

The Supreme Court, Friend or Foe for Pornographers?

By RUSSELL SHAW

Washington — (NC) — Where does the U.S. Supreme Court stand on obscenity? Is it pro-pornography or is it anti-pornography? Or is it in between? — let down the gates to a flood of pornography that threatens to engulf the nation? Or is it on the contrary bravely defending free speech, the keystone of a democratic society, against the forces of would-be censors who seek to stifle the exchange of ideas?

Never have these questions been asked more often or more heatedly than in the past few months. Indeed in some circles the Supreme Court's latest actions in the area of censorship and obscenity seem to have provoked a virtual crisis of confidence in its ability to represent the needs and aspirations of the public.

Yet elsewhere the court has been hailed for pulling the con-

stitutional right of Americans to free expression of ideas on a firmer footing than ever before.

WHO ARE RIGHT, the court's critics or its defenders? At this moment—in the heat of battle—definite answers are hard to come by. But one approach to deciding where the court stands and where it is headed lies in seeing where it has already been—in reviewing, that is, the decisions that have carried the court to its present position.

A convenient starting point is 1957. In that year the justices delivered what still remains, with significant modifications, their landmark ruling in its field, the Roth-Alberts decision.

Roth and Alberts had been convicted of violating anti-obscenity laws. In appealing to the Supreme Court, they argued that restraints on the distribu-

tion of any kind of literature—including obscenity—violate the First Amendment—"Congress shall make no law... abridging the freedom of speech or of the press".

The Supreme Court firmly rebuffed this argument in a majority opinion written by Justice William J. Brennan. "Implicit in the history of the First Amendment," he said, "is the rejection of obscenity as utterly without redeeming social importance. This rejection for that reason is mirrored in the universal judgment that obscenity should be restrained."

The court thus established the principle that obscene materials can be proscribed by law. Next it turned to setting a test for deciding what is obscene.

Justice Brennan put the test in these 23 words: "Whether to the average person applying contemporary community stand-

ards, the dominant theme of the material taken as a whole appeals to prurient interest."

At the same time the court underlined its belief that the mere presence of sex in literature or films is not itself obscene. Rather, it explained, obscenity is that which "goes substantially beyond customary limits of candor in the description or representation of nudity, sex or shameful acts." It was further noted that the "dominant theme" test means that isolated passages of a prurient nature are not sufficient by themselves to render a work liable to banning.

In this ruling the court, equipped itself with a doctrine—that obscenity can be banned—and with an interpretation of that doctrine explaining what, in legal terms, obscenity is. In a happier world, that should have been the end of the matter. As it turned out, it was just the beginning. Cases demanding elaboration of the court's position have multiplied, and over a period of time the court has obliged.

WHAT LIES ahead? Coming up in the immediate future is a major ruling on motion picture censorship. Argued before the court on Nov. 19, the case, which originated in Maryland, involves prior censorship of movies by review boards and licensing agencies. Four states—Kansas, Maryland, New York, and Virginia—and a number of cities have laws for this purpose.

Back in 1961, in Times Film Corporation v. Chicago, the court upheld the constitutionality of a Chicago film licensing ordinance. It said there is nothing in the Constitution that guarantees every movie a right to be shown publicly at least once. But the new test case is pitched on somewhat narrower grounds—the rights of an admittedly non-obscene film—and those could provide the support for a different outcome.

What conclusions emerge from all this? Several suggest themselves.

First, running as a consistent theme throughout the court's actions and rulings since Roth-Alberts is the determination of the justices to afford every possible right to non-obscene material. Obscenity has no rights under the Constitution, the court has said. But precisely for this reason—because obscene material is subject to such drastic proscription—the court will sanction no purported "anti-obscenity" procedure that infringes on the rights of constitutionally protected material. It will not let the baby be thrown out with the bath water.

The court is also clearly determined to give a book or movie the benefit of the doubt in deciding whether it is obscene. Justice Brennan noted in the Roth-Alberts opinion that the society has traditionally rejected obscenity as being "utterly without redeeming social importance." But the corollary is that material which can claim some "social importance"—because of literary or artistic merit or the presence of a significant (although possibly unpopular) idea—does not come within the category of the legally obscene.

THE STRESS here is on the "legally" obscene. The Supreme Court is not and does not claim to be the conscience of the nation. Its job is to interpret the Constitution and the laws, not answer questions of right and wrong for the individual.

One of the habitual fallacies of the American moral tradition is the belief, in the words of Father John Courtney Murray, S.J., that "whatever is moral ought to be legislated" (or, in the case of the courts, adjudicated). The classic instance of this fallacy is the U.S. attitude asks more of legislatures and courts than they are equipped to do. To quote Father Murray:

"No society should expect very much in the way of moral uplift from its censorship statutes. Indeed the whole criminal code is only a minimal moral force... The greater the social evil, the less effective

against it is the instrument of coercive law.

"Philip Wylie may have been right in saying that American society 'is technically insane in the matter of sex.' If so, it cannot be coerced into sanity by the force of law. In proportion as literary obscenity is a major social evil, the power of the police against it is severely limited."

It is worth noting that Justice Potter Stewart, in a brief concurring opinion last June 22, expressed the belief that only so-called "hard core pornography" can legally be banned. Justice Stewart's position is not the position of the court, and it may never be. But on the other hand it may point the way to the future.

FROM ALL THIS at least a few tentative cautions can be sorted out for those who are genuinely concerned about the problem of obscenity in American society.

One is that it is a mistake to try to bring the force of law to bear against works with some pretensions to literary and artistic merit. "Tropic of Cancer" is a case in point. Though the book has been roundly denounced by some for its alleged pornography, other equally sober-minded people have defended it as a serious work of art.

In the current legal climate, efforts to prevent its sale and distribution are not going to be sustained by appellate courts; they only run the risk of adverse rulings and unfortunate legal precedents.

At the same time, those who criticize the Supreme Court for its highly publicized rulings tend to overlook the fact that, all along, the court has regularly, quietly been dismissing many appeals from obscenity convictions. The court does allow some—indeed many—such convictions to stand.

The true hard core pornographers, those engaged in the production of filth for money's sake, do not have the U.S. Supreme Court as a friend.

Certain lines of action remain open to those who are alarmed about the obscenity problem. One is in the important area of educational efforts by private groups to form the reading and the viewing standards of their members, both by issuing warnings against objectionable material and by fostering good material. The churches obviously have an important role here, and so does the family.

Ways might also be explored of providing special legal protections for young people, the group generally conceded to be the most susceptible to corrup-

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COURIER-JOURNAL
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Vietnam Catholics

Refugees in Homeland

By FATHER PATRICK O'CONNOR

Society of St. Columban

Saigon — (NC) — Two hundred Catholic refugees have come to Saigon from the Quang Nam area in Binh Dinh province in central Vietnam and 11,000 more may follow them.

These refugees lived in villages where since last August the communist Vietnamese have taken control.

The process began after the overthrow of the Ngo Dinh Diem government in November, 1963.

Bands operating in the name of Buddhism and believed to be under communist leadership at-

thorized Catholics and claimed authority in the village.

Last August and September, the attacks on Catholics were renewed, this time by the "People's Council of National Salvation" to which local communist attached themselves. The attacks were ostensibly directed against former members of the Can Lao party, sponsored by the Diem regime.

The "People's Council of National Salvation," which arrogated to itself police authority, had been founded in Hue by Dr. Le khai Quyen, dean of the Hue University Medical Faculty, political organizer inside the university and a close associate of political Buddhist boss Thich Tri Quang.

As communist elements displaced anti-communists in the villages, what had been a means of defense became a means of communist domination and a threat to the lives of Catholics.

First in hundreds, then in thousands, Catholics moved into Suinhon City where they camped around the cathedral. Numbers rose from 2,000 reported in September by the N.C.W.C. News Service, following the visit of Msgr. Joseph J. Harnett of Catholic Relief Services National Catholic Welfare Conference, to 7,000 by October.

According to Bruce Knirsch of Seattle, assistant director of CRS-NWC in Vietnam, who has just returned from Quinhon, there are now 16,000 refugees in various parts of that city. They are all Catholics except about 800 Buddhists.

Those who come from villages were Catholics formed a large proportion say they could defend themselves if the government would give them arms. Lacking weapons and unprotected by government forces, they have had to abandon homes and this autumn's harvest to seek refuge. Most of them reported they want to come south to Saigon.

'New Look' Asked For School Ills

Portland, Ore. — (NC) — An appeal for a searching new look at problems facing Catholic higher education was made here by Monsignor John Tracy Ellis, noted Church historian.

Msgr. Ellis called for such a study "in the spirit of truth for which Pope John stood." He said that "very real progress" has been made in the Catholic education field, but there is also a continuing complacency "in indulged in in such excess it has become ludicrous in the eyes of some observers."

The historian, now teaching at the University of San Francisco, asked Catholic educators to have "courage to walk in sin, and error file through the door Pope John has opened."

"absurd multiplication" of Catholic colleges, universities and seminaries.

On the first point he said the "stagnant mentality" under a continuing complacency "in this century closed the gates of the Church and locked up the Catholic community from the world." He asked "Let us not be afraid our scholars are not loyal to the Church or traditional doctrine. Trial and error are the road to truth."

He said many current problems facing Catholic education, he mentioned that also face all U.S. colleges and universities. Some of these, he called "grave weaknesses," he enumerated as an asked how such small schools excessive dependence on merit to solve problems, a surplus of faculty courses and research that inflates staff sizes and keeps individual salaries down, and huge expenditures on athletics.

Among the problems peculiar to Catholic colleges and universities, he listed a perceived failure by the Church to encourage intellectual life and an unhealthy Catholic colleges.

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Msgr. Ellis noted that about two of every three Catholic colleges in the U.S. are now secular campuses, and appealed for help to the Newman Clubs on these campuses by courage intellectual life and an unhealthy Catholic colleges.

Church 'Solidly' In Unity Efforts

Worcester — (NC) — The Catholic Church is solidly involved in the ecumenical movement, Bishop Bernard J. Flanagan of Worcester said here. Speaking to some 1,500 Catholics, Protestants and Orthodox at Worcester's third Ecumenical Convocation, the bishop discussed the progress of the Vatican Council, with particular emphasis on its recently promulgated decree on ecumenism.

He said Catholics have been given an opportunity and a challenge "which former discipline did not permit, to work for the restoration of that unity which Christ willed for His followers."

Calling the Council's decree on ecumenism "a kind of charter for this century's movement," he said, as did Bishop Flanagan, that "no one is asking for uniformity — a hateful word." But, he added, the world is craving for the kind of unity that only Christendom can give.

Sodalities In Saigon

Saigon — (NC) — A three-day regional congress of Marian congregations, sodalities of Our Lady, was held here Dec. 6-8. Some 2,000 men, women and youthful members attended when the Apostolic Delegate, Archbishop Angelo Palmas, opened the congress by celebrating Mass and addressing the gathering. He spoke of the Blessed Virgin as "Mother of the Church," the title recently proclaimed by Pope Paul VI, and recalled that Vietnam has been dedicated to Our Lady.

This regional congress was held in conjunction with the third International Marian Congress held in Bombay, India, which opened on Dec. 15 and closed on Dec. 20.

'Just Like Catholics'

Atlanta — (NC) — Archbishop Paul J. Hallinan of Atlanta said here he has been told the new liturgy is bringing people to church early in order to get a seat close to the altar.

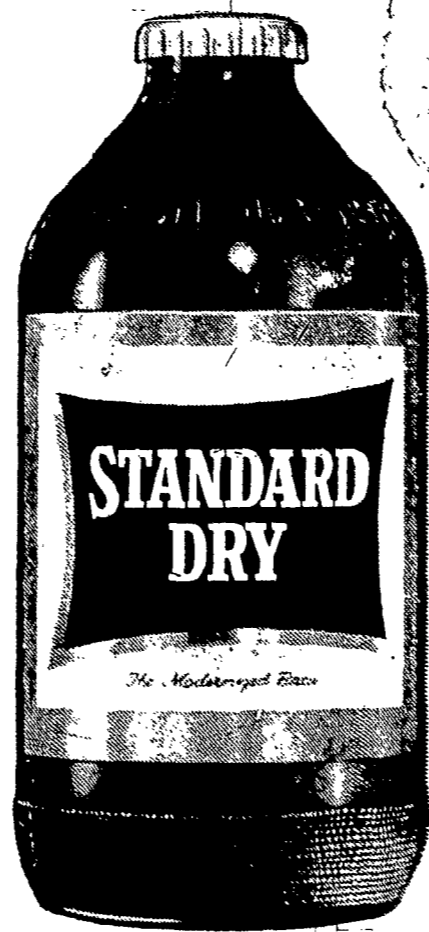
The prelate commented in his column, "Archbishop's Notebook," in the Georgia Bulletin, newspaper of the archdiocese.

"Every pastor has known the agony of the packed vestibule and empty pews up front. A bishop too has a similar problem at a clergy conference.

"I was privileged to hear in Rome last year a cardinal give the assembled bishops to take seats down front. 'You're acting just like Catholics' was his very comment."

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