

## The Trial of *Lady Chatterley's Lover*

Moira Robinson

There has been brought to our notice within the last few weeks a book which we have no hesitation in describing as the most evil outpouring that has ever besmirched the literature of our country. The sewers of French pornography would be dragged in vain to find a parallel in beastliness. The creations of muddy-minded perverts, peddled in the back-street bookstalls of Paris are prudish by comparison. The book is by one of the best known of modern English novelists, Mr DH Lawrence. It is entitled *Lady Chatterley's Lover*.<sup>45</sup>

On 10 November 1960 the first complete, unexpurgated edition of DH Lawrence's *Lady Chatterley's Lover* went on sale to the general public in Great Britain after it was officially published by Penguin Books Ltd following obscenity trials in the USA and England. On 11 November *The Times* reported the phenomenal first day's sales figures and commented that experienced booksellers "had never known anything like this demand before". Two million copies were sold in the six weeks up to Christmas 1960 and a further 1.3 million copies during 1961 making *Lady Chatterley's Lover* the best seller in Penguin's Classics series, thus outselling the previous favourite, EV. Rieu's translation of Homer's *Odyssey*, published in 1946.<sup>46</sup> Twenty years later John Sutherland referred to *Lady Chatterley's Lover* as "the best selling novel ever in the UK" in

<sup>45</sup> John Bull, 28 October 1928, quoted in Steve Hare, ed., *Penguin Portrait: Allen Lane and the Penguin Editors 1935-1970*, London: Penguin Books, 1995, p. 236

his book *Best Sellers: Popular fiction of the 1970s*<sup>47</sup>, and Jay A Gertzman suggests that one of the novel's claims to fame is: "that *Lady Chatterley* may be the most pirated 20th-century novel in English"<sup>48</sup>.

Almost forty years later no one would be surprised by those sales figures - notoriety and hype are now familiar tools of the publishing trade, but in 1928 when Lawrence struggled to get the first edition of his novel published social mores were not what they are today.

DH Lawrence was a prolific writer but *Lady Chatterley's Lover* remains his most well-known book due, in part, to the reason Lawrence gave for writing it: "I want men and women to be able to think sex, fully, completely, honestly, and cleanly."<sup>49</sup> But the entry under the novel's title in the Margaret Drabble edited version of *The Oxford Companion to English Literature* gives little indication of Lawrence's aims:

Constance Chatterley is married to Sir Clifford, a writer, intellectual, and landowner, of Wragby Hall in the Midlands. He is confined to a wheelchair through injuries from the First World War. She has an unsatisfying affair with a successful playwright, Michaelis, followed by a passionate love relationship

<sup>46</sup> www.penguin.co.uk

<sup>47</sup> John Sutherland, *Best Sellers: Popular Fiction of the 1970s*, London: Routledge & Kegan Paul Ltd, 1981, p. 35

<sup>48</sup> Jay A Gertzman, 'The Piracies of *Lady Chatterley's Lover*: 1928-1950', *The DH Lawrence Review*, Fall 1987, Vol. 19 (3), p. 268

<sup>49</sup> DH Lawrence, *A Propos of Lady Chatterley's Lover*, (published with *Lady Chatterley's Lover*), London: Penguin Books, 1994, p.308. Cambridge University Press edition, first published 1993. Originally published 1928

with gamekeeper Oliver Mellors, son of a miner and ex-officer from the Indian army. She becomes pregnant by him, goes to Venice with her sister Hilda partly to obscure the baby's parentage, but returns and tells her husband the truth, spurred on by the knowledge that Mellor's estranged wife Bertha has been stirring scandal in an effort to reclaim him. The novel ends with the temporary separation of the lovers, as they hopefully await divorce and a new life together.<sup>50</sup>

Lawrence's desire to write openly and honestly about sexual relations was to be only part of a novel in which he was to attack the desecration of the countryside, the class system and the cynicism of the business world, but the mere thirty pages out of three hundred devoted to the affair between Mellors and Connie and his use of four-letter words have almost eclipsed any other consideration of the novel. His advocacy of the freedom for women is evident from very early on and he had interesting ideas about the future "when babies would be bred in bottles and women would be "immunised""<sup>51</sup>(74). He was concerned about the poor quality of the air around the coal mining districts where even "the sheep coughed"(41) and the picture he painted of the coalminers "trailing from the pits, grey-black, distorted, one shoulder higher than the other, slurring their heavy ironshod boots"(159) is in sharp contrast to that of "the Lido with its acres of sun-pinked or pyjamaed bodies, was like a strand with an endless heap of seals coming up for mating (258). His vivid descriptions of colours

associated with Venetian sunshine and good living are rarely applied to any part of the Midlands, but he occasionally surprises the reader with "the yellow glitter" of the crowded celandines, the "lace work of half-open leaves" of the hazel-thicket, "the lush dark green of hyacinths", the "ink-purple ruches" of the columbines and the fluffed up forget-me-nots (165), in the woods near Mellor's hut.

"I hate the impudence of money and I hate the impudence of class" (276) says Mellors in Lawrence's voice and he shows his concern for the future of mankind after a speech about the futility of war when he has Mellors say: "I tell you, every generation breeds a more rabby generation, with indiarubber tubing for guts and tin legs and tin faces" (217), with their worship of money and the "bitch goddess" success (62). But he is perhaps foreseeing the furore over the content of the book when he says:

It's the one thing they won't let you be, straight and open in your sex. You can be as dirty as you like. In fact the more dirt you do on sex, the better they like it. But if you believe in your own sex, and won't have it done dirt to: they'll down you. It's the one insane taboo left: sex as a natural and vital thing.(264)

Many scholars have written about DH Lawrence and about *Lady Chatterley's Lover* in particular, and if one wants to study it in any detail, especially with reference to the passages that offended certain sections of society, then reading the trial transcript will inform the reader on all aspects of that novel as

<sup>50</sup> Margaret Drabble, ed., *The Oxford Companion to English Literature*, Oxford: Oxford University Press, 1990

<sup>51</sup> DH Lawrence, *Lady Chatterley's Lover*, London: Penguin Books, 1994. Cambridge University Press edition, first published 1993. Originally published 1928



well as give an overall idea of Lawrence's thoughts and intentions as he was writing it, since many of the so-called Lawrence experts pre-1960 were invited to give their opinions at the obscenity trial that followed Penguin Books announcement that they were going to publish the unexpurgated edition.

DH Lawrence began drafting *Lady Chatterley's Lover* in Italy in October 1926 but was dissatisfied with the first draft and began a second version in December of that year. Despite increasing illness he started the third and final version in November 1927 and from his essays it is presumed that he finished it on 8 January 1928<sup>52</sup>. His regular publishers, Martin Secker in England and Alfred A Knopf in America, were not prepared to publish the book unless it was expurgated. Lawrence would not accept their conditions and did his own copy-editing, designing, and proof-reading, and, with the help of his friend "Pino" Orioli, a Florentine bookseller, he published the book privately in the summer of 1928, and together they distributed hundreds of copies by mail although many of them were confiscated by the custom authorities. Because he did not have copyright, (a writer could not establish copyright if the work was considered indecent), many pirated editions of his book were printed thus depriving him of any profits, but he eventually countered this piracy by publishing an inexpensive edition in Paris in May 1929. In 1932 Secker and Knopf

<sup>52</sup> Michael Squires and Dennis Jackson, eds., *DH Lawrence's "Lady"*, Georgia: University of Georgia, Athens, 1985, p. X

published expurgated editions which ensured copyright and profits for Lawrence's heirs.

There appears to be some misunderstanding about the laws of copyright and how they applied to this particular novel. Gerald Pollinger, the Literary Executor for the estate of Frieda Lawrence Ravagli, says of *Lady Chatterley's Lover* that: "When the book, any book, was published in those days, there was no copyright law, Bern, Geneva, or Universal, to acknowledge. So publishers of a book, any book, just put something like "First published", and the date, if they put anything at all."<sup>53</sup> He also says that the reason why the novel was not copyrighted in Britain is because the unexpurgated edition was not published until 10 November 1960. However, The Copyright Licensing Agency Ltd when asked for clarification with particular reference to *Lady Chatterley's Lover* said:

There was a Copyright Act in 1911, therefore books did have copyright in 1928. The common law does admit a defence of "Unfair Dealing", which is not mentioned in the Act. "When a work is made which is a copy of another which is itself obscene, immoral, blasphemous or (probably) defamatory, then the owner of the copyright in the original work is powerless to prevent such infringement by copyright law. This is because the courts refuse to do anything which is tantamount to acknowledging the plaintiff's right to control the possession or distribution of any work which is of such an undesirable nature as to be

<sup>53</sup> Gerald Pollinger, letter, 22 January 1999

undeserving of the law's protection." (Whale on Copyright: 4th Ed: Phillips, Durie and Karet.)<sup>54</sup>

David Saunders, in his book *Authorship and Copyright*<sup>55</sup>, goes into more detail about cases "rare but historically real ... where copyright protection is withheld from works deemed obscene or immoral, even though this obscenity or immorality is not proven in a criminal sense" and he quotes various court proceedings where this has happened. Thus Lawrence must have known that he would not get copyright for his unexpurgated edition of *Lady Chatterley's Lover* through the experiences he had had with some of his previous works, for example *The Rainbow*, and, therefore, any complaints of piracy were less than honest.

The need to make money appears, from his letters to his friends, to have been the prime consideration when deciding on the publishing tactics in relation to his novel *Lady Chatterley's Lover*. Prior to 1928 Lawrence had periods of relative financial success as a writer writing poems, travel essays and short stories to supplement his income from his novels. In 1914 his then literary agent, JB Pinker, had arranged a three-novel contract with the publisher Methuen which entitled him to £300 in advance royalties for each book, following the success of *Sons and Lovers* in 1913. However, the first world war years were difficult ones for the book trade and especially so for Lawrence. The publication of his novel *The Rainbow* was postponed but after being published by Methuen in September

<sup>54</sup> Letter from The Copyright Licensing Agency Ltd, 4 February 1999

1915, it was suppressed at the end of October, and prosecuted and banned in November. In 1917 his novel *Women in Love* was rejected by publishers and for the rest of the war period his letters make many references to his poverty and the appeals he had to make to friends and charities for financial assistance.

His move to America in 1922 re-established his reputation as a professional writer and the American publisher Thomas Seltzer published *Women in Love*, which helped provide Lawrence with a larger regular income than he had previously enjoyed. Seltzer continued to publish all of Lawrence's books and by 1923 Lawrence had no pressing financial worries and was able to travel and live as he liked, as well as being able to send money back to his family in England. However, in 1925, following Lawrence's return to England, Seltzer's publishing firm collapsed and Lawrence's income from royalties gradually dwindled to nothing, thereby forcing him to ask his new American publisher, Knopf, for an advance on his latest novel *St Mawr*. Thus, by 1928, when Lawrence had completed the third and final version of *Lady Chatterley's Lover* the need to make money was paramount. He had discussed the idea of privately publishing the novel in Italy with his friend SS Koteliansky in a letter dated 22 November 1927<sup>56</sup>, but it is in his early 1928 letters that more explicit details on costs and hopes for profits are discussed, and the suggestion that the novel be re-christened *Tenderness*. In February 1928 however

<sup>55</sup> David Saunders, *Authorship and Copyright*, London: Routledge, 1992, p. 215



he is referring to the novel as *Lady Chatterley's Lover* again in a letter to the Honourable Dorothy Brett (12 February), which becomes the final title - although in his letters to Martin Secker, his English publisher (5 March), ED McDonald (9 March), and Witter Bynner (13 March) he refers to the novel as *John Thomas and Lady Jane*. Subsequently there were three different versions of the novel in print: *The First Lady Chatterley*, *John Thomas and Lady Jane*, and *Lady Chatterley's Lover*.

Although Lawrence's pronounced aim was to make money from *Lady Chatterley's Lover* he was very wary of adverse publicity and wrote to Kotliansky in November 1927: "don't mention it, will you, among people" (22 November), and to Catherine Carswell in January 1928 he wrote: "Please don't talk about it to anybody - I don't want a scandal advertisement" (10 January). But he appeared to be aware that that would happen because he referred to the novel in letters as "very shocking" (12 December 1927) and "it's the most improper novel ever written" (23 December 1927). However, he did make money with the novel and six months before he died in 1930 he wrote to a friend and said: "I am not short of money, *Lady C.* made me over £1000 last year" (9 September 1929), but as he died intestate, it was his wife,

<sup>56</sup> Harry T Moore, ed., *The Collected Letters of DH Lawrence*, Vol. 2, London: William Heinemann Ltd, 1970

Frieda, who later became Frieda Ravagli, and her new family who really gained financially from *Lady C.*<sup>57</sup>

"Reading *Lady Chatterley's Lover* seems to have been a pre-1960 rite of passage for anyone professing literary sophistication" says John Sutherland, in his book *Offensive Literature: Decensorship in Britain, 1960-1982*<sup>58</sup>, but the unexpurgated edition of *Lady Chatterley's Lover* was not legally available in Britain or America until 1960, following obscenity trials in both countries. In America, Barney Rosset, proprietor of Grove Press, decided to publish the novel following the Roth case in 1957, which had established that literary material which was prima facie obscene might be published if it could be argued that it was of "redeeming social importance"<sup>59</sup>. Grove Press had secured a large book-club deal for the novel which meant that copies would be sent to customers by mail. But soon after publication the American Post Office seized four cartons of the books and prosecuted Grove Press for sending obscene material through the mail. Grove Press was found guilty but appealed against the decision and brought a suit against the Postmaster to prevent him banning the use of the mail service. On 21 July 1959 Judge Bryan decided that *Lady Chatterley's Lover* was not obscene but the Government similarly appealed against that decision. However, on 26 March 1960 the Court of Appeals upheld Bryan with the verdict

<sup>57</sup> Peter Preston, Associate Director, DH Lawrence Centre, University of Nottingham, e-mail correspondence

<sup>58</sup> John Sutherland, *Offensive Literature: Decensorship in Britain, 1960-1982*, London: Junction Books, 1982, p. 11

"this is a major and distinguished novel, and Lawrence one of the great writers of the age".<sup>60</sup>

The prosecution in Britain of Penguin Books for the publication of *Lady Chatterley's Lover* in 1960 was the second case to be brought before the courts under the Obscene Publications Act of 1959. (The first case concerned a work called *The Ladies Directory*.) H Montgomery Hyde, in his 1989 introduction to the trial<sup>61</sup>, states: "(The trial)...remains the most sensational of its kind since the Act reached the statute book over thirty years ago." (1) However, for Sir Allen Lane, the founder of Penguin Books, the idea of book publishing causing sensations was not new; he had started his career in publishing with a distant cousin who had been jointly responsible for publishing *The Yellow Book* at the end of the previous century, and it was Lane, under the imprint of The Bodley Head, who had risked prosecution by publishing James Joyce's *Ulysses* in Britain in 1936.<sup>62</sup>

There had been several prosecutions for obscenity after the Second World War and following five such prosecutions in 1954 the Society of Authors took the lead in calling for a reform of the law. It set up a committee under the chairmanship of its President, AP Herbert, with members consisting of authors, critics, journalists, publishers and

<sup>59</sup> Sutherland, p. 13

<sup>60</sup> Ibid

<sup>61</sup> H. Montgomery Hyde, ed., *The Trial of Lady Chatterley: Regina v. Penguin Books Limited*, London: Bodley Head, 1990

printers. Norman St. John-Stevas, the future Conservative Minister, was given the task of drafting a reform bill and Private Members Bills based on his draft were introduced in the Commons by Roy Jenkins and Lord Lambton, but very little progress was made. However, when AP Herbert threatened to seek re-election to Parliament as an Independent on an Obscene Publications Bill ticket the Government found time for the Bill, and after many delays and bargaining over the amendments the Obscene Publications Act 1959 was passed in August of that year.<sup>63</sup>

The 1959 Act repealed the 1857 Act and the new test for obscenity was defined as:

For the purposes of this Act an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.<sup>64</sup>

Under this new Act expert witnesses can be called to justify the publication, even if it is *prima facie* obscene, by giving evidence as to its literary, artistic, scientific or other merits, and this is what Gerald Gardiner QC, did when he led the defence team during the trial of Penguin Books Ltd in 1960. But one

<sup>62</sup> JE Morpurgo, *Allen Lane: King Penguin*, London: Hutchinson, 1979, p. 75

<sup>63</sup> Montgomery Hyde, p. 10

<sup>64</sup> TR. Fitzwalter Butler and Marston Garsia, *Archbold Criminal Pleading, Evidence and Practice in Criminal Cases*, London: Sweet and Maxwell, 1962, p. 1484



valuable safeguard in the 1857 Act was not incorporated into the 1959 Act. Under the old Act, the police could only search premises if there was evidence of obscene articles being sold, but under the new Act, the *suspicion* of having obscene materials on the premises was sufficient reason for the police to take action; thus the police were now free to enter private or academic libraries which often contain books which would be considered obscene if publicly circulated.

At a Board meeting on 21 January 1960<sup>65</sup> the decision to publish an unexpurgated paper-back edition of *Lady Chatterley's Lover* was made because Lane said: "What we hoped to do this year was to round off the collection of DH Lawrence which we had started in 1950, and we felt *Lady Chatterley* was a book which it was essential should be included if we were in fact going to round off this group." Lane later explained why he felt the time was particularly opportune: "This year, the fact that the new Act was now on the Statute Book and that there had been a trial in America decided us this was a book we should now do"<sup>66</sup>, and it was a way of commemorating the twenty-fifth anniversary of the birth of Penguin Books, the 75th anniversary of Lawrence's birth and the 30th anniversary of his death. JE Morpurgo, in his book *Allen Lane: King Penguin*<sup>67</sup>, says that Lane considered that a prosecution was "unthinkable"

<sup>65</sup> Michael Rubinstein's papers, The Penguin Archive, Bristol University (DM 1819). Permission to look at these papers was given to me by Andrew Rosenheim, Managing Director, Penguin Press. Special thanks are due to Hannah Lowery, the Archivist at Bristol University Library, for her help.

<sup>66</sup> CH Rolph, Ed., *The Trial of Lady Chatterley: Regina v. Penguin Books Limited*, Harmondsworth: Penguin Books Ltd, 1961, p. 142

because he believed that public opinion since the war had become more liberal, and the fact that Mr Justice Stable had allowed the publication of Stanley Kauffmann's *The Philanderer* in 1954 had added to this opinion. When Penguin published the first paperback edition of *The Philanderer* they added Mr Justice Stable's summing up in the 1954 trial at the end of the text:

I do not suppose there is a decent man or woman in this court who does not wholeheartedly believe that pornography, filthy books, ought to be stamped out and suppressed. They are not literature ... But in our desire for a healthy society, if we drive the criminal law too far, further than it ought to go, is there not a risk that there will be a revolt, a demand for a change in the law, so that the pendulum will swing too far the other way and allow to creep in things that under the law as it exists today we can exclude and keep out? Members of the jury, that is all I have to say to you. Remember what I said when I began. You are dealing with a criminal charge. This is not a question of what you think is a desirable book to read. It is a criminal charge of publishing a work with a tendency to corrupt and deprave those into whose hands it may fall. Before you return a verdict of 'Guilty' on that charge you have to be satisfied, and each one of you has to be satisfied, that that charge has been proved. If it is anything short of that, the accused companies and individual are entitled to a verdict at your hands of 'Not Guilty'. Members of the jury, will you consider your verdict?<sup>68</sup>

<sup>67</sup> Morpurgo, p. 315

<sup>68</sup> Steve Hare, Ed, *Penguin Portrait: Allen Lane and the Penguin Editors 1935-1970*, London: Penguin Books, 1995, p. 234-5

Another point about the 1959 Obscene Publications Act was that it stated that a book had to be "taken as a whole" and not in isolated passages before it could be condemned, and a book could not be convicted if it were proved that publication "is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern" (Section 4:1)<sup>69</sup>. Thus, with DH Lawrence texts then on many school examination syllabuses, and four-letter words being printed by reputable publishers in acceptable texts, Penguin Books' legal advisers, Rubinstein, Nash and Co., agreed that the new Act would protect them effectively. However, in a letter to ASB Glover of Penguin Books on 10 March 1960, Rubinstein wrote:

If ... a jury were to find the publishers guilty at a trial ... I cannot believe that the Court would do more than impose a nominal fine (although the costs of defending the proceedings and especially of defending them unsuccessfully, would certainly be very substantial). There could be, I think, no question of prison sentences for the Directors of your Company or anyone else concerned with the publication.<sup>70</sup>

The usual procedure in a case involving obscene publications is for the Director of Public Prosecutions to instruct the police to buy a copy of the suspect book from a bookshop which therefore means that the bookseller can become the defendant. Since the bookseller is unlikely to be able to afford the costs involved with litigation he/she prefers to plead guilty with the

<sup>69</sup> Fitzwalter Butler and Garsia

result that the offending book is withdrawn everywhere. Penguin, however, decided to avoid this sequence of events and kept all their copies of *Lady Chatterley's Lover* in their warehouses while waiting for the Attorney General, Sir Reginald Manningham-Buller, to decide whether or not to prosecute, and when the decision to prosecute was made, Penguin invited the police to collect twelve copies of the novel from their offices in Holborn, thus avoiding the prosecution of a particular bookseller.

Roger Hutchinson, in his book *High Sixties: The Summers of Riot and Love*, suggests that the reason why Penguin Books was prosecuted was because no bribe was paid to the police. This practice of paying graft, in relation to pornographic material, Hutchinson says, "was apparent to most radical or even liberal publishers, to many journalists, and to anybody with a sceptical eye on the times". But this did not become common knowledge until 1977 "when 12 of Soho's finest policemen were jailed for a total of 84 years for, according to the judge, "an evil conspiracy which had turned the Obscene Publications Squad into a vast protection racket."<sup>71</sup>

However, Morpurgo, when he was writing his book, believed that the reason why the publication of *Lady Chatterley's Lover* was brought to the attention of the police and the Director of Public Prosecutions initially was because the

<sup>70</sup> Rubinstein files



printing firm contracted to manufacture the book, Hazell, Watson & Viney, refused to go ahead with the work because of shopfloor protests, and by the time another printing company, Western Printing Services Ltd of Bristol, was found, it was too late to meet the publishing date previously announced, therefore Penguin was forced to advertise the postponement in the trade press.<sup>72</sup> Lane was aware that *Lady Chatterley's Lover* printed in a cheap edition would cause a stir, although he had not expected it from the printers, and had ordered the initial print run to be doubled to two hundred thousand copies and these were all awaiting distribution following what was expected to be an unsuccessful prosecution of Penguin Books. Among all the questions that Rubinstein was prepared to be asked about the book there was one about the size of the print run and his planned reply was: "Its size was determined by the size of such orders and not by virtue of any supposed "sensational" quality of *Lady Chatterley's Lover*." And then there was a note added in brackets: ("Although large it is less than aggregate printings for some of the other novels and first printings of other novels where large pre-publication orders have been received.")<sup>73</sup>

Two days after the summons had been served on Penguin Books, on 21 August 1960, *The Sunday Times* had considered

<sup>71</sup> Roger Hutchinson, *High Sixties: The Summers of Riot and Love*, Edinburgh: Mainstream Publishing Company, 1992, p. 22

<sup>72</sup> Morpurgo, p. 316

<sup>73</sup> Rubinstein files

publishing 'A *Propos of Lady Chatterley's Lover*, an essay by DH Lawrence', but on the advice of Mr Helenus Milmo they had not published it "because of the danger that its publication after the issue of the said summons would constitute contempt of Court".<sup>74</sup>

One of several anomalies associated with the trial was that there was no "prisoner at the Bar". Mr Hans Schmoller, the most junior director of Penguin Books Ltd, who had been delegated to hand the twelve copies of the novel to the police thus tacitly accepting the responsibility for publishing the book, and Sir Allen Lane sat in the well of the court with their solicitors. According to Morpurgo, Lane "was conveniently absent in Spain" when the police called at their offices hence Schmoller's role <sup>75</sup>, but Steve Hare, who edited the book *Penguin Portrait: Allen Lane and the Penguin Editors 1935-1970*, tells a different story. He says that it was Sir William Emrys Williams, of Penguin Books, who handed the books to Police Inspector Monahan, but, as Schmoller recorded in his deposition:

... Shortly after the departure of the two Scotland Yard officers Sir William began to have misgivings about his having been the person who was recorded to have handed the book to Inspector Monahan. He said this might cause trouble at the Arts Council, whose

<sup>74</sup> Rubinstein files

<sup>75</sup> Morpurgo, p. 317

Secretary General he was. He telephoned Inspector Monahan in my [Schmoller's] presence and asked him to substitute my name for his (Sir William's) in the official record. Inspector Monahan accepted his request.<sup>76</sup>

It is difficult to believe that the trial was anything other than a formality, albeit a very expensive one, when the transcript of the trial is studied in the 1990s. In Montgomery-Hyde's introduction to the trial transcript he says that five members of the jury "read the oath with some hesitancy at having to read aloud, but the remaining seven appeared fluent readers", which appears to cast aspersions on some members of the jury's ability to read and comprehend the text being tried. The twelve members of the jury came from a list of twenty-six names along with their occupations; of the three female jurors two had no occupation listed and the third was a teacher; and of the nine male jurors two had no occupation listed and the other seven were a radio dealer, instrument maker, cabinet maker, works manager, designer, timber salesman, and valuation surveyor<sup>77</sup>. Montgomery-Hyde goes on to say: "it is known that from the beginning and throughout the trial until the last day, the jury in this case were nine to three in favour of an acquittal, which meant that the majority thought that the prosecution should not have been brought"<sup>78</sup>. Montgomery-Hyde reinforces my point by quoting part of the prosecuting Counsel, Mervyn Griffith-Jones', ill-conceived, and now well-

<sup>76</sup> Harc, p.241

<sup>77</sup> Rubinstein files

<sup>78</sup> Montgomery Hyde, p. 15

known, opening statement to the jury of ordinary men and women:

You may think that one of the ways in which you can test this book, and test it from the most liberal outlook, is to ask yourselves the question, when you have read it through, would you approve of your young sons, young daughters - because girls can read as well as boys - reading this book? Is it a book you would have lying around in your own house? Is it a book you would even wish your wife or your servants to read? <sup>79</sup>

This statement has clear class conscious undertones which Gerald Gardiner QC, for the defence, picked up on when he made reference to Griffith-Jones' rather long-winded efforts to define the precise meaning of tendency, as in the "tendency to deprave and corrupt" phrase in the 1959 Act, during his opening statement. Gardiner said:

In a case like this one [it] is perhaps permitted to reflect that nobody suggests that the Director of Public Prosecutions becomes depraved or corrupted. Counsel read the book; they do not become depraved or corrupted. Witnesses read the book; they do not become depraved or corrupted. Nobody suggests the Judge or the Jury become corrupted. It is always somebody else; it is never ourselves. <sup>80</sup>

Thus it appears that depravity and corruption are more likely to occur among the lower classes which view Griffith-Jones emphasised when he asked the jury: "Is it a book you would

<sup>79</sup> Ibid, p. 17

<sup>80</sup> Rolph, p. 37



even wish your wife or your servants to read?" However, that statement, along with the one "girls can read as well as boys", was perhaps more offensive to the nascent feminist brigade than to the so-called "lower classes". But it would be a brave witness who would be prepared to stand up in court and admit to being depraved or corrupted by something they had read.

Griffith-Jones' opening statement goes on to briefly outline the book. He describes Lady Chatterley as a sex-starved girl; he lists the episodes of sexual intercourse and infers that the rest of the book is padding; he refers to the bawdy conversation and lists all the four-letter words and the number of times they are used; and after reading from the inside cover of the book where the story of the love between a gamekeeper and the wife of a crippled intellectual is described as one of "phallic tenderness" he explained to the jury what "phallus" meant "for those who have forgotten their Greek"<sup>81</sup> (a remark that might have antagonised some jury members.) However, Griffith-Jones was supposedly trying to secure a ban on the novel so his interpretation was valid, although he made no reference at that time to the one episode that would have secured a conviction.

Another anomaly of this case was that only one witness for the prosecution was called and that was Detective Inspector Charles Monahan, the policeman who had gone to Penguin's offices to collect the twelve copies of the novel, and after the

opening speeches of the prosecution and that of the defence, who claimed that there was no case to answer, the trial was adjourned to give the jury time to read the novel. There must have been illustrious literary figures with adverse opinions on *Lady Chatterley's Lover* but none were called. FR Leavis had refused to appear as a witness in support and Morpurgo reports that the reason that he gave to Rubinstein was: "I can see no reason for Sir Allen's knight errantry, unless he has a Golden Fleece in view."<sup>82</sup> But with thirty-five witnesses called by the defence, many of them well-known names to the general public, all claiming that *Lady Chatterley's Lover* was of literary merit and not likely to "deprave or corrupt", there was little chance that the jury would disagree.

All the papers relating to the defence of *Lady Chatterley's Lover* have been given to the University of Bristol by Michael Rubinstein and there are many files relating to witnesses, possible witnesses, and potential witnesses for the prosecution. According to Steve Hare<sup>83</sup>, Bill (Sir William Emrys) Williams of Penguin Books started the letter writing campaign to find these witnesses before Rubinstein took it over. A very wide and varied field was trawled for these possible defence witnesses and there is no evidence of Rubinstein being advised about who to approach, and of those he did many refused because they did not believe that they were competent enough to support the case. As examples of the variety of those approached and who

<sup>81</sup> Montgomery Hyde, p.18

<sup>82</sup> Morpurgo, p.324

refused there was the classical scholar Maurice Bowra, Warden of Wadham College, Oxford; Lord Birkett, who disqualified himself saying that he was not an expert and that he was sitting in the Appellate Committee of the House of Lords next term as a judge therefore he could not give advice or be a witness; Rev. DS Bailey of the Church of England Moral Welfare Council; Lord Boothby, who would not give evidence "because I think it is one of DH Lawrence's least good works"; Vera Brittain - a written reply to the request is not among the letters but it would appear she objected on the grounds of Lawrence's treatment of women; Enid Blyton, whose husband said she could not give evidence, said in her reply:

I cannot IMAGINE why Penguin Books Ltd have put my name on their *Lady Chatterley's Lover* list. (Can you? After all, I'm only a children's writer - whose opinions surely would not weigh with the adult public! Don't you think there is something slightly comic about EB solemnly declaring that *L.C. Lover* is a fit and proper book for everyone's reading?)

I'd love to help Penguins Ltd - they are doing a fine job with their publications - but I don't see how I can. For one thing I haven't read the book - and for another thing my husband said NO at once. The thought of me standing up in Court solemnly advocating a book "like that" (his words, not mine - I feel he must have read the book!) made his hair stand on end. I'm awfully sorry - but I don't see that I can go against him. I feel impelled to read the book now of course (what MARVELLOUS publicity it is having and how pleased Penguins must be!) though a woman author (for adults) once told me that it was dull and badly written.

Can you convey my apologies to Penguins, and let them know that while I am against too much

<sup>83</sup> Hare, p. 242

censorship of books, I really cannot go against my husband's most definite wishes in this. ("To think of my wife standing up and advocating the reading of pornographic books - a well-loved author for children - you'd be condemned by every parent!") I think possibly it would be stupid for a children's author to join in, and I have a feeling that you would probably agree with me in that? I still feel most astonished that anyone should have thought my opinions would carry any weight with the novel-reading public.

Do your best for me, won't you - and don't let Penguins think I'm too uncooperative for words, anyway, they'll have a long string of scintillating names of critics and writers - and don't really need such small fry as children's writers at all!

Another interesting reply came from EJ Dingwall of the Department of Printed Books, the British Museum, who wrote:

It is the policy of the Museum, as confirmed to me by the Principal Keeper, to recommend that members of the staff should give evidence in cases of this kind only in matters of fact. What you are suggesting is that I give an opinion on the very vague question as to whether I consider the publication of *Lady Chatterley's Lover* is "for the public good". I regret that in the circumstances I am not able to help you in this matter.

And finally Dame Edith Evans, who replied:

As I have not yet read the book, I cannot give you an opinion, and I am very much averse to any form of publicity which is not directly connected with my own profession. But if I cannot buy the book, how am I to read it.

I would be more willing, after reading it, to give you my opinion in writing, and if that is any value, I will do so.



In his reply to her Rubinstein said that she would have to give evidence in Court and "it is clear from your letter that you would not want to do this. ...In the circumstances I cannot, of course, arrange for you to be sent a copy of the book, but I very much hope that you will be able to read one, obtained publicly, in a few months' time." From the files it would appear that Dame Edith was the only prospective defence witness who had made comments about not having read the novel who was refused a free copy. Of the three hundred proof copies supplied to Rubinstein fifty-eight remained unaccounted for by 26 August 1960.

Despite any rivalry that there might have been between publishing houses at the time of the trial it must have been heartening for Penguin when they got support from their fellow publishers. Ruth Dudley Edwards, in her 1987 biography of Victor Gollancz, prints most of the letter he sent to Rubinstein on 22 August 1960, and it appears to sum up the feelings of many of the interested parties at that time:

I read "L.C." over the weekend, with, for the most part, unutterable boredom. Subject to what I am going to say in the next paragraph, it is a pretty bad novel, and a pretty badly written one too, full of Lawrence's abominable trick of repeating words and phrases for emphasis.

But there is an exception to all this: all the love scenes - all the parts, that is to say, for which the book is being persecuted - are superb, and, in the main, superbly written. To call them either pornographic or obscene would be fantastic. In their modern terms,

they don't fall very far short of the Song of Songs: I would go as far as to say that they glorify the creator of human bodies...

I could not imagine a more deplorable piece of topsyturvydom than that "Lady Chatterley" should be condemned, and the really vile "Lolita" get through. Such a contrast must stink in the nostrils of honest people who have any taste whatever.<sup>84</sup>

Rubinstein's files contain many lists of potential witnesses with lots of crossings out and scribbled notes on them; No.1 lists, and No.2 lists headed "doubtful", and the Bristol University archivist has put together another file labelled: "Potential witnesses who were asked to give evidence, but no final answer whether they are willing to give evidence or not is in the file"; AJ Ayer and John Betjeman were just two of the names noted. All the potential witnesses made statements about their willingness to appear for the defence and why, and as well as all those that did appear, and those held in reserve, there were thirty-six more if the defence needed them, and of the thirty-nine who were scheduled to appear in Court, sixteen of them elected to receive no expenses.

Even though the *Lady Chatterley* case was considered to be a test case for the new 1959 Obscene Publications Act the huge array of potential defence witnesses seems to be excessive and unnecessary in comparison to the likelihood of there being any prosecution witnesses. Although Griffith-Jones did not call any witnesses, apart from the policeman,

<sup>84</sup> Ruth Dudley Edwards, *Victor Gollancz: A biography*, London: Victor Gollancz, 1987, p. 677

Rubinstein's office had made pertinent notes about five possible ones. After summarising the many academic achievements and still more publications of Dr Carlos Paton Blacker someone has written: "A practising psychologist ... is still regarded as completely mis-placed in Psychology - "no good at it". He might be asked in cross examination about the effect of the sterilisation he recommends\* upon the unfortunate wife of anyone sterilised, a situation which might correspond with that of Sir Clifford and L.C. in the book." (\*Apparently this potential witness was a believer in eugenics, i.e. no mating of criminals or undesirables, the helpful notes had added.) In the case of another academic, John Sparrow, Warden of All Souls, Oxford, the notes appear to have been compiled by JIM Stewart of Christ Church, Oxford, because someone has added: "off the record, Mr Stewart, thinks that dominantly there is a dash of Sir Clifford Chatterley in Mr Sparrow who, he is sure, sympathises with Sir Clifford and "hates our Connie"!"; but the rest of the barbed notes say of Sparrow:

He is expert on poetry and Latin verse, and translations from the Latin. Not known to be an expert on DH Lawrence and as All Souls is not an undergraduate college it is not believed that his contact with undergraduates and other people is in any sense, properly described as educational, or concerning, or considering, or solving the problems natural to them.

The other three listed potential prosecution witnesses were Esther Forbes, Richard Church and Sir Basil Blackwell. Of the American Esther Forbes it is noted that she is the author of a

very badly written report published in an edition of *The First Lady Chatterley*, and extremely critical of *Lady Chatterley's Lover*, and "... it would be apparent that she is capable of writing very bad English herself and cannot be taken seriously as a judge of Lawrence as a writer of English". The note compiler says of Richard Church that he has been through an unhappy period having left his first wife and children, but is now "... writing a book on Shelley which seems to have influenced his mind though he is probably fundamentally a puritan. Is very much dominated by his present wife - a good chap but rather woolly-minded." And, finally, it is said of Sir Basil Blackwell:

Is believed to have directed his bookshops not to display *Lolita* and no doubt other books which he regarded as unsuitable for free purchase by the undergraduates and citizens of Oxford but to have permitted such books to be sold either from stock or on order. To this extent he may be presumed to regard it as one of a bookseller's duties to his public to act as unofficial censor.

A further note relating to Sir Basil says:

Nevertheless at Instructing Solicitor's instigation there were purchased from two of Sir Basil's bookshops in Oxford certain books containing words and passages no better than some words and passages in *Lady Chatterley's Lover* to which it may be presumed Sir Basil takes objection.



The books purchased, and the receipts carefully kept, were *Aphrodite* by Pierre Louys (hardback 15/- (75p) but available in paperback edition at 2/6 (12.5p)), *Scottsboro' Boy* by Haywood Patterson and Earl Conrad, 3/6 (17.5p), Ace book, and two Penguins: *The Woman of Rome* by Alberto Moravia and *By Love Possessed* by James Gould Cozzens. Being paperbacks and therefore cheap, like the contested edition of *Lady Chatterley's Lover*, was an important point to be pressed if necessary by the defence because one of the issues concerning the prosecution was that the novel would be available, like all the other Penguin publications, at 3/6 (17.5p). This was not, however, the only book shopping the defence was prepared to do. Rubinstein had asked for a list of paperbacks currently available on bookstalls with lurid covers and blurbs. Eighteen were found and would have been used by the defence, for example: Evan Hunter's *Strangers When We Meet*, ("A novel of adultery"), and Zola's *Nana* ("Never before has a woman's rise through the exploitation of her sex been so powerfully depicted"). However, the luridness of the covers was hardly appropriate in relation to the book on trial because in the 1960's Penguins had very sedate, uniform covers for their paperbacks.

Rubinstein was also very well prepared with a schedule of good and bad passages in the novel should any reference be needed in court. Under those listed as "Important and beautiful or powerful passages" he has:

p56/7 The end of the affair with Michaelis "... this speech was one of the critical blows of Connie's life";  
 p104 bottom paragraph to p105 top paragraph, Mrs Bolton, the novel, and gossip;  
 p178-185, 217-221 Two of the larger expurgated passages which extol the beauty and tenderness and mutual care of the man and woman for each other: compare p56/57 - the evening with Michaelis;  
 p277 Lines 2-7 "It's the one insane taboo left: sex as a natural thing" (sic);  
 p291/2 (bottom 7 lines and turnover to 1st 4 paragraphs) Concerning tenderness - the point of the book. (e.g. p292 "... the creative act that is far more than procreative").

And under those listed as "Weak or difficult passages" he has:

p211/2 (turnover paragraph to "seems to me they're nearly all Lesbian.");  
 p258 "It was a night of sensual passion ... the same on Greek vases everywhere."  
 p259 "And what a reckless devil ... and how he pressed in on her" etc.  
 p280 (2nd half of first full paragraph) "... in the Italian way" etc.  
 p296/7 The conversation between Mellors and L C's father. Mr JIM Stewart has commented to Instructing Solicitors on this passage, as follows:  
 "Fathers look to your daughters: It has struck me as perhaps just worth pointing out here (although you have probably considered it) that the place most likely to disconcert a witness (certainly it would be so with me) is not any of the passages between Mellors and Connie, but the passage (Chap. xviii p296/7) between Mellors and Connie's father. This is the nearest the book gets to being revolting, and the reason of course, is that the passage is false. There seems to be 2 reasons for this howler (which is what it is) and one of them is interesting from our point of view. The first of course is just obstinate residual social ignorance. But

we come to the other when DHL here speaks of "the old free-masonry of male sensuality between them". But all his life he was much too pure of (sic) hear (or puritanical) to listen in on it in pub or smoking-room for thirty seconds longer than he need. So when he takes a wild shot at it he gets it screamingly wrong."

(The page numbers used in the above quotes presumably come from the 1st published edition of the novel. However, the page numbers are the same as those in the 1961 2nd Penguin edition.)

Rubinstein also had prepared a list of books and articles containing hostile criticism of *Lady Chatterley's Lover*. These were Hugh Kingsmill's biography of DH Lawrence; William Tindall's *DH Lawrence and Susan His Cow*; Richard Aldington's *Portrait of a Genius - BUT...*; Eric Bentley's *Cult of the Superman*; and TS Eliot's *After Strange Gods*, and a review in the *Criterion*, July 1931, of Sir John Middleton Murry's *Son of Woman*. It is strange to see TS Eliot being listed alongside potentially damning criticism of Lawrence's novel because he was one of those who had supplied a statement to Rubinstein offering to be a possible defence witness. He was held in reserve outside the Court in case, as the thirty-sixth expert, he was needed "to recant in public his thirty-year-old denigration of Lawrence"<sup>85</sup>. Morpurgo suggests that perhaps the prosecution was not aware that Eliot had written about Lawrence in 1933, but if Eliot was called to give evidence he was going to repeat what he had said to Rubinstein: "I am not necessarily to be assumed to agree with all my earlier opinions,

<sup>85</sup> Morpurgo, p. 324

some of which I now regard as being immature, ill-considered and ... too violent."<sup>86</sup>

Ordinary members of the public were also keen for their opinions to be known before, during and after the trial and sent letters to Rubinstein's office offering advice and suggestions about examples he could use of books that they considered obscene and depraved. There were also those who wrote to Penguin's offices who were very opposed to *Lady Chatterley's Lover* and the profits that the company was making from the book; one enclosed a newspaper cutting reporting the huge profits made attached to another cutting which was an advertisement for what was then the Oxford Committee for Famine Relief with the suggestion that all the profits should go to that charity. One particularly incensed letter writer, who gave his name and address, as most of them did, referred to Allen Lane as a "stinker", and the expert evidence at the trial as "pure bullshit", but that particular letter did not have "don't reply" pencilled on it as did a typed diatribe signed Potocki of Montalk.<sup>87</sup>

Morpurgo says that the *Lady Chatterley* case merits a place in legal history for one particular reason because "it stands as a proud justification of the jury system"<sup>88</sup>. Contentious words. In this case the jury system was without a

<sup>86</sup> Ibid.

<sup>87</sup> Rubinstein files. In 1932 Count Potocki de Montalk had written some erotic poems which he wanted privately printed but the printer was so shocked by them that he handed them to the police. He subsequently served six months in jail for them. (Montgomery Hyde, p. 5)



doubt a great asset to the defence because it is inconceivable that any of the twelve ordinary citizens in the jury would dare dispute the evidence of such notable witnesses as Sir Stanley Unwin, for example, who was introduced as "a long-established member of the Executive of the British Council and of the Royal Institute of International Affairs, a Fellow of the Royal Society of Literature, the recipient of numerous honours, and a man with ten grandchildren", as well as being "managing director of Allen & Unwin, and a publisher for fifty-six years"<sup>89</sup>; or Mr Raymond Williams, "Staff Tutor in English at the Oxford University Extra-Mural delegation, W.E.A. lecturer, student of Lawrence, and author of a number of books on the moral attitudes of leading English writers"<sup>90</sup>. Even when the jury appeared to recognise a witness, after he was unfamiliarly introduced as Edward Morgan Forster, they were not likely to argue about his testimony after a long list of his honorary degrees and his books were read out<sup>91</sup>. The defence did, however, imply a connection with the jury when Mr Richard Hoggart was introduced to them "as a man who went from elementary school and grammar school to university and took an English degree"<sup>92</sup>, but then went on to point out his more well-known attributes which brought him to the defence of *Lady Chatterley*.

<sup>88</sup> Morpurgo, p. 318

<sup>89</sup> Rolph, p. 149

<sup>90</sup> Rolph, p. 133

<sup>91</sup> Ibid., p. 112

<sup>92</sup> Ibid., p. 91

However, several of the witnesses agreed that *Lady Chatterley* was not Lawrence's best work, for example: Graham Hough, Norman St John-Stevas, Noel Annan, and Dame Rebecca West who made her remarks more personal: "Lawrence was a man without background or formal education. He also had a great defect which impairs this book. He has absolutely no sense of humour, and a lot of sentences in this book are to my view ludicrous. All the same, it is a book of undoubted literary merit."<sup>93</sup> (Nottingham High School and Nottingham University College, and the children Lawrence subsequently taught, might have felt justifiably miffed at her first remark.)

WE Williams, in his book *Allen Lane: A Personal Portrait*, draws attention to the fact, as so many other commentators did, "(that) it seemed incredible that the Crown should be unable to rustle up a solitary witness to support its contention that *Lady Chatterley's Lover* was an obscene book. The only man to say so in this six-day trial was the Treasury Counsel, Griffith-Jones."<sup>94</sup> But in the first few lines of his closing speech for the prosecution Griffith-Jones appeared sensitive to the situation that he was in: "It is easy enough, particularly in a case of this kind, to poke fun at the Prosecution, to draw laughs as to the conduct and the observations which have passed"<sup>95</sup>, and then he goes on to say quite clearly why he did not produce witnesses:

<sup>93</sup> Ibid., p. 68

<sup>94</sup> WE Williams, *Allen Lane: A Personal Portrait*, London: The Bodley Head, 1973, p. 82-83

As to the merit of this book as literature ... I conceded this in practically the first words I uttered in this case - that Lawrence is a great writer. I never challenged his honesty of purpose. I never challenged that this book was a book of some merit; ... They were matters, therefore, upon which it would have been wholly irrelevant and redundant to call evidence for the Prosecution. ... Upon the question of whether this book is obscene, members of the jury, I am barred from calling any evidence because the Act restricts me to calling evidence only as to the literary and other merits of the book.<sup>96</sup>

Griffith-Jones followed this by telling the jury: "You are going to decide this case, are you not, on the document itself, in accordance with what my Lord will lay down to you as being the principles of law which you are to apply"<sup>97</sup>, and it was at that point he had, in essence, completed his case. However, he did go on for some time about the meanings of obscenity, depravity and corruption, whether the book was a supporter of marriage or whether it condemned promiscuity, and, at some length, about the relevance of some of the questions asked of the witnesses by the defence team, and about the defence witnesses themselves. But then he read a passage from the novel which, if he had elaborated on it to the jury, would have cancelled out all the evidence of the thirty-five witnesses for the defence. Instead he said to the jury: "Not very easy, sometimes, not very easy to know what he is driving at in that

<sup>95</sup> Rolph, p. 206

<sup>96</sup> Ibid., p. 207-208

<sup>97</sup> Rolph, p. 208

passage."<sup>98</sup> It is the passage in which Lawrence describes "the night of sensual passion":

It was a night of sensual passion, in which she was a little startled and almost unwilling: yet it pierced again with piercing thrills of sensuality, different, sharper, more terrible than the thrills of tenderness, but, at the moment, more desirable. Though a little frightened, she let him have his way, and the reckless, shameless sensuality shook her to her foundations, stripped her to the very last, and made a different woman of her. It was not really love. It was not voluptuousness. It was sensuality sharp and searing as fire, burning the soul to tinder.

Burning out the shames, the deepest, oldest shames, in the most secret places. It cost her an effort to let him have his way and his will of her.<sup>99</sup>

Since Griffith-Jones brought this particular passage to the attention of the jury he was being perhaps a trifle disingenuous by suggesting that he did not know what Lawrence was "driving at". But there is no explanation as to why he did not stress this passage to the jury during the course of the trial, why he did not bring it up with any of the witnesses, especially those from the Church, particularly since the defence counsel had stressed that there was no "perversion" in the book when there patently is, and if two people were caught committing such a "perversion" in those days it was a crime punishable by life imprisonment.

<sup>98</sup> Ibid., p. 221

<sup>99</sup> Lawrence, *Lady Chatterley's Lover*, p. 246-7



Rubinstein, however, was prepared for the fact that the prosecution might bring up the subject of buggery. In a draft brief <sup>100</sup> dated 7 October 1960, section 4 (b), there is noted:

... if any emphasis laid upon implication or indication of buggery in the book it should be pointed out that (i) this is certainly not a dominant impression left by the book "taken as a whole" (ii) that Cellini himself (p282 of the Pelican *The Autobiography of Benvenuto Cellini*) disputes the meaning attributed to him on p280 of the book of "the Italian way" if this is alleged to mean buggery and (iii) compare poem on p36 of Petronius *The Satyricon* (2/6 paperback on Foyles' outside stall!).

But that particular passage was ignored by both sides. Why Griffith-Jones did not use the one "weapon" he had, which would have won him the case, remains a mystery, but it might have saved him from the opprobrium that was heaped on him by the broadsheet columnists and others after the trial. Even the Judge, Mr Justice Byrne, appeared to collude with him in willing the prosecution to fail by what Rolph describes as a misdirection to the jury in his summing-up when he said: "... our criminal law in this country is based upon the view that a jury takes of the facts and not upon the view that experts may have." Rolph's reason for seeing this as misdirection is: "... if Parliament makes "scientific merits" relevant, and provides for the calling of scientific experts, can a Judge properly tell a jury to ignore such evidence and form their own scientific views? If not, are literary merits subject to a different test?" <sup>101</sup> But that

<sup>100</sup> Rubinstein files

<sup>101</sup> Rolph, p. 226

proved to be just hypothetical; *Lady Chatterley's Lover* was found "Not Guilty" and thus became available on the open British market.

However, it must be considered that Penguin Books was not totally exonerated. They were refused costs. When Gardiner made his application for costs he referred to the extensive costs (they were actually £13,000)<sup>102</sup> and "as the case was opened by the Prosecution as a test case, I would respectfully submit that it is a case in which a very substantial contribution ought to be made..."<sup>103</sup>. In Rolph's transcription of the trial he ends it with the words of the Judge in answer to Gardiner: "I will say no more than this, that I will make no order as to costs."<sup>104</sup> The Judge was, no doubt, as aware as everyone else that the costs involved were minute in comparison to the figures to be gained by the "Not Guilty" verdict.

Andrew Shonfield<sup>105</sup> and John Sparrow<sup>106</sup> writing in *Encounter* after the court case were very blunt in their views about the offending passage that Griffith-Jones had read out. Shonfield, in an article entitled *Lawrence's Other Censor*, accuses Lawrence of expurgating his own unexpurgated edition because "he cannot bring himself to use words that will baldly

<sup>102</sup> Morpurgo, p. 325

<sup>103</sup> Rolph, p. 249

<sup>104</sup> Ibid., p. 250

<sup>105</sup> Andrew Shonfield, 'Lawrence's Other Censor', *Encounter*, September 1961, p. 63-4

<sup>106</sup> John Sparrow, 'Regina v. Penguin Books Ltd: An Undisclosed Element in the Case', *Encounter*, February 1962, p. 35-43

describe these intimacies". He picks out the passages where Lawrence is "coily" referring to "anal perversion" and calls Lawrence a coward for not being honest. Sparrow agrees with Shonfield, although he frankly refers to buggery in his long article about the "humbug" of the trial, and gives details as to why he finds "the novel extremely distasteful, despite its serious purpose and the brilliance of a number of passages in it, and think it a failure both as a moral or sociological tract and as a work of art"<sup>107</sup>, thus dismissing the views and opinions of the thirty-five eminent trial witnesses.

A similar dismissal was enacted by the eighty-six-year-old Lord Teviot in a debate he initiated in the House of Lords following the trial. He drafted a Motion in which he wanted to ask the Government "whether they will take such steps as are possible to ban for all time writings of this kind, particularly those of the author of this book"<sup>108</sup>. Nine peers spoke in the debate but only two supported the Motion, and it was Lord Hailsham, who brought the debate to a close saying that after a jury trial a particular member of the House of Lords could not ask for a change in the law because he did not like the jury's verdict.

The Prime Minister of Australia did not like the verdict either. Geoffrey Robertson QC, who wrote a new foreword for the thirtieth anniversary commemorative edition of the trial

<sup>107</sup> Sparrow, p. 36

<sup>108</sup> *Hansard*, "The "Lady Chatterley's Lover" Case", 14 December 1960

transcript, records that Prime Minister Menzies told his cabinet that he would not allow his wife to read *Lady Chatterley's Lover*, and, as well as banning the novel, he banned CH Rolph's account of the trial. Robertson goes on to describe how a perspicacious bookseller got around the ban and produced his own edition: "his friends in England wrote down every word of Mr Rolph's work on thirty-two tightly spaced airletters, which were despatched to Australia in a manner that eluded smut-sniffing customs officials."<sup>109</sup> And it is on the back cover of this 1990 book that a phrase frequently used in the 1960s equating the trial to a DH Lawrence seminar is used again with added detail of the social conventions of that time:

*The Trial of Lady Chatterley* serves both as an account of the most expansive (and expensive) seminar on the works of DH Lawrence ever given, and as a timely reminder of the repressive, humourless and class-ridden moral orthodoxies of an era when, as Geoffrey Robertson QC, recalls in his new foreword, "homosexuality and abortion were criminal offences and divorced men were not allowed to read the news on the BBC."

Australia was not the only Commonwealth country to ban this book. In 1965 the Supreme Court of India upheld the conviction of a Bombay bookseller who had sold a copy of the unexpurgated edition of *Lady Chatterley's Lover*. But that judgement just increased the underground circulation of the book and ensured greater publicity far beyond that engendered

<sup>109</sup> Geoffrey Robertson, The Thirtieth Anniversary Commemorative Edition, *The Trial of Lady Chatterley: Regina v. Penguin Books Limited*, edited by CH Rolph, Harmondsworth: Penguin



through the efforts of the booksellers themselves.<sup>110</sup> Likewise, the publicity surrounding the British court case increased sales leading to the phenomenal sales figures mentioned in the first paragraph, thereby making Sir Allen Lane a millionaire, who expressed his gratitude to the trial jury of nine men and three women by dedicating the next editions of *Lady Chatterley's Lover* to them.

Among the Penguin Archive files at Bristol University is a scrapbook of newspaper cuttings detailing the money made by Penguin Books in that crucial year. In 1960 the money earned by *Lady Chatterley's Lover* from the nearly two million copies sold contributed £62,000 to that year's record profit level of £364,588, nearly three times the level of 1959. Total book sales for 1960 were £17.1 million<sup>111</sup>. Reports of predicted £500,000 profit for 1961 helped tremendously when Penguin Books Ltd was floated on the Stock Market on 20 April 1961<sup>112</sup>, apparently after four years of discussion<sup>113</sup>. It was 150 times oversubscribed<sup>114</sup>, with £67 million sent in for the issue of 750,000 Ordinary 4/- (20p) shares<sup>115</sup>, colloquially referred to as 'Chatterley's'. However, profits fluctuated, falling in 1962, up again in 1963, but by then it was the book trade itself not *Lady Chatterley* causing the swing. Steve Hare

Books Ltd, 1990, vii

<sup>110</sup> Girja Kumar, *Censorship in India: With special reference to "The Satanic Verses" and "Lady Chatterley's Lover"*, New Delhi: Har-Anand Publications, 1990

<sup>111</sup> Rubinstein files. Sales conference 28 April 1966

<sup>112</sup> Penguin Archive (DM 1613)

<sup>113</sup> Morpurgo, p. 326

<sup>114</sup> *The Times*, 29 April 1961

<sup>115</sup> *Daily Mail*, 24 April 1961

ends his chapter on *Lady Chatterley's Lover* with the sentence: "Rubinstein, Nash & Co., the firm that had been Penguin's solicitors from their inception in 1935, was subsequently dropped in favour of another practice, who handled the flotation."<sup>116</sup> When asked why Rubinstein diplomatically said it was because it was not his area of expertise, although there were other partners in his firm who could have dealt with it.<sup>117</sup>

One of the interesting sequels to the trial of *Lady Chatterley* was that in 1973 Michael Rubinstein wrote to the "experts" who had given evidence for the defence asking them if they would like to contribute to a projected book of essays<sup>118</sup>. He suggested that they

might approach the subject from the point of view of their memories of the experience of giving evidence at the trial and of its effect on their lives in subsequent months and years, or on their retrospective thoughts and emotions arising out of the impact of the verdict in relation to literary attitudes, public opinion and the emergence of a "permissive society" (were we flowing with a stream or did we open the floodgates?).

He had compiled, or perhaps "doodled" would be more appropriate, fifty-four suggested titles for this project. The first one was: '*Lady Chatterley's Lover as a Peg*', and the fifty-fourth one was: '*That's not what I meant at all*'. However, according to Rubinstein's papers, he subsequently referred to it as: *Confounded Experts: Afterthoughts by Expert Witnesses to*

<sup>116</sup> Hare, p. 249

<sup>117</sup> Telephone conversation, 13 March 1999

*the Literary or Other Merits of Lady Chatterley's Lover*, and he issued bulletins at different times about progress. But in May 1974 the *Confounded Experts* Bulletin No 4 reported that Rubinstein had approached seven well-known publishers, including Penguin, with his idea but all seven had turned down his proposal because there was "insufficient commercial justification for such a book". One small company, Quartet Books, expressed an interest but the advance they offered would have worked out as only about £50 per contributor, which Rubinstein thought too embarrassingly low to even consider for the five thousand word essays he had suggested. Thus, it appears that the idea died as there were no more letters or references in Rubinstein's files.

Another much later publication that did come to fruition was a novel published by Macmillan in 1995, *Lady Chatterley's Confession*, advertised as "an extraordinary sequel to a legendary and best-selling novel" by "one of our most distinguished authors and a recognised expert on Lawrence". Elaine Feinstein's book, retailing at the pretentious price of ten guineas, picks up the story of Connie and Mellors where Lawrence left off. Who knows, perhaps in another thirty-five years, someone else will see potential in a spin-off from this book and write about Emily's angst in being the daughter of such unconventional parents.

<sup>118</sup> Rubenstein files

## DH Lawrence and Folk Music

Monica Nash

[This a condensed version of a talk accompanied with songs, which was given to the DH Lawrence Society at Eastwood Library on 10th March 1999. It is written from the point of view of a folk singer, rather than a Lawrence scholar, and the aim is to suggest some new possible lines of exploration in the general study of his works.]

Lawrence was very fond of learning and singing folk songs. He wrote to Cecil Gray on 17 January 1918: "I am not writing anything, only sit learning songs which I find a great amusement. I can read well enough to learn a song nicely in about a quarter of an hour so I have already got off twenty or thirty. I don't know why it amuses me so much more than reading or writing"<sup>119</sup>. A detailed examination of Lawrence's work reveals many references to folk songs, which might easily be passed over as trivial, but, as I hope to demonstrate here, they almost always have a symbolic significance which is directly related to Lawrence's major preoccupations - in particular, to the connected themes of nature, spontaneity and sexuality.

Perhaps the most striking example of Lawrence's knowledge and creative use of folk song occurs in *The White Peacock*, in the chapter called 'Pisgah'<sup>120</sup>. It is a passage which

<sup>119</sup> *The Letters of DH Lawrence* Vol. III, p. 197

<sup>120</sup> Part III, Chap.6, p. 292