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ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

The Rt Hon Douglas Hurd MP CBE
Secretary of State for the Home
Department
Home Office
Queen Annes Gate
London SW1

29 October 1986

Den Douglas

Thank you for copying to me your letter of 2nd October 1986 setting out your proposals for legislation to be incorporated in the Criminal Justice Bill with a view to enhancing the protection presently offered to rape victims by the Sexual Offences (Amendment) Act 1976.

I should like to start by reaffirming in principle the support for your objectives which was indicated in my letter to you of 30th April. However, I am not persuaded that a provision of the nature you now envisage would, taken overall, prove more effective than the present statute. As I understand the position, the point at which the victim would begin to enjoy statutory protection for her anonymity would be from the time of the offence itself rather than as now, the time at which the Court is seised of the issue of rape but the scope of that protection would be reduced because the prohibition would extend only to her name, address and photograph whereas the 1976 Act forbids publication of "any matter likely to lead to the identification of the victim".

My own assessment, based on experience gained through the discharge of my responsibilities in relation to contempt of court and section 8 of the Magistrates Courts Act 1980 etc



is that - whatever degree of responsibility the majority of journalists may display - there will always be a maverick element whose sole concern is the revenue which may be derived from the production of salacious copy; if there is to be legislation, it must be directed at that element. Accordingly, it would be unwise to narrow the scope of the victim's protection unless absolutely necessary. I should also say that your present proposals would not have protected the victim in the Ealing rape case. Although public indignation centred on the photograph which was public, the name of the victim's father and the identity of his church were also published, facts which would easily have led to the identification of the victim within the local community and to some extent by the world beyond.

But I do not think we could justify two separate standards of prohibition applying at different stages - name, address and photograph up to the point of charge and thereafter any matter likely to lead to the identification of the victim. This points to an endeavour to find, if at all possible, a formula which would enable us to prohibit publication of any matter likely to lead to identification of the victim from the outset whilst enabling the police to seek assistance from the press in appropriate circumstances. Here, I am bound to say that I find it difficult to envisage circumstances in which your present proposals would impinge on a police investigation any less than the wider prohibition, remembering that that prohibition is aimed at matter likely to, rather than matter which may, lead to identification of the victim. One possibility might be to build on the principle adopted in section 5 of the Contempt of Court Act 1981 so that it would be a defence to a charge for an editor to show that publication of the particulars in question was



merely incidental to a report of the crime published with a view to warning the public of the danger of further attacks or in response to a police request for assistance from the press. The advantage of this approach would be that the court rather than the police would be the arbiter.

Two other points require special mention. First, it occurs to me that the present proposal will invite comparison with the protection presently afforded under section 39 of the Children and Young Persons Act 1933 to children who have been the subject of sexual assaults short of rape. Arguably, their protection ought to start from the same moment in time even though we have not in practice encountered any problems on this score. Secondly, it will be necessary to ensure that where a rape has been followed by a killing, the new provision does not prevent publication of the victim's name as section 6 of the 1976 Act at present does where a man is accused of rape together with murder or manslaughter. That is a highly anomalous situation which is of great irritation to journalists.

Finally, I should say that I am quite willing for the legislation to impose a requirement that the consent of the Attorney General be obtained prior to institution of proceedings.

Copies of this letter go to the **Prime Minister**, to Members of H Committee, to the Secretary of State for Defence and to Sir Robert Armstrong.

Yours G.A. Michael

LABOR PROCEDURE

ROPE

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