

1953

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Recommended Citation

Stanley Wiener, *Final Curtain Call for the Motion Picture Censor*, 4 W. Rsrv. L. Rev. 148 (1953)

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broad that no further legislation seems necessary. Certainly the municipalities need not fear undue restriction by the courts or an unsympathetic judicial attitude toward their off-street parking programs. While it is unclear as to how far a municipality may deviate from the provisions of the statute without coming into conflict with it, the doctrine of the Ohio decisions seems sufficiently broad so that this uncertainty is not one which will impede the municipalities in carrying out their programs. The uncertainty should not adversely affect the municipalities' sales of their mortgage revenue bonds if the bonds contain provisions adequately protecting the rights of investors. Provisions similar to those found in Article XVIII, Section 12 of the Ohio Constitution,³⁰ which pertains to municipal financing of public utilities with mortgage revenue bonds, would seem to be adequate.

CHARLES H. MCCREA JR.

Final Curtain Call for the Motion Picture Censor?

THE SUPREME Court has recently declared that motion pictures are to be included within the free speech and press guaranty of the First and Fourteenth Amendments to the Federal Constitution.¹ What does this decision mean? How does it affect those states² and municipalities³ that permit the censorship of films? Is censorship of motion pictures a thing of the past? It is the writer's purpose in this article to answer these questions.

The leading case upholding the constitutionality of film censorship is *Mutual Film Corp. v. Industrial Commission*.⁴ In that case, the United States Supreme Court decided:

that the exhibition of moving pictures is a business, pure and simple not to be regarded, nor intended to be regarded by the Ohio Constitution, we think, as part of the press of the country, or as organs of public opinion.⁵

Relying upon this decision courts in subsequent cases laid down the rule that film censorship was within the police power of the state because motion pictures were a spectacle or show similar to prize fights, carnivals and stage plays.⁶ The motion picture censorship statutes were also upheld against contentions that they were an unlawful restraint on interstate commerce,⁷ an unconstitutional delegation of legislative and judicial powers⁸ and a deprivation of property without due process of law.⁹

³⁰ See note 32 *supra*.

Newsreels were given no special treatment; it was held that newsreels, unlike newspapers, are not included as part of the press of the country and, therefore, are subject to regulation and censorship.¹⁰

The decisions concerning movie censorship are but another phase in the expansion of the enforcement of First Amendment guarantees by use

¹ *Burstyn v. Wilson*, 343 U.S. 495, 72 Sup. Ct. 777 (1952).

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST. AMEND. I.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. AMEND. XIV, § 1.

² KAN. GEN. STAT. ANN. §§ 51-101 to 51-112, 74-2201 to 74-2209 (1949); LA. REV. STAT. tit. 4, § 304 (1950); MD. ANN. CODE GEN. LAWS art. 66A, §§ 1-26 (1951); MASS. ANN. LAWS c. 136, §§ 2-4 (1950); N.Y. EDUCATION LAW §§ 120-132; OHIO GEN. CODE §§ 154-47 to 154-47i; PA. STAT. ANN. tit. 4, §§ 41-58 (1930); VA. CODE ANN. §§ 2-98 to 2-116 (1950).

³ Some states allow municipalities to censor motion pictures. *E.g.*, ILL. ANN. STAT. c. 24, §§ 23-54, 23-57 (1942); TEX. REV. CIV. STAT. ANN. art. 1175(22) (1942).

⁴ 236 U.S. 230, 35 Sup. Ct. 387 (1915).

⁵ *Mutual Film Corp. v. Industrial Commission*, 236 U.S. 230, 244, 35 Sup. Ct. 387, 391 (1915).

⁶ *Mutual Film Corp. v. Hodges*, 236 U.S. 248, 35 Sup. Ct. 393 (1915); *Fox Film Corp. v. Trumbull*, 7 F.2d 715 (1925); *Mutual Film Corp. v. Chicago*, 224 Fed. 101 (1915); *Bloch v. Chicago*, 239 Ill. 251, 87 N.E. 1011 (1909); *Fox Film Corp. v. Collins*, 236 Ill. App. 281 (1925); *State ex rel. Brewster v. Ross*, 101 Kan. 377, 106 Pac. 505 (1917); *Thayer Amusement Corp. v. Moulton*, 63 R.I. 182, 7 A.2d 682 (1939). *Query*: Are stage plays to be protected under the First and Fourteenth Amendments of the Constitution because motion pictures are so protected?

⁷ *Mutual Film Corp. v. Hodges*, 236 U.S. 248, 35 Sup. Ct. 393 (1915).

⁸ *Mutual Film Corp. v. Hodges*, 236 U.S. 248, 35 Sup. Ct. 393 (1915); *Bloch v. Chicago*, 239 Ill. 251, 87 N.E. 1011 (1909).

⁹ *Mutual Film Corp. v. Industrial Commission*, 236 U.S. 230, 35 Sup. Ct. 387 (1915); *Bloch v. Chicago*, 239 Ill. 251, 87 N.E. 1011 (1909).

¹⁰ *Pathe Exch. v. Cobb*, 236 N.Y. 539, 142 N.E. 274 (1923). As to judicial review of a censor's decision, it is well settled that the decision will stand unless it can be shown that the censor was guilty of an oppressive abuse of discretion. *People ex rel. Guggenheim v. Chicago*, 209 Ill. App. 582 (1918); *Public Welfare Corp. v. Lord*, 224 App. Div. 311, 230 N.Y. Supp. 137 (1928); *Hallmark Publications, Inc. v. Dept. of Education*, 153 Ohio St. 595, 93 N.E.2d 13 (1950); *North Amer. Comm. to Aid Spanish Democracy v. Bowsler*, 132 Ohio St. 599, 9 N.E.2d 617 (1937); *State ex rel. Midwestern Film Exch. v. Clifton*, 118 Ohio St. 91, 160 N.E. 625 (1928) (example of abuse of discretion); *In re Goldwyn Distributing Corp.*, 265 Pa. 335, 108 Atl. 816 (1919); *In re Franklin Mfg. Corp.*, 253 Pa. 422, 98 Atl. 623 (1916).

of the Fourteenth Amendment.¹¹ As a result of this expansion of the First Amendment to state action,¹² many legal scholars and laymen assailed state censorship of motion pictures.¹³

The motion picture industry had attempted on several occasions to overturn the *Mutual* decision and gain for films the same protection afforded freedom of speech and press under the First and Fourteenth Amendments.¹⁴ For example, in *RD-DR Corp. v. Smith*,¹⁵ a suit was brought to restrain the enforcement of a municipal motion picture censorship provision. It was contended unsuccessfully that under the due process clause of the Fourteenth Amendment motion pictures were a medium of communication entitled to the same protection as the rights of speech and press.

In *Burstyn v. Wilson*¹⁶ the Supreme Court reconsidered this problem first raised in the *Mutual* case. The State of New York had issued a license authorizing the exhibition of a motion picture, and subsequently revoked the license on the ground that the picture was "sacrilegious" within the meaning of the New York licensing statute.¹⁷ The motion picture distributor brought suit claiming that the statute violated the Fourteenth Amendment as a prior restraint upon the freedoms of speech and press. The Supreme Court recognized that motion pictures can be and are media for communicating ideas,¹⁸ and, therefore, are included within the freedoms guaranteed by the First and Fourteenth Amendments.¹⁹

One of the reasons upon which the Court in the *Mutual* case had based

¹¹ *Grosjean v. Amer. Press Co.*, 297 U.S. 233, 56 Sup. Ct. 444 (1936); *Near v. Minnesota*, 283 U.S. 697, 51 Sup. Ct. 625 (1931); *Gitlow v. New York*, 268 U.S. 652, 45 Sup. Ct. 625 (1925).

¹² *Gitlow v. New York*, 268 U.S. 652, 45 Sup. Ct. 625 (1925).

¹³ "Most of the arguments commonly advanced for film censorship are the same as those urged in the seventeenth century for continuing the censorship of books and periodicals." CHAFBE, *FREE SPEECH IN THE UNITED STATES* 543 (2d ed. 1941). Kern, *Motion Pictures and the First Amendment*, 60 *YALE L. J.* 696 (1951); Kupperman, O'Brien, *Motion Picture Censorship*, 36 *CORNELL L.Q.* 273 (1951). Comment, 49 *YALE L. J.* 87 (1939). Velie, *You Can't See that Movie*, *COLLIERS*, May 6, 1950, pp. 11-13.

¹⁴ The industry was probably encouraged by a dictum in *U.S. v. Paramount Pictures, Inc.*, "moving pictures, like newspapers and radio, are included in the press." 334 U.S. 131, 166, 68 Sup. Ct. 915, 933 (1948).

¹⁵ 183 F.2d 562, *cert. denied*, 340 U.S. 873, 71 Sup. Ct. 80 (1950).

¹⁶ 343 U.S. 495, 72 Sup. Ct. 777 (1952).

¹⁷ "The director of the division, or when authorized by the regents, the officers of a local office or bureau shall cause to be promptly examined every motion picture film submitted to them as herein required, and unless such film or a part thereof is obscene, indecent, immoral, inhuman, sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime, shall issue a license therefor." N.Y. EDUCATION LAW § 122.

¹⁸ *Burstyn v. Wilson*, 343 U.S. 495, 501, 72 Sup. Ct. 777, 780 (1952).

¹⁹ *Id.* at 502, 72 Sup. Ct. at 781.

its decision that films are not constitutionally protected from prior restraint was that the production and distribution of motion pictures was a large-scale business conducted for profit. In rejecting this theory, the Court in *Burstyn v. Wilson* compared the motion picture industry with the newspaper and book publishing industries, large-scale profit-making businesses, which are protected from prior restraints by the First Amendment.²⁰

In deciding whether the New York statute was an unconstitutional restraint, the Court accepted the definition of "sacrilegious" as interpreted by the New York Court of Appeals²¹ and held that the state had no legitimate interest in protecting religions from views deemed distasteful to them which would enable the state to promulgate prior restraints upon the expression of those views.²² However, the last sentence of the opinion seems to narrow the above holding and the scope of the decision:

We hold only that under the First and Fourteenth Amendments a state may not ban a film on the basis of a *censor's conclusion* that it is "sacrilegious."²³ [*Italics added*]

This last quotation adds to the confusion as to what is the basis of the Supreme Court holding. Are prior restraints unconstitutional *per se*, or were the standards for prior restraints in this case too vague and therefore void?²⁴

The Court did not decide whether all censorship of motion pictures was unconstitutional for it stated that:

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

²⁰ "The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform. We fail to see why operation for profit should have any different effect in the case of motion pictures." *Id.* at 501, 72 Sup. Ct. at 780.

²¹ " that no religion as that word is understood by the ordinary, reasonable person, shall be treated with contempt, mockery, scorn and ridicule." *Burstyn v. Wilson*, 343 U.S. 495, 504, 72 Sup. Ct. 777, 781 (1952).

²² "It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches, or motion pictures." *Burstyn v. Wilson*, 343 U.S. 495, 505, 72 Sup. Ct. 777, 782 (1952).

²³ *Burstyn v. Wilson*, 343 U.S. 495, 506, 72 Sup. Ct. 777, 783 (1952).

²⁴ In a concurring opinion, Justice Frankfurter stated that the term "sacrilegious" as used in the New York statute and as construed by the New York Court of Appeals was unconstitutional because of vagueness, and, therefore, it was not necessary to decide whether movies can be censored or whether they are within the protection of the First and Fourteenth Amendments. *Burstyn v. Wilson*, 343 U.S. 495, 517 *et seq.*, 72 Sup. Ct. 777, 788 *et seq.* (1952). *Cf.* *Gelling v. Texas*, 343 U.S. 960, 72 Sup. Ct. 1002 (1952). In this case the Supreme Court in a *per curiam* decision which referred directly to the *Burstyn* case reversed the defendant's conviction for unlawfully exhibiting a motion picture without a license. The pertinent city ordinance authorized a local board of censors to deny a license for the showing of a motion picture, which the board was "of the opinion " was of such character as to be prejudicial to the best interests of the people.

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.²⁵

What is the effect of the *Burstyn* decision upon the exercise of state police power in regulating motion pictures? In answering this question it will be necessary to consider to what extent the Supreme Court has allowed the state to limit the freedoms of speech and of press so that an analogy may be drawn for motion pictures. It must be borne in mind, however, that each method of expression is different, contains its own peculiar problems and has different impacts upon society.²⁶

The landmark case concerning the freedom of the press from prior restraint is *Near v. Minnesota*.²⁷ Under a Minnesota statute²⁸ the state court abated and then permanently enjoined the defendant from publishing or circulating any periodical which was by nature malicious, scandalous or defamatory as defined by law.

The Supreme Court of the United States held this unconstitutional as a prior restraint. Not only was the defendant halted from publishing a particular periodical, but an effective future censorship was placed upon him so that, even if the defendant started a different publication, he would be subject to a contempt of court charge unless he could show that the publication was not malicious, scandalous or defamatory.²⁹

The *Near* case, however, did recognize that "the protection even as to prior restraint is not absolutely unlimited."³⁰ The Court quoted³¹ from *Schenk v. U.S.*.

When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterances will not be endured so long as men fight and that no court would regard them as protected by any constitutional right.³²

²⁵ *Burstyn v. Wilson*, 343 U.S. 495, 505, 72 Sup. Ct. 777, 782 (1952).

²⁶ "The moving picture screen, the radio, the newspaper, the handbill, the sound truck and the street corner orator have differing natures, values, abuses and dangers. Each in my view is a law unto itself." *Kovacs v. Cooper*, 336 U.S. 77, 97, 69 Sup. Ct. 448, 459 (1949) (concurring opinion).

²⁷ 283 U.S. 697, 51 Sup. Ct. 625 (1931).

²⁸ "§ 1. Any person, who, shall be engaged in the business of regularly or customarily producing, publishing or circulating, having in possession, selling or giving away (a) an obscene, lewd and lascivious newspaper, magazine or other periodical, or (b) a malicious, scandalous and defamatory newspaper, magazine or other periodical is guilty of a nuisance, and all persons guilty of such nuisance may be enjoined, as hereafter provided." § 3 [This section empowered the court to enjoin the defendant from continuing a violation of the act and to abate the nuisance.] MINN. LAWS 1925, c. 285, §§ 1-3, MINN. STAT. ANN. §§ 10123-1 to 10123-3 (Mason 1927).

²⁹ *Near v. Minnesota*, 283 U.S. 697, 712, 51 Sup. Ct. 625, 629 (1931).

³⁰ *Near v. Minnesota*, 283 U.S. 697, 716, 51 Sup. Ct. 625, 631 (1931).

³¹ *Ibid.*

³² *Schenk v. United States*, 249 U.S. 47, 52, 39 Sup. Ct. 247, 249 (1919).

Included in the above, according to the talk of the Supreme Court, would be obstruction to recruiting men, publication of troopship sailing dates or the location of troops.³³ An example of such a valid censorship can be seen in *U.S. v. Spirit of '76*.³⁴ In that case the Government seized a motion picture calculated to cause dissension between the United States and Great Britain during World War I. A motion for return of the film was refused, on the ground that a national emergency existed and the showing of the film would weaken the country's military effort.

The Minnesota statute in the *Near* case had a clause which provided for the abatement of obscene and lewd publications as a public nuisance.³⁵ Although this part of the statute was not ruled upon, the Court intimated that obscene publications may be subject to some prior restraint.³⁶

Extending the idea of freedom of the press, the United States Supreme Court has ruled that liberty of circulation is as essential as liberty of publication.³⁷ In *Lovell v. Griffin*,³⁸ the defendant was convicted of a violation of a city ordinance which held that the distribution of circulars, handbooks, advertising or literature of any kind without first obtaining permission from the city manager would be deemed a nuisance. The Supreme Court held that this ordinance was invalid on its face:

its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship.³⁹

Here once again, the Court was noncommittal as to whether this ordinance would have been upheld if it had been aimed specifically at lewd publications.⁴⁰

³³ *Near v. Minnesota*, 283 U.S. 697, 716, 51 Sup. Ct. 625, 631 (1931).

³⁴ 252 Fed. 946 (S.D. Cal. 1917).

³⁵ See note 30 *supra*.

³⁶ *Near v. Minnesota*, 283 U.S. 697, 716, 51 Sup. Ct. 625, 631 (1931). *Id.* at 737, 51 Sup. Ct. at 638 (dissenting opinion).

³⁷ *Lovell v. Griffin*, 303 U.S. 444, 58 Sup. Ct. 666 (1938); *Grosjean v. American Press*, 297 U.S. 233, 56 Sup. Ct. 444 (1936).

³⁸ 303 U.S. 444, 58 Sup. Ct. 666 (1938).

³⁹ *Id.* at 451, 58 Sup. Ct. at 669.

⁴⁰ "The ordinance is not limited to literature that is obscene or offensive to public morals or that advocates unlawful conduct. The ordinance embraces 'literature' in the widest sense." *Lovell v. Griffin*, 303 U.S. 444, 451, 58 Sup. Ct. 666, 668 (1938).

In *Schneider v. State*, 308 U.S. 147, 60 Sup. Ct. 146 (1939) three city ordinances absolutely prohibiting the circulation of handbills in the streets, and an ordinance prohibiting house to house distribution without written permission of officials were held invalid as violating the freedom of the press despite the contention that the ordinances were aimed at preventing the littering of streets in the first three cases and to protect residents from fraudulent solicitation in the latter case.

As to the right of freedom of speech, a similar vagueness exists as to what would be a legitimate prior restraint. In *Niemotko v. Maryland*⁴¹ a religious group wished to schedule Bible talks in a town park. The town had no ordinance prohibiting the use of the park, but there had been an established custom that organizations wishing to hold meetings there would first obtain permits from the town council. The permit was refused in this case, according to the United States Supreme Court, on the basis of the council's dislike for the applicant's religious views. In holding the refusal to be unconstitutional the Court said:

It thus becomes apparent that the lack of standards in the license-issuing "practice" (of giving permits to use the park) renders that "practice" a prior restraint in contravention of the Fourteenth Amendment, and that the completely arbitrary and discriminatory refusal to grant the permit was a denial of equal protection.⁴²

In the instant case we are met with no ordinance or statute regulating or prohibiting the use of the park; no standards appear anywhere; no narrowly drawn limitations; no subscribing of this absolute power; no substantial interest of the community to be served.⁴³

In *Kunz v. New York*,⁴⁴ a permit, previously granted under a city ordinance to the defendant, which enabled him to hold religious meetings on the streets of the city had been revoked because he ridiculed and denounced other religious beliefs. Later the defendant applied for another license, was refused without any reason being given and subsequently was arrested for speaking without a permit. On appeal to the United States Supreme Court the ordinance under which he was convicted⁴⁵ was held to be void. Once again there seems to be a conflict in the reasoning of the Court as to the basis for holding the defendant's conviction unconstitutional. At one point the majority said:

We have here, then, an ordinance which gives an administrative official discretionary powers to control in advance the right of citizens to speak on religious matters on the streets of New York. As such the ordinance

⁴¹ 340 U.S. 268, 71 Sup. Ct. 325 (1951).

⁴² *Id.* at 273, 71 Sup. Ct. at 328.

⁴³ *Id.* at 271, 71 Sup. Ct. at 327

⁴⁴ 340 U.S. 290, 71 Sup. Ct. 312 (1951)

⁴⁵ "*Public worship.*— It shall be unlawful for any person to be concerned or instrumental in collecting or promoting any assemblage of persons for public worship or exhortation, or to ridicule or denounce any form of religious belief, service or reverence, or to preach or expound atheism or agnosticism, or under any pretense therefor, in any street. A clergyman or minister of any denomination, however, or any person responsible to or regularly associated with any church or incorporated missionary society, or any lay-preacher, or lay-reader may conduct religious services, or any authorized representative of a duly incorporated organization devoted to the advancement of the principles of atheism or agnosticism may preach or expound such cause, in any public place or places specified in a permit therefor which may be

is clearly invalid as a prior restraint on the exercise of First Amendment rights.⁴⁶

Further on in the opinion the majority seemed to intimate that if there were definite standards to guide the discretion of the administrative official a prior restraint such as in the *Kunz* case may be valid:

It is sufficient to say that New York cannot vest restraining control over the right to speak on religious subjects in an administrative official where there are no appropriate standards to guide his action.⁴⁷

Justice Frankfurter seems to favor this latter viewpoint, for according to his concurring opinion the defendant could have been constitutionally halted from holding his street meetings, if it could have been shown based on definite standards that he was likely to denounce or to ridicule other religions on the populous city streets.⁴⁸

At this point note the similarity between the *Burstyn* case and the confusing statements of the *Kunz* case. Does the last sentence of the majority opinion of the *Burstyn* case⁴⁹ mean that if the New York movie censorship statute would have been more explicit as to what constituted ridicule and contempt of religion in a motion picture that the statute would be constitutional? It would seem that even after *Burstyn v. Wilson* this remains unclear.

One clear rule emerging from the cases dealing with restraints on speech and the circulation of ideas and beliefs in those areas where the states have a legitimate interest such as public parks,⁵⁰ street meetings,⁵¹ parades,⁵² and sound trucks⁵³ is that definite standards to guide the licensing authority must be set up by the state in protecting its citizens. In addition, this particular interest of the state must be important enough to justify prior restraints on the method of communication utilized.

Because the various methods of communication are treated differently by the courts,⁵⁴ the treatment accorded motion pictures may depend on the type of communication to which they are considered most closely analogous.

granted and issued by the police commissioner " ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, c. 18 § 435-7.0(a).

⁴⁶ *Kunz v. New York*, 340 U.S. 290, 293, 71 Sup. Ct. 312, 314 (1951).

⁴⁷ *Id.* at 295, 71 Sup. Ct. at 315.

⁴⁸ 340 U.S. 273, 285, 71 Sup. Ct. 328, 334 (1951).

⁴⁹ "We hold only that under the First and Fourteenth Amendments a state may not ban a film on the basis of a censor's conclusion that it is sacrilegious." *Burstyn v. Wilson*, 343 U.S. 495, 506, 72 Sup. Ct. 777, 783 (1952).

⁵⁰ *Niemotko v. Maryland*, 340 U.S. 268, 71 Sup. Ct. 325 (1951).

⁵¹ *Kunz v. New York*, 340 U.S. 290, 71 Sup. Ct. 312 (1951).

⁵² *Cox v. New Hampshire*, 312 U.S. 569, 61 Sup. Ct. 762 (1941).

⁵³ *Kovacs v. Cooper*, 336 U.S. 77, 69 Sup. Ct. 448 (1949).

⁵⁴ See note 28 *supra*.

For instance, if they are considered as equivalent to newspapers, books, magazines and handbills, any type of prior restraint would seem to be unconstitutional except in times of emergency.⁵⁵ On the other hand, if motion pictures are classified in a category with sound trucks, street meetings and public parks then some prior restraints should be upheld as constitutional.⁵⁶

It is the writer's opinion that motion pictures lie somewhere in between the above categories. It is clear that states have a legitimate interest in controlling the physical plant where motion pictures are shown, as they have for most public places of amusement, by means of licensing statutes.⁵⁷ But the extent to which the state can control the content of the communication (motion pictures) shown in the licensed physical plant is a problem requiring careful consideration because of the tremendous popularity, scope and effect of motion pictures on the general public and especially upon children.

Because of these characteristics, if the result of the *Burstyn* decision is not the elimination of *all* motion picture censorship, it would seem that state censorship of motion pictures which is aimed at prohibiting obscenity and indecency should be allowed. Five of the censorship statutes use these terms.⁵⁸ Certainly the police power of a state can legitimately extend to barring obscene and indecent films before they are seen by millions of adults and children since statutes which punish subsequently the showing of obscene pictures may well not be adequate. In regard to censorship for obscenity, therefore, motion pictures would be more analogous to sound trucks and street meetings than to newspapers or books, and prior restraints to prevent obscenity should be upheld as constitutional by the courts.

Louisiana and Ohio movie censorship statutes⁵⁹ present the other extreme. A film must reach a definite standard before it is licensed, and these statutory standards are vague. But what is perhaps more important, the state would seem to have no more legitimate interest in seeing that its citizens viewed only films which are of a moral, educational or amusing and harmless character,⁶⁰ than it would have a legitimate interest to see that its citizens read only moral, educational, amusing and harmless publications.⁶¹

⁵⁵ *Near v. Minnesota*, 283 U.S. 697, 51 Sup. Ct. 625 (1931).

⁵⁶ *Breard v. Alexandria*, 341 U.S. 622, 71 Sup. Ct. 920 (1951) (protection of the home owner); *Cox v. New Hampshire*, 312 U.S. 569, 61 Sup. Ct. 762 (1941)

⁵⁷ 52 AM. JUR. 271.

⁵⁸ KAN. GEN. STAT. ANN. § 51-103 (1949); MD. ANN. CODE GEN. LAWS art. 66A § 6 (1951); N.Y. EDUCATION LAW § 122; PA. STAT. ANN. tit. 4, § 43 (1930); VA. CODE ANN. § 2-105 (1950)

⁵⁹ LA. REV. STAT. tit. 4, § 304 (1950); OHIO GEN. CODE § 154-47b.

⁶⁰ "Only such films as are in the judgment and discretion of the department of education of a moral, educational or amusing and harmless character shall be passed and approved " OHIO GEN. CODE § 154-47b.

Other state statutes, providing for the censorship of films on the basis that they may corrupt morals,⁶² should be held invalid if "morals" is broadly construed to include manners, customs, habits and ways of life.⁶³ Such manners and customs should be subject to criticism in films as readily as they are in books.

May there be motion picture censorship based upon a censor's conclusion that the film would incite one to crime, or that the story is that "crime does pay"?⁶⁴ This seems to be an unsettled problem. In *Winters v. New York*,⁶⁵ the defendant was convicted under a New York statute prohibiting the distribution of magazines principally made up of criminal news or stories about deeds of bloodshed or lust, "so massed as to become vehicles for inciting violent and depraved crimes against the person."⁶⁶ The United States Supreme Court held the statute unconstitutional for vagueness. However, in the *Winters* case the statute dealt with punishment subsequent to the act and the Court held that the statute did not sufficiently apprise the defendant as to the nature of the crime. It is possible that, if under authority of a motion picture censorship statute similar to the above New York statute, films written and produced so as to become "vehicles for inciting violent and depraved crimes against the person" were prohibited from being shown the Supreme Court would hold that the statute was passed in pursuance of a lawful police power for the protection of the state's citizens.

Allowing censorship of a film on the ground of preventing a riot or public disturbance probably would be unconstitutional unless there can be shown a "clear and present danger" that the presentation of the motion picture will result in a riot or public disturbance.⁶⁷ In *Hague v. C.I.O.*⁶⁸ the Supreme Court held a city ordinance with these clauses invalid:

2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly 3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof, provided however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assembly.

⁶¹ *Winters v. New York*, 333 U.S. 507, 68 Sup. Ct. 665 (1948).

⁶² *E.g.*, MD. ANN. CODE GEN. LAWS art. 66A § 6 (1951)

⁶³ For an example of censoring a motion picture on the basis of its attacking the American way of life, see *In re Ramparts We Watch*, 39 D. & C. 437 (Pa. 1940).

⁶⁴ *E.g.*, VA. CODE ANN. § 2-105 (1950).

⁶⁵ 333 U.S. 507, 68 Sup. Ct. 665 (1948).

⁶⁶ *Winters v. New York*, 333 U.S. 507, 513, 68 Sup. Ct. 665, 669 (1948).

⁶⁷ See 27 N.Y.U.L.Q. REV. 702 (1952).

⁶⁸ 307 U.S. 496, 59 Sup. Ct. 954 (1939).