"THE MIRACLE" DECISION

THE SUPREME COURT, by unanimous vote, has just rendered two historic decisions on movie censorship. On May 26, it declared unconstitutional a New York State ban on the Italian film "The Miracle"; and on June 2 it invalidated a municipal ordinance of Marshall, Texas, under which showings of the American film "Pinky" had been prohibited.

"The Miracle" tells the story of a demented woman's seduction by a stranger who she thinks is St. Joseph, and of the birth of a child which she considers miraculous; it was banned under a movie censorship law which included the word "sacrilegious" as a ground for prohibition. "Pinky" tells the story of a white man's love for a Negro woman, and was banned under a city ordinance authorizing prohibition if a film is "of such character as to be prejudicial to the best interests of the people of the city."

The chief points of the Court's ruling on "The Miracle" are that motion pictures are entitled to the protection of the First Amendment, reversing a 1915 decision that movies are "a business pure and simple"; and that a state not only may not use a definition of "sacrilegious" too indefinite to come within "the kind of narrow exception to freedom of expression which a state may carve out to satisfy the adverse demands of other interests of society," but also has "no legitimate interest

in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views."

The "Pinky" decision simply cited the "Miracle" ruling, though Justice Frankfurter added that he believed the city ordinance's indefiniteness violated constitutional due process.

These decisions constitute a major victory for civil liberties. True, the Court cautioned in the "Miracle" decision: "It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and places." But the highest legal recognition has now been accorded to a long-established reality, that the movies are an important medium for the dissemination of information and ideas; and this could mark the beginning of a new era in motion picture content and treatment. Further, it is now established that "prior restraints" (pre-exhibition censorship) must be held within the limits of "narrow exception"; and this could mark the end of the control over movies now exercised by state and local censorship boards throughout the country.

Finally, a stern warning has now been given to private pressure-groups of all sorts, not only that their use of governmental censorship will be closely confined, but also (by implication) that their use of other methods to bring about censorship or suppression—as distinguished from free argument on the merits of any movie—violate the spirit of a basic constitutional principle that "previous restraint is a form of infringement upon freedom of expression to be especially condemned."

Since its founding in 1920, the American Civil Liberties Union has fought censorship of all kinds on many fronts. And it played a conspicuous part in the "Miracle" victory. It helped obtain an injunction against the New York City license commissioner's original ban late in 1950. When the New York State Board of Regents, early in 1951, withdrew the license it had previously granted, the ACLU helped fight the case through the state courts. In 1952, a large number of the Union's volunteer attorneys, including four members of its Board, helped prepare the 82-page *amicus curiae* brief filed with the Supreme Court; and the Court's opinions indicate that the justices gave it careful reading.

But much remains to be done. Through its National Council on Freedom from Censorship, and through its growing number of local organi-

zations, the Union intends to press home these "Miracle" and "Pinky" victories at state and city levels throughout the country—with respect to all media of communication, against all kinds of censorship. As a start in this new drive, the Union is publishing herewith significant excerpts from the "Miracle" decision and from the text of its November 1951 policy statement on pressure-group censorship.

From Mr. Justice Clark's Opinion, Delivered for the Court

The issue here is the constitutionality, under the First and Fourteenth Amendments, of a New York statute which permits the banning of motion picture films on the ground that they are "sacrilegious." . . .

It cannot be doubted that motion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression.

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. . . .

It is urged that motion pictures do not fall within the First Amendment's aegis because their production, distribution and exhibition is a large-scale business conducted for private profit. We cannot agree. That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment. We fail to see why operation for profit should have any different effect in the case of motion pictures.

It is further urged that motion pictures possess a greater capacity for evil, particularly among the youth of a community, than other modes of expression. Even if one were to accept this hypothesis, it does not follow that motion pictures should be disqualified from First Amendment protection. 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.

For the foregoing reasons, we conclude that expression by means of motion picture is included within the free speech and free press guaranty of the First and Fourteenth Amendments. . . .

To hold that liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth Amendments, however, is not the end of our problem. It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places. That much is evident from the series of decisions of this Court with respect to other media of communication of ideas. 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.

But the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule. There is no justification in this case for making an exception to that rule.

The statute involved here does not seek to punish, as a past offense, speech or writing falling within the permissible scope of subsequent punishment. On the contrary, New York requires that permission to communicate ideas be obtained in advance from state officials who judge the content of the words and pictures sought to be communicated.

This court recognized many years ago that such a previous restraint is a form of infringement upon freedom of expression to be especially condemned. . . .

New York's highest court says there is "nothing mysterious" about the statutory provision applied in this case: "It is simply this: that no religion, as that word is understood by the ordinary, reasonable person, shall be treated with contempt, mockery, scorn and ridicule. . . ."

This is far from the kind of narrow exception to freedom of expression which a state may carve out to satisfy the adverse demands of other interests of society. In seeking to apply the broad and all-inclusive definition of "sacrilegious" given by the New York courts, 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. New York cannot vest such unlimited restraining control over motion pictures in a censor. . . .

Under such a standard 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. Application of the "sacrilegious" test, in these or other respects, might raise substantial questions under the First Amendment's guaranty of separate church and state with freedom of worship for all. However, from the standpoint of freedom of speech and the press, it is enough to point out that the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views.

It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches, or motion pictures. . . .

ACLU Policy Statement on Pressure-Group Censorship

The American Civil Liberties Union defends, as being within both the letter and the spirit of the Constitution, any simple expression by any individual or group of disapproval of any book (or film, play, periodical, radio program, etc.) or any attempt simply to dissuade others from buying it.

The ACLU recognizes, as far as legal right is concerned, the use of such orderly and lawful means as peaceful and unobstructive picketing and the organization of a specific and primary boycott, even when they imply some degree of coercion.

However, in view of the fact that the field of communication differs significantly from the general field of industry and commerce, the Union actively opposes, as being especially contrary to the spirit of the Constitution, the use of such means in the following ways:

(1) as pressure, or explicit threat thereof, at any time prior to the actual offering of a motion picture, etc., to the public; and (2) even after the actual offering to the public, in the form of a general or secondary boycott—designed, for example, to close a theatre entirely or to close other theatres whose proprietors ally themselves with the proprietor of the first theatre.

The Union recognizes that the problem of "pressure-group censorship" is full of differences in degree, and that it is hard to draw lines which represent the best possible combination of the freedom of expression and the freedom to see what is offered on the one hand, and the freedom to protest effectively, on the other hand.

But it believes that intimidation and reprisal have no place in the field of ideas.

The ever-increasing attempts of private pressure-groups to bring about the censorship or suppression of motion pictures, etc., which they disapprove —either through public officials or directly—dangerously undermine one of the foundation stones of American democracy, the freedom of expression. (This is especially true in the case of such operations as are secretly financed or conducted.)

The Union therefore pledges itself to intensify its efforts to investigate and combat this dangerous tendency, by all appropriate methods.

It urges those responsible for the publication or production, the distribution or circulation or exhibition, of newspapers, periodicals or books, of radio or television programs, of plays, motion pictures or other theatrical entertainments, to stand firmly against this threat to the freedom of their industries and the freedom of the people as a whole.

In accordance with its long-established policy, the ACLU will refrain from expressing disapproval of the contents of any book, etc., unless in the opinion of the Board extraordinary circumstances necessitate such expression.

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