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### Book Review

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## BOOK REVIEW

THE UNITED STATES OF AMERICA V. ONE BOOK ENTITLED *ULYSSES* BY JAMES JOYCE: DOCUMENTS AND COMMENTARY—A 50-YEAR RETROSPECTIVE. Edited by *Michael Moscato* and *Leslie LeBlanc*. Frederick, Maryland: University Publications of America, Inc. 1984. Pp. xxvii, 482. \$27.50.

*Reviewed by Teresa Godwin Phelps\**

"A chaffering, all including most farraginous chronicle" (p. 349)<sup>1</sup> is the way James Joyce described *Ulysses*. These words might well apply to Moscato and LeBlanc's new volume, *The United States v. One Book Entitled Ulysses by James Joyce: Documents and Commentary—A 50-Year Retrospective*.<sup>2</sup> Although the book contains little narrative and is, as advertised, a collection of documents dealing with the famed *Ulysses* obscenity case, the reader emerges with a sense of chronicle, albeit chaffering and farraginous, as the story unfolds.

The *Ulysses* story presented in this book covers nearly two decades (1918 to 1935) of post-war America, during which changes in society's standards occurred with head-spinning frequency. Not least among these changes involved the legal definition of obscenity. Today, fifty years since Judge Woolsey's famed decision that "*Ulysses* may . . . be admitted into the United States,"<sup>3</sup> it is difficult to imagine (with *Deep Throat* at the movie theatre and *Hustler* on many newsstands) that Molly Bloom's soliloquy<sup>4</sup> could cause such outrage

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1 The *Oxford English Dictionary* (1933) defines "chaffering" as "bandying words" and "farraginous" as "miscellaneous."

2 THE UNITED STATES OF AMERICA V. ONE BOOK ENTITLED *ULYSSES* BY JAMES JOYCE: DOCUMENTS AND COMMENTARY—A 50-YEAR RETROSPECTIVE (M. Moscato & L. LeBlanc eds. 1984). The volume has an interesting genesis. John Moscato, president of University Publications of America, Inc. and a former literature major, became interested in the project several years ago. He interviewed Ernst and hoped to discover some transcripts of the oral argument. When he abandoned the project, his brother Michael Moscato, an attorney with Legal Aid in New York, took up the task and, with the help of Leslie LeBlanc, an editor at University Publications, compiled this impressive array of documents.

3 *United States v. One Book Called "Ulysses"*, 5 F. Supp. 182, 185 (S.D.N.Y. 1933), *aff'd sub nom.* *United States v. One Book Entitled Ulysses by James Joyce*, 72 F.2d 705 (2d Cir. 1934) (quoted at p. 312).

4 For those who find, as I do, Molly Bloom's soliloquy not obscene but moving, I recommend the Siobhan McKenna recording, *Ulysses: Soliloquies of Molly and Leopold Bloom* (Caed-

among the censors. But it did, and reading Moscato and LeBlanc's 50-year retrospective permits one to slip into another time and to understand why Alexander Lindey, one of the defense lawyers, could say that the *Ulysses* case "would be the grandest obscenity case in the history of law and literature" (p. 77).

As Richard Ellman, the prominent Joyce scholar, explains in the six-page Introduction, this grand case began in 1918 when Jane Heap and Margaret Anderson first published part of *Ulysses* in their magazine, *Little Review*. The United States Post Office seized and burned three issues containing the *Lestrygonians* episode, the *Scylla and Charybdis* episode, and the *Cyclops* episode. The fourth published section, the *Nausicaa* episode, caused John S. Sumner, secretary of the New York Society for the Prevention of Vice, to lodge an official complaint. Anderson and Heap were arrested, tried,<sup>5</sup> and each fined \$50.

Although American publishers wanted to publish *Ulysses*, the *Little Review* case made it clear that no such enterprise was possible. In fact, it appeared that no publisher would be willing to risk bringing out *Ulysses*. Finally, in 1922, Sylvia Beach, who ran a Paris bookstore called Shakespeare and Company, published *Ulysses* in France. It was her only title.<sup>6</sup>

For the next ten years *Ulysses* was smuggled regularly into the United States, while at the same time achieving a worldwide reputation as perhaps the most outstanding literary achievement of the twentieth century. Joyce, meanwhile, found himself ensnared in a legal catch-22: since *Ulysses* could not be published in the United States, it also could not be copyrighted, and a pirated edition appeared. Joyce responded with an "International Protest" signed by, among others, Albert Einstein, Miguel de Unamuno Y. Jugo, T. S. Eliot, William Butler Yeats, and Virginia Woolf. Although Joyce eventually won an injunction against the pirated edition, the primary effect of the *Little Review* case was that many people were profiting from *Ulysses'* clandestine popularity, but its author was not.

Ellman's Introduction gives this background for the legal drama

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mon Records: Read by Siobhan McKenna and E. W. Marshall; directed by Howard Sackler).

5 In a wonderfully ironic moment during the trial, one judge refused to read the allegedly obscene passages aloud because Margaret Anderson, who first published them, was present. When it was pointed out that Anderson was the publisher, the judge replied, "I am sure she didn't know the significance of what she was publishing" (p. xviii).

6 She later published Joyce's *Pomes Penyeach* in 1927.

that unfolds in the Commentary and Documents that comprise the book. The Commentary, only 73 pages and by far the shorter part, contains mainly newspaper and magazine articles that appeared shortly after Woolsey's decision. Most of these commentators applauded the decision, with one notable exception: "*Ulysses* the Dirty" by Francis Talbot, S.J.<sup>7</sup> Some of these articles have an appealing, dated quality, particularly Morris Ernst's remark in "Reflections on the *Ulysses* Trial and Censorship"<sup>8</sup> about the "now proven fact that women are unaffected by sexual writing or pictures" (p. 46). One article is worthy of particular notice: "Obscenity, the Law, and the Courts," an excerpt from *Censorship: Government and Obscenity* by Terrence J. Murphy. Murphy's piece provides a valuable overview of the history of obscenity law beginning with *Commonwealth v. Sharpless*<sup>9</sup> in 1712.

The Documents, which make up the remaining 409 pages, take up the "great *Ulysses* adventure,"<sup>10</sup> as Bennett Cerf called it, in 1931, when Cerf and Random House entered the picture. These numerous documents (290 of them) begin with a 1931 office memorandum from Alexander Lindey to Morris Ernst, the two attorneys at Greenbaum, Wolff & Ernst who were most involved in the *Ulysses* litigation. They culminate with a 1937 letter to Morris Ernst from James Joyce informing Ernst that his inscribed copy of *Ulysses* had been posted. The editors have included nearly everything, and the reader should skim and read those documents that appear most interesting. Some are trivial—enclosure letters, formal court orders; some are repetitious—excerpts from Woolsey's opinion reappear frequently.<sup>11</sup> Yet many are informative and deserve careful reading. As a whole, the documents reveal two fascinating things: the precise way in which Ernst and Cerf choreographed the *Ulysses* affair and the distinct personalities of the principals.

The *Ulysses* litigation was no random event, and following Cerf's and Ernst's maneuvers is a lesson in strategy. Ernst, who had become an advocate for openmindedness and a crusader against "squeamish-

7 This piece originally appeared in *AMERICA*, Sept. 1, 1934. Father Talbot objects more to Joyce's blasphemy in *Ulysses* than to his explicit sexual images and language. For some reason, *Ulysses* never appeared on the Index of Rome (list of books Catholics are forbidden to read).

8 The remark is dated although this article appeared as recently as 1965 in the *James Joyce Quarterly* (p. 46).

9 2 Sergeant and Rowles 91 (1815).

10 B. CERF, *AT RANDOM* (1977), excerpted here at p. 54.

11 Nonetheless, these documents do portray the repetition, formality, and tedium involved in any litigation.

ness in literature" (p. 335),<sup>12</sup> saw the *Ulysses* case as an opportunity to strike the death blow to what he considered unreasonable censorship. He designated *Ulysses* as "the only volume of literary importance still under a ban in the United States" (p. 98), and with Cerf set up a series of events that would inevitably result in the much-publicized *Ulysses* trial. In October, 1931, Ernst decided that *Ulysses* could "now be tested with the real hope of gaining immunity for it" (p. 98) and offered to take up the cause for substantially less than his normal fee.<sup>13</sup>

Bennett Cerf was in the process of building Random House into one of the nation's premier publishers and wanted to add *Ulysses* to an increasingly impressive list of titles. After some negotiation, he convinced Sylvia Beach to sell him the American rights to *Ulysses*. Cerf now had two choices. He could go ahead and publish *Ulysses* in the United States, knowing that the government would bring suit against the book. This would be an expensive gamble that could cost Random House heavily if the ban was not successfully lifted. The less expensive alternative, which he chose, was to maneuver to have the Paris edition of *Ulysses* mailed to an addressee in the United States, have it seized at Customs, and then defend the book at trial. This way Random House would not sink a great deal of money into a book that could perhaps never be released.

To increase the effect of the Customs seizure, Cerf first chose as the addressee the Honorable Oliver Wendell Holmes, former Justice of the Supreme Court. Holmes declined, as did a few other prominent people, and the eventual addressee was Random House. In the meantime, Cerf sent letters to authors, critics, clergymen, sociologists, and librarians in the hope of "secur[ing] a reliable cross-section of critical reaction" (p. 122) to *Ulysses* that could be entered as evidence at trial.<sup>14</sup> He then wrote Paul Léon, Joyce's agent in Paris, giving

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12 Ernst was involved in many of the censorship cases of the late 1920's and early 1930's. He lost defending John Hermann's *What Happens* in 1927, and the defeat turned him into a crusader. He wrote widely about what he saw as the absurdities of censorship and won cases vindicating Dennett's *The Sex Side of Life*, Stopes' *Contraception*, Wood's *Flesh*, Mirbeau's *Celestine*, the Chinese classic *Hsi Men Ching*, Royer's *Let's Go Naked*, Caldwell's *God's Little Acre*, and Schnitzler's *Reigen* (p. 331).

13 He wanted only a retainer of \$500 and \$500 for each appeal, up to a maximum of \$2000. Additionally, he wisely requested royalties of 4% (p. 99).

14 The responses that Moscato and LeBlanc reproduce in this volume are supportive to say the least. Louis Untermeyer wrote: "What Freud is to modern psychology, or Einstein to our revised notions of time and space, *Ulysses* is to the novel" (p. 125). John Dos Passos wrote: "To ban *Ulysses* is as absurd as it would be to ban *The Canterbury Tales* or the Book of Genesis" (p. 126).

him the following meticulous instructions:

Please buy for us a copy of the latest edition of *Ulysses*. If there has been printed in French any circular containing opinions of prominent men or critics on this book, paste a copy of this circular into the front of the book. It is important that this circular be actually pasted into the book, as if it is separate we may not be able to use it as evidence when the trial comes up, but if these opinions of respected people are actually pasted in the book, they become, for legal purposes, a part of the book, and can be introduced as evidence.

Pack up the book and mail it to us, addressing the package, Random House, Inc., 20 East 57th Street, New York, N.Y. Write on the outside of the package the boat that the book is to come by in very plain letters so that there can be no possible mistake made by the postal service. Then send us a cable as soon as you have shipped the book telling us what boat the book will arrive on.

As soon as we know what boat the book is coming in on, we will notify the Customs authorities here that it is due, so it surely cannot be slipped through without being noticed by them. Obviously, it is necessary that they catch this book or all our efforts in this matter will have been in vain (p. 119).

Thus, Cerf strategically set the stage to test *Ulysses* in the courts.

On May 8, 1932, the Collector of Customs seized the well prepared copy of *Ulysses* under Section 305 of Title III of the Tariff Act of 1930.<sup>15</sup> The government's hand was forced, and the United States brought a libel action against one book entitled *Ulysses*. Since a jury trial would involve the seemingly interminable task of reading *Ulysses* aloud to a jury, the case came up on motion. When it appeared that Judge Coleman, "a strait-laced Catholic" and "the worst man on the bench for us," according to Lindey (p. 202), would be sitting, Ernst adjourned the motion in a effort to get the liberal and literary Judge Woolsey on the bench.<sup>16</sup> He succeeded, and the rest is judicial history.

In addition to a miscellany of letters and memos, this volume includes Ernst's and Lindey's memoranda to the court prior to the first trial, two of the prosecution's inter-office memos,<sup>17</sup> the complete

15 Tariff Act of 1930, ch. 497, § 305, 46 Stat. 590, 688 (prohibiting importation of immoral articles) (codified as amended at 19 U.S.C. § 1305(a) (1982)).

16 One judge who would have presided "flatly refused to read the book" (p. 213).

17 The prosecution's memos are oddly complimentary about Joyce and insightful about *Ulysses*. One memo eloquently says: "In short, accompanying his characters, Joyce steps up to each man and removes the veil of his mind, showing to us what is there, and invades the secret places of the imagination, bringing forth those things even which we dare not say to ourselves" (p. 299).

text of Woolsey's opinion, briefs from both sides when the government brought the case up on appeal,<sup>18</sup> and the appellate court opinion. These provide a wide spectrum of opinion on *Ulysses* and on the nature and definition of obscenity.

That *Ulysses* would eventually be vindicated was inevitable, and the *Ulysses* case did not lay down important new legal principles. It represented, instead, a psychological breakthrough in society's ideas of censorship and obscenity. What emerged from the *Ulysses* case is that a work of literature must be read as a whole,<sup>19</sup> that language should not, indeed cannot, be divorced from context. A list of "dirty" words or explicit passages from *Ulysses* or any other book are not fit subjects for a court's scrutiny. Instead, the complete book, its author's intent, and its effect on its reader must all be considered in determining obscenity. Authors must have access to all of humanity's word hoard, to what Heywood Broun calls the "gusto of speech" (p. 333).

We crave certainty and finality in our legal definitions, yet each generation must define obscenity anew. Ernst and Lindey argued that "[t]he test of obscenity is a living standard" (p. 228), that "[p]ublic opinion furnishes the only true test of obscenity" (p. 228), and that "*Ulysses* must be judged in the light of present-day mores" (p. 247). We still grapple with these same principles in an effort to keep free the truth that only literature can provide.<sup>20</sup>

Moscato and LeBlanc have done a great service to scholars<sup>21</sup> in both literature and law by painstakingly gathering, editing, and arranging the multiplicity of documents that tell the *Ulysses* story. It is one worth remembering.

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18 The prosecuting attorney, Samuel C. Coleman, did not want to appeal. In fact, he said he agreed with Woolsey's decision. Martin Conboy, U.S. Attorney for the Southern District of New York, brought the appeal. Judges Augustus Nobel Hand and Learned Hand sustained Woolsey's ruling and found that *Ulysses* was not obscene. *United States v. One Book Entitled Ulysses by James Joyce*, 72 F.2d 705 (2d Cir. 1934) (quoted at pp. 452-56).

19 *United States v. One Book Entitled Ulysses by James Joyce*, 72 F.2d at 707.

20 *See, e.g.*, *Miller v. California*, 413 U.S. 15, 24 (1973) (defining obscenity to take into account whether "the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest"); *Penthouse Int'l, Ltd. v. McAuliffe*, 610 F.2d 1353, *cert. dismissed*, 447 U.S. 931 (1980) (applying the *Miller* standard).

21 The book would be a more valuable research tool, however, if it had an index.