would need to be demonstrated in court would be available. Again, the police sometimes did not seem to be fully alive to the opportunities to provide corroboration that were readily available. This too was something which might appropriately be taken care of by changes in police training and could perhaps be covered in the guidance which the Home Secretary had it in mind to issue.

/and In further discussion it was suggested that more effort should be made to mitigate the ordeal which women had to go through in rape cases, for example in the process of medical examination/in cases where the defence was one of consent. One possibility was to make more use of hearings in camera. There was no reason in theory why more cases should not be heard in camera, but there was likely to be a strong body of judicial opinion against such a development. In the end it must be for the trial judge to decide whether the administration of justice required a case to be heard in camera. It might be possible to exclude the general public but to continue to allow the press to be present. Dame Rose Heilbron added that another area where the Advisory Group had suggested women involved in rape cases might be given assistance was that of social and medical advice: such women often needed guidance and support even in dealing with their own families.

Finally, Dame Rose Heilbron raised a matter not directly related to the issue of rape - the question of unsworn statements from the dock. Until a few years ago such statements were

rare events. Now they were being made in many cases. They were bound to have an effect on juries, even though they were not to be given the same weight as evidence given in cross examination. There was widespread concern among the judiciary about this development which many thought would result in an increase in undeserved acquittals. If the Government decided to deal with the matter, perhaps in the present Criminal Justice Bill, it should be possible to carry the Criminal Bar Association with any change, provided they were consulted fully.

The Prime Minister, summing up the discussion, said that they were agreed that no immediate change in the substantive law of rape was required to deal with the present situation. Nor should mandatory custodial sentences for rape be introduced. We should stand on the statement by the Lord Chief Justice on sentencing. As regards the position on the question of contributory negligence, she would arrange for an inspired Parliamentary Question to be put down to the Attorney General. She would be grateful if the Lord Chancellor, in conjunction with the Attorney General, could let her have as soon as possible a suitable draft Question. The Home Secretary should consider how best to pursue the question of encouraging the police to deal with rape victims more sympathetically and to improve their methods of investigating complaints, including their approach to the issue of corroboration. Progress on these matters might best be achieved through improved police training, and it might be appropriate to cover them in the guidelines which he was considering circulating to Chief Constables. He should seek the views of the Lord Chancellor and Dame Rose Heilbron on any guidelines before they were issued. The Home Secretary should also consider whether the Criminal Law Revision Committee should be invited to look into corroboration as part of their review of the law on sexual offences generally. The Home Secretary should examine, with the Lord Chancellor, whether the problem of unsworn statements from the dock to which Dame Rose Heilbron had drawn attention could be dealt with in the Criminal Justice Bill. She would be grateful if Dame Rose Heilbron could report the outcome of their meeting to the Lord Chief Justice, and for this purpose she would arrange for her to receive a copy of the record of the discussion. Finally, the press were showing close interest in the meeting, and she proposed to take the line that she, the Home Secretary and Lord Chancellor had found it very helpful to discuss with Dame Rose Heilbron the recent events which had given rise to so much public concern and that Ministers would be considering further the issues involved. She would like to keep in touch with Dame Rose Heilbron.

I am sending copies of this letter to Michael Collon (Lord Chancellor's Office), Muir Russell (Scottish Office), Jim Nursaw (Law Officers' Department), Christine Duncan (Lord Advocate's Department) and David Wright (Cabinet Office).

Yours now,

John Halliday Esq.,
Home Office.

Muir Russell



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Legal Procedure.

10 DOWNING STREET

From the Principal Private Secretary

27 January 1982

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Dear Dame Rose,

The Prime Minister has asked me to repeat her thanks to you for being ready to come to see her at such short notice this morning to discuss the present public concern about rape cases. Mrs Thatcher found her meeting with you most helpful.

✓ As the Prime Minister told you this morning, she would be very grateful if you would report the outcome of the discussion to the Lord Chief Justice, and with that in mind, I enclose, as I promised I would, a copy of my record of the meeting.

Yours sincerely,

Oliver Whitmore.

Dame Rose Heilbron DBE