

Daniel Best

The 1955 Romance Comics Trial



IN THE FULL COURT OF QUEENSLAND

THE LITERATURE BOARD OF REVIEW

Respondent

vs

TRANSPORT PUBLISHING COMPANY PTY. LTD

ACTION COMICS PTY. LIMITED

POPULAR PUBLICATIONS PTY. LTD

Appellants

The 1955 Romance Comics Trial

Published by Blaq Books

Compiled and Edited by Daniel Best

First published 2013 by Blaq Books

First published in Australia

Copyright © 2013 by Daniel Best

Cover Copyright © 2013 Blaq Books

All art and images are Copyright © 2013 their respective owners.

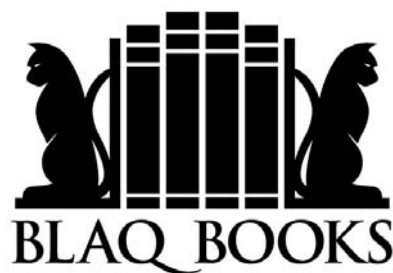
The moral right of the author has been asserted.

All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system, transmitted in any form or means, without the prior permission in writing of the author, nor be circulated in any form other than which it is published without the express written permission of the author.

Where possible all external quotes have been attributed. Any corrections should be directed to the author in the first instance so alternations can be made to future editions.

The author can be contacted at snoopy967@gmail.com or via the web-site: <http://ohdannyboy.blogspot.com>



INTRODUCTION	7
THE BANNED COMICS	14
EXTRACT FROM GOVT. GAZETTE	14
TRANSPORT PUBLISHING CO. PTY. LTD	15
ACTION COMICS PTY. LTD	16
POPULAR PUBLICATIONS PTY. LTD	16
AFFIDAVITS	17
AFFIDAVIT OF H. L. KELLY - DATED 19.1.1955	17
AFFIDAVIT OF B. F. R. STAFFORD - DATED 16.2.1955.	20
AFFIDAVIT OF O. W. BUTLER - DATED 16.2.1955	24
AFFIDAVIT OF B.F.R. STAFFORD - DATED 22.2.1955	26
AFFIDAVIT OF J. GEDDES - DATED 22.2.1955	27
AFFIDAVIT OF O. W. BUTLER - DATED 23.2.1955	30
THE TRIAL	32
FRIDAY, 4 MARCH, 1955	32
WEDNESDAY, 9 MARCH 1955	106
AFFIDAVIT OF A. T. STACEY - DATED 15.4.1955	134
AFFIDAVIT OF A. I. PANTON - DATED 15.4.1955	135
AFFIDAVIT OF J. McGEORGE - DATED 18.4.1955	136
AFFIDAVIT OF J.W. METCALFE - 21.4.1955	143
TUESDAY, 3 MAY, 1955.	146
WEDNESDAY, 5 MAY 1955.	202
JUDGEMENT	224
REASONS FOR JUDGMENTS	225
THE CHIEF JUSTICE C.J. MACROSSAN	225
JUSTICE S.P.J. MANSFIELD	235
JUSTICE J. HANGER	244
AFFIDAVITS	262
AFFIDAVIT OF H.L. KELLY - 29.8.1955	262
NOTICE OF APPEAL TO THE HIGH COURT	265
AFFIDAVITS	267
AFFIDAVIT OF A.H. TRAVES – 13.07.1956	267
AFFIDAVIT OF J.H. AGNEW – 13.07.1956	268
JUDGEMENT	271
REASONS FOR JUDGMENTS	273
THE CHIEF JUSTICE SIR OWEN DIXON	273
JUSTICE J. McTIERNAN	279
JUSTICE J. WEBB	283

Introduction

In mid-1954 the Queensland Government set up a Board of Review, working under the Objectionable Literature Act of 1954 act. The board, consisting of four men and one woman, initially met once every fortnight with the view of examining all publications on sale in Queensland, barring newspapers, and ultimately to prohibit the circulation in Queensland of any material that they found to be objectionable. The manner in which the Board acted was almost the opposite of the better known Commonwealth Censorship Board. The Commonwealth Censorship Board was more concerned with books of literary merit, banning titles such as Huxley's *Brave New World* and *The Dubliners* by James Joyce than comic books and pulp magazines, although it often would, and did, ban titles from coming into the country, starting with *Detective Comics* in the late 1930s and continuing into the 1960s when several hundred titles were on the prohibited import list, including almost everything by Mickey Spillane along with virtually every horror and crime comic and magazine and comics as diverse as *Doll Man*, *Marvel Tales*, *Battle Action*, *All American Men Of War*, *Zip Jet*, *Fightin' Marines*, *Captain Marvel Adventures* and, incredibly enough, single issues of *Classics Illustrated* relating to *Frankenstein* and *Crime And Punishment*. Despite this censorship the Queensland Literature Board would go even further.

The Board didn't limit itself to banning only overseas titles; it was just as keen to stop the distribution and sale of locally made publications. To this end they focused on what they defined as 'trash', publications meant for juveniles or young people, comics, popular magazines and glossy novelettes. Keeping in line with the strong religious sentiment of the time, the Board stated in its second Annual Report (1956) that it was doing its best to provide, "...an invisible but permanent armour against what the Scriptures call 'the fiery darts of the wicked'." However in doing its best it operated largely in secret with publishers being told of bans only after their books had been named and shamed in the *Government Gazette* and refusing to detail just how the decisions came about. Although avenues were open for appeals, the workings of the Board made it all but impossible to do so as nobody was clear as to how anything had been decided or what materials were used. Operating in this manner the Board were able to, and did, ban entire publications on the basis of single or multiple issues, and the publishers had little recourse to defend.

This arbitrary manner of working was due to the vagueness of the Act that controlled it. As it stood the Board was not required to give any prior notice of a prohibition order, nor was it required to hear representations from any publisher or distributor. It also did not have to give any reasons for its prohibitions or to specify into which category of objectionableness a particular banned work falls. Not only did it have the power to ban the current and back issues of a title, it also had the power to ban any and all future issues meaning that it could, and did, ban material that had yet to be published or even created. This caused many a problem as a publisher could, and often did, rejig material and tone the overall feel of the title down to an acceptable level with the hopes that the Board would lift the ban, but it was up to the Board to decide if bans were to be lifted. More often than not, once a ban was in place it stayed in place. The only avenue for a review of the ban was an appeal to the Supreme Court, a costly enterprise and one that the Board felt certain wouldn't be taken up by a small, struggling publisher.

The Board ended its first year of operations in June 1955 with a list of forty-seven banned publications, the majority of them being crime or love comics. Not one publisher was informed in advance of a proposed ban let alone being asked to show why a ban should not be imposed. Nobody, least of all publishers and distributors, were prepared for the ferocity and scope of the Boards decisions. In their First Annual Report (1955) the Board stated that,

"Some (publishers) came to say that they were already at work "to clean up" their publications, a circumstance which argued the possession of a not entirely moribund conscience. Others told of the adoption of internal "code" systems to which their publications would in future conform. All stated that the loss of Queensland trade would seriously affect their profits and might even put the publication off the Australian market because of adverse reactions in other States. Some came to submit "reconstructed" publications or to, give an undertaking to eliminate objectionable features. In several instances the Board accepted such undertakings and lifted a prohibition previously imposed. Almost all asked in one form or another, "Give us a statement of your standards, and we shall endeavour to conform to them". The difficulty of this will be apparent to all who realize that in dealing with any publication it is impossible to set out what forms of say, sex, horror and violence shall be permitted and what shall not shall one permit, for example, one, two or three murders per comic, or

one or a dozen robberies with violence? Such analysis reaches a reductio ad absurdum."

Even though publishers had asked for a statement of standards the Board didn't possess one to hand out. The Board banned on their own subjective standards, hence it was almost impossible to fight – what one person regarded as objectionable in matters of sex or crime might not fit into what another person's standards. However as there were few publishers with the financial means to mount a Supreme Court case, there wasn't a lot that could be done to fight the Board's bans, until five separate publishers decided to fight their respective bans over two court cases.

By mid-1954 the Board were kept busy banning comic books and other periodicals. The most high profile title banned was Len Lawson's Lone Avenger. The Lone Avenger was a mysterious lawman who wore a hood with eye holes cut into it as a mask and who's role in life was to punish criminals. He tended to specialise in saving scantily clad, busty young women from kidnappers and murderers. Len Lawson was charged with the kidnapping and rape of five school girls in early May, 1954. In an ordeal that lasted just over two hours, Lawson had met the girls on the premise of taking photos of them for a calendar that he was putting together, but had taken them into the bush where the police alleged that he first bound the girls, placed sticking plaster over their mouths and then raped two of them, indecently assaulted another two and had carnal knowledge of the fifth. All five girls were under the age of the 16, the oldest was 15, and, after arrest, Lawson was refused bail and pleaded not guilty to all charges. The defence argued that the girls had been talking about sex to Lawson and had posed 'provocatively', but that failed to sway the judge. Lawson was found to be guilty and sentenced to death. The sentence was later commuted to life imprisonment, which was then brought down to fourteen years.

There were several victims in the Lawson case, one of which was his young wife and their children, and, of course, the girls he terrorised. His wife instigated divorce proceedings in October, 1954; in a bizarre twist she alleged adultery against Lawson due to his rape of one of the girls. The divorce was granted and she then moved on with her life. Lawson's strange tale didn't end there though.

Lawson was released after serving seven years of his fourteen year term. Once released he turned to his artistic skills to survive, painting portraits of

people. However something inside of him snapped in 1962. On November 7th, 1962, while painting a portrait of 16-year-old Manly girl in his flat at Collaroy, Lawson suddenly bound her arms, sexually assaulted her and finally stabbed her to death. The next day, he burst into the chapel of the Sydney Church of England Girls' Grammar School at Moss Vale, taking schoolgirls and staff hostage at gunpoint. The police were called and Lawson demanded that the current Miss Australia, Tricia Reschke, and Olympic Golden Girl Betty Cuthbert be brought to him. Naturally his demands were refused and in the resulting siege, a struggle ensued, Lawson's gun discharged and he killed a 15-year-old student who was sitting in the pews. This time Lawson wasn't as fortunate as before. Arrested, charged and tried, he was convicted of rape and murder and was locked up for life. Ten years later, in 1972, he attempted to escape jail by taking a visiting dancing girl, Sharon Hamilton, hostage at knifepoint and stabbing her in the struggle that ensued. Although Hamilton was largely unharmed, the trauma affected her to the point where she took her own life six years later. This was the final straw for authorities who sentenced Lawson for the term of his natural life and marked his file 'Never To be Released'. Despite lodging several applications for day release and parole it wasn't to be and Len Lawson died in Grafton Gaol in November 2003 at the age of 76.

While in gaol for the first set of offences, Lawson applied to the authorities for permission to continue writing and drawing his comic book, *The Lone Avenger*. The application was refused, but it mattered not, the comic was banned as soon as Lawson was convicted. Eventually the ban was rescinded in October of the same year, the Board didn't give a reason, but the removal of Lawson's name from the strip and the general toning down of the more racier aspects of the strip, and the removal of Lawson himself would have gone a long way towards the lifting of the ban. The lifting of the ban only applied to issues published after November 1954 – anything with Lawson's name attached to it was to remain prohibited.

The Lone Avenger wasn't the only comic book banned. The Board was kept busy banning both comics and periodicals in its first year. Its first ban list, released in July 1954, contained the following titles; *Fight Comics* (Action Comics Pty. Ltd.), *G-Man* (Atlas Publications Pty. Ltd.), *Guilty* (Atlas Publications Pty. Ltd.), *Love Illustrated* (Barmor Publications Pty. Ltd.), *War Heroes Blue* (Diamond Publishing Co), *The United States Marines* (Larry Cleland Pty. Ltd.), *Anti-Crime Squad* (Red Circle Press), *War Battles* (Red

Circle Press), Dare (Ron Ashworth) and Famous Yank (Rosnock Pty. Ltd.). All of the comics banned were locally produced titles, as promised the Board were more interested in banning Australian produced material, leaving overseas material to the Customs Board and other Federal regulators. As the months rolled on more titles were added to the ban list. On the 25th of August 1954 the Board banned another series of titles; the aforementioned Lone Avenger was amongst them. The other titles were Dizzy Dames (Atlas Publications Pty. Ltd.), Headline Stories (Atlas Publications Pty. Ltd.), The Mask (Atlas Publications Pty. Ltd.), Wanted (Atlas Publications Pty. Ltd.), First Romance (Barmor Publications Pty. Ltd.), Love Problems (Barmor Publications Pty. Ltd.), Teenage Love (Barmor Publications Pty. Ltd.), Atomic Attack (Calvert Publishing C. Pty. Ltd.), Dragnet (Invincible Press) and Soldier Comics (Larry Cleland Pty. Ltd.).

For one publisher this was too much. Five days after the ban was announced, solicitors acting for Invincible Press, along with its associated companies, Truth and Sportsman Limited, formally lodged an appeal against the banning of Dragnet. The terms of the appeal fell along five sections as outlined in the Board's terms. These were that Dragnet did not 1] nor does any part thereof unduly emphasise matters of sex, horror, crime, cruelty, or violence, 2] was it not nor is any part thereof blasphemous, indecent, obscene, or likely to be injurious to morality, 3] was not nor is any part thereof likely to encourage depravity, public disorder, or any indictable offence, 4] was not nor is any part thereof otherwise calculated to injure the citizens of this State and 5] did not not nor does any part thereof have any tendency to deprave or corrupt any of the persons classes of persons or age groups aforesaid. The Boards defence was built around its claim that Dragnet was objectionable within the meaning of The Objectionable Literature Act of 1954. This would prove to be a hard claim to attack as it was, as previously mentioned, arbitrary at best. The Dragnet case would rely on mainly on affidavits, unlike the case that would follow.

Although these bans were limited to Queensland only, the rest of the nation was watching, and what was banned in one state was generally banned, albeit unofficially, in another. What compounded the issue was the loss of sales in a growing market and if a publisher was located in Queensland then they were prohibited from actually printing the product, meaning that a Queensland ban could very well spell the death of a periodical.

Despite the first appeal being lodged it was business as usual for the Board. On the 20th of December 1954 another round of comics were banned from publication and distribution in Queensland. Instead of the usual war and crime comics (horror was all but dead and buried by this stage) the focus was on romance comics and their use of sex. The titles were as follows: Darling Romance (Action Comics Pty. Ltd.), Love Secrets, Teenage Confessions and Teen-Age Romances (all published by Barmor Publications Pty. Ltd), New Romances and Popular Romance (both published by H. John Edwards Publishing Co. Pty Ltd) and Love Experiences, Real Love, Real Romances, Real Story and Romance Story (all published by Transport Publishing Co. Pty. Ltd.). The notice duly appeared in the Queensland Government Gazette on the 25th of December. As with the publisher of Dragnet, the Board would find itself facing an appeal. Three publishers banded together, Action Comics, Barmor Publications and Transport Publishing, to bring the appeal to the Supreme Court. Unlike the Dragnet case the appeal would consist of more than merely affidavits as for the first time in Australia, and perhaps in the world, a superior court listened to days of argument and a series of witnesses in order to decide whether a comic book had the power and influence to deprave the reader.

The first stage of the case was not a success for the publishers. They produced three witnesses, who also swore affidavits. The witnesses, two psychiatrists and a librarian, all testified that the comics didn't deprave anyone and indeed could serve a positive purpose by giving frenzied young girls and outlet for their romantic desires. In response the Board also a psychiatrist, who testified as to the results of studies that he had conducted and who also claimed that, by showing a positive outcome, the stories within the comics were totally unrealistic and would cloud a young girl's judgement. Also appearing for the Board was a Salvation Army Girl's School Matron who recounted the evil impact of the comics, as they had a tendency to overly excite the girls to the point of hooting at romantic scenes in movies and whistling at workmen who tended the School's gardens. Dr. Fredrick Wertham's *Seduction Of The Innocent* was raised as a defence for the banning, In one of the more amusing portions of the trial, one of the psychiatrists, appearing for the publishers, mentioned how he'd never read the book as it was, "...always out on loan," from the NSW Parliamentary Library. Als in the Boards defence, the then current Senate Hearings was brought up as more proof that comic books were evil.

The artists and writers didn't escape notice with their efforts being decried as crude, poor and not worthy of publication. Some of the artists efforts were misinterpreted by the lawyers and judges, despite an effort being made to help explain their techniques. The inference was clear, those who wrote and drew comic books were just as depraved, unprofessional and objectionable as the books themselves.

The trial, as mentioned, went badly for the publishers. Two of the presiding judges found for the Board, one found for the publishers. The publishers then promptly appealed to the High Court where they were more successful. The appeal was upheld by a majority of judges with the word 'objectionable' being interpreted as 'obscene'. This served to negate the Boards powers to ban comic books that would not be able to deprave or corrupt the average person. The ruling in the Dagnet case was handed down three days after the Romance Trials, it found that the Dagnet comics were 'objectionable', but as the High Court had stated that objectionable meant obscene, the Board had no real power to continue the ban. They were defeated in this instance and, ultimately, the comic books had won.

The Board continued to ban magazines though and were taken to court in the future. Ultimately the focus was shifted to books and with the lifting of import restrictions in 1961, the Board became somewhat of a toothless tiger, making sure that they were visible, but with no real powers. The comic book publishers had fought the law, and they had won.

THE BANNED COMICS

The following comics, and relevant issue numbers, were the subject of the court case.

Extract from Govt. Gazette

Dated 25 December 1954.

Page 2213

"THE OBJECTIONABLE LITERATURE ACT OF 1954"

THE Literature Board of Review, in pursuance of the provisions of "The Objectionable Literature Act of 1954", by this Order prohibits the distribution in Queensland of all and every the literature, being writings published periodically, specified in the Schedule hereto for that the said literature is, in the opinion of the Board, objectionable .

This order applies with respect to all copies of every part number or series thereof whether published heretofore or hereafter.

SCHEDULE

<u>Name of Publication</u>	<u>Publisher</u>
"Teenage Confessions"	Barmor Publications Pty. Ltd 149 Castlereagh street, Sydney.
"Teen-Age Romances"	Barmor Publications Pty. Ltd 149 Castlereagh street, Sydney.
"Love Secrets"	Barmor Publications Pty. Ltd 149 Castlereagh street, Sydney.
"Real Love"	Transport Publishing Co. Pty. Ltd 26 Hunter Street, Sydney
"Romance Story"	Transport Publishing Co. Pty. Ltd 26 Hunter Street, Sydney
"Real Story"	Transport Publishing Co. Pty. Ltd 26 Hunter Street, Sydney
"Real Romances"	Transport Publishing Co. Pty. Ltd 26 Hunter Street, Sydney
"Love Experiences"	Transport Publishing Co. Pty. Ltd 26 Hunter Street, Sydney

"Darling Romance"	Action Comics Pty 14 Bond Street, Sydney
"Popular Romance"	H. John Edwards Publishing Co. Pty Ltd 14 Bond Street, Sydney
"New Romances"	H. John Edwards Publishing Co. Pty Ltd 14 Bond Street, Sydney

Dated this twentieth day of December 1954

W.G.HAMILTON,
Chairman.

Transport Publishing Co. Pty. Ltd

Publisher

26 Hunter Street Sydney, New South Wales

Love Experiences No. 26	Love Experiences No. 30
Love Experiences No. 27	Love Experiences No. 31
Love Experiences No. 29	Love Experiences No. 32

Real Story No. 17	Real Story No. 18
Real Story No. 20	Real Story No. 21
Real Story No. 22	Real Love No. 26
Real Love No. 27	Real Love No. 28
Real Love No. 29	Real Love No. 30
Real Love No. 31	

Romance Story No. 19	Romance Story No. 20
Romance Story No. 21	Romance Story No. 23
Romance Story No. 24	Romance Story No. 25
Real Romances No. 26	Real Romances No. 27
Real Romances No. 29	Real Romances No. 30
Real Romances No. 31	Real Romances No. 32

Action Comics Pty. Ltd

Publisher

14 Bond Street, Sydney, New South Wales

Darling Romance No. 39

Darling Romance No. 41

Darling Romance No. 43

Darling Romance No. 44

Darling Romance No. 45

Darling Romance No. 46

Darling Romance No. 47

Popular Publications Pty. Ltd

Publisher

14 Bond Street, Sydney, New South Wales

New Romances No. 14A

New Romances No. 18A

New Romances No. 25

Popular Romance No.13A

Popular Romance No.16A

Popular Romance No.17A

Popular Romance No.18A

Popular Romance No.19A

Popular Romance No.24

Popular Romance No.25

Popular Romance No.26

AFFIDAVITS

A note on the Affidavits: as there were three separate publishers in this case, each Affidavit was submitted in triplicate. In each case the only difference was the name of the publisher and the titles cited. Unless a duplicate Affidavit was vastly different, I have chosen to only reproduce one of the three.

Affidavit of H. L.Kelly - Dated 19.1.1955

I, HERBERT LESLIE KELLY of 37 Liontpelier street Clayfield Brisbane in the State of Queensland and a member of the firm of Cannan& Peterson of 319-325 Queen Street Brisbane aforesaid Solicitors make oath and say as follows:-

1. My said firm is acting as Solicitors for Transport Publishing Co.Pty.Ltd. of 26 Hunter Street Sydney in the State of New South Wales and I have the conduct of this matter.
2. The said Company is the Publisher of "Real Love", "Romance Story", "Real Story", "Real Romances" and Love Experiences".
3. I have been informed by John Hilton Agnew, Accountant for Queensland of Gordon and Gotch (Australasia) Limited of 262 Adelaide Street Brisbane aforesaid and verily believe that -
 - (a) Gordon and Gotch (Australasia) Limited is the distributor of the said publications
 - (b) the said publications are issued monthly and distributed in all the States of the Commonwealth
 - (c) that an average of over 2000 copies of each issue of each of the said publications has been distributed in Queensland to newsagents for general sale in this State during the past six months
 - (d) The said publications are intended for circulation amongst teen-agers and all other classes and age groups of people and are purchased not only by teen-agers but by all other classes and age groups of people.
4. By an Order dated the twentieth day of December 1954 and published in the Queensland Government Gazette Volume CLXXXVII Number 173, page 2213 on the twentyfifth day of December 1954 the Literature Board of Review constituted under and for the purposes of "The Objectionable Literature Act of 1954" prohibited the distribution in Queensland of all and every the literature being writings published periodically specified in the Schedule of the said Order for that the said literature is in the opinion of the Board objectionable.
5. The said Order farther provided that it applied wish respect to all copies and every part number or series thereof whether published theretofore or thereafter.

6. A copy of the said Government Gazette is now produced and shown to me and marked "A"
7. The said publications "Real Love", "Romance Story", "Real Story", "Real Romances" and "Love Experiences" are specified in the Schedule of the said Order.
8. A true copy of each of the said publications "Real Love", "Romance Story", "Real Story" and "Real Romances" and "Love Experiences" respectively is now produced and shown to me and marked "B" "C" "D" "E" and "F" respectively.
9. Transport Publishing Co.Pty.Ltd. feels aggrieved by the said Order.
10. I have therefore been instructed to make application to this Honourable Court for an Order calling upon the said The Literature Board of Review to show cause before the Full Court of the Supreme Court of Queensland why the said Order should not be quashed and set aside in relation to the said publications "Real Love", "Romance Story", "Real Story", "Real Romances" and "Love Experiences" on the following grounds viz:-
 - (1) That the opinion of the Board upon which the said Order is based namely that all and each of the said publications is objectionable within the meaning of "The Objectionable Literature Act of 1954" is wrong in law and in fact in that -

whether or not regard is had to the nature of each one of the said publications, the persons, classes of persons and age groups to or amongst whom each or any of the said publications is or is intended to be distributed none of the said publications nor any part of any of them:-
 - (i) unduly emphasises matters of sex, horror, crime, cruelty or violence;
 - (ii) is blasphemous, indecent, obscene or likely to be injurious to morality;
 - (iii) is likely to encourage depravity, public disorder or any indictable offence;
 - (iv) is otherwise calculated to injure the citizens of this State;
 - (v) Has any tendency to deprave or corrupt any of the persons, classes of persons or age groups aforesaid.
 - (2) That the opinion of the Board upon which the said Order is based namely that all and each of the said publications is objectionable within the meaning of the said Act is arbitrary capricious and unreasonable and/or has been formed upon a consideration of extraneous and irrelevant matters.
 - (3) That the said Order is ultra vires in its purported application to any part number or series of the said publications which had not been published at the time the said Order was made, and to any which the Board had not considered as separate publications, in that the Board has no jurisdiction to prohibit the distribution of any literature which it has not examined and received.

(4) That the said Order is ultra vires and the said Act is invalid and unconstitutional in that it infringes Section 92 of the Constitution (Commonwealth)

(5) That whether or not regard is had to the nature of each one of the said publications, the persons, class of persons and age groups to or amongst whom each or any of the said publications is or is intended to be or is likely to be distributed none of the said publications nor any part of any of them

(i) unduly emphasises matters of sex, horror, crime, cruelty or violence;

(ii) is blasphemous, indecent, obscene or likely to be injurious to morality;

(iii) is likely to encourage depravity, public disorder or any indictable offence;

(iv) is otherwise calculated to injure the citizens of this State;

(v) has any tendency to deprave or corrupt any of the persons, classes of persons or age groups aforesaid

AND why the said The Literature Board of Review should not pay the costs of this application and of the Order hereon and the proceedings subsequent thereto.

ALL the facts and circumstances herein deposed to are within my own knowledge save where deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit

SIGNED AND SWORN by the above.

Affidavit of B. F. R. Stafford - Dated 16.2.1955.

I, BASIL FREDERICK ROBERT STAFFORD of Arran Avenue Hamilton Brisbane in the State of Queensland make oath and say as follows:

1. I am a duly qualified medical practitioner holding the degrees and qualifications of M.B. and B.S. and am a registered specialist of psychiatry in Queensland. Since 1938 I have been Director of Mental Hygiene, Queensland and since 1950 I have been Director of the Psychiatric Clinic, Queensland. I have practised psychiatry as a specialist in Queensland since 1929.
2. I have perused a copy of each of the publications "Real Love" "Romance Story" "Real Story" "Real Romances" and "Love Experiences" mentioned and referred to in the affidavit of HERBERT LESLIE KELLY sworn herein on the Nineteenth day of January 1955
3. I have also perused a copy of each of the publications "Romance Story" No. 21 "Real Romance" No. 32 and "Love Experiences" No. 31 now produced and shown to me and marked with the letter "C", "E" and "F" respectively.
4. In my opinion these publications rely for their appeal upon what is commonly known as "sex."
5. In my experience a psychological appreciation of the implications of the word "sex, is important. It has three implications -
 - (i) General appreciation of masculinity and femininity;
 - (ii) Sexual intercourse;
 - (iii) Behaviour that stimulates the implications of (i) and in a certain group of unstable adolescents would tend towards (ii)
6. The behaviour that I have in mind is illustrations of physical contacts such as kissing and fondling which to a certain group of unstable adolescents are probably more significant as sex behaviour than either of the two concepts of sex mentioned in Clauses (i) and (ii) of Paragraph 5 hereof.
7. The certain group of unstable adolescents that I have in mind is principally female and I believe that people constituting this group are considerable in number.
8. The said publications in my opinion rely for their attractiveness on the emphasis placed upon the behaviour mentioned in Clause (iii) of Paragraph 5 hereof. Their attractiveness as literature is almost non-existent and they constitute a danger to emotional rather than intellectual instincts in respect of the certain group of unstable adolescents hereinbefore mentioned.
9. Their presentations both pictorially and otherwise continually suggest a "modus operandi" in regard to associations particularly physical between male and female and the whole essence of the publications is that physical contact is something glamorous and desirable. The illustrations emphasise this aspect of sex.

10. The episodes portrayed in the publications almost invariably have the conventional "happy ending" thus conveying the idea that despite what might be misbehaviour of the characters involved no harmful results will ensue. Such a concept is divorced from reality and could bring about a sense of false values in moral standards. In other words the publications portray undisciplined social behaviour of adolescents

11. The underlying theme of sex throughout these publications is conveyed by constant repetition and in an insidious rather than a blatant manner so that their influences tend to impinge unconsciously on the senses.

12. In adolescence susceptibility to sensually receive influences is especially acute and the imagination is especially active and in my opinion these publications would in the certain group of unstable adolescents hereinbefore mentioned engender the desire to seek similar experiences to those portrayed and stimulate them to forms of immoral sex behaviour.

13. The influence of the said publications is accentuated by the pictorial form of presentation. Such a form of presentation depicts at a glance behaviour of the type mentioned in Paragraph 6 hereof in such a fashion as to more readily bring about the desire and stimulation in unstable adolescents hereinbefore mentioned than by means of the written word. It therefore extends the scope of their appeal to illiterate and sub-literate members of the certain group of unstable adolescents. Pictorial presentations would be more attractive to those members because it facilitates their understanding of the story and concentrates their attention on the subject matter of the illustrations which emphasise physical contact between male and female.

14. The said publications in my opinion represent a danger to emotional instincts and instil a sense of false values and concentrate on one particular phase of human relationship to the exclusion of all others, thus tending to destroy any sense of balance and stability in the individual which is necessary to a well ordered society. They constantly reiterate one theme which by its continued repetition must affect the formative processes of character building balance and stability throughout adolescence. Such consequences to the individual concerned must also injuriously affect society in general and the persons closely associated with such individuals in particular.

15. I have perused the report of the Special Committee on Moral Delinquency in Children and Adolescents appointed by the New Zealand Government and dated 20th September 1954. The following extract from the report comprises that part of the report dealing with objectionable publications:-

(i) Objectionable Publications.

There has been a great wave of public indignation against some paper-backed or 'pulp' printed matter. Crime stories, tales of 'intimate exciting romance', and so-called 'comics' have all been blamed for exciting erotic feelings in children. The suggestiveness in the cover pictures of glamour girls dressed in a thin veiling often attracts more attention than the pages inside,

Immorality would probably not result from the distribution of these publications, unless there were in the child, awaiting expression, an unhealthy degree of sexual emotionalism. Some of these publications are, possibly, more harmful to girls than to boys in that girls more readily identify themselves with the chief characters. One striking piece of information which was conveyed to the Committee was that the girls under detention in a certain institution (the greater number of them had had good deal of sexual experience) decided that various publications were more harmful than films because the images conveyed by the printed matter were personal to them and more lasting.

The Committee has been deluged with periodicals, paper-backed books, and 'comics' considered by their respective senders to be so harmful to children and adolescents that their sale should not be permitted. But, while all the publications sent are objectionable in varying degrees, they cannot be rejected under the law as it at present stands because that law relates only to things which are indecent or obscene.

An Inter-departmental Committee set up in 1952 to report on worthless and indecent literature similarly found that, while publications intended for adults are controlled by the Indecent Publications Act (which in the opinion of that Committee, was adequate providing the public initiated action under it), comics and other publications outside the scope of that Act might be objectionable for children.

When considering comics it is essential to appreciate the difference between the traditional comic, intended exclusively for children, and the more modern style which is basically designed for low-mentality adults. Both styles and variations of them circulate widely in New Zealand among children and adolescents. In general, however, younger children buy, and even prefer, the genuine comic which is not harmful and may even be helpful. Adolescents, and adults also, are attracted by comic books that have been denounced by various authorities as anti-educational, and even pernicious, in moral outlook.

The Inter-departmental Committee recommended that all comics be registered and that it be made an offence to deal in unregistered comics. There are strong doubts whether the adoption of those proposals would provide a satisfactory solution. Once registration were obtained (which would be almost automatic on application) much damage might be done by the distribution of a particular issue before registration could be cancelled.

Surely a simpler, faster, and safer procedure would be to make initial registration more difficult and subsequent deregistration more speedy.

Amendments recently made to the laws of various Australian States should result in a general improvement in the standard of publications

distributed in Australia, and consequently in New Zealand. On the other Hand, this tightening of the law may induce distributors to dump in New Zealand publications for which they have no longer a market in Australia.

A banning, rather than a censorship, of printed matter injurious to children should be the subject of immediate legislation for three reasons;

- (a) To prevent the Dominion being used as a market to offset any trade lost in some Australian States;
- (b) To encourage the efforts of those people who seek to lead children through good reading to better things; and
- (c) To let publishers know that the time has passed when publications likely to be injurious to the minds of children and adolescents may be distributed by them with impunity.

In order to meet the situation, it would be desirable for the Government to promote special legislation along the lines of the Victorian Police Offences (Obscene Publications) Act 1954.

The Victorian legislation is particularly effective since not only does it widen the definition of 'indecent' and 'obscene', and enables the police themselves to institute proceedings for breaches of the Act, but it also compels all distributors to be registered. Then, should a distributor be convicted of an offence, he may be deregistered, and in that case would be unable to distribute any other publication whatever

Despite frequent reference to distributors dumping objectionable publications on a newsagent or bookseller, who has to accept the bad before he can get the good, the Committee has not received any definite evidence of this practice occurring in New Zealand.

16. I agree with the conclusions of the Committee with regard to the attraction of adolescents and some adults to many of the so-called "comic" books. I also agree that the more modern style of "comic" publication (as distinct from the purely children's comic) is basically designed for low mentality adults and I would add adolescents. While I have not the publications before me which the Committee had before it in my opinion the publications referred to in paragraphs 2 and 3 hereof are included in the types of publication referred to by the Committee in its said report.

SIGNED AND SWORN by the abovenamed Deponent at Brisbane aforesaid this sixteenth day of February 1955

Affidavit of O. W. Butler - Dated 16.2.1955

I, ORMOND WILLIAM BUTLER of 15 Harold Street Holland Park Brisbane in the State of Queensland make oath and say as follows:-

1. I have been an officer of the State Children Department since 1918 and have been an Inspector of that Department from 1933 to 1953 when I was appointed Deputy Director at Brisbane. From 1956 to 1953 I was also District Officer for the State Children Department stationed at Townsville. As District Officer I was in charge of the State Children Receiving Depot at Townsville constituted under "The State Children Acts 1911 to 1952". The children received at this Depot are those admitted to the control of the Department as wards of the Department and those placed under the control of the Department by the Supreme Court and Courts of Petty Sessions. These children would all be under eighteen years of age
2. I have perused a copy of each of the publications "Real Love", "Romance Story" "Real Story" "Real Romances" and "Love Experiences" mentioned and referred to in the affidavit of Herbert Leslie Kelly sworn herein on the Nineteenth day of January 1955.
3. I have also perused a copy of each of the publications "Real Love" No. 31 "Romance Story" No. 25 "Real Story" No. 22 "Real Romances" No. 31 and "Love Experiences" No. 29 now produced and shown to me and marked with the letter "B" "C" "D" "E" and "F" respectively.
4. In conjunction with the Matron of the State Children Receiving Depot at Townsville I censored the magazines and literature addressed to the children and supplied to the Depot. I frequently destroyed publications of the type mentioned in Paragraphs 2 and 3 hereof as I considered that they were undesirable for children.
5. With regard to the said publications mentioned in paragraphs 2 and 3 hereof in my opinion
 - (a) They would appeal to the age group thirteen years to nineteen years more than to any other group and would be sought more by girls than by boys.
 - (b) There is a constant repetition of the sex theme throughout the publications which could tend to emotional disturbances. In that regard I think the portrayal of the scenes in pictorial form would make a greater impression on the age group abovementioned than were they portrayed solely in narrative form.
 - (c) Such publications when read by immature minds would have a weakening effect on moral values as they would arouse unwholesome curiosity with regard to sex impulses which could have an outlet in seeking similar experiences to those portrayed. This particularly refers to certain of the publications which contain illustrations that over accentuate the female figure.

(d) They over stress the importance of the relationship between the sexes and thus give a sense of false values of life.

6. Occasionally I have seen adults reading similar types of publications. Almost invariably the adults have been of sub-standard intelligence.

7. In Townsville where I had most of my experience as an officer of the State Children Department it has come to my knowledge in the course of my duties as District Officer that girls committed to the State Children Depot by the Supreme Court and Courts of Petty Sessions for sexual offences had publications of this nature in their belongings and that they were avid readers of publications of this type.

SIGNED AND SWORE by the above named Deponent at Brisbane aforesaid this sixteenth day of February 1955

Affidavit of B.F.R. Stafford - Dated 22.2.1955

I, BASIL FREDERICK ROBERT STAFFORD of Arran Avenue Hamilton Brisbane in the State of Queensland Medical Practitioner make oath and say as follows:-

1. I crave leave to refer to my affidavit sworn herein on the Sixteenth day of February 1955.
2. I have perused four copies of the publication "Real Love" Nos. 26, 27, 28 and 29 respectively now produced and shown to me and marked with the letter "B1", "B2", "B3" and "B4" respectively.
3. I have perused three copies of the publication "Romance Story" Nos. 19, 20 and 23 respectively and now produced and shown to me and marked with the letter "C1", "C2" and "C3" respectively.
4. I have perused three copies of the publication "Real Story" Nos. 17, 18 and 20 respectively now produced and shown to me and marked with the letter "D1", "D2" and "D3" respectively.
5. I have perused three copies of the publication "Real Romances" Nos. 26, 27 and 29 respectively now produced and shown to me and marked with the letter "E1", "E2" and "E3" respectively.
6. I have perused three copies of the publication "Love Experiences" Nos. 26, 27 and 32 respectively now produced and shown to me and marked with the letter "F1", "F2" and "F3" respectively.
7. The opinions I expressed and the statements I made in my affidavit hereinbefore mentioned regarding the publications mentioned therein apply to the publications mentioned in Paragraphs 2 to 6 inclusive of this my affidavit.

SIGNED AND SWORN by the abovenamed Deponent at Brisbane aforesaid this twentysecond day of February 1955.

Affidavit of J. Geddes - Dated 22.2.1955

I, JEAN GEDDES of 15 Jephson Street Toowong Brisbane in the State of Queensland Salvation Army Officer make oath and say as follows:-

1. I am a Salvation Army Officer and have been in the Salvation Army for 17 years.
2. I am at present and have been for the past twelve months Matron of the Salvation Army Girls' Industrial Home at Toowong Brisbane. During 1951 and 1952 I was Matron of the Salvation Army Girls' Home at Canowindra New South Wales and during 1953 I was Matron of the Salvation Army Girls' Home at Toowoomba Queensland. Prior to becoming Matron I was a Junior Officer in Girls' and Children's Homes in New South Wales and Queensland for approximately 15 years including three years at the Home where I am now Matron. The girls at this Home are aged between 14 and 18 years of age and are committed to the Home by the State Courts through the State Children Department. A majority of the girls has been committed to the Home for offences of a sexual nature.
3. I have perused a copy of each of the publications "Real Love" "Romance Story" "Real Story" "Real Romances" and "Love Experiences" mentioned and referred to in the affidavit of HERBERT LESLIE KELLY sworn herein on the Nineteenth day of January 1955.
4. The following comments and opinions regarding the said publications are derived from my experience with girls in Salvation Army Homes.
5. They have a special attraction for adolescent girls particularly those of below average intelligence and those who are emotionally unstable or irresponsible.
6. They are emotionally exciting to such girls and prove disturbing to their morals and thoughts. I have known such girls to read publications of this type over and over again from cover to cover.
7. I have very often found that girls committed to this Home have had publications of this type in their possession. I have confiscated these publications and the girls have frequently asked for them back in most cases almost immediately. I have destroyed the publications and explained to the girls that it was not suitable reading for them and replaced the publications with a better type of magazine or other literature.
8. From time to time I have noticed that girls who have been accustomed to reading publications of the type hereinbefore mentioned have been excited and unbalanced in the presence of members of the opposite sex. This was shown by their behaviour in front of workmen employed at the Homes and by their general conduct which became unco-operative and defiant to the staff. I have also noticed that when these publications were taken from them their general behaviour subsequently improved. I noticed this particularly in Toowoomba. The girls there were aged between 12 and 15 years and were in the habit of bringing publications of this type home from school and hiding

them. When any girl became excited and unbalanced in the presence of members of the opposite sex and her general behaviour deteriorated I suspected that she had access to publications of the type mentioned and in such cases made a search and very frequently found copies of that type of publication hidden in the girl's belongings and confiscated the publications. After this had been done I subsequently noted a general improvement in her behaviour.

9. In my opinion the effects of these publications on adolescent girls are strengthened by the pictorial form of presentation. Such a form of visual education impresses itself on their senses more vividly than does written matter or moving pictures. This applies more particularly to sub-normal types. I have known such girls read this Pictorial type of literature who would not read any other type. The impression made by this type of literature is more lasting than that made by moving pictures as the girls can and do revert to the former and read them over and over. The pictorial types of publication are more disturbing than the written ones. They portray males and females in attitudes which appeal to and stimulate the sexual senses through physical attributes and engender in unstable and emotional adolescents reading such publications the desire to have similar experiences to those portrayed and in my opinion this leads on in many cases to actual illicit sexual intercourse.

10. Constant reading of these publications which glamourise romance of the type depicted and continually stress the relationship between the sexes to the exclusion of other essential and important relationships of life are likely to give adolescent girls a wrong sense of the real values in life.

11. The girls at the Toowoomba Home obtained pictorial publications of a similar type to those mentioned in Paragraph 3 hereof from other children while at school and passed these publications to other girls in the Home. From my experience it is a general habit among adolescent girls who read such publications to pass them to other girls.

12. Without in any way qualifying the observations and opinions in the preceding paragraphs hereof -

(a) From my observations of delinquent girls I consider that in the case of girls who have had early sexual experience the reading of publications of the type mentioned in Paragraph 3 hereof tends to stimulate their sexual desires and keep before their minds their own sexual experience which it is the desire of the Home by education and training to erase;

(b) In the case of delinquent girls who have had early sexual experience it has been found that after careful education supervision and training the great majority of such girls has subsequently settled down to happy married life and become good citizens;

(c) In my opinion the rehabilitation of such girls is greatly retarded by the reading of publications of the type mentioned.

13. In my opinion the depicting in a publication of casual meeting between men and women of the kind known 'pick up';" likely to be harmful in adolescent

readers. Many of the girls who have been in my charge become involved with men, after casual meetings and in my opinion any publication which tends to surround with glamour such casual meetings is most misleading and harmful to adolescents.

14. Although some of the stories in the said publications may appear to point out a good moral from my observations and experience female adolescent readers of the said publications are much more interested in the pictorial presentation of amatory embraces than they are in any merits contained in the story.

15. From my experience in the Homes I know that publications of the type hereinbefore mentioned discourage girls from reading good literature. There are some girls in the Home now who have made a practice of reading publications of this type and will not read any other.

I have offered better class literature to them but they have refused to read it and just skim through magazines. In other cases girls who have made a practice of reading publications of the type hereinbefore mentioned have after I have taken such publications from them read better class literature when I have offered it to them and have appeared to develop an interest in it. In such cases I have noticed that their conversation has become more intelligent and their general behaviour has appeared to improve. The officers of the Home have been able to encourage younger girls to read books by authors such as Ethel Turner, Louisa Alcott, Mary Grant Bruce, Welyn Everett Green and others and such girls do not appear to be interested in publications of the type mentioned. The books I have referred to have been written for girls and deal with good home life.

SIGNED AND SWORN by the abovenamed Deponent at Brisbane aforesaid this Twentysecond day of February 1955

Affidavit of O. W. Butler - Dated 23.2.1955

I, ORMOND WILLIAM BUTLER of 15 Harold Street Holland Park Brisbane in the State of Queensland Deputy Director of the State Children Department make oath and say as follows:-

1. I crave leave to refer to my affidavit sworn herein on the Sixteenth day of February 1955
2. I have perused that part of the report of the Special Committee on Moral Delinquency in Children and Adolescents appointed by the New Zealand Government and dated 20th September 1954 which deals with objectionable publications and I agree that a banning of printed matter injurious to children would encourage the efforts of those people who seek to lead children through good reading to better things.
3. In my opinion reading of the publications referred to in Paragraphs 2 and 3 of my affidavit hereinbefore mentioned would discourage children and adolescents from reading literature of a higher standard. Whilst I do not set myself up as an educationalist in my practical experience in the State Children Department I have noticed that children and adolescents who read publications of the types referred to in Paragraphs 2 and 3 of my affidavit hereinbefore mentioned do not read better types of literature and that the reading of such publications seems to discourage them from reading better types of literature. When I was stationed in Townsville I have frequently taken publications of the type referred to herein from children and I noticed that they then read better types of literature.
4. Children and adolescents from time to time exchange with other children and adolescents copies of what are generally known as "comics" which description would include the said publications and the effect of this is to considerably increase the circulation of these "comics".

SIGNED AND SWORN by the abovenamed Deponent at Brisbane aforesaid this twentythird day of February 1955.

THE TRIAL

Friday, 4 March, 1955

BASIL FREDERICK ROBERTS STAFFORD, sworn and examined:

BY MR HART: Your name is Basil Frederick Roberts Stafford?

A: Yes

Q: You reside at Arran Avenue Hamilton Brisbane?

A: Yes

Q: You are a duly registered medical practitioner?

A: Yes

Q: You have already made two affidavits in this matter already?

A: Yes

CROSS EXAMINATION BY MR WANSTALL

Q: You are a specialist in psychiatry?

A: Yes

Q: How do you define the science of psychiatry?

A: The application of psychology by a medical practitioner.

Q: In what field?

A: Any field relating to human beings.

Q: How do you apply psychology to human beings?

A: Psychology could be defined, I think, as the science dealing with the mind. The functions of the mind are modified by many factors, such as environment, emotion, natural talent and so forth.

Q: How do you recognise and register functions of the mind?

THE CHIEF JUSTICE: What do you mean by that?

BY MR WANSTALL: How do you recognise and classify the functions of the mind?

A: I suppose I just answer you in words again by exhibitions of behaviour that would be commonly recognised as intelligent or lacking in intelligence.

Q: Does that mean by the way in which the function is translated into some visible external result?

A: Substantially, yes.

Q: So you draw a conclusion from an observed practical result that the mind has moved in a certain way?

A: Yes

Q: Do you recognise and accept that there is a state known as being in love?

A: I think one would have to have a definition of "love".

Q: You pick your own definition of it and tell me whether you recognise and accept that there is a state known as being in love, according to whatever definition you give to the word "love"?

A: I think, as giving it more or less an unpremeditated definition, I should have to include love as being an emotional reaction in a very wide sense to some object or another whereby the person exhibited that emotion and also exhibited some particular personal attraction to that object, whether it be a person or not.

Q: When you are dealing with a young man and a young woman in this particular subject, what do you say are the stimuli for that emotional state?

A: A physical stimulus would be one.

Q: Physical stimulus of what nature?

A: We have several special sense – visual, auditory, tactile, olfactory – the sense of smell – gustatory, or taste. All those factors come in in an appreciation of a particular object.

Q: Would those factors be influences within this physical stimulus to which you refer?

A: I should think so.

Q: All of them?

A: Not necessarily all at the one time.

BY THE CHIEF JUSTICE: All of them could be?

A: All of them could be.

BY MR WANSTALL: What other physical stimulus goes to make up this state of love?

A: There are very complex factors, too, in relation to personality, compatibility of personality, which is often conditioned by environmental training, social, education, religious, racial, national and economic. I mean to imply by that the sort of compatibility between people or a person and object.

Q: Do you place those manifestations of compatibility in the emotional field or the intellectual field?

A: Both.

BY THE CHIEF JUSTICE: Do you mean some in one and some in the other?

A: I think they are interwoven.

BY MR WANSTALL: What other physical stimuli exert a formative influence in this state of being in love?

A: I think I have covered pretty well all of them.

Q: In covering pretty all, you have not mentioned that the sexual stimulus has anything to do with it?

A: I have.

Q: You want to add that?

A: No. I have included that.

Q: Where?

A: Tactile. Do you know what tactile means?

Q: Perhaps we had better have your definition of it.

A: The stimulus resulting from close proximity and touch, literally.

Q: But a stimulus which comes from what element in the human?

A: I am not clear what you mean. Are you meaning the instinctive type of reaction?

Q: Yes.

A: Yes, I think it would be reasonable to add instinctive reactions to what I said before.

Q: Would you include the existence of sex of the two opposite kinds within that category? I mean in the category of instinctive reaction?

A: Yes.

Q: So that maleness and femaleness of the two people is a contributing factor?

A: Yes.

Q: It is only one of a number of contributing factors?

A: Yes.

Q: Can you say whether any one of those contributing factors is of greater importance than another, in general terms?

A: Psychologically I should say the instinctive factors are of greatest importance. They are there in the child – something that the child possesses by virtue of being a child. Other factors can be acquired by training, education and various environmental situations.

Q: In relation to cause and effect are these instinctive reactions what you call as the sine qua non qua...

MR HART: I object.

THE CHIEF JUSTICE: Can you make your meaning plain to the doctor?

BY MR WANSTALL: Do you attach greater importance because you recognise if it were not there would be no such state?

A: I attach great importance because it is a fundamental attribute of human beings and is there irrespective of subsequent training, education and so forth.

Q: Are you prepared to express an opinion as to whether it is the most important motivating force?

MR JUSTICE MANSFIELD: In the state known as love?

BY MR WANSTALL: Yes

A: I should say yes.

Q: From your answers to me so far you do not hold that this state of being in love is simply the result of sexual reaction?

A: Not simply so.

BY MR JUSTICE MANSFIELD: Do you say that sexual reaction is the strongest factor?

A: Yes, having in mind that it is fundamentally instinctive and therefore it would be possessed to some degree as an instinct by all human beings in whatever educational grade or social grade they may be, or their racial inheritance and so on. It is a common characteristic of the human race.

Q: As the result of your reasoning, in the most honourable courtship – you know what I mean - between a man and a woman who are of the most upright and wholesome character, that their condition of being in love has as the strongest motivating force sexual reaction?

A: In generalities, I should say yes.

Q: Do you go so far as to say that it is a conscious motivating force in those two people, in mu hypothesis?

A: Not entirely.

Q: It is then, to some extent, a sub-conscious influence?

A: Or instinctive, but not positively brought into operation by the people concerned – no operation predetermined by the people concerned.

Q: Does that not mean that for all practical purposes the sexual side of love in a normal decent person is a background influence?

A: Yes.

Q: In your affidavit in paragraph 4 you say, "In my opinion this publication relies for its appeal upon what is commonly known as 'sex'." Would you give me the commonly known definition of sex?

MR JUSTICE MANSFIELD: What he means?

BY MR WANSTALL: What you mean by sex, as it is commonly known.

A: The behaviour that emphasises or characterises the difference between a male person and a female person.

Q: Does that not mean, in the common understanding of the word sex, that it simply conveys maleness on one side and femaleness on the other side?

A: Yes.

Q: Do you say that is the meaning of sex as it is most commonly understood by people who use the word?

A: I would think so.

Q: Any literature which deals with males and females in sex literature? Is that the result of your reasoning?

A: What do you mean by sex literature?

MR JUSTICE MANSFIELD: Literature which deals with sex.

BY MR WANSTALL: What do you say?

A: To answer that I think I should say that the commonly accepted definition or appreciation of sex is, as I said before, what emphasises masculinity or femininity, but I am aware that sex, in a great many instances is also understood as relating to the actual sexual act or acts or something similar to that.

Q: Would you not agree that the second definition you have given is the more commonly understood one – the more frequently applicable?

A: I would not think so. I think it is confined to certain groups.

Q: What certain groups?

A: Broadly speaking, I think our community's appreciation of sex is masculinity and femininity. In that community, I think there are people to whom the word "sex" would indicate something more directed towards intimate behaviour than just what I have said.

BY MR JUSTICE MANSFIELD: "Sex" in that relationship means a more intimate relationship or behaviour between male and female?

A: Yes.

BY MR WANSTALL: That, you will agree, is a vitally different understanding of the meaning from that which would be accepted in the psychological sense? To a psychologist, the word "sex" would have a different meaning?

A: A psychologist would appreciate both meanings, but he would include things as coming within the definition of "sex" to a wider range.

Q: He would see the fundamental background in the relations between a decent engaged couple?

A: Just so.

Q: He would recognise that?

A: That is so.

Q: But the ordinary layman would not be conscious of that, would he?

A: Not to the same extent.

Q: Could you say it would be uppermost in his mind?

A: I think it would depend on his education and training, his essential intelligence. I do not mean psychologists.

Q: If a psychologist was shown a photograph of a bridal couple, would he say it was a photograph that had to do with matters of sex?

A: Yes.

Q: But the ordinary, decent layman would not, would he?

A: No.

Q: That expresses the difference between the two outlooks?

A: Yes.

Q: If a psychologist saw an engaged couple kissing, he would classify that as having a sexual background?

A: Yes.

Q: But you would not expect that reaction on the part of a normal, decent layman?

A: Who was intelligent?

BY MR JUSTICE MANSFIELD: I suppose it would depend on the nature of the kiss?

A: And I think the capacity of the observer.

Q: There are kisses that are sometimes called pecks and others that are more passionate in their nature?

A: Yes.

Q: A passionate kiss would probably convey to a layman?

A: A sexual implication.

BY MR WANSTALL: How would you recognise a passionate kiss if you saw a picture of it? I am not talking about personal experiences?

A: I suppose to avoid a lengthy and detailed description, one would have to say that the parties' participating in it would give you an air of physical abandon, that they were enjoying or experiencing some physical emotion to the exclusion, for the time being, of all other emotions.

Q: What signs about them would lead you to believe that they were in that abandoned state?

A: Maybe you would know better than I.

Q: You have said you could identify this from certain signs. I am asking you what they are. I do not mean when you are observing somebody in person, when you are looking at a drawing or an illustration.

THE CHIEF JUSTICE: Perhaps the best way would be to show the doctor some of your interesting romances.

MR WANSTALL: He has seen them.

THE CHIEF JUSTICE: He has not said anything about them. There are illustrations in them to which you might perhaps direct his attention.

MR WANSTALL: I intend to, particularly one or two of them, but at a later stage.

BY MR WANSTALL: What are these signs that you recognised in a drawing?

A: An expression of ecstasy; an expression of vehemence. One cannot keep on defining

BY MR JUSTICE MANSFIELD: I suppose, first of all, they would be very close together?

A: Physical proximity.

BY MR WANSTALL: That would be one sign?

A: Yes.

BY MR JUSTICE MANSFIELD: They would have their eyes closed so that they would not see anything else?

A: If they had them open they would probably be seeing visions and fantasies of delight.

BY MR WANSTALL: On what ground do you assume that they would probably be seeing fantasies and visions of delight?

A: From their ecstatic, pleased, abandoned attitude and appearance.

BY MR JUSTICE MANSFIELD: Would it not be more an absorbed look than an abandoned look?

A: I mean an abandoned look

Q: You mean they would be abandoning themselves to that particular time?

A: Yes, an exclusive type of behaviour.

BY MR WANSTALL: Do you recognise that there is a different type of kiss that is called a tender embrace?

A: Yes.

Q: That could be of long duration?

MR JUSTICE MANSFIELD: What do you mean by a "tender embrace"?

MR WANSTALL: As distinct from a passionate one.

MR JUSTICE MANSFIELD: Tender, instead of tough?

THE WITNESS: Perhaps Mr Wanstall means the exhibition of tenderness that a mother might bestow on her child.

BY MR WANSTALL: What about exhibition of tenderness that might bestow on his wife on their wedding anniversary by embracing and kissing her?

A: It is suspect.

Q: You dispute the premises?

A: Not premises, but the honesty of the tenderness.

Q: You do not accept embraces in those circumstances?

A: I did not say that. It was your illustration.

Q: That is the hypothesis I am putting to you.

A: You put a hypothesis to me which concerned two people who have just been married.

Q: No, I did not say they had just been married. I am referring to a wedding anniversary. Make it the tenth or the twenty-fifth if you like.

A: It is a revival of some particular and very important emotional experience in their lives. What I meant was that that tenderness would also convey an element of the man's licence. It would not be just quite an impersonal thing completely devoid of that atmosphere.

Q: It could be of long duration and the two would be in close physical contact. They might even have their eyes closed, might they not?

A: Then I would suspect that the tenderness was drifting into another type of affection.

Q: Take when two young people of honourable conduct and moral integrity have just agreed that they love each other, that they will get married, and they kiss. Does an illustration of that kiss necessarily convey sexual passion to you?

A: There again I should think it would depend on 'the manner. It could, definitely.

Q: If we are putting it in terms of a drawing on paper, it would depend, amongst other things, upon the expressions on the faces?

A: Yes.

Q: And upon the factor of the duration of it?

A: Yes, to some extent.

Q: Would you say that in some cases it would be devoid of any sexual passion?

A: I should think it would be unlikely.

Q: I am talking about the drawing.

A: That would be quite possible. You could draw anything.

THE CHIEF JUSTICE: Did you duration of it?

MR WANSTALL: I referred duration and expression.

THE CHIEF JUSTICE: How is duration shown in drawings?

MR WANSTALL: Perhaps it's not shown in drawings, but it could be shown by accompanying words.

MR WANSTALL: In your affidavit you make frequent reference to adolescents. What age group do you intend to refer to there?

A: What is roughly known as the teenage group.

BY MR JUSTICE MANSFIELD: From 13 to 19 years of age?

A: Yes.

BY MR WANSTALL: You also express the belief that there is a certain group of unstable adolescents in the community, and you add that you believe they are considerable in number. Upon what ground do you state the belief that they are considerable in number?

A: I state that on my experience, plus general information. I think I should say on my experience.

Q: So that within your experience you have met a considerable number of these people?

A: Yes.

Q: What do you call a considerable number?

A: Perhaps 60 or 70.

Q: They are the ones you have personally met?

A: Yes.

Q: From having met them in your experience, you make a deduction that there are others, is that the position? You did not imagine that you met the lot?

A: That is so.

Q: You treat them as a sample?

A: Yes.

Q: What in your opinion represents the total of which that 60 or 70 is a sample in the Queensland community, or to wherever your experience runs?

A: I would not know. The people who came to me are a sample, but what percentage of the total that sample represents, I would not know.

Q: And you have no means of telling?

A: No.

Q: Do you know what the total number of adolescents between the ages of 13 and 19 would be in the community today?

A: No.

Q: Have you any idea of the numerical strength of their age group?

A: No.

Q: That makes it even more impossible for you to assess whether the 60 or 70 you have met are a representative cross section?

A: That is so, It is just a group.

THE CHIEF JUSTICE: Cross section of what?

MR WANSTALL: Adolescents.

THE THE WITNESS: I think they probably are not. I think they probably are a special group.

BY MR WANSTALL: That is the ones you have met?

A: Yes.

BY THE CHIEF JUSTICE: The ones you have seen are not the whole group?

A: No, but I think they constitute a number. How much of the whole group they represent, I do not know, but whatever the total number is, I think it is a special group of adolescents.

BY MR WANSTALL: In what circumstances did you meet those samples?

A: In relation to my professional work.

Q: Carried out in what places?

A: In the psychiatric clinic.

Q: In Brisbane?

A: Yes.

Q: You refer to this group about which you are speaking as being unstable. Would you define that term?

A: By instability relating to those people to whom I have referred, I mean that their emotional reactions are more easily and more readily influenced than would be expected in the majority of people of the same age, same education and other social equivalents.

Q: When you say you would expect their emotional reactions would be more readily influenced, can you say by what stimulus?

A: I should say it would apply to any stimulus.

Q: Any stimulus at all?

A: Yes.

Q: So that a person in this group who is influenced by the stimulus of what is known as a crooning singer is emotionally unstable?

A: Put it this way: a person in this group who was emotionally unstable could be influenced by a crooning, singer.

Q: Would you say that every person who is influenced by a crooner is emotionally unstable?

A: No.

BY MR JUSTICE MANSFIELD: In what way do you say they are influenced by the crooner - by their auditory sense, visual sense, or what?

A: I suppose it would be essentially auditory, but visual, I fancy, must have some influence too,

BY MR WANSTALL: By what other stimulus might this group of unstable adolescents be influenced?

A: Visual.

Q: Visual of what - not a sanitary wagon the street surely?

A: Any stimulus is a factor; for instance, the sight of anything not recognised as being acceptable, or picture, or anything at all.

Q: What are the keys that release these emotions in this group of people? You would exclude a tram ride for instance.

A: Riding in a tram would not prompt an exhibition of instability of emotion

Q: What does?

A: I consider what would be more prone to do it would be something that would tend to influence their instincts.

Q: Such as seeing their mother crying?

A: It could be.

Q: So that any influence of an emotional character would be sufficient?

A: That is what I mean.

Q: And these influences might be of widely differing natures themselves?

A: Yes.

Q: Would there not be some people in that group who would be left quite unmoved by any of these stimuli whereas others would be moved by them?

A: Yes.

Q: So that you cannot even subdivide that group into people who react to A or people who react to B?

A: I should think ore this way - there are some who react to A and some who react to B.

Q: But would not there be in that group people who would never react to B in this way?

A: In degree, but in that group instability of emotional reaction, in my experience, would be evident to some degree.

BY THE CHIEF JUSTICE: No matter what the stimulus?

A: No matter what the stimulus.

BY MR WANSTALL: How does this inability manifest itself when they are aroused?

A: In almost innumerable ways - physical general behaviour.

Q: Do they burst out crying, do they laugh, or what do they do?

A: They could cry, he could laugh, they could go into -excitation episodes, they could so anti-social acts or go into temper tantrums in its myriads of forms.

BY THE CHIEF JUSTICE: I suppose the reaction depends upon the particular stimulus?

A: Very much so.

BY MR JUSTICE MANSFIELD: And I suppose upon the particular individual?

A: And the particular individual.

BY MR WANSTALL: In some circumstances, such people would react to a sexual stimulus?

A: Yes.

Q: And that sexual stimulus could come from any association between male and female?

A: It could.

Q: Such as ballroom dancing?

A: Yes, under certain circumstances.

Q: Or simply going for a walk?

A: Yes.

Q: Holding each other's hands?

A: Holding the hand of some other person.

Q: One holding the hands of a person of the opposite sex?

A: Yes.

Q: And these unstable adolescents were of both sexes themselves?

A: Yes. My experience has shown, what I might express as anti-social conduct which would be related more to social relationship of male and female, is more evident with the female.

Q: These various examples I gave you which you say might release instability, would have the same effect if depicted by illustrations?

A: The same type of effect.

Q: It might not be as intense an effect as if they saw it in person, but this group would derive a stimulus from a picture of two people dancing in one another's arms?

A: There I think we should clarify it by saying that there would be a variation in the intensity of the reaction.

Q: I am concerned with the existence of the reaction?

A: Yes.

Q: Take a couple strolling along the beach, might that have some effect?

A: Yes.

Q: They are the type of people to whom you refer in your affidavit as a certain group of unstable adolescents?

A: Yes.

Q: Have you made any personal study of the effect upon that group of the reading of various types of literature?

A: I have not made a study of it.

Q: Have you observed it?

A: I have observed it.

Q: In your clinic, with patients?

A: Yes.

Q: Have you given them certain books to read and recorded their reactions to those books?

A: No, it has been more the effect of having read.

Q: Is that not what I put to you? You establish that they read a certain book and you record their reactions to it?

A: It is not a systematic study.

Q: Over how many subjects has the study ranged?

A: There has not been a study.

Q: In how many instances have you done this?

A: I think you can say that the reasonable majority of the group of 50 or 60. It is part of the system of psychological tests.

Q: What types of literature did you use for your experiments?

THE CHIEF JUSTICE: The doctor did not say that he gave them books to read. He observed the effect of their having read books.

BY MR WANSTALL: That type of literature did you test by the method you describe?

BY MR JUSTICE MANSFIELD: What types of literature did they read?

A: In the tests we give we have indicators of types of literature read. In my experience the type of literature that had the most emotional effect on this special group was literature that confined itself more to the elementary or primary associations of boys and girls as distinct from any description of sex in a mere physical sense, mere courtship, particularly wooing and that type of thing.

Q: Was that literature straight prose or always pictorial literature?

A: A lot of it was pictorial.

Q: And some, straight prose?

A: It could have been; I cannot answer that.

Q: Have you observed by this method the reaction of such person to the readers of a love story in prose?

BY MR JUSTICE MANSFIELD: As opposed to the pictorially presented one?

A: I do not think my examination would disclose that as the reaction of all the people. I would only discover it in some. I cannot give you an expert opinion on that.

BY MR WANSTALL: You would not be able to say whether people would have any reaction to the prose form of a love story?

A: My opinion is they would have a reaction to it if it was sufficiently repetitive. Associated with this unstable group is generally a lack of intelligence potential or capacity, and with these people the acquisition of knowledge is often a matter of repetitive type training, and the capacity to reproduce very complicated activities is still repetitive type training. Any experience or education that particularises any repetition is more likely to have this effect on this particular group. It is a specialised form of training used for the not highly intelligent members of our community.

Q: Can you say whether this group, or some of them, would react in the way we are discussing to a love story told in prose?

A: It would depend on the manner of telling.

Q: Supposing the love story told of dancing between couples and moonlight canoeing on the river and an association of a plainly innocent and honourable kind, but nevertheless a close association?

A: If I dwelt sentence after sentence and sentence after sentence in simple word picture of a close association I should think on psychological grounds you would expect it to have a bad effect on them, but the ordinary romantic novel that generally goes round has a whole lot of very descriptive dialogue and so on.

Q: It would depend, to some extent, upon the plot or theme - the movement of the plot or theme?

A: I should think so.

Q: The more simple the plot the worse the effect?

A: The more simple the plot and the more repetitive the method of telling the more effective it would be.

Q: Amongst the people in whom you have observed these reactions, did you observe any in relation to the particular magazines set out in your affidavit?

A: No.

Q: In relation to those people you have so observed can you say whether those stories they read were pointed in a good moral?

A: They could have been.

Q: Are you able to say one way or the other?

A: They could.

Q: Do you know the attitude accepted in these stories to the institution of marriage - I don't refer to one marriage?

A: Generally speaking marriage is left as a sort of background achievement the stories.

Q: Did the stories convey that marriage is a desirable end?

A: Yes, in an idealist fashion.

Q: Did the stories exalt the marriage state?

A: I should say they presented it as something desirable to ordinary decent people.

Q: Were the stories entirely free of any immoral conduct on the part of the people depicted in them?

A: Mostly.

Q: Occasionally not?

A: Occasionally not.

BY MR JUSTICE MANSFIELD: Sexually immoral?

A: I mean sexually immoral.

BY MR WANSTALL: What types of characters were depicted in these stories with which your associations were associated?

A: Do you mean the age group?

Q: A good type or bad type?

A: On the whole, a good type; blatantly not bad.

Q: Would a reader be in doubt as to whether they were people whom it was desired to emulate?

A: Oh yes.

Q: Every character was not so clearly drawn as to convey without doubt that they were morally acceptable and upright people?

A: No, not clearly labelled bad or good.

Q: Did those stories, with which your observations were associated, make the point that honesty and virtue triumph over villainy and intrigue?

MR JUSTICE HANGER: Not in so many words.

BY MR WANSTALL: Did they convey that as the moral?

A: Some would.

Q: Of those that would not, would any convey the reverse - glorify wrongdoing?

A: By inference.

Q: Of course, all the time depicting an association between members of the opposite sexes in that background?

A: Yes.

BY MR JUSTICE MANSFIELD: Not associated with crime horror or violence?

A: Not necessarily although I think some were, incidentally.

Q: In observing this group, did you take into account what other interests they had other than the reading of the sort of stories you described?

A: Yes.

Q: What were the interests of these people?

A: That is very important. Their interests were practically nil.

Q: Would you consider that that normal state - to have no other interests?

A: No.

Q: Ordinarily you would expect an adolescent to be interested in sport?

A: Yes.

Q: To be a participator in it?

A: Yes.

Q: And to have some preoccupation either school lessons or earning her living?

A: Even to the exclusion of intensive interest in the opposite sex.

Q: Did you ascertain anything about the home life and the background - the kind of home that these people came from?

A: Yes. In many cases it was poor.

Q: Would you agree that it is the greatest single factor in making for what is generally known as delinquency in adolescents?

MR JUSTICE MANSFIELD: Or the lack of influence in the home?

BY MR WANSTALL: Either a positively had influence or the lack of a good influence?

A: It could be positively one way or the other, yes, I think so.

Q: Most of the subjects of your observations had such a background?

A: Yes.

Q: Had you any means of checking their record of truancy at school?

A: With some of them, yes.

Q: What did you find?

A: Irresponsibility of behaviour.

Q: And a history of truancy?

A: In some cases.

Q: I think you said that in a number of cases or a lot of cases you verified that the home background was a bad influence. Did you go so far as to isolate or identify the nature of that influence? For example, were the parents separated, or were they drunken or immoral themselves?

A: Yes, and the general conclusion was that the type of situation, as you have described some examples of, was not so relevant as any condition that produced insecurity in the home sphere.

Q: Whatever the cause, if it resulted in insecurity, that was a contributing factor?

A: Yes.

Q: The people whom we have been discussing are typical examples of those who react in this unstable way reading this type of literature?

A: Yes.

Q: Other than that group, would you say that any other adolescents would exhibit such a reaction?

A: No. I would be surprised if they would read it.

Q: Did you make any attempt to identify whether it was the reading of this literature or the influence of that bad environment that resulted in the instability that you refer to?

A: I would say the instability was there, that it was not produced by the bad literature.

Q: You would not say that the literature itself could produce that state of instability?

A: No.

Q: But given the state of instability, the literature could unlock it?

A: Could, yes.

Q: Having unlocked that emotional instability, are you able to say in any given case that the resultant action on the part of the person was a sexual lapse, of the commission of a crime or anything of that sort?

A: No, but our clinic tests would indicate that in the type I have in mind, the tendency would be for instinctive action to become a more controlling determinant of conduct. As sexual behaviour is a very strong primary instinct, we find that these people tend to exhibit aberrant sexual behaviour more than other types of anti-social behaviour.

Q: Did you establish such sexual misbehaviour in any one of those subjects?

A: Yes.

BY MR JUSTICE MANSFIELD: I presume that the subjects of which you are speaking had all been guilty of some misbehaviour before they came to see you?

A: Yes.

Q: It was investigating their background that enabled you to discover these things?

A: That is so.

BY MR WANSTALL: Could you say that those people would not have manifested that aberration of sexual behaviour except for reading this sort of literature?

A: No.

Q: The chances would be that the behaviour would result whatever literature they read?

A: No, they would be influenced by literature predominantly presenting a particular theme, and repetitively presenting a particular theme.

Q: That is not an answer to my question. I asked you whether it would not be so that their sexual misbehaviour would result even if they did not read any literature?

A: I said "No".

Q: Are you able to point to any evidence to establish that conclusion, to trace it to the literature and nothing else?

THE CHIEF JUSTICE: He does not say "nothing else".

BY MR WANSTALL: I concede that you said that without the foundation it would not be possible to assume the foundation, but can you trace the misbehaviour to the reading of the literature rather than to some other influence coming on top of that foundation?

A: Not exclusively.

Q: You are simply drawing a conclusion in which you condemn the literature?

A: No, I am drawing a conclusion in which I am of the opinion that certain types of pictorial literature are aggravating or predisposing to a particular type of anti-social behaviour in a particular and special group of people.

BY MR JUSTICE MANSFIELD: A contributing cause?

A: Yes.

BY MR WANSTALL: You are not able to identify it as the only cause?

A: No.

Q: Would you be able to say that without this contribution, they would have been free from that misbehaviour?

A: No.

BY THE CHIEF JUSTICE: All you can say is that the literature would have a tendency to –

A: Yes.

BY MR WANSTALL: A tendency to do what?

A: A tendency to encourage them to instinctive behaviour that would not be acceptable socially.

Q: There would be a dividing line between literature in relation to this influence? Some literature would have that influence, while some would not?

A: Some would not.

Q: Would all literature dealing with the association between man and woman of a close social kind have that effect?

A: Not all, no.

Q: Would literature that was given to relating the incidents in the course of a courtship that results in marriage, and the social contacts that are usual to that, be of that kind?

A: Yes, providing it was sufficiently repetitive, and particularly if it was pictorial.

Q: If this influence was operating in the presence of a number of counter influences, what would be the result?

MR JUSTICE HANGER: He might like to know what the counter-influences are.

BY MR WANSTALL: Influences that to produce a result other than that – the normal activity of earning ones living, engaging in sport, going to church and so on?

A: I think I can answer you by saying that in an effort to make these people socially acceptable - this particular group - the counter-influences are the methods we employ.

Q: What are they?

A: Such as you enumerate: other interests, religious interests, security in the home, economic interests, endeavours to improve their educational status and so on.

Q: Do you find that those methods normally succeed in their objective - this training campaign that you speak of?

BY MR JUSTICE MANSFIELD: What percentage of success do you have?

A: The successes are achieved where we can get some stable situation for the person, but the results are not good.

BY MR WANSTALL: So that despite all these good influences brought to bear deliberately upon these people -?

A: By us.

Q: By you; you do not succeed in redeeming them in the majority of cases?

A: No, I would say that in a number of cases we do not succeed.

Q: Could you say whether it is a majority of cases, or less than a majority?

A: It would be less than a majority.

Q: So that within this group there are a considerable number of people whose character already is such that it is impossible to redeem them by these good influences?

A: Yea.

Q: They represent a considerable portion of the group upon whose reactions your affidavit is based?

A: Oh yes.

Q: Have you a copy of your affidavit?

A: No.

(Handed to witness).

Q: Would you just read Paragraph 9 please?

A: (Witness does as requested).

THE CHIEF JUSTICE: This is the first affidavit?

MR WANSTALL: Yes, the other is simply a formal one.

BY MR WANSTALL: What is the modus operandi which you say is continually suggested?

A: In embracing, kissing, close physical contact - the subsidiary elements of sexual conduct.

Q: You say then that the whole essence of the publications is that physical contact is something glamorous and desirable?

A: Yes.

Q: In reaching the conclusion that that element to which you refer is the whole essence of the publications, what was your process of reasoning which got to that result?

A: Reading the publications.

Q: Did you observe that there was a consistent theme in every one of them that a happy marriage is attained through true love?

A: In certain ones I did.

Q: In certain ones. Now that you have made that statement, I want you to indicate one in which that is not the theme. I am not suggesting that they all finish at the altar; but indicate any one in which the theme is not that happy marriage is attained through true love?

A: My impression was that there were -

BY MR JUSTICE MANSFIELD: Did you read them all?

A: I didn't study them all, no.

BY MR WANSTALL: Which ones did you study?

A: The exact ones I don't know. I had a whole lot of them. I spent two or three nights reading them through one after the other. I couldn't identify them.

Q: Amongst those that you read you are claiming that there are some in which that is not the theme?

A: I have that impression, yes.

Q: I want us to understand each other. I am not putting to you that every one of them finishes at the point where the couple get married; that is not what I am putting to you.

BY MR JUSTICE MANSFIELD: First of all, did you read any copy other than these eight we have before us? About how many copies did you have to study? Do you know?

A: I don't recall how many. There were such a lot of them.

Q: I think we have eight before us.

MR HART: The second affidavit says he read, first of all, the eight Mr. Wanstall produced and after he had read those, the other ones we have annexed to the second affidavit. I do not know if he read them.

MR WANSTALL: His affidavit also says that he has read some which were not published at the time of the Board's order being made.

THE CHIEF JUSTICE: Sixteen others

BY MR WANSTALL: In those you have enumerated in your affidavit – I think His Honour the Chief Justice count them as 16 – did you...

MR HART: Sixteen plus eight.

BY MR WANSTALL: Did you analyse the content of each story in them?

A: No, I will have to admit I did not analyse the content of each story. I read through them and obtained a general impression really.

Q: Would you agree that the stories point to the moral that honesty and virtue triumph?

A: I would think so. Lots of them did, anyway.

Q: Then, in view of the presence, at least in a lot of them if you will not accept my suggestion that it is in all of them, of the theme that happy marriage is result of true love and in view of the moral, which you accept as present in a great number of them, why did you make the statement that the whole essence of them is that physical contact is something glamorous and desirable?

A: Because of the reward that follows. You see, you have your acceptable status of marriage as something achieved socially as a result of some casual acquaintance with some youth. Then there is a series of incidents where they embrace, hey kiss, they have passionate scenes, I believe, sometimes. That does not end up satisfactorily but they retrieve the situation in some way and ultimately in, a correct end I think, the majority of them anyhow, there.

Q: Yes, but the physical contact to which you are referring in this paragraph means kissing and embracing, does it not?

A: Yes.

Q: Do you not recognise that all of the stories contain the movement of a plot, however unsettled it may be? There is a sequence of incidents and happenings which are not related to kissing and embracing?

A: Yes.

Q: And isn't the object of that to provide continuity in the story of progress of the love between the characters?

A: My opinion was that the emphasis was not so much on the progress as a story; but the repetition of incidents of close personal contact.

Q: Is that a generalisation that you are making about all of them that you read?

A: Yes.

Q: Do you recall reading a story about a nurse is a hospital nurse with a blind Air Force pilot?

THE CHIEF JUSTICE: In which one is this?

MR WANSTALL: I have not picked it up.

MR JUSTICE MANSFIELD: It is in New Romances No.18A.

THE CHIEF JUSTICE: "Once in a Lifetime", is that the one?

MR JUSTICE MANSFIELD: Yes.

(Shown to the witness)

BY MR WANSTALL: Do you recall reading that story?

A: Yes.

Q: Would you say of that story that the whole essence of it is that physical contact - that is kissing and embracing -is something glamorous and desirable?

A: Not the whole essence. It forms a big proportion of it.

Q: You would not say it was the whole essence. Would you say of this story that it indicates a very high moral tone?

A: There is certainly that moral tone running through it, yes.

Q: Are you making that statement grudgingly or are you accepting that there is a high moral tone in it?

A: I am making it with a certain proviso, you see, because my impression still is that even in this story there is an emphasis on physical contact.

Q: As far as I can discover - I would like to be corrected if I am wrong - there are three illustrations which depict kissing in this whole story. Is that correct?

MR JUSTICE MANSFIELD: On which pages do you say they are?

MR WANSTALL: On page 3 there is one.

BY MR WANSTALL: I treat that as being, a repetitive one which I have included later on.

A: Page 1; 2, that is practically it...

Q: On page 1 you said?

A: Page 1; page 2, very close physical contact there in that last one, page 3; the fifth page at the top.

Q: Where he is wearing dark glasses?

A: Over the page.

Q: That is the scene which I am suggesting to you is a repetition of the keynote that is struck at the commencement. You see, the first one is intended to be an illustration of what is to follow, a synopsis of what is going to happen.

A: But still it...

MR JUSTICE HANGER: It is giving the essence of the story.

MR JUSTICE MANSFIELD: The climax of the story.

THE WITNESS: It is advertising the important feature of it.

BY MR WANSTALL: Which would you say would make the most impression upon the mind, the look of grief on the face of the nurse or the embrace that is going on in the background?

A: In the particular people I have in mind I would say the embrace in the background.

Q: You think their condition of mind would enable them to transpose the relative importance?

A: Yes.

Q: But you would not expect that on the part of a person of normal reactions?

A: No.

Q: Would you go so far as to call them perverts?

A: No.

Q: Would you call them morons?

A: Not all of them.

Q: Would you call them subnormals?

A: Some if they would be, and some would be moronic.

Q: The others could be what?

A: In the normal average class of intelligence.

Q: But subject to this emotional instability that the background influences?

A: Yes.

Q: Are you suggesting that in reading this story that group would receive no other stimulus but from the kissing scenes you have pointed out?

A: No, I would not say that.

Q: What other stimulus would they receive?

A: I should say the stimulus they would receive from the kissing scenes would be the most important stimulus.

Q: What would be the effect of that stimulus upon their character?

A: The stimulus would be to suggest to them that this personal contact type of behaviour was something that someone was deriving some comfort and pleasure out of, and suggesting to them that they might copy it.

Q: Up to that point, you would not say the effect of that stimulus was to deprave or corrupt them?

A: No.

Q: Take the first story in "Romance Story" No.24. It is called, "Our Hearts Desire". Is the theme of that story not that of a well-brought up girl prefers simplicity and decency to the false attractions of city life?

A: Yes, I should say so.

Q: Can you point to anything in the physical representations of the characters that is repulsive or degenerate in any way?

A: No.

Q: Do you say that the whole essence of this story is that physical contact, meaning kissing and embracing, is something glamorous and desirable?

A: I would say it is a big essence of it, anyway.

Q: Not the whole essence?

A: No. The last two illustrations are the thing to be achieved. My opinion is that this particular type of people I have in mind would emphasise those last two illustrations to mean that the physical contact was the thing to be achieved rather than the theme that hangs the story together.

Q: Those two scenes illustrate the actual betrothal of the couple, do they not?

A: That is how you and I and the majority of people would interpret it.

BY MR JUSTICE MANSFIELD: You say this class would interpret it otherwise?

A: Yes. They would emphasise the sexual significance of the climax.

Q: And they would obtain some sexual stimulus from it?

A: Yes.

BY MR WANSTALL: Which in many cases would stop at a mere stimulus?

A: Yes.

Q: Take the next story called "Dear John". Do you agree that the moral that is pointed by this story is to laud the virtue of faithfulness?

A: Yes.

Q: Do you agree that there is nothing dissolute in the illustrations of the characters as physical specimens?

A: Yes.

Q: Do you adhere to your statement in your affidavit that the whole essence of that story is that physical contact, meaning assessing and embracing, is something glamorous and desirable?

A: Yes.

Q: Despite that good moral and the movement in the story?

A: Yes.

Q: But that would only be to the very limited group you are speaking?

A: Yes.

BY MR JUSTICE HANGER: But to the normal individual, would you say that statement would not apply?

A: It would not apply.

BY THE CHIEF JUSTICE: I suppose you would not expect the normal individual to be reading the story?

A: No, I would not.

BY MR JUSTICE MANSFIELD: But if the normal individual did, you say it would not apply?

A: It would not apply.

BY THE CHIEF JUSTICE: You would not regard the illustration on the first page of the story, at the bottom, to be indicative of the best kind of conduct for a 17 year old girl?

A: No, particularly a girl who was unstable and in her instability was being inspired by her own instinct. That particular illustration is very intimate, and the title of the story is intimate – "Intimate Love Stories". That emphasises what I say.

BY MR WANSTALL: But is not that scene at the bottom of the page intended to show a parting between this young couple when the young man goes off to serve in the army in Korea?

A: Yes.

Q: Would you not say that would be apparent to even the group you have in mind?

A: No. I think the group I have in mind would say, "This young girl is very fortunately in a position to, socially, and in the approved fashion, exploit what I" - that in, the girl reading it - "would like to do."

Q: That would be the reaction of this person?

A: Yes.

Q: Would you say that reaction would result in depraving the character of the person who registered it?

A: No, but it would tend to emphasise her instinct in the sexual direction in a person one would calculate least likely to be able to control it.

BY MR JUSTICE HANGER: You mentioned the effect on a normal person. Do I understand that your idea is that if a normal adolescent picked this up and read one or three pages of it he probably would not finish it?

A: He or she would not finish it. I have made no test of the normal.

BY MR WANSTALL: There is a story in "Real Love", No.30, entitled "The Long Dead Past". Would you agree with me that this story is a complete vindication of the sanctity of marriage.

A: No. It is a peculiarly presented story, if I have the hang of it correctly. I think a girl marries somebody or other yet her affections are centred on somebody that she not married.

Q: She believed it was so?

A: The story makes quite a play on that, almost emphasising, particularly the reaction that could be experienced by dwelling on the experience that would follow an illicit...

Q: Don't you appreciate the character returns and she meets him and she realises her feeling for her husband is the real emotion and she rejects the other?

A: It goes through an emotional experience particularly that I think to this particular group would make them inclined to say, "Let us have that experience," rather than appreciate the sanctity of marriage.

Q: If they had that experience it would be they would marry a decent honourable young man, and if they were in love with somebody else, they would remain faithful to the husband and ultimately come to appreciate that he was the person that she really loved?

A: They could but they could have the emotion that they could still finish up and marry an acceptable person.

Q: Does this story contain illustrations of the kind referred to in your affidavit which would be seized upon by these peculiar people and given sexual implication?

A: It is not so obvious as that there.

Q: There are no illustrations of that kind?

A: I refer to some of these too.

Q: Show them to me.

A: On the second page here are quite a number showing the intimate relationship between a male and a female.

Q: Who in the story are affianced couples?

A: Yes, but the emphasis in pictures is the close physical contact.

Q: One shows them dancing in the ballroom?

A: Yes.

Q: And another one shows them walking in the grounds of what seems to be a home?

A: Yes.

Q: The one in the middle on the left shows what is meant to be represented as a dream she is having about her future life at home with her husband. He is depicted as reading a newspaper in a lounge chair whilst she appears to be lighting his pipe. Do you say that picture is capable of conveying to a pervert an improper stimulus?

A: I do not say that these people are perverts.

Q: And I am saying, even to a pervert?

A: I am still talking about this group.

Q: Would that convey to this group this improper stimulus you are talking about?

A: It has that same trend – the whole thing.

Q: And therefore must you not say that any picture of a man and a wife in their home in those circumstances must have that meaning to this group?

A: I do not agree with that. You have to appreciate the whole presentation. In my opinion the essential thing is fantasy and they go through an emotional experience built on these things. On particular picture might be bad or good. I do not think that is significant enough as much as the whole story from which they fantasise and read that the people are going through certain episodes or experiences and then the incentive is, "Can we produce them in real life?"

Q: It is the result of a fantasy by an unhealthy mind?

A: Yes.

Q: It is only by fantasy to unhealthy minds that you get that?

A: Yes.

Q: There are a number of other illustrations referred to in the course of this argument. Take "Popular Romance", 17A, and look at the fourth page where you see a picture of a couple kissing. In the picture on the bottom left-hand corner there is a couple kissing, associated with this wording, "And then his lips were eagerly pressing on mine" What do you say as to that kiss?

A: I should say it is a kiss of passion.

BY MR JUSTICE MANSFIELD: The one with the charged atmosphere round it?

A: Yes.

BY MR WANSTALL: These things have been referred to as mosquitoes, stars and constellations of some description, but what do you say that the background means?

A: I do not know what it means, symbolical or any other way, but certainly I say it is a background designed to emphasise the actors.

Q: That the whole world is spinning around?

A: Emphasising the fact that a kiss is making the world spin.

Q: What else makes you say that that a passionate kiss?

A: The eagerness.

Q: Where is that shown?

A: "And then his lips were eagerly pressing on mine." That desire could be interpreted by these people as positively sexual desire. "All dreamed it to be; the world spun round as I clung to him." Every second indicative of passion or extreme emotion.

Q: Supposing it is indicative what would be the reaction of one of your group of people reading it?

A: They would like to do the same.

Q: Would you say that the desire to do the same would deprave or corrupt?

A: It could. They would not be so particular about the ethical background as the actual fact.

Q: Would you say that looking at that, they would drop it and rush out into the street and do this?

A: No.

Q: When would they do it?

A: As opportunity offered.

Q: They would store it up in their minds and do it as opportunity offered?

A: Yes.

Q: Supposing they had already done it half a dozen times before they read this?

A: I would think that then they would be more anxious to do it again.

Q: Would you say that they would not do it if they did not see this?

A: No.

Q: In "New Romance", No. 18A, there is a story called "You Can't Lie About Love". It is about the golf professional and the newspaper reporter. There are two pictures in it that have been referred to in the course of the argument. On the fourth page of the story, at the bottom right-hand corner, there is a picture of a couple whose faces are ringed?

A: Yes.

Q: That picture has been referred to as indicative of passion. Would you agree with that?

A: Yes.

Q: Would you agree that it is a kiss that is taking place in the open air on a golf course? Having regard to the sequence of events - do you see the background of the one just before the kiss starts?

A: I do not think it is clear where it would be.

Q: You would not agree that it is take place on a golf course in

THE CHIEF JUSTICE: Do you near in front of the audience?

MR WANSTALL: No, I cannot see any audience.

THE CHIEF JUSTICE: I was wondering why you say that the locus is a golf course.

MR WANSTALL: The story is about a golf professional, and in the preceding picture one can see what I would take be a flag on a green.

MR JUSTICE MANSFIELD: It might be a golf course other than on a Wednesday afternoon or a Saturday or a Sunday.

THE CHIEF JUSTICE: The characters are not clothed in golfing costume, I should say.

MR WANSTALL: I am not suggesting that.

BY MR WANSTALL: In that illustration, can you see any repulsive expression on the face of either?

A: No.

Q: Can you see any ecstatic expression?

A: yes.

Q: Where do you see that?

A: Particularly on the girl.

Q: Because she has her eyes closed?

A: Her general attitude is one of ecstatic abandon, I would think.

Q: Turn to the end of the story. Again they appear on the golf course. This is the time where the camera is broken. From the context, would you agree that they are kissing in the presence of a newspaper photographer?

MR JUSTICE MANSFIELD: They do not know he is there, do they?

MR WANSTALL: They smash the camera.

THE CHIEF JUSTICE: After he has taken the photograph.

BY MR WANSTALL: Would you say that the last illustration is indicative of passion?

A: No, but I would say it is indicative of a person trying to recover the ecstasy.

Q: Would you say it is indicative of a becoming-engaged kiss between two honourable and decent young people?

A: No.

MR JUSTICE MANSFIELD: You had better explain that.

BY MR WANSTALL: Two people whose behaviour has not in any way in this story suggested any lapse from moral rectitude. They become engaged and are sealing their betrothal with a kiss. Would you not agree that that is what it conveys?

A: It could, but it also conveys that a very important part of it is "We kissed fiercely, trying to erase the past in one single ecstatic moment." I think that is an emphatic part of that portrayal.

Q: What effect would those two pictures have upon the mind of the group you speak about?

A: To glamorise physical contact; to make them desire to emulate them.

Q: Would you say that the stories as a whole would wake them desire happy marriage?

A: Not this group, no.

Q: They would close their eyes entirely to that then?

A: I think so.

Q: Would you say that a group that is capable of that reaction is capable of blinding itself to the real nature of any story?

A: No.

Q: Would you say that it is capable of blinding itself to the real nature of any of this type of story?

A: Yes.

Q: Any love story that depicts social physical contact between man and woman would produce that perverted reaction?

A: Particularly if it was emphasised pictorially, as these things do.

Q: Even if it was not, would it have that result?

A: Not to the same extent.

Q: But it would have a result?

A: It could, yes.

Q: These people have the capacity for selecting out of a story, whether pictorial or prose, just such incidents as they wish to select, and of giving them the whole of their attention?

A: No, you could not represent it as a conscious, intelligent selection of something.

Q: I will not use that word. These people are such that their condition results in the selection? It is an automatic process rather than a conscious one?

A: Yes.

Q: In Paragraph 10 of your affidavit you say, "The episodes portrayed in the publication almost invariably have the conventional 'happy ending'." Will you be a bit more specific about that? Do you mean that they end in a happy marriage?

A: I do not think they all did, but they all ended on a note of conventional approbation.

Q: You say that that conveys "the idea that despite what might be misbehaviour of the characters involved, no harmful results will ensue". What are you referring to in the expression "misbehaviour of the characters involved"?

A: I had in mind two things: one, misbehaving in the sense of these physical contacts we have been mentioning, and misbehaviour in the sense of somewhat irresponsible social contact.

Q: Take the two separately. Do you express the opinion that kissing between people in love constitutes misbehaviour?

A: No.

Q: Do you say that there is some other characteristic about the kissing here that makes it different from the way in which I put to you?

A: Yes.

Q: What is the characteristic?

A: The emphasis on the kissing.

Q: But it is not a matter of the emphasis given by the artist. You are characterising the conduct of the characters. You are saying that the conduct of the characters in the stories constitutes misbehaviour?

A: Yes.

Q: I am asking you what conduct constitutes misbehaviour?

A: The manner in which these personal close—contact associations are portrayed.

Q: Are you ignoring the fact that in most cases these contacts are either between couples already engaged or couples who shortly after in the story become engaged?

A: No, I have that in mind, too, but I consider that that theme in the story is not the one that is going to appear to these people that I have in mind. Rather, their various excursions into romantic episodes.

Q: Does not that opinion mean that if a young girl is escorted home from a dance and is kissed at the gate she is misbehaving?

A: Not necessarily, but she might be irresponsible.

THE CHIEF JUSTICE: Are you suggesting that there is no difference in character between different types of kisses?

BY MR WANSTALL: A kiss at the gate, tenderly and affectionately accompanied by an embracing?

A: What was the full question?

Q: A young girl who is escorted home from a dance — she is kissed at the gate by her escort in that way?

THE CHIEF JUSTICE: You are not referring to one of these fierce kisses?

MR WASTALL: No, I leave them as not being representative.

THE CHIEF JUSTICE: You are excluding them?

MR WANSTALL: I am excluding them as not being representative of the embracing that on the whole is depicted throughout these stories.

THE THE WITNESS: I would have to agree, of course, that with to nice young boy and the nice young girl, as you say, quite all right.

BY MR WANSTALL: Supposing they allowed their kiss to generate passion and she then said, "I must run in now", and closed the gate and went in, would you say that was misbehaviour?

A: Not of itself, no.

Q: But some person, because of his mental and emotional make-up could translate it into misbehaviour?

A: Yes.

Q: Could give it that twist?

A: Yes.

Q: In other words, he could distort it?

A: Yes.

Q: To what are you referring when you make reference to "undisciplined social behaviour of adolescents"?

MR JUSTICE MANSFIELD: In paragraph 10?

MR WANSTALL: Yes. I think that was the second branch.

THE THE WITNESS: I had in mind two things there which were conveyed by some story. I just do not remember which ones they were. One was of a girl, a teenage girl, who developed some attraction to a boy at school. Her parents had to leave that particular town and she, of course, perforce had to leave with them. She was terribly distressed at having to leave. She blamed her parents and made herself and the home miserable. One week-end she decided that she would return to her previous town or school, which she did, certainly under the chaperonage of an aunt who was there. But she ran away from home. She came back, certainly, realising that her escapade was fruitless and valueless.

BY MR WANSTALL: And she repented?

A: But the story really is built up around this type of behaviour. It is in that sense the adolescent's irresponsibility that is obvious there. Then I remember -
-

Q: Just before you leave that - are finished with that one?

A: Yes.

Q: In that story was she not repentant and contrite?

A: Yes, it all ends up very well.

Q: Isn't that the tone of it - "Here is a silly thing. Don't do it, girls. You will only be sorry."?

A: No, I would say that the interpretation to these folk I had in mind would be if you do thing it will end up all right.

Q: What was the other instance of undisciplined social behaviour that you had in mind?

A: The emphasis in a number of the stories – I think I am right in saying a number of the stories – in which contact between the girl and boy is made in the typical American type of dating pick-up sort of business. In the more disciplined organised home, I feel – perhaps I am old-fashioned – that they would not be so frankly encouraged. We expect the children to have these social acquaintances - doubtless; but there would be no semi-secret assignation.

Q: Can you recall any story in which there is any secret assignation against the wish of a parent?

THE CHIEF JUSTICE: Parents do not seem to come into most of them, do they?

MR WANSTALL: No.

THE WITNESS: My interpretation of this pick-up business--

BY MR WANSTALL Would you agree that in most instances the girls are working for their living? They are stenographers, shop-girls and people of that type?

A: Some of them are stenographers.

Q: You mean at the co-educational college in America?

A: Yes.

Q: Then do you say that that sort of conduct, or a desire to emulate that sort of conduct would in itself tend to deprave a person registering that desire?

A: The desire to emulate it?

Q: Yes.

A: Yes.

Q: The desire to emulate this would, in fact, itself deprave the person?

A: This particular person, yes - the desire to copy.

Q: I do not mean translating a desire into action, but the desire itself - the reaction of this is a thing I would like to do?

A: I do not see how you can distinguish very clearly between, or determine a lee-ire that never goes beyond a desire, and a desire that is translated into action. I think the translation, or the incentive to translate into action is automatic.

Q: From the background of the character of this group of people, would you not agree that it would be extremely likely that they had already done this sort of thing habitually themselves before they ever read one of these magazines?

A: I think that is right.

Q: Wouldn't the reaction be, "Well, this is normal because we have always done it."

A: No, the reaction, I think, would be, "What we have done, allegedly stated to be incorrect by people, must be right because it is done here."

Q: That reaction, you say, would come from an appreciation of the content of the story rather than from the illustration only?

A: Yes.

Q: So it would be true of any love story written in prose in which the same incidents occur?

A: That could be it.

Q: In relation to your paragraph 11, you speak about, "the underlying theme of sex throughout the publication is conveyed by constant repetition and in an insidious rather than a blatant manner so that its influence tends to impinge unconsciously on the senses." Are you intending by that to indicate that if there is a theme of sex in these at all - assuming there is one - it is only an underlying one?

A: Yes, it is not blatant.

Q: Do you agree then that there is no direct reference to anything of a sexual nature as usually understood?

A: Yes.

THE CHIEF JUSTICE: What do you mean by "direct reference to anything of a sexual nature"?

MR WANSTALL: I thought the doctor understood the question.

THE CHIEF JUSTICE: But I did not understand it.

MR WANSTALL: I put it in this way - I think the doctor got my meaning - that the stories do not speak about or depict any relations between the sexes which conveyed that they were having any sexual relations between them.

THE CHIEF JUSTICE: You mean sexual intercourse?

MR WANSTALL: Yes.

THE CHIEF JUSTICE: That is what I took you to mean.

BY MR WANSTALL: Would you agree that the stories do not even by innuendo suggest any reference to the sexual relation as such, as having happened any time between any of these characters?

A: Oh no.

Q: Then take your next paragraph and keep in mind the answer you have just given me. I do not challenge your reference to the susceptibility to sensually received influences, but go on to the next part. You say that these publications would in the certain group of unstable adolescents that we have identified engender the desire to seek similar experiences to those portrayed. What do you mean by, "similar experiences"?

A: The meeting of a boy, the kisses, embraces and physical contacts as portrayed.

BY THE CHIEF JUSTICE: Fierce kissing in which they try to erase the past in one single ecstatic moment. That type of thing?

A: That type of thing, yes.

BY MR WANSTALL: Now, assuming they engaged in one of those incidents one night, what effect would it have on their character in your opinion?

A: The effect it would have in my opinion is that the behaviour would likely proceed a stage further.

Q: It would not stop there?

A: It may not stop there.

Q: That would be because of their already degenerate character and homes?

A: Yes, because of their instability.

Q: What forms of immoral sex behaviour have you in mind in your next statement?

A: The kissing and embracing; nothing more than that.

Q: Is it fair for you to characterise that as being immoral sex behaviour?

A: Stimulate them to forms of immoral sex behaviour.

Q: You see, you do not go so far as to say it would stimulate them to indulge in illicit sexual intercourse, you speak about forms of immoral sex behaviour. I am asking you what you mean by that?

A: When you asked your question before I thought, or I interpreted it as meaning, you were asking me whether these actual publications portrayed the form of immoral sex behaviour.

Q: You misunderstood me; I am sorry. I am asking you now what you mean in that segment of your statement which say, "Stimulate them to forms of immoral behaviour"?

A: I mean sexual intercourse.

Q: Why did you not reach the conclusion in relation to this group of people that the desire to emulate the characters in these stories would inspire them to see a happy marriage?

A: Of course, I think the emotional experiences that are portrayed, resulting from these physical contacts, are emphasised pictorially to an extent that these people would wish to emulate order to capture that portrayed experience irrespective.

Q: Yes, but that really, with respect, as I understand you, does not answer my question. Why would you say they would not get the proper decent reaction, or the desire to have a happy marriage, the same as the people in these stories? Why wouldn't they get that?

A: Because in this particular class of people that portrayal of physical contacts and the portrayed emotional benefits that would come from it would both overshadow any consummation of marriage or recognised social conduct that might end up. In other words, it is the result of their single-track minds?

A: This particular group, yes.

BY THE CHIEF JUSTICE: Do you think that if they reached the stage of kissing fiercely in the manner portrayed and forgetting the past in one ecstatic moment, they would also forget they should not go any further.

A: Yes.

BY MR WANSTALL; But that is only because of their already degenerated character that they would react in that way?

A: That is the ones I am speaking of.

BY THE CHIEF JUSTICE: They are unstable emotionally?

A: Yes.

The Court adjourned until 2.30pm

The Court resumed at 2:30pm

BY MR WANSTALL: Has this group of people we have been discussing have any association with institutions?

A: No.

Q: How do you come in contact with them?

A: They are referred to the Psychiatric Clinic by other medical practitioners, parents and organisations.

BY THE CHIEF JUSTICE: The Psychiatric Clinic functions in the building next door to this?

A: Yes.

Q: Does it consist of a panel of several people?

A: It consists of several doctors and psychologists.

BY MR WANSTALL: Did you establish that in these people, or some of them, there was a history of previous immoral sexual behaviour?

A: I do not think we established that.

Q: But is it a fact?

A: I think it would apply to some.

Q: Can you say how many?

A: No.

Q: Could you exclude it from any?

A: Yes.

Q: In testing them, do you expose them to any influences, other than literature, or test their reactions to other influences than literature?

A: Yes.

Q: What other influences?

A: They would be the standard psychological tests.

Q: Of what description?

A: There would be tests with reference to establishing their standard of intelligence, tests with reference to establishing their social adaptability, tests to ascertain their emotional reactions to situations to give us an indication of their stability, as to whether intellectual or instinctive urges were the more dominant factors in their behaviour.

Q: How would the group of people we have been discussing react to photographs that are reproductions of scenes from films showing amatory embraces - in the same way as they would to these?

A: I should think so.

Q: How would they react to this sort of kissing close-ups you see on the screen -in the same way?

A: The same way, particularly if it was repetitive.

Q: Take the advertisements that appear in daily newspapers showing displays of female figures and male figures in underwear and intimate garments of that sort. How would they react to that type of illustration?

A: Not appreciably.

Q: Because they are females?

A: Mostly because they are females and mostly because these portrayals are individual.

Q: The sort of thing I am referring to is where there is an illustration of a figure that is intended to be a human figure wearing this type of underwear. Is that how you understood it?

A: Yes.

Q: How would adolescent males in this group react to that sort of thing?

A: I think definitely some of them would react adversely to it.

Q: So that if we were considering publications that had an appeal to adolescent male, more particularly than to the adolescent female, you would expect a similar reaction?

A: In some of them.

Q: Would you expect the exposure of the human body as it exposed on beaches in this State to have any influence on them?

MR HART: I object to this examination because it is irrelevant and referred to Ryder's case.

THE CHIEF JUSTICE: It is relevant to prove that there are other things that are equally objectionable, but I cannot see that it is of any great value.

MR HART: You have to start somewhere and if my friend's argument is right, you could never start anywhere to clean anything up.

MR WANSTALL: I take it Your Honour is not ruling against me.

THE CHIEF JUSTICE, I am not stopping you, but I cannot see it is of any great value.

MR WANSTALL: There are other aspects on which I think I can make this line relevant. They are aspects relating to the proper interpretation to be given to the section; in other words, whether the Court can be guided by the reaction of this isolated group.

BY MR WANSTALL: In your affidavit you set out certain extracts from a report made in New Zealand, and then you make certain statements concerning it?

A: Yes.

Q: Take your Paragraph 16. You agree with the conclusions of the committee with regard to the attraction of adolescents and some adults, to many of the so-called comic books?

A: Yes.

Q: You appreciate that this committee did not examine the particular literature we are concerned with here?

A: That is so.

Q: You know also that their observations of a general nature about comic books were related to other themes than this? For instance, they were related to crime stories?

A: Yes.

Q: Is it not a fact that your adverse opinion about these is predominantly influenced by the pictorial nature of the publication?

A: Yes.

Q: Can you see any reference in report of the New Zealand committee to intimate exciting romances which are pictorial as distinct from prose?

A: This is the definition of comics and I take it that the comics would be pictorial.

Q: In the first paragraph there are crime stories and so-called comics as well as intimate exciting romances. Are you assuming that the comic-illustrated ones?

A: I presume they cover some of them.

THE CHIEF JUSTICE: The definition of comics appears in the fifth paragraph.

MR WANSTALL: They do not say that the intimate exciting romance is in that form and the only reference to exciting romances is in the first paragraph.

BY MR WANSTALL: The whole of the paragraph is referring to comics without indicating whether it is inclusive of tales of intimate and exciting romances. Has the word "erotic" any relevance other than to the subject of love?

A: It could be originated by a lot of ancillary factors such as sadistic behaviour of all types leading to the sexual act, even distantly. They could produce an erotic feeling. Eroticism is not the result of a simple and blatant sexual experience.

Q: Is it not necessary that the feeling produced must have a relationship to the sexual instinct in some way? The word comes from Eros, the God of Love?

BY MR JUSTICE MANSFIELD: Does sadism flow from sexual instinct?

A: Very common.

BY MR WANSTALL: You agree that there is nothing in this report which would give you a basis of comparison with the illustrations upon which your opinion is formulated - the nature of the illustrations?

A: Excepting that one would assume that the tales of intimate and exciting romances would be similar to what were submitted to me.

Q: In fact, the illustration might be worse. The committee's reference might be based upon a particular degree of passion or impropriety exhibited in these illustrations?

A: I do not say that.

BY MR JUSTICE MANSFIELD: The doctor agrees with the conclusions of this committee and says that they correspond with his ideas of these, particular publications?

A: Yes.

BY MR WANSTALL: Do you agree that there are many illustrated editions of books written on the subject control and written for the lee are generally available in the of this town?

A: Yes.

Q: And the illustrations frequently depict the human organs of reproduction?

A: Yes.

Q: How would one of these groups of people react to such a book if the book got into that person's hands?

A: Some of them would possibly react to the semi-nude advertisements. I have not seen, in my experience, any of these books relating to marriage procedure and contraception which have given an indication of two people --

Q: We are speaking about this particular group of people who are capable of obtaining sexual stimulus from this type?

A: I would not recommend these books to them.

Q: I am concerned whether such a book, if it got into their hands - you would expect this group in the main to have a similar reaction?

A: I think they would.

RE-EXAMINATION BY MR HART

Q: You have told us about this particular group of individuals and you have given their reactions. I think you said also that a very stable individual would not be affected by these publications?

MR WANSTALL: A normal or stable person.

THE THE WITNESS: I think I said a normal person.

MR JUSTICE MANSFIELD: I think the witness said that a normal individual would not read more than three pages.

BY MR HART: In between these groups there are other persons - between the normal and the sub-normal. Can you divide people into watertight compartments?

A: Not completely.

BY THE CHIEF JUSTICE: Anybody not normal is abnormal?

A: Possibly there degrees of normality and degrees of abnormality. I think Mr. Hart is trying to ask me whether I would agree that at some point or other some degree of normality might verge with of abnormality.

BY MR HART: Tell us what would the effect of these publications or people outside the group you.

MR JUSTICE MANSFIELD: Lower in normality?

BY MR HART: Just higher?

A: I have no statistical information but in my opinion I would have to say that if there was a state of normality or abnormality just outside this group I have mentioned, approaching closely to the standard of abnormality they would probably react somewhat the same.

Q: There would be no hard and fast line?

MR WANSTALL: I object. I make available to the Court a list of the magazines my friend asked for yesterday, so far as we have been able to get them. I have had compiled an index of those included in the bundle. There are one or two referred to in my friend's affidavit that we have not got.

JEAN GEDDES, sworn and examined.

Q: You reside at 15 Jephson Street, Toowong, Brisbane?

A: Yes.

Q: You are a captain in the Salvation Army?

A: Yes.

Q: You are at present, and have been for the past 12 months, matron of the Salvation Army Girls' Industrial Home at Toowong, Brisbane?

A: Yes.

Q: You have made an affidavit in this matter?

A: Yes.

CROSS-EXAMINATION BY MR WANSTALL

Q: Is this institution at Toowong, which you call the Salvation Army Girls' Industrial home, a girls' reformatory?

A: Yes, it would be along those lines.

Q: Are the inmates in custody?

A: Partial custody, I would say.

Q: Are they free to leave the home as the fancy takes them?

A: No.

Q: What is it that restrains them in the home?

A: A certain amount of discipline and supervision but I would say their own desire to rehabilitate themselves.

Q: They have been committed to the care that home?

A: Yes.

BY THE CHIEF JUSTICE: Is that in every case?

A: Yes.

Q: Because they have fallen foul of criminal law in some way?

A: In most cases because they have committed an offence against the law, but sometimes because an offence has been committed against them.

Q: How do they come to be in custody offence has been committed against them?

A: They are put there for their own protection, and they are wards of the State Children Department.

Q: They are there in the capacity of being wards of the State Children Department?

A: That is so.

BY MR WANSTALL: If any of those who have been committed leave, can they be brought back?

A: Yes.

Q: By force?

A: Yes.

Q: That happens sometimes?

A: Yes.

Q: Is there a term of years for which it is necessary for them to stay there?

A: That depends on their behaviour. They are wards of the state till they are 18 years of age.

Q: If their behaviour does not warrant it, they are not released until they are 18?

A: That is so.

BY MR JUSTICE MANSFIELD: Are the offences that they have committed of a sexual nature, or are they merely dishonesty or something of that sort?

A: There is a variety of cases.

BY MR WANSTALL: Are some of them offences of a sexual nature?

A: A percentage.

BY THE CHIEF JUSTICE: For what offences are girls committed? Without giving any names, can you instance some girl who is in your institution because she committed some specific sexual offence?

A: Yes, because according to the law as I understand it, any girl who has association of a sexual nature with the opposite sex has committed an offence.

THE ,CHIEF JUSTICE: That is not so as far as I know.

MR HART: It might be under 17. Under the Code she would equally guilty.

THE CHIEF JUSTICE: Have you ever seen a girl prosecuted for being a party?

MR HART: It might be before the Children's Court.

MR JUSTICE MANSFIELD: Where in the Code is there an offence on the part of the girl?

THE CHIEF JUSTICE: I have never known a girl to be prosecuted.

MR HART: The witness did not say they were prosecuted.

THE CHIEF JUSTICE: If she has not been prosecuted, how can she be there without having committed an offence against the criminal law?

MR HART: I cannot answer that question.

BY MR JUSTICE MANSFIELD: Are they all committed by the Children's Court?

A: They come to use from the States Children Department.

THE CHIEF JUSTICE: They might be there as being neglected children.

MR JUSTICE MANSFIELD: Or uncontrollable children.

MR WANSTALL: I understand that some declaration of order is given by the Children's Court that puts them into that status.

THE CHIEF JUSTICE: As being a neglected child?

MR WANSTALL: Yes.

BY MR WANSTALL: That is the legal sanction for their being detained in custody?

A: That is what I understand.

Q: Would any one of those adolescent girls in your home be put under that sort of jurisdictional order, that is, committed there by the State Children Department?

A: No.

Q: There are no voluntary inmates?

A: No.

Q: The inmates are all State children under the Act?

A: Yes.

Q: The causes of their being State children might vary?

A: Yes.

Q: In some cases, it is because they are uncontrollable?

A: Yes.

Q: Not that they have simply been declared to be uncontrollable, but because they are not capable of control at that time?

A: Yes, lacking in control by their parents.

Q: They have been neglected by their parents and have been allowed to roam the streets, as it were?

A: That is so.

Q: Have some of them come there because they have been picked up under the consorting laws?

A: I am afraid I cannot answer that because the particulars all go through the State Children Department.

BY THE CHIEF JUSTICE: What are the age limits of the girls?

A: From 14 to 18.

BY MR WANSTALL: Do you get with each child a history of its past behaviour?

A: Not unless we ask for it.

Q: Some of them, you say, have been parties to immoral sexual experience?

A: That is so.

Q: Is it not true that a majority of them have been committed to the home for that very reason?

A: A big percentage of them.

Q: How big a percentage?

A: I am afraid I could not give you those figures.

Q: How many are in the home at the moment?

A: 23.

BY MR JUSTICE MANSFIELD: How many have passed through your hands since you have been there?

A: Probably about 50.

BY MR WANSTALL: Would you say that a majority of those 50 had been committed to the home because of being implicated in immoral sexuality?

A: A big percentage. In some cases, of course, it is an offence against them, not what the child has committed. They are there for their own protection.

Q: In other words, they may have been raped?

A: Yes.

Q: Leaving aside those, is there a proportion of them who have a history of willing participation in sexual experience?

A: I could not say "willing", because I do not know the history of the cases. We know they are there because an offence has been committed, but I would not be prepared to say it was willing on their part.

Q: At all events, they have had sexual experience, however they got it?

A: Yes.

Q: There are certain disciplinary rules? Are they allowed to go out of the home?

A: Not without supervision - an escort.

Q: They are required to work in the home?

A: Yes.

Q: What work do they do?

A: We keep them occupied in different varieties of work -laundry work, cooking, dressmaking, housework.

Q: Do they receive educational lessons ?

A: No, not actually - handicraft work. They are all beyond school age.

Q: Are they paid for the work they do?

A: No.

Q: Do they have no means of income of their own?

A: No, other than pocket money which they receive for good conduct, good work.

Q: That pocket money is a small sum per week?

A: Yes.

Q: If they commit an offence are they punished for it?

A: Yes, by detention. We have a detention room where they are detained for such reasonable time as we consider is necessary for the offence

Q: Would it be true to say of all the inmates of these homes that they have a background of neglect in their parents homes?

A: Not in all cases. They come from a cross-section of the life of the community.

Q: Do you find that a number of them have delinquent parents?

A: A percentage.

Q: Can you be more specific? One out of 100 is a percentage?

A: I would say probably in the majority of cases. We do not have history of all of them.

Q: You talk to them?

A: Yes.

Q: In the majority of cases they have a background of delinquent parents? You understand that phrase?

A: Yes.

Q: Their parents have neglected them and have not brought them up properly?

A: I would not say the majority of them; perhaps half of them.

Q: In some cases there is a background of a broken home - divorce or desertion?

A: Yes, there are a number of those cases.

Q: And some of the children have been abandoned by their parents?

A: I could not speak of any specific case of that.

Q: You have been matron of that home since 1953?

A: Since the beginning of 1954. I spent three years previously as a junior officer.

Q: You speak in your affidavit about publications of the type that you read?

A: Yes.

Q: What time did you spend in reading the ones that you read?

A: I could not say the actual time, but any publications that come into the home.

Q: You misunderstand me. I am speaking about the ones you referred to in your affidavit. You say, "I have perused a copy of the publication 'Darling Romance' mentioned and referred to in the affidavit of Herbert Leslie Kelly."?

A: I read them all through.

Q: How much time did you spend on them?

A: As long as it took me to read them.

Q: Then did you make your affidavit?

A: Following that.

Q: What were the various steps that took place in the making of your affidavit?

A: I can hardly say. A lot of things intervened. I only gave them the time I was able to.

Q: Did you write a draft of the affidavit at the home?

A: Yes, in conjunction with than gentleman who visited me in connection with it.

Q: Is all the wording in the affidavit your own?

A: Yes, I would say practically. It might be couched in different terms, but it is all my own deduction.

Q: You speak of "publications of this type". How do you identify a type of these things? What is your own basis of classifying them in types?

A: I do not know what you mean by that.

Q: Do you know what you mean when you say, "publications of this type"?

A: Speaking about the pictorial type, I am referring to the pictorial type of love story.

Q: Do you recall the names of any of those other publications; not the ones that you read for the purpose of making the affidavit, the other ones with which you compared them? Do you know the names of any of those others?

A: From my memory, "Real Love", "Real Romances",

Q: You may have misunderstood me. Not the ones you read at the home for the purpose of making the affidavit; but the other ones with which you are comparing those?

A: No, I am afraid I could not remember the actual names. The only reason I have for putting them in that type is because they are the pictorial type of love story.

Q: You have not made any comparison of the moral tone to which these stories point?

A: Well, yes, I have watched that too. In some of them there is quite a good moral.

Q: In some of these?

A: In some of the others too, from what I can remember of them.

Q: There is quite a good moral in the majority of these, is there not?

A: There appears to be, yes.

Q: In the other publications, can you recall what types of characters were in them?

A: Not actually. I did not spend tat much time oo them, I suppose. They all seemed to follow the same lines.

Q: I do not mean these; I mean the other ones?

A: Yes.

Q: The ones with which you have compared to these - "publications of this type" you call them?

A: Yes.

Q: I am testing you to see how closely they approximate these in what might be considered their important features. Now, what about the characters in the other ones? What eere they like?

A: Much the same as in the ones I read.

Q: Were they people who in the course of the story committed any immoral behaviour?

A: Well, no, you could not actually say that, because it is not shown in the pictures.

Q: Do you agree that there is no immoral tone in any of these pictures in any of the publications you read for the purpose of making this affidavit?

A: No, there is not.

Q: You say it is not shown in the pictures. Are you reserving something by that statement?

A: Well, my objection to the showing of the picture type of love story is the posture of the participants in the story.

Q: What posture?

A: Well, the embracing.

Q: You object to the embracing?

A: Yes, on the grounds that it is not suitable for teenage girls.

Q: Would you object to any illustration of a couple embracing?

A: Well, a lot depends on what leads up to it and the scene of the story.

Q: In love stories of this sort.

A: For teenage girls, yes.

Q: You do object to any illustration which depicts a man and woman embracing if it is in a love story of this type?

A: Yes.

Q: Would you still object to it if theme of the love story were in itself, the plot, was an uplifting one?

A: not so if it was a written story.

Q: I am speaking about one which is illustrated?

A: The embracing, you mean?

Q: An illustrated story scene of a couple embracing in it, any illustration at all which involves embracing?

A: Yes.

Q: And the story itself has a good moral theme?

A: Yes.

Q: Would you still object to the scene?

A: Yes, I would, for teenagers.

Q: Because you do not think that adolescent girls or boys should see a drawing of a couple who are embracing?

A: No, I do not.

Q: Or kissing either?

A: No.

Q: What about couples who are in each other's arms dancing? Do you object to those?

A: Well, I have never been to a dance hall to know. I could not pass an opinion.

Q: But in relation to an illustration or a drawing of a couple in one of those love stories who are dancing and holding each other?

A: Well, I cannot recall at the moment ever having seen one.

Q: Well, do you not recall seeing any in any of those that you read?

A: If I did see it I did not take particular notice of it. It would be the love scenes that would catch my attention mostly.

Q: The love scenes being the ones which showed them kissing?

A: Yes.

Q: Your objection to those love scenes would apply to any illustration at all showing a kiss between a young man and a young woman in the course of one of these love stories?

A: In the love stories, yes.

Q: Do you agree that with these stories - in the ones that you read for the purpose of making your affidavit - in the main the plot or theme of the story is to convey to the reader that a happy marriage is the result of true love?

A: No, I would not say that because I find in most of them that the beginning of the story is a case of a pick-up. That is another one of my objections to them.

Q: You say that is true, with a majority of the ones you read?

A: A big percentage of them.

Q: Would you say a majority? I put it to you that it is not a majority.

A: Well there is a percentage, although perhaps I was wrong in saying a majority of them.

Q: In any event, because the story starts or some stories start with pick-up, if they end in a happy marriage you are against them, are you?

A: Well, you have got to take out of the story what is going to be detrimental to the teenage child.

Q: You say that the existence of what you call a pick-up is detrimental, do you?

A: Yes, I do.

Q: Why is it detrimental?

A: Because I have known instances where it has gotten unfortunate girls into trouble.

Q: Have you known of these instances of your own knowledge?

A: Yes.

Q: Of your own knowledge not what someone has told you?

A: No, not from my own experience.

Q: Has one of these girls told you herself that she was picked up and on the occasion of that night out intercourse ensued?

A: Yes, I know of several cases.

BY MR JUSTICE MANSFIELD: What Mr. Wanstall is putting to you is has the girl concerned told you directly herself?

A: Yes.

BY MR WANSTALL: What was the character of that girl?

A: A normal girl really, only that she has been misled.

Q: Was she an inmate of your home before the event?

A: No, I would not say that. That was before she came to the home.

Q: What was her background at the time?

A: Well, I would have to take a specific case to give you that.

Q: I am suggesting to you that unless the girl had an unhealthy sexual outlook the event would not have happened?

THE CHIEF JUSTICE: Which event, the pick-up?

MR WANSTALL: No, that the pick-up would not be to blame for it, that the same thing would have happened if she had been introduced by somebody else to the man.

BY MR WANSTALL: That is what I am putting to you; does it not depend on the girl's moral standard anyway?

A: No, I do not think so, not in my experience.

Q: Has this ever happened to any other girl at your home after she had got there?

A: I am afraid that I do not quite understand your question.

THE CHIEF JUSTICE: She would not be picked up at home/

BY MR WANSTALL: No. The girls do go out under supervision at times, do they not?

A: Yes.

Q: Occasionally they escape?

A: Yes, occasionally.

Q: In fact, six or seven got out a couple of years ago?

A: Yes, we have not had that experience for quite a long time.

Q: Have you ever experienced that happening in those cases?

A: It happens always in those cases.

BY MR JUSTICE MANSFIELD: When they escape?

A: Yes.

BY MR WANSTALL: Because that is the character of the girl?

A: Because they have known the experience before, yes.

Q: Would you say it is because they are depraved?

A: I would not call them depraved.

Q: Would you call them corrupt?

A: Well, perhaps that term, to an extent, yes.

Q: Would you say that having early and illicit sexual intercourse does deprave the character of a girl?

A: For a period. She can rehabilitate herself, as many of them do.

BY THE CHIEF JUSTICE: It tends to deprave them?

A: Yes, tends to deprave them.

BY MR WANSTALL: These inmates who have not had that early sexual experience, would their misconduct, whatever it may be, consist of a breach of the law - stealing or something of that sort?

A: It could be.

Q: Or vagrancy, for example?

A: No, we have had no cases of vagrancy while I have been there.

Q: In your affidavit, in Paragraph 5 – I will go back before that. Would you tell me when you were in Toowoomba?

A: 19'52-1954.

Q: Then you came to Toowong some time in 1953, did you?

A: The beginning of 1954.

Q: You speak in your affidavit about certain publications of which you had knowledge in Toowoomba?

A: Yes.

Q: Can you recall what were the names any of those?

A: No, I am afraid I cannot remember, only that they were the pictorial type of love story.

Q: You would agree that none of them was any of these?

A: I could not say that. They could possibly be those.

Q: They could have been, these particular ones in 1953?

A: I cannot say because I don't remember the names of them.

Q: Nor can you say whether the publications which you say were of a similar type which you have seen the girls reading at Toowong were any one of these particular books?

A: We have some now in the home. They were brought into the home. They are these books.

Q: Any one of these?

A: "Real Romances", I think, is the name of one I have noticed.

Q: When did it come into your home?

A: Just within recent weeks.

Q: Have you got any others?

A: I could not say without investigating it.

Q: Are you prepared to say that in the publications which you are speaking about in paragraph 6 - will you look at paragraph 6 of your affidavit - are you prepared to say that you have had any knowledge or experience yourself of the reaction of girls to these particular books, not books of the same type but these particular ones?

A: No, I could not say that because my knowledge has been gained from Toowoomba; but they are the pictorial type of love story.

MR HART: That question is ambiguous. Does he mean "New Romances" or is it a particular number of "New Romances"?

MR WANSTALL: I mean these particular numbers of "New Romances" and any other numbers which come under the same name which are subject to the Board's order.

BY MR WANSTALL: Can you say that you have observed the reaction of any of your inmates to any books which have these names on them?

A: Well, I can from the girls that have recently come into our home and who have them in our possession.

Q: That is one of "New Romances", is it?

A: Yes.

Q: That girl who came in had a copy of "New Romances" in her possession. What was her background? I do not want you to give me her name?

A: She came from a good home really.

Q: For what reason did she come into your institution?

A: Because of an offence of a sexual nature.

Q: How old is she?

A: She would be just on 15.

Q: What would you call an offence of a sexual nature? What was it?

A: I could not tell you that. I do not go to the Childrens Court. We only have them passed on to us.

Q: She was committed to the home from the Childrens Court?

A: Yes.

BY THE CHIEF JUSTICE: Had she become pregnant?

A: No, she had not; but she had had associations.

BY MR WANSTALL: What was the extent of the association?

A: I could not tell you that. I do not have the details.

BY MR JUSTICE MANSFIELD: Are these girls all associating together, irrespective of the reason for their committal to the home?

A: Yes, to an extent we have segregated them in dormitories and they cannot be together.

BY MR WANSTALL: Is there any segregation according to age groups?

A: Yes.

Q: As well as according to background?

A: Yes. During the daytime, of course, the girls are all under supervision, so there is no chance of contamination from one girl to another.

Q: In your paragraph 5, you refer to adolescent girls who are emotionally unstable. What do you mean by that expression?

A: Girls who are easily excited by pictures or films that portray love scenes.

Q: Do you have those sort of films or pictures at the home?

A: Not very often. Occasionally there might be one and we have found that girls of that type become over-excited when there is a love scene shown perhaps in a decent film.

Q: If there is just one love scene in the film, they become excited?

A: A percentage of them.

Q: How do they act when they become over-excited?

A: They sometimes scream, stamp their foot and sometimes clap their hands.

Q: Do they swoon sometimes?

A: We have never had that experience.

BY MR JUSTICE MANSFIELD: Is excitement or applause?

A: Excitement.

Q: Are these pictures shown at the home?

A: Yes. We do not often have that type of film, but there may be one scene in a decent film.

BY MR WANSTALL: Whatever the film, if there happens to be one of these scenes in it, they react in much the way?

A: Yes, in most instances.

BY MR JUSTICE MANSFIELD: You do not think it might be their sense of mischief that they applaud at a scene of that sort creeping into a picture without the authorities realising it was in there?

A: I do not think so. I think they react because of some of the experiences they have had themselves, and it reminds them of it.

BY MR WANSTALL: Do you think these girls react this way because they have all had this experience before?

A: Yes.

Q: Because of their previous sexual experience, they react in that way?

A: Yes.

Q: I suppose occasionally in a magazine there will be a picture of a couple kissing?

A: Yes. I have seen the same reaction to that.

Q: It might be in "Home and Garden" or something of that description?

A: We do allow magazines, such as current women's magazines.

Q: Do you allow them the Women's Weekly?

A: Yes.

Q: Do you allow them the "Week End"?

A: I have never read it so I do not know.

Q: Have you ever read "People"?

A: Yes.

Q: Do you allow them "People"?

A: Not as a general rule.

Q: Occasionally?

A: Sometimes.

Q: Did you allow there the publication that dealt with the life of Tilly Devine?

A: I do not remember that.

Q: Do you allow them the "A.M."?

A: Not as a general rule.

BY MR JUSTICE MANSFIELD: Do you allow them the newspapers?

A: No.

Q: They are not fit for them?

A: The idea of not allowing them the newspapers is to prevent their getting hold of too much general outside information that is unsettling for them.

BY MR WANSTALL: What sort of outside information?

A: Murders, burglaries, boy involved in trouble that they might know be interested in.

Q: These people react in the same way to a news story about a burglary, murder or some other sort of crime?

A: I have not seen their reactions to that; it is just our own desire to keep these things from them.

Q: They do not get any newspapers at all?

A: No.

Q: Do you allow them to listen to the radio?

A: Yes, the serials and news sessions.

Q: Do you allow them to listen to "Courtship and Marriage"?

A: I do not think we have that on.

Q: You allow them to listen to women's serials on the radio?

A: The morning session.

BY MR JUSTICE MANSFIELD: The cookery session, and things of that sort?

A: No. There are some serials

BY MR WANSTALL: Can you tell us the names of some of those serials?

A: I cannot from memory because I do not listen. I am not with them in the room where the wireless is.

BY MR JUSTICE HANGER: Is there somebody with them when they are listening to the wireless?

A: Always.

BY MR WANSTALL: In one of these wireless stories, suppose there is a description of kissing. How do the girls react?

A: The girls to whom I have referred react in the same way as they do to the pictures. There have been occasions when we have found it upsetting them and turned the wireless off.

Q: Did it restore their equilibrium?

A: After a little while.

Q: They did not pine over it?

A: No.

Q: Do you allow them to listen to characters like Bob Dyer?

A: Not to my knowledge, because they do not often ask for it in the evening. They have handicrafts and other recreations then and very seldom ask for the wireless.

Q: Would you agree that in the normal publications of magazines such as Women's Weekly and so on there are frequently love stories?

A: Yes.

Q: And mostly the love stories are illustrated by some sort of embrace between a couple?

A: Not a great many of them, not to the extent of the pictorial type of publication.

Q: But there might be one picture at the beginning of the story with an appropriate caption that shows them in one another's arms?

A: There might be. I could not say without going over them because, whilst I glanced through some of them, I do not read there before I give to the girls.

Q: Do these girls register some reaction to that?

A: No.

Q: They do not?

A: They might to one particular picture. They might become excited sometimes when they see it.

Q: How do they react to the love stories themselves?

A: I could not say because I cannot see into their minds.

Q: Then how can you say whether anything is emotionally exciting? You can see the excitement?

A: Yes.

Q: And it happens after they have looked at a scene in a film or looked at one of the pictorial love stories?

A: Yes.

Q: From that you draw the conclusion that is the cause of it?

A: Yes.

Q: If you cannot see into their minds, how can you make the statement that these stories prove disturbing to the girls morals?

A: You can see the reaction there.

Q: What reaction?

A: Take the girls at the Toowoomba home. On one occasion I found they were very excited in their dormitory. They were teenage girls, and we found after several attempts at trying to investigate, that they were indulging in the reading of these pictorial types of publications.

Q: It made them excited?

A: Yes.

Q: Do you conclude from that that their morals were disturbed?

A: I think they would be.

Q: Their morals would be disturbed?

A: You could not say until you saw evidence of it and you could not see any evidence of it unless there was opportunity for it.

Q: Because they got excited whenever you found they had secreted some of these things in the dormitory, you concluded they were disturbing the girls morals and thoughts?

A: We also saw some reaction with some workmen who were in the home. We noticed their reactions in front of the workmen, and afterwards we found this reading in their possession.

Q: What age were the workmen?

A: I cannot remember. There were some older men amongst them, and some younger men.

Q: Did the girls react in the same way in the presence of the older men as they did with the young ones?

A: I could not say. They were not in association with them. They were last in the grounds.

Q: What form did this misbehaviour take?

A: They became excited whenever they passed them - loud talking and giggling.

Q: What happened after they talked and giggled?

A: Nothing further, because they were on their way to another part of the house.

Q: Are they used to seeing workmen in grounds?

A: Yes. At that home in particular had a gardener who came several times a week.

Q: These girls were passing across the grounds?

A: Yes.

Q: There was a group of workmen?

A: Yes.

Q: What were the workmen doing?

A: Building.

Q: They had come in for that purpose?

A: Yes.

Q: They were not normally members of the staff?

A: No.

Q: For how long had these girls been in the home?

A: Varying times. They are only girls and children. They are not in the same class as the girls we have at Toowong, They range from two years of age.

Q: There would be a lot of school children amongst them?

A: The majority of them.

Q: There would be a lot of girls below the age of puberty?

A: Yes.

Q: Were they amongst the gigglers?

A: No.

BY MR JUSTICE MANSFIELD: What ages were the ones who were excited?

A: They would be between 12 and 15.

BY MR WANSTALL: Were they going to school?

A: They were all school girls.

Q: Was this home in Toowoomba the same type of institution as the one at Toowong?

A: Definitely not.

Q: Was it an orphanage?

A: Yes.

Q: That is, the children were refugees in the orphanage?

A: They were there for varying reasons, sometimes separated parents and sometimes just one parent

Q: Upon seeing these builders, they became excited?

A: Yes.

Q: Did you see the builders yourself?

A: Yes.

Q: Were they rugged types or just normal men?

A: Just normal men,

Q: The school children became excited at seeing them?

A: Yes.

Q: Do you know whether they had ever seen builders before?

A: Yes, definitely.

Q: Where?

A: In the home previously. Quite a number of buildings have been erected there over the past few years. They have contact much more than the girls at Toowong because they have men school teachers.

Q: Do they mix in the community as normal members of the community?

A: Yes.

BY MR JUSTICE MANSFIELD: Do they go to the State School?

A: Yes.

BY MR WANSTALL: After they become excited and giggled, what happened?

A: They were just passed on to the officer in charge and got ready for school.

Q: They did their school lessons?

A: They go out to school.

Q: Do you say from that that if anything makes a school girl of from 12 to 15 years of age excited and causes her to giggle when she sees workmen it is something that is not suitable for her to have any contact with?

A: I do not understand the question.

Q: You deduce from this that these girls had some of this type of publication in their possession?

A: Yes.

Q: You say that because of their becoming excited and giggling?

A: That did not always happen. We had men coming to the home at Toowoomba almost every week to show films and have evenings with them. It was on this particular occasion when the workmen were in the ground and I found these publications in the possession of the girls. It was at that time that they became so excited and silly in the presence of members of the opposite sex.

Q: Was that the only incident of that particular behaviour that you can recall?

A: Yes. The only time it happened at Toowoomba, yes. It was the only time I found those publications when there had been men there working. I do know that they took particular notice of the pictures because I found them in their possession in the dormitory and they were laughing and making fun about them.

Q: On the same day?

A: At the same time.

Q: There was only one incident of that type that you can recall?

A: Only one that I can recall at the moment,

Q: It would not be true to say that general practice, that invariably when that conduct took place you searched and found this type of publication?

A: That was the only time it happened when there were workmen. Of course, we do not have workmen there all the time but I have many times found publications of that type in their possession when they became silly and giggled in their general conduct.

Q: Not necessarily in of the opposite sex?

A: No.

Q: Was it ever in the presence of members of the opposite sex?

A: No.

Q: Only on that occasion?

A: It only happened on that occasion because the men were there at the time.

Q: What would be the meaning of these words in your affidavit – "When any girl became excited and unbalanced in the presence of members of the opposite sex and her general behaviour deteriorated I suspected that she had access to publications of the type mentioned, and in such cases made a search and very frequently found copies of that type of publication hidden in the girl's belongings." From what you say now, that goes a little too far?

A: I am sorry but I cannot find the reference.

Q: I am looking at paragraph 8 of your affidavit which makes it look as if this was a frequent occurrence?

A: It is the only occasion I can remember. There might be a mistake there in that I should have said, "In front of members of the opposite sex." When girls become excited and unbalanced they frequently have had these publications in their possession but on this occasion the reaction was towards the workmen.

Q: Paragraph 9 of your affidavit speaks about the effects of visual education and you say - "This applies more particularly to sub-normal types." What is a sub-normal type?

A: As we refer to the sub-normal type, I mean girls not quite the average.

Q: With their mentality impaired or their behaviour wrong?

A: No, slightly below average in intelligence.

Q: That is your own classification?

A: Yes. We do not handle the real subnormal type who would be suitable for admission to a mental institution. Those girls are not brought into our home. These girls would be just below the average.

Q: Can you recall any specific instance in relation to one of this type? You are speaking about the effect of these pictures on their mind?

A: Yes.

Q: Can you tell me of any instance where you observed that yourself?

A: I cannot because we do not allow these publications in the home. My deductions come from their reactions to films and other magazines. My experience in regard to this type of literature is drawn from other homes where they have had the opportunity of getting the magazines and from the general behaviour of girls who having had the publications from them want them back again.

Q: In paragraph 9 you say that types of publication are more disturbing than the written ones as they portray males and females in attitudes which appeal to and stimulate the sexual senses through physical attributes. What do you mean by "attitudes"? Kissing and embracing?

A: That is what I am referring to.

Q: Anything else?

A: There is nothing else shown. They would not be allowed to publish anything more.

Q: Do you consider that you are qualified to express an opinion as to whether the pictures act as a stimulus to the sexual senses?

A: I think so.

Q: Are you qualified in the science of psychiatry?

A: I have only my own experience over the past 17 years.

Q: And from that you make the statement that certain illustrations stimulate the sexual senses?

A: Yes.

Q: You refer to physical attributes, what physical attributes? Is that your own phrase? I am looking at the last sentence in paragraph 9?

A: I think that is meant to be attitude. I think there might be a Mistake there.

BY THE CHIEF JUSTICE: You mean "attitude"?

A: Yes, I cannot see any sense in that really.

BY MR WANSTALL: Tell me what happens when the physical attitude stimulates the sexual senses?

A: That is going on my deductions from my-work. It is rather difficult to explain. I have worked with girls for the last 17 years and. I have seen their reaction.

Q: What makes you say that the sexual sense is stimulated?

BY THE CHIEF JUSTICE: Do you mean their physical appearance?

A: Yes, I think that, I should imagine.

BY JUSTICE MANSFIELD: The physical attitude of the female form, would that stimulate girls?

A: With couples together.

Q: With the male form?

A: Yes.

BY MR WANSTALL: It would be an association and it would not be the particular appearance of the female form but any girl in any man's arms would have that result?

A: In the picture form?

Q: Yes?

A: It depends on what the attitude is.

Q: The attitude of a close embrace?

A: Yes.

Q: You are not saying that it to only because the girls are good looking and their forms are well developed that that is why they are excited?

A: It would not appeal to a girl.

BY THE CHIEF JUSTICE: Do you mean that a picture like this one in "Real Story" No.21, depicting a young woman and a young man in a close embrace with the physical appearance of the woman's bust being strongly accentuated?

A: Depicting a female figure like that would not have an effect on girls. It is the embrace that stirs up thoughts in their minds and of things that have actually happened to them before.

Q: Taken in connection with the attitude?

A: It is the attitude of the embrace.

BY MR WANSTALL: You are not referring to the method of depicting the female or the male form, but the fact that it is a man and a woman?

A: Yes, and the attitude.

Q: In this particular attitude?

A: Yes.

Q: Tell me what you mean when you talk about this attitude stimulating the sexual senses?

A: I am of the opinion that it does. These girls have had experiences of being in that particular position themselves.

Q: They have had sexual experiences?

A: Yes.

Q: And because of that their senses are stimulated from these?

A: Yes.

Q: How do you know that it is the sexual sense that has been stimulated?

A: I cannot imagine any other sense but the sexual sense.

Q: You say that sort of picture usually stimulates the sexual senses of a girl who has had sexual experience?

A: Yes.

Q: In the same line you speak of the pictures engendering in the unstable and emotional adolescents reading such publications the desire to have similar experiences to those portrayed. Do you make that deduction because you are speaking about girls who have had sexual experience?

A: Yes.

Q: Is it because of a sexual experience that they are unstable and emotional?

A: Yes. They have been awakened to the sexual experience long before they should have been.

Q: Girls with an early sexual experience when they look at those illustrations have hopes of repeating them?

A: Yes.

Q: There is your statement - "and in my opinion this leads on in many cases to actual intercourse." Is that based upon your opinion only?

A: Yes.

Q: In paragraph 10 you are making the point that the constant reading of these publications which glamorise romance of type depicted and continually stress the relationships between the sexes to the exclusion of other essential and important relationships of life are likely to give adolescent girls a wrong sense of real values in life. Is it a fact that these magazines that deal exclusively with love stories and depict them in the way they do, they are the ones you are speaking about?

A: That is so.

Q: Are you suggesting it is an unadulterated diet of love stories that is harmful?

A: What do you mean?

Q: You are saying because they read these publications they are likely to get the wrong sense of the real values in life?

A: There are a lot of stories - love stories - surrounding home life which are not accentuated in the pictorial form. I have no objection to girls reading love stories.

Q: So long as they do not have pictures in them?

A: And so long as they are decent stories.

Q: You are not suggesting there is anything indecent about the theme of these stories?

A: No, but I object to the pick-up type.

Q: Not because it is indecent?

A: No.

BY MR JUSTICE HANGER: If they exclude the love aspect do you regard it as a decent story?

A: The type of love story I am speaking about has its background in home life, and shows the way that love comes into the picture.

BY THE CHIEF JUSTICE: If the theme of the story is to get them tangled with some person met casually and immediately have a passionate interlude with that person, do you think that is unhealthy?

A: It covers the story in the pictures and it is only a short story and from my observations the percentage of them are pick-ups. You will find that there is a meeting and a quick romance and a happy ending, something which does not actually take place in life as a general rule.

BY MR WANSTALL: Would not you agree that the type of girl you are speaking of has had a great number of pick-ups

A: Not in most cases.

Q: Would they have had any?

A: Yes, some.

Q: Do you approve of the practice of going to dances in a group and striking up the acquaintanceship of boys?

A: I have not had experience of that kind of thing.

Q: Would you approve of it?

A: Is it was an introduction.

Q: No introduction; a group of girl to a dance, and there being asked to by strangers who introduced themselves during the course of the dance. You would not approve of that?

A: No, not if it was my own child.

Q: In paragraph 12 of your affidavit you start off by saying, "Without in any way qualifying the observations and opinions in the preceding paragraphs hereof, from my observations of delinquent girls," and then you make certain deductions. What do you mean by the phrase "delinquent girls" as you use it there?

A: I mean girls who have been involved in trouble of any kind and have had to be brought under the protection of some authority.

Q: They have been in trouble in the sense that they have been taken into the custody of the State and committed to an institution of a reformatory nature?

A: Yes.

Q: You are speaking here only about such of those delinquents who have had early sexual experience?

A: Yes.

Q: May we take it that the conclusions you reach in this paragraph are conclusions in relation to girls of that character who, after their experience, are reading these?

A: Would you mind repeating that?

Q: Are you confining your opinion expressed here to the type of girl who is a delinquent - has had early sexual experience - with that in her past, she then reads these?

A: My deductions are gained from the fact that a big percentage of the girls come into the home with those in their possession, and frequently ask for them after being admitted to the home.

Q: Let us assume that they do come in with them in their possession. They do not get them in the home?

A: No.

Q: Were did you observe them reading these things?

(no answer).

Q: What opportunity have you to observe these things, if you are talking about girls who have come into the home and have had these publications taken away from them?

A: Probably I should have put there, "would tend to stimulate their sexual desires." It is only my opinion.

Q: If they did read them, it would tend to stimulate their sexual desires?

A: Yes. My opinion is gained from my observations whenever they have seen pictures in other magazines that have excited their interest, and the same with films.

Q: That is an opinion which you are stating as to the likely effect of publications of this type upon that section of the community?

A: Yes.

Q: In your next sub-paragraph you speak of the same type of girl?

A: Yes.

Q: You say, "After careful education, supervision and training, the great majority of such girls has subsequently settled down to happy married life and become good citizens." That enables you to make that statement?

A: That has been my experience over a period of years. I could quote dozens of girls living in Brisbane who have settled down to happy married life.

Q: Do you keep in touch with them?

A: Yes, saw one girl only two days ago.

Q: Their courtship would occur after they left the institution?

A: Yes.

Q: Have you any reason to suppose that those girls did not kiss their fiancés warmly, and perhaps passionately, before marriage?

A: No, I presume they would, but they would be beyond the age of the 14 to 18 group.

Q: Is it safe for them when they get beyond that age group?

A: I do not think it has the same effect on them, because they are more developed. We are dealing with girls who have had early sexual experience and they become unstable and unbalanced in their emotions, because they have been awakened to these things too early. We are trying to redirect their minds into clean thinking and clean living so that they can face up to love experiences in a normal way in later years.

Q: You are not suggesting there is anything in these publications that is not clean, are you?

A: No, but I know lots of reading that would direct them into better thinking. I do not think these publications tend to give them good thoughts. They keep their minds on the sexual aspect, particularly those who have had sexual experience.

Q: In Paragraph 4 you say, "Although some of the stories in the said publications may appear to point out a good moral." Are you disputing in that statement that the stories do point out a good moral?

A: You have to take the theme of the whole story, not just the ending. That is what I am referring to. We go back to the same point. I think the beginning of some of the stories is not good for the morals of the girls, the pick-up type, the casual meeting. There is a happy ending in many cases.

Q: Apart from being a happy ending, are there not many of the stories that, for example, develop the theme that it is the honest and virtuous girl who triumphs?

A: There may be one or two of them that perhaps point that out.

Q: Are there not many of that type?

A: I have only read those few publications.

Q: You did not see that in the ones you read?

A: I cannot recall any that I saw.

Q: You go on to speak about the result of certain observations and experiences which you have had in observing the reactions of adolescent readers to the pictorial presentation of amatory embraces. Where have you observed the reactions of those readers to the pictures contained in the publications referred to in your affidavit, and which you have read for the purpose of making the affidavit?

A: That is my observation from what I have seen of the girls at Toowoomba.

Q: These 12 to 15 year olders?

A: Yes.

Q: In 1953?

A: Yes. Apart from these things in other magazines that the girls may have come across, they are the only girls I have had experience of.

Q: You think they are much more interested in the pictorial presentation?

A: Definitely.

Q: What form did their interest display when you did observe them?

A: As I said before they became excited and giggled about it among themselves.

Q: About the pictures?

A: Yes.

Q: In paragraph 15 you say, "From my experience in the homes I know that publications of the type mentioned." What homes are you referring to, the ones at Toowoomba and Toowong?

A: Yes, and I was also in charge of a home in New South Wales.

Q: From that experience, you say you know that publications of this type discourage girls from reading good literature. Whenever you find a publication of this type in the possession of a girl in your home, you remove it?

A: Yes.

Q: She does not get it again?

A: Not the same one.

Q: Does she sometimes manage to get one smuggled into her?

A: It has happened in the home at Toowoomba, because they have the opportunity at school.

Q: What about the home at Toowong?

A: They do not get them there as a general rule.

Q: They cannot get them any more?

A: No.

Q: Except perhaps when a new girl comes in it might get round before you can catch up with it?

A: Yes.

Q: As far as Toowong is concerned, that statement does not apply?

A: No. I do not think I mention Toowong there.

Q: You say, "From my experience in the homes."?

A: Yes.

Q: That does not apply at Toowong, because there is no opportunity for it to apply?

A: No.

Q: There are some girls in the home now who have made a practice of reading publications of this type and will not read any other?

A: Those girls have been in the habit of reading them when they came in. We have offered them the story type of book but they will not read them. They will skim through magazines, but not story books. Unless there are pictures in them, they will not read them at all.

Q: When these girls came in, did they have in their possession some of what you call publications of this type?

A: Yes.

Q: That is, pictorial love stories?

A: Yes.

Q: But not necessarily the ones you read when you were making your affidavit?

A: I could not say. Some of them came in months before; but it was the same type of book.

Q: What is the ability of these girls to read a prose story?

A: The majority of them have the ability to read. As I said before, 'there are some who have perhaps only reached 5th or 6th Grade, but I do not know that we have had any who might be termed mentally deficient. Some of them have a very high percentage of I.Q.

Q: Do they have a set period for reading?

A: They have a set period for recreation and relaxation. They also have lights on in their dormitories, which are for reading or knitting, for about three-quarters of an hour to an hour each evening.

Q: Is that after they have had their evening entertainment or games or have listened to the radio?

A: Yes.

Q: Do you find that most of the girls prefer to listen to the radio than to read?

A: Not in the evenings.

Q: You would not be in favour of the radio either, would you, if it deflected girls from reading books?

A: They do not have the wireless.

Q: What is your opinion about that?

A: That would depend on the girls themselves. I think some girls would get engrossed in a book.

Q: But what is your opinion about it?

A: The wireless?

Q: Whether it is good or bad that girls who listen to the radio would prefer to do that than to read books. Are you against that?

A: Not for the girls who do not like reading.

Q: You have no objection to them not reading uplifting books?

A: I would encourage them to do it. They do not have the radio at night in their dormitories. Some girls do not like reading and they knit or crochet or do fancy-work.

They do not like reading, and if they are good books they will not read them anyway? By "books" I mean ordinary prose stories?

A: There are some girls who will not read them at all.

Q: In your last paragraph you speak of the officers of the home being able to encourage younger girls to read certain books that you refer to a reference to their authors' names. What age group is in that type?

A: Fourteen to sixteen year olds; mostly fourteen and fifteen year old girls whose minds have not developed as much as the sixteen, seventeen and eighteen year olds,

ORMOND WILLIAM BUTLER, sworn and examined:

BY MR HART: Your name is Ormond William Butler?

A: Yes.

Q: You reside at 15 Harold Street, Holland Park, Brisbane in the State of Queensland?

A: That is right.

Q: You are Deputy Director of the State Children Department?

A: Yes.

Q: You have already made two affidavits in this matter?

A: Yes.

CROSS-EXAMINATION BY MR WANSTALL

Q: In your first affidavit you speak about your experiences in Townsville. You see that part where you say, "The children received at this depot are those admitted to the control of the department as wards of the department" and so on?

A: Yes.

Q: For what reasons are they committed to the care of that depot?

A: Naturally, the children there would be committed for various offences through the court, actually, stealing, there would be neglected children, and then of course there would be offences whereby they would be committed for involvement in those.

Q: Being involved as a party in some sex offence?

A: Yes.

BY THE CHIEF JUSTICE: You mean being the victim of a sexual act?

A: In certain instances, yes.

BY MR WANSTALL: Girls under the age of 17 who have had intercourse?

A: Well, actually very often those girls - they might be involved in that then would possibly later on be charged with being neglected children and then committed.

Q: Occasionally would come there because they have been apprehended by the police under the consorting laws?

A: Very occasionally, yes.

Q: Perhaps one or two of them might be charged with prostitution?

A: No.

Q: Not at that age?

A: No, not at that age.

Q: The children that you speak about there or the adolescents?

BY MR JUSTICE MANSFIELD: Are you speaking of males or females?

A: They would be both.

MR JUSTICE MANSFIELD: You are speaking of females.

MR WANSTALL: Yes, thank you for defining it.

BY MR WANSTALL: In addition to the actual cause of the committal to the institution, would you know anything of their background apart from that?

A: In some cases, yes.

Q: What would that be?

A: In certain instances some of those children might have previously been released on probation firstly in the Court to their parents and then the Department would be exercising a watch over them. Also then, in relation to children actually coming through the Court, there would be children admitted

on the applications of their parents or legal guardians and in those cases where the parent would make that application the history of the case would be investigated beforehand before the approval is given.

Q: Is there any segregation of those what might be called innocent children from the offenders?

A: Yes, there is.

Q: The ones you mentioned first of all, who may have been going through their second period of committal to the home, they had previously been in, had they and they had been discharged on probation to their parents?

A: No. Actually some would have been before the Court and possibly it was felt that they might, as a result of their parents and possibly a better disposition by their parents, be successful, and they leave them as and give them that warning.

Q: Then it would work out not to be as predicted and they would have to come to the institution?

A: Later on be committed.

Q: That would be caused by either the inability or the unwillingness of their parents to control them?

A: That is right.

Q: Would you find that in many cases there would be a background of a broken home behind those children?

A: Yes, in very many cases that would be so.

Q: Or perhaps parents of poor moral character themselves?

A: In some cases, yes.

Q: In other cases, of course, it would simply be that there would be only one parent living, say the mother, and she had to work and the child goes there?

A: That is right.

Q: I am not concerned so much about those. You were in Townsville until 1953?

A: That is right.

Q: Were you in Townsville all of 1953?

A: No, not the whole of 1953, until April of 1953.

Q: Your opinions set forth in this affidavit are formed from that experience in Townsville, are they?

A: Yes, that is right.

Q: Where you speak of publications of that type which you mention in paragraphs 2 and 3 of your affidavit, you obviously are not referring to the particular publications set out in your affidavit, are you?

A: No, they are similar.

Q: They are similar?

A: Similar publications or type of literature.

Q: How do you establish similarity?

A: Actually they would follow on the same theme, that is, the repetition of the love theme, that is contained in these would be in others that I have mentioned there as similar literature.

Q: The love theme. You mean they are illustrated pictorial love stories, are they?

A: They would be the same,

BY THE CHIEF JUSTICE: Similar type of illustration?

A: Yes, a similar type.

BY MR WANSTALL: Did you make any comparison on the illustrations?

A: What do you mean?

Q: Are you influenced in your opinion about the magazines that you set out in your affidavit by the type of illustration that is in them?

A: Yes, to a degree. That is why I would be comparing those showing a similar type of literature, the pictorial.

Q: What type of illustration is it to which you object as a reason condemning the publication that you have examined in in making your affidavit?

A: Well, actually in my opinion, there is an over-emphasis on the sex theme, embraces, passionate embraces that usually appear possibly on every second page or possibly more.

Q: So it is the embrace of a passionate kind that you are talking about?

A: Yes, that would be so.

Q: Did you make any comparison between those illustrations and the illustrations in the other type of publications?

A: Yes, I did.

Q: What was the comparative degree of passion exhibited in the two?

A: They would be much the same.

Q: What about the types of character's in the others?

A: Well, little alteration. Most of them actually - nearly all represented the experiences of a teenage girl, apparently a teenage girl, and of course the young man; but there is a great deal of difference in the characters.

Q: Did you pay any attention to the comparative value of the moral theme the two sets of publications?

A: No, I cannot say that I did.

Q: What is your qualification for speaking about the effect of literature on the emotions?

A: Well, only in so far as my experience is concerned the experience that I have noted in handling those adolescent children.

Q: How does the emotional disturbance that you speak about become apparent? You see, you cannot see an emotion. What is it that you see that leads you to this conclusion?

A: That is the unsteadiness of the child. I mean it is shown up in that way. There is possibly a relapse to former conduct which had not been shown before anything like that. The disturbing influence usually has its effect that way, in bringing about that relapse.

Q: To what form of conduct is there a relapse?

A: That is in most cases where there has been a sexual weakness and there is a relapse to it. There is a danger sign immediately.

Q: By sexual weakness you mean sexual experience in the past?

A: Yes.

Q: Have you actually seen girls with that background reading this type of literature?

A: Yes.

Q: What is the effect on them?

A: Well, I feel that it has a bad effect on them.

Q: What do you observe?

A: Actually at the time you would not observe anything. Well, I would not have at the time, not as a result of their actual reading of the book, not from their expressions.

Q: Then what happens to connect it?

A: The connection is that where there has been that trouble there has been a possible return to advances to a boy. I have found on occasions that it has been possible by their again having opportunities of reading this form of literature.

Q: But that obviously could not happen in the institution?

A: It has, unfortunately. They are smuggled in. Perhaps the children are given the books at school and they come into the home before you are aware of it.

Q: I was referring to the lapse to immoral sexual behaviour. That does not happen in the home?

A: There is always a tendency that way. You have to be on guard continuously.

Q: Have you discovered that some inmates of some of the State institutions have had actual sexual intercourse? Have you caught them in the act?

A: No, but possibly it would lead to that unless it was corrected.

Q: Have you any experience of the reading of any of this leading to that?

A: Yes.

Q: How can you trace it?

A: I know of girl making advances to boys and asking that they do have intercourse with her. It was after that occurrence particularly that I found that books of this nature had been smuggled into that institution.

Q: Was she an inmate of one of the institutions?

A: Yes.

Q: Was she a girl who had previously had sexual experience.

A: Not to my knowledge.

Q: How old was she?

A: At the time she would have been about 14.

Q: Where did this happen?

A: In the institution itself.

Q: In Townsville?

A: Yes.

Q: For what cause was the girl in the institution?

A: There was a broken home. She was deserted by the parents and had been reared by the grandmother who became too old to carry on and applied for her admission to the home.

Q: Are you saying you discovered this girl reading this sort of literature?

A: In questioning other inmates, it was produced, and it had gone around amongst practically all the inmates.

BY MR JUSTICE MANSFIELD: Including this particular girl?

A: Yes.

BY MR WANSTALL: Then she made advances to some of the male inhabitants of the institution?

A: Yes.

Q: Do you conclude from that that the reading of the literature was the motivating force in her making the advances?

A: I felt that it would have been a big portion of the cause.

Q: In your affidavit you refer to certain of the publications as containing illustrations that over-accentuate the female figure. What part of the female figure is over-accentuated?

A: The voluptuous curves. The pictures are drawn in such a way that they overheat the passions. If they were drawn otherwise, possibly it would not have the same effect on the passions.

Q: It is because the illustrations show girls with voluptuous curves that you are pointing to them in this paragraph?

A: It is my opinion that it has the effect of heightening or accentuating the appeal.

Q: What effect would that have upon adolescent girls?

A: In my opinion those embraces in pictorial form give the feeling that it would be quite all right for her to go ahead and indulge similarly.

Q: The only point of my question is why you think that an over-accentuation of the female figure has any improper stimulus over an adolescent girl?

A: that is why I think it does.

Q: You think a girl of this type looking at one of these illustrations gets a stimulus from it?

A: I think she would if it was paraded in an overdone form. Some of them are very much over-accentuated.

Q: In paragraph 6 of your first affidavit you make the statement that you have seen adults reading similar types of publication and that almost invariably the adults have been of a sub-standard intelligence. Where did this occur?

A: It occurred in my work. I have noticed it at my work. I have seen adults reading them and they were of substandard intelligence.

Q: I am questioning your qualification for expressing that opinion.

A: Actually, on this occasion, as probation officer, I have explained that it is out duty to visit the homes of children placed on probation. In going into those homes I have on innumerable occasions seen the mother reading this type of literature and I have felt that the person has no solidity or intelligence to care for the child properly.

Q: You would find many of the girls would come from that type of home?

A: Yes.

MR WANSTALL: I object to the whole this witness's second affidavit.

RE-EXAMINATION BY MR HART

Q: You told the Court that on one occasion a girl misbehaved herself. Have there been other similar occasions

A: I have seen, possibly three times, there would have been occasions of that nature, but on those occasions I was not able to locate any literature of that nature,

Q: Have you any reason to think that it was there?

MR WANSTALL: I object.

MR HART: He may have had information that it was there.

THE CHIEF JUSTICE: And the information might not have been correct.

MR WANSTALL: I propose to put before evidence the Court particularly in rebuttal of Dr. Stafford' evidence. My clients have made contact with a Macquarie Street psychiatrist and I am having a telephone conference with him this evening to direct his mind into the relevant channels/ It will be

necessary to get the draft up from Sydney and it will be several days before the affidavit is in form for filing in the Court. I do not know if the Court intends to proceed on Monday.

MR JUSTICE HANGER: Mr Hart will probably want to cross-examine this gentleman and in that case could he not be brought straight up here to give oral evidence?

THE CHIEF JUSTICE: Why have you not got this evidence before? You knew the Crown was applying to have the evidence of certain people admitted on affidavit.

MR WANSTALL: I have known that, but I no reason to think the matter was urgent.

THE CHIEF JUSTICE: Did you think that the Court would adjourn for a week or two to see if you could meet the material?

MR WANSTALL: No. I did not think there was reason for me to take the steps at this stage, unless it became necessary by reason of the Court's deciding to let in the affidavits.

THE CHIEF JUSTICE: I think you should have expected that they might well be let in and be prepared to meet them if they were let in.

MR WANSTALL: That was not my impression.

MR HART: I should like to give Mr. Wanstall an opportunity to do that, but I should like to see the affidavit before.

THE CHIEF JUSTICE: When do you suggest, Mr. Wanstall, you could have this material available?

MR WANSTALL: By about Wednesday or Thursday.

The Court adjourned till 10:30am on Wednesday, 9 March, 1955.

Wednesday, 9 March 1955

The Court resumed at 10.30 a.m.

MR WANSTALL: The Sydney psychiatrist from whom I expected to have an affidavit unfortunately cannot arrive in Brisbane for cross-examination until Monday next. Realising the futility of obtaining an affidavit under those circumstances I have not got one from him. I wish to inform the Court of the reason lest there be any misunderstanding as to the willingness of that specialist to give evidence in the matter.

He is John McGeorge, a Macquarie Street specialist and he holds a number of official positions which have involved him in many commitments that he cannot break at short notice. He is the consultative psychiatrist at the Department of Justice and for the Royal Australian Navy and the Royal Australian Air Force, is a lecturer at the Sydney University and the Sydney Law School of Criminal Law and Lunacy. Having contracted to give a number of lectures it is impossible for him to get here before Monday. In the circumstances when I learned that late on Monday last, it was impossible to force him because a subpoena could not be served in time, had that been desirable. It would be necessary to obtain the leave of a Judge before a subpoena could be served in Sydney.

I have not gone further in obtaining an affidavit because I could not use it unless he was here for cross-examination. After that happened we were able to get in touch with a local psychiatrist and I have been able to get him here this morning to give evidence. By reason of the lateness, it is not possible to put his evidence in the form of affidavit to give a copy to my friend. I propose to call that doctor.

VICTOR LEWIN MATCHETT, sworn examined:

BY MR WANSTALL: Your name is Victor Lewin Matchett and you are a psychiatrist practising in Brisbane?

A: Yes.

Q: Are you registered under the Queensland Act as a psychiatrist?

A: Yes.

Q: A specialist in psychiatry?

A: Yes.

Q: Your degrees are M.B., B.S., Sydney University, and Dip. Psychological Medicine, Melbourne?

A: Yes.

Q: You have practiced as a psychiatrist in several mental hospitals?

A: Yes, for about 5 ½ years.

Q: Which hospitals?

A: The Brisbane Mental Hospital, the Beechworth Mental Hospital, Victoria, the Receiving House and Mental Hospital at Royal Park, Melbourne, and the mental hospital at Sundbury, Victoria.

Q: For the past 16 months have you been in private practice in Brisbane as a specialist in psychiatry?

A: Yes.

Q: Are you a member of the panel of psychiatrists who practise at the Psychiatric Clinic, Brisbane.

A: Yes.

Q: Over which Dr.Stafford presides?

A: Yes.

Q: Do you practise in hospitals in Brisbane as well?

A: I visit the Brisbane General Hospital and the Repatriation Outpatients Clinic at Rosemount.

Q: You have read the affidavit made by Dr.Stafford in this matter?

A: Yes.

Q: Have you also considered the evidence given by Dr. Stafford in cross-examination?

A: Yes.

Q: You have read the eight publications that are annexed to the affidavit of Mr. Kelly which were shown to you?

A: Yes.

Q: Enumerate the ones you read?

A: "New Romances", 18A and 14A, "Darling, Romances", 46, "New Romances", 25, "Popular Romances", 17A and 13A, 15A and 16A, "Real Love" No. 30, 'Love Experiences' No. 30, "Real Stories" Nos. 21 and 24, "Real Romances" No.30. I have not actually read every word.

Q: That opinion have you formed as to the tendency of that Literature to affect the character of any reader?

A: I do not think it would adversely affect the character of a reader any more than any other ordinary literature.

THE CHIEF JUSTICE: We do not know what you mean by ordinary literature.

BY MR WANSTALL: What aspects of this literature have you considered to form that opinion?

A: I do not see that there are any references to sex in the ordinary sense of the term.

Q: What do you mean by "the ordinary sense of the term"?

A: As the layman usually understands it.

BY MR JUSTICE MANSFIELD: The sexual act?

A: I think the term "sex" has three meanings to the layman. One is that it refers to gender, that is, the physical differences between male and female. It also refers to the mental differences between male and female; some males might be effeminate, and vice versa. A third meaning to the layman is that of mating.

BY THE CHIEF JUSTICE: In other words, the sexual act?

A: The sexual act.

BY MR WANSTALL: Within that understanding, you say this literature does not refer to sex?

A: Not the last meaning.

Q: Have you considered the themes of the stories that are told in the literature?

A: Yes. I think they are very good.

Q: In what way?

A: They show that decent behaviour leads to marriage.

Q: Have you considered the moral lesson of the stories?

A: I think that theme is the main moral. The stories also play down drinking, and smoking. Drinking is not mentioned in any of them, and smoking is only done by the poorer characters in the stories.

Q: Have you considered also the effect of the illustrations of embracing and kissing that are included in them?

A: I do not think there is anything extraordinary about them. They do not seem to indicate much emotion. They just show a picture of a man and a woman embracing, with their lips together as a rule.

BY MR JUSTICE MANSFIELD: What else would you expect them to show?

A: Some artists are capable of indicating intense emotion in their drawings.

BY MR WANSTALL: Looking at the expressions on the face of the characters, what have you to say about them?

A: I think they are rather expressionless. They look as if they could be asleep or unconscious.

BY MR JUSTICE MANSFIELD: Overcome by passion?

A: I cannot see any suggestion of passion in the illustrations.

BY THE CHIEF JUSTICE: What do you mean by "passion"? Do you mean that they are actually in the act of sexual intercourse?

A: No, I do not mean that. By "passion" I mean that they may have desires in the direction of sexual intercourse.

BY MR WANSTALL: In "Popular Romances" No. 17A, there is an illustration at the bottom left-hand side of page 4 that has been referred to in the argument. Have you had a look at that one?

A: Yes.

Q: What have you to say about that illustration?

A: When I first saw it, I did not notice anything in particular about it.

Q: When your attention was drawn to it, did you consider it?

A: Yes. I cannot see anything wrong with it.

Q: Can you see any indication of passion in it?

A: People in that position could be passionate.

BY THE CHIEF JUSTICE: That if it is taken in conjunction with the letterpress?

A: The letterpress certainly does indicate some degree of...

Q: The letterpress is associated with the picture, is it not?

A: Yes.

Q: The effect of the embrace is that the world spins round. That would indicate that the girl is really very much affected by sexual emotion?

A: Sexual in the psychiatric sense, but not necessarily in the lay sense.

Q: If it has the effect of making the world spin round as they cling to the gentleman who is kissing them, do you think they must have lost their self-control a good deal?

A: Partly.

BY MR WANSTALL: Looking at it from the point of view of the reader, what have you to say? You are answering His Honour as a psychiatrist, but what is your opinion of the ability of the reader to make the deductions you have made?

A: I do not think the average reader of this type of publication would realise that there was anything sexual in that picture or its caption.

BY MR JUSTICE MANSFIELD: Assuming you had a publication of this nature every picture in which was of a man and a woman embracing, do you think that would have any effect on the reader?

A: I do not think many people would read it.

BY THE CHIEF JUSTICE: Only someone of less than average mentality would read it at all?

A: No, I do not think so. A girl of average, intelligence in her early adolescence from 13 to 16 would derive a lot of pleasure out of reading these.

Q: An ordinary girl?

A: Yes.

BY MR JUSTICE MANSFIELD: For pleasure, or excitement?

A: I think some of them might get excitement out of it, but mainly it would be pleasure.

Q: Do you not think that the tendency would be for a girl of the age you mentioned to imagine herself in the position of the heroine in the story?

A: Yes.

BY MR WANSTALL: What effect would that have on her, in your opinion?

A: It would enable her to channel a lot of her ordinary sexual excitement onto the hero of the story, and dissipate it in that way.

Q: Would it have any other effect, in your opinion?

A: Yes. I think it would lead her to believe that what happened to the girls in these stories would be a good thing to happen to her. But as it ends in marriage, I think that is desirable.

Q: In other words, it would lead her to desire to emulate the happy marriage?

A: Yes

THE CHIEF JUSTICE: That is putting the answer into the witness's mouth.

MR WANSTALL: I was merely restating the witness's answer.

THE CHIEF JUSTICE: If you were restating it, there was no need to do it.

MR WANSTALL: I do not want any misunderstanding about it, and I should like it read if there is any suggestion that I put the answer in the witnesses' mouth.

At this stage and at the direction of the Chief Justice the last portion of the evidence was read out.

MR WANSTALL: What I put was the word "emulation".

BY MR JUSTICE MANSFIELD: Do you not think it would also encourage them to emulate all the preliminaries to the final pictures in these stories – to get a man by those means?

A: I cannot see anything wrong with that. Could they get married, if they did not kiss?

Q: Do you not think they would be likely to imitate the preliminaries to the marriage as shown in these pictures by, in some cases, pick-ups in the street or elsewhere, and by indulging in these amatory embraces and so on?

A: I do not think that these stories would give them the idea of the actual details of romance, and it would depend on the circumstances at the time.

Q: And on the partner, too, but do you not think they would be likely to possibly encourage their partner to indulge in these sort of acts?

A: I doubt whether these stories would have much effect in that way. Girls naturally do tend that way.

BY THE CHIEF JUSTICE: Do you appreciate the fact that very frequently these cases which are all that some impressionable female could hope for and which cause her to reach the stage when the world spins round as she clings

to her partner sometimes are not followed up by marriage but are followed by sexual intercourse before marriage?

A: Yes.

BY MR WANSTALL: In those circumstances what effect, in your opinion, would the literature have in causing that result?

A: I do not think it would have that effect. I do not know of any evidence that it would.

Q: Even assuming that the illustration does produce a stimulus of a sexual nature, whether it has a tendency to produce errant sexual behaviour?

A: I do not think it does, and I do not know of any cases of it.

Q: So you do not agree, assuming there is a sexual stimulus latent in these illustrations that they could result in errant sexual behaviour?

A: They could, but do not know of it happening.

BY MR JUSTICE MANSFIELD: Have you ever had any experience of girls of the age you mention reading literature similar to this and its effect on them?

A: No.

Q: You are speaking from a theoretical point of view?

A: Not entirely, but I have not actually gone into the literature read by girls of that class.

BY MR WANSTALL: Now look at "New Romances" No.18A and in the story called, "You Can't Lie about Love". In the bottom right-hand corner on the fourth page there is a ringed picture of a man and a woman kissing.

A: Yes.

Q: What do you say about the expression on the faces that are depicted in that illustration?

A: I can see very expression on the faces.

Q: What would you say of that illustration in connection with the suggestion that it conveys a sense of passion, of something ecstatic? Consider the letterpress with it.

A: Including the letterpress, it does suggest that these two people are experiencing deep emotion.

Q: In your opinion, what would be the likely effect on the reader of the experience that is being portrayed there?

A: In some readers it would produce sexual excitement.

Q: And then what?

A: In most of them, the sexual excitement would die away.

Q: Take the last picture in this story. That is the one outlined in the frame of what is usually taken to be a heart. The words are, "With that kiss I knew that nothing could come between us ever again. My path to love has been a rocky

one, but I have found it." What have you to say about the likely reader reaction to that?

A: Most readers would probably regard that as indicating deep emotion.

BY THE CHIEF JUSTICE: What about the one on the top of the page, on the right—hand side, taken in conjunction with the letterpress?

A: I think that would appear similarly.

BY MR WANSTALL: Within the range of literature that you have read, have you kept an eye on the proportion which the recognised passionate scenes bear to the whole of the embraces?

A: It is very small.

THE CHIEF JUSTICE: I suppose that is a matter of arithmetic and observation?

MR WANSTALL: Yes.

THE CHIEF JUSTICE: Is the doctor's opinion of any value on that?

MR WANSTALL: Yes, because it excludes a large proportion of the embraces when going through it one by one, from the classification of passion; so that is a matter of opinion.

THE CHIEF JUSTICE: I should with all respect to the doctor, that he no more qualified than anybody else to evaluate the character of the embraces by looking at the pictures.

BY MR WANSTALL: What opinion have you formed as to the illustrations of embraces which in your opinion are not passionate and do not indicate similar emotions to those examples I have been showing you?

A: I think they are less likely to arouse sexual excitement.

BY MR JUSTICE MANSFIELD: Less passionate pictures?

A: Yes.

MR JUSTICE MANSFIELD: I do not mean that the others are passionate but the ones which are not as burning.

BY MR WANSTALL: What do you say as to whether there is any theme of sex either underlying or obvious in these stories?

A: I do not think there is any obvious theme of sex.

BY THE CHIEF JUSTICE: Using sex in the sense of sexual intercourse?

A: Yes.

BY MR WANSTALL: What do you say as to whether the stories have an underlying theme of sex, in the sense of sex to the layman's mind ?

A: Only in so far as most of the stories do lead to the marriage of the hero and the heroine.

BY MR JUSTICE MANSFIELD: If you had to choose a library for adolescent girls between the ages of 14 and 18, would you include bound copies of these in the library?

A: Yes, I would because I think a lot of girls round that age would read stories of a different type to these.

BY THE CHIEF JUSTICE: Have you children of your own?

A: Yes.

Q: You are a married man?

A: Yes.

Q: And you have daughters?

A: Yes.

Q: You would choose this kind of literature as part of their adolescent education?

A: I would allow a bit of this reading if she so wanted it.

BY MR WANSTALL: If you made it available, would you expect it to have a depraving or a corrupting influence on the reader?

A: No.

Q: Why do you say that?

A: I think it would actually have the reverse effect on most readers because in girls of that age the sexual instincts are active and if they look to the innocuous way of reading magazines such as these they will not go out and indulge in ordinary sexual behaviour.

Q: Do you say that the effect would be to sublimate the effect of the sexual instincts which are there?

A: Yes.

BY THE CHIEF JUSTICE: Do you think the might get the impression - impressionable girls - from reading literature of this type that the ideal prelude to a happy marriage is to make an association with a casual gentleman which results in kissing fiercely etc?

A: These stories, they do not give me the impression that the friendship between the girls and boys who eventually get married was casual.

BY MR WANSTALL: You speak of the friendship not being casual. Perhaps you and His Honour are at cross-purposes. His Honour is speaking about the merhod by which the acquaintanceship starts. Do any of these stories indicated any dishonourable conduct?

A: No.

MR WANSTALL: In relation to the evidence given by Dr.Stafford as to the classification of a certain group of people he had in mind I find it necessary to direct Dr.Stafford's evidence into a basis from which there can be a comparison and I can only do that by referring to the classification and the

reactions as deposed to by Dr.Stafford, and I have to make sure that this witness is talking about the same people. I have worked on the basis that Dr.Stafford has exemplified with certain reactions and background and case histories and I propose to put them to the doctor.

BY MR WANSTALL: Dr.Stafford gave evidence about a certain group of adolescents in the community and concerning their case history and background said at page 99 of the evidence that they were all guilty of some misbehaviour before they came to him; at page 115 some unknown number, but not the whole of the group, had previous immoral sexual behaviour, that some of them were not capable of being redeemed by the usually applied good influences; some of them were morons and some subnormal, that the class generally showed a lack of intelligence potential and capacity, that the class generally had no other interest but the reading of this sort of literature, they did not indulge in sport and that most of them had a background of either a positively bad home influence or a lack of good influence, some of them had a record of school truancy and irresponsibility in behaviour, that it could not be said of them that they would be free from aberrant sexual behaviour irrespective of whether they read this type of literature, that their particular characteristics were existent before reading any of this literature. With that description are you able to recognise the group he was talking about?

A: They are a group of people who are generally labelled by psychiatrists as psychopathic personalities.

BY THE CHIEF JUSTICE: Actually reached the stage of being diseased?

A: Suffering from mental disorder.

Q: Not certified?

A: Not certifiable.

Q: In the community?

A: Yes. A few do go into mental hospitals.

BY MR WANSTALL: Are you able to put on record a definition of the meaning of the phrase psychopathic personalities?

A: I think it would be best to quote the definition from Henderson and Gillespie's textbook on Psychiatry.

Q: Is that a recognized textbook on the subject?

A: Yes, it was the textbook for both the Sydney and Melbourne Universities.

Q: How does that textbook express the term?

A: "They say we include under this title persons who from childhood or early youth are habitually abnormal in their emotional reactions and conduct and do not reach except episodically the degree of abnormality amounting to certifiable insanity. They show no intellectual defect as measured by the usual intelligence tests and cannot be classified as mental deficients and they do not benefit under prison treatment."

BY THE CHIEF JUSTICE: That is the class which is loose in the community and not in mental hospitals?

A: No.

BY MR WANSTALL: To what type of person does the psychiatrist limit the use of the term "pervert"?

A: A pervert is a person who from choice obtains most of his sexual gratification from abnormal sexual behaviour.

Q: From choice?

A: Yes.

Q: As distinct from somebody who is constitutionally a homosexual?

A: Yes, or else there are people who might be unable to obtain sexual intercourse and therefore their only opportunity is homosexual.

Q: The distinction between the pervert and the psychopathic who exhibits a certain aberration is that the pervert will express it in an abnormal method of gratification and the psychopathic in normal relations?

A: Psychopaths can be perverts and express sexual activity in a perverse way.

Q: With a view to assisting you to say whether the people described by Dr. Stafford fall within this definition of psychopathic -

BY THE CHIEF JUSTICE: I thought said they did?

A: I formed that opinion.

BY MR WANSTALL: Have you considered the reaction of this class exemplified by Dr. Stafford's evidence as behaviour in relation to association between male and females?

A: Yes. One characteristic of the psychopaths is that they are emotionally unstable and impulsive. Their emotional instability would suggest that they would be easily influenced by pictures like these indicating a physical contact between the sexes.

Q: What I am asking you to do is to classify the person we have had described as deriving a sexual association between a male and a female?

A: The class of people who do that is large. In America 60 per cent of the cases of prose referred to physical contact between the sexes.

Q: Dr. Stafford gave examples of people who, by looking at illustrations of a couple dancing in a ballroom, could produce this sexual stimulus; the same reactions would occur by looking at illustrations of a couple going for a walk or strolling along a beach. What does that indicate about the psychopathic classification of the person?

A: They derive the same stimulus?

Q: They derive their sexual stimulus by looking at illustrations of a couple going for a walk and holding one another's hands?

A: Apparently more than half the normal women of America do.

BY THE CHIEF JUSTICE: Do you say that applies to this country?

A: I cannot see any reason why it would not.

Q: You do not know that it does?

A: No.

Q: What is that based on?

A: Those figures are given in the Kinsey report,

Q: Are the people referred to typical of the ordinary American women? I have not read the Kinsey report but I understand that the type of women would not be considered ordinary in this country?

A: Kinsey goes on to describe how he got hold of the women to question and he seems to have covered a pretty representative cross - section of the population.

Q: Do you consider that there may be a substantial percentage of the women who would not lend themselves to such investigation by Kinsey or anybody else?

A: So far as I can remember, not many people refused.

Q: Would you approach ordinary women in this country with such a questionnaire as appears in the Kinsey Report?

A: I would if was engaged on research like that.

Q: I mean ordinary people whom you meet socially. Would you approach them with such a questionnaire?

A: Yes, if I was working on -

Q: What kind of a reception do you think you would get from them?

A: I think I would probably get the same sort of reception as Professor Kinsey got.

BY MR WANSTALL: What was that?

A: Mostly they told him all.

BY MR JUSTICE MANSFIELD: That would not be one of the methods that Dale Carnegie advocated on how to win friends and influence people – by approaching them in that fashion.

A: No.

BY MR WANSTALL: We know from Dr. .Stafford that this class of person has a similar reaction to a prose story, not necessarily illustrated, if it is sufficiently repetitive - that is, if his intellect is capable of absorbing it - that the mentality of the persons is such that looking at an illustration in one of these stories of a wife dreaming about sitting on the arm of her husband's chair and lighting his pipe, in the context of the story, that would have the same trend on the reaction of this person, that he would have the same sexual reaction to a scene of kissing or embracing on a film if it was repeated, and to a photograph

reproducing such a scene; that some of them would derive some sexual stimulus from looking at advertisements in newspapers of figures displaying intimate underwear, and a similar reaction to seeing the human body partly clothed in a bathing-suit; that the most emotional effect would be produced on these people by literature that confined itself more to the elementary or primary association of boys and girls, which the doctor illustrated as mere courtship, particularly wooing and that type of thing, as distinct from any description of sex in a more physical sense. Looking at the type of thing which Dr. Stafford says produces that reaction, does that assist you to classify the person he is talking about?

A: Only in this way, that it is possible that a psychopathic adolescent could be stimulated to impulsive behaviour of some kind. I do not know of that having occurred.

Q: What reaction would a person who is not a psychopathic adolescent have to the type of things I have been putting to you?

A: A proportion of them would be stimulated sexually, but they would not engage in any impulsive action as a result.

Q: What about a psychopathic adolescent who would be stimulated by the things described by Dr. Stafford: What would you expect as to his consequent behaviour?

A: After reading these?

Q: After reacting in the way that the doctor has described to any of those influences?

BY MR JUSTICE MANSFIELD: Would his sexual stimulus die, or what would happen?

A: Yes, think that would happen.

BY THE CHIEF JUSTICE: I thought you said it might result in impulsive behaviour?

A: I said it was possible.

Q: "Impulsive behaviour" would mean impulsive behaviour of some sexual type?

A: Not necessarily sexual.

Q: Possibly sexual?

A: Yes.

BY MR JUSTICE MANSFIELD: Would you include in impulsive behaviour jumping into the river?

A: That is impulsive behaviour, but there is a lot of other impulsive behaviour.

BY THE CHIEF JUSTICE: What kind of impulsive behaviour do you suggest might be stimulated in the psychopathic adolescent by this literature?

A: Any form; skylarking, for example.

BY MR WANSTALL: And giggling?

A: Yes, and getting into tempers and crying.

Q: What would you say as to the likelihood of one of these cases storing up in his mind, or her mind, this stimulus?

A: I do not think they can store up the stimulus. The excitement will die away after a couple of hours at the most.

BY THE CHIEF JUSTICE: You do not think they would recall it by memory?

A: Yes, they would be able to recall it.

BY MR JUSTICE HANGER: Do you think they would like to recall it and read the book again?

A: Yes, they might do that.

BY MR WANSTALL: Would you expect any translation of that into any action of aberrant sexual kind?

A: No.

BY MR JUSTICE MANSFIELD: Are there any publications that would stir people into any form of misbehaviour after the stimulus has worn off? For example, assume you were considering, not this book, but books in which there were portrayals of the sexual act; do you think they would stimulate them after two hours to commit some act of misbehaviour, or do you think they would forget it in the same way as they would forget these?

A: No, I do not think they would forget them. They have this desire. Once they have reached adolescence they get this desire to indulge in sexual intercourse.

Q: Assuming that the sexual instinct was stimulated not by magazines of this description, but by a magazine in which the sexual act itself was portrayed; do you think that would have a worse effect than these magazines?

A: I do not think it would, because of the women whom Professor Kinsey saw, only a small proportion - 30 per cent – were stimulated by pictures of sexual activity.

THE CHIEF JUSTICE: Thirty per cent is a fair proportion.

BY MR JUSTICE MANSFIELD: Can we take it that however bad or obscene or objectionable the illustration in the subject matter is, it would have no worse effect than with these magazines?

A: If Professor Kinsey's report is right, the illustrations would have less effect than the text.

Q: Assuming there was text and also a portrayal of the sexual act, am I correct in understanding that you say that would have no worse effect than would these magazines?

A: No. If the text referred to the sexual act, I think it would have a worse, effect.

BY THE CHIEF JUSTICE: But not the illustration alone?

A: No.

BY MR WANSTALL: Can you consider the illustration in isolation from the theme or message that the story is conveying when you are looking for this likely reaction?

A: No. Where the prose is combined with the pictures, as in those publications, I do not think you can consider them separately.

BY THE CHIEF JUSTICE: Except in relation to persons who do not read easily but can see quite well?

A: Yes.

Q: Such a person would be able to see the pictures without being able to read, or being disinclined to read?

A: Yes.

BY MR WANSTALL: Taking the Chief Justice's illustration, what would you say as to the ability of a person to make any deduction as to the meaning of the pictures in the absence of the words?

A: In these publications, I do not think they would be able to make much out of the pictures.

MR JUSTICE MANSFIELD: They would know there was a happy ending.

MR WANSTALL: They could see wedding bells and altars in some of them.

BY MR WANSTALL: We know from Dr. Stafford concerning the reaction of this group he is talking about, that essential thing about their reaction is the fantasy - that their healthy minds fantasise - and that produces a desire to emulate the experiences produced by the fantasy. What have you to say as to that reaction in regard to the classification of psychopaths of which you speak?

A: They do indulge in fantasies, but normal people do too during adolescence.

Q: If a person reading one of magazines and looking at an illustration of embracing that is not passionate, either from its method of drawing or from its letterpress - if those persons are able to distort and twist such an illustration into sexual misbehaviour, what have you to say as to their mentality?

A: I think it would be pretty low,

BY THE CHIEF JUSTICE: Would they be psychopaths?

A: Not necessarily, but most of them would.

Q: What is that?

A: A lot of them would.

BY MR WANSTALL: What would you say as to the possibility of such a person being depraved or corrupted by that influence?

A: I do not think they would be depraved or corrupted.

BY THE CHIEF JUSTICE: What do you understand is meant by "depraved or corrupted"?

A: I understand "depravity" to mean over-indulgence in one's desires, whether they be sexual or --

BY MR JUSTICE HANGER: Beyond the standards recognised by society?

A: Yes.

BY MR WANSTALL: You are speaking of it now in relation to sexual conduct?

A: Yes.

Q: What would you say as to the standard of such a person if he is capable of so distorting and twisting one of these illustrations? What would you say of his standard in relation to your understanding of depravity?

A: I do not quite understand you.

Q: I cannot put a leading question to you. We were talking about whether a person be likely to be depraved or corrupted by a given cause. We know his mentality is as you have described. Can you say anything as to his condition in relation to depravity before he has seen the illustration?

A: He would have to be depraved before he saw the illustration.

BY THE CHIEF JUSTICE: Do you think he could become more depraved?

A: No, I not think no.

BY MR WANSTALL: What would you say as to the type of mentality of a person who is able to ignore everything in such a story as these, presented in the form in which they are, except the amatory scenes, that is, the embraces and the kisses – a person is able to close his mind to all other influences in the story, and unconsciously as it were fasten upon the kissing scenes?

A: They would have to have some sort of obsession for physical contact for them to do that.

Q: A person with such an obsession - how would he be classified in your opinion in relation to whether he was depraved?

A: I do not think he need necessarily be depraved. He need not actually indulge his desires.

Q: With the person who was not necessarily depraved, what effect would you expect the illustrations to have upon him?

A: They could have a similar effect as on other people. They could stimulate him sexually, and by doing that dissipate for a while the sexual tension.

CROSS-EXAMINATION BY MR HART

Q: You told the Court that you consider these publications are fit reading for teenage girls?

A: Yes.

Q: What would you consider were the chief characteristics of these comics as opposed to other types of literature?

A: Not as opposed to all other types of literature, but they are love stories.

Q: As opposed to other pictorial types of literature, they show people embracing one another very frequently?

A: I do not agree with the "as opposed to other comic strips".

Q: Strips of this type as opposed to children's comics or horror comics?

A: I have not read children's comics or horror comics, but the comics in the daily papers frequently do show embracing.

Q: Have you read many of these particular comics?

A: I have given a list of the ones I read.

Q: But have you read any other than those on the list you gave to Mr. Wanstall?

A: No.

Q: So that until you came to court you had never read one of them?

A: .No

Q: Until you were asked to give evidence in this case, you had never read one this type of comic?

A: No.

Q: So you have no practical experience of the effect they have on teenage girls?

BY THE CHIEF JUSTICE: You have not selected any of them for inclusion in the library for submission for your children?

A: I have not actually do so.

BY MR HART: And you have no experience of them before reading them for this case?

A: No.

Q: So that everything you have been giving us is just your theoretical idea of what might be correct about them?

A: Not entirely theoretical ideas. They are based on my observaions of the reactions of adolescent girls, both normal and psychopathic.

Q: If you have no experience of the reactions of adolescent girls to these comics, how do you know what they are?

A: I do know a little bit about the way the minds of adolescent girls work.

BY THE CHIEF JUSTICE: You have never observed the effect of comics of this sort on any adolescent girls, normal or abnormal?

A: No.

BY THE CHIEF JUSTICE: Have you observed the effect of any sexual stimulus on adolescent girls, apart from this?

A: Yes.

BY MR JUSTICE HANGER: What sexual stimulus?

A: Many adolescent girls are stimulated sexually by contact with men. I have seen that produce an effect in them.

Q: Do you mean social or physical contact?

A: Even physical contact, such as kissing and embracing.

BY MR HART: Physical contact is the normal way to produce excitement, is it not?

A: There are other ways of producing it.

Q: But possibly the strongest way is physical contact?

A: Yes.

Q: These pictures show a number of passionate embraces?

A: Yes.

Q: Do you think it would stir the pins up more sexually if there were pictures of actual sexual intercourse than pictures of these passionate embraces?

A: Yes, I should expect it to.

Q: Suppose there were pictures of male genital organs. Do you think those would stir the girls up more?

A: Some, but not many.

Q: It would stir some girls up?

A: Yes.

BY THE CHIEF JUSTICE: But most not?

A: Mostly not.

Q: You mean that you want some glamour about it, some sex appeal, not a crude exhibition?

A: Yes.

BY MR HART: That is Kinsey said?

A: Yes.

Q: At page 654 of his book, "Sexual behaviour in the human female."?

A: Dr. Kinsey does not say that according to my understanding of it.

Q: Read it?

A: (Witness read the relevant portion from page 654 beginning with the words, "Many females are surprised to learn," and ending with the words, "which are associated with sex.")

Q: What they like is glamour. They like pictures of rather good-looking females being embraced by rather handsome males?

A: Yes, but they are most stimulated by descriptions of physical contact.

Q: You say they are more stimulated by prose descriptions than by pictorial descriptions?

A: I am merely quoting Professor Kinsey on that.

Q: Does he say they are not stimulated by pictorial descriptions?

A: No. He merely says that only half the number are stimulated by pictures as are stimulated by prose.

Q: But the half who would be stimulated by pictures would be the people who were the less educated of the community, or the people of lower mentality?

A: I would not expect that.

BY THE CHIEF JUSTICE: If you had a combination of pictures and a prose description, would that stimulate a very much bigger proportion?

A: It could, but it may be that the people who are stimulated by pictures are the same people who are stimulated by prose.

Q: I thought you said something to the effect that only half the number were stimulated by pictures that were stimulated by description?

A: Yes.

BY MR JUSTICE HANGER: Could it be that half of those particular women who are stimulated by prose are stimulated by pictures?

A: It could be that, but Professor Kinsey does not say whether there is any connection between the two groups.

BY THE CHIEF JUSTICE: Some might be stimulated by both?

A: Yes.

BY MR HART: The one thing present in all these love comics is the passionate embrace, is it not?

A: I do not agree entirely with that. In some stories there are only one or two kisses, as far as I recollect, and they are not very passionate.

Q: But the embrace, sometimes passionate and sometimes less passionate, is common to all the stories?

A: Yes.

Q: When people buy love comics, is it not the natural conclusion that they are buying them for the embrace?

A: I think the majority of people who buy them do buy them for that, and it is a good thing that they do.

BY MR JUSTICE MANSFIELD: It is an outlet?

A: Yes.

BY MR HART: Take "Real Romances" No. 30, look inside the cover, and you will see a picture of a lady who loved Mr. Wrong and above that the remarks, "Real Romances. Romantic stories that could be yours." Is not that inviting the girls to put themselves in the positions of the heroines?

A: Yes, and I think most adolescent girls would like to be in the position of those heroines.

Q: After they have been fed on a diet of this stuff for a while, do you not think it would give them the idea that it would be very nice to be embraced themselves in the same way?

A: Yes, I think they would think it nice, but there are factors that would prevent them from doing it until they reached a certain age.

Q: With some girls there are, but with some there would not be?

A: The psychopathic girls.

Q: And lots of other girls, weak-willed girls girls without such a strong bringing up?

A: Most of them are psychopathic.

Q: There would be a large number of girls who would emulate the heroines in those stories?

A: I do not think it is a large number; I think it is only a small number.

BY MR JUSTICE HANGER: "To emulate" means to follow the example of. Would they do the same thing? The question whether a large number of girls would try to do the same thing as the heroines in these stories?

A: Do you mean do it immediately or years later?

BY MR HART: I am not limiting it to immediately.

BY MR JUSTICE HANGER: Soon after?

BY MR JUSTICE MANSFIELD: While the story was still in their memory?

BY MR HART? Is that not so?

A: No. I think the percentage of girls who would rush into embracing a man shortly after reading these stories would be very small.

Q: What percentage?

A: Certainly less than 10 per cent.

Q: So that we can say that perhaps 8 per cent, after reading these stories, would consider it the proper thing to do shortly afterwards?

A: It is possible, but I do not think it is at all likely that the percentage would be that great.

Q: You told the Court that in some girls these would produce a sexual desire?

A: I do not think I said that.

Q: Did you not say it would stimulate their sexual desires?

A: It might sexually excite them.

Q: When they are sexually excited, if they go out and get an opportunity to be embraced in this fashion, some of them would take it?

A: This sexual excitement does not last very long. In most people it diminishes rapidly, within minutes.

Q: But would they not be reminded of it when they are next in the presence of males?

A: Not necessarily.

Q: I do not suggest that reading one of these publications would, but by the time they had a diet of this kind of stuff for months and months, would they not get the idea that it was the natural thing to be embraced passionately?

A: If they did read them for months and months I think they probably would become disgusted.

Q: If they became disgusted with them they would cease to read them?

A: Yes.

Q: But those girls who do not cease to read them and who take the publications are the ones I am asking about?

A: Those girls are probably dissipating their sexual excitement by reading these things. If they have to go on reading them for months, they must have a lot of sexual tension to dissipate.

Q: You are suggesting this would happen, then you say that it would not stir up any woman to go out and indulge in sexual intercourse?

BY MR JUSTICE HANGER: You have said that it could be a way of letting off steam. Is the stirring-up inconsistent with letting off steam?

A: No. It is a necessary part of letting off steam for them to be stirred up.

BY MR HART: Do you think it is possible for any literature to give teenage adolescents the idea that sexual intercourse for them is the proper thing, or desirable thing?

BY MR JUSTICE HANGER: You are being asked two things. The first is can any literature make adolescents believe that sexual intercourse is the proper thing and the second can any literature make them feel that sexual intercourse is desirable?

A: I think literature can encourage the idea that it is proper, and it can also convey the idea that it is desirable.

BY MR HART: Literature could also convey the idea that passionate embraces were proper?

A: Yes.

Q: With males who have been picked up only a short time before?

A: Literature could suggest that.

Q: Does not this literature suggest it?

A: I do not agree that it does.

Q: Have you counted up the number of occasions on which there has been a pick-up followed by a passionate embrace?

MR WANSTALL: Immediately?

BY MR HART: A few pictures further on?

A: I did not look for that point.

Q: Look at "Real Love" No.30. Look at the second story entitled, "The Long Dead Past". There is a casual meeting there. The wording is, 'Perhaps you might condemn me for what I am about to do, but please hear me through. I must begin in the past when I was 18. I met Ricky we made our plans for the future I love to dance with you darling; I love everything about you.' On the second page there is a casual meeting - "Time heals all wounds the wise ones say I went back to normal living but Ricky was always in my heart."

MR JUSTICE MANSFIELD: That is not a pick-up.

BY MR HART: My note was wrong. Look at "Romance No. 24, the story entitled, "Dear John". There is a pick-up on page 2 – "I was startled when the young man spoke to me on the bus." Shortly after, in the next picture, you see her being embraced by the gentleman she has picked up and on the following pages you see a number of positions with a gentleman. That is a pick-up story. Do you think that particular thing is good for girls to read?

A: I do not see anything particularly wrong in that. These adolescent romances are usually very fleeting.

Q: Is it a good thing to encourage adolescents to be picked up?

A: In this story the two have been seeing each other on the bus for some time.

Q: There is no harm in that?

A: I cannot see any great harm in that.

Q: Look at "Love Experiences" No. 30, and the second story entitled "When Love Comes too Soon." There is a pick-up on the second page. The girl is picked up by the bus-driver and on the top of the next page she is kissing him in a whirlwind meeting. Do you think that that is a good thing.

A: No, I do not think picking up in the street is a good thing. The only thing that can be said in favour of this man is that he has a magnificent car.

Q: Would not girls look for gentlemen with magnificent cars? A gentleman with a magnificent car could pick up a girl quite easily?

A: I do not think it should be so.

Q: Take "New Romances" No.18A, and the story, "My Unknown Lover". The wording is, "Is it shameful to kiss a man whose name you do not know I was desperately in love with him although he never said so Bert, I love you; Bert, I love you. I am fond of you too, Dell." There is a pick-up at the museum and she ends up by passionately embracing this gentleman on the top of the page.

A: Yes.

MR WANSTALL: I object to my friend putting that one at the top of the page as a passionate embrace, it is not an embrace at all.

BY MR HART: It is possible to have a passionate kiss without an embrace?

A: Yes.

Q: Do you say that there is passion in that or working towards it?

A: I can see very little suggestion of passion.

Q: Look at the opposite page - "Of me, I hope." Is any passion there?

A: I cannot see any marked passion there.

Q: What about the lady lying down the gentleman bending over her, is that suggestive?

A: Not to me.

Q: It was to her, because she knew he was going to kiss her and she was not going to stop him?

A: She is not in the picture.

Q: It is her face you are looking at. These stories are given up almost to the relationship of the male and female in courtship?

A: Yes, very largely.

Q: Love making, and ending up in many cases with passionate embraces?

A: Yes.

Q: These stories are read by teen-age girls?

A: Yes.

Q: Do you think that these girls of from 12 to 15 would wait until they are 21 or 22 to put themselves in the position of the hero and the heroine?

A: They would be abnormal if they did.

Q: If they emulate the hero and the heroine they would do it in the near future?

A: Not necessary. The reading of the stories does sublimate their sexual tension.

BY THE CHIEF JUSTICE: Don't you think it would excite it?

A: It excites it.

Q: You would not say that that was sublimation. To sublimate is to turn into other channels?

A: They turn into other channels. They turn it on to their heroes and that is how it is dissipated.

Q: What about the passionate embraces depicted in the story?

A: The passionate embraces stimulate sexual excitement and then they have to direct the sexual excitement towards something and they do it towards the heroes in these books.

Q: A lot of these stories are labelled as being real romances and true love stories. If the adolescent females accepted that at face value they would be stories of real adventures which turned out happily preluded by the passionate embraces. There are pictures of girls lying on their backs in parks and so on and the theme of the story is that the passionate embraces lead inevitably to the altar; instead, as we know, they frequently lead to actions for divorce and illegitimate children.

A: I am under the impression that a number of the stories show unsuccessful romances.

Q: Some are unsuccessful but the usual sequel is that they are successful – that the meetings in this way with gentlemen who are able to make them forget themselves and make the world spin round and lips burn with kisses lead to happy marriages and that sort of thing is the normal prelude to the happy marriage. If adolescent females get that idea, generally speaking, you would say that they are storing up trouble for themselves?

A: I would not think that. In these days this sort of thing is frequently the prelude to a happy marriage, if they indulge in this behaviour towards the end of their adolescence. It is only the psychopaths and the precocious girls who start before the later years of adolescence.

THE CHIEF JUSTICE: I thought you said that the psychopaths were a large percentage of the community?

A: I do not know what percentage of the community they represent.

Q: What would be the minimum percentage?

A: I cannot say that.

Q: Do you say a substantial percentage?

A: The minimum percentage is not substantial; it may be about 1 per cent.

BY MR HART: In adolescence there is a natural tendency towards sexual excitement?

A: Oh yes.

Q: I want to read to you a passage from the summing-up of Mr. Justice Stable in *R -v- MARTIN SECKER & Warburg Ltd*. It says,

"You have heard a good deal about the putting of ideas into young heads. But is it really books that put ideas into young heads, or is it nature? When a child, be it a boy or a girl, passing from a state of blissful ignorance, reaches that most perilous part of life's journey which we call 'adolescence', and finds itself traversing an unknown country without a map, without a compass, and sometimes I am afraid, from a bad home, without a guide, it is this natural challenge from childhood to maturity that puts ideas into its young head."

Do you agree with that?

A: Yes.

Q: "It is the business of parents and teachers and the environment of society so far as is possible, to so that those ideas are wisely and naturally to the ultimate fulfilment of a balanced individual life."

Do you agree?

A: I do.

Q: If girls are allowed to read this of literature and nothing else, do you think it would give them balanced ideas?

A: Yes.

Q: They would still have blanced ideas?

A: Girls of low intelligence, yes.

Q: Do you think it would give them a balanced idea of life?

A: If they read these and nothing else, they would not have a balanced idea of life.

BY THE CHIEF JUSTICE: If it was their literary food, would it give them a balanced idea of life or would it give them a false sense of moral standards?

A: No, I do not think it would do it.

BY THE CHIEF JUSTICE: It would give a false idea of what happened in real life?

A: I do not think so.

Q: If they accepted this as being true - you do not think it would give them a false idea of what normally happened?

A: No.

BY MR JUSTICE MANSFIELD: Do you think the behaviour illustrated could be classed as undisciplined social behaviour?

A: In one I saw there was some violence.

Q: I mean apart from violence?

A: No.

Q: You do not think it would give them any idea of undisciplined social behaviour?

A: No.

BY MR HART: If you define "sex" as the relationship between the male and female of the human species, these books are wholly given up to sex and nothing else?

A: So is most literature.

Q: I am asking you about these books. These books are, are they not?

A: Yes, if you define "sex" that way.

MR JUSTICE MANSFIELD: He says, "So are most other books," except those that deal with concrete-mixers and trains, and things of that sort.

BY MR HART: You tell the Court finally that you think that this literature would not tend to stimulate girls to imitate the example of the heroines in these stories, so far as being embraced is concerned?

A: No. I think it would suggest to them that embracing is pleasing and desirable.

Q: The next time they go out to a dance or a party where they meet young men, they will be more likely to indulge in embraces than if they had not been reading these things?

A: I think that would only apply to these psychopathic personalities.

Q: You cannot divide people into water-tight compartments, can you?

A: No.

Q: You gave us 1 per cent, but there would be a lot more shadowing-off percentages?

A: Yes.

THE CHIEF JUSTICE: He did not say there was only 1 per cent. He said that would be the minimum.

BY THE CHIEF JUSTICE: The maximum might be a great deal more?

A: Yes.

BY MR JUSTICE HANGER: You spoke of a minimum of 1 per cent. Have you any experience that would entitle you to express an opinion of any value as to what that percentage would be?

A: No. I do not know of anyone who has been able to determine what the percentage is. A number of people have made guesses.

BY THE CHIEF JUSTICE: At any rate, that is a distinct class of people who are loose in the community?

A: They may not be a very distinct class.

Q: But there is a class who come under that category and they are loose in the community? They are not locked up in mental institutions?

A: That is so.

BY MR HART: If a girl went out in this frame of mind - one of these psychopaths or borderline cases - and as a result of reading these comics allowed herself to be embraced passionately by a boy, even if she did want to stop it is quite possible that the boy might not let her? He might want to go on?

A: I think most girls are capable of putting a stop to that sort of thing.

Q: What about these psychopaths? Are they?

A: No, probably a lot of them are not.

Q: So that the result of this would be to lead on to sexual intercourse in certain cases?

A: It could, but I have never heard of it happening.

RE-EXAMINATION BY MR WANSTALL

Q: When you answered the Chief Justice that these psychopathic people constitute a class of persons who are loose in the community, is there any common factor by which they can be defined into a category except their psychopathic condition? In other words, what makes them a class?

A: Their emotional instability and anti-social behaviour.

Q: How would you describe the class? You would not say they were bricklayers of seamstresses. How would you describe them? By reference to what?

A: By reference to their behaviour.

Q: And that behaviour you classify as what?

A: Anti-social.

Q: But by what general name?

A: Psychopathic.

Q: Mr. Hart put it to you that if you define "sex" as the relationship between male and female, the books are entirely given up to sex. You said that was so with most books. If that is the definition, would the only type of books not classified as dealing with sex be something that contained

MR HART: I object. That is a leading question.

BY MR WANSTALL: What type of book would be excluded from my friend's definition?

A: I suppose only books that did not mention any relationship between the sexes – between males and females.

BY THE CHIEF JUSTICE: Such as a book on trigonometry?

A: Yes.

BY MR WANSTALL: Would any book dealing exclusively with men or exclusively with women be excluded?

A: No.

THE CHIEF JUSTICE: Such as a book on fashion for women?

MR WANSTALL: It might be questionable whether such a book would be entirely free of sex within my friend's definition.

BY MR WANSTALL: You were asked whether it was possible for any literature to give adolescents the idea that sexual intercourse is proper and desirable, and you said it was. What would you say as to whether this literature could do either?

A: I do not think it does.

Q: Before you were asked about the percentage of people who are psychopathic, you were asked Whether certain people would not want to follow the example of the heroine in the stories. You said only a small proportion would. How would you classify those people? Would you expect that of the normal adolescent?

A: Yes.

Q: In a normal adolescent, what effect would you expect that desire to have on the character of the reader?

A: It would reinforce their respect for, and desire for, marriage.

Q: How would you label any who do not get that worthy reaction?

MR HART: I object to this. This is not re-examination.

BY THE CHIEF JUSTICE: Before we deal with that, what do you say would their respect for marriage? Would it be their desire to emulate the heroine in these stories by being the recipient of passionate kisses and embraces in secluded spots?

A: That seems to be a necessary prelude to marriage these days.

Q: Is it?

A: In my opinion.

Q: Courtships are made under those circumstances where very frequently there is an alternative end quite open - passionate embraces in secluded conditions which may not be followed by marriage but which may be used as a prelude to sexual intercourse?

A: They could be.

Q: They frequently are, as we know in these Courts. You say that is the normal way in which courtships are conducted now?

A: I believe it to be.

BY MR WANSTALL: If a normal adolescent was reading one of these stories, what proportionate attention would you expect him to pay to the sort of thing the Chief Justice was putting, to you in comparison with the overall story?

A: I think their main interest would be in the story.

Q: Not in what the Chief Justice selected and put to you?

A: This is while they are reading the story?

Q: Yes?

A: That is so.

Q: That is the reaction of the normal adolescent? Anybody who did not put those scenes in their proper context in the story - what would you say as to his mentality

A: It would be disordered.

BY MR JUSTICE MANSFIELD: Do you suggest you can tell any story you like by words and pictures, and provided it ends in marriage it is all right? Because the ending is right, all the preliminary part of it is all right?

A: No, I do not say that.

Q: The fact that it ends in marriage really has nothing whatever to do with the story?

A: Very little. I thought that most of these stories praised useful occupations.

BY MR WANSTALL: If the ending of the story in a happy marriage was accompanied by the absence of any suggestion of immoral conduct on the part

of the characters, how would you expect the normal person to react when he is assessing the whole story?

A: I think the normal person would not think of immoral conduct.

Q: Is the happy ending one of a number of features?

A: .Yes.

Q: If, on the other hand, in the course of the story, it was made clear to to the readers that the characters were indulging in immoral behaviour, what reaction would you expect?

A: I would expect it to produce sexual excitement.

Court adjourned till 10:30am on Friday, 11 March, 1955.

Affidavit of A. T. Stacey - Dated 15.4.1955

I, ALLAN THOMAS STACEY of 178 Moggill Road Taringa Brisbane in the State of Queensland Newsagent make oath and say as follows:-

1. I am the senior partner in the firm of Taringa News which carries on business at 178 Moggill Road Taringa aforesaid. The business premises are situated almost directly opposite to the local State School.
2. I have had six years experience in the Newsagency business which consists of the sale of all classes of newspapers magazines and other particulars including those which are known as the romantic type (which has come into vogue within the last three or four years) and similar types of publications.
3. I know and am well acquainted with the publications known as Real Love, Romance Story, Real Story, Real Romances and Love Experiences.
4. In the course of my said business I have ample opportunity of noticing the classes of people who purchase the various publications.
5. In my experience the type of publications referred to in paragraph three hereof are purchased by residents of my district and not by casuals.
6. The majority of sales of the type of publications referred to are made to people of adult age and not to those of the younger classes. Although the publications are displayed for sale they are not purchased by the older school children.

ALL the facts and circumstances herein deposed to are within my own knowledge.

SIGNED AND SWORN by the abovenamed Deponent at Brisbane aforesaid this fifteenth day of April 1955

Affidavit of A. I. Panton - Dated 15.4.1955

I, AUBREY IMRIE PANTON of 375 Newmarket Road Newmarket Brisbane in the State of Queensland Newsagent make oath and say as follows -

1. I am the senior partner in the firm of A.I. and D.E. Panton which carries on business as Newsagents at 184 Edward Street Brisbane aforesaid.
2. I have had two years experience in the Newsagency business which consists of the sale of all classes of newspapers, magazines and other publications including those which are known as the romantic type and those of similar types.
3. I know and am well acquainted with the publications known as Real Love, Romance Story, Real Story, Real Romances and Love Experiences.
4. In the course of my said business I have ample opportunity of noticing the classes of people who purchase the various publications.
5. In my experience the type of publications referred to in paragraph three hereof are purchased by what may be called the senior office girl class, many of whom are married women judging from the rings worn by them.
6. The majority of sales of the type of publications referred to are made to people of adult age and not to those of the younger classes.

ALL the facts and circumstances herein deposed to are within my own knowledge.

SIGNED AND SWORN by the abovenamed Deponent at Brisbane aforesaid this fifteenth day of April 1955

Affidavit of J. McGeorge - Dated 18.4.1955

I, JOHN McGEORGE of 183 Macquarie Street Sydney in the State of New South Wales Medical Practitioner make oath and say as follows:-

1. I hold the Degrees of Bachelor of Medicine, Master of Surgery, Diploma in Psychiatry all of Sydney University.
2. As a Medical Practitioner I have throughout the past twentyseven years specialised in the practice of psychiatry.
3. I am a member of the Parole Board of N.S.W. and Consultant Psychiatrist to the Royal Alfred Hospital. I am Consultant Psychiatrist to the Department of the Attorney General and of Justice in the State of New South Wales, to the Royal Australian Airforce and to the Royal Australian Navy.
4. I am also a qualified Barrister-at-law and am a member of the New South Wales Bar.
5. I am Lecturer at the Sydney University on the subject of Forensic Psychiatry and at the Sydney University Law School on the subjects of Criminal Law and Lunacy.
6. My present appointment to the Department of the Attorney General and of Justice entails the examination of all sex offenders after conviction and sentence and of many before trial who may not be sent to prison after conviction. In my practice as a psychiatrist I saw many sex offenders. For five years I was the Senior Medical Officer at the Broughton Hall Psychiatric Clinic where psychopaths, sexual and otherwise, were admitted, This institution is the largest of its kind in Australia. For some years, prior to my retirement from practice, I was the senior psychiatrist at the Royal Alfred Hospital and in charge of the Psychiatry Pavilion at that hospital. There were 5 psychiatrists junior to me as well as a junior and a senior resident medical officer. This clinic also had numerous sex offenders referred to it. My present duties consist largely in expressing opinions on cases referred to me by magistrates and judges. The majority of such cases are sex offenders. I am the author of a monograph, published in July 15, 1939, on juvenile delinquency. I was the first chairman of the Child Welfare Advisory Council established by the N.S.W. Government to deal with problems related to child welfare, including delinquency. I am a member of the Visiting Committee to the Criminal Mental Defectives Institution. All the prisoners in this institution are sex offenders. I believe that I have a wider experience in forensic psychiatry than any other psychiatrist in Australia, having been visiting psychiatrist to the State Penitentiary, Long Bay, for eight years, consultant psychiatrist for a further ten years and holder of my present appointment for over three years making a total experience in this aspect of psychiatry of some twenty odd years. I am at present preparing a paper on the sex offender for publication in the Journal of Forensic Medicine of South Africa, at the request of the editor. My most recent paper published on October 30, 1954 was on "Medico-legal Aspects of Psychiatry" and a section of this is devoted to the sex-offender.

7. Prior to undertaking the said postgraduate lectures in Forensic Psychiatry I lectured in Psychopathology and devoted some time to a discussion of the psychopathic personality, often referred to as the "psychopath". There are several types of psychopathic personality which should be distinguished from each other. They are, however, all characterised by irresponsibility, impulsiveness and instability, and the psychopath is so from birth. Some are a preliminary stage in the development of frank insanity. Such cases are the schizoid psychopath (day-dreaming seclusive and unsociable) who may later become a schizophrenic; and paranoid psychopath (suspicious, unreasonable resentful and irritable) which may be a stage in the development of delusions of persecution. Other forms of psychopathic personality are: the alcoholic psychopath who drinks to excess and may end up as a chronic alcoholic; the moral psychopath who is a liar and perjurer, unscrupulous and unreliable; the criminal psychopath who becomes the habitual criminal for he has made crime his profession and would seek no other, punishment is never a deterrent; the sexual psychopath who may be merely over-sexed i.e. a nymphomaniac or the masculine counterpart a sufferer from satyriasis, or who may be a person who indulges in various types of sexual perversion. A sexual psychopath is necessarily in an existing state of deep depravity.

8. I have carefully perused and considered the undermentioned magazines which purport to have been published by Transport Publishing Co. Pty. Ltd., Action Comics Pty. Limited or H. John Edwards Publishing Co. Pty.Ltd. as the case may be:-

- (i) Real Love No. 30 Romance Story No. 24 Real Story No. 21. Real Romances No. 30 Love Experiences No. 30.
- (ii) "Darling Romance" Numbered 39, 41, 43, 44, 45 and 46 respectively.
- (iii) "Popular Romance" Numbered 13a, 16a and 17a, and 24, 225 and 26 respectively
- (iv) "New Romances" Volumes Numbered 14a, 18a and 25.

9. I have carefully perused and considered the definition of "Objectionable. Contained in "The Objectionable Literature Act of 1954" and in considering the said magazines as aforesaid have kept that definition in mind.

10. I have read the Affidavit and the transcript of the oral evidence of Basil Frederick Roberts Stafford in this matter and crave leave to refer thereto.

11. In the course of the foregoing wide experience with sexual offenders I have interviewed many adolescents and have let them tell their own stories without prompting. To try to peer into their sex lives or to prompt them would repel them and the interview would be profitless to doctor and patient. It is for that reason that many psychiatrists fail with young people. I have not personally observed the reaction of young people to this type of literature referred to in paragraph 8 hereof, but have closely questioned parents and social workers and adolescents about adolescents, experience and use of such literature and about their reactions to it. In this respect I consider that my opportunities for forming a sound judgment as to the effect of reading such literature have been

better than those which would be available to Dr. Stafford from the observations he has referred to in his evidence at pages 95 and 96 of the said transcript. In said experience and from such observations I have never found that the reading of such literature has had any deleterious tendency or effect upon any adolescent of any type.

12. I have had regard to the nature of the said magazines, including the plots of the stories contained therein, the types of characters therein depicted and their actions, and the illustrations which depict men and women kissing and embracing.

13. I have been informed by the solicitors for the appellants and verily believe that the said magazines are intended for distribution amongst adolescents and all other classes and age groups of people and that they are in fact read by adolescents and all other classes and age groups of people in all States of Australia, and have had regard to these facts.

14. Having regard to those facts it is my opinion that no part of the said magazines has or could have any tendency to deprave or corrupt any persons of any type in any such classes or age groups.

15. In my opinion there is nothing in word or picture in any of the magazines which would portray or suggest or be capable of suggesting anything of a salacious, immoral, indecent, obscene or depraved kind to any reader of any type and there is no likelihood of their being injurious to morality or encouraging depravity.

16. I consider that there is nothing in any of these magazines which would or would be likely to sexually excite the reader. There is nothing suggestive of sex in any of the kissing scenes and they should and in my opinion would be regarded as the natural conclusion of a romance. The psychopaths, sexual or otherwise, and the types described by Dr. Stafford would find them insufficiently stimulating and in my opinion would not be likely to read this type of clean romance, but would seek and require something of a pornographic nature to satisfy their aberrant sexually-abnormal impulses. Being already sexually over-active they would require something blatantly obscene to stimulate them beyond their existing state of over-stimulation. These Romances are of too high a moral tone to interest this type and would be far too tame for such types. For them, lewd and indecent stories and jokes, salacious postcards and pictures with a definite element of pornography are necessary for stimulation. Such kissing and embracing as are depicted in these Romances would have no sexual significance to the psychopaths who may happen to read them nor to a group referred to by Dr. Stafford who are satiated and blasé and immune to such illustrations.

17. The opinions expressed in evidence by Dr. Stafford as to the likely reactions of the group of people he has in mind to these Romances and to illustrations of such mundane matters as ball-room dancing, couples of opposite sexes holding hands, or walking along a beach, kissing or embracing, a wife lighting her husband's pipe, underwear garments and other such instances rest upon assumptions which in my experience are entirely unjustified. Persons who suffer from that form of sexual aberration known as

fetichism derive sexual stimulation from articles of clothing or other objects commonly associated with the opposite sex, e.g. fur coats, handkerchiefs, underwear, hair-oil, shoes and such like things. Great sexual excitement can be aroused in such psychopaths by touching these things and in rare and very bad cases merely by seeing them. But in my opinion even a fetichist would not be sexually stimulated by the stories and illustrations in these Romances nor by the illustrations of the ether things mentioned above. The acceptance of Dr. Stafford's assessment of the reactions to these Romances of the psychopaths he describes involves acceptance of the Freudian concept of phallic symbols in all manner of things, no matter how free of sexual significance they may be to a person not steeped in this perverted philosophy.

18. I do not agree with the opinion of Dr. Stafford that the whole essence of these publications is that physical contact is something glamorous and desirable. The scenes which show physical contact between men and women, particularly kissing and embracing, are in my opinion incidental to the movement of the stories, the whole essence of which in my opinion is the theme that happy marriage is only attained through true love. The stories do not lay particular stress on physical contact when the scenes depicting physical contact are considered in the context of the whole story. Most of the stories point a moral, the reader being encouraged to believe that it is the industrious honest and unselfish type of person who derives the greatest happiness from life. Dr. Stafford's stressing of "physical contacts", as if one were dealing with actual coitus, is misleading, for the so called contacts are in my opinion quite innocuous and are indulged in by a majority of adolescents without any harm - mental moral or physical - resulting. They are a natural part of courtship as a prelude to marriage, which in these stories is held up as the desirable state and they are not shown as a prelude to immorality.

19. None of the said stories makes any reference directly or indirectly to sexual matters as that term is commonly understood, and in my opinion they would not operate as a sexual stimulant to any reader.

20. The stories exalt and glamorise marriage but they do not refer to nor imply the sexual aspect of marriage - they are preoccupied with the social aspect of courtship and marriage and in my opinion do not deal with nor imply matters of sex at all as that term is understood by the layman as distinct from the psychiatrist.

21. I use the term sex, in this affidavit, in its ordinary everyday meaning of matters which arouse sexual desire with the ultimate aim of sexual intercourse.

22. The greatest stimulation sexually arises from direct contact, passionate love-making and intimate fondling. It is tactile, not visual. Few, if any, adolescents would be excited by the innocuous love-making pictures in these Romances, which in any event do not portray the sort of passionate love-making and intimate fondling to which I refer. For those who would be so excited it would take a perfectly harmless form of romantic day dreaming without any sexual element. The psychopathic and emotionally unstable types whose minds might be capable of giving a sexual distortion to a concept which, to the normal person, is free from any sexual significance, would not in my

opinion get such a reaction from visualising these pictures or stories, in which there is no salacity or pornography, for reasons which I have expressed in paragraphs 16 and 17 hereof.

23. I disagree with the opinion expressed by Dr. Stafford at page 88 of the said transcript that sexual reaction is the strongest factor in the state of being in love in normal decent people, even as a background influence. Love is not to be confused with passion or sex. It is a compound emotion i.e. a state of feeling of the organism, directed to some person, adult or child, of the same sex or opposite sex in the case of parents, but in the case of adults, usually of the opposite sex, although the fact of sex as such very often does not enter into it. The love or affection of adolescents is a perfectly normal phase in their development. Moral training in the home or, in its absence, an innate sense of decency, prevents this from degenerating into mere animal passion which is an uncontrolled mental, physical and emotional state leading to the domination of primitive instinct over conduct. I cannot agree that the sexual side of love is a background influence. In my opinion love can and frequently does exist without any sexual component whatsoever. I consider that love and lust, which is the instinctive reaction of sex, are being confused. Love is compounded of abasement, protectiveness, possessiveness and the tender emotion. Anger at the intrusion of another and fear at the prospect of loss of the loved one may also play a part at times, It may be seen from this that love can be quite a variable emotional state depending on the predominance of the different components at different times. Lust, passion or sex is always an upsurge of the sexual instinct and in it love may have no part at all. It should be known to everyone that passion may exist between two people without any real feeling whatever.

24. I disagree with the opinion expressed by Dr. Stafford at page 111 and 112 of the transcript that incidents in these stories in which a girl is "picked up" could tend to deprave or corrupt a reader of the type referred to by Dr. Stafford. It seems to me that there is in this reasoning a misunderstanding about convention and morality. A girl who allows herself to be "picked up" may be every bit as moral as one who awaits an introduction, although less conventional. I know of several successful marriages which resulted from such a beginning. The circumstances in these stories, as in life, usually are that they see each other frequently on a bus or train but never with a mutual friend. After all many friendships between University students of different faculties begin in a similar way. In these stories such girls are clearly shown as being of upright moral conduct. There is no justification for the assumption that the provoking of a desire to emulate such social behaviour would or could result in sexual immorality even in the already depraved types to which Dr. Stafford is referring. In my opinion, if they encouraged any desire to emulate these characters, it would only be towards decent courtship and happy marriage.

25. I disagree with the opinions expressed by Dr. Stafford at page 104 of the Transcript that seeing a picture of a couple kissing in the context of these stories would act as a stimulus and suggest to the people he is describing that they ought to copy it, and that such people would "emphasise the sexual significance of the climax" in illustrations which the majority of people interpret

as depicting the betrothal of a decent young couple. The story referred to has no sexual significance whatever. To take one or two pictures from a book, although these pictures are not in any way obscene or pornographic, and condemn the book, which applauds virtue and upholds the desirability of the marriage state, is in my opinion to apply the perverted philosophy of Freud.

26. I disagree with the reasoning of Dr. Stafford at page 109 of the Transcript that because the stories have a conventional happy ending the seal of approval is set on irregular conduct, of which there is no evidence in any of the stories I have read.

27. I also disagree with Dr. Stafford's opinion, expressed on page 110 of the Transcript that the stories portray kissing in a way which would be interpreted by anyone as misbehaviour. I do not recall seeing any scene which might be regarded as suggestive, sexually stimulating or obscene, including those to which particular reference has been made in the Transcript. I do not agree that any illustration or story in those magazines could act as a sexual stimulus to any reader, nor that it could result in aberrant sexual behaviour. If this were so I would expect to find actual evidence of such reaction in some of the subjects whom I have examined in the course of my many years of experience, but I have not done so. If this were so, I would also expect that the same reader or type of reader would react in the same way, but much more intensely, to the acting out on the screen of comparable amatory scenes which are frequently included in films. Also if Dr. Stafford's assessment were correct the types of psychopath to which he refers, or some of them, would derive much more undesirable stimulation from Shakespeare's "Venus and Adonis", or "The Rape of Lucrece", whilst the playing of "Hamlet" would gratify the most sadistic desires, for in it there are eight violent deaths, adultery, a ghost, a mad woman, and a fight in a grave. The same might be said of most of the operas, e.g. "Butterfly" (seduction, desertion and suicide) "Tosca" (torture) "Rigoletto" (seduction and murder) and "Aida" (burying alive) to mention just a few. Similar assumptions could and should, to be consistent with Dr. Stafford's assessment, also be made, in relation to the reaction of some of such persons, to music in certain keys and arrangements.

28. I also disagree with Dr. Stafford's opinion pressed on page 111 of the Transcript that even a person of the type envisaged by him could or would regard the incident referred to as illustrating that "if you do a silly thing it will end up all right". Such sophistry entirely ignores the obvious moral of the story, whilst assuming a sufficient degree of intelligence in the reader to reason some meaning out of the theme of the story.

29. In my opinion and experience, normal persons, both adolescents and adults, habitually read these books, but only those of average intelligence. Those of a high degree of intelligence would require something of a more complex nature to stimulate their interest. A report recently published by the Bureau of Public Administration of the University of California discloses that extensive researches conducted by the Bureau established that in America "comics" are regularly read by 25% of High School graduates, 16% of College graduates, and 12% of school teachers. This relates to all types of "Comics", not exclusively to the romance type. The latter type are extensively circulated in

America and I believe would be included in those overall figures. It is my opinion that romance stories have universal reader appeal and I would expect the position to be similar in Australia.

30. In my opinion the reading of such literature is an outlet solely for the romantic attitude of the normal person, particularly adolescents, and it has no sexual component in the accepted sense of the term. In this I disagree with the opinion of Dr. Matchett as to the sublimating effect of this literature on the sex instinct. Its effect would be no more than to gratify the romantic which exists in young girls. Sex, as such, does not enter into it.

31. I am firmly of opinion that each of the said magazines is suitable for reading by adolescents of either sex and any typo, and by adults whose literary tastes are satisfied thereby.

ALL the facts and circumstances herein deposed to are within my own knowledge save where deposed to from information and belief and my means of knowledge and sources of information appear on the face of this my Affidavit.

SIGNED AND SWORN by the abovenamed Deponent at Sydney aforesaid this eighteenth day of April 1955

Affidavit of J.W. Metcalfe - 21.4.1955

I, JOHN WALLACE METCALFE, 58 Hardy Street, Dover Heights, in the State of New South Wales, Librarian, being duly sworn, make oath and say as follows:-

1. I am the Principal Librarian of the Public Library of New South Wales, Executive Member of the Library Board of New South Wales, Vice-President of the Library Association of Australia and Chairman of its Board of Examination. I am a Bachelor of Arts in the University of Sydney and a Fellow, of the Library Association of Great Britain. I have been abroad for the study of library services and the use of books under the auspices of the Carnegie Corporation of New York and the British Council and I have been a delegate of the Commonwealth Government to the General Conference of UNESCO at which I was in 1947 Chairman of the Libraries and Documentation Committee. I was Deputy Principal Librarian of the Public Library of New South Wales from 1932 to 1942 and since that date Principal Librarian, and during that time I have had to exercise control over the selection and introduction of literature to all classes including children of all ages in schools of the Education Department of New South Wales.

2. I have read copies of the books described on their covers as follows:

No. 21 Real Story

No. 22 & 24 Romance Story

No. 23 & 30 Love Experiences

No. 30 Real Love

No. 46 Darling Romance

No. 17a Popular Romance

No. 18a New Romances

3. I have been informed by the solicitors for the appellants and verily believe that these publications are distributed generally to all classes and age groups of persons in the community in all States of Australia. I have seen publications similar to these in subject matter, theme, characterisation illustration and presentation in the possession of three or four men aged twenty and upwards who are employed in the library of the N.S.W Film Council as film checkers in Sydney. These young men are of average intelligence and education and I verily believe that they and others of the same age who I have frequently observed in public vehicles habitually read such publications.

4. Having read these books I have considered them with the definition "objectionable" contained in the "Objectionable Literature Act of 1954" and in my opinion none of these books is "objectionable" in respect of any part of that definition, and in my opinion these books would not tend either as wholes, or in parts, to deprave or corrupt any persons or classes of persons or age groups by which they might be read.

5. The narratives are mainly in picture form but the subjects are those commonly dealt with in illustrated prose fiction freely circulated amongst adolescents and adults, and one of them is a statement of a current problem of business management. In these respects instance:-

(a) The story entitled "Discontent" in No. 21 Real Story. The theme is that of a farmer's newly wedded wife who deserts him and even steals money from him, to spend it in idle and luxurious living in the city, but there is no undue emphasis in the pictures or narrative on evil living and she is shown to be disillusioned and returning to her husband on the farm.

(b) "Oh Lonely Heart" in Love Experiences No. 23, is a common story of misunderstanding, between a girl ballet dancer who thinks her manager has no other interest but to exploit her, whilst he thinks she has no other interest in life but dancing; there is no undue emphasis on sex in its physical or psychological aspects in the pictures or the narrative and the theme is common in novels, moving pictures and stories for children.

(c) "Can a Plain Girl Find Love" in No. 22 Romance Story, is a homely and salutary story to the effect that a plain girl can find happiness and marriage if she is prepared to accept a plain man. It is told against a background of good parent-child relations and very pointedly exalts happy family life.

(d) "Right Thing to Do" in Love Experiences No. 23, is a statement in picture form, with very little plot, of a question which has been discussed in an economic and business journal of such standing as *Fortune*; the theme is that the attempt which may be made by hip business operators to regiment the private lives of employees and their wives, to the extent of determining what sort of clubs they shall belong to.

(e) "One Man Too Many" in No. 26 "Real Romances tells, by the flash-back of 1955 technique of a mother talking with her daughter, a simple wholesome story on the "Which Do I Love?" theme. It emphasises happy family life and points the moral of mother-daughter confidence as the way to the solution of the adolescent girl's problem.

6. The narrative accompanying the pictures is almost completely free of slang or even colloquialisms, and of anything that could be considered objectionable within the meaning of this word in the Act, or otherwise; the pictures are free of any undue exhibition of the unclothed or half-clothed body, either male or female, which might be considered objectionable in the meaning of the Act, and there is no reference, explicit or implicit, to abnormal emotions or instincts, nor to immorality.

7. There is very little portrayal of physical force and of anything that could be called violence, and much less than there is in some novels that have been regularly prescribed for reading and study by school children, such as Dickens' "Oliver Twist" and Shakespeare's "Macbeth".

8. The particular field of these books has been the principal field of imaginative literature in all places and times. It is that of the emotional relation between the opposite sexes, especially in the adolescent period and that of courtship, and

in dealing with it these books which I have read endeavour to sustain respect for established principles of moral conduct, by carefully avoiding any reference to sexual relations and by avoiding situations that would imply that the characters had so indulged. It is noticeable that even when the characters are depicted as husband and wife the narrative and the illustrations avoid any suggestion of the sexual side of marriage. There is a constant emphasis on the virtue of happy marriage, homely living and of loyalty between husband and wife, which I consider a welcome counter to the emphasis in and picture on the opposites of happy marriage, homely life and the domestic virtues, which are common in newspapers read by adolescents, in their day to day reporting of general news, of criminal courts and of the divorce courts.

9. From my knowledge of literature I am of the opinion that the incidents depicted in the course of telling these stories of courtship and marriage, and the matter in which they are depicted, are common in the field of romance literature, whether the vehicle be straight prose, poetry, or a combination of either with illustrations. In such literature, social contact of the kind here portrayed including kissing and embracing is part and parcel of courtship. It is the standard technique of love stories to include graphic descriptions of such amatory embraces. I have observed the same technique in love stories on the films, in which actor and actress are frequently shown embracing and kissing in close-ups, and such scenes are commonly reproduced in advertising matter relating to the film, as well as in magazines. For centuries readers of literature in this field have been conditioned to accepting such descriptions and illustrations as expressing the love emotion without suggestion of sex. As a librarian I would not classify such literature, including the subject pictorial romances, as sex literature.

10. The subject literature is not included in the libraries for which I have administrative responsibilities, which are the Public Library of New South Wales and municipal and shire libraries under the New South Wales Library Act 1939, but that is because it is of the kind called popular, and not considered to be of sufficient literary, informative or educational value for inclusion in libraries supported from public funds for the purposes of education, culture and research, but I would have no objection to its inclusion in these libraries on any ground included in the definition of "Objectionable" in the said Act, as I consider that it could have no harmful influence of any of the kinds therein enumerated.

ALL the facts and circumstances herein deposed to are within my own knowledge save where deposed to from information and belief and my means of knowledge and sources of information appear on the face of this my Affidavit

SIGNED AND SWORN by the abovenamed Deponent at Sydney in the State of New South Wales this twentyfirst day of April 1955.

Tuesday, 3 May, 1955.

The Court resumed at 10 a.m.

MR WANSTALL: I have four affidavits available, and the deponents are available for cross-examination. The affidavits have been filed, and I ask leave to read them. They are the affidavits of John McGeorge, John Wallace Metcalfe, Allan Thomas Stacey and Aubrey Imrie Panton. The last two are newsagents who deposed to the actual sale in their shop. As to the affidavits of John McGeorge and John Wallace Metcalfe, only one engrossed original has been filed in the matter O.S.C. No.3 of 1955 and consequently has only that title on it. I ask leave to read it with each of the other two matters. The affidavits of the two Brisbane deponents have been prepared on the basis of one for each of the matters.

THE CHIEF JUSTICE: Leave to read the affidavits is granted.

(Mr. Wanstall then proceeded to read the affidavit of John McGeorge.)

MR HART: At this stage, I object to any evidence given by this doctor which depends on hearsay.

THE CHIEF JUSTICE: Any expert's evidence is very largely hearsay evidence. A doctor who is giving evidence on some matter of expert knowledge, gets his information from not only his own experience but textbooks he has read and lectures he has received from the University.

MR HART: But then he swears to issue in the case later. I take the objection now so that I can argue the point afterwards. I shall be objecting to anything that is not legally admissible evidence.

MR WANSTALL: I appreciate the position. Of course, I know what is coming in the affidavit, but I am in the position of answering other witnesses who have sworn to issue. The Court has not decided what it is going to do about that, consequently I have included in the affidavits matters that the Court might ultimately eliminate.

I read the affidavit of John Wallace Metcalfe. (Reads)

MR HART: I take the same objection to this affidavit in relation to swearing the issue.

MR WANSTALL: I read the affidavit of Allan Thomas Stacey. (reads)

I read the affidavit of Aubrey E. Panton.

I call Doctor John McGeorge.

JOHN McGEORGE, sworn and examined:

BY MR WANSTALL: Your full name is John McGeorge?

A: Yes.

Q: Your residential address is 9 Ormonde Road, Roseville Chase, Sydney, New South Wales?

A: Yes.

Q: You are the deponent of an affidavit which was sworn on 18 April 1955 and which has been read in this court. You have only sworn one affidavit in this matter?

A: Yes.

Q: During the reading of your affidavit a question came up as to what you meant in paragraph 11. Will you look at paragraph 11 about one-third of the way down where you say, "I have not personally observed the reactions of young persons to this type of literature referred to in paragraph 8 hereof."?

A: That referred to the actual books with which I had been supplied.

BY THE CHIEF JUSTICE: What do you understand by "this type of literature"?

A: The type of literature with which I had been supplied. These numbers of the Romance magazines.

Q: That would include those of the same type?

A: No. I was referring to the ones with which I had been supplied on that occasion.

BY MR WANSTALL: That is the fact? Have you conducted observations of the reactions of readers of comparable types of this literature?

A: Not observation of them in the actual process of reading.

Q: How have you put yourself in a position to observe their reaction to the reading of comparable literature

A: By discussing them with the parents and with social workers who are attached to the clinics with which I have been associated and the questioning of the actual readers of these periodicals.

Q: Could you say something to indicate the fairness of the comparison between the literature you questioned them about and the subject literature? How does it compare?

A: They were numbers of a similar nature to that. I also questioned them on a number of other volumes on crime and space stories and such-like things but included amongst the books on which I did question them were, to the best of my recollection, books of an identical type to this.

CROSS-EXAMINATION BY MR HART

Q: When did you cross-examine them?

A: At various times during my practice as a psychiatrist or as a medical adviser at Broughton Hall Psychiatric Clinic or senior psychiatrist at the Royal Prince Alfred hospital.

Q: Would it be over many years or only a few years?

A: It covered a period of quite a number of years; it would be at least 10 years.

Q: What job did you have 10 years ago? I know you were a doctor but what particular occupation?

A: I was practising as a psychiatrist in Macquarie Street, Sydney and I was honorary psychiatrist at the Royal Prince Alfred hospital.

Q: Was it in your private practice or at the hospital you came across these people?

A: Both in my private practice where adolescent problems were brought along for advice at the hospital where parents also brought their children along with some behaviour disorder.

Q: For 10 years you have been examining them from time to time on this type of literature and you found it had no ill effects on them whatsoever?

A: You are referring specifically to these Romance comics.

BY MR JUSTICE MANSFIELD: We are particularly interested in these pictorials?

A: They vary quite a lot. There are some which I regarded as relatively innocuous. There were others in which it seemed to me there was an undue emphasis on sex either in the letterpress associated with the pictures or in the pictures themselves. They were drawn and designed, I consider, with the object of appealing to the lower instincts of the readers.

Q: Do those pictures show actual pictures of sexual intercourse?

A: No. That was about the only restraint they actually did show.

Q: From the way they were clasping each other?

A: To some extent from the way they were embracing but also from the fact that the women in the pictures were partially clothed and the scenes for instance would be in a hotel bedroom or something of that nature.

BY MR HART: You say then that the mere representation of an embrace itself, no matter how passionate it might be need not be sexually stimulating?

A: It is possible for an artist with a pornographic turn of mind to convey quite a lot in a pictorial representation of an embrace which may be most undesirable. I do not say that all embraces are sexually stimulating.

Q: Some of them are?

A: Some could quite well be.

Q: The letterpress accompanying them could also be sexually stimulating?

A: That is quite possible.

Q: Dr. Matchett told this court that the prose form of the story is more stimulating than the pictorial form of stories. I will refer you to his exact words which occur on page 162 starting from line 28. I also refer you to Dr. Stafford's evidence in paragraph 13 of his affidavit, and also to Captain Geddes of the Salvation Army in paragraph 9 of her affidavit.

A: Those are, generalisations and you cannot generalise in psychology; in fact it is very difficult even to particularise. I would say first of all that I do not attach

a great deal of importance to Dr. Kinsey's report. I might say in parenthesis that my attitude is occasioned by the fact that I find it difficult to believe that any respectable decent woman would make the confessions to an investigator that those women are alleged to have made. I suggest that the quoting of Dr. Kinsey's report is not relevant. In regard to other matters it could be said that greater sexual stimulation will be aroused from phantasy and day-dreaming about sexual matters than from the actual pictorial representation of love-making. The pictorial representation shows you something; you have seen it and that is the end of it, but if you read an erotic passage from a book that stimulates day-dreaming and may go to extremes and result in great sexual excitement. That is why I say I do not think anyone can generalise on the subject. One would have to know the book and the nature of the book, and the type of person who is actually reading that book.

Q: You would in general agree then that the effect of the written word is greater than the pictorial form?

A: Dependlog on the type of written word.

Q: If you were to have both as you have here the effect night be very great?

A: There again it depends on the type of written word and the type of representation. I grant you that if the picture portrays something pornographic and at the same time the letterpress emphasises or underlines that, then you would have a much greater effect if only one of those conditions obtained.

Q: The only book that pretends to be scientific on this subject is that of Dr. Kinsey?

A: I agree with the use of the word "pretends".

Q: You do not think it is scientific?

A: I do not say I do not think it is scientific but I do not think it is accurate, because I cannot conceive of women making a confidant of some casual investigator who comes around asking them questions.

Q: You remember that the beginning of the book said that they were not casual investigators?

A: They are supposed to be trained investigators but they are employed investigators.

Q: Was not their method to go from group to group?

A: Yes.

Q: So that the whole group would have the confidence because they knew other members of the group had been around?

A: That has been said to lend force to the conclusion which he has drawn but I still cannot conceive the average respectable woman revealing the things contained in that book to any investigator.

BY THE CHIEF JUSTICE: Not in this community?

A: Certainly not in our community; we cannot conceive it happening.

BY MR HART: You did have a conference after you gave your affidavit and before you came into this court?

A: You mean with counsel?

Q: Yes.

A: Yes.

Q: You agree then that it is very difficult to generalise on these psychological matters?

A: No. I have in fact generalised on what would have an undesirable effect, but I say one cannot generalise by just using the words "books" or "pictures". One might particularise and specifically state the type of book and the type of picture.

BY THE CHIEF JUSTICE: And the type of person too?

A: The type of individual too.

BY MR HART: You say there is nothing of suggestive of sex in any of these pictorial magazines?

A: I recall nothing suggestive of sex in the common use of the term sex.

BY THE CHIEF JUSTICE: You confine it exclusively to sexual intercourse?

A: Or the passionate feelings aroused as a preliminary to sexual intercourse but not reaching the ultimate stage of sexual intercourse. There can be sex without the sexual intercourse and there can be love without sex.

BY MR JUSTICE MANSFIELD: What you have referred to in paragraph 9?

A: That is what I had in mind. The actual word "sex" does not necessarily connote sexual intercourse. It means the initial stages which may lead to that. Circumstances may prevent the ultimate.

BY THE CHIEF JUSTICE: Starting from what stage of physical contact?

A: I had in mind when I used the term sex not a pictorial representation of it or the written word but the actual physical association, a fondling and embracing of passionate nature which may lead finally to the sexual act.

BY MR HART: You say there is nothing in the embraces in any of these magazines which could arouse any sexual desire?

A: I recall nothing which in my opinion would arouse sexual desire.

Q: You have actually sworn that there is nothing?

A: I am saying that at the present time I do not recall anything. The affidavit was, of course, made within a short time after I had read the books which had been submitted to me.

Q: You say, "I consider there is nothing in any of these magazines which would or be likely to sexually excite the reader"?

A: Yes.

Q: "There is nothing suggested of sex in any of the kissing scenes, and in my opinion would be regarded as a natural conclusion of a romance"?

A: Yes.

Q: You, say that in each case the kissing scenes are the normal conclusion of romance?

A: Yes.

Q: You do not consider that many of them are at the beginning, on the first night they met?

A: Of course, some romances are of fairly short duration.

Q: You mean quick?

A: Yes.

Q: And, I suppose, generally short, too?

A: I should have to cast my mind back to the part to answer that question.

Q: You also say in paragraph 18, "I do not agree with Dr. Stafford that the whole essence of this publication is that physical contact is something glamorous and desirable"?

A: That is so.

Q: You do not agree with that?

A: I do not.

Q: Paragraph 19 you say, "None of these stories would act as a sexual stimulus to any reader". Is that your opinion still?

A: Yes, and I have expressed my opinion as to why that should be so.

Q: Then, in paragraph 24, you say that you disagree with the opinion expressed by Dr. Stafford as to pick-ups?

A: Yes, and I hold quite firmly to that.

Q: Do you believe in pick-ups?

A: No. You are distorting what I said. I said that I hold strongly to the opinion that a girl who is picked up might still be perfectly moral.

Q: You do not think it is a good thing to give girls the idea that to be picked up is a romantic and glamorous thing?

A: No.

Q: Then would you say that in this particular type of literature it is reprehensible?

A: No. I simply say there is confusion between convention and morality, and to say that because a girl is picked up it is reprehensible, is entirely wrong. A perfectly respectable girl might be picked up in the circumstances I have listed in my affidavit, with no suggestion of immorality.

Q: Do you say you have set out all the circumstances in which girls are picked up in this literature?

A: No. I have referred to cases in which University students of different Faculties have become acquainted with each other without the formality of an introduction. I do not suggest for a moment that makes these people any less moral.

Q: Take the case of a girl who goes to what they call pick-up dances.

MR JUSTICE HANGER: What is a pick-up dance?

MR HART: A dance to which young people go for the purpose of meeting young members of the opposite sex, to whom they are strangers – view mat.

MR JUSTICE MANSFIELD: But view mat is perfectly respectable, is it not? Do you call pick-up dances the dances that are commonly called two-bob hops where young men and young women go, pay 2s to enter and then dance with people whom they have probably never seen before?

MR HART: Yes.

BY MR HART: I mean a dance where people do not know each other, where they meet their partners and dance with them. Do you think it is a good thing to encourage that?

A: There again circumstances alter cases. It would depend entirely on the supervision. For instance, young people go to dances arranged by Church organisations. There is nothing reprehensible about that. The object is to bring young people together, and I think that is eminently desirable. It is an unfortunate thing that there are not more dances organised by Church organisations. If you are referring to dances where it is a common practice for young people to go and meet others of the opposite sex, I can only say there is a certain element of risk attached to it. There may be no harm in it. They may be perfectly respectable lonely people who have not the opportunity to meet the opposite sex. On the other hand, they may meet undesirables who often frequent those places.

Q: What about picking up casual strangerd in the street. Do you believe in that?

A: I do not believe in any of these things. I only say that I can see no harm in it. Perhaps there is a wide streak of the conventional in me. I do not a lot of these thinge, but that is not to say I actively disapprove of them.

BY THE CHIEF JUSTICE: Would you say it is a risky kind of comencement to an acquaintanceship to rely on?

A: Yes, casual meeting in the steet or perhaps at a dance hall. I agree there is a definite risk attached to that.

Q: It be all right, but there is a definite risk?

A: There is a possible risk in those circumstances.

Q: Do you not think it would be misleading to young people if they see that kind of thing depicted in these magazines?

A: There again it depends. One cannot generalize in that, either. I can only say that if the ending shown is the conventional happy ending of marriage and so on, then the effect would not be undesirable.

Q: But do you not think that lots of girls would read these things and decide that being picked up in the street was the thing to do, and it would not end in a happy marriage at all?

A: I could not agree with that. Frankly, I do not think these books would have much effect on anybody in any respect. I think the average adolescent would read them just for something to read, and for no other purpose.

Q: You do not think there is a tendency in adolescence to emulate the characters they read about in books?

A: That is a different story. I have said that in the reading of a book a person may daydream, may fantasy, may put himself or herself into the character of the book, in what is known psychologically as empathy. They put themselves in the places of the characters. It is the same with the screen. They live the adventures of the screen character, and it is in that fantasy that harm may be done, not in something they read in a book in half an hour or so and discard.

BY MR JUSTICE HANGER: But is the reading of the literature likely to encourage this state of empathy?

A: I do not think it would in this type of book. I feel that it is in the book where there is no picture, where they have to envisage it for themselves, that the start on course of daydreaming.

BY THE CHIEF JUSTICE: But what about the books where they have the literature and also the pictures in association?

A: I do not consider there is much likelihood, if any, of it occurring with this type of book. I think it is where the reader has to picture for himself what the author is trying to depict.

BY MR HART: What about films? Would people identify themselves with characters they see on the films?

A: Yes. That is why so many women are so tearful at the pictures. They are suffering just as the heroine is suffering, but there you have more than a mere pictorial representation, with the modern wide screen. You have something that is real. It is like the stage. You have them in front of you, acting and moving.

Q: What about when boys see pictures of gangsters? Would they tend to emulate them?

A: I can only say that in my experience the gangster films have not contributed in any way whatsoever to delinquency.

BY MR JUSTICE MANSFIELD: What do you consider to be the effect of the "Crime Does Not Pay" series that generally ends up with the gangsters being put behind bars?

A: I think, if anything, that it is good.

Q: Because the end shows what happens to these people?

A: Yes, it points a moral, and I think there is a lot to be said for it provided they are not devoted too much to the brutal aspect of crime. I do not think that is desirable; not so much from the moral point of view but from the nervous point of view. I feel that a lot of these youngsters who read so-called horror stories or horror comics are disturbed mentally. They have nightmares, states of anxiety, and so on. I think that there is a great danger there from that type of book.

BY MR HART: You do not think that any of the pictures they see could lead to actual delinquency?

A: Do you mean the movie pictures?

Q: Yes.

A: I can only say that in my experience I have not found it so.

Q: From your experience, pictures do not in any way contribute to juvenile delinquency?

A: That is my experience.

BY THE CHIEF JUSTICE: What would you say are the principal contributing causes of juvenile delinquency?

A: In my opinion, the greatest single factor in juvenile delinquency is the broken home. 37.8 per cent of all cases of delinquency come from broken homes. By broken homes, I do not mean only the home in which the mother and father are divorced; I mean also the home where the father has deserted, or has died, and the mother has to go out to work, keep the family and leave the children to their own devices. Men may not serve a very useful purpose in this existence, but they do seem to be useful about the home. The absence of the parent is a bad thing.

It is an extraordinary thing, but during the period of depression between the years 1928 and 1932 there was a marked decrease in all States of Australia in juvenile delinquency because the father was unemployed and was therefore home, able to devote more time to the boy, to take him out swimming, to football matches and so on.

Q: That applies to 37.8 per cent. What about the other 62.2 per cent?

A: There are actually five types of homes from which the delinquent comes. The first is the broken home, which gives the greatest percentage. Then there is the indulgent home where the boy has everything he wishes for until he goes out into the world in early adolescence and finds the world will not accept him at his own extravagant evaluation. From that group come many of our embezzlers and forgers, the better educated lads who drift into crime because they cannot get the things they have been accustomed to receiving from their parents. Then there is the indifferent home, which is comparable to the broken home, where the parents take no interest in the children. Often the father is out playing golf all day at the weekend and the mother is engrossed in various social and charitable activities, once again leaving the children to their own

devices. Then there is the repressive home, the home where the child is not allowed a thought of his own, or is browbeaten. He very often becomes the bully and gang leader outside as a sort of compensation for what he has been unable to achieve at home. He is so beaten down in the home that he has to make up for it when he gets outside. Finally, there is the slovenly home where there is no decent training and where the parents do not care what the children do, where they are brought up with an anti-social attitude - against the Government - where anything that represents authority is to be despised. The homes are the main factors for between 80 per cent and 90 per cent of our delinquency. The remainder is mainly the result of physical disabilities or intellectual defects in children who are unable to keep up to the others and who are of such a level of intelligence that they are practically ineducable or untrainable for the trades. The borderline group, the mental defectives form a large proportion of our present population. They are mostly people of dull average intelligence.

BY THE CHIEF JUSTICE: Below average intelligence?

A: Yes.

BY MR HART: But persons of any intelligence coming from broken homes could become delinquents?

A: Yes, possibly. I have said here that before parents separate they should give very serious consideration to the possible serious consequences to their children in later life.

Q: You say in paragraph 24 you know of several successful marriages that have resulted from pick-ups?

A: Yes.

Q: Do you know of any cases in which they just ended in seduction and nothing further?

A: That has happened.

Q: They would be the vast majority of cases, would they not?

A: I should not like to express an opinion. I have seen several cases, possibly a few more, that have resulted in some unsatisfactory relationship such as seduction or unhappiness, resulting from that type of meeting.

Q: How many happy ones can you think of?

A: Off hand, I should say about six or seven.

Q: And how many girls do you think would be seduced every night in Sydney because they have been picked up by chance somewhere?

A: I should not like to comment on that. I have no practical experience.

Q: It probably would be several hundred, would it not?

A: It is possible, but I have not carried out any research into it.

BY THE CHIEF JUSTICE: At any rate, you would not recommend it as a desirable type of commencement to any association?

A: No, but as I say, perhaps I am rather conventional about these things.

BY MR HART: Young people naturally imitate the behaviour of other people about them?

A: It depends upon the degree of originality possessed by the young person. They might mimic them from the screen. If you care to look around you will find many in the audience trying to express emotions that the actors are portraying. I do not think that they would imitate things undesirable. We should give our young folk credit for having an innate sense of decency.

Q: What about the ones from broken homes?

A: Yes, that is possible.

Q: If they have an innate sense of decency, it would be destroyed by the broken home?

A: No. The sense of decency is a safeguard and it is a shield and it is a bulwark.

Q: It is not a bulwark against them becoming delinquent?

A: You are assuming from what I said that all people from broken homes become delinquent.

Q: You said that it was the majority of delinquents who came from broken homes.

A: But it does not follow that the majority of people from broken homes are delinquent.

Q: People who are delinquent, and the delinquency has been caused by broken homes, might not have an innate sense of decency?

A: That is so.

Q: Would not those people be influenced by bad films?

A: No, I do not think so. I think that their whole attitude towards life is distorted because of the background.

Q: You do not think that bad films would have an influence on them?

A: I do not think the films make things much worse. These people are headed for delinquency unless we can get hold of them and put them in the proper environment.

Q: There are homes for delinquent girls in which an attempt is made to save them?

A: Yes, and I am afraid I am not terribly happy about the homes for delinquents. Obviously nothing can compensate for the influence of parents. I would rather see these people adopted out to some kindly, decent people than put them in a home.

Q: You know that that is very often impossible?

A: Not impossible but it is very difficult. The atmosphere of a home must be cold and distant compared with the atmosphere of a home where there are kindly people.

Q: Some of the delinquents sent to homes eventually give away delinquency and marry and settle down to a decent married life?

A: Yes.

MR JUSTICE MANSFIELD: In spite of the home, not because of it. I am not saying anything against the people who run these homes.

MR HART: Nobody would suggest that an institution could take the place of a home.

BY THE CHIEF JUSTICE: I suppose, in any home, the most potent influence on any inmate is the other inmates?

A: Yes. That is the danger these people are brought into contact with. They come in contact with the older and more hardened types of people. If there was some way of separating them - they are trying, to separate them both in the gaol and the reform home - they could be separated, the younger lads from the older and the first offenders from those who make a habit of crime.

BY MR JUSTICE MANSFIELD: Have you any idea how long this type of magazine has been circulating in Australia - this romance type of pictorial?

A: I recall the pictorial magazine going back 20 years. There have been a spate of them within recent years, but perhaps not exactly that type. It was the type of photoplay or motion picture magazine which included stories of a romantic nature.

Q: Have you any experience or have you noticed any increase in the delinquency of adolescent girls since this type of magazine has been in circulation?

A: I cannot say I have.

Q: What I really want to know is whether there is anything that can be proved to show that this type of magazine has increased juvenile delinquency amongst young people?

A: To the best of my knowledge it has had no effect on them.

BY MR HART: Have you conducted any actual experiment into that matter?

A: What do you mean by "experiment"?

Q: Have you got people together and given this type of magazine to one set of people to observe the effect on them?

A: No.

BY MR JUSTICE MANSFIELD: Comparing statistics, has there been an increase in juvenile delinquency since the magazines have been in circulation compared with the delinquency before they came into circulation?

A: There are peak periods in delinquency, one being most noticeable towards the end of the war because of the absence of parental discipline.

BY MR HART: There has been an increase in delinquency in the last three or four years?

A: As a matter of fact there has been a slight falling-off.

Q: There are so many factors going towards the creation of delinquency that it would be impossible to put your finger on any one cause?

A: Yes.

BY THE CHIEF JUSTICE: Would you agree that in the last 15 years there has been a considerable increase in sexual irregularities or sexual breaches of the moral code? We know that divorce has become more prevalent.

A: I cannot be quite certain. I am rather inclined to think that the present-day girl is basically no less decent than her mother or grandmother. She is disturbingly open in her conversation, very frank and somewhat embarrassing in the presence of her elders. I think it is only superficial. I do not think it goes deep enough to affect the morality of the person. We are going through a phase in which the younger generation delights in shocking its elders and very often succeeds. I think that that is as far as it goes. There has not been any marked increase in the number of illegitimate births.

Q: That might be accounted for by the greater means of dissemination of information, The use of modern contraceptives is more widespread?

A: I suppose so. But it is usually the rather more innocent type of girl who does have the illegitimate child. The shrewd one knows the method of preventing it. The illegitimate birth rate is not increasing. I have had experience with many young people whom I have met at different organisations and I am of the opinion that basically their idea is to shock, but not to go beyond that.

I should hate to think otherwise.

I am trying, perhaps, to convince myself.

BY MR HART: You have an actual knowledge about it?

A: No. I might be said to have illusions.

Q: You should not give illusions in court.

A: Perhaps not.

MR JUSTICE MANSFIELD: His opinion might be influenced by his illusions.

BY MR HART: Now, let us look at some of these books. Look at Romance story No.24 and look at the heading - "Intimate Love Story - Our Heart's Desire"?

A: Yes.

Q: There is a picture of a male and female in contact with each other. She is rather a pretty girl?

A: Oh yes.

Q: He is rather a handsome man?

A: Well, half of his face is obscured.

BY THE CHIEF JUSTICE: Assuming the other half is as good as the half that is not obscured.

A: Yes.

BY MR HART: This is a rather glamorous looking picture?

A: It is a romantic scene.

Q: You see them, in the bottom right-hand corner, kissing and gazing into each other's eyes?

A: Yes. As a matter of fact he is looking at her forehead.

Q: She is taking a good look at him?

A: She is looking at him.

Q: She goes off in the train and arrives in New York. On pages 4 and 5 she meets a girl and the girl takes her out to various dances. She is depicted dancing. At the bottom of page 5 there is a gentleman drunk. That is not a very pleasant picture? They are in a low dive?

A: Yes.

Q: On the next page, she decides to go home.

A: Before you get to that - I notice that on the bottom of that page she rebels against that atmosphere.

MR JUSTICE MANSFIELD: Do you suggest that would be sexually stimulating?

MR HART: No. It is not a question of whether the morals are good for the girl. She has gone to a low dive; everything turns out well.

BY MR HART: You see, at the bottom of page 6, there is an embrace between the male and female?

A: Yes.

Q: The kiss is a passionate kiss?

A: It is a kiss. I suppose, if you look at it that way you might regard it as passionate. It depends on one's own frame of mind. I do not want to be pedantic, but to the pure all things are pure.

BY THE CHIEF JUSTICE: You would not think there was anything dealing with sex in the illustration?

A: I do not think it conveys the idea of sex.

BY MR HART: Adolescents are naturally thinking about sex a great deal?

A: I do not think they consciously think about it. Their conversation gives the impression that they are very preoccupied with it but I have a doubt whether it is more than a pretence.

Q: The person whose conversation gives the idea that he or she is preoccupied about sex who looks at that picture would interpret it as a passionate embrace?

A: I suppose so.

Q: You are a barrister as well as a doctor. If you saw two men in that position, what would you say?

A: You would regard the relationship with grave suspicion.

Q: And you would say that they could be charged with gross indecency?

A: No, offensive behaviour at that stage.

Q: Surely, after that, they would be charged with gross indecency, if caught?

A: Yes.

Q: It would be a prelude to an act of gross indecency?

A: Yes.

Q: Would you not say that this deals with sex in the ordinary sense of the word?

A: I do not think so. I think the average adolescent young housewife who would read these books would not be affected by it. I have recently been in communication with the University of California in regard to its research in this matter and find that 51 per cent of the adult women read this type of romance. It is regarded as something to pass away the time and it has the natural happy ending one expects in a romantic story.

Q: Look at the next one - "Dear John". The lady is writing a letter to a friend in Korea. "It began in that wonderful 17th summer when I fell in love with Randy Moreton." There is a picture of her being clasped by him?

A: There is an unfortunate choice of Christian name for the gentleman.

Q: He is living up to his name?

A: He is amorous.

BY THE CHIEF JUSTICE: There is an element of sex on that page on the right-hand side?

A: I think there is, in the wide sense of the term because you have two people of opposite sexes obviously in love. There is an intimate embrace. Her sweetheart is going to Korea. It is not an unusual occurrence.

BY MR HART: It is quite common?

A: But not necessarily immoral.

Q: Sexually stimulating?

A: There again I think it depends very much on the attitude of a person. I do not feel this would have a sexually stimulating effect on people and I doubt whether it would have a sexually stimulating effect even if they were already stimulated.

Q: Would you not think that both these people would be sexually stimulated themselves?

A: In the third picture I think it is possible.

Q: It is not only possible, it is most probable?

A: That the people depicted themselves were sexually stimulated?

Q: Yes.

A: Yes.

Q: Don't you think that adolescent girls reading that would realise that fact?

A: I doubt it. I think they would regard it just as part of the story.

Q: Just because something is part of a story it does not mean it is not sexually stimulating?

A: No, that does not follow naturally.

BY MR JUSTICE MANSFIELD: Would you agree that anything that is sexually stimulating is, ipso facto, tending to corrupt or deprave?

A: No, not necessarily. It is quite conceivable that something sexually stimulating may depend upon the interpretation put upon it by the person himself or herself. It is possible for people to conceive sexual stimulation without being corrupted. It is not an uncommon experience that there is a close relationship between a number of emotions and sex. For example religious fervour, particularly in the case of some of those strange sects in America, although there is no sexual object in the commencement of the proceedings, it does reach that.

Q: What I meant was this: that because a picture story in a magazine may sexually stimulate some young people would you say that for that reason alone it would have a tendency to deprave or corrupt such persons?

A: I am sorry I did not understand you. My answer is no.

BY MR HART: Would you think that sexual intercourse in an unmarried girl of 15 was depraved conduct?

A: I would not describe it as depraved. I think it would have to go beyond intercourse. I would say it was most undesirable. I think the word depraved indicates a progress of some deeper sexual perversion than the normal.

Q: Would you call it corrupt conduct?

A: Corruption rather suggests an act of process operating on some person who is more or less passive, they are being degraded by something that is occurring to them. That is my interpretation.

Q: Would you say that literature which tended to make girls of 15 indulge in sexual intercourse would not tend to corrupt or deprave them?

A: I do not think it would corrupt or deprave them.

BY MR JUSTICE HANGER: Would it have a tendency to?

A: No, I do not think I can even go that far. It would tend to something undesirable and to immoral conduct.

BY THE CHIEF JUSTICE: Would you not think that immoral conduct by young girls would be evidence that they were degraded?

A: Yes, but the word used by Mr. Hart was "depraved".

Q: You mean that if they are only indulging in a natural instinct in what is regarded socially as being a reprehensible way, they are not depraved?

A: I think they would be immoral.

Q: They would not be corrupted?

A: No.

Q: Whatever the story was, whatever the pictures were, if they merely portrayed normal sexual intercourse, that would neither be corrupting nor depraving?

A: I think such things could lead to immorality but corruption and depravity would in my opinion be going a stage further. Promiscuity in the first stage and later an indulgence in all aberrations of sexual instinct. Then I think the stage of corruption and depravity would be reached. I think it is a matter of degree, first immorality, then corruption and then depravity.

MR HART: If she had one act of sexual intercourse with one man it would be immorality?

A: Yes.

Q: If she had two acts? I do not want to tie you down, but supposing a girl of 15 had frequent intercourse, then she would be a depraved girl?

A: Yes.

BY THE CHIEF JUSTICE: Would you say she was a depraved girl if she contracted a sexual liaison with one particular man?

A: Not with one.

Q: As I understood you, you would say that literature that merely tended to encourage sexual relations between unmarried adolescents would not be depraving then?

A: I do not consider it would deprave them. I consider it would render them immoral and it may alone be a stage towards depravity.

BY MR JUSTICE HANGER: If it is the first stage on the road would not it have a tendency?

A: There are stages in the process or progress to the ultimate of corruption and depravity.

Q: Don't you think that the first step is a tendency to take you to the last step?

A: It does not necessarily follow, but it could.

BY MR HART: Doesn't it follow that if literature stimulates people sexually, it tends to make them indulge in sexual intercourse?

A: No, that does not follow. There again I refer you to my previous statement that young people are innately decent. They could be sexually stimulated without going on to sexual intercourse.

Q: If they are sexually stimulated would not they have a tendency to go on to sexual intercourse?

A: Yes, I suppose when one is stimulated one tends to do something but that tendency can be blocked.

Q: It is blocked in the case of decent people by the home life of the people?

A: Yes, and by the community sense of decency.

Q: That about in broken homes, it might not be there to stop them?

A: It all depends.

Q: In the case of most delinquents, it would not be there?

A: No, that is so.

Q: Therefore I am putting it to you that this literature would have a tendency to corrupt a depraved delinquent girl?

A: That is a non-sequitur. It does not follow that this literature is going to deprave and corrupt because I have not conceded that this literature has anything about it except to point a moral. It makes the end result a happy result because the girl or the man has done the right thing.

Q: I will point out to you in a moment instances where she has not done the right thing.

BY THE CHIEF JUSTICE: Would you perhaps concede that an adolescent girl of 17 who allowed herself to be placed in the situation shown in that third picture could be referred to as very probably running a serious risk of something other than a happy marriage?

A: I agree.

Q: Therefore the girl who thought this was a desirable sort of a situation to get into would running a serious risk?

A: That is true. When a person is emotionally stimulated they are in a vulnerable position. They can be swept off their feet quite easily.

BY MR HART: Will you turn to page 8. At the top of the page he is posting a letter and on the next page he is walking along with a girl. The next picture shows where she sees a handsome young man and she thinks he might be interested in her?

A: I think most girls do.

Q: Do you think that would apply to most girls who have just seen their fiance off to a war?

A: I think that the average girl might just as a passing thought wonder if that good-looking young man could be interested in her. I do not suggest for a moment it would go any further than that.

Q: At the top right-hand picture she sees this handsome stranger and speaks about there never having been another man in her life, and then in the next picture there is another man. At the bottom they are walking about together and shortly after you have her being embraced by Harry and she says, that she could see he was not clowning. That is intimate conduct between a male and a female?

A: I would not describe it as intimate conduct. She seems to be withdrawing from him in that final picture.

Q: She is in his arms?

A: I cannot see his arms.

Q: She is pretty close to him and she is pressing herself against him?

A: She is close to him but the impression I would gain from that picture is that she is withdrawing from him.

Q: He must be holding her?

A: Yes.

Q: Well, she is in his arms?

A: If he is holding her and she is trying to get out, I do not think that should condemn her.

Q: In the next picture apparently she is in the arms of another gentleman?

A: I assumed that was the same man.

Q: I beg your pardon, it is. He asks her to marry him and then she has another chat with Louise and Louise tells her she had better search her mind out?

A: I think Louise is a very intelligent person there is pointing out a moral there.

Q: She is not following her advice?

A: Lots of girls ask advice from companions but do not follow it.

Q: Then we have her in the most intimate position with Eddie?

A: I am afraid that is quite a common sight on our beaches in summer time.

Q: That is beside the point.

A: I do not think it is beside the point. I think it is significant of the actual freedom that young people exercise today.

Q: On the Sydney beaches are people allowed to embrace unchecked?

A: I understand that is prohibited but they are not embracing.

Q: They are almost.

A: Almost but not.

Q: On the next page she is out with Jimmie and at Christmas with Ronnie. Then on the next page she is talking to Louise. Then Randy comes back at the bottom of page 11, and Louise and another gentleman are in physical contact at the bottom of page 12.

A: Yes.

Q: On the next page I think it is she and Randy. They are in physical contact?

A: Yes.

Q: In the centre left of page 12 they are almost about to embrace?

A: Yes.

Q: Her mouth is open?

A: Yes.

Q: Is not the next embrace what Kinsey refers to as a deep kiss?

A: I would describe it as a very satisfactory kiss.

Q: You know what Kinsey calls a deep kiss?

A: Yes. He implies it is passion.

Q: And that the mouth is open?

A: Yes, but you will notice also that she is speaking at that moment, so she may be forgiven for having her mouth open. I do not think that conveys what you refer to as a deep kiss. There she is actually speaking to him. We do not see the actual kiss. His face obscures her lips in all the succeeding scenes.

Q: She has a dreamy sleepy look on her face?

A: She has her eye closed, which I understand is the modern practice.

Q: But it also indicates sexual arousal, does it not?

A: I do not think it does, necessarily. The eyes may be closed for a number of reasons. They may be closed because she is happy. She may be imagining it is somebody else when she closes her eyes. I cannot quote the authority but investigations have been carried out on this rather interesting subject of the response of the female to kissing, and the majority of women close their eyes when they are being kissed.

BY THE CHIEF JUSTICE: Are there statistics on it?

A: Not as far as I know.

BY MR JUSTICE MANSFIELD: The theme of this story is related to a problem that is by no means infrequent, is it not?

A: It is quite common and very often leads to anxiety in the adolescent. They get into a state of uncertainty and indecision because they do not know which young man they should marry, and it is not at all uncommon to find them really having some quite serious nervous disturbance as a result of it.

Q: This would portray one type of solution to a common problem, would it not?

A: Yes. The girl would experiment, not going beyond friendship, parties, outings and things like that, in an endeavour to find the type of man she wants to marry. I think this is much more common now than it was because of the large wages girls can get. There is the possibility perhaps of their considering marriage at an earlier age when they have not stabilised sufficiently to make a satisfactory decision.

Q: I thought it was the large wage the girls received that was the deterrent to early marriage?

A: Quite a number of people are marrying now and the wife continuing to go to work.

BY MR HART: That would not apply to any of the 15-year old adolescents who read these?

A: But there is no suggestion that this girl is 15.

Q: She is 17. Many people of 15 would read it?

A: There would be quite a large proportion of 15 year old girls reading it - from 15 to perhaps 30 years, with a greater number of from 15 to 21 years.

Q: But no girl with much intelligence would read this stuff, would she?

A: That is the extraordinary thing. It has been proved, as a result of research, that quite definitely intelligence has nothing to do with it. Intelligent children read comics, intelligent children do not read them, dull children read comics and dull children do not read comics, so that the actual intellectual age of the child appears to have no relationship to comic reading whatsoever.

Q: Is it the emotional side of her nature that is affected?

A: I would describe it rather as the romantic side, the tendency to go round with stars in her eyes and daydream.

Q: That is the emotional side of her nature rather than the intellectual side, is it not?

A: Emotional as compared with intellectual, yes.

Q: Where do those figures come from?

A: They come from a report of Comic Book Regulations, prepared by the Bureau of Statistics of the University of California.

Q: (Witness shown passage on page 613 of the Kinsey Report). Would you agree or disagree with that?

A: I should say that type of person is concentrating on his work. I doubt that he actually loses consciousness during that phase. I have some small but not practical knowledge of the practice of prostitutes.

The man who pays them usually goes to sleep after the sexual act, and it is during that period that her companion comes in and steals from his clothes, not during the actual sexual act. I cannot accept that.

Q: As you have not actually investigated it, you would not really know?

A: I do not think Dr. Kinsey knows.

BY MR JUSTICE MANSFIELD: It is a matter of modus operandi, I should say?

A: Yes.

BY MR HART: But Dr. Kinsey says he has investigated it, and you would not be in a position, to say whether he is right or wrong, as you have not investigated yourself?

A: I have not gone into the matter to the same extent as Dr. Kinsey allegedly has gone into it, but I do feel that a lot of his facts are founded on information that is far from correct. I cannot accept that a person loses consciousness during an orgasm.

Q: But unless you have engaged in similar investigations, you could not reject it, could you?

A: I can reject it because I cannot accept that he has carried out the necessary investigation. He apparently has not observed this phenomena. He has relied on what prostitutes have told him, therefore he is in no better position than I am to express an opinion.

Q: Unless he has asked a lot more prostitutes than you have?

A: Maybe his acquaintance is more extensive than mine.

Q: You are not in a position to make a positive statement about that until have thoroughly investigated the matter?

A: I think I am. I think I have investigated sufficiently to be in a position to express an opinion. I cannot accept that these people can rob because the gentleman who is paying for the privilege is in a state of unconsciousness or coma.

Q: What I was really asking about was not prostitutes and their habits, but the suggestion that there is a reduction in sensory perception when sexual arousal takes place?

A: A reduction in the consciousness of the sensation. I do not think the sensation itself is in any way reduced.

Q: In your own words, they take a keen interest in the job on hand?

A: I said he was concentrating on his work.

Q: In the next story there is a picture of a young lady being embraced?

A: Yes.

Q: I suggest that is a passionate embrace?

A: I agree that a good deal of feeling is indicated in that picture.

Q: And the participants would be sexually aroused?

A: That is possible.

Q: It is highly probable?

A: That would depend upon the recipient of the kiss, of course.

BY THE CHIEF JUSTICE: It is described as being the real thrill that comes once in a lifetime.

A: The letterpress would indicate that she is being stimulated by the kiss.

BY MR HART: Take the next story. At the top of page 13 there is a picture of a male and female talking to each other and another girl watching them?

A: Yes.

Q: At the bottom left-hand corner there is a picture of physical contact?

A: Of a sort.

Q: On the right-hand side of page 14 there is another picture of physical contact?

A: Yes.

Q: Take the picture in the middle of page 19. I cannot make that out. What would say that was? I think she is in bed with her husband.

A: No. She is clutching a pillow there, a very inadequate substitute, if I might say so.

Q: In the middle of page 19 she is closing in for the clinch. There is physical contact.

A: Yes, but I suggest that is permissible between husband and wife.

Q: But I am putting to you that Dr. Stafford says that the whole theme of these things is psychical contact between male and female?

A: I think that applies more than to just simply touching and kissing. Physical contact rather suggests this is a preliminary to sexual relationship in the conventional sense of the term. I cannot see anything sexual or indecent about these embraces. If a husband and wife had been estranged and they came together like that and started passionately embracing again, would not that naturally be followed by sexual relations?

A: It depends on the circumstances.

Q: In normal circumstances, I am only talking about the probabilities of a husband and wife who have been estranged then come together and start passionately kissing?

A: It would probably be regarded as a natural stage in resumption of the normal marital relationship.

Q: They would probably resume them shortly after that?

A: They might or might not. The telephone might ring, or the milkman might call.

Q: But leaving aside all these?

A: In the absence of any interruption, a happy reunion between a husband and wife could well lead to sexual relationship.

Q: And any young girl reading these things after she was sexually aroused by a diet of this stuff could easily convince herself that this was the logical conclusion?

A: I suppose it is possible, but I cannot conceive of the average girl reading this except for just passing entertainment.

Q: In the next story at the top of page there is a picture of a male and female in physical contact?

A: Yes.

Q: And on page 19 the two bottom pictures are of a male and a female in physical contact?

A: Yes.

Q: In the two centre pictures on page 21 they are almost in physical contact?

A: Yes.

Q: In the bottom picture on the left-hand side there is physical contact?

A: Yes.

Q: The same thing applies to the two central pictures on page 22?

A: Yes.

Q: On the bottom right-hand side they have just come apart, apparently, and on the next page at the bottom she moves in and more or less puts her arms round his neck, and in the final picture you see them in the final clinch.

A: Yes. I cannot find anything particularly stimulating or exciting in these physical contacts. The majority of them are quite mild. The only one which seems to show feeling is when she is being kissed after the marriage which is only natural.

Q: Running through the whole of the story is the theme of physical contact?

A: Physical contact occurs in each of the stories at intervals.

Q: It is the constant theme of every story in that book - physical contact between male and female?

A: Yes.

MR JUSTICE HANGER: You say that the constant theme is physical contact. It is not a theme.

MR HART: If Your Honour objects to the use of that word I could use another.

MR JUSTICE MANSFIELD: It is an obligation really.

BY MR HART: It is what is common in every story.

A: It occurs in every story.

Q: And fairly frequently?

A: It is an innocuous sort of contact.

Q: There are instances where it is not innocuous. Where it is suggestive, it leads to the climax?

A: I do not agree with that. It is the natural climax to a romantic story and it is what one would expect. Every romantic story ends up in an embrace but it does not make the embrace innocuous.

Q: There is a lot of embracing at the beginning of the story?

A: Some.

Q: Look at the story "The Truck Driver's Sweetheart" to be found in No.17A of "Popular Romance". It says, "There is nothing wrong with truck drivers; some of them are the swellest guys in the world." The first picture shows the girl addressing all the people as truck drivers. When you come to the centre picture on Page 3 you see what might be termed a medium kiss taking place?

A: Medium in intensity.

Q: Obviously what she is doing kissing him without any thrill?

A: It is very discouraging to the gentleman. I cannot perceive anything more uninteresting than an inanimate woman.

Q: She meets Mike and in the right-hand picture she is talking to Mike and over the page she and Mike are together. In the three centre pictures they are in contact.

A: Yes.

Q: In the top left-hand picture she is again kissing Jerry. Neither is very keen. In the centre picture she is again kissing Jerry. She meets Mike and goes out with him. In the bottom right-hand corner picture she is going for a kiss with Mike and on the bottom left-hand picture there is a passionate kiss with Mike?

A: Yes, they seem to be deriving a great deal of pleasure from it. I notice that the gentleman in this instance has closed his eyes which is an unusual phenomenon.

Q: "The world spun round as I clung to him". You see all sorts of electric sparks.

A: Are they?

Q: That is a very passionate embrace.

A: It is an intense kiss but you cannot call it an embrace because you cannot see anything but their heads and we do not know what the other parts of their anatomy are doing.

BY THE CHIEF JUSTICE: The letter-press says that she clung to him?

A: Yes, but I have no indication what they are doing with the rest of their anatomy.

BY MR HART: They are both sexually aroused?

A: I suppose it is a reasonable conclusion. They are certainly emotionally stimulated.

Q: Their sensory perception would be diminished?

A: At the moment of the actual kiss, heightened.

Q: Their sensory perception of the kiss would be deadened?

A: Not necessarily. It is indifferent rather than a diminution of the sensation.

Q: She is out with Mike on the next page and she is out again with Jerry and gives him a medium kiss. Does not that type of kiss tend to highlight the passionate one?

A: I do not think it highlights it. Perhaps the other kiss is somewhat more prominent than the others. It was a rather ordinary practice whereas the other one is covered with asterisks. I do not think the other kissing highlights it so much. It is a pictorial representation of a kiss.

Q: On page 8 he goes drunk to a dinner party. There is the rain dropping off him, they come together and there is a sort of a close-in to a very deep kiss, which is a passionate kiss.

A: I think the fact that they are out in the rain would probably dampen the passion to some degree.

BY THE CHIEF JUSTICE: Or do you think they would not notice it was raining?

A: A diminution of the sensory perception.

BY MR HART: "We clung together in the falling rain". That is desirable at that stage?

A: There is nothing radically wrong with their conduct excepting that the lady had the usual feminine indecision so far as the two men are concerned. There is a gentleman by the name of Jerry who was a rival for her affection.

Q: Look at the next story - "Love at Second Sight". It is a kind of contrast because there is not one piece of physical contact in the whole of the story. There is a great contrast between those two stories. There is a difference between the physical contact in the stories?

A: No. It is a different type of physical contact because it is not apparently so close.

Q: Or so sexually stimulating?

A: I would not say that. That again depends upon the reader.

Q: It is not so sexually stimulating?

A: To the characters.

Q: Or to the readers?

A: We have no indication whether the characters were sexually stimulated. The words "The world spun round" does not mean sexual stimulation.

Q: Any person reading this thing would gather that there was a different kind of feeling as between the two stories?

A: That is a reasonable assumption. The truck-driver story shows greater intensity of feeling than the other one.

Q: An adolescent reading that one would notice the contrast and it would tend to highlight the first story?

A: I don't know. They would read it to pass the time and for the mild romantic interest it creates.

Q: The next one - "Love Like a Delicate Flower Blossoms Best ..." They go to a dance and each gets a pickup immediately. In the next picture you see them together. In the centre picture the girl has her arm on his shoulder and there is a kiss and on the centre right there is a physical contact.

A: To the extent that she is sitting beside him and he is reclining.

MR JUSTICE MANSFIELD: You see somewhat similar things happening on the beach.

MR HART: At the right time on the beach you see people doing all sorts of things.

BY MR HART: I am cross-examining on Dr. Stafford's theme of physical contact.

THE CHIEF JUSTICE: If there is physical contact I take it we could see it.

MR HART: His exact words are contained in paragraph 18 of his affidavit and I consider it necessary to point out that Dr. Stafford's remarks were correct.

BY MR HART: The language to these pictures shows that the gentleman is in close contact with or embracing females?

A: It occurs in every story. There is physical contact in the sense of a demonstration of affection.

Q: And embraces?

A: Which include embraces.

Q: Some are very passionate?

A: They vary in intensity.

Q: The people who buy these books would buy them for those embraces?

A: That is where I disagree with Dr. Stafford. I do not think it is the essence of the publication. The essence of the publication is simply a romantic story in which virtue is triumphant.

Q: It is not always triumphant?

A: It is in each of the stories we have dealt with.

Q: Look at this Daydream Romance No.24, at page 18 where she traded Randy's embraces for somebody else's.

THE CHIEF JUSTICE: That is one we have had already.

MR HART: Yes the doctor said that in the stories the moral was good.

THE WITNESS: I did not say the moral was good, I said they were simply romantic stories in which virtue was triumphant.

BY MR HART: In this picture this lady actually chased another gentleman until she decided she could not get him and then she turned back to the original one.

A: And as I said, virtue is triumphant. The original patient suitor is the successful one.

Q: She chased another man, found she could not get him and then she took the original one?

A: She was disillusioned by the other one and her better judgement took over and she decided to go back to the upright honest gentleman.

Q: It was not so much she was disillusioned as that she could not get him?

A: She was disillusioned by the fact that she found he was unworthy in that he was hitting some other girl. She says, "Never before had I felt so humiliated". It was humiliation and not heartbreak and she said she realised she never loved Dan.

MR JUSTICE HANGER: What is the matter with that?

MR HART: I do not think it is very edifying.

MR JUSTICE HANGER: There must be very few men who marry their first love.

MR HART: It is not particularly edifying.

THE CHIEF JUSTICE: It is not a question of whether it is edifying. It is a question of whether it should be allowed to circulate.

MR HART: In the letterpress there is not much suggestion of immorality.

MR JUSTICE MANSFIELD: Where can you show me in the letterpress any suggestion of immorality?

MR HART: That one we read about the lady.

MR JUSTICE MANSFIELD: In the letterpress where is there a suggestion of immorality? You may say that just because people meet and dance together that suggests immorality because, they may afterwards become intimate?

MR HART: I said I was not suggesting immorality.

MR JUSTICE MANSFIELD: You used the word much. Do you say it suggests immorality a little?

MR HART: It suggests conduct which might lead girls into immorality.

BY MR HART: You say you have not personally observed the reaction of young people to this type of literature. What exactly do you mean by that?

A: That I have not given them books of this type to read and recorded their blood pressure and pulse rate or anything like that while they are reading them to see if they were becoming emotionally stimulated by reading them. I have had to depend on what I have been told by parents or social workers or by the girls themselves.

BY THE CHIEF JUSTICE: What types of girls?

A: Mostly the girls that I have been consulted about have been girls in the working-type class. Although it is accepted that people of good intelligence do read these books, from my own experience I have not found that.

Q: The statistics you have come from California?

A: Yes, but my own experience has been from girls of working-class homes. They have been brought to me because the parents have had a sense of responsibility, having felt, in view of what they have heard of or read that the nature of the literature the children are reading might be undesirable, and I have been consulted for that reason. That has been the reason in the main why I have seen them. I have then questioned the parents as to anything they have noticed about the girls or any change since they started reading this type of literature, and whether they have read anything else, and quite a number did in between read books of a better class. Then I questioned the girls themselves as to what they felt about the story and most of them uniformly repeated the one phrase, "It was a lovely story, they got married." They did not

seem to see any sexual significance in the story; all they were concerned about was that everything worked out happily in the long run. That seemed to be their concern, that the right people were matched and everything ended with wedding bells and orange blossom.

Q: Those were not delinquent girls?

A: That is true, but at Prince Alfred we did see some delinquent girls and we had social workers there to investigate. They were psychiatrically trained social workers and they went into considerable detail about anything that might have played a part such as the nature of the home, the behaviour of the parents, the district in which they lived, the people with whom they associated and always the type of reading matter which they indulged in.

Q: In this you are giving the result of other people's experience and not of your own?

A: As I said I do not think anyone can actually give the result of their own observations of a person while reading this type of book.

Q: They might give the result of their own investigations after having questioned the people themselves?

A: That is exactly what I did.

BY THE CHIEF JUSTICE: Have you considered this aspect of the matter in relation to literature of this sort? These passages that I have drawn your attention were the young man and young woman are in very close contact under circumstances where they are apparently in some seclusion with the possibility of more intimate association being led to, have you considered the aspect that a certain kind of adolescent girl might get the impression that that kind of association was not accompanied by elements of danger but was a desirable kind of experience to have which would normally lead to wedding bells and not to sexual irregularities?

A: Theoretically that is a possibility, but my own experience has been that the type of girl or young adult who reads these romances reads them merely as a relaxation and they look forward to the happy ending which occurs in most instances and they do not attach any sexual significance to the embraces which they regard as merely a natural development in the romance.

The delinquent girls who are given to sexual irregularities in the main seek out books of a different type than these, books which could be regarded as definitely pornographic and really suggestive. Periodicals of that type in my opinion are really undesirable, and those are the books that these girls read. They have heard of books which have been banned and they seek to get copies of them or they get books recommended by friends which in their parlance are considered as being hot stuff. Those are the types of books which the sexually unstable girl wants rather than these periodicals. They find these are really too dull

BY MR HART: You told us that you yourself did not have any personal experience of delinquent girls and you relied on what other people told you?

A: Yes, and what they told me themselves.

Q: You told me that the people that came to you in your rooms were mostly not of the delinquent type?

A: Yes, but I am referring to the delinquents more commonly saw at a hospital clinic.

Q: I think you told us before you had no personal experience of these girls with this type of literature?

A: I was not suggesting that at all. When I said I had no personal experience I was indicating that I had not submitted them to any specific tests while reading this type of periodical.

Q: I am putting it to you that children are very greatly influenced in their conduct by the films they see and by the books they read.

A: To a degree. I would not say that children are influenced in all respects. For instance, if children see something undesirable such as shooting and stabbing on the screen it does not mean that they are going to shoot or stab but if they see somebody performing some deeds of derring-do they might try to emulate that person, but that is more closely connected with hero worship.

Q: You wrote an article on child delinquency?

A: I did.

Q: On juvenile delinquency?

A: Yes.

Q: Will you have a look at page 100. You say there that mental factors are many and varied?

A: Yes.

Q: You go on,

"In some cases it is difficult to determine where the environmental influence ends and the psychological influence begins; often the two are inextricably intertwined. Sometimes the psychiatric approach is over-emphasized, and as Gregory has pointed out, its slowness in getting results has made it lose favour with many educationists and parents. Gregory classifies delinquents into three groups:

- (i) the normal delinquent, whose crime was committed in extreme circumstances, usually opportunity;
- (ii) non-psychopathic personality deviates, including neurotic, schizoid or paranoid types, those with aggressive tendencies, and the inadequate, shiftless, weak and suggestible;
- (iii) persons with psychopathic personalities, immature emotional development or neurotic manifestations the emotionally unstable, nomads, and those with sexual abnormalities.

Of group (iii), 86% were recidivists and apparently incorrigible; 30% of group (ii) committed one or more offence also after a first conviction. The

graver forms of delinquency were most common in those with psychopathic personality. This shows the great importance of the mental aspect of delinquency.

Even a normal child may be influenced by mental stresses of different types - anxiety, worry and unhappiness. If any instability is present, the effect will be correspondingly greater and may lead to the child's being declared uncontrollable. Strong suggestions may have a determining influence on the behaviour even of the well-adjusted child; amongst these are the popular "thriller", the moving picture which glorifies the gangster or which portrays luxury and idleness in attractive terms, arousing in the child envy and a desire to obtain, by any means, similar comforts, and which may give rise to a spirit of envy which can be assuaged only by car stealing or theft, as an expression of self-assertion or in a spirit of boastfulness. Recklessness or display may be a compensation for some deficiency, intellectual or otherwise. Resentment or disparagement may provoke an intense reaction of an anti-social nature."

There you concede that films may have a very great effect on the children who watch them?

A: That is so. It has a determining influence on behaviour insofar as the films arouse this feeling of envy but very very few of these children do things as the result of what they have seen on the screen - things of an anti-social nature. As I have said they tend to imitate the popular cowboy hero but it does not necessarily follow that they will do anti-social things.

BY THE CHIEF JUSTICE: It does not necessarily follow, but it may follow?

A: It may follow. Envy might give rise to a desire to do those things. That is where the trouble lies.

BY MR HART: You have the word "envy" qualifying luxury and idleness?

A: Yes.

Q: The gangster would have a desire to emulate anti-social behaviour?

A: Yes.

BY MR JUSTICE HANGER: If the gangster is glorified?

A: Yes.

BY THE CHIEF JUSTICE: You do adhere to the views you have expressed in that article?

A: Yes.

The Court adjourned until 2.30pm.

The Court resumed at 2.30pm

Mr JOHN McGEORGE, continuing:

BY MR HART: At page 94 article you say,

"Practically the only aspect of juvenile delinquency upon which the students of this subject are agreed is that it presents a very pressing

problem, the solution of which still remains hidden in the maze of theories which have been introduced by the earnest workers in this field.

"Each has his pet theory as to the causation and the treatment, which is of value only in porportion to the amount of practical work he has done among delinquents. It is hoped that this paper will summarize to some extent the work done by many different people who are well qualified to speak on this question."

Do you agree with that still?

A: Yes.

Q: On page 96 you refer to indifferent homes?

A: Yes.

Q: You say,

"In the indifferent home the child may have every material advantage but no real affection or sympathetic attention. Conversely, it may be a home in a poorer district where the same lack of consideration is evident. The child is left very much to himself he may readily become resentful of this neglect and end as an uncontrollable child brought before the Children's Court. Bad companionship and lurid literature will take the ploc of parental affection and interest, with disastrous results."

A: Yes.

Q: Do you agree with that?

A: Yes.

Q: You say there that the children are affected by the literature they read?

A: Yes. I think you are suggesting that I am regarding that as an important factor. That is not so. It is one of the factors. What I am trying to suggest is that in the absence of parental guidance the child may unfortunately lean on lurid literature, which, of course, is a very weak reed to lean on.

BY THE CHIEF JUSTICE: To lean on for guidance?

A: Yes, and, in the absence of parental advice to the contrary, regard it as being acceptable.

BY MR HART: That would aply equally in the case of broken homes?

A: Yes, if the parent is unable to give the child the necessary attention.

Q: And broken homes are the greatest cause of delinquency?

A: The greatest single factor in the causation of delinquency.

Q: You go on,

"In the wealthy home, mothers with social aspirations and fathers with a golf handicap which they want to reduce are just as much at fault as are poor parents who have to work to keep the home together and spend their free hours at dog races or picture shows."

A: Yes.

Q: You go on,

"A recent case was that of two lads who had been reading the adventures of a burglar hero and decided to emulate him. They ended their exploit at the Children's Court, where an understanding magistrate made inquiries and found that the mother of one spent most of her days playing bridge, while the father spent his on the golf course. The other mother was a social climber, who devoted all her spare time to footling charities, while the father was given to interstate travelling on very doubtful business matters. They were more than astonished when the magistrate pointed out that the fault was theirs rather than the children's, and allowed the latter to go on probation."

There you explain that the cause was the reading of wrong literature. You say that actually brought the children to the Children's Court?

A: Not exactly the wrong sort of literature. Perhaps I have not made myself clear there. It was the imitative desire on the part of the children. I have forgotten who the character was in the story, but the imitative desire on the part of the children made them break into a neighbour's house, not with the actual intent to steal but for the sole purpose of doing something exciting. The neighbour, not knowing who was responsible, reported the matter to the police, who prosecuted the children.

The comments I have made there are perhaps a little caustic, perhaps a little unfair. I can only say that I have mellowed since those days and would not be so unreasonable in my criticism of the parent.

BY THE CHIEF JUSTICE: When was that article published?

A: On 15 July 1939.

BY MR HART: Did you not re-affirm this article later in another article?

A: My most recent article was one published in October last year on the medico-legal aspects of psychiatry.

Q: In that did you not refer with approval to your article of 1939?

A: I doubt it. I think I am a little too modest to refer with approval to my own article.

Q: You actually pat yourself on the back in your affidavit for having written that article in 1939?

A: I do not think that is an accurate description of my remarks.

Q: You quoted it as one of the things that entitled you to be considered an expert witness?

A: The fact I had written this article showed I had at least an interest in the subject.

Q: And you were an expert on the subject?

A: I do not think I said I was an expert on delinquency in the affidavit.

Q: You are giving evidence here as an expert witness?

A: Yes.

Q: You put that in as one of your qualifications as an expert witness?

A: Yes.

MR JUSTICE MANSFIELD: Not an expert in delinquency.

MR HART: He states that the article on delinquency is one of the things that make him competent to give evidence about comics.

MR JUSTICE MANSFIELD: You said he sets himself up as an expert in delinquency. He rather denies that. He is not an expert in delinquency, but he has some knowledge of the matter.

THE CHIEF JUSTICE: He said he has had wider experience in forensic psychiatry than any other psychiatrist in Australia. I take it that forensic psychiatry relates to psychiatry concerned with the courts in some way.

THE WITNESS: I think that perhaps that is cleared up by the final sentence of the first paragraph of that article. It says,

"It is hoped that this paper will summarise to some extent the work done, many different people who are well qualified to speak on this question".

I did not say I was one of those people.

BY MR HART: You are not suggesting that you did not mean what you wrote in this article about these two boys? You meant it to be accepted at the time.

A: I accept full responsibility for any of my comments.

Q: Takje your 1954 article. At page 693 you say,

"Delinquency is another subject which sometimes concerns the general practitioner, for he is often in a better position to sketch in the family background than the specialist. Much has been written on the subject and there appears little to add to a previous statement (McGeorge, 1939) that the homes from which delinquents come seem to play a large part in producing social maladjustment."

You there quoted your article of 1939.

A: Yes. That is for the people who are interested. They can read what I said about homes in that connection.

BY THE CHIEF JUSTICE: You say you have little to add to what you have previously said?

A: Yes.

Q: So I take it you mean you have nothing to alter?

A: That is so.

BY MR HART: On page 96 of your original article you say,

"So much for the homes from which delinquents may come; there are, however, many other environmental factors which may be at work. The normal child is a natural imitator and is given to hero worship."

A: Yes.

Q: Do you still agree that the normal child is a natural imitator?

A: Yes, persons for whom they have affection and respect.

Q: You say you are speaking there about their imitating persons around them?

A: That is a little too general. I limit it to the parents, or the school hero, the person who appears in their eyes to be an outstanding personality.

Q: Would it apply also to the hero of a thriller?

A: I do not think so.

Q: You are not referring there to literary heroes?

A: No. This relates to environmental factors. That means those people within the immediate environment in which the child is placed.

Q: I suggest the same thing would apply to the heroes of thrillers they read? They would emulate them too?

A: The heroes themselves.

Q: And to the gangsters in the films they see?

A: I would not go so far as to say they would imitate the gangsters in the films they see because the gangsters would not be the heroes, they would be the villains.

Q: You say they would only emulate the good, not the bad?

A: Their natural tendency for them to emulate those for whom they have respect, in other words, those to whom they can look up.

Q: You say there is a natural tendency in boys to emulate good conduct and not bad conduct?

A: I said the natural tendency is for them to emulate the hero, the good character.

BY THE CHIEF JUSTICE: Cannot the hero of a film be a person of bad character?

A: When I use the term "hero" I was referring to the good, not the bad character. It is possible that, not appreciating that the character is bad, they might emulate him.

BY MR JUSTICE HANGER: Suppose the villain is presented as a hero. There might be glamour cast round the villain who is being presented as the hero?

A: Yes.

Q: In that case, the imitative tendency would be towards the wrong influence?

A: Yes, but the point I have always tried to make is that it is the duty of the parent to correct the child because, after all, we cannot expect too much in the

way of discrimination in a child. He may not be able to see that the hero, as he imagines him, is really a villain, and it is the duty of the parent to point that out to the child.

BY MR HART: That is why films are so harmful in the case of delinquent children because very often they have not got a parent to correct them?

A: I do not agree that films are so bad in the case of delinquent children. I have already said there are many more important factors than anything like that which may possibly operate in the causation of delinquency. There is still a great deal of disagreement as to whether what they read or see on the films does influence delinquents in any way.

Q: So that you did not mean it when you said that?

A: I meant it, but the connection there is the influence on the unstable child at seeing the luxury of gangsters.

Q: You refer to things portraying luxury and idleness in attractive terms. You mention the popular thriller and speak of the envy and desire to obtain by any means similar comfort?

A: I had in mind the gangster there because at the time this was written there were many pictures portraying rich gangsters and suchlike things.

Q: You must admit it is not the natural meaning of what you wrote?

A: No, I can understand that another interpretation could be put on it, but that was the meaning I had in mind.

Q: How can you remember what you had in mind 16 years ago?

A: Quite easily. I always referring to this. I give lectures on this and kindred subjects and frequently refer to this article. That is why I was able to quote the figures about homes so accurately this morning.

Q: Do you not think some girls would pore over these love comics?

A: I do not think so. I should imagine that having read them, they would discard them.

Q: If people swear they did, you would be in no position to deny it?

A: If readers swore they did?

THE CHIEF JUSTICE: The witness has said he has not personally observed the reactions of the young people.

BY MR HART: If people did read them and re-read them, would they not tend to imitate the behaviour of the heroine in these comics?

A: No. I do not see that that follows at all.

Q: Don't the comics themselves suggest they could?

A: No, I cannot say that.

Q: Look at Real Romance No.30 - "He was a Gentleman" on the second page. "Romantic stories that could be yours."?

A: Romantic stories that could happen to you.

Q: Romantic stories that could be yours?

A: I don't think so although I am prepared to agree to your interpretation. My interpretation is that they could be romantic stories that could be yours - it could be story of something that happened to you.

Q: Would not a girl be more interested in knowing what was going to happen to her in the future?

A: Yes.

Q: These people look to the future and not backwards?

A: It depends on what memories they have to look back to.

Q: If they had memories of this sort of thing to look back to, it would make them look forward to them as well?

A: If they enjoyed them.

Q: Do you know Dr. Frederick Wertham?

A: I know his book entitled, "Seduction of the Innocent".

BY THE CHIEF JUSTICE: Is it a technical book?

A: He is a New York psychiatrist who wrote a book on the influence of crime comics on young people. There is a copy in the Parliamentary Library of New South Wales but since it was mentioned it was illustrated it is impossible to get this copy as it is always out on loan.

BY MR HART: This copy is from the Department of Public Instruction and on page 166 he says,

"Conscious imitation is only part of the psychological processes initiated by comic reading. Beneath is a keen and subconscious imitation called identification...some other pleasure."

Do you agree with that?

A: Psychiatrists are terrible people for speaking in generalities. I regard this New York psychiatrist as a fanatic on the subject and he was speaking in generalities. Paraphrasing what he said it means that children tend to go back to a similar account.

Q: Do you make any adverse remark about him as a psychiatrist?

A: All I said was that he was a fanatic on the subject.

Q: Although you have not read his book?

A: No.

Q: If you read the book you might say that he was not a fanatic?

A: I have seen a summary in the report from the University of California.

Q: And I suppose there are many contrary opinions showing that he is not accurate?

A: Yes.

Q: There are plenty of people who agree with him?

A: I cannot say that there are plenty of people who agree with him to the extent to which he does. I think from my knowledge of what he said that he is rather an extremist. He is a man who made up his mind that comic books were harmful and, by a process of reasoning to which psychiatrists are unduly prone, he seeks to depict -

Q: Do you say that you are out of step with the rest of psychiatrists?

A: No. I am a perfectly human being given to some of the errors the flesh is heir to.

Q: Everything you say might be your individual opinion?

A: Yes.

Q: Not agreed to by all other people?

A: I think that is possible but unlikely.

Q: Well, not agreed to by many other people?

A: Some other people.

Q: The main point in the pararah read is that the child identifies himself with the hero of the film or the comic. Do you agree?

A: I agree that children tend to do that and I have said it already.

Q: You say that the type described by Dr. Stafford would seek pornographic literature. On page 93 the transcript Dr. Stafford describes the type?

A: With all due respect to Dr. Stafford he does not identify the type. He is rather vague. He speaks of morons, sub-normal and unstable adolescents although he does not use the term psychopath.

Q: He calls them a certain group of unstable adolescents, mostly female.

A: They are a polyglot group. It is like saying to a doctor, "Here are half a dozen cases of diabetes, half a dozen cases of cancer and T.B., what treatment do you prescribe?"

Q: He said that he has examined certain people - unstable adolescents who react in a particular way?

A: Yes, but he does not particularise. I maintain it makes the opinion unscientific.

Q: He says, "I have examined a certain group of young people in my clinic and I have found out such-and-such a thing about them"?

A: And some of them are morons.

Q: Mr. Wanstall went on to cross-examine the doctor on various aspects.

A: I remember that. He was speaking in general terms of a group of mixed people which is unsatisfactory.

Q: He was simply giving the result of an experiment conducted by him?

A: Not an experiment.

Q: Well, observations made by him?

A: Not observations. These were the opinions expressed as a result of interviewing these people, not observing their reaction to the reading, unless I have misunderstood the nature of the evidence.

Q: As a result of interviewing them after these people had read the comics?

A: Yes, but that would not be described as an experiment.

Q: He denied that he had conducted any experiment.

A: Yes.

Q: As a result of his inquiries and tests on these people, he came to the conclusion that they were affected in a certain way. He does not identify the group at all.

A: No, he refers to them as a group of unstable adolescents.

Q: I am putting it to you that you are not in a position to say that such a group cannot exist.

A: Oh yes. I don't think there could be a group of unstable adolescents.

Q: Who are affected by these comics?

A: I will not agree. I want to know what particular type of instability the adolescents suffer from. You cannot use the psychological yardstick to measure all your patients. That is the ay seek philosophy as Freud fell down.

Q: The philosophy of Freud has nothing to do with it. The doctor did not attempt to apply it in any way.

A: I am not suggesting he did. I should say that it smacks somewhat of Freudian philosophy when reference is made to such things as holding hands - simple innocent acts - as giving rise to some form of sexual excitement. Freud found sex in everything.

Q: All these things were put to the doctor by Mr. Wanstall?

A: I was under the impression that Dr. Stafford agreed with the submissions made by Mr. Wanstall.

THE CHIEF JUSTICE: He said that in some instances it might react as a sexual stimulant.

BY THE CHIEF JUSTICE: You do not have to depend on Freud to show that in some cases people would get sexual stimulus from holding the hand of a person of another sex?

A: I feel that it is getting very close to Freudian philosophy when the simple act of holding hands can be regarded with sexual significance.

Q: In some people, in some circumstances?

A: Of course, there are people who have already an unhealthy frame of mind.

BY MR HART: I am putting it to you that you have misunderstood what the doctor said. I will read what he said from line 55 on page 106 and the continuing questions on page 107. It says,

"The one in the middle on the left shows what is meant to be represented as a dream she is having about her future life at home with her husband. He is depicted sitting down reading a newspaper in a lounge chair whilst she appears to be lighting his pipe. Do you say that that picture is capable of conveying to a pervert an improper stimulus?

A: I do not say that these people are perverts.

Q: And I am saying, even to a pervert?

A: I am still talking about this group.

Q: Would that convey to this group this improper stimulus you are talking about?

A: It has that same trend - the whole thire.

Q: And therefore must you not say that any picture of a man and a wife in their home in those circumstances must have that meaning to this group?

A: I do not agree with that. You have to appreciate the whole presentation. In my opinion the essential thing is fantasy and they go through an emotional experience built on these things. One particular picture might be bad or good. I do not think that is significant as much as the whole story from which they fantasise and read that the people are going through certain episodes of experiences and then the incentive is, "Can we produce them in real life?"

Dr. Stafford is saying that you have to take the whole of the things together as they appear in the story?

A: Yes, that is what he indicates there.

Q: Is that a Freudian statement?

A: No.

Q: That is the whole conclusion he arrives at?

A: Yes. He devotes a lot of time in his evidence as to physical contact which is taking one picture or two pictures or three pictures from each of the stories. That does not constitute the whole of the story.

Q: The whole thing is one piece. The physical contact runs right through the story?

A: I do not say that it runs through the whole story because there are some stories in which there is no physical contact.

Q: There is more in most cases. In most cases many more times than in others?

A: In some cases.

Q: You say that Dr. Stafford's description of types rests upon an unjustifiable assumption. You said that in paragraph 17 of your affidavit?

THE CHIEF JUSTICE: I notice that the heroine in this story has a different idea as to the holding of hands. I refer to page 4 of Real Romance No.30.

BY MR JUSTICE MANSFIELD: They would not hold hands unless they got some pleasure from it? That is the pleasure they get out of holding hands? A tactile sensation of touching each other?

A: And the fact they are attracted, emotionally to each other. As I said, there could be love without passion.

Q: Can there be a happy marriage without love?

A: I think we are getting into the higher realms of philosophy.

Q: No, Doctor, you introduced that yourself. You say,

"I disagree with the opinion expressed by Dr. Stafford at page 88 of the said transcript that sexual reaction is the strongest factor in the state of being in love in normal decent people, even as a background influence. Love is not to be confused with passion or sex. It is a compound emotion, i.e. a state of feeling of the organism, directed to some person, adult or child, of the same sex or opposite sex in the case of parents, but in the case of adults, usually of the opposite sex, although the fact of sex as such very often does not enter into it. The love or affection of adolescents is a perfectly normal phase in their development. Moral training in the home or, in its absence, an innate sense of decency, prevents this from degenerating into mere animal passion which is an uncontrolled mental, physical and emotional state leading to the domination of primitive instinct over conduct. I cannot agree that the sexual side of love is a background influence."

Don't you think that is going too far?

A: That is why I say there can be love without passion.

JUSTICE MANSFIELD: He refers to the love of a parent for a child. Doesn't he refer to that in that paragraph?

MR HART: "The state of being, in love", is what he says.

BY MR HART: You say,

"I disagree with the opinion expressed by Dr. Stafford at page 88 of the said transcript that sexual reaction is the strongest factor in the state of being in love in normal decent people, even as a background influence. Love is not to be confused with passion or sex. It is a compound emotion i.e. a state of feeling of the organism, directed to some person, adult or child, of the same sex or opposite sex in the case of parents, but in the case of adults, usually of the opposite sex, although the fact of sex as such very often does not enter into it. The love or affection of adolescents is a perfectly normal phase in their development. Moral training in the home, or, in its absence, an innate sense of decency, prevents this from degenerating into more animal passion which is an uncontrolled mental, physical and emotional state

leading to the domination and primitive instinct over conduct. I cannot agree that the sexual side of love is a background influence."

Would you not agree that the sexual side of love is a background influence in marriage?

A: Yes, I quite agree it is.

Q: You swore to the contrary, didn't you?

A: No. You are referring to being in love. Two young people can be in love and the actual element of sex with the stimulation of the sexual instincts with the ultimate aim of intercourse may play no part whatsoever.

Q: Would it not be an unconscious thing in their minds? Is not a man attracted towards a woman because she is a woman?

A: Presumably so, and because of certain characteristics which she possesses, but not necessarily physical.

Q: Is there not in the human race a tremendous urge to reproduce and go on existing?

A: That is so.

Q: Is it not that urge that brings the together, largely?

A: It could have some chemical basis.

Q: I am not suggesting there is no spiritual basis. There is such a thing as love's possessiveness, they do not want other people to possess the people they love?

A: Yes.

Q: Do you seriously suggest at the back of the attraction between the male and female there is not the urge to reproduce?

A: I suppose that that being a primitive instinct it is somewhere in the background, but I am referring to the state of being in love; I am not talking about getting married or reproducing the species.

Q: What Dr. Stafford was talking about was the approaches of a man to his wife; he was cross-examined on that.

A: Yes.

Q: What you are disagreeing about is what he said about love in married life?

A: I do not think so.

BY MR JUSTICE MANSFIELD: He says, "I disagree that sexual reaction is the strongest factor in the state of being in love in normal decent people."

MR HART: Then he goes on to say it is not even a background influence.

THE WITNESS: Perhaps I am old-fashioned, but I would hate to think that young people cannot meet and be attracted to each other and be in that state of being in love without the element of sex entering into it. I think there are many young people into whose minds the question of sex never enters.

BY THE CHIEF JUSTICE: Do you mean unconsciously, or consciously?

A: Consciously.

Q: What about unconsciously?

A: I think it is very difficult to determine what takes place unconsciously in a person's mind.

Q: What do you say constitutes being in love as between people of opposite sexes?

A: There is an attraction, perhaps physically, which the girl exercises over the man and there is something in her character which acts as a complement to his, and well, they just seem to be suited to each other. It is a trite phrase, but I think that covers it. The happiest marriages are based on mutual interests and some things similar and some things dissimilar. Both likes and contrasts play their part, but in the adolescent love affair so-called from my experience with young adolescents, questioning them about their problems and so on, I can say that sex, consciously at least, plays a very small part.

BY MR HART: I do not mean that every time a decent man takes out a decent young woman his object is to seduce her, but I am suggesting to you that sex is a strong background influence in marriage. Would you agree with that?

A: The intimacies of marriage lead to a situation which is entirely different from that of young people who meet and go to dances or go swimming or anything like that. The seal of the approval of the church has been set upon the relationship and when they marry the marriage service itself tells them the purpose of marriage which is the propagation of the species. Then they must face the possibility of having a family.

Q: In the Church of England service it is firstly set out that marriage was ordained for the procreation of children to be brought up in the fear and nurture of the Lord, and to praise His Holy Name?

A: Yes.

Q: "Secondly, it was ordained for a remedy against sin and to avoid fornication."

A: That is just what they have avoided in many instances until they are married.

Q: "That such persons as have not the gift of continency might marry, and keep themselves undefiled members of Christ's Body." Do you agree that is part 32 the Church of England service?

A: I agree with the whole of the marriage service. I think it is admirable.

Q: "Thirdly, it was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity."

A: Yes.

Q: You see there it is suggested in the second place that marriage is to avoid fornication?

A: Yes.

Q: Don't you think that is inconsistent with the idea that people have not the sexual urge before marriage?

BY THE CHIEF JUSTICE: You are not suggesting people do not have the sexual urge before marriage?

A: No. I am afraid we are rather at cross-purposes. My argument is that the decent young woman or young man is not promiscuous, is not ready to indulge in sexual intercourse even with their prospective partner. It is the solemnity of the marriage service sets the seal upon their relationship that the matter of sex enters into it.

BY MR HART: You say,

"I disagree with the opinion expressed by Dr. Stafford at page 88 of the said transcript that sexual reaction is the strongest factor in the state of being in love in normal decent people, even as a background influence."

I am putting it to you that before the marriage it must be there as a background influence otherwise how would it suddenly spring up at the marriage?

A: Perhaps we can say it is in the background, but I am not prepared to agree that it is an influence.

Q: Do you mean to say that ordinary people do not want to get married and have children?

A: That is different. You are suggesting this desire for sexual relationship is the background of young people's minds and I just simply maintain that it is not; I do not believe it. I have enough faith in the present generation to believe that it is not the case in spite of the outward semblance of irresponsibility.

BY MR JUSTICE MANSFIELD: Would you say that the reason why a male is attracted to the female is because of a sexual background, the difference in their sex?

A: Yes, that is quite so, but I was assuming that Mr. Hart was referring to the desire for sexual intercourse.

MR HART: Once people are married then sex is a very strong influence. Their sexual relations influence very greatly the success or non-success of marriage?

A: Yes.

Q: If this reference in the first sentence you make here were to the love of a man for his wife it would not be correct. I take it you do not intend it to be such?

A: Naturally I do not suggest that married couples should be prudish in the matter of sex.

Q: You have not distinguished in this affidavit of yours as to the reactions of boys and girls to different types of literature?

A: I have not discussed other forms of reading matter apart from the ones with which I was supplied.

BY MR JUSTICE HANGER: No, the reaction of a boy and a girl?

A: No, I have been primarily concerned with the reaction of a girl because it was to the adolescent girl that Dr. Stafford made reference.

Q: Why do you say that the type Dr. Stafford has described would seek something of a pornographic nature to satisfy their appetites?

A: I said that because Dr. Stafford indicated that those people would be sexually excited by pictures in these books and I could not conceive that happening unless they were sexual psychopaths of some sort.

Q: You say that people who are sexual psychopaths must have something pornographic to excite them?

A: They need something more or less pornographic to make an impression on them. Those essentially very depraved people.

BY THE CHIEF JUSTICE: Therefore they require a greater stimulus than people who are not?

BY MR HART: I suggest to you that women in general are not emotionally aroused by the sight of male genitalia?

A: Most people are repelled by it despite the popular belief to the contrary. A number of people believe that indecent exposure has an exciting effect on the female, but that is not true.

Q: I am putting it to you that the same thing applies in literature. Women are more attracted by sex such as this than they would be by pornographic pictures?

A: I think that generally speaking a sexually-inclined woman likes her sex a little more subtle than a man. The smokeroom story does not appeal to the average woman but men cannot learn that.

Q: You know that Dr. Kinsey says that. You agree with him there?

A: Yes.

BY THE CHIEF JUSTICE: In your paragraph 16 you say that there is nothing in any of those magazines that is likely to sexually excite a reader and that psychopaths would require something else to excite them?

A: I have had young women and young married women explain to me quite voluntarily that they like to read a book which describes some sort of passionate episode so that they can subsequently lie back and phantasy about it, picture it in their own minds, sort of roll it over on their tongue to savour it and they reproduce the scene in their own minds, but those women are not a bit interested in the average so-called man's magazine with unclothed women and rather suggestive scenes. That type of woman would rather read it in a book and picture it herself.

Q: Would not they build it up from pictures that portray loving embraces between a male and a female?

A: No, I have not found that to be the case. They would prefer to read a book of the type "Forever Amber". They would read that book and in their own imagination they would elaborate the scene and picture themselves in the scene and get a great deal of satisfaction and very often indulge in self-stimulation as an emotional climax.

Q: I have not read "Forever Amber". Is that a book that gives a detailed account of the acts of sexual intercourse?

A: I am not sure. I have not read it myself but two or three of my patients have done so and they have told me that the episodes in it have proved most exciting so apparently they are described in some detail. Needless to say it has had a very large sale.

BY MR JUSTICE HANGER: I thought you were going to say that the female would prefer a general description without going into detail so as to allow her to build up the details herself?

A: That might apply to a woman who is a sexually excitable person but to a lesser degree; I am referring to the person who is abnormal in regard to sexual excitability. She wants something that paints the picture fairly clearly for her.

MR HART: I tender Kinse's Report on Sexual Behaviour in the Human Female. (Admitted and marked "Exhibit 1")

BY MR HART: Turn to page 652 of that Exhibit. There you will see it says,

"Something more than half – 54% - of the males in our samples...males, 4,181."

Would you agree with that?

A: I think that is probably correct.

Q: So that the females do not like nude sex pictures?

A: Apparently not.

Q: Until they conduct experiments of this nature, people do not know what results they will get?

A: No.

Q: You cannot work out deductively how the male or female will react? You have to conduct experiments to find out?

A: You have to question people. I know it is relatively correct because I interview the people who are guilty of obscene exposure. They all tell me that the women show disgust, that they recoil, and run off and call the police, so I think I am entitled to deduct from that that this is correct. That is not by questioning the women but by questioning the men.

Q: But that experiment of yours would not show it at all because it is one thing for a strange man to expose himself to a woman in the street when she may be fearful of attempted rape or something else, and it is another thing for her to pick up a book and pore over it herself.

A: I think it amounts to the same thing. These stupid people who expose themselves usually do so in public and there is very little if any risk of sexual assault. As a matter of fact, the people who expose themselves rarely if ever assault the woman.

Q: Then it goes on to say,

“It is difficult to comprehend why males are aroused by seeing portrayalsovert sexual relations with them.”

A: That may or may not be true.

Q: The whole thing points to the fact that the women like glamour, that they do not like crudity?

A: I do not know how you would glamourise the male genitalia.

Q: You cannot, and that is why the women do not like them.

A: What do you mean by glamour?

Q: The well-dressed handsome man, fully clad, in good clothes. I suggest that he would be far more likely to attract women than a naked man.

A: Yes

Q: Especially if he brings her flowers and chocolates and pays her attention?

A: Now you are becoming a little materialistic.

Q: Would you agree?

A: Yes. An attractive, respectful well-dressed man, I think, is probably much more successful than the crude, uncouth individual, and the least successful of all, I should imagine, is the gentleman who is completely unclothed.

Q: Take the paragraph reading,

“Striking evidence of the difference in the reaction of females and males...for the consumption of males.”

Do you agree with that?

A: Yes, I think that is quite likely.

MR JUSTICE HANGER: What is the point?

MR HART: I am suggesting that this kind of thing is more attractive to the young female than the pornographic material

THE WITNESS: I think young people who read these get a certain amount of pleasurable enjoyment out of reading them.

BY MR HART: And I am suggesting sexual stimulation as well.

A: I cannot agree with that.

Q: Take page 655 dealing with observing genitalia. It says, “

Most heterosexuals are aroused by observing female breasts or legs.....males have not.”

Do you agree that that is probably correct?

A: I think this has to be qualified. That is just a bald statement. It might mean that this was the reaction of a certain percentage of women in the case of men who exposed themselves to them in the street - strangers. I think it probably means during the ordinary loveplay preparatory to sexual intercourse. In that case, of course, the figures would be a little higher, but not because of the exposure; it is because of the various preliminaries that lead to the exposure.

Q: I think you will agree that these figures show that almost every human being is affected to a different degree by observing genitalia, and various other matters?

A: That is perfectly true.

Q: On page 659 you will see what he gives as the result of observing moving pictures. He says,

"Portrayals of sometimes erotic situations are so common in present-day commercial moving pictures...by way of contrary response."

Do you agree with that?

A: It is possible. It does sound a little involved that a person protests against something he really approves of, but I suppose it is acceptable.

Q: It says,

"Males and females...some more than males."

Would you agree or disagree with those conclusions?

A: Frankly I do not think I can express an opinion on that because I have never been told that such was the case.

Q: There are many live scenes in moving pictures and things comparable to these embraces in these magazines.

A: What I have been informed by people whom I have questioned is that they put themselves in the part of the actors and actresses and suffer with them and rejoice with them, but not that they have found there was any erotic stimulation from them.

Q: Would not they also love with them?

A: They would sigh with them. I do not know if they go as far as loving with them. It may be that the censorship is not as strict in America as it is here and they see things in the pictures that we do not see.

Q: Sex is wrapped up with a lot of glamour in the moving pictures?

A: Yes.

Q: And that is what attracts the female?

A: Yes. I think the women like the trimmings.

Q: This report says they would have a greater erotic effect at one time than they would have now. Would you agree with that?

A: That is one of the arguments put forward in favour of nudism - the more you see of it the less you are interested in it.

Q: Would you agree with Kinsey's statement that earlier they probably would have had a greater effect than they have now?

A: I cannot speak with any authority on this, but I think it is reasonable to assume that.

Q: With an adolescent, the effect would be greater than it would be with a grown-up person?

A: Yes. They have not reached such a stage of stability. I think that is a fair conclusion.

MR HART: Now turn to page 662, to the paragraph relating to observing portrayals of sexual action. The heading to the statement is, "Observing the Portrayal of the Sexual Action".

BY MR HART: Do you agree with that?

A: As I said before I cannot speak with any authority because that is an aspect of the subject on which I have not made inquiries.

THE CHIEF JUSTICE: I think those percentages would not apply in this country.

MR HART: In what way?

THE CHIEF JUSTICE: The percentage of people who have seen a portrayal of the sexual act.

MR HART: It would seem that there not this filthy stuff going about in this country as in other countries.

BY MR JUSTICE HANGER: Would you say in a community such as existed in Victorian times where the female form was covered from the neck to the ankle that the portrayal of a woman in the position in which these women are portrayed in the arms of a man, and when also during the Victorian era kissing was looked upon as being something never indulged in and contact between the male and female only took place virtually when dancing, would you say that in those times this type of literature would have caused such an effect as in these days when these things are so common?

A: Many of these things might be regarded as pornographic in those days because of the different senses of value. People in those days when conventional restrictions were so marked would attach greater importance to what we regard as simply innocuous. It was the custom in those days never to refer to the legs of a table.

BY MR JUSTICE HANGER: Pictures of girls in bathing costume would have been quite shocking?

A: Yes, to Victorian morality.

Q: Would it have a greater effect in relation to stimulation in young girls?

A: Yes. They would feel it was something forbidden and something a little bit wicked and that in itself would lead from one suggestion to another which might have sexual excitement.

Q: One of the factors to be considered in relation to readers is as to how far it departs from what is commonplace in the community?

A: Yes. What is normal and average should be the standard.

BY MR HART: If, in those days, a girl read stories about pick-ups, she would not have the opportunity to emulate the behaviour?

A: No.

Q: Actually, when a girl is stirred up, these comics are likely to have a much greater effect towards immorality than in the Victorian days, assuming there are greater opportunities?

MR JUSTICE MANSFIELD: And assuming that they tend towards immorality?

BY MR HART: You agree that persons indulging in there would be aroused sexually? People indulging in the passionate kiss would be aroused sexually?

A: If a kiss is particularly passionate I presume there would be sexual stimulation to the people portrayed.

Q: The people reading thine things would identify themselves with the heroine?

A: No.

Q: Despite the passionate words that accompany the pictures?

A: I do not think so, because it is not a coherent story.

Q: There is a difference of opinion between psychologists. If it did arouse these people sexually and if they did arouse the adolescent female sexually, they would have a greater opportunity in these days to indulge in their desires than in the Victorian days.

A: Yes.

Q: And therefore, they would have tendency to corrupt nowadays than in the Victorian times?

A: Yes, assuming they do have that effect on them.

Q: I refer you to page 669 of the Kinsey Report detailing with stimulation in literary material

(reads passage)

Do you agree?

A: That is what I have said before. There is this condition of empathy, thinking oneself fitting into the character in the book.

THE CHIEF JUSTICE: Surely the figures must depend upon the works. Does it mean any novel? It must be some specific novel. I do not see how you could generalise.

THE WITNESS: Would the people who read Little Lord Fauntleroy think that?

BY MR JUSTICE MANSFIELD: Different books would affect different people in different ways?

A: One has to consider the individual psychology.

BY MR HART: This refers to descriptions of sexual reaction?

A: I think it is all too vague

Q: Females like their sex glamorised and not crude?

A: I don't know about that. I think that every natural woman with reticence is repelled by crudity.

Q: What I am putting to you is that the female does not like sex crude but likes it glamorised?

A: That is generalising and I cannot agree with that. You can say that some women sexually excitable like sex with trimmings but it would be better to say that women who were sexually over-responsive reject crudity but might accept sex if it is presented to them in an attractive form.

Q: This type of literature presents sex in an attractive form to adolescents?

A: I don't know. I do not think it presents sex in any form. It satisfies a craving in adolescents for a nice romantic story which is easy to read because it is largely pictorial and it can be read without taking up too much of the busy housewife's time. There are housewives who read these books.

BY JUSTICE HANGER: What do you say about the idea that it may sublimate sex in adolescents?

A: I do not subscribe to that idea. I know that Dr. Matchett suggested it.

Q: Do you call it sublimation of dissipation?

A: It is directing it into useful channels.

BY MR HART: You explained sublimation in that article of yours?

Q: I might have.

Q: Look at paragraph 27 of your affidavit. Would you expect that?

A: As I have said before you have a wide screen and you get the appearance of reality which is more impressive than a flat picture in a periodical.

Q: The wide screen is quite new?

A: Well, any screen. Go back to the days when the pictures flickered. There was movement.

Q: Dr. Kinsey's opinion is that films do sexually excite some women?

A: He said that.

Q: Do you disagree with that?

A: I said had not of my own knowledge found that to be the case.

Q: You are not competent to give an opinion on that matter?

A: That sounds unkind. I know you do not mean to be. I am not in a position to express an opinion.

Q: You are not competent?

A: I have not been informed that such is the case.

Q: You are not competent?

MR JUSTICE MANSFIELD: In his experience he has not come across any cases in which that has happened.

BY MR HART: Supposing a girl read one of these stories over and over again? She would be more influenced by these pictures than by the films?

A: If she read them over and over again.

BY MR JUSTICE HANGER: You have to assume that a girl would read one of these over and over again.

A: I have found it difficult to get through one of them. I had in mind when I wrote that paragraph that nobody had complained to me or told me that the screen affected him or her in that way. I always adopt the practice of letting the patient tell his or her own story without any questioning. If I was to ask questions I might get answers that would please me. If I gave an indication of the type of answer I happened to be expecting I would most certainly get the answer. Had this been the case, somebody would have said to me, "I get stirred emotionally or excited sexually when I see something on the screen".

Q: You would not get that information unless they volunteered it?

A: No, not unless they volunteered it.

Q: You do not ask them?

A: I have felt a bit diffident about questioning adolescents.

Q: If in fact they did not volunteer the information you would not ever have it?

A: That is so, but I felt that the majority of them had been honest with me because I had tried hard to gain their confidence and I felt that anything that affected them would be told to me.

BY MR HART: I put it to you that you never specifically directed your inquiries to that point.

A: I did not say to them, "Do you get sexually excited at the pictures?"

BY THE CHIEF JUSTICE: People who sell these spectacles regard them that way from a selling point of view. I am afraid I am not a person who has much experience of pictures but I cannot help reading the advertisements and they seem to be directed to persons who may be sexually stimulated?

A: I think they put special emphasis on that. I have not been to the pictures myself for many years but I do feel that the patrons would be disappointed in many cases because the advertisements do not give a true impression.

BY MR HART: There is nothing very amateurish about the scenes depicted in the pictures?

A: I could not give an opinion on recent films.

Q: Even when you were a boy there were love scenes in the films?

THE CHIEF JUSTICE: It is not a matter of whether they are amateurish, but whether they are sexually disturbing.

BY MR HART: You say in your affidavit,

"Also if Dr.Stafford's assessment were correct the types of psychopath to which he refers, or some of them, would derive much more undesirable stimulation from Shakespeare's 'Venus and Adonis' or 'The Rape of Lucrece', whilst the playing of 'Hamlet' would gratify the most sadistic desires, for in it there were eight violent deaths, adultery, a ghost, a mad woman, and a fight in a grave. The same might be said of most of the operas, e.g. 'Butterfly' (seduction, desertion and suicide), 'Tosca' (torture) 'Rigoletto' (seduction and murder) and 'Aida' (burying alive) to mention just a few. Similar assumptions could and should, to be consistent with Dr.Stafford's assessment, also be made, in relation to the reaction of some of such persons, to music in certain keys and arrangements."

THE CHIEF JUSTICE: It seems to me that that is argumentative rather than evidence.

MR HART: I suppose it is.

BY MR HART: I was going to ask you: is not that inconsistent with your statement about boys being affected by horror films?

A: I do not see any inconsistency.

Q: You said that these psychopaths are so depraved that nothing would make any difference to them, nothing would make them more delinquent?

A: It depends upon the type of psychopath and I had in mind the sexual psychopath and the answer would be "Yes".

Q: Human beings cannot be put into watertight compartments?

A: No.

Q: Although you get some psychopaths who are so bad that nothing would make any difference to them there would be a lot of borderline cases that would be affected, that would be stimulated by reading this literature?

A: I do not think so. I cannot see that they would have any effect. They would not be the sort of thing that would appeal to the sexual psychopath.

Q: The ordinary woman does not like crudity in sex, she likes it wrapped up?

A: I think that is a reasonable assumption.

Q: I am putting it to you that if anything would stimulate women it would be these romances?

A: I do not think that would follow.

RE-EXAMINATION BY MR WANSTALL

Q: My learned friend Mr. Hart asked you some questions this morning as to your opinion whether there might be a couple of hundred per night of innocent girls seduced in Sydney as the result of pick-ups.

THE CHIEF JUSTICE: The doctor, I take it, was not able to tell us.

BY MR WANSTALL: Can you express an opinion as to what proportion of the number of pick-ups would lead to no sexual relations?

A: I could not say. It depends on the individual. I know from my own experience with young girls that there are a number of girls who do this out of a spirit of bravado and who would not have the slightest intention of indulging in sexual intercourse.

Q: Can you say whether the matter of the pick-up and the absence of an introduction has any incentive effect on any sexual intercourse?

A: It is unconventional but I do not think it is in any sense immoral.

BY THE CHIEF JUSTICE: It is more likely to embolden the picker-up to proceed further?

A: That is where the danger lies, in the fact that he thinks the girl is "easy".

BY MR WANSTALL: You said in answer to Mr. Hart this morning that there might be some sort of literature which could have a tendency to deprave or corrupt a girl of 15. Could you give some example of the type of literature you have in mind so that we might compare it with this?

A: I had in mind some of the books I have seen on the bookstalls on which there are pictures of partly unclothed women in the embraces of men and which, instead of pointing any moral, deal with the rather unpleasant scenes of seduction and abandonment and things like that.

Q: If it be true that an illustration in one of these stories does indicate that the participants who are portrayed are sexually aroused, what effect, if any, would that have on the reader?

A: I do not see that it would have any effect on the reader. A great deal depends on the interpretation one puts on what one sees. It does not follow that the person who puts that interpretation on it must for that very reason go and indulge himself.

Q: Are you saying it is a case of "Honi soit qui mal y pense"¹?

A: Yes.

Q: We had a story referred to this morning in which it was suggested that the last picture of a happy reunion between a man and wife was suggestive of sex. Can you see any sex in that?

A: No. The implication was that when a husband and wife fall into each other's arms, and being husband and wife and having fallen into each other's arms, the natural conclusion, except for interruptions, would be that they would indulge in sexual intercourse.

Q: In the evidence you gave to Mr. Hart this morning about the delinquents you examined at Prince Alfred hospital whose background was investigated by

¹ "Shamed be he who thinks evil of it"

other trained social workers, what was the contact between you and the delinquents?

A: I interviewed him or her first at some length and then referred him or her to the social worker who would have my record and who would continue the inquiry into the background and so on and who would then go out subsequently to the home and investigate all the environmental circumstances and forward a typewritten report to me of what she had discovered.

Q: There was a doctor and patient relationship between you and the delinquent?

A: Yes, and that relationship was continued after I received a report which would give me information on which I could take certain steps to remedy matters.

Q: Would that include information as to the likely effect of reading material?

A: Yes. That would be included in the report under the heading of "recreations", reading and the type of reading, and sports.

Q: During the cross-examination this morning, His Honour Mr. Justice Hanger, asked you whether you would agree these particular books would be insipid to the sexually unstable person?

A: Yes, I think they would. They would be of no interest. They are not exciting enough.

Q: My learned friend Mr. Hart cross-examined you about some passages in your article on juvenile delinquency and in particular about strong suggestions that might be made by certain types of literature. How would you compare the subject magazines with the influences you are referring to there?

A: There is no comparison actually, they are quite a different type of thing altogether.

Q: At another part of that paper you referred to lurid literature. How would you compare the subject literature?

A: It would not be described as lurid.

THE CHIEF JUSTICE: These things are not lurid.

MR WANSTALL: These things are on the record and are quite capable of being misunderstood.

BY MR WANSTALL: There was the illustration of the little boy in the Children's Court here in a recent case who had been reading the adventures of a burglar hero. How was the hero portrayed in relation to the concepts of good and ill?

A: He was the Raffles type.

BY THE CHIEF JUSTICE: The burglar was the hero?

A: Yes, the Robin Hood type.

BY MR WANSTALL: My friend also cross-examined you about certain opinions held by Dr. Frederick Wertham as to the effects of comic books upon

American children. Do you know what type of comic books the doctor was speaking about?

A: All the references there are to sex, horror and crime.

Q: How would you compare the material on which Dr. Wertham expressed that opinion with the subject literature?

A: As a matter of fact I did not find anywhere in that report reference to material of the type that is before the Court.

Q: Dr. Wertham makes this reference to the sort of comics he is writing about, "The behavior..."

MR HART: I object to this.

THE CHIEF JUSTICE: Mr. Hart asked this witness whether he agreed with certain things. He did or did not. That is his opinion of what Dr. Wertham said. He has already given his opinion.

MR WANSTALL: But whatever argument my friend might be able to base upon that -

THE CHIEF JUSTICE: He cannot base any argument on it. He can only base an argument on this witness's opinion.

MR HART: I tender the article written by the witness in 1939.

(Admitted and marked "Exhibit 2")

MR HART: I tender also the article written by the witness dated 30 October 1954.

(Admitted and marked "Exhibit 3")

The Court adjourned until 2pm. the following day.

Wednesday, 5 May 1955.

The Court resumed at 2 p.m.

JOHN WALLACE METCALFE, sworn and examined:

BY MR WANSTALL: Your name is John Wallace Metcalfe?

A: Yes.

Q: And you live at 58 Hardy Street, Dover Heights, Sydney in the State of New South Wales?

A: Yes.

Q: You are the deponent in an affidavit which is before the court in these matters?

A: Yes.

Q: As a librarian do you have to control the availability of certain types of literature in the sense of the public access to them?

A: Yes.

Q: According to what classifications do you control their general availability in your libraries?

A: In making my judgment - I take it that is what you mean - on what should be restricted in access and what should not, I find it necessary to have three categories in mind. There is the book we assume to be intensely pornographic and the book which has a genuine scientific attitude towards such matters as sex but which may be used as though it were pornography - case histories and the like. Then there is, well, the rest. There are special categories such as books dealing with forgery and embezzlement and what not. There is the book, then, that we find may be subject to some abuse. For example, works of art may be subject to mutilation and so on but whereas we may protect those for purely physical reasons in their distribution, we find we cannot limit public access to them because we find there is no limit to the kind of mental use which can be made of them by minds which appear to be already perverted in some way.

Q: Does it fall to your lot, then, to exercise the judgment necessary to control their use in the way you have described?

A: Yes. We segregate books in different categories. People make application for certain categories on printed forms and either myself or a senior officer would check, as it were, all requests for that type of material.

BY THE CHIEF JUSTICE: Those categories that you have referred to are all categories which are restricted in their access?

A: The third category no, is not. The third category is the general category of books which are on open access, as we call it. They are on the open shelves of the library in the reading room or they can be obtained by anyone from

stack. We know that in fact some of them, passages out of them, pictures out of them, may make some appeal to perverted minds but we find we cannot discriminate.

Q: What do you do about them? Nothing? You just leave them there?

A: In the interests of the general student we have to leave them because you can never tell. You suddenly find a book with some obscenity written in the margin. You would not conceive that that obscenity would be written until you find it written there. Other books, like Havelock Ellis's "Psychology of Sex" you know immediately that there will be students who will make proper use of them. You know also that you have a demand from people who want that particular book, putting it mildly, just for recreation. That is the type I have in my middle category which we attempt to give protection. That also applies to my first category of books which really we regard as pornographic. There may be a difference of opinion as to whether Burton's "Arabian Nights" or Rabelais are pornographic, but there is a demand for that sort.

Q: They are put in the pornographic class?

A: They are put in a specially reserved class. We ourselves express no judgment on them.

CROSS-EXAMINATION BY MR HART

Q: I could not quite hear what you are saying. Would you mind telling me the three classes again?

A: The class of book which is generally deemed to be pornographic in intent.

Q: Would that include Rabelais?

A: In the minds of many people, it does.

Q: It would come into that category?

A: It would come into that category. The second category is mainly scientific works and some literary works. Rabelais could actually come into the second class, which is a matter of subjective judgment. Take Joyce's "Ulysses" and Ellis's "Psychology of Sex" one in a scientific category and one in a literary category, which people want to read, I say, putting it mildly, for amusement. Because our business is not to provide amusement, we restrict the circulation of those books. The third category is the rest of our library.

BY THE CHIEF JUSTICE: "Ulysses" would be in the first category, would it?

A: It be in either. It is a matter of opinion whether it's intention is pornographic or not.

Q: It would not be regarded as a scientific work?

A: No, but it would be regarded as a work of high literary merit.

BY MR HART: That is Homer's "Ulysses"?

A: Joyce's "Ulysses".

Q: I am sorry. I am not up on these things. I could not see how Homer's book would be getting in there?

A: You never know.

Q: The comics in this case you do not put in air category. You will not have them in your library?

A: We do not have them in the State Library in New South Wales and, by and large, they are not included in the libraries operating under the New South Wales Library Act of 1939, because they are a popular class of literature, along with most novels, a great many novels, current fiction, that we assume people will get through other channels. We have no attitude of discrimination towards them, other than arises from the fact that we are supposed to have an educational and research function.

BY THE CHIEF JUSTICE: You would not regard them as being works of literary merit?

A: No, they are simply popular literature, of which there is a very wide range. Fairy tales, for example, come in the same category. Some acquire the status of classics; others do not.

BY MR HART: You would have Grimm's Fairy Tales in your library?

A: Because that has acquired the status of a classic. We have some comics; we keep them as specimens.

BY THE CHIEF JUSTICE: You would regard them as merely ephemeral?

A: Yes, they are ephemeral.

MR HART: You say the narrative accompanying the books is almost completely free of slang, or even colloquialism?

A: Yes.

Q: Is that a considered judgment?

A: I have read those comics through and, in my reading, I was not conscious of any high proportion of slang or colloquialism. There may be some colloquialisms.

Q: You do not say that. You say it is almost completely free of slang?

A: Yes. I did not make a statistical check.

MR JUSTICE MANSFIELD: "Almost completely" does not mean completely free.

BY MR HART: If there is a large proportion of slang, what you say would not be true?

MR JUSTICE MANSFIELD: It is a matter of degree.

THE CHIEF JUSTICE: In any event, I take it that we do not need any evidence as to how much slang there is or is not in these documents. We can read them ourselves.

BY MR HART: In paragraph 4 you express an opinion of law, do you not?

A: As a layman, I have read the definition given to the word "objectionable".

Q: I think you will agree with me that it is a matter of construction of this section as to whether, in order to be objectionable, it must not only unduly emphasise the matter of sex, but must tend to deprave or corrupt someone?

A: Yes.

Q: Which definition did you take?

A: I had in mind the "unduly corrupt". I had some mental trouble over the word "unduly".

BY MR JUSTICE MANSFIELD: "Unduly emphasise"?

A: Yes, I must confess I had difficulty there. I take it that it means that you can, in a certain context, give emphasis to a topic such as sex, broadly considered, which you might not give in another context. Otherwise, I find myself in difficulty in attaching any meaning to the word "unduly". When I came to the rest of it, the "corrupt" and "depraved", I was of the opinion from my experience as a librarian that only the already depraved, depraved by some other channel and means, would find any perverse appeal in what I have read. I admit the already depraved might find that perverse appeal, but in all my knowledge I have not seen that type of literature being the cause of it.

BY MR HART : You know there are a number of passionate love scenes in this literature?

A: The word "passionate" is not mine.

Q: Everyone else has been through this again and again: I will refer you to "Popular Romance" No. 17A. On page 5 it starts off with the truck driver's sweetheart. I have mine numbered 1, 2, 3, and at the bottom of page 5, the one with the mosquitoes.

A: I am sorry, I have the first page with the heading, "Truck Driver's Sweetheart".

MR JUSTICE MANSFIELD: That is on your page 4.

BY MR HART: You see that at the bottom left?

A: Yes.

Q: Would you look first of all in the centre right of that page?

A: "I guess you found me out, Sally".

Q: "I don't care; I don't want to keep you; I like you too much," She said, "I like you too, very much, Michael.", and then you see the next picture at the bottom left, "Then his lips were cruelly pressing on mine and his kisses were all I had hoped they would be, all I had dreamed they might be and the world spun around as I clung to him." You see them in close contact with electric shocks going round them; that is a passionate kiss, is it not?

A: I still do not follow you; this question of passion is a matter of degree; I don't know what you mean to imply by "passionate".

Q: I mean they are both being sexually aroused?

A: I would not take that as following from that.

Q: You would not?

A: No.

Q: Do you think she is in a cold impassioned mood when she is kissing him?

A: I would say that maybe her feelings are those which you would associate with the word "love" rather than the word "sex".

BY THE CHIEF JUSTICE: What kind of love?

A: I should say legitimate.

Q: Love between two persons of the opposite sex?

A: Love between two persons of the opposite sex who are at last considering matrimony.

BY MR HART: When you have love between the opposite sexes who are considering matrimony, and they kiss like that, when they love each other like that, and they are clinging to one another, would that not be passion?

A: Yes, I would say that was passion; I would say that was moral passion.

Q: They would be to a certain extent sexually aroused?

A: I have no opinion to express on that.

Q: Would you not expect them to be?

A: I have no opinion to express.

Q: What do you think those dots round them are intended. to indicate?

A: I do not know; those dots could merely be filling in there; you will notice that is a characteristic of this writer right through there; he uses a dotted background up to the back right-hand picture for black leaves; I think you would have to get the artist's opinion; my own opinion is that this is a typical trick of this artist to fill up his background.

Q: You say it is typical of the writer, or artist?

A: If you look at the middle right, you see black spots which are representing leaves, and you see the one on the right picture on the top group of pictures, again he has that broken background. You see, the printer expects him to break up his background; he cannot have too much white.

BY MR JUSTICE MANSFIELD: Those ones you refer to represent something: one represents leaves and the other represents curtain. What do you say this one represents? Mosquitoes or the footprints of bears?

A: No, I do not think it represents anything; it merely represents his obligation not to leave too many white spaces. I think you will find it right throughout all these pictures that the area of the picture is filled, because you have certain technical problems in printing there; I think you should get an expert for that.

BY THE CHIEF JUSTICE: Some of them are not filled?

A: That is very rarely that you find complete whiteness behind any picture, I think; you have one on the next page; you have two heads speaking to each other, and you have a certain amount of whiteness but the general tendency is

to break up the background. My own view would be that your idea may be as good as mine, but I do not necessarily say that those dots in the background are to represent passion.

BY MR HART: Do you say that from the letterpress and the attitude which you would gather from the picture that these two people are not in a very passionate embrace?

A: Again "passionate" is your word; it is an embrace of two people who have found themselves very much in love with each other.

Q: Would you accept the word "ardent" embrace?

A: Those are words; just worn-out words.

BY THE CHIEF JUSTICE: What would you say would be the proper description?

A: I think you would need circumlocution. You would have to say you have two people who are approaching the conclusion of a romance and they have strong feelings; I should say a psychiatrist would say there was an element of sex in it, but it would be for them to say how that was related to the feeling called love; I cannot say. Feeling, yes; sentiment, yes; strong feeling - strong sentiment, but I am not going to label it with the name sex, or even with the name passion.

HART: May he be shown "Romance Story" 20? It is one of the extra ones that he put in.

MR JUSTICE HANGER: What page?

MR HART: The second story, page 7, on the right hand side, "Engaged."

MR JUSTICE MANSFIELD: What page?

MR HART: Page 9, bottom right, and then page 10, top left, page 12, right centre, and then the bottom of page 12. The court may get tired of the old story.

BY MR HART: Will you have a look at those stories?

A: This is not one that I have previously seen apparently,

Q: No, I know you have not.

THE CHIEF JUSTICE: It is headed "Engaged".

THE WITNESS: "Maybe it is because I lived with my married sister"?

BY MR HART: No, it is, "Engaged", over the page. There is a girl saying, "Do you realise the blackmail I could engage in after Cynthia gets back?"

A: Yes.

Q: The man says, "I have to take my chance, I guess." They are fairly close together in that one.

A: Yes.

Q: The one at the top left on page 10?

A: Yes.

Q: "At the door, as he said, 'Good night.', I could think of nothing but the happiness of being with him." Do you see them kissing there?

A: Yes.

Q: That is a fairly passionate kiss?

A: Yes.

MR JUSTICE MANSFIELD: He does not seem to agree with your use of the word "passionate".

BY MR HART: A fairly ardent kiss?

A: You can only deduce something of that sort from the words, not the drawing.

Q: Yes, from the words?

A: It is your own deduction, not mine, but it is not in the drawing itself. All you have is the contact of two cheeks as in film shows.

BY THE CHIEF JUSTICE: What does the letterpress say?

A: "As he said, 'Good night,' I could think of nothing but the happiness of being, with him."

MR JUSTICE MANSFIELD: Apparently she was not thinking of him at all but of her own happiness,

BY MT HART: Look at the centre right on the next page.

A: "My joy at being able to call Allan was dimmed by the fear that he would be too upset to speak to anyone."

Q: No, on page 12, centre right: "Cynthia Hall means nothing to me."

A: Yes.

Q: The "We broke our engagement before she sailed. I had no intention of falling in love again, either, but it was Fate's plan...having everyone think I was still engaged. They left me alone." Then the next one, "Then you came along. You were such fun, so easy to be with, I fell in love again and I wanted to tell you all week but you were out so much. Say you will marry me...we would never have to part." There is a passionate embrace there, or do you object to that word?

A: I still object to it. You have a picture of two static figures, a man and a woman, talking to each other and the inference is from the drawing. I do not know that people who are what you call "passionate" can talk so coherently. They are talking about matrimony; they are not talking about sex or any implication. I am just giving you my reading of it. I am making no comment.

BY MR JUSTICE MANSFIELD: All pictorial representations of that sort are static; they are not moving?

A: I have had experience in having to deal with pornography. This is a picture of any romance that you would find in the mid-nineteenth century. This is the

typical finale of a romance leading to marriage in which the whole emphasis is on marriage and on legitimate intercourse between the sexes. You get your picture like that. They are in conversation, their lips are open, they are uttering words and then you get that silhouette following which shows the actual embrace. I don't know what conclusions you put upon that.

Q: Will you have a look at "Darling Romances" No. 46?

BY MR JUSTICE HANGER: Is there any other way that you can pictorially represent the conclusion of courtship than by showing two lovers kissing?

A: All I could say to that would be that I think in our English-speaking civilisation it has been the convention for centuries to represent the conclusion of the proper form of courtship with an embrace. It would not, I gather, be so in Japan where kissing is regarded as an almost obscene act, but in our western civilisation I do not know of any period when it was objectionable. Any other representation would not represent the conclusion. These pictures all seem to me to bring it within the framework of an acceptable relationship sanctioned by both law and religion and it has been the convention to represent it in that way. You find it in many evil pictures, even in stained glass, say, Ruth, biblical stories. There may be a little more of what Hart calls passion at the present time but essentially the thing remains the same.

BY MR HART: Have you got Dr. Kinsey's book in your library?

A: Yes, we have.

THE CHIEF JUSTICE: Which one?

BY MR HART: On the female?

A: We have both.

BY MR JUSTICE MANSFIELD: What category do you put those in?

A: That is a category we have to restrict, the second category - popular pressure.

BY MR HART: You do not like the word "passionate". Do you know what is the distinction between simple kissing and deep kissing?

A: I have not read the work.

Q: Do you appreciate the significance of the difference between simple kissing and deep kissing?

A: You rather embarrass me.

BY THE CHIEF JUSTICE: Do you know what deep kissing is?

A: I am quite unfamiliar with the phrase but I think I know what he is getting at. I will say that.

MR HART: May the witness see Dr. Kinsey's book? It is in there.

THE CHIEF JUSTICE: He does not profess to be an expert on deep kissing.

MR HART: He has sworn to the issue that they are not objectionable.

THE CHIEF JUSTICE: That is not going to affect the judgment of the court.

MR HART: I am just working up to putting it in that he has not the faintest idea of what effect these books would have on the young girls who read them. That is a matter for psychologists.

THE CHIEF JUSTICE: Ask him that.

BY MR HART: You have sworn in your affidavit have you not, that this literature is not objectionable within the meaning of the Act?

A: On my reading of the Act, in my opinion, yes.

Q: One of the matters that makes them objectionable is if they unduly emphasise sex?

A: Yes.

Q: have you any idea of what effect these books would have on a teenage girl of 15 who continually read them?

A: You asked me about undue emphasis on sex. Now you switch to a girl of 15. Could I ask: what has that got to do with undue emphasis on sex?

Q: I will explain it. If they unduly emphasise sex they could have a harmful tendency on young girls, adolescent girls, who read them.

A: There are two propositions. First of all there is your hypothesis that these books do unduly emphasise sex. I have sworn that they do not but your hypothesis is that they do. Then you say that having unduly emphasised it that would have an effect on girls of 15.

BY THE CHIEF JUSTICE: You say they do not unduly emphasise sex?

A: I say they do not unduly emphasise sex. I do not express an opinion in any expert on what effect they may have on some girls of 15 but I say they do not unduly emphasise sex.

Q: Do you think they would have a tendency to deprave or corrupt girls of 15?

A: I do not think so. I think they would have to be in some way already depraved before they could read into these pictures anything objectionable. I read the Act in that way and it said you have to expect something flowing from this to the person and that a person not already depraved would become depraved by these, if my reading was correct. I then made my deposition that I did not think these unduly emphasised sex and further that they would not deprave the normal girl of 15.

BY MR HART: Do you know what effect these comics would have on a normal girl of 15, first of all, a continual diet of them?

A: I can offer you my opinion as a man of the world if you want it.

BY MR JUSTICE HANGER: Only as a man of the world?

A: As a man of the world, one who has had some knowledge of this question of literature.

BY MR HART: Have you made any study of the effect of this kind of literature on adolescent girls of 15?

A: No.

BY THE CHIEF JUSTICE: Or any other age?

A: I have made no study that could be called psychological or statistical.

BY MR HART: So if a psychologist said that this literature did tend to deprave some girls of 15 or some adolescent girls, you would not be in a position to deny it?

MR JUSTICE HANGER: He has already told you that he does not claim to be an expert on that matter.

MR JUSTICE MANSFIELD: He has already said he does not pretend to be an expert. I do not know why you persist with it.

BY MR HART: You do not pretend to be an expert?

MR JUSTICE MANSFIELD: As far as girls of 15 are concerned, or any other age.

BY MR JUSTICE MANSFIELD: Your proposition first of all is, as a librarian having some knowledge of literature, that it does not unduly emphasise sex?

A: Yes.

Q: Your second proposition is that as a man of the world you would say that it would not deprave a girl who was not already depraved?

A: I say that also from some knowledge of the demand made by people for literature, that when it comes to depravity my observation of some association is that with depraved people it is much stronger meat than this that they go for.

BY THE CHIEF JUSTICE: You say it would not have any tendency to deprave; is that right?

A: I would express my view that this would not have even a tendency to deprave. It may not be an expert view but that is my view.

BY MR HART: Why do you say that?

A: I say it partly as a man of the world of some observation.

Q: But you say they go for stronger stuff?

A: Yes.

Q: Who does?

A: It is mainly males but it is also females on occasion where there has been, I think, some prior corruption. They put pressure and make endeavours to get books, as I say, in a different category to those comics. If you look at the ordinary library catalogue you will see that the catalogue cards that are thumbed and dirty are those for books by Havelock Ellis and people like Rabelais. They are not the cards of popular comics and the like.

Q: What age are the women that take those out?

A: There are very few women who press for that sort of literature in my experience in reference libraries.

Q: What do the adolescent girls press for?

A: As far as I know - and I confess to a limited experience - adolescent girls, I mean by that, say, over 16, advanced teenagers, as far as I know they go for these Romance types of literature either in straight prose narrative or in this picture form.

Q: What about the ones under 16? Say, 13 to 16?

A: I have not worked in the children's department of the library but from the sort of stuff we are asked to buy for them they go for school romances bearing down to the fairytale type.

Q: So that they are not attracted by to pornographic stuff like the males are?

A: Not at that age, no not below 16.

Q: Very few of them over 16?

A: Much small percentage to my knowledge than of the males.

Q: So that pornographic literature is not actually corrupting of females?

A: No, I don't think females have the same reading habits. I do not think their corruption comes from literature of any kind.

Q: Do you notice a tendency in young people to emulate the characters in the literature they read?

A: Yes, in general terms I do. I think, if I can, it is an inculcation of values rather than actual acts. It is my opinion from a considered study of it and my own experience that, for example, the penny dreadfuls of pre-'14, about that time, had a great deal to do with forming values of heroism and courage in the troops of the first war but it was the moral values conveyed that were taken up rather than the attempt to imitate actual situations.

Q: If young girls lived on a continual diet of romance such as this in which people are continually embracing each other, do you not think that it would give them the idea that that was the correct mode of behaviour?

A: First of all, there is no continual embrace in anything in front of me. There is an embrace, yes, at the conclusion of the narrative, but you have said continual embrace.

Q: You look at these. I do not want to waste the time of the court by having you read through them, but in all of these the constant theme running through them is the contact between the male and the female?

A: No, not on my reading. The constant theme running through these is happy and respectable married life. I find that theme repeatedly in them, as I enumerated in my deposition,

Q: Have you not found that physical contact running all through the pictures?

A: I have never found the physical contact separable from marriage.

BY MR JUSTICE MANSFIELD: What Mr. Hart means is that in numbers of the pictures of each story the male and the female are touching each other on the face or the head or the hands or the arms or somewhere. There is physical touching.

A: That is rather different to anything that could be called a passionate sexual embrace. Certainly there are contacts. Those are accepted in life. You would have an entirely unreal story in words or pictures if you had no touching of hands or dancing or whatever it might be.

MR HART: But what I am putting to you is that these romances concentrate their attention upon that aspect of life?

A: They concentrate their attention on what is regarded as the thing which should engage an adolescent girl's attention. That is the prospect, the possibility, the hope, of marrying an acceptable man with proper regard for the sanctions of law and religion and morality and settling down in proper married life with children. That appears to me to be the emphasis. Incidental to that there is always the hope for a romantic courtship. That seems to me to be the continuous theme of all those stories. I have read the same thing in dozens of romances, without the pictures, but it is the same thing.

MR HART: In order to contradict him on that, I have to take him through all the stories. I think Your Honours have been through them.

MR JUSTICE MANSFIELD: Do you have to take him through? You would be only just asking him, "Do not these people touch each other in pictures 1, 7, and 11?" We can see that for ourselves.

BY MR HART: I put it to you that you have passed a psychological judgment in this affidavit of yours, which you are not competent to pass, because you have said that they are not objectionable within the meaning of the Act?

A: You said before that I passed a legal opinion which I was not able to pass, now you say I passed a psychological opinion.

Q: Do you agree with that, or do you not?

A: If you say I have passed an expert psychological opinion, yes; I am not an expert in psychology. You must agree that psychology is now a well-worn word, and people are supposed to be able to express opinions on psychology, that is, on the mental life of people. To say I expressed a psychological opinion is not to say I expressed a psychologist's opinion; it is to say I expressed an opinion on the mental life of people.

Q: Whether these books could in fact harm teenage girls is a matter that could only be found out by actual experiments with them, or by investigating their behaviour. Would you agree with that?

A: Yes. Such inquiries have been made.

Q: Have you made such inquiries?

A: No, not myself.

Q: Therefore, you are not competent to pass judgment, are you?

A: In that sense.

MR JUSTICE MANSFIELD: From your own personal knowledge?

A: Of my own personal knowledge, I am not competent to pass judgement in a statistical or technically psychological way.

THE CHIEF JUSTICE: I think a lot of this is just a waste of time.

BY MR HART: Have a look at "Darling Romance" No. 46, page 14. The story is, "Whose Was My Heart?". You see a kiss with all electric things coming out of it. Would you say that was a passionate kiss?

A: No, because, for one thing, the girl's lips are not against the man's lips. They are on the side of his cheek, and there is obviously no great bodily contact. She has her arm on his shoulder, which would prevent him from getting really close. There is no suggestion of tension in that drawing at all. That is the work of an artist who has been told very carefully and deliberately that he has to avoid any suggestion of sexual passion.

Q: What about all those sparks coming out?

A: They are meant to indicate strong emotional feelings, but not sexual feeling.

BY MR JUSTICE MANSFIELD: What are examples of strong emotional feeling and examples of strong sexual feeling?

A: In relation to the drawing, they could be the same. You must take the drawing along with those little dashes. The drawing shows no extreme pressure between the two bodies. It shows the girl in an attitude which would definitely hold the man apart.

Q: Is she pushing him away?

A: If he pressed, there could be resistance. A different type of drawing is used to express extreme sexual feeling.

BY MR HART: How old are you?

A: 53.

Q: Have you forgotten your youth?

A: No. You have embarrassed me, because I remember my youth.

Q: Would that embarrass you?

A: I remember a very careful distinction in my youth between love and sex.

RE-EXAMINATION BY MR WANSTALL

Q: You more asked about that picture in "Popular Romance", No. 17A, the one with the asterisks and so on round it. It was suggested it bore a significance from the type of background. You said that in your opinion it represents the artist's attempt to fill up the white background. Look back to the previous page in the left centre panel.

ALLAN THOMAS STACEY, sworn and examined:

BY MR WANSTALL: Your name is Allan Thomas Stacey?

A: Yes.

Q: You live at 178 Moggill Road, Taringa, Brisbane?

A: Yes.

Q: You are a newsagent, and you have made an affidavit which has been used in this case?

A: Yes.

Q: In the affidavit you do not mention the average number of sales which you make of the literature with which we are concerned. There are eight separate publications. Could you indicate your average sale of each issue of each one?

A: I would say upwards of not exceeding of half a dozen of each title per month, or per issue.

Q: You say in paragraph 5 that the types of publication referred to are purchased by residents of your district, and not by casuals, and that they are adults. What other type of reading material do they buy?

BY THE CHIEF JUSTICE: In your district, would not practically the whole of your business be with people in the district?

A: Yes, mainly.

Q: People do not go out to Taringa to buy their literature, if they do not live there?

A: No, except that there is a passing trade of people going through to other suburbs.

Q: I suppose they keep on passing?

A: Not all of them.

BY MR JUSTICE MANSFIELD: You are not in the centre of a large shopping area?

A: There would be 20 or 25.

Q: It is midway up, up near the Indooroopilly State School?

A: The Taringa State School.

BY THE CHIEF JUSTICE: People would not go to that district because of particular attractions there?

A: There are quite a number, not with these things as with other publications, of businessmen going home at night, who stop their cars and buy a paper.

Q: A newspaper?

A: Yes, and other papers.

BY MR WANSTALL: What other type of reading material is usually purchased by people who buy this literature?

A: As far as I can recollect, it would be just normal reading matter, such as Women's Weekly magazines.

BY THE CHIEF JUSTICE: Have you ever taken note of what combination, if any, these people who purchase the subject literature have with other literature? Have you ever made any notes of it?

A: No, I haven't any actual statistics.

Q: Or have you observed it?

A: It would only be from general observance,

BY MR WANSTALL: Of which sex would the majority of customers who buy this type of stuff be?

A: I would say they would be wholly female.

Q: All females. What age?

A: I would say in their late teens, or any age, actually, above that.

By MR JUSTICE MANSFIELD: Do young married women buy it?

A: Yes, and not so young.

BY THE CHIEF JUSTICE: Would middle-aged women buy them?

A: No. I would say up to the age of 30 or 35.

CROSS-EXAMINATION:

BY MR HOARE: With regard to this publication known as "Real Love", can you name any persons who bought that regularly from you?

A: No, I would not be able to do that, because it is not a publication that we had on order. It would only be through casual sale.

BY THE CHIEF JUSTICE: Have you this in your shop at all?

A: Yes, we did have.

MR JUSTICE MANSFIELD: "This conforms with the A.G.P. code of approved teenage reading." What does that mean?

MR WANSTALL: That is "Associated General Publications". They are an association of companies which have their own internal code of ethics.

THE CHIEF JUSTICE: People who publish these?

MR WANSTALL: Yes.

THE CHIEF JUSTICE: It is in accordance with their code? They publish things which are in accordance with their code?

MR WANSTALL: Yes.

MR JUSTICE HANGER: Each publishes in accordance with the code?

MR WANSTALL: This is not confined to Australia. It has been in force in America.

BY JUSTICE MANSFIELD: You referred to the Hays Office of Censorship.

MR WANSTALL: There is one in New York presided over by an ex-magistrate named Murphy. It is a committee set up by the publishers for the purpose of maintaining standards in publication.

MR JUSTICE MANSFIELD: Standards for the purposes of getting sales, or for raising the educational standard?

MR WANSTALL: For the purpose of the moral standard only.

THE CHIEF JUSTICE: For the purpose of avoiding conflict with some local law in New York or some other place in America?

MR WANSTALL: In many States there are not any laws which could apply, but if one reads the descriptions of the type.

MR JUSTICE MANSFIELD: For the purpose of avoiding prosecution for obscenity - I suppose that is one of the objects.

MR WANSTALL: The immediate object might be for the purpose of avoiding prosecution,

THE CHIEF JUSTICE: We have not a copy of their code.

MR WANSTALL: I have one, but it is considerably marked and annotated.

THE CHIEF JUSTICE: What does it matter what their code is?

MR WANSTALL: That is why I did not put it in.

MR JUSTICE MANSFIELD: I am sorry I asked the question; I just happened to notice it.

MR HOARE: The question was whether he could name any person who bought a particular publication.

THE CHIEF JUSTICE: What does it matter? Supposing he cannot, what does it matter, and supposing he can, what does it matter.

BY JUSTICE MANSFIELD: Supposing he said, "I know a lady, Mary Smith."

THE CHIEF JUSTICE: You want him to look at "Romance",

BY MR HOARE: In all those publications you have mentioned in your affidavit, can you name any person who regularly bought them?

A: No, I could not.

BY JUSTICE MANSFIELD: Do you know the name of every person who comes into your shop to buy these papers?

A: That would be an impossibility.

BY MR HOARE: You know the names of scores of your customers?

A: Yes, but it is rather hard in the course of a day.

MR JUSTICE MANSFIELD: Perhaps Mr. Stacey would not be prepared to name them; I think he may be frightened that you might ask him could he name them.

MR HOARE: He has already given an answer on that.

THE CHIEF JUSTICE: He said he could not name them; he said he could not say if Mary Smith bought "Real Love".

BY MR HOARE: When were you asked to recall the ages of the persons who bought these publications?

A: With reference to how long ago from now?

Q: Yes?

A: I suppose in the last month.

Q: These particular publications have not been for sale for about five months?

A: Yes, that would be right; about November or so they were taken off.

Q: I put it to you your recollection is just a recollection?

A: Yes, that is all it can be.

Q: You cannot recall any particular person when you refer to the fact that the majority of sales are to persons of adult age. Is that not the position?

A: No, except, with that type of literature in the shop, you get to know the customers' requirements. Somebody comes in to buy a Donald Duck, for the kiddie, and you know where to look for it and you would take notice if a 10 or 11-year-old child bought a romantic story or a love story because each class of literature is somehow synonymous with the age group or type of person who buys it.

Q: You know what I mean by the crime comics?

A: Yes.

Q: What age group do you say buys them?

A: I would say lads round about - I take it you are referring to such as comics of the "G-men, series and that sort of thing, not Dick Tracy and the others which have not come before the Board but of the type that were banned - they would be mainly youths of 16, and anything up to 25, but there again, it is hard to say.

Q: What, about school children?

A: No, I have found that the main attractions were the teenage comics of which there were a number of series, four or five, and the Donald Ducks, and the type of comic which is since published to a great extent, Superman – not Superman...

BY JUSTICE MANSFIELD: Mandrake?

A: No, not that type.

BY MR JUSTICE HANGER: The Superman-type?

A: Yes.

BY JUSTICE MANSFIELD: I do not suppose these people are waiting for the next issue to come out; they do not rush you when the next issue comes in?

A: These "Romance" type?

Q: Your sales are fairly slow?

A: Yes. I would say with one of these we might have sold three or four and with some issues half a dozen copies, but with some of the more popular ones like Walt Disney we might sell 60 or 70.

Q: With regard to these people who bought the various publications referred to in your affidavit, do you know anything about the family of these people, whether they have younger sisters, or who else was in the family?

A: I could not answer that.

MR WANSTALL: I have no re-examination.

AUBREY IMRIE PANTON, sworn and examined:

BY MR WANSTALL: Your full name is Aubrey Imrie Panton?

A: Yes.

Q: You live at 375 Newmarket Road, Newmarket?

A: Yes.

Q: You are a deponent in affidavits being used before the courts in these matters?

A: Yes.

Q: Can you tell me the average number of sales of each issue of these magazines that you were in the habit of making before they were banned?

A: We were usually supplied with six of each and we generally were cleaned out.

BY THE CHIEF JUSTICE: Per what?

A: Each time they were issued.

Q: How often were they issued?

A: They were weekly issues for a while.

Q: You were supplied with six?

A: Yes.

Q: What happened to the six?

A: We sold the six,

BY MR WANSTALL: There were eight separate publications?

A: Yes.

BY MR JUSTICE HANGER: Do you recall whether you had demands or requests for them which you could not supply?

A: Only on rare occasions, on holiday periods.

BY THE CHIEF JUSTICE: Were some of them more popular than others? If they could not get a "Real Romance", would they take a "New Romance"?

A: Yes, they would take one copy if they could not get the other.

BY MR WANSTALL: Could you give any evidence as to whether a customer for this type of literature would buy other literature in the shop?

A: Yes, they would buy the usual weekly magazines and daily papers and such-like and they would browse up along the counter until they came to the romance series, and pick up one of titles and walk out.

Q: What type of magazines?

A: Pix, Women's Weekly, People and such-like; the overall trend of things.

CROSS-EXAMINATION BY MR HOARE

Q: When were you first asked to recall, the type of persons who bought publications referred to in your affidavit?

A: When Mr. Mortimer of Gordon and Gotch came round to the shop and asked who we were supplying the papers to.

Q: You have an affidavit on this matter dated 15 April?

A: That would be right.

Q: Would it be about that time?

A: That is right.

Q: That is not a couple of months ago?

A: He came round before the affidavit was signed and asked me - naturally he had to come into the shop to ask me. It was not just the same day that the affidavit was signed that he came in.

Q: How long before?

A: I would say about two months from this time.

BY THE CHIEF JUSTICE: More than a month before you signed the affidavit?

A: It would be round about that time I should imagine.

BY MR HOARE: Did he make any notes of what you told him or did he just carry it in his head?

A: Not that I noticed.

Q: You did not notice him making any notes?

A: No.

Q: The affidavit was prepared and you swore it as it was prepared?

A: That is correct.

BY MR JUSTICE HANGER: Did you read it before you signed it?

A: Yes.

BY MR HOARE: How would you define a senior-office-girl class?

A: The majority of people who come into our shop are married women. They just come along, and I know them from being in the shop for so long, and I recognise the fact that they are married women and I know them as such and that is what we call the senior-office-girl type.

BY THE CHIEF JUSTICE: That is the married-woman-senior-office-girl type?

A: On the awards they have to be over a certain age to be considered as senior.

BY JUSTICE MANSFIELD: 21?

A: Over 23.

BY THE CHIEF JUSTICE: Each of the people who are employed in offices would be senior office employees?

A: Yes.

BY JUSTICE MANSFIELD: You mean they are married women and they are employed in offices as well?

A: Yes.

BY THE CHIEF JUSTICE: How do you know that?

A: By the wedding rings they wear.

Q: That does not mean they are employed in offices?

A: I can honestly say we have 10 who come from Noyes Bros. the electrical firm around the corner. There is one particular woman, a Mrs. Whip, who is a grandmother 50 years of age, and she buys her books there.

JUSTICE MANSFIELD: Does she buy these?

A: Yes.

BY MR HOARE: I do not suppose you have seen these customers, such as the last one you have mentioned, reading these publications from cover to cover in your shop?

A: No, they will turn over the pages, finding the general trend of the stories and then they will decide to take it.

Q: Do you know anything about the family background of the people who have bought these papers, whether they have children or grandchildren as the last occasion you have mentioned?

A: Some I do know have children because they have remarked about the children when they have been in the shop.

Q: You would not know what age they would be?

A: No.

BY MR JUSTICE HANGER: Would these ladies be around the age of 23?

A: Yes, they would be round that age; in the later twenties and some in their thirties.

Q: Late twenties and early thirties?

A: Late twenties and early thirties.

BY MR HOARE: How would you distinguish a senior office girl from a senior telephonist or a senior...?

MR JUSTICE MANSFIELD: Ledger-keeper - would not a telephonist be an office girl?

BY MR HOARE: Or a senior assistant in a jewellery shop or a senior assistant in a drapery shop? How would you distinguish them all?

A: Well, I only know that round our locality there are very few shop assistants come around where we are. We are in an area more of a warehouse and office section.

Q: You assume from being in an area here there are warehouses and offices that that is where the customers come from?

A: Because they go to these various places and that is where they come from. We sell concert tickets, and we write out their addresses.

THE CHIEF JUSTICE: Girls of 15.

THE WITNESS: What do you mean?

BY MR HOARE: Do any of them buy these publications?

A: They could have come in the shop just as a passing trade and bought them.

Q: Most of the people in your area are the older shop assistants?

A: Yes, that is correct.

Q: The only adolescents that you would expect to sell to would be the ones who happen to pass?

A: That is correct.

THE CHIEF JUSTICE: If they did not pass.

BY MR HOARE: If they happen to get as far as the door and came in?

A: Yes.

BY THE CHIEF JUSTICE: Where would the non-passing adolescents come from?

A: That would be hard to say, just the fact the door is open. We have a shop and there is no door and the shop is directly onto the footpath and the goods are displayed directly onto the street and quite a few browse up and down the shelves and buy what they want to buy and walk out again.

BY MR JUSTICE HANGER: Do you have these adolescent girls in occasionally?

A: There would be some, occasionally.

BY MR JUSTICE MANSFIELD: Whereabouts exactly is the shop?

A: It is right alongside the Embassy Hotel in Edward Street.

RE-EXAMINATION BY MR WANSTALL

Q: It is entirely a business area?

A: Yes.

MR WANSTALL: That is why it was chosen.

BY THE CHIEF JUSTICE: Shop girls from the Embassy Hotel do not come in?

A: They are practically all married women in there.

Q: What about the senior office girl type, wearing wedding rings?

A: They come from Warburton and Franki, there is E.S.C.A., Hoffnungs, Noyes Bros - general types.

BY MR WANSTALL: Have you any recollect on of sales to adolescent girls of this type of literature?

A: No, I cannot recall any at all.

Q: You were asked about the circumstances of your giving the affidavit. Do you know where the offices of Cannan and Peterson's are?

A: Yes.

Q: You know Mr. Kelly's office in Cannon & Peterson's?

A: Yes.

Q: Have you ever been there?

A: Yes.

Q: Under what circumstances?

A: To give the affidavit.

Q: Was that before or after Mr. Mortimer had interviewed you?

A: After.

Q: While you were present in Mr. Kelly's office, did he ring anybody?

A: You.

Q: Did you sign any affidavit that day?

A: Yes, I did.

Q: That is you then went away and were subsequently advised of the date of the court?

A: That is correct.

MR WANSTALL: That is all the evidence that I wish to call.

JUDGEMENT

The Eighth day of August 1955.

UPON HEARING on the Twenty-fifth day of February 1955 and on the Second Third Fourth and Ninth days of March 1955 and on the Third Fourth Fifth and Sixth days of May 1955 M.R. WANSTALL of Counsel for the abovenamed POPULAR PUBLICATIONS PTY.LTD. and MR HART Queen's Counsel with him MR HOARE of Counsel for the abovenamed THE LITERATURE BOARD OF REVIEW and UPON READING the Order to Review made in this matter on the Twenty-first day of January 1955 calling upon the said THE LITERATURE BOARD OF REVIEW to show cause why the Order of the said Board dated the Twentieth day of December 1954 and published in the Queensland Government Gazette on the Twenty-fifth day of December 1954 Whereby in pursuance of the provisions of "The Objectionable Literature Act of 1954" the said THE LITERATURE BOARD OF REVIEW prohibited the distribution in Queensland of all and every the literature being writings published periodically with respect to all copies of every part number or series thereof whether published theretofore or thereafter of the publications "Popular Romance" and "New Romances" for that the said literature was in the opinion of the Board objectionable should not be quashed and set aside AND why the said THE LITERATURE BOARD OF REVIEW should not pay the costs of the application and Order to Review and the proceedings subsequent thereto AND UPON READING the two several affidavits of BASIL FREDERICK ROBERT STAFFORD and of ORMOND WILLIAM BUTLER and the affidavit of JEAN GEDDES filed herein on behalf of the said THE LITERATURE BOARD OF REVIEW on the Fourth day of March 1955 by leave of the Court granted on the Third day of March 1955 the affidavits of JOHN McGEORGE and of JOHN WALLACE METCALFE both filed in Order to Show Cause No.3 of 1955 on the Twenty-eighth day of April 1955 and the affidavits of ALLAN THOMAS STACEY and of AUBREY IMRIE PANTON both filed herein on behalf of the said POPULAR PUBLICATIONS PTY.LTD. on the Twenty-eighth day of April 1955 by leave of the Court granted on the Third day of May 1955 AND UPON HEARING the oral evidence of the said BASIL FREDERICK ROBERT STAFFORD JEAN GEDDES ORMOND WILLIAM BUTLER JOHN McGEORGE JOHN WALLACE METCALFE ALLAN THOMAS STACEY and AUBREY IMRIE PANTON and of VICTOR LEWIN MATCHETT THIS COURT DID ORDER that the matter should stand for judgment and same standing for judgment this day in the paper in the presence of Counsel for the said POPULAR PUBLICATIONS PTY.LTD. and for the said THE LITERATURE BOARD REVIEW THIS COURT DOTH ORDER AND ADJUDGE that the Appeal be dismissed and that the said Order to Review BE and the same is hereby discharged AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said THE LITERATURE BOARD OF REVIEW do recover against the said POPULAR PUBLICATIONS PTY.LTD. its costs of and occasioned by the said Order to Review and of the said Appeal to be taxed.

REASONS FOR JUDGMENTS

The Chief Justice C.J. Macrossan

These are three appeals by Order to Review against orders made by The Literature Board of Review prohibiting the distribution in Queensland of certain literature published periodically for that the said literature is in the opinion of the Board objectionable.

The first appeal concerns five publications called "Real Love", "Romance Story", "Real Story", "Real Romances" and "Love Experiences", respectively.

The second appeal concerns a publication called "Darling Romance" and the third appeal concerns publications called "Popular Romance" and "New Romances", respectively.

The grounds on which the Order to Review was granted in each case are identical. They are as follows:-

"(1) That the opinion of the Board upon which the said Order is based namely that all and each of the said publications is objectionable within the meaning of 'The Objectionable Literature Act of 1954' is wrong in law and in fact in that -

whether or not regard is had to the nature of each one of the said publications, the persons, classes of persons and age groups to or amongst whom each or any of the said publications is or is intended to be or is likely to be distributed none of the said publications nor any part of any of them:-

- (i) unduly emphasises matters of sex, horror, crime, cruelty or violence;
- (ii) is blasphemous, indecent, obscene or likely to be injurious to morality;
- (iii) is likely to encourage depravity, public disorder or any indictable offence;
- (iv) is otherwise calculated to injure the citizens of this State;
- (v) has any tendency to deprave or corrupt any the persons, classes of persons or age groups aforesaid

That the opinion of the Board upon which the said Order is based namely that all and each of the said publications is objectionable within the meaning of the said Act is arbitrary capricious and unreasonable and/or has been formed upon a consideration of extraneous and irrelevant matters.

That the said Order is ultra vires in its purported application to any part number or series of the said publications which had not been published at the time the said Order was made, and to any which the Board had not considered as

separate publications, in that the Board has no jurisdiction to prohibit the distribution of any literature which it has not examined and reviewed.

That the said Order is ultra vires and the said Act is invalid and unconstitutional in that it infringes Section 92 of the Constitution (Commonwealth).

That whether or not regard is had to the nature of each one of the said publications, the persons, class of persons and age groups to or amongst whom each or any of the said publications is or is intended to be or is likely to be distributed none of the said publications nor any part of any of them:-

- (i) unduly emphasises matters of sex, horror, crime, cruelty or violence;
- (ii) is blasphemous, indecent, obscene or likely to be injurious to morality;
- (iii) is likely to encourage depravity, public disorder or any indictable offence;
- (iv) is otherwise calculated to injure the citizens of this State;
- (v) has any tendency to deprave or corrupt any the persons, classes of persons or age groups aforesaid"

By consent the three appeals were heard together.

"The Objectionable Literature Act of 1954" by Section 6 constituted a Board to be called "The Literature Board of Review" consisting of a Chairman and four other members to be appointed from time to time by the Governor-in-Council by notification published in the Government Gazette.

By Section 8, the Board is given the function, inter alia, to examine and review literature with the object of preventing the distribution in Queensland of literature which, or any part of which, is objectionable. It is provided that the Board shall not at any time exercise this function in respect of literature consisting solely of public news, intelligence, or occurrences, or political or religious matter, or any remarks or observations therein.

Section 10 of the Act provides, inter alia, as follows:

1. The Board may by its order prohibit the distribution in Queensland of any literature for that that literature or some part thereof is, in the opinion of the Board, objectionable.
2. A person shall not, in Queensland -
 - a. Distribute; or
 - b. Either in writing or otherwise howsoever promise, offer, represent, or advertise that he will distribute (whether the actual distribution is to be in Queensland or elsewhere).

any literature at any time when the distribution in Queensland of that literature is prohibited by an order of the Board.

(3) (a) An order of the :Board prohibiting the distribution in Queensland of any literature -

(i) shall apply with respect to all copies of that literature including, in appropriate cases, all copies of every edition, part, number or series thereof;

(ii) may specify that literature by such means of distinguishin the same as the Board may think suitable; and

(b) A copy of every order made by the Board ana of every order rescinding, setting aside, or quashing any order of the Board shall be published in the "Gazette"

Section 11 provides:-

"A person who feels aggrieved by an order made by the Board in respect of any literature May appeal by way of Order to Review as if that order were an order made by justices sitting as a court of petty sessions and Part IX of 'The Justices Acts, 1886 to 1949' shall, with and subject to all necessary adaptations of the provisions thereof, apply and extend accordingly.

The Court or Judge before whom such an order to review is returnable shall determine as an issue in the appeal the matter of whether or not the literature in question or some part thereof is objectionable under and within the meaning of this Act and, in respect of that determination, shall not be bound by the opinion of the Board".

Section 5 of the Act provides that in the Act, unless the context otherwise indicates or requires, certain terms shall have certain meanings. Amongst these are: -

"Literature - Any publication of any description; Without limiting the generality of the foregoing, the term includes any book, pamphlet, or paper, or any review, magazine, newspaper, or other writing published periodically, or any other publication whatsoever cincluding what is popularly known as a 'comic' or 'comic-strip'), comprising any words or any picture or pictures or partly comprising any words and partly comprising any picture or pictures;"

"'Objectionable' - In relation to literature or any part of any literature, regard being had to the nature thereof, the persons, classes of persons, and age groups to or amongst whom that literature is or is intended to be or is likely to be distributed and the tendency of that literature or part to deprave or corrupt any such persons (notwithstanding that persons in other classes or age groups may not be similarly affected thereby), objectionable for that it -

(i) unduly emphasises matters of sex, horror, crime, cruelty or violence;

(ii) is blasphemous, indecent, obscene or likely to be injurious to morality;

(iii) is likely to encourage depravity, public dis-order or any indictable offence;

(iv) is otherwise calculated to injure the citizens of this State;

A preliminary question arising on these appeals is as to the character of the appeal created by Section 11. It was contended for the appellants that the appeal granted by this section is an appeal as of right. I think that this contention is illfounded. The section expressly says that the appeal is by way of Order to Review as if the Order made by the Board were an order made by justices sitting as a Court of Petty Sessions and it further provides that Part IX of The Justices Acts 1886 to 1949 "shall with and subject to all necessary adaptations of the provisions thereof, apply and extend accordingly.

Section 209 of the Justices Acts which is the first section of Part IX of the Acts expressly states that as the foundation of the power of a judge to grant to an applicant an Order to Review, the applicant must show by affidavit to the judge a prima facie case of error or mistake in law or fact or an absence of jurisdiction to make the order which it is sought to appeal against. Clearly, then, an appeal by Order to Review against an Order made by justices sitting as a Court of Petty Sessions is not an appeal as of right, and I can see no reason why the necessary adaptation of the provisions of Part IX, of the Justices Acts to the appeal granted by Section 11 of "The Objectionable Literature Act of 1954" requires that the appeal granted by Section 11 should be of right.

Another preliminary question that arose on the hearing, of the appeals was this on which party lay the initial burden of the appeal has the appellant required to prove that the Order of the Literature Board appealed against was wrong, or was the respondent required at the outset to show that the Order of the Board was correct.

In relation to appeals by Order to Review against Orders of Justices sitting as Courts of Petty Sessions, this Court has held that the burden lay upon the appellant to show that the Order appealed against was wrong. I see no reason for holding that this rule should not apply to appeals under Section 11 of the Objectionable Literature Act. But from a practical point of view the point seems to be of little importance because Paragraph 2 of Section 11 of the Objectionable Literature Act imposes the duty on the Court of determining as an issue in the appeal the matter of whether or not the literature in question, or some part thereof, is objectionable under, and within the meaning of the Act.

I confess I have some difficulty in understanding what is meant by the immediately following words of Section 11 that "in respect of that determination the Court shall not be bound by the opinion of the Board". If the Court were bound by the opinion of the Board there could not be any sustainable right of appeal against the determination of the Board. It must be the necessary foundation of any appeal that the appellate tribunal is not bound by the determination appealed against. The words used do not appear to me to be apt to convey a meaning that the opinion of the Board is to be completely ignored.

Another question that arose for determination was as to the powers of the Court to hear evidence.

Section 213(1) of the Justices Acts gives the Court a discretionary power to admit further evidence, either oral or by affidavit, on the return of an Order to Review an order made by Justices in Petty Sessions. This power is one which is applicable to these appeals. The Court has no information as to what material, if any, was considered by the Board before it made the Orders appealed against other than certain copies of the literature in respect of which the Orders were made.

The definition of "objectionable" contained in the Objectionable Literature Act cited above, shows that in determining whether or not literature is objectionable regard is to be had to, inter alia, the persons, classes of persons and age groups to or amongst whom the literature is, or is intended to be, or is likely to be distributed, and the tendency of that literature or part to deprave or corrupt any such persons notwithstanding that persons in other classes or age groups may not be similarly affected thereby. Clearly, therefore, evidence would be admissible to show who are the persons, classes of persons, and age groups to, or amongst whom, the literature is, or is intended to be, or is likely to be distributed. I think too, that relevant and admissible evidence would include evidence of the effect of such literature on such persons, classes of persons, and age groups from witnesses who had observed such effect, and that evidence of the effect of similar literature on such persons, classes of persons, and age groups, would be relevant and admissible. Further, I think that evidence of persons skilled in psychology or psychiatry as to the probable effect of the subject literature on the persons, classes or persons, and age groups in question would be relevant and admissible evidence. But I think that evidence of the last mentioned category, like all evidence of experts in subjects which are not exact sciences must be scrutinised with great caution. There is probably no subject in relation to which there is a greater variety and even contradiction, of opinion of persons professing to be experts in it, than psychology.

With regard to evidence as to what emotions are portrayed or conveyed by a picture, it appears to me that the evidence of witnesses is of little, if any, value to assist the Court. In *Payton & Co. v. Snelling Lampard & Co.* (1901) A.C. 308, a case of passing off, Lord Macnaghten said at p. 311: "The Judge looking at the exhibits before him, and also paying the attention due to the evidence adduced, must not surrender his own independent judgment to any witness".

This observation appears to me to apply particularly to evidence of the category just referred to.

With regard to the definition of "Objectionable" in the Objectionable Literature Act it was contended for the appellants that in that phrase the words "the tendency to deprave or corrupt" must be given the sense in which they were used by Cockburn. L.C.J. in *R. v. Hicklin*, L.R. 3 Q.B. 360 at 371 where he said, "I think the test of obscenity is this: whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open

to such immoral influences and into whose hands a publication of this sort may fall".

If a tendency to deprave or corrupt is a necessary quality of literature that is objectionable within the meaning of the definition of "objectionable" in the Objectionable Literature Act, then I think the phrase "to deprave and corrupt" must have a wider application than that phrase as used by Cockburn L.C.J. in *Hicklin's Case*. *Hicklin's Case* was concerned with literature which was alleged to be obscene. The definition of "objectionable literature" in the Act under consideration includes literature which is not obscene and which is not immoral in any sense of that term however wide. For instance, literature which does no more than unduly emphasise matters of horror is neither obscene nor immoral but it may be objectionable within the definition of the Objectionable Literature Act. The dictionaries give amongst the meanings of the word "deprave" the following:- "To make bad, "to make worse", "to impair the good qualities of". And amongst the meanings of the word "corrupt" - "To deprave", to contaminate" "to debase", "to taint".

I think that the phrase "to deprave or corrupt" as used in this Act was intended by the Legislature to relate only to moral depravity or corruption. But I think also that literature which has no tendency to deprave or corrupt in this sense may yet be "objectionable" within the statutory definition of that word. The Literature Board or the appellate tribunal must have regard to the tendency of the literature to deprave or corrupt. But the absence of such a tendency does not necessarily protect the literature from an order prohibiting its distribution as being objectionable on some one or other of the grounds set out in the statutory definition of "objectionable".

With regard to the meaning of the phrase "matters of sex" in the definition of "objectionable" in the Act, it was submitted for the appellants that "matters of sex" meant only matters dealing with sexual intercourse or the passionate feelings aroused as a preliminary to sexual intercourse but not reaching the ultimate stage of sexual intercourse. In my opinion this is a much too restricted definition of the phrase "matters of sex" as used in the definition of "objectionable". I think that literature which deals with the behaviour of males as such, in relation to females as such, and which unduly emphasises either the emotional or the physical aspects, or both of such relationship, or which unduly emphasises the distinctive physical or psychological attributes of members of the two sexes is literature which is dealing with matters of sex and is literature which may unduly emphasise matters of sex. In the sense which I hold to be the correct one all the literature which is the subject of these appeals deals with matters of sex: their titles indicate the character of the stories and in most, if not in all cases, their sub-titles emphasise it.

"Real Love" has the sub-title "Romances from Life"; "Romance Story" the sub-title "Intimate Love Stories"; "Real Story" the sub-title "True to Life Love Stories"; "Real Romance" the sub-title "Romantic Stories that could be yours"; "Love Experiences" the sub-title "Candid Confessions Illustrated"; "Darling Romance" the sub-title "Real Stories of True Love"; and "New Romances" the sub-title "Exciting Real Life Stories of Love".

It is true, as was submitted by Counsel for the appellants, that none of the stories deals with illicit intercourse, and that generally the plots emphasise that the attainment of a happy and enduring marriage through true love is the ideal of every girl. But a considerable number of them also emphasise the thesis that an acceptable means of achieving this ideal is a casual acquaintance made by a young girl with a man hitherto a complete stranger to her the ardor of whose embraces and kisses provide the assurance of the constancy of his affection.

Doctor V.L. Matchett a doctor practising as a Psychiatrist in Brisbane and a witness for the appellants, expressed the opinion that one effect on a girl of average intelligence in her early adolescence from 13 to 16 of reading these stories in the subject literature would be that she would be led to believe that what happens to the girls in the stories would be a good thing to happen to her. But he went on to say "But as it ends in marriage I think that is desirable". He also admitted that some of the illustrations in the subject literature would produce sexual excitement in some readers although he had never observed the effect of literature of this description on any adolescent girls, normal or abnormal.

In my opinion adolescent girls of 13 to 16 years of age who permitted to youths or young men the intimate physical contacts with them profusely illustrated in this literature, in the circumstances of place and time depicted or otherwise indicated in it, would incur a very serious risk of having more intimate sexual relations with their male associates, not in marriage, and not ending in marriage.

Another witness called for the appellant was Doctor John McGeorge, a medical practitioner practising as a Psychiatrist in Sydney. Doctor McGeorge is also a Barrister. Of Doctor McGeorge I must say that I was more impressed by his skill in forensic fencing and by his zeal for the parties on whose behalf he was called as a witness than by his candour as a witness. In the course of his evidence he positively asserted, in relation to the influence upon boys of moving pictures of gangsters, this:—"I can only say that in my experience the gangster films have not contributed in any way whatsoever to delinquency". And in further questions he was asked:

"You do not think that any of the pictures they see could lead to actual delinquency?--Do you mean the movie pictures?

Yes?--I can only say that in my experience I have not found it so.

From your experience, pictures do not in any way contribute to juvenile delinquency?--That is my experience."

His attention was then drawn to an article written by him published on the 15th July 1939, in the Medical Journal of Australia on the subject of juvenile delinquency wherein appeared the following passages: "Even a normal child may be influenced by mental stresses of different types - anxiety, worry and unhappiness. If any instability is present, the effects will be correspondingly greater and may lead to the child's being declared uncontrollable, Strong suggestions may have a determining influence on the behaviour even of the well-adjusted child; among these are the popular 'thriller', the moving picture

which glorifies the gangster or which portrays luxury and idleness in attractive terms, arousing in the child envy and a desire to obtain, by any means, similar comforts, and which may give rise to a spirit of envy which can be assuaged only by car stealing or theft, as an expression of self-assertion or in a spirit of boastfulness.....It is possible for habits of thought to develop involving criminalistic ideas and imagery. These may be based on what the child reads in the newspapers and in general literature, if it can be so called, and in things seen in motion pictures."

Doctor McGeorge said that he adhered completely to the views expressed in this article. In my opinion his attempt to reconcile them with these and other passages in his evidence was quite unconvincing.

I think that the opinions expressed by him in the article which was, of course, not written for the purpose of supporting any financial interest, deserve serious attention. But my reading of his affidavits and my observation of his evidence have led me to conclude that I can attach little weight to the opinions which he expressed on the possible effects of the subject literature. He was, I think, an excellent illustration of the type of expert witness referred to by Lord Campbell, L.C. in the Tracy Peerage, 10 Cl. & Fin. 154 at 191, of whom the Lord Chancellor said:

"I daresay he is a very respectable gentleman and did not mean to give any evidence that was untrue. But really this confirms the opinion I have entertained that hardly any weight is to be given to the evidence of what are called scientific witnesses. They come with a bias on their minds to support the cause in which they are embarked".

I think that the evidence of Matron Geddes and Mr.O.W. Butler, Deputy Director of the State Children's Department of this State, was of substantial assistance towards forming a conclusion as to the probable effect of the subject literature on certain types of emotionally unstable girls and young women. Their evidence, of course, concerned only their experience of such persons who were inmates of the institutions of which the witnesses had been in charge either because they had come into conflict with the law in some way or because they were neglected or orphan children. But my own experiences lead me to believe that there are many more persons of that class outside public institutions than there are within them. The uninhibited behaviour of young females of adolescent years, or slightly older, in the presence of persons making emotional appeals to them by crooning, is frequently publicised in our local Press. Even if one makes a very substantial allowance for exaggeration in such stories the numbers of the persons who take part in such demonstrations must be considerable.

I agree with the opinion expressed by Doctor Stafford that the publications in question represent a danger to emotional instincts and instil a false sense of values and concentrate on one particular phase of human relationships to the exclusion of all others, thus tending to destroy the sense of balance and stability in the individual which is necessary to a well-ordered society. They constantly reiterate one theme which by its continued repetition must adversely

affect the formative processes of character building and balance and stability throughout adolescence.

I think that all the publications in question are objectionable within the meaning of the Objectionable Literature Act in that they unduly emphasise matters of sex, they are likely to be injurious to morality and have a tendency to deprave emotionally unstable young women by encouraging them to permit intimate physical contacts with young men in circumstances calculated to endanger the chastity of the females concerned, and they have a tendency to deprave telltales of the age groups referred to.

With regard to the second ground on which the Orders to Review were given I see no reason for holding that the opinion of the Board upon which its Orders were based is arbitrary, capricious, or unreasonable, and there is no evidence that that opinion was formed upon a consideration of extraneous or irrelevant matters.

With regard to the third ground the term "literature" as used in the Objectionable Literature Act includes by express definition any writing published periodically and Section 10 (3) (a) (i) provides that an order of the Board prohibiting the distribution in Queensland of any literature shall apply with respect to all copies of that literature including all copies of every edition, Part, number or series thereof.

Affidavits filed on behalf of the appellants allege that each of the said publications is issued monthly and distributed in all States of the Commonwealth. I think that the subject publications are periodicals and that Section 10 (3) (a) (i) empowers the Literature Board of Review to make the Orders which it made in these cases applying the Board's Orders to all copies of Every part, number, or series of the publications whether published before or after the date of the making of the Board's Orders.

The power given to the Board by Section 10 (3) (a) (iii) at its discretion in the case of a writing published periodically to accept an undertaking by the publisher to eliminate from it in future all parts of it which in the opinion of the Board are objectionable if the publisher gives to the Board evidence satisfactory to it of his intention to observe the undertaking, indicates very clearly, in my opinion, that in the case of a periodical the powers of the Board extend to the prohibition of future issues of the periodical.

The fourth ground taken in the Orders to Review was hardly argued seriously for the appellants and I think there is no substance in it. It is clear that the State of Queensland may prohibit the distribution in Queensland, for instance, of contaminated food irrespective of the place of origin of such food. Equally I can see no ground for thinking that the State is prohibited by Section 92 of the Constitution of the Commonwealth from preventing the distribution in Queensland of literature which is calculated to injure the citizens of this State because it is objectionable in some one or more of the respects particularised in the definition of objectionable contained in Section 5 of The Objectionable Literature Act. The legislation does not discriminate in any way between literature brought into Queensland from another State and literature produced

in this State. The discrimen on which the power to prohibit the distribution of literature rests is not associated with the Inter-State character of the literature.

That I have said in relation to the first ground in the Order to Review sufficiently indicates that in my opinion the fifth ground also fails.

I think the Orders to Review should be discharged.

I HEREBY CERTIFY that the typewriting contained, on this and the thirteen preceding sheets of paper is and contains a true copy of the Reasons for Judgment of the Honourable the Chief Justice, of which it purports to be a copy.

Justice S.P.J. Mansfield

These are appeals under Section 11 of The Objectionable Literature Act of 1954 against an order of The Literature Board of Review whereby the Board by notification in the Queensland Government Gazette of 25th December 1954, prohibited the distribution in Queensland "of all and every the literature, being writings published periodically, specified in the Schedule hereto for that the said Literature is, in the opinion of the Board objectionable". The order was expressed to apply "with respect to all copies of every part, number or series thereof whether published theretofore or hereafter". The Gazette contained a Schedule setting out a list of the publications referred to, including those which are the subject matter of these appeals.

By the said Section 11 it is provided:

"A person who feels aggrieved by order made by the Board in respect of any literature may appeal by way of Order to Review as if that order were an order made by Justices sitting as a Court of Petty Sessions and Part IX of 'The Justices Acts 1886 to 1949' shall, with and subject to all necessary adaptations of the provisions thereof, apply and extend accordingly.

The Court or Judge before whom such an order to review is returnable shall determine as an issue in the appeal the matter of whether or not the literature in question or some part thereof is objectionable under and within the meaning of this Act, and in respect of coat determination, shall not be bound by the opinion of the Board."

This Section raises some unusual consideration. In the first instance, the obtaining of the Order to Review under the Justices Acts necessitates the establishment by the person aggrieved of a prima facie case of error or mistake in law or fact. Where the appeal is from Justices the evidence and the materials adduced before the said Justices and on which they have based their decision is part of the record, and, on the return of the Order to Review, the Court or Judge must consider such evidence and materials, and if the Court or Judge thinks fit, any further evidence.

In the instant cases, the record contains copies of the subject literature, the order of the Board, the affidavit of the applicants annexing these copies and setting out the grounds of appeal, and the Order to Review.

As far as this Court is concerned therefore, it must assume that the Board had no other materials before it and that its decision was based on a consideration of the subject literature or a sufficient part thereof to indicate its nature. If there was any other material, this Court is not aware of it, and it would, in my opinion, not be proper to assume that the decision of the Board was arrived at by taking into consideration anything other than the literature itself. There would, therefore, seem to be before it no evidence in the sense of legal evidence of the persons, classes of persons and age groups to or amongst whom the literature is or is intended to be or is likely to be distributed or of the

tendency of the literature or part to deprave or corrupt any such persons other than the literature itself and the inferences that may reasonably be drawn therefrom as to those matters.

However, apart from the problem associated with the necessity to show a prima facie case of error in fact or in law on the obtaining of an Order to Review once the order has been obtained and the matter has duly come before this Court, one of the functions of this Court is clearly set out in the second paragraph of the above quoted section.

This Court is to determine as an issue in the appeal whether or not the literature or some part of it is objectionable, and this Court is not to be bound by the opinion of the Board.

It is, of course, quite clear that if this Court were to be bound by the opinion of the Board, an appeal would be of no avail to any person aggrieved; therefore it is difficult to discover what was intended by such a direction.

The determination "as an issue in the appeal" of the matter of whether or not the literature is objectionable in my opinion casts upon this Court the duty of rehearing the matter and of considering such further materials or evidence which are placed before it by leave of this Court and which are relevant to such determination.

An important preliminary question to be answered is as to the onus of proof, When an issue has to be determined, the onus of proof is usually cast upon the person making an assertion or allegation. In the instant case the Board formed an opinion that the literature was objectionable, and that opinion was arrived at in the absence of any party or parties. The Board itself originated the matter by forming that opinion and making an order, and when the matter came before this Court the Board was represented and supported such opinion and order. It is then, I consider, in a similar position to that of a litigant who has made an allegation in a pleading, and therefore the onus rests upon the Board of establishing that the literature is objectionable.

The next question is the standard of proof required. In answering this question, it is important to consider the nature of the proceedings. The effect of an order prohibiting the distribution of literature which is objectionable in the opinion of the Board, does not involve a penalty similar to that attached to the commission of a crime. When a person contravenes or fails to comply with any provisions of the Act he would be guilty of an offence and in such cases proof beyond a reasonable doubt would be required, but the proceedings before this Court are not in the nature of a trial for a criminal offence, although a determination adverse to the applicant would have the effect of curtailing a legal right to publish without penalty matter, the publication of which did not contravene the law in force before the passing of the Act. That the standard of proof required is not proof beyond a reasonable doubt may be supported by a consideration of the position of a plaintiff suing for damages for the breach of a statutory duty. The imposition of the particular duty by statute is a curtailment of the common law rights of the subject, and the proof of the breach of such a duty is not required to be beyond a reasonable doubt unless such a standard

is expressly or impliedly enjoined. It is my opinion that the standard of proof is the ordinary civil standard.

Section 5 of the Act provides;

"In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say -

"Literature' - Any publication of any description: Without limiting the generality of the foregoing, the term includes any book, pamphlet, or paper, or any review, magazine, newspaper, or other writing published periodically, or any other publication whatever (including what is popularly known as a 'comic' or 'comic-strip'), comprising any words or any picture or pictures or partly comprising any words and partly comprising any picture or pictures,

'Objectionable' - in relation to literature or any part of any literature, regard being had to the nature thereof, the persons, classes of persons, and age groups to amongst whom that literature is or is intended to be or is likely to be distributed and the tendency of that literature or part to deprave or corrupt any such persons (notwithstanding that persons in other classes or age groups may not be similarly affected thereby) objectionable for that it -

(i) unduly emphasises matters of sex, horror, crime, cruelty or violence; or

(ii) is blasphemous, indecent, obscene, or likely to be injurious to morality; or

(iii) is likely to encourage depravity, public disorder, or any indictable offence; or

(iv) is otherwise calculated to injure the citizens of this State;

The direction to have regard to the nature of the literature does not involve a direction to make or be satisfied of any fact. "Nature" means the essential qualities and particular character, and by considering these ingredients some guides may be found to point to a conclusion on other matters which the Board and the Court are required to consider. For example, a medical textbook may properly contain material which would be out of place in a publication ordinarily bought by and distributed amongst the general public. In such a case the fact that the former publication can from its nature be shown to be published for legitimate scientific purposes and for distribution amongst persons associated with the study of medical science, would prevent it classed as objectionable, whereas the latter publication could not get such protection and may properly be classed as objectionable.

The importance of having regard to persons, classes of persons and age groups referred to in the section may be gathered from the example which has been referred to in the previous paragraph of this judgment. In that example, the nature of the literature has provided a reasonable basis for coming to a conclusion on this matter, and it may well be that in numerous other cases, the

nature of the literature may furnish such a basis, but there are cases, and I think the instant case is one of them, in which it could not be satisfactorily determined without extraneous evidence, amongst what persons or classes of persons or age groups the literature is distributed or is likely to be distributed and I also add, is intended to be distributed, because I think that when it is shown that literature is distributed or is likely to be distributed amongst certain persons, classes of persons or age groups, the inference can reasonably be drawn that it is the intention of the publisher that the literature is intended to be so distributed.

It is necessary that the Board and this Court arrive at a conclusion as to the persons, classes of persons and age groups to or amongst whom the subject literature is or is intended to be or is likely to be distributed, because the Board and this Court are further required to have regard to the tendency of that literature to deprave or corrupt "any such persons". The phrase "such persons" refers back to "persons, classes of persons and age groups" previously mentioned and is a compendious term which covers any persons, any persons in any of the classes of persons, and any persons in any of the age groups referred to.

The ordinary meaning of "deprave" is to make bad or worse, while that of "corrupt" is to debase or render impure.

If there is no such tendency, then in my opinion the literature cannot be held to be "objectionable" although it may fall within one or more of the categories enumerated in the definition. The force of this proposition may be illustrated by an example referred to by Hanger J. during the course of the argument. He then mentioned that a person might publish literature advocating that no wheat should be grown in Australia. I assume that such a doctrine, if followed by all wheat growers in this country, would injure the citizens of this State, and therefore the literature could be said to be calculated to injure such citizens. In such circumstances it could not properly be held that the literature had a tendency to deprave or corrupt anyone, and I fail to see the force in any argument that such literature would be "objectionable" under the Act.

In relation to the subject literature it was argued that having regard to the factors which I have already mentioned it was "objectionable" in that it unduly emphasised matters of sex.

There are here three things to determine. Firstly, what are matters of sex? Secondly, whether such matters are emphasised; and thirdly, whether such matters are unduly emphasised.

Sex is the distinction between male and female and comprehends not only physical differences, but their psychological differences and generally their differences in conventional behaviour. It was suggested that the word had a meaning restricted to the emotional or sensual reactions of one sex to the opposite sex. There is nothing in the definition which in my view so restricts the construction of the word and I therefore consider that it must be taken in its ordinary meaning.

If a publication deals almost entirely with the distinction between male and female as defined above to the exclusion of other matters of interest or

entertainment, it could, I think, be held not only to emphasise such distinction but to emphasise it to an undue degree.

It was also argued that the subject literature was indecent, and obscene, and likely to be injurious to morality.

An indecent publication is one which is unbecoming, improper or immodest, and in determining unbecoming conduct, impropriety or immodesty, the standard to be used is not that of a person of rigid puritanical views, nor that of a person of low or lax morality but the standard adopted by the ordinary reasonable and respectable member of the community. Each person has his or her own ideas of correct and proper standards of conduct, and there may be a wide divergence of views of people who could normally be classed as respectable citizens and all of whom no doubt would consider themselves to be the ordinary reasonable person, but this Court must endeavour to determine as best it can what is the standard of an ordinary reasonable and respectable member of the community.

It was further argued that the subject literature was likely to encourage depravity. This, I think, means moral debasement or extreme wickedness.

A further argument was founded on paragraph (iv) that if the literature did not fall within any category enumerated in the previous paragraphs it was otherwise calculated to injure the citizens of this State. The main theme of this argument was that if literature which had no cultural value was read by persons to the exclusion of literature which had a cultural value, it would be injurious to those persons. In view of what has been stated above in relation to the necessity of finding in every case a tendency to deprave or corrupt, it is clear that such a contention is not, in my opinion, well founded.

Having endeavoured to set out the tests and considerations which are prescribed by the Act, I now turn to the subject literature and to the evidence before the Court to apply those tests and considerations.

The nature of the publications

Each of the publications is on poor quality paper and is sold at a price which puts it within the means of all except a pauper to purchase. The title or sub-title of each of them refers either to romance or love, and calls the attention of the prospective reader to the theme of the stories contained therein. Each of the stories, with one or two exceptions, consists of a series of pictures accompanied by letterpress either describing the meaning of the picture or quoting the language of one or more of the persons depicted. The stories themselves deal with the courtship of male by female and vice versa or with the problems and difficulties as well as the pleasantries associated with the attraction of female for male which in the majority of cases is reciprocal, but in some cases is not. Also, in the majority of cases, the preliminary courtship is followed by marriage.

There is no suggestion that any of the illustrations can give offence in so far as the attire of either male or female is concerned.

There are, however, in almost every story, pictures of a man and woman embracing and in some cases the closeness of the embrace and the

utterances of the participants indicate that the embrace is a passionate one. In one case, where a close embrace is depicted, the artist has suggested that the atmosphere immediately surrounding the couple has become charged with romantic aura.

This literature in my opinion emphasises sex as I have defined it, and it does so to an undue degree because of the pictorial repetition of the theme of physical contact between the sexes.

From the nature of the literature, I find it difficult to determine the persons, classes of persons or age groups amongst whom it is, or is intended or is likely to be distributed but I am of the opinion that it would have no appeal to a male of any age or of any particular class, either educated or uneducated, nor would it appeal to a female of mature mind and of normal outlook. I therefore consider that the evidence tendered to the Court should be considered before arriving at a conclusion on this matter.

Again from the nature of literature, it is difficult to arrive at a conclusion as to the tendency of the literature to deprave or corrupt because the persons who might be affected by it have not yet been ascertained.

The evidence before the Court

The evidence of the witnesses who swore affidavits and who were cross-examined at the hearing, leads me to the conclusion that the persons, classes of persons and age groups amongst whom the subject literature is or is likely to be distributed consist of the following -

1. A group of unstable female adolescents (Dr.Stafford)
2. Adolescent girls between 14 and 18 years of age who have been committed to the Salvation Army Girls Industrial Home at Brisbane, most of whom were committed for offences of a sexual nature, and particularly those who were below average intelligence, emotionally unstable or irresponsible (Matron Geddes)
3. A group of psychopathic adolescent girls, corresponding to group No.1 (Dr.Matchett)
4. Normal persons, both adolescents and adults, of average intelligence (Dr. McGeorge)
5. Females in their late teens or any age, actually, above that, married women and the "not so young", excluding middle aged women (Allan Thomas Stacey)
6. Senior office girl class, many of whom are married women (Aubrey Imrie Fasten)
7. Young men aged 20 years or upwards, of average intelligence and education (John Wallace Metcalfe).

There was considerable divergence of opinion of the expert witnesses called as to the tendency of the literature to deprave or corrupt.

Dr.Stafford formed the opinion that the literature depended for its appeal upon sex; that it constituted a danger to emotional rather than intellectual instincts of

group No.1; that in that group it would engender a desire to seek similar experiences to that portrayed and stimulate forms of immoral sex behaviour. He further stated that he did not know what percentage of the community consisted of unstable adolescents and that other adolescents would not be affected by the literature.

The result of his evidence was that, in his opinion, there was a class of persons consisting of adolescents other than normal, whom the literature would be likely to deprave or corrupt.

Matron Geddes stated that in her experience, the literature was emotionally exciting to the persons in Group No.2; it disturbed their morals and thoughts; that the literature portrayed males and females in attitudes which appealed to and stimulated the sexual senses and engendered in the persons in Group No.2 the desire to have similar experiences which led in many cases to actual illicit sexual intercourse; that in the case of girls who had early sexual experience, the literature tended to stimulate their sexual desires and keep before their minds their own sexual experience and greatly retarded their rehabilitation; that the girls referred to were much more interested in the pictures of amatory embraces than in the merits of the story.

The girls to whom Matron Geddes referred had been sent to the home by the Courts, and in the majority of cases they had delinquent parents.

The effect of her evidence is that there is a class of persons whom the literature would have a tendency to deprave or corrupt.

Dr.Matchett stated that the literature would not adversely affect the character of any reader; it did not refer in any way to the sexual act; the moral of the stories was good; there was no passion in the scenes of kissing and embracing; some of the pictures were likely to produce sexual excitement in the reader, but it would disappear. He had had no experience of young girls reading the type of literature concerned in this case, but he said that the group referred to by Dr. Stafford were psychopathic adolescents and that after receiving sexual stimulus they might behave impulsively and indulge in some sexual behaviour or some form of skylarking or get into a temper and cry.

The effect of Dr.Matchett's evidence was that there was a class of persons who would be sexually stimulated by the literature, but that it would not have any bad effect on the individual so stimulated.

Dr.McGeorge was a psychiatrist having considerable experience in juvenile delinquency. He stated that in his opinion the literature could have no tendency to deprave or corrupt any person of any type. In saying this he swore to the issue and I disregard such statement. He further stated that there was nothing in any of the literature which would be likely to excite the reader sexually; that the psychopath would find them insufficiently stimulating; that the effect on a normal person of reading such literature would be no more than to gratify the romantic which existed in all girls; that sex as such did not enter into it.

He further stated that only the already depraved would find any perverse appeal in the literature; that none of the embraces depicted were passionate; that he would not label any of them with the name sex or even with the name

passion; that the stories concentrated their attention on what is regarded as the thing which should engage an adolescent girl's attention i.e. the prospect of marrying an acceptable man with proper regard for the sanctions of law and religion and morality and settling down in proper married life with children.

The effect of Dr.McGeorge's evidence is that the literature could not deprave or corrupt any person.

The above extracts from the evidence of those witnesses who gave the Court assistance by expressing their views on the tendency of the literature are those which appear to me to express in a concise form what they think of the literature and its tendencies. There are numerous additional statements by each of them which elaborate and explain their reasons for arriving at their conclusions.

It is for the Judges of this Court to evaluate those opinions and to accept what we consider to be in accordance with human behaviour as known to us. There are conflicting opinions expressed by witnesses who are in a position to form proper conclusions and therefore we must endeavour to arrive at our own conclusions after weighing the evidence tendered to us.

The approach which I think to be proper in this regard is first of all to -seek out what may be classed as factual evidence and determine whether the factual evidence can lead to a reasonably certain conclusion.

In referring to Dr.Stafford's evidence, it appears that he had based his opinion on the records of 60 to 70 unstable adolescents. He had not studied the effect on these persons of the reading of the particular literature, but he had observed the effect on them of reading literature of a similar type. By this he meant to convey that he had obtained from them their own accounts of their reactions to such literature. He therefore, in my opinion, was able to put forward some positive evidence (although hearsay in that he based his opinion on what the subjects told him) which, if believed, would establish that literature of the type under examination would have a tendency to deprave or corrupt.

Matron Geddes informed the Court of her observations of the effect of similar literature on the individuals referred to above in Group No.2. Her evidence was factual and was not based on the descriptions by the subjects of their reactions. Her evidence therefore, if believed, established that the literature would have a tendency to deprave or corrupt the individuals referred to above in Group 2.

Dr.Matchett gave no factual evidence and based his opinion entirely on theoretical conclusions from his knowledge of human reactions.

Dr.McGeorge based his opinion on the fact that he had observed the behaviour of persons who read such type of literature and had also questioned them as to their reactions. In no case had he been able to observe any tendency in such literature to deprave or corrupt.

John Wallace Metcalfe had also observed the reactions of young men aged 21 years and upwards, of average intelligence and education, who had read such types of literature, but he was unable to detect any sign of any tendency therein to deprave or corrupt such readers.

I am unable to reject the positive evidence of Dr.Stafford and Matron Geddes in favour of what, for want of a better term, may be described as the "negative" evidence of Dr.McGeorge and Mr.Metcalf.

I therefore arrive at the conclusion that the subject literature has a tendency to deprave or corrupt certain persons belonging to the classes mentioned by Dr. Stafford and Matron Geddes. I think that the class of unstable adolescents is comprised of a larger number of individuals than those expressly referred to by those two witnesses. In Dr.Stafford's class, I think it would be contrary to reason to assume that he met and interviewed the only unstable adolescents in the community, and I consider his belief that such class is more numerous to be well founded.

Similarly, in the case of the class referred to by Matron Geddes, those whose conduct she observed were girls who had been committed to the Industrial Home by the Courts. I think it reasonable to infer that the class is comprised of more individuals than those who came under her notice.

In the result I am satisfied after a careful consideration of the literature itself and the evidence before the Court that the literature is "objectionable" within the meaning of the Act.

Other grounds of appeal not referred to above were raised by the appellants and on those matters I agree with the views expressed by the Chief Justice.

I therefore consider that the appeal should be dismissed.

I HEREBY CERTIFY that the typewriting contained on this and the thirteen preceding sheets of paper is and contains a true copy of the Reasons for Judgment of the Honourable Mr. Justice Mansfield, of which it purports to be a copy.

Justice J. Hanger

The Objectionable Literature Act of 1954 constituted a Board called "The Literature Board of Review" to consist of a Chairman and four other members, to be appointed from time to time by the Governor in Council. Amongst the functions of the Board are the examination and review of literature as defined in the Act, with the object of preventing the distribution in Queensland of literature which or any part of which is objectionable. The word "objectionable" is defined in Section 5 (1) which provide in Section 5 (1) that in the Act, unless the context otherwise indicates or requires, the word means:

"In relation to literature or any part of any literature, regard being had to the nature thereof, the persons, classes of persons, and age groups to or amongst whom that literature is or is intended to be or is likely to be distributed and the tendency of that literature or part to deprave or corrupt any such persons (notwithstanding that persons in other classes or age groups may not be similarly affected thereby), objectionable for that it -

(i) unduly emphasise: matters of sex, horror, crime, cruelty or violence; or

(ii) is blasphemous, indecent, obscene, or likely to be injurious to morality; or

(iii) is to encourage depravity, public disorder, or any indictable offence; or

(iv) is otherwise calculated to injure the citizens of this State".

Section 10 (1) enables the Board, by its order, to prohibit the distribution in Queensland of any literature for that that literature or some part thereof is, in the opinion of the Board, objectionable Subsection (5) provides that the order shall apply with respect to all copies of that literature including, in appropriate cases, all copies of every edition, part, number or series thereof; and that the order may specify that literature by such means of distinguishing the same as the Board may think suitable. Other provisions of the Act relevant to the determination of this appeal are set out hereafter.

In the exercise of its functions, the Board by notifications in the Gazette in December 1954, prohibited the distribution in Queensland "of all and every the literature, being writings published periodically, specified in the Schedule hereto for that the said literature is, in the opinion of the Board, objectionable." The notifications continued: "This Order applies with respect to all copies of every part, number or series thereof whether published heretofore or hereafter."

There followed Schedules setting out lists of the publications referred to which included those which now fall for the consideration of this Court. They come before us consequent upon three orders to review made under The Justices Acts - No. 3 of 1955 relating to the publications, "Real Love" "Romance", "Real

Story", "Real Romances" and "Love Experiences" No. 4 of 1955 relating to the publications "Darling Romance" and No. 5 of 1955 relating to the publications, "Popular Romance" and "New Romances". On the return of the three orders to review, Counsel agreed to argue all three appeals together.

Several points arose for consideration, the principal of which was the construction to be placed upon the definition in the Act of the word "objectionable" in the application of this definition to the publications, and, as incidental to this question, the admissibility of evidence, other than the publications themselves, to prove that they were objectionable.

For the appellants, Counsel argued that judicial precedent had established the test of obscenity as being "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall" (See *R. v. Hicklin* L.R. 3 Q.B. 360 at p.371; *R. v. Martin Secker and Woburn Ltd.* 1954 W.L.R. 1138 at p.1139; *R. v. Reiter* (1954) 2 Q.B. 16); that the first part of the definition of "objectionable" in the Act was a restatement of this test of obscenity and that the authorities showed that in applying this test, the person or class of persons to be considered was the normal person, not an abnormal person, not a pervert nor a psychopath. He further submitted that the tendency to deprave or corrupt must necessarily be found to exist before any literature could be objectionable.

For the respondent, the submission made was that matter was objectionable if it came under any of the categories listed in the section whether or not the tendency to deprave or corrupt existed.

Neither appellant nor respondent, so far as I understood the argument, contended that though a tendency to deprave or corrupt existed and the matter came under one of the categories listed, it might still not be objectionable.

For the respondent, it was also further argued that provided a substantial class of persons could be found whom the literature would tend to deprave or corrupt, there was no necessity that they should be normal persons; they might be abnormal and consist of emotionally unstable adolescents.

After hearing the arguments put forward, I feel that the difficulty is much more in the application of the definition to literature than in the construction of the definition. The frame of the definition is that literature is "objectionable" if, having regard to certain prescribed matters, it is objectionable because it is of a certain sort or has certain characteristics or is likely to produce certain results. I think that the important word in the definition is "objectionable" which must of course be given its ordinary meaning and not that contained in the special statutory definition. The Act has not attempted to define with precision the literature which it aims to suppress, but it has indicated in the statutory definition matters for the consideration of the Board, and, by the particular headings specified, has placed some limit upon the literature which may be prohibited. Whether literature is objectionable is obviously a matter upon which opinions may differ and the Legislature has provided for the determination of the question whether the literature is to be suppressed, a tribunal to consist of five members appointed by the Governor in Council. To this tribunal, the

determination of whether literature is objectionable in the ordinary sense has been entrusted, with this limitation, that in arriving at its conclusion, the Board is to have regard to certain matters and is to confine itself to those classes of literature specified in the groups (i) (ii) (iii) and (iv). The result of this view of the Section is that from a practical point of view, in respect of some of the categories of literature specified, it does not matter whether or not the existence of a tendency to deprave or corrupt is specifically found to exist, e.g. if it unduly emphasises matters of sex, or is indecent or likely to be injurious to morality or likely to encourage depravity, the tendency will almost inevitably exist.

I have not found any strong argument decisive of this question but the fourth category in the definition, "matter which is otherwise calculated to injure the citizens of this State" is very wide and if read without the qualification that the matter tends to deprave or corrupt, could include a pamphlet urging the farmers of this state not to grow any more wheat, a matter which scarcely seems appropriate to be included in an Act dealing with objectionable literature, and I feel that the sounder view of the definition is that before literature can be "objectionable" as defined, it must have a tendency to deprave or corrupt.

Regard is to be had to the persons, classes of persons and age groups to or amongst whom the literature is or is intended to be distributed and the tendency of that literature to deprave any such persons (notwithstanding that persons in other classes or age groups may not be similarly affected thereby).

For the respondent, it was contended that there was, in particular, a class of persons referred to as "unstable adolescents" (Dr. Stafford) or as "unstable and emotional adolescents" (Matron Geddes) whom the literature under consideration would tend to deprave or corrupt. The question arises whether these are persons contemplated by the definition, since they are not normal persons. The point is of importance because of evidence and argument that what would not tend to deprave or corrupt a normal person would tend to deprave or corrupt persons in this group or class.

An author writes and gets published a first class novel; a novel too, which, from the standard of the normal person, places no undue emphasis on sex etc., and which has no tendency to deprave or corrupt the normal person, but which, in reference to a group of abnormal persons, has a tendency to deprave and corrupt, and unduly emphasizes sex. Was it the intention of the Legislature that this novel should be "objectionable" literature as defined by the Act? If the interpretation of the definition, which I have endeavoured to set out, is correct, it becomes a matter for the Board to consider and on appeal, this Court. In such a case, unless the tendency to deprave or corrupt were very strong, or the class were very large, my present opinion is that I should without hesitation hold the literature was not objectionable in the ordinary sense, and therefore not "objectionable" within the meaning of the Act.

I note at this point, that by Section 11 a person aggrieved by an Order of the Board made in respect of any literature is given a right of appeal. An Order is not specially defined by the Act and as the Board may make orders revoking

earlier orders (Section 10 (3) (iii) and the Act speaks specifically of orders of prohibition (Section 10 (3) (c) and Section 10 (4), it seems at first glance as though the revocation by the Board of an earlier order might be the subject of appeal, though a refusal by the Board to make an order of prohibition would not be so subject. It may be, however, that the Act is only intended to give an appeal against an order of prohibition; in this case, the right of appeal exists only as a curb on the prohibitions of the Board; it does not exist for the benefit of any person feeling aggrieved because the Board has refused to prohibit the distribution of any particular literature. Both the Board and the Court must agree that literature is objectionable before it can be banned.

The peculiarity of the appeal section is the provision in the second paragraph, which provides "The Court or judge before whom such an order to review is returnable shall determine as an issue in the appeal the matter of whether or not the literature in question or some part thereof is objectionable under and within the meaning of this Act, and, in respect of that determination, shall not be bound by the opinion of the Board."

Two matters here seem to me to call for comment. In the first place the appeal is by way of order to review under "The Justices Act". In such a case, the order may be made returnable before a single Judge or before the Full Court, so that a single Judge may set aside the decision of a specially constituted Board of five. In the second place, he may set it aside, on his own opinion that the literature in question is not objectionable; it seems, indeed, that he is bound to do so.

The Legislative policy behind this section can only be guessed at and I should not have referred to it but for another question which arose.

On the hearing in this Court, the respondent tendered evidence on affidavit designed to show that on certain persons or a class of persons, the literature under consideration would have a tendency to deprave or corrupt. The Court decided to hear the evidence a withstanding objection by the appellant, reserve the question of its admissibility. Counsel for the respondent was allowed to cross-examine the deponents to these and was allowed to submit affidavits in answer, the deponents to which were also cross-examined.

The objection to the admissibility of the affidavits was based on certain cases dealing with obscene publication, argued that whether a publication tended to deprave or corrupt was a question whether it was obscene, See *R. v. Hicklin* (supra) and that the authorities showed that this could be determined only by an examination of the publications. In *R. v. Reiter* (1954) 2 Q.B. 16. on a prosecution for uttering and publishing obscene libels, for the defendants other books were produced for the jury to read to assist them to decide whether the alleged obscene works were obscene or not, the contention being that they were not obscene by the standards of today. The Court of Criminal Appeal consisting of Lord Goddard C.J. and Slade and Gerrard J.J. quoted with approval the following extracts from *Galletly v Laird* 1953 S.C. (J) 16:

"(1) I am not dismayed by the idea that the opinion of the magistrate before whom the case is brought is virtually determinative of the question whether the books or pictures libelled are or are not indecent

or obscene. Once it is understood that the emphasis falls to be laid upon the second of the elements defined above, it seems to me to be not only intelligible but inevitable that the character of the offending books or pictures should be ascertained by the only method by which such a fact can be ascertained, viz. by reading the books or looking at the pictures. The book or picture itself provides the best evidence of its own indecency or obscenity or of the absence of such qualities, and if in any case the Magistrate's decision is challenged, the only method by which an appellate tribunal could determine whether the Magistrate was entitled to reach the conclusion which he did would be by examining the book or picture, not with a view to re-trying the case but solely with a view to discovering whether they revealed evidence on which a reasonable magistrate would be entitled to condemn them as indecent or obscene.

(2) The magistrate disallowed cross-examination by the complainer's solicitor and positive evidence tendered for the defence designed to show that books other than those referred to in the complaint circulated in Paisley and were available in the local public library, the suggestion apparently being that these other books were not materially different in character from those complained of. I consider that the Magistrate's ruling was right. The character of other books is a collateral issue, the exploration of which would be endless and futile. If the books produced by the prosecution are indecent or obscene, their quality in that respect cannot be made any better by examining other books, or listening to the opinions of other people in regard to these other books."

The Judgement in *R. v. Reiter* then went on to state that the Court adopted every word of the Judgement in *Galletly v. Laird* as a correct statement of the law in England.

In *Thomson v. Chain Libraries Ltd.* (1954) 1 W.L.R. 999, which was heard and determine just two months after *R. v. Reiter*, books and postcards were seized as obscene and the respondents were summoned to show cause why they should not be destroyed. The appellant had not pointed out passages alleged to be obscene and had not by evidence or otherwise specified the nature of the complaint nor shown a prima facie case that they were obscene. The Magistrates therefore ordered the return of the publications. On appeal by case stated to the Queen's Bench Division, in the judgment of Lord Goddard C.J., the following passage appears:

"The section is perfectly clear. When the return day for the summons arrives, the Justices have to be satisfied that the books are obscene. The only way that they can be satisfied of that is by reading them and looking at them. It does not require evidence to satisfy the Justices either that they are or are not obscene; the Justices must look at them for themselves.

With regard to the postcards, exactly the same position prevails and it is only confusing the Justices to have anything said to them about

innuendos. 'Innuendo' means a secondary meaning, a meaning because of something which is known to particular people is an innuendo, If a thing has a secondary meaning, I should say, prima facie, that it would not be obscene. A thing is either obscene or is not obscene, but the Justices should look at it and must look at it".

It is true that in this judgment Lord Goddard stated that the only way to decide whether or not a book is obscene is to read it. But the question at issue was a procedural one more than anything else and I do not think the decision was intended to be in any way a reiteration of the views already expressed in *R. v. Reiter*.

In *R. v. Reiter*, the Court accepted what it called the "classic" definition of obscenity in *R. v. Hicklin* (supra) and held that for the purpose of comparison other books could not be read. Though the point in that case is precisely the same point as that involved in the case before us, which is whether evidence is admissible as to the probable effect of the literature upon certain persons in the way of depraving or corrupting them, yet I think that it is a corollary from that decision that such evidence should be excluded on a question whether the literature is obscene.

However, no earlier authority than *R. v. Reiter* was cited and the point before us should not I think be regarded as settled by that case.

There are in the definition of objectionable, various matters for consideration - the nature of the literature the persons, classes of persons and age groups amongst whom the literature is or is intended to be or is likely to be distributed, as well as the tendency of the literature to deprave or corrupt; it is apparent also that it may by some means or other appear to the Court that persons in other classes or age groups may not be similarly affected. The persons and classes referred to must surely be capable of being determined by evidence. So also the respect in which literature may be objectionable include its tendency to encourage public disorder; and its tendency to injure the citizens of this State; with regard to these, it also seems to me that evidence would be admissible. If admissible as to these matters, why not as to any other matter of fact dealt with by the Section? The tendency of literature to deprave or corrupt persons is a question of fact; the existence of the tendency may fall to be determined in regard to adolescents, more than in regard to any other class. As this Court, consisting as it does, of Judges, is required to determine on appeal whether any literature is objectionable and to have regard in determining that question to the class of people amongst whom the literature may circulate, there can be no doubt as to the desirability of the members of the Court being informed of the likely reactions of the class to the literature. I know no reason in law why such evidence should not be admitted. It may be true that when admitted the evidence on such a topic may turn out in a particular case to be vague, uncertain and of a highly speculative kind and there is not of much value, but that is not, a reason for holding it inadmissible.

A further question raised by the appellant was that it was only published literature, that is, an existing document, that could be the subject of a prohibition by the Board. The orders under appeal we expressed to apply "to

all copies of every part number or series thereof whether published heretofore or hereafter". Section 10(3) provides, inter alia, that an Order of the Board shall apply with respect to all copies of the literature "including inappropriate cases, all copies of every edition, part, number or series thereof and that an Order may be later revoked if the Board is satisfied that the literature has been reconstructed so as to be no longer objectionable", or "if the Board, at its discretion in the case of a writing published periodically, accepts an undertaking by the publisher to eliminate from it in future all parts of it which in the Opinion of the Board are objectionable and gives to the Board evidence satisfactory to it of his intention to observe such undertaking".

It further provides that the revocation of the order shall not prejudice the power of the Board to reimpose by its further order the prohibition with respect to that literature if the Board is then of the opinion that the literature is objectionable.

The intention of the Legislature appears from this section to have been clearly to give the Board power to deal with literature as yet unpublished. The argument to the contrary rested on the following provisions:-

(1) Section 8: "Subject to this Act, the Board shall -

(i) Examine and review literature with the object of preventing the distribution in Queensland of literature which or any part of which is objectionable"

(2) Section 10(1):

"The Board may by its order prohibit the distribution in Queensland of any literature for that the literature or some part thereof is, in the opinion of the Board, objectionable".

(3) The definition in Section 5(1) of Literature as

"any publication of any description. Without the generality of the foregoing, the term includes any book, pamphlet or paper or any review, magazine, newspaper or other writing published periodically, or any other publication whatsoever (including what is popularly known as a 'comic' 'comic strip') comprising any words any picture or pictures or partly comprising any words and partly comprising any picture or pictures."

From these provisions, it was argued that the definition referred to existing writings; that the reference to a "writing published periodically" was to the number or issue of the periodical when published; for that Section 8 required the Board to "examine and review literature", and this must refer to existing documents only; That in Section 10 the Board's power is to prohibit the distribution of literature which it thinks objectionable and a thing which does not yet exist cannot be objectionable, whether defined by the Act or otherwise.

With regard to the definition, I think that the term "publication" is appropriate to cover writings actually published - something concrete -and also that semi-abstraction which we speak of when we say "The Bulletin is published weekly" or "The 'Courier-Mail' or 'The Telegraph, ie published daily"; and I think such semi-abstractions are included in the phrase "other writings published

periodically" and in the word "publication". In Section 8, there is no need for the "literature" which is to be examined and reviewed by the Board, to cover other than writings actually already in existence. It may examine existing literature with a view to prohibiting writings to be published in the future. It follows from my construction of the definition of literature, that the Board's power in Section 10 is not confined to writings in existence at the date of the order.

The appellant's last legal point was that the Act was an infringement of the rights conferred by Section 92 of the Commonwealth Constitution and therefore ultra vires the State Legislature except so far as preserved by Section 3. The point was only faintly argued for the appellant, and I am prepared to rule against it on the authority of *Hartly v. Walsh*, 57 C.L.R. 372.

A matter raised by the Court during the argument calls for mention. Section 11 giving a right of appeal, requires the Court "to determine as an issue in the appeal the matter of whether or not the literature or some part thereof is objectionable under and within the meaning of the Act" and states that "in respect of that determination", the Court "shall not be bound by the opinion of the Board". The question raised was where the onus of proof lay on the hearing of the appeal. The Board was given no specific power to hear evidence; the prima facie case of error required to be shown to obtain an Order to Review could not be based on evidence before the Board, and It seems to me that the Court begins anew on the determination of the question whether the is "objectionable"; the onus there on the respondent to establish that it is.

Evidence was put before the Court by both appellant and respondent. For the respondent an affidavit was read by a Dr. Stafford, a registered specialist in psychiatry and since 1950, Director of the Psychiatric Clinic in Queensland. He deposed to the existence of a group of unstable adolescents, principally female, which he believed was considerable in number, and said that the effect of the literature under consideration, because it depended for its appeal upon sex (which he defined) constituted a danger to emotional rather than intellectual instincts in respect of that group; that the literature as presented, pictorially and otherwise suggested a "modus operandi" in regard to associations, particularly physical between male and female, and that the essence of the publication was that physical contact was something glamorous and desirable; that the literature portrayed undisciplined social behaviour of adolescents, that in the group referred to, it would engender a desire to seek similar experience to that portrayed and stimulate forms of immoral sex behaviour.

He particularly objected to the reiteration of the one theme in all the stories.

In cross-examination he said that he had met personally perhaps 60 to 70 unstable adolescents; what percentage of the community consisted of unstable adolescents he did not know; he described the class as persons whose emotional reactions are more easily and more readily influenced than would be expected in the majority of people of the same age, education and other social equivalents; that this instability could manifest itself in many ways such as

crying, laughing, excitation episodes, anti-social acts and temper tantrums; that those adolescents would react to a sexual stimulus which might come from any association between male and female such as ballroom dancing under some circumstances, or simply going for a walk, holding hands or mere illustrations of those things; he stated that associated with the unstable group was generally a lack of intelligence - potential; that he had not studied the effect upon the group of the reading of various types of literature though he had observed it; he had not given books to read and recorded reactions to them, but had noted the effect of the books having been read; (what precisely he meant I do not know); the books might have pointed a good moral, they conveyed the idea that marriage was a desirable thing for ordinary decent people; mostly they were free of any immoral conduct by the characters; some made the point that honesty and virtue triumph over villainy and intrigue. Of the adolescents observed, he said that in many cases their home was poor; their background was not good; their history showed irresponsibility of behaviour and in some cases, a history of truancy; that such adolescents were typical examples of those who reacted in the unstable way to reading literature of the type under consideration; other adolescents would not react in that way; he would be surprised if they read it; all the adolescents he had come into contact with in this group had been guilty of some misbehaviour before he saw them; a considerable portion of the group upon which he based the statements in his affidavit were people whose character was already such that it had not been found possible to redeem them by good influences.

The "modus operandi" he had referred to as being continually suggested was embracing, kissing, close physical contact - the subsidiary elements of sexual conduct.

He said he would not expect the normal individual to read this type of literature; if he did read it, he would not be affected in the way the members of the group of unstable adolescents would be affected.

I think it is quite clear that this witness did not expect any harm at all would result to the normal adolescent from this literature.

With regard to Dr. Stafford's Affidavit, I mention the following matters on which I unequivocally disagree with him;

(1) that the whole essence of the publications is that physical contact between male and female is something glamorous and desirable. After my first casual perusal of the publications, I was inclined to agree with the statement. A careful re-reading of them has satisfied me that my first Impression was quite wrong.

(2) That the publications convey the idea that despite what might be misbehaviour of the characters involved, no harmful results will ensue; and that the publications portray undisciplined social behaviour of adolescents.

With regard to his statement that the publications have no attractiveness as literature, it is my opinion that as narrative of events they consist of stories clearly told in an interesting way, regard being had to the outlook to be expected from an adolescent.

An affidavit of Jean Geddes, read the respondent showed that she was a Salvation Army Officer, and Matron of a Girls' Industrial home in Brisbane and had had considerable experience of adolescent girls; At the Home in Brisbane were girls between 14 and 18 years of age committed to by the State Courts through the State Children Department. A majority of the girls had been committed to the Home for offences of a sexual nature. She said that the literature under consideration had a special attraction for adolescent girls particularly for those of below average intelligence, and those emotionally unstable or irresponsible; that it was emotionally exciting to them and disturbed their morals and thoughts; that girls who read it have been excited and unbalanced in the presence of males; that the pictorial form of presentation adopted impressed them more vividly than written matter and the literature, portraying as it did, males and females in attitudes which appealed to and stimulated the sexual senses engendered in unstable and emotional adolescents the desire to have similar experience; that this led in many cases to actual illicit sexual intercourse; that constant reading of this literature which glamourised romances of the type depicted and continually stressed the relationship between the sexes to the exclusion of other relationship of life was likely to give adolescent girls a wrong sense of the real values in life.

She further was of the opinion that in the case of girls who had had early sexual experience, the literature tended to stimulate their sexual desires and to keep before their minds their own sexual experiences; and greatly retarded their rehabilitation; that the depicting in a pictorial form of casual meetings between man and woman of the kind known as "pick ups" was likely to be harmful to adolescents; that though the stories might appear to paint a good moral, the girls were much more interested in the pictures of amatory embraces than in the merits of the story.

She also said that the existence of this literature tended to discourage the reading of better literature.

From her cross-examination, it appears that the girls at the Home in Brisbane must all have been sent there by the Courts; she said that in the majority of cases, the girls had delinquent parents. Though the moral of a story might be good, she objected to it for adolescent girls if it showed a picture of a couple embracing or kissing; she believed that most of the stories began with a "pick up". She had observed girls react to scenes in a film by screaming, stamping feet or clapping their hands; they had reacted in this way because of some previous sexual experience they had had; she had seen the same reaction to a picture in an ordinary magazine of a couple kissing; and to a story on the wireless; she had noticed on one occasion after girls had read literature of this sort, that in the presence of workmen at a Home they became excited and showed this by loud talking and giggling; these girls were between 12 and 15 years of age. In reference to the statement in Paragraph 9 of her affidavit that the literature stimulated the sexual senses, she explained that this happened because of the girls' previous sexual experience; that the girls were unstable and emotional because they had been awakened to the sexual experience long before they should have been. She had no objection to a girl reading a love story so long as it was decent and did not have pictures in it. On page 137

of the transcript I think she makes quite clear the type of adolescent girls she has been particularly concerned with. She says after referring to girls beyond 18 years of age: "I do not think it has the same affect on them, because they are more developed. We are dealing with girls who because they have had early sexual experience and they become unstable and unbalanced in their emotions, because they have been awakened to these things too early. We are trying to redirect their minds into clean thinking and clean living so that they can face up to love experiences in a normal way in later years".

With regard to the affidavit of Matron Geddes, I mention that there is in the publications exhibited only one instance of what I understand to be a case of a "pick up". There are other casual meetings where the male and the female have not been introduced but nevertheless have become acquainted at once. In the single case of a "pick up" to which I have referred, the issue was not portrayed as happy. (See "When Love Comes Too Soon" in "Love Experiences" No. 30).

Ormond William Butler, Deputy Director of the State Children Department expressed the opinion that the literature when read by Immature minds would have a weakening effect on moral values by arousing an unwholesome curiosity in regard to sex impulses; particularly he referred to pictures which over accentuated the female figure; further that it gave a sense of false values of life.

For the appellant, three witnesses gave evidence, two of whom swore affidavits.

Victor Lewin Matchott a registered specialist in psychiatry in Queensland, gave oral evidence. He had practised as psychiatrist for about 5 ½ years; and was member of the panel of psychiatrists at Psychiatric Clinic over which Dr. Stafford presides.

His opinion was that that under consideration would not adversely affect the character of any reader; it did not refer to sex, meaning the sexual act; the theme of the stories was good; the moral pointed was good; he found no "passion" in the scenes of kissing and embracing; he thought a girl of average intelligence from 13 to 16 years of age would derive a lot of pleasure from reading this literature; that it would enable her to channel a lot of her ordinary sexual excitement on to the hero of the story and dissipate it in that way; he did not think the literature would lead to illicit sexual intercourse by young girls; he had not had any experience of young girls reading the type of literature. Some of the pictures would very likely produce sexual excitement in the reader, but it would disappear without other effect.

He described a group referred to by Dr. Stafford as psychopathic adolescents and said that after receiving some sexual stimulus they might behave impulsively and indulge in some sexual behaviour, or some form of skylarking; or get into a temper or cry.

In cross-examination, asked whether girls "after being fed on a diet of this stuff for a while, would not be given the idea that it would be very nice to be embraced in the same way", he answered, "Yes, I think they would think it

nice, but there are factors that would prevent them from doing it until they reached a certain age." He excepted the psychopaths.

At page 166 of the transcript he was asked: "Do you think that these girls of from 12 to 15 would wait until they are 21 or 22 to put themselves in the position of the hero and the heroine?" The answer was: "They would be abnormal if they did." His feet were, in this, very firmly on the ground as regards the average girl.

His important point was that though the depicting of passionate embraces may stimulate sexual excitement, the reader then dissipates the sexual excitement by turning it towards the hero in the literature.

At page 166 the following appears:

"Q. I thought you said treat the psychopaths were a large percentage of the community? A. I do not know what percentage of the community they represent.

Q. What would be the minimum percentage? A. I cannot say that.

Q. Do you say a substantial percentage? A. The minimum percentage is not substantial; it may be about 1 per cent."

At page 168 the following appears:

"Q. You spoke of a minimum of 1 per cent. Have you any experience that would entitle you to express an opinion of any value as to what that percentage would be?

A. No. I do not know of any one who has been able to determine what the percentage is. A number of people have made guesses."

John McGeorge of Sydney deposed that for the past 27 years he had specialised in the practice of psychiatry and was Consultant Psychiatrist to the Royal Alfred Hospital and to the Department of the Attorney General of New South Wales and to the R.A.A.F. and the R.A.N. He has had considerable experience in juvenile delinquency. In his opinion, the literature could have no tendency to deprave or corrupt any person of any type; nor was there any thing in word or picture which would portray or suggest anything of a salacious, immoral, indecent, obscene or depraved kind to any reader; there was nothing in any of the literature which would be likely to excite the reader sexually; the psychopath would find them insufficiently stimulating; for him, lewd and indecent stories and jokes, salacious postcards and pictures with a definite element of pornography are necessary for stimulation.

He expressed the opinion, from his experience, that normal persons, both adolescents and adults, habitually read this literature, but only those of average intelligence; and said that the reading of it was an outlet solely for the romantic attitude of the normal person, particularly adolescents; that the effect would be no more than to gratify the romantic which existed in all girls; that sex, as such, did not enter into it.

In cross-examination, he said that in general the effect of writing was greater than picture; that there was nothing in one literature which would arouse

sexual desire; that if a girl allowed herself to be "picked up" it was a risky kind of beginning to an acquaintance; that in the reading of a book, a person may day dream and put himself into the character of the book, in what is psychologically known as empathy; in that fantasy, harm may be done, not in the reading of the book; that the subject literature would not encourage this stage of empathy, that in his experience, gangster films had not contributed in any way whatever to delinquency; that some of the pictures in the literature showed embraces between people who were probably sexually stimulated embrace, but he did not agree that adolescent girls reading the literature would realise that fact; that they would regard the embrace just as part of the story; he did not agree that matter which was sexually stimulating ipso facto had a tendency to deprave or corrupt; nor that if literature stimulated people sexually, it tended to make them indulge in sexual intercourse; that any such tendency was countered by a sense of decency; that literature of the type was read by both intelligent and unintelligent children and adults; that he did not agree that the reader of the literature read it on account of the demonstration of physical contact showing affectation; in his opinion it was read merely for the romantic story; that the essence of the stories was romance in which virtue was triumphant.

In his opinion, the type of girl or young adult reading the literature, regarded it merely as relaxation and looked forward to the happy ending and did not attach any sexual significance to the embraces, which she regarded merely as a natural development in the romance; that the delinquent girls given to sexual irregularities, in the main, sought out books of a different type - those which could be regarded as definitely pornographic and really suggestive.

He agreed that children were to some extent influenced by films; he was referred particularly to the following passage from an article written by him in 1939: "Strong suggestions may have a determining influence on the behaviour even of the well-adjusted child; among those are the popular 'thriller', the moving picture which glorifies the gangster or which portrays luxury and idleness in attractive terms, arousing in the child envy and a desire to obtain, by any means, similar comforts and which may give rise to a spirit of envy which can be assuaged only by car stealing or theft, as an expression of selfassertion or in a spirit of boastfulness" and in explanation he said that he conceded there that films may have a very great effect on the children who see them and added: "It has a determining influence on behaviour insofar as the films arouse this feeling of envy but very few of those children do things as the result of that they have seen on the screen - things of an anti-social nature. As I have said, they tend to imitate the cowboy hero but it does not necessarily follow that they will do anti-social things."

He agreed that the child was a natural imitator and given to hero worship and tended to emulate that for which he had respect in general, the good character; but that if glamour were cast around a villain, he might imitate him.

He criticised Dr. Stafford's statement as to the existence of a group of unstable adolescents as a group with, as I understand the evidence, uniform characteristics attaching to each member of the group, some of whom are morons.

He said that in regard to a great many young people "in love", the question of sex never entered their minds consciously; though it might be in the background; that people sexually excited by the literature would all be psychopaths.

He agreed that women liked glamour and disliked crudity; that people seeing films put themselves in the character of the actor, and suffer with him or rejoice with him, but did not derive erotic stimulation at a time when it might be assumed that the actor was experiencing it; that a factor to be considered in a reader was how far what was portrayed departed from what was commonplace in the community - from the normal and average standard; he did not agree with Dr. Matchett's view as to sublimation.

John Wallace Metcalfe, the Principal Librarian of the Public Library of New South Wales, swore an affidavit in which he deposed that he had seen young men aged 20 years or upwards, employed in the library of the New South Wales Film Council as film checkers, of average intelligence and education, in possession of similar publications to the subject literature. He expressed the opinion that they would not tend to deprave or corrupt any person who read them; he said that the field of this literature, the emotional relation between the opposite sexes, especially in the adolescent period and that of courtship, had been the principal field of imaginative literature in all places and times. The literature would have no harmful influence of any of the kinds enumerate in the definition of "objectionable".

Cross-examined he said that only the already depraved would find any perverse appeal in the literature, but that in all his experience, he had not seen that type of literature have any perverse appeal. He declined to describe the embraces shown as "passionate" - "I should say a psychiatrist would say there was an element of sex in it, but it would be for them to say how that was related to the feeling called love; I cannot say: Feeling, yes; sentiment, strong feeling - strong sentiment, but I am not going to label it with the name sex, or even with with the name passion".

With regard to one picture referred to him by Mr. Hart, he expressed himself in this way: "I have had experience in having to deal with pornography. This is a picture of any romance that you would find in the mid-nineteenth century. This is the typical finale of a romance leading to marriage in which the whole emphasis is on marriage and on legitimate intercourse between the sexes. You get your picture like that. They are in conversataon, their lips are open, they are uttering words and then you got that silhouette following which shows the actual embrace. I don't know what conclusions you put upon that".

Asked whether there was any other way in which one could represent pictorially the conclusion of courtship than by showing two lovers kissing, he said, "All I could say to that would be that I think in our English-speaking civilisation it has been the convention for centuries to represent the conclusion of the proper form of courtship with an embrace. It would not, I gather, be so in Japan where kissing is regarded as an almost obscene act, but in our western civilisation, I do not know of any period when it was objectionable. Any other representation would not represent the conclusion. These pictures all seem to

me to bring it within the framework of an acceptable relationship sanctioned by both law and religion and it has been the convention to represent it in that way. You find it in many Bible pictures; even in stained glass, say, Ruth, Biblical stories. There may be a little more of what Mr. Hart calls passion at the present time but essentially the thing remains the same".

In reference to the existence of an impulse to emulate characters from literature he said he had noticed it. "I think...it is an inculcation of values rather than actual acts. It is my opinion from a considered study of it and my own experience, that ,for example, the penny dreadfuls of pre-'14, about that time, had a great deal to do with forming values of heroism and courage in the troops of the first war but it was the moral values conveyed that were taken up rather than the attempt to imitate actual situations".

As a general description of the literature, he said this: "They concentrate their attention on what is regarded as the thing which should engage an adolescent girl's attention. That is, the prospect, the possibility, the hope of marrying an acceptable man with proper regard for the sanction of law and religion and morality and settling down in proper married life with children. That appears to me to be the emphasis. Incidental to that there is always the hope for a romantic courtship. That seems to me to be the continuous theme of all these stories."

Allan Thomas Stacey, a newsagent at Taringa, Brisbane, swore an affidavit in which he stated that publications of the type of the subject literature were purchased mostly by adults. Examined for the appellant, he said they were wholly female, "in their late teens, or any age, actually, above that"; that married women bought them, and the "not so young" but not middle-aged women; that the average sale of each publication would be about 6 per issue per month.

Aubrey Imrie Panton, a newsagent whose business was conducted in the City, swore an affidavit in which he swore that the subject literature was purchased by what he called the "senior office girl class, many of whom are married women, judging from the rings worn by them"; and that the majority of sales were to people of adult age.

Examined for the appellant, he said that the average sales of each issue of each publication per month was about 6. Cross-examined he stated that the senior office girl class would be aged over 23.

In dealing with the evidence put before us, I have not attempted even to summarise it, which indeed having regard to the matter it dealt with, would be difficult. All I have attempted to do has been to select those parts of it which appeared to me as being particularly significant. As regards the evidence of the witnesses other than the two newsagents, except where they deposed to actual facts as distinct from matters of opinion, I have dealt with it rather as a discussion of the problems dealt with, than as being the expression of authoritative opinions. I think that regarded in this way, it has been very helpful to me in suggesting lines of thought which have assisted me to a conclusion.

On one view of the statutory definition of the word "objectionable" it is necessary to consider the tendency of the literature to deprave or corrupt human beings. The Judges of this Court are therefore to apply their own views of moral behaviour in the determination of this appeal. One important religious denomination in Queensland regards dancing and gambling in all forms as a corrupting influence on the members of the Community; another so regards gambling in all its forms but not dancing; another sanctions both dancing and gambling in some forms; the Legislature sanctions both dancing and gambling. Obviously, what is a depraving or a corrupting influence is a matter on which opinions may differ widely. Furthermore, the ultimate question, after the question of the tendency to deprave or corrupt has been resolved having regard to the matters dealt with in the section if the question has to be determined, is whether the literature is "objectionable" in the ordinary sense conveyed by that word, not in the sense conveyed by the Statutory definition.

I find it essential to keep in mind that the Statute is dealing with human beings, persons with some moral code, with persons having a sense of right and wrong; having a capacity to know that there are certain things which they ought not to do because they are morally wrong. It is also to be postulated that they have some moral "fibre" -some capacity to resist temptation; that they are not always stimulated to action by the urge to gratify a desire which has arisen in consequence of the presentation before them of something pleasant.

Put another way, whether matter tends to deprave or corrupt must of necessity depend not only upon the nature of the writing, but upon the character of the person by whom it is read.

Unless all these things are assumed, men are relegated to the status of beasts of the field. Moral standards will vary; so will moral fibre; it is this variation in the moral fibre which is the foundation of the argument for the respondent; it is the existence of some moral fibre which I think destroys its argument. Human individuals do not invariably succumb to temptation. The tendency to deprave cannot be determined by finding a stimulus to anti-social behaviour and assuming no resistance to the stimulus.

The argument to support the order of the Board seems to me to have two kindred points. Put as I understood it, though in different words, one was that there was a superabundance of physical contact displayed between male and female, which included embraces only to be described as passionate; that this physical contact was depicted as something glamorous and desirable; that the periodicals circulated amongst adolescents particularly the female adolescent and the pictures both alone and coupled with the letterpress aroused sexual emotion or passion in the adolescent; that a normal adolescent and particularly an unstable adolescent would be stimulated to forms of immoral sex behaviour as a result of the constant repetition of the ideas the stories suggested.

Counsel for the Board only very faintly insisted on this result in the normal adolescent.

With little of this I agree. As I have already said, a casual perusal gave me the impression that the embraces were remarkably frequent but closer examination dispelled this impression. No doubt many couples experiencing

an embrace of the type depicted would be stimulated sexually; but I should think that the reader was very abnormal in whom such a picture aroused any sex emotion. Quite apart from all other considerations, I would think that the environment of all normal adolescents today except a cloistered few, including as it does films, film advertisements etc. would render them immune to any stimulus presented by these periodicals.

However, if sexual emotion is aroused, what of it? It is probably aroused very frequently in adolescents by other stimuli, without causing any attempt at gratification of the consequent desire. The arousing of the desire is not ipso facto an act which tends to deprave or corrupt. The barrowman who leaves his choice fruit unattended for half an hour knowing that school boys are in the vicinity cannot have his conduct described as tending to deprave or corrupt the boys. Further, in a desire for something, we cannot postulate a desire to obtain it by illegal or anti-social means. This leads me to the second point in the argument.

It was urged that in some of the stories one acquaintance between male and female began as a result of a "pick up"; the acquaintance developed rapidly, and a happy ending was reached by the parties; that the depicting of a favourable issue to such a beginning stimulated adolescents to believe that such conduct was suitable to be copied whereas in fact it was a danger which could or would probably lead to seduction of the female, and hence tended to depravity and corruption by at least starting her on the road to ruin. I have already pointed out that in the periodicals exhibited, I found only one real "pick up" case, and it ended unhappily for the parties concerned.

In the evidence submitted to the Court, I find in regard to the normal adolescent nothing to satisfy me that the literature has any tendency to deprave or corrupt; in fact, I am satisfied that this is not the case. In regard to the normal adolescent, am further satisfied that the literature does not come under any of the categories by Counsel for the respondent, i.e. such as unduly emphasises matters of sex, is obscene, is likely to be injurious to morality, likely to encourage depravity or is calculated to injure the citizens of this State.

In regard to the unstable adolescent, I am not satisfied that there is a tendency to deprave or corrupt. Opinions were expressed by Dr. Stafford and Matron Geddes to which I have given, I think the serious consideration they merited. Though proof of conduct as the result of reading literature would be almost impossible to produce, I am not prepared to accept the opinions expressed as sufficiently well founded to lead me to find the existence of such a tendency, nor am I satisfied that in regard to the unstable adolescent, the literature comes within the categories specified by Counsel for the respondent.

I should further state that I reach these conclusions irrespective of where the onus of proof lies in this Court.

Matron Geddes concerned herself chiefly with delinquent girls and her evidence was almost exclusively confined to them. Dr. Stafford was concerned with a special group of unstable adolescents which he believed to be considerable in number; but he was not prepared to estimate even approximately what the number was. Dr. Matchett said he did not know what

percentage of the community psychopaths comprised; pressed to make an estimate of the minimum, said that he could not say what it was; when pressed further he made an estimate. I said at the time that I would pay no attention to an estimate obtained from the witness in this way, and I adhere to this view.

The result is that there is no satisfactory evidence of the extent or size of the group referred to by Dr. Stafford. I have no knowledge of its extent or size myself. These facts alone would be a sufficient reason for me to decline to hold that the literature in question is objectionable.

In my opinion, the orders of the Board should be set aside and the Board ordered to pay the costs of the appellants.

I HEREBY CERTIFY that the typewriting contained on this and the twentyseven preceding sheets of paper is and contains a copy of the Reasons for Judgment of the Honour Mr. Justice Hanger.

AFFIDAVITS

Affidavit of H.L. Kelly - 29.8.1955

I, HERBERT LESLIE KELLY of 37 Montpelier Street Clayfield Brisbane in the State of Queensland a Solicitor of the Supreme Court of Queensland and a member of the firm of Cannan & Peterson of 319-325 Queen Street

Brisbane aforesaid Solicitors make oath and say as follows:—

1. My said firm is acting as Solicitors for Transport Publishing Co.Pty.Ltd, of 26 Hunter Street Sydney in the State of New South Wales and I have the conduct of this matter.
2. The said Company is the publisher of literature specified respectively by the names "Real Love" "Romance Story" "Real Story" "Real Romances" and "Love Experiences".
3. By an Order dated the twentieth day of December 1954 and published in the Queensland Government Gazette Volume CLXXXVII Number 173 page 2213 on the twentyfifth day of December 1954 the Literature Board of Review constituted under and for the purposes of The Objectionable Literature Act of 1954" prohibited the distribution in Queensland of all and every the literature being writings published periodically specified in the Schedule of the said Order for that the said literature is in the opinion of the Board objectionable.
4. The said Order further provided that it applied with respect to all copies and every part number or series thereof whether published theretofore or thereafter.
5. A true copy of the said Order published in the said Government Gazette is hereto annexed and marked "A".
6. The said publications "Real Love" "Romance Story" "Real Story" "Real Romances" and "Love Experiences" are specified in the Schedule of the said Order.
7. It is provided by Section 11 of "The Objectionable Literature Act of 1954" that a person who feels aggrieved by an order made by the said Board in respect of any literature may of Order to Review as if that order were an order made by justices sitting as a court of Petty Sessions and that Part IX of "The Justices Acts 1886 to 1949" shall, with and subject to all necessary adaptations of the provision thereof apply and extend accordingly.
8. It is provided by part IX of "The Justices Acts 1886 to 1949" that a Judge of the Supreme Court may grant an Order to Review calling upon a party interested in maintaining a conviction order or warrant of a justice sitting as a Court of Petty Sessions to show cause why the conviction order or warrant should not be reviewed and that such Order to Review may be made returnable before the Supreme Court sitting as the Full Court or before a Judge sitting Court or Chambers.

9. The said Company invoked the appeal provisions herein before mentioned, and on the twenty-first day of January 1955 obtained from the Honourable Mr. Acting Justice Brown a Judge of the Supreme Court sitting in Chambers an Order to Review the said Order of The Literature Board of Review.

10. The said Order to Review was made returnable before the Supreme Court of Queensland sitting as the Full Court at its Sittings commencing on the fifteenth day of February 1955 and was argued before the said Full Court by Counsel for the appellant and the respondent respectively on the twentyfifth day of February 1955, the second, third, fourth and ninth days of March 1955 and the third, fourth, fifth and sixth days of May 1955 and on such hearing evidence was given for both parties, and desponents were cross-examined before the said Full Court.

11. On the eighth day of August 1955 the said Full Court of the Supreme Court pronounced judgement thereon whereby it did by a majority dismiss the appellant's said appeal and discharge the said Order to Review, and order that the appellant pay the respondent's costs to be taxed.

12. It is provided by Section 10 (3) .(c) of 'The Objectionable Literature Act of 1954' that the said order of prohibition made by the respondent shall be in force on and from the date of the publication in the Queensland Government Gazette of a copy thereof until (if that order is revoked, rescinded, set aside or quashed) but not including the date when a copy of the order revoking, rescinding, setting aside or quashing that order of prohibition is published in the Gazette and by reason of the judgment of the said Full Court the said order is still in force.

13. By reason of the said order of prohibition appellant is prohibited inter alia from distributing any of the said publications in Queensland and to do so is on offence punishable by fine of the appellant and its officers, and any of the said publications found on the premises of any distributor may be seized and forfeited without compensation.

14. I have been informed by John Hilton Agnew, Accountant for Queensland of Gordon and Gotch (Australasia) Limited of 262 Adelaide Street Brisbane foresaid and I truly believe that

(a) Gordon and Gotch (Australasia) Limited is the distributor of the said publication

(b) The said publications have been continuously and distributed for more than four and a half years and are issued monthly and distributed in all the States of the Commonwealth

(c) An average of over 2000 copies of each issue of each of the said publications had been distributed in Queensland to newsagents for general sale in this State during the six months immediately preceding the publication of the said order of prohibition

(d) There is a growing demand for publications of the type of the said publications and a ready sale therefor in all States, and that the distribution of each of the said publications in Queensland would average at least 2000 copies per issue if the said order of prohibition

were not in force and that they would maintain such sales for an indefinite number of years which in the opinion of my said informant would be not less than one year.

15. I have been informed by Stanley David Lawson Horwitz, of 40 Arnold Street Killara Sydney in the State of New South Wales, Managing Director of the appellant, that:—

(a) At the time of the publishing of the said order of prohibition the total revenue received by the appellant from the sale of the said publications in Queensland was averaging £309/11/0 per monthly issue or £3714/12/0 per annum

(b) At the said time the appellant's average net profits per month on the sales of the said publications in Queensland were respectively:—

Real Love	£34 5 4
Romance Story	£20 5 0
Real Story	£20 7 8
Real Romances	£30 17 0
Love Experiences	£31 6 0

and that its total loss per month in consequence of the said order of prohibition amounts to £147/1/0 or £11644/12/0 per annum

(c) The appellant would have continued to distribute the said publications in Queensland but for the said order of prohibition and would have resumed distribution thereof in Queensland if the said Full Court had by its judgement rescinded the said order and still, desires to resume distribution in Queensland, and would continue distribution for an indefinite number of years on its experience of past sales in Queensland and continuing sales in other States it reasonably expects to make not less than the average net profits set out in (b) hereof if it is permitted to resume the distribution thereof in Queensland, and would continue to do so for an indefinite number of years.

16. By reason of the facts stated herein the said judgment of the Full Court of the Supreme Court of Queensland is a final judgment given or pronounced in respect of a matter at issue amounting to or of the value of £1500 and involves directly or indirectly a question respecting property and a civil right amounting to or of the value of £1500 and the appellant has an appeal as of right to this Honourable Court.

17. All the facts and circumstances herein deposed to are within my own knowledge save where deposed to from information and belief and my means of knowledge and sources of information appear on the face of this my Affidavit.

NOTICE OF APPEAL TO THE HIGH COURT

TAKE NOTICE that the Full Court of the High Court of Australia will be moved by way of appeal at its first sittings in its appellate jurisdiction appointed to be held at Brisbane after the expiration of six weeks from the institution of this appeal or as soon thereafter as Counsel can be heard by Counsel on behalf of the Appellant that the whole of the judgment of the Full Court of the Supreme Court of Queensland given or pronounced on the eighth day of August, 1955, WHEREBY the said Court DISMISSED THE APPEAL of the appellant from an order made by the Respondent under the provisions of "The Objectionable Literature Act of 1954" prohibiting the distribution in Queensland of the literature specified by the names "Popular Romance" and "New Romances" AND DISCHARGED THE ORDER TO REVIEW granted to the Appellant by the Honourable Mr. Acting Justice Brown a Judge of the Supreme Court sitting in Chambers on the twentyfirst day of January, 1955, AND ORDERED the Appellant to pay the Respondent's Costs MAY BE SET ASIDE with costs AND THAT in lieu thereof judgment may be entered for the Appellant rescinding setting aside and quashing the said Order of the Respondent with costs of and incidental thereto and of this Appeal upon the following grounds:-

1. That the said judgment is wrong in law and contrary to law.
2. That the said judgment is against the evidence and the weight of the evidence.
3. That the learned Justices who constituted the majority should have found on the law and the facts that neither of the said publications was "objectionable" within the meaning of "The Objectionable Literature Act of 1954" and in particular none of them fell within any of the categories of the definition of "objectionable" therein contained and/or had any tendency to deprave or corrupt any person.
4. That the learned Justices who constituted the majority wrong in law in the construction Which they put on the phrase "unduly emphasises matters of sex" and the learned Chief Justice in the construction which he put on the phrase "injurious to morality", and in finding that either of the said publications came within either of the said phrases properly construed.
5. That the learned Justices who constituted the majority were wrong in law in the construction which they put on the phrase "tendency to deprave or corrupt any such persons" and in finding that either of the said publications came within the said phrase properly construed.
6. That the learned Chief Justice was wrong in law in holding that the onus of establishing that the said publications or either of them were not "objectionable" within the meaning of the said Act was on the Appellant.
7. That the learned Chief Justice was wrong in law in holding that literature which has no tendency to deprave or corrupt may be "objectionable" within the statutory definition of that word.

8. That the learned Justices who constituted the majority were wrong in law in holding that the "objectionableness" of the said publications or either of them within the meaning of the said Act could be determined by reference to its likely effect or tendency in respect of any but normal persons or alternatively in respect of the types of persons whom the said learned Justices found that the said publications had a tendency to deprave or corrupt.
9. That the learned Justices who constituted the majority were influenced by inadmissible evidence in finding that the said publications were "objectionable" within the meaning of the said Act.
10. That upon the proper construction of the said Act neither of the said publications should have been held to be "objectionable" within the meaning of the said Act and the said Order of the Respondent should have been rescinded set aside and that upon the proper construction of the said Act it should have been held that the said Order of the Respondent was ultra vires (a) in its purported application to any part number or series of the said literature which had not been at the time the said order was made, and any which the Respondent had not consider as separate and existing publications, in that the Respondent had no jurisdiction to prohibit the distribution of any literature which it had not examined and reviewed and (b) in that the Board making the said Order failed to comply with the provisions of Section 10 of the Act in that it did not therein state within which of the categories definition of "objectionable" the said literature fell.

DATED this twenty-ninth day of August, 1955

AFFIDAVITS

Affidavit of A.H. Traves – 13.07.1956

I, ARTHUR HAROLD TRAVES of 6 Love Street Northgate Brisbane in the State of Queensland Secretary make oath and say as follows:-

1. I am the Secretary of the Queensland Newsagency Transfer Board a trade Association which deals with all transfers and valuations of newsagencies in Queensland which in most cases include the sale of magazines periodicals and newspapers.
2. I have read paragraph 15 of the Affidavit of Herbert Leslie Kelly sworn herein on the twenty-ninth day of August 1955.
3. On the figures as therein set out I assess the capital value of the units involved or the goodwill of that business as a going concern as approximately Two thousand five hundred and sixty-five pounds
4. This estimate is based on the rate of Two hundred and twenty-five pounds per 1000 twopenny weekly units which is the average sum per 1000 twopenny units adopted for the valuation of the goodwill of all businesses dealt with for transfer and valuation purposes by the said Board.
5. This basis of assessing the value of the goodwill of such businesses is accepted and has been accepted for many years by the Commissioner of Stamp Duties, Queensland, for Probate and Succession Duty purposes and for all purposes of the Stamp Acts.

SWORN by the Deponent ARTHUR HAROLD TRAVES at Brisbane in the State of Queensland this thirtieth day of July 1956.

Affidavit of J.H. Agnew – 13.07.1956

I, JOHN HILTON AGNEW of 27 Union Street Clayfield Brisbane in the State of Queensland Accountant for Queensland of Gordon and Gotch (Australasia) Limited of 262 Adelaide Street Brisbane aforesaid make oath and say as follows:-

1. Gordon and Gotch (Australasia) Limited is the distributor of publications in the nature of illustrated romance stories similar in type set-up and price to the publications published by the abovenamed appellant the distribution of which in Queensland was prohibited by the Order of the Literature Board of Review of the twentieth day of December 1954.

2. The said Company is and has at all material times been under contract with the majority of the publishers of this type of literature including the appellant company for the distribution of their publications in Queensland and all the other States of the Commonwealth.

3. This type of publication has been distributed in Queensland for more than three years. Publications of this type are issued monthly.

4. According to the records of the said Company for January 1955 the said Company distributed in Queensland a total of 26,611 copies of this type of illustrated romance publications under the following titles:-

Great Lover Romance	2200
Love Pic	2750
Youthful Romances	2200
Darling Love No. 48	1800
Darling Love No. 49	2000
My Own Romance	2511
Revealing Confessions	3000
Romantic Love	3000
Romantic Secrets	2450
Love & Romance	2600
Young Brides	2100

In July 1955 the number of titles had increased to fifteen with a total of 37,500 copies distributed. In the month of July 1956 the number of titles has increased to twenty four with a total of 56,550 copies distributed.

5. There is a growing demand in Queensland for this type of literature and a ready sale therefor and there is no reason to anticipate a decline in the market.

6. I have read paragraph 14 of the Affidavit of Herbert Leslie Kelly sworn herein on the twenty ninth day of August 1955 and I say that I gave that information to the said deponent and that it is true and correct. I further say, that by reason of the continued and growing demand for this type of literature

as herein set out I adhere to my opinion that the particular literature the subject or the order of prohibition would have continued to make the sales which I anticipated when giving such information to the said deponent.

SWORN by the Deponent JOHN HILTON AGNEW at Brisbane in the State of Queensland this thirtieth day of July 1956

JUDGEMENT

IN THE HIGH COURT OF AUSTRALIA QUEENSLAND REGISTRY.
ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

APPEAL NO. 15 OF 1955

BETWEEN:

TRANSPORT PUBLISHING CO. PTY. LTD. APPELLANT

AND

THE LITERATURE BOARD OF REVIEW RESPONDENT

APPEAL NO. 16 OF 1955

BETWEEN:

POPULAR PUBLICATIONS PTY. LTD. APPELLANT

AND

THE LITERATURE BOARD OF REVIEW RESPONDENT

APPEAL NO. 17 OF 1955

BETWEEN:

ACTION COMICS PTY. LTD. APPELLANT

AND

THE LITERATURE BOARD OF REVIEW RESPONDENT

APPEALS CONSOLIDATED BY ORDER OF THE HONOURABLE MR.
JUSTICE MATTHEWS DATED THE TWENTYEIGHTH DAY OF NOVEMBER
1955

Before the Full Court constituted by:-

Their Honours The Chief Justice (Sir Owen Dixon), Mr. Justice McTiernan, Mr.
Justice Webb, Mr. Justice Kitto and Mr. Justice Taylor.

Sydney the seventh day of November 1956.

The abovementioned Orders to Review having on the twentyfourth thirtieth and
thirtyfirst days of July 1956 come on for hearing at Brisbane in the State of
Queensland by way of appeal or in the alternative for Special Leave to Appeal
from the Judgments of the Full Court of The Supreme Court of Queensland
pronounced on the eighth day of August 1955 WHEREBY IT WAS
ADJUDGED that the appeals of the abovenamed Appellants by Way of Orders
Nisi to Review against the Order of The Literature Board of Review dated the
twentieth day of December 1954 and published in the Queensland
Government Gazette on the twentyfifth day of December 1954 whereby in

pursuance of the provisions of "The Objectionable Literature Act of 1954" the said The Literature Board of Review prohibited the distribution in Queensland of all and every the literature being writings published periodically with respect to all copies of every part number or series thereof whether published theretofore or thereafter of the following publications viz: -

(a) "Real Love" , "Romance Story", "Real Story", "Real Romances" and "Love Experiences" .

(b) "Darling Romance"

(c) "Popular Romancett and "New Romances" ,

be dismissed and that the said Orders to Review be discharged with costs .

NOW upon hearing what was alleged by Mr. Wanstall Q.C. and with him Mr. D.M. Campbell of Counsel for the Appellants and Mr. Hart Q.C. and with him Mr . Hoare of Counsel for the respondent THIS COURT having reserved its decision on the appeals and the appeals this day standing for judgment in the list of this Court at Sydney in the presence of Counsel for all parties THIS COURT DOTH ORDER AND ADJUDGE that Special Leave to Appeal be granted to the Appellants AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE each of the said Appeals be and the same is hereby allowed AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Orders of the Full Court of the Supreme Court of Queensland be and the same are hereby discharged AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that in lieu thereof the Orders to Review be and the same are hereby made absolute with costs AND THAT the Order of The Literature Board of Review be and the same is hereby quashed and set aside in so far as it relates to the publications mentioned In such Orders to Review AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Appellants do recover against the Respondent their respective costs of the appeal to be taxed AND BY CONSENT THIS COURT DOTH ORDER that the sum of Fifty pounds (£50) paid into this Court by each of the abovenamed appellants as security for costs be paid out of Court to the Solicitors for the abovenamed appellants.

REASONS FOR JUDGMENTS

The Chief Justice Sir Owen Dixon

(Delivered Wednesday, 7th November, 1956)

These are appeals from three orders respectively of the Full Court of the Supreme Court of Queensland discharging orders nisi to review an order of The Literature Board of Review in relation to certain periodicals mentioned in the orders nisi. The appeals were consolidated.

The order of The Literature Board of Review was dated 20th December 1954 and published in the Gazette on 25th December 1954. It stated that the Board in pursuance of the provisions of The Objectionable Literature Act of 1954 by the order prohibited the distribution in Queensland of all and every the literature, being writings published periodically, specified in the schedule thereto for that the said literature was in the opinion of the Board objectionable. The order was further expressed to apply with respect to all copies of every part number or series thereof whether published theretofore or thereafter.

Among the publications enumerated in the schedule were five published by the first of the abovenamed appellants bearing the respective titles of Real Love, Romance Story, Real Story, Real Romances and Love Experiences; one published by the second of such appellants bearing the title of Darling Romance; and two published by the third of such appellants bearing the respective names of Popular Romance and New Romances.

The appellants instituted their appeals from the several orders of the Supreme Court as appeals of right, but on the hearing doubts were raised as to the sufficiency of the grounds for saying that the appellants were prejudiced by the respective orders of the Supreme Court to the requisite amount. In two at least of the three appeals it appeared as if the difficulty could not be surmounted by the appellants; but however that may be an application was made in all three cases for special leave to appeal, and having heard the cases argued, we think that sufficiently substantial grounds exist for granting special leave.

The Objectionable Literature Board is an administrative body even if some of its functions are quasi-judicial. But an appeal to the Supreme Court is given from any order of the Board prohibiting the distribution of any literature. Sec. 11 of the Act provides that a person who feels aggrieved by an order made by the Board in respect of any literature may appeal by way of order to review as if that order were an order made by justices. The provisions of Part IX of the Justices Acts are to extend and apply accordingly but with and subject to all necessary adaptations. The cardinal question of fact, however, upon which the order of the Board must depend is placed wholly within the determination of the Court. It is done by the final provision of Sec. 11, which is as follows: "The Court or Judge before whom such an order to review is returnable shall determine as an issue in the appeal the matter of whether or not the literature in question or some part thereof is objectionable under and within the meaning

of this Act and, in respect of that determination, shall not be bound by the opinion of the Board." "Literature" is a defined word. It means any publication of any description; but this general definition is elaborated with some particulars which refer specifically, among other things, to "any review, magazine, newspaper, or other writing published periodically." : sec. 5(1). When these expressions are read with certain references in substantive provisions of the Act , e.g. in sec. 10(3)(a) (i) and (iii), they seem sufficient to establish that the Board's power of suppression is not limited to a given number already in existence of a journal or periodical but extends to prohibiting the further publication of the journal or periodical so that no succeeding numbers may lawfully be issued. The publications prohibited by the Board 's order now in question are of a periodical description and the order has been understood accordingly as forbidding the issue of any further numbers. The criterion for determining whether "literature" is objectionable is supplied by a definition of the word "objectionable": sec. 5(1). It is a long definition which if analysed will be found to fall into two parts the purposes of which are different. The second part seeks to set forth in four alternative categories the characteristics or qualities which a publication must possess to bring it within the definition. The first part sets out some of the matters which must be considered when the question is whether a publication possesses the characteristics or qualities described in one or other of these four categories. This first part of the definition of "objectionable" requires that regard shall be had to the nature of the "literature"; then regard must be had to the persons, classes of persons, and age groups to or amongst whom that literature is or is intended to be or is likely to be distributed; finally regard must be had to the tendency of that literature to deprave or corrupt any such persons. There is added a parenthesis excluding the consideration that persons in other classes or age groups may not be similarly affected by the literature. The second part then makes the term "objectionable", in relation to literature, mean, regard being had to all the above objectionable for that the literature (i) unduly emphasizes matters of sex, horror, crime, cruelty or violence; or (ii) is blasphemous, indecent, obscene, or likely to be injurious to morality; or (iii) is likely to encourage depravity, public disorder or any indictable offence; or (iv) is otherwise calculated to injure the citizens of the State of Queensland.

The question for the determination of the Supreme Court upon which the substance of the appeals turned was whether the respective publications suppressed really fell within any of the alternative grounds which the definition gives for holding literature to be "objectionable". A preliminary difficulty in dealing with such an issue in a case of this description arises from the fact that the Board does not specify the materials upon which it acts in making its order. The Board has apparently proceeded upon the view that, if in performing its duty under sec. 8 of examining and reviewing literature it forms the opinion that any given publication is objectionable literature, there is no need to call upon the party responsible for publishing it in Queensland or any other party interested to defend the publication, but on the contrary the Board may without more ado prohibit the publication under sec. 10, leaving any person aggrieved to his right of appeal. Perhaps this is what the Act means, but the result is that in the case of an order prohibiting a periodical from further publication, the

Court has not the advantage of knowing which issues or numbers the Board examined or considered.

In the present cases the difficulty was met by placing before the Supreme Court copies of a number of issues of each periodical in question. The Board appeared by counsel upon the appeal and there seems to have been no dispute that the samples were adequate. It is obvious that the question whether a publication falls within any part of the statutory definition of objectionable literature must depend upon its contents and that it is upon an examination and consideration of its contents that the question must be determined by the Court.

In the Supreme Court Macrossan C.J. and Mansfield S.P.J. were of opinion that the publications were within the definition because they unduly emphasised matters of sex.

Macrossan C.J. also considered that they were likely to be injurious to morality. Their Honours "had regard to" the nature of the literature and what they considered to be a tendency to corrupt members of an age group of females described as unstable adolescents. Hanger J. dissented. In arriving at their findings the majority of the Court devoted much attention to a quantity of opinion evidence that had been called on the hearing of the appeal before the Full Court. The admissibility, as well as the weight, of much of this evidence is open to question. But in any case what matters is the judgment of the Court on the literature itself and, however much assistance may be sought in extrinsic evidence, it can form no substitute for that judgment. In the present case it happened that owing to the course the argument took in this Court we did not turn to the actual publications in question until we had listened to a discussion of the Act, the judgments of the Supreme Court, and parts of the evidence, where the terms that are commonly employed with reference to impure literature constantly recur, obscenity, tendency to deprave, to corrupt, to encourage depravity, matters of sex, injurious to morality, moral debasement and so on. When we did turn to the publications their actual character proved quite unexpected and produced almost a sense of contrast. The theme of them all nearly is love, courtship and marriage. Virtue never falters and right triumphs. Matrimony is the proper end and if you are not told that happiness ensues it is the constant assumption. They are, of course, intended for feminine readers.

The pages contain nothing prurient, lewd or licentious. The tone is the complete contrary. The vehicle for this romance and sentiment is the only too familiar crude drawings with the inset print of dialogue, usually issuing from the lips of the figures. Needless to say, there are adventures, hazards, threats of violence, and escapes to excite the apprehensions of a fond reader. Whatever sensations are aroused by the narrative must be short-lived. For a story seldom occupies more than a dozen pages. There are, of course, bad men and they are sometimes wealthy. But invariably the heroine escapes from them by the aid of the strong, embracing arm of a good young man upon whom fortune is yet to smile. Why then has this literature been considered unduly to emphasise matters of sex and exhibit a tendency to deprave? It is because the lovers are depicted as loving passionately. They embrace and they embrace

closely. Their kisses, though pure are full and perhaps prolonged. Their feelings for one another are intense and joy and happiness are represented as coming from a love that is as deep and passionate as it is devoted. Moreover, the eyes of the heroine are drawn with lids either drooping or unduly raised and her lips, though drawn in black and white, are obviously as rosy as lipstick can make them. There is, too, an evident though crude attempt to infuse the subject with glamour, in the modern technical sense of that term. Another element frequently recurring is love at first sight; and love at first sight is at times aided by the tacit acceptance of the "pick up" as an ordinary social practice.

The convention that requires formal introduction seems safely to be ignored by the heroines and there is no reason to suppose that it is observed in the circles in which they and the expected readers move. The stories and the pictures bear every mark of American origin. The drug store and the campus may be the place of meeting and the scenes through which the story takes the lovers thence are American and so is the idiom of the simple speech in which it is told. The whole atmosphere resembles that of the American cinema. The reason why these otherwise virtuous narratives have been held unduly to emphasise matters of sex and to be likely to be injurious to morality is because again and again they depict or describe love scenes in which the parties kiss and embrace and display an ardent passion one for another.

This does not appear to us to be within the range of any reasonable application of what is meant, in the definition of "objectionable", by the phrases "unduly emphasises matters of sex" and "likely to be injurious to morality". The connotation of these phrases doubtless is not very definite and any attempt to give them greater definition than the legislature has chosen to do would be hazardous. But it is evident from the context in which they occur that they relate to obscenity, indecency, licentiousness, or impudicity or the like. Every distinction between man and woman may be said to be a matter of sex but obviously it is in no such general sense that the expression is used. No doubt direct references to the physiological distinctions or to actual physical relations are in the contemplation of the phrase as it occurs in the provision, wherever the purpose or effect is immoral or perverted or implies some other aberration. But publications of the kind here in question seem to be quite outside its scope. What they contain is an affront to the intelligence of the reader but hardly a real threat to her morals. The stories are extremely silly, the letter press is stupid, the drawings are artless and crude and the situations are absurd. But we are not concerned with the damage done to the intellect or for that matter to the eyesight of the readers of these foolish periodicals. Our duty is to apply our judgment to the question whether regard being had to the nature of the literature, to the persons and age groups among whom it is to be distributed and to its tendency to deprave or corrupt them it is objectionable for that it unduly emphasizes matters of sex or is likely to be injurious to morality or to encourage depravity. An examination of the literature is enough to satisfy us that the proper judgment upon the literature is that it is not "objectionable" within the definition on any of those grounds.

In reaching the contrary conclusion the majority of the Full Court of the Supreme Court seem to have been influenced in some measure by the extrinsic evidence. The to the issues raised in this case under the definition of "objectionable" may perhaps be difficult to define with precision and to apply with rigid accuracy but they are not wide. There is the issue as to the persons amongst whom the literature is distributed. That is of course to be proved by evidence. In the present case two newsagents gave evidence. The shop of one was opposite a suburban school. According to him he sold up to six a week of each title of the publications now in question, and they were bought by adult females whose age was from the late 'teens to thirty-five years, and not by the schoolgirls. The other newsagent carried on business in the city of Brisbane. He sold six a week of each title (the number supplied) to customers he described as married women and the senior office girl type. It is possible too that evidence from the trade may be found that could be given in an admissible form to prove amongst what people the literature is intended to or is likely to be distributed. But that is not a matter which arises in the present case.

But on the question of the tendency of the literature to deprave or corrupt any such persons important distinctions must be observed. For the question necessarily has two aspects or falls into two parts. One is the content and nature of the literature and the other concerns the characteristics of the persons themselves. With reference to the second of these it may be said at once that ordinary human nature, that of people at large, is not a subject of proof by evidence, whether supposedly expert or not.

But particular descriptions of persons may conceivably form the subject of study and of special knowledge. This may be because they are abnormal in mentality or abnormal in behavior as a result of circumstances peculiar to their history or situation. It is an illustration far away from the subject in hand but it appears that the manner in which men pursuing a special vocation would reason about a matter of business may be the subject of evidence. Thus it happens to have been a question much controverted whether persons skilled in marine insurance could be called, when the question is the materiality of a nondisclosure alleged to avoid a policy⁷ in order to prove how the - fact if disclosed would influence an underwriter. Practice has established the admissibility of such evidence: see Halsbury, 2nd Ed., Vol. 18, p. 272, sec. 373; Arnold Marine Insurance, sec. 626. But before opinion evidence may be given upon the characteristics, responses or behaviour of any special category of persons, it must be shewn that they form a subject of special study or knowledge and only the opinions of one qualified by special training or experience may be received. Evidence of his opinion must be confined to matters which are the subject of his special study or knowledge. Beyond that his evidence may not lawfully go.

As to the first of the two aspects or parts of the question, opinion evidence is not admissible. The contents and nature of the literature the court can see for itself and must judge accordingly: see *Galletly v. Laird*, 1953 Sess. Cas. (J.C.) 16. In the present cases opinion evidence was called with respect to a class described as "unstable adolescents". Some further opinion evidence was

called as to what doubtless should be regarded as comprised within the class of "unstable adolescents", that is to say girls aged between 14 and 18 who had been committed at the instance of or through the State Children Department to a Salvation Army Home. A high percentage of these had already undergone some immoral sexual experience. How far any of the publications in question came to the hands of members of this class is not shown, though there is some evidence that one girl was seen with a copy.

Psychiatrists gave contradictory evidence on the question whether the pictures of the lovers kissing and embracing were or were not calculated to excite the imaginations of unstable adolescent girls and stimulate them to immoral behaviour. An officer of the State Children Department expressed his opinion to the effect that the same unstable group would suffer emotional disturbances from the reading of repeated episodes where such scenes were depicted. The matron of the Salvation Army Home condemned the literature because of the effect such reading would in her opinion produce on the girls in her charge. The love scenes would excite them and retard their rehabilitation and the pictures of "pick-ups" would do them particular harm. The foregoing does not even summarize the evidence; it is but a description of its nature. In fact both by affidavit and oral testimony it spread over every aspect of such literature and even further, without regard to the limits of admissibility and at times went to the point of irrelevance. The question of the admissibility of evidence of this class has a peculiar importance in an appeal from an order of the Literature Board of Review. For it is sufficiently plain on the face of the Act that the object of the appeal is to submit to judicial determination the true character of the literature as falling or not falling within the definition of "objectionable". Once the Court permits the boundaries to be transgressed which the law places upon proof of the opinion of others in such a matter, it is very likely to be drawn from the issue by a flood of controversial argument as to the effect and desirability of the publications which will be advanced in the guise of expert testimony.

In the present cases an attempt to disentangle the admissible from the inadmissible evidence leaves very little that could be of real assistance. But two comments may be made. The first is that a proposal to test the question whether the literature is within the definition by a scertainint its possible or probable effect upon admittedly bad girls committed to a Home must be misconceived. Such a test cannot be considered decisive of or even relevant to the application of the definition. That is not what is meant by "persons, classes of persons and age groups" in sec. 5(1) The second comment is that the evidence at best could be used only with reference to the matters to which regard is to be had and does not and indeed cannot otherwise affect and cannot control the issues under sub-paragraphs (i), (ii) and (iii) of the definition. Because the literature is outside those paragraphs the appeals should succeed. Special leave to appeal should be granted and the appeals allowed in each case. The orders of the Full Court of the Supreme Court should be discharged and in lieu thereof it should be ordered in each of the three cases that the orders nisi to review be made absolute and the order of the Literature Board of Review quashed and set aside in so far as it relates to the publications mentioned in such order nisi.

Justice J. McTiernan

The Literature Board of Review is an executive agency of the State of Queensland constituted under "The Objectionable Literature Act of 1954". The long title of this is "An Act to Prevent the Distribution in Queensland of Objectionable Literature". The Board in pursuance of the provisions of the Act, by its order, dated 20th December 1954, prohibited the distribution in Queensland of the following matter: "All and every the literature being writings published periodically specified in the Schedule hereto for that the said literature is in the opinion of the Board objectionable". The Board by this order declared that it "applies with respect to all copies of every part number or series thereof whether published theretofore or hereafter", This order purports to be an exercise by the Board of the power conferred by subsection 1 of Sec. 10. This subsection says: "The Board may by its order prohibit the distribution in Queensland of any literature for that that literature or some part thereof is, in the opinion of the Board, "objectionable". The part of the order stating the extent of its application depends upon Sec, 10(3) (a) (i), which provides; "An order of the Board prohibiting the distribution in Queensland of any literature shall apply with respect to all copies of that literature including, in appropriate cases, all copies of every edition, part, number, or series thereof."

The publications specified in the schedule to the order include "Real Love", "Romance Story", "Real Story", "Real Romances", and "Love Experiences". All these were printed by Transport Publishing Co. Pty. Ltd. Another publication specified in the schedule is "Darling Romance", which was printed by Action Comics Pty. Ltd. Two others are "Popular Romance" and "New Romances", printed by Popular Publications Pty. Ltd. Each of the companies appealed, under sec. 11, by way of Order to Review, from the Order of the Board to the Supreme Court of Queensland. This section, in its second paragraph, provides: "The Court or Judge before whom such an order to review is returnable shall determine as an issue in the appeal the matter of whether or not the literature in question or some part thereof is objectionable under and within the meaning of this Act and, in respect of that determination, shall not be bound by the opinion of the Board".

The appeal was heard by the late Chief Justice (Macrossan C.J.) the present Chief Justice (then Mansfield S.P.J.) and Hanger J. The Court, by a majority, dissentiente Hanger J., determined that each publication is objectionable under and within the meaning of the Act, dismissed each appeal and discharged the Order to Review by which it was brought. Each company appealed to this Court or alternatively applied for special leave to appeal, against the order of the Full Court of Queensland affecting it.

The main question for decision is whether the publications in question or some of them are objectionable under and within the meaning of the Act.

Each of them is "literature" according to the definition in sub-section (1) of Section 5. The criteria to be applied in determining the issue whether literature is objectionable are stated in this sub-section.

"'Objectionable' - In relation to literature or any part of any literature, regard being had to the nature thereof, the persons, classes of persons, and age groups to or amongst whom that literature is or is intended to be or is likely to be distributed and the tendency of that literature or part to deprave or corrupt any such persons (notwithstanding that persons in other classes or age groups may not be similarly affected thereby), objectionable for that it -

- (i) unduly emphasises matters of sex, horror, crime, cruelty, or violence; or
- (ii) is blasphemous, indecent, obscene, or likely to be injurious to morality; or
- (iii) is likely to encourage depravity, public disorder, or any indictable offence; or
- (iv) is otherwise calculated to injure the citizens of this State."

The first question is, what is the nature of the publications in question? The titles of the publications have been mentioned. They also have subtitles. "Real Love" has the subtitle "Romances from Life"; "Romance Story" has the subtitle "Intimate Love Stories"; "Real Story" has the subtitle "True to Life Love Stories"; "Real Romance" the subtitle "Romantic Stories that could be Yours"; "Love Experiences" the subtitle "Candid Confessions Illustrated"; "Darling Romance" the subtitle "Real Stories of True Love"; and "New Romances" the subtitle "Exciting Real Life Stories of Love".

Each publication consists of consecutive drawings in panels of young persons in postures of enthusiastic affection, often kissing and fondling, and indulging in absurd and slangy erotic patter. The motif is an accent on sex.

The second question is, who are "the persons classes of persons and age groups to or amongst whom that literature is or is intended to be or is likely to be distributed?"

These are not issues which, like that of the nature of the publications, can be assessed merely by perusal of the publications.

I think that it is necessary to have evidence of persons qualified to inform the Court. First, upon the application in each case for the order nisi to review the order of the Board, it was deposed on behalf of the applicant company that the publications "are intended for circulation amongst teenagers and all other classes and age groups of people and are purchased not only by teenagers but by all other classes and age groups of people".

Secondly, evidence was given at the hearing of the appeal to the Full Court of Queensland by persons whom the judges regarded as qualified to give evidence on these issues. Mansfield J. made a sufficient and correct review of this evidence, which I adopt. "The evidence of the witnesses who swore affidavits and who were cross-examined at the hearing, leads me to the conclusion that the persons, classes of persons and age groups amongst whom the subject literature is or is likely to be distributed consist of the following -

1. A group of unstable female adolescents (Dr . Stafford) .
2. Adolescent girls between 14 and 18 years of age who have been committed to the Salvation Army Girls Industrial Home at Brisbane, most of whom were committed for offences of a sexual nature, and particularly those who were below average intelligence , emotionally unstable or irresponsible (Matron Geddes) .
3. A group of psychopathic adolescent girls , corresponding to group No. 1 (Mr. Matchett) .
4. Normal persons, both adolescents and adults, of average intelligence (Dr. McGeorge) .
5. Females in their late teens or any age, actually above that , married women and the ' not so young excluding middle aged women (Allan Thomas Stacey.
6. Senior office girl class, many of whom are married women (Aubrey Imrie Panton).
7. Young men aged 20 years or upwards, of average intelligence and education (John Wallace Metcalfe).

The third question is: Have these publications "the tendency to deprave or corrupt any such persons (notwithstanding that persons in other classes or age groups may not be similarly affected thereby?"

The tendency of a publication is generally a question for the Court to decide upon what the publication contains and evidence of its tendency is not admissible. But in the case of such a special issue as whether any of these publications has a tendency to deprave or corrupt particular groups or classes, I think the evidence of persons qualified to speak on the issue is admissible, not, of course, to determine the issue, but only as evidence relevant to it. Evidence was tendered on behalf of the appellants and the Literature Board on this issue and that as to the distribution of the publications.

The qualifications of Dr . Stafford, the witness mentioned above, are that he is a qualified medical practitioner, a registered specialist of psychology in Queensland, and since 1938 has been Director of the Psychiatry Clinic . He based his evidence on the records of 60 in 70 unstable adolescents on whom he has observed the effect of reading similar publications. This witness was of the opinion that the publications would have a tendency to deprave or corrupt adolescents of that type. Matron Geddes, another witness referred to above, is a Captain in the Salvation Army and has long experience as Matron of Girls' Homes.

Mansfield S. P.J., as he then was, said the evidence of Matron Geddes "was factual and not based upon the descriptions by the subjects of their reactions. Her evidence, therefore, if believed, established that the literature would have a tendency to deprave or corrupt the individuals referred to above in Group 2.

Both His Honour and the late Chief Justice appear to have regarded the evidence of these two witnesses as more satisfactory than the evidence of other witnesses on these issues.

If there were nothing before the Court but the publications themselves, I would reach the same conclusion as to their tendency to deprave and corrupt young people who are so who unstable as to fancy them as literature, or acquire the habit of reading them. Some, of course, are less evil than others. But I the publications think that it is correct to say of all of them are calculated to stimulate the sensual passions of teenagers and adolescents and to inculcate brutish standards of conduct for sweethearts and to debase courtship and marriage.

Having regard to the nature of the publications, the classes who read them or for whom they are intended, their tendency to deprave or corrupt such persons, are they "objectionable" upon any of the grounds mentioned in the Act?

The plot of most of the stories is two young people seeking happiness in marriage. But the manner in which they pursue the ideal is not characteristic of decent young people. The friendships begin and are carried on by conduct that is right outside the bounds of propriety. The publications debase courtship: the drawings in many cases are calculated to convey that it justifies conduct which rather has the appearance of being bestial than a manifestation of love. Illicit intercourse is nowhere explicitly represented as a motive, but the pictures and the stories are likely to inflame the venereal passions of the classes of young persons likely to devour this trash. As Macrossan C. J. said of these publications: "But a considerable number of them also emphasise the thesis that an acceptable means of achieving this ideal (marriage) is a casual acquaintance made by a young girl with a man hitherto a complete stranger to her, the ardour of whose embraces and kisses provide the assurance of the constancy of his affection."

In my opinion it is correct to find that these publications unduly emphasise matters of sex and are likely to be injurious to morality and to encourage depravity. For these reasons they are all objectionable literature within the meaning of the Act.

The other grounds of appeal are devoid of substance. I agree with what Macrossan C.J. (in whose opinion thereon Mansfield S.P.J. concurred) said about those grounds.

I would dismiss the appeals if competent and, if not, I would refuse special leave to appeal.

Justice J. Webb

I agree with the statement of the law in the majority judgment, except on two matters, my views on which and the evidence lead me to a different conclusion from that reached by the majority. The two matters are (1) the meaning of the phrase "unduly emphasises matters of sex" in the definition of "objectionable" in relation to "literature" in S.5 of "The Objectionable Literature Act of 1954"; and (2) the persons .who may constitute a class of persons for the purposes of that definition.

As to (1) : From the context in which the phrase "unduly emphasises matters of sex" occurs I think it is broad enough to include emphasis on conduct short of obscenity or indecency such as embracing and kissing; otherwise the phrase would, I think, be redundant, as what is "obscene" or "indecent" is also expressly included in the definition. Further, as the phrase is not placed in the same category as " obscene" or " indecent", but in a category which includes "horror", "crime", "cruelty" and " violence" , whilst "obscene" and " indecent" are in the same category as "blasphemous", resort to the principles ejusdem generis and noscitur a sociis is not permissible.

If the legislature intended to exclude the application of these principles without expressly saying so it could hardly have done so more effectively. I share the view of the majority of the Full Court of Queensland, which view, summarised, is that literature which by constant pictorial repetition purports to illustrate the behaviour of males as such towards females as such, and in so doing unduly emphasizes the emotional and physical aspects of such behaviour, or unduly emphasises their distinctive physical or psychological attributes, is literature which unduly emphasises matters of sex.

As to (2): I think that the expression "classes of persons" in the definition of "objectionable" is not to be restricted to normal persons, and that, say girls committed to an industrial home, even for sex offences, although they are to some extent already depraved or corrupt, may still constitute a "class". As the definition expressly provides for "age groups" I am unable to see what classes of persons, other than those possessing abnormal characteristics, mental, psychological or sexual, could be intended: no other discripen suggests itself to me. Moreover literature having a tendency to deprave or corrupt does not lose that tendency while its distribution is limited to a group of persons already to some extent depraved or corrupt. I think it is not too much to my that a purpose of this legislation is not merely to prevent the pure from becoming impure; but also to prevent the impure from being kept impure.

So much for the law. As to the facts: Looking first at the literature without regard to the evidence as to its effect, as I think we must, it appears to me to unduly emphasise matters of sex, inasmuch as by constant pictorial repetition it emphasises both the emotional and the physical aspects of the behaviour towards each other of the males and females depicted, and also their distinctive physical and physiological attributes, and that , as Macrossan C. J .

noted, the times and places of the incidents depicted are so selected as to add to that emphasis, which in the result is undue.

It may be that all this does not apply to every "strip" considered without regard to the series of which it is part. It is true that the Board's prohibition extends to the series, but we are confined to a consideration of the literature actually in evidence.

Then, as to the effect of this literature, we now come to the evidence of the witnesses.

In my opinion the reaction to literature of this type of adolescents mentally, psychologically or sexually abnormal, can properly be the subject of expert testimony by those who as psychiatrists, State officials or persons in charge of recognised institutions for the reception and reform of such adolescents have had experience of such reaction. For the respondent Board evidence of this kind was given. But for the appellants the evidence was not so comprehensive. It is true that the appellants called two psychiatrists, one with 27 years practice before he retired and the other with 5 ½ years practice. However the former admitted he had not personally observed the reaction of adolescents to literature of this type and the latter did not claim to have done so. Both had much to say as to the quality of the literature and the effect it should have on individuals, but neither had much to say as to how individuals were in fact affected according to their experience. All the witnesses were closely questioned by the Bench during cross-examination and the majority of their Honours preferred the evidence for the Board.

In this matter they had an advantage that we do not possess of seeing the witnesses give their evidence and so of judging of its value, not only on what the witnesses said but how they said it. That was a considerable advantage in dealing with evidence and witnesses of this kind. In the circumstances I have decided to accept the evidence for the Board, as being the more reliable, but only so far as it dealt with the effect of literature of this type on adolescents. It is for the Court to find what is the quality of the literature apart from its effect on individuals; but throughout their evidence witnesses on both sides trespassed extensively on the Court's domain. Having read all the evidence I see no reason why I should prefer the appellants evidence which, as I have already stated, was not as comprehensive as the Board's evidence: it was not based on the same wide and varied experience in dealing with abnormal adolescents.

I proceed to set out some of the evidence which the majority of the Full Court preferred and which, subject to what I have already said, I accept. Each of the three witnesses who gave this evidence made an affidavit and was called for cross-examination, which, though thorough, did not seem to result in any material contradictions of the affidavits.

Basil Frederick Robert Stafford deposed that he was a duly qualified medical practitioner and a registered specialist of psychiatry and had practised psychiatry as a specialist since 1929. He had perused the prohibited publications. In his opinion they relied for their appeal on what was commonly known as "sex". In his experience a psychological appreciation of the

implications of the word "sex" was important. It had three implications (i) general appreciation of masculinity and femininity; (ii) sexual intercourse; (iii) behaviour that stimulates the implications of (i) and in a certain group of unstable adolescents would tend towards (ii) . He had in mind illustrations of physical contacts such as kissing and fondling which to a certain group of unstable adolescents were probably more significant as sex behaviour than either of the two concepts of sex mentioned in (i)' and (ii) . The group of unstable adolescents he had in mind was principally female and the group was numerous . The publications relied on their attractiveness on the emphasis placed upon the behavior mentioned in (iii) . They constituted a danger to emotional rather than to intellectual instincts. The presentations pictorially and otherwise continually suggested a "modus operandi" in regard to associations, particularly physical, between male and female; and the whole essence of the publications was that physical contact was something glamorous and desirable. The illustrations emphasised this aspect of sex. The episodes portrayed the idea that despite what might be the misbehaviour of the characters involved no harmful results would ensue. Such a concept is divorced from reality and could bring about a sense of false values in moral standards. The publications portrayed undisciplined social behaviour of adolescents. The underlying theme of sex throughout these publications has conveyed by constant repetition and in an insidious, rather than in a blatant manner, so that their influences tended to impinge unconsciously on the senses. In adolescence susceptibility to sexually receive influences is especially acute and the imagination is specially active, and in his opinion these publications would in the group of unstable adolescents engender the desire to seek similar experiences to those portrayed and stimulate them to forms of immoral sex behaviour. The influence of the publications was accentuated by the pictorial form of presentation which depicted at a glance behaviour of the type referred to in such a fashion as more readily to bring about desire and stimulation in unstable adolescents than the written word, and so extended the scope of their appeal to illiterate and semi-illiterate unstable adolescents, to whom pictorial representations would be more attractive because it facilitated their understanding of the story and concentrated their attention on the subject matter of the illustrations, which emphasised physical contact between male and female. In his opinion the publications represented a danger to emotional instincts and instilled a sense of false values and concentrated on one particular phase of human relationship to the exclusion of all others, thus tending to destroy the sense of balance and stability in the individual which is necessary to a well-ordered society.

They constantly reiterated one theme which by its continued repetition must affect the formative processes of character building balance and stability throughout adolescence. Such consequences to the individual must also injuriously affect society in general and the person closely associated with such individuals in particular.

In reply to the Bench during cross-examination Dr Stafford said that in his reference to adolescents he had in mind a group of 60 to 70 girls between 13 and 19 years of age with whom he had come into contact. He did not claim

that they were a cross-section of adolescents between 13 and 19: he thought they were a special group of unstable adolescents.

Ormond William Butler, Deputy Director of the Queensland State Children's Department, deposed that he had been an officer of the Department since 1918. The children of whom he spoke were all under 18. He had perused the literature in question here. In the course of censoring literature addressed to children he had frequently destroyed literature of this type as he considered it undesirable for children.

It would appeal to the age group 13 to 19 years and would be sought more by the girls than by the boys. The constant repetition of the sex theme could tend to emotional disturbances.

The pictorial form would make a greater impression than the narrative form. The literature would have a weakening effect on moral values as it would arouse unwholesome curiosity with regard to sex impulses which could have an outlet in seeking similar experiences to those portrayed.

It over-stressed the importance of the relationship between the sexes and thus gave a sense of false values. Girls committed to the care of the Department by the courts for sexual offences had publications of this nature in their belongings and were avid readers of this type of literature.

Jean Geddes, Matron of the Salvation Army Girls Industrial House, Brisbane, and an officer of the Salvation Army for seventeen years deposed that the girls at the home were between 14 and 18 years of age and are committed to the Home by the courts, the majority for sexual offences. Literature of the kind in question had a special attraction for the girls particularly those below average intelligence and those emotionally unstable or irresponsible. It was emotionally exciting to such girls and proved disturbing to their morals and thoughts. She had known such girls to read such literature from cover to cover and over and over again. She often found the girls with it in their possession. She noticed that the girls accustomed to read it had been excited and unbalanced in the presence of males working about the Home and their general conduct was uncooperative and defiant, but that their behaviour improved when they were deprived of this literature the effect of which was increased by the pictorial form, more particularly in the case of sub-normal girls. The impression made on the girls by this form of literature was more lasting than that made by moving pictures as it could be reverted to and read over and over again. The pictorial types were more disturbing than the written as they portrayed males and females in attitudes that appealed to and stimulated the sexual senses and engendered in unstable adolescents the desire to have similar experiences leading in her opinion to illicit sexual intercourse in many cases. In girls who have had early sexual experience this type of literature tended to stimulate their sexual desires and keep before their minds their sexual experience which it was the desire of the Home by education and training to erase. The rehabilitation of such girls was greatly retarded by the reading of publications of this kind. The girls were much more interested in the pictorial representation of amatory embraces than in any merits contained in the stories.

I am satisfied, after considering all the evidence, that, as Dr Stafford said, literature of this kind depends for its appeal on sex, and that it could constitute a danger to the emotional instincts of unstable female adolescents, as it would engender in them a desire to seek similar experiences to those depicted, and so would stimulate in them immoral sex behaviour. Further, as Dr Stafford's evidence was based on the reactions to literature of this kind of 60 to 70 unstable female adolescents, and it can safely be concluded that the number of such adolescents, including those in industrial homes and similar institutions, is much greater than 70, then, although all these persons are abnormal sexually, they are still capable of being and should be regarded as a class of persons within the definition of "objectionable" in relation to "literature". The bad effect that literature of this type has on discipline and in retarding the rehabilitation of girls in institutions is shown by the evidence of Matron Geddes.

It might seem regrettable that there should be a total prohibition of the distribution of literature which prejudicially affects only a restricted class of abnormal persons. But an "age group" of normal persons in whose interest a total ban might unquestionably be imposed need not be more considerable in numbers. Indeed it is conceivable that the sexually abnormal class might be larger than the particular age group, as it overlaps all age groups, and the age group in the definition would be restricted to adolescents. Just as I cannot see how "classes of persons" in the definition of "objectionable" could refer to other than persons mentally, psychologically or sexually abnormal, so I am unable to see what "age groups" other than adolescents are within that definition. However, whatever regrets we might have because of a total prohibition in this case is tempered by the realisation that the community would not suffer much, as the literature amounts to little if anything more than an insult to the intelligence of its readers.

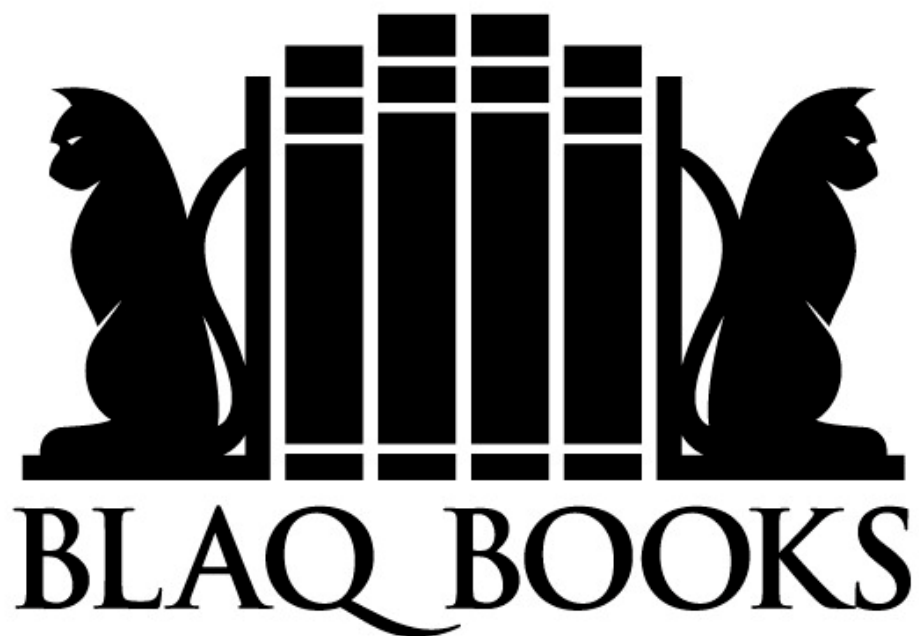
Before concluding I should say that I think it is at least arguable that as the Literature Board of Review is not required to act judicially, as was the board in *Medical Board of Victoria v. Meyer* (1937) 58 C. L. R. 62; and as the Supreme Court is not confined to the determination of questions of law, as was the Full Court in *Webb v. Hallon* (1939) 61 C. L. R. 313, but has the same full power of decision as that possessed by the Literature Board of Review, which clearly acts administratively and not judicially, neither these appeals nor the applications for leave to appeal come within s.73 of the Commonwealth Constitution or S.35 of the Judiciary Act.

The question of jurisdiction was not raised by counsel or by any member of this Court at the hearing. Still if I had no doubt that this Court lacked jurisdiction I would be bound to decline jurisdiction. See *Vatson v. Federal Commissioner of Taxation* (1953) 87 C. L. R. 353. But in the absence of argument and in view of the fact that in the application for the Order to Review the applicant must make a prima facie case of error or mistake in law or fact or an absence of jurisdiction (S. 209 of Justices Acts and S. 11 of "The Objectionable Literature Act of 1954"), which might appear to suggest that the Supreme Court on appeal is to act judicially and not administratively, I am not

satisfied that the jurisdiction is lacking and so I assume for the purpose of these proceedings that it exists.

I would dismiss the appeals if they are as of right and refuse special leave if they are not.

.



Your mark of excellence and quality