[March 16, 1965]
[By David B. Owens]

When Emory called to ask me to be on the program this year, I gave him my title, "Forging Ahead," without hesitation, for I had been pondering for some time on the fascinating career of that gentleman forger of first editions, the late Thomas J. Wise.

But when, during the Christmas holidays, I sat down to try to put my thoughts together, I found it just wouldn't jell; and at the same time I found my thoughts being haunted by another subject: the problem of obscenity, pornography, and censorship in literature. Thomas J. Wise is for another day, and tonight without changing my subject, I am switching over, for I believe we have been "forging ahead" in the area I want to discuss with you. The battle, however, is far from won. The issue is still with us, as witness the lead article in the March issue of Harpers, the recent S.C. decision on the Maryland motion picture licensing law, a recent T.V. program, and a struggle now in up-State N.Y. to have the works of Hemingway and Salinger removed from school libraries.

I propose to proceed in the following manner: I shall consider something of the background of censorship, explore some of the historic cases that have shaped the law in America, discuss the situation as it applies to Ohio and Columbus, and conclude with some general observations.

At the beginning I want to make my own position completely clear: with the exception of hard-core pornography--a term I shall define and discuss a little later-- I am completely opposed to any and all forms of censorship of the written word.

People who know that I am a clergyman sometimes ask, how can you take such a position? My answer is twofold. First, there has never been any serious and scientific study that has shown there is an effect upon the reader of obscene literature. Indeed, such evidence as there is tends to show that the vicarious release may prevent the unstable person from turning to overt acts.

But far more important to me is the fact that c ensorship is and intrustion into an area that Americans and all who are committed to democratic principles detest and resist: thought control. I can best summarize this in the words of Theodore Schroeder in his Obscene Literature and Constitutional Law: "No argument for the suppression of obscene literature has ever been offered which, by unavoidable implication, will not justify, and which has not already justified every other limitation that has ever been put upon mental freedom."

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It is my feeling that we are witnessing a serious and determined onslaught on personal freedom today. And it is all the more sinister because it is so often linked to an assumed public good.

There is a belief abroad that there is a determinable norm for the "good" American, and those who do not conform should be dragooned into acceptance. In life, in taste, in morals, in reading matter--in everything. We reach the heights of the ridiculous--and also the disturbing--right here in Columbus, when a schoolboy must have his hair cut not to suit his own taste but rather that of some pettifogging school official.

One of the early--and still a fundamental--statements on freedom to publish was issued in 1644 when John Milton published his Areopagitica in defiance of the licensing laws.

The occasion for the pamphlet was a parlimentary ordinance of 14 June 1643, requiring, among other things, that all books be licensed by an official censor before publication. The act reflected Presbyterian determination to reduce English religious practice and opinion to a new uniformity and to silence political opposition.

Because Milton can by no stretch of the imagination be called a libertine, and because his views are still completely valid, I want to discuss the Areopagitica at some length.

Milton begins with a review of the history of censorship from ancient times, showing that it has always been a concomitant of tyranny, associating it in its then modern form with the Council of Trent, thus making it a product of the very forces that Parliament has overthrown. The defense proper then follows.

Milton's first point is that reading of every sort is necessary to the attainment of knowledge and experience in a world where good and evil grow up indiscriminately together. "The knowledge (of good or evil) cannot defile, nor consequently the books, if the will and conscience be not defiled." In other words, if heart and mind be sound, bad books--whatever that term means--will not harm one and one may learn necessary knowledge from them.

"As therefore the state of man now is, what wisdom can there be to choose, what continence to forbear without the knowledge of evil? He that can apprehend and consider vice with all her baits and seeming pleasures, and yet abstain, and yet distinguish, and yet prefer that which is truly better, he is the true wayfaring Christian....Since therefore, the knowledge and survey of vice is in this world so

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necessary to the constituting of human virtue, and the scanning of error to the confirmation of truth, how can we more safely and with less danger scout into the regions of sin and falsity than by reading all manner of tractates and hearing all manner of reason? And this is the benefit which may be had of books promiscuously read."

Corruption of the reader, Milton argues, is a matter of the heart, not of books. He points out that the best of books, the Bible itself, has passages that can be corrupting to the evil heart and mind. How else is one to account for the heretics who can spout scripture to buttress their arguments?

This is a wicked world, Milton argues, and it is silly to pounce upon books, which, after all, make their appeal to the literate and best educated.

"If we think to regulate printing, thereby to rectify manners, we must regulate all recreations and pastimes, all that is delightful to man. No music must be heard, no song be set or sung. There must be licensing (of) dancers, that no gesture, motion, or deportment be taught our youth....It will ask more than the work of twenty licensers to examine all lutes, the violins, and the guitars in every house; they must not be suffered to prattle as they do....And who shall silence all the airs and madrigals that whisper softness in chambers?"

Milton next turns to the assertion that men cannot be made virtuous by external restraint. Since corrupting influences are everywhere, they can be met only by building up an inner discipline and the power of rational choosing.

"If every action which is good or evil in man at ripe years, were to be under pittance and prescription and compulsion, what were virtue but a name, what praise could be then due to well-doing, what (thanks) to be sober, just, or continent?...They are not skilful considerers of human things who imagine to remove sin by removing the matter of sin."

I shall not attempt to deal in greater detail with Milton's arguments. Let me summarize in the form of some brief statements:

1. People who live under a strict censorship are not conspicuously better or more moral than those who do not.
2. Censorship discourages scholarship and permits the status quo to persist unchallenged.
3. Censorship spreads evil and error by giving them an importance they do not deserve.

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2. Censorship discourages scholarship and permits the status quo to persist unchallenged.
3. Censorship spreads evil and error by giving them an importance they do not deserve.

4. Truth given free course will always and eventually defeat evil and error. "So Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter."

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I would like now to turn to a consideration of the history of the struggle against obscenity in our own country.

Although the founding fathers of our c ountry were well aware of censorship in Europe, they deliberately ignored the issue. Indeed, the only thing that even tangentially relates to it is the guarantee in the First Amendment to the Constitution of freedom of press. "The one fact," says Morris Ernst, "is that for over a century the governments of our colonies and then our Republic kept their hands off the censorship of obscenity--without visible impairment of national or local morals."

Itwas not until 1815 that the first obscenity charge in America was brought before a court in Philadelphia, where it was alleged that:

"Jesse Sharpless, John Haines, George Haines, John Steel, Ephraim Martin, being evil disposed persons, and designing, contriving, and intending the morals, as well of youth as of divers other citizens of this commonwealth, to debauch and corrupt, and to raise and create in their minds, inordinate and lustful desires, on the first day of March, in the year one thousand eight hundred and fifteen, at the city aforesaid, and within the jurisdiction of this Court, in a certain house there situate, unlawfully, wickedly, and scandalously did exhibit, and show for money, to persons, to the inquest aforesaid unknown, a certain lewd, wicked, scandalous, infamous, and obscene painting, representing a man in an obscene, impudent, and indecent posture with a woman, to the manifest corruption and subversion of youth, and other citizens of this commonwealth." The defendants were convicted.

The first action against a book came in 1821 in Mass., where the trouble arose over that noble old warhorse, which has recently proved a renewed vitality, John Cleland's Fanny Hill. The court came down on the publisher, one Peter Holmes, with all its rigour, finding that the book was such as to debauch and corrupt readers, creating in their minds inordinate and lustful desires. I would point out that the court did not say these desires resulted in any overt action; as a consequence, the court was undertaking to inquire into the private area of a reader's thoughts and desires, surely a forbidden area until those thoughts result in acts.

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Both The Sharpless and Holmes convictions were on the basis of common law. There was as yet no obscenity law on the statute books. The first law in the United States aimed explicitly against indecent literature was enacted in Vermont in 1821.

Two factors appear to account for the rise of early laws against indecent literature and lewd pictures. The first was the decline in the power of the clergy and a loosening of their domination of community life; and the second was a rise in literacy, with the accompanying belief that the ordinary citizen was somehow more vulnerable to corruption than was the well-to-do.

The first serious drive against obscenity was launched in 1873 when Congress enacted Title 18, Chapter 71, Section 1461: "Mailing obscene or crime-inciting matter." The law, which still governs obscenity in the mails, is an ill-drawn, vague, shotgun attack on books, contraceptives, pictures and drugs. To send such matter through the mails can result in a fine of $5000 and/or five years in prison.

It is worth noting that in a great debate in 1835, some of America's most distinguished lawyer-senators (Clay, Calhoun, Webster) categorically declared that any such effort to regulate the mails was unconstitutional. They held that the use of the mails is a constitutional right, not a privilege. Thus far the courts have not passed on the scope of the postal censorship power, though in effect the power was limited in the Lady Chatterly's Lover case. "At the moment," says Morris Ernst, "first-class mail appears to be sacred and substantially free from examination by postal officials."

In 1868 there appeared on the American scene one of those troublesome crackpots that periodically arise to disturb the social order. Anthony Comstock in that year was a 24-year-old grocery clerk.

Of Comstock, Ernst writes: "His later diaries, kept during his short enlistment at the time of the Civil War, are precious morsels for any psychiatrist. Obvious it is that he suffered from extreme guilt feelings because of a habit of masturbation."

Comstock became a crusader against sex in all its manifestations. One of his early slogans was "Books Are Feeders for Brothels." Quoting Ernst again: "On one occasion he seized 117 masters of classical French art. Looking back on this obvious psychopath, it is plain that suppression gratified his hatred of everything he saw as vice."

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establishment of the New York Society for the Suppression of Vice and became its agent. It was Comstock who was largely responsible for lobbying through Congress the 1873 law governing obscenity in the mails.

When he had succeeded in getting the law through Congress, Comstock abandoned the grocery business to go into the business of the censorship of all the arts. By January 1, 1874, he could brag that under the new statute he had seized 194,000 obscene pictures and photographs, 134,000 pounds of books, 14,200 stereo plates, 60,300 rubber articles, 5,500 sets of playing cards, 31,150 boxes of pills and aphrodisiac powders.

As a result of his activity, many states followed with laws against the lewd and obscene. These are often called Comstock laws. With the passage of these laws, a long series of legal skirmishes began. Gradually the important issues were defined. In 1895 the Supreme Court held that the vulgar, the tasteless, the scatalogical, generally speaking, was not obscene (Swearingen and the Burlington Courier). The Rosen Case of 1896 established that a defendant must KNOW the doubtful nature of the material he was mailing.

In 1868 the Lord Chief Justice of Great Britain ruled that the test of obscenity is "whether the tendency of the matter....is to deprave and corrupt those whose minds are open to such immoral influences." It is to be noted that the ruling is practically without limits, since "almost any book might have evil effect" upon almost anybody.

This ruling--known as the Hicklin rule--became a standard in both England and America, and in this country it was not challenged until 1915 when the great jurist Learned Hand suggested that the present standards of the community ought to be considered. In Kennerley vs. New York, he wrote: "...it seems hardly likely that we are...content to reduce our treatment of sex to the standard of a child's library."

In 1922 (Halsey vs. the New York Society for the Suppression of Vice two important points were established: 1) a book must be considered in its entirety and not in terms of isolated passages; and 2) the opinions of literary critics and scholars as to the value of a book are relevant to the decision of the court.

One of the landmark cases came in 1930 with "United States vs. One Book Called Ulysses." The importance of the case is less that any new precedent was established but rather that after the vindication of Joyce's great classic the general community notion of what was dirty became just a little more sophisticated.

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I should like to quote at random from Judge Woolsey's opinion in upholding the book.

"Where a book is claimed to be obscene it must first be determined whether the intent with which it was written was what it is called, that is, written for the purpose of exploiting obscenity....

"The words which are criticized as dirty are old Saxon words known to almost all men, and, I venture, to many women, and are such words as would be naturally and habitually used, I believe, by the types of folk...Joyce is seeking to describe....

"Whether a particular book would tend to excite (sexually impure and lustful thoughts) must be tested by the Court's opinion as to its effect on a person with average sex instincts." (Italics mine.)

The government appealed the decision, only to lose again. In his opinion Augustus Hand wrote, "That numerous long passages in Ulysses contain matter that is obscene under any fair definition of the word cannot be gainsaid; yet they are relevant to the purpose of depicting the thoughts of the characters and are introduced to give meaning to the whole, rather than to promote lust or portray filth for its own sake." The point is that even obscenity per se is under some conditions legally acceptable.

"It is settled, at least so far as this court is concerned, that works of physiology, science, and sex instruction are not within the statute, though to some extent and among some persons they may tend to promote lustful thoughts. We think the same immunity should apply to literature as to science....Indeed a book of physiology in the hands of adolescents may be more objectionable...than almost anything else."

With the failure of the government in 1959 to win its prosecution of Lady Chatterly's Lover, there has been an increasing tendency to turn in a new, and in my opinion dangerous, direction. The attempt is to avoid criminal sanctions and to proceed against newsdealers or bookstores that sell allegedly obscene books and to proceed by public pressure and police intimidation. But by avoiding criminal actions in favor of so-called civil processes, state and local governments often avoid the necessity of proving their case beyond a reasonable doubt. I shall have more to say on this presently in connection with the Columbus Scene.

In this connection, however, the Supreme Court in 1959 held that there must be proof that a vendor knows there is obscene material in books or magazines when he offers them for sale before he can be successfully prosecuted. This is obviously necessary in a day when

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a seller orders hundreds of books from dozens of publishers or receives hundreds of magazines on consignment. Question: is the vendor informed and thus legally responsible if a Columbus police officer enters his store, warns him not to sell the Tropic of Cancer, telling him it is a dirty book?

In writing the majority opinion in Smith vs. Calif., Justice Brennan held: "If the contents of bookshops and periodical stands were restricted to material of which their proprietor had made an inspection, they might be depleted indeed. The booksellers limitation in the amount of reading material with which he could familiarize himself, and his timidity in the face of his absolute criminal liability, thus would tend to restrict the public's access to forms of printed word which the State could not constitutionally suppress directly. The bookseller's self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all books, both obscene and not obscene, would be impeded."

Incidentally, it is interesting that in this same case and just last week again in the Maryland case Justice Black held that the protection of the First Amendment is absolute and means what it says--that Congress shall make NO law abridging freedom of speech or press. He was joined in this position by Justice Douglas who also joined him in the Maryland case, with the reservation that censorship is valid when printed material can be directly connected with an illegal action.

The argument is sometimes advanced that while a book may safely be read by an adult, it is not fit for young people, and thus we must put up with censorship for the sake of youth. This position was unanimously rejected by the Supreme Court in 1957 in Butler vs. Michigan. In this case the late Justice Frankfurter wrote:

"The State insists that, by thus quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence, it is exercising its power to promote the general welfare. Surely, this is to burn the house to toast the pig....The incidence of this enactment is to reduce the adult population of Michigan to reading only what is fit for children."

One of the most important cases in modern obscenity trials came before the Supreme Court in 1957 in Roth vs. the United States. Roth had been convicted of sending obscenity through the mails. The question

a seller orders hundreds of books from dozens of publishers or receives hundreds of magazines on consignment. Question: is the vendor informed and thus legally responsible if a Columbus police officer enters his store, warns him not to sell the Tropic of Cancer, telling him it is a dirty book?

In writing the majority opinion in Smith vs. Calif., Justice Brennan held: "If the contents of bookshops and periodical stands were restricted to material of which their proprietor had made an inspection, they might be depleted indeed. The bookseller's limitation in the amount of reading material with which he could familiarize himself, and his timidity in the face of his absolute criminal liability, thus would tend to restrict the public's access to forms of printed word which the State could not constitutionally suppress directly. The bookseller's self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all books, both obscene and not obscene, would be impeded."

Incidentally, it is interesting that in this same case and just last week again in the Maryland case Justice Black held that the protection of the First Amendment is absolute and means what it says--that Congress shall make NO law abridging freedom of speech or press. He was joined in this position by Justice Douglas who also joined him in the Maryland case, with the reservation that censorship is valid when printed material can be directly connected with an illegal action.

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One of the most important cases in modern obscenity trials came before the Supreme Court in 1957 in Roth vs. the United States. Roth had been convicted of sending obscenity through the mails. The question

at issue on his appeal was whether the First Amendment guarantee is absolute. The court by a vote of 6 to 3 held obscenity to be outside the protection of the amendment. But at the same time it extended the protection of the amendment as far as possible and established a new definition of the obscene.

Justice Brennan for the majority: "All ideas having even the slightest redeeming social importance--unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion--have the full protection of the guarantees....Sex and obscenity are not synonymous....Obscene material is material which deals with sex in a manner appealing to prurient interest, and the test of obscenity is whether to the av erage person, applying contemporary community standards, the dominant theme of the material appeals to prurient interest."

Since that time the court has made absolutely clear that community standards do not mean the standards of a particular community, Columbus for example, but the entire community of the nation. Columbus must be balanced against New York and San Francisco.

Even the definition I have just given has been narrowed even further in our own decade. In 1962 (Manual Enterprises vs. Day) the Supreme Court ruled that only hard-core pornography--although it did not use that specific term--is beyond the protection of the First Amendment.

Perhaps the best definition of hard-core pornography has been given by D. H. Lawrence: "In the first place, genuine pornography is almost always under-world, it doesn't come into the open. In the second, you can recognize it by the insult it offers, invariably, to sex, and to the human spirit. Pornography is the attempt to insult sex, to do dirt on it....The insult to the human body, the insult to a vital human relationship! Ugly and cheap they make the human body nudity, ugly and degraded they make the sexual act, trivial and cheap and nasty."

Now, against the background of the material I have offered you, it is time to ask the question, what is the situation in Columbus and in Ohio?

Some light is thrown on the local situation by an experiment I conducted. I chose three titles--The Tropic of Cancer, The Tropic of Capricorn, and The memoirs of Fanny Hill--because each of these has, at some place in this country, been adjudged obscene.

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I visited the manager of the Lazarus book department, who since he knows me slightly also knew that I was not some sort of snooper and trouble-maker. I asked for these three titles, and I was told Lazarus does not stock them. It is surely perfectly proper for Lazarus to decide it does not want to handle these particular books. But I next asked if the store would order the books for me, and I was told that it would not. This, it seems to me, is something else again.

I asked why the books would not be ordered, and I was told that the police have issued a warning against them. I understood this to mean not a specific warning to Lazarus but a general warning to any store that might consider stocking these books.

I wish to make it perfectly clear that I am not blaming Lazarus for this situation. I do submit that if this situation is true as I have described it, there is intimidation and extra-legal censorship at work; for no Columbus court has in fact held that any of these books is obscene. Indeed, the federal courts have specifically held that the Tropic of Cancer is not obscene. It is my contention that if the situation exists as I have described it, the local police are interfering with my civil liberties, and in a way, so far as my own legal knowledge goes, that leaves me no opportunity for redress.

You will have noted that several times I suggested the picture may not be precisely as I have described it.

My next visit was to Captain Beck, the head of the Columbus vice squad. He categorically denied that the police have warned any local dealer against handling these books. I am not saying that the manager of the Lazarus book department was trying to mislead me. There are ways and there are ways of giving an impression.

I don't know whether Captain Beck was conning me or not. I did find him to be a very pleasant and apparently reasonable man. His attitude on the subject of censorship appeared to me to be quite sane.

I asked what the procedure is in Columbus and he told me that if an information is filed charging a book is obscene, an arrest will be made. Such and information can be laid by any citizen. This it seems to me is proper, since it allows the issue to be determined in court.

But Captain Beck did leave a curious opening. He said that he would take action if told to do so by the chief of police or the mayor. He hastened to add that he was sure neither of them would do this. Yet the disturbing impression is left that the mayor or chief could decide to act as an unofficial censor.

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The pertinent sections of the state law are these: Section 715.54: "Any municipal corporation may restrain and prohibit the distribution, sale and exposure for sale of books, papers, pictures, and periodicals or advertising matters of an obscene or immoral nature."

Section 2905.34: "No person shall knowingly sell, lend, give away (I add parenthetically at this point that I have broken the law) exhibit...or have in his possession or under his control an obscene, lewd, or lascivious book (You will note that this makes it a crime to possess such a book.)... made up principally of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of immoral deeds, lust, or crime, or exhibit...such books, papers, magazines, or pictures."

In an August 4, 1964, supplement to Ohio's Laws Relative to Obscenity, Attorney General Saxbe, as a result of recent Supreme Court decisions, stated that the decisions "seriously affect the enforcement of the Ohio laws relative to obscenity."

I think he was quite correct.

Although I am not a lawyer, I offer the opinion from my studies that the present Supreme Court of the United States will uphold no action against any book or magazine that is not obviously hard-core pornography. For my part, I believe this is good.

I respect the convictions of those who are disturbed by the possibility of corrupting young people. I have two concluding comments to make on this point. Justice Brennan recognizing this legitimate concern, wrote in Jacobellis vs. Ohio, "State and local authorities might well consider whether their objectives in this area would be better served by laws aimed specifically at preventing distribution of objectionable materials to children, rather than at totally prohibiting its dissemination."

The second point I wish to make is this. There is practically no scientific evidence to suggest that reading so-called obscene books has any detrimental effect upon young people. Quite the contrary. Justice Douglas writing on the Roth case stated:

"Scientific studies of juvenile delinquency demonstrate that those who get into trouble...are far less inclined to read than those who do not become delinquents. The delinquents are generally...the type who

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have little use for reading. Thus, even assuming that reading sometimes has an adverse effect upon moral conduct, the effect is not likely to be substantial, for those who are susceptible seldom read."

Sheldon and Eleanor Glueck, who are among the country's leading authorities on juvenile delinquency, have concluded that what delinquents read has so little effect upon their conduct that it is not worth investigating in an exhaustive study of causes.

At the last meeting of Kit Kat, I gave to a member to read and, if possible, to pass on to some other members, a book, Last Exit to Brooklyn by Selby, that for once did, in some respects, shock me. I hope those who read it will comment on it, since it provides a concrete case for consideration.

An now I would like to conclude with a quotation from Morris Ernst--"Perhaps the most ironic, and saddest, aspect of the.... feuds so prevalent in our country today is that with so much energy expended on keeping out 'bad' influences, there is little left to encourage a refinement of taste and sensitivity. The real danger in all this is not that some people will be exposed to pornographic vulgarity but that, by default, the rest of us will be exposed to very little that is much better. Certainly a civilization becomes more 'civilized' by improving its prestige symbols, not by improving its methods of suppression. While we fight so strongly over what not to read and think and see, who is left to worry about the quality of what we are allowed to enjoy? And yet by that quality (or lact of it) will the heritage we leave be judged."

Ernst, Morris L. and Alan U. Schwarts. Censorship. New York: Macmillan, 1964.

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