



S.H. Booth

PRIME MINISTER

I have discussed with Quintin Hailsham the action we should take following the Lords' rejection of the clause in the Prosecution of Offences Bill which gave the Attorney General a power to refer apparently over-lenient sentences to the Court of Appeal. We should be grateful if we could have a short meeting with you to consider how we should deal with the matter in the House of Commons.

You will remember that our intention to introduce this power was one of the measures which I announced at the 1983 Party Conference to strengthen public confidence in the working of the system of criminal justice. We considered and rejected the alternatives of statutory minimum sentences and of a full prosecution right of appeal; and we agreed that this proposal provided a sound way of dealing with the very real public concern which was (and still is) being expressed over sentences alleged to be excessively lenient, without the practical difficulties and objections of principle which would be involved in either of the alternatives.

The main objections which were expressed in the House of Lords were that the new Crown prosecution service would be involved in a new and improper activity of arguing for and reviewing judicial sentences, and that the power was unnecessary because the Court of Appeal Criminal Division already issues guideline judgments in the course of hearing normal appeals by the defence. Neither Quintin nor I is persuaded by these arguments. The initiative would always come from the Attorney General himself, perhaps following representations made to him by Members of Parliament or others, but not in any sense at the instigation of the prosecution service. The guidelines issued by the Court of Appeal afford no adequate substitute since the Court can only operate on



appeals which in fact have to be brought by the defence. The lenient sentences about which the public are concerned are by their nature unlikely to be the subject of appeal.

We are therefore both convinced that our original proposal was right in principle and that the issue we have to face is not one of criminal justice policy but a wider Parliamentary one. Bertie Denham's assessment is that if we reinstate the clause in the House of Commons and a large number of lawyers on our side of the House speak and vote against it, the House of Lords is likely to reject it again when the Bill returns for consideration of Commons amendments. He does not, however, consider that they would reject the clause for a third time if we again reinstated it in the Commons when the Bill returned from the Lords.

Soundings which the Whips have taken (which confirm my own impression) suggest that most of our lawyers in the Commons are opposed to the clause and would probably speak and vote against it. The Chief Whip has no doubt, however, that we can get it through the Commons with a comfortable majority.

Quintin and I would like to discuss whether, on the broadest political grounds, we should be willing to contemplate a second defeat in the House of Lords on this issue, with the widely publicised attack on the Government by the legal establishment which would inevitably be associated with it (although you may feel that persistence on our part would not necessarily be to our disadvantage in the country); or whether you would prefer to defer the issue until we can bring the measure forward as part of the Criminal Justice Bill which is planned for 1986/87. I must clearly be in a position to announce our decision during the Second Reading debate in the House of Commons (now intended to be soon after Easter), and if we are to make further approaches to some of our supporters in the Commons, we shall need to do so quite soon. Quintin and I would therefore appreciate a meeting with you and perhaps some other colleagues involved if possible early next week.



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I am sending copies of this minute to Quintin Hailsham, Willie Whitelaw, John Biffen, Michael Havers, John Wakeham and Bertie Denham who might be invited to join us, and also to Sir Robert Armstrong.

L.B.

28 March 1985