



LAWRENCE KURLANDER



PAUL CAMBRIA

Obscenity: Two Views

By JOHN DASH

In the American legal system, few issues can be as confusing and contrary to a layman's ken as questions of obscenity.



That this is so surfaced recently at a day-long explanation of the law, from the viewpoint of an attorney who has argued the relationship of obscenity to the First Amendment before the Supreme Court, and from the viewpoint of Monroe County's District Attorney, Lawrence Kurlander.

And on many points, he and Paul Cambria, who has defended mid-west publisher Larry Flynt on obscenity

charges, agree.

Current obscenity statutes around the country hail from a landmark Supreme Court decision in 1957. In Roth, as the case is called, the Court devised a test for materials to determine whether they are indeed obscene and therefore not entitled to First Amendment protection.

Since that time "the Court has been struggling for the past 21 years to 'define' obscenity," Cambria said.

Cambria stated, and Kurlander agrees, "Every obscenity case involves a First Amendment challenge."

Cambria explained that the First Amendment is "preferred . . . in an elevated position. All material is presumptively protected by the First Amendment."

In a pornography trial, he said, the standard presumption of innocence until proof of guilt is established, is twisted. "In a pornography trial the question is, 'We know he did it— is it a crime?'"

Part of the Roth test is that for materials "to be obscene they must be utterly without redeeming social value," Kurlander said.

However, he added, "In 1973, the Court relaxed that test somewhat. In Miller v. California, the Court set forth a new guideline, that the trier of facts must determine whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value."

In this state, he said, material is defined as "obscene" if "(a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated; sexual intercourse, sodomy, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political and scientific value.

"Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience."

"If you don't understand that," Kurlander quipped, "you're not alone."

Springing from that definition, are a number of statutes, both on the state's books and on the books of smaller communities. And many of those statutes, Cambria contends, tend to be "overly broad, vague," examples of "burning down the house to light the candle."

The ideal law would be stated thus, he said, "any material which is obscene may not be displayed in public."

With one exception, crimes centering on obscenity are misdemeanors. The exception is the recently enacted law designed to protect children. It is a felony when a person "employs or induces a child of less than 16 years of age to engage in a sexual performance, and or being a parent, guardian or custodian of such a child, consents to the participation of the child in such a performance."

Cambria contends that, as stated, that law is unconstitutional, without the word obscene in it.

It is an example he said, of "legislators drafting laws from ignorance and zeal, because it is politically expedient."

Both Cambria and Kurlander agree that "pornography must be regulated." "I agree 1,000 per cent that pornography must be regulated," Cambria said.

On the child pornography issue, Cambria also said that "Children participants must be protected — but under other laws than would raise a First Amendment challenge."

The state law, Kurlander said, arose from the recognition of "acts of sadism, including torture and murder involving these youngsters . . . obviously these acts of violence involve a small number of children. But the number of children exploited for the sexual gratification of adults is large and the moral and psychological harm it causes is incalculable."

How does one prosecute? How does one defend? Given the difficulties of the obscenity laws, both Cambria and Kurlander, surprisingly, agree.

Try such matters in civil, rather than in criminal court.

In such a procedure, if found guilty, the defendant would be enjoined from distributing obscene materials. Should the defendant persist, he could then be brought to criminal court.

The advantage for the prosecution is that in civil court, a judge and not a jury would be dealing with the ambiguities of the obscenity laws; and a verdict of obscenity could more readily be obtained.

Both men also agree that using civil court would help unburden the already overburdened criminal court system.

Both men enunciated their views at a day-long session on obscenity and the First Amendment at the recent Institute on Law and the Social Studies, held at R. L. Thomas High School in Webster, under the direction of Peter Knapp.

Obscenity Case Jury Rejects Definition

Cleveland (RNS)— A jury here has acquitted of obscenity charges Reuben Sturman, alleged to be one of the largest distributors of sexually explicit materials in the nation. Six of his employees also were acquitted.

After 34 hours of deliberation, the jury said they found the 12 films and 24 magazines involved to be "morbid, shameful and lewd," but they had problems with the definition of "prurient interest." They said they

didn't believe that the average person was capable of having a shameful, morbid interest in sex.

The seven persons were charged in Federal District Court with shipping obscene materials across state lines. Sturman's Sovereign News Company also was named in the suit.

Under U.S. Supreme Court guidelines, a test of obscenity is whether a work, taken as a whole, appeals to prurient interest of an average person.

Alumni Trip

The Bishop Kearney Adult Alumni Council is planning an air excursion to San Juan, P.R., Oct. 15-20. Details are available from Joseph Goodyear, 338 Rogers Pkwy., Rochester 14617; telephone 266-6658.

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SOME THOUGHTS TO CONSIDER
"Confronting Death"
By Ed Sulewski

Some people believe that the viewing of the dead human body as a part of the funeral is only morbid entertainment for curiosity seekers. Most people who feel this way are unaware of the healing value involved in the viewing — or perhaps they are unusually uncomfortable in this situation. However, for the bereaved — who are often attempting to deny the death of their loved one — confronting the fact of death by viewing the body is most important. Denial is a natural reaction to the death of someone close to us — but if this denial is continued, it can be mentally damaging. The viewing of the body is an important step toward accepting the fact of death. There are no simple ways to work through the days and weeks after the death of a loved one. But there are steps that can be taken to help release grief and emotion — and, through our years of experience, we are familiar with many of them. If we can answer questions for you, at any time, please call any member of our staff.

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