

In contrast, Lord Goff of Chieveley took the view that evidence of an accused person's statement to the police about his motive in assaulting a female person was inadmissible, *ibid*, at pp.437, 1086 and 233, respectively. However, his Lordship made it quite clear that he was not to be taken as saying that evidence of motive was never admissible in evidence. Thus, he conceded that such evidence might be admissible in certain cases where an accused person sought "to say that what, *prima facie*, might appear to be indecent was not, in fact, so because the circumstances were not, in fact, circumstances of indecency", *ibid*, at pp.442, 1090 and 236, respectively.

The recent case of Court

The case involved a male shop assistant who struck a 12-year-old girl visitor to the shop outside her shorts on her buttocks, some 12 times, for no apparent reason. In response to a question by the police as to why he did that, he said: "I don't know - buttock fetish". He was subsequently charged with having committed indecent assault on the girl, contrary to s.14(1) of the Sexual Offences Act 1956. At his trial, he pleaded guilty to assault, but denied that the assault was indecent. Indeed, he submitted that his statement about "buttock fetish" should be excluded as being a secret uncommunicated motive, and that it could not make indecent an assault which was not overtly indecent.

However, the trial Crown Court Judge refused to exclude that statement from being admitted in evidence, whereupon the accused did not give evidence. He was convicted, but appealed to the Criminal Division of the Court of Appeal against the conviction. The latter court dismissed his appeal. But he then proceeded to appeal to the House of Lords against the conviction. By a majority of four (Lords Keith of Kinkel, Fraser of Tullybelton,

Griffiths and Ackner) to one (Lord Goff of Chieveley) their Lordships' House equally dismissed the appeal, albeit on different grounds from those previously given by the Court of Appeal. The relevant reasons given in the speeches of their Lordships have already been outlined above.

Conclusion

More often than not, a jury or a trial criminal court would be likely to be able to glean from the circumstances of an assault on a female person whether or not the assault may have been indecent. The idea, therefore, that there are some special situations where the circumstances of an assault may tend to be equivocal and, therefore, the proof of an intent to commit common assault would not be enough to establish the *mens rea* of an indecent assault may be logistically expedient. But it is doubtful whether the requirement of proof of an "indecent intention", on the part of an accused person, in addition to proof of an intention to commit common assault would tend to ensure an effective and just application of the law relating to the offence of indecent assault. Nor could the admissibility of evidence about an accused person's sexual motive, for the purpose of establishing criminal intent on his part, be said to make for a fair administration of criminal justice.

The decision of the House of Lords in the recent case of *Court* appears to have rendered the nature of the offence of indecent assault, somehow, problematic. Arguably, this may tend to place persons accused of the offence at a great deal of disadvantage, a state of affairs which could hardly be said to be satisfactory. It may be submitted, therefore, that the views expressed by Lord Goff of Chieveley, in his dissenting speech in that case, seem preferable to those expressed by the overwhelming majority of the other four Lords in the same case.

SENTENCED TO DENTAL WORK? - A FABLE

A.M. BRIDGES*

Readers may be interested to know of the debate that has recently taken place in Erewhon¹ amongst that country's dentists - their full title is Dentation Officers. Erewhon's dentists have a strange position in their society: they help people, but they are also officers of their courts. Many sufferers of bad teeth are taken to court and suitable cases are (if they consent) placed on a Dentation Order. This means that they are required to attend at the surgery when ordered to do so by the dentist during the prescribed period. The sufferer is in breach of the order if he or she fails to keep an appointment with the dentist during this period, or if their teeth start to get worse again.

Surprisingly, perhaps, this system is quite successful. After all, many people don't like going to the dentist, and put it off as long as possible,

although they are usually glad once they have been. The Dentation Order offers a structure whereby appointments get offered, and, on the whole, people tend to keep these appointments. Once in the surgery, most people are prepared to co-operate with the help that they need. Under the order, the appointments are compulsory, but the treatment is voluntary; nevertheless, the Dentation Order has in the main proved adequate in getting people to do something which they have mixed feelings about.

However, in recent years, there was increasing concern in Erewhon that the state of people's teeth in that country was not getting any better. It was felt that the dentation service should have more impact on the overall problem. Tooth decay is morally reprehensible in Erewhon, and the government of the day felt that the country's dentists should make more use of their powers of compulsion. Many dentists, even those who claimed that they were not supporters of the government, agreed that dentation orders ought to have "more teeth" (sic).

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1. The land described in Samuel Butler's novel, where crime is a sickness and sickness is a crime.

What confused this debate even more was that dentists all over the country were developing new and genuinely imaginative ways of helping with people's teeth. However, as soon as a new form of treatment was invented, some dentist somewhere was sure to say, "This new treatment is so good, we ought to make it compulsory". Therefore, with fanfares of trumpets, the new treatment packages became written requirements under the new "specified activities" and "schedule 11" dentation orders.

This did appear to produce a marginal increase in the number of orders that dentists were receiving, but it brought other problems with it as well. Dentists were increasingly having to tailor their work to the needs of different court orders, and to the timings of the different packages, and less to the needs of individuals. In particular, there were problems with the increased powers of compulsion. The old dentation order had just said that you must turn up at the surgery when instructed to do so; the new orders were more specific about how many times you would have to turn up and what treatment you must "agree" to, whether you needed help or not.

Many dentists began to find it absurd to try to cajole people into accepting help by threatening to take them back to court. Instead, they decided to

return to using their own well-developed powers of persuasion. They now give a lot of time and effort to gently but persistently encouraging people to recognize their need for help. They have once again remembered that even otherwise sensible adults have ambivalent feelings about going to the dentist; hence their job is to work at this patiently, rather than to ascribe sinister motives to the sufferers and to resort to threats. They are finding that most people will still respond (eventually) to being treated like an adult by someone who behaves as if (s)he cares. This is now raising their credibility in the eyes of the courts and of the sufferers themselves.

The dentists of Erewhon have been in a rather muddled debate, but the key choice has been this one: if you want more people to have treatment for their bad teeth, is the answer to increase the powers of the courts and of the dentists themselves in order to compel or cajole people into co-operating with treatment? Or is the answer for the dental profession to improve their existing skills? They led themselves into this debate because of the mistaken belief that credibility is gained by the increased use of authority. This can be true in the short term, but they have now learned that the way to gain credibility in the long term is to improve the overall value and quality of their service by using their traditional strengths.

LETTERS TO THE EDITOR

Dear Sir,

THE SHOPS ACT AND THE EEC TREATY

Mr. J.P.H. Diamond writes an interesting article, at p.51, *ante*. Without in any way detracting from his arguments, he does less than justice to *R. v. Plymouth Justices, ex parte Rogers* [1982] 2 All E.R. 175. The impression is that the reference to the European Court was disapproved, but that was not the case at all. The reference in that particular case was specifically approved, even though the reference had been made at the close of the prosecution case. Words of caution about too easy a reference by a magistrates' court to the European Court were expressed, but the decision went the other way.

The short point was that the European regulations under which the respondent was prosecuted were defective and incomplete. That was just the case to refer to Europe, even before the defence gave evidence. It could follow from that, attacking the whole basis of the Shops Act, a reference to Europe is a logical step.

If the laws passed in this country by Parliament are contrary to European law, then this country has to comply with European law, or leave the European Community. We cannot have it both ways, and this is what the politicians are just finding out, far too late as usual. Hence the present political activity.

Yours sincerely,
Cliff Meiser,

Plymouth Magistrates' Court,
St. Andrew Street,
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What Mr. Allen and his ilk fail to realize is that the majority of people in this country are worried about the level of offending and are looking for offenders to be dealt with in a way that can be understood. This does not mean that people are vindictively seeking revenge and there is, in fact, a wide acceptance that prison is not constructive to rehabilitation, and therefore other less negative measures are needed.

Personally, I welcome the Green Paper. I believe it sensibly endeavours to bring an element of punishment into sentencing which will at the same time be constructive and not deprive offenders of their liberty. Perhaps the concept of tagging is a trifle doubtful, particularly as there seem to be technical difficulties, but the concept of tracking seems to have some merit, given the resources.

It is the arrogance of people like Mr. Allen who cannot seem to accept the views of the majority of the public about offending, and who seem content to go along in the same old way watching crime increase, and hoping that their kindly case work methods will stop offending, that make the public so angry and demand sterner measures.

I hope something will come of the Government proposals. The biggest task the Government face, however, is to get the acceptance and co-operation of the judiciary, for without that, the project will surely founder.

Yours faithfully,
G.W. Betts,
Senior Probation Officer.

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Dear Sir,

COURT CLERKS

I refer to a letter from the Deputy Clerk at Grimsby and Cleethorpes, Mr. H. Long, at 152 J.P.N. 787.

It is unfortunate that Mr. Long wrote without first contacting us to establish the facts.

I established the Agency, not as Mr. Long states in an attempt to solve the national shortage of court clerks, (only prompt action by the JNC, local and central government can do that) but to fill short-term vacancies with properly qualified people.

Being a barrister, with 14 years' experience as a court clerk, I am well

Dear Sir,

THE GREEN PAPER - ANOTHER VIEW

After Mr. Rob Allen (at p.38, *ante*) gets his anti-Tory diatribe off his chest, it is clear that his rubbishing of the constructive proposals in the Green Paper have very little substance, and are, I suspect, like most of the other detractors of the Green Paper, the result of being totally opposed to any measures, however valid, suggested by the present Government. Also, like all the others opposed to the proposals, he finds it easy to advance objections, while never coming up with any positive suggestions to the problem. It is easy to criticize, but another matter to produce some original ideas.