File

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JA (55)

cc H. Booth

10 DOWNING STREET

From the Private Secretary

17 February 1986

Dear Stephen

LENIENT SENTENCING

Thank you for your letter of 14 February.

The Prime Minister has noted the Home Secretary's views. She is content that the proposals on lenient sentencing in the draft White Paper on the Criminal Justice Bill 1986/87 should go forward as agreed by H Committee on 4 February.

I am copying this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), David Morris (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office), David Beamish (Government Whips' Office, Lords), Henry Steel (Law Officers' Department) and to Michael Stark (Cabinet Office).

Yours ever

Mark Addison

(Mark Addison)

Stephen Boys Smith, Esq.,
Home Office.

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DSG

E.R.

PRIME MINISTER

LENIENT SENTENCES

You were struck by the parallel between Clause 22 of the Prosecution of Offences Bill (which was thrown out by the Lords) and the existing procedure under Section 36 of the Criminal Justice Act 1972, under which the Attorney General can refer points of law raised by acquittals to the Court of Appeal for opinion. You asked whether this parallel had been drawn forcibly to their Lordships' attention, and for the Home Secretary's views on whether the existing procedure did not constitute a strong precedent for the Government's original proposal in Clause 22.

The Home Secretary's advice is set out in the attached letter from the Home Office. I also attach the earlier papers which you may like to have to hand.

The gist of the Home Secretary's response is that the parallel you draw is a powerful, though not a complete, one, and that a good deal of the opposition to Clause 22 was based on misconception. But he goes on to note H's view that the practical difficulties of securing sufficient support for the original proposal are insuperable.

The Home Secretary sticks by the view agreed by H Committee that his new proposal, for putting the guideline judgements of the Court of Appeal on a more systematic basis, provides the best practicable way forward.

We are, therefore, back to the position whereby you can

i) Rest content with H Committee's recommendation (though you might, as the Policy Unit have suggested, ask him nonetheless to consider the wider question of reviewing minimum and maximum sentences for at least a range of the more serious offences) or

ii) Return to the charge, and seek to persuade colleagues that some other way forward is needed.

Time is short. The Home Office hope to publish the White Paper on the Criminal Justice Bill early next month. If you opt for ii) above, you will I think need an urgent meeting with the Lord President, the Home Secretary, the Lord Chancellor and the Attorney General.

Which would you prefer?

Leave it as now — we can always remove the other clause at committee stage. I suspect my point was not argued at H. MS

Mark Sawer (Duty Clerk)

pp. Mark Addison
14 February 1986

BM2ADH

From: THE PRIVATE SECRETARY

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

14 February 1986

Dear Mark

LENIENT SENTENCES

Thank you for your letter of 11 February.

There was, as the Prime Minister has pointed out, very real similarities between the proposal in Clause 22 of the Prosecution of Offences Bill and the existing procedure under which the Attorney General may refer points of law raised by acquittals for the opinion of the Court of Appeal under section 36 of the Criminal Justice Act 1972, and consciously so. During the Lords Committee Stage of the Prosecution of Offences Bill the Lord Chancellor made the point with some force that it was as important to get sentencing principles right as it is for principles of law, and observed that the section 36 procedure had been a wholly beneficial change. But other speakers in the Lords debates (including Lord Rawlinson) saw a clear distinction between the two procedures, and there are indeed important differences.

In the first place, it is not the acquittal itself which is referred to the Court of Appeal under section 36, but the particular point of law to which it gives rise. Perhaps more important, though, is the fact that the section 36 procedure does not by its very nature raise the thorny issue of the prosecution's role in sentencing. The critics of Clause 22 argued that, unless he was to rely solely on press clamour in deciding which cases to select for reference, the Attorney General would need to take advice from the prosecution and that this would unacceptably extend the role of the prosecution into the sentencing field.

As he said in his minute of 31 January to the Prime Minister, the Home Secretary believes that these arguments were overdone, but he is in no doubt that opposition in the Lords would still be very strong. Indeed, the view at H was that there was no chance of the old proposal carrying in the Lords. It must also be borne in mind that lawyers on the backbenches in the Commons opposed Clause 22, and would certainly do so again sufficiently vocally to encourage their Lordships to opposition. That is why he favours the new proposal described in his minute and agreed by H Committee colleagues for putting the guideline judgments of the Court of Appeal on a more systematic footing, with publication under statutory authority by the Judicial Studies Board. The target - improving sentencing practice - would be the same, but the method would not be open to the objections, however misconceived, which carried the day in the Lords. He does not agree that this change would be simply cosmetic. It would provide us with a means of making more effective a procedure which is at present somewhat haphazard and unfamiliar to the public, but which if strengthened could go a long way towards solving the problem.

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I am copying this letter to the other recipients of yours.

Yours,

Stephen

S W BOYS SMITH

Mark Addison, Esq.

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HOME Affairs

Sentencing Policy

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