

PRIME MINISTER

Mrs. Mary Whitehouse wrote to you on 21 July, saying she was unhappy with the meeting she and her colleagues had had with the Home Secretary and Mr. Mellor, and that she would like to discuss her concerns with you personally. (Her letter is at Flag A). You agreed to do so, though we have not yet fixed a firm date for the meeting. Before you meet Mrs. Whitehouse, you wished to have an opportunity to discuss obscenity legislation, and the Home Office's position, with the Home Secretary.

You have in fact already had a brief word with Douglas Hurd about the Mary Whitehouse letter, and he subsequently wrote to you, arguing that it gave a misleading account of the meeting (Flag B).

The Home Office have provided a brief setting out their current position (at Flag C). This deals with the following points:

- the law at present and its shortcomings;
- the Home Office's assessment of whether, and if so how and when, the shortcomings can be remedied;
- Mrs. Whitehouse's views and proposals and the Home Office's response to them.

You may also like to have to hand at the meeting recent correspondence with Judge King Hamilton (Flag D).

You will also wish to discuss with the Home Secretary whether or not he should attend the meeting with Mrs. Whitehouse.

*MAA*

Mark Addison

29 August 1986

JA2ADN

From: THE PRIVATE SECRETARY

*ce Highgate*



HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

26 August 1986

*Dear Mark,*

*N*

*I take it you would like  
to attend Monday's meeting?  
Or are you not  
really here? MSA 28/8*

You asked for a note on obscenity, including broadcasting, before the Prime Minister's meeting with the Home Secretary on 1 September to prepare for a meeting with Mrs Whitehouse.

... I attach a note which the Home Secretary has approved as an agenda for the discussion. It does not go into the question of Conservative Party policy at the next election, but the Home Secretary is, of course, ready to discuss this.

*Yours*

*Clare*

MS C PELHAM

Mark Addison, Esq.

OBSCENITY

## PRESENT LAW

The Obscene Publications Act 1959 makes it an offence to supply an obscene article; an article is defined as obscene if its effect is such as to tend to deprave and corrupt those who are likely to read, see or hear it. A magistrates' court can, without convicting anyone, order the forfeiture of articles which it considers obscene in this sense.

2. There are a number of other statutes dealing with particular areas of concern including

- (a) sending indecent or obscene material through the post (the Post Office Act 1953);
- (b) indecent displays (the Indecent Displays (Control) Act 1981);
- (c) licensing of sex shops (Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982);
- (d) video recordings (the Video Recordings Act 1984);
- (e) obscene telephone calls (the Telecommunications Act 1984).
- (f) bogus cinema clubs (Cinemas Act 1985).

In addition, Customs legislation (the Customs Consolidation Act 1876) prohibits the importation of indecent or obscene material.

3. The BBC and IBA are not subject to the Obscene Publications Act. There is, however, a statutory obligation on the IBA and the Welsh Fourth Channel Authority to satisfy themselves that nothing is included in 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; and they 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. The BBC recognizes the same obligations in an Annex to its Licence and Agreement, and draws up similar guidelines for programme-makers. Cable operators are under the same obligations as the BBC and IBA regarding good taste and decency, but are also (since actual programme content is not supervised by the Cable Authority) subject to the Obscene Publications Acts.

4. Cinema films are ~~not~~ subject to the Obscene Publications Acts but *also* have to be licensed for exhibition by local authorities, who usually adopt the recommendations of the British Board of Film Classification.

#### SHORTCOMINGS OF THE LAW

5. Whether the obscenity law draws the boundaries at the right point, and how serious are the consequences if it does not, are matters of opinion. Plainly, however, the present law has the following defects:

- (i) The 'deprave and corrupt' test is not ideal. It derives from a judicial decision given in 1868 and is difficult for juries to apply literally.
- (ii) The law on obscenity and indecenty is scattered over a range of statutes, some of which give different definitions to the same words and accordingly set different standards for different purposes. For example, "obscene" in the Customs Consolidation Act has its ordinary dictionary meaning. The European Court, however, decided earlier this year that any stricter test applied to imported as opposed to domestic articles amounted to a restriction on trade contrary to the Treaty of Rome.
- (iii) Juries' verdicts tend to differ from magistrates' decisions and, in respect of the same material, from each other. Thus both publishers and retailers and the prosecuting authorities can find that they do not know where they stand.

6. The broadcasters are felt by many people to be above the law; no redress, except an apology is available to those offended; and no-one except the broadcasters themselves has any direct say.

#### ASSESSMENT

7. Effort has in recent years been concentrated on making specific progress in areas where a consensus can be achieved and a clear remedy is available. For example, the application of the Video Recordings Act from 1 September to most video works not previously registered for exhibition as films means that the "video nasty" is now subject to a control, by way of pre-publication censorship and classification, more precise and less capricious than the Obscene Publications Act.

8. Any general re-opening of the scope of the Obscene Publications Act is much more difficult and there is no current plan to do so, although various possibilities have been considered. The difficulties lie in deciding how and how far the boundaries ought to be moved; in drafting something that will actually induce juries to deliver the desired results; in finding a reasonable measure of consensus; and, as shown by the fate of Mr Churchill's Bill, in getting enough Members of Parliament to take the matter seriously.

9. The most comprehensive available analysis of the present law, and blueprint for new legislation, were offered by the Williams Committee (1979). Their recommendations were clear and rational, but would in some respects represent a contraction rather than an expansion of the scope of the law. The only material which Williams would have banned altogether was material the production of which involved the sexual exploitation of children or in the production of which actual physical harm was inflicted. Other offensive material would be restricted to places which children could not enter and to the post, but anyone who wanted it would be able to get it. There would (explicitly) be no control whatever over the written word. It has not been thought that these proposals are ones which the Government would wish to commend to Parliament.

10. An alternative to the Williams Approach would be to replace the deprave and corrupt test by another formula of general application. For example, the word "obscene" in the 1959 Act could be left to take its ordinary dictionary meaning, or obscene material could be redefined (along the lines of the criteria offered by Williams for mere restriction) as material the publication of which is, by reason of the manner in which it deals with violence, sexual matters etc, offensive to reasonable people. This would meet some of the narrow objections to the deprave and corrupt test, in that it would reduce the task of the jury to the much simpler and more explicit one of deciding what was beyond the pale and what was not; but it would be weak on two fronts. First (and this is a point which even some of Mrs Whitehouse's supporters have raised), it would mean forfeiting any claim that the law has any regard to the harm done by pornography, except in the very limited sense that anything that is offensive is ipso facto harmful. Secondly (and paradoxically), such a change would probably amount to little more than ratification of what juries already do, and have been to some extent encouraged by the courts to do, with the 'deprave and corrupt' test. Whether it would produce any noticeable change in what juries find obscene is thus far from certain (there is of course some material - eg advocacy of drug-taking - which depraves and corrupts but which does not easily come within any new definition of the kind discussed here).

11. The overall position on obscenity generally is thus that there is no proposal to hand which satisfies the following tests:-

- (i) goes in the direction in which the Government would want to go;
- (ii) is of clear effect; and
- (iii) is likely to be generally acceptable.

12. The Government took a neutral position on whether the Obscene

Publications Act should, as Mr Churchill proposed, be applied to the BBC and IBA, while pointing out that the 'good taste and decency' requirements are much stronger than any restrictions imposed by the Acts. The important issues relating to broadcasting are how strictly and well the broadcasters' own guidelines are applied and what the effects are of the "drip, drip" of material which, while a world away from obscenity in any sense which the criminal law could reasonably attack, portrays violence, and unpleasant language and behaviour, to a degree which causes disquiet. The fact has to be faced, however, that the programmes which spring most readily to mind here are among the most popular on television and that, short of a revolution in the arrangements for broadcasting, there are strict limits to what the Government can do. The Home Office will maintain a dialogue with the broadcasters; encourage them to take full account of responsible opinion, respond constructively to the criticisms levelled against them, and give out better information about, for example, the times when programmes might be unsuitable for children; and to encourage responsible research. The Home Secretary is ready again to take a personal part in this, as he did before Christmas.

#### MRS WHITEHOUSE'S VIEWS AND PROPOSALS

13. Mrs Whitehouse attacks the present law and arrangements over a very broad front; it is not easy to pin her down to specific propositions or proposals or to identify, even in principle, any particular line of advance which would go any reasonable distance towards satisfying the generality of her concerns. It is, however, clear that she believes that too much of what she would regard as fit for prohibition gets past juries; that this is to some extent, at least, because they are bamboozled by technicalities and over-clever defences; that the authorities do not take seriously enough the need to enforce the law; and that the broadcasters should be brought under a degree of control.

14. On the general law of obscenity, Mrs Whitehouse previously favoured the list approach, whereby the sort of material which she would like to see banned would be identified explicitly in the statute; but she has now finally moved off this. Her current proposal

is that the deprave and corrupt test should be replaced by a new test under which it would be necessary to prove that

- (a) the article concerned sex, violence or drugs; and
- (b) was so presented or depicted as to encourage similar acts or conduct or drug experimentation or abuse.

15. Mrs Whitehouse wants Government legislation, not a Private Member's Bill (the 1959 Act arose from a Private Member's Bill, and the law in this area has traditionally been amended by Private Members' legislation).

16. On broadcasting, Mrs Whitehouse would like to see the BBC and ITA made subject to the Obscene Publications Acts, with opportunities for private prosecution. She takes the point that the prospects of conviction under present law are remote, but presumably hopes that extensions of the scope of the Acts would eventually catch up with what is actually shown. Pressure for prosecution would in any event bring publicity, and put the DPP and the Government into a more exposed position. Unlike other members of her organisation, Mrs Whitehouse does not advocate direct Government responsibility for changing programme standards. She has, however, recently proposed that the remit of the Broadcasting Complaints Commission (at present limited to complaints of unfairness or invasion of privacy) should be extended to include taste and decency. She would also like to see an annual debate on broadcasting in Parliament.

17. Mrs Whitehouse wants Customs to go on seizing material which is merely indecent, or obscene only in the dictionary sense, notwithstanding the EC decision.

#### VIEWS ON MRS WHITEHOUSE'S PROPOSED SOLUTIONS

18. The Home Office, like the Williams Committee, has always considered the list approach to obscenity to be fundamentally unsound,



despite its superficial offer of greater certainty. This view is reinforced by the experience of Mr Churchill's Bill: his opening proposal, with its list, dissolved at a touch.

19. The Home Secretary's views on Mrs Whitehouse's current proposals for a new obscenity test were reflected in the advice offered on Mr King-Hamilton's letter of 17 June and in the Prime Minister's reply to it of 24 July. The key point is that the proposal would confine obscenity law to material which encouraged "similar acts". As Home Office Ministers have repeatedly explained to Mrs Whitehouse, this would weaken the law because it would be more difficult to prove beyond reasonable doubt that material, even of the most appalling character, would encourage repetition than that it had a tendency to deprave and corrupt. Mrs Whitehouse is apt to treat a point of this kind as a mere difficulty of drafting; but it is in fact one which goes to the heart of the proposal. Mrs Whitehouse's current proposal therefore fails, by a long chalk, the test of offering a definite improvement on the present law.

20. As to imported material, we are bound to comply with the EC ruling. It is admittedly unsatisfactory that, accordingly, Customs should now have to operate their legislation as if it meant something different from what it says. Mr Chris Smith MP obtained leave in July to introduce a Bill to amend Customs legislation and the Obscene Publications Act. This will be considered in due course in the normal way. Following discussion with the Home Office, Lord Nugent of Guildford is considering the introduction of a Private Peer's Bill which would, in principle, bring within the scope of the Obscene Publications Act articles of the kind at issue in the EC case, although he is beginning to appreciate the technical difficulties of doing so.

21. As to broadcasting, extending the Obscene Publications Act to the BBC and IBA is something that could be contemplated, as on Mr Churchill's Bill. The exemption is not logical, though broadcasters are attracted to it. But it is far from clear that removing the exemption would have much practical effect. The Annan Committee firmly rejected the idea of extending the powers of the Broadcasting Complaints Commission.

There is no shortage of Parliamentary interest in broadcasting matters, although much of it is unsupportive of Mrs Whitehouse's views, and no strong case for institutionalising debate on an annual basis.

#### Summary and Conclusion

22. There have in recent years been a number of measures which, while relatively modest in their scope, have both attracted widespread Parliamentary and public support and effected real improvements (sex shops, indecent displays, bogus cinema clubs, video recordings). But Mr Churchill's Bill, dealing with the Obscene Publications Acts, failed to attract the 100 Members necessary to force the closure.

23. Mrs Whitehouse pins too much on reform of the Obscene Publications Act, overestimates the possibility of finding amendments that will make real improvements and under-estimates the need, even for a Government measure, to secure reasonable consensus.

24. At present there are no proposals available which either make definite improvements (at least to the Government's and Mrs Whitehouse's way of thinking) or would be generally acceptable. It is of the essence of any law of this kind, relying on juries to pass judgement retrospectively on matters which include ones of taste, that it is incapable of fine-tuning; and any attempt at a really significant shift in the coverage of the law (eg. by making it an offence to publish an article which was merely indecent) would throw up a maelstrom of difficulties and differing opinions.

25. In any event, many of the matters which concern Mrs Whitehouse and others, such as bad language and the treatment of social issues, are simply incapable of being addressed by the criminal law.

26. In their dealings with Mrs Whitehouse Ministers have never ruled out reform of the Obscene Publications Act. The approach of Home Office Ministers has been to

receive her with sympathy, encourage her to engage in realistic dialogue on the real problems involved in any change in the law and consider any concrete proposal which she makes. Mrs Whitehouse tends to interpret this as meaning that Ministers are not interested, and continues to believe that the problems are merely ones of effort rather than of concepts, principles and politics. Unless and until the Government is confident that good proposals are available for general reform, in addition to the practical progress made on narrower fronts, it would be dangerous to encourage her in this belief.

CROXLEY  
DUPLICATOR

Home Office

August 1986

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OBSCURITY

10/83

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