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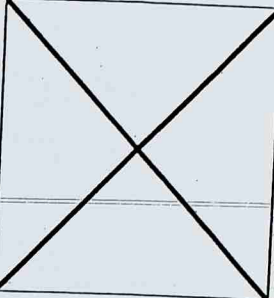
Thank you for your letter of 1 February about the recent articles and leaders in The Times on the powers of courts to impose restriction orders. The Prime Minister is content for the Home Secretary to answer the draft arranged Question attached to your letter, and is happy with the draft Reply. She hopes that this will clear up any misunderstandings about the powers of courts to make restriction orders.

W.F.S. RICKETT

Colin Walters, Esq.,
Home Office.

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PROPOSALS FOR ARRANGED PARLIAMENTARY QUESTION FOR WRITTEN ANSWER

DRAFT QUESTION: To ask the Secretary of State for the Home Department if the judgment delivered by the European Court of Human Rights on 5 November 1981 in the case of "X" v the United Kingdom, or the passage of the Mental Health (Amendment) Act 1982, prevents or inhibits courts from exercising their power under section 65 of the Mental Health Act 1959 to make restriction orders in respect of mentally disordered offenders.

DRAFT REPLY: No. The power to make a restriction order (in a case requiring the protection of the public from serious harm) is not diminished by the European Court's judgment on appeal rights or by the changes to be made from 30 September by the Mental Health (Amendment) Act 1982. More than 130 restriction orders were made during 1982.

mr

7 June 22/1/83

Fagan release criticism raises legal objections

By Anthony Bevins, Political Correspondent

The Prime Minister's Commons comments on the release of Mr Michael Fagan have caused distress within senior legal circles. It has been stated that if Mrs Thatcher had been better advised, she would not have made any comment which could have been interpreted as a criticism of the trial judge, Judge James Miskin.

Instead, Mrs Thatcher recognized the "deep feelings" that had been expressed by one of her own backbenchers, and then added: "I understand that the judge who presided in this case made a hospital order without also making a restriction order, which it was open to him to make.

"The hospital order put the decision on to the medical tribunal. Had the judge made a restriction order as well, the matter could have gone to the Home Secretary. At present we must obey the existing law, which was drawn up in 1959." Downing Street sources said yesterday that Mrs Thatcher's remarks had been intended as a "neutral" description of the facts.

But senior legal sources stated yesterday that it would have been better if the Prime Minister had responded that such matters were best left to the courts. It was suggested that

Continued on back page, col 4

Thatcher remarks on Fagan queried

Continued from page 1

the pillar of justice was all-too-easily and all-too-often rocked by the comments of politicians inside and outside Parliament.

It was also remarked that the Prime Minister had remarkably failed to make any reference to an amendment to the Mental Health Act, 1959, which was enacted by the present government on October 28, just three weeks after Mr Fagan had been dealt with at the Central Criminal Court.

The Mental Health Amendment Act, 1982, significantly

alters Section 65 of the 1959 Act, under which a judge is empowered to make the restriction order referred to by the Prime Minister.

More importantly, that amendment was made to the law because of a judgment by the European Court on November 5, 1981, in which it was stated that it was a breach of the European Convention of Human Rights that a mental health review tribunal should not have the right to release a patient without reference to the Home Secretary. It was ruled that in the case of a restriction

order, it was not enough that a tribunal should be confined to an advisory role.

Because of that judgment, the law was amended last year. Downing Street sources pointed out last night that this amendment would not take effect until September 30 this year.

The point was made yesterday, however, that Judge Miskin could not very well have signed a restriction order, in the light of the European Court ruling and the Government's acceptance of it through amending legislation.

Leading article, page 9

22/1/83

Juan

SEPARATION OF POWERS

It is unbecoming in the Prime Minister to be so ready with instant criticism of controversial judicial decisions. The temptation to substitute one's own sense of justice for the sense of justice of a judge, who has heard the evidence and seen the witnesses, is a temptation to which leader writers are prone. They may still expect their prime ministers to be made of sterner stuff.

The free-for-all of Prime Minister's Questions is the occasion for these observations. Just before Christmas Mrs Thatcher agreed with her questioner that a sentence that had been passed in a rape case at the Leeds crown court was so lenient as to be "wholly incomprehensible". The Speaker pulled her up for breach of the procedural rule that a judge cannot be criticized except on a substantive motion before the House. The next day the Speaker corrected himself. That rule applies only to reflections on a judge's character or motives. No such restriction is placed on a member who simply wishes to contend that a judge is wrong. The Speaker seldom slips. Perhaps on that occasion he was startled to hear a Prime Minister roundly roast a judge. His acumen momentarily deserted him, but not his true

instinct. Something had occurred which should not have occurred.

On Thursday of this week the subject of Mr Michael Fagan's discharge from hospital was raised - he it was who last year made monkeys of the palace police and sorely embarrassed the Queen. This time Mrs Thatcher was more circumspect. In print the exchange might be read to imply no criticism at all. That is not how those who heard it heard it, though there is doubt whether her displeasure was directed at the tribunal which discharged Mr Fagan or the judge who sent him to hospital under one type of order rather than another. Either way, it is hard to see what there is to criticize.

For his palace capers only one charge was brought against Mr Fagan, stealing half a bottle of wine, and of that a jury acquitted him. Next week he stood trial on a totally unconnected charge of assault. The alleged victim, his stepson, did not show up and the judge ordered his acquittal, describing the incident as trivial. Mr Fagan then pleaded guilty to taking and driving away a car, a crime that does not call for a custodial sentence on first offence. The judge, having been apprised of his evidently disturbed mental state, ordered him

to be sent to a secure hospital with the words, "My order is neither punishment nor sentence. He will be sent there as a patient and not as a criminal. I hope he will be cured and when he is cured he will be discharged". He has now been discharged. Whether he is cured the mental health tribunal is better able to say than the House of Commons.

To be deprived of his liberty in England a man must be convicted of a crime that properly attracts a custodial sentence, or his mind must be so deranged that he would be a danger at large. A danger, not a nuisance. There is no procedure for shutting away "undesirables". And long may that be so.

But apart altogether from the merits of these cases, it would not be a happy development if the Prime Minister were to be available at Question Time for comment on any judicial decision that has hit the headlines. The Prime Minister's influence is very powerful, especially this Prime Minister when she is riding high. An impression that the judges work in the shadow of her displeasure or the light of her pleasure is one that is better avoided. The constitutional doctrine of the separation of powers applies in this area at least.

to be expensive. My hon. Friend mentioned the water industry. There is an agreement in that industry to solve disputes through arbitration, which is binding upon both sides. I understand that the employers and unions are negotiating through ACAS. I hope that the negotiations will be successful and that the threat to strike will be withdrawn.

Mr. Foot: The position in the water industry, with possible strike action, is serious. Will the Prime Minister, as a Government, do everything possible to ensure that the discussions at ACAS are allowed to succeed? Will she, as a Government, ensure that no steps are taken that would injure the possibility of successful negotiations? The unions have wanted that from the beginning, and they want it now. They want fair treatment from the Government.

The Prime Minister: The right hon. Gentleman knows that there is a threat to strike. I understand that that is in breach of the agreement, which is to resolve disputes through arbitration. I join with him in hoping that the discussions through ACAS will be successful.

Mr. Foot: I would not invite the right hon. Lady to say anything that would make a settlement more difficult—I would not wish to do so. I am sure that she will understand that there have been ballots throughout the industry. There is strong support among its workers, who feel that the proper negotiating machinery has been interfered with and that the Government have intervened. Will she encourage the discussions at ACAS to succeed through genuine negotiation? I am sure that a settlement could be reached on that basis.

The Prime Minister: I have already wished the negotiations well, and I repeat that.

Mrs. Faith: Without in any way criticising the tribunal that sat in Liverpool yesterday, does my right hon. Friend agree that it is a matter of anxiety that Michael Fagan was released from hospital yesterday without any surveillance? Would she further agree that the Mental Health Act 1959 should be amended so that in future it should be possible for mental health tribunals to impose a supervision order on people leaving hospital, if that is thought to be necessary?

The Prime Minister: I recognise the deep feelings that my hon. Friend has expressed. I understand that the judge who presided in this case made a hospital order without also making a restriction order, which it was open to him to make. The hospital order put the decision on to the medical tribunal. Had the judge made a restriction order as well the matter could have gone to the Home Secretary. At present we must obey the existing law, which was drawn up in 1959.

Mr. David Steel: Has the Prime minister seen the report of the Central Statistical Office, published yesterday, which showed that manufacturing output in November was the lowest since the mid-1960s? Is that not a remarkable achievement after four years of her economic policy?

The Prime Minister: The right hon. Gentleman is correct in what he says about manufacturing production. That is, of course, only part of production. The GDP over the same period is considerably up. The right hon. Gentleman referred to the middle 1960s. The index of manufacturing production is at its lowest since 1967. On the same basis, GDP is up 26 per cent. on the 1967 figure.

Viscount Cranborne: Does my right hon. Friend accept that, in seeing this afternoon the survivors of the Logar massacre in which 105 unarmed civilian Afghan people were massacred by Russians, she has earned the gratitude of the Afghan people and struck a blow for the self-determination of that country?

The Prime Minister: I agree with my hon. Friend. These people are brave and courageous resistance fighters. We must do everything that we can to support them.

Q2. Mr. Alton: asked the Prime Minister if she will list her official engagements for 20 January.

The Prime Minister: I refer the hon. Gentleman to the reply that I gave some moments ago.

Mr. Alton: Has the Prime Minister had time to consider the case of the 7½-year-old child in my constituency who has become addicted to glue-sniffing? Does the right hon. Lady agree that, in view of the massive increase in solvent abuse, there is a desperate need for new legislation to prevent the sale of such solvents to young people, and to establish centres to help children who become addicted to glue-sniffing?

The Prime Minister: I know of that case and I am aware of how deeply we all feel about it, and how worried we all are that there is an outbreak—if that is the right word—of glue-sniffing in certain areas. The hon. Gentleman will know that it is not easy to stop such action by legislation. I doubt whether legislation would have much effect upon it. He will also be aware that in Liverpool and many other local authority areas voluntary bodies are working with the authorities to tackle solvent misuse and alert youngsters to the dangers so that they may be responsible for their own health. He will also have seen an announcement by the Under-Secretary of State for Health and Social Services to the effect that he is consulting the authorities, retailers and voluntary and statutory bodies to see what they can do to help.

Mr. Best: In view of the interest being shown in Scottish seats by some Opposition Members does my right hon. Friend agree that that could constitute a good case for devolution, if not outright independence, for Scotland.

The Prime Minister: I congratulate my hon. Friend on the ingenuity of his question. I am sure that whatever happens he will be returned for his seat in Wales.

Mr. Arthur Lewis: During the Prime Minister's busy day, could she take the opportunity to ask for the relevant papers from the European Assembly, which has apparently passed a resolution condemning her and the British Government for saying that we should buy British whenever possible? The British Government representative made an abject apology and said that it was not the policy of the British Government that we should buy British, because that is against Common Market rules. Are we to be told by this bureaucratic "Jenkins" assembly that we cannot ask people to buy British?

The Prime Minister: I feel a good deal of sympathy with what the hon. Gentleman says. We are free to choose what we buy. I hope that British goods will soon be better than those of any of our competitors. I believe that we should be free to buy British.

Q3. Mr. Stanbrook: asked the Prime Minister if she will list her official engagements for Thursday 20 January.