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W.A. Fuller (Incorporated Society of Authors, Playwrights & Composers)

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Obscene books - Draft of a bill to establish a Commission re.

H.O.144/ 22430

Ido a rough draft for favour of any obsns regarding any provisions of the bill which might be likely to rouse opposition

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S. Williams

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Telegrams: AUTORIDAD, WESTCENT, LONDON

February 18th 1936.

F. J. Henderson Esq.,
The Home Office,
S.W.1.

Dear Mr. Henderson,

I have now had an opportunity to read the article to which you kindly referred me in the *Justice of the Peace*, and found it very interesting.

The chief differences between the scheme suggested there and mine are that in the former the special court is apparently to have exclusive jurisdiction in obscenity cases and that it is to have power to punish. It seems to me that if every case of obscenity, including those cases which I imagine must be the majority, where there is no doubt whatever as to the obscenity of the matter and the only question is the particular defendant's responsibility, were to be of necessity remitted to a central tribunal, a great deal of time would be wasted. Questions of responsibility, degree of guilt, and appropriate penalties, seem to be eminently within the competence of the existing petty sessional courts.

Yours sincerely,

WAF/DG.

W. A. Fuller

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February 5th 1936.

F. J. Henderson Esq.,
The Home Office,
S.W.1.

Dear Mr. Henderson,

I enclose a copy of the proposed
Obscene Books Bill we were discussing yesterday. This represents
my original rough draft with only such slight amendments
as have occurred or been suggested to me in the course of a
few brief discussions with one or two publishers; I have no
doubt that if it goes any further the need for more alterations
will become apparent. My object has been, (a) by confining
the Bill to procedure, and (b) by interfering as little as possible
with existing authorities, to produce a non-controversial
measure. I should be very grateful for any hints you may be able
to give me as to any remaining provisions which you would expect to
arouse avoidable opposition.

Yours sincerely,

WAF/DG.
Enclosure.

W. A. Fuller

OBSCENE BOOKS BILL.

A Bill for the better conduct and coordination of proceedings in connexion with the publication of books alleged to be obscene.

1. (1) There shall be established a court styled the Obscene Books Commission (in this Bill referred to as the Commission) consisting of five members, and the Commission shall be a court of record and have an official seal which shall be judicially noticed.

(2) The members of the Commission shall hold office for such term not exceeding seven years from the date of their appointment as may be determined at the time of their appointment and then retire but a retiring member shall be eligible for re-appointment.

(3) The members of the Commission may be appointed by His Majesty at any time after the passing of this Bill and from time to time as vacancies occur and shall be so appointed on the joint recommendation of the Lord Chancellor, the President of the Board of Trade and the Secretary of State.

(4) Of the members of the Commission one shall be a man of letters, one shall be a biologist, one shall be a minister of religion, and one, who shall be the president, shall be an experienced barrister.

2. (1) The Commission may appoint a clerk and such

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other officers and servants (subject to the consent of the Treasury as to number and not exceeding twenty) as it may consider necessary for assisting it in the proper execution of its duties, and there shall be paid to the members of the Commission and to any such clerk, officer or servant aforesaid such remuneration as the Secretary of State, with the approval of the Treasury, may determine.

(2) Any such remuneration and any other expenses of the Commission incurred in the exercise and performance of its powers and duties shall be defrayed by the Secretary of State out of monies provided by Parliament.

(3) Fees.....

3. (1). The Commission may from time to time with the approval of the Lord Chancellor and the Secretary of State make general rules governing its procedure and practice and generally for the exercise and performance of its powers and duties and such rules may amongst other things provide:-

- (a) The awarding of costs by the Commission.
- (b) The requirement of security for costs prior to the entry of any matter for hearing.
- (c) The regulation of notices to be given to authors and publishers and the circumstances in which such service may be dispensed with where it appears to be impracticable.

(d) The regulation of notices and declarations under subsection (5) of Section 4 hereof and the requirement of security for costs in connexion therewith.

(2) The Commission shall maintain a Register containing the name and a description sufficient for identification of every book which it has decided to be obscene and shall maintain another Register containing a description sufficient for identification of every book which it has decided not to be obscene, and such Registers shall be open to inspection by the public in London at reasonable hours on all days other than public holidays.

(3) The Commission shall annually make a report to the Secretary of State of its proceedings including all entries made in each of its Registers which report shall be laid before Parliament and issued for sale to the public.

(4) All proceedings of the Commission shall be held in public.

(5) The Director of Public Prosecutions or, with the leave of the Attorney-General, any person may petition the Commission to place any book upon the Register of obscene books provided such book is not already upon either of the Registers.

(6) Not less than one calendar month before the date of the hearing of a petition in respect of any book the petitioner

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shall use his best endeavours to serve a notice upon publisher and author of the book and upon any person against whom proceedings are pending in the United Kingdom in respect of any alleged obscenity in the book to appear before the Commission and show cause why the book should not be placed upon the Register of obscene books.

(7) Not less than one calendar month before the date of the hearing of a petition in respect of any book the petitioner shall cause the name and description of the book to be advertised in the Gazette and any person against whom criminal or summary proceedings in respect of the book could properly be taken shall have the right to appear before the Commission and show cause why the book should not be placed upon the Register of obscene books.

(8) Ten years after the refusal of the Commission to place any book upon the Register of obscene books the Director of Public Prosecutions may again, subject to the requirements of this Act, petition the Commission to place the book upon the Register of obscene books.

(9) Ten years after any book is placed upon the Register of obscene books, or with the consent of the Attorney General at any earlier time, the author or owner of any part of the copyright of the book or with the consent of the Attorney General any other person may petition the Commission to remove

the book from the Register of obscene books and place it upon the Register of Books found to be not obscene.

(10) Any party to any petition under this Act may appear before the Commission in person or by counsel and may adduce expert or other evidence as to the obscenity and/or value of the book.

(11) Should the Commission be satisfied that any book, though obscene, was written in good faith and without intention to corrupt, it shall add a rider to that effect to the entry relating to the book in the Register of obscene books, and such rider shall be taken into consideration by any court before whom any person is being tried for an offence in respect of the book.

4. (1) In any criminal or summary proceedings in which the obscenity of a book is an issue the presence of the book upon either of the Registers shall be conclusive evidence that it is or is not obscene as the case may be.

(2) In any criminal or summary proceedings in which the obscenity of a book is an issue and the book is not upon either of the Registers a defendant may request the Court to adjourn the hearing of the case until the book has been submitted to the Commission and the Court shall thereupon do so.

(3) In any appeal from a judgment in any criminal or summary proceedings in which the obscenity of a book was an issue either party may request the Court to adjourn the hearing

of the appeal until the book has been submitted to the Commission ^{and} notwithstanding that no such request was made to the Court of first instance the Court shall grant such adjournment if it shall be satisfied that having regard to all the circumstances it would be just and reasonable to do so.

(4) For the purposes of the Customs Consolidation Act 1876 or any amending statute the presence of a book upon either of the Registers shall be conclusive evidence that it is or is not obscene as the case may be.

(5) Should any book not upon either of the Registers imported or sought to be imported into the United Kingdom be detained by the Commissioners of Customs under authority conferred by the Customs Consolidation Act 1876 or any amending statute on the ground of its alleged obscenity, notice shall be served upon the person to whom such book is consigned informing him that such a book is believed to be an obscene book and is intended to be destroyed. Should such person within one month of the service of such notice declare to the Commissioners of Custom upon oath that he does not believe such book to be obscene and is prepared to show cause before the Commission why such book should not be placed upon the Register of obscene books, such book shall not be destroyed or otherwise disposed of until it has been placed upon the Register of obscene books. Should no petition have been filed in

respect of such book within one calendar month of the delivery of such declaration, it shall not be lawful for the Commissioners of Customs to continue to detain such book.

5. The word "book" shall for the purposes of this act include any manuscript or typescript intended to be published as a book or as part of a book.

Notes on Obscene Books Bill.

Section I establishes the Commission. The important part, as to which there may be opposition is subsection (4).

Section 2, which is not complete, governs administrative matters. Its details would have to be worked out with the Home Office.

Section 3 deals with procedure in general. Subsection (2) sets up the two Registers. Subsection (4) is important as distinguishing the Commission from a board of censorship sitting behind closed doors. Subsections (6) and (7) deal with one of the major grievances of the existing system -- the possibility of condemning a man's book without his being heard in its defence.

Subsections (8) and (9) deal with reconsideration, allowing primarily for changes in public opinion. The provision in subsection (9) for a rehearing in less than ten years with the Attorney General's consent is to cover the possibility of a clearly wrong decision, and is the only thing proposed in the nature of appeal. The right to seek a rehearing is given in the first place to the owner of copyright, as the person most likely to be interested in resuscitating an old "banned" book. To cover cases where the book is out of copyright or the present owner is inactive there is included a provision for a rehearing to be sought by

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any other person with the Attorney General's consent. The necessity for consent will prevent the Commission being pestered by busybodies having no legitimate interest in the matter. Normally such a petition would, in default of a copyright owner, be brought by an intending publisher or editor. Possibly it might be preferable to require the consent in their case not of the Attorney General but of the Commission itself. It could then, under its rule-making powers conferred in Section 3, lay down rules governing the interest in the matter which must be disclosed or declared on affidavit by would-be petitioners.

Subsection (10) removes another of today's major grievances — the refusal of courts to hear expert evidence .

Section 4 relates the Commission to existing machinery. It should be especially noted that remission of obscenity cases to the Commission is not automatic. If a shopkeeper has been surreptitiously selling books which are obviously obscene it will not be necessary to waste the Commission's time and it will be made to his advantage not to invoke it. If he does, security for costs may be demanded (Section 3 (1) b).

If, on the other hand, officious proceedings are started in some provincial court against a book which to the defendant seems obviously innocent, it will again be un-

desirable for either the Commission or the defendant to be troubled with a petition, and the defendant will no doubt rely upon the first court to acquit him. Should it, however, take advantage of his forbearance and convict, it is desirable that he should have some redress, and it is accordingly provided, in subsection 3, for his invoking the Commission on appeal, after the first court's judgment. A petition after judgment is subject to the appeal court's discretion, because there might also be appeals, substantially upon some point other than the obscenity of the book, by an ordinary dealer in pornography; what the appeal court would have to decide would be whether the appellant's failure to invoke the Commission in the first court was for some good reason and not due to the demerits of his case.

A final point worthy of notice is that a book can be submitted to the Commission by the proper authorities for condemnation whether there is a police-court case actually in being or not, Section 3 (5), whereas it can only be submitted for exoneration after proceedings have begun. This may seem at first discriminatory against books, but the explanation is as follows: proceedings against a book can only be brought by the Director of Public Prosecutions or with the leave of the Attorney General; they will not, therefore, be brought frivolously, and if it were made

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necessary to start them in a police court the costs would be increased without any compensatory advantage; if, however, it were possible for the sponsors of a book to go direct to the Commission when no objection had yet been taken, it might become customary to do this in every case as a matter of course, and the Commission might thus develop into what is particularly not desired -- a regular censorship.