

NATIONAL VIEWERS' AND LISTENERS' ASSOCIATION

OBSCENE PUBLICATIONS ACT 1959 - THE NEED FOR NEW LAW

In the pre-amble to the Obscene Publications Act 1959 it is stated that the intention of the Act is to "strengthen the law concerning pornography".

However, Lord Denning, when Master of the Rolls, stated in 1972: "Unfortunately this legislation against pornography seems to have misfired - at any rate as far as prosecutions are concerned. Experience has shown that much material - which at first sight would appear to be pornographic in the extreme - HAS ESCAPED THE REACH OF THE LAW". (emphasis added). He argued that the law had misfired because of the "wording of the statute and the way in which the courts have applied it". Eight years later in the Appeal Court Lord Denning repeated this assessment and commented ruefully that pedlars of pornography "were cocking a snook at the law".

The Williams Committee Report, published in 1979, which examined the working of the Law on Obscenity and Film Censorship concluded that the law on these matters "in short, is a mess".

Furthermore, when he was Home Secretary, William Whitelaw conceded that the obscenity laws were "in ruins".

An indication of the failure of the present obscenity law is shown by the necessity of enacting other legislation such as the Protection of Children Act, 1978, the Indecent Displays Act, 1981, the Local Government Miscellaneous Provisions Act 1982 (licencing of sex shops) and the Video Recordings Act, 1984. These laws were aimed at curbing the excesses of the pornographers and attempting to allay growing public alarm at the worsening situation. In the words of one Chief Constable in a letter to National VALA "the current statutory test of obscenity does create in some cases almost unsurmountable prosecution obstacles".

RECEIVED 17 NOV 1990

Just how bad the situation has become, in spite of the above mentioned legislation, was described by a senior officer from New Scotland Yard's Obscene Publications Department, speaking at one of National VALA's "fringe" meetings at the 1987 Tory Party Conference, said that "there is a greater explicitness of violence being portrayed with excellent special effects and with sound, giving tremendous visual impact and there is greater explicitness in sexual encounters being shown in films, videos and magazines. Although pornography has been present since humans could express themselves in drawings, it is only in the last 10 years that great advances in explicitness and quantity have been made in this country to the very worrying level we now find ourselves.

"Although violence has long been a factor in life, the diet of violence now portrayed in films and television has reached a level where stronger control and a lessening of the confusion of the definition of obscenity is required. Whilst the family as a whole is being subjected to the obscenity in films, magazines, etc., there is a more stealthy intrusion into family lives through child pornography. Child* pornography is now thriving and includes sexually explicit photographs, slides, magazines, films and video cassettes, audio cassettes and handwritten notes. This material is used for the sexual arousal and gratification of paedophiles.

"In some cases coming to the attention of U.K. police, the arousal and fantasy fuelled by the pornography is a prelude to sexual acts with children".

The weakness of the present law on pornography was confirmed by Supt. Michael Hames in an interview with 'The Times' 3rd August 1990: "the content of it (pornography) is escalating, becoming harder, more vicious, more full of torture." And advances in photography since the 1960's mean a much more sophisticated product is available.

He picks up a copy of a lurid adult magazine called 'Black Masters, White Slaves', full of bondage and joyless faces. "Two juries have found this not to be obscene in the meaning of the 1959 Act. If this is not obscene, what is?"

In spite of Parliament's intention "to strengthen the law concerning pornography" with the 1959 Obscene Publications Act, the pornography industry in this country is now part of an enormous and largely uncontrolled international trade whose annual turnover is assessed at many millions of pounds.

There is incontrovertible evidence from the U.S.A. that the trade in illegal drugs and pornography is backed by organised crime (we attach the text of a statement, the original of which was signed and sealed by Solicitor General, James Webb of the State Court of Fulton County, Atlanta). (See Appendix).

In Britain there are nationwide retail outlets with backup mail order facilities offered in national and provincial newspapers and magazines.

A report from a law enforcement conference in Denver, Colorado (June 1985) stated:

"Many organised crime people in the United States deal in drugs and in obscene materials. Organised crime makes more money by dealing in drugs than in gambling and obscene materials. Most enforcement people believe that if extensive enforcement efforts are directed toward curbing drugs or gambling that obscenity would increase in scope and sales. (emphasis added).

If English authorities radically increase enforcement against drug trafficking I feel sure that you can expect an increase in the distribution of obscene materials in your country".

The Conservative Party committed itself in its 1983 ELECTION MANIFESTO to taking some action in respect of the law on obscenity.

"WE WILL ALSO RESPOND TO THE INCREASING PUBLIC CONCERN OVER OBSCENITY AND OFFENCES AGAINST PUBLIC DECENCY, WHICH OFTEN HAVE LINKS WITH SERIOUS CRIME. WE PROPOSE TO INTRODUCE SPECIFIC LEGISLATION TO DEAL WITH THE MOST SERIOUS OF THESE PROBLEMS, . . ."

This gave great encouragement to many people throughout the country rightly and deeply concerned about the availability and circulation of obscene and pornographic matter. HOWEVER, THE GOVERNMENT HAS YET TO FULFIL THIS UNDERTAKING.

The establishment of the Broadcasting Standards Council, for which we are grateful, with impending statutory status, and the removal of the exemption of Broadcasting from the Obscene Publications Act 1959 still leaves intact this unsatisfactory law which can control only the most extreme material.

There is increasing anxiety in the EUROPEAN PARLIAMENT concerning the enormous scale of the international pornography industry. Member countries are being urged by the European Parliament to take steps to contain the problem within their own states. With British law as weak and ineffective as it now is, it is difficult to envisage how Britain can properly respond to that appeal. The lifting of European Trade restrictions in 1992 can only make matters considerably worse.

Mr. Peter Brooke, MP, formerly Minister responsible for CUSTOMS & EXCISE at the Treasury, informed (11.9.86) National VALA that:-

"On 11th March (1986) the European Court of Justice gave its judgement in the case of H M Customs v. Conegate Ltd . . . The decision was that, as a matter of community law, the United Kingdom is not entitled to put up barriers to trade between member states, on the grounds of public morality, which are stricter than the laws applied within the United Kingdom to those same goods".

This means that Customs & Excise officers may no longer use as their criterion for seizing material the provisions of the Customs & Excise Act which was based on their judgement of what was "indecent". They now have to apply the "deprave and corrupt" test of the Obscene Publications Act 1959. Since the Director of Public Prosecutions is increasingly reluctant to initiate proceedings because of the weakness of the Obscene Publications Act, and the consequent likelihood of an acquittal, this has resulted in pornography being imported to the United Kingdom without let or hindrance. Indeed Customs and Excise reported in July 1989 an enormous reduction in the number of items they were able to seize.

For more information about the work of the National Viewers' And Listeners' Association write to:-

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OCTOBER 1990

APPENDIX

A F F I D A V I T

To Whom It May Concern

My name is James L Webb. I am the duly elected and presently acting Solicitor General of the State Court of Fulton County.

The Solicitor General of the above named court has the responsibility for the investigation and prosecution of approximately 25,000 misdemeanor cases per year in the said State Court.

As the Solicitor General of the said State Court from January 1, 1983, until the present time I have had the opportunity of being involved in a large number of criminal cases involving the investigation and prosecution of Pornography and Illegal Drug cases.

It is my personal opinion and professional opinion as Solicitor General, as aforesaid, based upon the knowledge and information gained from investigations made by my office, that the monies made in the sale and/or distribution of Pornography and the monies made in the illegal possession, sale or distribution of Drugs are used, in many instances, one for the other. That is to say, Drug Money is used for Pornography and Pornography Money is used for Drugs.

James L Webb

Sworn to and subscribed
before me this 23rd day
of September 1983

David L Roberts
Notary Public