



New York Trial Transcript
Volume 11

— LENNY BRUCE TRIAL TRANSCRIPTS —

State of New York

v.

**Lenny Bruce
Howard Solomon
Ella Solomon**

VOLUME XI

State of New York

v.

**Lenny Bruce
Howard Solomon
Ella Solomon**

VOLUME XI

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

----- X

PEOPLE OF THE STATE OF NEW YORK	:	Docket Nos.
		A-4623-4
VS.	:	A-4406-7
LENNY BRUCE, HOWARD SOLOMON	:	CHARGE:
AND ELLA SOLOMON	:	Indecent Performance

----- X

New York, N. Y.
Dated: July 28, 1964

B E F O R E:

HON. JOHN MURTAGH,
Presiding Judge.

HON. KENNETH PHIPPS
HON. JOHN RANDALL CRUEL,
Associate Judges.

A P P E A R A N C E S:

FOR THE PEOPLE:

RICHARD HUGH, ESQ.,
Assistant District Attorney.

Witnesses:

John Fischer
Marian Marnes Clarkson

FOR THE DEFENDANTS:

BRENNAN, LONDON & BUTTENWIESER
1 East 44th Street
New York, N. Y.

BY:

EPHRAIM LONDON, ESQ.
MARTIN GARBUS, ESQ.
(Of Counsel.)

COURT OFFICER:

ANDREW ORINSKY

Jack L. Berman,
Official Court Reporter.

COURT OFFICER: On trial. People versus Lenny Bruce, Howard Solomon and Ella Solomon. Dockets A-4406, A-4407, A-4623 and A-4624 of the penal law.

J O H N F I S C H E R, called as a witness on behalf of the People, duly sworn, by the Court, testified as follows:

COURT OFFICER: In a loud clear voice state your name.

THE WITNESS: John Fischer.

COURT OFFICER: And your address, sir.

THE WITNESS: 23 Dupont Avenue, White Plains, New York.

COURT OFFICER: Your business or occupation.

THE WITNESS: I am an editor of Harpers Magazine.

DIRECT EXAMINATION BY DISTRICT ATTORNEY:

Q Mr. Fischer, you give your occupation as an editor of Harpers Magazine. Are you in fact the editor and chief of Harpers Magazine?

A Yes.

Q That is the monthly magazine that is published in New York and has national and international distribution, is it not?

A Correct.

Q As the editor and chief of Harpers Magazine, do you make the final decisions as to the contents of each monthly issue of that magazine?

A Yes, sir.

Q And generally what areas does the magazine cover?

A Politics, social commentary, literature, poetry, fiction.

Q Does it from time to time contain pieces of satire?

A Yes.

Q From time to time contain pieces commenting on problems of integration and bigotry and racial tensions quite frequently. In fact, in the current issue there are at least two major issues dealing with racial problems?

A That is correct.

Q Now, has Harpers Magazine ever published writers such as James Baldwin?

A Yes. We believe we were the first national magazine for James Baldwin and published many negro writers.

Q Besides being the editor of Harpers Magazine, have you also a role in the publishing house of Harpers?

A Yes. I am a vice-president of the firm.

Q Prior to being editor and chief of Harpers, did you have a different role at the book publishing firm of ~~Harper & Roe~~?

A For about ten years I was editor and chief of the Trade Book of the General Book Department.

Q And has Harper & Roe served as the publisher for the late Mrs. Eleanor Roosevelt?

A Yes.

Q And in connection with Mrs. Roosevelt's writings, did you as chief editor of Trade Book of General Book Department have a hand in editing her writings?

A Yes.

Q Besides having a hand of Mrs. Roosevelt's writings, have you had a hand in the editing of John F. Kennedy, the late president, JFK?

A A subsidiary hand. I was not the chief editor for his books.

Q At present is Harpers or has Harpers recently published a book of his with an introduction by President Johnson?

A That is correct.

Q And has Harpers just recently published, I believe within the last week, a book of the Reverend Martin Luther King called, "Why we can't wait?"

A That is correct.

Q Did you also have a hand in the editing of the papers of the late President Franklin Delano Roosevelt?

A Yes, sir. Very slight. I was not the primary editor.

Q Apart from your work as editor and chief of Harpers Magazine and as a vice-president and formerly the chief editor in the Trade Book Department and of Harpers & Row, have you, yourself, done some writing?

A Yes.

Q Have you written some books?

A Two books, and I helped edit a number of anthologies and written introductions for a good many books.

Q Have you also written for and contributed to a number of national magazines other than Harpers?

A Yes.

Q What magazines?

A The New Yorker, Life, Readers Digest, perhaps a half a dozen others.

Q Have you written in the critical field, have you done some book reviewing or commenting on books?

A Yes, sir.

Q And for what publications have you written in that field?

A For Harpers Yale Review, Graduate Journal.

Q Now, have you also done some lecturing both in this country and abroad in the area of government politics, writing and publishing the other areas in which you had considerable experience?

A Yes, sir.

Q Where among other places have you lectured in these areas?

A Radcliff College, University of California, University of Minnesota, University of Pennsylvania.

Q And the lecturing, for instance, more than mere panel participation of Radcliff, did you give the commencement address?

A Yes.

Q At the University of Minnesota did you give a series of lectures at the school journal?

A Not a series. A lecture in a series, one of which is presented each year.

Q And you were chosen a particular year to deliver the particular lecture. That is part of a series?

A Yes.

Q Now, incidentally, as to your own education, where did you go to collect and graduate?

A The University of Oklahoma.

Q And thereafter where did you go?

A For two years to Oxford in England.

Q Have you apart from the time that you lived abroad spent substantial periods of time living in various states of the United States?

A Yes. Texas, Oklahoma, New Mexico, Idaho, Washington, D.C.

Q And New York?

A And New York. Yes, sir.

Q Have you received honorary degrees from various colleges' and universities in this country?

A Yes. I think three.

Q And have you been honored by the Society of American Magazine Writers?

A Yes. I think two years ago I got an award from that society.

Q Was the award that you received name you the editor of the year of that society?

A Yes.

Q Have you over the years served as a consultant in your areas of proficiency for various trusts and foundations?

A Yes.

Q Now, did you, Mr. Fischer, at my request read two transcripts, and I show you Court Exhibits Four A and Five A, and can you state for the record that these are the original copies of which are photostats of which I turn to you, Mr. Fischer?

A Yes. These appeared to be the originals of which I saw copies.

Q And did you, Mr. Fischer, hear tapes played by each of those transcripts?

A Yes. Two tapes.

Q Now, I inform you, Mr. Fischer, that the evidence has indicated that these are tapes that I supplied you with and the transcripts that you had read are tapes and transcripts of two performances of the performance of Lenny Bruce of April One and April Seventh given here in this County. Have you an opinion as to the literate manner of the tapes that you heard and the transcripts that you read?

A Any such opinion has to be highly subjective, but I could not see any literary merit in either of them.

Q Thank you. Did you see any artistic merit in either of them?

A No, sir.

Q Have you an opinion as to whether there is any social valiant in either of the tapes that you heard of the transcripts that you read?

A None that I could discern. As a matter of fact, it was hard for me to understand quite what point Mr. Bruce was trying to make. The material seemed to me rather incoherent.

Q Now, insofar as you could at least understand snippets and portions of the material, in your opinion did portions of the material exceed the contemporary limits of rancor?

MR. LONDON: Objection.

THE COURT: Objection is overruled.

A Yes. Again this is necessarily a subjective judgment, but in my opinion they do.

Q Now, in your opinion, and in light of your familiarity with various communities in America, in your opinion

were materials repugnant with the materials being repugnant with the pace that most persons in our American contemporary life ----

MR. LONDON: Your Honor, this is the issue the Court must decide, and I don't think any witness is competent to answer this question or should.

THE COURT: We will take it if the witness is talking with regard to community standards.

MR. LONDON: Further objection on the further ground that the witness to prove competent standards has not been shown.

THE COURT: Objection overruled.

A For what my judgment is worth, I do think it exceeds community standards, but again I must point out this is a highly subjected matter in which nobody can be certain.

Q Thank you, Mr. Fischer. You are familiar with writings. Are you familiar with the writings of

James Joyce, specifically Ulysses, with some of the novels as well as he says of James Baldwin, with the play by Edward Albee, "Who is Afraid of James Wolfe," Are you familiar with those works?

A Yes, sir.

Q In some of these items, some of the four letter words and others that are used by Bruce, do you find that the use as you hear it by Bruce is the same as the method in which the words are used in these writings that I have mentioned?

A No. They seem to me to be much more coherent. The language seems to have a specific purpose there. It does have some literary merit.

DISTRICT ATTORNEY: I have no further questions of this man.

CROSS EXAMINATION BY MR. LONDON:

Q Mr. Fischer, have you made any study of community standards?

A Insofar as it is necessary to keep in touch with community standards in editing a magazine, yes, I have. Every editor has to have familiarity -- not

only with legal rulings in this field, but with general standards of taste in the community.

Q When I spoke of a study I meant a formal study of standards of the community?

A No.

Q Your answer is no. And in speaking of the study that you make in your work do you read such magazines as Rugged and Certain Night and Tonight and Cocktail and Snap?

A I have seen and skimmed through some of those from time to time, but I don't read them consistently because we don't regard them as competitive magazines.

Q So that you don't make a study either formal or informal of the kind of magazine that I have just mentioned?

A No, sir.

Q And your reading of them is only occasional and casual?

A That is correct.

Q You are aware, of course, that the language used in those magazines are greatly different than the language used in, let us say, Harpers Magazine?

DISTRICT ATTORNEY: May it please the

Court, I object to that question in that magazine has no relevancy. I personally don't know what the language used is, although I have read each of those magazines.

THE COURT: The Court will allow it.

Objection overruled.

A I am not familiar enough with those magazines to answer that question accurately.

Q You are aware though that there are a number of publications similar to those that I have just mentioned?

A Oh, yes.

Q It being so sold throughout the stands through the area?

A Yes, sir.

Q You are also aware, are you not, Mr. Fischer, that there are different conventions or standards with respect to national periodicals on one hand and hard cover books on the other with respect to the use of language and the freedom in the use of language?

A I am not sure of that. No, sir.

Q Well, let us take Tropic of Cancer that you know has

appeared in hard cover books. You are aware it is being sold today in the State of New York?

A Yes, sir.

Q Now, the language that is used in Tropic of Cancer is not used, is it, sir, in the national periodical such as Harpers?

A Not such as Harpers. I couldn't speak for the ones you mentioned.

Q But you do acknowledge that there is freedom in the use of such language as you found in Exhibits 4-A and 5-A in hard cover books?

A Yes. But I never have seen a hard cover book in which such language was used in such a purpose in this fashion.

Q Apart from the purpose of the use of the language, actually the same words are used, are they not?

A Often, yes.

Q And they are often used in many other books besides Tropic of Cancer?

A I believe so.

Q When did you last attend a night club performance, Mr. Fischer?

A Perhaps four or five years ago when some relatives from out of town wanted to go to a night club, and I took them.

Q How long before then did you attend a night club?

A I can't remember, but it was a number of years.

Q So that in the last ten years you may have gone twice?

A I think that would be an overstatement.

Q By the way what was the name of the night club you attended five years ago?

A I am sorry. I can't remember. I don't believe it was the one which Mr. Bruce was performing.

Q You have never seen Mr. Bruce perform, did you?

A No.

Q So that it would be fair to say that you are not familiar with the standards of performances in night clubs?

A That is true.

Q You know Jayson Epstein?

A Yes, sir.

Q He is acknowledged, is he not, as one of the leading editors of books?

A I regard him as a very capable editor. We disagree on many points, but I respect his abilities very considerably.

Q Mr. Epstein testified earlier in this trial that he thought that the Bruce performance had literary merit, essential value as satire and humor.

DISTRICT ATTORNEY: May it please the Court, I object to that misstatement of the testimony. I distinctly recollect Mr. Epstein stating that there was no literary merit whatsoever, that they could not be judged as literary performances, that he believed before they had such merit, but not literary merit. Although he recollected other oral performances, verbal performances that did have literary merit -- not by the defendant Bruce. That I think was his testimony.

THE COURT: Is there an objection?

DISTRICT ATTORNEY: There is, your Honor.

THE COURT: Objection sustained.

Q Let us take the statement with respect to the value of these performances as humor. You recognize, do you not, Mr. Epstein is an expert in the area?

A No, sir. Of humor?

Q The general area of literary value and literary merit which would include human satire, would it not?

A Insofar as any editor can be called an expert, I suppose he would be. I am not sure any of us are.

THE COURT: Mr. London, I don't think under the law of evidence we can be contrasting with this witness with the views of the other witnesses.

MR. LONDON: This is perfectly legitimate cross-examination, your Honor.

THE COURT: As I stated yesterday, there is an exception to the hearsay rule with respect to authorities and text books, but now to

first to get into the nebulous area what a previous witness said and what the impact on this witness would be I think is stretching it.

MR. LONDON: Certainly, your Honor.

Q Mr. Fischer, you have stated your opinion that these particular performances were without merit. I did understand your testimony to that effect.

A In my judgment that is true.

Q And what you are stating is a matter of your own judgment, is it not?

A Yes, sir.

Q And you will recognize that other people have a different opinion?

A Certainly.

Q With respect to these same transcripts and same performances?

A That's quite possible.

Q Do you know Richard Gillman formerly of Common Weal?

DISTRICT ATTORNEY: I object on the basis that your Honor has indicated the ruling.

MR. LONDON: I am merely asking the witness if he knew.

THE COURT: Objection overruled.

A I don't know him personally. I know who he is and something of his work.

Q And in the field of dramatic performance he is recognized as something of an expert or at least an acknowledgeable person?

A He is a well known critic, yes, sir.

Q Do you know Nathentoff?

A Yes, sir.

Q And you recognize, sir, that in the are of popular cult he is an acknowledgeable critic?

A I wouldn't go that far. I would say in the field of jazz he is an eligible critic. In other fields I have a less high opinion.

Q Do you know of his own writings in the New Yorker?

A Yes.

Q Do you know his writing in the various magazines?

A Yes. He has written for Harpers and manuscripts has been rejected by Harpers.

Q That many is true of many authority and ----

A Some of these rejected articles are published, but this is a matter of individual judgment.

Q You realize, sir, that there is a great difference between a work that is performed and a work as appears in the transcript of the performance or even a typewritten performance?

A I think it is a very important difference.

Q And you would agree that one cannot judge a public performance without having seen it?

A I think I can have an opinion of it from reading a transcript.

Q You agree the opinion is less value having not seen the public performance?

A That is true.

Q Have you ever seen Lenny Bruce?

A No, sir.

Q It is possible also, is it not, that your opinion might change after seeing the performance?

A It is possible. I think it highly unlikely.

Q Now, with respect to Exhibits 4-A and 5-A, do you recall the section in both on St. Paul and his introduction of celibacy?

A Yes. In a general way I do.

Q And the doctrine of the virtue of celibacy, as you know, one that was introduced into religion by St. Paul?

A No. I don't know it was. I think it was. Celibacy was practiced in other religions before that time.

Q Can you give me an example of in what religion it was practiced as a virtue?

A Yes. There are certain Greek sects. I am not sure of this. In periods before Paul, the Samothracian in which I think the priests practiced celibacy, and there may be other examples.

Q As a matter of fact, even in the Greek religion where celibacy was practiced to some extent, there were also sexual activities in connection with religious observances?

A In some cases that is true.

Q In the Judea-Christian religions or theologies was not the virtue of celibacy introduced by St. Paul?

A I believe so.

Q And is not the question of celibacy discussed a great deal in theological circles?

A I don't move into theological circles. So I speak from hearsay.

Q That is your understanding?

A Yes.

Q And did you understand this section of the exhibit, would you read page twelve?

A Of which transcript?

Q Of the transcript of April First, I think Exhibit 5-A.

A Yes.

Q Can you give me your understanding of that section that you just read on page twelve?

A No, sir. I am not quite sure what the point is.

Q You are unable to?

A No. I am not sure if Mr. Bruce is in favor or not in favor of St. Paul.

Q Apart from the question he is in favor of St. Paul do you have any understanding of this part of his monologue?

A I don't think that I could accurately say I understand what he intended.

Q Would you turn to the following page and read from the words? It is a definition of a large group down to the words, "That is the truth."

DISTRICT ATTORNEY: Can you tell me where that appears?

MR. LONDON: On page twelve.

Q Can you give me your statement, the meaning of that section that you just read?

A It is my impression that Mr. Bruce is being persecuted by Christians.

Q This is the entire understanding that that portion?

A As I understand it, that seems to be his main point, and that he disagrees with them.

Q Do you see it in that section any discussion of the question of ends and means in the propriety and

the virtue of line in reaching a certain conclusion and end?

A I don't see the term, "Ends and means," even mentioned. No, sir.

Q Those aren't mentioned, you don't see that discussion or that thought expressed?

A I think that Mr. Bruce is trying to say that somebody lied about him and felt that they were justified in doing so.

Q Does he also not indicate that this was justified by the persons who lied as a Christian and act because after they had hurt him or exposed him, they would then forgive him?

A I think that's what he trying to say, yes, sir. I don't know any reason to believe that it is a fact.

Q I am not speaking of the fact. I am merely speaking of the statement.

A Yea.

Q And you think that is a statement to that effect?

A It could be so interpreted, yea.

Original

P. 26

missing

THE COURT: Without a normal construction of his words would clearly aid to that thought?

THE WITNESS: Not very clearly, sir.
I don't regard this as a very clear statement.

Q Would you turn to page ten of that same transcript and read from the words, "There is a lot of American Negroes that is pissed off," down to the word or the name of Bayard Rustin. Have you read it?

A Yes.

Q Tell me what you believe of that portion monologue means to be?

A I think he feels that Negroes are discontented and with reason. I am not sure what he means beyond that.

Q Well, do you see in that statement an indication to white people, of the injustice of having white jurors judging a negro?

A That might be an implication in it, yes. You stated it much more clearly than the transcript does.

Q Are you familiar with the term Kaleidoscopic?

A Yes, sir.

Q As used in connection with the literary format?

A Yes, sir.

Q Will you state what it is?

A Usually it would be applied I think to a manuscript in which broken scenes are projected before the readers in quick succession with the scenes in a kaleidoscope.

Q Is it also sometimes applied to the use of various portions and bits and just juxtaposition to each other to make the vary distinct pattern?

A No. I think the point of kaleidoscope and pieces make a general pattern.

Q Taken separately?

A Yes.

Q They would not appear to be part of the pattern, they would be bits of glass or bits of ornament, isn't that so?

A I think so.

Q Do you know the work of Jules Phieffer?

A Yes, sir.

Q Would you state your opinion of Mr. Phieffer's work?

A Some of it is very good, some less good.

Q Would you describe him as a satirist and humorist?

A Yes.

Q Do you know Professor Dodson of Columbia?

A No.

Q Do you know Allen Morrison, the editor of Ebony?

A I know the magazine, but I don't know him personally.

Q Do you know Kenneth Tynning?

A Yes.

Q Would you state your opinion?

DISTRICT ATTORNEY: If your Honor please, the statement will be objected to any reference to Kenneth Tynning. We got in trouble yesterday when Mr. London searched for somebody who had not appeared as a witness. I have not seen Kenneth Tynning in this courtroom called as a defense witness. What Kenneth Tynning believes

about the defendant Bruce this Bench doesn't know nor do I know nor is provable to any statement.

MR. LONDON: I think I have a right to ask at least these questions.

DISTRICT ATTORNEY: May it be Court, I would urge before the question asked, your Honor showed exactly the same tolerance yesterday when there were questions and lead what I think was a highly embarrassing situation I think. I think embarrassing: a lawyer who is supposed to act in good faith. We now go afield to persons who have not testified here. I suggest that we are getting into something. I see no legal relevancy to it, your Honor, and I press my objection.

THE COURT: We will overrule the objection. I do agree with the District Attorney that we should not be getting into these side issues, but I will hear with you and the Court will hear with you.

Q Are you familiar with the writings of Kenneth Timney?

A Some of them, yes.

Q Will you tell the Court just who Mr. Kenneth Timney is?

DISTRICT ATTORNEY: I object to that.

THE COURT: Objection is overruled.

A He is a British theatrical critic.

Q He is read widely here in the United States, is he not?

A A year or two when he was working in this country he published in the New Yorker and Harpers and other magazines, and at that time I believe was highly read. I don't believe he is now.

Q Have you read Mr. Timney's reviews of Lenny Bruce's performance?

A No, sir.

Q Are you familiar with the magazine, Partisan Review?

A Yes.

Q Will you describe it briefly?

A It is a so-called literary magazine, that which

was originally established to argue a political and literary point of view I believe in the early thirtys. It is now a fairly well known in rather small academic circles.

Q And it is regarded as a mark of some distinction, is it not?

A Yes.

Q Have you read the article in Artisan Review about Mr. Bruce called the sick with a negro?

A No, sir.

Q Do you know the writing of W. D. Hill of the New York Times?

A Yes.

DISTRICT ATTORNEY: it pleases your Honor, Mr. London early in this trial offered various items, and the Court ruled they were excluded. Yesterday he got back into this area. I asked the judge to stop him in this area. I objected and asked that he be directed to go on to offer admissible evidence.

THE COURT: Mr. London, I believe you should ----

MR. LONDON: Your Honor, the purpose of this examination at this time as to find out this witness' familiarity with the writings on Bruce. With some of the thought about Lenny Bruce I am not offering these particular items into evidence.

THE COURT: The Court will bear with you.

DISTRICT ATTORNEY: The Court has already ruled that if Bruce were the finest writer that ever lived in the world and greatest verbalist and orator and everything else, that has nothing to do with these two particular transcripts. There is absolutely no showing that anybody anywhere any place has ever written a single word about these performances of the defendant, Lenny Bruce. I will object to this line.

THE COURT: The Court will agree to take the testimony fully aware of that extreme limitation. Proceed.

Q Your answer was you are familiar with Mr. Gelb's writings in the New York Times?

A Yes.

Q Will you tell us of the nature of his writing in the New York Times?

A He usually does theatrical reviews I believe.

Q Have you read Mr. Gelb's article about Lenny Bruce in the New York Times of December 8, 1960?

DISTRICT ATTORNEY: My continuing objection is noted. There is further reference that a particular assumption not a fact not established in this record, and I suggest ----

MR. LONDON: I am asking if he read it.

THE COURT: Overruled.

A No, sir. And I might save your time by saying I don't remember ever reading any reviews of

Mr. Bruce's work. I don't ordinarily read nightclub reviews because it is in an area I am not interested, and I have no more reading that I have to do than I can easily manage.

Q Well, you are familiar enough with Partisan Review, sir, are you not, to know they generally do not write about nightclub reviews?

A I would think not very often.

Q Would you turn for a moment to Exhibit 4-A. That is the one that is marked April 7, 1964. Turn to page twenty-three, starting with the paragraph, about the sentence seven or eight lines from the bottom, "This is Chet Huntley News," and reading from there to the word, Nicotine, on the following page. Would you just read that first please? And you state your understanding of that particular portion or monologue?

A No, sir. I really can't. Again I think this isn't very coherent. He obviously is talking

about an incident in which some miners were trapped underground, but again I don't know what point he is trying to make.

Q Were you able to understand in this excerpt that he is mimicking a news broadcaster?

A Yes.

Q Who is broadcasting about a mine disaster?

A Yes.

Q And then takes advantage of the situation in order to publicize or advertise Viceroy cigarettes?

A I would take your word for that, yes.

Q You certainly agree it is capable of that interpretation of that particular excerpt?

A Yes. I think it might be.

THE COURT: Would it be a natural interpretation, one that flows clearly from the words?

THE WITNESS: It doesn't flow clearly, but it is a possible interpretation I would say.

Q Now, that, sir, was the subject of a book, was it not, the commercial sayings of a disaster of a situation in which a man is trapped underground?

A I don't know of such a book.

Q Do you remember the cave?

A I don't believe so, no. A recent book?

Q Yes. About three or four years ago?

A I am afraid I didn't read it.

Q I believe it was by Robert Penround, does that refresh your recollection?

A I am sure I didn't read it.

MR. LONDON: Thank you.

REDIRECT EXAMINATION BY DISTRICT ATTORNEY:

Q Mr. Fischer, in your experience have you seen instances in which at least in your judgment critics, literary and others, have had their own critical judgments influenced and effected by their own search for self-characterization as sycophants?

A Yes.

MR. LONDON: Objection, your Honor.

THE COURT: We will allow it.

Objection overruled.

A I am not sure I understand.

Q Let it be ask that it be read back.

A I don't know. I am hesitant to make a judgment about any critics, motives or the influences. I am sure there are many.

Q Would you recognize at least this possibility exists that persons may in terms of their own self ----

MR. LONDON: Objection.

THE COURT: Sustained.

Q Mr. Fischer, Mr. London questioned you about the kaleidoscope effect. Referring to Exhibits 4-A and 5-A, do you see any artistic kaleidoscopic unity in those exhibits?

A No. I was not able to discern any pattern or any unity. It is clear Mr. Bruce was annoyed about something.

DISTRICT ATTORNEY: Thank you. I have no further questions, your Honor.

(Court is recessed.)

COURT OFFICER: Continued trial of Lenny Bruce, Howard Solomon and Ella Solomon

DISTRICT ATTORNEY: May I proceed?

THE COURT: You may.

M A R I A N M A N N E S C L A R K S O N
called as a witness on behalf of the People, duly sworn, by the Court, testified as follows:

COURT OFFICER: In a loud and clear voice give your name.

THE WITNESS: Marian Mannes Clarkson.

COURT OFFICER: Your address?

THE WITNESS: 1 West 72nd Street, New York City.

COURT OFFICER: Your business or occupation?

THE WITNESS: Free lance writer.

DIRECT EXAMINATION BY DISTRICT ATTORNEY:

Q Mrs. Clarkson, you are married and you have a grown son, is that correct?

A That is right.

Q Do you use the name, Marian Mannes, which is your maiden name, and in most of your literary work?

A Yes.

Q You mentioned being a free lance writer. Can you tell us generally the nature of the writings that you engaged in over the years?

A Well, the nature has been predominantly in the field of social criticism and direct criticism of television, radio and theatre. It has also been satire, verse and prose. Some fiction, but mostly non-fiction.

Q Modestly known as a strong satirist?

A I am known as a satirist, yes, and a reasonable controversial one.

Q Miss Mannes, prior to doing free lancing exclusively, which I think you indicated you are doing now, were you employed with a magazine until recently?

A Yes. I was for twelve years with the Reporter Magazine on the staff as a staff writer.

Q As a staff writer for the Reporter Magazine, did you have any particular areas there in which you specialized?

A Well, again, articles and pieces on what I suppose is the American scene in general plus American television,

and during the last two or three years criticism of theatre, theatre reviews.

Q Incidentally, during the period that you did theatre review, did you review the play, "Who is Afraid of Virginia Wolf"?

A Yes, I did.

Q Did you give that a good or bad?

A I gave it a favorable one.

Q You found it a very interesting experience?

A Well, I found it a brilliant piece of dramatic work and extremely interesting on many levels.

Q Miss Mannes, besides your work on the Reporter, have you contributed to other national magazines?

A Yes, quite a wide range from Esquire to Harpers to McCalla.

Q Including the Saturday Evening Post?

A Yes.

Q New York Times?

A And the Herald Tribune, work which I do a column a month.

Q And I asked a question and you answered, and the Herald Tribune Book. Did you include the New York Times Book?

A I have been published in both quite often.

Q And Reader's Digest?

A Yes. Usually from something that has been printed before, not specifically for the Digest.

Q Have you written for the New Yorker Magazine?

A Yes, but not for quite a while. That was during the forties.

Q During the war did you serve in the United States Government?

A Yes. For about four years I was engaged in intelligence work.

Q And if I may know a little about your critical background, Mrs. Mannes, who your parents were?

A They were both musicians. My father were David Mannes, and my mother, Clara Rochman Mannes, who was quite a professional pianist, and they were professional concert players.

Q And you were raised in an artistic atmosphere to some extent?

A Yes.

Q In the 1930s did you serve as an editor of Vogue Magazine?

A Yes. I was for four years fashion editor in the 30s of the Vogue.

Q And over the years have you some book reviewing and print?

A Yes, a lot of book reviewing and in various places.

Q And apart from the theatre reviewing and the T.V. reviewing, you mentioned you have also done some reviewing of some individual arts and sculpture?

A Yes, but again as an expression of social attitudes rather than as straight art criticism.

Q Miss Mannes, have you written a number of books?

A Four.

Q And is one of them a recent book?

A One of them has just been out a month or so ago.

Q And soon after that were you the subject of a picture story in Life that also included extracts?

A Yes, I was.

Q Can you tell us what other books you have written?

A The one before was a book on New York in terms of my own experience as being born here and lived in many sections of it called, "The New York I Know." And before that there was another series of essays and satire called, "Morning and Anger," and in '48 a novel was published called, "Messenger From A Stranger."

Q You have given us those books in verse?

A In verse.

Q Have you also published a book called Subverse?

A Subverse it is called because it was satirical, mostly political during the Eisenhower period.

Q And in that book did some of that satirical verse attack some of the images of our culture?

A Yes, very sharply.

Q Have you appeared on radio and television?

A Yes, quite often either as a panelist on network show and in '59 I had a series of my own on Channel 71 called, "I speak for myself." I was I suppose you might call as a spot guest. I haven't got a series.

Q As a spot guest today have you appeared on many of the big national shows?

A Johnny Carson Night and some years ago on Jack Parr and on various network shows.

Q And besides that, all these things that you told us about, have you found time to give thought to speeches before various national groups and universities?

A Yes, I have. This seems to be part of being a writer these days. You talk a lot.

Q Can you tell us, Miss Mannes, some of the groups that you addressed on topics having to do with your social mores and criticism?

A Well, I had spoken at Dartmouth and the University of North Carolina, UCLA, and quite a lot of other places.

Q Have you also at least on two occasions been the guest of the Womens National Press Club?

A In Washington, that is correct.

Q One one of those occasions did you fill in for Mrs. Eleanor Roosevelt?

A I was asked to take her place to speak with her again Clare Booth Luce.

Q And on another occasion before the same group, The Womens National Press Club or under those auspices, did you address a group of leading national public official Senators and Congressmen?

A That is correct. A very unpopular speech.

Q And in fact you are known on occasion for your unpopular speeches?

A Quite frequently.

Q You speak what you have in mind in your own independent judgement? Is that correct?

A Yes. Well, that is what I intend to do, yes.

Q Have you been honored in spite of the fact that your speeches infrequently happen to have your independence of thought and your independence of criticism been recognized, and have you been nationally honored by various groups?

A Well, nationally honored. I did get the George Pook award for journalism in the fields of criticism. And then I have gotten the Greek letters.

Q Sigma Phi?

A Yes.

Q And what is that Sigma Phi?

A It is a national organization of women journalists.

Q And did their honor to you honor you as an essayist and critic for contributions in the field of communications?

A Yes.

Q Now, you mentioned the controversial nature of your writing and your independence of thought. Have you read the two transcripts that I supplied to you with the originals of which are marked Exhibits 4-A and 5-A in evidence in this case -- withdrawn. Now, I stated that I supplied the witness with photostats of

two transcripts, the originals of which are 4-A and 5-A. Miss Mannes, have you read those transcripts?

A Yes, I have.

Q And did you notice in those transcripts the use of certain four letter words?

A Yes, I have.

Q In your strong writing have you found it necessary to utilize such able vocabulary?

A Well, I haven't simply because I don't think it would have helped.

Q And so those words at least make terms obscenities you have not used in your own writings?

A Merely because the occasion didn't call for it.

Q Thank you, Miss Mannes. Did you ever hear the defendant Lenny Bruce, perform?

A Yes, about ten days ago in San Francisco.

Q San Francisco in connection with the public national?

A Yes.

Q Not as a delegate?

A No, not as a delegate.

Q Have you an opinion as to the artistic or literary merit of the two tapes of which I supplied?

A Yes. I have an opinion.

Q Can you tell us what that opinion is?

A Well, the opinion is that I in spite of real effort and the intention of being wholly objective about this could not find artistic value in either the transcripts or in the performances.

Q And have you an opinion as to any social value contained in either of these transcripts or performances?

A Here again this must be a subjective comment. I personally did not, and I looked for it, but I did not find it.

Q In your opinion and judging by our contemporary community standards, would these materials be deemed offensive?

MR. GAREUS: Objection, your Honor, on the ground that Miss Marnes hasn't been qualified as an expert on any contemporary community standards.

DISTRICT ATTORNEY: I have no objection to a voir dire.

MR. GAREUS: There is no necessity for a voir dire.

THE COURT: Objection is overruled.

A Well, I don't know what qualification one has to have for knowing or assuming what community standards are,

and I admit this is an extremely hard term to define. I wouldn't attempt to define it at this point. I found as a member of the community and one case harden four letter words because they are everywhere these days that both the transcripts and the performances, although I might say the performances were, if I may use the word, cleaned up in San Francisco. The profusion of four letter words in the transcripts I found offensive.

DISTRICT ATTORNEY: Thank you. I have no further questions at this time.

CROSS EXAMINATION BY MR. CARBUS:

Q Miss Mannen, in your direct-examination you said that four letter words are found everywhere these days. Isn't it a fact that these same four letter words and ten letter and twelve letter words are found in Lenny Bruce's script and can be found in literature being published today?

A You are saying the word literature. They are found in literature.

Q As a matter of fact they are quite ----

DISTRICT ATTORNEY: I object to interrupting the witness.

THE COURT: Let the witness finish the answer, and may I suggest you raise your voice. The Court hardly hears you when you talk. Continue your answer please.

BY MR. GAREUS: (Cont'd.)

A Well, the answer was yes. Obscenity is found in a great deal of writing, and in some literature there is a sharp distinction, and it seems to me this is a distinction that we are concerned with today.

Q Miss Mannes, you testified that you would in the course of your own writing use certain words if you felt it to be effective?

A Effective is not the words to be used. I would say I would say necessary whatever it is that I felt needed saying.

Q So that if you felt you needed or it was necessary to use four or twelve letter words, you would do it within the meaning?

THE COURT: Will you keep your voice up?

Q Miss Mannes, then as I understand your testimony, you stated that you would use those words if it were necessary to get your particular point across, is that right?

BY MR. GAREUS: (Cont'd.)

A I would if I felt so, but only with the aim of only if I could find no other way to express or to prove a point, but not for the saying of the word by itself.

A Q Miss Mannea, are you familiar with Robert Manpire's (Phonetic) book, The Cave?

A No. I am not.

Q Would some of the issues that you discussed on your program, I Speak For Myself?

A Well, it was in '59. It's five years ago, and it was a pretty wide range of subjects ranging from Why Woman Bore Men to contemporary standards in literature. It was very free. It went from soap operas to teenage habits to the sort of quite a lot of faces of life.

Q Would it be fair to say then that in 1959 you were discussing the problems that face our community?

A Not necessarily problems.

Q Observing some of the things that were happening in society?

A Yes.

Q Today, as a matter of fact, is it one of those things that are happening in society as evidenced by the

BY MR. CARBON: (Cont'd.)

recent Republican Convention as the cry by the Negroes that Senator Goldwater is estranged from them?

A You say, "Do I agree that this is the case?"

Q Do you agree that the Negroes, as evidenced by their pickets out at the Republican Convention, are making the statements?

A Yes.

Q Is that the statements that the Negroes have made essentially, to use Mr. Bruce's words, "They are pissed off. They haven't got a fair shake from the white community"?

A Yes.

Q Is that right?

A Yes, self-evident.

Q And it is also self-evident that the Negro down south who is being tried before twelve white jurors is not getting a fair shake?

A That is perfectly correct.

Q And isn't there an argument being made by Negro leaders right now if there are ever twelve jurors, the white man is going to get the same short end of the stick, if I may use the expression?

BY MR. GARBUS: (Cont'd.)

A That's an assumption.

Q This is a statement that is made by responsible Negro leaders, is that right?

A Yes.

Q Miss Mannes, I am referring to the transcript of April 1st, 1964, and I will just briefly read the first paragraph of page eleven. You can follow it on your transcript if you will.

A I am familiar with that page.

Q It starts off with "Barry Goldwater knows nothing, but knows about that phrase, trick whitey." Miss Mannes, are you familiar with that phrase, "Trick whitey?"

A This is page eleven.

Q Page eleven of the April First transcript.

A Yes. I have it.

Q Do you know the expression, "Trick Whitey"?

A Well, yes. I have run acrossed it.

Q What does that expression mean?

A Well, it's a term against the White. I don't know why I should be asked to define.

BY MR. GAREUS: (cont'd.)

Q Do you think the statement is self explanatory,
"Trick Whitey"?

A Well, I just said I assume this is what it means.

Q Now, where have you heard of this expression, "Trick
Whitey," used?

A I can't possibly tell you. I may have heard it on the
street.

Q Did you hear it used by the Negroes to express their
hostility toward Negroes?

A They are used by a Negro and not a White.

Q The first sentence is: "Barry Goldwater knows nothing."
That phrase, "Trick Whitey," what does that phrase mean
to you?

A Frankly not very much.

Q Let me read the sentence once more. Perhaps you can
think about it for a moment. "Barry Goldwater knows
nothing." That phrase, "Trick Whitey," does that
sentence mean anything to you? Let me refer you to
the middle of that page where Mr. Bruce then says,
"It's a different language and a different culture."
Isn't what he is saying Mr. Goldwater is not familiar

BY MR. GARETS: (Cont'd.)

with the language and culture of the Negroes as you testified the Negroes are stating now?

A Well, so what?

Q Is that statement, whether you agree with it or not, do you understand the statement, "Barry Goldwater knows nothing about that phrase, Trick Whitey?"

A I understand that.

Q Now, I like to address your attention to three sentences down. Now, if you suppress the word, you suppress of the language. Do you understand that statement?

A I understand what is meant by that statement.

Q What is meant by that statement?

A What is meant by that particular statement? I gather is if you suppress the word, "Trick Whitey," you suppress part of the language because that as far as I can see is hardly enough to understand the known obscenity in that particular page.

Q Is that the known obscenity in that particular page where before that where you find one obscenity in those four sentences, Miss Mannes?

A There is no obscenity in those four sentences to pick out.

BY MR. GAREUS: (Cont'd.)

DISTRICT ATTORNEY: I object to that.

THE COURT: Please. Let the witness finish her answer.

A There is no obscenity in those four sentences, correct.

Q Thank you. Now, Miss Mannes, have you ever heard "Mother Fucker" used?

A By the kids on the street.

Q You never heard it in a Broadway play?

A I may have. I don't remember hearing it.

Q Did you see Blues and Mr. Charley?

A No. I read it however.

Q Did you see The Dutchman?

A No.

Q Do you know who Leroy Jones is?

A Yes. I do. And I know Mother Fucker is used frequently.

Q Isn't Mother Fucker used by Negroes as an epithet to express hostility sometimes against Whites and sometimes against other Negroes?

A Certainly.

Q And isn't Mother Fucker peculiarly a negro term?

A I wouldn't be in a position to judge.

Clarkson - cross

BY MR. GAREUS: (Cont'd.)

Q Now, going to the seventh sentence of that monologue, Mr. Goldwater says, as mimicked by Mr. Bruce, "Goldwater, what are they talking about?" What does that mean to you, Miss Mannes?

A Well, it merely means that Mr. Goldwater does not know what they are talking about.

Q And this is just another way of Mr. Bruce saying that, the Negro community is unfamiliar to Mr. Goldwater, isn't that right?

A I assume so.

Q And then someone explained to Mr. Goldwater, "Please, Mr. President, that's not hostile, that's not obscene. Perhaps it's a term of endearment with these people." He then explained to Mr. Goldwater what the Negro means and what the Negroes are saying?

A Yes.

Q And you have heard Mr. Farmer of CORE making the statement within the last two weeks, isn't that right?

A No, I have not. You mean these words?

Q Not with these words. The statement that Mr. Goldwater doesn't understand the Negro?

A Yes.

BY MR. GAREUS: (Cont'd.)

Q Now, Miss Mannes, in your discussion of the domestic problems or the personal problems that face families, haven't you have been faced with the language of communication with people who would give the truth, not for the purpose of giving the truth, but rather to hurt the person to whom the information is given?

A I don't think I quite follow that question.

Q By the way, Miss Mannes, have you heard the expression, Boss Charley?

A Yes.

Q What does it mean?

A It means the white man as seen by the Negro.

Q As a matter of fact you heard the expression, "Fuck you, Boss Charley"?

A The lowest form of animal life.

Q The Negro calling the white man the lowest form of animal life?

A Loosely.

Q This is very often, for example, Mr. Baldwin whose Mr. Jones talked about?

A Yes.

BY MR. GARBUS: (Cont'd.)

Q With respect to page ten of the April First transcript, going to the top of the page, he says, "There is a lot of American Negroes. They are pissed off and justifiably so." You understand that, Miss Mannes?

A I do.

Q Do you understand Mr. Bruce's transcripts contain many such social statements? We will go through them piece by piece.

A There are such statements sprinkled through the scripts.

Q Will you please find such other statements?

DISTRICT ATTORNEY: May it please the Court, I don't think where we have about sixty pages of statements here ----

THE COURT: The Court agrees.

Q Perhaps I can help you refresh your recollection, Page Eight of that transcript he talks about Puerto Ricans. Do you understand the statement being made by Mr. Bruce with the general concept that the garbage in Puerto Rican areas is being brought by the Puerto Ricans themselves

A I got that, yes.

Q That is quite clear, is it not, Miss Mannes?

BY MR. GAREUS: (Cont'd.)

THE COURT: Would you say that the statement there is clear?

THE WITNESS: I don't think it is clear. It is part of the general incoherence of the entire transcript, and to pick out one or two or five or six sentences as evidence of social content, as far as I can see, is proof of nothing.

Q Your point is the social statement is being made, but it is being lost among other things?

A Lost, confused and overwhelmed.

Q There is a social statement?

DISTRICT ATTORNEY: I object.

A Overwhelmed by irrelevant ----

THE COURT: The Court's patience is being taxed, Counselor. Let the witness finish her answer.

Q Miss Manres, are you finished?

A I am finished.

Q Miss Manres, is there a social statement being made?

A I said before that there were several statements made which could I suppose be called social statements because they refer to society, yes.

BY MR. GAREUS: (Cont'd.)

Q And these are the statements being made by other people in the community about the same subject?

A Said in other ways.

Q Now, Miss Mannes, you never saw Mr. Bruce? As I understand it, before you saw him in San Francisco?

A That is correct.

Q Did you and I have a phone conversation last week?

A We did.

Q What did you tell me at that time as to your views of Mr. Bruce's performances?

A At that time I said that I did not think I would testify because I really did not think it was well important enough. I think I used the word, Pathetic.

Q Didn't you think you couldn't testify about the basis of a transcript before you saw the performances?

A That is correct.

Q And didn't you tell me also that you changed your mind about Mr. Bruce after seeing him in San Francisco?

A I only changed my mind to the extent that there was less obscenity in San Francisco than in the transcripts, but no more social value and no more artistic value.

BY MR. GARBUS: (Cont'd.)

Q Have you ever seen Mr. B. S. Pulley in a night club?

A No.

Q How often do you go to night clubs?

A Not very often.

Q When was the last time you went to a night club?

A San Francisco.

Q Previous to that?

A Possibly a year.

Q Who did you see then?

A I don't remember.

Q Did you ever see Mr. Joey Lewis in a night club?

A Not that night club. I have been on a television show with him, and I have heard him on T.V.

Q Have you ever seen Mr. Gregory in a night club?

A No. I have not.

MR. GARBUS: I have no questions at this time.

REDIRECT EXAMINATION BY DISTRICT ATTORNEY:

Q Earlier in Mr. Garbus' examination, Miss Mannes, you said that ~~some of~~ the words Mr. Garbus used profusely. I think you indicated some time later a great deal of writing. Can you tell us what distinction you were drawing?

A The distinction I was drawing was that obscenity is sometimes necessary in portraying characters who speak this way which is part of the characterization in their kind of speech whether it is soldiers or whether it is free wheelers of any kind. Obscenity is part of the nature of their character. My distinction is largely when obscenity has a clear part in the pattern of the writers when it is essential to dramatic impact or to the development of character this then is literature. If it is used for shock effect for an amusement to get a laugh or just as Mr. Bruce said, "lets talk dirty," then I fail to see its redeeming values either social or artistic.

Q When Bruce uses it and in your judgment, your critical judgment, would you say he uses it for shock value for his brand of entertainment rather than for any literary purpose?

A He gets it to get a laugh which is the last resort of the comedian. I have listened to the transcripts carefully and listened to the night club, and every four letter word was followed by a burst of laughter regardless of context. This is the comedy.

Q And when some of these words are used in such as Who is Afraid of Virginia Wolfe, are these used in a different sense?

A Again they are used at moments of extreme tension when people like that would be apt to use them. They are not used solely for shock effect because the play is a study of human conflict with a very serious undertone. It is a work of a craftsman, the work of a young experienced writer, and I think it does come under the heading of dramatic literature.

Q And Mr. Garbus mentioned to you who is Mr. Charley, when assuming the words are used, and you indicated that you had not seen it, but read it. Are these used in this craftsman fashion?

A Well, they are used because Mr. Baldwin, who is a very honest writer, lets his character speak the way he would speak.

Q And is that also true of Leroy Jones when he used the same words?

A Unfortunately, except for articles by Mr. Jones, I have not seen his plays. I am no longer reviewing. So I don't get to everything.

Q Now, Mr. Garbus drew your attention to certain portions the Goldwater portion, and one or two others of the transcript, and asked if they contain social statements. Let me phrase the question differently. Miss Mannes, would you say that the materials as used by Bruce contained social ----

MR. GARBUS: I will object to the form of the question. Miss Mannes is Mr. Hugh's witness.

THE COURT: Objection overruled.

Q Let me rephrase the question. Putting aside the fact that they may deal with a social problem as any of us may talk about a social problem, the material which appears in the Bruce's transcript, considering the transcript, considering whether you find the materials clear or unclear, would you say Bruce's exposition an important exposition of the problems?

MR. GARBUS: I object to that.

THE COURT: Objection is overruled.

A Well, could I perhaps put it in another way? Do I think these transcripts add up to a coherent social satire or or social statement? No, I don't think they do.

In fact I would be very much surprised if the people after hearing Mr. Bruce could define precisely what it was that he was trying to tell them.

Q You compared the performance in these two transcripts to the performance that you witnessed in San Francisco, and if I wrote the words correctly, you said that the one had no more social value and no more artistic value than the other. Do you find any artistic value or any social value in the two transcripts?

MR. GARBUS: I object.

DISTRICT ATTORNEY: I am asking about the two transcripts performed.

MR. GARBUS: I will object to any ----

DISTRICT ATTORNEY: I asked her about any' social value, any social importance, any artistic importance in the transcript.

MR. GARBUS: I will object to the question if it is predicated upon contrasts between the San Francisco performances.

THE COURT: Objection overruled.

A Well, I think I answered before, and I said no.

Q You mentioned Mr. Garbus brought up the telephone conversation that he had with you. Assuming that the tapes

that you heard are accurate, and assuming further that these transcriptions of tapes are virtually accurate, and further assuming that Bruce was a performer as gifted or ungifted as you saw him in California, can you see any social importance or artistic value that might come through these transcripts if you had seen them performed alive? That is a complicated question.

MR. GARBUS: I object to that question. There are about five assumptions in the question.

DISTRICT ATTORNEY: It is a hypothetical question.

THE COURT: Objection overruled.

Q Do you have trouble with that question?

A No. I think I got it. You mean did I see any features in the delivery of these transcripts in the actual performance?

Q That would give evidence of artistic or social value?

A No. I think there is nobody that questions the ability of Mr. Bruce to entertain. This I don't think we are talking about, and I would make a statement, if I may, in general about it.

Q Please, Miss Mannes.

A About the law, Obscenity. I am not one and never have been for censorship. I am not at all sure that the law that is on the books, to which we are now referring, is a clearly definable law. I think it is acceptable to a great many interpretations. However, it is the law, and unless it is changed by the repeal or defined more clearly so as to totally avoid all danger of censorship, it seems to me that the major questions which I tried to answer are still valid. Has obscenity left alone has social or artistic value, and my only feeling is in both cases negative.

Q Thank you.

MR. GAREUS: I move to strike out so much of Mr. Mannes's statements concerning her understanding the law on the grounds that Miss Mannes herself states she is not qualified.

THE COURT: That is before the Court.

DISTRICT ATTORNEY: I have no further questions of the witness.

MR. GAREUS: I have no questions of this witness.

DISTRICT ATTORNEY: May it please the Court, I am at fault. I said that I would complete my witnesses today, and I shall, but I did not think we get to a third witness in the morning. I have one more witness and that will wind up the People's case, and he is to be here at two o'clock.

THE COURT: I guess we have no alternative but to recess. Make it two o'clock.

COURT OFFICER: The Court is recessed until two o'clock.

CERTIFIED THIS IS A TRUE AND ACCURATE TRANSCRIPT OF MINUTES IN THE CASE OF PEOPLE VS. LENNY BRUCE, HOWARD SOLOMON AND ELLA SOLOMON.



Jack L. Berman,
Official Court Reporter.

PART 2B3 : COUNTY OF NEW YORK

Defendants.

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: Docket No. A4406-A4407
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: Charge: 1140A of the Penal Law
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Thomas J. Landers, C.S.R.
Official Court Reporter

Dr. van den Haag - for the People - direct

COURT OFFICER: People v. Ella Solomon,
Howard L. Solomon and Ella Solomon, violation
of 1140A of the Penal Law.

MR. KUH: May I proceed, your Honors?

THE PRESIDING JUDGE: You may.

MR. KUH: Dr. Ernest van den Haag, please.

E R N E S T V A N D E N H A A G,
residing at 52 West 9th Street, New York, New York, called as
a witness in behalf of the People, having been first duly
sworn, testified as follows:

COURT OFFICER: And your business or occu-
pation?

THE WITNESS: I am adjunct professor of
Social Philosophy at New York University and
lecture in sociology and I'm a psychoanalyst in
private practice.

DIRECT EXAMINATION

BY MR. KUH:

Q Dr. van den Haag, will you keep your voice up loud
so I can hear you back here?

Apart from this private practice as a psychoanalyst,
you teach in the field of sociology; is that correct?

A Yes.

Q Have you, over the years, done a great deal of work

as a practicing sociologist?

A Well, I have written a great deal on sociological matters and published some books about it.

Q Let me get right now to your books and to your writing.

What books have you published, if any, in the field of art -- contemporary American mores dealing with social and critical criticism of contemporary American life?

A I have published The Fabric of Society in 1957; another book called Passion and Social Constraint in 1963, and I have written quite a number of articles and chapters in books published by other people.

Q Apart from those two books, can you tell us what chapters you have written in books and other anthologies that others have gotten out or articles you have written dealing in the area of community mores in America and social and cultural traditions and existence?

A "A Dissent from the Consensual Society" in an article that came out in a book called "Culture for the Millions"; "Reflections on Mass Culture" came out in the American Scholar Reader and has been published in American.

Q Is American the official publication of the Phi Beta Society?

A Yes; "Quia Ineptum" came out in the Chicago Journal and this deals with censorship. "On the Analysis of Mass Culture" came out in a book of Varieties of Modern Social Theory. "Snobbery", The British Journal of Sociology; "Notes on American Popular Culture" in Diogenes; "The Menace of Mass Media", in The New Leader.

I think we will do with that.

Q Have you written --

A A few others.

Q Have you written over the years for publications including Harpers, Commentary, and Partisan Review, among other publications?

A Yes.

Q Besides the writing you have done and the teaching you do at New York University and The New School for Social Research, have you lectured at various colleges and universities in this country?

A I have lectured at Harvard, Yale and Columbia, University of California and a variety of others.

Q Have you also lectured about the American Sociological Association?

A I wrote quite a number of papers at their annual meetings.

Q Are you a Fellow of that association?

A Yes, sir.

Q Have you also appeared in discussing problems of censorship, problems that are community mores, our community culture, and have you appeared on radio and television programs?

A I had the pleasure of appearing with Mr. London about two months ago.

Q The defense counsel in this case?

A Yes.

Q Was that on the Open Mind?

A Yes.

Q That is a Sunday program moderated by Dr. Eric Goldman of Princeton, I believe?

A Right.

Q And apart from that program with Mr. London, have you appeared on other television and radio broadcasts?

A Yes, I have, but I don't remember them.

Q What's that?

A I don't remember each.

Q Did you in 1964 -- were you chosen in May of this year, in fact, were you chosen to deliver the Freud Memorial Lecture at the Philadelphia Psychoanalytic Institute?

A Yes, sir.

Q Now, Dr. van den Haag -- withdrawn.

MR. KUH: I state for the record that I supplied Dr. van den Haag with two transcripts which are photostatic copies of People's 4 and 5 in evidence.

Q Dr. van den Haag, did you get to read the two transcripts?

A Yes.

MR. LONDON: Objected to, your Honor.

I would say and concede that Dr. van den Haag is a scientist of note and sociologist of note but I just wonder what -- in what capacity he is now testifying.

THE PRESIDING JUDGE: Do you wish to cross-examine him?

MR. LONDON: I don't think there has been any qualification yet for his testimony in respect to the matter on trial, the issues on the trial.

MR. KUH: The People will call Dr. van den Haag, whom Mr. London concedes is a sociologist of note, to testify principally concerning any social importance to the Bruce dialogues. He

has written critical analyses and he's articulated about the aspects of our culture and I will call upon him for his critical opinion as to these dialogues. I suggest that a -- and I don't mean anything unkind -- a person of less note was called as a sociologist by the defense whose experiences, I recollect, were principally in urban planning, and was permitted to testify although there was no foundation indicated, as I recollect, that he had ever written a single critical item of any kind anywhere.

MR. LONDON: If your Honor please, the reference to Dr. Gans, I think, is gratuitous and I won't bother to answer it.

Again, I say that I don't understand, unless there is the fact now that Professor van den Haag is being offered as an expert on popular culture in America today and, if that is so, I don't think he has yet been qualified. Sociology is, indeed, a broad field and, as I said, he is an eminent sociologist but I don't know if he's an expert in that particular

field, and if he is, it has not yet been brought to the Court's attention.

THE PRESIDING JUDGE: We'll overrule the objection, at least at this time. You may raise it with regard to specific questions. I suggest you might go -- Mr. Kuh, you might go into the doctor's present duties at the two universities. I don't think that was brought out.

BY MR. KUH:

Q Doctor, when questioned by the Court Officer when you were first sworn, you mentioned that you were an Adjunct Professor of Social Philosophy at New York University and a lecturer in sociology at The New School for Social Research.

Can you tell the Court something about the duties and the courses you covered over the years in those teaching duties?

A At New York University, I taught graduate and undergraduate courses in the general field of sociology, including courses in such matters as public opinion and so on.

At The New School, I have for quite a number of years taught a course in American Popular or Mass Culture.

Culture which is a topic on which I have also published a number of articles which you didn't ask me about and I

didn't mention them there.

Q Can you tell us a little about some of the articles you have written, critical articles you have written, about American Mass Culture?

A "Of Happiness and of Despair we Have No Measure"; "Reflections on Mass Culture"; "On the Analysis of Mass Culture", "Creativity, Health and Art", which, despite the title, deals with this.

Then some articles that have come out in foreign journals. "Conspicuous Consumption of Self", "The Soul Recovers Radical Innocence", "Education as Part of America's Secular Religion".

Q And in these various articles, have you expressed critical commentary on various facets of our American culture?

A One, for instance, called "What to do About Advertising", which is, of course, concerned critically with advertising, and in all of them, indeed, I have expressed not -- well, I have tried to give an analysis of mass culture in critical terms.

Q Thank you, Doctor van den Haag.

Now, you did, I believe, answer my question that you had read the two transcripts that I supplied to you?

A Yes, sir.

Q And did you hear tapes played with which I also supplied you of those transcripts?

A Yes, you insisted on that, and so I did listen to them, although I had read the transcripts several times because they were not entirely clear to me.

Q On the basis of having heard the tapes and having heard the transcripts several times, have you a critical opinion concerning the merit of the two Bruce performances that are in the transcripts with which I supplied --

MR. LONDON: Objection, your Honor, the witness has not been qualified as an expert on the merit of any particular writing, monologue or performance.

MR. KUH: Let me do this. Let me withdraw this question.

BY MR. KUH:

Q I give you transcripts that are the Court Exhibits and I state for the record that I have equipped you with photostats or carbon copies, I think they were photostats of those same exhibits. I ask you, with reference to those exhibits, have you an opinion as to the social importance, social importance, if any, of the comments of the performer, Bruce, in those transcripts?

MR. LONDON: Same objection.

THE PRESIDING JUDGE: Objection overruled.

A Would you elaborate a little bit about what you have in mind by social importance?

Q Do you find in those transcripts items that to you seem to be socially important, socially significant, socially valuable commentary, or do you not, and if so, explain, if you can, your own reaction?

A I have not found any, Mr. Kuh, to the extent to which the transcript was intelligible to me, and I must add it was not always, the points he seems to make is that he doesn't like war, that he's opposed to violence, and that people in Las Vegas go there -- and I think I have paraphrased -- to see tits and ass, which is probably true, but it didn't strike me as a revelation.

Q You say it strikes you as a revelation?

A No, because it seems to be fairly obvious that was the case in moderate ways, I think, no one would fail to express a very similar opinion. Indeed, this is what -- why these things are being exhibited in Las Vegas because people want to see them. So I hardly think this struck me as new or any of the other things. I think they are commendable sentiments but by social criticism that is why I asked you to elaborate.

I understand that someone brings to the fore a new aspect of the matter, is not altogether obvious, or expresses his criticism in a form such that it will be experienced more deeply or more strikingly or in an aesthetically more valuable way, I find nothing of this. It seemed to me just slightly ill-expressed and somewhat disgustingly put. A plousing (phonetic) of common places.

Q In your terms, you say "ill-expressed" and "disgustingly put."

With your knowledge as sociologist of our community mores and our community cases and standards, in your own opinion, would these materials be disgusting and repugnant to our American community?

MR. LONDON: Objection.

THE PRESIDING JUDGE: Objection overruled.

A Well, Mr. Kuh, the American community is something that the sociologist will not regard as a unit. I will have to answer your question, if you let me, in several sections.

If you move in certain circles, say, without casting aspersion, if you moved along with longshoremen, you will hear sudden expressions which, in other American circles, say, in a ladies' club or so, are not regarded as acceptable. So that the question, here, is you asked me in general, well,

my observation is this: That even those longshoremen who, together with other longshoremen, will use such expressions as Mr. Bruce uses, are unlikely to use them within their family and would object if, say, their daughter were to use them or if they were to be used in their daughters' presence.

And I have noted this from personal experience.

So what it seems to me that what Mr. Bruce has done there is to use expressions which, of course, are accepted in some parts of our community. Otherwise, the word wouldn't exist. So, obviously, it is being used somewhere but he has used it in a context and among people who do not usually use it and who take a sudden delight in seeing in public pronounced words that they have been taught, according to our community standards within the circles in which they normally move, are not permitted or are prohibited.

MR. LONDON: I move to strike out so much of the witness' answer as relates to the public's reaction to what Mr. Bruce says. I don't think that Dr. van den Haag can possibly testify to the reaction of listeners whom he has not seen and doesn't know and has not spoken with.

MR. KUH: I suggest to the Court a trained and conceded expert sociologist, as well as a psychoanalyst, it is Dr. van den Haag's pro-

fessional knowledge to know how individuals or groups of individuals and groups in the community do react and, I think, that it is quite appropriate that he testify.

THE PRESIDING JUDGE: We have indulged the defense by giving great freedom to expert witnesses. We must do the same for the defendant. Objection overruled and motion denied.

Q Continue, please, if you will, Dr. van den Haag.

A What strikes me here -- let me try to explain it by an analogy. Certainly, the people who come to this night club to listen to Mr. Bruce are aware of what he is telling them. In the same sense in which, if you will forgive me, I'll assume you have a normal digestive tract, therefore, I will assume that your normal interwalls defecate and urinate.

However, I would be somewhat surprised if you were to do that in public and even more surprised and disturbed if you were to do it on a night club stage. Now, what I am trying to indicate is that something being known and being usual and being performed in public are not quite the same things.

Of course, to perform it in public when the mores of

our society enjoin that these things are performed privately is, of course, to give -- it is done for the purpose of giving rise to certain infantile delight and chuck, I would say.

Now, it seems to me that Mr. Bruce's performance is very similar to the analogy I have just referred to. It is sort of verbal diarrhea; that it is instead of defecating in a stage in a literal sense, he does it through orally.

And people like it probably because it delights them to hear, again, and publicly so to speak in an accepted word, the word, as children, they have been taught they ought not to pronounce. Now, I don't think that this delight that I think is quite innocent is in itself damaging. And I do not think that the performance is exciting sexually. At least, I can only judge for myself. It depressed me and certainly didn't excite me.

But it is disgusting, and speaking in social terms, I do think there is a certain harm done. You see, all societies that I have studied do protect certain minimal social standards. There is something that sociologists call the ethos, the sum of shared values that hold a society together, and what societies usually do rationally or irrationally is to make some attempt to protect that ethos against violators because they feel that as you give reign, so to speak, anything goes, the

social bonds are weakened, the atmosphere becomes poisoned, people who themselves would not necessarily wish to use these words, say, or to enjoy such a performance, become nevertheless affected because their friends go and there is a certain social pressure and for this reason all societies, that I know of, be it democratic societies, such as in England or France, or Communist societies such as in Russia and so on, protect the minimal core of the social values, and I think this protective measure has been violated in this case. This is where I would see the damage.

MR. KUH: I have no further questions.

Thank you, Doctor.

MR. LONDON: Thank you, Doctor.

CROSS-EXAMINATION

BY MR. LONDON:

Q Dr. Van den Haag, have you ever made a study of night club performances?

A No, sir.

Q When did you last attend a night club?

A Well, that may be twenty years ago.

Q Then you do not claim to expertise in what is acceptable or not acceptable in night clubs, do you?

A No, sir, I wouldn't agree. I do.

Q You do claim that expertise?

A Within limits if, if you'll allow me to explain.

Q I would like to know the limits of your expertise in the area of night clubs.

A I don't know the limits. But I do claim some expertise in the sense that I believe you can study something theoretically without having the direct experience of it. I am aware of the fact --

Q And --

MR. KUH: May I have the witness' answer to Mr. London's question without interruption? Mr. London wanted to know the basis of his expertise in this area and, I think, we should hear it.

MR. LONDON: We will have complete opportunity.

THE PRESIDING JUDGE: Let him finish his answer, please.

MR. LONDON: I would like to hear his answer completed.

THE PRESIDING JUDGE: Would you read back what the witness has so answered, and if he wishes to add to it, he may do so.

(The last answer was read back.)

THE WITNESS: May I add to it?

A (Continuing) This is a generally accepted method. There are two methods of studying a crime. One undoubtedly is to practice it and the other is to study it without directly participating in it. One can study prostitution, no doubt without being a prostitute, and so one can also study the behavior of night club audiences and their reactions without being in a night club.

But you wanted to just make a specific point which, I think, you will agree with me, Mr. London. I know enough about night clubs to know that the behavior accepted in night clubs and the performance expected would exceed the limits that you would accept in a garden club or so. That is, that you would certainly go considerably farther than that. The question is, however --

Q I am going to ask you, please, Professor van den Haag, to try to -- in your answers just answer my questions. I am sure that no one more than Judge Murtagh would agree that it is not necessary to consort with prostitutes in order to write about them.

(Laughter)

JUDGE PHIPPS: I think the record should show Judge Murtagh wrote a very able book.

MR. LONDON: Indeed, that is what I was referring to.

JUDGE PHIPPS: I think the record should show it very clear.

Q My question, Professor van den Haag, is how exactly did you conduct your study of night club performances?

A Sir, I really could repeat what I already said. I did certainly not study it by not going to night clubs --

Q Did you do it in another way?

A Yes.

Q How?

A Well, I read about night clubs. There are rather lengthy descriptions published in a number of journals. I have read sociological studies about them. I have read descriptions given for the sake of entertainment. I have seen pictures and so on.

Certainly, I have quite a number of friends that also attend night clubs and tell me about this. I have not made a systematic study of night clubs. If that was the intent of your question, the answer is "No, I haven't."

Q And your study has been limited to reading what other people have written about night clubs and speaking to your personal friends?

A I have gone into that. I have not been in a night club for at least twenty years.

Q But you have not conducted any systematic study of audiences by questioning them other than your friends?

A And you are right.

Q And when you speak of friends, I assume you are talking of your social friends?

A Yes.

Q People who share your intellectual interests?

A I never find people who do.

Q People with whom you -- people in your own social circle?

A Yes, sir.

Q These are the people you have questioned about what goes on in night clubs?

A May I point out that I have a rather large circle of acquaintances, quite a number of my students perform and others attend in night clubs. Since, as I mentioned before, one of my courses is American Popular Culture, I often not only get papers but get questions, comments and so on from students who are night club performers, managers and so on.

So it's not entirely my social acquaintances.

Q Have you ever studied the content of any night club

performer's monologue?

A This is the first.

Q Or act, as it is sometimes called?

A This is the first time.

Q This is the first time you've done so?

A Except in indirect fashion I have read articles by Mort Sahl and some others.

Q You didn't read what Mort Sahl said but what was wrote?

A Except what was quoted.

Q Did you ever read anything about Dean Martin's performances?

A Not that I recall.

Q Did you ever read anything about Dick Gregory's performance?

A I have been on a panel discussion with him, once, and he told me a great deal about it.

Q Did he tell you about the language he used?

A Yes.

Q Did he tell you that he used such words as "mother fucker"?

A He did not mention it.

Q You are not aware that he has used such words?

MR. KUH: I object to the testimony that Dick Gregory used the word "mother fucker". There was testimony that he used some of --

THE PRESIDING JUDGE: We'll allow the question. It's a question but it's not testimony.

Q You were not aware?

MR. KUH: I think the question, if the Court please, is objectionable.

THE PRESIDING JUDGE: This is cross-examination. We know the limitations.

MR. KUH: Certainly.

THE PRESIDING JUDGE: We are not going to be bothered by innuendoes.

A I was on a panel discussion with him. He certainly didn't use it on the panel. I had, if I recall, afterwards, either dinner or drinks with him or so, and it didn't strike me. I would certainly have noticed if he had used this word in this context. I don't know, of course, what he uses when he's at home or on the stage which I do not see.

Q So it would be fair to say you do not know whether he uses such words as "mother fucker" in his performances?

A Right.

Q I suppose the name "Pigney Martin" (phonetic) doesn't mean anything to you?

A Never heard of him.

Q I suppose your answer would be the same as to B. S. Pulley?

A Same.

Q I suppose your answer would be the same as to Joe E. Lewis?

A The name is familiar but I've never seen or heard of him.

Q Are you aware of the fact that I have -- I withdraw that question.

These names that I have mentioned are not very meaningful to you?

A Most of them are unknown to me.

Q Yet, on the basis of your reading of other people's material, and on the basis of what some other people may have said about night club performances, and without having heard a single night club performance in twenty years, you have stated to the Court that Mr. Bruce, in his night club performances, has transgressed the bounds?

A What bounds?

Q I believe I was quoting you, was I not, in indicating

that there are certain boundaries that one may not transgress or go beyond.

A Mr. London, I said the boundaries of community standards which I conceded to you before are drawn considerably more widely in night clubs than in other parts of the community, but it seemed to me that Mr. Bruce exceeded the general boundaries that a community would expect to be respected even in a night club.

Q And I say you reached that conclusion without having attended a night club performance in twenty years --

A I reached that conclusion as a member of the community, not of night clubs.

Q So your conclusion is based on studies that are not -- are based on studies of the community outside of night clubs?

A Perhaps, I haven't fully understood you. I didn't mean to say, at least, for myself, that night clubs are under a special legal or moral immunity not granted to other parts of the community and, therefore, can exceed the general community boundaries. I merely said that I feel that these are informally regarded as more widely drawn in night clubs than elsewhere but I think that the general community standards, such as I know them and as I'm sure you know them, are appli-

cable to night clubs.

Q Again, your answer then is based on your knowledge of general community standards, not on your knowledge of whatever is performed in night clubs?

A Yes, sir.

Q You, I believe, did testify on direct that one uses language depending on the place and on the circumstances, that longshoremen, to use your example, may use the language that Mr. Bruce uses outside of their homes but in the presence of their daughters they do not?

A Yes, sir.

Q So that there are conventions about the use of language?

A Yes, sir.

Q And language is used freely in one place and not in another?

A Well, I think, the difference is between public and private and between the presence of a mixture of sections and of only one section. And finally between occupational occasions and others, such as leisure and entertainment and so on. Well --

Q This, again, is based on your general knowledge of community standings?

A Yes, sir.

Q Have you ever conducted a study of community standards with respect to language?

A No, that would be an interesting study but I would have to get a foundation grant.

Q But you have not conducted such a study as yet?

A No, sir.

Q You have nevertheless indicated on direct that there are certain language taboos?

A Yes, sir.

Q And you suggested on direct that these taboos would apply to the specific words that Mr. Bruce has used in Exhibits 4A and 5A?

A No, sir, not quite. If I gave that impression, allow me to correct it.

The taboos apply to the words in context. Let me try to illustrate.

James Joyce used in "Ulysses" certain words and certain scenes that, outside the context of that book, may very well be regarded as violating community standards. But I would justify their use because it can be shown to anyone reasonably expert in the field that he had a legitimate literary purpose in using them. That is, that this was required for the aes-

thetic purpose he tried to achieve and for the conveyance of the kind of experience he wanted the reader to have and feel as belonging to his protagonist. The reason I find Mr. Bruce's words objectionable is that they are not sustained by any such context which may possibly make them justifiable in any other occasion.

Q In indicating that certain words and certain descriptions of James Joyce are acceptable in that context, I believe, you indicated that it is one who is knowledgeable in that context, and has knowledge of the field, can easily say this is permissible or not?

A He can articulate. I think one not knowledgeable can even understand it. But I think it takes usually a literary scholar to articulate exactly how, why and where one thing is permissible and another is not.

Q Now, does one know that it is permissible in one context and not in another?

A Well, I think, if you refer to social occasions, if one has a general knowledge of society and is a student of it, one should be competent in this context.

If you refer to literature, a general student of literature, one should be able to make this distinction.

Q Without having studied the area, one is not able to

make the distinction?

A I have just divided the word into two areas. One has studied one or another or neither. I don't accept any further distinctions.

Q You have indicated that society will prevent or not permit certain expressions.

However, does society manifest its refusal to permit these expressions?

A I think by laws. I think I mentioned before I have written a long article on this called, "Quia Ineptum", and I may -- the title comes from Portillons (phonetic) saying he believes, even though it be inept and observant, my point was to indicate that the struggle that society has to fight in this sort of thing was unending and that borderlines are also necessarily blurred and re-established by every precedent, so to speak, so the answer to your question is by laws about censorship and by application of the laws through the judiciary and proceedings such as this, I guess.

Q So that, according to your understanding, then, a work such as Tropic of Cancer would at this moment no longer transgress the bond or the boundaries?

A I understand that it has been found by the judiciary -- I happen, myself, to doubt the literary merits of the work,

and, therefore, I am not altogether in agreement with the judiciary on this, but certainly what the judiciary decides is what we have to take to be decided.

Q Before the judiciary decided, then you would have been of the opinion that that book transgressed the boundaries and was not permissible?

A I am still of the opinion but my decision is not decisive.

Q And your testimony here today has also been your opinion what is permitted in night clubs?

A Let me try.

MR. KUH: Let the witness try.

A (Continuing) My testimony is about what is permitted in the community, including any kind of public occasion, that includes, of course, night clubs.

Q Have you seen the play "The Dutchman"?

A No, sir.

Q Have you made any scientific study of what is permitted in the community so far as candor of expression is concerned?

A I do not know of any such specialized study that has been made by anyone, including myself. I do think that I have studied the community, including, of course, and as a principal part of it, the community mores, but this particular question, which I think is interesting and should be

studied, to my knowledge, has never been studied by any sociologist.

Q Have you ever lived among the working class people?

A I think I have, yes.

Q And have you ever conducted a study of mores of working class people?

A I'm quite familiar with them.

Q I didn't ask you, sir, if you are familiar with them.

I asked you whether you conducted a study.

A No.

Q Coming back to the verbal taboos that you indicated that actually exist, let us take the word "fuck".

Is this one of the words about which there is a taboo, that is not accepted by society in certain contexts?

A I don't know whether one would use the word taboo. Let me put it this way. It is a matter of social status and class. I would not expect you to use that word except in a proceeding such as this.

On the other hand, I would expect it to be used under certain circumstances by lots of people, including possibly both you and myself. I would not expect it to be used in public normally.

Q This is merely a matter of what you are accustomed to and what you are accustomed to hear, then?

A Customs and ultimately laws are what people are accustomed to, sir. Let me say once more: The intercourse can be referred to as "fucking", a number of other colloquial words. The difference between the colloquial and non-colloquial term is usually the colloquial one conjures up a more vivid picture than what the symbol refers to. Therefore, it tends to be used usually when you have the purpose of procuring this more vivid experience, be it for shock, obscenity or aesthetic purposes.

Q You indicated a moment ago that intercourse is a word that you have no hesitancy in using?

A I would have no hesitancy in using the other, even. In my profession, you are accustomed to hearing a number of words, but this is not the same as using it in public. The word "intercourse" is so used publicly precisely because it is somewhat remote from the thing it is referring to.

Q These are all socially accepted words?

A Yes.

Q But the word "fuck" may not be socially accepted?

A Much more restricted.

Q This is purely a question, is it not, of custom?

A Yes.

Q And it's fair to say, is it not, that so far as you are concerned, the way of determining custom is by what the law punishes in this area?

A Not altogether, sir.

You see, let me say -- I have lived for a number of years in Paris. And, as you no doubt know, in night clubs in Paris, girls appear usually nude. Certainly, they are far more undressed than we are accustomed to here.

Now, if I lived in France I wouldn't object to that, but if you ask me, "Is this within the framework and mores of the American community?", the answer is "no".

Q Again, you make this judgment because the law does not punish nudity but the law does punish nudity here?

A I think it is the other way around. The law punishes nudity because it is against the mores of the community.

Q Let me ask you, again, how is the limits of the community tolerance determined?

A Well, it's usually determined in a variety of ways and does not always have full agreement obviously, otherwise, we wouldn't be here, but what the legislator does is probably in fastening the law, trying to express as well as he can, what he considers the community consensus.

Q Then we do come back to the laws as being --

A The expression of the community standards.

Q -- as being the expression?

A Yes, right.

Q You indicated that your personal judgment of the language used in Exhibit 4A and 5A is that it was not sexually stimulating but disgusting?

A Right.

Q And if synonyms were used like "fornicate" or "cohabit", would your reaction have been the same?

A It's a little hard for me to imagine. You are straining my imagination because that discourse, its main point seems to be the use of these words. If you try in imagination to replace them by other words, I just don't know what would remain and whether it would shock me or not or whether it would disturb me or whether I would find it disgusting. I think it would depress me, as this does, I believe.

Q What?

A I think it would disgust me, as this does.

Q Even if synonyms were used?

A Yes.

Q And even if those were socially acceptable synonyms?

A Yes, because it's such a senseless and somewhat -- how can I say -- disorganized and disassociated attempt to hit

in all directions at once against a somewhat nebulous enemy who is assumed in some way to like the things that the speaker in some way dislikes, would just depress me as an insane performance.

Q You did, on direct examination, indicate that the sentiments expressed were -- and I think I'm using your word -- are "commendable", but that there was nothing new; it was commonplace; is that correct?

A Yes, sir.

Q And you now state that in addition to their being -- I'll withdraw that question.

By the way, you also are returning to some of your own writing. You wrote a book called "The Menace of the Mass Media".

A That's an article.

Q An article, was it?

A Yes.

Q And can you tell me the text of that article, briefly?

A Frankly, it's a number of years ago and I don't have it with me and I really don't quite remember what it was about.

Q Was no point of view expressed?

A Certainly.

Q Can you tell me what that was?

A I can tell you what my general point of view is and no doubt it was expressed in some form, but, I don't remember specifically what was said in this article.

I think I probably discussed the lightlessness and homogenization mass media bring about, the prefabricated nature of the shocks that are administered, the artificiality of it. Frankly, if you want to, I can give you a two-hour lecture about it, but I have no clear idea of what this article refers to. I am sorry I am not prepared.

Q There was another article, "What to do About Advertising."

A That I recall.

Q Can you tell me the point of view in this article?

A Yes, certainly. It's rather complex. I indicated the necessary economic functions of advertising. I indicated that many people seem to exaggerate the effect of the advertising which for a variety of reasons is not as influential as it is depicted to be by both those that oppose it and those who favor it and believe the wheels of American industry would not turn without advertising. I pointed out that advertising, to be more technical, does not affect aggregate demand but only shifts the demand from one field to another or one article to another or one brand to another, and then I went

on to explain there were various kinds of advertising.

Those that are informative, those that appeal to the emotions, and are not informative, and not cognizant in content. And there is another possible distinction between the more coercive media of advertising and the less coercive one. That is, there is some that you cannot escape easily without making an effort and others that you can easily avoid. And I proposed to -- then I pointed out the totality of advertising is far in excess of the needs of information. Then I proposed that a tax be imposed on advertising. The advantage being that we could, by imposing it on specific media, as being a sales tax, in a specific way probably reduce the total amount of coercive and emotional advertising, without greatly reducing the amount of informative advertising and without -- that was my point -- having to make any administrative decisions which I oppose for obvious reasons. The purpose was, in short, to reduce the total size in advertising, to reduce the kinds that are most noxious and do so by ways that are fairly automatic and do not require human decisions once the general decision has been made.

Q Now, to use a term of yours, "emotional advertising", it is true, is it not, that a great deal of this "emotional advertising" is intended to and does actually appeal to the

sexual instinct?

A Yes.

Q Rather openly and rather flagrantly?

A Yes, usually, I don't know when you find a pretty girl depicted near a car, the answer is, of course, the intent on the part of the advertiser of eliciting possibly an unconscious connotation that if you get the car, you get the girl, too. Something along those lines, but -- if you mean by that reference to the sexual instinct, the answer is "yes."

Q Have you made a study of publications in our society, mass magazines?

A Yes.

Q And trade books, that is ordinary books that are sold?

A Yes, sir, I have been concerned with these matters quite a while.

Q And you have found, have you not, that there is a great deal much more freedom of expression in these last ten years than prior to that time?

A Yes, sir.

Q A great deal more freedom in the use of language?

A Well, if you want to call it freedom.

Certainly, a number of words which were, as you put it

before, nearly tabooed are now used in print and novels, and a number of novels that ten years ago would hardly have been allowed to be sold publicly, now are.

Q And these words are used with some frequency?

A Yes, but may I add one thing?

To my knowledge, in these novels, of course, critical opinions may vary, but they are used in a context to which is intended to convey some sort of artistic and social purpose.

Q You didn't find that context in Tropic of Cancer, for example?

A I would think that it existed in the intention of the author but that he was not successful in conveying it to me.

Q You don't use, certainly, the intent of the author as the test in determining?

A You're right, I don't.

Q By the way, I think you did indicate on your direct examination that language that you found objectionable in Exhibits 4A and 4B were words that one learned as children were not to be used publicly.

Now -- I am now not quoting you exactly but I think that was the substance of what you said.

A I haven't understood the question.

Q Pardon me?

A Will you please repeat this?

Q I believe that you stated that the words that are used in Mr. Bruce's monologues, Exhibits 4A and 5A, that you found objectionable, were words that one learns as children are not to be pronounced openly?

A If you mean to say that people normally learn as children the word "mother fucker", so I did not mean to say that. Some people do and some don't. There are some others -- there are processes of rationalization. These are words that are more familiar with --

Q To your knowledge.

A But you see, the point is precisely that the family has taboo words, that is the point. His performance is in using a word that he knows and that the audience regards as taboo which seems to give a pleasurable shock.

Q This is, again your conclusion?

A That is my theory.

Q About an audience that you have never seen?

A About generally the behavior of audiences confronted with obscene terms.

Q Again, that characterization of yours, "obscene", is it your --

A Certainly.

Q You are, of course, aware that the legal definition of the word "obscene", or are you familiar with the legal definition?

A No, sir, I leave that to you. I leave that to you.

P. KUH: Please, Doctor, leave that to the Bench.

THE WITNESS: I'm not familiar with the law and I'm not familiar with the legal definition of the word "obscene".

Q Accepting for a moment the definition that that is obscene which appears to the prurient interests --

THE PRESIDING JUDGE: Mr. London, please.

MR. LONDON: All right, I'll withdraw the question, that's all.

MR. FUR: Mr. Schwartz?

MR. BRUCE: May I talk to my attorney before the witness leaves the witness stand?
I didn't get a chance to talk to him.

THE PRESIDING JUDGE: Surely.

MR. BRUCE: Thank you, sir.

(Conference among Messrs. London, Galt,
and Bruce.)

MR. LONDON: May I just ask one or two more

questions.

BY MR. LONDON:

Q You were not born in the United States, Professor van den Haag?

A No, sir.

Q Where were you born?

A In Holland.

Q Where were you educated?

A Educated mostly in Italy, some extent in France and the United States.

Q When did you come to the United States?

A 1940.

Q And you didn't remain here during the entire time from 1940 to date; I think you testified that you lived abroad for a time?

A No, sir.

Q Your stay in Paris was prior to your coming to the United States?

A Well, I lived -- first studied at the University of Iowa, so I lived there for a while and Philadelphia studying at the University of Pennsylvania, and then mainly, almost exclusively, in New York. I have been in Europe once or twice but usually only for a few weeks.

Dr. van den Haag - for the People - cross
redirect

Q Now, did you understand all of the words that I used in Exhibits 4A and 5A?

A Yes, sir.

Q All of them?

A Yes, sir. I may amend this, excuse me.

I didn't always understand the sense but I understood the words. I understood the grammar but not the syntax.

MR. KUH: Just a question or two of Dr.

van den Haag.

REDIRECT EXAMINATION

BY MR. KUH:

Q You mentioned that referring to the words, the alleged obscene words, that in context they may serve some purpose.

As you read the Bruce transcripts, the transcripts which I supplied you and listened to those tapes, what purpose, if any, do you find Bruce, in your opinion, in your critical opinion, what purpose, if any, do they serve?

MR. LONDON: Objection, your Honor.

I think the witness is not competent to testify as to Mr. Bruce's purpose.

THE PRESIDING JUDGE: Objection overruled.

A - Of course, I do not know Mr. Bruce's purpose in the

sense of motivation, but I do know, I believe, the effect that they serve, that is the function of these words, and it seems to me they were the only thing that held the discourse together. That is, it was, so to speak, a rather soft p spiked with some rais ns. These words serving as raisins.

It was, as I tried to say before, sort of a discourse, against all kinds of recognized evils, such as people being overly interested in sex in a reductive fashion in Las Vegas, say, or sometimes using the halls of modern times to get a stimulus or gratification of sexual desires or something like that, but in the guise of objecting to these things, it seemed to me that Mr. Bruce rather displayed them and the enjoyment of his audience, I think, can hardly have been in the critical disguise but rather in what was being represented to them, and the point of that enjoyment, as far as I can see. For otherwise the discourse did not offer anything much in terms of wit or elegance of speech or poetry or whatever cognitive content. The point must be the use, the unfamiliar use of taboo words in public when people sort of wait for them but wondered, "Does he dare or will he?" Or something like that. That seems to be the function of these words.

Q Dr. van den Haag, you speak of them as taboo words.

Let me ask you a few short questions.

Do you know Reverend Sidney Lanier?

A Yes, sir.

Q Do you know a sociologist, Herbert, I think his first name is, Gans?

A Yes, sir.

Q Do you know drama critic Richard Gilman?

A Yes.

Q Do you know someone by the name of Nate Hinton?

A Yes.

Q If I tell you that they, in discussing the words you classify as taboo words, they indicate these -- and I just generalize now, I am not going to detail the testimony of each -- but these words are not taboo but acceptable.

Have you an opinion as to the reasons for the difference in judgment between your own view and the view of each of these persons?

MR. LONDON: Objection, your Honor. The witness is now being asked about the motivation of other witnesses whom he has not heard testify.

THE PRESIDING JUDGE: Sustained.

MR. KUH. May I suggest to your Honor that Mr. London was permitted to question other witnesses about witnesses whom he produced and

as this witness has a knowledge of each
these persons, I think, for whatever value
has, it --

THE PRESIDING JUDGE: Objection is sustained

MR. KUH: I have no further questions --
one moment.

(Discussion off the record between Mr.
Kuh and Cuccia.)

MR. KUH: I have no further questions

THE PRESIDING JUDGE: Counsel for the
other defendants?

MR. SCHWARTZ: No cross.

MR. KUH: At this point, People rest,
your Honor.

MR. BRUCE: Your Honor, at this time, I
would like to ask the Court to allow me to speak.
I do have counsel that ably represents me but
I have a problem communicating with them and
there is evidence withheld from the Court and
I would --

THE PRESIDING JUDGE: The Court strongly
advises you to be guided by the wisdom of
counsel. You are fortunate in having most dis-

tingished and able counsel.

MR. BRUCE: This is evidence important to the Court and I don't have the opportunity to communicate with -- and I don't have the opportunity to --

THE PRESIDING JUDGE: We'll take a short recess to allow you to communicate with counsel.

(Short recess held.)

MR. LONDON: If the Court please, Mr. Bruce has agreed to be guided by my advice and the defendant Bruce now rests.

MR. SCHWARTZ: The Solomons have rested before, but I rest, again.

MR. KUN: I didn't hear Mr. Schwartz? Does that reflect both Solomons?

MR. SCHWARTZ: Yes.

THE PRESIDING JUDGE: Both sides rest. Is there any motion?

MR. LONDON: Yes, your Honor, I just wonder if we ought to make our motion in a brief?

THE PRESIDING JUDGE: I think you make your formal motions and I think the support for the motions can come in written briefs.

Motion - Mr. Schwartz
Mr. London

MR. SCHWARTZ: Your Honor, may I make an oral motion at this time?

THE PRESIDING JUDGE: Surely.

MR. SCHWARTZ: I would like to move to dismiss on the ground that the People have failed to prove the case against my clients beyond a reasonable doubt. If I may, I'd like to be heard briefly on the question.

THE PRESIDING JUDGE: That's what we're seeking to avoid. I think anything you have to say in support of your motions can be adequately covered in briefs and I don't think we're going to decide this on oral argument in any event.

Now, counselor indicated this morning that we could proceed in this fashion.

MR. SCHWARTZ: All right.

THE PRESIDING JUDGE: That is your motion?

MR. SCHWARTZ: That is my motion.

MR. LONDON: Defendant Bruce moves to dismiss, or in the alternative, for an acquittal on the grounds it will be set forth at length in a brief unless the Court wishes to hear them at this time.

THE PRESIDING JUDGE: I think you make your formal motion to dismiss on the ground that the People have failed to prove a case beyond a reasonable doubt.

MR. LONDON: On that ground, on the ground that the statute under which the defendant Bruce is charged, the defendant Bruce is charged with violating, is an unconstitutional statute, that the defendant Bruce has not committed any crime that may validly be condemned.

THE PRESIDING JUDGE: All right, the Solomons join in that motion?

MR. SCHWARTZ: Yes, sir

MR. LONDON: Again, may I state the constitutional grounds in the brief but I will be happy if the Court wishes to hear argument.

JUDGE CREEL: In your brief. It's a long pertinent case. Particularly, it would be of interest to me, personally, Mr. London, to know if any of the cases have ever considered the question as to whether there is such a thing as hard core vulgarity as distinguished from hard core pornography.

MR. LONDON: We will certainly search to see if there has been such a distinction.

THE PRESIDING JUDGE: What date will we have the briefs, now?

MR. KUH: People will be able to prove -- I think we can get our brief in a few days your Honor. In declaring a recess in order that briefs might be prepared, I would, of course, be curious to see Mr. Schwartz and Mr. London spell out particular grounds I might not be aware of. I would like to be able to meet that.

THE PRESIDING JUDGE: Initial briefs can be submitted when?

MR. LONDON: Your Honor, may I suggest ten days, your Honor, and a week thereafter for reply?

THE PRESIDING JUDGE: Agreeable?

MR. SCHWARTZ: Yes.

THE PRESIDING JUDGE: Ten days from today is what day?

COURT OFFICER: The 10th.

THE PRESIDING JUDGE: August 10th and one week from that?

MR. LONDON: Yes.

MR. KUH: I don't want to press this Court unduly but is there any chance of making it a date earlier than August 10th? For the next two weeks I'm going to be over my ears and I would like to see the defense briefs soon and I take it there will be two briefs to answer sooner.

THE PRESIDING JUDGE: Do you want more time for reply brief?

MR. KUH: I don't want to prolong the case and I don't mean to press either Mr. London or Mr. Schwartz, but when the Court declared the recess one of the purposes was to give us time to prepare briefs. I would suggest the prior week and the week after that.

THE PRESIDING JUDGE: This is the summertime. The Court has labored long and hard already. The Court will need time to study this matter, too.

August 10th, and then for reply August 17th.

MR. LONDON: Thank you, your Honor. I understand we will exchange briefs on the 10th.

and serve all briefs on the 17th.

MR. KUH: May I make this suggestion, your Honor, without annoying you? If your Honors are not going to move up the time, the weeks from August 10th to the 21st will be virtually impossible for me to accomplish anything. There is a conference in New York, the 17th and 21st, and I am one of the hosts.

THE PRESIDING JUDGE: Do you want a later date?

MR. KUH: For the reply briefs, would you give us the following week? Make it Friday the 28th.

THE PRESIDING JUDGE: Agreeable to the Court.

MR. KUH: I don't mean to slow things up. I tried to advance the whole schedule, your Honor.

THE PRESIDING JUDGE: All right, August 28th. And, at least at the moment, I don't think any oral arguments are contemplated. In the interest of justice, if both counsel press, we will consider it but I think --

MR. KUH: I'm sorry, your Honor --

THE PRESIDING JUDGE: I say, on the matter of oral arguments, the Court would just as leave avoid oral arguments, but, on the other hand, it has an open mind, and if counsel both feel that something would be gained by it, we will reconsider that. But we strongly prefer to rest on the briefs. We won't fix a date for decision. Counsel can be notified of the decision.

We will -- consistent with vacation schedule we will make a determination of this at an early date after the receipt of the briefs.

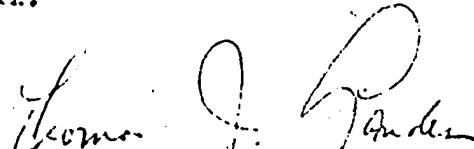
MR. LONDON: Thank you.

MR. KUH: Thank you, your Honors.

THE PRESIDING JUDGE: Court is adjourned.

COURT CLERK: Court stands adjourned.

This is to certify that the above is a true and correct transcript of the testimony taken at this trial.


Thomas J. Ladders, C.S.R.
Official Court Reporter

COURT OFFICER: Docket 4406, 4407,
Lenny Bruce and Howard Solomon, charged with
1140a of the Penal Law. Notice of appearance for
defendant Bruce, Ephraim London, 1 E. 44th
Street, New York City. For the defendant Howard
Solomon, Alan G. Schwartz, 733 Third Avenue, New
York, New York. For docket 4623 and 4624,
Ella Solomon and Lenny Bruce, 1140a of the Penal
Law, notice of appearance, Ephraim London, 1 E.
44th Street, New York, New York.

MR. BRUCE: Ephraim London --
Bruce was substituted.

COURT OFFICER: Notice of appearance,
Ella Solomon, Allen G. Schwartz, b733, Third Avenue,
New York City.

JUDGE MURTAGH: One moment, please.
Will you be seaged?

MR. BRUCE: Surely.

JUDGE MURTAGH: All right, Mr.
Bruce, do you want to say something to the court?

MR. BRUCE: I would like to
testify.

any counsel, I therefore, respectfully submit to Your Honors not to ask me to represent him in this sentence.

MR. BRUCE: Thank you.

JUDGE MURTAGH: Mr. Herschman, would you accept an assignment to be available for the Defendant Bruce? The defendant Bruce asked to appear for himself and the Court should prefer that he have the benefit of any legal advice during these proceedings and would appreciate it for this purpose only you be available as counsel and advise the defendant in this matter.

MR. HERSCHMAN: If he asks my advice I will be glad to give it.

JUDGE MURTAGH: Any reason why we should not proceed to sentence?

MR. MILLER: None whatsoever, except, I would like to make a statement to the Court.

JUDGE MURTAGH: Yes.

MR. MILLER: Since he is defendant number one, I suggest Mr. Bruce be heard first.

JUDGE MURTAGH: Yes. You may speak yourself or you may speak through counsel. You will be better advised, I will advice you to speak through counsel, but, you can speak for yourself.

MR. BRUCE: I will speak for myself, thank you.

It's twenty-five to four and I speak for the record. Your Honor, the first motion I make, I would like the Bench to appoint a Master, a Referee. The reason for the Master, the Referee, I have sued Your Honor personally for \$500,000 under 1984 as Your Honor is aware. You were served personally. I sued Magistrate Phipps and Magistrate Creel and the civil suit, 356474, is still on. The temporary restraining order was denied but there is still a suit and I feel that perhaps Your Honor might be a bit bias and I would like Your Honor to appoint a Master for the tape recording that reflects the perjury that Mr. Kuh encouraged and the Master would also listen to the tape recording and see the distortions and conflicts in the record, the transcript which I purchased from the Court Reporter. I wait to hear Your Honor's word if you would appoint a Master or not.

JUDGE MURTAGH: Your motion is denied.

MR. BRUCE: Thank you. Your Honor, the second application I would like to make is that you arrest judgment and I base this on new evidence that was not available at the time of the trial. Before I present this evidence, Your Honor, I would like to make the Bench aware of the fact Richard Kuh is no longer with the District Attorney's Office and is present here justifies

the civil suit that he has conspired with the Nassau County District Attorney and I ask the Bench who is my adversary, who is representing the District Attorney's Office here?

JUDGE MURTAGH: I think Mr. Kuh is representing Mr. Hogan, am I correct?

MR. KUH: That is correct, Your Honor.

MR. BRUCE: In the official capacity?

JUDGE MURTAGH: As an Assistant District Attorney of New York County.

MR. BRUCE: Thank you, Your Honor. The legal argument I have to present has to do with 1140A, that was I arrested under 1140A, three counts of 1140A. At the time of trial I wasn't aware that in 1931 there had been an amendment to 1140A. 1140A is as it reads today, has a provision, what we call a statutory exception and it says that the provision of this section shall not apply to anyone who participates in the performance merely as an actor, stage-hand, spectator or musician. I sent to Albany and I got the legislative history and I would like to read it to Your Honor, it's very short. First, page forty-two from the District Attorney's Memorandum in opposition to acquit. It says, Lenny Bruce, with respect to the Defendant Bruce, it is beyond question that his role is not confined to that

of a "mere actor", and hence is is not redeemed by the statutory exception. He neither reads nor recites from a script, nor memorizes lines penned by another. He functions as one who presents a loose and partially extemporaneous improvization. Far from being a mere actor, he is the entire show. 1140A reads: Any person who as owner, manager, producer, director, actor or agent or in any other capacity prepares, advertises gives, directs, presents or participates in, any obscene, indecent, immoral or impure drama, play exhibition, show or entertainment, or any obscene, indecent, immoral, impure scene, tableau, incident, part or portion of any drama, play exhibition, show or entertainment, which would tend to the corruption of the morals of youth or others; or who prepares, advertises, gives directs, presents or participates in, any drama, play, exhibition, show, entertainment, scene or tableau depicting or dealing with, the subject of sex degeneracy, or sex perversion; and every person aiding or abetting any such act, and every owner, lessee, or manager of any theatre, garden, building, room place or structure, who leases or lets the same or permits the same to be used for the purpose of any such drama, play, exhibition, show or entertainment, or any such scene, tableau, incident, part or portion of any drama, play, exhibition, show

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or entertainment, knowingly, or who assents to the use of the same for any such purposes; shall be guilty of a misdemeanor. The provisions of this section shall not apply to any person participating in unlawful performance merely as an actor, musician, stage hand or spectator. A letter, 1931, from the Police Department and written to the Honorable Franklin D. Roosevelt, Governor of the State of New York The Capitol, Albany, New York. My dear Governor: Last year the Legislature passed an amendment to Section 1140-a of the Penal Law, known as the Post Bill. This amendment would have done away with the so-called "padlock" provisions in regard to theatres which has exhibited indecent and immoral plays against which the authorities have taken successful action and obtained convictions. At the direction of the then Police Commissioner, Grover A. Whalen, I telegraphed to you expressing the opposition of the Police Department of the City of New York to the Post Bill. Subsequently, I believe, you vetoed this measure. At the Legislative Session just closed a similar bill was again passed known as the Buckley Bill. This measure would give immunity to actors participating in indecent public exhibitions and plays. I am directed by the Police Commissioner, the Honorable Edward P. Mulrooney, to state to your Excellency that the police

Department of the City of New York is opposed to the Buckley Bill. We believe that if Section 1140-a of the Penal Law is amended as this Legislation seeks to amend it, it will seriously weaken any prosecution that may be attempted by us against obscenity on the stage. I have had charge of the handling of these cases for the Police Department for more than five years and I do not believe that the present Statute imposes any unnecessary hardship upon the actor nor does it place him in undue jeopardy. There has been a great deal of clamor during the past year for a State censorship of the theatre and the Police Department has maintained that there was no need for such censorship provided Section 1140-A of the Penal Law was not altered. We do not make raids indiscriminately under this Section as is witnessed by the fact that we have been uniformly successful during the past half a dozen years in securing convictions or causing the withdrawal of the productions objected to. We respectfully submit to you that the Buckley Bill would weaken the authority of the Police Department in matters relating to the stage and would be undue interference with Police power.

Signed James P. Sinnott. Now, we have from the Diocese of New York, Synod House, April 18, 1931, Dear Governor

Roosevelt; I am taking the liberty of appealing to you to give your approval to the Buckley Post Bill which would exempt from summary arrest the members of the casts of plays which may be suppressed by the police. In my work as Executive Secretary of our Social Service Commission, I was brought into close relationship with the theatrical profession generally, and with the officers of the Actors' Equity Association. Our commission was very active for a long time in trying to bring about some improvement in the character of the plays produced on the New York Stage, and in all this effort we had the active and sincere co-operation of the members of this profession; and I am convinced that the provisions of the Buckley Post Bill would safeguard earnest and high-minded actors and actresses against undeserved attack and condemnation by the Police and the District Attorney's office. O trust you will not attach too much weight to the requests that are probably coming to you from so-called Reform organizations to veto the Buckley Post Bill. Respectfully yours, Suffragen Bishop of New York. The law before it was passed, I will note, 1140A before the amendment. It is similar to one, two, three. It says: Section 1140-A, Any person who as owner, manager, producer, director, actor. The argument the Dis-

trict Attorney presents that Lanny Bruce is spontaneous, he pens his own material. The New York Society for the Suppression of Vice. The letter dated April 13, 1931. It says: Honorable Franklin D. Roosevelt, Your Excellency: We are writing in opposition to the Post-Buckley Bill passed by the Assembly and by the Senate intended to amend Section 1140-A of the Penal Law by giving immunity to actors and some other classes regardless of the fact as to whether or not the public show in which they may be engaged is indecent and otherwise demoralizing. We hope that you will withhold approval and veto this measure. From a practical standpoint should this measure, become a law, it would be impossible to take any remedial action whatever in many cases regardless of the degree of indecency of a public stage production. This is particularly true with reference to burlesque performances, where in some instances it is impossible to find anyone occupying a responsible position in connection with the production of a show other than the actor engaged therein. Moreover, in this type of show much of the dialogue and action is spontaneous, and is not known in advance to the producer or manager of the show. This type of entertainment has grown with great rapidity during the last few weeks, five separate houses in different parts of the city having been taken over for burlesque

purposes. In connection with such shows there have very recently been four criminal prosecutions. During the past season a show entitled Ballyhoo, which apparently was loosing money, was abandoned by the producer, but was subsequently carried on by the fourteen actors appearing therein. We believe that there is no excuse for putting mature and presumably intelligent actors and actresses from the legal standpoint in the class of children and imbeciles, and we further believe that such a measure is patently an undue interference with the police power of the state. Trusting this matter will have your very careful consideration, and that your determination may be against this proposed amendment. Signed, The Secretary. Now, we have passed through both houses, this paper says, In Assembly, An Act to amend the penal law, in relation to immoral plays and the use of real property therefore. Next page we have titled, Number 266, 1905, Int. 266, In Assembly, January 20, 1931, Introduced by Mr. Post, read once and referred to the Committee on Codes. It says, An Act to amend the penal law, in relation to immoral plays and the use of real property therefore. Under the People of the State of New York, represented in Senate and Assembly, do enact as follows: Section 1. Subdivision one of section eleven hundred and forty-a of the penal law is hereby amended to

read as follows: 1. Any person whoas owner, manager, producer, director, and is bracketed to actor, matter in italics is new matter in brackets old law to be omitted. Such section is amended by inserting therein a new subdivision to follow subdivision three, to be subdivision four, to read as follows: The provisions of this section shall not apply to any person participating in such unlawful performance merely as an actor, musician, stage hand or spectator. This act shall take effect September first, nineteen hundred thirty-one. We have the answer to all of their questions by the writer of the bill, Langdon Post, before the Assembly, Assembly Chamber, State of New York, Albany, April 17, 1931, My dear Governor: In reply to your request yesterday that I send you a memorandum regarding my amendment to Section 1140A, which excludes an actor under that particular section, I here with quote you other sections under which the actor may be prosecuted for any specific act which he may do in the course of a production. Under Article 148 of the Penal Law which provides against the commission or maintenance of nuisances, immoral or improper public entertainments have been successfully prosecuted. Section 1530 of the Penal Law under that article defines a "public nuisance" as "unlawfully doing an act or omitting to perform a duty, which act or omission, two, offends public decency. Un-

der that section, in the case of People vs. Doris, 14 App. Div. First Department, 117, a judgment of conviction was upheld by the Appellate Division against a defendant who had presented a pantomime symbolic of the retirement of a husband and a wife upon their wedding night. The conviction was upheld on the ground that the section embraces within its provisions any public representation suggestive of indecency and injurious to public morals. Under Section 1532 of the Penal Law, it is provided that "a person who commits or maintains a public nuisance is guilty of a misdemeanor." The use of the word "commits" brings directly within the terms of the definition of public nuisance in 1530, any individual employee or actor who is personally responsible for an act violative of the provision. This was directly held by the Appellate Division in the case of People vs. Weeks, 172 App. Div. Second Department 117. Under Section 1140 of the Penal Law, it is provided that a person who commits indecent exposure - - I repeat 1140 - - rather I qualify that, under section 1140, not 1140A, under Section 1140 of the Penal Law and I'm correcting the letter I'm reading, April 17, 1931, to Franklin Deleanor Roosevelt, from Langdon Post, and this is the fifth paragraph, the fifth paragraph again. Under Section 1140 of the Penal Law, it is provided that a person who commits

indecent exposure publicly is guilty of a misdemeanor. This section is comprehensive enough to cover an individual act or exposure during the course of a public performance by a particular actor, and it has been so held. Of course, in various local ordinances in cities throughout the State, there are provisions covering indecency, disorderly conduct and public nuisance which permit of local prosecution. The important distinction at which the amendment to 1140A, now before you, is directed is that under that section, the individual actor is held responsible for the entire production even if his contribution or part is not in and of itself offensive or violative of the indecency act. He arrives and his only line is, "You are under arrest". He stated that he had never seen the balance of the production, referring to the actor, merely came to meet his family. In as much as there is suitable provisions in the law for the indictment and conviction of the actual offenders, it is not only just but proper that the law be amended to exclude the actor. This Section, 1140A, has only been in existence for four years. Prior to that there had been many arrests and convictions for indecency on the stage. The section was passed for the purpose of making punishment more severe and of reaching those who were more directly responsible

for the indecency, such as the producer, the director the author and I stop. The author of obscene material would be libel under 1140. Who might necessitate a closing of the theatre by relocation of its license for the period of a year. The arguments put forward in 1927 during the hearings on the bill were directed entirely and solely against the theatre as a whole, not against the actor or the individual who appears in smokers. In the course of the hearings on this amendment it seemed apparent that the arguments for the section were quite different. Referring to another letter where he said, passage of the bill would give immunity to filthy stage shows. That's what the writer's bill called for, the letting - - he would never have given immunity to spectators for they are the only type of spectators that are arrested, Respectfully yours, Langdon W. Post. P.S. As I told you yesterday this amendment received the approval of the late Senator Wales when I first introduced it in 1929. As you know, Senator Wales is the author of 1140A. My note; It is obvious that the official authorities aid the private organizations that resisted the amendment to this bill in 1931 are of the same opinion today. The intent of the late FDR is clearly established by his signature to this

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bill. The letters opposing the amendment display that it was a matter that received due amount of inquiry, deliberation and debate. The letter from the New York County Lawyers' Association (Irving J. Joseph, Esq.) display a great deal of concern as to the imminent chaos the signing of this bill would bring about. The documents display that the law had originally included the actor and that it took a meeting of both houses and the signature of the governor to add the amendment. If the Court would the exemption as intended and expressly set forthwith such a precise nature. "The amendment of law." If the Court would not heed this, what they're doing, actually, is ignoring Roosevelt. They're ignoring the mandate of Franklin Delano Roosevelt, I assume is a great deal more offensive then saying that the late Eleanor Roosevelt had nice Nays Nays. The defendant begs the court to take a judicial notice of the fact that there is no question as to the interpretation of a law that has had an amendment to it as this law, 1140A has, the bill jackets that are attached hereto from the archives in Albany that were not available to the court since the archives library contains legislative history that is available no place else in the state. So naturally the Court didn't know,

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the District Attorney didn't know anything about it. It contains a legislative history. I sent for - - I have got it here, it is available no place else in the state and I want the Court to reverse its earlier decision based on this evidence plus the evidence that the law that this court would enforce besides violating the fourteenth amendment, which is due process of law, is compounded by the opinion of the Court, a five page opinion. It's now four minutes to four, in two minutes I will hand this over to the Court.

JUDGE MURTAGH: That is a motion, I take it, Mr. Bruce - - -

MR. BRUCE: This is not a motion to - - this is - - yes, Your Honor, I didn't mean to interrupt you.

JUDGE MURTAGH: This is a motion for us to reconsider our original ruling to set aside the conviction, is that correct? - - - I state for the record Mr. Bruce has terminated argument temporarily and is shuffling through his file at great length.

MR. BRUCE: I have them. I'm ready, I start at - - -

JUDGE MURTAGH: I'm not criticizing you, I just want the record to be complete.

MR. BRUCE: I would like to present this evidence to the Court, certain perjury - - Your Honor will not listen to the perjury evidence I have to give to the Court?

JUDGE MURTAGH: The Court will hear you in any regard, but, the Court - - -

MR. BRUCE: I beg your pardon.

JUDGE MURTAGH: The Court wants to know if you want a ruling on your motion to set aside the conviction, set aside the ruling and reverse its conviction?

MR. BRUCE: No, Your Honor, I haven't finished with the evidence I have to give to the Court.

JUDGE MURTAGH: Continue then.

MR. BRUCE: I refer to the opinion of the Court - - from the opinion of the Court, Honorable John M. Murtagh, Violation 1140A Obscene plays, "Monologues also contained anecdotes and reflections that were similarly obscene. For example: Three, St. Paul giving up "fucking." - - - From the Opinion of the Court, Honorable John M. Murtagh, Violation 1140A Obscene plays, "...monologues also contained anecdotes and reflections

that were similarly obscene. For example: 3.
 "St. Paul giving up "fucking." (1st performance;
 transcript of 2nd performance at p. 12; transcript
 of 3rd performance at p. 19) Number 9. "The reunited
 couple discussing adulteries committed during their
 separation, and the suggestion of a wife's denial
 of infidelity, even when discovered by her husband."
 (1st performance; transcript of 2nd performance at
 p. 29) These are two of the twelve examples the
 court chose as representative of the performances
 that were in violation of the law. The use of the
 taboo word in above three is in error. "St. Paul
 introduced celibacy to Christianity." The People's
 witness, Commissioner Ruhe, who reported this show
 from five pages of notes he had transcribed from
 earlier notes, "his version" "testifying from re-
 vived recollection." "... introduced celibacy to
 Christianity" was reported "fucking." by Commissioner
 Ruhe. Nine, discussing adulteries committed during
 their separation, and the suggestion of a wife's de-
 nial of infidelity, even when discovered by her hus-
 band." A Supreme Court decision on the motion pic-
 ture, "The Miracle." Mr. Justice Clark delivered
 the opinion of the court: "First Amendment's guaran-
 tee of separate church and state with freedom of

worship for all. However, from the standpoint of freedom of speech and the press, it is enough to point out that the state has no legitimate interest in protecting any or all religions - - I want to stop there, protecting any or all religions from views distasteful to them which is sufficient to justify restraints upon the expression of those views. It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches, or motion pictures."

Burstyn V. Wilson 343 US "In the realm of religious faith to persuade others to his point of view the pleader as we know at times, resorts to exaggeration, to villification of men who have been, or are prominent in church or state, and even to false statement."

Mr. Justice Roberts speaking for unanimous court in Cantwell v. Connecticut 310 US "The line between informing and the entertaining is too elusive for the protection of the basic right (A free press). Everyone is familiar with the instances of propaganda through fiction. What is one man's amusement teaches another's doctrine." (The importance of motion pictures as an organ of public opinion is

not lessened by the fact that they are designed to entertain as well as to inform.) Winters v. New York 33 US. The defendant directs the court's attention to the first paragraph "The dominant theme of the performance appealed to the prurient interests and was patently offensive to the average person in the community, as judged by present day standards. The performances were lacking in "redeeming social importance". My note, this is a paraphrase of the language in Roth 354 US and Manual Enterprises 370 US and Zeitlin V. Arhnderg 31 Cal. Reporter 800 Jacobellis V. Ohio 378 US and the model penal code tentative draft 6-7. 1957 proposed draft, The gravamen in the first paragraph is, made by the court, "the dominant theme" that starts the sentence, appealed to the prurient interests" is in conflict with the 2nd paragraph, made by the court, that starts, "The monologues were not erotic. They were not lustinciting, bur, while they did not arose sex, they insulted sex and debased it." The meaning of prurient embraces lus-inciting, sexual arousal, and the erotic. The authority that supports this statement is in Roth V. US 354. Attorney General V. Tropic of Cancer 344

mass, NE 2nd 328 Fritch 13 New York 2nd 119, 127 (1963). Manual Enterprises v. Day 370 US. This is the authority now that supports the erotic as an integral part of obscenity. "We decline to contribute to Congress any such quixotic and deadening purpose as would bar from the mails all materials, not patently offensive, which stimulates impure desires relating to sex and it is only material whose indecency is selfdemonstrating and - - the And in italics so the emphasis is there, that's my note, back to the opinion, And by the Justice Harlan, who delivered the opinion to the court, parenthesis, I comment, now the opinion, which, from the standpoint of this effect may be said predominantly appeal to the prurient interests. I comment, Mr. Justice Harlan, concurring in results 61, and dissenting in 582 in Roth v. United States 354 US, 476, now to his comment, Justice Harlan, he's talking about Mr. Albert, he is the defendant. The defendants in both these cases were engaged in the business of purveying textual or graphic matter openly advertised to appeal to the erotic interests. Chief Judge Desmond's concurring opinion reiterates this analysis: This is Lenny Bruce talking now, "Judge Desmond: "St. John-Stevas, one of the soundest and

sanest of today's writers on the law of obscenity, says that: "A pornographic book is one deliberately designed to stimulate sex feelings and to act as an aphrodisiac" Attached hereto - - I talk now; attached hereto is the excerpts that have been reproduced photographically to preclude any error that would thwart justice. The excerpts are from Manual Enterprises. There are two elements that have distinct qualities. The - - - prurient interests is used to describe the elements that causes criminal action. It is not criminal in and of itself locked in the drawer or when displayed to a proper audience. That is why one of the tests in the model penal code refers to "the audience it is intended for." The dominant theme of the performance appealed to the prurient interest and was patently offensive to the average person in the community, as judged by present day standards. The performances were lacking in "redeeming social importance." The monologues were not erotic. They were not lust-inciting, but, while they did not arouse sex, they insulted sex and debased it. The Court called for this authority upon Chief Judge Desmond of the Court of Appeal

observed in People vs. Fritch, 13 New York 2nd 119, 127. Below in this document, I'm going to five to the clerk, I pasted in a photocopy that displays that Chief Judge Desmond was half quoted in the language used in the opinion of the Court, is not the language of Chief Judge Desmond. Below - - I read, Below is a pasted-in photocopy that displays the half quoted Chief Judge Desmond's decision that was the Tropic of Cancer, by the way the decision was reversed. So the Court called upon the decision that was reversed for authority and which reinterated my call for a master, an impartial referee because the argument the Court makes in paragraph two on page four, that the performance was not lust-inciting, and calls to its support the language of the high court. The language of the high court Chief Judge Desmond if redressed and reversed - - - if this language were redressed, I would have no problem. I underline the words that have been changed in the below, very meaningful, the word is "obscene" is changed, the word "book" has been changed. Page four, the authority calls for Professor Lewis Henkin - - from the opinion of the Criminal Court

Part 2B, calls for Lewis Henkin of the Columbia Law School, the court quotes an excerpt that alleges that filth is actionable obscenity and not only eroticism. That is true with the phrase "not only actionable obscenity can embrace many factors along with eroticism but filth alone which is discussed at great length in Manual Enterprises v. Day 370 US (in the opinion of the court delivered by Justice Harlan in the two elements must conjoin test) attached hereto I have attached the excerpts from Manual Enterprises that spell out that there is nothing vague about obscenity, it is very clear. The only people that keep it vague are the executive branch naturally. Another problem that poses itself is that obscenity is protected by not the United States Constitution - - rather protected by constitutional law, constitutional fact. The reason it's difficult for many many people to understand constitutional law, it's the only law that has no punishment to it. From Manual Enterprises 370 US, Obscenity under the federal statute thus requires proof of two distinct elements: 1. patent offensiveness; 2. prurient interest appeal. Both must conjoin before challenged material can be found obscene. There is no

obscene libel. Obscene libel refers in English usage simply means obscene material, being derived from libellus, "little book." There can be no obscene libel unless what is published is both offensive according to current standards of decency and calculated or likely to have the effect described in R. v. Hicklin. Manual Enterprises was a book that was supposedly dedicated to homosexuals. A homosexual magazine went up before the United States Supreme Court and the Court said we will not get into the appellate question that a homosexual is an average member of the community, so therefore, there is no just cause for the arrest and to be before the Supreme Court. The Supreme Court said they weren't going to get into it because the book on its face could not be discussed at great length.

In Manual Enterprises Justice Harlan said it can not be that indecent, the disgusting, the revolting herein after referred as patent offensiveness, indecency, disgusting go beyond the ordinary limited candor description representation. All of these elements have nothing to do with prurient interest. Prurient interest - - the definition was narrowed by the California Legislation. Originally in Roth it was obscene

means to the average person the material taken as a whole appeals to the prurient interest. They narrowed it by saying, i.e., that is shameful or morbid interest in sex, nudity or excretion. A misreading of Roth is that, i.e., he meant the shameful or morbid interest in sex, nudity or excretion was a definition for prurient interest; certainly not. That was the explanation what the predominant appeal was, shameful or morbid interest in sex, nudity or excretion appeal to prurient interest. The decision that Justice Harlan pointed out in Manual Enterprises now and is very important in law and goes beyond the ordinary limit of candor in description and representation of such matters. I refer to the other opinion of this court and the most serious - - the court then called for the footnote in Roth and why I feel this is serious, it's the same argument that was used in Chicago that the people used and it is depressing to see the same argument note only used as a copy-cat, but, to put the wrong page number. The authority is the footnote in this court's opinion: "We perceive no significant difference between the meaning of obscenity developed in the case law and the definition of the American Law Institute Model Penal Code Section 207.10

(2) (tentative draft number 6, 1957) 'a thing is obscene if, considered as a whole, its predominant appeal is to prurient interests i.e., a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond the customary limits of candor in description or representation of such matters."

The court masculated all of the authorities in this opinion and the entire footnote is pasted in below to preclude the problem that can happen as evidenced here. The important part of the footnote that was deleted without the required elipsis symbol was the opening "i.e., material having a tendency to excite lustful thoughts." If there had been some judicious scrutiny as to this footnote the statement made by the court on page 4, paragraph 2 of the court's opinion, "They were not lust inciting," would not have happened. Footnote 20 reads, "Were no deletions." It's Roth v. United States, 354 U.S. 476. The opinion of the court - - this was the opinion of the court: I.e., Material having a tendency to excite lustful thoughts. Webster's New International Dictionary (Unabridged, 2nd ed., 1949) defines prurient, in pertinent parts as follows: "Itching; longing; uneasy with desire or longing; of persons, having itching, morbid, or lascivious longings; of desire, curiosity

or propensity, lewd. Pruriency is defined, in pertinent parts as follows: Quality of being prurient; lascivious desire or thought. See also Mutual Film Corp. v. Industrial Commission, 236 U.S. 230, 242, where this court said as to motion pictures: "They take their attraction from the general interest, eager and wholesome it may be, in their subjects, but a prurient interest may be excited and appealed to." And, the court - - this court picket it up from here on down, "We perceive no significant difference between the meaning of obscenity developed in the case law and the definition of the American Law Institute Model Penal Code Section 207.10 (2) (tentative draft number 6, 1957) viz.: "A think is obscene if, considered as a whole; it predominant appeal is to prurient interests i.e., A shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters." The last page, paragraph 5, people v. Wendling, 253 N.Y. 451 (1932), the court states that the statute was not declared unconstitutional. I don't know what the courts' purpose was in mentioning that, but the constitutionality of the Wendling case was never raised by the appellants in the Wendling case, and that decision is pasted hereto.

This first opinion of the court here, it is Section 1140A of the Penal Law, is not unconstitutional as contended by the defendant. Well, I was pro per, I said that 1140A was good law, not unconstitutional law, it was applied unconstitutionally to me. The last argument to the court is a statement made by the court that 1140A of the Penal Law is unconstitutional. Pasted hereto is the page from the official transcript on the day made by the defendant a statement when the court had recognized the defendant as the attorney or record. The court substituted, or rather acknowledged the substitution, in a formal manner on page sixteen directly before Judge Murtagh speaks. Mr. Bruce: I said it was applied unconstitutionally, it's not unconstitutional. The unconstitutional application of 1140A, a law that applies to owners and definitely excludes the defendant under the provisions the defendant is an actor and an actor under the law is a slave and you can give the slave lots of clothes and money and feed him and give him a new car, still he's a slave. You can stop him, you can turn the lights out, you can tell him to get off - - when to get off the stage. The provisions especially set forth in the amendment that is attached

hereto is combined with the fact that the owner is found not guilty is in violation of the mandate of the United States Supreme Court and for clarity sake, I repeat and qualify I am not calling to the United States Constitution or the Bill of Rights. I am calling for specific case law that has come down from the United States Supreme Court. It is Roth v. US 354 Obscenity is outside the limits of the protection of the United States Consitution. 2. Speiser v. Randell US 357. "It follows that under the Fourteenth Amendment a state is not free to adopt whatever procedures it pleases for dealing with obscenity." 3. "The Fourteenth Amendment is what this court is denying me and violating the guarantees it gives me if it does convict me. There are rules set down as to the judging of whether a work is obscene or not. The reason the Supreme Court rules this court and that the answer "there are adequate remedies of relief in the appellate court" has no merit the abuse of omission has been held repulsive to the keepers and protectors of the constitutional safeguards. The court's statement "the monologues contained little of social significance" ignores the words and the test of Jocebellis v. Ohio

US 378 "We would reiterate, however, our recognition in Roth that obscenity is excluded from the constitutional protection only because it is "utterly without redeeming social importance." "It follows that material dealing with sex in a manner that advocates ideas, *Kingley Int'l Picture Corp. v. Regents*, 360 US 684, 3L ed 2d 1512, 79 S Ct. 1362, or that has literary or scientific or artistic value or any other form of social importance, may not be branded as obscenity and denied the constitutional protection. The important language, Nor may the constitutional status of the material be made to turn on a "weighing" of its social importance against its prurient appeal, for a work cannot be proscribed unless it is "utterly" without social importance. The court was made aware of *Jocebellis* on June 22nd, when the Illinois Supreme Court vacated their judgment on their own and there was no judicial scrutiny. The important part was that the Illinois Supreme Court - - they said and the court has these papers before the, said on June 18th, this court's final - - the decision of the lower court, this was the Illinois Supreme Court, in light of *Jocebellis* 378 US the case which is important to our case, they're

pertinent facts relating to your case and we ask you to submit more argument. The decision of the Illinois Supreme Court literally rejects the prosecution's argument in New York which one line be redeeming must the whole thing be redeeming. Well, the court was aware that there was a narrowing definition of obscenity because the test of Roth kept it a little to open. The court realized that nigger is very disgusting - - that nigger - - that the word nigger is very disgusting, is so repulsive in New York, in Alabama a nigger is disgusting. They figured out a way where everybody disgusting was different. The only thing not of constitutional protection would be hard-core pornography. I close with this last page of this, I refer to the transcript that's the evidence against me: "With a shit three sizes too big." In People's Transcript, page 11, line 12, a tape recording this court has in its possession that I sent to preclude any discrepancy. The correct wording, you'll hear it: "With a suit three sizes too big," Page 12, line 12: "Uncle Willies' ready." People's Transcript, and the correct wording is, "Uncle Willie's ruddy palm." Page 14, line 12, "You're not giving

me any shit." People's transcript. The correct wording, "You're not getting any secrets." Page 20, line 18, "The old lady kissing the door off three times this week." The People's Transcript. The correct wording, "The old lady kissed the doorbell three times this week." Page 23, Line 14, "The lowest tit can the sight of blood of (indistinguishable big ass." The People's transcript. The correct wording, "The Loew's Pitkin haha, five vaudeville, five big acts." Page 24, line 3, "Get us out of her (indistinguishable) matches." People's Transcript. The correct wording, "Get us out of here. Don't light any matches." Page 24, line 16, "Switch over there, try symphony shit." The People's Transcript. The correct wording, "Switch over to Detroit, Symphony Sid." Page 31, line 2, "It's a realistic portrayal that pisses." The People's Transcript. The correct wording, "It's a realistic portrayal in prison." Page 6, line 22, "If a huge block of American eagles who tried to relate to Mr. Goldwater." The People's Transcript. The correct wording, "If a huge block of American Negroes tried to relate to Mr. Goldwater." Page 31, line 14,

"Raymond jumps me now." The People's Transcript.

The correct wording, "Ladies and Gentlemen." The District Attorney, Richard Kuh in a sworn statement that's notarized, says he took two transcripts and gave them to the District Attorney of Nassau County while I was still innocent and said in his sworn affidavit he knows of no law that would prevent that - - - he knows of perhaps of the Fourteenth Amendment that prevents prior restraint, but, I'm going - - - what I'm going on to is that on the record, this record reflects that Ephraim London at my insistence asked Richard Kuh, did you take a tape recording marked in evidence and play it for the District Attorney in Nassau County during the trial? Richard Kuh said, I did not play the recording that was in evidence, I played another recording. The District Attorney, Richard Kuh, came to a federal court unasked, unsolicited and represented this court when this court was ably represented by the Attorney General's office. Richard Kuh in his sworn affidavit says: 6. Following petitioner's conviction, on November 4, 1964, the Criminal Court ordered a full pre-sentence investigation together with a psychiatric report pursuant to Section 45 of the New York City

Criminal Court Act. I am informed by the administrative office of the Criminal Court of the City of New York that it maintains a staff of ten psychiatrists and two psychologists which form the psychiatric clinic. Psychiatric reports are not uncommon and serve the dual function of guiding the court in imposing sentences and protecting defendants, which seems quite reasonable to this defendant, except, for the fact this defendant was refused the right to testify when he was in proper. The co-defendant, defendant one, was found not guilty, denied equal protection, did not get the benefit of a psychiatric examination and the other defendant did testify in a contempt proceeding before Judge Strong. However, District Attorney Kuh feeling nothing wrong with a psychiatric report, I believe, negated it by - - the top of page three, January 1, 1964, The petitioner's conduct, both during the trial and while awaiting sentence, particularly justifies the order for a psychiatric report and negates all inferences of arbitrary and discriminatory action. I refer not only to the context of petitioner's performances, but to

his discharging after trial - - Ephraim London, Esq., as his attorney, his statements in court when first making known his intention to discharge Mr. London, and his statements on the date of the court's decision, and his filing of all but incomprehensible motion papers in the trial court, and somewhat similar papers at present in this court. At no time has the District Attorney of New York County exerted any prior restraint or attempted prior censorship by means of threat or arrest or otherwise against the petitioner. Petitioner was advised, of course, by means of his April 3, 1964 arrest, that the grand jury had deemed his April 1st shows in contravention of New York's obscenity laws. That there was no prior restraint, however is indicated by the fact that his performances thereafter in New York County were not stopped. He continued his engagement at the same coffee-house, and was rearrested some days later, on April 7th, at the conclusion of another show precisely similar to those that led to the earlier grand jury action. At various times subsequent to Bruce's New York County arrests, I was informed by various persons, including representatives

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of the Nassau County District Attorney's office and the New York City Department of Licenses that advertisements had appeared indicating Bruce's intention to perform in Nassau and in New York County. I fully cooperated with these other agencies in informing them as to the status of the criminal proceedings in New York County. I reinterate I was on trial, I had never been convicted of a crime in New York, and I lost the job at the Cork and Bibb.

Indeed - - this is quoting, "Indeed, although I did not supply Nassau County with a recording of the Bruce shows, I did give them typed transcriptions of them."

Where does the money come from when typed transcriptions have cost me \$60 and \$70 when ordering the record. Richard Kuh says we introduce exhibit 4a and five - - 4a and 5a were descriptions of tape recordings had been introduced into evidence. I hand Your Honor the original

copy and I state for the record there are two carbon copies and he qualifies all the copies that were available. The firing of Ephraim London has caused me a great deal of distress. The civil suit and also in this court when I came before this court and asked the court to be pro per, the court misadvised me I had very competent

counsel and I informed the court at that time I didn't have the ability to relate to Ephraim London. Ephraim London was in touch with my adversary, Richard Kuh, and I have a letter dated September 25, 1964, Dear Mr. Kuh: Thank you for your letter of September 24, 1964. After our briefs were submitted, Lenny Bruce did send me some material with the request that I submit it to the Court and - - - -

JUDGE MURTAGH: Mr. Bruce; you are not represented by counsel and the Court is willing to give you a great deal of latitude but, I suggest you go to another matter of consequence here.

MR. BRUCE: The relevancy here, Your honor, has to do with the Court's opinion of me and I am very concerned with the Court's opinion because these letters state - - this series of nine letters - - I begged Ephraim London with respect to the trial court, I said I did not want - - - I told Ephraim London that the transcript was very important because what would go up on the record in obscenity cases - - the record is all important and the fact that Richard Kuh talked Ephraim London into waiving the court reporter when they played the tape, there is nothing on the record. The only thing on the record is Commissioner Ruhe's five page report and

these letters reflect - - - should have some inquiry that Richard Kuh was not under oath. Certainly the District Attorney's office - - it's their position to win and I respect that position. They fight for the people and only the judge will judge. When we needed an attorney for the District Attorney, we said we will get a guy who will go in and win for us everytime and I respect the District Attorneys position, but, they're adversaries. Certainly if my attorney would meet with them and I can understand, then Richard Kuh, who is not under oath, who caused under the color of the New York State flag Commissioner Ruhe to perjure himself. The record that this court prepared by court reporter Yearwood is in direct conflict with the tape recording that I made of the trial on June 17th. I presented this to the court, this file with the clerk of the court. The reason I sent the tape recording to the court is it seems to me to be reasonable if I present tape recording to the court on the day that I accuse someone of some conspiracy, they would say sure, you now bring the tape recording after you ordered the record from the court reporter. So I sent it before so the court had it and I don't feel that this court would find me guilty if they would hear or appoint a master to listen to these

tape recordings. If they will appoint a master to listen to these tape recordings - - they're very loud and clear. This transcript - - it says Criminal Court of the City of New York, Part 2B, People of the State of New York against Lenny Bruce and Howard L. Solomon, Dockets 4406, 4407, 4623, 4624, page 100 to 142, and the Court would see the word "Bullshit," and as that appears in the court record, do not appear and more serious and the reason I ask the Court to appoint a master is that the reversible error made by Your Honor has been removed from the record and the reversible error that would be of no materiality to a lay lawyer, but I tell you these changes are made not for the appellate court, they're very meaningful changes. They have to do contradictions, reasonable doubt, the rules of judging, there are instances of this in this court that support sustaining of objections on page 23. Your Honors', as to this record, can see the erasions. Now, I don't believe there is any conspiracy. I don't believe two people have got together to do anything. I do believe that people feel strongly about certain things. If I pose as a villian - - well, like I don't have to wear a uniform to be a CORE member and certainly Eichmann

might wonder if the court reporter at his trial said I don't like you and I might change the record. I respectfully reinterate I would like the Court to appoint a master before they sentence me so they might listen to the tape recording and I'll take, naturally, the master's word, the referee's word, whatever he says, and I think it would come out this master would tell the Court that Commissioner Ruhe was not there when he said he was there, he perjured himself since he was the witness who testified to the grand jury. The Court certainly would have never signed a warrant on the information that was filed. That's all I have to say, Your Honors, thank you.

JUDGE MURTAGH: Counselor.

MR. MILLER: In respect to Mr. Solomon, may it please Your Honors, after listening to Mr. Bruce I have been practicing since 1927, I must say having a defendant representing himself, I think, he made a perfect witness for my client, Mr. Solomon, by his own statement and Your Honors recall he said I do not read from a script. He admitted his remarks during his performance are spontaneous. How could a manager or officer of the Cafe Au Go Go be found guilty in this particular case because he did not participate or did he have any

knowledge that Mr. Lenny Bruce would use any expressions which Your Honors might deem to be in violation of a statute. I call Your Honors' particular attention - - I make my motion to set aside the conviction, especially, to have Your Honors - - to Judge Creel who has dissented I don't appeal from his decision. I ask Your Honors to reconsider the conviction based upon only one case. I read all these cases Mr. Bruce has outlined to Your Honors, but, as late as June of this year the Illinois Supreme Court has interpreted the decision of the Supreme Court of the United States and in the field of obscenity to mean that material having any social importance is protected by the Constitution from censorship. The Illinois Supreme Court so held in reconsidering a decision which affirmed the conviction of Lenny Bruce, the nightclub entertainer. I'm coming here to Your Honors to ask you to follow the footsteps of the Judges in the State of Illinois that you take under advisement to reverse your - - to reverse the conviction and let my client, I might say also Lenny Bruce though I do not represent him, that he should be let free, there should not be a conviction. The court when in Illinois went further to say, however, that after reading

the recent United States Court decisions in regard to certain alleged obscene moving pictures, the Illinois Judges said they were compelled to reverse a conviction with regard to Lenny Bruce although as the Judges put it, I think Your Honors felt the same as they did, they did not like his performance. The Illinois court went further in their opinion that while we would not have thought the constitution guarantee necessitates the society's gradual deterioration which this type of presentation promotes, we must concede that some of the topics commented on by Lenny Bruce have social importance. Based upon that decision, Your Honors, I ask Your Honors to reconsider. As far as the Defendant Howard Solomon is concerned, Your Honor, in the event there is a conviction, this man will have to close up his nightclub. This man is free from any record. This man beside running a nightclub is gainfully employed and, I think, Your Honors are familiar with his employment and on April 1st when the first performance took place, would you state that the Defendant Howard Solomon was guilty of permitting an obscene performance. Howard Solomon never heard Lenny Bruce. There has been no testimony that he heard Lenny Bruce and as a matter of fact when the performance which Lenny Bruce was subsequently arrested, prior to that performance Howard Solomon was in conference a few hours

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before that showing with attorneys 'Herbert Morton Levy' and Maurice Rosenfield, the attorney from Chicago, 'Howard Jadron', his assistant, Allan Schwartz, and all advised him that in view of that fact that the State of Illinois has reversed the conviction in regard to the same kind of performance, they advised Mr. Solomon you must continue with the terms of the contract. By the advise of these counsels he permitted Lenny Bruce to perform. What did Howard Solomon do on that particular night? He was not present. He left because he felt inwardly that he did not want to hear the performance. I say Your Honors must take into consideration I have a co-defendant who has expressed himself in such a manner he has to be a good defendant's attorney as far as my client is concerned, as far as he is concerned personally, I heartily agree with his remarks - - some are not related to the topic at hand, but in view of the fact there has been reversible - - in view of the fact there will be great harm to my client, I respectfully submit for a reconsideration of two of the men on the Bench that the conviction be reversed and the defendant, Howard Solomon, be found not guilty.

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MR. KUH: May I be heard briefly?

JUDGE MURTAGH: Briefly.

MR. KUH: I will be very brief. I think certain things should be said when a whole series of alleged factual statements involving myself and the District Attorneys' office is made by Mr. Bruce. I will not controvert them each individually. May the Bench know, clearly, now as I have an opportunity here that they are 99 plus percent false. I will not go beyond that. May I further suggest this to Your Honors, before Your Honors rule on the motion - - that in the light of Mr. Bruce's statements here which I just as an attorney found to have at least elements of incomprehensibility and ramblings and lack of analysis in theme. I know Mr. Bruce was subjected to a psychiatric report by the probation department of the City of New York. As he appears without counsel and hence there is no counsel who can state he understands the charges and cooperated in his defense, I think, this record should reflect there is a finding of this psychiatrist he does understand the charges and is coherent in terms of sentence.

JUDGE MURTAGH: The defendant has counsel available to him. The Court has out of fairness to him, out of sense of obligation assigned counsel who is present at the moment and available to assist in anyway.

MR. KUH: Your Honor, I don't press - - I only thought for the reader of this record I would put myself, momentarily, in the role of an appellate court. It might reflect in coherent. The record also reflects assigned counsel was just assigned here this afternoon and no indication he knows Mr. Bruce under other circumstances or not. I think it might - - -

JUDGE MURTAGH: He reflects nothing more than the fact a person representing himself has a fool for a client. Proceed.

MR. KUH: If Your Honors please, the People have a statement to make on sentencing. In connection with the legal points that were made by Mr. Bruce, himself, and counsel for the defendant Solomon though were fully covered in briefs, I will not discuss them here. If and when the Court gets to sentencing I will ask to be heard briefly.

MR. HERSCHMAN: Mr. Bruce asked me to say a word and I would like to add my own. I'm here of course by assignment of the court. I've made myself available to the defendant Lenny Bruce whom I've never seen before, not even in this court for consultations, neither which he sort from me. I think it is proper to say that the Court has been most patient, attentative of the elaborate and very painstaking effort on defendant himself in his own defense.

He's asked me to make some statement for the record and I will make it now: The defendant asked the Court to set aside his conviction for error of law in fact committed at the trial. I would like to add myself that his argument in some points is advanced in People against Underhill 267 Appellate 867, where the court held - - where the legislature has intended to make an employee responsible for the violation of a statute. It is so stated in the specific language and is referring of course what he described as an exception to Section 1140A of the Penal Law. He also adds a conviction is in violation of the Fourteenth Amendment of the Federal Constitution and it's incorrect because of the confusion now prevailing in this country as a result of the United States Supreme Court Decision on questions of obscenity. I would also like to add that there is undoubtedly before the Court a full probation report. Not knowing the defendant personally or having any contact with him heretofore, I'm sure the Court has fully read that and will take that into consideration and in addition to that is the fact he has no prior criminal record of any convictions having recently been reversed. Your Honors, I would like to add for myself an application to be relieved from further assignment after the sentence of the Court.

JUDGE MURTAGH: For the completeness of the re-

cord the Court will note for the record that there is before it a letter dated December 8th, 1964, from Maurice Rosenfield, Esquire, of Chicago, Illinois, and that this is in the nature - - it's dated December 8th, 1964, it's in the nature of an application to appear as amicus curiae and submits the letter as an application to set aside the conviction in view of the ruling of the Illinois Supreme Court in People against Lenny Bruce. The application to appear as an amicus curiae is granted by the Court and this letter will be marked for the record as part of the proceedings before the Court. For convenience we will mark it the Court's Exhibit 1.

(So marked.)

JUDGE MURTAGH: Was that statement of the record, the various motions on behalf of the both defendants, the applications that are before the Court are respectfully denied in all respects by the Court. Are we ready for sentence?

MR. MILLER: On behalf of Howard Solomon, we are, Sir

MR. BRUCE: Yes, Your Honor.

MR. HERSCHMAN: The defendant is ready.

JUDGE MURTAGH: Anything the Court wishes to add to the material before the Court? The Court has the probation report, it has the psychiatrist's report.

MR. BRUCE: I would like to give one document.

JUDGE MURTAGH: The Court is free, the Court is available to hear anything else in mitigation.

MR. MILLER: While he's looking for the papers; on behalf of Howard Solomon, Your Honors, please take into consideration and the fact that here we have a man who has a nightclub where no liquor is served, Your Honors, it's called a caberet nightclub. All the entertainment that we have had since Lenny BRUCE and prior to Lenny Bruce has been sanctioned by the Department of Licenses. Never been in any arrest - - never been any arrest since it. Since the Defendant, Howard Solomon, was arrested there is so much at stake. Mr. Solomon if he's convicted, he's going to be penalized just by the fact the Department of Licenses would take it upon themselves to have a hearing and most likely request that the license be revoked. They will be refrained from doing business as the Cafe Au Go Go, that is enough of a penalty. Your Honors, I want Your Honors to take into consideration this defendant, Howard Solomon is married, has two children, his wife is expecting a third child. He's been gainfully employed, he has never been involved in any criminal matter. He's trying to make a living to the best of his ability. If Your Honors will not set, of course, the conviction which you have denied, the application I want Your Honors to take into consideration the fact

that this defendant has been penalized, has received a very severe sentence just by his conviction of this case.

MR. HERSCHMAN: Mr. Bruce asked to be heard.

MR. BRUCE: I just want to give the Court this document, it is an affidavit in answer to petitioner's motion for a restraining order signed by Richard Kuh, it's notarized, it says sworn to me before the 7th day of December, 1964, Richard Kuh and it supports the statements and I believe since it's his sworn statement plus the sworn statement of the Nassau County District Attorney - - Assistant District Attorney Martin I. Silberg. I submit this to the Court as proof that Richard Kuh has perjured himself before the Court when he says 99 percent plus this record will reflect what Richard Kuh said I said. I give this document to the clerk as exhibit 2.

JUDGE MURTAGH: For orderliness we will mark it Court's Exhibit 2 A, as it having a record - - as the number of the Defendant's Exhibits.

MR. BRUCE: Can I show Your Honors about the motion I made Friday to be put on the Docket - - about correcting the record? Will that motion be heard?

JUDGE MURTAGH: We will address ourselves very shortly to it. We have it under advisement.

MR. KUH: May I be heard briefly?

JUDGE MURTAGH: Yes.

MR. KUH: First as to the Defendant Bruce:

I'm here at the direction of the District Attorney Frank S. Hogan and ask on behalf of the People of this county and state the Defendant Lenny Bruce's sentence be one of imprisonment. May I state in support of that request, if please the Court, apart from the Defendant Bruce's prior conduct prior to the intent involved in this trial, the Defendant Bruce throughout the trial and since the trial has shown by his conduct absolutely - a complete lack of any remorse whatsoever. I point out, briefly, after having been arrested not by the act solely of the police officer acting on his own, that having been arrested on a warrant issued at the direction of the grand jury, that the Defendant Bruce proceeded to continue with his same show and was rearrested. May I point out after he was convicted by this Court and regardless of Mr. Bruce's legal opinion, there is a presumption - - - after he was convicted, he found, apparently, some other club, some other place of entertainment and advertised in the papers on November 25th, that he would be appearing again. I point out that the possible premises, on the strength of his conviction, had 80 seats at \$100. I suggest to Your Honors, if there is any incident of arrogance, Your Honor, any lack of remorse

more

- - - if Mr. Bruce's contention this Court is wrong as a matter of law, it is well taken, there are channels which that correctness or incorrectness can be tested by appeal. The price goes up on at the Cafe Au Go Go. After the first arrest when the price goes up and then still goes further after the conviction. I suggest, If Your Honor please, quite apart from anything that has taken place in this courtroom or other courtrooms, Your Honors have instance of notable lack of remorse. I urge Your Honors, speaking on behalf of the District Attorney, Mr. Bruce's sentence be one of imprisonment and Defendant Solomon, I urge the Court, impose a maximum fine on each. I suggest that the Court make this highly unprofitable for the Defendant Solomon.

MR. BRUCE: May I have three minutes to rebut that very serious charge? It has to do with religion, Your Honors, it has to do with Christianity and the fact that we hear filth for profit sake. I am a Jew before this Court. I would like to set the record straight that the Jew is no remorseful. I come before the Court not for mercy but for justice and profit is everyones motivation in this country. I believe Richard Kuh is in court unsolicited when he is not with the District Attorney anymore, that he is here personally - - -

JUDGE MURTAGH: Will you please address yourself

to the Court.

MR. BRUCE: Yes, Your Honor. I believe that Jews are constantly looking to sit at the right hand to Jehovah and since Christians have the seat of authority, the Jew is always looking up to get his seat. Now, I believe Richard Kuh takes advantage of this and to use a psychiatric report then to support it with a term of imprisonment is inconsistent. The point of view here, I believe - - - Your Honors' know is a religious point of view. I believe the big conflict with Ed Sullivan and Jackie Mason - - to a Jew this symbol with your index finger means in your tuckass, is an image. All the words I use are in the dictionary. I believe Your Honors should be made aware of the fact that I believe - - - Your Honors are aware of the fact Richard Kuh is emotionally involved to come here when he's not working for the District Attorney's office, he's not getting paid.

JUDGE MURTAGH: Will you kindly address yourself to the Court. Mr. Kuh is here as an Assistant District Attorney, a representative of Frank S. Hogan and he is legally such.

MR. BRUCE: He doesn't represent the People of New York.

JUDGE MURTAGH: I suggest that you confine yourself to the merits. We have indulged you considerably. Anything further?

MR. BRUCE: No.

MR. MILLER: One more statement, Your Honor, Mr. Kuh has asked for a fine. I might state for the record ever since this occurrence has taken place there has been a tremendous loss of money. We are on the verge of bankruptcy. Your Honors, as a matter of fact the persons who put in some \$60,000 can not receive one penny return for their investment. There is no money whatever being made. I respectfully submit that there should be - - - if there is a sentence, there should be a suspended sentence.

JUDGE MURTAGH: The Defendant Lenny Bruce was previously convicted A4406, A4407 on two counts and also on A4624 of one count; on each count a sentence will be imposed. The sentences are to run concurrently, not consecutively. The sentence on each count, the majority of the Court imposes a sentence of four months in the workhouse on each of the three counts, sentence to run concurrently, not consecutively.

*Sentence
concurrent*

JUDGE CREEL: The record should show from this - -

JUDGE MURTAGH: Yes.

MR. HERSCHMAN: The defendant has asked me to request that if a sentence were imposed a request be made for a short stay of execution of that sentence so that the defendant or his counselor his friends may take such steps that may be required, particularly, on a question of a certificate of reasonable doubt, so the appeal can be taken. He respectfully asked then for a stay of execution be had until a week from today.

JUDGE MURTAGH: There is an appropriate application for a certificate of reasonable doubt and the Court will entertain that.

MR. KUH: If it please the Court, this problem has come up in this court in the past and there is no authority of this court to grant the stay pending the application of the certificate. I can get the statute, we have cited them to other judges. There is no authority and most of the judges - - in fact all the judges - - -

JUDGE MURTAGH: What section are you referring to, the code?

MR. KUH: Referring to the code. If you look at a certificate of reasonable doubt, it's simply permits this court granting the certificate - - granting the stay, it does not permit the court that imposes sentence.

There is no authority in the code for a court to stay its own sentence pending application.

JUDGE MURTAGH: There is authority in the code for this court to grant a certificate of reasonable doubt, this is the court of record.

MR. KUH: It is, Your Honor, but I'm frankly - - I wasn't prepared to argue this here. I think I would have to get the section.

JUDGE MURTAGH: You may.

MR. KUH: 520

JUDGE MURTAGH: As to Howard Solomon, who is before the Court for sentence on two counts having been convicted by this Court. The Court imposes a sentence on each count of \$500 or thirty days.

MR. MILLER: Your Honor, May I respectfully ask for a stay of execution? I have all my papers ready, but, it is now a quarter after five, I won't be able to serve the necessary parties with my papers.

JUDGE CREEL: Before the matter of stay is resolved, I think, the record should show that I dissented from the conviction of each defendant and the record should show I have voted to suspend sentence upon each defendant. The opinion in support of the dissenting opinion, in support of my vote is filed in this court. There is some question

I gather from the communication from the Official Reporter as to whether or not it will appear in the report, but, the fact it's filed will sufficiently set forth for me the reasons I give in support of my vote and my dissent.

MR. MILLER: Thank you, Your Honor.

MR. BRUCE: Thank you.

MR. MILLER: I again, at this time, before I renew my application - - I'm sorry I did not wait for Your Honor's opinion. I respectfully submit my papers are ready. I cannot serve them today, if you'll give me forty-eight hours, I will be fine.

JUDGE MURTAGH: As to the Defendant Solomon, we will adjourn that matter for payment of sentence to December 28th.

MR. KUH: I think the only thing I find Your Honor - - Your Honor is quite right, this court - - certainly the court of record can hear the application, but, Section 529, which states, not to be granted even on notice of the District Attorney, provides for the procedure on certificate of reasonable doubt and then deep in the section - - I'll hand the volume to Your Honors, deep in the Section provides the Judge or Justice granting such order to show cause. The order to show cause being whether or not a certificate should be issued, may in his decision stay execution of judgment.

of conviction until the determination of such application - - of the application of conviction for a certificate. So, there is express provision for a stay when the application for the certificate is formally before Your Honors including the specification of - - the basis of having the doubt. There being no application, I believe, the Court is technically without authority until a proper application is made.

MR. HERSCHMAN: It would seem to me, Your Honors, in addition to Section 529, there is the inherent right or power in the court to stay the enforcement of its order or judgment until the defendant has proper time and asks for reasonable time to take whatever steps are necessary.

MR. KUH: I would suggest to Your Honors the Court - - the District Attorney has no recommendation except as we read the law. If there is inherent power, there would be no reason at all for this specification that gives this court power to stay its sentence once the application has been made while the court is considering the merits of it. We have no recommendation, we simply point it out to the court and leave it to the court's judgment on the law.

JUDGE MURTAGH: The Court will exercise its discretion and grant a stay of execution with the pro-

visions on that the stay shall extend until 4:00 PM
on Monday, December - - - -

MR. HERSCHMAN: The statute does say the District Attorney is entitled to a full day of notice.

JUDGE MURTAGH: We'll give the defendant until Wednesday afternoon, the 23rd, to submit his application.

MR. KUH: We are not standing on formal notice requirements.

MR. MILLER: You'll waive?

MR. KUH: Certainly. I think the statute also provides we must be given the court transcript. We now waive that.

MR. MILLER: Thank you.

MR. HERSCHMAN: May I ask on behalf of the Defendant Bruce bail be continued until December 23rd?

JUDGE MURTAGH: Yes.

MR. MILLER: On behalf of my defendant he be paroled in my custody?

JUDGE MURTAGH: Yes, granted. The Court also has an application that its thoroughly considered for an amendment of the record by the Defendant Lenny Bruce. Are you ready to hear the Court's decision on that?

MR. BRUCE: Yes, Your Honor.

THE CRIMINAL COURT OF NEW YORK

PART 2B NEW YORK COUNTY

-----X
THE PEOPLE OF THE STATE OF NEW YORK : CAL. NOS. 42, 43
--against-- : DOCKET NOS. A4624
 : A4406
LENNY BRUCE & HOWARD L. SOLOMON, : A4407
 :
Defendants : SENTENCE
-----X
1140a P.L.

ON: December 21, 1964

AT: 100 Centre Street

EXCERPT OF MINUTES TAKEN IN THIS CASE

BEFORE:

HON. JOHN M. MURTAGH, Presiding Judge
HON. KENNETH M. PHIPPS, Associate Judge
HON. JAMES R. CREEL, Associate Judge

APPEARANCES:

For the People:

Richard Kuh, Esq.
Assistant District Attorney
New York County

For the Defendants:

William S. Miller, Esq.
1440 Broadway
New York, N.Y.

Harry Herschman, Esq.
457 West 151st Street
New York, N.Y.

Harold M. Lustig
Official Court Reporter

Bridgeman: A. Orenski

COURT OFFICER: Calendar number 42, Docket numbers A4624, Lenny Bruce. The defendant is on for sentence having been convicted of giving an obscene performance.. Calendar number 43, Docket number A4406, A4407, Lenny Bruce, Howard L. Solomon, defendants are on for sentence having been convicted of giving an obscene show. The defendant Howard L. Solomon is represented by William S. Miller, 1440 Broadway, New York.

MR. BRUCE: Lenny Bruce, Per Se, Malton Hotel, 5 West 8th Street, New York.

JUDGE MURTAGH: Mr. Bruce, are you represented by counsel?

MR. BRUCE: No, Your Honor, I am pro per. Your Honor recognizes that, I believe, the last time I was before Your Honor.

JUDGE MURTAGH: Well, the Court will ask Counselor, your name?

MR. MILLER: Miller.

JUDGE MURTAGH: Would you stand in as counsel for Mr. Bruce?

MR. MILLER: Your Honor, in view of the fact I haven't had the opportunity and offered Mr. Bruce on many occasions to represent him only for the purpose of sentence and since he has refused to be represented by

JUDGE MURTAGH: Are you represented by counsel?

MR. BRUCE: No, I substituted, your honor; if you remember when I came to you on the 5th, I substituted London; do you want that to be substituted, he said, yes. Lenny Bruce was substituted on the record as counsel of record.

JUDGE MURTAGH: The court clearly advised you at that time that court was not in session. I was presiding alone. I did not rule on any substitution. Ephraim London is still your counsel. If the request is he be relieved, then the court can now consider that request.

MR. BRUCE: First I would like to request, I can testify, your honor.

JUDGE MURTAGH: Are you represented by counsel?

MR. BRUCE: No, I am not represented by counsel.

JUDGE MURTAGH: If you recall, I advised you to appear today with counsel, whether it

be someone else who could properly represent you --

MR. BRUCE: And, your honor,
I feel the only one that can perform the show the way
the public has asked for continually, I feel, is
myself. I can best imitate Lenny Bruce.

JUDGE MURTAGH: This case was
closed.

MR. BRUCE: You won't let me
testify, your honor?

JUDGE MURTAGH: First we want to
clear up the matter of your representation. It is
well that you be represented by counsel. If you are
asking that Mr. Ephraim London be relieved, that
request will be granted. Do you make that request?

MR. BRUCE: Your honor, I am
not being rude. I think the record will reflect
Martin Garbus substituted for Ephraim London.
Those were the words; you asked him did he want
this. He said, yes. I substituted myself for him
on that date. You advised me --

JUDGE MURTAGH: Mr. Garbus?

MR. BRUCE: Yes.

MR. GARBUS: I am here today at your honor's request on behalf of Mr. London. I think what Mr. Bruce is referring to, the last time when I appeared here, I asked Mr. London and I be relieved.

MR. BRUCE: And the court's position was yes; he asked you again, you want to be relieved, you said yes.

MR. GARBUS: Yes.

JUDGE MURTAGH: The court also advised, if you recall, that you were not relieved at that time, that the court would take the matter under consideration. In any event, if that is the request, the court will relieve your counsel, Mr. Ephraim London. Now, he was assisted in your representation by Martin Garbus. If you have no other counsel, the court will respectfully request Mr. Garbus to counsel you at this state of the proceedings.

MR. BRUCE: Your honor, may I give you the reasons why I want to represent myself?

I won't waste any of the court's time.

JUDGE MURTAGH: All right.

MR. BRUCE: Ephraim London told

me that the trial court at its best could not understand me. He guaranteed me that the appellate court, they have the wisdom; they will understand. I discharged him. It cost me \$14,000.00 to talk to your honors. That's what he is suing me for. I want to tell you what the performance is, what I do. I am not obscene; that there were 2,130 word-errors in the prosecution transcript, such as the word shit; three sizes too big. Lowest tit was actually lowest pit. If your honor will allow me to represent some of the gestures.

JUDGE MURTAGH: Mr. Bruce, counsel has been relieved. We are asking Mr. Garbus to stand in. Now, this case has been concluded. It's here today for decision. The court is prepared now to rule on the motions that were made.

MR. BRUCE: I haven't testified, your honor. The merits of the case, the obscene, the moral play. The only thing presented is a

screenplay, not the gestures. You haven't seen the visual. That's why the prosecution case is -- I made gestures and there was the play. You have read a written play, but you haven't seen any gestures. May I give you the gestures. Would you judge a film listening to the sound track?

JUDGE MURTAGH: You were duly represented by counsel throughout the case, and the case was concluded.

MR. BRUCE: The last day of the trial I begged your honor, please, I don't have the ability to relate to my counsel, can I talk to the court; can I give the evidence. You said, no, you have very competent counsel. I don't think I did.

JUDGE MURTAGH: You elected to take his advice, and the case is closed.

MR. BRUCE: You won't let me testify?

JUDGE MURTAGH: We will not grant your application at this time to reopen the case.

MR. BRUCE: Will you hear it

off the record then, your honor?

JUDGE MURTAGH: No, everything is on the record.

MR. BRUCE: There is nothing on the record, because the district attorney very carefully had the court reporter waived, so there is actually nothing on the record at all. It is barren; only a dirty show presented by the district attorney. Proof of that is Marya Manes, a people's witness, said never read me, saw me in San Francisco, said, he certainly cleaned his act up. He certainly cleaned. She had read about the dirty Lenny Bruce, saw me in person. She said, he certainly cleaned his act up. Your honor, the gestures, masturbations, were gestures of benediction. I did a bit on Catholocism. How perverse Ephraim London would be to defend me for gestures of masturbation. They were meant to be gestures of benediction. I have the right to say fuck you. I didn't say it. Please, your honor, I so desperately want your respect. I want the court to know. My profit has gone down from \$350,000.00 a year before to \$6,000.00.

JUDGE MURTAGH: The court has all
of your arguments to that effect before it.

MR. BRUCE: The court hasn't
heard the show. They haven't heard me testify.
I can give you the show verbatim. When you see --
please let me testify. Let me tell you what the
show is about.

JUDGE MURTAGH: The court urges
you to be represented by counsel.

MR. BRUCE: Counsel doesn't
understand my show. I comment parenthetically.

JUDGE MURTAGH: You have every
opportunity to get counsel of your own choice. You
are hear today --

MR. BRUCE: Finally to talk
to the court. After four years of laughing, you
know your children say mother fucker, how dare you
say that. Finally I had said these counsel are
insane. I must talk to the court. They are
defendant me, throwing me in with a band of
pornographers. My thinking is, I believe in
sensorship. I believe, as I said in prior restraint,

I don't believe a building has to burn down for the building inspector to look at the wires. I know what obscene means. I know more than the district attorney. I know obscene is a legal word like possession is. They don't have anything to do with common sense. The element that makes up the word obscene, the district attorney not only presented his dirty show, but he distorted and dirtied up the honorable Judge Desmond by changing his point of view. How will the appellate court judge anything judging his dirty show. Please your honor, let me tell you the show. Let me tell you St. Paul? Let me say one more thing. I realize I come back before this court as Richman before a Jewish judge. It's certainly difficult for you not to be prejudiced. If I read this transcript, the fact I continually rest, where there is smoke and fire, he continually gets arrested, makes a show out of the court. It's an insane thing. I just keep trying to the court, to you, to to the court, attorneys keep telling me, look, this schmuck doesn't know anything. It's a lower court. They are

assholes. That's the language. I don't believe that's the case. For Ephraim London, he'll do it free. Why won't he present to the trial court; why deny the trial court everything. I believe by the time Ulysses gets up -- the attorney finally read the book. Don't judge me on their dirty book. At least here is part of the book. Here is the first two sentences in the book. Hear that I didn't say a child is a woman's son. I said a child is a woman's sin.

JUDGE MURTAGH: You have had days upon days to prepare your evidence.

MR. BRUCE: I'll show you letters from Ephraim London, get it into the record, tell them about the transcript. Tell them about the errors. Ephraim London. For him to have the audacity, send me a letter back, we'll attach the transcript on appeal, that the appellate court will see it. All of his letters; everyone of his letters talk about the trial court is not -- I sent to him in a letter that caused the suit.

It's very tempting to say, look, he is in a civil liberties case, because civil liberties is the wounded person. Everytime there is a guilt, not the god-damned judge, but the foot soldier. It's the cop. It's the god-damned cop. It's not god damn you Ephraim for denying the trial court all of the information, so the blame goes upon the cops who are not indeed fascists. I believe the district attorney's position is to win for the People. He promised me when he said, I'll bullshit, win anyway. The judges will be on their own; I'll lie because both sides will perjure themselves; justification for the lie for the truth. The judge will be the one to decide; he'll decide the merits of the case. He'll perjure; he'll lie. He did. He presented a distorted transcript. He promised he'll do it for the People; he'll prosecute. The judge is the one who'll judge. Let me do the show. Let me do the gestures. Let me show you what I did. This is not the gestures of masturbation; boom, boom, boom, with

mike for the purpose -- I like to do this. The reason I like to do this is that it's a classic illustration of "I The Beholder". When I get the projection, they go like this, a lot of Jews think I'm trying to hit the audience. Perhaps if a lot of quasi-catholics, think that Catholics worship symbols and statues; not knowing this -- just let me go into some of this. He made gestures of masturbation. He said get us out of here, and what I actually said, get us out of here, don't light any matches. The name Jacqueline Kennedy does not appear anywhere in these transcripts. Jackie Kennedy hauls ass; where is Jackie Kennedy. The name is not in there, no Jackie Kennedy. I never did a Jackie Kennedy haul ass bit. Ramon, Jump me now. That is, ladies and gentlemen. We know this is true. Naturally the court would assume, you have got a million types, what I do do. Ephraim London waived the court reporter. The only thing that's in the record would be this transcript. I had the tape. Naturally, I paid everything. That's my way of recording. I tape every day of my life.

I can show you figures. I spent about \$63,000.00 the last two years on tape recordings. I tape recorded every day of this trial; tape recording of the tape recording, so I have an exact show. I have the tape here to play for your honors as it was played in court. There are 2, 130 errors. The district attorney's position is that there are over a hundred. Let me testify, please, your honor. Don't finish me off in show business. Don't lock up these 6,000 words. That's what you are doing, taking these counts, taking away my words, locking them up. These plays can never be said again. You are finishing me up in show business. I have no job. I got out of the hospital to come here, your honor. Certainly, I think that the court would have said, well, the man is in the hospital -- I called up the clerk here. He said we will sign a bench warrant for you. I collapsed during the trial. I was in the hospital again. I came here. Won't you, after twice coming 3000 miles, won't you please let me show what the form was. You asked for the form. Ephraim London said the judge knew what the

form was; why he kept asking for the form. He wanted to do away with any prurient test, because he didn't, couldn't even say there is no form; ask to have the complete test. It's just hard-core pornography. The judge is interested in form, I can give him the form.

JUDGE MURTAGH: Mr. Bruce, the case has been closed. We have given you any opportunity that you needed to get additional counsel. The case is on here for decision today.

MR. BRUCE: Just a legal argument, your honor, that 1140a is being applied unconstitutionally. If then, I am to be damned from making gestures of masturbation, defend that and tell you masturbation is a religious sin not against the law. Therefore, the prosecution's case is violative of the law congress passed in the House, to prohibit or encourage any religion. I tell you, gestures of masturbation could be indecent. They can disturb the peace, could not be obscene because it would appeal to the prurient interests of homosexuals, consent with the average

adult members of the community. Adult masturbation would not appeal to the prurient interests of the police, your honor. I want to know why won't you let me tell you.

JUDGE MURTAGH: We must conclude now these proceedings.

MR. BRUCE: The appellate courts have said, do, you are not saving us any money; don't do us any favor; don't send it up. We have to send it right down. Every obscenity case. I know the operation of the law. I know what happened with Fanny Hill. I know Danny Petter (Phonetic) comes from Yorkville, man who never saw me work. I know I am being lumped up with a hysteria. That's what's going on in New York. He said that. Judge Scilleppi, the death knell is sounded. Judge Desmond said, where are we going. Atleast don't let me get roped in with that.

JUDGE MURTAGH: Will you let the Court speak. Appropriate motions having been made by all defendants to dismiss the information on the

ground that Section 1140a of the Penal Law is unconstitutional --

MR. BRUCE: I said it was applied unconstitutionally, not unconstitutional.

JUDGE MURTAGH: Appropriate motions have been made to dismiss the information against all three defendants on the ground the People have failed to prove the defendants' guilt beyond a reasonable doubt, having considered all of the evidence, after due deliberation, all of these motions are denied as to each count with respect to the defendants Lenny Bruce and Howard Solomon. The court, Judge Creel dissenting finds the defendants Lenny Bruce and Howard Solomon guilty as charged. The Court by unanimous vote finds the defendant Ella Solomon not guilty. The Court will file its opinion and a dissenting opinion by Judge Creel. All right, the defendants Lenny Bruce and Howard L. Solomon will be sentenced on December 16th.

MR. BRUCE: Might I be sentenced today since I have no more money left to live on in this area. I cannot work as you know. The district

Original

Pp. 18 et. seq.

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