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Introductory Note by Francis Bennion

The following is an article I wrote on the 1977 *Libertine* trial in Leicester, which I attended as a member of the executive committee of the Defence of Literature and the Arts Society. As a commentator put it:

> ' . . . despite the provincial setting "Mortimer's travelling circus" (Mrs Whitehouse's term) rallied to the defence. Francis Bennion, of DLAS, observed the proceedings – to ensure that literature and the arts were properly defended – and gave an account in the *New Statesman* (18 February).'

The above quotation is from John Sutherland's book *Offensive Literature: Decensorhip in Britain, 1960-1982* (Rowman & Littlefield Publishers, Inc., 1983). This gives an extensive account of the *Libertine* trial (see pp. 160-163).

The acquittal in the Libertine case was achieved by the well-known advocacy skills of John Mortimer QC. When I congratulated him in the robing-room at the end of the trial he shrugged modestly and said: 'I just deployed for the umpteenth time a well-worn bag of jury-pleasing tricks'. As to this see *Olla Podrida* chapter 4, item 3.

The Libertine Trial

Francis Bennion

'Home on Leave', a strip cartoon in *Libertine 7*, particularly incensed the prosecution in last week's obscenity trial at Leicester. The burly RSM, newly arrived from Northern Ireland, greets his decrepit, wizened mum. She offers him oyster pie, and crumpet for afters. 'Tell me son, how was it in Ulster?' The bullock-stupid RSM replies: 'It was rough mum . . . there I was surrounded by them Micks, after my arse they was, so I cocks me automatic and POW! POW . . . hee! hee! . . .splattered her brain all over the place. That . . . hee! hee! . . . learned her!' A crude, troops-out, political cartoon, but there is something more. 'Crumpet for afters' means oral sex. The drawing is competent, and first time round the psychic shock tells. 'Melvin just loves his mum's hot crumpet' croons the balloon issuing from mum's thin lips as she lies outstretched on the kitchen table.

An Old Bailey jury might just take that sort of thing, but aren't attitudes less permissive in the provinces? In quick time and unanimously the Leicester jury put paid to that idea. They acquitted Libertine's youthful editors and publishers, Arabella Melville. and Colin Johnson, and the judge gave them their costs. They are free to go on running what Colin was proved to have called 'an improper little cottage industry'.

Libertine started in 1974 as a journal of period erotica, mainly Victorian and Edwardian. Colin and Arabella took it over after five issues as 'a labour of love and principle'. They kept the period erotica but added humour, current sex information, a readers' advice column and anything else their fertile imaginations could dream up. As Dr Bethlehem, one of their witnesses, put it, 'the magazine has a friendly air'.

It received an unfriendly response from the police when Colin and Bella cheekily opened a sex bookshop in Leicester's main thoroughfare, Granby Street. Within days, the shop was raided and 22 tons of magazines removed. Undeterred, the two went on producing and selling

Libertine, helped by sympathetic printers and others willing to work for nothing in what they saw as an important cause. The entire printing of issue 10 was seized, so the young publishers reprinted most of it in issue 11. When indictments were drawn up they were reproduced in facsimile on the back of the current number, reprinted with the slogan 'There are no obscene words . . . there is no such thing as pornography.' David Barker QC, prosecuting at the trial, disagreed rather strongly.

The old attitude to sex, unchallenged at the passing of the Obscene Publications Act in 1959, was fully displayed by Mr Barker, the judge nodding approval. *Libertine*'*s* title page describes Bella (a Ph.D., B.Sc., of Birmingham University) as a consulting sexologist – 'whatever that means' said Mr. Barker scornfully. Of the Ulster strip cartoon he asked: 'Would it be wrong to use the word vile?'

The defence called expert witnesses in support of the new attitude to sex. Maurice Yaffé, who contributed to the Longford Report and is writing a Ph.D. thesis on pornography, said *Libertine* is educational. Challenged over items on paedophilia, he told the court about 'victimology', a new sub-discipline of criminology which studies the contribution made by the victims of sex crimes to the events which happen to them. He thought it socially valuable to study sexual deviants, their fantasies and motivation. They are, after all, human beings. Mr Barker looked disbelieving. He showed the witness the cartoon of the RSM and his mum:

'Is that of educational value?'

'Yes, in the sense that it expresses taboo thoughts of incest.'

'Is that a desirable way of doing it?'

'Yes. It takes the heat out of the subject.'

Peter Webb, wearing more purple even than the judge, gave evidence as an art historian. His qualifications include authorship of a book on David Hockney. Mr Barker pounced, but Mr Webb parried. Hockney, he said firmly, is not an erotic artist. Many illustrations in *Libertine*, he insisted, were of artistic importance. Some originals are in the secret collections of the British Museum or the V. and A. It is difficult to view them there, Mr Webb said. Until recently they could only be seen if the Archbishop of Canterbury was present too. Other originals are in the erotic collection of the kings and queens of England at Windsor Castle. 'Will they,' asked John Mortimer, QC for the defence, 'be opened to the public as part of the jubilee celebrations?' The witness doubted it.

There were several points of legal interest in the *Libertine* trial. John Mortimer persuaded the judge to vary the normal rule under which the jury are kept in ignorance of the defence until the close of the prosecution case. When the prosecutor proposed to tell the jury what he thought of *Libertine* and then let them go away and read it, Mortimer objected. It was not fair that the jury should do their reading after having heard only one side. He cited the precedent of *Lady Chatterley*, when Gerald Gardiner QC (now Lord Gardiner) persuaded Mr Justice Byrne to allow the defence to have its say too. Mr Barker protested, but the judge conceded the point.

Further protests followed when Mortimer sought to produce his expert witnesses. In the 1976 case of *R. v. Jordan* the House of Lords ruled against the practice of calling experts to testify that pornography has a therapeutic value. Section 4 of the Obscene Publications Act lays down the 'public good' defence. Even though an article is obscene it may escape if the defence proves its publication is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern. To say that sex therapy is an object of general concern might be true, in general terms. However, such an interpretation of Section 4 would alter the Act and largely deprive it of effect.

Mortimer argued that the evidence of Mr Yaffé and other experts should be admitted on the ground that publication of the material in the magazine was in the interests of *learning* (with some help from 'science' and 'other objects of general concern'). He accepted that *R. v. Jordan* prevented him saying porn was of medicinal value, like taking a pill ('nicely put' said the judge), but this was different. The judge accepted the argument, ruling that it was in the interests of learning for young people to find out 'that there are certain vices'. But there must be no question of teaching a new dog new tricks, he warned.

A third legal point concerned the question of readership. The Act lays down as a test of obscenity whether the magazine has a tendency to deprave and corrupt persons likely to read it. This makes it relevant to know what sort of people the readers are. 'Any sort of people' argued Mr Barker, citing the fact that the bookshop in Granby Street was open to all and sundry. It would not be right for the defence to hand-pick from thousands of readers just four or five who would make a good impression on the jury. In fact, that is exactly what they were allowed to do. At least, argued Mr Barker, they should be Leicester people. Even that restriction was denied him. 'Isn't NW6 Hampstead?' he demanded of one demure lady, as though the reading of licentious magazines was only to be expected of that notorious left-wing stronghold. 'I don't know' said the lady. 'You don't know? But you live there, don't you?' It turned out that Mr Barker had his notes wrong. The lady lived in W6.

This incident underlined the political angle of the trial. To some extent *Libertine* is political pornography. Like *Oz*, *IT* and other former underground magazines it attacks the Establishment by attacking its cherished institutions: monarchy, law, religion, marriage. Sex is an effective weapon because suppression of sexuality forms a central feature of establishment attitudes. Colin and Bella see sexual freedom as an important political issue.

The Government intends to set up a departmental committee on obscenity and film censorship. The terms of reference and composition of the committee are not yet known, but clearly it will have to decide whether the law should reflect the new or old attitudes to sex. The 'deprave and corrupt' test, coupled with the public good defence, means that juries rarely convict. There will be pressure on the committee to recommend tightening up the law, though some will argue that it is time to abandon attempts to restrict the reading matter of adults. Colin and Bella displayed in the window of their short-lived bookshop a poster saying:

> 'There is no reason why in 1975 Europeans should not be allowed to marry whom they want, to hear, see and read what they want, to travel abroad when and where they want. To deny that proposition is a sign, not of strength, but of weakness.'

As Colin pointed out in his statement from the dock, the author of these sentiments was Sir Harold Wilson. He was addressing the Helsinki Conference at the time of the police raid on the *Libertine* bookshop. By their verdict, a local jury has proved that raid unjustified.