The main consequences of repealing the Obscene Publications Acts are set out in the following paragraphs.

2. By virtue of section 2(4) of the 1959 Act offences at common law which were used before the Act came into force to prosecute obscene literature were put in abeyance (not abolished), so long as the Act remains in force. Thus, as soon as the Act is repealed, all or any of these may be used once again.

3. The common law offence used for this purpose before 1959 was obscene libel. This is much broader in scope than the offence of publishing an obscene article under the Acts. The jury simply had to find the book etc. obscene, and that was that. Although "obscene" had, as a result of the case of Hicklin in 1868, a similar meaning to obscenity under the Acts, a "tendency to deprave and corrupt" etc., this tended to be something which was simply assumed - it was not a matter which the jury had to decide. Further, it is doubtful whether there was any public good defence under this offence. The one case, de Montalk in 1932, said that there might be, but nobody ever was acquitted on this basis.

4. Since 1959 the judges have been busy discovering other offences at common law dealing with obscenity. The main one is conspiracy to corrupt, established by Shaw v. DPP, the House of Lords case in 1962. The offence of conspiracy to corrupt public morals is just about as broad as the judges care to make it, the only limiting factor being that, as it is a conspiracy offence, at least two people (only one of whom need be charged) must be involved. Not only this: by a technicality, the Law Lords held that section 2(4) of the 1959 Act did not apply to this new offence, so that it could be charged along with offences under the Act. Only after Parliamentary protest in those long lost days of relative libertarianism did the Attorney-General give an assurance to the Commons that, as a matter of practice, but not of law, section 2(4) would be deemed to apply, so that the offence would not be charged so long as the 1959 Act covered a particular case. The House of Lords got round this by another technicality in 1972, when it upheld similar charges to those in Shaw in Knuller v. DPP (the IT case). Now, only by a self-denying ordinance do the police refrain from charging this one, and, of course, if the Acts went, they would be at it again.

5. There are other common law offences which have been established since 1959. Chief among these is conspiracy to outrage public decency, a charge of which was not upheld, but only for lack of proof, in Knuller. This, being concerned only with "indecency", is that much broader then any of the offences mentioned above. Again, this could be used against books etc. covered by the Acts, since it is only the self-denial of the police while the Acts are in force that prevents it being charged. Section 2(4) of the Act does not apply to this offence either, because it is concerned with indecency, not obscenity.

6. Another offence which could be used but for police restraint while the Acts are in force is gross indecency, discovered as regards films in the R. v. Jacey (More about the Language of Love) case. This has never been used against books, but there is no legal reason why it should not be. Really, this is just the "conspiracy to outrage" charge without the element of conspiracy. On top of this, it is probable that there exists an offence of corrupting morals, without the conspiracy element, although it has not been tested against books.

7. None of the offences in paragraphs 3-6 have public good defences.

8. The repeal of the Acts would therefore leave literature to the tender mercies of Mrs Whitehouse and others (you name them), who at present cannot get at porn, except of the hard variety, because of the protection of the Acts and their relatively limited breadth. That is why she and others are,

like NCROPA, campaigning for their repeal.

9. The Acts may, to NCROPA, be "unjust and ridiculous", but that was not Woy's object. They were seen by him and others as liberalising legislation designed to protect literature having any merit, whether on scientific, religious, literary or other grounds. The loose wording of the public good defence, though, enabled those with large financial interests in hard porn to get themselves acquitted on grounds not envisaged by Parliament. The effect of DPP v. Jordan, House of Lords 1976, is to stop this kind of publication getting through. Soft porn and the rest are unaffected, since this is not regarded by juries as obscene within the meaning of the Acts.

10. No doubt the ideal solution would be the repeal of the Acts and the abolition of the common law offences, substituting only provisions respecting protection of minors and public display. The present likelihood of any such Utopian situation coming to pass may be judged by the fate of the 1976 Law Commission draft Bill appended to their Report on Conspiracy and Criminal Law Reform. This was designed to abolish conspiracy except where the object of the agreement is a criminal offence, and to abolish common law offences which also covered the area of current conspiracy charges, used in those cases such as conspiracy to corrupt, where there was doubt as to whether there was any offence without the element of conspiracy. To that end, the Bill would have abolished obscene libel, gross indecency and (if they exist) outrage to public decency and corruption of public morals. The far-seeing and courageous Government said "thanks", adopting all the recommendations except those dealing with obscenity and indecency, deeming these too hot to handle. Instead, they are going to set up a "committee" (which will, no doubt, be far less liberal in composition than the Law Commissioners) to look into the whole field. Meanwhile, the Criminal Law Bill now going through Parliament, not only does not abolish the common law offences, but specifically preserves conspiracy to corrupt morals and conspiracy to outrage public decency, just in case these offences cannot exist without the element of conspiracy! So these previously shadowy common law conspiracy charges find their statutory accolade. That's progress!

11. A realistic aim at present is to get the Law Commission's provisions to abolish the common law reinstated in the current Criminal Law Bill. This would leave the relatively liberal Obscene Publications Acts, which most people except those with an interest in hard pornography can live with, as the only provisions dealing with, in effect, the censorship of books by means of the criminal law. To hope for more at the moment, when not even a Labour Government is prepared to do that much, is optimism verging on the light-headed.

12. You will gather that I consider NCROPA's efforts to be totally misguided and unrealistic. Their efforts, no doubt worthy, would be better channelled into something with an outside chance of achieving at least part of what they want to achieve. At present, the successful outcome of their campaign would have an effect directly opposite to that which they intend. They are, unwittingly to be sure, Mrs Whitehouse's best allies.