E.R.

PRIME MINISTER

MEETING OF MINISTERS: OBSCENITY LEGISLATION

You asked for this meeting following your separate discussions with the Home Secretary and Judge King-Hamilton. The record of the first discussion is at Flag 'A' and I have attached the note which Judge King-Hamilton left at Flag 'B'.

The Home Secretary has sent the paper at Flag 'C'. This concludes that there should be a new Bill to protect children and an extension of the Obscene Publications Act to cover sex aids. He suggests further consideration on the removal of the exemption of the BBC and IBA. You may find that this does not go far enough and may want to explore the Policy Unit suggestion (Flag 'D') of a two stage procedure with the lesser offences being considered by Magistrates courts. This does not remove the problem of getting the wording right: and you may still want a small drafting committee as proposed by Judge King-Hamilton.

PAB

P A BEARPARK

30 September 1986

SL2AJH

PRIME MINISTER 30 September 1986

MEETING ON OBSCENITY - 4.30 PM, WEDNESDAY 1 OCTOBER 1986

A. The Present Law Under the 1959 Act

The present law has failed because it tries to do too much in one short definition. Lord Denning rightly complained about the applicability of the definition in R v The Commissioner of Police ex parte Blackburn 1980 (The Times, 7 March 1986). Many other Judges besides Judge King Hamilton have agreed. The problem is as follows:

The present law tries to combine the difficult matter of "what is obscene" with the second difficult question "what does a jury think will corrupt members of the public". The Home Office finds no answer. This is not surprising because it fails to break the definition down into its constituent parts. The tough solution which you seek and which we support can only be found by a radical approach to the definition itself (paragraph E below).

B. Politics

You have already assessed the climate. The average Tory voter is probably appalled by obscenity and is looking to us to be tough. Don't be put off by any Minister arguing that the public view is equivocal. The attitude of the man in the street is reflected by the 135 MPs who trooped behind Winston

Churchill, even with his sadly deficient Bill, last year, and is also reflected by the 6½ million people who have signed Mrs Whitehouse's petitions on this subject. National VALA say that, on their records, 90% plus of people asked sign up for these petitions. This may only be a straw but your post bag also provides enough straw to make a few bricks on this subject.

C. The Wider Importance for Action

1. Link with drugs: illicit drug profits are being invested into pornography production and vice versa. Scotland Yard's Vice and Serious Crimes Branch verify the situation here, and the same is true in the United States. An example is attached at Appendix 1.

2. Link with crimes of violence and sexual offences: there have been 600 or more serious attempts to prove different theses. Not surprisingly, there is little consensus and this is held up by the Home Office as proof that we must keep out of this difficult area! At least, this mass of academic work emphasises public concern. Moreover, one strand is now sustainable. Those who have a tendency towards violence are attracted to viewing violence (Appendix 2). Therefore, at its lowest, the flames of violence are fanned by some obscene violent material. Ultimately, it is not an academic matter, it is a question of commonsense. However, there is clear evidence that, in certain cases, pornography can directly

stimulate copy cat crimes of violence. An example of this is the case set out in Appendix 3, where a boy was shown pornographic material and went out and committed various violent sexual offences.

D. The Frame And The Argument To Avoid

We need to allow the courts to have discretion to use their commonsense and not be tripped up by legalistic niceties. We also need an offence which does not confuse juries and is John Mortimer proof! The arguments to avoid and which will always be brought up by the Home Office, are the application of examples of obscenity to the proposed law. We should leave particular cases to the discretion of the judiciary.

E. The Options

The options to solve the dilemma include:

1. A new list of ghastlies: this would be tangled with disagreements and double meanings. No.

2. A new panjandrum on the old Lord Chamberlain lines: this would be laughed out of court by the media. No.

3. Repeal the present law and make the publication, importing sale or distribution of obscene material a new offence, using the Home Office's dictionary definition,

namely, "repulsive, filthy or loathesome", but without the requirement that it should be corrupt. The material that also corrupts could be dealt with below in a further separate offence. This proposal has the logic of splitting up the present offence into its two constituent parts, and should be accompanied by clear guidance that the test to be applied is what the man in the street thinks about obscenity. This would catch what ordinary people felt was obscene.

4. This new lesser obscenity offence should be triable only in the Magistrates Court: the new offence will be much wider than the present one and could be tried only in the Magistrates Court, with the power of that court to remit to a higher court for sentence if it felt its powers were inadequate. Convictions in the Magistrates Court are likely to be more plentiful than in front of a Jury. The "beaks" are well known for their application of commonsense! I have suggested this idea to Mary Whitehouse who likes it.

5. Alternatively to 4, this new offence could be tried in front of a Jury. This may be pressed by the Liberals on all sides, but it would be cheaper and easier to obtain convictions in the Magistrates Court.

6. Have more serious obscenity offence in addition: treat the cases where obscene material is so bad that it is likely to deprave and corrupt as a separate more serious

offence. This option is similar to the present offence and would have two halves. It would be an offence to publish, distribute, import or sell obscene material that was also likely to corrupt or deprave. The definition of obscene would be the definition in the dictionary above and would so strengthen the old offence. This would be triable by Jury and would attract a more serious sentence.

7. Increased powers to seize assets of pornographic sellers: in a general review of the law, we should take powers to seize more of the assets of pornographers.

8. Add a further offence of laundering the profits of pornography. This is needed and could be enacted on the same basis as drug traffickers. It may be included by the Home Office in this year's Criminal Justice Bill.

F. Handling

We need speedy action if this matter is to get into this session. However, it is probably a Manifesto commitment? If you appoint a King Hamilton-type committee, it should report in a period that can be used by the Manifesto committee, say, 3 months.

G. Conclusion

A committee such as King Hamilton suggests might help, but it must report in double quick time. We support the proposal to split up the obscenity offence. We also recommend the matter be made a Government Manifesto pledge to reform the 1959 Obscene Publications Act hopefully on the lines we suggest. As for the removal of immunity for the BBC and the IBA, that should be included when we legislate on Peacock.

Hartley Booth.

HARTLEY BOOTH

APPENDIX 1

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.

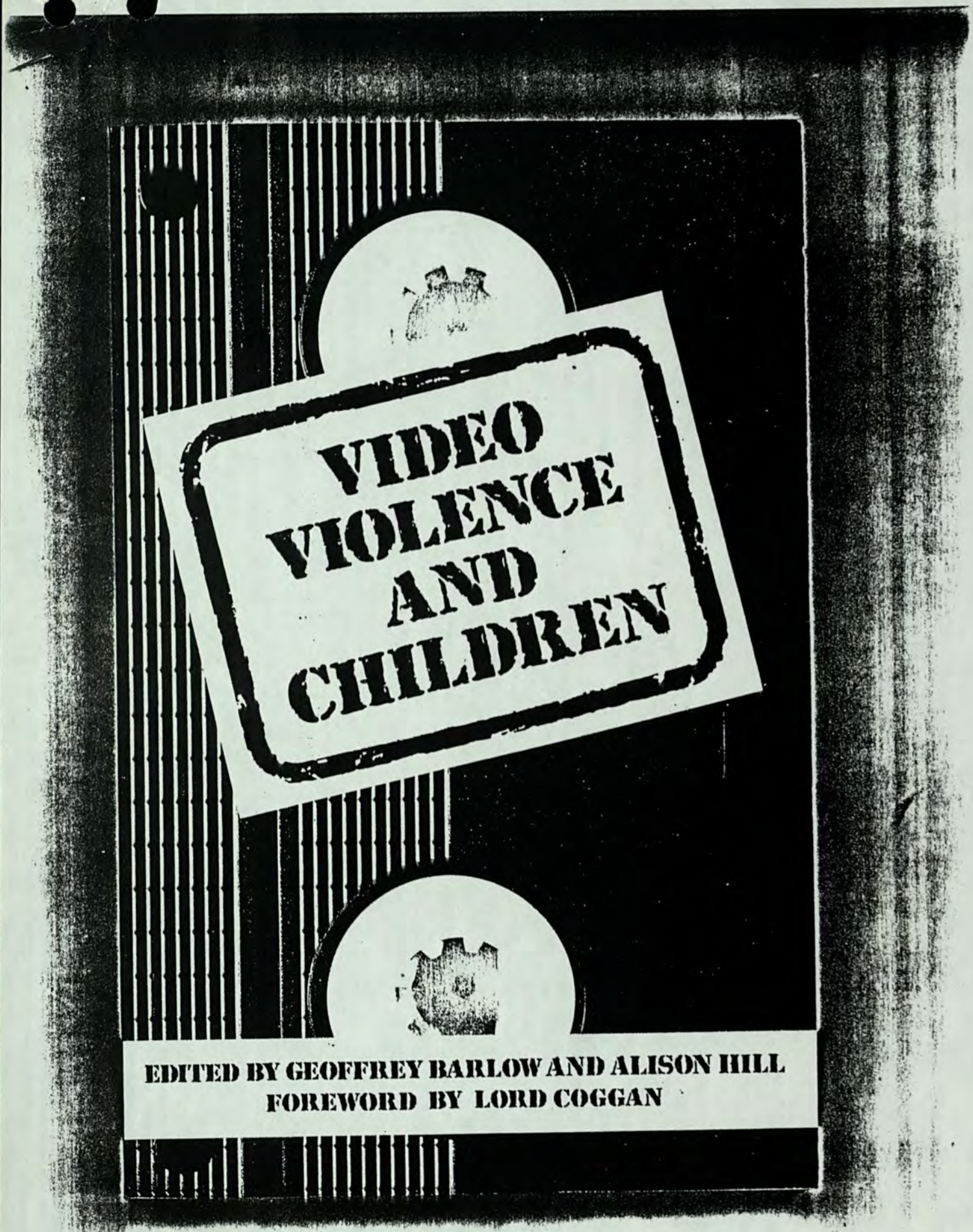
James L. Webb

JAMES L. WEBB

Sworn to and subscribed
before me this 23rd day
of September, 1986.

Notary Public

Notary Public, Georgia, State At Large
My Commission Expires May 29, 1989


VIDEO
VIOLENCE
AND
CHILDREN
EDITED BY GEOFFREY BARLOW AND ALISON HILL
FOREWORD BY LORD COGGAN

be easily transmitted and may swiftly become foundational values in a society.

Research Results

1 Exposure of children

The figures derived from the National Viewers' Survey conducted as part of this Enquiry revealed that large numbers of schoolchildren of all ages have been and are being exposed to films primarily intended for an adult market. The sample of families visited by Officers of the NSPCC together with data derived from other sources in the Enquiry indicates that many children of pre-school age are also being exposed to video films of this nature. The conclusion is that whatever is available for home viewing will be seen by children of all ages.

The current trend among some film makers of producing video films especially for the home market, that they know would not obtain certification for public exhibition, has resulted in the availability of films containing scenes of extreme violence that even the most liberal-minded producers and distributors did not intend to be seen by children. The British Videogram Association and other spokesmen representing the distributors have constantly dissociated themselves from any intention to expose children to the so-called 'video nasties' or other specifically adult material. But the fact is that a great many school children have actually seen a video film containing scenes of extreme violence. This is an undeniable conclusion from this Enquiry.

The sceptics are, of course, perfectly entitled to question the figures produced by our research and we freely acknowledge the difficulties of obtaining accurate information on this subject. Children are notoriously unreliable respondents. But so are adults! It is a recognised fact of any piece of social investigation that the use of self-completed questionnaires will produce unreliable statistical information unless there are a variety of built-in safeguards. Such techniques were faithfully used in our research and in presenting our findings to the public we believe ourselves to be social scientists of integrity who have taken all reasonable care to produce reliable figures. We would nevertheless like to make this point, that even if we are mistaken and our statistics are wildly inaccurate (although we most certainly do not believe them to be inaccurate) but if they were 10% or even 15% inaccurate – which is far beyond the normal limits of tolerance in modern social investigation – we would still have a situation in Britain in which approximately one-third of all British school children have been exposed to video films containing such scenes of extreme violence that they have been found to be legally obscene in a Court of law in the UK.

2 Effects upon Children

The evidence produced in this Enquiry strongly suggests that children are adversely affected by their exposure to scenes of violence on video film. Normal, healthy children are affected in the short-term and may suffer disturbed sleep or other forms of anxiety reaction. As regards the long-term effects, nothing can yet be said with certainty as the VCR is a new social phenomenon. The indications suggest that the short-term harmful effects do not last long in normal, healthy children especially where there is wise parental support and a secure family and home environment. Where such basic security is lacking, the harmful effects may last longer and may do permanent damage.

3 Attraction to Violence

The evidence suggests that those who have a tendency towards violence or aggressive behaviour are attracted to the viewing of violent video films. The stronger the propensity towards aggression, the stronger the attraction to viewing scenes of violence.

The evidence suggests that the viewing of scenes of extreme violence has an obsessive characteristic that may be habit forming in a manner that demands increasing stimulation through more extreme forms of violence. This is probably the result of the 'desensitisation' process whereby normal healthy people, whose first reaction to violence is one of repugnance gradually become desensitised to it through continual exposure.

4 Link with Behaviour

The evidence strongly suggests a causal link between the viewing of violence and violent behaviour. It is recognised that this is a complex issue and that it is virtually impossible to eliminate all other variables, and just isolate only the experimental variable of viewing scenes of violence, which would provide positive proof. However, the link has occurred in the evidence of so many professional people at work among children that the evidence must be considered conclusive.

The copying of behaviour seen on television and film is a well-known phenomenon. The behaviour of children emerging from a cinema reveals what kind of film they have been seeing. Teachers regularly say that they know what was on television the previous night by what games the children play the next morning. The copying of scenes viewed on video film is therefore a well-known and well established phenomenon. The evidence in this Enquiry suggests a causal link between the viewing of scenes of extreme violence and actual violent behaviour in some children and young people.

5 Catharsis Theory

The evidence from this Enquiry appears conclusively to explode the catharsis theory. There was a 75% response rate of consultant psychiatrists in the survey carried out through the Royal College of Psychiatry. Not one psychiatrist expressed the opinion that the viewing of scenes of extreme violence may enable a person to live out a horrific experience in fantasy or imagination and thus prevent them from carrying out such an act in reality. Of those psychiatrists who had found some evidence of a violent video film being influential in a patient's emotional state or behaviour, 77% believed that the viewing of violent videos could be harmful or disturbing and 79% of those who had found an association between their patient's symptoms and the viewing of violent video films believed that viewing violent videos could be harmful. The paediatricians also produced similar results.

6 Parents' Attitudes

The evidence strongly suggests that the attitudes of the parents is a major determinant affecting the child's viewing patterns. Where parents' attitudes are strongly protective, comparatively few of their children have been exposed to violent video films. In contrast, where the parents' attitudes are broadly tolerant and children are left free to watch whatever they wish, proportionately more of their children have watched violent video films.

This pattern is remarkably demonstrated by the NSPCC's sample. In those families where the parents themselves watch video films portraying scenes of extreme violence, a very high proportion of the children have been exposed to this type of film, whereas in families where the parents do not watch these films the proportion of children who have seen violent video films drops dramatically.

The evidence we have examined suggests that in some families where there is a history of violent behaviour, including child abuse, there is an attraction to viewing violent video films. If our evidence concerning a link between exposure to violence and violent behaviour is correct then we may well be indicating here one of the major sources of the growth of a syndrome of violence as a social phenomenon. Clearly this is an area that warrants further investigation.

7 Further Research

Our Enquiry results indicate a number of areas requiring further research. In view of the present public concern over the level of violence in society we would advocate a major research programme into the individual and social sources of violence. We urgently need to increase both our knowledge and understanding of these complex issues.

and films was being issued from schools for advice abou matters, Mrs. Frances Morre

Evid form

D. Tel. 27.9.86

Boy rapist 'influenced by pornography'

PORNOGRAPHY may have turned a teenager into a rapist, a court heard yesterday.

Graham Taylor, 16, subjected two women to an hour-long ordeal at knifepoint in a beauty parlour. Leeds Crown Court was told that he imitated sexual acts he had read of in abscene books and magazines.

Ordering Taylor to be detained for 10 years, Mr Justice MacPherson told him: "Your introduction to soft and hard porn may have been a trigger to this act. It illustrates the total lack of moral restraint for others which is present in the country and is fed by these evils."

Mr Colin Harvey, prosecuting, said Taylor struck at the shop in Bradford, Yorkshire, in June as the 28-year-old owner was plucking the eyebrows of a 29-year-old customer.

Ordeal of terror

"For about an hour he put the two women through an ordeal of terror, abuse and sexual degradation," said Mr Harvey.

Taylor, who admitted raping the victims and robbing them, went into the shop wearing stocking mask and armed with a butcher's knife. He demanded money then locked his victims in the treatment room before committing the attacks.

Mr James Stewart, QC, defending Taylor, a market porter of West Bowling, Bradford, said an older man had given him 68 books and magazines.

Prize wise

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

26 September 1986

Dear Andy

The Home Secretary has asked me to send you, in connection with the meeting arranged for 1 October to discuss how the law on obscenity might be strengthened, the attached papers he has had prepared on:

- reform of the Obscene Publications Act 1959;
- obligations of the broadcasters;
- public attitudes on obscenity;
- the film "Bizarre Tastes" (which the Prime Minister has had drawn to her attention).

I am copying this letter to Joan MacNaughton (Lord President's Office), Michael Saunders (Law Officers' Department), Timothy Walker (Department of Trade and Industry), Alison Smith (Lord Privy Seal's Office) and Michael Stark (Cabinet Office).

Yours sincerely

W R FITTALL

P A Bearkpark, Esq

SVII LG05

ANNEX A

OBSCENE PUBLICATIONS ACT

PRESENT LAW

The Obscene Publications Act 1959 makes it an offence (broadly) to supply an obscene article; an article is defined as obscene if its effect is such as to tend to deprave and corrupt those likely to read, see or hear it.

CRITICISMS OF PRESENT LAW

Mrs Whitehouse and her supporters have levelled three main criticisms against the present law:

(i) the threshold of obscenity is too high;

(ii) juries' verdicts tend to be inconsistent with each other and, generally, to be less strict than those of magistrates;

(iii) broadcasting is exempted from the 1959 Act.

3. Mrs Whitehouse puts part of the blame on the 'deprave and corrupt' test in the 1959 Act. This test derives from a judicial decision given in 1868 and is difficult for juries to apply literally.

4. There is concern also about matters such as bad language, with which existing legislation does not deal, and casual violence, only the most extreme manifestations of which are subject to the existing criminal law.

5. Mrs Whitehouse claims that the Obscene Publications Act is ineffective. In fact, the number of convictions has risen substantially in recent years:

Year	No of convictions
1980	162
1981	221
1982	234
1983	370
1984	429

Moreover, the Obscene Publications Act is buttressed by a number of statutes dealing with particular areas of concern (indecent displays, licensing of sex shops, video nasties etc) where reform of the Obscene Publications Act would have little or not direct impact.

PROPOSAL TO REFORM PRESENT LAW

6. A number of proposals have been put forward for amending the definition of obscenity in the Obscene Publications Act 1959:

(i) Williams Committee

Professor Bernard Williams' Committee, which reported in 1979, proposed that material should be banned only if its production involved either the sexual exploitation of children or the infliction of actual physical harm. Certain other material would be restricted to places where children could not enter and to mail order. Thus the Williams Committee recommendations would tend to weaken the existing law.

(ii) List Approach

Mrs Whitehouse at one time advocated the list approach but she and most other commentators now accept that this would not be viable. Under this approach a list of activities, the portrayal of which would automatically render an article obscene, would be set out in statute. This was the approach embodied in the original Bill Mr Churchill introduced earlier in the Session. However it dissolved at a touch and he was forced to abandon it. Any list will inevitably cover certain material the portrayal of which ought not, in all circumstances and in all contexts, to be regarded as obscene and, conversely, would fail to catch other material which ought to be made unlawful.

It would be possible to draw up a narrow list of material which in all circumstances should be regarded as obscene (eg bestiality). But such material (insofar as it circulates) is already generally found by the courts to be obscene; and such a list would be counter-productive if, despite the statute making clear that the list was without prejudice to the general test of obsenity, the list was in practice treated as the touchstone of what was obscene.

(iii) Judge King-Hamilton (Mrs Whitehouse's unofficial legal adviser) has drafted a Bill which provides, essentially, that an article would be obscene if

(a) it contained objectionable sexual or violent material or it concerned drugs and

(b) it could encourage similar acts or conduct or drug experimentation.

Such a test is misconceived. Pictures of, say, naked women do not "encourage similar acts or conduct". A prosecution in respect of even the most appalling material would fail if the prosecution were unable to prove that it could lead to imitation.

(iv) Taste and decency

The Prime Minister has asked that consideration be given to the introduction of a test that material should not offend against good taste or decency as an addition to the deprave and corrupt test. The BBC and IBA are already required to ensure that programmes do not offend against good taste and decency. Many of the things which people find objectionable in the media - violence, sexual activity, nudity, bad language - can be thought of in terms of lapses in taste and decency.

"Taste and decency" would represent a reduction in the threshold of obscenity and would therefore in effect replace the deprave and corrupt test and be seen to do so. The deprave and corrupt test requires consideration of the effect of the article on individuals. It embodies a moral judgement. A taste and decency test would apply a different sort of moral test. It would be vulnerable to the criticism that taste is essentially an individual matter and is not a precise enough concept for courts to be able to apply the test predictably in criminal proceedings. It would be said that it is therefore not suitable as the basis of an offence which attracts penalties of up to three years' imprisonment. When challenged in Parliament as to whether it would apply to particular items the Government would be able to give little or no guidance.

The taste and decency test in the Broadcasting Act 1981 does not give rise to criminal proceedings but is enforceable only through the civil courts. The Court of Appeal have held that the duty it places on the IBA is a 'best endeavours' obligation; but if it were to be included in the Obscene Publications Act any breach would constitute an offence. Annex B deals further with the obligations of the broadcasters.

(v) Obscene to take dictionary definition

The deprave and corrupt test could be repealed leaving 'obscene' simply to take its dictionary definition. At the margins, this might bring in certain material which was "repulsive, filthy or loathsome" but did not deprave and corrupt. Conversely, it would fail to catch certain material which did deprave and corrupt (eg books inciting drug-taking and some violent material) but which was not repulsive etc. There might be advantage in simply leaving juries to reach their own definition of what was obscene in each case but it would probably make little difference in practice.

(vi) Grossly offensive to reasonable people

The Williams Committee proposed that material which was grossly offensive to reasonable people by reason of the manner in which it dealt with violence, sexual matters etc should be sold only in adults-only shops or by mail order. Instead, such a test could be used in substitution for the deprave and corrupt test so that material which was grossly offensive would be deemed to be obscene. Again, this would exclude certain material

which could deprave and corrupt but was not grossly offensive. The new words would be more familiar to jurors; but whether they would find them easier to apply, and what effect if any they would have on the propensity to convict, is more problematic.

Reform of deprave and corrupt test: Conclusion

7. The overall position is thus that there is no proposal to hand which satisfies the following necessary tests:-

(i) clearly strengthens the law;

(ii) is likely to be generally acceptable to Parliamentary and public opinion.

ALTERNATIVE APPROACH

8. The Government's strategy since it came to office in 1979 has been to support Private Member's Bills or (in the case of the licensing of sex shops) to introduce its own legislation to tackle particular problems which are capable of being dealt with in a self-contained measure and for which there is clear public and Parliamentary support for tightening up the law. As a result the law has been strengthened in the following areas:

(i) indecent public displays (the Indecent Displays (Control) Act 1981);

(ii) licensing of sex shops (Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982);

(iii) licensing of 'adult' cinema clubs (the Cinematograph (Amendment) Act 1982);

(iv) objectionable video recordings (the Video Recordings Act 1984).

9. Consistently with this strategy, the Government, while drawing attention to the shortcomings of the list approach in the Churchill Bill as introduced, offered Mr Churchill amendments, which were incorporated in the final version, designed to protect young people from unsuitable pictures in magazines and books. These amendments provided (broadly) that where pictures were supplied to children, or displayed in such a way that children could see them in the shop (eg by thumbing through a magazine) the test would be whether the pictures would tend to deprave and corrupt children in that age group regardless of what effect, if any, it would have on adults. There were exceptions for pictures in films and videos (which are subject to their own controls) and for pictures in art galleries or museums or in any work published in the interest of science, medicine, education or art. These provisions were designed to ensure that at least the more extreme "girlie" magazines would either be sold shrunk-wrapped or be removed onto a separate shelf behind the counter. In addition the Bill would have prevented shopkeepers accused of supplying such magazines from arguing that their effect on adults as well as children should be taken into account in assessing whether they would deprave and corrupt.

10. A further area in which the law could usefully be strengthened is the supply of sex aids. A recent judgement by the European Court (in the Conegate case) has shown that the Obscene Publications Act 1959 does not deal adequately with such items. This is because the 1959 Act deals only with the impact of articles on those seeing, reading, or hear them whereas the adverse effects of sex aids are not caused by seeing etc them. Some of the items in circulation are most objectionable including some which can cause physical injury. There is a strong case for bringing sex aids fully within the scope of the deprave and corrupt test in the 1959 Act. However certain conceptual difficulties in extending an Act designed to deal only with pornography would need to be overcome.

CONCLUSION

11. The best way forward would seem to be the introduction of a new Bill containing provisions based on those in Mr Churchill's Bill for the protection of children from unsuitable pictures and extending the Obscene Publications Act to cover sex aids. By building on and strengthening the existing deprave and corrupt test this would represent a clear tightening up of the law. The main part of the Bill would be directed specifically towards the protection of children.

12. Mr Churchill's Bill was talked out at Report Stage mainly because of opposition to the second main provision in the Bill - the removal of the exemption from the controls in the Obscene Publications Act of anything done in the course or furtherance of broadcasting by the BBC or the IBA. Consideration would need to be given, in consultation with any Private Member prepared to take up a new Bill and taking into account his position in the Ballot, to whether any new Bill should contain provisions to remove the broadcasting exemption or whether the risk of this jeopardizing the successful passage of the Bill would be too high.

THE OBLIGATIONS OF THE BROADCASTING AUTHORITIES

Statutory obligations are laid on the IBA and the Welsh Fourth Channel Authority by Section 4(1)(a) of the Broadcasting Act 1981 (which repeats earlier statutes). These require the authorities to satisfy themselves 'that nothing is included in the programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling'. Additionally, under Section 5(1) the authorities must draw up codes of guidance on violence and other matters with special regard to programmes broadcast when large numbers of children may be in the audience. Extracts from the IBA's guidelines are attached.

The arrangements for the BBC are broadly similar. In an annex to its Licence and Agreement, the Corporation recognises obligations on taste and decency set out in identical words to those in the 1981 Act. It also draws up similar guidelines for programme makers.

Cable television is also required to follow identical standards on taste and decency (Section 10(1)(a) of the Cable and Broadcasting Act 1984). Because the Cable Authority does not exercise direct control over programmes (but only licenses cable operators), cable operators are also subject (in Section 25 of the 1984 Act) to a criminal offence based upon the Obscene Publications Act 1959.

Enforcement

The IBA approves ITV programme schedules and it may, and often does, ban, re-schedule, or seek changes in particular programmes or series which have been proposed. Officials of the IBA preview sensitive programmes and on rare occasions will refer them to members of the Authority. A rota of IBA officials monitors all IBA programmes as they are transmitted and reports on them. The Authority takes up any lapses in standards with the ITV companies and in the last resort it may rescind the contract of a company which fails to maintain adequate standards. In a test case brought by Mrs Whitehouse over the programme 'Scum' the Court of Appeal held that the duty of the IBA to satisfy itself as to matters of taste and decency was a 'best endeavours' obligation and that it was for the members of the Authority to adopt appropriate working methods to secure

the requirements of the Act. In effect the Court endorsed the IBA's existing working methods, and rejected Mrs Whitehouse's contention that Authority members should preview all sensitive programmes.

The BBC being a unitary organisation operates differently from the IBA. Sensitive programmes are subject to 'referral up' the organisation before being made or broadcast, ultimately to the Director-General as Editor-in-Chief. Judgments on acceptability are made with reference to the guidelines approved by the Board of Governors. There are also regular discussions between the Governors and the editorial staff of the BBC on these matters, and a weekly analysis of correspondence from the public is discussed by the Governors. The Governors do not normally preview programmes, and the convention is that they express their view after programmes have been shown in the light of which guidelines and working procedures may be amended.

There is no evidence that the differences between the BBC and the IBA's methods of supervising programme standards produce significantly different results.

The broadcasting authorities deal with complaints from the general public on programme standards and hold public meetings at which these issues can be raised. Any member of the public can seek judicial review of the IBA's exercise of its statutory duty in relation to a particular programme or programmes, but the bringing of such cases is rare, and likely to be even more rare since the failure of Mrs Whitehouse in the 'Scum' case. In that case, the Court indicated that, because the issue was essentially one of value judgments, a single lapse by the IBA would not necessarily lead to the conclusion that they had failed in their general duty.

Since the BBC is not subject to a statutory duty, but only a voluntary undertaking, on this issue, there is no opportunity for judicial review by the courts. The undertaking is, however, part of a contract with the Home Secretary and could, in theory at least, be enforced by his revoking the Licence and Agreement. But this would be too draconian a sanction to be used in practice against the BBC in any particular case.

If the broadcasters' exemption from the Obscene Publications Act were lifted, the broadcasting authorities could be prosecuted, subject to the consent of the DPP, for a criminal offence if they broadcast material that appeared to be obscene; but the test of obscenity is, of course, nowhere near so strict as the taste and decency obligations to which they are already subject.

The powers of the Government

The Government has reserve powers to ban particular programmes or classes of programme. They have only been used five times since the beginning of broadcasting and never in relation to an individual programme. It does not have powers to set down rules or guidelines on programme standards, nor has it a right to be consulted on these matters.

OBSCENITY - PUBLIC ATTITUDES

It is notoriously difficult to gauge public attitudes on topics like obscenity. Opinion surveys tend to yield inconsistent results; and expressing disapproval about the amount of sex and violence in films, magazines and on television does not necessarily translate into supporting measures which impinge on adults' freedom to watch what they choose. What can be established is:

a) there is concern about the general level of violence on television and rather less general concern about the portrayal of sex on television, in films and magazines. Such concern as exists about television seems more likely to be tackled successfully by pressure on the broadcasting authorities to be more responsive to public opinion than by a change in the law on obscenity;

b) there is a perceived link between pornography and sex crimes;

c) there is not substantial pressure for a major new initiative in the field of obscenity.

1. Parliamentary Opinion

The Churchill Bill received its Second Reading by a majority of 161 votes to 31. In favour were 135 Conservatives, 18 Labour, 7 Alliance and 1 Scottish Nationalist. However the Bill foundered not only because of filibusering tactics by the Bill's opponents but also because of Mr Churchill's inability to generate sustained enthusiasm in the House.

In the last session there were only two Early Day Motions dealing with obscenity. Mr Thorne's motion (795) regretting the blocking of the Churchill Bill drew no additional signatures and Mr Winterton's (1083) backing the Report of the National Viewers and Listeners Association on reform of the Obscene Publications Act drew five signatures.

2. Correspondence

The only issue which has prompted a large number of letters to Home Office Ministers in this field recently has been 'video nasties' which were dealt with by the Video Recordings Act 1984. This yielded 213 letters in favour of action in 1983 (16 against) and 61 in 1984. Otherwise the level of correspondence on the obscenity law has remained low:

	should be strengthened	should be weakened
1983	35	9
1984	27	4
1985	28	2
1986 (to date)	12	1

The number of letters received at 10 Downing Street on obscenity is modest.

The Churchill Bill yielded 33 Ministerial cases in 1986 (17 favoured the Bill) and 111 letters from the public (83 against, of which most objected to Mr Churchill's 'list' approach).

There is a steady stream of complaints about the lack of taste and decency (including excessive violence and sex) on television: in 1985 there were 312 letters on the subject and in 1986 274; this compares with 384 letters on the 'Real Lives' programme and 286 on the BBC's temporary dropping of 'Dr Who'.

The most prolific cause of complaints to the IBA and BBC are scheduling and programme repeats. In 1984/85 they received 555 letters on taste and decency (including bad language) and 34 on violence; the figures for 1985/86 were 608 and 337 respectively. The 1984/85 BBC Annual Report, commenting on the 129,061 unsolicited letters of acclaim or criticism which they had received, states that 'it was not violence or the portrayal of sexual behaviour that caused most offence. Of the various categories, 'bad taste' featured most frequently. There was also continuing concern about bad language'.

3. Opinion Surveys

It is difficult to track changing attitudes because we have not been able to discover any useful and consistent series of questions.

Concern about pornography (the hard core of which is covered by the Obscene Publications Act) and its possible role in stimulating sex crimes is demonstrated by the following questions asked by Gallup:

Q: Do you agree etc with the following statements:

a) the use of pornography is harmless and has no serious effects on those who have a taste for it?

b) the use of pornography can trigger sexual assaults?

	Harmless		Trigger assaults	
	March '86	Feb '82	March '86	Feb '82
Strongly agree	1	2	17	14
Agree	17	25	60	58
Neither agree/ Disagree	9	10	5	8
Disagree	44	37	9	11
Strongly disagree	23	20	2	2
Don't know	5	6	7	7

These figures show a slight hardening of attitudes to pornography. Men and younger respondents take a more relaxed view of its likely effects.

In a Gallup survey of the causes of crime: violence in TV entertainment was identified as a very or fairly important factor by 67% of respondents in July 1981, this fell to 54% in October 1985; cinemas showing films with violence and sex was mentioned by 58% of respondents in 1981 and 50% in 1985. In a list of fourteen possible causes television violence ranked tenth in 1981 and twelfth in 1985, and violence and sex in cinema films ranked twelfth and thirteenth respectively.

In another Gallup survey (February 1986), respondents were asked to identify from a list what they considered to be very serious social problems: pornography was identified by 52% and ranked eighth behind various types of crime, drugs and bad housing but ahead of prostitution, gambling, drunkeness and homosexuality.

Thus far, various surveys convey a dislike of pornography (undefined) and concern about its possible role, together ith concern about the impact of television violence, in romoting crime. A limited measure of support for Government action in the field was indicated in a survey conducted by Gallup in January 1986:

> Q: 'I am going to read you a list of things that some people believe a Government should do. For each one can you say whether it is .....?
>
> 'Take measures to reduce the amount of sex and nudity on television, in films and magazines'

Very important that it should be done	29
Fairly important	21
It doesn't matter	28
Fairly important shouldn't be done	8
Very important shouldn't be done	11

In a list of twenty topics it ranked in the middle below spending more on the Health Service, promoting equal opportunities for women, tackling pollution and withdrawing troops from Northern Ireland; it was comparable in popularity to restoring grammar schools and more popular than unilateral disarmament or 'spending as much money as is necessary to defend the Falklands'.

Nevertheless, the ambivalence of public opinion - and therefore the difficulty of identifying measures which will be widely welcomed and effective - in this area is shown by a more detailed survey conducted in October 1985. This

found opinion almost equally divided about whether there was too much sex on television, and although there was widespread agreement that there was too much violence on television, 58% agreed that there was no need for a new law to deal with it. Some reluctance to see the law intervene more extensively is further demonstrated by the following questions:

> Q: I am going to read out some statements, for each of them would you please tell me whether you agree or disagree with it?
>
> a) The authorities should stop interfering and allow ordinary people to decide what is fit for them to see and read and what is not;
>
> b) Anyone over 16 should be able to see any film or publication about sex so long as there is a clear warning of its contents;
>
> c) The law should ban films and publications which contain explicit descriptions or illustrations of sexual acts?

	(a)	(b)	(c)
Strongly agree	8	7	10
Agree	41	60	32
Neither agree/ disagree	9	4	10
Disagree	29	22	38
Strongly disagree	9	4	5
Don't know	3	3	5

4. The Press

In the context of the Churchill Bill, 'The Times' and 'The Sunday People' favoured strengthening the obscenity law; 'Today' and, unsurprisingly, 'The Guardian' opposed it. It is significant that the other leading newspapers made no editorial comment on the issues raised by the Bill. 'The Times', 'News of the World' and 'The Spectator' all support the removal of the broadcasters' exemption.

Most papers reported Clare Short's Bill to outlaw pictures of page 3 girls. 'The Sun' was the only paper to surface with an editorial attacking the proposal.

SVII LG11

ANNEX D

'BIZARRE TASTES'

The National Viewers' and Listeners' Association (of which Mrs Whitehouse is the President) have drawn attention to the outcome of a prosecution brought under the Obscene Publications Act 1959 against the film 'Bizarre Tastes' as evidence, they claim, of the ineffectiveness of the Act.

2. The film depicts acts of coprophilia (the eating of human excrement). It was prosecuted in 1981 under section 2 of the Act. During the proceedings the judge had to adjourn the case and leave the court because the viewing of the film had made him physically sick.

3. The case resulted in an acquittal. We understand that the foreman handed a letter to the judge saying that the jury had had difficulty in determining who was likely to see the film. Presumably, they thought the film would have been seen only by those already attracted to coprophilia and that such people were incapable of being further depraved and corrupted by films on the subject. Accordingly, they believed that the film would not deprave and corrupt. But this sort of argument had already been scotched by the House of Lords in **DPP v Whyte** [1972] when they held that the proposition that readers of the books in question, being addicts of that type of material whose morals were already in a state of depravity or corruption, were incapable of being depraved and corrupted, was fallacious. The case does not therefore seem to suggest that the 1959 Act is ineffective but instead that the law was misunderstood or misapplied on this occasion.

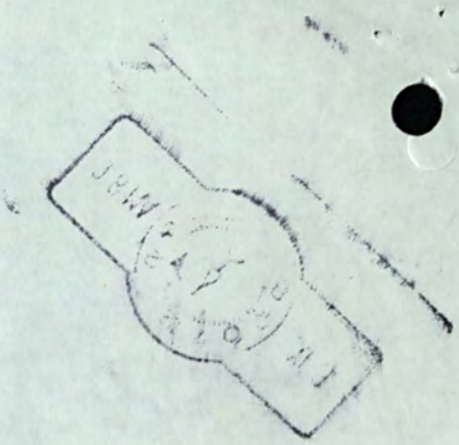
4. Mr Mellor wrote to Mr James Bogle of NVALA (who had drawn this film to his attention) on 12 August explaining the position. (He

also noted that, under NVALA's proposed Bill to amend the Act, the film would be obscene only if it could be proved first that it contained material of a sexual or violent nature or which concerned controlled drugs and second that it could encourage similar conduct; and that it seemed that a prosecution under such a Bill would fail on one if not both counts.)

1+ AFFIXES

OBSCENITY

10/83



Confid
filing

NOTE FOR THE FILE

Judge King-Hamilton met the Prime Minsiter on 15 September to discuss obscenity legislation and to ensure that it also covered the BBC and IBA. He proposed a small drafting committee consisting of a Judge (he suggested Henry Pownall), a QC (Stephen Mitchell), a representative of the DPP and a Parliamentary Draftsman - all to be under an unspecified Chairman and with the power to co-opt. Copies of his proposal and draft legislation are attached to this note.

The Prime Minister thought the idea worth considering but was of the view that the Judge must be Chairman.

She agreed to think about it - prior to a meeting of Ministers now arranged for 1 October.

PAB

P.A. BEARPARK
16 September 1986

E. R.

B

B 859 X

NOTE RE OBSCENE PUBLICATIONS ACT 1959

1. It is generally accepted that the Act is unworkable. This view is not only held by lawyers,[1] but also by Scotland Yard.[2] And, I suspect, also by publishers, distributors and retailers of pornography.

2. In the circumstances, it is not surprising, and commonly accepted, that violence and pornography are continually increasing and getting worse, i.e. portrayals of violence are more and more horrendous and nauseating, and obscenity more extreme, explicit and filthy.

3. Nor is it surprising that, in the last few years, there has been an increase in the number and severity of assaults on children (up by 90 per cent according to the N.S.P.C.C.). In the opinion of the police, the link between this increase and that in obtainable and visible pornography is no mere coincidence.

Footnotes:

1. See, e.g. R. v. Met. Police Commissioner, ex parte Blackburn, (reported in The Times, 7 March 1980).
   Lord Denning: "The test of obscenity in the Act ... was difficult to apply ... the fault lay with the wording."
   Lawton, L.J.: "No branch of the criminal law presented more difficulty for police officers ... in trying to apply the law ... they require all the help they can get."
   Ackner, L.J.: "The Act, with its test of obscenity, made it difficult to prognosticate the result of prosecution."

2. Information from Scotland Yard, June 1986: "The great difficulty ... has been the various decisions by the courts as to what is obscene."

4. It is submitted that the solution to this problem is either to amend the present Act or to replace it with a new one. To this end, I venture to suggest the setting up of a small drafting committee comprising a Judge (I suggest H.H. Judge Pownall, Q.C.), a Queen's Counsel (Stephen Mitchell, Q.C.), a representative of the D.P.P., and a Parliamentary draftsman. And, of course, a Chairman. It should have power to co-opt (e.g. Lord Denning).

A. King-Hamilton

Handed in PM 15/9/86

JUNE 1986

PROPOSED BILL TO AMEND OBSCENE PUBLICATIONS ACT 1959

1. Section 1 of the Obscene Publications Act, 1959, is hereby repealed and replaced by the following provisions:-

2. For the purpose of this Act, any publications, whether written, printed, audible or visual, shall be deemed to be obscene if -

(i)(a) it contains any material of a sexual nature which, in the opinion of a jury, is grossly indecent or lewd or

(b) portrays degradation, or unrestrained cruelty or violence, or

(c) contains any material concerning any controlled drug; and which

(ii) is so presented or depicted that it could encourage similar acts or conduct or drug experimentation or abuse.

3. Without prejudice to the generality of Section 2(i) above, where it is apparent that the publication is intended for or sold or otherwise supplied to children or young persons, it shall be deemed to be obscene if it contains any material of the nature set out in Section 2 above.

4. In considering whether the material in question is obscene within the meaning of clause 2 above, the jury shall have regard to whether it, or any part of it, was an essential ingredient of the narrative which could not otherwise be suggested or left to the imagination of the reader, listener or viewer. The onus of establishing to the satisfaction of a jury, that it is so essential is on the defence.

5. In a trial by jury for an offence under this Act, the right to challenge shall only be exercised for good cause.

(The repeal of whole of Section 1 ensures that the content of television and sound broadcasting is no longer exempt from the Obscene Publications Act).

cc B/L

PRIME MINISTER

OBSCENITY LEGISLATION

You wanted to meet Judge King Hamilton to discuss the law on obscenity. You may like to glance at the recent correspondence with him (Flag A). A note of your recent meeting with the Home Secretary is at Flag B. Just in case you want to glance at the Home Office brief setting out their current position I have attached this at Flag C.

A meeting of Ministers has been arranged for Thursday 25 September.

ANDY BEARPARK

12 September 1986

VSCAAW

Back 5/5.30 evening

G.R.

MR. BEARPARK

Obscenity Legislation

I have had difficulty in contacting Judge King-Hamilton but will try again obviously before I leave at lunchtime tomorrow (Friday). We have got to fit him in some time in the week beginning Monday 15 September and I have allocated 1730 on that day. Alternatively, we could offer him Friday 19, at 1000. But Mark also asked me to set up a meeting of Ministers for the following week and this I have done at 1500 on Thursday, 25 September.

CR.

09276 7711

* confirmed.

AKH 99
Honda Accord
Metallic
Dark Blue

(CAROLINE RYDER)
4 September 1986

4 September 1986

I have tried to contact you on the telephone as the Prime Minister would very much like to have a short meeting with you to discuss Obscenity legislation. As I am on holiday next week I wonder if you could make contact with my colleague, Andy Bearpark on 01-930 4433, to arrange a mutually convenient date. What I had in mind was Monday 15 September at 1730 but if this is not convenient, I am sure Mr. Bearpark will be able to offer you an alternative slot.

(CAROLINE RYDER)

His Honour Judge King-Hamilton, Q.C.

Subject cc master

CONFIDENTIAL

A cc/B/MP file VK X

cc S. Sherbourne

10 DOWNING STREET

From the Private Secretary

1 September 1986

Dear Clare

The Prime Minister and the Home Secretary discussed yesterday the law on obscenity.

The Prime Minister said she was concerned that the existing legislation was not effective. The letters she received from Mrs Mary Whitehouse and Judge King-Hamilton reflected a growing public anxiety that the law as it stood was unable to stop obscene material being made available to the public. Furthermore, the public would react favourably if the Government were to be seen to try and tackle the lowering of standards in the media generally. A distinction had to be drawn between freedom and licence. It was a difficult boundary to define. But the Government had so far failed to take the necessary steps to get it right, and had to be seen now to try and do so. The Prime Minister suggested that one way forward might be to impose a test that material should not offend against good taste and decency <u>in addition</u> to the "deprave and corrupt" test in the Obscene Publications Act.

The Home Secretary said he was sympathetic to the Prime Minister's concern. The difficulty was in finding a new legal formulation which would be both effective in catching the material the Government wished to catch, but no more, and which was acceptable to the public and to the House. So far, nothing satisfying those conditions had been proposed. The Churchill Bill showed how great the difficulties were. The Home Secretary hoped that, once the Peacock Report had been considered, it would be possible to remove the broadcasting authorities' exemption from the obscenity legislation. Their position was now quite illogical, particularly in view of the prospective development of many more TV channels in the future. The Home Secretary noted the Prime Minister's proposal for an additional "decency" test but he doubted whether that would encourage juries to convict any more than they did at present.

Summing up the discussion, the Prime Minister said she would arrange an early meeting with Judge King-Hamilton to discuss more fully his ideas for reforming the law. She would not arrange to see Mrs Whitehouse yet. The Prime Minister would also chair a Ministerial meeting to discuss possible ways in which the legislation could be tightened up, with a

view to a suitable Member being approached if one was successful in the ballot for Private Members' Bills. One particular proposal to consider was increasing the protection afforded to children. The Home Secretary would also consider the responsibilities and powers he himself had in relation to the legislation, particularly so far as the IBA and BBC were concerned.

I am copying this letter to Joan MacNaughton (Lord President's Office), Michael Saunders (Law Officers' Deprtment) Timothy Walker (Department of Trade and Industry) and Michael Stark (Cabinet Office).

Yours ever

Mark Addison

MARK ADDISON

Ms Clare Pelham,
Home Office.