HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

20 May 1986

Dear Willie,

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED - BROADCASTING

In your letter of 1 May you asked me to put a firm proposal to H Committee on the question of the broadcasting exemption for this offence. As you will recall, H Committee discussed the scope of the offence of racial incitement last year and Giles Shaw wrote again to the Committee on 24 April this year with revised proposals.

I believe there is now a strong case for extending the offence to films, videos, sound recordings and to forms of broadcasting such as community radio which are outside the control of the broadcasting authorities. Since we last discussed the matter there has, as Giles Shaw's letter made clear, been indications of a growing trade in sound tapes of a racial nature. I have also become increasingly concerned about the embarrassment which could occur with the community radio experiment (where a number of applications for licences, which I am still considering, were from ethnic groups) if the criminal law were left in its present unsatisfactory state. My aim, therefore, is to introduce such an amendment in the Lords in June. The central question which remains is whether or not the broadcasting authorities - the BBC, the IBA and the Welsh Fourth Channel Authority - should be exempted from the offence. The arguments for and against exemption are discussed below.

The constitutional position of the broadcasting authorities is that they are appointed as 'trustees for the public interest' in broadcasting. They are formally responsible for all aspects of their programmes and are subject to detailed obligations as to the content of programmes, contained in the Broadcasting Act 1981 and the Charter and Licence and Agreement of the BBC, including an obligation not to broadcast material which incites to crime or disorder. To extend the criminal law to the authorities might be resented by their members. It could be taken as suggesting that the Government was dissatisfied with the way in which they had fulfilled their obligations and foster a climate of distrust at a time when Peacock and other matters have already introduced uncertainty into the broadcasting world. (The Peacock Report is likely to be published in July, perhaps not long after these matters are debated in the Lords). It is also relevant that, in the context of Winston Churchill's Bill to remove the exemption of broadcasting under the Obscene Publications Act, the Government spokesman maintained a neutral stance. The Bill fell at Report primarily because of opposition to the inclusion of broadcasting.

The Rt Hon The Viscount Whitelaw, CH., MC.

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I have consulted the Chairmen of the IBA and the BBC on the possible extension of the law. They are strongly opposed, and among the points they have made are the following:

(i) the broadcasting authorities are subject to a different form of regime from other kinds of publication, and already have a variety of responsibilities which are not imposed on or accepted by other sections of the media;

(ii) there has been no significant evidence that their existing controls have been ineffective in dealing with racial matters;

(iii) their editorial controls take greater account of the moral dimension of racialism than could be included in any legal restraints, and this could be weakened if they were to be brought within the general law on racial incitement;

(iv) their ability to report racial incidents and related issues could be compromised;

(v) the powers of search and seizure contained in the Bill could affect their news-gathering operations.

There is some force in the first two of their comments, but to my mind they are not decisive.

The principal argument against exempting the authorities lies in the changing pattern of broadcasting in recent years. The BBC and the IBA now have extensive local radio networks: there are increased hours of television on four channels: day time television is round the corner: and up to five new direct broadcasting by satellite channels may soon be available. The concept that the governing boards can be directly responsible for everything they broadcast is therefore increasingly seen as a fiction. In addition, the growth of cable services (which are already subject to the criminal law on racial incitement), low-powered satellite services, and other possible forms of quasi-broadcasting, all of which we would hope to regulate in some way with regard to racial incitement, means that the public (and some MPs) will find it difficult to accept that the position of the IBA and the BBC under the criminal law should be substantially different from other kinds of electronic published.

More positively, the inclusion of the broadcasting authorities within the offence would indicate the Goverment's full commitment to combatting racial hatred, and an exemption might be misunderstood by the ethnic minority community. Their inclusion might also assist in dealing with any abuses by community radio stations since we would be able to point to the fact that the BBC and the IBA were subject to the same provision, and that there could be no suggestion that the Government was not being even-handed.

The issues remain, in my view, fairly finely balanced. We risk stirring up trouble with the broadcasters, who will argue that there are objections of broadcasting policy to bringing them within the scope of the criminal law. But on balance I believe that the arguments point away from an exemption for the BBC, IBA and the Welsh Fourth Channel Authority. The broadcasters may receive some support in the Lords but I believe that the decision can be defended as a rational and consistent one and will be supported outside broadcasting circles.

I should be grateful for the agreement of the Committee to proceed on this basis.

I am copying this letter to the other members of H Committe, to the Prime Minister, to the Foreign & Commonwealth Secretary, to First Parliamentary Counsel and to Sir Robert Armstrong.

Yours,

Douglas.

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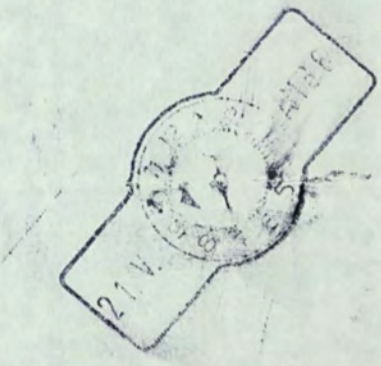
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