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QUEEN ANNE'S GATE LONDON SW1H 9AT

4 November 1986

Dear Michael,

Thank you for your letter of 29 October about my proposal to enhance the protection presently offered to rape victims by the Sexual Offences (Amendment) Act 1976.

As you point out, I am proposing two separate standards of anonymity at different stages. I entirely agree with you that we should not narrow the scope of the victim's protection unless absolutely necessary. My proposal is, therefore, in addition to the existing prohibition on publishing any matter likely to identify the victim once a man had been accused and brought before the court, which will remain intact. What I propose is an additional prohibition on publishing name, address and photograph to protect the victim before a man is accused. I think that this two stage protection can be justified. While the police are investigating an offence there may be a need to publish some material which may identify the victim in the interests of apprehending the rapist. Once a man is charged this justification vanishes and the existing absolute prohibition can take effect. It is significant that in the Ealing vicarage case no complaint was made about the first report in the news media which enabled the place of the crime (and thereby the people affected) to be identified; this information helped to arouse public concern and was potentially of value in the police investigations. It was only the subsequent publication by the "Sun" of the victim's photograph which rightly aroused indignation.

I understand the reasons which have led you to suggest that we should build on the principle adopted in section 5 of the Contempt of Court Act 1981. But there are serious difficulties with the defences you propose. It seems to me that any newspaper report of a rape could always be claimed to be a warning to the public provided it is published before the rapist is apprehended. Thus a defence that material was published to warn the public would provide no protection at all to the victim.

We did discuss with the police your suggestion that it should be a defence that material was published in response to a police request. The police are strongly opposed to such a scheme. I take your point that the intention is that the courts, not the police, would be the arbiter. However, in practice the press would ask the police for permission to publish claiming that they are only trying to assist the enquiry. As I explained in my letter to Willie Whitelaw, this would place the police in the difficult position of choosing between muzzling the press and offending the victim. They have made it quite clear they could not operate such a proposal.

The Rt Hon Sir Michael Havers, QC., MP.

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For these reasons I still prefer my own proposal. But I think it is worth exploring further the possibility of constructing a defence if the victim wishes to publicise her case. As I explained in my letter of 2 October a consent provision may lead to harassment by the press. Something more restricted than consent simpliciter is clearly needed. My officials will consider this further with Counsel to see if a solution can be found.

I take your point that any change to the 1976 Act may give rise to comment on the scope of section 39 of the Children and Young Persons Act 1933. However, I think the two can be distinguished. The 1933 Act gives the court a discretion to prohibit publication of details identifying a child who appears before it in proceedings either as complainant, accused or witness. This is quite different from the 1976 Act scheme which imposes a prohibition on identifying the victim. Under the 1976 Act a court may only disapply this prohibition in certain carefully defined circumstances.

I agree with you that the prohibition on identifying a victim should end with her death. We shall ensure that this is clear. I am grateful to you for agreeing that the consent of the Attorney General should be required before a prosecution is brought alleging breach of the prohibition.

Time is now short before the Bill is to be introduced. I hope that you can agree with my proposal, so that it can be incorporated in the Bill on introduction.

I am sending copies of this letter to the Prime Minister, members of H and L, the Secretary of State for Defence and Sir Robert Armstrong.



Yours,  
Douglas.