

The Guardian, 5 January 1967

Art and the expert witness by NORBERT LYNTON

THE one thing we all think we know about the English law is that the burden of proof rests with the prosecution. We are innocent until proved guilty. This does not seem to apply in obscenity cases. Even under the Obscene Publications Act 1959, which tried so hard to distinguish between commercial pornography and serious works of art and research, accusation is nine tenths of conviction.

Kevin Tierney, in a recent article in the "New Law Journal," summed up the results of the 1959 Act as follows: "In effect, therefore, it is no longer an offence in English law to publish an obscenity. The true offence is publishing an obscenity which cannot be justified on some ground of public good." The Act stressed that the works charged with obscenity should be considered as a whole, and that, even if found to be obscene, such works could be held to be justified if shown to be "for the public good on the ground that it is in the interests of science, literature, art, or learning, or of other objects of general concern." So it provided that "the opinion of experts as to the literary, artistic, scientific, or other merits of an article may be admitted in any proceedings under this Act."

On December 19 and 20 the case of a young Cypriot painter, Stass Paraskos, charged with publishing obscene articles, a painting and a drawing, was heard before three magistrates in a Leeds court. He was found guilty and fined. I was there as one of nine "expert witnesses" called by the defence, and I am convinced that justice miscarried.

It was emphasised that the prosecution must prove its case. To do this the prosecution called one witness—the policeman who, acting on orders, had gone to the gallery where Paraskos was having his one-man show, spent between five and ten minutes there observing the public's reaction, and removed the pictures. Among the seven people the policeman saw during this time were two schoolgirls of about 15. How had they reacted on seeing the two works in question? They had giggled. Did the policeman consider these works obscene? He did. Did he normally take any interest in art? He did not.

The defence showed that "publication" here meant having an exhibition in a gallery run by the Leeds College of Art on the second

floor of an educational building, without even a poster or other notice on the outside of the building. But there was no charge for admission and so public access was technically unrestricted (money-seeking pornography does better under the law in this matter). Eric Taylor, principal of the college, described the opening of the exhibition, attended by a large part of the civic virtue and the intelligentsia of Leeds; no one had noticed anything amiss. Attendance figures for the exhibition had been low, and had continued low after police intervention had given the show unexpected publicity.

The nine expert witnesses agreed on the high quality of Paraskos's work. We stressed its poetic, unrealistic character. Some of us emphasised the special value of showing what the prosecution had called "love-play" in a context of tenderness when sexual relationships are so frequently shown or described in terms of violence and fortuity. The galleries of the world were full, we said, of works portraying sexual love and no one seemed to mind: art, like science, must deal honestly with human concerns in order to make them accessible to thought, and Paraskos's works belonged to an ancient tradition. Would we wish our children to see such pictures? We would.

WE WERE TREATED gently by the Bench and the prosecution and I do not think our sincerity was doubted. Sir Herbert Read said he thought only the display of perversion could "tend to deprave or corrupt." Professor Quentin Bell of Leeds University asked the Court to see the difference between sexy photo magazines and art. Bench and prosecution shared a major difficulty with which they confronted us repeatedly. Would we not think it offensive to see people in real life behaving the way the lovers in these pictures did? Why should art be different from life in these matters? We insisted on the stylised, generalised quality of these works, and suggested that the timelessness of art lifted such subjects on to a different plane. We failed. I think, to find an off-the-cuff formula that satisfied the Bench, but I doubt that anyone went to lunch off a Dutch still-life in the local gallery.

No evidence of a tendency to deprave or corrupt was brought. How could it be? Even if 50 citizens had appeared to declare that

they had been shocked by these works, that would not be the same thing. Possibly pictures like these could awaken lustful thoughts, but if everything capable of arousing lustful thought was held to be criminally obscene, life would become very difficult.

In giving his judgment the stipendiary magistrate discounted the two schoolgirls and their giggles. But it was his duty, he said, to think of the other people who may have seen these pictures and been affected by them. He referred repeatedly to the man in the street. Since there was no jury the Bench had to represent his opinion, and in his opinion these pictures were obscene and Paraskos was guilty.

No amount of expert evidence could have made any difference to this verdict. In the "Lady Chatterley's Lover" case Mr Justice Byrne drew a hard line between "the facts" put before the jury and the expert witnesses' view of them. The other day Lord Justice Harman in the Court of Appeal dealt even more roundly with the professional evidence brought by a consultant psychiatrist. Expert witnesses are tolerated rather than welcomed by our Courts.

In this case it was an anomaly that Paraskos should have been charged at all. He painted and drew the pictures, but it was the gallery that brought them before the public, and the gallery is run by the college, that is by the Education Department of Leeds—the City of Leeds itself. Suppose the city authorities had been in the dock, would the verdict have been different?

The trouble with an untestable, indefinable notion like that of obscenity is that all sorts of considerations will affect anybody's view of it. What a little-known painter does is one thing; what a great city does is another. All that evidence from arty people, notoriously unreliable in matters of public decency, could not help Paraskos, whereas civic dignity might have been thought reassuring. In London, I am certain, the case would not have been brought at all, since no one would have bothered to lay the original complaint.

The two guilty pictures must now be destroyed by the officers of the court. Outside, the lurid paperbacks beckon without hindrance. I half expect to hear that the college has been ordered to close its gallery for fear of offending the man in the street again.