File

10 DOWNING STREET

From the Private Secretary 26 September 1983

Thank you for your letter of 23 September about the Home Secretary's proposal for a power of appeal against excessively lenient sentences. I have shown this to the Prime Minister. She would still like a meeting with the Home Secretary. She is concerned that the Home Secretary's proposal will not satisfy those who are concerned about lenient sentencing since it will not allow sentences in particular cases to be increased, and yet at the same time it will still arouse the criticism of those who believe that such a change would disturb the function of prosecution. She is worried that the opposition which this proposal may arouse could put at risk the Government's plans for an independent system of prosecution.

W. F. S. RICKETT

Tony Rawsthorne, Esq.,
Home Office.

Prime Minister
If you agree I will pass the gist of these comments to the Home Secretary's office before the meeting on 3 October.
WR 23/9

Yes please
MT

cc FM

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23 September 1983
Policy Unit

PRIME MINISTER

APPEAL AGAINST LENIENT SENTENCES

The Home Office letter of today's date argues in greater detail the case for giving the prosecution the right of appeal against lenient sentences.

The Lord Chancellor and the Attorney-General agree with Leon, so long as he does not introduce a "full" right of appeal, which would increase the sentence to be served by the actual defendant.

I think this half-way house tends rather to compound the difficulty. The prosecution would only tend to appeal in horrific cases which had aroused public outrage. But that outrage would certainly not die down if the Court of Appeal certified that the sentence had in fact been too lenient but they did not have the power to alter it.

This is rather different from the power under the 1972 Act (which in any case has rarely been used). There, the prosecution has the right "to refer a general point of law to the Court of Appeal without affecting the acquittal of the actual defendant". Here, we are dealing with a term of years to be actually served in jail, not a general point of law.

This phoney right of appeal will not satisfy our own supporters. But it will certainly annoy many of the civil liberties people who mauled the Police and Criminal Evidence Bill. More important, it is likely to be opposed by many criminal lawyers who believe that such a change would disturb the function of prosecution.

Once again, I doubt whether the law officers are the best judges of public reactions. And I remain uneasy about adding this proposal to a list of proposed measures which is already quite formidable. I am also worried that if, as Leon intends, this prosecution right of appeal is to be included in the Bill for an independent prosecutor, it may help to discredit an otherwise admirable reform.

You are due to discuss the proposal on 3 October.

FERDINAND MOUNT

From: THE PRIVATE SECRETARY

cc NO

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

23 September 1983

Dear Willie,

Thank you for your letter of 19 September indicating that the Prime Minister would like to discuss further with the Home Secretary his proposal for a power to refer to the Court of Appeal cases in which excessively lenient sentences are imposed. As it is not possible to arrange a meeting before Monday week the Home Secretary has asked me to write setting out his thoughts on how this proposal fits into the wider package he discussed with the Prime Minister on 13 September, and on the specific point she raised then about the application of similar arrangements to magistrates' courts.

The Home Secretary regards it as important that he should be seen to be taking legislative action to meet public concern over unduly lenient sentences, few in number but usually very well publicised. He believes that the best way of doing this is to take a power which bears directly on the particular cases where there has been a failure to apply properly the tariff laid down by the Court of Appeal. This has the merit of imposing on the judges a duty to put their own house in order. It is also in line with the trend towards greater clarity and coherence in sentencing policy which the Court of Appeal is keen to encourage. Without this element the package of measures the Home Secretary is proposing might be criticised as being excessively reliant on the exercise of the executive functions of Government. He is anxious that at least part of the package should involve the judiciary in a substantial way. The Home Secretary believes that the fact that the Lord Chief Justice has publicly advocated a prosecution right of appeal against sentence makes it particularly important to have something to offer in this area.

As the Prime Minister pointed out in her discussion with the Home Secretary, there are strong objections to conferring on the prosecution a right to ask the Court of Appeal to resentence the individual offender. What the Home Secretary is proposing, however, avoids those objections and follows precisely the approach established in section 36 of the Criminal Justice Act 1972, which confers on the Attorney General a power (already exercised several times) in the case of an acquittal to refer a general point of law to the Court of Appeal without affecting the acquittal of the actual defendant. Similarly an inherent feature of the present proposal is that the sentence served by the particular individual would not be altered. Nonetheless, in ruling that the sentence had been too low the Court of Appeal would be exercising an important general influence in favour of greater severity in the whole class of cases that would be in question, and would also be giving an authoritative and public view of the particular case. This cannot happen at present as the only appeals against sentence reaching the Court of Appeal are those where it is claimed that the sentence is unduly severe.

/ The

Willie Rickett, Esq

The Lord Chancellor and the Attorney General are in agreement with what the Home Secretary proposes. In particular, the Attorney General does not favour a full right of appeal against sentence for the prosecution, but considers that it would be entirely acceptable to follow the 1972 Act precedent as closely as possible.

As regards magistrates' courts, the Home Secretary accepts that their sentencing decisions are as liable to err on the side of leniency as those of the Crown Court; but magistrates are dealing with relatively less serious offences, whereas it is the Crown Court that deals with the really grave cases - eg of rape or robbery - over which there is most concern. An extension of the Home Secretary's proposal to cover magistrates' courts would give rise to formidable problems of selection. Magistrates deal with about two million offenders a year, as against 80,000 dealt with by the Crown Court. The Court of Appeal could not cope with any greater burden of references than might arise from the Crown Court, at least not to start with. To provide for magistrates' sentences to be referred to the Crown Court instead of the Court of Appeal would risk the very inconsistency that the proposal is intended to avoid.

The Home Secretary and the Attorney General have therefore concluded that they should proceed with the proposed power of reference in relation to Crown Court sentences only, and should see how that works before contemplating any extension or adaptation of it to the magistrates' courts.

It would be very helpful to know if the Prime Minister is content with the Home Secretary's proposal on the basis of this explanation as he is anxious to finalise the details of the package; and whether she regards it as important that the package should be, and be seen to be, a balanced whole. If the Prime Minister feels that a meeting is still necessary, he would of course be very happy to have a further discussion.

Yours ever,

Tony Rawsthorne

A R RAWSTHORNE

Home Affairs: Sentencing Pol.
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23 SEP 1983