A D V I C E

1. I am asked to advise whether the publications enclosed with my brief would amount to all or any of the offences of conspiring to corrupt public morals, obscene publication or living off immoral earnings. I am further asked to indicate the apparent public policy of the Director of Public Prosecutions in the light of the recent prosecution of Rendez-Vous Publications at Birmingham.

2. It might be helpful if I outlined at the outset what happened in that case. Rendez-Vous and its proprietors were prosecuted on all three charges set out above. The trial of each count was severed and the Director of Public Prosecutions insisted on a trial of all counts despite discouragement from the judge. Rendez-Vous like Kentfern had been publishing for 13 years without prosecution. It was plain that the Director of Public Prosecutions was treating Rendez-Vous as a test case and that if he were successful that would almost certainly lead to prosecutions of other contact magazines.

. That said, the material in Rendez-Vous was much "harder" than anything in Kentfern's publications. It included advertisements for Pet Lovers and the Crown called people who had indulged in or

witnessed bestiality as a result. It included advertisements for schoolgirl sex, most of which was plainly for an adult acting as a schoolgirl, but which in two cases led to people exchanging videos or letters of real children indulging in sex. It also included a wide variety of other conduct which the Crown described as perverse and a large number of advertisements from single ladies seeking kind or generous gentlemen or expressing a preference for the over 40s. It also included homosexual advertisements. Originally the Crown in the conspiracy count followed the wording of the indictment in Shaw -v- D.P.P. (1962 A.C. 220), alleging that it was corrupting to encourage fornication and other perverse activities. Subsequently they amended to exclude fornication and gave particulars limiting corrupting immorality to sex with animals or children (including exchange of information), bondage, humiliation, urination, corporal punishment or group sex. In opening they specifically said that morals changed and they were not alleging that resort to a prostitute was in itself corrupting morally, nor was homosexual conduct or transvestism. They drew a rather curious de facto dividing line that wife swapping was not corrupting if sex took place in separate rooms, but was if it involved group sex in which they sought to include AC/DC conduct. In the event the defendants were convicted on that count. Of course, the conviction does not indicate which types of conduct the jury found to be morally corrupting.

4. I think it likely that this conviction will be quashed on appeal because it included conduct which would be a criminal

offence if committed by a single person contrary to Section 5(3) of the Criminal Law Act 1977. There are also further grounds of appeal on the meaning of intent to corrupt public morals.

5. At the end of the trial the defendants pleaded guilty to substantive counts of obscene publications which had been amended to cover specific forms of conduct i.e. bestiality, sex with children, urination, and sado masochism. In pleading guilty to the last, which was based on one particular advertisement, it was made clear that what was intended was conduct likely to cause serious injury, not mild correction. The defendants were fined or sentenced to suspended prison sentences. These pleas would not, of course, bind other defendants or juries but the judge indicated he hoped they drew a sensible dividing line.

6. The one male defendant was acquitted of living on immoral earnings. His defence to that was threefold: (i) he did not know the women advertising were prostitutes, (ii) if the jury found he did then the money he received from them was so small (they only paid over 20 words or for repeat ads. in the same issue) that it could not be said to be living in part off immoral earnings, (iii) so far as the money received from men for contact with prostitutes was concerned it was not the earnings of prostitution because he did not direct, control or influence the prostitutes. The law on this topic is in a curious state. In Shaw -v- D.P.P. (1962 A.C. 220) the House of Lords held that a man who published advertisements by women who paid him for the advertisements was

living on the earnings of prostitution and guilty of the offence if he knew they were prostitutes. In Calvert -v- Mayes (1954 1 Q.B. 342) the Court of Appeal held that a taxi driver who drove prostitutes to American airmen who paid him the taxi fare was living on the earnings of prostitution. However, in Ansell (1974) 60 Cr. App. R.45) the Court of Appeal held that a man who obtained the addresses of prostitutes through a contact magazine and then advertised himself in it for male respondents was not guilty of living on immoral earnings because he accepted money from the respondents in order that he put them in contact with the prostitutes. The court distinguished Shaw's case because the defendant received no money directly from prostitutes and Calvert -v- Mayes because the defendant exercised no direction, control or influence over the prostitutes. At the close of the evidence in the Birmingham case the Crown agreed that the jury should in that case be directed on the lines of Ansell alleging that the defendant (a) did get money from prostitutes directly and (b) did influence them because (i) some women who would not otherwise have become prostitutes had done so and (ii) the publication of their advertisements influenced existing prostitutes not to solicit on the streets. This last contention although technically a form of influence was so foreign to the intent of the statute it is hardly surprising the jury rejected it. My own view was that the defendant was fortunate the judge directed the jury in the form he did with the acquiescence of the prosecution.

(5)

7. The various convictions and the acquittal in the Rendez-Vous case give some guidance as to the likely policy of the D.P.P. and some as to the likely outcome of a trial. However, since juries vary considerably in their views on perverse sexual behaviour nothing in this field is certain. If the appeal in Rendez-Vous succeeds that would not prevent the D.P.P. in future charging a conspiracy to corrupt public morals which did not allege conspiracy to commit acts which would be criminal if committed by a single person e.g. urination, corporal punishment or group sex. He could also charge a conspiracy under the 1977 Act to commit a criminal offence e.g. bestiality. The de facto line drawn by prosecuting counsel at Birmingham would not bind another prosecutor who might follow Shaw to the letter and allege fornication was corrupting. However, it does seem to me that the Kentfern magazines do exclude the type of conduct which the D.P.P. regards as most objectionable. I have noticed a few advertisements for water sports but as a general rule that is excluded as are pet loving, sex with children or sado masochistical activity. There are a few for anal sex. I cannot guarantee that the group sex, AC/DC activity would not be prosecuted, but I think there is a reasonable possibility they would not or if they were that there is a reasonable possibility they would be acquitted.

8. Similarly there is no guarantee that the acquittal of the immoral earnings charge in Birmingham will discourage the D.P.P. from trying again, but as that case was a test case it may

have that effect. In any event Kentfern seem to take far more precautions to exclude prostitutes than Rendez-Vous did and the advertisements do not so obviously appear to be for prostitution. If the proprietors were prosecuted they would probably be on firmer ground in saying they lacked knowledge of the prostitution. If no payments are received directly from female advertisers they would be on even stronger ground. The only point I would make on the draft letter is that it stipulates the writer is not seeking payment for illegal services. As prostitution is legal it might be thought to exclude that from the prohibition. It might be best to omit the word "illegal".

9. As I have already indicated it is difficult to advise with certainty in this field. It would be wise in future to exclude advertisements for water sports or anal sex which at present occur occasionally. In the Rendez-Vous case the Crown did allege that group sex, AC/DC sex in a group context and gang bangs were morally corrupting. Whether the D.P.P. would have prosecuted these forms of conduct had they not been associated with "harder" sexual conduct is difficult to say for certain. However it may well be he would not. If Lord Simon's test of corruption in Knuller -v- D.P.P.(1973) A.C. 435 namely that it has to be conduct undermining the fabric of society, were applied I think there would be a reasonable chance of a jury acquitting such conduct.

In sum in my view the result of a Rendez-Vous case would not preclude Kentfern from continuing to publish advertisements for group sexual

(7)

activity. I cannot guarantee that such publications would not be prosecuted nor that if prosecuted they would be acquitted. However I think there would be a reasonable chance that they would not be prosecuted or if prosecuted, acquitted.

If Instructing Solicitors wish to discuss these points in consultation I would be happy to do so.

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7th January, 1986.