

is a definition of "hate literature." That is why I said to myself that the next time I was here I was going to ask the lawyers where those words begin, and where they end.

Mr. Scollin: It is very difficult to define "defamatory libel," but the fact is that juries habitually manage to come to a pretty sound conclusion on the particular facts of a particular case as to what actually happened, without having anything in the form of a water-tight definition which would probably sweep more in, in a dangerous way, than it leaves out. For example, section 248(1) deals with defamatory libel, and provides:

A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

Now, that definition in its own way is neither more precise nor more imprecise than the definition that is attempted in section 267B. In the particular case that is a matter of an honest *bona fide* determination as to whether what was published was published without lawful justification or excuse—this would be a matter for the court—and is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule.

One cannot define the categories of hate, contempt or ridicule, but given a specific case and a specific document, and given the framework within which you are operating, you can apply these general tests, and say either "This falls within the definition", or "This does not fall within the definition".

The motivation, for the purposes of section 267B, does not matter. It may be commercial anxiety, commercial jealousy, or there may be any number of reasons, but what this is aimed at is the eventual result that comes out of what is published. I would hesitate to think that one could define this highly emotional sort of thing. We can categorize it and say that we will add books to our list as they come out, and say that these are and these are not, but this would be a pretty unsatisfactory way of doing it.

Senator Bourque: You said that the courts would decide, but that may not be satisfactory because one judge may look upon it as a very grave offence while another judge might say it is nothing at all. Take myself, for instance. When I was a young man there

were many things that I would have said are not right, are unjust, and so forth. But now, with the experience of years, I have come to the conclusion that I should say of some of these things: "Well, that is that man's opinion. He did not mean badly. That was just his way of judging this affair". That is why I ask: Is there not a gauge by which we can measure whether this is hate literature or not?

Mr. Scollin: Of course, it has to be aimed at colour, race and ethnic origin. You are limited to things that incite hatred or contempt on these grounds in relation to colour, race or ethnic origin. This is not the whole field of debate. This narrows it down to these three tests. It has to be hatred or contempt on the ground of colour, race or ethnic origin. So, initially you are starting off from not too broad a base.

The Chairman: Perhaps it will help, Senator Bourque, if you keep in mind that the test is that of a reasonable man looking at the document. The question of whether there is libel or not is a question of fact, which means it is for the jury, and not for the judge, to decide. Of course, if there is no jury then the judge has to put himself in a position of saying: "I am not judging this from a purely legal point of view. It is my own common sense that tells me what this thing is."

If you look at some of the documents that are reproduced in the Cohen Report I think it is obvious that any reasonable person, reading those documents, would come to no other conclusion but that they did, in fact, hold the groups referred to in them up to hatred and contempt, and that they were intended to do that. Once you get to that point, there is no trouble.

The same difficulty was experienced with respect to obscenity and crime comics. We reached a point in the law where finally we could not define these things with complete preciseness. When that happens the courts then apply, or they ask juries to apply, the test of what the reasonable man would think. The question is: Would a reasonable man, reading this document, looking at this sign, or hearing this broadcast or whatever it was, feel that the intention and the effect of it was to hold this identifiable group up to hatred or contempt? This would be the same as the test that would be applied in the case of an individual.

One of the things that runs through much of this hate literature is: The Negro is inferi-