



MR. AL J. KAVANAUGH



DR. CALVIN G. THAYER



DR. FRANCIS J. KOVACH

In March the Philosophy Club sponsored a debate on the program of the Citizens for Decent Literature, an organization formed in Oklahoma City with the objective of ridding newsstands of books and magazines which its members felt to be obscene and thus detrimental to society, particularly youthful society. The CDL was represented by its chairman, Mr. Al Kavanaugh, an Oklahoma City contractor. Another invited CDL representative was unable to attend at the last moment. Opponents of the CDL were Dr. Calvin G. Thayer, professor of English, and Dr. Francis J. Kovach, associate professor of philosophy who holds the Skogsberg chair. Prior to the debate representatives of the CDL had submitted a list of more than 200 books and magazines they bought from Oklahoma City newsdealers, which they found to be obscene and pornographic, to the state attorney general, asking that they be banned from sale. More than 500 students and faculty packed a large lecture room in Adams Hall to hear the debate; scores were turned away. In his rebuttal Dr. Kovach proposed two positive alternatives endorsed by Mr. Kavanaugh, a program of sex education in state public schools and formation of a committee of experts in fields like psychology, sociology, literature, criminology, and law which could regulate the sale of books judged without aesthetic value in a manner similar to that of liquor, thus preventing minors from having access to them.

A DEBATE ON CDL

Kavanaugh

MY POSITION AND the position of the CDL is simply this: that there is a federal law and a state law that says it's against the law to either write, print, publish, sell or have for sale obscene and pornographic literature, or show motion pictures or any other way of self-expression. Obscene literature or obscenity in any form is defined by the federal and state laws as that material considered as a whole in the light of contemporary community standards that has as its dominant theme the appeal to prurient interests.

In the everyday language of a layman like myself—I'm a contractor—that simply means this: Any material that arouses in a person an interest

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I CAN IMAGINE nothing more chaotic than trying to administer a set of laws predicated on the assumption that the standards, real or alleged, of morality in Tulsa, in Oklahoma City, in Atoka and Lexington are all going to be different from each other and are therefore going to have to be administered in a different way. This strikes me as being a legally and constitutionally absurd notion.

I want to quote a brief excerpt from a Supreme Court decision, a famous one, the Jacobellis vs. the State of Ohio opinion of 1964 in which the court assumed jurisdiction in a case after a man in Cleveland Heights, Ohio, had been convicted of possessing

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I SHALL CONFINE myself to a negative criticism of the CDL as I know it from the statement we just heard and from the press accounts. As any supposedly reasonable and open-minded person, I am in basic agreement with the CDL in holding that smut can be and actually sometimes is harmful to the youth and as such should be fought. But this does not prevent me from strongly disagreeing with Mr. Kavanaugh and the CDL program as a means to this end.

The reason I am on this panel is because of the realization that I as a faculty member and as a citizen have a moral obligation to endeavor to show the other side of the question for the

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or desire to commit a sexual act that is unlawful is obscenity or pornography, and those people who are guilty of either writing, printing, publishing, selling or having for sale such material are subject to a sentence of not more than one year in the penitentiary and not more than a \$1,000 fine in Oklahoma.

What has happened as far as that law is concerned is that as a society we simply haven't paid much attention to it. It's on the books, and there's only one group of people that can act as censors in any manner and that is a jury properly constituted in a court in the particular community involved. That means that what is considered obscene and pornographic in Oklahoma City may not be considered such in Tulsa.

Or to put it another way, we could get into two or three 707's tonight and fly to Africa or some South Sea island and be in a community where the people didn't wear any clothes and got married by rubbing noses or divorced by simply touching hands and walking away. In that particular community this is all right—these are standards they live by. This has been going on for hundreds, maybe thousands of years, but if they came to Norman and tried to behave in that manner, they would be breaking our laws of public behavior, our standards of morality and in all probability would be forcibly put in jail unless a jury decided they weren't violating the standards of decency. That jury and other juries would then set the standards of that community much like that community in Africa, and rightfully so, because under our laws if that's the way, let's say in Norman, the people want to live and want to behave, they've got a right to and nobody in any other community has got a right to do anything about it.

By the same token our laws say someone—and any citizen can do it—picks up some literature, and in his or her opinion it's below the standards of morality in the community. They have a right—in fact, under our laws they have a duty—to submit it to the proper authorities and if the county attorney agrees it's questionable, he's supposed to bring a charge. Then it's submitted

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and displaying in his theater an allegedly obscene film, French naturally, called *Les Amants* (The Lovers). The conviction was upheld by an appellate court and the supreme court of Ohio and it was overturned by the U.S. Supreme Court. Mr. Justice Brennan, with whom Justice Goldberg joined in writing the decision of the majority, wrote: "Moreover, the concept of contemporary community standards does not focus upon the standards of the particular local community from which the case arises, but to the national community, to the society at large. It is, after all, a national constitution we are expounding." It is not the Constitution of the city of Norman or of Oklahoma City or Tulsa; it's the Constitution of the United States. And we don't make exceptions because people in individual, *isolated* communities might have different ideas.

What I know about CDL is based upon what Mr. Kavanaugh has said tonight and what I have been reading in the *Oklahoma Journal* in recent weeks. As I understand it, the CDL is concerned with the dangers to society of the free and unregulated printing and distribution of books and periodicals said to be pornographic and therefore damaging, especially to youthful and unformed minds. Now of course it would be anomalous and absurd for a professor of literature to argue that minds cannot be affected by the reading of books—no matter how slight the evidence might be. And also it would be absurd to deny that many books and magazines are published that might better have been forgotten. I myself have never quite had the stomach to make a detailed investigation of the sort of things that are available on many newsstands, but even a casual glance will reveal a few covers at least that would bring a blush to the cheeks of even the most jaded pornographer. I specify covers in this particular instance because the nature of the paperback book industry is such that there is often a serious discrepancy between the cover and the book.

It would be no exaggeration to say that there is a perfect flood of trash easily available for anyone who wants to buy it, but I might add that it is by

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sake of all students and every civic-minded and open-minded person. My thesis is simply this: While its explicitly stated intention of protecting our youth from the harmful effects of smut is objectively good, the means chosen and advocated by the CDL are both generically and specifically wrong. The generic erroneousness, the root of the wrongness of the CDL program, is that it oversimplifies the situation. It says there is smut around us, the cause of the smut is the publishers and so let's prosecute the publishers and that will take care of the whole problem. Now this is typically what logic textbooks call the American fallacy of black and white.

And from this fallacy another one is immediately construed in the following syllogistic form: Whoever is a friend of smut and a foe of morality is against the CDL. All those who do not share our program are against the CDL. Therefore, all of the opponents of CDL are friends of smut and foes of morality. You ask why the CDL oversimplifies the difficulties. Mr. Kavanaugh's group considers smut mainly, if not exclusively, a moral problem by arguing thus: Smut is evil in itself and its effects as well, therefore let us eliminate it by prosecuting the publishers.

A student of mine has asked why CDL doesn't leave the problem of smut up to the psychologists. She recognized that the problem is as much psychological as moral. She should have added a number of additional aspects, for smut and its possible solutions have philosophical and scientific aspects. The philosophical aspects include aesthetic, literary, moral or ethical aspects, while the scientific breaks down into psychological, legal, and historical factors. Consequently, without claiming to exhaust the question in all its aspects, I shall raise objections to the CDL program from the aesthetic, moral, psychological, legal, and historical points of view.

First, my favorite approach—*aesthetic criticism*. One way of showing the wrongness, the inherent weaknesses of the CDL program is to analyze it from the point of view of *philosophic aesthetics*. The basic attitude of the CDL to art works is such that it

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to the judge and he's supposed to read it in the light of what he himself thinks about it. He has to read it in the light of what the average person in the community would think about it and whether or not if to the average person it would arouse a desire to commit an illegal sex act. If, in the opinion of the county attorney and judge, this is true, the judge then will charge the jury in the same manner. He will say to the jury, "You read this and if in your opinion this book as a whole (it has to be the whole thing, it can't be just a page or two or one or two sections of it but it has to be better than 50 percent of it) is designed and does appeal to prurient interests," he says to that jury, "it's your duty to vote whether it is obscene or pornographic and either tell the court what the fine and the prison [term] is to be or if you want to leave it up to the judge, then I'll decide." And this is simply the case.

The reason I got interested in this thing, and frankly I hadn't paid much attention to it because I'm a builder and have been busy building buildings, highways, airports and things of that kind, was when these seven boys [in Oklahoma City] abused this girl from Texas. It happened that one of those boys was the son of a very good friend of mine, Jimmy Fellers, a fine attorney, and he asked me to try and help. I didn't know how to. I didn't know anything about the laws so I started checking up on it and went down to the county attorney and he told me, much to my surprise, that there were six cases of this kind in Oklahoma City last year. I asked him why he hadn't done something about it, and he said the girls involved and the parents didn't want the publicity, and the only ones to come forward was this girl and this particular family. Obviously, with six children and 14 grandchildren, I was pretty interested. And I got into it to see what could be done about it.

I've come to the conclusion that as a parent and citizen that since I have as much right to my opinion as any other person in the United States that I'd try and find out just what the standards of decency were in the com-

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no means exclusively confined to sex, and I daresay that more damage can be done by books and articles on other subjects. The problem of getting rid of this sort of thing is not simple. Individuals disagree and always have disagreed on what constitutes pornography. Publishers have disagreed. Courts have disagreed. Juries have disagreed. Professors, who never agree on anything, don't agree on this. Drawing the line between the serious work and the harmless and amusing work on the one hand, and the vicious one on the other is in fact very difficult. It should also be remembered that when a publisher of a pornographic magazine is caught and an injunction served against him, he can always diversify, do something else for awhile and wait for the courts to decide on his subsequent efforts while in the meantime the profits go into his bank account. Dirty magazines are a little bit like the Hydra's heads—cut off one and a few more will grow in its place.

I think the problem is our twentieth century American obsession with sex. And this is a subject on which most of us have clearly defined, wholeheartedly ambiguous attitudes. On the one hand, in spite of all the laws, it's fun. And that, I think, only a true pornographer would deny. On the other hand, it's somehow naughty, disreputable, and wicked. That, I guess, is because deep in our Puritan unconscious, everything that is fun is somehow wicked. The difference is, of course, that sex involves commitments that are not necessarily inherent in square dancing, chamber music or handball. Furthermore, as Lord Chesterfield said once, "The expense is atrocious and the position is ludicrous." However, publishers of pornographic books and magazines are not in business to make converts. They are in business to make money, and they make money by appealing to curiosity, appetites, attitudes already in existence and often very clearly defined.

The less casual our attitudes toward sex, the more ready we are to read about it, particularly in its more rococo forms. The less we know about it, the more we want to read about it. The recent proliferation of so-called

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confuses the subject matter with the art work itself or ignores the real distinction between the two. By doing so is to confuse the part with the whole and the artistically significant with the artistically insignificant. This is why blacklists often include such works as *Catcher in the Rye* and calls anyone defending Henry Miller as an artist an idiot. Moreover, the CDL fails to consider the form imposed on the subject matter completely. They never ask how is this or that topic treated or presented. They consider the subject matter irrespective of the whole of which it is an organic part of the aesthetic order superimposed upon that subject matter. It may interest the CDL that this mode of consideration of art works is directly opposed to the advice of such great moralists and religious thinkers as Marcus Aurelius, St. Augustine, St. Bonaventure and St. Thomas.

St. Augustine: "If somebody does not consider the whole, certain parts of it may offend him, because he will not notice the suitability and reference to the whole." Aurelius: "He who criticizes the whole because of a part of it, criticizes the whole stupidly." St. Bonaventure applies this to literary criticism by warning: "Nobody can recognize the beauty of a poem unless he considers it as a whole." St. Thomas reminds us: "A painting is beautiful as long as it perfectly or beautifully represents its object, however ugly that object may be." And for the sake of the CDL—however objectionable that object may be. Another St. Thomas quotation: "One cannot take delight in adultery without sin but he may well take delight in the beautiful ways of which someone may speak of adultery."

The enthusiasts of decent literature clearly confuse the body with evil; consequently, by their myopic minds any literary work daring to talk of sex or any painting displaying the human body is simply and categorically evil. They forget that the human body, including its sexual parts and functions, are God's creative idea of man, and they make no distinction between proper and improper uses, descriptions, and illustrations of the body and sex.

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munities in Oklahoma and try and arouse the citizens—the parents, the boys and girls, the people like yourselves—to where you would actually have evenings like this evening, where you'd think about it and study it and talk it over among yourselves and communicate with one another and study it and talk it over among themselves and communicate with me and the professors and the judges and the newspapers. I believe I've got that started all right.

I know there's a lot of people that don't agree with my views but that's their right. There's an awful lot that do. I've had some 7,000 communications from people in Oklahoma who do agree with me and quite a number who don't. What it amounts to is that in our Congress, we've arrived at laws and arrived at standards and every law that we have is a standard—it's a standard of behavior just like our speed laws. They're arrived at by debate because I bet if you took every mind in this room and analyzed it and there are a lot of good minds in this room, most of them are, there'd be a different opinion about this subject and a lot of other subjects and eventually if we're going to write a standard for the people in this room, it would have to be an average standard. And 50 percent or better would have to arrive at it.

I think maybe we all will disagree a little bit on exactly how to go about it as to just exactly what books will be considered pornographic and which shouldn't. You and I will probably get an opportunity when we have some lawsuits, and we're going to have some. Frankly, we've been waiting until the Supreme Court came down with some rulings that are before them right now. There's 17 cases before them. It would be foolish to file our lawsuits on a certain level or with a certain literature that maybe the Supreme Court would make a ruling on. However, there's a lot of lawyers and a lot of legal minds that feel that the Supreme Court doesn't have a right to pass on what book is obscene or pornographic, that it's only the juries, say in Norman. And if the jury in Norman would rule that a certain

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marriage manuals is easily understandable in terms of readers both frustrated and obsessed. Our society has a large-scale sexual obsession, a phenomenon that frequently occurs during periods of stress, change, social decay, as in Rome of the late empire, Alexandria, 17th century England, Victorian England, and in some modern countries. It is therefore natural enough that, for example, on the Dr. Kildare television program the tedious moments between medical problems that no one understands are filled with brassiere ads that make their points clearly enough.

This obsession exists. We get it from all angles. This country is more obsessed in a sick sort of way with sex than almost any society since Alexandria in the third, fourth, and fifth centuries A.D. The problem is how to cope with it. The CDL, as I understand it, wants to come to grips with the problem at what it regards as the source—pornographic books and magazines. Such books and magazines, we are told, contribute directly to the committing of sexual offenses by young people. I strongly sympathize with any well-directed effort to reduce the occurrence of such offenses, and I think it is possible that from time to time the youthful offender might well get an idea for a new and perhaps loathsome game from something he reads in a magazine. But I also think that the issue of pornography has been grossly overstated, and I am not prepared to accept the word of a youthful offender that he was led astray by dirty books. The behavioral sciences have not developed to the stage where we can point to cause and effect relationships in questions of this sort. It is simply not possible. Inferences can be drawn, but inferences are very much different from scientific, logical, objective fact.

What I object to specifically and first, then, is the CDL's penchant for simplistic argument about complex problems. Second, I object strongly to the contention that since certain books and magazines may exert a dangerous influence on youth, they should be declared pornographic and banned from public sale. One sometimes gets

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In doing so these people mean well but being unqualified are bold enough to try to impose their preconceived ideas and arbitrary norms upon creative artists, beholders, and upon society as a whole. All this in turn tends to create an utterly unfavorable situation, especially for creative artists. For on one hand, how could an artist know what the supreme judges of art and morality will think of him and do to him and his works? On the other hand, what will happen to art if anyone is allowed to dictate to a creative artist or even punish him if he doesn't obey? Look at the Soviet art under Stalin or at the trials of the Russian novelists recently to get your answer. To this reasoning a former judge declared in his recent defense of the CDL: "It has been asserted that if there is no freedom, there will be no great artists, but there has been freedom in the last 40 or 50 years, therefore there should have been great artists in this period but there have been none. Therefore, obviously freedom is not needed in art; its lack is of no consequence." In this well sounding polysyllogism there are only two errors. The first conclusion—namely, that therefore there should have been great artists in this period—is a fallacy of the antecedent and the second—that there have been no great artists—is a historical error, displaying his ignorance or blindness.

Next, the moral consideration: One can object to the CDL program at the speculative and the practical moral level. Speculative objections: Every student of ethics knows such basic moral principles as this: There is a difference between the end and means to the end; or, the end never sanctifies the evil means; or, the means must be proportionate to its end, otherwise the means is unreasonable, contrary to human nature, hence immoral and evil. Now, all I have said heretofore and shall say hereafter, especially in my legal criticism of the CDL, will show the disproportion of the problem of smut and the CDL solution of it.

One conspicuous factor of this incongruity is the interference of the CDL people with the normal adult's inalienable right to make decisions

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book was not obscene and it was appealed to the Supreme Court, the only thing the Supreme Court is supposed to rule on is the legal procedure involved and not the book itself.

There are judges up there who don't agree with that, but some of us feel like that is legislation or it's exceeding their rights. Many of you know I don't agree with Justice Douglas' rulings and the only difference between him and me is that he's on the Supreme Court and I'm not. But thank God in this country I can say what I think about him and his rulings and he can say the same thing about me. So, I'll probably hear from him before long.

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the impression that the CDL wants no book or magazine sold that is not fit reading for a five-year-old. And one recalls that standard of decency, advanced satirically, of course, by Charles Dickens in the words of Mr. Podsnap: "Would it bring a blush into the cheek of a young person?" And one recalls the standard introduced to this sort of question by Judge Woolsey of the southern district of the U.S. Circuit Court in New York in 1933, a famous case over James Joyce's *Ulysses* in which he substituted for the blushing Victorian virgin something new and more rational—the man with normal sexual appetites and instincts as the norm. Not infants, not children, not what are called deviates or sick people.

I would submit the very far from heretical view that the raising of children is the responsibility of parents, not of the Citizens for Decent Literature. As an example for what I mean, it's one thing for me to tell my 10-year-old child to wait awhile before reading *Tropic of Cancer*. I might add that I think it's appropriate for me to tell her that. It's quite another thing for the CDL to say that such a book should not be sold at all. Third, I am appalled by the total lack of critical sense and responsibility implied by the list of books and magazines that, according to the *Oklahoma City Times*

of Feb. 24, "should be declared pornographic," quoting a spokesman for the CDL. I will say, of course, I am for good reasons unfamiliar with a good number of the listed titles. And in the normal course of events I should be perfectly happy to remain unfamiliar with them. *Sister for Sale, Party Wives, Love Me Quick, Come Be My Slave, I'm a Hollywood Callboy, Go Go Sadisto*. (laughter) And your response to the titles is, I think, the only sane response.

But what are we to make of the inclusion in this list as such widely varying books as *Torture Garden* by Octave Mirbeau, James Baldwin's *Another Country, Thunderball, Tropic of Cancer, Fanny Hill*, which is at best a stupid book—a stupid, dull, idiotic book—*Justine*—the authors are not given in this list so we don't know if it's Durrell's or De Sade's—*The Air-Conditioned Nightmare, Sexus* but not *Plexus* or *Nexus, The Feminine Mystique*, Frank Harris' *My Life and Loves*.

The literary merit, to use an absurd and pompous phrase, varies greatly of course, but their interest *is* literary. They were not designed to appeal to prurience. That some of them in fact may do so tells us nothing about the books but much about the readers. Prurience is in the mind of the reader. None of these books are for children although some of them are childish. They were not designed for children, but they are not pornographic. And to declare them so would be to impose an unwarranted and odious censorship of a peculiarly stupid kind.

I would suggest that the ostrich's approach to experience is not the best one. To deny books to adults because they are not fit for children is scarcely more logical than to tell an adult he can't have steak because infants can't chew it. The human condition is often an ugly thing. A good deal of it, both good and bad, is contained in books, and I think we should do well to know about it whether we like it or not.

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for himself, rather than be forced to accept another's judgment.

Considering now the same program from a practical point of view, the CDL must be accused of an astonish-

ing lack of prudence. Proof: Prudent is the man who recognizes easily and correctly what is the right thing to do at any given time in any given situation. Now you can check this with Aristotle and St. Thomas, too. But, would it be prudent if I, the philosopher, wanted to dictate to a physician how to perform an operation? Would it be prudent if I, who knows nothing about banking, except how to withdraw all my money, tried to teach a banker how to run his business? Obviously, the answer to these questions is "No." It wouldn't be prudent. But, what makes the CDL people think their concern with decent literature alone qualifies them as judges or experts on aesthetics, morality, psychology, sociology, law, and history?

Psychological criticism: It is an ever human frailty to become interested in what is forbidden. This is why every kind of censorship is merely an invitation to have a greater audience participation. And this is why the CDL advocates a self-defeating program. Perhaps in no other respect can the unsuitability of the CDL program to its alleged end be seen better than psychologically, for they claim that they want to protect children and youths from the harm of smut. But to achieve this end they want to prosecute the publishers of smut literature. Thus, should they succeed in their program, they would in effect "protect" not only the young but also the adult and the old, not only the immature and emotionally unstable but also the mature and emotionally stable.

With this criticism we have already touched on one of the most basic, mainly the legal problems in this question. I think the CDL shows its program at its worst from the legal point of view with its actual and potential evils.

The CDL wants Oklahoma to go back to the Stone Age, with its philosophy of morality showing, thereby, its frightening anachronism. All I can say in my conscience is that the CDL program, in all due respect to their rights to hold their views, is aesthetically ignorant, morally imprudent and unjust, psychologically self-defeating and disproportionate, and legally tending to destroy our American way of life while being also historically anachronistic. As such, all I can say is "No, thank you." END