

NATIONAL CAMPAIGN FOR THE REFORM
OF THE OBSCENE PUBLICATIONS ACTS

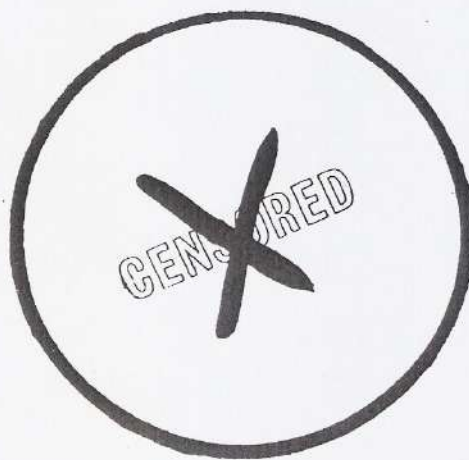
N C R O P A

**THE WILLIAMS REPORT
— AN APPRAISAL**

PRESENTED TO THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

THE RT. HON. WILLIAM WHITELAW, CH, MC, MP.

APRIL 1980



THE WILLIAMS REPORT - AN APPRAISAL BY THE

NATIONAL CAMPAIGN FOR THE REFORM OF THE OBSCENE PUBLICATIONS ACTS

(N.C.R.O.P.A.)

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There is a great deal in the Report of the Home Office Committee on Obscenity and Film Censorship with which the National Campaign for the Reform of the Obscene Publications Acts is in full accord and it is very gratifying to find that so much of what we put forward in our evidence, both written and oral, has been endorsed by the Committee and that so many of our proposals have been accepted. We also note with especial satisfaction that the Committee's findings were unanimous. In reports of this kind there are usually at least one or two dissenting voices. Here there were none and this must add considerable weight to the Committee's findings.

This does not mean, however, that we give the report our blanket approval and our major criticism is that the measures proposed do not go far enough and that too many unnecessary legal restrictions would still remain even if all of the Report's recommendations were implemented. We make this criticism after much careful consideration of the full implications of the report and our reasons are set out below in detail, together with our constructive alternative proposals where appropriate, which we believe are not only highly desirable but also severely practical.

I. INTRODUCTION .

N.C.R.O.P.A. welcomes the proposal of the Williams Report that the laws relating to the availability of visual material be contained in one new comprehensive statute (para. 13.4 - no. 1), and accepts the basic recommendation that there should be restrictions on the availability of certain types of visual material. However N.C.R.O.P.A. decries the different treatment proposed for publications and films. N.C.R.O.P.A. believes that freedom of expression is indivisible, and that therefore the same criteria should apply to all visual material. Thus restricted publications should only be sold in some

shops and restricted films should only be shown in certain cinemas and in private cinema clubs. Similarly, there should be no censorship of films in the same way that there is none of publications. There is no justification for singling out films as the only form of expression to be censored in this country, especially in view of the declared aim of the Williams Report to consolidate and unify the law regarding visual material (para. 13.4 - no.1) and in view of the opposition to such censorship by film exhibitors (para. 12.6).

11. RESTRICTED MATERIAL.

N.C.R.O.P.A. accepts the recommendation that reform of the law be based on "harms caused" and that there be restriction of the display and availability of certain types of visual material (para. 13.4 - no. 3). However we believe that the definition of restricted material proposed by the Report (para. 13.4 - no. 7) is too wide and vague. This will mean that shopkeepers, newsagents and others will not be able to differentiate clearly between restricted and unrestricted publications.

Para. 9.37 states that restrictions should not be imposed on naturist magazines or on pin-up magazines of a more old-fashioned variety since they do not propose that simple nudity should bring a publication within the prescribed class. However, the definition which the Williams Report proposes in para. 9.36 is not sufficiently precise to ensure that this will result. The phrase "offensive to reasonable people" is, in our opinion, little better than the old "likely to deprave and corrupt" yardstick in the 1959 Obscene Publications Act. N.C.R.O.P.A. therefore believes that the definition should be less ambiguous, so that it can only be interpreted in the way the Williams Report intends. The only completely satisfactory way in which such restrictions can be justly imposed is by ensuring that material in this category is unequivocally defined viz. pictures, illustrations or photographs showing erect penises, open vaginas, seminal fluid - and so on. If the drafting of such legislation, along these clear lines and in such terms, is deemed impossible, then N.C.R.O.P.A. believes that this would be indication enough of the basic wrongness of such legislation and would therefore prefer it to be dropped altogether. We believe, however, that it can be done.

We also note that no specific mention of sound only material is mentioned in the Williams Report e.g. gramophone records and cassettes. Since the removal of all restrictions on the written word is advocated, we assume that this also applies to the spoken word and we would also endorse that recommendation.

III. SEARCH POWERS.

N.C.R.O.P.A. strongly opposes the Report's recommendation that the Police should be given powers of search for restricted material (para. 13.4 - no. 16 and para. 9.45). Since the availability of such material under restricted conditions is advocated, we believe that it is both unnecessary and undesirable for the Police to have powers of search. The very fact that material requires to be searched for means that it is being sold in the restricted conditions that the Williams Report recommends.

IV. LIVE ENTERTAINMENT.

N.C.R.O.P.A. strenuously opposes the proposal that there be a special prohibition applicable only to live entertainment (paras. 11.14, 11.15 & para. 13.4 - nos. 24 & 25). Such a special prohibition would produce the absurd anomaly that what could be shown in publications and films could not be shown "live", whereas such a "live" show would have had to be staged in order for it to have been photographed or filmed in the first place. The Williams Report recognises that this anomaly would exist and so proposes that "live" shows which are staged for the purposes of a film or to be photographed (para. 13.4 - no. 27) should be specially exempted. We believe that such differentiation is illogical and will bring the law into disrepute. It cannot reasonably be argued that a performance may be photographed or filmed and subsequently shown to consenting adults in private but that the actual performance itself must not. The arguments which the Report advances in favour of this special prohibition are invalid (para. 11.9. and Appendix 3 - no. 108). The fact that live sex shows are not available in public theatres in Denmark, but only in private clubs is not an argument for their total prohibition in this country. It is only an argument for restricting them to private clubs. In any case

the Williams Committee could have investigated other countries like Holland and France, for example, where sexually explicit live entertainment is openly available and presents no problems of "public order" of the kind the Report seems to envisage. To try and prohibit such shows, even in private clubs, strikes at the root of the democratic freedom of consenting adults to have access to the type of entertainment of their choice. It would also introduce the illogical fact that a separate prohibition would apply to live entertainment which did not apply to films and publications, thereby openly conflicting with the declared basic aim of the Williams Committee for the consolidation and unification of all laws relating to visual material in a new comprehensive statute (para. 13.4 - no. 1).

V. PUBLIC GOOD DEFENCE.

N.C.R.O.P.A. opposes the proposal of the Williams Report to abolish the defence of "public good" (para. 13.4 - nos. 9 and 28). This defence will be of particular importance in connection with the proposed prohibition of material consisting of photographs or films which give reason to believe that actual physical harm was inflicted on a person. For example such material may be news evidence of atrocities and therefore should not be prohibited if such prohibition is contrary to the "public good".

VI. LICENSED CINEMAS.

N.C.R.O.P.A. is particularly concerned by the recommendation of the Williams Report regarding films. The proposals in the Report regarding the licensing of cinemas to show restricted films (para. 13.4 - no. 35) have a serious omission. This is the failure to impose a statutory duty on local authorities to consider applications for licences, let alone to grant such licences (para. 12.38). A situation might well arise, for instance, wherein nearly all local authorities may decide, as a matter of policy and perhaps in order to avoid controversy or public conflict with vociferous minority groups, not to consider licensing any cinemas in their areas to show restricted films. Pressure groups opposed to the showing of such films (and thus opposed to the recommendations of the Williams Report) would try and influence local authorities to adopt such a policy. If such a policy was widely adopted by

local authorities, it would have the effect of completely prohibiting the showing of restricted films and the resultant situation would be as unsatisfactory as the present situation is admitted to be by the Williams Committee, probably more so, i.e. the driving of such films underground. The Report accepts that such films should have a legitimate outlet (paras. 8.17, 12.33 & 12.43) but the failure to ensure that some cinemas would be granted such licences makes it uncertain as to whether such an outlet will be created. N.C.R.O.P.A. believes, therefore, that local authorities should have an obligation to grant applications for licences for cinemas in their areas to show restricted films. Furthermore local authorities should have a duty to give reasons for any refusals to grant such licences and, in addition, there should be a right of appeal to the Secretary of State for the Environment. These procedures are followed in connection with planning matters and N.C.R.O.P.A. believes that they are appropriate regarding the licensing of cinemas, because the same considerations will apply. Similarly we believe that the same local authorities which deal with planning applications should also deal with applications for cinema licences to show restricted films. However, when dealing with applications for planning permission, the relevant local authorities are guided by the provisions of the Town and Country Planning Act. No such guidelines are contained in the comprehensive new statute suggested by the Williams Committee. The inclusion of such guidelines into the new statute is essential if there is to be uniformity of licensing provisions relating to cinemas throughout the country. The Williams Report specifically proposes that the powers of local authorities to license films be abolished precisely so that there can be uniformity throughout the country (para. 12.10). If such guidelines are not contained in the proposed new statute itself, N.C.R.O.P.A. believes that the statute should empower the Secretary of State for the Environment to lay down such guidelines which would be binding on local authorities, with a right of appeal to the Courts if the guidelines were not adhered to regarding any hearing of an application.

VII. PRIVATE CLUBS.

N.C.R.O.P.A. strongly believes that the law relating to private clubs for adults should remain unaltered. There is no justification, when reforming the law relating to visual material, to change the general law relating to

private members' clubs. These clubs represent a basic expression of freedom of association. They should, therefore, have the right to show unclassified films as they please. In any case the certificating of the large number of short films shown in such clubs would be impracticable. On the Continent clubs are exempted from the film classification requirement and its attendant expense which is only applicable to public cinemas. The same differentiation between private cinema clubs and public cinemas should apply in this country, since it is based on administrative logic and on the different legal status of public and private places.

N.C.R.O.P.A. categorically rejects the criticisms in the Williams Report regarding private cinema clubs. The complaint in paragraph 3.14 that many of these clubs do not meet safety requirements can easily be rectified by local authority enforcement, as has already occurred, the Report notes, in some areas. N.C.R.O.P.A. absolutely rejects the unsubstantiated allegation in paragraph 12.35 that children are admitted into cinema clubs. We can produce evidence that these clubs are private and exclusively for adults and that children are never admitted, except for ethnic (e.g. Chinese) film clubs. They cause harm to no-one and thus should be left as they are.

VIII. PROHIBITING FILMS.

N.C.R.O.P.A. is totally opposed to the recommendation of the Williams Report that the proposed Film Examining Board should have the power to prohibit the showing of films in any outlet whatsoever in this country. The Board's purpose should be for film classification only (para. 12.45). We are also opposed to the fact that the grounds for prohibition would be wider than those applying to publications in that they would include "the manner in which sexual activity or crime is depicted" (para. 12.45). The interpretation of this by the proposed Film Examining Board could mean that nearly all films which are at present refused a certificate by the British Board of Film Censors would also be refused a certificate by the new Film Examining Board. Therefore the recommendations that freedom of expression for films be extended (paras 8.17, 12.33 & 12.43) could, in practice, be negated by the vagueness in which the grounds for prohibition are defined (para. 13.4 - no. 44). Also the fact that the grounds for prohibiting films are framed in wider terms than those for

prohibiting publications is again contrary to the Williams Committee's intentions that there should be a comprehensive new statute to deal with all law in this field (para. 13.4 - no. 1), in that it would introduce an unnecessary distinction between the two different types of material. The distinction would be especially invidious since it could result in the prohibition of certain films because they depicted activity which it would be lawful to depict in photographs in a book or magazine. Such an absurd situation would be bound to bring the law into disrepute in exactly the same way that the present law has been brought into disrepute by its meaningless distinctions and contradictions, as the Williams Report has so rightly pointed out. In any case, the Williams Report seems to imply that films for private showing should not be classified but should merely be confined to shops selling restricted material (para. 9.37).

The Report has also failed to differentiate clearly between the laws in other countries relating to private clubs as opposed to public cinemas. Paragraph 12.3 points out that certain films can be prohibited from being shown in public cinemas in several Western countries. However the same films can be shown commercially in those countries provided that it is not in a public cinema, e.g. the Federal Republic of Germany (appendix 3 - para. 123). The Williams Report is, therefore, incorrect in stating that film censorship is widespread in the Western World (Para.12.3). The accurate assessment of the situation is that most Western countries have a system whereby films are vetted and in certain cases can be prohibited from being shown in public cinemas, but that no such controls apply to private clubs. N.C.R.O.P.A. believes that a similar system should be adopted in this country. We are most concerned that the Williams Committee seems to have misunderstood the prevailing situation in most other Western countries and has not fully appreciated that they only apply controls to films shown in public cinemas.

IX. APPEALS REGARDING FILMS.

N.C.R.O.P.A. is totally opposed to the recommendation that any person should have the right to appeal against the granting of a certificate by the proposed Film Examining Board (para. 12.31). This would undoubtedly produce a chaotic situation whereby the Board was subjected to endless, time-consuming

and time-wasting appeals initiated either by pro-censorship pressure groups or simply individual "suppressionists" - in other words, by people dedicated to the retention of Britain's present draconian censorship legislation in perpetuity.

X. CLASSIFYING FILMS

N.C.R.O.P.A. believes that the proposal of the Williams Report that all films intended for exhibition should be referred to the proposed Film Examining Board (para. 13.4 - nos. 49, 50 & 51), would be unworkable in practice. Large numbers of short films and video cassettes are produced for showing on home projectors and video cassette players. It would be virtually impossible to ascertain whether any given film or video cassette, especially if it was short, was being produced for exhibition in a public cinema or for private use only. Therefore, we recommend that the proposed Film Examining Board should only have an obligation to classify films if they are to be exhibited in public cinemas. If a duty was imposed on the Film Examining Board to examine all films, both home-produced and imported, it would be overwhelmed by the volume and, indeed, performing an unnecessary task, because most of such films would be destined for private home "consumption" only, which the Williams Report states should in any case, be exempted from classification requirements (para. 12.49). Such requirements should therefore apply only to films shown in public cinemas but not to those shown in private houses or private clubs.

XI. CUSTOMS CONTROLS.

N.C.R.O.P.A. welcomes the recommendation of the Report that customs control be reformed to bring it into line with the other reforms proposed, and particularly welcomes the replacement of the present prohibition on the import of "indecent and obscene" articles by a prohibition of a new defined class of material (para. 10.13). We recommend that the new comprehensive statute proposed by the Williams Report (para. 13.4 - no.1) should contain the necessary amendments to section 42 of the Customs Consolidation Act 1876 and to the Customs and Excise Management Act 1979 (Appendix 1 - nos. 45 and 46).

N.C.R.O.P.A. believes that no films should be seized on importation unless they contain subject matter which is prohibited in publications (i.e. exploitation for sexual purposes of a person under 16 years of age or infliction of actual physical harm on a person other than in the public interest e.g. news film). We believe, however, that the recommendation by the Report that films be referred by H.M. Customs & Excise to the proposed Film Examining Board (para. 13.4 - no 50 and para. 12.48) is both impracticable and unnecessary. It is impracticable because the Board would be overwhelmed with the obligations of dealing with huge numbers of short imported films and video cassettes, most of which would, in any case, be purely for private home use. They should not, therefore, be subject to the classification procedure of the Film Examining Board, which should only apply to films intended for exhibition in public cinemas. It should be the duty of the importer to ensure that any films he intended to screen publicly were submitted to the Board for certification and classification and not that of H.M. Customs and Excise.

XII. POWER OF ARREST.

N.C.R.O.P.A. opposes the recommendation of the Williams Report that the police be given a new power of arrest in connection with prohibited publications (para. 13.4 no 31 and para. 10.17). The basic aim of the Report is to reform the law in this field and make it more logical. Therefore there is no justification whatsoever in increasing the powers of the police regarding this area of the law. As Lord Gardiner, a former Lord Chancellor, has pointed out, the police in this country already have more power than in any other Western country. It is therefore totally inappropriate, and indeed unnecessary, to increase their power in connection with the rationalisation of the law relating to "obscenity".

XIII. MODE OF PROSECUTION.

N.C.R.O.P.A. fully agrees with the recommendation that the consent of the Director of Public Prosecutions should be required in connection with prosecutions regarding prohibition offences (para. 13.4 - nos. 14 & 55), but does not believe that there should be a different method of prosecution of this type of

offence from that of other offences relating to publication. Therefore we strongly oppose the recommendation that there should be a separate method of prosecution for "restriction" offences, triable only by magistrates (para. 9.48). The Williams Report freely acknowledges the need for uniformity of prosecutions throughout the country and N.C.R.O.P.A. believes that the only certain way of ensuring this in practice is a process whereby all proposed prosecutions relating to visual material offences must first be approved by the Director of Public Prosecutions before being instituted.

XIV. MODE OF TRIAL.

As has been stated, N.C.R.O.P.A. believes that all offences relating to visual material should be dealt with in the same way and this would be in keeping with the declared aim of the Williams Report that all laws in this field should be consolidated into one new, comprehensive statute (para. 13.4 - no. 1). We therefore strongly oppose the recommendation that offences relating to restricted material and restricted live performances should be triable only in the Magistrates' Courts (para. 13.4 - nos. 15 & 56), whereas offences relating to prohibited material and prohibited live performances should be triable before a jury in the Crown Courts (para. 10.15). N.C.R.O.P.A. does not believe that the right to a jury trial should be denied to defendants in any type of visual material offences. We reiterate our belief that the mode of prosecution and trial relating to all visual material offences should be the same, so as to provide the necessary uniformity and certainty in this area of the law which would otherwise remain vague and fragmented. The right of trial by jury is both necessary and appropriate in such cases since the whole basis of the verdict will be the views of a cross-section of the public. Such views are much better reflected by a jury than by magistrates (often stipendiary magistrates sitting alone) and would come nearer to satisfying the "reasonable people" requirement as defined by the Williams Committee (para. 13.4 - No.7).

XV. BURDEN OF PROOF.

N.C.R.O.P.A. totally rejects the proposal that there be a unique and unjust reversal of the burden of proof in connection with the sale of prohibited publications (para. 10.7). It is a fundamental and just principle of English

Law that it is for the prosecution to prove guilt and not for the defence to prove innocence. Quite apart from the matter of principle involved, it is, in practice, impossible to prove a negative. This will be especially true in connection, for example, with the retailer who sells goods which he did not produce himself and which he cannot possibly examine in detail because of their bulk. The Williams Report proposal would mean that such a retailer would have to prove beyond reasonable doubt that, for example, the persons depicted in any publications whatsoever that he sold in his shop, in this category, were over the age of 16 years when the publication was produced. Such a burden of proof would, in practice, be impossible to satisfy. In no other country in the democratic world is such an unreasonable burden placed on retailers. We strongly recommend, therefore, that the burden of proof regarding both prohibited and restricted publications be placed on the prosecution, as it is in every other type of offence in this country. There is simply no justification for a defendant in the case of a prosecution for such offences being placed in the uniquely onerous position of having to prove, beyond reasonable doubt, that he is not guilty of the offence, whereas in all other prosecutions it is for the prosecution to prove beyond reasonable doubt that the defendant is guilty. Quite apart from the moral iniquity of this proposal, it is, again, totally contrary to the declared aim of the Williams Report that one new comprehensive statute should deal with all the laws in this field (para. 13.4 - no. 1.) The proposal would mean that, for a certain very restricted type of offence under the new statute, there would be a reversal of the burden of proof requirement, whereas for all other offences in the proposed statute, the normal burden of proof would apply. It must be remembered that existing laws in this country, and in other Western countries, which prohibit publications containing the visual depiction of sexual activities by persons under the age of 16 years (or whatever), place the burden of proof on the prosecution. N.C.R.O.P.A. can find no justification for the abandonment of the accepted and normal rules of natural justice for this comparatively rare, or indeed any other, type of offence.

XVI. CONCLUSION.

Almost before it was published, the Williams Report came in for a barrage of criticism from predictable enough quarters. We refer, of course, to those factions in our society who demand rigid laws to ensure that their own

beliefs, opinions and behaviour patterns are forced on all others. They want everything of which they disapprove, whether harmless or not, to be suppressed. It is not therefore surprising to find them trying to discredit the Williams Committee and, in some instances, impugning the integrity of its members. It is also extraordinary how, having been given their opportunity to submit evidence and state their case, and that evidence having been carefully considered and rejected, they are now suddenly able to produce "new" evidence which for some strange reason was not available a few months ago when the Committee was sitting.

N.C.R.O.P.A. is not introducing any "new" evidence. We are confident that the evidence we have already submitted stands up on its own. The criticisms we have herein detailed are levelled, not at any liberalisation the Williams Report clearly supports, but largely at the extent of that liberalisation and some of the ways in which the Report feels this should best be enacted. The Williams Report is in no doubt that the present United Kingdom laws relating to "pornography" are "a mess" (para. 2.29) and are controversial (paras. 3.32 4.1 and 12.4). We believe that the Report's proposals plus our suggested amendments should ensure the clearing up of "the mess" and a virtual end to the controversy, except, of course, from a fringe of fanatics who will always be there. This is what the Williams Report notes has occurred in other countries where "pornography" has been legalised (Appendix 3 - paras. 110 & 118; Appendix 4 - paras. 33 & 49). There is no reason to suppose that the same would not happen in Great Britain.

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