

SUBJECT
OF MASTERfile 116
Mr Alison

10 DOWNING STREET

From the Private Secretary

6 February 1984

As you know, the Prime Minister, together with the Home Secretary, met Lord Nugent, Lord Halsbury, Mr. Finnis and Mr. Johnston today to discuss the draft Bill to revise the Obscene Publication Act 1959 which they had prepared. Mr. Alison was also present.

Opening the meeting the Prime Minister said that she very much shared Lord Nugent's desire to ensure that strong controls were placed upon violent and obscene material: in her view some of the extremely violent material now being produced was indicative of an increasingly cruel society. Nevertheless, there were favourable signs. There was an increasing number of successful prosecutions under the 1959 Act, including one of a violent rather than pornographic film during the previous week. This was perhaps indicative of decreasing public tolerance of obscenity. In addition, Mr. Graham Bright's Video Recordings Bill had been strengthened during its passage in the House of Commons by the requirement that the designated classification body should take into account the fact that films were to be shown in the home. This to some extent offset the disappointment that Sir Bernard Braine's amendment to prohibit films classified 18R from video distribution had failed. Lord Nugent said that he was pleased by these developments. However, he remained convinced that the 1959 Act was inadequate. In particular, the definition of obscenity in the Act allowed too many successful defences, especially when coupled with the defence available under Section 4 of that Act, the so-called "public good" defence. This defence had been particularly used in a number of cases in the 1960s and 1970s by barristers in cases in which obscene material was held to have therapeutic value. What was needed in the view of his group was legislation which specifically ruled out the depiction of certain kinds of material: hence the list of prohibited material in the draft Bill.

The Home Secretary said he did not believe that the present definition of obscenity was wholly ineffective. What mattered was public attitudes. Unless juries saw material as unacceptable

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by the standards of the day, there was little merit in a move towards the definition of obscenity proposed in the Bill. The signs were that juries were taking a tougher attitude and if they did so the definition in the 1959 Act - that of the "tendency to deprave and corrupt" - offered considerable scope as was shown by the increasing number of prosecutions. Moreover, the list approach might well exclude material which would be caught under the present Act. An example was a film which encouraged drug-taking. Such a film would clearly be caught by the "tendency to deprave and corrupt" criterion but under Lord Nugent's Bill would not be covered. In practice, therefore, the list approach might well secure fewer rather than more convictions.

Commenting on the definition of obscenity, the Prime Minister said that there might be scope for extension, particularly in the case of material which could be held to disturb or damage the minds of its audience without necessarily depraving or corrupting. In this context the Home Secretary drew attention to the definition of obscenity drawn up by the Williams Committee which was based on the concept of "offensiveness". The Prime Minister thought that this had some merit.

On a different point, Lord Nugent and his colleagues argued that even under the present legislation there was too little resort to action in the courts. For example, the Theatres Act remained largely untested because the Attorney General was required either to bring prosecutions himself or to sanction private prosecutions. The fact that he did not do so effectively meant that the theatre was exempt from the obscenity laws. Mrs. Whitehouse's action against "The Romans in Britain" merely established that the Sexual Offences Act applied to the stage, although it was conceded that this had at least established a firm legal precedent on the matter. The Home Secretary said that he could not comment on the practice of the Attorney General and Director of Public Prosecutions but the fact that there was an increasing number of prosecutions did not suggest an unduly restrictive attitude.

In a specific discussion of the Parliamentary climate for obscenity legislation, the Home Secretary pointed out that the defeat of Sir Bernard Braine's amendment to the Video Recordings Bill was indicative that legislation of the kind suggested by Lord Nugent would have a difficult passage. Perhaps the approach which stood the most chance of success was that based upon a bill which merely refined or extended the definition of obscenity. Otherwise, experience had suggested that limited measures to deal with specific problems had a higher success rate. Lord Nugent said that he had himself introduced a Bill on the definition of obscenity in the House of Lords in a previous session and asked if the Home Secretary would look again at that Bill. The Prime Minister agreed with the Home Secretary that the approach he had outlined was the most likely to be productive and in this context noted that experience with the Video Recordings Bill tended to suggest that such legislation was best sponsored by a backbencher.

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Otherwise opinion tended to polarise around support for the Government rather than on the merits.

Concluding the meeting, the Prime Minister said that she hoped that Lord Nugent and his team would reflect on the points which had been made about their draft Bill and in particular about Parliamentary handling. She also very much hoped that Lord Nugent would take on the Video Recordings Bill in the House of Lords; it was agreed that Lord Nugent would discuss the handling of the Bill with Home Office Ministers. In the meanwhile, the Home Secretary would look again at Lord Nugent's 1982 Bill.

I am sending a copy of this letter to Henry Steel (Law Officers' Department).

TIMOTHY FLESHER

Nigel Pantling, Esq.,
Home Office.