STATE FILM CENSORSHIP
WITH PARTICULAR REFERENCE TO OHIO
VOLUME I
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CHAPTER I

Statement of Purposes

This is a study of the problems of motion picture censorship with particular reference to the State of Ohio. It is generally concerned with the question of whether the major problems such censorship raises are soluble by state government action of the sort attempted in Ohio. It is concerned particularly with how film censorship is like or unlike other kinds of administrative regulation.

Like other media, the film portrays the human and physical world around us and necessarily teaches moral lessons about it. Both content and lessons produce a variety of reactions among the medium's audience. These lessons differ, audiences differ about them, and some people feel strongly about what others may learn and do as a consequence. Hence, the film finds itself like other media confronted with demands for censorship.

Film censorship involves preventing expression of views considered either dangerous to established morality or likely to cause anti-social acts; thus, it may be properly viewed as a social control employed to maintain and protect community morality and order. Like other forms of censorship, film censorship operates through laws which provide standards of community morality, leaving it to the censor to apply these broad standards to particular expressions.

- 1 -
To some degree, which we will explore, film censorship thus partakes of the nature of administrative regulation. With the demand for greater public services and regulation so characteristic of the modern state, the legislature has found it increasingly necessary to create administrative agencies to handle these demands. Whether because of lack of time or knowledge, the law-makers have assigned to the administration the detailed, day-to-day tasks of government, reserving to themselves the authority to create the agencies, define their general policy directives and hold their agents responsible. One method of requiring responsible administration has been to limit the agencies, especially the regulatory agencies, to operating within certain standards; judicial caution of this new phenomenon has caused the judges to require that these standards be relatively clear, fair and objective. The more "objective" the standards, then the more clearly defined the discretionary authority of the agencies, and hence the easier it is for the citizen to know what is required, for the judiciary to measure fairness and for the legislature to determine accountability.

The meaning of "objectivity" in administrative regulation will be examined in detail in our conclusions. A major hypothesis by which this dissertation proceeds is that the standards of "objectivity" may be viewed on a continuum, varying with the variety of tasks now required of administration. This continuum concerns administration of the
state's police power, i.e., regulation of public health, safety, welfare and morals. It is suggested that health and safety regulations (the bacteria count of milk or water, the friction coefficient of particular brake linings used on train wheels) provide standards which are less subject to differences of opinion and, consequently, which we might deem more objective. As we move to regulation of the social welfare aspects of life, the degree of objectivity lessens; regulation of profits or other economic factors of business has been the subject of more controversy than the preceding regulation. Finally, we suggest that the other end of this continuum in standards is represented in the attempt to regulate art and morals. Here, so great is the difference of opinion that standards of regulation are much less agreed upon than those preceding.

"Objective" standards have been required of administrative regulation for several reasons. If a director is to delegate the job to subordinates, his statutory standards must be specific, and as free as possible from differences of meaning; having these, the agency can operate in a more coordinated manner. Further, the director needs such definiteness to satisfy the long established requirements of due process of law and equal protection of law; having this clarity, he knows that his orders will be more easily made fair and non-discriminatory, thus satisfying the courts.
Although exploration of the nature of this administrative regulation will be our chief concern, we shall view other aspects of film censorship along the way, such as the following: how it became the only modern case of prior official restraint of an entire medium; how it has been exercised almost exclusively at the state level; how it has affected the movie industry, and in what ways the threat of censorship has reinforced the efforts of private groups to influence the medium’s products.

As this is written, the whole system of official film censorship developed over the past half century is seriously threatened with dissolution. Clearly, at this moment of readjustment, a reconsideration of the fundamentals of this public policy as it operated in Ohio should serve to focus and define the issues. Does current Constitutional doctrine make impossible the construction of precise standards? What are the strengths and limitations of the actual administration of censorship? What do struggles in courts and legislatures tell us about the nature and values of the social groups involved? Finally, can we say this method of state restraint is efficient, is in harmony with the fundamentals of group determination of public policy in a liberal democracy and is conducive to public order?
CHAPTER II

The Film Industry and the Censorship Problem

This chapter examines the economic and technical development of the film industry which produced legal restraints and private group pressures. Like other mass media, the film industry grew up subject to the pressure of earning a return on an immense investment by appealing to a nation-wide and overseas audience which sought entertainment, thrills and sometimes education. The technical and artistic development of film production early made available the means for satisfying these audience demands. The result was a product whose moral effect concerned some groups. These groups sought to influence the medium's product, either through the public, legal sanction of censorship legislation or through the private group sanction of boycotts. Such sanctions achieved significant results after 1934, when the industry conformed to these pressures. In the post-World War II period, however, new forces emerged to challenge the official censorship institutions and, less effectively, the private controls.

I. Economic Development of the Motion Picture Industry

Thomas Edison invented a motion picture camera in 1889 as an adjunct to his talking machine. The first "peep show" movie appeared in 1894, projection machines for large screens were available in 1895 and the first screening of a motion picture occurred as the last
act of a vaudeville show in 1896. The resulting success motivated the fantastic story that is the history of the medium, aptly labelled, "A Million and One Nights." We divide that history into four stages, in each of which new economic forces changed the industrial structure and practices. Each subsequent stage, retaining characteristics of earlier ones, produced changes in the qualities of films offensive to moral reform groups.

A. The Early Struggles: 1889-1914

In the period from 1896 to 1908, entrepreneurs begged, borrowed, or stole film equipment con-

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1. For a scholarly investigation of the history of moving pictures from antiquity to the opening of the 20th Century, cf. Martin Quigley, Jr., Magic Shadows: The Story of the Origin of Motion Pictures. The most detailed history of Edison's work on the camera and the period from this to the first public screening is Terry Ramsaye, A Thousand and One Nights, vol. I, chs. 1-17; cf. also Quigley, op. cit., chs. 15-17; Benjamin B. Hampton, A History of the Movies, ch. 1.

The ensuing discussion was drawn from the following which in whole or part, deal with economics of the industry: Ramsaye, loc. cit.; Howard T. Lewis, The Motion Picture Industry (1933); Lewis Jacobs, The Rise of the American Film, chs. 4, 6, 10, 16, 21 (1939); Temporary National Economy Committee, The Motion Picture Industry—A Pattern of Control, monograph No. 43, 76th Cong., 3d Session (hereinafter referred to as TNEC #43); Mae Huettig, Economic Control of the Motion Picture Industry: A Study in Industrial Organization, (1944); Gilbert Seldes, The Great Audience, 9-104 (1950); Raymond Moley, The Hays Office, ch. 17 (1945).
trolled by a few who held the patents; later problems of distribution, advertising, stars and pricing were secondary to getting equipment. At the same time, the patent holders began making films and then producing the motion pictures which made their exhibition equipment indispensable. The dominance of these producers, however, was necessarily challenged. "The opportunity for quick profits was too alluring; equipment and films continued to appear in the market, where they were absorbed with no questions asked by the exhibitors or the public."2 Indeed, "'Bootleggers' of movie equipment raw stock, and completed films violated the patent laws as nimbly and cheerily as the liquor oligarchy later scorned the Volstead Act."3

At the height of this struggle, 1907-08, the first demands for film censorship appeared. Certain factors account for this. The competition for control of equipment resulted from audience demands for more and varying products. The medium's initial audience thrill had been satisfied by reliance upon vaudeville acts, newsreels, and travel-

3. Hampton, op. cit., 64.
ogues. But the subsequent need for variety was satisfied only by dramatic productions which, by definition, involved moral lessons. Once the possibilities were demonstrated, competition called forth a larger supply.

What moral lessons should be dramatized? The moral values that were most available were those of the movie-makers themselves. Gilbert Seldes gives us some idea of their moral background in the following passage: "The moving picture was taken away from its inventors by aggressive and ignorant men without taste or tradition, but with a highly developed sense of business...." Unmoored to "accepted" moral systems, driven to portray something "different" so as to capture their audience, themselves involved in dramatic struggles, they found it easy to produce films in which moral lessons about love, hate, and crime were presented in an exciting, often sensational, fashion. The success of The Great Train Robbery

4. Gilbert Seldes, The Movies Come From America, 9 (1931). Ramsaye, op. cit., passim, indicates the contrasts between the background and values of these pioneers and the social environment in which they worked. Moley, op. cit., 21-3, details the origins of these pioneers.
in 1903 indicated an audience appreciation of such presentations, particularly when produced as an integrated story. From that time on, producers were to ride such vehicles to similar success.

By thus presenting dramas with their concomitant moral lessons, the movie-makers entered the arena of value conflict; by that entrance they necessarily created first interest, then protest from those opposed to the producers' moral interpretations.

The first stage of economic development closed in 1908 with the emergence of a new pattern of organization and struggle. The ten leading manufacturers of film equipment, who had patent claims of variable legal validity, pooled their patents in the Motion Picture Patents Company (MPPC), a company owning no property except the assigned patents. The intent was to force out smaller competitors and eliminate wasteful competition among the MPPC.

5. This section on the MPPC is drawn from Huettig, op. cit., 14-17; Lewis, op. cit., 5-14; Ramsaye, op. cit., vol. II, chs. 46, 48, 52, 55, 72; TNEC #43, op. cit., 3-4; Jacobs, op. cit., ch. 6. The participating companies were Edison, Biograph, Vitagraph, Essanay, Selif, Lubin, Kalem, Mélies, Pathe and distributor George Kleine; cf. Jacobs, op. cit., 82 and TNEC #43, op. cit., 4.
Further consolidation came in 1910 when the MPPC organized the General Film Company as a distribution subsidiary. Prior to this, the exhibitor had bought prints from the film makers. This system, however, had satisfied poorly audience demands for fresh bills-of-fare; the exhibitor's profits could come only from frequent turnover (demanded by audiences), but films were too expensive to purchase frequently. Under the new distribution arrangements of the GFC, however, both audience and exhibitor demands were met, as the distributor bought the films from producers and leased them to the exhibitor at a fraction of the previous costs. The title to the film remained with the distributor, and the length of time it was kept for exhibition could be adjusted to demand. The exhibitor, however, had one source of supply instead of many. The GFC in this fashion moved to buy or force out all but one of the distribution "exchanges" within the ensuing year; by 1912 the GFC, with one exception, was the sole distributor of films.

The lives of both the MPPC and GFC were short, for their tactics engendered great opposition among independent producers, distributors and exhibitors.
The federal government brought successful restraint of trade suits against both companies; the GFC was dissolved by court action in 1915, the MPPC in 1917. As Terry Ramsaye notes, however, "The decision, as in most film litigation, was too late to have any effect because the growth of the screen had swept on past the ground the fight started over."\(^6\)

The importance of this period lies, then, not so much in its direct impact upon the films it produced. The importance lies in the storm of intra-industry protests created by monopolistic restraints, for it was these protestants who were to change basic features of the industrial organization and produce the films that would stir up the moral reform groups.


The next period, from 1914 to 1926, witnessed the rise of the movie giants, huge structures in which production, distribution and exhibition were chained together. It begins with the breaking of the MPPC's strangle-hold, a move necessary to provide conditions of competition. The "inde-
pendents," frustrated by the rigid control of the MPPC, united in economic as well as legal measures, and with great success. In the economic skirmishes, the independents turned to new trade practices that would lure the audiences to them, practices which were to affect film content and the demand for censorship.7

Between 1908, when the MPPC was formed, and 1914, when "the trust had actually become wholly ineffectual,"8 the independents blossomed. Firms rose and fell virtually overnight. Feature films, the star system and large-scale advertising were eagerly adopted to capture audiences, while the trusts stiffly opposed and then grudgingly adapted to the new forces. By 1914, the independent producers found willing customers in individual distributors, who adopted the pattern of handling a company's products for one particular state. In that year, these successful "states"

7. The story of the independents' fight with the MPCC and the "upward-downward" analysis following is drawn from the following sources: TNEC #43, op. cit., 4-6; Jacobs, op. cit., chs. 6,10,16; Huettig, op. cit., 20-39; Ramsaye, op. cit., vol. II, chs. 52-81; Lewis, op. cit., 5-20.
8. Jacobs, op. cit., 84
right distributors" joined with some independent exhibitors and studios to form the Paramount Pictures Corporation, the first of the large vertically integrated film corporations.

This form of vertical integration originated from below with the exhibitors. Such an "upward" movement toward integration was countered by producer-distributor groups seeing possible loss of exhibitor markets for their product, who moved "downward" to form their own exhibitor networks. Finally, in these consolidations, the many small economic units yielded to the handful of huge, integrated production-distribution-exhibition chains. There were still some "independents" in 1926, but they were mostly in the exhibitor field and were soon to diminish.  

The significance of this period for our story, in this struggle against the MPPC and the later

9. Lewis, op. cit., 20, reports that the number of independent theater chains increased from 571 in 1915 to 1500 in 1925 but notes (at 28) that 1925 marked a general program of theater acquisition by the big production-distribution chains. Jacobs, op. cit., 291, notes that "by 1927, with close to 600 exchanges in 46 American key cities, and 20,000 theatres, exhibition had become almost entirely monopolized by chain theatres, all in the hands of the major producer-distributor-exhibitor combinations."
rampant free enterprise, is the development of trade practices which affected film content and censorship movements. At least four such significant practices emerge, "features," the "star" system, large-scale advertising and "blockbooking-blind-selling."

The adoption of the "feature" film provided a longer canvas for painting moral lessons. Prior to 1912 the bulk of films were one-reelers, of limited plot and dramatic scope. But during 1911, a flood of multiple-reel or "feature" films appeared from Europe, attracting large audiences. Independents, seeking economic vantage points over MPPC, viewed the feature as a coming thing while the MPPC smugly ignored the development. The MPPC had inaccurately gauged the feature's success, however; the "feature craze" caught on so well that the Paramount Pictures Corporation quickly concentrated on these only, with amazing profits. The struggle of trust and independent to exploit this potential is indicated by film historian Lewis Jacobs.

10. Huettig, op. cit., 17
11. Jacobs, op. cit., 93
12. Ibid., 84-5
"While the licensed companies [of MPPC] were standardizing and cramping their pictures, the independents sought in every way to better the quality of theirs and so gain patronage. They lured away many of the trusts' experienced film makers by offering them higher wages; in production they encouraged experimentation, originality, inventiveness. Made almost always "on the run" the independents' pictures had the virtue of new and interesting locales and fresh subject matter....

The trust members thereupon began to budget their pictures higher, increase their personnel, raise their own standards, allow their directors greater leeway. A race for quality now went on side by side with the race for quantity."

Paralleling this move was the emergence of the "star" system. Prior to 1910, movie-makers kept hidden the names of their actors, reasoning that such publicity would stir them to demand higher salaries. Mounting popular curiosity about these personalities, however, moved one producer to devise a ruse to focus public attention upon his top actress and her next film. The resulting publicity alerted producers to the possibility of exploiting this latent popular appeal, and so the "star" system was born. "Typing" of stars soon followed;

emotions and values became personified in major stars. The impact upon audience attraction increased when Lon Chaney became Fear, Mary Pickford "America's Sweetheart," Theda Bara "The Vamp", and Douglas Fairbanks "Don Juan" whenever they appeared on the screen.

Thus began the fabulous publicity build-up of the stars to the high status position which they hold even today. Their wealth and clothes, marriages and divorces, statements and peccadilloes were broadcast to an eager public; appearances in their most recent film were awaited excitedly and hugely attended. In the cultural constellation of heroes, the film star rose quickly, burned brightly and passed soon—a nova phenomenon but always succeeded by other novae.\(^1\)

These personalities, moving before the eyes of millions in a fashion clearly out of the ordinary, were certain to arouse the attention and then the criticism of groups concerned with morality. Characteristic of this displeasure is the senatorial comment in 1922:\(^1\)

14. Lewis, op. cit., 117-24, presents details of the system; cf. also Rotha and Griffith, The Film Till Now, 129-34.

15. Congressional Record, 62:9657, June 29, 1922, quoted in Moley, op. cit., 27.
"At Hollywood is a colony of these people where debauchery, riotous living, drunkenness, ribaldry, dissipation, free love seem to be conspicuous. Many of these "stars" it is reported were formerly bartenders, butcher boys, sopers (sic), swampers, variety actors and actresses, who may have earned $10 or $20 a week. Some of them are now paid, it is said, salaries of something like $5000 a month or more, and they do not know what to do with their wealth extracted from poor people in large part by 25¢ or 50¢ admission fees except to spend it in riotous living, dissipation, and "high rolling." These are some of the characters from whom the young people of today are deriving a large part of their education, views of life and character forming habits.... Rather a poor source, is it not? It looks as if censorship is needed, does it not?"

Thus there was much in the cultural milieu of the movie star which advocates of censorship could use to support their case.

Underlying and helping to create these trade practices was the development of large-scale advertising. The feature films could be promoted successfully only with great publicity; it was soon realized that the more sensational and erotic the publicity about films, the greater the audience attracted. The stars, often living ads of their vehicles and their industry, were publicized in every available channel—and some new channels were invented to exploit their sales value. The
side-show "barker" had gone "big time."\textsuperscript{16}

Advertising did not affect film content directly, but it publicized that content to a susceptible audience. Its luridness may be seen in an ad of that time:\textsuperscript{17}

"A long, long kiss, a kiss of youth and love and beauty, all concentrating like rays into one focus, kindled from above; such kisses as belong to early days where heart, and soul and sense in concert move, and the blood is lava and the pulse is ablaze."

Such descriptions were fuel to the flames of moral protest, especially when film content came to rely heavily upon sex themes and were portrayed by publicly acclaimed stars.

While these practices sought to capture audiences, others sought to ensure a captive exhibitor. Arising during the 1910's as a consequence of the integration struggles, these were "blockbooking" and "blindselling."

"Blockbooking" has been described as\textsuperscript{18}

\textsuperscript{16} Developments of these publicity techniques are chronicled at Jacobs, \textit{op. cit.}, 88-9.
\textsuperscript{17} Ruth Ingles, \textit{Freedom of the Movies}, 63.
\textsuperscript{18} Lewis, \textit{op. cit.}, 142. This definition is the one used by TNEC #43, \textit{op. cit.}, 23.
"...the simultaneous sale to a distributor of a number of motion pictures for release and delivery to the exhibitor over a period of time, the pictures being offered as a group and the aggregate price being in part dependent upon the quantity taken."

In some forms the "block" of films was offered on an "all or none" basis; elsewhere, the better films in the "block" were priced so highly when purchased separately as to make it impractical to buy anything but the whole lot where the better films were discounted. With "blind-selling," however, the exhibitor was presented with a prospectus of the forthcoming films of a particular studio; a few were emphasized—their plots, stars, directors—but many would be designated only by number and price. In accepting such a contract, the exhibitor knew only that he would get a certain number of films at certain prices; a Congressional committee report remarked that, "It can be categorically stated that this is the only industry in which the buyer, having no idea of what he is buying, underwrites blindly all the product offered him." 19 Producer-distributor combines, however, defended it as a

19. TNEC #43, op. cit., 31. For detailed analysis of the practices and the controversy surrounding block-booking and blind-selling cf ibid., 23-34, and Lewis, op. cit., ch. 5, the former primarily a digest of the latter's
wholesaling method that reduced distributing costs and assured a definite income that enabled them to make better pictures than otherwise.

These practices affected the film censorship movement.

"The independent exhibitors have been supported in their opposition [to block-booking] by religious, civic, and public welfare groups. These groups opposed blockbooking because it interferes with community selection, or local censorship activities. It is the experience of these groups that an exhibitor will meet their objections to the showing of an unsuitable film with the statement that he is economically obliged to play it since he must pay for it, or alternatively, that failure to show it might involve him in a breach of contract action....

Blindselling has consistently been opposed by organizations interested in improving the moral standards of film entertainment. These groups have found that blind-selling, combined with blockbooking, has prevented them from bringing pressure on the local exhibitor to permit some form of community selection of pictures."

In summary, how did these practices affect the demands for censorship? Features provided the scope for dramatic interpretation of controversial values. The stars personalized the values the

19. (cont'd) more extended discussion; the former is highly critical of the practices, the latter more sympathetic.

films portrayed and by their unorthodox lives created criticism of themselves and their productions. Large-scale advertising emphasized the unusual and daring aspects of films and stars. "Blockbooking" and "blindselling" forced the exhibitors to accept and show films objectionable to moral reform groups. It seems more than coincidental that this period was accompanied by the greatest wave of censorship agitation.

C. Industrial Stabilization with Financial and Exhibitor Dominance: 1926-1956

Although the transition was not abrupt, the last period reveals significant differences from the foregoing. The later period was one of industrial stabilization in which financial-credit institutions and the exhibitors tended to conservatize film content for reasons of profit. This was done by standardizing film themes while permitting variation in interpretation of these themes.

Beginning in the mid-twenties, the movie giants felt the need for larger sums of money for several reasons: purchase of more theaters in the renewed competition for exhibitor outlets; expansion of production facilities to adjust to sound pictures,
and financing of film costs. The most notable consequence of this need was the entry of financial interests into the industry on a large scale. 21

Until 1919, the industry had usually financed itself out of earnings.... Between 1919 and 1927 there were occasional excursions into the stock market for funds by various producing groups, but on a very minor scale.... Not until nearly 1926, when the acquisition of theatres was in full swing, did the banks and investment houses regard the industry as a legitimate field of activity. Theatre properties were something against which bonds could be issued, and as such seemed reasonably good investment risks.

Not only did theater properties seem a good investment risk, but they turned out to be such. Credit poured in to satisfy the heavy demands for capital and, except during the 'thirties, the profits were large—especially so during World War II. As production costs increased, the role

21. Huettig, op. cit., 49-50. This source is relied upon for the following analysis of capital venture, rather than Jacobs, op. cit., chs. 16, 21, which tells roughly the same story but with a far more Marxian interpretation and with more exaggerated views than Lewis Jacobs documents. Huettig is careful to document with statistics at every point.
of credit interests became larger; the cost for
and "average" picture increased from $40,000-
$80,000 in 1920 to $900,000 in 1951.22 By 1940,
the structure of the industry was characterized
as "a large inverted pyramid, top-heavy with
real estate and theatres, resting on a narrow
base of the intangibles which constitute films."
Little evidence appears that this structure has
changed despite the anti-trust actions of the
federal government. As we shall see, as the film
industry became big business, films were con­
ceived on the hard marble floors of banks.23

22. The 1920 figure is from Jacobs, op. cit., 293, while
the 1951 figure is from Kann, op. cit., xiii. Neither
source defined the length of the "average" film; never­
theless, the pattern of increase is valid.

23. Huettig, op. cit., 54. For the story of the entrance
of financial interests into the structure and the re­
sulting economic practices, cf. ibid., ch.2-3, particu­
larly Tables IV-V. The details of production costs,
good for the period up to 1933, are found at Lewis, op.
cit., 122-41. The anti-trust cases are the 1940 consent
decree, U.S. v. Paramount Pictures, Inc., et al., Civil
Action No. 87-273, in the District Court of the U.S.
for the Southern District of New York, amended and
supplemental complaint, Nov. 14, 1940; and the federal
Supreme Court decision, U.S. v. Paramount Pictures, Inc.,
334 U.S. 131 (1948). For the full text of consent
decrees following severance order of the 1948 case, cf.,
Kann, op. cit., 737-68.
For somewhat similar financial reasons, the role of exhibition became strong, too. Mae Huettig pins down the exhibitor's power when she notes the importance of theater admissions in the sources of income within the industry.24

The exhibitor group controls the purse-strings; it accounts for more than nine-tenths of the invested capital and approximately two-thirds of the industry's income....Exhibitors...may not know much about the art of the film, but they know what has been good box office before. Consequently, theirs is the conservative influence; they are traditionalists of the trade, exerting their influence in the direction of the safe-and-sound in film making.

At first thought, this alleged influence seems to contradict the earlier complaint of moral reform groups that the exhibitor was hamstrung by "blockbooking" and "blindselling." The resolution of the contradiction lies in the constant flow of communication to the producers about the type of film that exhibitors believe will draw audiences. This exhibitor opinion

24. Op. Cit., 60-1. Kann, op. cit., xiv, reinforces Huettig's data for the late 'thirties by 1949 data which reveal that capital investments in theaters represent $2,525,000,000 out of a total investment of $2,685,000,000. Contemporary data on relative importance of admissions to industry's total income is lacking; such data is closely guarded.
flows upward via criticism of current film fare, trade journals and direct correspondence about audience reactions. This opinion is heeded, from all available information, and then molded into production of new films. These films, in turn, were "thrust" upon the exhibitor. Although recent anti-trust action has modified these two trade practices, the voice of the exhibitor continues to be raised and heard.25

This financial and exhibitor influence tended to produce a rather standardized film. The desire of the financiers of films to stick to the

25. Seldes, The Great Audience, 17-19, describes this process in emphasizing the role of the exhibitor. He notes the comment of Joseph Mackiewicz, writer-director-producer, at 19, "Who controls the movies? Isn't it true that a real-estate operator whose chief concern should be taking gum off the carpets... Isn't it true that this man is in control?...Here is... the real undercover man in the motion-picture industry--the exhibitor". Of particular importance in the exhibition field is the first-run theater; for this, cf., Huettig, op. cit., 77-8. Further, extended discussion of this is at ibid., 77-84; TNEC #43, op. cit., 9-16; for data up to 1946, corroborating this fact, cf. Kann, op. cit., vii; Seldes, The Great Audience, 17, indicates that pictures receive from one-tenth to one-fifth of their total revenue from showing at a single house, although this data is undocumented. These key centers are the 32 exchange cities, q.v., Kann, op. cit., xii.
tried "formulas" arises, Mae Huettig contends, from the risk nature of capital investment. 26

The structure of the major companies is important because there is a real and direct connection between the way in which they are set up, the kind of people who run them, and the kind of films produced. This is the reason for emphasis on the fact that the capital assets of the dominant companies are so largely land, buildings, and real estate. Where the investment takes this form, it is not surprising that the executive personnel should consist of men skilled primarily in the art of selecting theatre sites, managing real estate and financing operations, rather than of talented producers....

The production of films, essentially fluid and experimental as a process, is harnessed to a form of organization which can rarely afford to be either experimental or speculative because of the regularity with which heavy fixed charges must be met.

Others, even more critical, have charged that these financier-producers "discovered that the quickest way to sell pictures in advance and to produce them rapidly was to duplicate the most recent successes....Production methods under this rigid system became mechanized; the 'assembly line' appeared in Hollywood...." 27


The exhibitor, too, preferred to risk capital only on the previously successful. Huettig's previous observation on the traditionalist approach of these men has been repeated in a deeper analysis by Gilbert Seldes, an intimate observer of the medium. 28

The exhibitor, like any other retailer, has a commodity to sell, and the merchandising principle almost universally accepted in the industry is to sell the same product to the same people as often as possible. The product must have no special quality, it must be average, because it is offered to a large, fairly homogeneous group of buyers... There is no time to bring in another group of customers; all the regulars must be attracted to the theater within three days or a week... It is the system of the corner orange-juice stand; it is not the system of the village grocery store or the mail order house or General Motors.

II. The Producers' Dilemma in Film Content: Standardization plus Variety

Yet, standardization will not keep audiences coming back; sameness stales. So the industry has long struggled with the dilemma of standardizing films while varying them. Its answer so far has been found in ingenious, new technical features of photography and in varying the nature of the stories told. These developments, too, have had consequences for film censorship.

A. Technology and Variety

From the industry's beginnings, producers have sought to wrestle against standardization by developing new technical features for their audience appeal. Like a new born infant, the camera extended and refined its senses. Better lighting and "faster" film improved the chances of seeing the objects photographed. Like a sensitive being, the camera learned to move-up, down, around, zooming in and out. Illusions were fostered by editing techniques. Then the instrument sprouted ears and a voice and produced a sound track; it was a fine sense of history which moved the producer to make the first words spoken from a film (by Al Jolson in 1927), "Come on, Ma! Listen to this...." Then the maturing camera developed mechanical optical rods and cones and saw color. Lately it has expanded its peripheral vision in Cinemascope and is still dabbling

29. The discussion in this section is drawn from the following: Jacobs, op. cit., chs. 1-3, 7-8, 11-12, 17-19, 22-23; the most compendious source, Rotha & Griffith, op. cit.; Raymond Spottiswoode, A Grammar of the Film (1935); J.A. Benoît-Levy, The Art of the Motion Picture (1946); Maurice Bardeche & Robert Brassillach, The History of Motion Pictures (trans. Iris Barry, 1938); Serge Eisenstein, The Film Sense (trans. Jay Leyda, 1947); V.I. Pudovkin, Film Technique (trans. Ivor Montagu, 1929); Allardyce Nicoll, Film and Theatre (1936).
with creating three-dimensional productions.

As this thing of voices and music, colors and
tones, patchwork and continuity became a glori­
fied story-teller, there were those in the communi­ty who rose to question the danger it could create
if it told the wrong stories. And within the
industry there were those who wondered what kinds
of stories it could tell.

The striking factor about film subjects has been their wide variety, even from the first
days of the medium. In that dawn era, the
movie-goer feasted on two to three minute farces
and love scenes (The Kiss lasted long in the
industry's memory), religious dramas (The Passion
Play was a one-reel success), crime (initiated by
The Great Train Robbery) and topical newsreels
(McKinley's inauguration was the first viewed by
by greater numbers than those physically present).

Psychological fantasies, unionism, temperance,

30. Content of these earlier films may be found at Jacobs,
chs. 1,3; Bardeche & Brasillach, Op. cit., ch. 1;
Content of films after 1908 are found discussed at
Bardeche & Brasillach, Op. cit., Part II, III-2, IV-6,
V-5, VI-1; Ramsaye, Op. cit., chs. 59-61,63,68-70,
73,76,79.
woman suffrage, the evils of capitalism—all found their way into the early pictures.

The variety remains today, but its range is narrower. To understand how the producers settled the problem of standardized yet varied films, we must understand the distinction between the format and the theme of a presentation. Format refers to the physical, natural settings and actions that are arranged to make the continuity of the film. Theme refers to the pattern of values interwoven within the format, the doctrinal element of the continuity. The format is the story, the theme is the moral lesson it teaches. The pressures for standardization achieved two results with format and theme.

One, the film makers have tended to concentrate on a smaller number of formats. Relatively few films deal with religious and political situations as compared with the clash of people in love or in trouble with the law. Musicals, witty dialogue situation comedies, historical settings—these continue to have their days, although from time to time one gets slightly more emphasis. By eliminating certain kinds of story situations, the film makers satisfy the industrial demand for
standardization; the story situations still left are enough to satisfy audience demands for variety.

Two, the film makers have tended to restrict even more the variety of themes. As we shall see, the Production Code of 1934 was to institutionalize these limited moral lessons in a printed series of proscriptions and encouragements. The result has been that for the last two decades one knows in advance that whatever the story situation in the many love films he will see, adultery and seduction will only be hinted at—if included at all—and will be condemned in the end; that divorce is objectionable; that sensual love is immoral; that in marriage the husband is constantly servant, suitor, and butt of jokes, etc. Alternative moral lessons to these are possible but not generally permissible. Note, too, that even within the permissible, there exists some variety, again the resolution of the contradictory demands of standardization and variety discussed above.

B. Private Group Pressures and Standardization

If the demands of industrial efficiency have been significant in producing these limitations
on the product, equally important has been the thrust of private groups concerned with the preachments of the product. A brief review of this pressure will suffice.

1. Pressures in Industry's Early History

One might argue a priori that any presentation of sex and crime may conflict with community mores. These subjects, so heavily emphasized in the medium, must, if they contain the struggle characteristic of drama, deal with violation of moral and governmental laws. For many, the mere touching upon these subject's moral lessons would cause objection, soon translated into action seeking restraint.

Their protests are raised not only to moral lessons that can be said to be consciously taught by films, but also to lessons that may be presumptively be learned from them. For example, law enforcement officials and professional welfare workers characteristically deplore the showing of too explicit or realistic a description of how to crack a safe, burgle a house or commit a "perfect" murder, regardless of the producer's motives. It is feared that suggestible people in an audience,
weak in moral fibre, may draw their own anti-social lessons from a documentary as well as from a drama.

More tangible evidence of this opposition exists, however. All available data on material actually censored by the states, examined later, show clearly that the *bete noir* of public officials was the film that was concerned either with sex or crime. During the 1920's when the industry first began to seek accommodation to external pressures, it had compiled a list of subject matter deleted by censors in the past; 83% of all subjects so censored dealt with sex, crime or cruelty related to crime. 31

Other evidence of the offensiveness of these subjects appears from the public protests of private groups. The first record of demand for censorship, in 1896, deals with pictures of a *Passion Dance* and *The Kiss*. 32


32. Ramsaye, *op. cit.*, 256,258-9, tells the story.
Mark Sullivan noted the groups supporting censorship when it was first urged in New York City; the regulation appeared "because of the serious opposition by the rectors and pastors of practically all the Christian denominations in the city and because of the further objections of the Society for the Prevention of Crime (to) pictures tending to 'degrade the morals of the community.'

This censorship movement swelled during the 1910's, reaching a climax in 1922. Many religious groups were echoing the remarks of Rev. William S. Mitchell, Protestant clergyman, when he exclaimed that the occupation of the industry leaders

...is to shield, for enormous salaries, the panderers who have made their millions selling vice, crime and sexual suggestion to a public that is in the main composed of the immature.

The prevalence of the cheap, the nasty and the suggestive in our films is the bane of popular amusement. The person with high ideals and a moral repugnance for the vulgarities and obscenities with which the modern producer of motion pictures feels it necessary to fill even his greatest film is continually offended by these features.

34. Editorial, *the Churchman*, July 13, 1929, 8; quoted in Moley, *op. cit.*, 66, first paragraph quote.
Under the leadership of the International Reform Bureau, many ministers were mobilized in a campaign to employ the law to back their protests. Women's Clubs were in this campaign then as later. The General Federation of Women's Clubs in at least six states analyzed many films, finding them "harmful" or "not worthwhile" because of their sexual and criminal portrayals.


36. For discussion and content of these surveys, cf. Young, op. cit., 19, 22-3, 50. Cf. Moley, op. cit., 58, for Hays' attempts to conform some pictures during the 'twenties to protests of the National Congress of Parents and Teachers.
Some educators claimed the medium had an unhealthy effect upon the nation's youth. Complained Bernardine Freeman,

The movie contains the most sexually suggestive elements. It shows lawlessness and crime in all their horror and brutality. It pictures drunkenness in its most licentious aspects. Home and family relations are made subjects of jests and ridicule.

Juvenile delinquency officials in seven large cities reported that 70% of the delinquents, according to their own testimony, obtained their anti-social ideas from the movies.


38. Rev. J.J. Phelan, Motion Pictures as A Phase of Commercialized Amusement in Toledo, 114-17; cf. Ibid., 265-72, for statements of court officials who held this belief. Cf. also William Brady, The Individual Delinquent, 307 ff., for the views of one juvenile delinquency expert who thought censorship justifiable on these grounds.
These morality groups, operating in the reform climate of the 1910's soon turned protest into social action. Where should they focus, what means should they employ? The kaleidoscopic nature of the industrial economy offered no single point where combined pressure could be effective. Organized boycotts of films might boomerang to attract audiences to a "naughty" picture. Federal power seemed lacking because of the prohibitions of the First Amendment on abridging a free press. Nevertheless at this time a federal law did appear prohibiting the use of facilities of interstate commerce to obscene film material; 39 For reasons the author has never uncovered this law was rarely enforced.

Local and state governments provided the necessary vantage point. Municipalities, never accurately enumerated, passed censorship laws under the pressure of this moral reform movement. But this lever was not too effective, having a built-in weakness, in that its impact was too local for the demands of the reformers. State censorship, therefore, became the preferred answer. Out of the many states initiating legis-

lation of this kind, seven emerged by 1922 with full blown, fully operative prior restraint mechanisms. These were Kansas, Ohio, Pennsylvania, Maryland, Virginia, New York and Massachusetts.

Unlike local censorship, state action affected substantial numbers of the population, but more importantly, state censorship made itself felt in Hollywood. The industry could not afford to make one version of a picture for 41 states and seven versions for the seven censor states. So there evolved an anticipatory effect, by which the industry slowly began to mold its national product to the dictates of the censorship states. The impetus of the censorship drive, satisfied by the early 1920's with this success, died down, not to reappear for another decade.

2. The Production Code: Accommodation to Pressures

As the industry slowly formed into multiple giants, it presented a better target for the reformers. Its growing sensitivity to public
relations\textsuperscript{40} (a reflection of its concern for profits) likewise made it susceptible to reformers' demands.

The early public relations efforts of the industry were not favorable to these demands. The National Association of the Motion Picture Industry, which was formed in 1916 (composed of a majority of the producers and exhibitors and a scattering of exhibitors), spent its short life fighting censorship battles instead of molding its products to outsiders' demands. Its failure to defeat state censorship measures and a burst of unfavorable publicity about some stars' misadventures led in 1921 to the creation of the Motion Picture Producers and Distributors of America and the selection of Will Hays, Postmaster general of the United States, as director.\textsuperscript{41}

\textsuperscript{40}. The best single source on this factor is Moley, op. cit., from which most of the following is drawn. Moley is most sympathetic toward this agency and its director. For a more critical analysis of the PCA and its Code, cf. Seldes, \textit{The Great Audience}, 64-88; Ingles, op. cit., 180-6.

Hays was brought in by industrial leaders to accommodate their practices to contemporary social pressures. By the end of the 1920's, however, he found his efforts toward "cleaning up" film content had met with indifference or outright opposition by those same leaders. Further, the 1929 crash was forcing the companies to...seek short cuts to public patronage. And short cuts had always meant a drift to sensationalism and lower moral standards. Criticism was mounting, and no one knew this better than Hays, since his office was the clearinghouse for complaints by citizenry.

To meet this criticism, Hays had the movie-makers adopt a "Code" regulating film content and advertising. Although adopted in 1930, it was not observed, either because it interfered with the films' sensationalism or because it lacked enforcing provisions.

The continuing moral protest crystallized in early 1934, when the Roman Catholic Church created a Legion of Decency to fight for better pictures and to boycott offensive films. Jointed by representatives of all faiths, the Legion's three month campaign presented--through boycott--such a threat to the depression-weakened industry that the movie-makers hurriedly drew up a Production Code Administration (PCA). NRA codes, which were then the fashion of the day, had relaxed the fears of anti-trust prosecution. This private code, although lacking legal sanction, provided teeth which made it effective;

42. Moley, op. cit., 68

43. On Code origins, cf. ibid., ch. 5. The best single source on the Code's origins and meaning is by its author, Martin Quigley, Decency in Motion Pictures (1937).
pictures without PCA approval were denied distribution and exhibition channels; films had to be submitted at various stages of production to this body for its approval, and finally, the delinquent producer suffered a $25,000 fine. With an effectively instituted "house cleaning" in operation, the Legion called off its boycott; from that time to present the PCA has been an active force in regulating film content at its origin. As Morris Ernst commented, "When 11,000,000 persons

\[44\] Moley, op. cit., ch. 6, presents the 1934 struggle, as does Quigley, op. cit. The content of the Code is found at Moley, op. cit., 241-8 (and in each annual of the trade publications), and comment upon it at ibid., chs. 8-9. Operation of PCA is described at ibid., chs. 7-10.

The effect of the Legion of Decency campaign upon the market is found at ibid., 81, and in a specialized study of the campaign's impact, Robert W. Janes, The Legion of Decency and the Motion Picture Industry, M.A. dissertation, University of Chicago, 1939, 152-3, where the measurement under control conditions during the campaign revealed significant decrease of exhibition of condemned films in both low and high Catholic areas. A specialized study on this period of Paul W. Facey, S.J., The Legion of Decency: A Sociological Analysis of the Emergence and Development of a Social Pressure Group, Ph. D. dissertation, Fordham University, 1945, particularly with reference to statements in text, cf. 16, 58, 60-2, 135.

For details of the struggle and role played by all groups, cf., particularly the Janes and Facey references. Ingles, op. cit., 124, states the following groups participated in the 1934 battle: Federal Council of Churches of Christ in America, National Education Association, Emergency Council of Fraternal Organizations (representing Knights of Columbus, Elks, Masons, and Odd Fellows) and some 54 Protestant and Jewish churches.
threatened to go out the door, cartelized purity flew into the window with a vengeance." The threat of private pressure remains, however, as Ruth Inglis comments in her thorough study of the PCA, "Much more important in keeping the producers in line...is the continued existence of pressure groups like the Legion of Decency and the latent and potential strength of the forces of morality everywhere." 

44a. Morris Ernst, The First Freedom, 204.
45. Inglis, op. cit., 2, 177.
3. Illustrative Group Pressures

This dissertation seeks to establish that the combination of state censorship and private pressure has been significant in molding the medium's product. The bulk of this work concentrates on censorship; a few examples of the private pressures may be here employed to illustrate the nature of this force. Newspapers document in only fragmentary fashion these private pressures; their extent seems great but hardly measurable. Success seems to depend upon the intensity of the furor and the size of the audience affected. Occupational groups protest slights on their means of livelihood, women's groups object to vivid sexual presentations, political groups picket, sometimes with violence,


occasional political films. It is, however, the religious groups that raise the greatest objections most consistently.

The pressure of the Protestant Church seems to be limited to pictures which relate to sex and crime. This pressure sometimes is exerted in a formal way through the Protestant Film Commission, an organ of the National Council of Churches of Christ in the United States. An official of that group informed the author recently that upon the invitation of the producers it consults on scripts in preparation on matters of "church services, clergy, etc." The sensitivity of the medium is reflected in this official's comment that "the major studios have welcomed this assistance and more and more are circulating scripts to the committee whenever planning a production about the church."

48. E.g., re The Desert Fox, favorable to Nazi General Rommell, cf. NYT, Nov. 16, 1951, 20; Nov. 30, 1951,20; Dec. 9, 1951,87; Dec. 10, 1951,34.


Re action of the American Legion on political movies or suspect actors, cf. ibid., Apr. 6, 1952, II 5; Apr.13, 1952, II, 5.

49. (over)
Pressures of this kind seem to have mounted in the post-World War II era as new forces in the movie world reopened the old problem of censorship. These forces were to move the industry to present its products in such a fashion as to raise again the battle standards of the moral reform agencies.

An influx of foreign film threatened the domestic market by their challenging presentations of sex and crime. The development of television also cut drastically into the movies' audiences, compelling the industry to be more sensational, or at least different, in its offerings. A series of Supreme Court cases from 1952 on pulled the props from underneath state censorship, as the movies became included within the freedoms of the Fourteenth Amendment. State censorship ground to a halt in the face of these decisions; legislative attempts to shore up the old laws were not always effective. Industry officials

49. From letter to author from Phyllis Rosenberg, Protestant Film Commission, Jan. 28, 1952. The Protestant Motion Picture Council provides for monthly issues of Christian Herald reviews and ratings of current films, in which "undesirable" films are not mentioned. The Protestant Film Commission also produces films; cf. Films for Christ and Church, report of the Protestant Film Commission (pamphlet, n.d.)
themselves began to call for a revision of the Code so as to make it more "realistic"; for some time, critics of the Code had claimed that producers were evading its requirements by imagery and insinuation; it was charged that this was producing for Americans a set of beliefs which were unrelated to reality. 50

These attempts to seek a new accommodation stimulated the moral reformers to renewed activity. The Legion of Decency, which throughout its history has been the most vigilant guardian of the Code, became particularly active. Indeed, this body became so active that some commentators stated the view that the Code, born in Catholic-inspired boycotts and authored by Catholics, is really the mechanism by which that Church dominates the medium. 51 Whether that is correct or not, it is certain that recently the voice of the Legion has been clearly heard in Hollywood. Films stressing a certain interpretation of sex and crime (or Church history) have been recalled under the protests of the Legion; these were expressed via formal Legion denunciations in its

periodic film review, clerical warnings to the congregation, public statements by high Church officials, and boycotts of the films themselves or even of the exhibiting theater.\textsuperscript{52}

This kind of Catholic protest has been raised particularly in the post-war period. The flood of foreign films has been met by the opposition of the Papal Cinema Office and the American Legion of Decency. Annual reports of the Legion decry this change in moral tone and point out the increased amount of objectionable ratings they receive. At least one such film, \textit{The Miracle}, became a \textit{cause célèbre} in a series of turbulent events, with the full battery of Church pressures in operation. A reversal of the censors by the

\textsuperscript{52} For such bending to pressures in the case of \textit{Duel in the Sun}, cf. \textit{NYT}, Feb. 8, 1947, 10; May 10, 1947, 9.


In re \textit{Beyond the Forest}, cf. \textit{ibid.}, Nov. 20, 1949, II, 5.

U. S. Supreme Court terminated the affair.\textsuperscript{53} Despite the counter-objection of other groups to this pressure, it remains one of the real forces operating against the new attempt of the industry to redefine its thematic content.

III. Conclusions

In this chapter we have seen how the motion picture represents an amalgam of economic institutions and practices, artistic techniques and expressions, and socio-political pressures from without. All have made the film product, and each has helped thrust the medium into the area of moral interpretation.

The moral content of the film has been criticized by those who view this experimentation with moral lessons as dangerous to their own. Such experimentation—

\textsuperscript{53} For a full account of the early, eventful stages, cf. Bosley Crowther, "The Strange Case of "The Miracle,"
\textit{Atlantic Monthly}, April, 1951, 35.

tion has been modified by certain compulsions upon the
industry to conform to "accepted" beliefs: (1) the
economic compulsions of a standardized product and pro-
duction methods plus the compulsion of capital inves-
tors hesitant to violate too flagrantly the desires of
morality groups; (2) the legal compulsions of state
and local censorship; and (3) the informal social and
political compulsions of morality groups seeking to
force adjustment of film values to their own values.
However, the tendency to try the new has remained, as
seen in (1) the variations in format, techniques and
themes, (2) the sensitivity of the film market to eco-
nomic conditions which threaten loss of markets and
thus compel more sensationalism, and (3) the growing
pressure by some industry leaders to make their pro-
duct more "realistic."

In this chapter, we have seen the early develop-
ments within the industry which stimulated film censor-
ship, the continuing struggle for variety which fos-
tered that regulation and the great impact upon the film
product achieved by this legal and private pressure.
Much of this story will be significant in later discus-
sions of the operations of movie censorship. For now
we may note that the industry's product involved it in
the area of values, that this involvement (attended by
exciting technical devices) disturbed those groups who believed their function as agents of community morality was being challenged and that they consequently felt "there ought to be a law." To the origins of that law in Ohio we may now turn.
CHAPTER III

The Censorship Law in Ohio: Its Rise and Fall

I. Ohio Censorship Origins, 1913-1915

This chapter traces the evolution of Ohio censorship law, from its beginning a generation ago to its present time of troubles. Here we shall view the forces which challenged it years later. In this conflict we may see for the first time the value conflict which has made this law so controversial.

Ohio's censorship law appeared in a decade marked by the most vigorous attempts at federal, state and local levels, to regulate the motion picture. Federal efforts were limited and unsuccessful. Although several attempts in 1915-1916 failed, a federal law was passed in 1920 with film producer backing, forbidding transportation in interstate commerce of any "obscene, lewd, or lascivious, or any filthy...films."\(^1\)

This law created no form of prior restraint, only a national criminal obscenity law. Administration of it has been extremely limited.

A more effective movement for censorship was occurring below the federal level, first in the cities. As

early as 1896, successful pressure banned local exhibition of *Passion Dance* and *The Kiss.* Efforts at systematic regulation did not appear, however, until 1907 when Chicago, under newspaper pressure, authorized police film censorship; New York followed in 1908, as did other cities later. The extensiveness of this municipal censorship movement is uncertain because most municipal laws lay dormant and were not recorded in industry records although one student notes that by 1921 at least 21 large cities censored films.

The states, between 1910-1922, were the objects of much more agitation for censorship laws. Pennsylvania pioneered in censorship laws in 1911; Ohio followed in 1913. During 1915-16, twelve states were considering such laws; in 1921 nearly one hundred such bills were thrown into 37 state legislative hoppers. Yet, when 1922 opened, only Kansas, Maryland, Virginia, New York, Florida and Massachusetts had joined their two sister states in active censorship. Massachusetts censorship applied only to Sunday showings.

The year 1922 marks a turning point in the movement for state regulation. As the year opened, the industry was fighting off 32 state bills; when it closed the movie makers had successfully fended off these threats. Especially cheering to the industry was a decisive 2-1 defeat of a censorship referendum in Massachusetts (seeking full-time regulation conducted under the political campaigning


techniques of Will Hays. 7 In succeeding years only two
states passed such laws; one in Louisiana is not today
enforced, and the other in Connecticut was later repealed.7a

Thus the Ohio censorship law appeared not as an iso-
lated phenomenon, but as legislation earnestly sought
everywhere. It emerged, too, in an era marked by bitter
complaints about the medium’s lurid advertising, sensation-
ally living stars and film content shocking to the values
of those seeking censorship.

7. Description of Massachusetts campaign and the evalu-
ation made above is at Raymond Moley, The Hays Office,
53-6, and Ingles, op. cit., 73-4, 76-7. For an in-
dustry version of the campaign, cf. The Massachusetts
Verdict and Its Significance, pamphlet issued by the
Motion Picture Producers and Distributors of America,
n.d.

7a. Moley, op. cit., 48-50. Moley states that the suc-
cess of the Louisiana law came under Huey Long’s
regime, and that Long did it supposedly because of
anger at the failure of the industry to cooperate
with him in his political and economic plans.

8. Information on the reason for 1915 law is from conver-
sation with former censors Charles G. Williams (censor
from February, 1915, to November, 1919) and James
Maddox (censor from Aug. 1, 1913, to Jan. 1, 1914)
both of Columbus.
The story began in Ohio on February 10, 1913, when a bill was introduced "providing a board to censor motion picture films and prescribing the duties and powers of the same."\(^9\) Sent to committee, this bill was lost, only to be replaced by a new text which became Ohio's organic censorship law. Emerging from committee April 9, the bill was discussed briefly and accepted unanimously in the House two days later. Five days afterwards, the Senate had finished its committee consideration and floor deliberation, with the bill receiving an overwhelming 23-4 support; here, though, the bill was altered to provide for remedial rights by administrative appeal and for censorship fees. Returned to the House that day, the bill received final approval and enrolment April 28; five days later, May 3, Governor James Cox signed the bill into a law.\(^{10}\)


10. The author is indebted for these legislative data to Ivan Brychta, "The Ohio Film Censorship Law," 13 Ohio State Law J., 351-2. Sources are as follows: House Committee referral, 1913 Ohio House Journal 307; committee report to House, ibid., 854; House consideration and approval, ibid., 912-913; Senate consideration and approval, 103 Ohio Senate Journal 679; Senate report to House, 1913 Ohio House Journal 1087; House signature and enrolment, ibid., 1264; Governor's signature, 103 Ohio Laws 401.
The primary result of the 1915 amendments was to make the law applicable to distributors under threat of penalty. Two other provisions over-ruled Attorney-General opinions; one provision required the censors alone to make "leaders" (the stamp of approval first projected on the screen) and forbade their counterfeiting; the other addition permitted the censors to delegate their authority to assistants working under censor supervision. With these changes passed May 19, 1915, and signed by the Governor May 25, the major framework of Ohio's film censorship system was settled for the ensuing generation.

12. Ibid., sec. 871-52, later 154-47e.
14. Ohio Gen. Code, secs 871-49, 871-52 and 871-52a (later secs. 154-47b, 154-47e and 154-47f) applied to the leaders, while ibid., sec. 871-48 (later eliminated in favor of 154-47f) applied to assistant censors. The 1915 changes are found at 105-106 Ohio Laws 325.
What was the nature of this censorship system? The law created within the Industrial Commission a censor board of three persons (moved in 1921 to the Department of Education). They reviewed all films "publicly exhibited and displayed" in Ohio, such review occurring between distribution and exhibition; for this service, distributors paid a small fee per unit of film. In addition, the censors were responsible for issuing certificate records to the exhibitor, showing deletions, and for issuing the "leader." (supra). Violations of the law were defined to mean the following: failure to delete censor eliminations before exhibition; deliberate bypassing of the board (hence showing uncensored films), and counterfeiting of the leader. Prosecution of these offenses rested at the local level with justices of the peace, mayors or police judges. Persons dissatisfied with censor decisions had remedial rights of rehearing "on the reasonableness and lawfulness of any (such) order" and the right of appeal from the administrative decision to the Supreme Court of Ohio. The standards by which films were evaluated appeared in one sentence:

Sec. 871-49 (later 154-47b). Only such films as are in the judgement and discretion of the board of censors of a moral, educational or amusing and harmless character shall be passed and approved by such board.
The resentment of the film industry and others over these standards was to be a major force causing the re-examination of this public policy a generation later.

B. Censorship Support and Opposition: The Supporters

The groups supporting censorship seem to have been of three types: (1) some ministers and women leaders who created an attitude of needed reform in the minds of law-makers; (2) most Ohio exhibitors, who pressured directly for the 1913 law, and (3) in 1915, censors who personally sought legislative remedy for an inefficient law. The lack of records suggests that the issue was not the occasion for great publicity; Ohio censorship appeared rather quietly, almost as an aside.

There is little to suggest that religious and women's groups directly requested the Ohio legislature for the 1913-1915 laws. Charles Williams, a censor of that day "recalls" that the Ohio Congress of Parents and Teachers and some "church groups" petitioned the law-makers in 1913; yet another censor, James Maddox "believes" that only one group appeared, the exhibitors. Both remember that Roman Catholic Church representatives in the early days frequently objected to the
"laxity" of censor decisions, indicating its possible support of the regulation.

There is evidence, though, that at this time these elements were agitating for censorship in other states and in Washington. Religious groups supported federal film censorships in hearings on the Hughes Bill in 1916. One group, the International Reform Bureau, was active for some years in seeking this goal, crusading against "opium, alcohol, sex and celluloid" under the direction of Rev. Wilbur F. Crafts, "Lobbyist of the Lord." Fragmentary records show such activity at the state level; as early as 1910 the Christian Endeavor Societies in Missouri sought

15. For support of this, cf. Richmond Virginian, June 16, 1916, 2, for such criticism from the Ohio State Federation of Catholic Societies. From letter to the editor from assistant secretary of the NBR, found in NBR File in author's possession.

16. Hearings before the Committee on Education on HB 456, 64th cong., 1st Sess., 1916.

censorship, and for many years in Pennsylvania, Rev. Clifford G. Twombley made national news by his denunciations of the film and by his call for more censorship.

Organized women's clubs were likewise disturbed about the film content of their day. By 1916, the General Federation of Women's Clubs was sufficiently disturbed to initiate a six-state study of the subject; they reported that large majorities of the movies were "of a harmful nature" or not "worthwhile." The action the GFWC took to remedy this situation was of two and quite contradictory forms. On the one hand, the national GFWC belonged to the National Board of Censorship (infra), a group that preferred promoting "good" pictures rather than advocating film censorship. Yet at least two state federations of the GFWC, Michigan and Alabama, were supporting film censorship laws. The Michigan GFWC support of censorship stemmed from their

18. "'It was proposed to put the ban on "spooning" scenes and on films that depicted kissing on the part of any except relatives or married persons.'" Mark Sullivan, Our Times, vol. IV, 562.


20. Young, op. cit., 19, 22-3.
resentment of NBC efforts to influence them; the leaders of the Alabama GFWC actively led her state's censorship movement.\textsuperscript{21}

Such scattered reports, however, are hardly evidence of the activities of these groups in Ohio. We do know they were disturbed about the problem and discussed it in their meetings and publications,\textsuperscript{22} thereby creating a climate of opinion favorable to censorship. It would seem probable that law-makers of Ohio were aware of and sensitive to this sentiment.

With this background, it can be imagined what was the effect upon the legislators when they found that the movie exhibitors themselves were asking for the law. A former censor, who had been an exhibitor, is most emphatic on this phase.\textsuperscript{23}

\textsuperscript{21} Michigan data from ibid., 50. Alabama evidence from correspondence in \textit{NBR File}; cf. letter to Mrs. E. G. Derr from NBR, Oct. 18, 1921. The NBR was seeking to get the Cleveland Better Films Movement to write the Alabama women to convince them of the "superior merits" of the Movement as an alternative to censorship.

\textsuperscript{22} \textit{Springfield (Ohio) News}, April 23, 1916, 14, for one such sermon, although this occurs after the legislation is adopted.

A lot of people think it was reformers who started censorship, but it wasn't. Local censorship would have ruined us (exhibitors). The Motion Picture Exhibitors was pretty well in agreement that a statewide law was better.

Other evidence of this surprising support is seen in the efforts of the Cleveland exhibitors who cooperated freely in a municipal investigation of their ads and of a possible censorship of their films; the report of this investigation recommended a municipal censor board with exhibitor representation. More striking evidence of this move appears in an exchange of letters between the Ohio Motion Pictures Exhibitors League and the National Board of Censorship; the former had resolved in its 1916 convention to support a then-pending federal censorship bill:

More than seventy Ohio exhibitors have endorsed Federal Regulation (including) Cincinnati and Columbus exhibitors....The facts in the case are that Ohio Exhibitors are responsible for the Ohio Censor Law and if you will examine this bill you will find that we favored federal regulation when the bill was first introduced and only advocated State Censorship until such time as we could get federal censorship....

24. R.O.Bartholomew, Report of Censorship of Motion Pictures and of Investigation of Motion Picture Theaters of Cleveland, filed with City Council, April 7, 1913, as File No. 28832.

This authoritative statement reveals that Ohio in 1913 witnessed the unusual situation of a medium urging that it be censored. The impact of this upon the law-makers must have been immense, particularly if former censor James Maddox is correct in his "belief" that these were the only persons testifying on the bill in 1913.

The third group important in securing Ohio censorship were the censors in office when the 1915 amendments were adopted, Mrs. Maude Murray Miller and Charles G. Williams. Mrs. Miller, children and women welfare columnist for the Columbus Evening Dispatch, was a militant fighter against the evils of the movies.26 Mrs. Miller described her role in this way:27

From the fact that the public speeches I made...saved censorship for Ohio, secured an amendment to our law, prevented...abolishing our Board and establishing in its place a volunteer board which (was) suggested, proves that my statements were conclusive and were received by the People of Ohio with confidence.

This lady, highly active before women groups, was so devoted to this regulation that she favored federal censor-

26. Letters in NBR File show clearly that she was forthright in her opposition to the NBR. Cf. letter from her to W. D. McGuire of the NBR (June 29, 1916) in which she explains her criticism of his group. At one time she threatened them with a libel suit; cf. letter from Mrs. Miller to Orrin G. Cocks, Feb. 19, 1916.

ship, even though it meant abolishing her job. Her wide contacts among women groups as a leading columnist on women's affairs and welfare reform, plus the obvious sincerity ringing through her writings, served to reinforce her pleas for further censorship in 1915.

Her colleague's efforts were directed elsewhere—directly upon the legislature. Charles Williams informs the author that he actually constructed the amendment later passed, supplementing it with a series of arguments he circulated among law-makers. He said he spent considerable time "working on" the legislators on a personal basis; as an old friend and former student of the then Governor Frank B. Willis, his advice must have been heard rather clearly in some quarters. He further issued a press statement on the needs and values of Ohio censorship. 29


29. Besides this interview as source of data, other documents verify William's work. Cf. NBR File for his mimeo statement; cf. Richmond Virginian, May 24, 1916 and June 16, 1916, where he describes his efforts; cf. also for copy of same, Re. J. J. Phelan, Motion Pictures as a Phase of Commercialized Amusement in Toledo, Ohio, 226-31.
These, then were the advocates of censorship in its formative years. What were the fears and hopes motivating them? What did they seek to gain from film censorship? The answers differ as does the composition of the group supporting censorship.

The club women and religious leaders saw evil on the screen and were agitated about its anti-social impact, particularly upon the young. A kind of syllogism con-

30. A good statement of this is at How to judge the Morality of Motion Pictures, authorized by the Episcopal Comm. on Motion Pictures for the Legion of Decency, published by National Catholic Welfare Conference (n.d.), 4. For other Catholic expressions cf. Production Code of MPAA, "Reasons" section; Encyclical letter of Pope Pius XI, "Motion Pictures."

For concern expressed in Ohio, cf. Phelan, op. cit., passim, and Bartholomew, op. cit., passim.

tain much that is evil ("immoral," "obscene," "sacrilegious"). Films have an influence upon the attitudes and morals of their audience. Films may thus influence the viewers, particularly the young, to evil. The answer to this problem for the pro-censorites was one long imbedded in American history when some have felt the society's moral structure threatened—"there ought to be a law."

Earlier we have seen how the content of films was denounced by this group, horrified by the interpretation of sex and crime then splashed across the screen. When studies were issued which denounced the "bad" content discussed above, these people were referring specifically to such presentations as one Toledo minister described from his content analysis of then current film fare:

One-piece bathing suits, discredity (sic) or mockery of marriage vows, sex degeneracy, underworld scenes, opium dens, nudes, keyhole peering at undressed people, men raising women's skirts, bathtub scenes, suggestive rolling upon women, women sitting on men, girls putting hands in men's trouser pockets, comic emphasis on women's busts, hips and legs, close-ups of the dead, spitting, close-ups of agony, use and effect of drugs, arson, white slavery, blackmail and gambling.

31. Phelan, op. cit., 130-8. Abstracted from this source. In these early years, the offensive films were made more objectionable by the vaudeville often accompanying the film; for a description of one such lurid act in Cleveland, cf. Bartholomew, op. cit., 13-17.
To those concerned with the youth as the carriers of traditional morality, such material was offensive to a degree hard to visualize today. In the pre-censorship literature of that time this great theme of the corruption of the youth runs like the note of tragedy through a Greek classic. Its impact may be seen in the U. S. Supreme Court decision of 1915 which upheld Ohio's censorship (infra); there the Court spoke movingly of the harmful influence of unregulated film fare upon the minds of youth and women. Here we see, then, a group motivated to censorship support, aghast and fearful at seeing the old and cherished values challenged and flaunted.

The second group, the exhibitors, had another and more material motivation, however. Before state censorship came they had stood exposed to the uncertain whim of criminal obscenity laws. After state censorship, they were handed a product already approved, leaving them exempt from criminal prosecution. Too, censorship might move the producer to give the exhibitor films more acceptable to his local audience. An Ohio censor in 1916 indicated as much when he stated,32

I am happy to say that the higher class motion picture men now favor state censorship. They acknowledge that their business has increased since pictures have been censored, and that their patrons express satisfaction in the cleaner pictures.

Why did not these exhibitors, if they desired such regulation, seek it at the local level? One may conjecture that exhibitors believed local censors more sensitive to the narrower demands of smaller minority groups. A minister's influence, which might be considerable at the local levels, would diminish at the state level, as it merged into the larger range of interests served there. State censorship achieved for exhibitors more freedom from penalties and from local narrow-interest groups.

The censors who sought the 1915 amendments seemed moved by both material and ethical considerations. These amendments made the censors administration more effective; furthermore, the censors favored the regulation for reasons similar to those of the moral reformers. Thus, Maude Murray Miller warned that anyone voting to repeal the law "will have a hard time explaining his action to the mothers and fathers in his home district. We need state censorship and we need such a board as we now have to censor films." Her colleague, Charles Williams, also criticized the immoral nature of the current films in urging the changes.33

33. Cf. fn. 29 and Columbus Dispatch, Apr. 15, 1915, 7.
Such views would seem to some an illustration of the censor stereotype as a "blue nose," Comstockian type. Yet fairness requires the qualification that such actions may be also viewed another way; they were the actions of interested administrators seeking revision of the law defining their functions in order to insure more efficient operation. Such, explicitly, was the purpose of the 1915 amendments. These administrative lobbying actions are a normal pattern in legislative affairs, particularly with regulatory agencies. In terms of administrative responsibility, it must be admitted that the 1913 law was weak for the purposes of its creation; few could bespeak the need for revision better than those who administered it.

Thus, we find that both material and ethical concerns motivated these advocating film censorship in the early years; we shall see these views reappear a generation later when Ohio censorship stood challenged and rocked to its very base.

C. Censorship Support and Opposition: The Opponents

While the supporters of censorship were articulate and organized, its opponents were few in number, weak in organization, and, in the end, ineffective. One might expect that attempts at governmental regulation of any social organization would bring that group out
in full cry. But in 1913 and 1915, film makers and distributors had no direct representation. Only in 1915 did opposition emerge, but this was from a citizen group, the National Board of Censorship (later the National Board of Review, the NBR); it worked directly upon the legislature and indirectly through constituent citizen groups. Everywhere it met defeat.

As for the 1913 law an NBR lobbyist remarked, "There was no opposition from any source and the bill became law by negation rather than by affirmation." Why? The answer may lie in whom this 1913 law affected; it regulated the exhibitors who welcomed it. Elsewhere, however, when such regulation applied to distributors, they were active, just as they were to be in 1915 through the NBR; in this year, we may recall, Ohio's law suddenly turned against the distributor.

34. From ostensibly a press release in NBR File, marked "Binder 10-20-14; Made papers." Binder is the lobbyist discussed below.

The National Board of Censorship (Review) was organized in March, 1908 in New York City after the rise of censorship there (supra, Ch. II,). Its membership then, as now, consisted of representatives of national and municipal women's organizations, professional groups and those community elements generally described as moral and welfare groups. Its functions was to review and publicize the "better" movies. In this, it was financed by charges levied against the producers for each unit of film reviewed. Its criteria for such reviews were that films did not violate obscenity laws, were not detrimental to public morality and would not have a subversive effect on the country.

This description might well fit a group supporting state censorship. But its answer to the potential evils of the medium lay elsewhere: opposition to legal censorship and encouragement of production of "good" films. The NBR opposed the regulation because

...it is based on the theory that there are final, unchanging universal standards of good and evil and of good and evil influences (and yet) fundamental in the whole question of the motion picture is a legitimate and inevitable difference of opinion between sections, communities, groups, and individuals.

36. Howard T. Lewis, The Motion Picture Industry, 374, condenses what is found in numerous NBR pamphlets on this subject, e.g., Objections to State Censorship of Motion Pictures, Repudiation of Motion Picture Censorship in New York City, and The Case against Federal Censorship of the Motion Pictures, all published during this period. Cf. Beman, op. cit., for reprint of one.
In its more positive concern with "good" films, an able analyst of the NBR has stated that: 37

(it) has been important chiefly as an agency for mobilizing social organizations who want to improve the content of motion pictures, but who oppose legal censorship as a means. Through the organization of local better film committees throughout the country, publications of (a magazine) and other organs, the holding of annual conferences....the Board has pursued the policy of ignoring poor pictures and promoting good ones. It has set itself the task of raising the level of public taste through education.

Ostensibly an independent agency, the NBR had very close relationships with the industry which could be employed by the latter in censorship battles. This is not to say that the movie-makers dominated NBR policy or used it as a dummy, as was and has been intimated by many of its opponents. 38

That there existed a parallel

37. Inglis, op. cit., 76. For thorough analysis of its history and defects, cf. ibid., 74-82.

38. Ibid., 78-82, for attacks and refutations of NBR. For attack on NBR by Ohio censors, cf. letters in NBR File from Mrs. Maude Miller (June 29, 1916) and answer from NBR to her (July 1, 1916). Cf. also Young, op. cit., ch. 5, surprisingly biased for a published dissertation. For more detail, cf. Beman, op. cit., 381, for detailed index of criticisms.
interest between the two groups in their opposition to censorship is certain; this may be seen in the 1915 Ohio assembly, where only the NBR spoke, for itself and the industry, against the amendments.

The NBR tried to tap its grass-roots support against the revisions. Its files before 1915 and afterwards are filled with evidence of an extensive program to start "better films" movements in Ohio. Federations of women's clubs, civic cinema clubs and others were advised to arrange children programs at local theaters, to publish pamphlets periodically on good films and to work with city officials to restrain the fringe exhibitor of erotic films. Yet these same files show that very little of this had been organized by 1915, and so little of this constituent support could be employed against the bill.

Nevertheless, two agents of the NBR, Jacob Binder and Orrin Cocks, toured the state in December, '1914. Emphasizing the advantages of education and voluntarism in meeting the evils of films, these men spoke before such groups as social workers of the Bureau of Municipal Research in Cincinnati, church and social workers of the Charity Organization Society in Columbus, and representatives of the mayor, the Federation of Churches, YWCA and Chamber of Commerce in Cleveland. The NBR files reveal
that their agents were extremely bitter against the censors personally. One of Binder's press statements complains:\footnote{39}

Under the operation of the law, there are many complaints of unfairness, delays and annoyances. Exchange men...speak of these things, but pretty generally will not allow themselves to be quoted for fear of the consequences that might be visited upon their pictures if they told the facts. Sinister hints are made in connection with an enterprise to publish an Ohio Motion Picture paper to which manufacturers, exchange men and others will be "invited" to subscribe and in which they will be asked to advertise. The Board makes no attempt to fix standards, or to advise manufacturers why their pictures have been rejected.... The legalized censor board may object, but they cannot "disbar" the (NBR) from following its convictions through action in Ohio, nor visit "penalties" upon it.

When the legislature opened, Binder, as a registered NBR lobbyist, continued his efforts. He circulated to the newspapers a sheet of stories on his views, although, as the NBR later commented regretfully, "far more influence was brought to bear by Mrs. Miller through letters, addresses and articles in newspapers than could possibly be brought to bear by Mr. Binder."ootnote{40}

\footnote{39. Cf. fn. 34. That Binder's efforts, shot through with this sort of insinuation, did harm, if any good, may be seen in the report of a lecturer 1½ years later, when she speaks of a city official "warped by Mr. Binder! Indeed it'll take us one while to live down Binder in Ohio;" NBR File, "Excerpt from Miss Peck's letter of Oct. 12, 1916 re Toledo, Ohio."}
Another tactic was to present the law-makers with testimonials against censorship from its constituent members. The NBR files contain a carbon copy of a telegram sent by the Federated Churches of Cleveland opposing the present censorship; it is hardly a wonder that this NBR copy is marked, "File where we can find this—Important." No records appear, however, that ministers appeared in person before the committee to implement this view. Another "name" organization and personality was brought to bear by the NBR when Samuel Gompers of the American Federation of Labor wired the Senate committee his support of voluntary controls and opposition to censorship "in the name of Justice and for the sake of priceless freedom."

Yet, on all fronts, Binder's efforts were ineffective. The Columbus Evening Dispatch reported that "finding the sentiment for the law too great...they (the NBR) sought to amend it so that it could no longer affect them."

41. NBR File, carbon copy of wire, n.d.


This revision was actually a substitute bill providing home rule for film censorship, a decentralization counter to the exhibitor's emphasis upon centralization (supra 8-9).45 Defeated here and at every move in the Assembly, the NBR aided in the preparation of a referendum, repealing not the whole law, interestingly enough, but only the 1915 revisions applying to distributors. However, the electorate never got to the issue as the referendum failed to receive enough signatures to get on the ballot.46 Thus ended the tale of defeat for censorship opponents in 1915.

When we turn from actions to motivations of the opponents, we find again the combination of material and ethical concerns. The material motivation was fear of economic loss and the ethical was concern for civil rights.

The injury to economic interest was never explicitly expressed in this struggle, but inferences may be made.

45. Cf. pamphlet in NBR File, "Home Rule for the Regulation of Motion Pictures in Ohio," n.d. This is also an excellent source for the history and activities of the NBR.

46. Information from former censor Charles Williams; cf. also 1915 Ohio Attorney General Opinions, 1229, 1522.

Producers and distributors did not protest the 1913 law which affected them not at all; but the 1915 amendments, inter alia, placed the burden of censorship fees upon the distributor. The clearest evidence of this interest is seen in the NBR efforts for a referendum which removed censorship from only the distributor in those years of cut-throat competition and marginal production, any added cost to production was to be avoided.

The ethical concern was expressed in several forms. Legal arguments, themselves carriers of values, were of little avail in 1915 when the Supreme Court had just validated the regulation (infra); still, frequent NBR statements did suggest that obscenity statutes then existing would suffice to control immoral films if the legislature would kill censorship. But the most frequently expressed stand was on the principles of democracy. Here efforts were made to (1) identify free speech and press with American concepts of democracy,

(2) demonstrate the incompatibility of censorship with these concepts, and (3) restate the liberal creed that the dangers flowing from censorship far outweighed any possible dangers attendant to its absence. The pamphleteering of the NBR in those years—as today—strikes hard on these principles. Note the appeal of Gompers to "Justice" and "the sake of priceless freedom." A year later, a congressional committee reporting on the suggested federal censorship law, noted that industry leaders opposed it for other reasons, that it

(would) tend to stunt the natural development of the usefulness of the moving picture and (would) tend to confine it...to the lighter forms of mere amusement when its potential utility lies in the far wider field of information and propaganda...they (industry spokesmen) also frankly (said) that they (were) unwilling to enter into an inevitable political contest for the control of the censorship commission....

Such, then, were the value symbols employed in those early years. Such they will appear a generation later.

D. Judicial Approval

One final phase of the birth of Ohio film censorship remains to be described—the judicial approval. This imprimatur came in 1915 with Mutual Film Corporation v. Industrial Commission (236 US 230), on appeal from a federal district court decision refusing the corporation

49. Cf. fn. 47.
an injunction restraining the enforcement of the Ohio law. The industry argued the unconstitutionality on three grounds: unlawful burden on interstate commerce; excessive delegation of legislative authority by reason of lack of adequate administrative standards, and violation of the free speech provision of the Ohio constitution (Art. I, sec. 11). The Supreme Court, speaking unanimously, denied all these contentions and declared the censorship law valid.

The interstate commerce argument was disposed of by declaring that each film, on entering the state and being placed before the censors, had so co-mingled with intra-state commerce that it was subject only to state regulation. The "co-mingling" had begun before the censors received it. Here the Supreme Court was following a classic method of distinguishing articles of interstate and intrastate commerce.

The challenge to the delegation of legislative authority rested on the point that the administrative standards (supra, 57) by their vagueness "leaves decision to arbitrary judgment, whim and caprice." The Supreme Court thought otherwise, defining these standards' contents in a statement long pondered in the

50. Ibid., 245.
legal analyses of film censorship. 51

...its terms, like other general terms, get precision from the sense and experience of men and become certain and useful guides in reasoning and conduct. The exact specification of the instances of their applications would be as impossible as the attempt would be futile. Upon such sense and experience, therefore, the law properly relies.

The final challenge on grounds of free speech was denied by the Supreme Court because it saw the medium as essentially a business whose major concern was profit, not influencing; only the latter function was covered by the free speech provisions of Ohio's constitution. Indeed, the Supreme Court derided the thought that these "spectacles" should be projected in this fashion. At the same time, with contradictory reasoning, the justices thought the medium was "capable of evil" which was what "induced the State of Ohio...to require censorship." 52

Thus by 1915, from a welter of group and value conflicts, legislature and court had welded the framework of a distinctive system of prior restraint on a medium of communication, a system which was to stand for decades.

51. Ibid., 246.

52. Ibid., 243-5.
II. The Attempt at Repeal of Ohio Censorship: 1953

A. The Changing Scene

And yet these decades brought changes, in legal interpretations, in group alignments, in the industry itself. By 1954, Ohio censorship had had its statutory standards voided by the supreme courts of state and nation. Today the structure still stands in some states, but uprooted in others.

During the years after 1915, the movie industry successfully fended off efforts at additional governmental censorship, accommodated to interest group pressures but finally moved in later years to eliminate all censorship.

Although more efforts at state censorship took place in the period we have just referred to, only one such attempt was recorded after 1935 and even that was a bluff intended to influence the producers.

53. Legislation directed wholly or in part to this end is listed by title and date as follows: HR 6233, 69th Cong., 1st Sess., 1923; HR 6821, 2-9-24; HR 6233, 12-21-25; HR 4094, 12-8-25; S.1667, 12-13-27; HR 9298, 1-13-28; HR 10087, 1-26-28; HR 13686, 5-11-28; HR 45, 4-15-29; S. 1944, 9-30-29; HR 8767, 1-17-30; HR 9986, 2-17-30; HR 4530, 12-8-31; HR 215, 12-8-31; S. 3770, 2-23-32; HR 15, 3-9-33; HR 3654, 3-16-33; HR 6097, 6-12-33; HR 8686, 3-16-34; HR 9901, 6-11-34; HR 9912, 6-12-34; H. Res. 144, 1934; HR 142, 1-3-35; HR 8877, 7-16-35; HR 2999, 1-3-35; HR 250, 1-3-39. Data provided by film industry to writer.
to cleanse their advertising. This diminution of pressure for federal control may be traced to three factors: the industry's sincere effort under the Production Code of 1935 to clean up film content; the impact of the war which tended to loosen interpretation of morality and permit the movie makers more leeway, and the elimination of "block-booking" and "blindselling" which, it had been long argued, produced offensive pictures. To fend off those clamoring for federal control, the industry successfully


55. For statement indicating willingness of Ohio censors to permit such loosening of morality under war conditions, cf. Progress Report, 1944, Ohio Dept. of Education, 9.

countered with pressure on Congress, a public relations program seeking to placate reformers and self-regulation.

Municipal censorship, little publicized and documented, continued. So little is known of it that estimates of the cities involved range between fifty and over one hundred. Although several cities have obtained something like national attention by their efforts, most municipal censorship is not active, according to industry sources; such laws, although on the books, are "sleepers" invoked only rarely for a film particularly disturbing to local morality groups.

58. Ingles, op. cit., 64-6, 120.
57. Ibid., 119. Moley, op. cit., passim, describes this public relations program as the most important technique for improving the public's respect for the industry. For a description of particular groups opposing federal censorship, cf. Zachariah Chaffee, Government and Mass Communications, 246.
59. Contemporary listings may be found, although varying in count, in the annual year books of trade publications, e.g., Kann, op. cit., 725-9, where 93 cities are listed.
Efforts at state censorship sharply diminished after 1922. One source notes that in the five years after 1922, 48 bills were introduced but defeated. The decisive index of the movement, however, is seen in the fact that no effective state regulation was passed thereafter (supra, 53); however, industry efforts for repeal of existing legislation were unsuccessful. Particularly in New York during the 1920's and 1930's, leading cultural representatives spoke out against the regulation there. The defenders of the system were too powerful; every attempt to repeal the law, as one Assemblyman said, left the impression that "I seem to have put my head into a hornet's nest." An Ohio attempt to repeal newsreel censorship succeeded in 1933, only to be returned at the next session; here, the

61. Moley, op. cit., 48. No details were given.

62. For these attempts, cf. NYT for March 10, 1935, 17; March 22, 1934, 23; Feb. 9, 1933, 4; March 2, 1933, 10; March 22, 1933; March 9, 1932, 17; Jan. 22, 1931, 4; Jan. 20, 1928, 4; Jan. 25, 1927, 23; March 24, 1927, 3; Jan. 7, 1926, 11; Jan 17, 1926, 15; April 15, 1926, 29; Feb. 4, 1925, 23; March 26, 1925, 2; Feb. 1, 1924, 19; Feb. 4, 1924, 25; April 11, 1924, 2; Jan. 4, 1923, 10; Jan. 10, 1923, 6; Feb. 15, 1923, 6; May 4, 1923, 2.
reversal transpired when an important lobbyist was not recompensed by the industry for obtaining the repeal.63

Actually, there are several periods of industry's concern with state censorship. Their opposition seemed to weaken after 1935 when the newly-effective Production Code made self-regulation a reality. Later data will indicate a significant decrease in the amount of censorship performed in Ohio after 1935. This suggests that with the product now conforming to censor's demands, the movie makers were little impelled to attach the legislation. By 1939, on the other hand, there was circulating at high industry levels a memorandum suggesting court attacks, in light of the new Court doctrines.64 But, as Sidney Schreiber, general counsel for the industry informs the author, the public relations conscious leaders postponed that move. A decade of inaction passed. Then in 1948, the U. S. Supreme Court in an unexpected obiter dictum stated that, "We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment."65

63. Interview with Jack Bryson, special assistant to Eric Johnston, president of the MPAA. Pertinent laws are Ohio Laws 199 and Ohio Laws 100. Bryson believes the lobbyist had been promised a sum of money if he obtained this repeal, but when the money was not paid upon his success, this lobbyist was so angered he successfully brought pressure in the next legislature to reinstate censorship of newsreels.
For four years, parts of the industry joined in legal engagements with state censors, seeking clarification of the question: Did this mean all film censorship was proscribed? These efforts were climaxed in 1952, in *Burstyn v. Wilson* (393 US 495), which denied the right of New York to ban a movie as "sacrilegious." The U.S. Supreme Court reasserted the obiter dictum of 1948, expressly over-ruling the decades-old Mutual Film case in this respect. The justices stated, however, that freedom of the press is not absolute, yet they argued there must be sufficient justification for any restriction. Sacrilege was denied as such a justification, thereby voiding that part of the New York law. However, the high court did not void all censorship standards, as it stated that a "clearly-drawn statute designed and applied to prevent the showing of obscene

64. Cf. brief to this effect, dated 1939, prepared under MPAA letterhead and drawn up by Charles C. Pettijohn, industry attorney, Mimeo in N. Y. files of MPAA.

65. 1948 case is *US v. Paramount Pictures, Inc.*, 334 US 166. A comprehensive exposition of evolution of this part of 14th Amendment will be dealt with in a later chapter.
films" might be acceptable. By drawing the movies under the freedom of the press but focusing upon only one censorship standard, the Supreme Court opened the door to a stream of litigation examining the standards of each system of state censorship. That door was to be kept swinging for some time with the traffic of challenges to state censorship.

B. Censorship Support and Opposition

This one case did not put the state censors out of business; indeed within days after the decision, Ohio banned The Miracle as "immoral." But the industry was encouraged to attempt further litigation and to make further efforts to secure legislative repeal of censorship. Examining such efforts in Ohio in 1953 and 1955, we may once again see something of the forces and motives underlying censorship.

The industry's choice of Ohio to wage the fight came after defeats elsewhere. Their attempts at repeal were met in Pennsylvania and Massachusetts by the opposition of distributors and exhibitors who feared to stir sleeping dogs; efforts in Kansas were immediately opposed by

66. Information from interviews with Jack Bryson and Senator Charles A. Mosher, chairman of the Senate Education Committee in Ohio Legislature.
the governor, who told industry lobbyist Jack Bryson he would veto any such repeal. At this point in early 1953, Bryson received a letter from Senator Charles A. Mosher, chairman of the Senate Committee on Education and Health; Senator Mosher sought information and help on a bill he wished to introduce repealing Ohio's censorship. The response was quick and positive.

In the course of the ensuing struggle, three bills were conceived. Mosher's original bill called tersely for outright repeal. When an informal poll revealed his colleagues would not pass it on the floor, he considered a substitute moderating the scope of censorship; this, too, died when the industry insisted it was still censorship and hence objectionable. Mosher, then deciding to achieve what crumb he could, substituted for his original bill a repeal of newsreel censorship; this measure passed both houses with very little opposition.

67. Mosher informed the author he was referred to Bryson by Robert Wile of the Ohio exhibitors group to whom he had, in turn, been referred by drama critic of the Cleveland Plain Dealer, W. Ward Marsh.

68. The following is drawn from personal experience and interviews with Senator Mosher.

69. S.B. 159, 100th Ohio General Assembly, introduced Mar. 19, 1953.

70. S.B. 304, passed June 30, 1953. Most of the above on the inside maneuvering comes from interviews with and records (over)
1. **The Groups**

A size-up of the supporters of censorship, reflected in committee testimony and informal pressures upon senators, shows a striking similarity to those of a generation before. These were representatives of religion (Knights of Columbus, representatives of the Roman Catholic Church, and the Ohio Council of Churches), women clubs and educators (Ohio School Principals Association). The exhibitors of 1953 were now opposed to the censorship regulation however, while the censors, so active in 1916, remained neutral in action, if not in attitude.

The Cleveland Knights of Columbus seemed to organize supporters of the censorship regulation, for their agents gave Mosher a list of witnesses who would appear before the committee to oppose repeal. There is evidence that: (1) the K. of C. Council of Cleveland launched what it claimed to be a state-wide fight against repeal, engaging an attorney to speak for them before the committee.

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70. (cont'd) of Mosher. No evidence remains of the substitute bill (suggested by Senator Huffman), of which only two copies were typed. Formal record of the passage of the newsreel exemption bill is at Ohio Senate Journal, June 1, 1953, 3-4, and Ohio House Journal, June 30, 1953, 8 (daily journal printings).

71. *Cleveland Press*, April 10, 1953. The two representatives of the K. of C. were state deputy John Malloy and the hired attorney, Thomas L. Osborne.
(2) local chapters of the K. of C. pressured exhibitors throughout the state,\(^7\) (3) Catholic clergy sought to convince at least one committeeman,\(^8\) and (4) the Columbus Catholic weekly editorially criticized the repeal.\(^9\) In addition, a representative of the Ohio Council of Churches appeared to speak against repeal.\(^10\)

Several groups of women wrote letters of protest to Senator Mosher.\(^11\) The Ohio Educational

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74. The Catholic parish paper editorial was found as an unmarked clipping in Mosher's files, n.d.; it lauds an editorial in the *Columbus Dispatch* which opposed censorship repeal.

75. He was attorney Charles E. Brown, hired to represent the group's views; his testimony was challenged by Mosher, himself a member of the executive body of the Council, who claimed no such decision had been made.

76. Mosher's files reveal letters from the Emma Bain Circle of the Child Conservation League of New Lexington, Ohio, and from the Somerset Mothers Study Club of Somerset, (dated May 19, 1953).
Association did not join the Ohio School Principals Association in opposition, although the former had more to gain from the existence of censorship; censorship fees supported audio-visual aids in the Department of Education. Nor did the Ohio Congress of Parents and Teachers oppose this measure, even though they were at that time filing an amicus curia brief before the Ohio Supreme Court defending the Ohio censors. The censors remained officially neutral; indeed, as Moser related to the author, Clyde Hissong (the director of the Ohio Department of Education in which the censorship was administered) encouraged him privately, "You would be doing me a tremendous favor because it is my major headache in the Department." Mosher, however, expressed the opinion that some of the censors and their friends influenced certain senators to oppose the repeal.

The opponents of censorship were newspapermen, industry officials, plus representatives of religi-

77. At one point, there was a newspaper report that OEA was planning opposition; Bliss, executive secretary of the OEA, rushed to inform Mosher that this was not true. Cf. Columbus Citizen article (n.d.) by Don Strouse in Mosher's files; Akron Beacon Journal, April 14, 1953, editorial commenting on the story.

78. A year later in early 1954 he again privately expressed his regret to Mosher that the US Supreme Court had not completely voided Ohio's censorship or that Mosher's repeal had not passed.
ous, women, legal, academic and civil liberty groups. The campaign of these opponents was more extensively and skillfully organized than in 1915 but the results were a similar defeat.

A good omen for the anti-censorites (Note: this phrase is used to alternate with longer phrase "opponents of censorship") was that the chairman of the committee considering the bill was its sponsor, Senator Mosher, a newspaper editor. He not only initiated the measure, but editorialized for it, sought the aid of other papers and carefully questioned censorship supporters.79 Throughout the campaign, he was assisted by representatives of the film industry; these were two top lobbyists for MPAA (Bryson and Manning Clagett) and the head of the Ohio exhibitors' organization (Robert Wile). The film lobbyist Clagett did the main leg and head work,79a Wile spoke for the exhibitors and Bryson was general overseer.80

79. Keynote editorial is at Oberlin-News-Tribune, March 26, 1953. Memo which Mosher sent to all Ohio editors after loss of repeal is found in his files (n.d.); cf. reference to parts of memo in Cincinnati Post, June 3, 1953.

79a. Clagett kept in close touch by letter with Mosher throughout the campaign when the former was called elsewhere for business. The liaison was more close during the hearings when Mosher had meals and staff discussions with Clagett at his hotel suite. Clagett's letters, covering many phases of the campaign are in Mosher's files; cf. letters dated April 23, April 30, May 8 and May 22.

80. Following based on author's personal observation as researcher for this team.
The film lobbyist Clagett organized a "citizens committee" of high status groups, and used these and others to testify before committee. He also sought support from the state's newspapers. The citizens committee was merely a name, with little effect; few newspapers printed suggested editorials against the measure, but the committee witnesses did appear in number.

These were Louis Bromfield, author; Graumann Marks, former head of the Cincinnati Bar Association; Mrs. Fronia Sexton, Ironton bank president and exhibitor; Oliver Schroeder, Jr., Law School professor at Western Reserve University; W. Ward Marsh (cf. fn. 67); William Wolfarth, audio-visual aid director in Canton public school system; Martin Smith, exhibitor and former president of the Independent Theatre Owners of Ohio, and Rev. John Burt, Episcopalian pastor in Youngstown.

The following journals, as found in photostatic copies of editorials in the files of Mosher and Clagett, supported repeal; Toledo Blade, March 30, June 3, May 21; Cincinnati Times-Star, April 8; Youngstown Vindicator, June 5; Cincinnati Post, June 3; Springfield Sun, April 3; Cleveland Main Dealer, March 22; May 21; Columbus Citizen, April 14; Akron Beacon Journal, April 14, May 21; Perry County Tribune, April 11; Celina Daily Standard, April 2; Cincinnati Enquirer, April 8; Chagrin Falls Chagrin Valley Herald, April 4; Cleveland News, May 21.

Two film critics had long used their columns for this purpose before the bill was introduced. Norman Nadel of the Columbus Citizen was responsible for its editorial April 14. W. Ward Marsh of the Cleveland Plain Dealer was restrained from appearing as a committee witness by action of his editor Paul Bellamy who preferred the battle to be fought in the columns and not in person (information from Manning Clagett); for some of Ward Marsh's criticism of the legislature for not passing the repeal, cf. ibid., May 21, May 31.

Oral or written testimony was submitted by Bromfield, Marks and Schroeder. Burt was forced to cancel his appearance at the last moment because of family illness. When Wolfarth's time for testimony came, he publicly objected to inclusion of his name in the "Committee Minutes". Mosher believes Wolfarth had come under pressure from the Dept. of Education not to align himself with censorship repeal.
The film lobbyist Robert Wile spoke for the economic institution and organized groups of local exhibitors as "week-end lobbyists." The religious element was represented by Rev. Cleveland J. Bradner, Granville minister and faculty member of Denison University; he presented the committee with a petition from Licking County ministers opposing censorship and testified to his personal religious objections to censorship. Members of the legal profession who appeared to oppose censorship were Graumann Marx, Cincinnati bar official, and Oliver Schroeder, Jr., Western Reserve Law School professor and PTA official in Cleveland. Meredith Gilpatrick, political scientist, supplied historical illustrations of the misuse of censorship by foreign dictators. The professional "civil rights" groups spoke through the American Civil Liberties Union of

84. Wile and Clagett had several heated clashes on tactics, which made Clagett wary of Wile's utility; these disagreements, however, never reached the breaking point. Much of this friction may have stemmed from the previous intra-industry squabbles attendant upon the divorce of production-distribution from exhibition following the anti-trust decision of 1948.

85. Earlier, Clagett rejected a minister's offer to testify if paid a $100 fee; the lobbyist feared repercussions if the fee were ever revealed—"I never do business that way."
Central, Ohio, by telegram, and through testimony by Warren P. Hill, law professor. The views of several newspapers were expressed in the testimony of James Radcliff, then vice-president of the \textit{Cincinnati Enquirer} and Norman Nadel, drama critic of the \textit{Columbus Citizen}. Finally, Mrs. William R. Thomas, Cleveland civic figure active in the Ohio federation of the GFWC, expressed her opposition.

Such was the voice of censorship opposition. They had more witnesses and gave longer testimony than the supporters. If these factors determined the course of legislation, censorship should have died in 1953. But the proposal to repeal never even got out of committee.

2. \textbf{The Arguments}

If this analysis of group alignments reveals continuity across the decades, the same can be said for the arguments employed. Both sides had material and ethical interests which took different and conflicting forms. The dangerous content of current films still worried the supporters. The Knights of Columbus spokesman complained that today's films still contained "sex, extreme horror, murder plans, immorality, suggestive dancing and
singing, perversion, nudity, promotion of racial misunderstanding and the use of marijuana." Note the similarity to the descriptions on page 66, supra, of 1915 film fare. Similarly, the supporters of censorship pointed to the anti-social effect of this medium, especially upon the youth. This argument, Senator Mosher later stated, was the most telling. Senators unfriendly to repeal presented sexually lurid movie ads in committee session and asked if repeal of censorship would not permit much more of this to be shown the state's youth. Appeal to records of rising juvenile delinquency was made; pro-censorites feared that unregulated films would stimulate this problem to even greater heights. 87

Nor were these groups impressed by two proposed alternatives for protecting youth; parental control and improved self-regulation by the industry. They believed the former failed because

86. From the author's notes of hearings for April 27, 1953. For further evidence of Catholic opposition to immoral film and fear of their consequences, cf. numerous pamphlets supplied by the Legion of Decency.

parents lacked competence or time to do the job well; even if the child was accompanied by parents to prurient movies, he was thereby exposed and corrupted. The industrial regulation alternative was insufficient, also; pro-censorites cited data to indicate that (1) not all film makers belong to the industry's Production Code Authority and so are not bound by it, and (2) even the Code had limited effectiveness, for those who do belong have had their films censored in Ohio. 88

Legal arguments were employed by the pro-censorite, although they were faced by the recent Burstyn v. Wilson case (supra, 86) challenging censorship. They found other contentions more important, viz., the decision had only narrow application, not affecting Ohio, and the State's duty to protect community morality overrode the requirements of a free press. 89

88. Osborn (cf. fn. 86) noted that "40%" of the films shown in Ohio were not under the Code seal, that 4 of 47 banned in the last decade did have the seal, that out of 337 films reviewed in Ohio with a seal, 35 had to have deletions made. He complained of the sensationalism of the movie ads and movie content, that 72 foreign distributors and 31 US distributors did not subscribe to the Code. In the litigation cited in fn. 48, the State claimed not more than "50%" of the films presented to New York censors had the Code seal.

89. (over)
their cause was an Ohio Supreme Court decision upholding state censorship which appeared in the midst of this struggle.  

Mosher informed the author that this decision was the second factor producing defeat of repeal; his colleagues, he said, were greatly impressed that the State Supreme Court found the law valid.

The material and ethical motivations of the censorship opponents appeared in different contexts. The industry's material complaint was against the economic burden which censorship fees had produced. Although this complaint appeared in censorship litigation then underway elsewhere, it was not made directly in the testimony of Robert Wile, exhibitor official, until cross-examination by hostile senators produced it. The brief of the Civil Liberties Union of Central Ohio before the committee suggested that these fees raised a serious question about unconstitutional taxation. In conversations with industry lobbyists, the author

89. Cf. State's brief in case cited in fn 48, and other briefs filed in same case by Ohio Catholic Welfare Conference, Ohio Council of Churches and Ohio Congress of Parents and Teachers, Inc. These arguments were heard from Malloy and Osborne as cited in fn. 86.

90. Cf. case cited in fn. 48.

has found that this factor of economic costs loomed large, although it was thought better to "soft pedal" it in committee testimony.

The ethical grounds of opposition were much like those presented in the 1915 struggle (supra, 77). Now, however, there was added the incompatibility of the regulation with contemporary constitutional doctrine, viz., Burstyn v. Wilson decision. The impact of this was diminished when the other side produced opposing interpretations of that decision; little attempt was made to resolve these contradictions.

In the main, however, most of the testimony of censorship opponents rested on the familiar ground that the regulation was incompatible with traditional doctrines of democracy and freedom. Lawyers quoted Milton, Mill and lines from free speech court cases; newspapermen illustrated particular evils of censorship as they had seen it operate; professors drew upon history to equate censorship and dictatorship, and the ministers raised moral questions about restricting the development of man's soul.

To support these views, the opponents presented alternatives to censorship which would protect the
community. The private alternative offered was parental control; the state was interfering in the intimate, family relationship of the parent's duty to guide his child's development. The corporate alternative offered was industrial self-regulation, said to be quite successful in cleansing the screen. Finally, all witnesses offered the legal alternative of widespread criminal obscenity laws by which localities could protect their people by restraint after exhibition. All of these alternatives were thought to be, by their private, post-restraint, nature, more in keeping with American traditions more efficient or more safe than public prior restraints.

III. The Attempt at Strengthening Ohio Censorship: 1955

To one on the scene at the end of this 1953 struggle, the possibility of removing the regulation seemed remote. The pressure of the censorship supporters had been most impressive. The Ohio Supreme Court had just upheld the public policy. Despairing exhibitor officials had to be encouraged to continue the fight up to the federal Supreme Courts. And yet, within a year the structure of this regulation had received a smashing blow; within yet another year, the damages were irreparable by legislative action.
The major effort was made through the courts. The Ohio decision decisive in the legislative struggle was appealed, and in early 1954, the U. S. Supreme Court, by a *per curiam* opinion reversed the lower court. The industry's challenge had employed a battery of constitutional arguments: violation of due process for reason of vague standards; inequitable taxation; abuse of administrative discretion, and restraint of speech and press. But the federal court's terse "The judgments are reversed" left unanswered the question of which arguments were influential.

Within a year, other court decisions and Attorney General opinions had effectively scuttled the regulation. On Dec. 1, 1954, the Ohio Supreme Court had refused "reluctantly" to uphold the censors' deletions in several films, in light of the above cases; a 5-2 decision here failed by one vote to achieve the majority necessary to render the law unconstitutional. Then, in early January, 1955, a three-member state district court of appeal, considering a request for an injunction against the Board's actions, ruled the Ohio law unconstitutional for violating freedom of

92. Latter case cited in fn. 91.
speech. The Attorney-General refused to appeal, and followed with an opinion that the Board could not prosecute for failure of distributors to submit films for review.

Censorship forces did not wither up in face of these setbacks. The Board had been considering the possibility during 1954 of having the 1955 Ohio Assembly re-write the law's standards to satisfy the implication of the earlier Burstyn v. Wilson decision, where it had been suggested that a "clearly-drawn statute designed and applied to prevent showing of obscene films" might be acceptable. In early December, 1954, Governor Frank Lausche, insisting that "Ohio must have a film censorship law," advised the Department of Education to draft a bill "to conform to the requirements prescribed by the decision of the Supreme Court of the United States."

And so, when the 1955 Assembly session opened, the forces of censorship were again drawn up in battle array. They were to sweep overwhelmingly through the lower house and Senate Committee, only to die by a

95. Idem.
parliamentary maneuver of Senator Mosher as the session scrambled to a close in its traditional fashion. Most of the opposing groups were there, most of the same arguments were re-stated, and—up to the very end—almost the same outcome of previous struggles occurred.

The bill (House Bill 241) originated in the House, along with another to provide obscenity prosecution for obscene motion pictures and comic books. Referred to the Judiciary Committee, the censorship bill was analyzed by a subcommittee for possible conflicts with current constitutional doctrine. A small minority of legislators here questioned the possibility of ever devising judicially acceptable standards, voted against the measure in committee and on the floor, and delivered oratorical blasts against it in both places and before public groups. This opposition, however, was small, because the censorship measure was voted out of committee; the House passed it 105-10, despite critical speeches by the minority.97 In the Senate, the same strong support continued. Senator Mosher, chairman of the Senate Education Committee considering the House measure, maintained his opposition, despite

97. Ibid., May 27, 1955, 15, and information from Rep. John Chester of Franklin County, GOP member of the Judiciary Committee opposed to bill.
his estimate that there were no more than four colleagues who would oppose the bill in a vote. However, when the Senate moved to vote the bill out of committee before opposition testimony was completed, only 18 of the 22 votes needed were garnered; thus the measure died in committee in the last moments of the Assembly. 98

A. Same Groups Same Arguments

The supporters of the new censorship were formidable in number and status. They were mobilized under the banner of Ohio Committee for Decent Motion Pictures, 99 organized in March, 1955. The Committee claimed to represent combined membership of more than four million; Senator Mosher stated that no less than 50,000 were involved. 100 The group's executive committee contained a past president of the Ohio Child Conservation League, the president of Juvenile Court Judges of Ohio, the legislative chairman of the Ohio Congress of Parents and Teachers, the executive secretary of the Ohio Council of Churches. Senator Mosher relates that other groups supporting the regulation were


99. Mosher analysis cited in fn. 98; cf. also Columbus Dispatch, March 20, 1955, 18A.

100. Cf. Mosher analysis cited in fn. 98.
school principals, mothers' clubs, federated women's clubs, Fraternal Order of Police and the granges. We earlier noted that in 1953 the censors took no active part in supporting their law. But in 1955, Mosher thought "strikingly evident... the pro-censorship lobbying activity by employees of the censorship office, their families, friends and neighbors, fighting not only to 'protect' public morals but to protect their jobs." He further criticized the opposition of the "Wolfe family, bankers and newspaper owners who reputedly dominate politics in central Ohio (and who) used personal pressure and their two Columbus newspapers (which were) the only dailies in the state which editorially vigorously for the bill." Political support of censorship came from a resolution of the Cleveland City Council, and from Republican Senate leader Stanley Meachem, Democratic minority leader Joseph Bartunek and Democratic Governor Frank Lausche. 101

The old motivation of censorship supporters appeared here again. The statement of the Ohio Committee for Decent Motion Pictures listed these in its earliest publicity. Films have tremendous impact and an unrestricted audience. "Bad" films

101. Preceding from idem.
are related to the "alarming increase" in juvenile
delinquency and to increased teenage use of nar­
cotics following films showing methods for using
drugs. The industry's self-regulation is insuf­
ficient to do the job because only "50 per cent"
of the producers came under the Production Code.
The great increase of foreign films, unregulated by
that Code, also requires state censorship. The
Ohio Committee's legal contentions were that the
state has the same right to protect morality as it
has to set regulatory statutes on food and drink,
physical protection from violence and other such
laws. Further, it asserted that the December, 1954,
decision by the Ohio Supreme Court "did not declare
it unconstitutional," only "too general." 102 As
Mosher states, 103

One notion alone seems sufficient to
inspire their effort; "State censorship
of the movies is necessary to protect the
morals of our children." And misrepre­
sentation in movie advertising, playing
up sex, crime and gore, encourages that
belief. Proponents of censorship seem
to feel no need to offer competent
evidence that movies product immorality
and delinquency, or evidence that the
"impact" of movies is greater than that
of other media. They state it as doc­
trine, and thousands accept it uncriti­
cally.

102. Preceding from Columbus Dispatch, Mar. 20, 1955, 18A.
103. Mosher analysis cited in fn. 98.
The forces opposing censorship were not this time as well organized and represented as two years previous. The industry had its voice, as did the American Civil Liberties Union through its Ohio chapter. Not all religious groups supported censorship; Mosher pointed to "the number of pastors and lay leaders who offered to testify against censorship. At least three subsidiary groups (in the Episcopal, Congregational and Unitarian denominations, respectively) took official action against the censor bill" was the observation of Senator Mosher.\(^{104}\)

Legal and ethical grounds against the regulation were taken by Rep. John A. Chester of Franklin County, who led the opposition in the House. Senator Mosher again led the anti-censorites in the Senate; he early prepared a "ripper" bill in his committee to substitute complete repeal for rewriting of the legislation.\(^{105}\) He stated that newspaper support, although not heavy in volume, seemed mostly on the side of Chester and Mosher, with the exception of the Columbus papers mentioned above. Mosher claims that Sen. Joseph Bartunek,

\(^{104}\) Idem.

\(^{105}\) Conversation with author.
Democratic minority leader and spokesman for the new censorship bill, was "personally a convinced foe of censorship;" he was moved, however, by the Catholic support of his Cuyahoga County area, where he was to be a candidate for mayor of Cleveland, to defend the need for a new censorship bill. Mosher commented on this that "His defection typifies that of numerous members of the Legislature. There was considerable avowed opposition to censorship at the session's start, but under the heat of such well organized 'popular' pressure as is seldom seen, most of it melted quickly." In 1953 Mosher could claim at least 13 of the 33 Senators supported repeal of censorship; in 1955 on the Senate floor, he could rally only four.  

The factor which determined the defeat of the 1955 attempt to re-write Ohio's film censorship policy was not the size of groups defending freedom of expression; there was never a ground-swell of opposition to censorship. We can see, as Mosher pointed out, that the outcome was determined not by majority opinion responsibly translated, but by factors which have long been criticized as oligarchic or anti-democratic: Senatorial courtesy; Mosher analysis cited in fn. 98.
the traditional respect by Senate leader Meacham for a committee chairman, and the agreement of the Senators to maintain loyalty to that party leader.

B. The Prospect

Thus, in the three years from Burstyn v. Wilson decision of 1952 through the 1955 Ohio struggle, the institution of film censorship had been drastically disrupted. Elsewhere around the nation, there were clear signs that other censorship systems were falling by the way, limiting their activities or maneuvering to meet new Court requirements of the Constitution. In Kansas, legislature and governor combined to repeal the regulation, according to one newspaper account; however, a letter from the Kansas censor in October, 1955, informed the author that "the Supreme Court decisions have made very little difference in our operations..." and that they continue operations under revised rules; as of this writing, this conflict has not been resolved. 107

In Massachusetts, the State Supreme Judicial Court voided the Sunday censorship law on grounds of violating the First and Fourteenth Amendments;

the legislature then removed the offending law from the books. Consequently, Boston's mayor declared his city could no longer ban pictures for obscenity in light of these actions. In Pennsylvania, a Philadelphia Common Pleas Court judge "reluctantly" ruled that state's law invalid as offensive to the federal Constitution. In Memphis, that city's censor board, which has received considerable publicity in the past for its arbitrariness, backed down from a film ban when threatened by a suit challenging the city ordinance.

Other censors fared better. The Chicago censors banned The Miracle as obscene and immoral; on appeal to the US Supreme Court by the American Civil Liberties Union, that body by a 6-3 vote


110. Ibid., Sept. 23, 1954, 42; letter to author from Pennsylvania censors (Oct. 17, 1955) informs that "the Board is without a chairman" and no comment on current developments is to be made.

111. Ibid., April 1, 1955, 22, and April 5, 1955, 19.
refused to consider the appeal "for want of a final judgment" in lower courts. New York, Maryland and Virginia seem to have adjusted by rewriting their laws in the more clear fashion required by the US Supreme Court (infra, Ch. IV).

In Ohio, the defeated pro-censorites are gathering their forces for another effort in 1957. Possibly by that time Senator Mosher may not be able again to use the technique successful in 1955. As of the beginning of 1956, the censors continue to exist, willing to review films if the distributors will submit them voluntarily, although none do. The industry, aware of the precariousness of its position, is critical of those who have taken the reversal of censorship as a "green light" to show the extremely erotic film. Governor Lausche is reported extremely disturbed at the appearance of so-called "art" films in Northern Ohio. Robert Wile, head of the Ohio exhibitors, advises his group to "report to the police and prosecuting attorney" if "your competitor tries to show one of these pictures." The movie people's leaders are fearful that these fringe exhibitors will provide most lurid ammunition for the next censorship

112. Ibid., April 5, 1955, 19.
legislative effort. Further ammunition may be found in the efforts of some Hollywood producers to attempt a re-writing of the Code to make it more "realistic;" this may well be interpreted as a move to return the screen to the wide open days of yesteryear. Among those who are aware of the situation in Ohio, there is a feeling that the matter has not yet been settled.

IV. Summary and Conclusions

In these two chapters we have suggested that the origins of film censorship is rooted in the moral reform movements which the infant film industry aroused by its often sensational film content, technical innovations and trade practices. The drive to exploit met head on the moral protest elements, a conflict resolved by resort to governmental restraint by cities and states; for long, the threat of federal control hung heavy. In this setting, a censorship law was passed in Ohio which

113. For these events, cf. Columbus Dispatch, Oct. 23, 1955, C 1.

was almost unanimously endorsed by the law-makers and supported by church groups and particularly by film exhibitors. The opponents of the legislation, who were few in number and poorly organized, seemed to be unable to present an attractive alternative to the censorship law.

The years between 1915 and 1953 brought an atmosphere more favorable to the abolition of censorship. In 1953, the first major move to repeal the law was blocked by three pressures. The forty-year old law had a long-standing constitutionality, a pressure reinforced during the legislative consideration by an Ohio Supreme court decision which upheld the regulation. Also, the appeal that film censorship was needed to protect the youth seemed particularly influential to legislators; this pressure gained special force when it was unchallenged by supporters to repeal. Finally, external pressures, particularly from religious groups, gave direction and force to the two preceding pressures.

Between 1953 and 1955, Ohio censorship--like that of other states--was sorely beset by judicial decisions which left it with an administrative structure but no authority to censor. Rallying forces, the supporters of censorship, impressive in number and prestige, entered the 1955 Assembly session to write new standards of judicially acceptable precision. These efforts met defeat, but only because senatorial courtesy permitted an
objecting chairman to employ a parliamentary maneuver. That chairman is himself dubious of his chances of doing this again.

The primary purpose of this chapter has been to indicate the forces producing the change in censorship, a change which provokes this dissertation's re-examination of the policy. The major social groupings and arguments have been laid out for later analysis. For now, we may note how this struggle has influenced the direction of censorship.

This struggle from 1913 onwards identified for the censors the community groups whose interests the regulation was thought to serve. Because the law was drawn to restrain the industry's moral interpretations, the censors would give less attention to the industry's view of that subject than to the views of the moral welfare groups significant in producing the law. The law was designed to protect community morality, the prime concern of the industry was making money while the concern of the morality groups was defining morals; when the two conflicted, the censor would better hear the latter.

Also, because the law's standard were not self-defining, the censors would find their definitions in
the detailed protests by moral welfare groups; these protests against sex and crime in films will be seen later to have been fully met by the censors. Here we find illustration of a phenomenon met elsewhere in public administration, that the officials empowered to administer a particular regulation are greatly influenced to listen to those responsible for that regulation.

Further, in identifying the groups significant to him, the censor was likely to be concerned with what these groups conceived to be the law's regulatory purpose, in this case protection of the youth. Thus the group struggle in the legislature set the censor's concern with protecting the youth as a prime directive of his actions, instead of such other directives as aesthetics, truthfulness, etc. If the censor's orientation were aesthetic, he might pass presentation of crime if it were not ugly; because his concern was with the youth, however, he might not pass it, no matter how artfully produced. Thus is this public policy structured because of conditions in its origins.

Finally, this chapter has indicated how differences of opinion and values in the administration of censorship produced attempts at legislative and judicial control of the censors. The attempts have been brought on by
the accumulation of a host of difficulties inherent in the operation of the regulation. The sources and nature of these difficulties, as they arise in the administrative structure and operation of film censorship, will be our next concern, then. In baring the bone and muscle of the regulation we may better see the heart of the problem.
CHAPTER IV
The Machinery of State Film Censorship

We have presented the background of film censorship with analyses of the industry, its product and the history of censorship regulation. This chapter will examine the location of the regulatory power, the enforcement procedures, the standards, and the finances. Recent events, viewed in Chapter III, make part of this past history; both old and present elements contain, however, enough to point up the distinctiveness and controversy of the regulation.

In all of the states but New York, censorship is carried on by a permanent board whose members are politically appointed. Distributors submit all films except newsreels to these boards who examine their content for compatibility with statutory standards. Pictures which, in whole or part, fail to meet these standards are prohibited exhibition until deletions are made. For these services to the industry, the censors charge a fee, varying in rate and volume, which must be paid before the films are returned to the distributors. Inspectorates check compliance with censor orders. Courts enforce the law and ensure that censor decisions are made in accordance with due process of law. Such are the formal elements of the process which will concern us here.¹

¹. The above and following observations, unless otherwise indicated, are drawn from the following statutes, letters and talks: Kansas Laws, ch. 308, Laws of 1917; G. S.
I. The Locus of State Censorship Power

A. Patterns of Organization

What branch of the administration performs the function of censorship? The striking part of the answer here is the lack of uniformity in its location. Three types of location are found: independent, law enforcement, and education agencies.

Thus in Kansas and Maryland, the three-member board of censorship is an independent agency, appointed by the governor. On the other hand, the Massachusetts censorship agency, (the Bureau of Sunday Censorship), before its abolition, was under the direction of the State Commissioner of Public Safety, a gubernatorial appointee. The Virginia censorship law was administered by an agency in the Department of Law, under the direction of the Attorney-General who appointed them.

The three biggest censor states have given their
educational departments the task of administering their censorship laws. The six-member Motion Picture Division which administers the New York censorship law, is located in the Department of Education. The three-member State Board of Censors of Pennsylvania is also a part of the state Department of Education.

In Ohio the responsible official (although the regulation is now inoperative) was the Director of the Department of Education, appointed by the governor; the Director was aided by two bodies. An Advisory Board of Censorship, gubernatorial appointees, was consulted infrequently about controversial pictures. More important, however, was the Division of Film Censorship, within the Department, in which the day-to-day censorship was performed by a chief censor and a variable number of others, with the Director an *ex officio* member.

This three-fold pattern of location, not unusual in a federal system, may reflect different philosophies of administrative organization. These regulatory systems were created in a period of proliferating state activity in many fields, when little attention was given to the principle of functional integration;
it was surprising that not more censor agencies were independent. One can understand why some saw the task as a function of law enforcement; viewing the sweeping reorganization movements following World War I, it is surprising that more states did not place the administration in the law enforcing agency. Most difficult to understand is why the administration was placed in educational departments; it is hard to see the relationship between the dissemination of ideas involved in education and their restriction in censorship.

Little information is available to explain this location. Donald Young suggests that in this early period of censorship agitation there was also agitation for child labor and child penal reform; it was thus natural to ask if movie content might not contaminate youth as much as wretched working and prison conditions. Young believes this thought moved Ohio Governor Cox to sign the original 1913 censorship law.


3. A.E. Buck, The Reorganization of State Governments in the U.S.

4. Governor Cox, "who strongly supported the censorship bill, gave his support to it because he desired to protect the children and young people of his state. This seems to have been the general attitude of the time." Donald R. Young, Motion Pictures: A Study in Social Legislation, 66.
Young further observe that the transfer of Ohio's law to the Department of Education in 1922 (infra) "again emphasizes the idea of child saving which played an all-important part in the establishment of the theory of censorship in the minds of those who have been interested in the work."  

**B. Organization of Ohio Censorship**

A more intensive analysis of Ohio's censorship organization reveals two patterns employed -- before and after 1922. Prior to that year, censorship was performed by a quasi-independent agency within the Industrial Commission of Ohio (ICO); after 1922, as a consequence of administrative reorganization of the whole state machinery, the regulation was placed legally with the Director of Education.

The 1913 law creating censorship left in its wake some confusion in administrative relationships. Note the relevant legislation:

There is created under the authority and supervision of the Industrial Commission of Ohio a Board of Censors of motion picture films. Upon taking effect of this act, the [ICO] shall appoint with the approval of the governor, three persons ... who shall constitute such a board.

5. Ibid., 67.
(By the italicized provision above, and others, the ICO was authorized administrative controls characteristic of a parent body vis-a-vis a subordinate division.) Confusion arose, however, in the description of the censors' duties, viz., "It shall be the duty of the Board of Censors to examine and censor as herein provided all motion picture films to be publicly exhibited and displayed in the state of Ohio." The chief question was not as to whether the Board of Censors could perform censorship functions, but as to where an administrative appeal from the Board's decisions could be taken. The law, in placing the Board within the ICO, might seem to have implied that such appeal was to the ICO; another provision of the law might be so interpreted also. Little precedent existed within the ICO on this problem, for it had been created only a few months before the Board.

The issue was settled by Attorney-General opinions in mid-1914, which stated that (1) only the Board

7. Ibid., secs. 871-48,49.
8. Ibid., 871-53.
9. The commission was enacted into existence March 18, 1913 (103 Ohio Laws 95) and the Censor Board May 3, 1913.
could censor\textsuperscript{10} and that (2) its decisions could not be appealed to the ICO.\textsuperscript{11}

So it was that Ohio censorship agency during this first period existed as a quasi-independent regulatory body within the ICO. The censors were independent of their parent body with respect to the censorship function and with respect to administrative review. In minor administrative relations, however, the Board was subordinate to the ICO.\textsuperscript{12} Otherwise the Censor Board was supreme.

In 1921, by the provisions of the Administrative Reorganization Act, the Ohio Censor Board was transferred to the newly established Department of Education for administrative purposes.\textsuperscript{13} At the same time, the independent role of the censorship agency was altered and the body was made responsible to the Director of the Department. The day-to-day duties of cen-

\textsuperscript{10} "There is nothing to indicate that the aesthetic taste or moral perception of any other Board or Commission is to be substituted for that of the censors, nor is there anything to indicate that such censors act purely in a ministerial capacity as agents of the Industrial Commission when they pass upon the films." 1914 Ohio Attorney General Opinions 1049.

\textsuperscript{11} Idem.


\textsuperscript{13} 109 Ohio Laws 105; cf. introduc. for purposes of reorganization.
sorship were performed by a Division of Film Censorship, within the Department. Its responsibility to the Director of the Department was somewhat confused by the addition of an advisory group working with the Director.14

The change brought about by the Administrative Code of 1921 was made in several steps. First, existing legislation dealing with the old Board of Censors was repealed and the Department of Education was given all powers and duties "vested by law in the (ICO) and the board of censors of motion picture films ...."15 The law then created in this Department a gubernatorially appointed advisory board whose authority might seem to conflict with the Director, viz., "Such board shall assist and advise the department ... in the examination and censorship of motion picture films."16

One suspects that the Director may have had some difficulties with his advisors and settled the matter by resort to Attorney-General opinions in 1922. These opinions resolved all doubt: (1) the Director is the executive head of his Department, with full power to

14. Ibid., 105, 132, 111.
15. Ibid., 121; Ohio Gen Code, sec. 154-46.
manage, supervise and direct, including the subordinate Division of Film Censorship, and (2) the Advisory Board's task is to assist the Department by advice and information which the Director is free to use or reject as he sees fit.\textsuperscript{17}

This, then, was the locus of the censoring power for the next three decades; some later laws seem to confuse the picture by giving the impression, in their wording, that new censor offices were created and dissolved at different times.\textsuperscript{18} The fact is, however, that after 1921, the censorship function was actually performed by the Division of Film Censorship. The Director was \textit{ex officio} consulted only intermittently, when especially contentious films were screened. The relationship of the Advisory Board was tenuous, infrequent and, in the long run, relatively insignificant. Although little remains of its origins, it tended to be, in the words of Harvey Mansfield, "a bomb shelter for the Director when he runs into trouble." As both Directors and working censors inform the author, its use was so infrequent that there seems to be no

\textbf{17.} 1922 \textit{Ohio Attorney-General Opinions} 269.

recollect of any kind as to how often it was used. Like a many-peaked iceberg which occasionally rolls in adjusting to temperature changes but retains essentially the same unity, the location of this film authority remained after 1921 in the same place, operating through the same channels.

II. Administrative Decisions: Enforcement and Appeal

Administrative decisions are not normally self-executing. They require some to see that they are being obeyed, and they require that affected parties may have some form of appeal from their enforcement. Normally, administrative enforcement relies upon both sanctions — the threat or reality of penalties upon the non-conformist — and inducements — the encouragement of the affected that it is to his advantage to obey. The provision for appeal exists to satisfy long-standing concepts of due process of law.

In the web of administrative enforcement and appeal involved in film censorship, we can see some distinctive configurations.

Enforcement of censors' decisions is carried out against those who by-pass the regulation or ignore regula-

19. Analysis drawn from interviews with censor officials: Former Superintendents of Public Instruction Vernon Riegel and Clyde Hissong; former censor Mrs. Mary Edith Luethi and present chief censor Susannah Warfield.
tory orders. However, the industry mainly conforms to these decisions. Such conformity is achieved by the usual mixture of inducements and sanctions plus the cooperation of interested private groups. When a distributor wishes to appeal a censorship order, such is usually made first to higher administrative officers or to the censors themselves in the form of a request for re-review; appeal from this level then lies to the courts. Study of the inspection function of film censorship reveals that exhibitors, to a great degree, have complied to censor decisions without direct inspection over every film exhibited. Equally interesting, but more familiar, is the extent to which the courts act as partners reinforcing the exercise of discretion by the censors; this last has of course changed drastically in the 1950's, as we have seen.

A. Field Inspection of Censor Decisions

Given the flow of hundreds of films through the offices of a state censor in a year, it might be expected that the task of inspecting theaters for compliance with censor decisions would be a formidable one. However, the states have obtained seemingly good results by permitting censors to make periodical inspection

20. Material analyzed in a later chapter reveals that a total of 5634 films were reviewed for the period Jan. 1, 1948 to mid-May, 1951. The breakdown was: 1948 -- 1722 films; 1949 -- 1588; 1950 -- 1650; Jan. 1 to mid-May 1951 -- 674. Even this figure is not all reviewed, as some weekly reports on which the analysis was based were missing.
tours of the states, and by systematizing this by the work of a regular inspectorate staff, by the efforts of local interest groups concerned with a "clean" screen, and by the action of exhibitors themselves, desirous of preventing trouble.21

Massachusetts relied upon local government officials as inspectors. The law provided that public entertainments be licensed by city mayors or town selectmen provided that "the proposed entertainment shall have been approved in writing by the commissioner of public safety as being in keeping with the character of the day [Sunday] and not inconsistent with its due observance."22 The commissioner's office published a list of approved films with which the local officials checked before issuing license for local exhibition.23 Thus, inspection of exhibitor compliance became automatic and extensive in scope to a

21. The author here relies upon information supplied by the New York censors (correspondence from Hugh M. Flick, director of the Motion Pictures Division, dated May 17, 1954), Ohio censors (sources noted below) and letter from Mrs. Frances Vaughn, Kansas chief censor, dated May 24, 1954.


23. Ibid., Hambro letter.
degree not noted in any other censor state.

Pennsylvania and Kansas laws specifically provided for such inspection. The Kansas censors wrote that "we have two inspectors who travel over the state and check the films in the theatres to be sure that they have been through our Board.... The inspector checks the film and marks down the serial number and sends it in to our main offices each day with her reports."  

New York also employs a state staff; that state's chief censor's description of this inspection function points out the common problem of censor inspectors.  

The law allows us one chief inspector and four field inspectors. With some fifteen hundred theatres in the state and with the average program changing twice a week, the task presented is enormous and most certainly out of proportion to the number of inspectors allowed. Experience has however allowed us to designate certain danger areas which are given concentrated treatment while the remaining portions of the State are inspected periodically .... The law under which we operate also authorizes any police officer in the State to act as an inspector. In such cases reports come to us through channels of either the State police or a local police organization.

In Ohio, there was one person designated in the Division of Film Censorship as inspector; he informed the author that his job kept him on the road most of the week, although he checked in at the Columbus headquarters at least once a week to obtain the latest listings of deletions and bans. In the past he had been aided by the censors themselves, who made several trips a year spot-checking the state; that practice no longer existed in 1953.

This account alone might well give the impression that the inspection was skimpily performed in Ohio. However, these formal inspectors relied upon an informal arrangement with private interest groups who supplemented state inspection more intensively. In the past, especially before even the one inspector was provided, these groups carried the load of inspection, serving as scattered, sensitive centers to alert the official channels for possible prosecution.

In the early 1920's in Ohio, this alliance with interest groups was formalized by Mrs. Evalyn F. Snow, first chief censor under the Reorganization Act of 1921. An undated memorandum, "Instruction

to Inspectors," describes the practice and its purpose. It said in part, 26

There being no inspection or follow-up work provided for in the censorship laws of Ohio, we had no means of checking up violations of the law until we received the cooperation of various organizations throughout the state who are interested in the great moral and educational work of securing better films.

The memorandum further noted that these volunteer inspectors were issued credentials to enter theaters to check for violations from a list issued them weekly. Miscreants, both exhibitor and distributor, were to be reported immediately to the censors.

Little record remains of these volunteers. The Division's report for 1924-25 refers to some of these in general terms as "... representatives of Women's Organizations, Parent-Teachers' Associations and ... in some of the larger cities the churches ..." 27 At least during 1921, the Cincinnati Juvenile Protective Association was active in this work. The problems of enforcement and the differences of opinion inherent in this regulation are seen in its report: 28

26. From files of the National Board of Review in author's possession; item is undated but issued (internal evidence suggests) sometime after the first of 1921 and June, 1922.

Without the follow-up work which we do, much of the Ohio Board's work would go for nothing, for out of an entire year's cases, in only 46 percent were the cuts made as ordered, although they displayed the leader "Passed by the Ohio Board of Censors." In 54 percent of the cases the inspector felt that there was need for cuts other than those ordered by the Board, and on many occasions felt those made were not necessary and a waste of effort.

Another report, from Cleveland during 1922, revealed less offensive material found. The spokesman of the Cleveland Cinema Club (seeking to publicize "good" pictures as an alternative to censorship), in correspondence with the National Board of Review, noted, 29

In the past six years [before 1922] we have referred all matters in theatre regulation that called for police interference to the Civic Committee of the Federated Churches feeling that men could well undertake that part of the work. No such matter was referred until after we had first tried to bring it about in a very friendly way, dealing with the theatre men. There have been very few cases in the last three years. We get splendid cooperation from the theatre men, who are improving as a class, from year to year.

At least two other of these informal elements

28. Quoted from the Cincinnati Women's City Club Bulletin, May, 1921, which quoted in turn from the annual report (undated) of the Juvenile Protective Association; the transcript of this Bulletin article is found in the files of the National Board of Review in author's possession. Emphasis in original.

were employed, teachers and the exhibitor-distributor combination. It seems that during the 1920's and 1930's, the Department of Education was authorizing "six to eight" teachers to help in the inspection in their off-hours. By the late 1940's, the practice was employed so infrequently it did little to lighten the burden.

The exhibitors and distributors themselves indicated some willingness to abide by the decisions of the censors, although the report of the Cincinnati group would question how much. But even that group reported that "'if they [cuts] have not been made we have had unfailing cooperation from the exchange managers in having them made before the picture appears again;" further, the Cleveland group cited above observed, "We get splendid cooperation from the theatre men, who are improving as a class from year to year." Even a censor during the earliest years, James A. Maddox, has told the author that although the censors' policing was informal, the exchange people worked well with the censors. No evidence was available to reveal the scope of this private inspec-

30. Interview with Mrs. Mary Edith Luethi, censor during this period; interview with Vernon Riegel, former Superintendent of Public Instruction; cf. also supra, fn. 85, for mention of this.

31. Information from Miss Warfield, present chief censor.
tion by organized community groups when Ohio censorship was stranded.

It is the author's impression from discussions with film officials and censors that the significant force operating to accomplish compliance with censor decisions was not primarily the pressure of these groups or the inspectors. It was, instead, the general willingness of the exhibitors to comply with the decisions, without any formal checking upon them. They realized that state approved films would keep them free from community pressure about "dirty" pictures. Indeed, there is some evidence that these theater men themselves occasionally make deletions in films already approved, deletions of material which they feared might cause community disapproval.33

Let us, then, describe concisely the pattern of enforcement of film censorship decisions. The censorship regulation has been of long standing, carrying thereby a force of acceptance which only the occasional fly-by-night exhibitor of erotic films might seek to

32. This evaluation is questionable in light of the reported violations of the censor law during the year Maddox was in office, violations by exchange men which led to the strengthening of the law in 1915; cf. supra, Ch. II.

33. Information from Miss Warfield; cf. also, Mary McGarey, "The Watchdog Get a Challenge," Columbus Sunday Dispatch Magazine, 9; further verification was found from Robert A. Wile, president of the Independent Theatre Owners of Ohio.
oppose. Most exhibitors, closely tied to their communities, were exposed to the potential pressures of significant local groups; they were aware that their livelihood depended upon public acceptance of their displays and that such acceptance could be injured by the outcry of offended groups; the history related in the preceding two chapters gives full illustration of this. On the other hand, those who consistently risked public disapproval gathered a reputation for suspect exhibition and thus were more easily the focus of the formal state inspection. Indeed, as noted, the Ohio inspector concentrated heavily upon exhibitors with prior violations and upon exhibitors of the so-called "sex theater."\(^{34}\)

Ohio censorship thus found itself in the convenient position of needing only a minimal staff, relying mostly upon private groups' sensitivity, which caused most exhibitors to conform and which could alert the formal machinery for the fringe cases. The exhibitor, that is to say, was controlled by inducements and sanctions; the inducements of favorable relations with censors and his community and the sanctions of potential and actual deprivation of his films, fines or penal sentences. The exhibitor we see, was, like other elements of the industry,

\(^{34}\). Information from Miss Warfield.
constantly faced with resolving the problem of how to titillate the people enough to attract an audience but not enough to stir up disapproval.

B. Action against Violators of the Censorship Law

What of the exhibitor or distributor, however, who challenged the censorship law? How might he run afoul of the law and what were the consequences? Generally, criminal prosecution arose in two cases, where the film official bypassed the censorship process entirely or where he ignored censors' orders of deletions or bans. The pattern of sanctions involved a fine and/or imprisonment flowing from a trial initiated at the nearest local court; in Ohio, these courts were the justice of the peace, mayor court or police judge.35

The penalties could be severe. Kansas levies a $25–500 fine or 30 days imprisonment, with each day an uncensored film is shown deemed a separate offense; in addition, conviction for "misbranding" a film (adding a fake seal of approval) brings a $50 fine or 30 days in jail, plus -- and this is the real sting -- the possibility of the film being confiscated. In Pennsylvania, violation might have brought

§25-50 fine for the first offense, §50-100 for subsequent offenses; in default of payments, the convicted faced 10-30 days in jail. "Misbranding" in Pennsylvania was treated more lightly, a $5-10 fine or 2-5 days in jail. In Massachusetts, the cost of violations rose, for non-compliance could bring up to $500 fine. In Maryland, punishment involves a $25-100 fine or 10-30 days in jail, while Virginia levies only the fine. 36

In Ohio, however, the range of fines was most severe, and the law more sharply defined the nature of the offenses. 37 Ten crimes were described: handling unapproved films; showing films without a seal; distributing films without a seal; showing or distributing films whose licenses had been revoked (infra), and counterfeiting or possessing the official seal. First offenses brought fines ranging from $25 to $500 while subsequent offenses could bring a fine as high as $1000. The crime of "misbranding" could put the convicted in jail for 30 days to one year. Not only were these sanctions higher than elsewhere, but their application against distributor

36. Citations are those of supra, fn. 1.
was harsher; indeed, before 1923, the convicted distributor faced a 30 days to one year penalty for all of the above crimes.38

The imposing list of state sanctions for the violator suggests that their availability contributed to the industry's compliance. These possible sanctions may account for the fact that prosecutions have been so infrequent that censors with whom the author communicated could give no estimate of their number.

C. Appeal from Censor Decisions: Administrative
The seeming harshness of these sanctions is contrasted with the elaborateness of the appeal procedures available to those who would challenge censor decisions. The pattern was for first appeal to the censors themselves or their parent body and second appeal to the courts. Only a few of the censors' orders have been so challenged, and few of these were successful at either level, until recently.

Generally, the first move was for the distributor to ask within 10 days of the first order for the censors to review their decision. This request was followed by another screening of the film before

the full censor body and applicant. If the censors adhered to their original decision this time, then, in all but New York, appeal lay to the courts. In New York, however, there were other strata of administrative appeal -- to the Director of the censor division and then to the Board of Regents, the parent body of the censors; loss here moved the applicant to the courts. 39

The frequency of administrative appeals is little known because censors do not keep such records; most, when queried, indicated that appeals were "occasional" or "infrequent." New York's former chief censor noted, however, that such appeals (from distributor back to the censor and then to him as Director) were "extremely numerous and take the form of cooperative conferences. It is during this period that most of the difficulties are solved." Appeals from his office to the Board of Regents occur about once every two months. 40 In Ohio, Miss Susannah Warfield, chief censor, recalled


that these occurred only "occasionally" and were informal conferences to convince the censors of the need to modify or rescind their decision; she states further that such conferences frequently resulted in modifications but rarely in rescindings. She noted that such appeal as her group provided was not called for in the law but had arisen as an informal practice or board rule. However, one must point out that Ohio law prescribes such procedure for licensing agencies of which the censors were one; the requirement is for public notice and hearings with right to appear with counsel and to subpoena.41

This relative infrequency of administrative appeal suggests another phase of the film men's willingness to comply. This meekness may have been based on prior, unsuccessful experience in seeking to modify censor's decisions or upon the unwillingness of the distributor constantly to challenge the censors. One film official in Ohio told the author that he no longer appeared before the censors in appeal because he knew that they had a strong antipathy against him for his earlier and too-energetic efforts along this line.42 Perceiving little chance of successful ap-

41. 120 Ohio Laws 358 (1943); amended 121 Ohio Laws 578 (1945).
42. This official asks anonymity for fear of further recrimination against his products which he believes the censors would deliver.
peal and fearful of an unpleasant reputation, distributors find little to gain in administrative appeal unless the stakes are very high; such stakes are involved when films are banned. It is indicative of the difficulty of appeal that in a later chapter's study of Ohio's actual censorship for three years, only one ban was appealed from agency to courts. We may now see what form of appeal was available for the venturesome distributor seeking to challenge the censor in court.

D. Appeal from Censor Decisions: Judicial

Records of appeal to the courts from adverse censor decisions reveal that this process was little used, and when used the courts, until recently, tended to support the censors. We suggest that this support was based upon the court's inability to detect transgressions of discretion when the standards for such discretion were so wide.

In all but Ohio, such appeal ran from agency to the lowest local court above the justice of the peace; in Ohio, appeal lay to the state's supreme court.43

This latter appeal is of interest for two reasons. Only here did appeal lie in the first instance to such a high court and only here were the grounds stated on which appeal might be brought; these were when a censor's order was alleged to be "unreasonable and unlawful."\textsuperscript{44} One student of the legal procedure noted that, "concerning the scope of review ... the court will examine the film itself and will not treat the determination by the administrative agency as a determination of fact by jury, i.e., as conclusive."\textsuperscript{45} If this analysis be correct, then the court acted as a super-censor, considering facts on which a particular censorship was based. If appeal was based on the "unreasonable" nature of the order, the court would have to determine that by reviewing what was censored and why; that would lead the court to ponder the immoral or harmful elements of the film, hence making it a super-censor.

How have the courts treated appeals from censors' orders? When we examine the record, we find a rather clear pattern; before the US Supreme Court decision

\textsuperscript{44} Ohio Gen. Code, sec. 154-47h. Emphasis added.

\textsuperscript{45} Brychta, op. cit., 404-405. Brychta refers to Hallmark v. Division of Film Censorship, 153 Ohio St. 595 (1950) on this.
in 1952 included the film under the freedom of the press, courts supported the censor. In the main, the judicial interest was whether the reason for censoring was listed in the statutory standards; few courts questioned the nature of the discretion or overrode the censors for abuse of that discretion. Between 1915 and 1952, only ten censor decisions were overridden by state courts, while over thirty cases supported state and local censors.

46. Bychta, op. cit., 407, considers the nature of the appeal to the Supreme Court.


48. Federal -- Mutual Film Corp. v. Hodges, 236 US 248 (1915); Fox Film Corp. v. Trumbull, 7 F. (2d) 715 (1925); Chicago v. Kirkland, 79 F. (2d) 963 (CCA 7th, 1935); RD-DR Corp. and Film Classics, Inc. v. Smith, 183 F. (2d) 562 (1950).


Ohio, too, knew this pattern of judicial support. Between 1915 and 1954, 10 cases arose to challenge the censors. The latter were upheld in 7 of these: in 1916, 1924, 1937 and twice in both 1950 and 1953.49 In


Pennsylvania -- Buffalo Branch, Mutual Film Corp. v. Breitinger, 250 Penna. 255 (1915); In re Franklin Film Corp., 253 Penna. 422 (1916); In re Fox Film Corp., 295 Penna. 451 (1929).


Minnesota -- Bainbridge v. City of Minneapolis, 131 Minn. 195 (1915).


Ohio -- CF. infra, fn. 109.

For further compilations of such cases prior to this date, cf. Notes, 64 A. L. R. 505 (1930); 1 Cornell L. Q. 173 (1916); 14 Michigan L. R. 138 (1915). These cases above have been compiled from Note, 60 Yale L. J. 698-9; Note, 49 Yale L. J. 93, 96; Note, 39 Columbia L. R. 1397; and Motion Pictures Law Digest, plus succeeding monthly supplements.

49. Epoch Producing Corp. v. Industrial Commission of Ohio, 95 Ohio St. 400; Sullivan v. Riegel, 25 Ohio N. P. N. S.
two others, 1917 and 1938, Ohio courts prohibited cities the exercise of this power; this has made the power exclusive to the state, although one student raises questions about such state pre-emption. Yet another case represented the only judicial restraint on the censors until recently; when in 1928 the Director of Education sought to ban boxing films without reviewing them, on grounds he knew their general nature and disapproved; the Ohio Supreme Court rescinded the action and ordered the film be submitted for proper reviewing procedure. Note that here this check on the censors was not because of their interpretation of Ohio's statutory standards but because they did not act with due process.

The first signs of what was to come appeared in Toledo in 1952, when the court of common pleas de-

49. con't. 118; North American Committee to Aid Spanish Democracy v. Bowsher, 137 Ohio St. 599; Hallmark Productions Inc. v. Dept. of Education, 153 Ohio St. 595 and 596 (involves same film on two different forms of appeal); Superior Films, Inc. v. Dept. of Education, 159 Ohio St. 315 (involves two films).


51. The 1928 case was State ex. rel. Midwestern Film Exchange, Inc. v. Clifton, 118 Ohio St. 91.
clared newsreel censorship unconstitutional; of questionable impact because of its application only to the Toledo area, the decision was shortly thereafter validated by the legislature when it exempted the newsreel from regulation. The real judicial blows were struck in 1954 and 1955, as we have seen. The federal Supreme Court in early 1954 voided the standard of "not moral" in the Ohio law; the Ohio Supreme Court followed suit in late 1954, falling short by one vote from voiding the whole law; that last did occur in early 1955 when a state district court of appeals unanimously declared the whole law unconstitutional.

Why this judicial restraint until recently? The answers to this seem relevant to our concern with the nature of this kind of administrative regulation. The answers may lie both in the practice of judicial restraint in administrative decisions and the imprecision of the censors' standards.

The courts have been reluctant in recent times to negate administrative actions as long as there is

52. The recent case was State of Ohio v. Smith, Toledo Municipal Court, Memo Opinion No. 572128 (1952).
some evidence of the reasonableness of that action.\textsuperscript{53} Indeed, in the New York courts, the view seems to have been that if there were some belief that a film was objectionable, then the censors' decision must be confirmed. In 1939, that state's high court stated, "It is a matter of opinion whether this picture is decent or indecent, and where there is room for an honest opinion, this court should not interfere;" in 1947, the same court noted, "Some reviewing bodies would think this film offended, thus there is doubtless some evidence to sustain the finding."\textsuperscript{54}

However, judicial restraint has not applied in every kind of administrative review, so it is suggest-

\textsuperscript{53} Harris and Ward, Administrative Decisions and Judicial Review, ch. 1 (1941); although this draws heavily on California, other state references make it applicable here. An early review of this phenomenon is Blachly and Oatman, Administrative Legislation and Adjudication (1934), particular summation at 185. For analysis of federal Supreme Court tendency, cf. Herman Pritchett, The Roosevelt Court, for statistics and subtleties of distinctions; for additional commentary, cf. V. M. Barnett, Jr., "The Supreme Court and the Capacity to Govern," Political Science Quarterly, September, 1948, 342-67.

\textsuperscript{54} The New York court has stated, "Some reviewing bodies would think this film offended, thus there is doubtless some evidence to sustain the finding," and earlier, "It is a matter of opinion whether this picture is decent or indecent, and where there is room for an honest opinion, this court should not interfere." Distinguished Films v. Stoddard, 271 App. Div. 715, 68 NY Supp. (2d) 737,739 (3rd Dept., 1947); American Committee on Maternal Welfare, Inc., v. Mangan, 257 App. Div. 570, 14 NY Supp. (2d) 39 (3rd Dept., 1939).
ed that the second factor may be more important. That is, such judicial reluctance may stem from the lack of clarity in the standards by which censors operate. If the court is to measure instances of excessive discretion, there should be some precision in the standards of discretion alongside which to lay the challenged administrative action. If censorship standards and decisions are highly subjective, the court's task becomes so difficult as to be impossible. Justice Felix Frankfurter indicated awareness of this in Burstyn v. Wilson ( supra, Ch. III) in commenting on the standard of "sacrilegious":

these all important guides which direct the state
now here, now there, against the sights and sounds
of the medium. What they are is a big question. But
an even more pregnant question is -- what do they
mean?

III. The Standards of Film Censorship
Film censorship attempts to measure motion picture con­tent against certain standards in order to ensure that
citizens will not be exposed to films violative of those
standards -- with the alleged consequences that entails.
It is therefore relevant to turn to those standards in
this re-examination of the policy. We will find them to
be general, statutory expressions of morality, long em­
bedded in law restraining other modes of communication.
We will find that recent judicial complaints against their
vagueness have caused to be created new, more fully de­
fined standards. Whether new or old, these standards
raise significant questions about their meaning, fair­
ness in application and consequent conflict with due
process of law.

In Chapter I we suggested an hypothesis to which we
can now turn for the first time. We noted there that
legislatures, forced to permit administrative agencies
to do more day-to-day governing, had sought to hold these
agencies responsible by providing them standards by
which legislature, court, administrator and citizen could gauge administrative determinations. We suggested that such standards might be ranged along a continuum of "objectivity," a measure of the degree to which such standards' articulation into law is subject to disagreement; the last chapter will analyze "objectivity" in considerable detail. Administration of the state's police power over health and safety was rated as more "objective" than that over welfare; these, in turn were more "objective" than regulation of public morals or art.

We are suggesting that in film censorship we find a regulation operating on the least "objective" end of the continuum; it is this which makes it the controversial regulation it is and which has brought on its current time of troubles. When the legislature delegates to a board the task of proscribing "immoral," "harmful," etc., film presentations, is it delegating anything more definitive than just those words? Do the possibilities of interpretation which these words bring to mind bely the clarity and precision required of other regulatory agencies? Experience suggests, as we shall see, that there is little unanimity of meaning in the minds of state censors; indeed, the censors themselves admit the subjectivity of their work.
A. The History of Film Censorship Standards

This study is an examination of one form of restraint of expression, before or after the act, whereby legal codes describe the expressions deemed objectionable. Such legal restraint is rooted in our Anglo-Saxon tradition. A brief survey of those roots will provide the background for understanding the origins of the film standards.

Our English heritage and Puritan tradition have created in the eyes of the law the notion that the stage (forerunner of the film) may subvert approved morality. As early as 1543, the English had state control of the theater, a practice strengthened under the Commonwealth of Cromwell and firmly established for political censorship in the mid-eighteenth century under Walpole. This regulation continues to the present, accompanied by film censorship when that medium emerged.

Legal control of the stage has a similar history

56. Thompson, The Controversy between the Puritans and the Stage.

57. Theater Act of 1737, 10 Geo. II, c. 28; found in full at Fowell and Palmer, Censorship in England, 368.

58. Theater Act of 1843, 6 & 7 Vict. c. 68. For a classic criticism of this censorship and its authority, cf. G.B. Shaw's preface to Mrs. Warren's Profession in Bernard Shaw Seven Plays (1951) 3.
in the United States where the police power of the state delegated to the towns has been held to authorize such censorship.\textsuperscript{59} Obscenity and licensing laws have provided a check on the stage by prosecutions or by removal of theater permits.\textsuperscript{60} These widely prevalent obscenity laws, one source notes,\textsuperscript{61}

... usually declaratory of common law principles, provide for ex post facto punitive measures under the penal code, a violation in most cases being considered a misdemeanor. The owner, distributor or exhibitor (if it is a film), if faced with prosecution, has the opportunity of a trial in open court of the issues involved.

Such statutes can be a sword of Damocles. Producers, fearful of the law's execution after a performance, may consult the authorities before the performance, thus making post-restraint of the stage a form of prior restraint or censorship.\textsuperscript{62}

\textsuperscript{59} For a list of such cases prior to 1915, cf. Mutual Film Corp. v. Hodges, 236 US 244; cf. also People v. Wendling, 258 US 451 (1932) and Opinion of the Justices, 247 Mass. 589 (1924).

\textsuperscript{60} For examples, cf. Chicago v. Kirkland, 79 F. (2d) 963 (7th Cir. 1935) and Commonwealth v. McGann, 213 Mass. 213 (1913).

\textsuperscript{61} Note, 49 Yale L. J. 100-101; for a listing of these laws, cf. \textit{ibid.}, 101, fn. 87. For a fuller description of the history and operations of obscenity statutes, cf. Morris Ernst, \textit{To the Pure}, and Ernst and Lindey, \textit{The Censor Marches On}.

In New York, this traditional test of obscenity has added such considerations as literary merit, historical description, moral teaching and opinions of experts and critics; cf. Note, 60 Yale L. J. 709; People v. Brainard, 192 App. Div. 816, 183 NY Supp. 452 (1st Dept. 1920).
Other media of communication have had a long history of local control, and not every medium has been accorded the same treatment. Laws have hit harder at fiction books than at newspapers; a Kentucky court once decreed that a book was subject to obscenity laws but its serialization in a newspaper was not;\(^{63}\) in New York, a film on childbirth was banned but photographs from the film in a magazine were not subject to obscenity prosecution.\(^{64}\) The printing of news seemed exempt from restraints, while its dramatization was not.

Books have had applied to them changed interpretations of the printable and the proscribed. Until recently in the US, the traditional standards of obscenity, stemming from British law, was "whether the tendency of the matter charged as obscene is to deprave and corrupt those who minds are open to such immoral influences and into whose hands a publication of this sort may fall."\(^{65}\) This interpretation certain-

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ly narrowed the range of subjects available for books. This became liberalized, however, as the federal courts came to remove restrictions from the freedom of the press in the last thirty years. Now, instead of wondering whether a susceptible part of the audience might be harmed, the courts ask whether the book "taken as a whole has a libidinous effect." This test means that particular portions of a book need not blight the whole piece, which in turn enlarges the area where the writer may discuss ideas and actions without official restraint.

Many of the prohibitions against the film we note below read almost verbatim from obscenity laws existing when film censorship arose. Morality groups, disturbed by the nature of films, found the then-available laws insufficient; they could be used only after the films had been exhibited and had contaminated the audience. In searching for a device to prevent this danger, they turned to the previous restraint agency

66. U. S. v. One Book Entitled "Ulysses," 72 F. (2d) 705, 707 (2d Cir. 1936); cf. also, Hannegan v. Esquire, 327 US 146 (1946) and Parmelee v. US, 113 F. (2d) 729 (D.C.Cir. 1942) where this same test was followed.

67. For a fuller discussion of obscenity prosecutions, cf. Z. Chafee, Government and Mass Communications, I., 200-34; Grant and Angoff, op. cit., 37, 147; Notes, 34 Cornell L.Q. 442 (1949); 53 Harvard L.R. 403 (1940); Ernst, op. cit., passim; Ernst and Lindey, op. cit., passim.
at the state and local levels; in searching for expressions of morality, they seem to have turned to the obscenity laws of post-restraint to define the objects of their displeasure. Sometimes, as in Ohio, the standards were even wider than those of obscenity laws.

B. Standards of Censorship, 1911-1952

The following analysis takes into account the impact of recent adverse court decisions in this area. We shall examine first those censorship standards as they were before this adjudication and then question whether the new standards redefined under court pressure are any different from the old.

The earlier censorship standards were of surprising similarity. Thus, citing only the relevant criteria, we find the following:

Kansas: "... approve [that which is] moral and proper ... disapprove such as are cruel, obscene, indecent, or immoral, or such as tend to debase or corrupt morals."

Pennsylvania: Same as Kansas, although substituting "sacrilegious" for "cruel."

Maryland: "... obscene, indecent, immoral, inhuman, sacrilegious or [which] tend to corrupt morals or incite to crime."

New York: Identical to Maryland.

Virginia: Same as Maryland, omitting "sacrilegious."

68. For citations, cf. supra, fn. 1.
Massachusetts: "... in keeping with the character of the day [Sunday] and not inconsistent with its due observance..."

Ohio: [Approve only those]"of a moral, educational or amusing and harmless character..."

Note here the frequency of certain words. In five states the censors proscribed the obscene, indecent, immoral and tending to corrupt morals. In three, they prohibited the sacrilegious, tending to incite to crime and inhuman ("cruel" in Kansas would make this four references). Only Massachusetts and Ohio indicated any variety. Two explanations may account for this similarity: the states were drawing upon their obscenity post-restraint laws with the longer history discussed above, or some states were copying other states. Such terms as "obscene," "immoral," etc. are imbedded in the older obscenity laws. On the other hand, the Kansas law, first to be enacted, may have been drawn upon by later censor states for their standards. Neither explanation, however, accounts for the drastically different criteria of Ohio and Massachusetts, where the widest possible terms of reference appeared.

Most of these terms are negatively worded, i.e., the law indicates what the censor shall disapprove. By this it would seem that the censors are provided with a device through which the rolls of film can be drawn; any projections from the thin roll can be
spliced off, and if too much is thus excised, the whole may be scrapped for that state. The author has heard innumerable pro-censorites argue that the law operates in almost this mechanical fashion.

Instead of the precision implied in such a mechanistic analogy, the author suggest that these terms are either so vague as to suggest no concept of what is prohibited or so imbued with historical experience as to suggest many possible meanings. The very fact that a censor deletes a certain film indicates that he differs with the producer as to the "immoral" nature of the subject. This possibility of differing interpretations suggests the hypothesis that the meanings of these laws must in the final analysis rest upon the individual censor's value structure. Words can thus come to mean what the censors want them to mean. This hypothesis rests upon the likely vagueness of the standards with which the censor operates.

On the other hand, a kind of objectivity may exist here. A particular censor board may translate "immoral" into some working rules applicable to particular presentations, e.g., scenes of actual fornication, adultery, nudity, etc. These working rules may then be used to evaluate the flow of film mater-
ial for such clearly portrayed scenes. Questions arise here, however. Is there objectivity here if the working rules change from time to time? Is there anything to prohibit the arbitrary action of a censor changing the working rules for a particular producer? When these working rules are not written out into law, they may be subject to officials' whims; in this, what protection is there against such lack of objectivity?

But the more significant question lies prior to these working rules: how do we know that such rules provide the real meaning, or the widely accepted meaning, of the statutory standards? The translation of such laws into working rules is not itself subject to standards of objectivity. The working rule of a health board that "unsafe" milk means a certain number of dangerous bacteria is regarded as objective because of widely agreed upon biological tests. Where is there the wide agreement that a particular working rule of a censor is similarly objective? Thus, although one might think definition of criminal sex acts would be clear, there is considerable variation among the states both in sex acts which are punishable and in the severity of punishment. For such reasons, we believe that on the continuum of objectivity in stan-
dards of administrative regulation, film censorship seems to fall on the extreme we have labelled subjectivity.

In a legal sense, it is important to verify such an hypothesis of subjectivity. The judiciary has required that administrative discretion operate within quite objective standards in order that due process of law not be abridged. If evidence demonstrates, however, that this particular regulatory agency operates with non-objective standards, then the shield of due process does not protect the affected citizen.

We have suggested some evidence of this subjectivity earlier. In the 1953 and 1955 legislative and judicial actions described in the last chapter, opponents of censorship contended that they and many in the community did not view as "immoral," "harmful," etc., much material that the censors deletd. In this chapter (supra, 8), we noted a Cincinnati group supporting censorship who thought that some material cut out was "not necessary and a waste of effort." These group variations in standards interpretation suggest the possibilities of subjectivity inherent in the process. In a later chapter examining the differential censorship of roughly the same flow of films among various states, the difference of the
rate of censorship is suggested as an index of the impact of personal censor values upon ambiguous standards. If in two states employing the same standards, one bans a film and the other does not, where lies the kind of objectivity required by due process?

Actually among the censors themselves, there is no belief that their standards are objective. The author's experience with censors reveals that they are aware of the subjective nature of their work. Dr. Hugh Flick, late head censor of New York, wrote, "I am sure you appreciate the fact that it is extremely difficult to establish arbitrary standards in regard to motion pictures since each individual sequence must be interpreted in the light of the film in which it appears." In a published interview, Dr. Flick further commented, 69

We try to work from the broad effect, and we also try to give ourselves a latitude of action. You might say that the law requires some interpretation on our part, and we do our best with what directives we have ... While moral standards are generally a matter of geography, the time, and individual interpretation, in America it is held that the basis of our way of life is the family. Anything that disrupts the standards of normal family life, that breaks down our accepted moral structure is considered against the law. This is the in-

An interpretation of the law that we used, and the ruling was made.

These comments underline not only the subjectivity of these standards and their lack of clarity but also the problem of changing standards of morality; this in turn suggests the looseness of the standards and the consequent discretion open to the censor. Miss Susannah Warfield, Ohio chief censor, has stated that in the 1920's her board was more severe on scenes of women smoking and women in bathing suits than is true today, clear evidence that working rules change. Wartime has caused the Ohio censors to permit other concepts of proper film content.

It is also necessary, because of the war, to be unusually cautious and discriminatory in deciding what is acceptable and at times, it has seemed desirable to permit showing of scenes which might not have been approved in peace time.

While naturally more allowance is given such scenes [brutal scenes] in films based on the war .... Use of strong language under stress of certain war conditions has at times been allowed...

Thus there is some evidence that censors operate...

70. Columbus Citizen, 10-14-47; ibid., 1-24-54. This point has been made by Miss Warfield to the author on several occasions.


ate with standards which contain little of the objectivity required by due process of law. Such makes difficult the tasks of maintaining responsibility, not only to the legislature, but also to the administrative heads who have delegated authority to the work-a-day censors. The standards become fishing licenses in extremely broad currents of waters; neither the lawmakers or agency heads can keep count of the catch made or the nets used.

C. Standards of the Ohio Censors: 1913-1952

What has been the nature of standards in the Ohio picture? The censors were required by law to approve "only such films as are in [their] judgment and discretion ... of a moral, educational or amusing and harmless character ..."\(^7\) This provides three criteria for film evaluation: (1) moral, (2) educational, and (3) amusing and harmless. The author has been unable to find the origins of this wording, although he can offer one suggestion which has only the strength of plausibility. Those exhibitors who sponsored the 1913 law may have drawn up the broadest standards possible in order that the state censors might have the fullest play for screening everything which could offend local interest groups. The fact that the censors were to pass only acceptable material would assure them

\(^7\) Ohio Gen. Code, sec. 871-49.
of a really "safe" product for display.

Precise definition of these standards will appear later when we study actual deletions. Published definitions, or working rules, are found in only one place, an annual report for 1925. It is not known whether later censors regarded them as generally applicable; the later analysis of deletions suggests some of them were. This report may furnish some clarity as to the nature of the standards.74

All scenes which are obscene, salacious, indecent, immoral or teach false ethics, such as the following, should be eliminated:

(a) Sex:
1. Productions which emphasize and exaggerate sex appeal or depict scenes therein exploiting interest in sex in an immoral or suggestive form or manner.
2. Those based upon white slavery or commercialized vice or scenes showing the procurement of women or any of the activities attendant upon this traffic.
3. Those thematically making prominent an illicit love affair which tends to make any virtue odious and vice attractive.
4. Scenes which unnecessarily prolong expressions or demonstrations of passionate love.
5. Scenes which exhibit nakedness or persons scantily and suggestively dressed, particularly suggestive bedroom and bath room scenes and scenes of inciting dances.
6. Stories or scenes which are vulgar and portray improper gestures, postures, and attitudes.

7. Scenes which tend to give the idea that sexual vice accompanied by luxury makes vice excusable.

(b) Vice, Crime and Violence:
1. Themes predominantly concerned with the underworld or vice or crime and like scenes; unless the scenes are part of an essential conflict between good and evil.
2. Stories which make crime, drunkenness and gambling and like scenes which show the use of narcotics and other unnatural practices dangerous to social morality, attractive.
3. Stories and scenes which may instruct the immature and susceptible in methods of committing crime or by cumulative processes emphasize crime and the commission of crime.
4. Stories or scenes unduly emphasize bloodshed and violence without justification in the structure of the body.
5. Scenes which tend to produce approval of businesses, institutions or conditions that naturally tend to degrade and deprave mankind.
6. Productions whose tendency is to incite sympathy for those engaged in parasitical or criminal activities.
7. Productions that teach fatalism or the futility of individual resistance of adversity.
8. Expiration (sic) of crime by some act of physical bravery.
9. Crime must not be made attractive and the punishment must be clearly and adequately portrayed.

(c) Respect for Social Institutions:
1. Scenes which ridicule or deprecate public officials, officers of the law, the United States Army or Navy, or other governmental authority or which tend to weaken the authority of the law.
2. Scenes which offend religious beliefs of any person, creed or sect or ridicules ministers, priests, rabbis, or recognized leaders of any religious sect, and also which are disrespectful to objects or symbols used in connection with any religion.
3. National, racial and class hatred, should not be fostered.

(d) Subtitles:
1. Titles and subtitles should not be salacious or deceptive.

Several inferences may be drawn from this list. The great concern for sex, crime and violence undoubtedly reflects the same concern which had motivated the creation of film censorship in the earliest years of the industry; here we see evidence of our suggestion concluding the last chapter, that the direction of censorship was influenced by the groups supporting it. Secondly, it seems likely that, although the report cautions "These standards are not considered as inviolable rules but merely as a guide in censoring," the effect of these detailed criteria is to reinforce a status quo value structure. "Guides in censoring" will be based on the censors' evaluation of the predominant community values, many of which he shares. Use of these "guides" may well create a conditioned response which then affects the censors' outlook on current films. Changing community values, then, must work against these engrained "guides" of the censor who, in effect, becomes a bastion of existing community morality. This likelihood in turn

75. Ibid., 95.
suggests that official interpretation of statutory standards probably tends to lag behind the actual community value system. We shall return to this later.

Embedded within the Ohio law was another set of standards by which censors could prohibit exhibition.

The department of education shall be authorized to recall any film for recensoring or to revoke any certificate permitting the exhibition of any film in the State of Ohio, whenever, in the judgment of the department ... the public welfare requires it.

This grant would seem sweeping, even wider than the standards of censorship employed in reviewing films prior to exhibition. One student of this question has noted, however, that such was not so, either in law or practice, because the revocation authority got meaning only from the standards for original censorship. Actually, when the censors sought in 1950 to revoke a film's license because of a storm of disapproval about the private lives of the film's participants, the Attorney-General restrained the cen-

76. Ohio Gen Code, sec. 154-47b.
77. Brychta, op. cit., 393-5.
78. For story of this whole incident, cf., New York Times, 2-4-50, 8; 2-8-50, 33; 2-9-50, 19; 2-12-50, II, 2, 5, and IV, 2: 2-14-50, 27; 2-19-50, II, 1; 3-15-50, 33; 2-26-50, II, 5;
ors; censorship could be applied only to the film content, not to the social environment surrounding its production.79

The application of censorship standards kept pace with the technological advances of the industry. From the earliest days, not only was the actual picture censorable but also the subtitles used until the advent of sound. In 1928, an Attorney-General opinion permitted censorship of the sound track.80 Titles of films remained subject to regulation, but not, however, merely because the censors thought them "misleading or ... not truly indicative of the nature of the picture," as the Attorney-General in 1949 declared in again restraining the censors.81

A further restriction was that censorship was limited to "... all motion picture films to be publicly exhibited and displayed in the state of


79. 1950 Ohio Attorney-General Opinion 50.
80. 1928 Ohio Attorney-General Opinion 1447.
81. 1949 Ohio Attorney-General Opinion 706.
Ohio. In practice, this was interpreted to apply only to films to which the public was invited and where admission was charged. This resulted in two instances where censorship was not applied: (1) films shown as educational aids to students, and (2) films shown before private groups other than students.

Furthermore, the newsreel and television films were not censored. In 1953, Ohio became the last state to surrender jurisdiction over this format. Although Clyde Hissong, formerly director of the Ohio censorship system, believed that television films should be censored, no Ohio efforts were made to do this, possibly because a 1951 federal court decision.


83. Information on this paragraph drawn from conversations with officials of the Division of Film Censorship, Director Clyde Hissong, and C. K. Miller (director of the Audio-Visual Aid Section of the Ohio Department of Education). Experience at both Ohio State University and Denison University by the author has validated the statements about exemption applying to educational films. Reason suggests that pornographic or "stag" films, by their very nature of offense to censorship standards, are not submitted for review, even though stag groups frequently charge members admission.

84. Statements to the author in private and in discussion before Social Science Section of the Ohio College Association, Columbus, Ohio, March 20, 1953.

action rebuffed such an attempt by Pennsylvania. 85

Thus, before the judicial blows fell on Ohio censorship, its jurisdiction, despite the limits noted above, were quite extensive. The seemingly clear statement of standards found in the 1925 report seen earlier would seem to narrow the censors' actions; careful examination reveals, however, certain key phrases even there were as variable in meaning as the original standards. It was hardly a surprise, then, that when state censorship started to fall, the attention of the courts was upon the vagueness of these standards.

D. Standards of Censorship, 1952-Present

In face of unfavorable court action, the states have sought to redefine their statutes more precisely, a move yet to be tested by the courts. This redefinition transpired after federal court action voided the New York and Ohio standards of "sacrilegious," "immoral" and "tending to incite to crime." Certainly no state censors had been driven out of business by the Burstyn v. Wilson decision of 1952. The New York censors re-instated the film involved in that decision (The Miracle), warning that it would still ban the obscene and immoral; 86 indeed, Ohio was so

undaunted by the Court decision that it banned the same film as immoral a week after that decision. In Maryland, however, the Attorney-General ruled the censor power must be cut in accordance with this opinion.

The impact of the 1954 decisions against "immoral" and "inciting to crime" forced the censor states into action. The censors' feelings may well have been expressed by the then head censor of Ohio, Clyde Hissong:

> It doesn't leave us much on which to base rejection of a film. If you can't ban a picture because it is immoral or because it incites to crime what can you ban it for? Obscenity maybe, but that's already ruled out by the film industry itself. [The decision makes it] exceedingly difficult to ban a film in Ohio in the future.

Moved by such fears as this, the censors of the six full-time states met in New York City within a week after the 1954 Court decision. The meeting, planned for some months prior to this date, was called to consider redefinitions of standards, seemingly required by the courts.

87. Ibid., June 13, 1952, 19, and June 14, 1952, 12.
89. Columbus Sunday Dispatch, Jan. 24, 1954, 7B.
90. Information from Miss Susannah Warfield.
In the first case, *Burstyn v. Wilson*, the Court left a loophole which seemed to the censors to be their answer. The Court had refused to condemn all censorship outright; indeed, it hinted it would not do so under certain conditions, i.e.,

... it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films. That is a very different question from the one now before us.

Here appeared the opening -- redefine your standards for the purpose of precision; this inference was strengthened when the 1954 cases threw out standards on grounds of the *Burstyn v. Wilson* decision.

So, at this 1954 winter meeting, a model law was discussed which set forth exactly which films or parts could be banned. An Ohio censor pointed out to the author that there was no agreement on precise wording but that there was agreement on the need to re-word in light of the Supreme Court's statements. Within three months of this meeting, New York amended its

92. *Supra*, fn. 68.
93. Conversation with Miss Warfield.
law to redefine the standards of "immoral" and "tending to incite to crime." Kansas film censors, in May, 1954, revised these two standards by administrative action; they re-defined the standards which "were sent to the Revisor of the Statutes who is empowered to make them official and a part of our laws." About this same time, Ohio censors had an Attorney-General's opinion clarifying their standards; he declared that still applicable were "obscenity" and possibly "that which incites to an actual breach of the peace." An

94. The standards now read: an immoral picture is one "the dominant purpose or effect of which is erotic or pornographic; or which portrays acts of sexual immorality, perversion or lewdness, or which expressly or impliedly presents such acts as desirable, acceptable or proper patterns of behavior." A film which "incites to crime" is one which "the dominant purpose and effect of which is to suggest that the commission of criminal acts or contempt for law is profitable, desirable, acceptable or respectable behavior; or which advocates or teaches the use of, or the methods of use of narcotics or habit-forming drugs;" New York Times, April 12, 1954, 39.

The N. Y. bill was introduced at the request of the state Department of Education on Feb. 16, 1954, three weeks after the conference of state censors; information from copies of bill (Assembly Bill, Introductory No. 2757) and Governor's approval (memo released to press April 12, 1954) supplied by N. Y. censors to author.


96. From an undated Informal Opinion of the Attorney-General, unlisted mimeo, addressed to Director of Education, Clyde Hissong.
act of the 1955 Maryland legislature amended the censors law to redefine "immoral," "obscene" and "tending to incite to a crime."\(^{97}\)

How do the standards appear at the end of 1955? The Ohio censorship system is out of action, as we have seen. Massachusetts and Pennsylvania censorship laws are likewise inoperative as a consequence of state court action. The standards of the remaining states demonstrate such similarity as to suggest that an agreement was reached on the wording of the new definitions at the 1954 meeting of state censors.

New York's revisions defined "immoral" and "tend to corrupt morals" to mean:\(^{98}\)

... a motion picture film or part thereof, the dominant purpose or effect of which is erotic or pornographic; or which portrays acts of sexual immorality, perversion, or lewdness, or which expressly or impliedly presents such acts as desirable, acceptable or proper patterns of behavior.

This phrasing, almost verbatim, is found in the 1955 Maryland revisions,\(^{99}\) while the New York phrase "or which expressly or impliedly, etc." is repeated in Kansas's revision of this standard.\(^{100}\)

97. Ann. Code Maryland, Ch. 201, as amended 1955, secs. 6(a)-(d).
However, some variation appeared in Maryland and Kansas. Maryland now defines a picture as "obscene," if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever other merits the film may possess.

Kansas is more particular in proscribing sexual scenes when

Said film or reel expressly or impliedly presents (etc.) acts relating to sex which constitute felonies or misdemeanors under the laws of this state.

Either the theme or its manner of presentation, or both, present sexual relations as desirable, acceptable or proper patterns of behavior between persons not married to each other.

It portrays explicitly or in detail an act of adultery, fornication, rape or seduction.

It portrays nudity or a simulation thereof, partial nudity which is sexually immoral, sexual relations of any kind, or actual human birth, or if it presents scenes portraying sexual hygiene, sex organs, abortion, methods of contraception or venereal disease.

The new definitions of "tending to incite to

99. Ann. Code Maryland, Ch. 201, as amended 1955, secs. 6 (c).


101. Cf. fn. 99 at sec. 6 (a).

102. Cf. fn. 100 at secs. 18-1-22 (a) - (d).
crime" indicate more similarity. The New York standard now proscribes

... a motion picture the dominant purpose or effect of which is to suggest that the commission of criminal acts or contempt for law is profitable, desirable, acceptable, or respectable behavior; or which advocates or teaches the use of, or the methods of use of, narcotics or habit-forming drugs.

With slight alterations, Kansas and Maryland have copied this definition into their laws. 104

There is a most interest aspect to these new standards. Not only do they proscribe particular sexual or criminal acts, but they check any film expression which suggests these acts are "desirable, acceptable, or proper patterns of behavior." This represents an even greater limitation on the film producer. Whereas before he might hint that sexual promiscuity had its pleasures, if not advantages, now even that hint can be the cause of a deletion.

Note further that, although some of these redefinitions point to clearly defined acts (sexual perversion, fornication, use of drugs), much of the wording partakes of the kind of subjectivity condemned by the courts. Can different groups perceive

103. Cf. fn. 98 at sec. 122-a (2).
104. Cf. fn. 100 at 18-1-23, and fn. 97 at sec. 6 (d).
similarly "the dominant purpose or effect" of a presentation or the Maryland equation about the probability of a deleterious effect outweighing other merits of a film? Kansas has more carefully redefined its concept of morality with its inclusion of specific sexual tabus; the US Supreme Court in October, 1955, voided the "obscenity" portions of the old statute. All of these revisions have yet to meet the judgment of that Court.

IV. The Finances of Censorship

State film censorship is essentially a licensing operation; all persons are prohibited a certain field of activity unless given special permission by the state to perform that activity under certain conditions. Like most licensing activities, the granting of a license is conditional upon payment of a certain fee to the state; these fees in aggregate are designed to pay the cost of administering the licensing. Not uncommon in a federal system, the range of the rate and volume of censorship fees vary widely. Within this range, Ohio charged a high rate, received large revenue and employed the money for a unique purpose.

The rate of the censorship fee is tied in with cer-
tain units of film and with whether the film is the original or a duplicate. Kansas charges $1.25 per reel of film, and Massachusetts levied $2.00 per complete film. The others used the unit of feet of film: $2.00 per 1000 feet in Virginia; $2.00 per 1000 feet in Maryland, New York and Ohio, and $2.00 per 1200 feet in Pennsylvania. This rate is for the original film submitted to the censors. Particularly obnoxious to the industry was the fact that in all but Virginia, they had to pay the same rate for every copy of that film used in the state, which meant paying for films the censors did not review. The educational film, as distinguished from the commercial variety, is in two states either reviewed free or with smaller charges.

The smallness of these fees might indicate that the regulation returned little revenue. Actually, the revenue returned was surprisingly large for the effort expended,

106. In Ohio, for example, the chief censor Warfield states that the average film requires 15-20 duplicates to satisfy the demand, while the popular film requires 30-35 prints. Maryland requires that its rate applies only to films averaging 16 frames or less to the foot. For citations, cf. fn. 1.

107. Cf. fn. 106.

108. This point has been made frequently to the author by Manning Clagett, legislative representative of the MPPA, and Robert A. Wile supra, fn. 91.
although very small when compared with total state budgets. Reports indicate this revenue for a recent period, the expenditures employed to raise the revenue and the degree to which revenue exceeded expenditures. 110

FINANCIAL STATEMENT

Revenue and Expenditures of State Censorship Boards for Three Fiscal Years Ending June, 1951

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<th>Revenue</th>
<th>Expenditure</th>
<th>Percent that Revenue Exceeded Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kansas</td>
<td>$90,210.50</td>
<td>$87,238.49</td>
<td>103%</td>
</tr>
<tr>
<td>Maryland</td>
<td>$240,843.57</td>
<td>$144,663.23</td>
<td>167%</td>
</tr>
<tr>
<td>Virginia</td>
<td>$188,763.00</td>
<td>$100,828.54</td>
<td>188%</td>
</tr>
<tr>
<td>Penna.</td>
<td>$528,061.00</td>
<td>$262,791.40</td>
<td>201%</td>
</tr>
<tr>
<td>New York</td>
<td>$1,124,033.50</td>
<td>$235,187.95</td>
<td>478%</td>
</tr>
<tr>
<td>Ohio</td>
<td>$380,070.81</td>
<td>$113,978.88</td>
<td>772%</td>
</tr>
<tr>
<td>Mass.</td>
<td>$555,970.00</td>
<td>$22,680.00</td>
<td>2451%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$3,607,952.38</td>
<td>$967,368.49</td>
<td>372%</td>
</tr>
</tbody>
</table>

We see that the regulation represented a yearly outlay of one million dollars to the industry. The differential in returns noted above relates to population dif-

ferences (obviously, larger states require more prints to satisfy exhibition demands and thus require more of the censor services) and to the different film formats censored; during this period Ohio was still censoring newsreels while others were not. The payroll accounts for far and above the highest amount of expenditures; other costs were repairs, communication, printing, office and other supplies, insurance, rent, etc.

Although Ohio ranked high in total revenue and in the degree that its revenue exceeded costs, a more extended time analysis indicates that the gap between revenue and costs was slowly diminishing, although never to the point where it could possibly be called equal. Reports indicate the financial report for Ohio censorship for the decade 1942-52.

### FINANCIAL STATEMENT

**Revenue and Expenditures of the Ohio Censor Board, 1943-52**

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue</th>
<th>Expenditure</th>
<th>Percent that Revenue Exceeded Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 1-Dec. 31:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1943</td>
<td>$172,995.90</td>
<td>$22,220.00</td>
<td>778%</td>
</tr>
<tr>
<td>1944</td>
<td>209,361.80</td>
<td>21,762.62</td>
<td>964%</td>
</tr>
<tr>
<td>1945</td>
<td>218,417.75</td>
<td>26,840.93</td>
<td>814%</td>
</tr>
<tr>
<td>1946</td>
<td>239,111.75</td>
<td>30,823.45</td>
<td>776%</td>
</tr>
<tr>
<td>1947</td>
<td>245,301.25</td>
<td>42,284.97</td>
<td>581%</td>
</tr>
<tr>
<td>1948</td>
<td>256,424.00</td>
<td>45,767.64</td>
<td>626%</td>
</tr>
<tr>
<td>Jan. 1'49 to June 30'49</td>
<td>134,348.00</td>
<td>8,734.11</td>
<td>1543%</td>
</tr>
<tr>
<td>July 1-June 30:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1949-50</td>
<td>298,110.75</td>
<td>39,332.55</td>
<td>733%</td>
</tr>
<tr>
<td>1950-51</td>
<td>297,981.00</td>
<td>43,167.13</td>
<td>691%</td>
</tr>
<tr>
<td>1951-52</td>
<td>292,114.50</td>
<td>53,431.16</td>
<td>552%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$2,397,156.70</td>
<td>$334,364.56</td>
<td>720%</td>
</tr>
</tbody>
</table>
Indeed, one might say that the Ohio law expected this excess revenue, for one provision, unique among censorship states, required that such excess be utilized for a specific purpose,\(^{112}\) a fund

... for disseminating information relative to the history, scenic beauties, natural resources, and industries of Ohio through the office of the director of visual education of the department of education and for the creation, maintenance, administration and regulation of a suitable collection of visual aids for loan to the education institutions of Ohio.

As originally enacted by the legislature, this called for half of the excess to be used for this purpose, the remainder to be deposited in the state's general revenue fund.\(^{113}\) The author can find no legislative action providing that all the revenue be so employed.

During the years analyzed in Table II, this provision for half of the fees being used for audio-visual aids

\(^{111}\) This data, drawn from annual Auditor Reports, is found in statement of stipulation of facts agreed upon by both parties, filed before Supreme Court of Ohio in case of Superior Films, Inc. v. Dept. of Education, and in Transcript of Record, 10-13, filed before U. S. Supreme Court in same case on appeal from lower court.

\(^{112}\) Ohio Gen. Code, sec. 154-47a. This new provision for all the moneys appears in a mimeo compilation of censorship laws provided by the Division of Film Censorship, Ohio Censorship Laws, Sections from the Ohio General Code, sec. 154-47a.

\(^{113}\) This provision was first inserted in the law in 1935 (116 Ohio Laws 101) and retained in later changes in the law in 1943 (120 Ohio Laws 481) and in 1947 (122 Ohio Laws 400).
provided just over one million dollars; the Audio-Visual Section of the Department, which handles this fund, operated during the post-war years on an annual budget of around $120,000. Such funds have enabled the state to rank among the best in this service; it maintains a film collection of 3250 titles (many duplicated) and handles about 144,000 bookings a school year with about 75% of this service to high schools.\footnote{114} Thus, while other states have employed their fees for general revenue purposes, Ohio uniquely turned its fees to an educational purpose. One suspects an irony in the practice of funds drawn from restraint on the dissemination of ideas to encourage dissemination of ideas in other formats.

The economics of state censorship indicated the returns were highly rewarding,\footnote{115} a practice carrying certain profit-making characteristics; these, in turn, raise serious question about whether the fees levied were fees, in the usual sense of levies for the purpose of covering costs of administering a certain regulation, or were\footnote{116} taxes on the fiscal taxing theory of benefit received. This provokes a certain legal questions, considered in a later chapter.

\footnote{114} Information from C. K. Miller, director of the Audio-Visual Aid Section; cf. also annual reports of the Department of Education for further description of this section's activities.
V. Summary and Conclusions

This analysis of the machinery of state film censorship has indicated some of those elements which make the regulation distinctive. True, it has also indicated elements which make it not unlike other regulations. We see such similarities in its denying a field of activity to all except those who conform to state standards, in the forms of administrative and judicial appeal, in the non-merit selection of officials, in the use of inspection to enforce decisions and in the greater reliance upon inducements than coercion in achieving compliance. The basic differences, however are seen in that censorship, unlike other regulatory agencies, did not exist as an independent group in Ohio and elsewhere, it returned revenue larger than costs and it operated with a much higher degree of subjectivity in its decision-making.

In balancing these factors of difference and similarity, the author wishes to emphasize that in the forms of structure and operation the similarity is greatest, but that in the substance and basis for decision the similarity is least. The central element of this regulation, the factor which makes it sui generis among other acts of the states' police powers, is that it is a system of continuing

115. It was indicated in that Governor Frank Lausche in the 1953 repeal attempt stated his opposition to repeal if it meant loss of this revenue, which it obviously did; information from Sen. Charles Mosher.
inspection with a view to prohibiting or permitting expression of ideas before they can enter the market place. From this difference stems many of the differences noted above; from this difference stems the continuing controversy and current re-examination.

As explained earlier, censorship is essentially a process of social control, concerned with the maintenance of particular norms of belief and action. The content of these norms are not clearly expressed in statutory standards. Although the contents are supposed to be those of the community, specificity is lacking because of (1) the plurality of community norms and (2) the ambiguity of the statutory standards. The censor gives precision to the norms, however, by interpretation of the standards and by choosing among community norms. He has a range of values, from tabus to high-status beliefs, from which to make his choice. Among all of the plural norms, certain subjects are recognizedly tabu, e.g., fornication, nudity, excretion, etc. Stretching away from these extremes are subjects of social control not so tabu until we reach a balance where the subjects are neither completely forbidden nor encouraged. Moving farther along this continuum we find subjects of increasing community value which are positively encouraged.

Where does the censor concentrate his attention along
this continuum of norms? The extreme tabus can hardly
take much of his efforts, because the film industry does
not portray them; its Code is a prohibition of these ex-
treme tabus and an encouragement of the high-value norms.
Nor, as we shall see later, does analysis of what censors
actually delete reveal much attention to these extremes.
On the other extreme of this continuum, the censor can
do little to encourage positive norms; by definition,
censorship involves removing material, and the act of ex-
cision is quite different from encouraging presentation
of approved material. A later chapter clearly indicates
that on this continuum, the censor's actions are focussed
on those subjects on which community norms are uncrystal-
lized or balanced; here there is no community consensus
of what to ban or promote. Although censorship was cre-
ated and exists to protect society against the tabu, its
major activity, as records of actual deletions reveal,
is with the less tabu.

Why, if movies contain so little of the extremely
tabu, does the censor concern himself with other subjects?
Possibly he believes that some censoring is required to
justify his existence; i.e., censorship for the protec-
tion of his job. Also, he may possibly believe that cen-
sorship of the less tabu prevents the fully tabu presenta-
tion which might appear if attention were not given to the
near-tabu. A frequent contention of the pro-censorite is that, if there were no censorship, film content would soon turn to really dangerous themes. It is interesting to observe that the effect of recent court decisions, striking down particular standards, has been to force the censor to re-focus his attention back upon the extreme tabus, e.g., obscenity and encouragement of crime. Even that area may now be untenable.

That film censorship deals with proscription of ideas goes far in explaining other characteristics described earlier. Why should distributors argue with censors about whether a picture is "immoral" when definition rests ultimately in what the censors believe the community means by it? Why should the exhibitor risk economic injury when he knows the definition of "dirty" pictures rests with articulate community groups, even though he knows that the meaning of "dirty" is variable? The distributor's fear of the ultimate authority which he believes the censor has to define the state's vague standards explains why there has been little need for an elaborate inspectorate and why there has been such limited industrial challenge of censorship authority. The fearful power of economic boycott resting with community groups explains the acquiescence of the exhibitor. Thus it is that this strange interplay of economic, libertarian and
restrictive forces has produced the distinctive elements of the process of film censorship. Those interested in institutionalizing social control might well learn something from a study of the forces in operation in motion picture censorship.

This chapter has examined the subjective features of film censorship, which make it such a distinctive exercise of state police power. Such subjectivity, we have suggested, rests in large degree upon the value structure of the censors themselves, a consideration which has recently provoked judicial disruption of the regulation. The personality of the censor, then, becomes of immediate concern. What kinds of people are they, how are they selected, what do they believe? These questions will be the center of attention in the next chapter.
CHAPTER V

The Personnel Aspects of Film Censorship

The material of the preceding chapter suggested that much of the policy making of film censorship revolves about the nature of those who do the censoring. How censors are selected and what kinds of people they are become important questions. Answers to these queries may furnish a more sophisticated analysis of the relationship between censorship and community norms of morality.

However, the limited nature of our data compels our conclusions to be highly tentative. Further, the lack of such data requires that the considerations of this chapter must rely heavily upon hypotheses. Therefore, in this we are concerned with suggesting hypotheses, not with verification. Until much more information is available, then, ideas about the personal element of film censorship cannot be firm but tentative.

Typical of such problematical considerations is the process of selection of the film censors. Experience elsewhere in personnel administration suggests several hypotheses about the method of selection of government administrators. A brief description of those propositions here will provide us guides for evaluating the selection of film censors.

Censor appointment may come about through political or merit considerations. When the merit system operates in
other administration, we find the practice to be that the standards for selection are clearly described and relate to the job description. If censorship is so subjective, we may hypothesize that then the standards of merit appointment may also share this subjectivity; it may be that such standards have difficulty in defining the precise requirements of a qualified censor; if this be true, it might be expected, then, that the standards of merit have to rely upon merely satisfying certain educational requirements. In this case, we may further hypothesize that the personal values of such persons reflect some vaguely defined middle class concepts of morality. One of our tasks in this chapter, then, is to examine the merit requirements of film censors where such a system of selection is employed.

If censor selection is by political appointment, however, then there is much discretion open to the appointing agency; here, the nature of the censors may depend upon what the appointing authority wants the censor body to become. Several alternatives seem likely here. One may conjecture that under some conditions, the selection is of no importance to the authority and hence the agency may be filled by traditional patronage methods, i.e., making appointments simply to satisfy the demands of partisans seeking a safe job. Secondly, the authority may have a definite notion of what he wants the censors to do and hence the agency can be
"stacked" to represent his particular point of view about what values the films should reflect. Finally, it may be that the authority, finding the subject of censorship one rife with controversy, may seek to keep the peace by selecting censors to represent the views of those concerned with the regulation. Here, one might expect to find spokesmen for the industry, the churches, the arts or parent groups. Thus the board could become a small composite of the conflict raging in the larger society, a microcosm of the macrocosm.

Whether appointment is by merit or politics and whether political appointment is for the three reasons suggested above, these method of selection should indicate different things about the kinds of censors we get, the values they reflect and their relationship to the community. This chapter will examine such data from the censor states of Kansas, New York and Pennsylvania and Ohio, with particular attention to the last, hoping to discover what patterns of censorship appointment prevail and how such appointment conditions the censors' actions.

As elsewhere in censorship study, source materials have been a persistent problem. Censors are little given to published statements, and the author's attempts to probe more than superficially into these people's values and personalities
have been rebuffed. A few published statements, occasional letters, obituaries, official biographies and the author's own observations constitute the nature and scope of his sources. These limitations, we warn again, restrict not only inquiry into this problem, but the conclusions we may draw.

I. Requirements for Censors in New York, Kansas, Pennsylvania

The only state clearly employing a merit system is New York.¹ From 1921, when censorship began, through 1927, the job was a political plum, performed by an independent appointive group. After that date, the former group was abolished and its duties transferred to the Department of Education with the positions placed under a merit system. However, the pre—1927 incumbents were shifted over en masse and given civil service status; as late as 1949, three of the censors were these carryovers. Two more were appointed in 1943 by an examination and a sixth late in 1949. These officials are paid approximately $4500 to $5200, the highest of any state censor.

Requirements for the job are quite explicit and quite imposing. Not only must an applicant have a B.A. degree from a recognized college, but also four years experience in educational or social work or one year of this if the candidate has three years of graduate work in education,

¹. This information and the following is drawn from the New York Times, Nov. 27, 1949, II,4, and from a letter to the author from Dr. Hugh Flick, head censor, June 10, 1952.
journalism, sociology or romance language, or if he has three years travel or residence abroad, military service not included. Knowledge is required of history, literature, French, Italian, or Spanish. The applicant must have a thorough comprehension of movie laws and the "ability to interpret these laws in keeping with accepted standards of public morals and good taste and also in keeping with court decisions and rulings of the Attorney-General." Moreover, he must have "high standards of morality without tolerance; a good sense of justics; mature judgment, and good address, and the ability to deal impartially with motion picture producers and distributors without arousing antagonism."

Finally, certain physical requirements are specified.

The director of this group until recently, Dr. Hugh Flick, once reminisced on his entrance examination, providing the only published statement of what they are like.²

I can't say that my previous experience (state archivist) included much movie-going. I was in the habit some people have of trying to pick out the good ones and staying far away from the others. My special field was history, but I discovered that lack of experience in the film business was not disqualifying. After passing the five-hour written examination, I was grilled for two hours by a board set up by the Civil Service Commission. One question asked me was whether

or not I approved of film censorship. I answered that I didn't care for any kind of censorship, as the term is generally used. That statement didn't prevent my appointment, may even have helped.

Compared with other states, these requirements are models of clarity. From then one may infer that the position is not one to be filled by any "average" citizen or even by an "average" college graduate. Indeed, when the 1949 New York exam was held, 200 candidates applied for one job, of whom "in the top bracket of candidates [were] many who held master's and doctor's degrees."³ Although it is difficult to understand how the moral qualities demanded are as clearly tested as other, tests are possible for such fields as history, literature, etc. Clearly the concept of the task in New York is that it requires a very high intellectual competency and a substantial background in the liberal arts.

If these are the New York requirements of the task, what kinds of persons are selected? Dr. Flick, himself having served as a state archivist and risen during World War I from private to Lieutenant colonel, wrote the author,⁴

4. Letter to author from Dr. Hugh Flick, May 17, 1954.
Three...have been with the Division for a number of years (supra, 190) and bring to discussions...a point of view gleaned from long years of personal experience. Four...are fairly recent accessions and their experience and background is as follows.

One is beginning his doctorate work in psychology and has had a wide experience with foreign attitudes and customs through foreign residence. He is also, incidentally, one of the ranking chess players of the country. The next member...in order of seniority has spent the major portion of his experience in attending the courts of New York City on problems of juvenile delinquency. He brings to our discussions a very useful fund of information. The next member...has worked also with the City of New York but mostly in social welfare and truancy. His professional experience is also of extreme use. The last member...has worked with various radio programs and other forms of mass communication, more especially with the Voice of America in the preparation of foreign language broadcasts...This you can understand, is of immense benefit in understanding the real meaning of slang used in various fields.

Four members...are male and three female...there is a fairly good representation in regard to religious backgrounds including Catholic, Jewish and Protestant.

Thus there appears no discrepancy between the merit requirements and the qualifications of the New York censors. The high requirements have meant selection of those carrying the symbols of high status occupations and community experience; this, is, however, no more than to be expected from other government jobs with similar high standards of selection. There, as with these censors, such sym-
bols are significant in reinforcing the authority of their position; he who opposes the system is faced not only by the state's mark of legitimacy but the popular deference rendered to the occupational status and background of those who administer the system. This carry-over of status is an interesting example of what Talcott Parsons calls "lateral" movement within occupations or the "hiring away" from other groups in the same or closely related fields, a process which tends to accumulate status symbols. State and status are thus major bulwarks of New York's system of censorship and account largely for its resistance to abolition.

Elsewhere, political appointment prevails, even in Ohio where, as shown later, an element of merit is legally required. The Governor appoints these officials in Pennsylvania, Kansas and Maryland (here consent of the Senate also is required), while in Virginia the Attorney-General appoints. The laws of these four states specify that censors should be "well qualified" by education and experience; a Pennsylvania Board bulletin notes that


7. Some of these characteristics are drawn together for comparative analysis in Leo Litsky, Censorship of Motion Pictures in the United States, Ph. D. dissertation, School of Education, N.Y.U., 1947.
"the act does not require the Board Members to be learned in the law--but to have a good education, common sense and decency." For their work, these censors' financial rewards vary greatly. Kansas offers a salary range of only $2000-2400, Maryland $2400-3000, Pennsylvania $4500-4800, all below the salaries paid in New York.

Certainly the statutory requirements for the job are so generally worded that they place few limitations upon the kinds of people appointed. Pennsylvania censors provided extremely little information on this. A mimeographed memo was sent to the author, stating that "the present chairman [now resigned] was in governmental service prior to the appointment and had a unique background of governmental and business administrative record." One study of this group during the 1920-1930 period clearly indicates, however, that at that time the job had been

8. Relevant statutes are cited in Chapter III where administrative organization is analyzed.

9. Pennsylvania State Board of Motion Pictures Censors, mimeo (n.d.) sent author in answer to request for information.

10. New York salary figures from Dr. Hugh Flick (cf. fn. 1); Ohio figures from Ohio Civil Service Commission; Kansas figures from letter to author from head of censors, Mrs. Frances Vaughn, June 6, 1952; Maryland figures from Litsky, op. cit., (probably outdated, however).

11. Cf. fn. 9.
of the political patronage variety, subject to the shifting winds of state elections.\(^\text{12}\)

Queries to Kansas returned more complete information, which suggests another pattern of political appointment. Here, all three censors were women, described by the Chairwoman as follows:\(^\text{13}\)

One...is a newspaper woman, having owned her own newspaper plant for many years. Another is a club woman and the third is a housewife and Church worker. Two of the members are mothers and grandmothers.

Some amplification of these qualifications came to the author later.\(^\text{14}\)

One has been an editor and publisher of a newspaper for the past thirty years and still owns the paper, one has been active in a large Sunday school group and active in Church work and the third member is active in the Catholic Church and that church has a special interest in the cleanliness of films.

Here it seems that the selection process has been employed to provide a board which illustrates the use of appointing power to keep the peace. That is, it seems that members have been chosen who could bespeak those interests especially concerned with protecting the community from dangerous film content. All are women, whom we


saw in earlier chapters keenly supported the regulation; the newspaper representative brings in a person sensitive to community demands about morality and certainly the durch affiliations provide an awareness of the "special interest in the cleanliness of films." It is possible that the authority could have satisfied partisan patronage purposes in these appointments and could have "stacked" the board for a particular viewpoint; what seems more certain, however, is that his appointments have served to represent community groups concerned about film dangers to morality.

II. The Selection and Nature of Ohio Censors: 1913-1921

In the two periods of Ohio censorship organization discussed in Chapter IV, there were two forms of appointment; political appointment prevailed during the 1913-1921 period and civil service thereafter, although in the latter political considerations may have operated. Political influence as a factor in hiring and firing had its heyday in the early years, however, when the job was done under the Industrial Relations Commission. Then, all personnel were appointed and removed by the Governor.

James A. Maddox, censor for seven months during 1913, informs the author that he was urged to accept the job by Governor Cox; Maddox had been recommended by the state's
film distributors, being himself an exhibitor. Harry Vestal (1913 - 1915), another exhibitor from Ada, was similarly appointed. He resigned when the Censor Board refused him permission to go as a guest of a film company to California. Maude Murray Miller (1914-1920) and Charles G. Williams (1916-1920) provided the main continuity the old board had during those early years. Williams relates that Governor Willis, his former instructor at Ohio Northern University asked him to take the job as a special favor; the Governor said the board was the most troublesome of all his agencies and he wanted someone on it whom he knew well. Williams and Miller took turns being board chairman, depending upon which political party had its representative in the Governor's Mansion.

From the sketchy data available, we will present brief biographies from which we draw some tentative conclusions about composition and appointment of Ohio censors. To keep the personnel better in mind, the following lists them and their tenure:

Harry Vestal, 1913-15
James A. Maddox, 1913
Maude Murray Miller, 1914-20
Charles G. Williams, 1915-20
W. R. Wilson, 1914-17
J. S. Kinslow, 1919
Maurice S. Hague, 1917-20
Elinor Parker, 1921
Evalyn P. Snow, 1921-22
Harry Vestal had been a newspaper publisher and owner of two theaters in Ada, Ohio, and figure in that city's politics. He had attended Ohio Northern University around the turn of the century, seeking a degree in pharmacy. A prominent citizen of that time recalls that Vestal "was no Comstock. Vestal had no particular theory about movies if he had any at all. Ada people could see no reason why he was appointed." It is the belief of one person on the scene at the time that Vestal had purchased the local newspaper at the bequest of the local Democratic leader as a party organ; this informant conjectures that when the paper failed, the Democratic leader may have persuaded the Democratic governor to give Vestal the censor appointment as a form of compensation. It is certain, at any rate, that he was much more successful as an exhibitor.

15. This information is gathered in large part from a letter to the author from Wilfred E. Binkley, Ohio Northern University, who in turn obtained it from an old resident, the town's leading banker, Dana Welsh.


18. Cf. fn. 15.
JAMES A. MADDOX

Maddox, who was with the board for the last half of 1913, its formative year, brought to the group his experience as an exhibitor. Born in the small town of Hillsboro, he was 40 at the time of his service. Before entering the film business, he had worked variously as a newspaper man, apprentice in a shoe factory, magazine subscription salesman and freight checker on steamboats plying the Ohio River during the 1880's. When Governor Cox appointed him to the job, he was manager of the Colonial Theater in Columbus, the biggest in town, showing to a million people annually at fifteen cents a head. After his departure from the board, Maddox became one of Columbus' leaders, being a member of the city Board of Education, Rotary Club, Chamber of Commerce and local Red Cross, all of which he chaired at some time. He left the film business during the 'twenties to enter the insurance field; at present, retired, he dedicates himself to civic work.

MAUDE MURRAY MILLER

The figure of Maude Murray Miller emerges as that of a dynamic, energetic, outspoken feminist, a woman politi-
cal leader in the time when even woman suffrage was thought to be a daring idea. A Christian Scientist, she was born in a small Alabama town, a Mayflower family descendant. A B.A. graduate of Judson College, she was married twice, in 1884 and, when widowed, again in 1906; two sons were born of her. If one may assume that she was about 20 at her first marriage, she must have been in the 'fifties during her censor service.

Her activities were impressive. A contributor to leading magazines, Mrs. Miller worked five years on the Springfield Daily (owned by one time Democratic Governor Cox), before she moved to the Columbus Dispatch where she wrote the "Human Progress" column, urging social welfare measures particularly for women and children. Later, she was to be the "Betty Fairfax" or lovelorn columnist for fifteen years; before her death in the mid-thirties, she had become a member of the editorial staff.

As a result of her social welfare work, she was appointed at one time to the State Board of Women Visitors to all state institutions, corrective and charitable; it was at her urging that the Ohio Penitentiary inmates received a baseball diamond. At other times, she secured pardons for two women murderers, one from Governor Cox, the other from President Wilson. Her political connec-
tions, suggested above in her appointment, were strengthened by being a member of the "Democratic National Committee for Ohio." After leaving the censor service, she continued her work for the Dispatch but found time to become a trustee of the Columbus Children's Hospital, a member of the Big Sisters' Association, member of numerous women's clubs and a popular speaker throughout the state, what one source terms a "lecturer on sociological subjects." She also had business experience as director of the women's division of the American Bond and Mortgage Company. 21 If prior assumptions about her age are correct, she died in 1935 in her 'seventies.

She was a vigorous supporter of censorship. We have seen her role in strengthening the regulation in 1915 (supra, Ch. III). She was bitterly opposed to the National Board of Review; at one time she threatened a libel suit against one of its officers. 22

21. The author cannot accurately place all of these accomplishments in temporal sequence because his biographical sources furnished few such clues.

Mrs. Miller left a distinct impression among those who knew her, although the available views are limited in number. Mr. Maddox recalls her as "tempermental," Williams as an "officious," "primpy" Southern woman with whom he had many differences of opinion; although he thought her "brilliant," he believed she had "queer notions," such as permitting nudity in so-called "art films" but cutting heavily into the productions of Charlie Chaplin, whom she disliked. Former superintendent of Public Instruction, Vernon Riegel, remembers her best as a censor who "would sleep through many of the previews." Whatever the source, the image of Mrs. Miller that remains is that of the militant feminist, or, as her obituary reads, "writer, newswoman, politician and leader in projects benefitting women."

CHARLES G. WILLIAMS

Charles G. Williams was the other censor of long service on the old Board. Born a "farm boy" in 1884 near Coshocton, he finished only the third grade, yet studied for and passed his teacher's examination. For awhile he taught, in interim between being construction worker and later contractor; simultaneously, he continued study of the law at Ohio Northern University, whence he was gradu-

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23. Cf. fn. 17.


25. Personal interview with Charles Williams.
ated in 1909. For the next six years he practiced law in Coshocton, until called at the age of 31 into censorship service under circumstances related above (supra, 198). While on the Board, Williams, although critical of Mrs. Miller, cooperated with her in their energetic efforts to strengthen the law in 1915; it was he who drafted the amendments which put effective teeth in it and lobbied in the legislature to secure their passage. Leaving the Board in 1920, Williams entered the office of the Attorney-General; since then, he has been active in various departments of state government as a lawyer.

MAURICE S. HAGUE

The one member of the old Board with a national reputation was Maurice S. Hague, a nationally exhibiting landscape artist. He was born in the small town of Richmond, Ohio, in 1862 and educated in Columbus schools. After studying medicine for three years, he abandoned this for art, in which he educated himself. Following portrait painting and modeling until 1895, he turned then to landscaping, where he achieved his best known success in many national exhibitions. Unmarried, a Quaker, Republican, Mason and one of Columbus' best known public figures, Hague was appointed to the Board in 1917 and served through 1920; he was in his late fifties at this time. Such was the only artist Ohio censorship ever employed.
EVALYN F. SNOW

Very little background data were found for Mrs. Evalyn F. Snow, chairman of the division during the transition from Board to Division. Her published comments and the recollections of her colleagues leave a firm impression of a woman who strongly believed in the need for censorship and whose short career in censorship was most stormy.

Some of her belief in censorship is seen in her published statement which was to be used as evidence against Ohio censorship in that successful challenge over three decades later. Accompanying her deletion of a portion of a newsreel was a letter to the distributor, which read,

"We intend to cut out anything that reflects on the censor...The people are not the best judges of what is good for them. If they had been, censorship would never have been necessary. The people are not fit to judge for themselves. Statistics prove that only 10% of the people are thinking persons; 15% think part of the time and 75% never think at all. The fact that certain very objectionable and disgusting pictures, barred from Ohio, are permitted to show in the states which do not have censorship, proves the people are not the best judges."

27. The following is drawn from interviews with Riegel, Walden Bliss and Mrs. Edith Luethi of Columbus.

28. This appears in brief filed by Civil Liberties Union of Central Ohio before Ohio Senate committee considering 1953 repeal of Ohio censorship; it reappears later in Brief of Appellant in Superior Films, Inc. v. Hissong, 346 US 587 (1954).

If these were the earliest censors, what were their common and variable elements? Newspaper and film exhibition served for experience for Vestal, Maddox, and Miller, while Williams was teacher and lawyer, and Hague an artist. Characteristic of the era, all were either born or raised in small communities. Their education varied from Miller's college degree through Hague's partial medical training down to the odd combination of Maddox and Williams whose formal schooling was extremely limited, yet who transcended this later in life. The same variation appears in their ages; Williams in his 'thirties, Maddox in his 'forties, Hague and Miller in their 'fifties. All but Hague were married. All were Protestant; Miller a Christian Scientist, Hague a Quaker and Williams a Disciple of Christ. If censors should be versed in the arts, this group was untypical, for only Miller and Hague could qualify. All seem to have been very active in community activities, thus bringing to the censor service the consequent symbols of status.

Nor is there any particular pattern to their method of appointment, unless it was the likelihood of having been appointed by a Governor of their political persuasion. We see that some's appointment fulfilled each of the reasons for appointment hypothesized earlier, but no single pattern emerged. Maddox and Hague may have
been selected to represent particular community views, Maddox the film people's and Hague the artist's. Miller seems to have been appointed on patronage grounds, although her training made her representative of significant community values. Williams was brought in to restore peace in the agency, while Vestal's choice may have been a combination of paying off a political debt plus representing a particular view, the exhibitors.

Thus the early censors with their middle class background, influential political friendships and community status were above the "common man" level of their time. Occupationally, most seem to have been "communicators," whether through the formal media of communication, such as theater, newspaper and art, or through informal positions in the community where their ideas were more likely significant in moulding its values and opinions. This combination of factors leads the author to believe the best designation of the early censors is "cultural leaders."

III. The Selection and Nature of Ohio Censors: 1921-1955

The sweeping changes of Ohio's administrative reorganization in 1921 brought the censors under the Department of Education and placed their position on a classified basis. At this time, Mrs. Snow was chief censor; following description of the 1921 test is drawn from interviews with Riegel, Bliss and Luethi.
she had appointed two assistants for temporary work subject to a civil service examination within 90 days.

As for so many other offices in Ohio state government at that time, Ohio censorship had to devise a merit examination. Superintendent of Public Instruction Vernon riegel asked his assistant, Walden Bliss (now executive secretary to the Ohio Educational Association), to prepare such an examination. In the memory of the two who passed it, Miss Susannah Warfield and Mrs. Mary Edith Luethi, it was a psychological aptitude test—termed a "bug test" by Mrs. Luethi, plus questions on what they would censor from a battery of paintings, statues, and films. For these two $1800 jobs there were "forty to fifty" applicants; despite the experience of former censors also applying—which counted as part of the score—Warfield and Luethi found themselves on top, not only to the surprise of Mrs. Snow who vehemently protested their appointment, but also to the ladies' surprise; Mrs. Luethi believed there were probably never two people less "qualified" by any criteria for the work.

After that time, three others held the classified position. The author was not permitted access to civil service records to determine whether they took the examination or even what it was. At least three others have
aided in censoring without holding the position. Riegel recalls that his assistant Bliss helped on occasion and that a chief clerk in the Division of Film Censorship, Mrs. Charles Williams, wife of a former censor, was employed by Luethi and Warfield in their early days for judgment in censoring. Also, beginning in the 'forties, Howard E. Hamlin sat regularly with the two official censors, although he was actually on loan from another division of the Department where he held a different classified title.

A final aspect of the merit factors in Ohio censorship may be viewed in Appendix I, where we find the official job description. This is a statement of "essential knowledges, abilities and skills" and other qualifications as listed in the Ohio Civil Service Commission records for the position "Motion Picture Censor I" and Motion Picture Censor II." The latter is the title of the last chief censor, Miss Warfield, and the former that of the assistant, Mrs. Ruth A. Hornbeck.

These job descriptions suggest several functions performed by Ohio censors. Purely administrative or supervisory functions were performed by the chief censor, i.e., "supervises a small group of censors of lower grade and other technical employees." Second, as is obvious, the censors must censor, i.e., "views motion pictures to be
publicly exhibited and analyzes them for compliance with state censorship laws and policies." Third, the censor is asked to be aware of and sensitive to the community in which he operates. Thus,

- Maintains extensive contacts with motion picture representatives and interested citizen groups regarding the interpretation of the law.

- Extensive knowledge of standards for the review of motion pictures for cultural and moral content.

- Considerable knowledge of Psychological factors relating to motion pictures.

- Ability to predict the reaction of the public to the decisions of the office of censorship.

- Maintains contacts with motion picture representatives and public groups with respect to censorship problems and in an effort to determine public attitudes toward specific films or certain types of films.

- Analyzes and interprets public opinion as it relates to censorship, holding conferences with various representative civic groups to determine attitudes toward different types of films, with respect to their acceptability in terms of public opinion.

- Reviews magazines and other publications of the motion picture industry to keep informed on trends of the industry, reports of Censor Board action, etc.

- Ability to meet the public.

This large amount of consideration given to such public relations qualities should not be surprising if one remembers that the censorship was created and is allegedly maintained in order to protect community moral standards.
Analysis of the post-1921 censor indicates two types, (1) the civil service classification of "motion picture censor" who does the work-a-day job, and (2) the Superintendent of Public Instruction, who, as head of the parent Department of Education, is *ex officio* head of the Division of Film Censorship. Data on these types are uneven. The newer censors, unlike the pre-1921 kind, were extremely reluctant to reveal to the author any information about themselves; because of past experience they were sensitive to the possibilities of such data being used against them. Information on the Superintendents, however, is much more abundant because of published biographies.

We may begin our analysis with the censors. The following were regular censors after 1921: Susannah W. Warfield (1922-1955); Mary E. Luethi (1922-37); Roy Reichelderfer (1937-40); Ruth Curry (1941-44); Ruth A. Hornbeck (1945-55), and Howard E. Hamlin (1949-55).

**Susannah W. Warfield**

The last head censor of the Division represented over 30 years' experience in film censorship, a record probably not approached in any other state. Miss Warfield refused to divulge anything of her background beyond the fact that she was graduated from Ohio State University, where she majored in home economics. A newspaper edi-
torially opposed to film censorship pictured her in a news interview, after the 1953 struggle, as follows:

A spinster nearing 60, Miss Warfield is a Puritan. Period...Miss Warfield does not drink, smoke or run around with men. She does chew gum. She does not have a television set in the apartment where she lives alone and likes it.

A serious, slender woman with sharp brown eyes and hair that is turning grey, Miss Warfield has spent better than half her years not going to the movies but having the movies brought to her...She takes her job seriously. It is her whole life in fact. She firmly believes that it is her duty to see to it that no movies are shown in Ohio that would lead a single child astray.

Miss Warfield has no hobbies and no pets. She goes home in the evening, listens to the radio and reads a little. She likes traveling and thinks Florida is an elegant state. She is eligible for retirement in the state system but she has no intention of doing so. She likes her work.

The snide nature of this article suggests why censors are reluctant to talk much about their work or themselves. Possibly it contains some insight into her nature.

Mary Edith Luethi

Mary E. Luethi entered the service with Miss Warfield in 1922. She was graduated from Ohio Wesleyan University with a B.S. degree in education. Dissatisfied after a year of teaching in Ashtabula, she worked a short while in an insurance company, until she heard of the censor


32. Following from personal interview with Mary E. Luethi.
examination, which she took and passed as described earlier. After her departure in 1937 from the Division, she then married and is at present an administrative official in the School of Dentistry at Ohio State; she has not seen half a dozen films since she left the Division.

Howard E. Hamlin

Howard E. Hamlin, one of the last three censors also had a teaching background. Now probably in his 'sixties, Hamlin was also graduated in the early 1910's from Ohio Wesleyan with a B.S. in education. Even before attending college, however, he had taught in secondary schools. Leaving OWU, Hamlin went to Harvard University for his M.A., whence he moved in 1915 to Simmons College as an instructor in Biology. In the intervening years he taught in various universities and public school systems, coming to the Division of Public Instruction in the Department from the Ohio State University. From here he moved in 1949 to the Division of Film Censorship; however, he still was classified for a position in the former division. He said his community activity was extremely limited (he does work in a garden club) and professed no political activity—"none of that stuff for me."

Despite the author's many efforts in many places, this represents all the information he could secure on the

33. Following from personal interview with Howard Hamlin.
social composition of the regular censors. Reichelderfer and Curry were unavailable for interview, and no other sources provided such information. One of the last censors, Mrs. Hornbeck, refused to grant an interview.

For the Superintendents of Public Instruction, however, there was available much more information, drawn from various Who's Who sources. As we have seen in Chapter IV, this ex officio head of the censors was significant in deciding when highly controversial film would be banned or heavily deleted; this role requires inclusion here of their background. The following were the officials involved: Vernon M. Riegel (1920-27); John L. Clifton (1927-31); Beverly O. Skinner (1931-35); Edward L. Bowsher (1935-37); E. N. Dietrich (1937-41); Kenneth C. Ray (1941-45); and Clyde Hissong (1945-54). The striking similarity in background of these men suggests that instead of individual description, we abstract the elements of similarity and difference for comment. For more detail, reference can be had to the published biographical sources.

Although one might expect a considerable turnover

in this office subject to political appointment, there has been little because of the fixed four-year term of the office and the two-year term of the Governor. Only one had any overt political activity; Ray was a GOP member of the legislature from 1928 to 1932 and is now a member of the State Central Committee of the party. Ray was the only Republican, but he and four other Democratic officials served terms under Governors of both parties; Clifton and Bowsher did not. One source informs the author that political reasons prevented renewal of the terms of Dietrich and Ray only; failure to renew in other cases was because the rest left for better jobs. Possibly the factor of politics has been restrained by the legal barrier to appointment and the element of professional competency. The turnover has been caused primarily by the opportunity for better jobs; the low paying job—only $7500 until very recently—made it merely a stepping stone to more remunerative professional jobs.

35. Personal interview with E. B. Hawes, friend and colleague of these superintendents, Granville, Ohio

36. The Governors involved were the following: Harry Davis, elected 1920 (GOP); Vic Donahey, elected 1922 (Dem.); Myers Y. Cooper, elected 1928 (GOP); George White, elected 1930 (Dem.); Martin L. Davey, elected 1934 (Dem.); John Bricker, elected 1938 (GOP); Frank Lausche, elected 1944 (Dem.); Thomas Herbert, elected 1946 (GOP); Lausche, elected 1948 to 1956.

37. Cf. fn. 35.

38. Idem.
Indeed, the picture these superintendents present is that of the professional educational administrator. From Riegel to the latest official, the number and rank of degrees earned had increased, the last two having the full complement up to the Ph. D. All obtained their secondary education, teaching training and administrative experience in small Ohio towns. Most at one time held teaching or supervisory jobs in the county school systems. Clifton and Hissong had taught previously in college, Skinner had been president of Wilmington College and Bowsher trustee at Bowling Green and Kent State Universities.

More intimate personal characteristics are lacking, which is unfortunate, for these would provide more significant insight into their censor interpretation than official biographies. Skinner, Bowsher, Ray and Hissong (he twice) were married and with children. Their age, at the mid-way point in their service, was what is generally termed "middle-age;" Clifton was 48, Skinner 58, Bowsher 46, Ray 42 and Hissong 57. After leaving the office, most continued in their professional field. Clifton and Skinner are now dead; Riegel operates a teacher placement service in Columbus; Bowsher is superintendents.

39. Clifton had a B.S.; Skinner a Ph. B. and M.S.; Bowsher a B.S., M.A. and LL.D.; Ray and Hissong, B.S., M.A., and Ph. D.
40. Cf. fn. 35.
41. Idem.
tendent of schools in Toledo; Dietrich is president of Bliss Business College in Columbus; Ray, a state political leader, is working abroad for the federal government at last count, and Hissong returned as professor of education at Bowling Green.

Such then are some personnel characteristics of the post-1921 Ohio censor. He has been characterized by these features: longer service, reflecting both civil service tenure and professional requirements; greater background in teaching and educational administration, reflecting censorship reorganization under the department; a larger amount of education, civil service and professional requirements, and seemingly less political pressure in tenure than the censors of the older Censor Board. Yet this educational experience has not brought to Ohio any censors trained in the arts or aesthetic judgments. But, like his predecessor, the post-1921 specimen did come from that upper-middle class element loosely termed "communicator." While the superintendents continued the earlier characteristic of active community relationships, the regular censors indicated little of this. In a real sense, the regular censors' activities reveal that the job was a consuming one, accompanied by the development of skills by which they sought to make their task more mechanical. Whereas the earlier censor
may have had a clearer picture of community norms from his intimate acquaintance in group contacts, the later one was more given to calling in such groups occasionally for highly controversial pictures. Here, too, the role of the superintendent may have been very significant; his extensive community contacts may have given him the awareness of community demands which he could bring to bear upon the occasional controversial film brought to him for decision.

What does this post-1921 description tell us about the use of appointments? Civil service would seem to restrict the merely political appointment. However, although it is clear that in 1921 Misses Warfield and Luethi entered the service under a merit examination, there is a great deal of vagueness about whether that test was ever used again; the author's efforts at verification were met by evasion by the censors then in office and by the silence of the Civil Service Commission. In light of this uncertainty, it is not clear whether the introduction of civil service restricted the force of politics in censorship appointment in Ohio.

IV. Conclusions: Subjectivity and Personnel

We have here examined available data on the practices employed in the appointment of censors and on the social composition of such people. We must now consider how
such information contributes to this research. The following observations, it must be constantly kept in mind, are drawn from limited data; at best they represent hypotheses based on suggestive sources and are to be employed, not as statements of fact, but as ideas indicating the need for further research. How may we approach the data we have reviewed?

One way would be to examine the stereotype concept of the censor. This view describes him as a "Puritan," "middle class" official who, with missionary zeal, is determined to protect the public from its basic instincts by "legislating morality." Around this view ranges a veritable blizzard of charges and counter-charges which dims if not blocks verification. Illustrative of the difficulty of ascertaining an understanding with this outlook are the sets of contradictory data in the author's experience which bolster both sides.

Supporting the stereotype are some censor statements urging the need and rightness of their job; the statement of Mrs. Snow (supra, 205) about the inability of most people to think illustrates this, while other state censors have spoken similarly. It might be argued in sup-

42. Examples of this censor belief may be found in the following: J. R. Rutland, State Censorship of Motion Pictures, 129, 163-4, 29, 36; Terry Ramsaye, A Thousand and One Nights, 485; source cited in fn. 2; statements of Mrs.
port of the stereotype thesis that belief in such need and rightness must be a prerequisite for the job. Some of the actual deletions analyzed in the next chapter seem to support the narrow moral views usually ascribed to censors.

On the other hand, evidence appears to challenge this case. Some of the censors known to the author have not fitted this picture at all; some have questioned even the need for censorship, as did Clyde Hissong, Superintendent of Public Instruction until 1954, who during the 1953 legislative battle privately wished success to the sponsor of censorship repeal; all censors inform the author they are willing to alter some of their decisions if distributors can convince them. This willingness to modify their views hardly fits the view of the censor as a narrow, rigid personality; there is some evidence that censors are willing to change their general interpretations when community norms change.43 Nor do the censors

seem tightly bound to any particular group's concept of morality, for from a number of states there has come to the author censors' denials that they are spokesmen for any one group.

The author sees two areas in personnel practices in which the subjective element of censorship is demonstrated. One lies in the inherent difficulty in prescribing qualifications for the job and the other lies in the relationship between the censor and the community.

How does one measure fitness and competency in the position of film censor? One criterion employed elsewhere is efficiency, i.e., does the official do his job well? How to measure that for the censor? Possibly volume of work might be one measure. In the author's experience, he found Ohio censorship a full 40-hour week job. Despite film officials' complaint that the censors can't be working all the time (their claim is the volume of films cannot possibly be handled in their work week), the author can only note in his two weeks intensive observation of the Ohio censors he never found any idleness.

Such a measure of competency really measures only quantitative things. Are there measures of quality of work? Here the answer becomes most difficult. One may evaluate the quality of work of a government typist or
chemist, but how to censor a censor? New York's standard of competency required for securing the position is academic proficiency and certain general moral qualities, the latter repeated in other states; New York's exams are pitched to the academic and aesthetic. Yet, one must ask, is such a test valid and reliable? Is one literate in the arts any better censor than a high school graduate? Does an examination of aesthetic judgments really measure competency of the potential censor? These questions, vague in themselves, raise even further and less answerable questions, because they point to a basic problem in all censorship—and in all questions of the use of power. Who should be a censor? Academic degrees adorning the end of a censor's name may seem to some an admirable quality for the official to have, but it must be remembered that his values do not necessarily represent those of the community—the community which the censor is ostensibly representing in his official duties.

In this fashion, the nature of film censorship affects the requirements of the job. Given the indefiniteness of the standards of discretion, the job requirements become difficult to state explicitly. In turn, the qualities of the items desired in censors become likewise dif-

Illustrations of such modifications may be found at Ohio Department of Education, Progress Report, 1943, 12; Columbus Citizen, Oct. 10, 1947; op. cit., Jan. 24, 1954; and statement by Williams in McGarey article cited in fn. 43.
ficult. Finally, given these problems of lack of clarity, it becomes a very difficult thing to measure competency in the censor's operations, aside from the purely quantitative measures. Taking for granted that one has appointed the censor who clearly fits the clearly stated job requirements (an assumption this research suggests is not tenable), how does one measure the quality of his performance, how well is he exercising his discretion? If the censor is to bar the "immoral" and there is clear understanding among all concerned (courts, higher agency officers, interest groups, etc.) as to what "immoral" means, then one can measure performance. If the censor bans as "immoral" what all others know to be not so, he is performing poorly. Provisions for administrative and judicial appeal would seem to implement such measurement.

But, as we suggest throughout this work, if the terms of discretion are multi-meaning, how can one claim a censor is performing poorly when he needs merely to state he regards a film to fit within his standards of discretion? The available evidence suggest to us that the facets of merit system applicable elsewhere in government operations are not applicable to the process of film censorship. We think of crucial relevance in making this point the fact that the exercise of discretion, which in other public administrations frequently fits poorly to
a merit system, is even less compatible in film censorship, where the standards of such discretion are so poorly defined.

Even if one could establish a merit system based on meaningful requirements, then another problem arises, that of the tenure which is the usual accompaniment of civil service. Given that details of community morality will change through the years, is it "efficient" to have censors who can make a life-time career of translating community values into public policy? If one accepts the view that individual values are set early in life, is it possible that Miss Warfield with her three decade tenure had altered her official values in accordance with the community? She states that she did alter her views with changing times; even so, how can one be sure that her view of what changes the time demands are what the community demands? If this danger is a real one, and if one is to have censors, rotation in office might be of great value; it might offer greater opportunity for censor values to reflect those of the community.

Another aspect of censor appointment where subjectivity enters derives from the social composition analysis made earlier. We suggested in the last chapter that imprecise standards require specific definition by the censor and in Chapter III on censorship origins that cen-
sors looked for definitions from those who supported censorship. Objectivity in this process might be had if three conditions could be met: (1) the censors held no values; (2) the community held homogeneous, exact values, and (3) the censors accurately perceive such community values. Under these conditions, the censors would be an administrative phonograph, playing back the community demands. We suggest that none of the conditions exist, and consequently little objectivity exists.

First, to imagine that censors hold no values is to engage in fantasy of the most improbable kind. The social composition analysis clearly indicated that censors bring to their job a complete baggage of values, differing among themselves as their origins and training may differ. Indeed, among the requirements for the job are certain vaguely stated "moral" requirements, themselves an admission that censors, too, are human, with all the value structure that implies.

Secondly, is the community so homogeneous and its values so exact, thereby making the censor's job more precise? If it were, the censors despite their own values, would have to carry out these community norms. But the bulk of work on the nature of American society
done by the social sciences has pointed to the prevalence of pluralism.\textsuperscript{44} Even such a significant work as David Riesman et al in \textit{The Lonely Crowd}, while pointing to certain patterns of conformity, has not ignored the co-existent diversity. When the community speaks to the censor he hears no single voice but a babel of many tongues.

These two factors thus inhibit greatly the censor's effort to perceive accurately this community morality. Given this variety, the task of the censor, if he is to escape the criticism of subjectivity, must be to define the significant groups with which to identify "community" morality; note that Ohio's job description (Appendix I and \textit{supra, (210)}) refers to the censor's duty to know what the public expects. Yet the values of groups differ; we have seen this in the 1953 legislative struggle (\textit{supra, Ch. III}) where religious group spokesmen differed on the desirability of censorship itself; former Ohio censor Charles Williams tells of a group of ministers quarreling bitterly over the morality of a film about which he had asked their opinion.

The censor is thus left with the problem of identifying significant groups in the community, and his decision must reflect some of his own values. If he does not like Catholics, will he consider their values significant when they differ with his? Too, subjectivity arises because the censor must make many decisions on which groups have no particular pronouncement; the author knows of no morality group which defines when a kiss is too long and a dress is too short. And yet, as the next chapter will show, this kind of detailed value judgment constitutes the bulk of his work. All of this suggests that with no community dictates before him, the censor must apply discretion in the job; thus the possibility is increased for personal values to be translated into law. To the degree this exists, to that degree is film censorship operating on that end of the continuum of administrative regulation we have termed subjective.

The differences among the censors' values, the diversity on the community morality they are to translate, the semantical and mechanical problems of perceiving morality of significant groups—all of these combine to make film censorship something more than merely a mechanical playback of the morality of the community at large. True, this does not mean that he is uninfluenced by the community. After all, he was trained in some group's values.
Also there are certain specific limits on the censor's values by the community; nudity, fornication and atheism trangress those limits, for example, and the censor cannot permit these, whether he likes nudism or not. No such common agreement exists in the vaster area of film content with which he must work. In that area the censor may be roaming at will as his values may direct.

Lacking agreed upon data with which to work, lacking reliable and valid tools of measurement, the censor appears not as the stereotype so much, but as a variable creature, moved at times by broad community tabus, at other times by narrow group demands but in the main by his concept of what morality demands of the motion picture; such a definition must necessarily differ among the censors. Such freedom given to these people, differing in background and values, suggests that the results of censorship may differ among the states and probably among the censors on the same board. The time has come to examine the nature of actual material deleted from the screen by censors. We have seen the matrix within which the regulation operates, its history, structure, standards and personnel. What can we find about what the censors really do?
STATE FILM CENSORSHIP
WITH PARTICULAR REFERENCE TO OHIO
VOLUME II

DISSERTATION
Presented in Partial Fulfillment of the Requirements
for the Degree Doctor of Philosophy in the
Graduate School of the Ohio State
University

By
Frederick Marshall Wirt, B.A., M.A.

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The Ohio State University
1956

Approved by:

[Signature]
Advisor
CHAPTER VI

Analysis of Selected Material Deleted by Film Censorship

This chapter analyses the material actually deleted from motion pictures by state censors, particularly in Ohio. This analysis searches for the kinds of values expressed in the deleted material and seeks to determine whether these values are uniformly interpreted among several states.

I. Sources and Methodology for Deletion Analysis

Source material here is drawn from industry records of actual eliminations by censors in Ohio, New York, Maryland and Pennsylvania in the post-war years; further data, although incomplete, reveal these states' activity before that era. Although Ohio's censors offered substantial information on structure and operation, they would not permit scrutiny of their deletions, an attitude not restricted to Ohio. New York's chief indicated why:¹

"...the precedent was established many years ago that the product which we process is in reality the property of someone other than the State...I presume that this also was originally established in order to protect the vested interest of the owner of distributor of the films which might be jeopardized by any public statement on the part of the State.

¹ Letter to the author from Hugh M. Flick, June 10, 1952.
A further explanation is possible. When, in 1933, the New York censors permitted the National Council for Freedom from Censorship to analyze 15 months of deletions, the public report "was so damning and resulted in so much derision at the expense of the censors that the lid came down with a bang and since that time all requests for information have been refused."²

From industry officials the author obtained data on Ohio censorship for the period from Jan. 1, 1948, to mid-1951. Sometime later, he was permitted by the MPAA to analyze records from New York, Maryland and Pennsylvania for the same period.³ Further materials have been drawn from previously reported, partial summations of censorship and several annual reports of censors themselves.

These industry-donated records consist of weekly reports issued by the state censor bodies, an example of an Ohio report being found in Appendix 1. Each


3. Persons providing both the Ohio and the remaining three states' records have asked that they not be named here, for fear of possible censor retaliation against them.
report runs to one or more pages. The example in Appendix I reveals the various alternatives of action possible to the censor: approve completely, eliminate sections, add to or subtract from earlier eliminations, completely reject a film or revoke an earlier approval.

To abstract from these reports the formats and subjects which censors acted upon, a tally sheet was employed, listing in some detail the various ways in which a film might violate censorship standards. This list was drawn from the industry's Production Code, which also regulates film content. The data gained from such tabulation were further subdivided into headings of "feature" and "short" and into "American" and "foreign" film. This organization provided information on the subject matter, format and origins of material censored.

The topical headings employed are in most cases self-explanatory. For instance, "Murder Techniques" refer to deletions where the objection seemed to be the suggestion to someone in the audience how he might do likewise; the objection to "Brutality" seemed to be the cultivation of callousness; "Unessential Passion" was tallied only when the censors so commented. "Comments on American Value
Structure" seemed to be unfavorable or cynical references to certain values cherished in our system.

In compiling the data shown in Appendices II - VII, every cut of a sentence or less of dialogue was tallied and entered into the appropriate column for length, origin of film and topic of deletion. When the censor ordered particular action deleted, that was tallied as many times as a different action was proscribed. Thus, in the sample weekly report in Appendix I on Page 3, heading "Reel 5-A," the deletions in the first sentence are 5 actions and 3 lines of dialogue that were entered under the "Feature: Foreign" column and on the line for "Immorality: Seduction;" the last is chosen because the sense of the deletion seems to be a first sexual intercourse for the couple; otherwise, the entry would have been "Obscene: Reference to Intercourse."

Several limitations of the data must be indicated. First, not all the weekly reports for these states were included in the records analyzed, because they were missing. Ohio's reports have 20.5% of the weekly reports missing, New York 26.2%, Pennsylvania 28.6% and Maryland 21.6%. Secondly when comparing
these states, one must recall that the time periods of the analysis were not the same; the actual periods were,

<table>
<thead>
<tr>
<th>State</th>
<th>Time Period</th>
<th>No. of Weeks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio</td>
<td>Jan. 1, '48 - May 19, '51</td>
<td>146</td>
</tr>
<tr>
<td>New York</td>
<td>Jan. 1, '49 - Mar. 31, '52</td>
<td>124</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Jan. 1, '49 - Mar. 3, '52</td>
<td>120</td>
</tr>
<tr>
<td>Maryland</td>
<td>Jan. 1, '49 - Apr. 30, '52</td>
<td>135</td>
</tr>
</tbody>
</table>

What is available, however, represents a preponderant majority of the time period and, it seems likely, a similar majority of their work.

A third limitation arises from the fact that a deletion indicates only the frequency with which a subject was censored. Another index would be the amount of film footage cut out; but that information was not included in the reports. A cut for a "Seduction" scene may receive only one notation even though

4. The missing weeks are for Ohio as follows: 1948 (Feb. 14, June 12, Oct. 23, Nov. 7, Dec. 4); 1949 (Feb. 12, 19, March 12, April 1, 16, May 14, 21, June 4, 11, July 30); 1950 (Feb. 4, March 11, 18, April 1, 8, July 15, Sept. 9); 1951 (March 10, May 12). The missing monthly reports for Pennsylvania were not recorded. For Maryland: 1952 (only January through April were available); 1951 (Months of December, March and April were missing); 1950 (missing were Feb. 23, March 10, 17, 24, 31, April 14, 21, May 19, 26, June 1, 9, July 7, Oct. 1, 8, 15, 29, Nov. 3); 1949 (missing were June 17, July 8, 15, Dec.). For New York: 1952 (only Jan. through April were provided); 1951 (Dec. missing); 1950 (only June, July, Oct. Nov., and Dec. provided); 1949 (Aug. missing).
it represents a large percent of the footage; another single "Seduction" gets the same notation although only a smaller footage is cut. Thus a cut represents an incident, not space. Similarly, a frequency index is no index of the quality or intensity of the censors' feeling about each cut. Did the decision to delete hang for a while in balance, close to the line, or was it a clear case, easy to decide? No such index is available from these, and, one suspects, from any data of censor activity.

A fourth limitation arises from the vagueness of censors' statements describing material to be deleted. In some cases, as in the example report of Appendix I, Page 4, heading "Reel 3-A," the censors ordered dialogue cut between one point and another; this gives no indication of the exact nature of the deletion or how many scenes or lines of dialogue are involved. Fortunately, this represents only 0.9% of all deletions analyzed; nevertheless, it makes for a corresponding difficulty in classifying and tallying some of the deletions. When a vague murder deletion is ordered, should this be tallied under "Murder: Technique" or "Murder: Brutal Killings?" When a vague reference is to fornication in some fashion, should it be listed as
"Immorality: Seduction" or "Profanity: Obscene - Reference to Intercourse?" When the report of deletions is vague, classification becomes difficult.

In working these data, the author felt he was developing consistent criteria for such difficulties, although he warns that these inclusions, like many others, rest on his own subjective evaluation; another analyst might devise somewhat different topics and placement for specific cuts. This possibility, however, would in all likelihood develop much the same pattern of censorship for sex and crime.

With these explanations we can now turn to a quantitative and qualitative analysis of censorship activity with emphasis upon Ohio. The direction of this analysis is exposition of (1) the general pattern of Ohio censorship from its earliest to latest years, with emphasis upon films reviewed, deleted and banned per year, (2) specific material and formats censored in Ohio during the period from 1948 to mid-1951, and (3) comparative analysis of Ohio with three other states during roughly the same time.
II. Film Deletions: Quantitative and Qualitative Analysis

A. General Analysis of Ohio Censorship, 1916-1950

The reports of Ohio censorship require different forms of presentation for successive time periods. Materials for the years 1916 - 1919 show the number of reels censored; other reports used the complete film as the basic unit of work. A table of these data will prepare the way for graphic analysis and comment. (See Table I).

The striking feature of this table is the last column, which indicates the percent of banned or deleted films in the total of all films reviewed. The year 1916 revealed a great amount of objectionable film material followed by a surprising decrease in a few years; by 1919 the amount of such material had decreased by two-thirds. Several explanations of this may be offered.

During this time there was a great turnover of

5. The 1916 report is from NBR File, "Statement of Films Censored During Twelve Months from July 1, 1915, to June 30, 1916, Inclusive," Ohio Board of Censors, n.d. The 1917 report is from Revd. J. J. Phelan, Motion Pictures as A Phase of Commercialized Amusement in Toledo, Ohio, 64, being copy of a letter from Censor Charles Williams to Phelan. Date on 1918 is idem. 1919 data from NBR File, letter from Maurice Hague, censor chairman, to the National Board of Review, Sept. 18, 1919.
## TABLE I

Performance Report of Ohio Film Censors, 1916 - 1919

<table>
<thead>
<tr>
<th>Year Ending June 30</th>
<th>Approved Reels</th>
<th>Approved Films</th>
<th>Deleted Reels</th>
<th>Deleted Films</th>
<th>Banned Reels</th>
<th>Banned Films</th>
<th>Reviewed Reels</th>
<th>Reviewed Films</th>
<th>Bans &amp; Cuts</th>
<th>% of Total Bans &amp; Cuts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1916</td>
<td>21447</td>
<td>9273</td>
<td>9204</td>
<td>6248</td>
<td>616</td>
<td>293</td>
<td>31267</td>
<td>15814</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1917</td>
<td>20798</td>
<td>7918</td>
<td>7918</td>
<td>291</td>
<td>291</td>
<td>29007</td>
<td>26905</td>
<td></td>
<td>31.4%</td>
<td>41.3%</td>
</tr>
<tr>
<td>1918</td>
<td>22472</td>
<td>4295</td>
<td>4295</td>
<td>138</td>
<td>138</td>
<td>26905</td>
<td>26233</td>
<td></td>
<td>28.3%</td>
<td>16.4%</td>
</tr>
<tr>
<td>1919</td>
<td>23319</td>
<td>2791</td>
<td>2791</td>
<td>123</td>
<td>123</td>
<td>26233</td>
<td>26233</td>
<td></td>
<td>11.1%</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>88036</td>
<td>24208</td>
<td>1168</td>
<td>113412</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>22.3%</td>
</tr>
</tbody>
</table>
censors, as we have seen; possibly this decline could reflect different personal standards. However, Mrs. Miller and Charles Williams chaired the Board then, probably providing more continuity and consistency of standards of interpretation than the data on turnover suggest. Another explanation of this decline may be that the movie-makers of the particularly offensive film were scratching Ohio off their circuit; again, it might have been that movie makers were beginning to take more heed of the demands of this and other groups of censors and so conform their product to these moral norms. Still another explanation may be that by the postwar year 1919 the censors were hardened or tolerant toward much that seemed offensive to the prewar mores of 1916.

The next series of data is drawn primarily from annual reports of the Division and records of detailed eliminations during the 1948 - 1951 period. 6 Employing the complete film as the unit

6. This series of data is limited by the absence of a number of annual reports, which were never issued in the report of the Dept. of Education. Repeated inquiries to censors and Department officials produced no explanation of this; its cause seems buried, probably in some technical, administrative reason.
of censorship, we may see the volume of censorship activity in Ohio from 1924 to 1950.  

(See Table II.)

Tables I and II are presented graphically in Figure I. Its general pattern is a downward trend in volume of censorship despite several peaks of later, increased activity. The great percentage of material cut in 1916 represents the new broom sweeping clean. This was the first full year after passage of the amendment making the law affect distributors, and, as a censor of that period informs the author, the Ohio Board had waited until that amendment passed before going to work. In that year, they were dealing with the type of picture which had occasioned the rise of censorship, so that it is not surprising their volume of work was large. Whether the backlog of objectionable films was cleared

7. 1948 and 1949 data are from Division's weekly reports, described above and analyzed in detail below; some weeks are missing (supra, fn. 4) thereby accounting for the "approximate" label. Data for other years are from annual reports of the Dept. of Education, variously titled Ohio School Reports, Progress Reports and Annual Report to the Governor.

8. Information from Charles G. Williams, father of the amendment.
TABLE II
Performance Report of Ohio Film Censors for Selected Years, 1924 - 50

<table>
<thead>
<tr>
<th>Year Ending June 30</th>
<th>Films Approved</th>
<th>Films Deleted</th>
<th>Films Banned</th>
<th>Total Films Reviewed</th>
<th>% of Total Films Banned and Deleted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1924</td>
<td>2061</td>
<td>409</td>
<td>16</td>
<td>2485</td>
<td>17.2%</td>
</tr>
<tr>
<td>1925</td>
<td>1909</td>
<td>518</td>
<td>13</td>
<td>2470</td>
<td>22.8</td>
</tr>
<tr>
<td>1927</td>
<td>2245</td>
<td>230</td>
<td>2</td>
<td>2677</td>
<td>16.1</td>
</tr>
<tr>
<td>1930</td>
<td>2806</td>
<td>399</td>
<td>28</td>
<td>3233</td>
<td>13.2</td>
</tr>
<tr>
<td>1931</td>
<td>2002</td>
<td>279</td>
<td>15</td>
<td>2296</td>
<td>12.9</td>
</tr>
<tr>
<td>1932</td>
<td>1819</td>
<td>320</td>
<td>8</td>
<td>2147</td>
<td>15.3</td>
</tr>
<tr>
<td>1933</td>
<td>1346</td>
<td>352</td>
<td>10</td>
<td>1708</td>
<td>21.2</td>
</tr>
<tr>
<td>1934</td>
<td>1098</td>
<td>239</td>
<td>18</td>
<td>1555</td>
<td>29.4</td>
</tr>
<tr>
<td>1935</td>
<td>1559</td>
<td>202</td>
<td>9</td>
<td>1770</td>
<td>14.9</td>
</tr>
<tr>
<td>1936</td>
<td>1882</td>
<td>177</td>
<td>7</td>
<td>2066</td>
<td>8.8</td>
</tr>
<tr>
<td>1937</td>
<td>1957</td>
<td>225</td>
<td>15</td>
<td>2197</td>
<td>11.0</td>
</tr>
<tr>
<td>1939</td>
<td>1868</td>
<td>224</td>
<td>4</td>
<td>2096</td>
<td>10.8</td>
</tr>
<tr>
<td>1940</td>
<td>1688</td>
<td>253</td>
<td>5</td>
<td>1946</td>
<td>13.3</td>
</tr>
<tr>
<td>1944</td>
<td>1548</td>
<td>159</td>
<td>1</td>
<td>1708</td>
<td>9.3</td>
</tr>
<tr>
<td>1948 approx 1587 ft</td>
<td></td>
<td>133</td>
<td>2</td>
<td>1722</td>
<td>7.4</td>
</tr>
<tr>
<td>1949</td>
<td>1425</td>
<td>150</td>
<td>13</td>
<td>1588</td>
<td>10.7</td>
</tr>
<tr>
<td>1950</td>
<td>1772</td>
<td>123</td>
<td>6</td>
<td>1901</td>
<td>6.8</td>
</tr>
<tr>
<td>TOTALS:</td>
<td>30572</td>
<td>4822</td>
<td>172</td>
<td>35566</td>
<td>14.0%</td>
</tr>
</tbody>
</table>
FIGURE I

PERCENTAGE OF FILMS NOT APPROVED
BY OHIO CENSORS IN SELECTED YEARS
1916 - 1950
or movie-makers were bypassing Ohio or for other reasons, censor activity dropped radically after 1916, as is seen in the short curve on Figure I for the reels cut from 1916 - 1919; from deleting or banning 3 out of 10 reels in 1916, the censors by 1919 were altering 1 out of 10.

When records for films censored reappeared in 1924, we again witness the decreased amount of censored material. Although there is a short spurt for 1925, for the 'twenties and early 'thirties, the rate of censorship is much lower than in 1916. Within the space of five years, 1930 - 1935, however, there came a sharp increase, the cause for which seems to lie in contemporary social history. In the early part of that half-decade, the industry was adjusting rapidly to the advent of sound. Two recurrent film treatments were gangster dramas and risque situation comedies; Miss Mary E. Luethi, then censor, informs us that these two caused them great trouble, the gangster film because of its heavy reliance upon excessive

9. Both censors William and Maddox have informed the author that bypassing of the state did occur on the part of many of the fly-by-night producers who catered to erotic tastes.
violence and gutter language, and the comedy for its use of the double entendre. Recall, too, that this was an industry suffering from the Great Depression, although the impact came about 1931, somewhat after the national downturn. Movie-makers, in a frantic effort to retain their paying audiences, turned quickly to exploit sound within formats as sensational as possible. Thus the swelling increase in Ohio censorship seems related to this new film content and the industry's economic troubles.

Inter-related here, too, must be the movement of moral protest at film content which during 1934 reached national proportions. Moral welfare groups, increasingly disturbed during the early 'thirties at film content, crystallized their discontent by supporting the Legion of Decency movement which began in April, 1934, to seek improved film content by economic boycott of

10. "Weekly (attendance) average, according to Hays Office, soared from 65,000,000 in 1928 to 95,000,000 in 1929 and on to 110,000,000 in 1930 despite the stock market crash. In 1930 the theater holdings of the major companies reached a peak of 3600. In 1931 weekly attendance slumped from 110,000,000 to 75,000,000. Between 1930 and 1935 the major companies' theater holdings dropped from 3000 to 2225." Morris Ernst, The First Freedom, 195 - 6.
condemned films. A few months of such pressures moved the industry to adopt an effective self-regulation.\textsuperscript{11}

It is likely that this movement is related to the dramatic decrease in the volume of censorship measured in Figure I in the first year after the self-regulation was instituted. Between 1934 and 1935, the industry moved quickly to accommodate to these pressures by "cleaning" films then in production, those held for release and even those already exhibiting. Any other explanation of this 1934 - 35 drop in Ohio censoring is difficult to perceive; the rate of censorship dropped fifty percent, from $29.4\%$ to $14.9\%$. By 1936, the rate had dropped almost another fifty percent to $8.9\%$. Although later years reveal slight increases in rates, never again do available records show the high degree of activity in Ohio which preceded effective self-regulation under pressure from the Legion of Decency. As Ohio Censor, Mrs. Leuthi,

agreeing with this analysis, commented, "Our job was made much easier after the Legion came on the scene."

The later small increase in censoring noted in Figure I may require some explanation. There is little to explain the increase from 1937 to 1940. Possibly this reflects the pending legislation to break up "block-booking" and "blind-selling" while anti-trust litigation was seeking the dissolution of alleged monopoly conditions;\(^{12}\) these restraints of trade were highly publicized as forcing the exhibitor to take films which offended community morality \((supra, \text{ Ch. II})\). Censors conscious of this controversy may have been pitching in to help the exhibitor. In 1941, Hollywood was investigated by Congress on the charge of war propagandizing;\(^{13}\) possibly Ohio's censors may have been more cautious in issuing approvals for this sort of film, particularly if it contained brutality. This cause - if it be


such—certainly disappeared by 1944 when the censors reported they would "give more allowance" to war themes with their consequent brutality and to propaganda "for the purpose of unifying thought and effort toward winning the war."\(^\text{14}\)

The final small increase in censorship is seen in 1949, traceable, as we shall see, to the influx of foreign films. These were not submitted, hence approved, by the Hollywood Code, primarily because of their practice of calling spades spades.

This analysis of the cycles of increased Ohio censorship indicates that the main cause of variations lay in the nature of the material reviewed. Other causes may be possible, such as a larger volume of film being produced or changes in censor personnel. Yet there is no correlation between quantities of films reviewed and percent of censorship.\(^\text{15}\) Any causation traceable

\(^{14}\) Ohio Dept. of Education; \textit{Progress Report; 1944}, 9.

\(^{15}\) Employing the Spearman rank correlation method, the coefficient for all years for which there are data is +.201; eliminating the 1948 and 1949 figures for which some of the weekly reports were missing on which this total is based, the coefficient is +.051. Neither are of sufficient statistical significance.
to variation in censor's philosophies is diminished by the presence of several of the censors throughout the period of 1930 - 1936 and the war and post-war years (supra, Ch. V). Thus, the causal factor seemingly creating the cycles is more likely fluctuation in degree of film content offensiveness.

Finally, it is significant that the diminution in offensiveness did not come about entirely because of the operations of a state censorship. True, the Hays Office paid some heed to this force, by providing producers with lists of particular dislikes of state censors during the 'twenties.16 That this force was not alone determinant in changing film content is seen in the general levels of censorship activity before and after the creation of self-regulation. Before that event, the 1924 - 1934 average percent of films cut and banned was about 18%; after self-regulation, the average percent from 1935 - 1950 (only those years for which data are available)

16. Moley, op. cit., passim, makes reference to this. Such a list became the basis of the famous "Don'ts and Be Carefuls", which was the fore-runner of the Code in 1934.
fell to 9.5%. Thus, although Ohio - and other - censors were actively censoring Hollywood's productions at a high rate, it was not until the industry instituted its own private censorship that the rate of activity fell. And the creation of this Code is more traceable to the efforts of private than of official censors. With the snipping efforts of official censors, the industry had learned to live; not until the great threat of economic boycott - backed by the equally great threat of federal censorship (supra, Ch. II) - did the movie-makers turn out a product more acceptable to moral welfare groups and to the censors. And yet, we must not fail to remember that the Hays Office, even before the Code, successfully anticipated a large proportion of the censors' objections; after the Code, however, the degree of anticipation or conformity ranged even higher.

B. Material Censored in Ohio, 1948 - 1951

Turning from totals to components, this section reviews more intensively the types of film format and subject matter censored by the Ohio censors from January 1, 1948 to May 19, 1951. The analysis
is in terms of national origins of the film, its length and the differential impact of censorship upon dialogue and scene action. The topical analysis considers the subject matter of the films which gave offense to censorship standards.

1. Format Censorship

The raw figures of format censorship are presented in Table III.

Clarity of analysis is served by converting the raw data of Table III into sets of percentages. (See Table IV).

One significant conclusion of these data is that foreign film is more heavily censored than its American counterpart. During this period, although 5.6% of all films reviewed were foreign, these accounted for 35.1% of all cuts. On one hand, 5319 U.S. films were reviewed, of which a total of 6.6% were altered by bannings or deletions. On the other hand, of the 315 foreign films reviewed, 32.3% were thus affected. Put more briefly, the smaller amount of foreign films received six times the deletions than one might expect from their
<table>
<thead>
<tr>
<th></th>
<th>1948</th>
<th>1949</th>
<th>1950</th>
<th>1951</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Films Rev'd:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1722</td>
<td>1588</td>
<td>1650</td>
<td>674</td>
<td>5631</td>
</tr>
<tr>
<td><strong>Foreign</strong></td>
<td>65</td>
<td>83</td>
<td>94</td>
<td>73</td>
<td>315</td>
</tr>
<tr>
<td><strong>Shorts Rev'd:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Newsreels</strong></td>
<td>566</td>
<td>555</td>
<td>581</td>
<td>236</td>
<td>1938</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>602</td>
<td>579</td>
<td>581</td>
<td>229</td>
<td>1991</td>
</tr>
<tr>
<td><strong>Films Banned:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>U.S.</strong></td>
<td>2</td>
<td>9</td>
<td>2</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td><strong>Foreign</strong></td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td><strong>Films Deleted:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>U.S.</strong></td>
<td>111</td>
<td>116</td>
<td>82</td>
<td>31</td>
<td>340</td>
</tr>
<tr>
<td><strong>Foreign</strong></td>
<td>22</td>
<td>34</td>
<td>26</td>
<td>13</td>
<td>95</td>
</tr>
<tr>
<td><strong>Actual Deletions:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>U.S.</strong></td>
<td>493</td>
<td>314</td>
<td>260</td>
<td>105</td>
<td>1172</td>
</tr>
<tr>
<td><strong>Foreign</strong></td>
<td>135</td>
<td>253</td>
<td>200</td>
<td>47</td>
<td>635</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------</td>
<td>-------</td>
<td>-------</td>
<td>-------</td>
<td>--------</td>
</tr>
<tr>
<td>U.S.</td>
<td>96.3%</td>
<td>94.8%</td>
<td>94.3%</td>
<td>89.1%</td>
<td>94.4%</td>
</tr>
<tr>
<td>Of which were:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Banned</td>
<td>0.1</td>
<td>0.6</td>
<td>0.1</td>
<td>0.0</td>
</tr>
<tr>
<td></td>
<td>Deleted</td>
<td>6.7</td>
<td>7.7</td>
<td>5.2</td>
<td>5.1</td>
</tr>
<tr>
<td>Foreign</td>
<td>3.7%</td>
<td>5.2%</td>
<td>5.7%</td>
<td>10.9%</td>
<td>5.6%</td>
</tr>
<tr>
<td>Of which were:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Banned</td>
<td>0.0</td>
<td>4.8</td>
<td>2.1</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td>Deleted</td>
<td>33.8</td>
<td>40.9</td>
<td>27.6</td>
<td>17.8</td>
</tr>
</tbody>
</table>

Percent of All Cuts Found in:
<table>
<thead>
<tr>
<th>Films</th>
<th>1948</th>
<th>1949</th>
<th>1950</th>
<th>1951</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Films</td>
<td>78.5%</td>
<td>55.7%</td>
<td>56.6%</td>
<td>69.0%</td>
<td>64.9%</td>
</tr>
<tr>
<td>Foreign Films</td>
<td>21.5%</td>
<td>44.3%</td>
<td>43.4%</td>
<td>31.0%</td>
<td>35.1%</td>
</tr>
</tbody>
</table>
volume; 35.1% of all deletions fell upon but 5.6% of all films reviewed.

It must be remembered that the foreign film is only occasionally processed by the Code and thus has not yet fitted into the value mold the censors have come to expect of the Hollywood product. Such films are particularly suspect for their emphasis upon realistic drama, a characteristic which the present Code has been criticized as preventing. This double standard takes an unusual form at times in Ohio. The author has been informed that on some occasions in Ohio, American films showing a certain sequence have been passed by the censors while the foreign version of a very similar sequence has been censored to eliminate "objectionable" material. This suspicion in the value profile of Ohio censors we shall meet elsewhere.

17. For the argument that this failure to adapt to the Code is a major reason for Catholic opposition to these foreign films, cf. Bosley Crowther, "The Strange Case of 'The Miracle,'" Atlantic Monthly, April 1951.

18. For consideration of this argument, cf. Ingles, op.cit.

19. Information from Norman Nadel, film critic of the Columbus Citizen.
Another feature of these data is the differential censorship between feature and short motion pictures. Any film over four reels has been classed as a "feature," anything shorter as a "short." The data of Table III, converted to percentages in Table V, measure the censors' impact according to length of film. (See Table V.)

The volume of films was rather evenly divided among features, newsreels and other shorts. More important, although features constituted only 30.2% of the volume, almost 95% of the cuts fell here. In a sense, this should be expected by anyone familiar with the innocuous nature of shorts and newsreels. A total of seven deletions fell upon newsreels; five were cuts of the "Bikini" bathing suits, one was a coverage of a nudist camp and the last eliminated "My God!" The cuts in the other shorts were mostly in American serials, usually scenes of personal violence, arson or trainwrecking.

This censor acceptance of short films increases the percentage weight of their disapproval of features. The ratio of films
**TABLE V**

Relationship of Ohio Censorship to Films' Length, 1948 - 1951

<table>
<thead>
<tr>
<th>Length</th>
<th>1948</th>
<th>1949</th>
<th>1950</th>
<th>1951</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Features:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of which were</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banned</td>
<td>0.3</td>
<td>2.8</td>
<td>0.8</td>
<td>0.0</td>
<td>1.1</td>
</tr>
<tr>
<td>Deleted</td>
<td>20.3</td>
<td>29.3</td>
<td>21.3</td>
<td>16.2</td>
<td>22.5</td>
</tr>
<tr>
<td><strong>Newsreels:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of which were</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deleted</td>
<td>0.5</td>
<td>0.1</td>
<td>0.3</td>
<td>0.4</td>
<td>0.3</td>
</tr>
<tr>
<td><strong>Other Shorts</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of which were</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deleted</td>
<td>2.3</td>
<td>2.5</td>
<td>0.5</td>
<td>3.9</td>
<td>2.1</td>
</tr>
<tr>
<td><strong>Percent of All Cuts Found in:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Features</td>
<td>95.1%</td>
<td>93.8%</td>
<td>98.8%</td>
<td>93.4%</td>
<td>94.7%</td>
</tr>
<tr>
<td>All Shorts</td>
<td>4.9</td>
<td>6.2</td>
<td>1.2</td>
<td>6.6</td>
<td>5.3</td>
</tr>
</tbody>
</table>
banned or deleted to all films reviewed is \( \frac{455}{5634} \) or 8.1%. However, eliminating the shorts banned and altered (49) and the total shorts (3929) reviewed, the resulting ratio of banned and altered features to remaining features is \( \frac{406}{1705} \) or 23.8%. Put more briefly, while 8 out of 100 pictures of all kinds were altered by the Ohio censors, about 24 out of 100 of the features alone were so handled.

A final aspect of format censorship is the relationship between deletions of dialogues and scenes. The distinction here is between the spoken word alone or titles in foreign films on the one hand and, on the other, action (gestures, fighting, dancing, etc.) unaccompanied by proscribed speech. The censors strike here evenly, for in this period 52.1% of all cuts were for dialogue, and 47.9% for action. Much of this equality is accounted for by the frequent pairings of proscribed words and action. Nevertheless, this result is rather surprising in light of the fact that much talk about film censorship revolves about the spoken word. Experience reveals here that the gesture may be as objectionable
as the word. This differential varies sharply with the subject, however. Thus in criminal or brutal film cuts, 72.9% of these were for actions, while in cuts involving sex, 63.3% were for dialogue. This is understandable in light of the nature of the material being censored.

2. Subject Matter Censorship

Let us now consider the content or topics in films which were censored. Appendices II - VI contain the tabulations for each year together with a summation for all years. Table VI lists the percentages of cuts for each of the major topics by years and subject matter. (See Table VI)

Each of those topics is a major heading combining various sub-topics. They may, however, be condensed further under five headings: Sex (Immorality, Profanity: Reference to Sex Act), Crime (Crime), Cruelty (Cruelty), Religion (Religion and Profanity: Irreverence) and Other. This alternative classification is shown in Table VII. (See Table VII)
<table>
<thead>
<tr>
<th>Topic</th>
<th>1948</th>
<th>1949</th>
<th>1950</th>
<th>1951</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime</td>
<td>36.1%</td>
<td>33.9%</td>
<td>28.1%</td>
<td>21.1%</td>
<td>33.0%</td>
</tr>
<tr>
<td>Immorality</td>
<td>29.5</td>
<td>18.2</td>
<td>37.4</td>
<td>57.7</td>
<td>31.5</td>
</tr>
<tr>
<td>Vulgarity</td>
<td>4.2</td>
<td>1.6</td>
<td>2.6</td>
<td>3.9</td>
<td>3.4</td>
</tr>
<tr>
<td>Profanity or Obscenity</td>
<td>14.2</td>
<td>22.5</td>
<td>14.7</td>
<td>14.0</td>
<td>17.1</td>
</tr>
<tr>
<td>Brutality</td>
<td>8.7</td>
<td>12.3</td>
<td>11.4</td>
<td>3.3</td>
<td>9.2</td>
</tr>
<tr>
<td>Religion</td>
<td>2.8</td>
<td>7.9</td>
<td>0.2</td>
<td>0.0</td>
<td>3.5</td>
</tr>
<tr>
<td>Political Attitudes</td>
<td>1.7</td>
<td>1.4</td>
<td>0.6</td>
<td>0.0</td>
<td>1.0</td>
</tr>
<tr>
<td>American Value</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Structure</td>
<td>0.7</td>
<td>1.4</td>
<td>1.7</td>
<td>0.6</td>
<td>1.2</td>
</tr>
<tr>
<td>Unclassified</td>
<td>2.1</td>
<td>0.8</td>
<td>3.3</td>
<td>0.0</td>
<td>0.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
TABLE VII

Percentage of Combined Topics Cut by Ohio Censors, 1949 - 1951

<table>
<thead>
<tr>
<th>Topic</th>
<th>1948</th>
<th>1949</th>
<th>1950</th>
<th>1951</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex</td>
<td>43.0%</td>
<td>36.6%</td>
<td>49.8%</td>
<td>67.1%</td>
<td>44.9%</td>
</tr>
<tr>
<td>Crime</td>
<td>36.4</td>
<td>34.2</td>
<td>28.7</td>
<td>21.0</td>
<td>32.4</td>
</tr>
<tr>
<td>Cruelty</td>
<td>8.9</td>
<td>12.3</td>
<td>11.5</td>
<td>3.2</td>
<td>10.1</td>
</tr>
<tr>
<td>Religion</td>
<td>4.9</td>
<td>10.9</td>
<td>3.4</td>
<td>3.9</td>
<td>6.3</td>
</tr>
<tr>
<td>Other</td>
<td>6.5</td>
<td>6.0</td>
<td>4.9</td>
<td>4.6</td>
<td>6.1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>99.7%</td>
<td>100.0%</td>
<td>98.3%</td>
<td>99.8%</td>
<td>99.8%</td>
</tr>
</tbody>
</table>
Table VII clearly indicates one of the well-known aspects of film censorship and film content - the stress placed upon sex and crime. Moreover, in Table VI a substantial degree of correlation seems to appear in the amount of censoring for each topic. When one compares the rank order of amount of censorship of the subjects of Table VI for each year and then correlates this ranking among the years, employing the Spearman rank correlation method, the following coefficients emerge: $+.834$ (1948 - 51); $+.840$ (1949 - 50), and $+.865$ (1948 and 1950). It might be argued that this emphasis on crime and sex stems from two causes, (1) a greater amount of these are in film content anyhow and (2) the censors employ a hierarchy of values when they examine films, stressing certain tabus more than others. Whatever the cause, an interesting differential emerges when we line up all the categories employed on the tally sheet in rank order of the amount of cuts each accounted for from the grand total of cuts; when this scale of percentages is translated
into a scale of 100 by regarding the highest amount as 100 and spacing the others beneath it proportionately, the results found in table VIII. (See Table VIII)

This scalar technique suggests that the first four items, representing a rather clear break above the remaining, are what the censors condemned most. It is interesting further to note that there is almost a descending order of visibility of the action and statements on this scale; those items on the top half lend themselves to direct expression and hence closer scrutiny, while those on the bottom can be expressed in films only by implication, particularly under the restrictions of the Code.

This scale also raises interesting questions about the effectiveness of the Code. Although it is true that the volume of films which feel the censors' scissors has been drastically reduced since the birth of the Code, that type of film content which led to the self-regulation is still the type most altered by censors.
### TABLE VIII

Scale of Cuts in Ohio Censorship, 1948 - 1951

<table>
<thead>
<tr>
<th>Percent of Total Cuts for Topic</th>
<th>Column I on Scale of 100</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.7%</td>
<td>100</td>
<td>Murder</td>
</tr>
<tr>
<td>15.3</td>
<td>92</td>
<td>Immorality: Perversion, Prostitution, Adultery, Seduction</td>
</tr>
<tr>
<td>13.6</td>
<td>82</td>
<td>Crime: Methods</td>
</tr>
<tr>
<td>12.8</td>
<td>77</td>
<td>Obscene References to Sexual Intercourse</td>
</tr>
<tr>
<td>9.2</td>
<td>55</td>
<td>Brutality or Cruelty</td>
</tr>
<tr>
<td>7.6</td>
<td>45</td>
<td>Nudity</td>
</tr>
<tr>
<td>7.4</td>
<td>44</td>
<td>Form of Passion</td>
</tr>
<tr>
<td>6.5</td>
<td>39</td>
<td>References to Religion or Diety</td>
</tr>
<tr>
<td>3.5</td>
<td>21</td>
<td>Vulgarity</td>
</tr>
<tr>
<td>2.1</td>
<td>13</td>
<td>Glorification of Crime</td>
</tr>
<tr>
<td>1.5</td>
<td>9</td>
<td>Bedroom Scenes</td>
</tr>
<tr>
<td>1.2</td>
<td>7</td>
<td>Comments on American Values</td>
</tr>
<tr>
<td>1.0</td>
<td>6</td>
<td>Political Attitudes; U.S. Govt.</td>
</tr>
<tr>
<td>0.6</td>
<td>0.6</td>
<td>Political Attitudes; Foreign Govt.</td>
</tr>
<tr>
<td>1.5</td>
<td></td>
<td>Unclassified</td>
</tr>
</tbody>
</table>
3. Illustrations of Ohio Censorship

No adequate understanding of censored material can be derived by reliance upon statistics alone. Some discussion is needed about the exact nature of deletions to achieve insight into the workings of the censors' values. The following illustrations are gathered under six headings: crime, sex, cruelty, religion, political attitudes and comments critical of American values. These examples are not identified with particular films at the request of industry officials permitting use of these censorship records.

CRIME

The deletions under the heading of murder - the first of the crime topics - represent objection against the inordinate use of techniques or against brutal killings. This is illustrated by one order to reduce from 38 to four or five the number of knife stabs used to kill a woman; in another, 12 scenes and 14 lines of dialogue were scissored from a murder technique. Here care was given that Ohio movie-goers were not offended by the thud and blunder accompanying violent death.
This included off-scene cries and crashes, persons with knives, swords and bayonets protruding from various parts of their anatomies and murder victims being dipped in boiling vats, crushed under weights or run over by motor vehicles. Constant exposure to this may explain one censor's comment to the author as we watched the denouement of a murder: "I do hope they spare us the details."

In eliminations of criminal methods, the censors made most explicit one of their basic assumptions: the screen may by its offerings teach men how to commit anti-social acts, and so make what was only a vague wish into a practical possibility. Ohio censors have stated vigorously to the author their dislike of the criminal methods which have plagued them in post-war years.

Of these, the use of poison and drugs was most circumscribed. This ban extended not merely to the use of these medicines but to the very mention of their names. Likewise, the exposition of means of theft and arson, next most censored of methods, implies that their
presentation may be the trigger setting off anti-social reactions in the audience. The mere dropping of a match into a pool of gas or a torch into a haystack became suspect for providing a suggestive modus operandi for the public elements predisposed to this type of action. It is interesting to note that most of these variations on criminal methods appeared in American films. Here we may see the thesis advanced in Chapter II, that Hollywood producers, restrained by their Code and other forces from exploring certain themes, seek variety in presentation of these standard themes.

The deletions for glorification of crime, which were all American, object to portraying crime or criminals in a favorable light. Illustrative of this theme are the following deletions:

"You can't pick up a paper without seeing you plastered all over it. Every time some dingbat robs a filling station, they say its Bowie the Kid - The Zelton Bandit! You'd have to have wings to be everyplace they say you have been......All the newspapers print about is you."

The underlined was deleted: Any crook smart enough to rig up a thing like that is just too smart to leave any fingerprints."
Says a criminal, "The biggest mistake of all is to get caught."

"Anybody who shot Jesse James would become the biggest gunman in the country."

When asked how he escaped from prison, a man says, "Oh, there's plenty of angles for a guy with dough."

"Well, murder can be an art, too. The power to kill can be just as satisfying as the power to create."

"He's not even a respectable crook."

In an episode where nickels are being returned in a pay telephone after a gangster hangs up the receiver, this remark by an observer was cut, "Those fellows always win....even on the telephone." This film also suffered cuts of 25 lines on this general theme, including a newspaper story describing the surrender of a "public enemy."

All of these crime deletions point to the censors' fear of aiding the spread of delinquency by permitting exhibition of too-gory murders, criminal methods, or deference to criminals.

**SEX**

The great concern of the censors, however, were all the subjects collected under the heading of sex. The largest element of this was analyzed as *immorality*, i.e., perversion, prostitution, adultery and seduction. Few references
appeared here that had connotations of perversion; what there was came in one film, where the relationship between a male teacher and child student was suspect. That few deletions appeared here is probably traceable - more than many other subjects - to the fact that the industry, here and abroad, regards this as a major tabu, not to the fact that the censors do not believe much of it should be eliminated. Likewise, the presentation of prostitution is closely circumscribed by community and industrial morality. That it looms large in the analysis stems from one picture which accounted for four-fifths of the cuts for this subject; this, oddly enough, was an American film. Adultery accounts for even less of the immorality cuts than prostitution and is evenly divided between American and foreign films with the greater amount of cuts falling upon dialogue rather than action. An Old World film in which it is remarked, "Men tire of faithfulness," is hardly compatible with the censors' construct of ethics. An American picture obtained the same results when a hero says, "Personally, I have nothing against women betraying their
husbands. Even our government is against monopoly." The supposed humor was lost on the censors, whose concern with such cynicism as these remarks reveal will be noted later.

Seduction accounted for half the immorality deletions. Here again, the foreign film bore the brunt of the excisions, possibly again a reflection of the recent wave of such films into the U.S.; the dramatic potentials involved in portraying seduction is certainly one aspect of their realism so widely praised and criticized. With obscene references to sexual intercourse, the censors have been greatly concerned about the double entendre; its prevalence indicates again the resort to variety of treatment and indirection by producers operating under the Code. Deletions of dialogue here at times reached a level that found more subtle implications in what was said than possibly were imagined by the screen writers; others were more obvious.

Following is an illustrative list:

Man says to woman, "Be good, Ellie. If you can't be good at least get in on time." (Later rescinded.)
When man says to his girl about another man, "Let's shake this guy early," censors deleted ensuing conversation: She: "Why?" He: "That's a good question."

A song about a woman who "runs around" too much was cut in its entirety, including reiteration of this refrain, "But, Baby, I know what you're putting down." There the reference was not to installment buying.

Man remarks to woman, "Yes, I had some very interesting dreams, too. Remind me to tell you about them sometime."

When two are embracing and the somewhat hesitant woman asks her partner if he would like some coffee, his query "Coffee? Is she kidding?" was excised.

The censor's task, made difficult by such insinuation, becomes much easier when dealing with nudity and form of passion because of their high degree of visibility. Again, the foreign picture received the scissors more often than the Hollywood product. Revealed breasts and the uncovered body, with a moral disapproval rooted deep in Puritan history, get far less portrayal in this medium than in any other employing visual symbols. The resort to insinuation appears again, however, in that there were
no deletions for tightly fitting clothing. The foreign film maker, ignoring such subtleties for the sake of "realism," fell into trouble with the Ohio censors.

The most frequent form of passion deleted was either kissing or erotic dances. A difficult question raised here - and not facetiously - is how can one determine the point at which a kiss has become so long that it threatens community morality? Censors told the author they "just know" when too much was too much. Determining the "danger" in a dance may have been more easy, for here the offenses were various movements suggestive of sexual intercourse. Other forms, such as posture, require little attention because few producers seemed to go beyond certain well-defined limits in positioning a man's body in relation to a woman during a love scene. Gestures were cut which brought certain parts of the woman's body into prominence as she was caressed.

What the wise producer might conclude from these deletions for nudity and form of
passion is that love scenes are all right as long as all concerned are kept covered, clean and calm.

**CRUELTY**

Cruelty is different from anything before except brutal killings. Deletions here included too turbulent fighting scenes, gruesome shots of the dead or wounded and scenes of torture. Many of the eliminations for fighting required cutting down footage showing men striking one another over the head or elsewhere with chairs, bottles, clubs and other handy implements. Scenes of grotesquely sprawled bodies, bleeding wounds or curdling screams received severe attention, as did description of torture methods and results. Whereas producers' attempts to "spice up" details of standardized "formula" sex themes relied upon the suggestive, with depiction of violence the emphasis was upon repetition of the stark.

**ANTI-RELIGION**

Eliminations made for their anti-religious nature were of two kinds,
references to religious faith and irreverent profanity. Foreign pictures suffered restrictions against their use of "damn," "hell" or the name of God almost four to one over American films. Here again the trouble traced back to foreign efforts at realism. Censors have told the author that they were occasionally pressed by distributors to permit inclusion of expletives in certain films where their use was intended for dramatic emphasis; rarely would this be allowed, however, for fear that other companies would seek to widen that breach. An exception to this was the famous closing line of Rhett Butler in Gone With the Wind, "Frankly, my dear, I don't give a damn."

The questioning of religious faith, like many other subjects described here, seems no longer the cause for censorship. Yet examination of censorship in Ohio for this reason, although clearly prevented now as a consequence of Burstyn v. Wilson, in 1952, will serve to disclose the censor as defender of the faith, regardless of the faith. The lengthiest of these cuts
dealt with the question of relativity in religious beliefs.

There's something that bothers me. Suppose Elzear's God weren't the REAL one? I know a lot of Moslems, Hindus and Chinese. Their God isn't the same. They don't do what we do. Our sins might be their good deeds and vice-versa. They may be wrong..... Still, there are millions and billions of them. Suppose they were right? It's a good question. Here, poor Pannisse is all fixed up to the taste of Elzear's God. But suppose that, rounding a cloud, he bumps into a Good Lord to whom he was never introduced. A Good Lord that's red, black, or yellow. Or dressed up like a Buddah in an antique shop.....or with a large paunch or with as many arms as a squid? What do you expect poor Pannisse to tell him? And in what language? And with what gestures? Can you picture yourself, exhausted by your death and still dizzy from the trip.....trying to make yourself understood by a Good Lord who doesn't understand you? And He says it in Chinese. An awful predicament. The Holy Bible is a lie, then? And the Scriptures? Aren't you ashamed to speak like this in front of the choir boys? If you went to church oftener, instead of drinking you'd know there is but one God - Ours. Ours, I agree, is the real one. But I think there are a lot of people on this earth who are being fooled. I feel sorry for them.

It should be surprising to none familiar with the Code to discover that this was not an American production. Not only could a broad
proposition in religion, but narrower points, not be questioned; the censors cut one character's assertion in a foreign film that marriages were not made in heaven.

Hollywood, too, transgressed during this time, as witnessed by the following song deleted from a Western, concerning an outlaw:

It's a sin to plan on Sunday/ You must pray the whole day through/ But there's always trains on Monday, and the banks are open, too/ With his good wife on a Sunday and his kids around at play/ He thinks fondly of the Monday/ and the job he's planned that day, and the next day, and the next day/ He's dreaming fondly on Sunday of the job that he's planned next day.

Further, even naming one denomination, Baptist, became offensive when members of this group were also portrayed as western outlaws. Here we see additional evidence that prior religious group pressure has made Hollywood reluctant to handle religious themes; when considered at all by a small producer (Martin Luther) or a big company (Bells of St. Mary, Keys to the Kingdom or The Left Hand of God), every effort is made not to present material critical of the group or its theology.

20. For consideration of this, cf. fn. 18.
The topic "American value structure" contains a certain vagueness. These were 23 fragments which seemed to be of two kinds, references thought either to engender racial antagonism or to criticize cynically certain American values. Most of the racial deletions came from one film, including such dialogue as a white girl complaining, "'I can't swing a club.....I can't break a head'"; a bitter Negrophobe commenting to his girl friend, "'We kept it dark here because we thought you'd like it better if you couldn't tell we were white.'" More substantial cuts occurred in this film, however, 153 feet showing both sides preparing for a race riot and the riot itself.

The other set of eliminations here - essentially for cynicism - are included at this point for comment:

"Everybody has larceny in his heart."

When a woman said to her lover, "Surrender could be so beautiful and so easy if the woman did not have to think of tomorrow," the censors forbid his reply, "Tomorrow! Tomorrow is the poor excuse of people who are afraid to live today!"
"When you try to solve the mysteries of nature it doesn't matter whether you experiment with guinea pigs or human nature."

Says a gangster, "There's only one way to get big dough and that's the way I get it. And anybody that gets it gets it just the same way. Some inside the law, some outside."

"Revenge is a nice thing, but money's nicer."

"No woman who wants something is a lady. If she is, she doesn't get it."

"Virtue is a luxury. It takes a lot of hold-ups to afford it."

When a man is told that a certain public show was a lecture on virtue, his comment was cut, "Virtue? How come they get a big crowd like that?"

"You know there isn't a lotta difference between legitimate business and the other kind."

Underlined clause was deleted, "I understand immorality but I cannot understand cruelty."

"If everyone who lived together loved each other, the earth would shine like a sun."

"The only reason I am a fat-headed fool and not a hero is because I went on doing what the country put me in uniform to do, after they had taken it back."

The following material was added as a prologue and epilogue to a French film:

"Prologue: The flourishing republic of Venice was at one time the hub
of Italian culture. In the 16th Century, however, its government was preyed upon by a swarm of rascals, rogues and pilferers. Ben Jonson's purpose in relating this tale which takes place in this period of decadence is to caricature and thus show up the malignant evil in the souls of those scoundrels who eventually brought about the downfall of the great republic.

Epilogue: Here stops Ben Jonson's tale. History records of the period are vague, but from available material it can be assumed that, eventually,... the victimized thief was recognized. He and Mosca who has wasted no time in squandering his illgotten gains were imprisoned. Thus, both paid the full wages of sin by spending the rest of their mortal lives side by side at the galleys."

These comments seemed to be tied together by the common characteristic of cynicism, viz., the two deletions about soldiers continuing to kill after leaving the army, discussion of the attainment or extent of prevalent virtue and distinctions between legitimate and illegal means of success. The comment about understanding immorality does not seem to fit, however. The film to which were appended opening and closing statements was a vehicle thoroughly expressing a sneering disbelief in sincerity and rectitude. These additions, almost Victorian in style, seem to
be an attempt to soften the blow of this film's attitude, and so they fit within the pattern ascribed this topic.

These eliminations, it is interesting to note, came mostly from American films. One might suppose that the recent crop of allegedly "realistic" foreign films might employ more cynicism, given the basic existentialism they reflect. That they are not as heavily censored may arise from the possibility that the English titles say different things than the spoken words, a possibility heightened by the need for brief titles and by the nuances of idioms.²¹

ATTITUDES ON GOVERNMENT

The bulk of material cut under attitudes on government were disrespectful comments about the police and courts. One short "comedy" revolved about a courtroom scene, in which the judge was made to seem ludicrous. The most

²¹. Foreign pictures are required by Ohio censors to submit an English script translation to the officials, which might increase the censors' awareness of what is being said on the screen; but, who knows if the script is correctly translated?
intriguing erasure about courts was the following:

A boy pulls a clipping from his pocket and remarks, "See? It's what the Supreme Court of the United States itself said! This fellow it writes about.....He was tried, convicted of murder, sentenced - all in the same day! The same as me! Then the Supreme Court itself said, "Let that man out." No due process of law. That fellow was sixteen, too, when he done his murder, same as me."

Possibly this deletion was made because it reflected unfavorably on the American judicial process by suggesting it would convict a person hurriedly. The police, also, bore some of these deletions. Typical of such offensive statements were a man's comments, "They're always bustin' in where they aren't wanted - all in the cause of law and order," and "I hate cops."

One final revelation of censor treatment of American government is that a film dealing with the problems of reformation in a women's penal institution was required in Ohio to have the following foreword:

"Foreword: This is a fictional story. It is intended to emphasize the problems of administration in penal institutions. It is recognized
that in most states the authority for the administration of such institutions resides in a department of state government; and every effort is made to rehabilitate inmates so that, upon release, they may be restored to society."

Did the censors wish to correct any moviegoer's false impression that the brutality expressed in the film was typical of all prisons? Such a foreword indirectly implies that in Ohio, at least, the harshness of treatment of women prisoners is not such as portrayed in the film. Note: There is no authority under the Ohio law permitting these censors to compel inclusion of specific comments; that they did, and that distributors complied, stemmed from the censors' power to retaliate if compliance was not obtained.

On the other hand, the fears of liberals that censors may restrict political expression have not been realized in Ohio to any great extent during the period studied. A survey, however, of such political censorship here may further indicate not only its infrequency but its direction.
In 1922, Ohio cut the following from an industry short:

Movies are democratic amusement of a democratic people. These people are the best judges of what is good for them. They exercise natural censorship by patronage for good pictures and boycott for bad ones. Any additional censorship is superfluous.

When making this deletion, the chief censor is said to have declared, 22

We intend to cut out anything that reflects on the censors....The people are not the best judges of what is good for them. If they had been, censorship would never have been necessary. The people are not fit to judge for themselves. Statistics prove that only 10% of the people are thinking persons; 15% think part of the time and 75% never think at all. The fact that certain very objectionable and disgusting pictures barred from Ohio are permitted to show in the States which do not have censorship, proves the people are not the best judges.

A month later, a caption was cut from a silent newsreel, "Eugene V. Debs leaving the White House after telling the President he has not changed his mind." 23 These appear

23. Ibid., May 28, 1922, VI 2.
to be isolated cases. However, the most continuing cause of criticism of Ohio censors during the 'twenties was their treatment of Birth of A Nation. Former censor Mary E. Luethi related to the author that prior to 1925 this film was a political football; it would be granted exhibition rights or not depending upon whether the administration was Democratic or Republican, as support disturbed Negro groups.

During the 'thirties, these censors reflected occasionally the domestic and foreign ferment of the times. In 1936, they banned a cartoon, The Amateur Fire Brigade, because it "encourages disrespect for the office of the President of the United States;" the film depicted Roosevelt as a boy astride the Democratic donkey and as the driver of a broken-down fire engine representing the New Deal. A year later, a civil war film of Spain in Flames was banned, after consulting with interested

community groups, with this comment,

The picture itself did not contain any harmful propaganda. However, the dialogue of the narrator, made the picture, we considered, very harmful. We suggest that the narrators, in reporting on this subject . . . keep their remarks neutral, or we will find it necessary to make eliminations.

The distributors reply was as vigorous as it was injudicious.  

You have no right to give us any such advice, or any advice, and we certainly do not intend to consider your ideas of what authority you may have when you try to tell us what we may not say on any subject . . . . Never again try to tell us what we may or may not say in a newsreel.

This political censorship of an alleged "current event" film was an echo of events in 1920 when "it banned films which it thought to

25a. Among these were the American Legion and an Ohio civil rights group. The question was whether this film was a newsreel or not; if so, the censors (see quote) thought it should be neutral. Information from Dr. Francis Aumann, Ohio State University.

26. John Harley, World-Wide Influences of the Cinema, 83. There was some question over whether this was really a newsreel.
be pro-labor during a coal strike." Similar action on another theme occurred in 1937 when Ohio banned a Russian film because it "encourages social and racial equality, thereby stirring up racial hatred... All the above doctrines are contrary to the accepted codes of American life;" among the objectionable lines was, "Don't be afraid, all people are of the same stock."  

This same concern for racial feelings, while not preventing the censors from passing most of the post-war prejudice films, broke out again in 1952 when Richard Wright's Native Son was banned again, thereby initiating an unsuccessful appeal to the courts. Their reasons for banning provide an insight into these censors' values.

Harmful: because - contributes to racial misunderstandings, presenting situations undesirable to the mutual interests of both races; against public interest in undermining confidence that justice can be carried out; presents racial frictions at a time when all groups should be united against everything that is subversive.

Here is a deep concern for presentations which might disturb the peace and order or criticize the system of justice; we first saw this under our illustrations of crime deletions. The reasoning here seems to be if a subject tends to create misunderstanding or friction by its discussion or dramatization, there is strong evidence of its subversiveness. It would be interesting to find the reasons for banning the old *Birth of A Nation*; would the potentials for subversion appear there as a rationalization for its prohibition?

In retrospect, then, we see that Ohio's censorship placed a set of screens across the stream of ideas that the industry is capable of creating. The two screens that caught the most objectionable material were labelled "sex" and "crime" while other screens sifted out cruelty, irreverence, vulgarity, cynicism and subversion of American ideals. The "catch" of the sex and crime screens represented over 75% of the material eliminated, while the next two raised the total to over 93%. Although there was some annual variation in the size of the catch, there remained a high
correlation among these values as to their relative importance to the censors. The long-run tendency seemed to reveal that less of the film product in recent years was offensive and that a recent slight increase might have been traceable to the influx of the foreign products which were not processed by the Hollywood Code and hence which had not attained the degree of accommodation to the censors' values characteristic of the Hollywood variety. There is evidence, too, that the Ohio censors reflected the moral reform movement of the mid-thirties which produced effective industry self-regulation. Such interest group and censor protest, each stimulating the other to increased efforts, died down after the Code was operative, but the movement indicates the sensitivity of the censors to interest group concerns if loudly expressed in volume. Against this case study of Ohio censorship, we may now project for comparison the bigger picture of other states' censorship.
III. Comparative Censorship Results in Ohio, Maryland, New York and Pennsylvania

This section follows the outline of the preceding, with first a comparison of long-run trends in quantity and subjects censored among several states, with a particular comparison of New York and Ohio; the second part analyses in detail from industry records the subjects censored from 1948 to 1952 in these two, Maryland and Pennsylvania. The objective throughout is to place Ohio censorship in a framework of action in the other states.

A. General Historical Trends in State Censorship

Because censor states publish few, scattered and general reports, what is available are only surface data on number of films reviewed, rejected and deleted. New York provides more material for analysis than others but considerably less than Ohio; Table IX presents this. (See Table IX)

30. Data for 1938 are from Ernst & Lindey, op. cit., 81 - 2. The remaining data are from the New York Times; for 1921 (Jan. 17, 1922, 7); 1922 (Feb. 18, 1923, VII, 6); 1931 (Dec. 17, 1931, 26); 1932 (Nov. 20, 1932, 27); 1933 (Oct. 29, 1933, IX, 4); 1935 (Oct. 4, 1935, 25); 1940 (Dec. 1, 1940, 63); 1946 (July 23, 1947, 19); 1947 (idem); 1948 (Aug. 8, 1948, 30); 1949 (April 27, 1949, 32 - here fiscal year ended March 31, 1949).
<table>
<thead>
<tr>
<th>Year Ending June 30</th>
<th>Approved Films No.</th>
<th>Approved Films %</th>
<th>Deleted Films No.</th>
<th>Deleted Films %</th>
<th>Banned Films No.</th>
<th>Banned Films %</th>
<th>Total Films Reviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1921</td>
<td>1170</td>
<td>87.6</td>
<td>160</td>
<td>11.9</td>
<td>5</td>
<td>0.3</td>
<td>1335</td>
</tr>
<tr>
<td>1922</td>
<td>2516</td>
<td>72.8</td>
<td>861</td>
<td>24.9</td>
<td>72</td>
<td>2.0</td>
<td>3449</td>
</tr>
<tr>
<td>1931</td>
<td>1318</td>
<td>77.6</td>
<td>366</td>
<td>31.5</td>
<td>14</td>
<td>0.8</td>
<td>1698</td>
</tr>
<tr>
<td>1932</td>
<td>1326</td>
<td>80.3</td>
<td>326</td>
<td>19.7</td>
<td>Unknown</td>
<td></td>
<td>1652</td>
</tr>
<tr>
<td>1933</td>
<td>1413</td>
<td>61.5</td>
<td>825</td>
<td>35.9</td>
<td>59</td>
<td>2.6</td>
<td>2297</td>
</tr>
<tr>
<td>1935</td>
<td>1515</td>
<td>86.5</td>
<td>225</td>
<td>12.8</td>
<td>12</td>
<td>0.6</td>
<td>1749</td>
</tr>
<tr>
<td>1938</td>
<td>1822</td>
<td>93.2</td>
<td>110</td>
<td>5.6</td>
<td>23</td>
<td>1.1</td>
<td>1955</td>
</tr>
<tr>
<td>1940</td>
<td>1642</td>
<td>93.2</td>
<td>111</td>
<td>6.3</td>
<td>9</td>
<td>0.5</td>
<td>1762</td>
</tr>
<tr>
<td>1946</td>
<td>1456</td>
<td>94.2</td>
<td>85</td>
<td>5.5</td>
<td>3</td>
<td>0.2</td>
<td>1544</td>
</tr>
<tr>
<td>1947</td>
<td>1503</td>
<td>90.6</td>
<td>153</td>
<td>9.2</td>
<td>5</td>
<td>0.2</td>
<td>1661</td>
</tr>
<tr>
<td>1948</td>
<td>1653</td>
<td>92.8</td>
<td>123</td>
<td>6.9</td>
<td>5</td>
<td>0.2</td>
<td>1781</td>
</tr>
<tr>
<td>1949</td>
<td>1603</td>
<td>96.7</td>
<td>47</td>
<td>2.8</td>
<td>8</td>
<td>0.4</td>
<td>1658</td>
</tr>
<tr>
<td>TOTAL</td>
<td>18937</td>
<td>84.1</td>
<td>3392</td>
<td>15.0</td>
<td>215</td>
<td>0.9</td>
<td>22541</td>
</tr>
</tbody>
</table>
Comparison with Ohio data is unsatisfactory, because only seven years are comparable. A rough comparison is available in Figure II on the next page. This suggests a general similarity of the rate of censorship through the years, particularly in the mid-thirties increase in cuts and the later decrease. Prior to 1935, the average for New York was 25.3% and 18.5% for Ohio; after that date New York fell to a striking 7.6% and Ohio to 9.8%. Here again we see how less objectionable material was found after the industry had made extensive efforts to accommodate its product to the demands of interest groups.

The gap between the curves in Figure II indicates the differential impact of these two states' standards upon roughly the same flow of material. Employing only those years in which we have data for both, we find a rank correlation coefficient of +0.643. We suspect that the gap and the coefficient are an index of the differing values which censors employ and, hence, an index of the subjectivity of censorship.

For the qualitative aspects of state film censorship, however, reliable data are sketchy
for comparative analysis. Morris Ernst attempted this in 1928; his study found 56.4% of the cuts were for crime and 29.5% for sex.\(^1\)\(^1\) The only other comparative analysis appears in a research by Leo Litzky for 1937. Using industry records of censors' treatment of 100 films, he found the data presented in Table X.\(^3\)\(^2\) (See Table X)

Litzky's table records only 100 films and only for one year, but it suggests several observations pertinent here. Ohio was the most active of the states, and Chicago seemed more energetic than all the states except Ohio. Three subjects accounted for 75% of all cuts. The data also raise some questions. Is Ohio's large percentage of cuts compared to Kansas traceable to different personalities on the boards or to the fact that Ohio's standards at that time were the most vague of all the states and Kansas's most explicit? Why did Ohio find more "crime" deletions than Chicago, which one would suppose to be especially sensitive to the causes of delinquency? Is it possible that

\(^{31}\) Ernst & Lindey, op. cit., 82.

TABLE X

Topical Censorship in 100 Films, 1937

<table>
<thead>
<tr>
<th>Topic</th>
<th>Kansas</th>
<th>Maryland</th>
<th>New York</th>
<th>Ohio</th>
<th>Pennsylvania</th>
<th>Virginia</th>
<th>Massachusetts</th>
<th>Totals</th>
<th>Topic's Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime</td>
<td>1</td>
<td>2</td>
<td>21</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>27</td>
<td>1</td>
<td>29.0%</td>
</tr>
<tr>
<td>Liquor</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1.0</td>
</tr>
<tr>
<td>Sex</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>17</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td>21</td>
<td>22.6</td>
</tr>
<tr>
<td>Vulgarity</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>---</td>
<td>0.0</td>
<td></td>
</tr>
<tr>
<td>Obscenity</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>2</td>
<td>4</td>
<td>4.3</td>
<td></td>
</tr>
<tr>
<td>Profanity</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>2.1</td>
<td></td>
</tr>
<tr>
<td>Taboo Expressions</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1.0</td>
<td></td>
</tr>
<tr>
<td>Exposure</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td>4</td>
<td>4.3</td>
<td></td>
</tr>
<tr>
<td>Dancing</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>4.3</td>
<td></td>
</tr>
<tr>
<td>National Feelings</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1.0</td>
<td></td>
</tr>
<tr>
<td>Minorities</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>-</td>
<td>-</td>
<td>6</td>
<td>6</td>
<td>6.3</td>
<td></td>
</tr>
<tr>
<td>Repellent Subjects</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>12</td>
<td>1</td>
<td>4</td>
<td>22</td>
<td>23.6</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>2</td>
<td>3</td>
<td>12</td>
<td>58</td>
<td>4</td>
<td>11</td>
<td>3</td>
<td>93</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>PERCENT OF CUTS</strong></td>
<td>2.1</td>
<td>3.2</td>
<td>12.9</td>
<td>62.3</td>
<td>4.3</td>
<td>11.8</td>
<td>3.2</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>
the relative aggressiveness of Chicago stems from the greater susceptibility of local censors to local pressures? Imponderables aside, however, there is seen in the topics deleted in this 1937 study a shift away from the Ernst figures of 1928 where crime figured so heavily; combining categories in the Litzky table, we find that sex (sex, obscenity, taboo expressions, exposure, dancing) now rates 36.5% of the deletions and crime 29.0%.

Scattered annual reports of the New York censors present a highly generalized statement of causes for deletions and an interesting trend.33 These figures are presented in table XI. (See Table XI)

Assuming that indecent and immoral may be categorized as sex generally, these figures indicate that during this period crime as a reason for censorship had drastically decreased while sex had increased greatly. While in 1932 sex and crime each accounted for 43% of all cuts, by 1938 sex was taking over 80% and crime less than 10%. As

TABLE XI

Grounds for Deletions by New York Censors during Selected Years

<table>
<thead>
<tr>
<th>Year</th>
<th>Indecent</th>
<th>Inhuman</th>
<th>Inciting To Crime</th>
<th>Immoral</th>
<th>Sacer­legious</th>
<th>Obscene</th>
</tr>
</thead>
<tbody>
<tr>
<td>1922</td>
<td>20.2%</td>
<td>22.2%</td>
<td>37.2%</td>
<td>18.0%</td>
<td>2.0%</td>
<td>0.2%</td>
</tr>
<tr>
<td>1931</td>
<td>15.4</td>
<td>8.0</td>
<td>37.2%</td>
<td>38.4</td>
<td>0.8</td>
<td>0.0</td>
</tr>
<tr>
<td>1932</td>
<td>12.2</td>
<td>10.3</td>
<td>43.2</td>
<td>31.4</td>
<td>2.7</td>
<td>0.0</td>
</tr>
<tr>
<td>1938</td>
<td>47.2</td>
<td>3.7</td>
<td>7.7</td>
<td>34.3</td>
<td>7.1</td>
<td>0.0</td>
</tr>
<tr>
<td>1940</td>
<td>26.4</td>
<td>3.3</td>
<td>6.4</td>
<td>54.1</td>
<td>9.6</td>
<td>0.0</td>
</tr>
</tbody>
</table>
Ernst revealed in 1938 study, the censors had become very concerned with proscribing a long list of words with sexual connotation.\(^{34}\) This shift from crime to sex censorship from 1932 to 1938 is confused, however, by a quite detailed report of the National Council on Freedom from Censorship; employing a methodology similar to the author's study of Ohio censorship, for the period of Jan. 1, 1932 to March 31, 1933, this group found that 55.5% of the cuts were for sex and only 29.3% for crime.\(^{35}\)

Although such data provide no clear statement, there is visible a pattern of shift from emphasizing crime deletions in the 'twenties to sex deletions in the 'thirties. The cause for this possibly lies in the exploitation of sound for love films from the late 'twenties onward. The New York censors explained the direction of the objection to sexual presentations in the early 'thirties; "Sex subjects are censored not where immoral relations are shown, as they often are, but where they are shown in a favorable or too

\(^{34}\) Ernst & Lindey, \textit{op. cit.}, 82 - 3.

jocular light.\textsuperscript{36} Despite this opinion that sexually immoral subjects were not \textit{ipso facto} suspect, New York has banned most "sex hygiène" films which attempt \textit{serious} discussions of such subjects as venereal disease; possibly this reflects Catholic Church pressure.\textsuperscript{37} Certainly other state censors were concerned equally with sex films in the 'thirties; one source revealed that 9 of 14 films banned in Maryland in 1939 were for sexual immorality, 7 of 10 in Massachusetts and 15 of 20 in Pennsylvania.\textsuperscript{38}

B. Subject Matter Censorship in Four States, 1948 - 1952

This section presents a comparative analysis of materials deleted by four state censor bodies. Weekly reports of Ohio, New York, Maryland and Pennsylvania for roughly the same period (\textit{supra}, 3) were subjected to the same topical analysis used

\textsuperscript{36} \textit{New York Times}, Oct. 6, 1949, 40.


\textsuperscript{38} Harley, \textit{op. cit.}, Ch. 3.
above for Ohio. This revealed a grand total of 5223 deletions in 16,054 total reviews in these states; Maryland reviewed 3744, New York 3830, Ohio 5458 and Pennsylvania 3022. This variation in numbers requires that comparative data be expressed in percentages; absolute figures are found in Appendix, percentages in Table XII. (See Table XII)

One should caution that some of these figures are unreliable because not all weekly reports are provided; also, in some cases a high percent derives from one film alone, e.g., New York's 1951 deletions for "Socio-Political Attitudes." With this in mind, we may suggest some observations possible from this study.

The striking point here is the heavy emphasis given to sex deletions. In all but one state, Ohio, this accounted for a majority of the cuts; in Maryland 4 out of 5 cuts were for this, and 3 out of 4 in New York. Equally striking is the distinct variation among states in what subjects were most offensive. Figures III and IV below graph for purposes of emphasis. Figure III depicts the total cuts in percentages for particular topics.
TABLE XII

Reasons (in Percentages) for Deletions Made by Four Censor States, 1949 - 1952

<table>
<thead>
<tr>
<th>Topic</th>
<th>State</th>
<th>1948</th>
<th>1949</th>
<th>1950</th>
<th>1951</th>
<th>1952</th>
<th>Total</th>
<th>% of Topic in Total Cuts</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEX:</td>
<td>Md.</td>
<td>----</td>
<td>88.8%</td>
<td>68.7%</td>
<td>69.2%</td>
<td>87.9%</td>
<td>80.2%</td>
<td>80.2%</td>
</tr>
<tr>
<td></td>
<td>N. Y.</td>
<td>----</td>
<td>79.2%</td>
<td>84.0%</td>
<td>71.6%</td>
<td>66.9%</td>
<td>73.2%</td>
<td>73.2%</td>
</tr>
<tr>
<td></td>
<td>Ohio</td>
<td>43.0</td>
<td>36.6%</td>
<td>49.8%</td>
<td>67.1%</td>
<td>----</td>
<td>44.9%</td>
<td>44.9%</td>
</tr>
<tr>
<td></td>
<td>Penna.</td>
<td>----</td>
<td>57.3%</td>
<td>51.2%</td>
<td>56.0%</td>
<td>37.6%</td>
<td>54.4%</td>
<td>54.4%</td>
</tr>
<tr>
<td>CRIME:</td>
<td>Md.</td>
<td>----</td>
<td>1.1%</td>
<td>6.1%</td>
<td>7.1%</td>
<td>0.0%</td>
<td>3.4%</td>
<td>17.6%</td>
</tr>
<tr>
<td></td>
<td>N. Y.</td>
<td>----</td>
<td>9.7%</td>
<td>0.8%</td>
<td>1.5%</td>
<td>6.5%</td>
<td>3.7%</td>
<td>17.6%</td>
</tr>
<tr>
<td></td>
<td>Ohio</td>
<td>36.4</td>
<td>34.2%</td>
<td>28.7%</td>
<td>21.0%</td>
<td>----</td>
<td>32.4%</td>
<td>32.4%</td>
</tr>
<tr>
<td></td>
<td>Penna.</td>
<td>----</td>
<td>17.6%</td>
<td>18.4%</td>
<td>23.1%</td>
<td>34.7%</td>
<td>20.2%</td>
<td>20.2%</td>
</tr>
<tr>
<td>RELIGION:</td>
<td>Md.</td>
<td>----</td>
<td>5.0%</td>
<td>12.9%</td>
<td>10.7%</td>
<td>11.1%</td>
<td>8.7%</td>
<td>8.7%</td>
</tr>
<tr>
<td></td>
<td>N. Y.</td>
<td>----</td>
<td>9.3%</td>
<td>4.2%</td>
<td>3.2%</td>
<td>22.6%</td>
<td>9.0%</td>
<td>9.0%</td>
</tr>
<tr>
<td></td>
<td>Ohio</td>
<td>4.9</td>
<td>10.9%</td>
<td>3.4%</td>
<td>3.9%</td>
<td>----</td>
<td>6.3%</td>
<td>6.3%</td>
</tr>
<tr>
<td></td>
<td>Penna.</td>
<td>----</td>
<td>13.9%</td>
<td>8.6%</td>
<td>13.6%</td>
<td>24.6%</td>
<td>12.9%</td>
<td>12.9%</td>
</tr>
<tr>
<td>CRUELTY:</td>
<td>Md.</td>
<td>----</td>
<td>3.6%</td>
<td>6.1%</td>
<td>7.1%</td>
<td>0.0%</td>
<td>4.5%</td>
<td>4.5%</td>
</tr>
<tr>
<td></td>
<td>N. Y.</td>
<td>----</td>
<td>0.8%</td>
<td>1.6%</td>
<td>6.3%</td>
<td>3.0%</td>
<td>1.1%</td>
<td>1.1%</td>
</tr>
<tr>
<td></td>
<td>Ohio</td>
<td>8.9</td>
<td>12.3%</td>
<td>11.5%</td>
<td>3.2%</td>
<td>----</td>
<td>10.1%</td>
<td>10.1%</td>
</tr>
<tr>
<td></td>
<td>Penna.</td>
<td>----</td>
<td>8.7%</td>
<td>13.7%</td>
<td>5.3%</td>
<td>2.9%</td>
<td>8.8%</td>
<td>8.8%</td>
</tr>
<tr>
<td>SOCIO-POLITICAL:</td>
<td>Md.</td>
<td>----</td>
<td>1.4%</td>
<td>4.9%</td>
<td>7.1%</td>
<td>0.0%</td>
<td>3.3%</td>
<td>3.3%</td>
</tr>
<tr>
<td></td>
<td>N. Y.</td>
<td>----</td>
<td>0.8%</td>
<td>9.2%</td>
<td>23.1%</td>
<td>0.8%</td>
<td>14.4%</td>
<td>14.4%</td>
</tr>
<tr>
<td>ATTITUDES:</td>
<td>Ohio</td>
<td>6.5</td>
<td>6.0%</td>
<td>4.9%</td>
<td>4.6%</td>
<td>----</td>
<td>6.1%</td>
<td>6.1%</td>
</tr>
<tr>
<td></td>
<td>Penna.</td>
<td>----</td>
<td>8.0%</td>
<td>7.9%</td>
<td>1.9%</td>
<td>0.0%</td>
<td>5.9%</td>
<td>5.9%</td>
</tr>
</tbody>
</table>
FIGURE III

Grounds of Deletions (in Percentages) Made by Four State Censors for Specific Reasons

1948 - 1952

Sex

Crime

Religion

Cruelty

Pol.-Soc. Atts.
FIGURE IV
DELETIONS FOR SEX BY FOUR STATE CENSORS
1948 - 1952
Here we see that Maryland and New York were more concerned with sex than Ohio and Pennsylvania, while this pattern is reversed for crime and cruelty. Similar concern is expressed by Pennsylvania for irreverence and New York for socio-political attitudes. Figure IV presents a temporal variation in censorship for sex for each year; here again, we see the constant concern of Maryland and New York for sex, with their fluctuation within rather narrow limits. Ohio, however, fluctuates widely over the years.

Such conflicting curves make difficult any answers to the question of which state is most aggressive. Actually there are several indices of this employing different variables. Table XIII indicates this. (See Table XIII)

Whichever index is employed, Maryland appeared least active, while Ohio or Pennsylvania performed two or three times as much. The indices using "No. of features Reviewed" may be more significant, because the censors seldom cut shorts. Thus, by Index C, Maryland had one deletion for every three features, Pennsylvania \(\frac{1}{2}\) per five and Ohio better
TABLE XIII

Indices of Amount of Censorship in Four States, 1948 - 1952

<table>
<thead>
<tr>
<th>Index</th>
<th>Md.</th>
<th>N.Y.</th>
<th>Penna.</th>
<th>Ohio</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>[\frac{\text{No. of Cuts}}{\text{No. of All Films Rev'd}}]</td>
<td>0.216</td>
<td>0.362</td>
<td>0.411</td>
</tr>
<tr>
<td>B</td>
<td>[\frac{\text{No. of Films Cut &amp; Banned}}{\text{No. of All Films Rev'd}}]</td>
<td>0.041</td>
<td>0.072</td>
<td>0.115</td>
</tr>
<tr>
<td>C</td>
<td>[\frac{\text{No. of Cuts}}{\text{No. of Features Rev'd}}]</td>
<td>0.363</td>
<td>*</td>
<td>0.869</td>
</tr>
<tr>
<td>D</td>
<td>[\frac{\text{No. of Films Cut &amp; Banned}}{\text{No. of Features Rev'd}}]</td>
<td>0.069</td>
<td>*</td>
<td>0.246</td>
</tr>
</tbody>
</table>

* New York's data unavailable here because they do not record the feet of film reviewed, but the number of reels.
than 1 per feature. By Index D, Maryland cut or banned less than 1 out of 10 features, Pennsylvania and Ohio 1 out of 4. From these indices, it is possible to suggest that the differing censor records reflect the differing value systems of the censors; these censors were handling roughly the same flow of films and employing highly similar standards but produced different results.

Turning to the details of what was actually censored, we may note, first, deletions for "Socio-Political Attitudes," interesting in that this area has most often created fears in the "liberal" mind; we may relate these fears to the facts. In the months of material analyzed, there was a clear tendency to be most solicitous of approving racial prejudice films which might create racial frictions. Thus, Pennsylvania censors, while approving such a film, appended this warning:

The Board issues an Approval Seal.... with reluctance - not because of the theme - but because of the inflammatory direction....If this film causes real distress at any place or for any people in the state, we will feel privileged to the right to revoke the license.
Similar concern was reflected with another film banned in Ohio and receiving 173 cuts in New York. Ohio cut heavily a film dealing with race riots, and Maryland cut other scenes in a film suggesting negro-white sexual attraction; here, the proscribed material was noted,

Eliminate all shots, including flash-back of colored man seated next to white woman at table, in cafe, as he leans against her and puts his face practically against her face, while lighting another white girl's cigarette.

The suggestion of sexuality is remote but the censors made sure that it was not broadcast.

Two instances of political censorship did appear, other than an occasional deletion of a humorous characterization of a judge. In Maryland, a line in an old anti-Nazi film was cut when there was a reference to Franklin D. Roosevelt as "the meddling fool." The other such elimination, in Pennsylvania, is amusing and confusing. From a Greek language film these bits of dialogue were cut:

The internationally organized bourgeoisie plays its last trump in the race in contrast to the well-fed will of the conscientious mass. To the well-fed will of the conscientious mass, I said, the conscientious mass. The citizens passing from action to reaction
became inconsiderate and unwilling organs of the international non-conscientious oligarchy. To their dark pursuances, I said, of the conscientious nonconscientious oligarchy. The 20th century I said the century of basic communal reforms. It will differentiate the old-style perceptions. Unshaken arguments and self-evidenced view, is the awakening of the masses from the lethargy of superstition on the road, I say, of a new destination.

This material appeared to have been cut because it sounded subversive, not because the censors understood such gobbledygook. These pieces, however, represent the totality of political censorship in over 16,000 films during this period. Quantitatively, the "liberal's" fear is unjustified.

A final point of interest is the differential censorship operating against foreign and American films, which we saw earlier in Ohio. The same pattern held for the three other states. Thus, while foreign films were only 15.9% of all films reviewed, 23.3% of them were cut and banned; American films, 84.1% of the total, had only 4.3% cut and banned. The bulk of the foreign pictures, 67.2%, were reviewed in New York, reflecting the ethnic demands there; of these, however, New York cut and banned only 20.3%. On the other hand, Pennsylvania and Maryland, having many fewer such
films, cut them heavier, Pennsylvania altering 28.3% and Maryland 31.2%. The American films were roughly split equally among these three, but Pennsylvania was the heaviest censor of these films, deleting 9.4%; Maryland cut 2.5% and New York only 1.8%.

Another differential factor appears in topics cut in American and foreign pictures. Thus, New York cut six times as heavily for sex reasons in foreign films as either of the other two. In all three, the foreign film accounted for the vast bulk of religious deletions. Maryland and New York censored evenly between the two kinds for reasons of cruelty, but Pennsylvania struck down heavily on foreign presentations of this topic. Wide variation appears also with crime films; Pennsylvania cut heavily into foreign pictures for this, Maryland distributed its crime cuts evenly and New York cut only American films. Finally, cuts for socio-political attitudes were even in Pennsylvania and Maryland, but delivered entirely against foreign films in New York.

In detail or generally, the foreign motion picture enters the censor's chambers under a mantle
of suspicion; it has much less chance than its American counterpart of leaving unmarked. As the Maryland censor complained, "The moral qualities of post-war motion pictures have hit an all time low" due "partially to the influx of foreign films of which 42% were found objectionable" during 1949.39

III. Conclusions

In this chapter, from such data as were available, we have examined the quantitative and also the qualitative nature of censored material. Both Ohio and New York censors were seen to have been less active after the institution of self-regulation by the industry in the mid-thirties. In their eliminations during several post-war years, the Ohio censors stressed sexual immorality more heavily than crime presentations, cut heavier into foreign than American films and concentrated their work on "features."

When other states' censorship for this period was examined, great variation appeared in the reasons for censorship, but sex deletions predominated, with crime a modest second; in light of fears of political

censorship, it is enlightening to note that very little is exercised, although recent racial problem films have caused more action. The heavier censorship of features and foreign films seen in Ohio reappeared in other states.

Such data raise questions about the relationship between this censorship and film content. In Chapter II we saw how an industry threatened sporadically by external boycotts and other group protests came to accept self-regulation. These external and internal forces have been important in moulding the nature of the film product, primarily by proscribing so many areas of dramatic expression that most film makers had come to rely upon standardized themes which were "safe." Needing, however, some device to attract audiences, movie-makers came to rely upon new techniques to sell their films; one of these was the search for new interpretations of these "formula" themes, new presentation techniques which dealt with the details or edges of the prohibited themes. This analysis has been further verified in this chapter, for the striking aspect of censorship seen here has been the great concern with details of the movies and
great ignoring of the thematic content. In over 16,000 films separately reviewed by the four states here studied, only 71 films were banned in toto or 0.4%. The emphasis of the censor, then, has been upon the detail, not upon the central concept.

If the censor's main activity is directed toward details of the length of a kiss, the number of stabs or the sexually suggestive dance, such snipping hardly touches the conclusions the movie-goer may draw from the uncensored amounts. The producer takes a standardized "formula" to which he is limited, preoccupies the viewer for an hour and a half with lurid and often exaggerated shots of life and then wraps it up in a neat, final bow of "repent and ye shall be saved" or what Ben Hecht has called the "law of the Virtuous Finish."

To mention a not unusual plot: A crime movie portrays the struggle of the police to catch a racketeer or murderer who is seen living quite well, who manages to outwit the law several times until the film's hero (usually not connected with the police force) detects - often by chance - some small item which leads to arrest or causes the villain to reveal all in the presence of hidden witnesses. The censor
finds the only offense is an especially gory murder or a cocky remark by the criminal about the efficiency of the police; the rest of the film passes on to the mass of viewers. Note, however, if the motion picture influences attitudes (infra, Ch. VII), deletions have hardly touched a major conclusion that may be drawn from this presentation of crime, viz., crime does pay - if you are lucky and careful about admitting your sins. Such a conclusion is as valid as the ostensible one that "crime does not pay;" maybe it is more valid, as the latter is not introduced except as a brief after-thought at the film's end when some degree of verbal repentance is shown by the criminal or when he dies in a swelter of blood.

Likewise, films center around lengthily described or hinted-at illicit sexual relations, while at the end the triumphant couple make the proper obeisances to the values required of the industry. The viewer, however, has had his attention almost exclusively focussed upon the amorous prelude. Certainly the impression left by a sudden jump in the film sequence, caused by a deletion during the amorous byplay, may well linger longer than the effect of the virtuous finish.
This is not necessarily to argue that the censors censor too little or too much or that the whole business is impossible; but it is at least to say that the data here considered seem clearly to point to the emphasis of the officials upon details without similar emphasis upon the centrality of the film's effort. Thus the stereotype often held about the censor, as one who blocks off whole areas of expression from the public, is to a great degree erroneous. The thrust of his efforts is to the fringe and minutiae, not to the big ideas.

It is possible to conjecture, however, that the indirect influence of the censor accomplishes what the stereotype claims. Producers, knowing that controversial "idea" pictures, such as Birth of A Baby or Native Son, have been banned, will be reluctant to essay new productions dealing too intimately with basic belief systems; given the conservative financial nature of the industry (supra, Ch. II), this possibility may be a reality.
Yet, there are produced a surprising number of serious films dramatizing important, controversial issues. 40

A more involved question is the cause of the particular materials out from pictures. The general proposition advanced here is that such censorship is a resultant of two forces, the nature of the film content and the values of the censors. The few deletions for socio-political attitudes are more likely traced to the fact that few films are critical of the

40. Following is a list of films produced since 1948 and their subject matter: negro prejudice (Pinky, Intruder in the Dust, Lost Boundaries), anti-Semitism (Cross-Fire, Gentlemen's Agreement), dangers of demogoguery and fascism (All the King's Men), juvenile delinquency, (City Across the River, Knock on Any Door) commercialism of college football (Saturday's Hero), the ruthlessness of yellow journalism (Scandal Sheet, The Big Carnival), the disabled veteran (The Men, Bright Victory), labor-management relations (Whistle at Eaton Falls, With These Hands), mob emotions, (The Well, The Lawless), the KKK (Storm Warning, The Burning Cross), alcoholism (Lost Week-End) the need for psychoanalysis (The Dark Past), mental illness (The Snake Pit), communism (The Iron Curtain), American subversion (I Was A Communist for the FBI), Nazism (Tomorrow the World), evil effects of war (Three Came Home, Battleground), brotherhood of nations (Berlin Express), euthanasia (Live Today for Tomorrow), problems of displaced persons (The Search, Long Is The Road), tragedy of the traitor (Decision Before Dawn), false worship of material success (Death of A Salesman) and the frustrations of social class distinctions (Place In The Sun). That this new emphasis has been profitable for the industry is indicated by Siegfried Kracauer, "Those Movies with a Message," Harper's, June, 1948, 567; cf. also Variety, Nov. 30, 1949, 1. But contra, cf. Arthur Mayer, "Myths and Movies," Harper's Best, 1952 ed., 69, also printed in Arthur Mayer, Merely Colossal.
dominant attitudes. Further, sex deletions loom so large because sex forms such a major part of current film themes. Thus Table VIII, which employs a scalar technique to rank the types of material censored, may not be a hierarchy of censors' values but more a reflection of the volume of such values in film content. Does this mean that the personal values of censors are not related to what material is cut? Several observations may give some insight into this factor. The striking differential among the four censor states in what and how much material was cut from roughly the same flow of motion pictures points emphatically to the importance of personal values in interpreting statutory standards of morality. How else does one account for the banning of a film in some states but not in others? Or that foreign films are cut heavier than American films? Or that this suspicion of foreign pictures differs among the states? Or that some states concentrate the bulk of their cuts under different headings? The most convincing evidence is Litzky's study of how 100 films were treated differently among the states (supra, Table X). It compels the conclusion that the censor's values must play some part in the determination of what is censored.
Another point of interest here is that the record of deletions does not give substance to an hypothesis advanced by Dr. Alfred Kinsey and accepted by Dr. Frederick Irion. This is that, because there are class differences in attitudes toward kissing and nudity, the censor will reflect the most numerous group's values. The data here suggests, however, that the censor seems to provide for the views of all classes. The lower class values Kinsey identifies are reflected in Ohio's cuts for kissing and embracing (10.0% of all sex cuts), postures and gestures (2.6%), erotic dancing (3.4%) and nudity (16.7%) - elements totalling almost one-third of the sex deletions. If Kinsey is correct that upper classes are more critical of sexual intercourse, then the cuts for intercourse reflect again the censors' sensitivity to that class; of all sex eliminations, bedroom scenes provided 3.4%, adultery 4.3%, seduction 16.4% and references to the sex act 28.7% - a total of 52.8%. If anything, the censors seemed to reflect somewhat more the upper-class attitudes;

41. The thesis is proposed in Kinsey, Pomeroy & Martin, Sexual Behavior in the Human Male, 365 - 381; this is more fully related to the need for censorship in Frederick Irion, Public Opinion and Propaganda, 630 - 633.
if the censors reflected more the more numerous lower class, as was hypothesized, they should see less offense in intercourse references. Such an analysis is most tentative, however, because of the methodological problems of Kinsey and the author. Here is an area for further research employing the same censorship data within the framework of Kinsey's work.

Thus, in this chapter, we have examined the degree of subjectivity in certain censorship data. The variations indicated here point out again that this is no fairly objective determination of such things as the amount of bacteria in milk, the surety of capital in investment institutions or the amount of braking pressure needed to halt a train. Instead, one finds in film censorship the doubtful tools of statutory standards discussed earlier, a film content whose artistic worth is subject to a highly individualistic appraisal, and administrative decisions influenced by the subjective force of personal values.

One finds, also, substantial and oftentimes heated debate in the whole process. We have examined the political debate in Chapter III, the administrative debate in Chapter IV, the debate over personnel in
Chapter V and the debate among states as to what is censorable in this chapter. Yet another mode of expressing this controversy is the legal. To this we may now turn, not merely to describe the legal arguments involved in the subject, but also to relate these arguments to the data of censorship experience. The particular value of such an analysis should be to indicate the forces and experience which have contributed to the current re-examination of the regulation.
CHAPTER VII
The Legal Aspects of Film Censorship

This chapter considers the legal controversy over film censorship. The conflicting legal arguments are examined in light of the data presented in this dissertation. Such examination has not been performed in others' consideration of the problem; it is hoped that this analysis will add new illustration to the dictum that "the life of the law is not logic but experience."

I. The Changing Legal Position of the Motion Picture Censorship

For the vast bulk of its history the motion picture in America was not considered an element of the press and was therefore not under the protection of the First or Fourteenth Amendment. In 1952, however, that protection was extended to the medium. What changes in constitutional concepts of freedom transpired to make this possible?

A. The "Mutual" Case and Changing Concepts of Civil Rights

We have seen earlier how film censorship was sanctioned for almost four decades in the 1915 decision of Mutual Film Co. v. Industrial Commission of Ohio (236 U.S. 230). Here, the Supreme Court upheld film censorship by denying that it was a burden on interstate commerce, an excessive delegation of
legislative authority without precise standards or a violation of the free speech provisions of the Ohio Constitution.\textsuperscript{1} Although no challenge to this thinking came before the Supreme Court until 1952, during those four decades legal thinking on other phases of civil rights was changing.

The most striking change had been the expansion of the "liberty" clause of the due process provisions of the Fourteenth Amendment. Prior to 1925, the First Amendment served the citizen as protection only against the federal government; but in that year Gitlow v. New York, there appeared an obiter dictum which signalled the great change. Here, the Court declared that the liberties of speech and press were "among the fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the States."\textsuperscript{2}

The re-casting once begun, more means of communication were protected from state action prohibited by that amendment. This included such items as the

\begin{itemize}
\item 268 U.S. 652 (1925).
\end{itemize}
following: newspaper exemption from prior restraint\(^3\)
and discriminatory taxation;\(^4\) distribution of leaflets
in the streets\(^5\) and sale of crime magazines;\(^6\) house-
to-house canvassing for sale of publications\(^7\) and
playing records for religious solicitations;\(^8\) use of
sound truck amplifiers within certain volume limits;\(^9\)
peaceful picketing;\(^10\) exemption of television from
prior restraint;\(^11\) and free speech and assembly on
public\(^12\) and private\(^13\) property. Note that many of
these extended freedom not only to publishing of
ideas but to their circulation; as the Court once
observed, "indeed, without the circulation the publi-
cation would be of little value."\(^14\)

5. Lovell v. City of Griffin, 303 U.S. 444.
14. Cf. fn. 10 at 452; cf., also, Winters v. N.Y., 333 U.S.
   509; Ex parte Jackson, 96 U.S. 733 (1878); Follette v. Town
Other changes appeared in the due process concepts of adequate standards and in the meaning of interstate commerce. First, a number of cases after 1915 dealing with application of administrative standards to civil rights challenged the lack of careful statutory wording in the administrative delegation. Second, beginning in 1923, the federal government considered the film industry as interstate commerce in all its aspects; by 1948, it could reach down to the lowest levels of the film industry in applying anti-trust laws.

With these doctrines changing, more frequent legal objections to film censorship appeared; as early as 1939 a memo was circulated in high industry circles pointing to the possibility of overthrowing the


"Mutual" case if properly challenged, but the fears of the leaders vetoed action. Several very strong recommendations for voiding the precedent case appeared in leading legal periodicals. It was not, however, until the appointment after the war of Eric Johnston as head of the industry to succeed Will Hays that the industry's attitude changed. Johnston soon became outspoken in his opposition to censorship and promised early legal attacks, a promise soon fulfilled. The whole movement was accelerated by a Supreme Court obiter dictum in 1918 in an anti-trust suit against the industry; "We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment."


18. Information from general counsel of MPAA, Sidney Schreiber.

19. Signs of this discontent just prior to the war may be seen in fn. 17 above, and legal articles, e.g., Note, "Film Censorship: An Administrative Analysis," 39 Columbia L.R. 1383 (1939); Note, "Censorship of Motion Pictures," 49 Yale L.J. 87 (1939).


The legal attack this comment inspired suffered two rebuffs in cases where the constitutional issue was not sufficiently presented. The first arose when Memphis censors banned Curley for racial reasons. The trial judge avoided the challenge to censorship by dismissing the petition on other grounds; although the state supreme court affirmed the decision, it implied serious doubts about the validity of censoring on grounds of race. The second challenge arose in Atlanta in 1950 when Lost Boundaries was banned for fear of consequent racial strife. Here, the contentions of violating the First and Fourteenth Amendments were not upheld by either federal district or appellate courts because of the "Mutual" decision; the district court, however, delivered what was in court circles a judicial blast at the regulation. In both cases, certiorari appeals to the Supreme Court were denied. The pressure of the industry continued, however, attaining initial success in 1952.


B. The "Miracle" Case of 1952

The 1952 action changing the status of this medium arose two years earlier amid a whirl of legal and social action. The film at issue was The Miracle, in which a demented, unmarried girl believes her baby to have been conceived by a Catholic saint. From its first showing in New York City in December, 1950, the film was the subject of picketing, pulpit denunciations and pressures by various Catholic groups upon the state censors to revoke its license. Pressure, including bomb threats, mounted through January, 1951, until in early February, after claiming to have had hundreds of protests, the New York


25. The bomb threat is reported at Ibid., Jan. 21, 1951, 1, and Jan. 28, 1951, 1. For statements of protest, cf. Record before Supreme Court in Burstyn v. Wilson; cf. also Frankfurter's concurring opinion, in same case at fn. 20.
Board of Regents reviewed the film and declared it "sacrilegious," revoking its license.\textsuperscript{26}

The film's owner appealed through state courts to the federal Supreme Court. Although he received no support in the state, he did pick up strong dis­sents and popular support from distributors, religious and civil liberties groups - and even some Catholic groups.\textsuperscript{27} Both state courts denied the challenge on the precedent of the "Mutual" case.\textsuperscript{28} A new argument, violation of state-church separation, likewise failed because, to the courts, the medium by its nature was not involved in inquiry and discussion about such matters.\textsuperscript{29}

The result in 1952 in the U. S. Supreme Court, however, was quite different and precedent-shattering

\textsuperscript{26} Cf. Frankfurter's concurring opinion, \textit{ibid.}, fn. 19, for protest of non-Catholic groups against banning the film. For action of previous licensing, cf. \textit{Sat. Rev. of Lit.}, Jan. 27, 1951, 28 - 9.


\textsuperscript{29} \textit{Ibid.}, 303 N.Y. 255.
in a decision that came to be known as the "Miracle" case. The Court, passing over briefly the contentions of due process and state-church separation, decided the case on free press grounds. They recognized that this was the first case since 1915 to present the question of whether the film was in the "ambit of protection" of the Fourteenth Amendment; they decided it did belong there, without, however, proscribing all censorship.

Most of the old "Mutual" case was overthrown by reversal of the earlier Court's evaluation of the medium's significance. "It cannot be doubted that motion pictures are a significant medium for the communication of ideas." Nor is their importance as an organ of public opinion "lessened by the fact that they are designed to entertain as well as to inform;" the line between informing and entertaining is too elusive. Further, the motion picture, like other media, cannot be denied safeguards of freedom because it is conducted for private profit. Finally, the capacity for evil of the medium does

31. Ibid., at 501.
32. Idem.
not deny it these safeguards. "If there be capacity for evil it may be relevant in determining the permissible scope of community control, but it does not authorize substantially unbridled censorship such as we have here." \(^{33}\)

Having placed the film within these safeguards, the Court next asked whether the standard of "sacrilegious" is the type of exception to these freedoms which can be permitted; note that the Court was not questioning all standards of censorship, but only one. The Court first traced exceptions back to the so-called "Near" doctrine of 1931, that "the protection of free speech and press even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases." \(^{34}\) Consequently, declared the Court in 1952, "In light of the First Amendment's history and of the Near decision, the State has a heavy burden to demonstrate that the limitation challenged here presents such an exceptional case." \(^{35}\)

33. Ibid., at 502.


Had the state so demonstrated? No. Indeed, serious consequences would follow from permitting such regulation; "the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another, and he would be subject to an inevitable tendency to ban the expression of unpopular sentiments sacred to a religious minority." Further, such censorship would raise substantial questions of state-church separation, questions, however, not pursued. Their final conclusion, therefore, was that states could not ban for reason of sacrilege.

However, several reservations left some confusion. Thus, the Court cautioned, 37

It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places.... Nor does it follow that motion pictures are necessarily subject to the precise rules governing any other particular method of expression. Each method tends to present its own peculiar problems.

36. Ibid., at 505.

37. Ibid., at 503.
And again:

Since the term "sacrilegious" is the sole standard under attack here, it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly-drawn statute designed and applied to prevent the showing of obscene film. That is a very different question from the one now before us.

The footnote to this last sentence contained "certain well-defined and narrowly limited classes of speech" which had permitted certain exceptions to the "Near" doctrine, e.g., obscenity, profanity, libel, insults or "fighting" words, "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." This unwillingness to overturn the decades-old censorship system is seen in one judge's concurring opinion suggesting the Court review each refusal of a license and in another three-man concurrence analyzing only "sacrilege" as a violation of due process.

38. Ibid., at 505. (Emphasis added.)
40. Burstyn v. Wilson, 343 U.S. 506. (Emphasis added.)
41. Ibid., concurring opinion by Justice Frankfurter, Jackson and Burton.
Thus the "Miracle" decision created a new constitutional status for the medium, one of general protection by free press guarantees with, however, no blanket prohibition of all film censorship. Such a stand implied the Court would examine the particular standards of censorship as cases arose. New cases soon came.

C. Decisions after the "Miracle" Case

In the years following, the Court turned down repeatedly particular standards challenged by the industry. In each case, the decision was per curiam, referring to the "Miracle" precedent. The re-writing of standards which this caused has been seen in earlier chapters, although none of these have yet to come to the Court.

A week after the "Miracle" case, the Court overthrew municipal censorship in a Texas city, where films had been banned that were "of such character as to be prejudicial to the best interests of the people." Elsewhere, film owners were commencing action against the state censors, in New York against the banning of

42. Gelling v. Texas, 343 U.S. 960.
La Ronde and in Ohio against the banning of M. Both were decided by the high court a year and a half after the "Miracle" case, striking down the standards employed but not proscribing all restraint.\textsuperscript{43}

The award-winning New York film La Ronde consisted of a chain of sequences dealing with amorous adventures of six couples, not all of whom were married; it was banned for "immorality." The lower state court insisted that sufficient grounds to warrant interference with administrative decisions had not been demonstrated, and that the "Miracle" case proscribed only "sacrilegious." The state's highest court agreed and further insisted that the standard did not suffer from vagueness; "immorality" had generally been understood to include the kind of sexual immorality found in this film.\textsuperscript{44}

The Ohio case arose over M, an American re-make of a well-known German film of the 'thirties, incidentally, approved by the Ohio censors in its time;


the central character was a criminal psychopath, impelled to murder children, who is finally caught by the underworld when the police fail. The Ohio censors objected because, in their words, 45

1. There is a conviction that the effect of this picture on unstable persons of any age level could lead to a serious increase in immorality and crime.
2. Presentation of actions and emotions of child killer emphasizing complete perversion without serving any valid educational purpose. Treatment of perversion creates sympathy rather than a constructive plan for dealing with perversion.
3. It is a horror picture of the most revolting kind since it invades the realm of innocent children.
4. It undermines confidence in enforcement of law and government. The plot is composed of a repetition of criminal acts and law violations with mob violence and hysteria and at the same time exhibiting ineffectiveness of the police.

The film owner appealed to the Ohio Supreme Court with the usual battery of complaints - free speech and press and vague standards; further, the law's provisions for fees imposed an undue burden on him, being repugnant to interstate commerce provisions of the U.S. Constitution.

45. Official Report of the Ohio Division of Film Censorship, found in Transcript of Record before U. S. Supreme Court in the M case - Federal, at 23.
The state appeal was in vain. Reviewing the
"Miracle" case, the court concluded that although
films may not be rejected as "sacrilegious," "there
still remains a limited field in which decency and
morals may be protected from the impact of offending
motion picture film by prior restraint under proper
criteria."

This court was convinced that rising
delinquency may be traced in part to such exhibi­
tions as this. The justices were unconvinced that
the standards were vague, referring to other Ohio
criminal laws employing such standards; "furthermore,
the tests of the censorship statute have over a
period of 40 years acquired a definite and circum­scribed meaning," as measured by the films banned
in the past decade. The claim of an unconstitutional
tax was denied because the film owner had paid the
fee without protest and was not seeking its recovery.

Time is taken here to elaborate this litigation
because when both cases were appealed to the U.S.
Supreme Court, that body filed only a per curiam

46. Superior Films, Inc. v. Hissong, 159 O.S. 315, herein­
after referred to as "the M case - State."

47. Ibid., at 327.

48. Ibid., at 332.
opinion in January, 1954, reversing state court judgments in both instances.⁴⁸a A vigorous concurring opinion by Justices Black and Douglas declared the censorship systems unacceptable in their entirety. But in the face of the silence of the majority, it is difficult to understand which of the legal contentions urged upon the Court produced the outcome.

The next moves took place in Ohio at the end of 1954. The Ohio Supreme Court in December, 1954, declared that orders of state censors acting under the statutory standard were unlawful and unreasonable in light of the federal over-throw of their earlier decision in here, parts of three films had been banned for sexual immorality. This court lacked the one extra vote needed to render the whole statute void. The precarious thread by which the Ohio law hung was cut a month later when an Ohio District Court of Appeal declared the regulation unconstitutional.⁵⁰

⁴⁸a. Cf. fn. 43.

⁴⁹. RKO Radio Pictures, Inc. v. Dept. of Education, 162 O.S. 263.

Elsewhere, other court actions were chopping down the regulation. A Pennsylvania lower court had, in September, 1951, "reluctantly" ruled the state's regulation invalid for unclear standards.\(^{51}\) In Massachusetts, the Supreme Judicial Court voided the Sunday censorship law in July, 1955; thereafter the mayor declared Boston censorship inoperative on obscenity grounds.\(^{52}\) Finally, in late October, 1955, the U.S. Supreme Court voided Kansas's standards for obscenity censorship.\(^{53}\)

Thus, at the opening of 1956, film censorship status has at least three aspects: (1) the film today shares with the older media a "preferred position" within the shield of the Fourteenth Amendment liberties; (2) this does not yet mean that censorship systems are therefore automatically repugnant to that new position; (3) but all of the standards so far challenged are repugnant.

\(^{51}\) Ibid., Sept. 23, 1954, 42.


These decisions have been compromising in the sense that they gave a little to both the pro- and anti-censorship groups. Those seeking its abolition were given the higher doctrinal status and elimination of particular censorship standards. Conversely, those supporting censorship could find solace in the Court's reluctance to void all such regulation and in the suggestion that some standards might be acceptable. The decisions, as we saw earlier, served as the basis for a dual program of action by the protagonists; the advocates attempted to clarify their laws to accord to the Court's will, while opponents sought further elimination of other standards. At some point in the future, however, the Court must face the real problem of whether any standard, despite its clarification, can be employed without contradicting the protection of the Fourteenth Amendment.

Litigation over censorship has centered on three major constitutional questions: freedom of the press, due process and the nature of censorship fees. It is appropriate now to review what has been said on each issue, and to relate them to the practical experience of censorship.
II. Freedom of the Press: Arguments and Experience

A brief summary here will outline the legal arguments which this section explores. At the heart of the film censorship controversy is the meaning of "freedom of the press," a confusion reflecting the different philosophical interpretations of the word. The opponents insist that it means no prior restraints or only restraints for which there are clear and pressing justifications; the alleged dangers of movies present no such justification. The advocates insist that freedom is not absolute and may be infringed to serve community interests; the dangers of an uncontrolled film expression justify such infringement. Basically, both admit the necessity of some restraint on the press but differ as to whether the film constitutes a social danger requiring that restraint. The pro-censorites emphasize the anti-social effects of the film upon its audience, particularly the young; the anti-censorites challenge the validity of such causal theories of social. While the opponents point to alternatives to censorship protecting society, the advocates insist these are too weak. Finally, available data on causal theories seem to favor the censorship opponents.
A. The Meaning of Freedom of the Press

For the anti-censorite, freedom of the press means exemption from prior restraint, an exemption believed to be declared in the First Amendment.

For this belief, the industry in a recent brief relied upon legal scholars from Blackstone and to federal and state cases from our earliest history until the "Near" doctrine was announced in 1931. At this point, the Supreme Court objected to such breadth in the meaning and suggested that restraints were justified under exceptional circumstances. However, the industry could thereafter cite "over 150 Supreme Court, federal and state cases" in which this doctrine was employed but in

54. Law Department of Motion Picture Association of America, Inc., "Brief on Repeal of Censorship in Ohio," mimeo, April, 1953.


none of which it was employed to permit censorship. This approach by the industry and others means getting as far out as possible on a continuum of freedom and yielding only a little ground by reluctant acceptance of restraints under the "Near" doctrine.

On the other hand, while the pro-censorite recognizes the importance of a free press, he insists that it may be limited in serving the larger interests of the community; in matters of morality, for example, the police power has primacy over freedom of the press.58a Thus, the Ohio Congress of Parents and Teachers (OCPT)


58a. Cf. statement of this in amicus curiae brief of Ohio Council of Churches filed in "M" case - State; cf. also testimony of John Malloy in 1953 Ohio legislative hearings.
believed that "it is of great importance in a republic.....to guard one part of society against the intemperance of the other part." The State of Ohio indicated why the medium concerned the community interest when it stated in its brief in the M litigation:

The impact of the motion picture, the unrestricted audience, and the subject matter of those films which experience shows have been rejected, taken together present an area of interest for Ohio, and an area which can be Constitutionally regulated.

Further, declared the state, "the Fourteenth Amendment was not intended nor should it be used to strike at the heart of a state's effort to protect the morality and well-being of its own people." After all, as a Knights of Columbus (KC) representative commented before the Ohio Senate committee considering repeal in 1953, if the state has the right to protect the society in such matters as quarantining disease, inspecting food and drugs for health and punishing libel and slander, has it not the right under the same

59. Amicus Curiae brief in "M" case - State.
60. Brief of Defendant in "M" case - State.
61. Idem.
doctrine to protect the young of that society against moral corruption? This view takes for granted that censorship is in fact a protection and argues that it may be invoked whenever the legislature is persuaded to decree it.

The pro-censorites find constitutional support for their view. The state of Ohio noted that in Kovacs v. Cooper, the community could be protected against "objectionable noise;" if that were a proper area of interest for protection, then why are not "morals, the rates of crime and juvenile delinquency of the state even more deserving of protection?"

On the basis of such cases as this, Ohio could discern a proper area of interest where restraint of the film "M" was justified. The pro-censorites

61a. Testimony of John Malloy, state deputy of Knights of Columbus of Ohio before Senate Committee, April 27, 1953.


63. Brief of Defendant in "M" case - State.

64. Source in fn. 63 cited other cases where Court has permitted the state to limit free expression: Chaplinsky v. New Hamp., 315 U.S. 571; Feiner v. N.Y., 340 U.S. 315; Fox v. Washington, 236 U.S. 273; Beauharnois v. Ill., 343 U.S. 250. Same argument was used by Defendant in Brief of "M" case - Federal.
further relied upon the "escape clause" of the "Miracle" case, the suggestion that carefully-worded standards might be employed against certain classes of clearly defined subjects.65

B. The Argument over Justifications of Prior Restraint

The pro-censorite definition of "freedom" as something subordinate to community interest seeks to emphasize the dangers to the community of an unrestricted film medium. This justification may be stated briefly: motion pictures contain good and evil in their content; the films influence; the films may thus influence to evil, and therefore, films must be censored to eliminate their potentials for evil.

This thesis of film content is seen in such terms as those of the Ohio Council of Churches (OCC), referring to "themes and scenes which may promote juvenile delinquency, disrespect for law and order or pandering to low and indecent desires."66

65. Brief of Defendant in "M" case - State and Federal; Brief of Ohio Catholic Welfare Conference in "M" case - State; testimony before Senate Committee of Ohio Legislature considering censorship repeal by John Malloy (cf. fn. 71), Thomas Osborne (attorney for Cleveland Council of Knights of Columbus) and Sen. John Corrigan.

It will be recalled from previous chapters that the early agitation for censorship strongly emphasized this thesis.

The thesis of film's effect is illustrated from the brief of the OCC in the "M" litigation:67

The combination of the sense of sight and hearing, in a quiet darkened theatre, free from outside distraction, gives a vehicle to ride into the comprehensions of an individual far beyond that of any other medium of expression.

The thesis of antisocial effect of the films was dramatically expressed by the state of Ohio in the same case:68

Those who will fully appreciate the tragedy and artistic values of a movie showing the ways of a depraved and vicious killer will sit side by side with impressionable and excitement-seeking youths, with those whose mental quirks run the gamut of psychiatry, with those whose calculations perhaps are well served by the methods they observe on the screen. This audience sees the same movie, eats the same popcorn but the reaction to the impact is entirely diverse. It has been truly said, "What is one man's amusement, teaches another doctrine."...It equally is true that that which leads one to artistic satisfaction leads another to abortion, another to violent crime, and another to adultery.

67. Idem.

68. Brief for Defendant in "M" case - State; cf. also Brief of Appeal in "M" case - Federal.
For the anti-censorites, however, this justification raises more devils than it quiets. Through their legal briefs marches a "parade of imaginary horribles" which censorship allegedly produces. This general argument, resting upon a basic libertarian dislike of restricting free expression, relied heavily upon quotations from Mill, Milton, etc.69

Their arguments were more particular, however. First, some questioned that ability of any group to censor; few went as far as Louis Bromfield in the Ohio repeal attempt, when he wrote the Senate,70

I know of no citizen of Ohio, including myself, whom I feel is of such impeccable moral standards, judgement, intelligence and education that he is qualified to tell other citizens what they should see or not see....Censorship is a dangerous business when power is vested in a very few individuals who may well be and frequently are in themselves psychopathic in tendency and point of view and should not be trusted to judge for the great bulk of more balanced citizens....there is a natural tendency psychologically for the psychopathic to seek out censorship jobs. In fact, I would not trust the aggressive self-appointed censor as far as you could throw a grand piano across the Neil House Ballroom.


70. Copy of letter in author's possession and in files of Senator Charles A. Mosher; the same theme is found in Plaintiff's Brief in "M" case - State and Ernst & Lindey, The Censor Marches On, 224 - 6, 236 - 7; a cogent statement of this is by G. B. Shaw in his preface to Mrs. Warren's Profession.
Another line of attack was to challenge a basic premise of censorship - the influence of the film upon audiences. Sometimes this challenge was general, with no supporting data. Thus, one student commented, 71

> It is impossible to say what words, pictures, music or sculptures, gestures, or meaningful silence can become an inherent part of an unlawful situation.... Any expression may become criminal if the situation is such as to make it so....

A civil liberties group favorably referred to Judge Jerome Frank's view: 72

> Psychological studies in the last few decades suggest that all kinds of stimuli - for instance, the odor of lilacs or old leather, the sight of an umbrella or a candle, or the touch of a piece of silk or cheesecloth - may be provocative of irregular sexual behavior in apparently normal men - for all we know, far more provocative than the reading of obscene books.

More specific data to challenge this premise appeared at several points. The film owner's brief in the "M" case pointed to the increased statistics of juvenile delinquency in Ohio,


72. CLUCO Brief in Ohio censorship repeal (fn. 66) at 14 quoting from Roth v. Goldman, 172 F. 2d 788, 793 (1949).
higher than national rates; if censored movies were to help decrease such delinquency, why did not the record reveal it here? Likewise, the MPAA had compiled in 1950 a list of opinions from "noted authorities in the field of juvenile delinquency," all questioning this causal theory. This challenge has not been widespread; it did not appear before the Ohio Senate in 1953 nor the "M" case litigation. Although it may be a fruitful approach, there may also be in it some contradiction with the belief that the film deserves protection of a free press; that protection has generally been deemed important in the eyes of constitutional law and State Constitutions because of the influence of these means of expression upon public opinion. Thus, to challenge the causal effects may mean working against one's self.


74. MPAA, "Juvenile Delinquency and Dramatized Entertainment; Can the Motion Picture Contribute to Juvenile Delinquency?" mimeo, compiled March, 1950, at 1.

C. The Argument over Alternatives to Censorship

In order to strengthen their case, the anti-censorites have argued the possibilities of alternatives. These are: (1) legal - post-restraint or criminal obscenity statutes and audience categorization schemes; (2) industrial - the Hollywood Code and the demands of exhibitors and producers, and (3) private - interest group ratings and parental control. None of these satisfy the fears of the pro-censorites.

The most frequently advocated legal alternative is the widely prevalent criminal obscenity law. In the 1953 Ohio repeat attempt, several witnesses urged this as a means of providing the ends sought by censorship and as a means more compatible with a free but responsible press. Such laws provide for ex post facto prosecution. Some suggest that breach of peace ordinances could be used,

76. Testimony of film critic Norman Nadel and law professor Oliver Schroeder.

although requiring clear definition of the offense; with both measures, control rests in judicial rather than administrative hands.\textsuperscript{78}

Another legal method might be to regulate the nature of the audience, particularly the youth, permitted to view films. This would escape the necessity of conforming standards of films to those of a young audience. One method would be that now used in some states and cities, restricting the age of the age of the movie-goer or the time at which he may attend the theater.\textsuperscript{78a} Another was to classify the types of films as to audience which might witness them, the system now employed in England\textsuperscript{79} and suggested recently by the former New York chief censor Hugh Flick.\textsuperscript{80}

The basic rebuttal by pro-censorites to these legal methods is that they do not prevent the damage.

\textsuperscript{78} Suggested at Note, "Motion Pictures and the First Amendment," 60 \textit{Yale L.J.} 712-13; cf. extension there of legal argument.

\textsuperscript{78a} Brief of National Council of Freedom from Censorship in "M" case-Federal, at 23-4; for examples, cf. Note, "Motion Pictures and the First Amendment," 60 \textit{Yale L.J.} 710.

\textsuperscript{79} For review of this technique with supporting citations, cf. Note, "Censorship of Motion Pictures," 49 \textit{Yale L.J.} 94.

\textsuperscript{80} \textit{Time}, 1954.
As a witness before the Ohio Senate objected, those who have seen the film may be led into a life of crime and immorality; for those so contaminated, there is no recompense or curative effect in such measures.81

A second alternative to censorship is industrial regulation by the Production Code Authority;82 this office screens all film material of MPAA-allied producers in order to measure compatibility with a Code of basic ethical and moral principles.83 A newspaper film critic in 1953 Ohio repeal attempt urged that the Code was preferable to censorship because it was specific while the censorship law was only general and because the Code represented the cooperative spirit of the industry working out its own problems.

81. Testimony of Thomas Osborne, Attorney for Cleveland Council of Knights of Columbus before Senate Committee considering repeal.

82. Testimony on censorship repeal by Norman Nadel and CLUCO Brief; Brief of Appellant in "M" case - Federal, at 18.

in the "American way," while censorship represented outside, state interference from which there was no recourse. 84

Against this, the pro-censorite objections were more specific: the self-regulation did not screen out enough material and it was film censorship which had forced the industry to use the Code anyhow. The KC spokesman noted that 40% of the pictures shown in Ohio were not under the Code; indeed, he said that 72 foreign and 31 American distributors did not subscribe to it. 85 Ohio argued before the U.S. Supreme Court that "not more than 50% of the pictures presented to the New York censors have been approved by the Code. The same holds true for foreign production." 86

Furthermore, operation of the Code against its subscribers is not thought sufficient. The KC official complained that 4 of the 47 films banned in the past decade had a seal of approval under that Code, as did 35 of the 337 pictures with

84. Testimony of Norman Nadel; cf. also Columbus Citizen, May 20, 1953, 7.
85. Same citation as fn. 91.
Ohio noted that the Legion of Decency reported that for the decade 1939-49, of the films passed by the Code, the number approved by the Legion had declined, from 61% to 41.3%; "far from solving the problem the Code but demonstrates it." A final argument claims the Code relies heavily upon state censorship, and that if the regulation were repealed, the movie-makers would return to their pre-Code days of sensationalism; this same argument has been presented to the author by Ohio's former chief censor, Miss Susannah Warfield.

Another industrial element proposed as an alternative is the pressure of exhibitors and financial backers to present movies aimed at mass audiences, hence films objectionable to as few as possible. It may be recalled from the history of the industry that these two groups had combined to produce conservative films; too sensational films were feared by exhibitors for the

87. Same citation as fn. 91.
88. Same citation as fn. 96.
89. Columbus Citizen, May 20, 1953, 7, reports this argument by a Catholic priest made privately to a Senator.
community disapproval, the threat of obscenity prosecutions and economic boycotts - all of which reduce profits. Such fears, it is argued, might operate to throttle down increased production of erotic films which might occur if censorship were eliminated. 90

Although pro-censorites have not directly discussed this alternative, there are some indications of their reaction. The same arguments applied to the Code as an alternative operate here; the Code may have throttled down some sensational films, but if censorship were removed there would be additional incentive for the producer to try "different" and consequently "dangerous" films.

The third area of alternatives, aside from legal and industrial, employs private, non-industrial means. Here involved are (1) interest group pressure upon the industry, (2) group pressure upon group members not to attend "bad" movies and (3) parental control.

90. This is suggested as one of the informal restraints on the industry operating after the removal of censorship; cf. Note, "Motion Pictures and the First Amendment," 60 Yale L.J. 717 - 19; Seldes, op. cit., 39; CLUCO Brief, 12 - 13.
A surprising number of private groups are concerned with the film; these are primarily religious and women groups interested in child welfare or cultural development of the medium. They frequently express themselves through publishing "estimates" of current film fare, emphasizing the "good" pictures, hoping thereby to attract audiences; only the Legion of Decency "condems" films, although the reviewing process of all is rather similar. 91

The leading group promoting "good" pictures is the Film Estimates Board of National Organizations, representing the most significant community groups. The editor of this group's "estimate" explained its work: 92

The purpose of the...Code and that of his group coincides. Both attempt to make sure that motion picture production is in


92. Letter to the author from Marjories Granger Dawson, Associate Director of Community Relations, MPAA.
line with the contemporary mores of this particular period of our culture.....

Here, in New York, the MPAA makes available preview privileges for all pictures (including foreign films) to thirteen different national organizations. The group's "Joint Estimates of Current Motion Pictures" is distributed gratis, twice a month, to schools, colleges, universities, churches, club groups, film councils and even to a growing group of exhibitors. What distinguishes this unique form of public service is that the Industry, itself, defrays the cost of printing and distributing film evaluations which are completely frank and unbiased.....

The MPAA, obviously encouraging this as a means of good public relations,\textsuperscript{93} provides a surprising array of publications and screen material to accommodate these groups,\textsuperscript{94} the most circulated of which is the "Joint Estimates;" children's

\textsuperscript{93} Holey, op. cit., describes in detail the creation and operation of this community relations program. It is significant that all materials relating to such group efforts as these are coordinated by a MPAA official; cf. source in fn. 92.

\textsuperscript{94} On the questionnaire sent persons interested in such materials is a check-list on the following kinds of information for which one might get materials: "Joint Estimates," material for speeches, broadcasts, published articles, library-classroom-bulletin board exhibits, about motion pictures and children, about films relating to social problems, about music in films, about making films, about outstanding foreign films plus study guides, brochures and classroom materials on outstanding films. Cf. source cited in fn. 92 for copies of such materials.
library film service and materials for schools are available in great quantity and variety.95

The extensiveness and status of these groups96 represents a force which anti-censorites have contended "may also be relied upon to keep motion pictures 'pure.'"97 In periods of any increased objection to film content, it is argued, these groups can alert their members while the force of their complaint will be channelled back to producers.

95. The organ for this is the Children's Film Library, started in 1946 by Eric Johnston, providing suitable films for special children's matinees. Miss Dawson (supra, fn. 92) is also chairman of this.

96. The "Joint Estimate" goes to 30 million club women and to 18,000 schools, libraries, colleges, churches and club groups; source cited in fn. 103. The national groups affiliated with FERNO are AAUW, American Farm Bureau Federation, American Jewish Committee, American Library Association, American Legion Auxiliary, Girl Scouts, General Federation of Women's Clubs, Daughters of the American Revolution, National Federation of Music Clubs, National Board of Review, National Congress Parent-Teachers Association, Protestant Motion Picture Council; in addition, the following local groups are affiliated - Brooklyn Motion Picture Council, Cleveland Public Libraries, Long Island Federation of Women's Clubs, Parent's Magazine, Parents Motion Picture Group of Greater New York, Queen's Motion Picture Council, Schools Motion Picture Committee, Staten Island Motion Picture Council and United Daughters of the Confederacy. For statements of groups preferring private ratings to censorship cf. New York Times, May 21, 1947, 9 (DAR); Dec. 18, 1947, 39 (NBR); Feb. 12, 1948, 28 (United Par. Assoc. of NYC); March 9, 1948, 25 (Prot. Nat. Pic. Cncl); June 4, 1948, 26 (ADA); Nov. 12, 1948, 32 (NC of P.T.A.); source at fn. 90 at 714.

97. Brief of Appellant in "M" case-Federal at 16; CLUCO Brief at 17; testimony of Professor Oliver Schroeder.
Another private alternative to censorship is parental control of films their children review. Most witnesses against censorship in the Ohio repeal attempt strongly urged this as a "democratic" alternative to defeating any evil effect the medium may have. The argument of the Civil Liberties Union of Central Ohio was typical.

By so doing it may be that not only will parents take the initiative in helping their children develop standards of taste and discrimination where before they relied upon some governmental agency to render innocuous and sterile the celluloid world of fantasy. The trouble with any sort of public intervention in the matters of childrearing is that it increases dependency and incompetence on the part of the parents who should really be exercising the judgment on questions of proper environment.

The National Council on Freedom from Censorship has insisted that "each parent has a right to determine the course the education of his child shall take and the state may not deny them this right" by intervention of state censors.

98. CLUCO Brief at 15; testimony of Rev. Cleveland Bradner and Mrs. Thomas.
99. CLUCO Brief at 15.
These private alternatives would be challenged by pro-censorites on the grounds that they lack adequate enforcement, do not do enough and, in the case of parents, may fail because of apathy and lack of training. Basically, however, this approach is thought to fail because it does nothing to prevent offensive material from being shown, thereby creating the possibility of some audience contamination.

Although no comment is available on the pro-censorite reaction to the interest group alternative, parental control was the subject of considerable discussion in the hearings on censorship repeal. Senator Corrigan, opponent of repeal, frequently questioned whether parents could control all the films their children see, as they may do with a television set. Nor does the parent have time to preview all films so as to have adequate judgment of what is proper for his offspring. Thus, the OCC claimed that parental review is not possible because there are too many pictures; anyhow, even parental attendance with the child will not stop the evil from being done to the youth before he leaves. The argument against interest group

control, in light of the pro-censorite rationale, would probably be that they do not act strongly enough against the "bad" films, their influence upon the producers is indirect and too remote, and they have no compulsion over either offensive films or those who witness them.

D. Evaluation of the Free Press Controversy

This section evaluates the preceding arguments in light of available censorship data. Expressions of these arguments by protagonists tend to take the form of lawyers' briefs, where one does not work both sides of the street. Possibly some balance can be achieved here.

Reference to current constitutional law to decide the issue is of little help; the earlier mentioned equivocation in the "Miracle" decision provides ammunition for both sides. Data are available, however, to test some of the propositions of the justification of censorship: the theses that films contain good and evil, films influence and hence may influence to evil, thus justifying their restraint.

The belief that films carry good and evil cannot be denied; regardless of the group concerned, good
(agreement with a particular orthodoxy) and evil
disagreement with that orthodoxy) can be found
in motion pictures. What is equally evident is
that different groups disagree on the good or
evil of a particular film.

Analysis of the themes reveals the industry's
absorption with love and crime; certainly this is
reflected in the amount of censorship these sub­
jects cause, as we have seen. Film content analysis
by numerous investigators point out that love appears
as "the glutinous desire of one member of the species
for another" and crime presentations turn on the
crime-does-not-pay theme, or, once more to use Ben
Hecht's term, "the Rule of the Virtuous Finish."102
The past decade, however, has seen more political
and social issues presented, although they still

102. The definition of love is Leo Rosten's, "Movies and
Propaganda," Annals, November, 1947, 116; Ben Hecht
is quoted in William Albig, Public Opinion, 265.
represent only a small part of the output. It would be hard to find a film which does not say something about some group's values, thus making it an expression of evil or good, depending upon the movie-goer's views.

The proposition that films influence attracts no such agreement. This whole area of "effect analysis" is little more than virgin ground, despite the glibness with which some assert the anti-social impact of this and other media upon attitudes, values and action. It does seem that the audience of the film is mostly the nation's

103. "That movie producers are becoming more aware of the potentialities of their medium as a factor in opinion formation is shown both by statements of industry leaders and the increasing number of films dealing with political and social issues;" Note, "Motion Pictures and the First Amendment," 60 Yale L.J. 706, where such statements are provided.

Several studies show that number of films dedicated to such issues are on the increase; for trend from 1920 - 30, cf. Edgar Dale, The Content of Motion Pictures; for later trends, cf. Consumer's Research Bulletin, No. 950, 16; Saturday Review of Literature, Aug. 26, 1950, 26; Dorothy Jones, "Quantitative Analysis of Motion Picture Content," Public Opinion Quarterly, 1942, 511.

That this emphasis has been profitable is indicated at Siegfried Kracauer, "Those Movies with a Message," Harper's, June, 1948, 567, and Variety, Nov. 30, 1949, 1; but contra cf. Arthur Mayer, "Myths and Movies," Harper's Beat, 1952 ed., 69.
youth, so that the pro-censorite's fear of the
effect on youth is demonstrably correct only in
believing youth are the largest part of the audience.

However, information on the influence of the
film is sketchy and contradictory. The central
problem has been stated by Franklin Fearing:

In order to understand this extraordinarily complex process which involves
both expression and communication, it is
necessary to know something about the
content of the film, the psychological
needs of the persons who are exposed to
it, the immediate setting, and the social
and cultural forces operating on the
persons who make films and the audiences
for whom they are intended. It must be
confessed that we have very little in the
way of tested answers to any of these
questions.

Fearing notes at least three schools of thought
on the nature of the medium's influence. One
group, which includes many in the industry, sees

104. Paul Lazarsfeld, "The Communications Behavior of the
Average American," Mass Communications (Schramm, ed.),
389, which is abstracted from Lazarsfeld and Kendall,
Radio Listening in America; cf. also, Lazarsfeld,
"Audience Research in the Movie Field," Annals, Novem-
ber, 1947, 160; Fiske and Handel, "Motion Picture
Research: Content and Audience Analysis," Journal of
Marketing, October, 1946; Confidential Motion Picture

105. "Influence of the Movies on Attitudes and Behavior,"
Annals, November, 1947, 70 - 79. Italics in original.
the impact on behavior and attitudes as negligible or transitory; for them, films are merely entertainment.\textsuperscript{106} A second sees an interaction between film and viewer in which the film reflects the demands and expectations of its audience, reinforcing already existent, dominant social attitudes and values - a "reflector of the stress patterns and emotional needs of its audiences."\textsuperscript{107} A third opposes these two by citing measured effects of the film, especially upon the children, research which provides the ammunition for the pro-censorite. In that this is the view motivating and justifying films' restraint, its validity in experience should be seen.

On one hand, some research indicates measured effect upon youth. The pioneer Payne Fund studies of the early 'thirties, despite the recognizedly

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{106} Cf. Martin Quigley, \textit{Decency in Motion Pictures}, for an exposition of this thesis.
\end{enumerate}
\end{footnotesize}
complex movie-viewing situation, found some evidence of impact; other studies, smaller in scope, present similar but tentative conclusions. The essential findings of the Payne Fund are that:

The outstanding contribution of the study is the establishment of the fact that the attitudes of children toward a social value can be measurably changed by one exposure to a picture. The motion picture, as such, is a potent medium of education. Children remember facts for a surprisingly long time. Emotions are measurably stirred as the scenes of a drama unfold and this excitement may be recorded in deviations from the norm in sleep patterns, by visible gross evidences of bodily movement and by refined internal responses.

These considerations establish motion pictures as an incitant to conduct as well as a pacifier of feelings. It is insufficient to regard motion pictures simply as a fantasy world by participating in which an individual softens the ardor of his life and escapes its monotony and hardships, nor to justify their content and "unreality" on this basis. For too many pictures are authentic portrayals of life, from which they draw patterns of behavior, stimulation to over conduct, content for a vigorous life of imagination and ideas of reality. They are not merely a device for surcease; they are a form of stimulation. Their content does not merely serve the first purpose,

108. For a listing of the 12 monographs which constitute this study, cf. Fearing, op. cit., 72, fn. 3.


110. Ibid., 60 - 61.
but incites the latter result. What might be intended to have harmless effect of the former, may on occasion, have the striking influence of the latter.\footnote{111}

Others have produced later evidence to substantiate this effect. One researcher found that a movie seemed to have specific effects on children's attitudes in the direction intended; another thought a film had created a favorable attitude for a candidate in a municipal election; a study of the British adolescent found some distortion of particular values but negligible evidence that the film motivated youth to commit petty crime.\footnote{112}

Equally impressive are other studies denying this thesis of effect, either by questioning the methodology of studies showing effects or by presenting different studies which show little or no

\footnote{111. Herbert Blumer, \textit{Movies and Conduct}, 196; quoted in Brief of Appellee in "\textit{M}" case - Federal at 17.}

effect. Thus the Payne Fund series¹¹³ and other studies¹¹⁴ have been criticized for unreliable methodology; even one participant in the Payne Fund work recognized that "the motion picture situation is very complicated. It is one among many influences which mold the experience of children. How powerful this is in relation to others these studies have not canvassed...."¹¹⁴a For the juvenile delinquency "expert" who believes from professional experience that films cause crime, there are other "experts" also relying upon such experience to deny this causation.¹¹⁵ Those


¹¹⁵. For such statements, cf. New Movies, April 1948, 27; Boxoffice, May 3, 1947, 111; "Children and the Cinema," a report of a conference organized by the British Film Institute and National Council of Women, London, British Film Institute, June, 1946, 8 (quoted in source cited at fn. 74); Richard Ford, Children in the Cinema, 76-77, 87-88; article by P. G. Cressey cited in fn. 107; Harper's July, 1933, 244.
doubtful of the film's impact indicate that the effects have not been measured,¹¹⁶ challenge whether films affect actions at all,¹¹⁷ and suggest that maybe film-going is a safe, vicarious release for anti-social potentials;¹¹⁸ indeed, one source claims that believing films cause anti-social behavior is an escapism which avoids the complex causal relationships underlying delinquency.¹¹⁹

¹¹⁶. Cf. sources cited in fn. 120 and 121.

¹¹⁷. This is based on the thesis that the causes of juvenile delinquency are so complex that the effect of the motion picture is so slight as to be impossible to isolate or measure; cf. P. G. Cressey article cited in fn. 107; Walter J. Reckless, The Crime Problem, 27 - 30; Wall & Smith, "The Film Choices of Adolescents," British Journal of Educational Psychology, June, 1949, 121 - 36; Franklin Fearing, "Redirecting the Delinquent," 1947 Yearbook, National Probation and Parole Association, 78 - 92; Maude A. Merrill, Problems of Child Delinquency, 10 - 11; Sheldon Glueck, Survey Monthly, "What Do We Know About Delinquency?" March, 1944; Henry Thurston, Concerning Juvenile Delinquency, 55.


Particular case studies likewise challenge the thesis. An extensive War Department report surveyed the influence of certain indoctrination films upon American soldiers during World War II; the report revealed that, while soldiers' factual information increased, the films "had no effects on items prepared for the purpose of measuring effects on the men's motivation to serve as soldiers, which was considered the ultimate objective of the orientation program."¹²⁰ Other studies indicate a commercial movie had no general impact upon community opinion,¹²¹ while similar dubious effects came from a film directed toward modifying the prejudices of high school students and adults.¹²² When the British Home Office requested information on the subject from the Magistrates' Association, that group report


¹²² Cooper and Dinerman, "Analysis of the Film 'Don't Be A Sucker,'" Public Opinion Quarterly, 1951, 243.
concluded that there was no evidence there or abroad of a relationship between movies and juvenile delinquency; an American's review of the subject reached a similar conclusion, stating that "present evidence seems to indicate that the process of acquiring conduct norms, both deviant and conventional, is primarily through intimate association with others and personal experiences of a face-to-face nature." There thus seems to be a sizable body of empirical evidence which raises serious questions about the validity of the proposition of the pro-censorite on the influence of this medium. Certainly the crime rates of censorship states are not collectively better than non-censorship states, although the pro-censorite might here argue that it is one force helping to control crime without which their crime rates would be worse.


126. For such data, cf. FBI, Dept. of Justice, Uniform Crime Reports, vol. 23, No. 1 (USGPO) 8.
These data suggest weakness in the pro-censorite's urgings of the need for film censorship. Recall that the state is under heavy requirement to justify the need for prior restraint of a medium under the "Near" doctrine. Such conflicting conclusions as are here presented do little to support the pro-censorite's claims.

On the other hand, solid experimental data are lacking for the anti-censorite's belief that censorship produces great restraint of expression. The preceding chapter's analysis of actual deletions showed clearly that this regulation hit only a small minority of films; less than 10% of films handled were censored by even the most aggressive state. Nor is their fear realized that it strikes sharply at the expression of ideas on current political, social and religious problems. Censorship for these reasons constituted a small minority of a small minority of deletions.

Little data can be brought to bear on the arguments about alternatives to film censorship. To the pro-censorite, all of these are unsatisfactory for their inability to prevent exposure of the audience to "bad" films. This contention
seems correct, because even those which operate before exhibition - the Code, group ratings, parental control - cannot prevent all films from exhibition and all audiences from viewing them; certainly obscenity laws, by definition, operate after exhibition.

The Code's effectiveness is subject to some criticism. Ruth Inglis has commented that the "Code itself promotes a kind of sophisticated immorality" whereby producers abide by the letter but not the spirit of the industrial rules; through complex symbolism they emphasize sex so that the audience really knows what producers have in mind. 127 Hortense Powdermaker has observed that ".....although the MPAA Code of Taboos is more or less obeyed, everyone inside and outside of Hollywood knows that sexiness is a prime requisite for all actors and for most movies, and that crime and violence dominate a very large number of them." 128

On the other hand, the industry is made conservative by operating at the vortex of considerable group pressures, directly through public relations and indirectly through audience demands. Inglis balances her previous criticism of the Code with this observation: 129

......upon occasion, the Code does try to exert a conservative influence......Too often in the past "the Hay's Office" has been made a whipping-boy by the producers in order to keep creative personnel thinking and working within the same old safe grooves.....The Hay's Office has been one of the means by which the industry has avoided trouble with the pressure groups and hence has contributed to the timidity of the movies.

Therefore, producers' evasions of the Code's letter and the absence of all producers from the Code's control support the pro-censorite contention of the inadequacy of this alternative; the conservatizing influence of the Code's operations, however, supports the other side. Data in the preceding chapter support both sides, too. The

129. Inglis, op. cit., 183; for other complaints against the code, cf. Note, "Censorship of Motion Pictures," 49 Yale L.J. 106; Note, "Motion Pictures and the First Amendment," 60 Yale L.J., 715 - 16. These sources argue that the Code, with its alleged stultifying influence, represents a reaction against censorship, i.e., a defense mechanism; for a statement of this argument, cf. CLUCO Brief in repeal battle at 12 - 13.
foreign pictures, mostly unregulated by the Code, bore the brunt of the deletions; American films, mostly Code approved, bore relatively little of the excisions, but they did bear some.

Finally, it seems the data support the pro-censorite belief that only state censorship provides extensive, adequate, prior coverage. And yet, the weight of the data does not so strongly support either their contentions of the dangerous impact of the medium or the effectiveness of censorship as a control of anti-social action.

III. The Legal Arguments of Due Process of Law

Like the contentions over freedom of the press, the arguments about due process of law deal with the meaning of words, the standards of censorship. The contentions are three: whether these standards (1) allow prevision of what is lawful conduct, (2) permit arbitrary censorship and (3) make judicial review possible. Although recent litigation has provoked re-writing of standards, the new terms must still meet these arguments.
A. Brief of Censorship Opponents

Central to this discussion is the meaning of the words of censorship standards. If one believes a word has no particularly clear content, then one may claim the impossibility of prevision of legality, control of censor's discretion and adequate judicial review, because all three are based on the meaning of words by which censors operate. If, however, one believes those words do have specific meaning, then prevision is possible, control of discretion quite easy and judicial review ever ready to restrain arbitrariness. Much of this, then, is a search for meaning.

The first objection of the anti-censorite is that the standards provide no guide for the film maker. In the "K" litigation, the movie-owner asked of Ohio's standards, 130

When is an opinion affirmatively "moral?" What are the subjects that can be so characterized? Is there any single minimum or quantitative measure of what is moral? Reflection will lead to but one answer - there is not..... Considering "educational" - Educational to whom and for what purposes?

130. Brief of Plaintiff in "M" case - State; Brief of Appellant in "M" case - Federal at 27.
Can the term... be given any precise meaning except in terms of the opinion of the commentator? The test of "amusing" can only be characterized as a catchall that covers anything which, in the opinion of the censors, seems proper. The companion test of "harmless" in modifying each of the foregoing, leaves the standards utterly without form, without definition, without predictable meaning of any kind except as interpreted and applied by the "judgment and discretion" of the agents of the State.

In this case, the movie-owner complained that "M" as a German-language film had been approved in 1933, but that in 1953 as an American film with the same content and message it was banned.\(^\text{131}\)

An alleged danger of this lack of prevision is that it creates pressure towards producing only "safe" or generalized films; thus we find the Civil Liberties Union of Central Ohio claiming,\(^\text{132}\)

A movie-maker would be loath to hazard his capital on a daring or original theme or idea when the threat of deletions or complete suppression at the whim of some minor state functionary is an ever-present reality. When prediction of legal consequences depends not on skilled interpretation of the law but intimate knowledge of the individual psyche of each censor, it is prudent to adhere to the tried-and-true themes, the empty generalities.

132. CLUCO Brief at 8.
This fear emerges in the second contention, that the vagueness of the standards leaves administrative discretion uncontrolled. When the limits of the discretion are uncharted, the official action can rarely be challenged as ultra vires. Thereby, "broad statutory language...make possible the elimination of films on the basis of a highly subjective view of morality or for reasons quite unrelated to moral standards."\(^{133}\)

This possibility, if unchecked by adequate judicial review (infra), raises the particular horror of oligarchical determination of the expression of ideas.\(^{134}\)

...with no chart to guide him other than the statutory criteria the censor undertakes his duties armed with absolute and final power....The result, however, reflects the judgment of but one....and the decision fixes the thought pattern for every movie-goer in Ohio.

Thus again, this argument returns to an allegedly inevitable result, the standardization of medium content to conform to orthodoxy; "....the most fearful evil of all lies in the fact that the...

\(^{133}\) Note, "Motion Pictures and the First Amendment," 60 Yale L.J. 692.

\(^{134}\) Brief of Appellant in "M" case - Federal at 34.
censor has the power to prohibit all but such pictures as hew to the line of doctrines prescribed by the State.\textsuperscript{135}

The final due process contention is that the vagueness of standards makes impossible adequate judicial review. Essentially, the complaint here is that the court does not interfere enough with administrative action, does not, in effect, substitute its judgment for that of the censors. Thereby, notes two legal scholars, "the modern view, which sustains administrative determinations based on some evidence, has helped to drive deeper the censorship nail."\textsuperscript{136} That is, if the courts will intervene only when censors have transgressed their discretion or have not given adequate hearing, there can be no judicial review; standards are so broad, and discretion hence so unknown, that it is impossible for the courts to detect when the official has wandered off the reservation. Abuse of discretion appears only in the infrequent incident when the censor censors on some basis not provided

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{135} Ibid., at 33; cf. also CLUCO Brief at 18 - 20.
\item \textsuperscript{136} Kupferman & O'Brien, \textit{op. cit.}, 292.
\end{itemize}
\end{footnotesize}
for in the statute.137 But for most appeals, the court's view is that if there is some belief a film is obscene, immoral, etc., then the censor's determination must stand.138

B. Brief of Censorship Advocates

The essence of the pro-censorite's argument here is that the standards do have real and generally understood meaning. If there be such meaning, then discretion is not uncontrolled and judicial review is adequate. Although our attention is here focussed upon the "M" litigation, it is suggested that the pro-censorite rationale would obtain elsewhere.

Where do the pro-censorites get meaning for their standards? They find three sources: Common understanding, material censored in the past and legal definitions. It is first thought that common acceptance of particular meaning attaches to the

137. Such as when Ohio censors banned a film without viewing it; cf. State ex rel Midwestern Film Exchanges, Inc. v. Clifton, 118 O.S. 91.

usual censorship standards. In the original "Mutual" case of 1915, the Supreme Court thought these criteria "would gain precision from the sense and experience of men;" the censor employs these words as understood in common parlance. In the Ohio repeal effort of 1953, pro-censorites were surprised that opponents claimed multi-meanings to words like "immoral." The brief of the OCP in the "M" case considered that these standards "are set not only by the legislative but also by the social behavior of all its citizens. We must submit there are sufficient guide posts along the way." The publications of the Legion of Decency are replete with discussions of the meanings of such standards, as they apply to Church doctrine.

A second definition could be found, at least in Ohio, in the nature of material banned in the past. The State argued that "the standards have enjoined the obscene, immoral, and that which tended to promote crime or riot, judged in relation to the impact

139. Senators Mosher and Pepple frequently challenged pro-censor witnesses on this.

140. Brief of Ohio Congress of Parents and Teachers in "M" case - State.

141. Cf. sources cited in fn. 102, particularly last pamphlet.
and the audience. The experience of the past decade indicates that not one of the 44 films rejected fell outside of that test.\textsuperscript{142} The films mentioned were listed by title and cause for rejection; in every case, the censors' cause was "harmful" because - followed by a terse listing of the causes (\textit{supra}, 7).

The third definition is found in legal sources which have either justified restricting expression under standards of less clarity than present censorship standards or which have themselves defined the meaning of these words. The first approach - other and vaguer standards are permitted - was employed by Ohio in citing federal restraints, the operation of the "clear and present danger" test and the "group libel" case.

Are not vague standards employed by the federal government, it was asked, when the FCC's statutory standards prohibit renewal of radio licenses on

\textsuperscript{142} Brief of Defendant in "M" case - State; Brief of Appellee in "M" case - Federal at 15 - 17. The reasons for rejecting these 44 films was employed in the censorship repeal struggle in testimony by Thomas Osborne, Cleveland Council of Knights of Columbus.
grounds of "not in the public interest?" Or when program control of television was recently declared the exclusive jurisdiction of the federal government, exempt from state censorship? Or when the Supreme Court upheld "group libel" laws in Illinois, which prevent and punish expressions defamatory of groups? Or when it restricts Communist operations as a "clear and present danger?" Was not the evil feared justified restriction of expression and action, just as the state fears the dangerous impact of the film upon its susceptible audience? Did not the "Miracle" case itself in part accept the old "Mutual" case definition of censorship standards in a concurring opinion; "Well-equipped law libraries are not niggardly in their

143. Brief of Appellee in "M" case - Federal at 25 - 6; reference here is to 47 U.S.C. Section 307 (a) and 312 (a) 2, as upheld in National Broadcasting Co. v. U.S., 319 U.S. 190.

144. Brief of Appellee in "M" case - Federal at 26 - 7; reference here is to Dumont Laboratories v. Carroll, 181; Fed. 2d 153 (CCA 3) at 156, cert. denied, 340 U.S. 929.

145. Brief of Appellee in "M" case - Federal at 21; reference here is to Beauharnois v. Ill., 343 U.S. 250 at 256.

reflection of the 'sense and experience of men'..."147
Finally, do not state and federal laws, and even the MPAA Code, use such terms as "obscene" and "immoral" without judicial challenge?148

Having established lack of vagueness, the pro-censorite finds much easier his task of asserting the existence of administrative control and judicial review; if discretion is known and clearly charted, then its abuse is more easily recognized and judicially restrained. All states provide for judicial review, the standards have meaning, therefore, no lack of due process is found.

C. Evaluation of the Due Process Arguments

Relating experience to arguments in this area is rendered most difficult by two factors: semantical confusion and the conflict of relative versus universal values. Although both sides would likely agree that standards apply to certain extreme presentations - sexual intercourse, nudity, etc. - beyond that exists a large area of disagreement. The anti-censorite claims the

standards are multi-meaning, the pro-censorite claims they are precise; the former urges a relativistic approach to values, the latter a universally monistic interpretation.

There are some data supporting the anti-censorites. In the last chapter, we examined Leo Litzky's study of the variable treatment given 100 films by the censors of the seven states and one city. A tremendous differential rate of censorship was noted; that is, to the same films were applied general standards for which the pro-censorite has claimed a generally understood meaning - yet the results were quite different. The anti-censorite would interpret this to mean that these universal meanings are really the personal reactions of different persons to the same thing. A similar conclusion might be drawn from the further analysis of actual deletions made recently.

Such an analysis has certain limitations, however. The same films were not reviewed by all censors in the author's own research; had they been, possibly the results would be more similar. Note that the

premise of the argument using these data is that vagueness equals differences. In other matters, we come to expect that a federal system produces variability. Why not here and thus why not justifiable differences? The answer is that the pro-censorite's argument that the standards are not vague rests on the premise that such words have generally understood meanings. If there be such commonality of meaning, the application of these standards to a comparable flow of films should produce the same results. Although there may be some methodological qualifications about the author's analysis of four states, there are none in the Litzky study; there, the same films received a dramatically different treatment. Such a differential may be evidence of many things, but it is not evidence of agreed-upon meanings of those acts encompassed within the standards. If the argument of the common meaning falls, then the other pro-censorite arguments fall.

What of the other sources employed to cite meaning to these standards, viz., other statutes and judicial decisions? To claim meaning by citing other statutes employing the same words may well demonstrate that these other laws are also
vague. To argue further that one finds proof of common meaning in finding that films banned in Ohio for a certain period fit within the standards is post hoc ergo hoc reasoning; it rests on using for evidence what one seeks to demonstrate.

Reliance upon court opinions to sustain the commonality is open to all the criticisms of citing judicial precedents. To say that other, more vague standards have been judicially approved raises certain questions. Were the other decisions themselves correct? Is the argument by analogy weakened because previous cases involve different situations? Finally, the efforts of censor states to redefine standards— itself a tacit admission of their vagueness— simply removes the argument to another level of abstraction; may not these new phases be as variable in meaning as the original?

On the other hand, the anti-censorite stand on judicial review is equally weak. To argue lack of adequate judicial review is to argue substitution of the judges' opinions for those of the administrators. This is objectionable
for two reasons: it runs counter to the current judicial view of its position vis-a-vis the agencies, and it is an invitation to censorship by officials in robes, not in business suits. One flies in the face of current practice, the other creates the same problems feared by the opponents. From close acquaintance with these anti-censorites, however, one must fairly note that they really do not want judges to censor. They seek to overthrow all film censorship by demonstrating that all standards, by their vagueness, make impossible any judicial review whatsoever.

Finally, the anti-censorite argument that these denials of due process, like those about a free press, create an orthodoxy and consequent sterility in the medium's expression is not one for consideration here; data are most difficult to gather and analyze. It might be suggested again, however, that much post-war film fare has dealt successfully with many contemporary social and other problems.

In summary, we return to the problems of definitions. To the degree that either side can successfully demonstrate either the relativity or commonality of meaning in these phrases, to that degree do they build a strong base for their legal
case. The prevailing awareness of relativism in American cultural values suggests that the procensorite faces strong opposition in asserting common meaning to his standards.

IV. The Legal Arguments of the Nature of the Censorship Fees

The earlier discussed pattern of censorship fees becomes another issue in this litigation. The questions raised are: is this levy a tax or a fee? If a tax, is it compatible with constitutional provisions for a free press, interstate commerce and equal protection of the law? The anti-censorite claims it is a tax and hence contravenes the Constitution in these three respects.

The nature of the levy is thus central here. Pointing to the bulk figures, not to the rates, the anti-censorite claims that the differential between revenue and administrative cost is *prima facie* evidence that the levy is a tax. A fee should cover administrative costs and no more; a tax means that revenue exceeds costs.\[149a\] We have earlier seen that the volume of

fees for censorship exceeded costs, generally by a large ratio. It was upon this factor, inter alia, that a local Ohio court in 1952 voided newsreel censorship. Further support of this view is found by the anti-censorite in the Ohio law itself, which provides that excess fees be used for visual aids; thus the law's expectation is that revenue will exceed costs, a matter of unhappiness for the industry.

Ohio has defended its fees on several grounds. First, the definition of the levy as fee or tax is the task of the legislature, and it has clearly labelled this as fee. Nor is the rate of fee charged excessive; other censor states charge roughly comparable rates. Moreover, the data on volume of fees is misleading, because they do not account for administrative costs which the censors need not pay, but which the state must from general revenue funds;

150. Ohio v. Smith, Toledo Municipal Court, Memo Opinion No. 572128.

151. Ohio Gen. Code, sec. 154 - 47a. This is discussed in detail in Ch. III.

152. Brief of Appellant in "M" case - Federal at 50.


such costs as these are amortized cost of censorship offices and theater and current expenses for light, heat, water and janitorial service. This view was particularly convincing to the Ohio Supreme Court in the "M" case.

In the controversy after this, however, the procensorite view does not find expression. Having denied that a tax is employed, he can further deny any infringement of free press, interstate commerce or equal protection of the laws. There is a previously fortified position he can employ, however, the provision for severability of the fee, which would prevent abolition of the regulation on grounds of fee.

The anti-censorite, regarding the fee as a tax, contends first that such a tax on distribution imposes a restriction on the freedom of press which the U.S. Supreme Court has on two occasions overthrown.

155. Ibid., at 38 - 9.
156. Superior Films, Inc. v. Hissong, 159 O.S. 335.
157. Brief of Defendant in "M" case - State; Brief of Appellee in "M" case - Federal at Point IV, C.
158. This argument appears at Brief of Appellant in "M" case - Federal at 36, 44, 51, 52; CLUCO Brief at 11; Brief for Defendant in Smith v. Ohio, cited cf. fn. 152.
In *Grosjean v. American Press Company* (297 U.S. 233, 1935), the Court voided a state gross receipts tax on newspaper advertising in papers over a certain weekly circulation. Here the Court traced the history of "taxes on knowledge" from England and the colonies in order to show how such laws were repugnant to our forefathers because of their great possibility for hostile use against a free press. The other case, *Murdock v. Pennsylvania* (319 U.S. 105, 1943) provided a frequently cited viewpoint:

A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution....The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which the Court has repeatedly struck down.....The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.

A second anti-censorship contention, involving equal protection of the law, is that only the film is taxed and regulated by such a licensing system. The Court, it has argued, has declared that classification in laws (which may threaten infringement of the equal protection) is possible, but only when there

160. Same citations as at fn. 158.
is a reasonable basis for the distinction and that
"no impediment shall be interposed to the pursuits
by others under like circumstances; that no greater
burdens should be laid upon one man than are laid
upon others in the same calling and condition...."162

Only the film, in the "same calling" of communicating
ideas and entertaining, suffers a censorship and
accompanying tax. Elsewhere in Ohio laws, the movie
is grouped with other media of communication, but
only with censorship is it segregated.163

Some recent situations illustrate this alleged
discrimination. In New York, a movie was banned but
magazine photographs of the movie could not be banned
as indecent matter.164 Ohio theaters could show the

162. Brief for Appellant in "M" case - Federal at 36,
quoting from Barbier v. Connolly, 113 U.S. 27, 31;
reference there is further made to Yick Wo. v. Hopkins,
312, 337 - 8.

163. The bulk of the Brief for the National Council on
Freedom from Censorship in "M" case - Federal consisted
of a detailed comparison of the content of motion
pictures and newspapers as to their references to
crime. For further argument, cf. Brief for Appellant
in "M" case - Federal at 38 and Appendix B.

164. Brief for Appellant in "M" case - Federal at 39 - 40,
referring to People V. Larsen, 5 NYS 2d 55; references
on this same type of differential control is cited
(ibid., 38 - 41) at New American Library of World
Literature v. Allen, 114 F. Supp. 823 (D.C., Ohio),
picture of a prize fight by direct television without censorship or fees; if, however, the same fight had been filmed and shown the same day in that theater, then censorship and taxes would have applied. Indeed, the whole practice of televised motion pictures being uncensored while the same film shown in a theater requires censorship is pointed to as further evidence of denial of equal protection. 165 One anti-censorite noted that 166

Between 1948 and 1952, 1836 films were shown on television in Ohio. Of these, 546 never had been submitted for censorship, 484 had been cut when shown in theaters but were televised uncut, and five totally rejected for theater showings by the censors, were shown in homes via TV.

The final contention is that the fees are a burden on interstate commerce. It is argued that film censorship creates a burden by creating an uneconomic and inconvenient distribution pattern in the region. Some Ohio censors are actually closer to distributors outside Ohio than to their distributors in Cleveland and Cincinnati which they must use because of the

165. Brief of Defendant in source cited in fn. 168, and that court's decision; cf. also CLUCO Brief at 12, fn. 17.

166. Information from Column of Norman Nadel in Columbus Citizen, Nov. 17, 1953.
need to exhibit only censored films. This is thus an interstate burden with spatial consequences. It has an economic consequence, too; those exhibitors so "dislocated" must pay higher shipping charges to the longer distances.\textsuperscript{167} The \textsuperscript{3/4} theaters of the Toledo area pay about 50% more for shipping from Cleveland than if they could ship from Detroit; it is estimated that some 57 theaters in eastern Ohio could save over $20,000 per year by shipping from Pittsburgh rather than Cleveland. Towns on the Ohio river lose trade across the river when Ohio viewers go over to see a banned film. There is, finally, a temporal consequence. The greater number of "first run" theaters in Ohio cannot be supplied sufficient prints of the same film for a simultaneous opening. Prints could be borrowed temporarily from neighboring states, but they must first be censored and then later returned with cuts restored - a practice too burdensome to be employed. The result is a lack of simultaneous showing and a

\textsuperscript{167} CLUCO Brief at 12; thus it is noted there that Toledo is 57 miles from Detroit distributors but must use Cleveland exchanges 113 miles distant; Steubenville must take films from Cleveland, 108 miles distant, although Pittsburgh, 142 miles away, could handle it.
further delay in getting pictures to "second run" houses.168 All represent economic losses.

However, the industry has emphasized the volume of fees as the primary burden on interstate commerce.169 The differential between revenue and costs would seem to conflict with earlier Supreme Court decisions. Ingels v. Morf (300 U.S. 294 - 1936) reviewed a series of precedents whose central theme was that inspection fees by the state levied against interstate commerce must bear a reasonable relation to the cost of regulation.170 Impinging upon the film industry which is in interstate commerce,171 employing a fee system all out of proportion to costs, censorship is condemned as contradictory to established protections of that commerce.

In evaluation, the arguments of the anti-censorites are weak in one respect, strong in another. The high

168. Brief of Plaintiff in "K" case - State; Brief of Appellant in "K" case - Federal at 49 - 50; CLUCO Brief at Part II; cf. also source cited in fn. 168, Brief of Defendant.

169. Information in preceding paragraph drawn from source in fn. 166.


171. Cf. citations at fn. 16.
court is not likely to void a whole statute for any of the fee arguments here discussed; its inclination is only to strike out offensive portions. Such an itemic veto would hardly abolish the whole practice, for it could work quite as well with equitable fees or no fees at all. The best the opponent could expect would be some revision in the rate and volume of fees.

On the other hand, the argument that serious economic hindrance is caused by film censorship, regardless of size of fees, seems stronger. Here the anti-censorite could argue (1) the higher shipping costs, (2) loss of audiences to neighboring states and (3) loss of profits because of the inability to cover a state for "first runs" or to exhibit quickly enough in "second runs;" these may represent serious obstacles to that quick and smooth flow of interstate commerce which the Court has elsewhere deemed important. Yet, one must point out that in light of the Court's earlier discussed reluctance to over-throw all censorship on the more serious grounds of free press and due process, it is unlikely that it will do so on this secondary ground.

V. Conclusions on The Law and Experience of Censorship

This, then, is the legal environment in which film censorship has existed. Whereas the first two chapters
described how the economic institution adapted to the social and economic environment, this chapter has noted how the legal environment adapted to the institution's significance as an instrument of expression. Although recent decisions have voided some censorship standards, the new retains elements of the old, as seen in the judicial reluctance to abolish all censorship. The seeming contradiction in law between the sweeping inclusion within the Fourteenth Amendment and the failure to void all censorship is the symptom of legal concepts in flux; such is not unknown elsewhere in the study of the law, for it marks the constant effort of jurists to re-evaluate experience and doctrine.

Possibly the most striking aspect of this analysis is the conflict of legal arguments. This appears between the arguments of both sides, within those of each side and between all arguments and the data of censorship experience. One expects the different urgings of protagonists; such a contrast is rooted in different philosophical approaches and different sets of data. The pro-censorite, holding community interests superior to expression of ideas, urges that for an allegedly collective danger (injury to youth) there be employed a collective approach of state
censorship, which operates before the community is exposed to the medium. The censorship opponent, with values reversed, fears the dangers of the regulation to expression and questions the medium's alleged danger and the practicability of censorship; he does suggest, however, if such a danger exists, control should be vested in a private or a post-restraint method.

The inconsistencies within particular arguments have been indicated in the text of this chapter. Opponents, while urging the medium's importance as an influential element of the press, yet challenge the anti-social effects suggested by the pro-censorite. The opponents believe the Code an effective deterrent to "bad" pictures, yet admit that its restraints have caused a levelling of film content and a consequent search for subtle - but evident - exposition of sex and crime. The pro-censorites urge restraint of the medium for its potential effect on opinion, while admitting that constitutional freedom of the press is extended to all media just because of their potential. Likewise, the pro-censorites question the ability of parents or pressure groups to evaluate films while believing that a small number of official censors can. Too, while arguing the common meaning of standards,
censors personally admit that they are subjectively interpreted. This illustrative list of internal consistencies partially arises from the fact that the sources used for this analysis were scattered, rarely combined in one group. As a collected argument or as individual expression, these present questions.

What, then, do the data of experience tell us about the law of censorship? Certainly the data question the claim of the anti-social impact of the film. On the other hand, the anti-censorite arguments do not fit certain of the data, either, particularly the fears of restricting freedom. When the latter engage in personalities about censors or wave furiously the banner of "freedom," they enter a realm where objective data avail little.

What do we know about the relationship between the motion picture and attitudes or actions? Certainly, the data are conflicting and any present answers are highly conditioned by those making them. Typical of this is the report of the Senate Subcommittee to Investigate Juvenile Delinquency, "Motion Pictures and Juvenile Delinquency." Polling trained clinicians who deal daily with juvenile delinquents (the Medical Correctional Association, the American Academy of
Forensic Sciences) this subcommittee report frequently stated that such experts did not believe movies "caused" delinquency but that they all thought it exerted some influence. The report's summary of these views is significant:

1. That the mass media, including the movies, reflect many of the socially undesirable attitudes, desires, wishes, etc. of the adult society and to that extent they are reflecting the prevailing atmosphere.

2. These media have a tremendous influence on the young child in his early development and that while reflecting the major attitudes of the society, they are in turn influencing, to a degree, the attitudinal development of children. That given an emotionally stable child who has had what may be interpreted as the proper emotional relationship with his parents, this type of presentation in the mass media may have little or no effect in terms of influencing his behavior. However, given a child with a more or less undeveloped attitudinal framework, the mass media may go a long way toward providing ideas both in the development of attitudes and in predisposing the child for a certain type of behavior. It is likely that the movies exert the greatest influence when there is no alternative source of information or images in the environment of those who see them. For example, children may be temporarily influenced because they do not know any better. On the other hand, given a child who has had what may be interpreted as poor emotional relationships with his mother and father and who is in the throes of a frustration-aggression complex, this child may gain support and ideas from viewing aggressively brutal and violent scenes as presented in motion pictures, and as presented both in pictorial form and in the terminology present in motion-picture advertising. He may incorporate these ideas into his behavior pattern with the end result being a delinquent child.
Given the tentative nature of many of these observations (note the frequent use of "may" and "it is likely") it is at best a working hypothesis that the film influences child attitudes and behavior. Only the Supreme Court can determine whether this is sufficient to remove the "heavy burden" placed upon the State to justify exceptions to the doctrine of no previous restraints upon freedom of the press.

If it cannot be clearly demonstrated that movies affect attitudes and behavior with anti-social consequences, then much of the case for censorship crumbles. Such a demonstration requires a comprehensive research program relying upon new techniques of social and psychiatric research. To date, all we have are isolated case studies, often contradictory in conclusions, and general impressions of those who work in the field of juvenile delinquency.

Finally, if it is demonstrated that movies can affect the attitudes and actions of youth, we face yet another question. Are there attitudes and actions which should not be challenged or threatened by alternatives? Put conversely, are there attitudes and actions so objectionable that censorship is required to prevent exposure of the youth to their corrupting influence? Here we plunge immediately into the whole area of what
is objectionable, corrupting, moral, good, etc. More significantly, we enter on the question of the degree to which the State will permit exploration of community morality. If most of the community believe a particular value is good and to be cherished, how much tolerance will the democratic community permit those who disagree and who wish to challenge that worth? The answer lies elsewhere than the realm of fact.

As one listened to the arguments as they were actually made, there emerged a sense of the clash of strongly held philosophies, especially on the relationship between man and the State. The intensity of this clash has not been sufficiently expressed here, except in the statement of Louis Bromfield about the qualities of censors (supra, 341). Such a clash of principles is only partly a cloak for a strife of material interests, to challenge the dictum of Ambrose Bierce; most involved view their objectives quite strongly in terms of principle and indeed have no material interest the principle may serve— with the exception of the film officials.

When such a struggle becomes very much a matter of principle, then emotions enter easily to give fire to the conflict. Such emotionally conditioned principles are little modified by contradictory data. Then the
contestants become captives of their slogans, blind to realities, indifferent to real causes, unconcerned with refutations. But those as yet uncommitted in the struggle may desire some comprehensive understanding of the law of film censorship which this chapter may have provided.

A final task is to relate this chapter to our whole research. Censorship litigation centers on the touchy question of prior restraint of ideas, ideas about which many men differ. Litigation over health standards is unlike censorship litigation in that the former deals with items of experience susceptible to objective measurement; the latter does not. It follows that the use of data in arguing the case about censorship is not as conclusive as in arguing about health regulations.

When both sides discuss the question of common or different meanings of censorship standards, it becomes very difficult to find data which will "prove" one side correct. A lawyer's brief may argue that the bacteria count of pasteurized milk should not exceed a certain figure, which may be established by agreement among biologists; but when a censor declares a film "immoral," where does one find such agreement?
What are the tools that may be employed for finding it? Similarly, the meaning of "freedom of the press" and "the community interest" are subject to such lack of precision. Thus, it is argued here that the essentially qualitative, subjective atmosphere in which the censorship process was born and nurtured provides the basis for the difference in the legal environment.

The problems of film censorship need now to be drawn together and focussed for a final evaluation. The last chapter turns to that task.
CHAPTER VIII

Evaluation of Film Censorship as A Type of Administrative Regulation

In closing this exploration of the byways of film censorship, we return to meet the questions raised at the beginning. What features of this form of censorship are common to all forms of censorship and what are distinctive? What features of film censorship are common to other types of administrative regulation and what are not? Are the problems film censorship raises soluble by state action of the sort witnessed in Ohio?

I. The Distinctive Features of Film Censorship as a Type of Censorship

As a type of censorship, film censorship in the United States reveals at least three distinctive features: it exists as the only system of prior licensing of an entire product of a medium of expression; it is handled almost exclusively at the state level; and the actions of these few states, combined with private pressures, mold the film product for the whole nation.

As the only form of prior licensing operation upon a single medium, film censorship has presented serious constitutional questions discussed in the preceding chapter. The film's similarity to the stage brought upon it early in its history a form
of restraint not unknown to the older stage. In its formative years, the medium was not thought to be as serious and significant as the newspaper and book and hence was not thought privileged to have free press guarantees. Earnest moral reform groups, deeply aroused by the presentation of moral lessons contrary to their own, operating in an environment where reform of other social errors was an urgent movement of the time, having available the existing method of controlling the stage, quickly turned to apply previous restraint to the motion picture. The restraint's four-decade strength was supported by Supreme Court doctrines, by the industry's fear of its spread if challenged too closely ("let sleeping dogs lie"), and by that same group's ability to learn to live within the regulation. When all three of these factors changed, censorship was threatened in the fashion we have seen. Court doctrines changed, particularly those relating to the Fourteenth Amendment; new industry leaders arose who found the restriction either hostile to their personal views or hampering to the frenzied search for markets which declined after World War II.

The location at the level of state government is distinctive, because even post-restraint statutes applicable to other modes of expression rely primarily upon local action. Although most states have on their
books laws against libel, obscenity, slander, etc., they apply them only through local officials, but acting as agents of the state. But in film censorship, we find more than state law, we find state administration. True, there is some municipal censorship, scattered, limited, invariably dormant; but within the censorship state, local government has been excluded from this exercise of law.

Although the causes for this distinctive location are not clear, it seems that in Ohio, the film exhibitors themselves turned to state control, fearful of the then rising numbers of local censors; one industry source stated that federal censorship was the ultimate objective. The exhibitor, sensitive to community pressures, would be rendered safe from obscenity laws, local attacks and narrow viewpoints if handed a product stamped by the state as "clean." Although the Ohio exhibitors came to regret this move, as seen in their support of repeal in 1953, censorship became lodged at the state level.

A third distinctive element of this form of censorship has been that its operation has tended to cause the movie-makers to conform to the objections the censors made. In this development, of course, the censors were clearly aided by private moral welfare groups who brought pressure to bear at Hollywood. The dramatic impact of
the censors, however, was clearly seen in Chapter VI, where the sharp decrease in films censored within a few years after Ohio began operation is graphically demonstrated. When objectionable film content increased in the mid-thirties, the censors' increased restrictions plus the economic boycott of the Legion of Decency movement brought the industry into line. The industry learned to live with its censors and pressure groups; finding impossible and uneconomic the task of producing films for both censor and non-censor states, the industry had to mold its products for the whole nation in terms of the "Do's and Don'ts" of a handful of states. This process was clearly related to the influx of capital finance which was reluctant to risk investments in censor states where the audiences were considerable - unless threatened by a depression or the rise of competing forms of entertainment; both of these required increasing amounts of sensationalism to attract back dwindling audiences.

Finally, a distinction appears which we have suggested above. Although the practice of private moral welfare groups seeking to influence media of expression at their source is not new, there is novelty in the combination of this private pressure and powerful state censors. As Hollywood has known its Legion of
Decency, so have radio and television known its "Red Channels," the newspaper its local temperance union objecting to liquor ads, the publishing business the Boston Watch and Ward League, etc. Too, these private groups have employed not only economic boycott but also existing post-restraint criminal obscenity or libel laws. But only in the movie industry have such private groups been able to use the possibilities of censorship to reinforce their demands. The producer did not necessarily know that because the Legion of Decency objected violently to The Outlaw that the state censors would ban or cut heavily his production; but the possibility of such state action was enough to deter his issuance of a film in which so much was invested. The power of such private and public forces lay not in their action but in their anticipatory influences.

II. The "Objectivity" of Film Censorship

The central question in this whole research has been in what ways is film censorship like and unlike other kinds of administrative regulation? This section brings together both the theory and practice of film censorship in order to answer that question. We must first determine certain characteristics of administrative regulatory action in general and film censorship in particular. Then, by applying the experience of film censorship we
may better determine whether it is congruent with other forms of regulation. Essentially, we are asking whether film censorship is more or less "objective" than other regulatory activity.

A. Characteristics of Administrative Regulatory Activity

When we abstract the essential qualities of administrative regulation, we find three which seem basic: ends, classes of action and an assumption. The ends are as variable as the interests of groups which look to government for action; in any specific case they may be found in the history of the legislation or in specific references in the law. The classes of action refer broadly to that which government seeks to promote, prohibit or protect. The assumption - although there are many involved - most significant to our study is that administrative regulation can achieve particular, desired ends.

When we examine film censorship, we find in certain respects that it, too, shares these three basic qualities. Such censorship has at least two ends: (1) to maintain the status quo of community morality, and (2) remove that which threatens or challenges the preceding. Broadly put, that for which protection is sought is either major moral values deemed significant by leaders of community
morality or its social order. Film censorship, thereby, in protecting moral values prohibits the immoral, obscene, sacrilegious, etc.; in protecting social order, such censorship prohibits that which tends to incite to criminal action. All of this is but to say that film censorship is a device for social control, concerned basically with blocking changes which might threaten the society.

Film censorship, like other regulatory activity, concerns itself with specific classes of action and, in this case, thought. These classes, when articulated into administrative action, implement the ends above. Further, they embody the ends, i.e., they define the moral and social values to be protected. We have seen these classes of action defined in the standards of state film censorship; these standards, once much more inclusive, have undergone a sharpening of definition as a consequence of court decisions.

Finally, film censorship, like other regulations, operates upon the assumption that this form of action is a significant means of achieving the desired ends. There are other assumptions involved here, of course, such as that the ends desired are good and that the standards which define them are clearly expressed. We think most basic, however, the assumption that
administrative regulation can achieve particular ends by employing certain standards which embody important classes of action.

Thus, in all these broad respects film censorship is like other types of administrative regulation. But, the question is, how does it differ - if it does at all? We suggest that the difference lies essentially in the amount of disagreement and uncertainty which surrounds the ends, the classes of action and the assumption. Before turning to a more intensive analysis of that, let us first admit two points. First, as long as administrative regulation must operate with legislatively delegated standards of some generality, all regulation must partake of discretionary action and consequently be subject to difference of opinion about the correctness of that action. We but note, however, that the evolution of constitutionalism in the United States has required that the discretion be as carefully defined as possible, so that the amount of personal preference which might become law is restricted. Second, we must note that when film censors forbid the presentation of nudity, sexual intercourse, homosexuality and possibly a few other subjects, they are prohibiting actions and concepts which are widely agreed upon in the community as
offensive. That is, in such cases, the amount of disagreement and uncertainty is far less than in other of the censor's prohibitions.

This analysis of difference begins with the assumption of film censorship, that administrative means are practical for achieving particular ends. If the assumption is correct, one measure of the means should be its efficiency. So great is the nature of this aspect, however, that we shall set it aside for later consideration in more detail. Where the disagreement and uncertainty enters in for our present consideration is in the answer to the old question, "Can we legislate morality?" Anyone the least familiar with this old saw in social control knows that there are sharply drawn lines of opinion on the answer. Those who would answer "yes" would point out that by definition, if censorship prevents exposure to that which corrupts the mind and the society, then in a real sense community morality has been conditioned. Those who deny the possibility raised in the question would point to history to show it has not been successful, to other mass media which may "corrupt" the citizens and to political philosophy concepts which say the attempt at legislating morality should not be made. The point here is not to settle the question but to
indicate the evident differences of view about the assumption of the efficacy of such regulation.

The ends sought by film censorship reveal similar differences of view. If one were to measure by legislative support, the amount of disagreement over the use of film censorship to maintain and protect the community status quo in morality was very little. None of the seven states' censorship laws here studied were ever overthrown by the legislature; in legislative challenges, spokesmen for morality groups came out in effective force. Yet even these broad ends found dissenters. This research has indicated the great number of opinions of courts, legal scholars, film critics, defenders of civil rights and others who have questioned whether maintenance of the status quo in beliefs was desirable. Such critics of these ends have pointed out that history has shown change and progress to be the essential, dynamic elements of our society. Such critics therefore ask whether freezing our belief systems is desirable or possible. We shall return to this point later.

Descending from the generality of these ends to the particulars of classes of action and thought which film censorship proscribes, we find that here exists
probably the greatest disagreement. We will turn soon to the specifics of such disagreement as our work has revealed. But first let us explore a working hypothesis of administrative regulation of classes of action which we sketched in Chapter I. We said there that the presence of disagreement and uncertainty in administrative regulatory activity is a matter of degree, that possibly we can order this degree of disagreement along a continuum of the state's police power over public health, safety, welfare and morals. What does this mean?

We suggest that at one end of this continuum of "objectivity" is the state's regulation of health and safety. Here the classes of action affected and the standards employed reveal a wide area of agreement as to what must be done and how it is to be done. There is a wide agreement as to what constitutes healthy and unhealthy, safe and unsafe, because there are physical descriptions of such conditions; further, such descriptions are relatively permanent, for the description of spoiled milk, for example, is the same today as tomorrow. Further areas of agreement in health and safety regulation appear in the problem of how to achieve health and safety; here can be employed physical tests whose
validity and reliability can be easily and regularly verified. Finally on this end of the continuum, note that the number of persons who can perform the administrative regulation is quite small and specially trained; only a few, highly qualified personnel can measure pollution of water, make bacteria counts of milk and test the load safety factor of bridges. The training for such experts is quite explicit and the qualifications for the job clearly defined.

But, when we consider the state regulations for social welfare, we find significant differences. The reference here is to the political and social welfare of humans and particularly to the economic activities of the government. Here, we suggest, exists less agreement in all respects than we indicated in health and safety regulations. There is more disagreement about the proper role of the government; reflective of such differences of view are the larger number of theories which allegedly describe the proper role; further, such theories vary depending upon which phase of the economy is under debate, for those who urge economic benefits for the farmer may deny them to the laborer. Further, how the government should proceed and what means it should use are subjects of considerable debate even among those who do agree on
what the proper role of the government is in general. Note, too, that the tests employed to determine whether the state is providing for the welfare are not as subject to validity and reliability measurements of verification as noted in health and safety regulation. Those who agreed to public utility regulation for years debated vigorously whether "fair return" was based on an property assessment evaluated in terms of "original cost" or "replacement value." Finally, there is a different personnel factor operating here. It is true that such regulation employs regularly professionally trained persons - economists, statisticians, social workers, etc. - but note further that there also exists a number of laymen who believe they know what form and direction administrative regulation should take. In the 1930's in California, various old-age pension schemes caused trained economists to point out the obvious fact that the state could not pay for them; great numbers of aged, however, thought they knew best what the state's regulation for social welfare should mean. The emergence of these laymen suggests that in regulation for welfare, the state is restraining a larger number of citizens than is true for health and safety regulation; now the state acts against worker and employer,
farmer, financier, \textit{rentier} and others who formerly were used to acting for themselves without state restraint.

When the state seeks to regulate morals under its police power, it does so in an environment of controversy of a different order than suggested for the preceding subjects. Disagreements and uncertainty prevail when one asks exactly what is being regulated here. True, there might be substantial agreement that we shouldn't permit immoral, obscene, etc. presentations. Such sentiments, however, are on the order of being against sin. When we seek to articulate these general phrases in specific terms, disagreement arises of a kind certainly not present in regulation of health and safety and greater than we suggested for welfare regulation. Disagreement arises, moreover, about the basic proposition that the state \textit{should} attempt to regulate this phase of life. Further, when we turn to the question of means employed for this purpose, we find great disagreement. Some may believe that other means than censorship should be utilized, that so much discretion is left the censor he may be translating personal preferences into public policy, that there may not be means available to determine whether this
is happening and that possibly censorship does not do the job it is created to accomplish. The personnel factor here also arouses disagreement. First, how does one become specially trained in the community morality, particularly when that morality exists in diverse and conflicting patterns of a dynamic society? Second, it is possible that the number of laymen who feel qualified to participate in the process is almost universal, because one suspects that each person in the community believes he knows what is good or bad, beautiful or ugly, reverent or sacrilegious, criminal or peaceful, etc. The possibility of this latter seems increased if one believes that all Americans would resent the proposition put in these words, "Do you want the government to tell you what these values are to be?" This widespread number of laymen involved arises, we suggest from the fact that in this area the government is acting against a much larger number of people than in the preceding areas.

This, then, is a working hypothesis of the nature of administrative regulatory activity. We are not saying that all regulations must fit precisely within the mold of one of these three subjects; obviously, many within one subject may have different degrees of disagreement. What we are suggesting is that
administration of the state's police power must fit somewhere along this continuum but that health, safety, welfare and morals will tend to cluster around the three nodes discussed above. All partake of some disagreement, uncertainty, and participation of experts and laymen. The wider the disagreement, the wider the discretion necessarily permitted the administrator and hence the lesser the "objectivity" of that particular regulatory activity.

Because this research has focussed merely upon regulation of morals, we shall turn to investigate what the data from the experience of this regulation tell us about the correctness of our hypothesis. Scope and time preclude examination of health-safety and welfare regulations. Such is a subject of research for others; that part of the hypothesis stands supported only by plausability and the logic of scattered data about administrative regulation. Our task is to determine whether there does exist extreme disagreement about the moral regulation involved in film censorship and whether such disagreement increases the likelihood that such regulation is not "objective." What have the preceding chapters told us which throws light on this problem?
B. The Experience of Film Censorship

The outcry from community groups clearly and early set the impression that motion pictures are a value-ridden medium and that what moral lessons they teach and how they teach them are subjects about which there are different views. The early legislative struggles, like later ones, identified for the censors those whose interests the regulation was to serve, some particular meanings of broad standards and the "protect the youth" end objective of this administrative regulation. Even here, there were those who disputed the form and content of film censorship. The complaints of moral reform groups continued, however; these complaints of the 1920's and 1930's, which created a list of "Don'ts and Be Carefuls" and the later Code, clearly indicated that the film producers and some private groups differed in their views of what moral lessons the movies should promote and protect. Censors authorized to regulate the film product were necessarily picking and choosing among competing beliefs.

Certainly the statutory standards by which the censors operate are the key factor in analyzing the "objectivity" of the regulatory activity. Is the authority granted by these standards such as to permit
the administrator more than it denied him, ensuring him a kind of "fishing license" for entering the flow of films to seize, in this case, what he did not like? If so, how effective is appeal? For, such standards would make difficult if not impossible any judicial restraint on personal arbitrariness; i.e., how could there be judicial restraint of personal arbitrariness when censors standards were of such breadth as to include any presentation the censor deemed offensive?

Evidence that the standards are of such breadth appeared in many places. Obviously, recent Supreme Court decisions asserted or implied that these were so broad as to make administration essentially subjective and that hence they were incompatible with constitutional doctrines of freedom. It is ironic that in the very act of lining up with the anti-censorites, the courts became yet another group involved in applying judgements in areas where clear-cut lines are hard to draw. Possibly the most telling evidence of the "non-objective" nature of film censorship has been the censors' belief themselves in the "subjectivity" of their work.

Is it not possible that we saw this in the analysis of actual deletions? For example, the state censors
were greatly disturbed by the amount of offensive sexual presentations. Clearly, there are many differences of view as to what commits an offensive act, even within our own cultural, not to mention between ours and other cultures; censor action, then, must be an expression of only certain views - and how can we determine whether these are widespread community views or merely personal views? Certainly they are not the views of the Production Code Office which issued an excised film a seal of approval.

The deletion analysis revealed that these censor states achieved varying results with rather similarly worded standards. Even neighboring states, where some regional agreement about important moral beliefs might be expected, registered no such agreement in their censorship results. What part does the censor's personal values play in this?

There is some evidence which suggests his values play little part. We saw how the statistical analysis of Ohio and New York deletions revealed that their

censorship increased during the early 1930's as group protests increased over current film fare. This suggests either the censors' personal sensitivity to that material or to the group protests; if the latter, then, they were reflecting widespread community views. Further, we have seen how the censors themselves assert that their views of what is permissible have changed with the times, as they see the milieu permit different values to be expressed; there is no statistical evidence of this, merely scattered examples and personal recollections, but it does suggest a sensitivity to broad currents of community changes in values.

On the other hand, there is also evidence suggesting that censors' decisions are not always based upon community demands. We have seen how there have been substantial differences among the states in censoring the same film material. This variation suggests three answers. The community agrees upon its basic values but the censor is using his own views. The community disagrees significantly about these values and the censor is reflecting these differences. Or, finally, the community disagrees about such values and the censor is using his own views. The first proposed answer seems unlikely; current social analysis plays up the pluralistic nature of our society and beliefs.
The second answer may be more likely, for there is great variation in cultural values, so possibly the censor is reflecting this. Yet, such a conclusion is weakened by the statistical fact that there are tremendous differences between censor results, which might suggest we are more divided internally than is currently realized. Moreover, despite these community disagreements about values, we would expect more agreement among censor states that are neighbors than emerges from these data.

What is there to support the third answer, that the community disagrees and the censor is using his own views? We believe this most likely because, as discussed in concluding Chapter VI, the bulk of censorship involves details of action and expression about which the community has little if anything to say. What group's orthodoxy prescribes the exact length of a kiss or that five instead of thirty-five blows should be shown in a beating? In Chapter VI we suggested the moral codes with which the censor might deal range from proscribing widespread tabus on one end of a continuum to the other extreme of promoting positive beliefs. We said that the promoting end of the range is not within the means of the censor; by definition, he must be concerned with taking out, not
putting in. Nor does he do little with the extreme tabus; movies contain little of these. Thus we suggest, on the basis of logic and the data of actual deletions, that the censor deals most with values which are not as clearly structured in the community view, which are the subject of continuing disagreement among community groups. Both experience and logic alike compel us to the conclusion that the censor is most active in areas where there are few clearly agreed upon blueprints and that consequently, to quote the U. S. Supreme Court in the Miracle case, "the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies" and, we add, those provided by his own views. The vocal groups may sway him on major moral views, but in those areas where they may be silent, his views must necessarily be his guiding chart. His concern for details, as we revealed in deletion analysis, means he operates in an area of great disagreement, thereby substantiating the working hypothesis of kinds of administrative regulation.

What do the data of censor personnel tell us about this? The background, recruiting and job qualifications of these officials reveal that the nature of the job is poorly defined, hence "experts" here are poorly defined and hence "objectivity" is harder to achieve. How can we know if professional degrees in liberal arts make for an "expert" censor? Possibly one criterion of expertise would be how well he represents significant community elements concerned with morality and how well he can apprehend and translate their views. But, as we have suggested, the diversity of such community elements raises the question of which to represent, while the deletions analyses pointed to censor concern for film items about which there is extensive disagreement. Other criteria for the job suffer from this same problem of vagueness; as long as the job definition remains vague, recruitment and testing will be likewise. Thus, differences of view about the classes of action comprehended within the regulatory activity affect the personnel problems.

Further and substantial disagreement prevails in the legal analysis of film censorship. Is this restraint of the press justified? That whole question was the center of diametrically opposed views,
but to date the Supreme Court has denied any justification. From the tangle of arguments on this point, the one clear conclusion is that the state has not clearly demonstrated the need for exception to the rule of previous restraint laid down in the Near doctrine. Yet, there still remains the argument that, if movies are capable of dangerous influences upon the community, then protection of that community should supercede the claims to a constitutional right. If the premise is correct, the argument is not without merit. Is this restraint a denial of due process of law? Again, the Supreme Court seems to agree that there is permitted here too much discretion to an official for a function where clear cut lines of administrative responsibility are hard to draw. Here, the belief is that the breadth of discretion in film censorship renders inoperative the requirements of due process for administrative action which are deemed so important in other regulatory activities. It provides no prevision of the illicit and renders judicial review in effect inoperative; as Justice Frankfurter said, concurring in Burstyn v. Wilson, "thus, the administrative first step becomes the last step."

3. Ibid., 5.
The legal analysis pointed to another area of disagreement; the issue here was not about the relationship between censorship and rights but whether censorship could do the job and if it could, whether other means might not be as effective. Criminal post-restraint obscenity laws, the industry's self-regulation apparatus, parental control and the influence of private groups promoting "good" pictures were all presented as attractive alternatives to the prior restraint mechanism. This argument was closely linked to the previous legal arguments; those who objected to censorship as a violation of particular rights saw these alternatives as desirable, while those who supported censorship found them ineffective. In this, as in other controversial phases of film censorship, where you end depends upon where you start. The disagreement remains.

Thus, these aspects of film censorship indicate the great extent of disagreement surrounding its operation. Such evidence supports the working hypothesis that this regulation is one of great disagreement and uncertainty about assumptions, means, classes of actions and ends. To place film censorship properly along this continuum would require quite extensive analysis of state regulation of health, safety and welfare. This research points to the extensiveness
of the disagreement about regulation of morals; others may use this as a point of departure to test the other nodes of regulation on the suggested continuum. Lacking evidence about these other regulations, we do not say that film censorship is the most controversial, the most uncertain, the least "objective" of regulatory activity; we say it partakes highly of all these adjectives and we suspect that it likely is on the farthest extreme.

III. Recommendations in Policy-Making: Appeal to Political Principle

Although the experience of film censorship suggests its lack of objectivity, with consequent constitutional objections, can it be argued that the regulation is still a good one? What criteria can we apply to test its worth which evaluate its objectives, its execution of these and its problems? We will offer two broad criteria, general political principles of democracy and liberty and the more pragmatic tests of experience and operations. On the first score, this research has been concerned with the experience of film censorship, not with a full examination of the political values surrounding it. We realize that others who regard themselves as advocates of democracy and liberty may reach conclusions contrary to those here presented. Yet we would be remiss in our duties as scholars if we failed to evaluate
governmental experience in terms of political values which we deem significant. Without recapitulating the voluminous literature on the subject of liberty and democracy, it is enough here to set out the views of a leading contemporary democratic theorist which seem persuasive.

Robert MacIver describes several common elements in the meaning of democracy: responsibility for power, separation of state and community and free play of ideas. He sees the whole history of the struggle for democracy a struggle to make the use of power responsible to a growing number of citizens; this responsibility is at the heart of such democratic practices as elections, due process of law, checks and balances, etc. Of equal and parallel importance is the separation of the institution of the state from all other social institutions; this separation prohibits the state's power from being used to dictate the patterns of behavior and belief which MacIver deems better achieved through the private institutions' interactions with constituents. Finally, maintenance of a free play of ideas is significant, not only as a means for ensuring the first two conditions, but also as an important condition for society to progress towards new ways of believing and acting. Tested by these

criteria, film censorship appears to be antagonistic to all three.

The regulation denies and obstructs the process of making responsible those who use power, because the vague standards create the difficulty of appeal from essentially subjective power determinations, as indicated earlier. The author has been told that Mrs. Maude Murray Miller, early Ohio censor, cut and banned heavily Charlie Chaplin films because of her personal dislike of that actor; if that be true, then we see here an instance from which there is no appeal and which is inherent in the structure and operation of film censorship. An important element in making power responsible is the erection of clear limits to the use of power by a governor; democratic government requires that when he exceeds these limits he be restrained. But when censorship operates by unclear standards, where are the clearly defined limits? How to perceive when they have been transgressed? How, then, to hold responsible the use of power? Film censorship has consistently, because of its very nature, made difficult, if not impossible, satisfactory answers to these vital questions. It is true that censors claim and the deletion analyses verified that censors follow broad changes in

5. Information from former censor Charles Williams.
community morals (supra, 418-19); such data suggest there is some responsibility of censors to citizens. However, we further noted that censors are most active in areas where community views are either not explicit or the subject of much disagreement; such data suggest a use of discretion in a manner for which there are no tests of responsibility.

The regulation blurs rather than sharpens the distinction between the state and the community. Such separation is deemed significant because if the state's power is extended too deeply into the community, there can be no challenge, no appeal, no modification of that power. Yet, in film censorship, we see the state prescribing morality for the community. Here is a task which we believe belongs to other social institutions than the state. When the state performs this task, always at the demand of a vocal minority, it restricts and prohibits the variety which we regard as the seed-bed of democratic government. Instead of the moral beliefs accepted by the citizen because it has come to have meaning for him through experience, there appears morality by fiat.

Nor does the regulation seem compatible with the requirement of free play of ideas. Indeed, censorship by definition frustrates this interplay; the essence of prior restraint is a blocking operation, prohibiting the emergence
before men of some expressions. There are limits to
this freedom, true, but our Constitution requires that
the need for them be first clearly demonstrated (the
Near doctrine); their need has not been empirically
shown, as we have seen.

We should further point out that this obstruction
has had some not clearly understood impact upon the film
medium, causing it to conform to narrow views of censors
in a fashion not likely had there been no film censorship.
Producers, fearful of the state's edict, seek to express
meaning by devious and insinuating expressions or else
abandon in despair certain themes which might be explored.
Quite likely, such reaction to the dangers of censorship
has contributed to the criticisms the medium has long
suffered for the alleged shallowness of its expression;
if to go too deeply into social values means injury,
movie-makers soon learn that the most shallow level pro-
duces the least restraint.

Although MacIver's view of democracy is a general
argument blanketing all media of expression and all forms
of official censorship and brackets all centuries in
which progress has been a goal, the findings of this re-
search reaffirm its validity in light of the experience of
a particular form of censorship over a particular medium
of expression in a recent period of time and in a
particular locality, especially Ohio. Yet this particular prior restraint demonstrates characteristics of other forms of prior restraint. A recent article abstracted these characteristics into categories which provide further insight into how film censorship contradicts the democratic concepts here set out. This article was particularly concerned with how prior restraint compared, in democratic terms, with the technique of post-restraint. Its general findings about how prior restraint operates are borne out in the experience of film censorship.

"Prior restraint normally brings within the complex of government machinery a far greater amount of communication than a system of subsequent restraint.....The machinery is geared to universal inspection, not to scrutiny in particular cases." By operational definition, such as been the case in film censorship. Prior restraint delays, if not prohibits, the entrance of ideas into the market place so that the ideas may become obsolete or their expression unprofitable. This possibility we saw as a real one in Chapter VII where we heard the industry complaining of delays for censoring which caused loss of profits.

This system has a greater "propensity toward an adverse decision" than post restraint; the censor may act by a stroke of the pen, but under post-restraint, "a government official thinks longer and harder before deciding to undertake the serious task....the expenditure of time, funds, energy and personnel that will be necessary." The ease of reaching adverse decisions may be clearly inferred from our analysis of the administrative machinery of film censorship.

Further, prior restraint involves administrative rather than criminal procedure. Thereby, prior restraint renders inapplicable the procedural guarantees built around criminal prosecution, "the presumption of innocence, the heavier burden of proof borne by the government, the stricter rules of evidence, the stronger objection to vagueness, the immeasurably tighter and more technical procedure - all these are not on the side of free expression when its fate is decided." Our legal analysis substantiated these characteristics.

"A system of prior restraint usually operates behind a screen of informality and partial concealment that seriously curtails opportunity for public appraisal and increases the chances of discrimination and other abuses." However, we have seen in Ohio that the censors had the practice of calling in morality groups when faced with a
particularly contentious film; further, the author was permitted several weeks observations of their operations. Yet, in neither case did the censors open to scrutiny the actual decision making session on these films. Thus, we agree that "in the long run, however, the preservation of civil liberties must rest upon an informed and active public opinion. Any device that draws a cloak over restrictions on free expression seriously undermines the democratic process."

"Perhaps the most significant feature of systems of prior restraint is that they contain within themselves forces which drive irresistibly toward unintelligent, overzealous, and usually absurd administration."

References here are to the ability and personality of the censor. We must point out, however, that there is nothing in the way of a comprehensive, intensive study of this personal factor. When this article continues with the statement that the censor "has a professional interest in finding things to suppress," we must note that some censors have told us that they thought there was too much censoring being done, even in their terms of office. This factor, however, may be labelled a potential of the censorship process; its reality has yet to be fully realized.

"It is frequently argued that a system of prior restraint affords individual citizens greater certainty in the law
with less risk of serious consequences." Certainly this was true of the exhibitors in 1913 who urged state censorship upon the Ohio legislature (supra, Ch. III); it was not true of them in recent years. Granted, however, that prior-restraint can provide certainty and risk, it raises other problems;

For it means, under most circumstances, less rather than more communication of ideas; it leaves out of account those bolder individuals who may wish to express their opinions and are willing to take some risk; and it implies a philosophy of willingness to conform to official opinion and a sluggishness or timidity in asserting rights that bodes ill for a spirited and healthy expression of unorthodox and unaccepted opinion.

We have seen earlier (supra, Ch. II) that the industry did come to accept some conformity to film censorship in order to achieve certainty and eliminate risk.

Finally, the prior restraint system is more effectively enforced than one of post restraint. Note, however, upon what such effectiveness is thought to rest. "A penal proceeding to enforce a prior restraint normally involves only a limited and relatively simple issue - whether or not the communication was made without prior approval. The objection to the content or manner of the communication need not be demonstrated." The effectiveness arises from the fact that the censor need not show danger to the community. This we have seen in the massive judicial support of film censorship before recent adverse
Supreme Court actions. It is certainly obvious in the
dynamics of the administration of the law.

Therefore, concludes this source, "in a democratic
society, such as ours, a system of prior restraint based
upon executive approval will operate as a greater deterrent
to free expression and cause graver damage to fundamental
democratic rights than a system of subsequent punishment."
In this evaluation, we agree.

If one sought a basic premise from which to view
critically the practice of censorship, he would find it
most briefly stated, with its attendant conclusions, by
George Bernard Shaw; when in difficulty himself with the
English stage censor for Mrs. Warren's Profession, he
remarked in a later introduction to that play,

All censorships exist to prevent anyone from
challenging current conceptions and existing
institutions. All progress is initiated by
challenging current conceptions, and executed
by supplanting existing institutions. Conse­
quently, the first condition of progress is the
removal of censorships. There is the whole
case against censorships in a nutshell.

Such thoughts lead us to declare that if a fair
measurement of the worth of any administrative policy
in a democracy is the manner in which it accords to the
political values of its environment, then there exists
an extensive and imposing body of opinion challenging the
work of this censorship.
IV. Recommendations in Policy-Making: Appeal to Efficiency

Yet another measure which can be fairly applied to any policy is how well it accomplishes what it sets out to do. Thus some indication of the efficiency of this instrument should be made. In so doing, the author again finds that this regulation fails to measure up to that requirement.

One manner of noting that failure is to examine the history of other kinds of censorship. That is, does past experience with censorship indicate that it is a practicable method for achieving the ends it desires? Does historical perspective permit one to argue Milton's thesis that an idea suppressed will rise again if it has something to claim the attention and respect of man? Experience with book censorship clearly validates that thesis, as even a casual perusal of Anne L. Haight's Banned Books will demonstrate. Here we see from the Hellenic Age to the present the names of works of literature banned and burned, their authors fined, ostracized, exiled, burned or otherwise killed - only to find that these works re-emerge in later ages hailed as classics of Western Civilization. Homer, Confucious, Aristophanes, Ovid, the Bible and the Koran, Dante, Bacon, Erasmus, Machiavelli, Michelango, Luther, Servetus, Cervantes,
Galileo, Shakespeare, Ben Jonson, Descartes, Milton, Moliere, Locke, Defoe, Swift, Montesquieu, Rousseau, Diderot, Kant, Gibbon, Jefferson, Goethe, Schiller, Stendhal, Shelley, Balzac, Hugo, Browning, J. S. Mill, Darwin, Marx, Whitman, Dumas, Ibsen, Tolstoy, Twain, Hardy, Zola, Maupassant, France, Wilde, Doyle, Maeterlinck, D'Annunzio, Kipling, Gide, Dreiser, London, Anderson - and a whole host of contemporary writers - so illustrious is this list that it seems one should not properly be deemed an "immortal" in the expression of ideas unless some group has condemned or banned his works.

Several observations seem justified from this historical record. Morality groups' concern with proscription is rooted in fear of what an expression may do to the status quo. And yet, censorship proved impracticable in long run terms; although for the immediate time, censorship may have been successful, it could not finally prevent change in the status quo of morality. We have seen throughout this study the expressions of censors themselves to the effect that that which they censored ten years ago is permitted today. If the community's moral structure is to change anyhow, and such is a characteristic of a dynamic society, what justification is there for the censors who seek to impede that change? Such
historical illumination suggests not only impracticality but the point made by Morris Ernst, "that any guess as to the danger of ideas at any moment of history looks silly and vapid in the next decades."

Ernst has made his special concern this area of the history of forms of censorship; his studies document fully the ineffectiveness of censorship. Historically in Western civilization, censorship first sought to proscribe the blasphemous; then, with the separation of state from church, the state struck out at sedition; finally, with the rise of democracy and the concept of free speech, this was narrowed, and efforts turned toward excising obscenity. Whether the concern was religious, political or moral deviation, the effort to eliminate it by censorship was first narrowed and then, frequently, abolished. Such a limitation occurred because of the social protest accompanying these efforts to circumscribe wide areas of man's thought and action.

8. M. Ernst & Seagle, To The Pure; Ernst & A. Lindey, The Censor Marches On.
Historical analysis suggests two conclusions concerning censorship: (1) that censorship historically has tended not to achieve what it set out to achieve and (2) that the social protest stimulated by its exercise indicates that it affords an ineffective means of securing a particular goal. Does the practice of film censorship confirm these conclusions? We believe that it does for several reasons backed by convincing data. Such data increase the "heavy burden" put upon the State by the Near doctrine to justify restraint of free expression.

First, the lack of national coverage by film censorship suggests that the anti-social effects ascribed to the movie cannot be entirely restrained by the actions of a few state censors. Only seven states had censorship before the Supreme Court in 1952 acted to decrease that number further; and although a larger number of municipalities authorized it, available evidence indicates that only a few actually operated it with any regularity. What, then, of the other 41 states and the vast number of cities where uncensored films may be legally viewed? Imported foreign films, and the output of some non-conforming domestic independent producers, may be freely exhibited in these areas to vary the staple fare of the Hollywood producers. This lack of coverage may be used by the pro-censorite to proclaim the need for more censorship, but
the fact still remains that the existing state censors cannot be completely stemming the tide of "objectionable" film content. What is the use of stemming only a part of it?

This problem of coverage is further aggravated by the fact that television movies are shown uncensored to the whole nation, including states with censorship for movie houses. The last chapter pointed out the anomaly of a state censoring pictures for commercial exhibition while the same film may be viewed uncut in the home or in private clubs. Again, the pro-censorite may claim this practice indicates the need for more regulation, but again the fact remains that existing state censorship is limited in what it can accomplish.

Further, how effective is film censorship, even within those seven states and some cities, when modern America is characterized by an abundance of other media of communication which can present "objectionable" stimuli to the citizen? All of this is but to say that even within a censor state, the variety of stimuli which might affect the citizen or even the prurient is so great that it necessarily challenges the practicality of censoring one mode of expression. In the matter of expression of ideas, no state is a watertight compartment. Even if it were, even if all formal media of communication were censored
to protect the youth, as someone must have said, "there should still be the spring breeze."

The effectiveness of film censorship may be challenged in yet another direction — whether it actually prevents anti-social acts. The field of delinquency demonstrates no agreement among criminologists, sociologists and psychologists about its causes; what agreement there is lies in the belief that delinquency is rooted in many, interrelated, not-well-understood causes. Yet, as we have seen, the pro-censorite claims that this regulation is significant in deterring criminal actions. Such a one-sided explanation of a multi-factor social phenomenon certainly finds no verification in the data of state crime rates; censor states are among the best and worst in their crime rates. When the pro-censorite seeks to support his argument by the statements of a few juvenile delinquents that they were motivated to a particular crime by a particular movie, he overlooks two unanswered questions: how representative are such cases and how can we be sure the delinquent's statement of motivation is not a rationalization by which he seeks to escape the consequences of his action? Finally, this thesis of social causation does not square with the sizable body of social studies which question both the general and dangerous impact of the medium upon action. Post-war racial
prejudice films, certainly supposed to be the most potentially explosive film content, created no disturbances in the South; Atlanta and Memphis banned several of these for fear of disturbance of the peace, yet when they were shown in nearby or other towns, no such outbreak occurred.

A third measure of the inefficiency of this regulation lies in its impact upon film producers. We have earlier noted that the industry has learned to live with these restraints and yet produce varying formats. Part of this accommodation has been the movie-makers' attempt, usually successful, to evade censors by devious, insinuating presentations. Thus this permits a crime picture to show for the bulk of its presentation that a life of crime has certain attractions, as long as the ending is wrapped in a briefly stated bow to the moral belief that crime does not pay. Such a consequence argues against censorship for three reasons.

First we are here saying that the actions of a few states are having national influence when producers are conforming their product to the expectations of these few. Does not this situation raise serious constitutional questions about the proper place of the state in a federal system? In other areas of interstate commerce, discussed in the last chapter, constitutional doctrine has been
reluctant to permit the individual state to impinge upon the flow of that commerce if it has national consequences. This suggests another constitutional question, not yet raised with any other expression of ideas; when state action upon a medium of expression has the national consequences here noted, does not the obstruction to interstate commerce reinforce the Fourteenth Amendment's challenge to any form of prior restraint, no matter how worded? The most clearly worded censorship standard would still be causing the industry to conform its national product to the dictates of a few states.

Two other consequences of this restraint upon the medium point to its ineffectiveness. Paradoxically, the producers' necessity to conform has reacted to bring forth producers' evasions. This very fact of patterned and frequent evasion indicates the ineffectiveness of the restraint. Short of banning great numbers of motion pictures, which censors have been reluctant to do (if records here studied are representative), this evasion cannot be prevented by the censor. The censor is seen more concerned with the minutiae of presentations than with the broader, moral concepts the film may evasively touch upon or even challenge.

The final consequence of this evasion is even more serious. Is it not possible that the practice of
censorship has defeated its ostensible purpose, the protection of the moral standards of the community? We have earlier noted Shaw's point that censorships aim to restrict progress and the historian's point that in the long-run they fail even in that. The point now under discussion is more subtle and much less susceptible to measurement.

If the censor is partly responsible for creating this evasive kind of expression, he has thereby discouraged productions that would aid the citizen more easily to understand his fellows and their world. Moral standards mean nothing if they do not provide a way of life for the citizen and his community; such standards are viable to the degree that they aid the individual to integrate himself with others in his society and to understand himself and his place in life. However, the operation of censorship has contributed to the manufacture of a product which too rarely undertakes a deep appraisal of those standards, which fears to relate these standards to the life of the citizen and which, consequently, fails to provide for the individual appreciation of those standards on which the community is based and which the censor is created to protect. Whether by specific exclusion of certain film content or by indirectly causing the producer not to pry too deeply into the community value structure (and then in a leering, sidling fashion), the censor
contributes to preventing the citizen from having a meaningful understanding of his beliefs. When this happens, as John Stuart Mill and others have warned, morality becomes formalized, ritualistic and mere "superstition." When movies are not permitted to say that crime does pay sometime (and explore why this is so and what to do about such a serious problem) and when all other media of communication are shouting that it does pay, the movie-goer may well become cynical of the moral belief that "crime does not pay." If censorship is to protect morality and the preceding criticisms are correct, the regulation has defeated itself.

Although these are the major items suggesting the impracticality and inefficiency of motion picture censorship, yet other facets of the regulation provoke this same criticism. How can we devise statutory standards of morality which are specific enough in content to satisfy the requirements of due process? How can we be assured that the censor is not permitting his own, particular values to be transcribed as community values? Who will censor the censors to make sure of this? How can we achieve agreement upon the desirable qualities of a censor, how can we test and recruit censors with those qualities? How can we demonstrate that the prior restraint of censorship better accomplishes its ends than the public and private forms of post restraint?
Lack of satisfactory solutions to these problems argues strongly, therefore, that film censorship does not escape the difficulties evidenced by other forms of censorship attempted throughout history. Its ineffectiveness, its futility and its harm both to movie audiences and to the medium are inherent. Given the subjectivity, the impracticality, the judicial disfavor, the lack of evidence to justify its restraint of a valued American concept, and the possible harm to citizenry and industry, the dangers which film censorship is to fend off may better be faced by other means than this.

If a prime concern of policy makers, whether private or public, is how well a policy accomplishes its objectives, those now re-examining film censorship should be told that this regulation does a poor job. If another concern is how well a policy accords to the values of the community in which it must operate, they should be told that this regulation poorly fits most interpretations of democracy and liberty. History has elsewhere revealed that other censorships have failed to meet these two requirements. We must conclude the Ohio story with the observation that the practical experience of error here noted seems to demonstrate the wisdom of the ages.
NATURE OF WORK IN THIS CLASS

This is responsible work in ensuring that motion pictures comply with state censorship laws and policies based on such laws.

An employee in this class views motions pictures which are to be publicly exhibited in the state prior to their release to determine acceptability for exhibition. Considerable independent judgment and discretion is exercised in applying state laws and department policies to determine specific deletions to be made from motion pictures. Incumbent receives general supervision from a Motion Picture Censor II on the application of censorship standards.

ILLUSTRATIVE EXAMPLES OF WORK

Maintains contacts with motion picture representatives and public groups with respect to censorship problems and in an effort to determine public attitudes toward specific films or certain types of films.

Views motion pictures to be publicly exhibited and analyzes them for compliance with state censorship laws and policies.

Determines scenes or dialogue to be deleted, taking cognizance of necessary sequences.

Analyzes and interprets public opinion as it relates to censorship, holding conferences with various representative civic groups to determine attitudes toward different types of films, with respect to their acceptability in terms of public opinion.

Reviews magazines and other publications of the motion picture industry to keep informed on trends of the industry, reports of Censor Board action, etc.

Performs related work as required.

ESSENTIAL KNOWLEDGE, ABILITIES AND SKILLS

Thorough knowledge of state laws governing motion picture censorship and their interpretation.

Ability to predict the reaction of the public to the
decisions of the office of censorship.

Ability to meet the public.

Skill in determining deletions from pictures and dialogues without destroying sequence or giving undesirable interpretation by omission.

Skill in directing recreation programs.

QUALIFICATIONS

Specialized experience of a responsible nature in social work, teaching of psychology or sociology, or recreation work; plus additional general experience which would provide familiarity with the work of this class.

*Training at an accredited college with courses in pertinent fields (such as sociology, psychology or recreation) may be substituted for the requirement of general experience providing familiarity with this work.
APPENDIX I-B

MOTION PICTURE CENSOR II

This is responsible supervisory work directing the inspection of motion pictures to be publicly exhibited for compliance with state censorship laws and regulations.

An employee in this class exercises considerable judgment and discretion in applying state laws, regulations, departmental policies and standards in the censorship of motion pictures to be publicly exhibited in the state. General supervision is given to a small group of technical and clerical employees engaged in censorship activities and routine clerical work.

ILLUSTRATIVE EXAMPLES OF WORK

Censors motion pictures in accordance with the Ohio state censorship laws. Reviews films to ascertain that only those films which are of a moral, educational or amusing and harmless nature are approved for display.

Maintains extensive contacts with motion picture representatives and interested citizen groups regarding the interpretation of the law.

Prepares justification for eliminations made in specific pictures.

Supervises a small group of censors of lower grade and other technical employees engaged in censorship activities.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Extensive knowledge of standards for the review of motion pictures for cultural and moral content.

Considerable knowledge of psychological factors relating to motion pictures.

Ability to predict the reaction of the public to the decisions of the office or censorship.

Ability to organize and direct the work of subordinates.
QUALIFICATIONS

Considerable specialized experience of a responsible nature in social work, teaching of psychology or sociology, or recreation work; plus additional general experience* which would provide familiarity with the work of this class.

*Training at an accredited college with courses in pertinent fields (such as sociology, psychology or recreation) may be substituted for the requirement of general experience providing familiarity with this work.
APPENDIX II

Sample of Weekly Report of Ohio Censors

STATE OF OHIO
DEPARTMENT OF EDUCATION
DIVISION OF FILM CENSORSHIP

State Office Bldg.
Columbus 15, Ohio

THIS REPORT IS NOT TO BE MADE PUBLIC
BULLETIN FOR THE WEEK ENDED JUNE 25, 1949

REVIEWS .......... 29 FILMS 152 REELS
ELIMINATIONS IN .... 6 FILMS 15 REELS
MODIFICATION OF ELIMINATION .... 1 FILM 9 REELS
REJECTIONS .......... 1 FILM 6 REELS
REVOCATIONS .......... 1 FILM 7 REELS

FILES APPROVED WITHOUT ELIMINATIONS

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FILMS APPROVED WITH ELIMINATIONS

CESAR (FRENCH DIALOG WITH SUPERIMPOSED ENGLISH SUBTITLES)
Siritzky International Picts. Corp.
New York City, N.Y. 12 Siritzky Int. Picts.

CHIPS ARE DOWN, THE (FRENCH DIALOG WITH SUPERIMPOSED
ENGLISH SUBTITLES)

LOVE-LIFE OF NAPOLEON, THE (FRENCH DIALOG WITH SUPERIMPOSED
ENGLISH SUBTITLES)

RED, HOT AND BLUE
Paramount Pictures Inc., Cleveland, 9 Paramount Picts.

SLEEPING CAR TO TRIESTE
Eagle Lion Films Inc., Cleveland, 0.11 Eagle Lion Films

WINNERS OF THE WEST NO. 3 (THE BRIDGE OF DISASTER)
Film Classics Inc., Cincinnati, 0. 2 Film Classics

ELIMINATIONS

CESAR (FRENCH DIALOG WITH SUPERIMPOSED ENGLISH SUBTITLES)
Reel 1-A: Eliminate following English subtitles and cor­responding French dialog (69 thru 88--continuity English titles). (See Chapter VI, III B 3 for text of this cut.)

Reel 3-A: Eliminate following English subtitles (445 thru 448--continuity) and corresponding French dialog:
"There's no doubt you are his greatest accomplishment."
"He wasn't solely responsible."
"So your Marius made love to mother?"
"Your presence seems to indicate it."
Eliminate English subtitles (497 thru 504--continuity)
"Marius went to your mother's. It was night."
"When I found out, I came running...I arrived just in time."
"I made him leave."
"You think if you hadn't arrived..."
"She loved him, you know...too much."
"She helped me make him leave...But she was glad I had arrived..."
"...because she had no will-power left..."
"So, he obeyed."
Reel 6-A: Eliminate English subtitles and corresponding French dialog (1180 and 1181--continuity): "I know it wasn't funny for you, day after day, and especially night after night..."
"Yes, you sacrificed yourself...But you became a lady, eh?"
Eliminate English subtitle--(1335--continuity) "I want you stark naked..."
Eliminate English subtitles and corresponding French
dialog (1347 and 1348--continuity) --"You see, I'm embar­rassed with you...I'm afraid to look at you."
"If we were married. I'd be like the foreman who makes love to the boss' wife."
CHIPPS ARE DOWN, THE

Real 4-B: After sequence on stairway of flat where couple ask little girl -- "Is your mother at home?" and she says - "Don't go in! She's with Uncle George!" eliminate following scenes of man knocking at door of room, "Uncle George" opening door as he is fumbling with his clothes to fasten them, scene of child's mother on bed, getting off bed and all scenes of her after she gets up from bed, fastening her robe around her. This is to be a solid continuous cut from scene of couple with child on stairway up to scene in room accompanying English subtitle --"Answer! Is she your daughter?" and mother has her back to camera and is no longer fastening her robe. The following English subtitles are removed in this elimination:
"All Right! ... Don't get nervous
"Do you want to break down the door?"
"Are you Mrs. Astruc?"
"Is this your daughter?"

Real 5-A: In bedroom sequence between couple make solid continuous cut starting with close scene of woman, first upper part of her body then camera sliding up to close scene of her face, then scene of them standing together and man has his hands on her face and English subtitles --"We are all alone now!" "We must love each other!" "It's our only chance." Then scene of her leaving him and walking over and sitting down on bed, then sound of his feet - off - walking toward bed, she lies back on bed, he approaches bed, leaning down over her, their faces close, he kissed her neck, then he leaning over her, their faces close, he kissed her, her hand grasping him, then scene camera panning around room, then close of him pulling away from her, close up her hands beside her head, then he kisses her again--her hands working themselves over his back, then camera moving away from bed and panning around room, then scene of him dressing, fixing his tie and scene of her in front of mirror adjusting her dress. Cut to English subtitles - "They won't come back." "Why?"
Eliminate scene where rose is shown on mussed bed and scene of her picking it up.

LOVE-LIFE OF NAPOLEON, THE (FRENCH DIALOG WITH SUPERIMPOSED ENGLISH SUBTITLES

Real 4-A: Following English subtitle by Desiree and Julie: "Nor do I! With this difference...that even if Bernadotte should one day take the Emperor's place, I wouldn't hold Josephine's!"
Julie: "And yet you'd have her place..." Eliminate following English subtitles by Desiree: "---but not in his bed!"
Also eliminate the corresponding French dialog by Desiree: "--mais pas dans son lit! "
'RED, HOT AND BLUE
Reel 4-B: Eliminate underlined dialog by Hair-De (member of gang) - "Maybe by tomorrow night I'll have some of the answers. And look tell your friend, Corwin, to stop printing stuff like I'M a criminal when I'm only doin' what the law is doin' ... only more competent and less... thrills."

SLEEPING CAR TO TRIESTE
GENERAL ORDER - Eliminate work "damn" wherever used throughout the picture.

Reel 2-A: Eliminate entire dialog sequence between Grant and Joan starting with toast by George - "To future happiness" down to and starting and including the kissing scene between them following last line of dialog spoken by Joan - "Darling." (Included in the above deleted dialog sequence are the following speeches - Grant: "They won't find out. And, even if they did - it doesn't worry me what other people think." Joan: "Oh George yes! You do know that I love you, don't you? You do know I'm not just - looking for excitement, or - or-" Joan: "You feel the same, George. Don't you? You're not just regarding this as a - a casual affair to - enliven a business trip? George, if I thought."

Reel 2-B: Eliminate following dialog between Joan and Grant - Joan: "But George, you can't leave me stranded like that!" Grant: "Look darling, Bishop is dynamite. He's a stockbroker. He drinks and talks. Once he finds out, my reputation's gone." Joan: "I'm risking mine. Can't you risk yours? I'm risking mine because I love you. If you loved me back, you'd do the same. Also eliminate dialog by Grant to Joan - "You find another compartment for an hour."

Reel 3-A: Eliminate dialog sequence between Grant and Joan starting with Grant saying - "I thought I'd never find you darling, etc. down to and including dialog by Joan - "All right, till a quarter past." (Dialog eliminated pertains to George obtaining berth for them to be together - obtainable at one o'clock.)

Reel 3-B: Eliminate entire sequence where West, American soldier, with bottle knocks at door of compartment occupied by Suzanne and Andree, with opening remarks - Andree: "Has Monsieur not made a mistake?" West: "I don't know, honey, yet." with continuous elimination of dialog up to and including dialog by West and Andree - West: "Look monselle, don't get my motives wrong. This is just a gesture of France-American solidarity and friendship." Andree: "That I know monsieur, for I have seen many such gestures when the Americans came to Paris in 1944, but...please, I really don't want to be liberated anymore...Goodnight, M'sieu."

Reel 4-double: Where men are fighting in berth, eliminate scene where one picks up bottle and cracks over other man's head. Where Joan leaves Grant's compartment eliminate entire episode where her wrap is caught in door with attendant
knocking on door to have her wrap released. Accompanying dialog is eliminated: Joan: "George! George!" Benoit; "Madame is caught! Allow me, madame" Joan: "Thanks!" Joan: "(to Attendant) Thank you. (to Grant) George, my wrap got caught." Grant: "Ah! Yes."

In Grant's compartment, eliminate dialog sequence between Joan and Grant beginning with Joan saying - "Oh, George why did we ever come away?" down to and including Joan saying - "Well, then - who else?" "Just tell me that. Who else?" Eliminate following dialog sequence between Bishop and Jolif: Bishop: "You have, by Jove - but just in ignorance. They told me in the dining-car that you suspected George of travelling with some young woman. Dash it all, old George is married." Jolif: (smiling) "You surprise me, monsieur!" Bishop: "To a very pretty girl, what's more." Jolif: "Ah, monsieur! Have you not observed, in life men who marry pretty women are inclined to be susceptible to pretty women - "

Bishop: "Dash it all, that's obvious." Jolif: "Quite so, monsieur. And, therefore, often overlooked." Eliminate dialog sequence between Jolif and Grant:

Jolif: "But monsieur, if you were with this young lady, why not tell your friend the truth?"
Grant: "The truth! I've got my reputation to consider. I'm a married man."
Jolif: "Can Englishmen not even sin with honesty?"
Grant: "Now listen Mr. Jolif - you're French. I'm English, see!"
Jolif: "Yes, monsieur I have noted that."
Grant: "Well, with an Englishman, his reputation comes before - well, his romance. An Englishman will go to any lengths to keep his reputation clean."
Jolif: "To any lengths, monsieur?"
Grant: "Yes, damn it."

Reel 6-A: Eliminate underlined dialog by Randall: "He came to bed at night on two. Last night. His 'air all ruffled. Ah mean to say!" and reply by Bishop - "No - don't tell me - It's my blood pressure you know." Eliminate underlined dialog by Grant: "Thanks terribly. I rather feared you disapproved." and reply by Bishop: "And so I did, old man. (he winks) Sheer jealousy."

NOTE: The following material was not included in this print submitted for censorship and must not be used in any print of this picture exhibited in the State of Ohio:

Reel 1-double: Conversation between Joan and Grant beginning: "Poor darling. When did you get in?" to scene following Joan's saying "Touch wood?" wherein they kiss and Joan snuggles into Grant's arm contentedly.
Reel 3-double: Valya: "Your lover was not pleased to see me." down to and including Valya saying: "Then he is someone else's husband. That is duller still." West: "Hell." Valya: "To have a love affair with someone else's husband." down to and including the line by Joan: "It's different, isn't it?"

Reel 4-double: Conversation between Valya and Joan: "They leave us to ride out the storm." and part following of Valya's concluding lines: "But my father never blamed me when I did not listen to his words." Grant to Joan: "God." Conversation between Zurtz and Yalya concerning Joan: "Well, it serves her right. I seem to recollect in the days of Moses, Valya, indiscretions of that nature were punishable by death. Also remarks by Zurtz: "Yes, thanks to me." Bishop's retort to Jolif using word 'Damn.' Bishop: "Well, as soon as he's run off on an illicit love affair."

Reel 5-double: "Well, she's had a shock all right, poor girl. She got your number. Shocks aren't permanent, old boy."

WINNERS OF THE WEST NO. 3 (THE BRIDGE OF DISASTER)
1st Double Reel (Section A): Eliminate underlined dialog - Carter: "Disguise yourself and Maddox as Indians. Put an obstruction in the middle of the bridge, you understand?" Also eliminate underlined dialog by Carter: "When they hit that blockade of yours, they'll blow that bridge to kingdom come!"

1st Double Reel (Section B): Eliminate all scenes on bridge where men are shown handling heavy timbers and placing them across rails and working with rope.

MODIFICATION OF ELIMINATIONS

SORROWFUL JONES 9 Reels Paramount Picts.
Reel 2-3: Where little girl is in tub having her bath, eliminate underlined dialog by Sorrowful - "A big breakfast. Oh, that's wonderful! I could hold her head under...Control yourself."

Reel 4-A: Eliminate underlined dialog by Steve - "Oh, I see. All right, get on over there and shut him up and get that kid out of sight. Havin' her around so close might give Reardon ideas. Now, look, I don't care what you have to do, get rid of her! Lose her!"

REJECTIONS
PAROLED FROM THE BIG HOUSE 6 Reels Screen Guild Prod. of Ohio, Inc., Cleve.

FILMS REVOKED
PAROLED FROM THE BIG HOUSE 7 Reels Geo. C. Kendis Cleveland, Ohio
### APPENDIX III
Number of Deletions for Specific Reasons
By Ohio Censors in 47 weeks of 1948

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A* is for American films
F* is for Foreign films
## APPENDIX IV

Number of Deletions for Specific Reasons
By Ohio Censors in 42 Weeks of 1949

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*Notes:*
- Features: A* = American, F* = Foreign
- Each column represents a different reason for deletion.
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% of Total Cuts 24.4% 23.2% 24.1% 19.6% 2.6% .7 4.4 .7 100%

A* is for American films  F* is for Foreign films
## APPENDIX V

Number of Deletions for Specific Reasons by Ohio Censors in 45 Weeks of 1950

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A# is for American produced films
F# is for Foreign produced films
### APPENDIX VI
Number of Deletions for Specific Reasons by Ohio Censors in 13 of First 15 Weeks in 1951

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|                        | Dialogue Scenes | Dialogue Scenes TOPI
| CRIME                  |           |        |
| Murder                 |           |        |
| Techniques            | 0 0 14 0 0 0 0 0 0 14 |
| Brutal Killings       | 0 0 5 0 0 0 3 0 8 |
| METHODS                |           |        |
| Arson                 | 0 0 0 0 0 0 4 0 4 |
| Poison, Narcotics     | 1 0 0 0 0 0 0 0 4 |
| CRUELTY               |           |        |
| Firearms or Shooting  | 0 0 2 0 0 0 0 0 2 |
| Dead or Wounded       | 1 0 1 0 0 0 0 0 2 |
| Fighting              | 1 0 2 0 0 0 0 0 3 |
| IMMORALITY            |           |        |
| Form of Passion       |           |        |
| Kissing               | 0 0 1 5 0 0 0 0 6 |
| Embrace               | 0 0 0 1 0 0 0 0 1 |
| Posture               | 0 0 0 3 0 0 0 0 3 |
| Gesture               | 0 0 1 2 0 0 0 0 3 |
| Dancing               | 0 0 2 5 0 0 0 0 8 |
| NUDITY                |           |        |
| Partial               | 1 0 2 6 0 0 0 0 9 |
| Complete              | 0 0 5 0 0 0 0 0 5 |
| Stripping             | 0 0 9 0 0 0 0 0 9 |
| Costume               | 0 0 0 3 0 0 0 0 4 |
| IMMORALITY            |           |        |
| Perversion            | 0 0 5 0 0 0 0 0 5 |
| Prostitution          | 3 0 0 0 0 0 0 0 3 |
| Adultery              | 5 0 0 0 0 0 0 0 5 |
| Seduction             | 17 0 5 3 0 0 0 0 26 |
| VULGARITY             |           |        |
| Drinking              | 3 0 0 1 0 0 0 0 4 |
| Other                 | 0 0 2 0 0 0 0 0 2 |
| PROFANITY             |           |        |
| Reference to Sex Act  | 12 0 1 2 0 0 0 0 0 15 |
| Irreverence           | 3 3 0 0 0 0 0 0 6 |
| COMMENTS ON AMERICAN VALUES |
| Totals                | 1 0 0 0 0 0 0 0 0 1 |
| Unclassified          | 1 0 0 0 0 0 0 0 0 152 |
| % of Total Cuts       | 32.6 2.6 31.3 26.1 0 0 4.5 1.9 100% |

A* is for American produced films
F* is for Foreign produced films
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**MURDER**
- Techniques: 44 10 106 16 1 4 4 4 189
- Brutal Killings: 15 0 61 1 0 0 4 0 81

**METHODS**
- Theft and Kidnapping: 16 1 28 3 0 0 0 0 48
- Dynamite: 5 0 6 4 5 0 6 0 26
- Arson: 10 0 30 0 0 9 0 49
- Firearms or Shooting: 6 0 15 1 0 0 1 0 23
- Trainwrecking: 1 0 9 0 4 0 6 0 20
- Poison, Narcotic: 30 11 14 6 0 0 9 0 70
- Other: 6 0 5 0 6 0 0 0 17

**GLORIFICATION OF CRIME**
- 36 0 0 0 1 0 0 0 37

**IMMORALITY**

**FORM OF PASSION**
- Unessential: 2 3 0 0 0 0 0 0 5
- Kissing: 33 0 15 16 0 0 0 0 64
- Embrace: 0 0 6 9 0 0 0 0 15
- Posture: 0 0 5 7 0 0 0 0 12
- Gesture: 0 1 4 4 0 0 0 0 9
- Dancing: 2 0 7 14 0 0 3 1 27

**LOCATION OF PASSION**
- Bedroom: 4 0 5 18 0 0 0 0 27

**NUDITY**
- Partial: 1 3 7 22 2 0 1 0 36
- Complete: 0 8 9 30 0 0 2 0 49
- Stripping: 1 2 2 19 0 0 0 0 24
- Costume: 4 0 4 6 1 0 7 1 23

**IMMORALITY**
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- Prostitution: 43 15 2 4 0 0 0 0 64
- Adultery: 11 30 6 4 0 0 0 0 34
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% of Total Cuts 31.6 19.3 28.3 15.5 1.4 0.2 3.3 0.4 100%
A* is for American films F* is for Foreign films
### APPENDIX VIII

#### Treatment of Films by Three State Censors, 1949-1952

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# APPENDIX VIII

Treatment of Films by Three State Censors, 1949-1952

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OPINIONS OF THE ATTORNEY-GENERAL OF OHIO:


INTERVIEWS:

Frances Aumann. Professor of Political Science, Ohio State University.
Walton Bliss. Executive Secretary of the Ohio Educational Association.
Jack Bryson. Representative of the MPAA.
John Chester. Ohio Legislative Representative from Franklin County.
Manning Clagett. Representative from the MPAA.

Howard Hamlin. Ohio Censor.

E.B.Hawes. Retired Professor of Education. Granville, Ohio.

Clyde Hissong. Former Superintendent of Public Instruction in Ohio.

Mary Edith Luethi. Former Ohio Censor.

James Maddox. Former Ohio Censor.

C.K.Miller. Director of The Audio-Visual Aid Section of The Ohio Department of Education.

Charles A. Mosher. Chairman of Ohio Senate Committee on Education.

Norman Nadel. Drama Critic of Columbus Citizen.

Vernon Riegel. Former Superintendent of Public Instruction in Ohio.

Sidney Schreiber. General Counsel for the MPAA.

Susannah Warfield. Ohio Censor.

Robert A. Wile. President of The Independent Theatre Owners of Ohio.

Charles Williams. Former Ohio Censor.

CORRESPONDENCE WITH AUTHOR:

Wilfred E. Binkley. Professor of Political Science. Ohio Northern University.


J.H.Bradford. Virginia Director of the Budget.

Mrs. R. Carroll. Former Pennsylvania Censor.

Marjories G. Dawson. Associate Director of Community Relations, MPAA.

H.D.Defenbacher. Ohio Director of Finance Department.

W.J.Dougherty. New York Deputy Comptroller.

Hugh M. Flick. Former New York Censor.
Mitchell Hambro. Supervisor of the Bureau of Sunday Entertainment, Massachusetts Department of Public Safety.

W.G. Hamilton. Kansas Budget Director and Accountant.

E.E. Logan. Budget Secretary, Governor's Office, Pennsylvania.

J.O'C. McCusker. Maryland Treasury Department.

Mrs. Frances Vaughn. Kansas Censor.

Phyllis Rosenberg. Protestant Film Commission.

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Ohio Council of Churches.
Ohio Welfare Council.

American Civil Liberties Union.
Motion Pictures Association of America.
National Council on Freedom from Censorship.

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Law Department, Motion Picture Association of America

NE wpapers:

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MISCELLANEOUS:


Author's notes of public testimony by following in 1953 hearings before Ohio Senate Committee on Education to repeal film censorship:

Rev. Cleveland J. Bradder, Jr. Granville, Ohio, minister.
Warren Hill. Law Professor, Ohio State University.
John Malloy. Knights of Columbus spokesman.
Graumann Marks. Cincinnati attorney.
Norman Nadel. Columbus newspaperman.
Thomas Osborne. Knights of Columbus spokesman.
James Radcliff. Cincinnati newspaperman.
Oliver Schroeder, Jr. Law Professor, Western Reserve University.

Cincinnati Women's City Club Bulletin. May, 1921.


I, Frederick Marshall Wirt, was born in Radford, Virginia, July 27, 1924. I received my secondary school education in the public schools of Cleveland, Ohio. My undergraduate training was obtained at Fenn College, University of California, Berkeley, and DePauw University; from DePauw University I received the degree Bachelor of Arts in 1944. From the Ohio State University I received the degree Master of Arts in 1949. While in residence at the Ohio State University from 1949 to 1952, I taught in the Political Science Department as a graduate assistant and assistant instructor. From 1952 to the present, I have been on the staff of the Government Department at Denison University.