

February 2001

To: Hayde Scarsbrook
Sex Offences Review
Sentencing & Offences Unit
Home Office
50 Queen Anne's Gate
London SW1H 9AT

Dear Sirs.

SETTING THE BOUNDARIES: REFORMING THE LAW ON SEX
OFFENCES

The Campaign Against Censorship's comments are
as follows:

INDECENT EXPOSURE (page 144)

As proposed, this would criminalise male nudity,
however fleeting, in the course of a public performance
eg in streets, squares, parks, public houses, or theatres.
It would also outlaw nudity as a form of public protest
and "streaking". In any event that is already dealt with
under other public order legislation. It is wrong to
equate all nakedness with sexuality; a protest against
torture or ill-treatment would be caught by the proposal
if a man appeared with no clothes on. (see case of R-v-
Vincent Bethell; Southwark Crown Court; 10th January
2001).

We suggest that the words "any person" should be
replaced by "any reasonable person." The maximum
penalty should not be increased from three months to
two years, because the latter is disproportionate.

OUTRAGING PUBLIC DECENCY (page 144)

This is an outdated "catch-all" offence which
should be abolished, as recommended by The Law
Commission Report on Conspiracy and Criminal Law
Reform 1976 no 76. In any event the existing maximum
penalty of life imprisonment is grossly excessive. It
should be reduced to three months. The continued
existence of this offence constitutes a threat to civil
liberty.

See: DPP v Jacey Ltd (The Guardian 6th June 1975): "the offence (Outraging Public Decency) may be committed not by conduct but also by words and pictures"-cinema proprietor convicted after a private prosecution because he showed the film "More About the Language of Love" which had been certificated by the local authority.
see also : R v Gibson (1991 1 All ER 439): freezer dried foetus case; conviction of artist for exhibiting his work to the public.

PROSTITUTION (pages 148 & 149)

Given that prostitution is legal, The Campaign Against Censorship believes that advertising material relating to it should also be lawful in itself. It is regrettable that this issue is the subject of a separate draft offence being prepared by Lindsay McKean, Policy Adviser in your Department, without reference to this Review.

COMMERCIAL EXPLOITATION OF A CHILD (pages 148, 149 & 150)

The Campaign Against Censorship's contention is that mere possession of an indecent photograph of a child should not be a criminal offence. Such photos should only be used in Court proceedings as evidence that a listed offence against a child has been committed. The possession of the photos should not be a crime in itself.

DISORDERLY HOUSES ACT 1751 (25 Geo 2 c 36)

This should be repealed as the mischief to which it is directed is covered by existing laws and the proposals in this review. This old law is part of the present illogical, incoherent, conflicting "patchwork quilt of provisions ancient and modern" decried by the Review (paragraph 0.2 Page 3). This law has been used to criminalise shows by and for consenting adults. See: R v Cross & McManus, Isle of Wight Crown Court 28th June 2000.

COMMON LAW OFFENCES

The Review provides an opportunity to give effect to the recommendations of The Law Commission Report on Conspiracy and Criminal Law Reform 1976 no 76 by abolishing the common law offences of:

- Corrupting Public Morals
- Keeping a Disorderly House
- Outraging Public Decency
- Indecent Exhibition.

The mischief aimed at by these ancient laws is already dealt with by statute, including the proposals in the Review. Repeal of these outdated common law offences will help end the present illogical, incoherent, conflicting "patchwork quilt of provisions ancient and modern" decried by the Review (paragraph 0.2, page iii).

The way these laws harm freedom of expression is illustrated by the convictions for Corrupting Public Morals obtained in the cases of *Shaw v DPP* (1961) 2 All ER 446 (the "Ladies Directory" case) and *Knulier v DPP* (1972) 2 All ER 898 (the *Rendezvous* contact magazine case).

CONCLUSIONS

It is regrettable that the list of members of the Steering Group (page 139) and External Reference Group (Page 140) excludes representations by interested relevant organisations, such as the Campaign Against Censorship, English Collective of Prostitutes, the Gay & Lesbian Humanist Group, the International Union of Sex Workers, the Libertarian Alliance, Liberty, Outrage, the Sexual Freedom Coalition, and the Strippers Union. We request that these bodies be invited to participate in future consultations. A copy of the SFC's Sexual Freedom Bill was twice sent to the Home Office (1997 and 1998), but ignored.

Yours sincerely,

Cllr E Goodman
Chair of CAC