

*Criminal Code*

As I understand it, the amendments are divided into two sections. First, it is no longer necessary to prove that the publisher knowingly and without lawful justification or excuse published, or had in his possession for the purpose of publishing, lewd, lascivious, obscene matter or crime comics. I can see no objection to that, because it does away with the defence that I believe should not be available to the publisher, namely, that he did not know what he was publishing or what would be published when the document was finally sent out.

The last subsection is one that I find it difficult to support. It says in effect that it shall be no defence that the publisher did not know the nature of or the presence of the matter complained of. Is that not what the last section means? I find it difficult to bring that provision into line with section 1, subsection 1. There the offence is having in his possession for the purpose of printing or publishing. Having "in his possession" implies that the crown must, in doubtful cases, either directly or inferentially, establish that he knew the nature of or the presence of the matter complained of. If you intend to prohibit the publisher from having books, documents and crime comics which are lewd or detrimental to morals, then I submit that in order to close the door you have to remove the words "has in his possession".

May I cite an analogous case? In the early days in Saskatchewan under the temperance act provision was made for an offence which consisted of having intoxicating liquor in a stock of soft drinks. A Chinese resident in that province who had nothing to do with the liquor being in a stock of soft drinks—in fact the crown finally had to admit that the liquor had been planted there—was charged with this offence and convicted. The case went to the court of appeal in Saskatchewan, which said he did not have it in his possession because he did not know of its existence. But that is not the offence. The offence is that he did have in his stock of soft drinks intoxicating liquor.

Here we have, as I see it, an endeavour to get around this difficulty, by saying in section 1 (1) that the publisher is liable only if he has in his possession; and then you add a paragraph which states that it shall be no defence that he did not know the nature or the presence of the matter. I submit that these two sections, particularly as they apply to the word "presence", cancel out one another. In my view, so far as subsection 7 is concerned, to make it consistent with section 1 (1) it should read that it shall be no defence that he did not know the nature of

the matter, rather than "the presence of the matter". I pass this suggestion on to the minister.

Sometimes, in a desire on the part of a legislature to close all the doors, other doors are opened. The definition of a crime comic is one which exclusively or substantially comprises matter depicting crime, either actual or fictitious. I believe in this instance the door is left open to a continuing stream of crime comics in this country—not crime comic books which exclusively or substantially comprise matter depicting crime, but do so only partly. Would it not be a defence to turn out a ten-page crime comic book containing four pages of crime comics and six pages of the ordinary comics the youngsters enjoy? With four pages only of crime comics there would be an absolute defence under the section as it now stands. I suggest that consideration be given to rewording it. It is not for me to suggest what the rewording should be, because I have not had a chance to prepare a proper amendment. Perhaps the words "a crime comic is one the general purpose of which is either in whole or in part to depict crime either actual or imaginary" might cover it. I am trying to offer some suggestions so that the law may be workable; for I know what crime comics do.

I see that one of the agents of one of the attorneys general has said he is not sure of what the effect would be. Well, I am not inclined to refer to personal matters, but, about a year ago after the session of parliament was over, some parents came to me to speak to me about their son, a boy of nine, brilliant, with a high intelligence quotient. He became a kind of boss and ran his gang. The gang committed a great deal of crime, and he kept up to date through the reading of crime comics. When I had him in my office and talked to him I said: "In the event of your being acquitted, you have a great future ahead of you. I am sure you really got into these difficulties unintentionally, and you will not have any such difficulty again". His answer was: "You were hired by my parents as my mouthpiece". In other words he spoke most contemptuously of any suggestion on my part that what he had done had been a mistake on his part. I believe that attitude is general. Young people of fifteen or sixteen years cannot help being enthusiastic about the possibility that they, too, as a result of misdemeanours and wrongdoings, may achieve the degree of newspaper notoriety—indeed sometimes adoration, as it is set out in some of the crime magazines—which some regard as an element of greatness.

While these amendments are stern, and wipe out some of the things upon which our

[Mr. Diefenbaker.]