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Legal Control of Sex Shops

The National Campaign for the Reform of the Obscene Publications Acts has recently had a meeting with officials of the Home Office to discuss the licensing of sex shops. There are provisions on this subject in the Greater London Council (General Powers) (No 2) Bill, now before Parliament. The Government intends, the NCROPA delegation was told, to graft the provisions concerned into the Local Government (Miscellaneous Provisions) Bill at the Reports Stage, so that the arrangements proposed in the former for licensing sex shops will apply to the whole country and not merely to the Greater London area. NCROPA is against the licensing of sex shops *per se*, and it is therefore opposed to the licensing provisions in the Local Government Bill, no less than in the GLC Bill. Its opposition is unlikely, we think, to be widely shared, as indeed it is itself well aware. A general case against the kind of censorship which has been advocated by those who wish to see sex shops closed down completely (and on that account opposed recent Indecent Displays Legislation) is, in our view, unanswerable. A general case against the licensing of such establishments, within the over-all framework of indecent displays controls, has at the very least to be made out. The NCROPA will have to do better, if its campaign against licensing is to carry conviction and win the support of others, ourselves included. The case it has presented to the Home Office does neither. NCROPA claims, for example, that the incorporation of the licensing provisions of the GLC Bill into the Government's Local Government (Miscellaneous Provisions) Bill is "yet another blatant Establishment attempt to deny the free and proper expression of its views". Proper the free expression of those views may indeed be, but how can it conceivably be said to be denied by the adoption by the Government of a national licensing system for sex shops, when NCROPA is entirely free to make its views on the subject known wherever and as often as it chooses to do so. It is true that if the GLC in the face of the Government's legislative initiative should decide to withdraw the licensing provisions in its own Bill, NCROPA will lose the right of petition which it would have enjoyed against that Bill. That is so, however, simply because the right of petition is reserved to Private Bills, and if the GLC Bill is withdrawn, there will be no Private Bill for anyone to petition against. But NCROPA's right to give expression to its views against the Government's Bill is as great as it ever was. What its case against the licensing of sex shops lacks in hard argument, it makes up in fantasy. 1984, it claims, "may be closer than we think" and it "wonders what next" will be thought up to "erode individual freedom in this country". The fact is that the proposed licensing system is concerned with whether sex shops are conducted as Parliament has already decided they should be conducted, and it is therefore no more "an erosion of individual freedom" than the statutory licensing systems which have long governed such establishments as public houses, betting shops, gaming clubs and employment agencies, to name but a few. The licensing system is clearly in the public interest in these instances. If it is abused in the case of sex shops, it is its abuse against which NCROPA should concentrate its fire. Then perhaps we may understand more clearly what it is firing at.

Precisely because it appears that there has been abuse of powers accorded by Parliament to a public authority — in this instance, the police — NCROPA is on very much stronger ground in demanding an inquiry into a recent series of police prosecutions, brought under the Obscene Publications Acts, against John Lindsay, a sex cinema club director, and others similarly involved in the management of such establishments, which have been heard before His Honour Judge Babington at Knightsbridge Crown Court. NCROPA has protested to the Lord Chancellor, the Home Secretary, and the Attorney-General as well as to the Metropolitan Police Commissioner, against what it describes as "at best grossly irresponsible and at worst simply vexatious" conduct on the part of the police — conduct involving "the maladministration of justice on the one hand and police persecution on the other". It is not merely the number of raids on their premises (as many as eight in a

single case) Mr Lindsay and the other defendants involved have had to endure against which NCROPA is protesting, but still more so the fact that prosecutions on the same essential facts and grounds of law have continued unabated, and indeed have increased in number, despite NCROPA's earlier complaints to the Home Secretary and the fact that in one of the cases concerned, the trial judge "deplored" the activities of the police and said that they were "wholly unwarranted". The defendant was acquitted, his costs were paid out of public funds and films seized from his premises were returned. Of five consecutive prosecutions of John Lindsay and those employed by him, one resulted in a hung jury, and he was formally acquitted. His co-defendants, employees of his cinema club company, were acquitted on charges concerned with precisely the same films and cassettes seized in the course of no less than ten raids on his premises. At the second trial he was acquitted and at the third, fourth and fifth, as well as at the re-trial of the first, the prosecution formally offered no evidence. On that occasion Judge Babington, in addition to describing the conduct of the police as "vexatious", complained of "the shocking waste of public money" their interventions had led to. He stipulated that all future prosecutions of John Lindsay were to be heard by himself — a stipulation which has since not been complied with. In the aftermath of these proceedings NCROPA also protested to the Lord Chancellor that magistrates were aiding and abetting the misconduct of the police by virtually rubber-stamping their applications for search warrants. In his reply the Lord Chancellor disclaimed all responsibility for the conduct of the police, but made no reference at all to the activities of the magistrates concerned. In reply to a similar letter of protest, the Home Secretary merely drew attention to the autonomous status of the police as prosecutors of alleged offenders. It has been well established by a series of decisions following the *Blackburn* case in 1968 that, in the words of Lord Denning in the most recent of them (*R v Chief Constable of Devon and Cornwall, ex p Central Electricity Generating Board*), "it is for the Commissioner of Police or the Chief Constable, as the case may be, to decide in any particular case whether enquiries should be pursued, or whether an arrest should be made, or a prosection brought . . . No court can or should give him directions on such a matter". It is precisely because the police have that unfettered discretion, that there are circumstances in which they are right to prosecute and circumstances in which they are not right to do so. The circumstances of the John Lindsay case unquestionably put it in the latter category.