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David C. Baldus

PENNSYLVANIA'S PROPOSED FILM CENSORSHIP LAW—HOUSE BILL 1098

DAVID C. BALDUS*

THE PROBLEM

The trend of Pennsylvania and United States Supreme Court decisions during the past decade has steadily reduced the number of lawful methods which Pennsylvania law enforcement officials may use to prevent the public exhibition of a motion picture they consider to be obscene. During the summer of 1965 in Allegheny County, for example, detectives attempted without success to halt the local showing of "Promises! Promises!," a film which they believed was legally obscene. The detectives secured a search warrant, seized the films and arrested the exhibitors, charging them with the crime of exhibiting an obscene motion picture.[1] The officers apparently intended to hold the films pending completion of the obscenity prosecution. If the films had been found obscene in the criminal action, they would have been forfeited to the Commonwealth; if not, they would have been returned to the exhibitors. The Allegheny County Court of Common Pleas, however, held that the county government could not interfere with the exhibition of the films prior to a judicial determination that they were actually obscene.[2] By court order "Promises! Promises!" was returned to the exhibitors and presented as scheduled in neighborhood theaters.

Although neither the Pennsylvania nor the United States Supreme Courts has yet struck down the Pennsylvania statute[3] authorizing seizures of allegedly obscene motion pictures, there is little doubt that the procedure used by the Allegheny County detectives in seizing "Promises! Promises!" was constitutionally deficient. The United States Supreme Court has expressly ruled that any governmental seizure of publications on the ground of obscenity is an unconstitutional prior restraint if undertaken prior to a judicial determination of the obscenity issue.[4] The effect of this policy is to deny enforcement officials their most effective means of preventing the showing of films they consider to be obscene, i.e., seizing and holding them until their obscenity has been determined. If the rulings of the Supreme Court are followed, Pennsylvania officials must now rely

* Member of the Pennsylvania Bar. A.B., Dartmouth College, 1957; M.A., University of Pittsburgh, 1962; LL.B., Yale University, 1964. Associated with Metz, Cook, Hanna & Kelly, Pittsburgh, Pennsylvania.

1. PA. STAT. ANN. tit. 18, § 4528 (1963).

2. Harlequin Int'l Pictures, Inc. v. Duggan, 113 P.L.J. 358, 364 (C. P. All'y County 1965).

3. PA. STAT. ANN. tit. 18, § 783 (1963).

4. Marcus v. Search Warrant, 367 U.S. 717 (1960); A Quantity of Copies of Books v. Kansas, 378 U.S. 205 (1964).

solely on the deterrent effect of criminal prosecution to prevent the public exhibition of obscene films. But fears exist that the threat of penal enforcement may not be enough to prevent all public exhibitions of obscene films, and if such a film is shown, law enforcement officials may not, under the present law, interfere with its exhibition pending the criminal trial.

THE PROPOSED SOLUTION

Concern over this loophole in the existing system for controlling obscene films has created pressures in the Commonwealth to establish a statutory procedure which will require prior submission of films to a censor. Such a system is suggested by House Bill 1098, which proposes a State "Preview Board" to review questionable films and to initiate judicial proceedings to enjoin the exhibition of films which the Board finds to be obscene.[5]

The idea of a State Board to review films is not new to Pennsylvania. The first Motion Picture Censorship Board was established in 1915 and functioned until 1956 when the Pennsylvania Supreme Court found the standard it applied unconstitutionally vague and indefinite.[6] In 1959, the Motion Picture Control Act revived the censorship system by giving a Board of three gubernatorial appointees the power to forbid the showing of any film they found to be obscene.[7] In 1961 this procedure was held unconstitutional in *W. Goldman Theatres v. Dana*[8] and has not been

5. House Bill 1098 was introduced by Messrs. Fineman, Perry, Rubin and Shelton, May 5, 1965, and was amended on a Second Reading June 29, 1965. The Senate companion bill is Senate Bill 741 introduced May 4, 1965, by Messrs. Johanson, Donalow and Wade. The operative sections of the Bill are as follows:

> Section 2. Pennsylvania Motion Picture Preview Board.—The Pennsylvania Motion Picture Preview Board, hereinafter called the board, shall consist of a chairman and two members; they shall be residents of Pennsylvania and shall be appointed by the Governor for a term of four years. . . .
>
> Section 3. Duties of Persons Who Sell, Lease, Lend, Exhibit or Use Films, Reels or Views.—Every person intending to sell, lease, lend, exhibit or use any film, reel or view in Pennsylvania, shall register with the board, giving his name, trade name if any, and address. Each registrant shall notify the board in writing at least seventy-two hours before the first showing of any film, reel or view in Pennsylvania, and shall notify the board where and when each such showing will take place. Upon the request of the board, the registrant shall furnish the board with an exact copy of the film, reel or view for preview.
>
> Section 5. Disapprovals by Board.—The board shall have the power to examine any film, reel or view in order to determine whether such film, reel or view violates standards set down by the courts for obscenity. If the board finds that any such film, reel or view does violate the standards it shall immediately begin injunction proceedings in the court of common pleas of the county where the film, reel or view is about to be shown. The court shall make its determination within five days.

6. Hallmark Productions, Inc. v. Carroll, 384 Pa. 348, 121 A.2d 584 (1956).

7. PA. STAT. ANN. tit. 4, §§ 70.1-.14 (1963).

8. 405 Pa. 83, 173 A.2d 59 (1961).

replaced; House Bill 1098 attempts to fill the statutory gap left by the *Goldman* case.[9]

The proposed "preview" system differs significantly from its unconstitutional predecessor, the Motion Picture Control Act, although its preventive purpose and administrative structure are similar. As under the old system, the Bill requires motion picture distributors and exhibitors to register with the Board and to advise it where and when the intended exhibition will take place, "at least seventy-two hours before the first showing."[10] Each registrant is also required to furnish the Board with a copy of any film requested by the Board.[11] From this point on, however, the proposed "preview" procedure makes a marked departure from the earlier law. The decision of the former Board that a film was obscene made its exhibition anywhere in the Commonwealth a crime. The old Board's decision was made without a hearing and could only be challenged in lengthy and costly appellate proceedings, during which time the film could not be shown. In contrast, the proposed Board will have no power to ban any film. If the Board finds a film to be obscene, it may do only one thing—present a claim in Common Pleas Court that the film is obscene and demand an injunction barring its exhibition or distribution. The decision on obscenity is to be made "within five days" by "the court of common pleas of the county where the film . . . is about to be shown"; if the injunction is granted, any exhibition of the film thereafter is punishable under the criminal contempt statute.[12]

HOUSE BILL 1098 AND JUDICIAL REVIEW

The draftsmen of House Bill 1098 believe that their "preview" system "meets all of the constitutional requirements and will provide the degree of care that we should have in the dissemination of films."[13] The first inquiry, therefore, is whether the system can survive the claims of unconstitutionality that will surely be made against it. In this writer's view, the Bill fails to meet the requirements of the United States and Pennsylvania constitutions because of its effect as a prior restraint and because it denies exhibitors a jury trial on the issue of obscenity.

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9. Senator Johanson made the following comment upon introducing the Senate Bill: "Mr. President, we have always had, at least, since the advent of the motion pictures in the Commonwealth of Pennsylvania, a Board of Review or a Censor Board, which has, lately, run into a great deal of difficulty in having its rulings enforced, because of the high regard the Courts have for freedom of expression and freedom of speech. This, pretty much, has emasculated the actions of that Board." 1 *Sen. Jour.* 475 (1965).

10. The former statute required only forty-eight hours notice.

11. The old Board could review the film only after it had "been exhibited at least once in Pennsylvania."

12. PA. STAT. ANN. tit. 17, §§ 2047-48 (1963).

13. *Sen. Jour.*, *supra* note 9, at 475 (remarks of Senator Johanson).

United States Constitution

In the context of film censorship, prior restraint refers to the degree to which government action either deters motion picture distributors and exhibitors from agreeing to lease films for future exhibition or deters exhibitors from showing films they have already leased. House Bill 1098 will interfere with the leasing and exhibition of films in three ways. First, before a motion picture may be shown in public, the exhibitor must register with the Board, give notice of his intent to show the film, and then wait three days. Any exhibition in violation of these requirements is a crime. Second, publication of the Board's decision that the film is obscene and its claim in court to that effect will deter exhibitors from showing the allegedly obscene film and from agreeing to lease it for future exhibitions. The United States Supreme Court has graphically described how communication of the censor's view that a film is obscene may have a "discouraging" and "chilling effect" on exhibitors and distributors, even when the censor's decision requires judicial action for its enforcement:

> Particularly in the case of motion pictures, it may take very little to deter exhibition in a given locality. The exhibitor's stake in any one picture may be insufficient to warrant a protracted and onerous course of litigation. The distributor, on the other hand, may be equally unwilling to accept the burdens and delays of litigation in a particular area when, without such difficulties, he can freely exhibit his film in most of the rest of the country; for we are told that only four states and a handful of municipalities have active censorship laws.[14]

In addition, a Board finding of obscenity will generate, throughout the state, the fear that any public exhibition of the film is an invitation to criminal prosecution by local authorities under the anti-obscenity statute.[15] For example, in the face of an adverse Board finding and the initiation of injunction proceeding in Allegheny County, how many other exhibitors in Pennsylvania would be willing to exhibit the contested film or to lease it for future exhibition? For even if the film is found not to be obscene in the Allegheny County injunction proceeding, other exhibitors still face both the possibility of Board action against them, and if they show the film, the possibility of criminal prosecution. Thus, whether a motion picture is legally obscene or not, an adverse finding by the Board will have a deterrent effect on its leasing and exhibition throughout Pennsylvania.

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14. Freedman v. Maryland, 380 U.S. 51, 59 (1965). Of the four statewide systems to which the Court referred, Maryland's was struck down in the *Freedman* decision and New York's was held unconstitutional in *Cambist Films v. Bd. of Regents of Univ.*, 260 N.Y.S.2d 804 (1965), leaving only West Virginia and Kansas with statewide systems.

15. PA. STAT. ANN. tit. 18, § 4528 (1963).

The third prior restraint in the proposed system will operate when the court grants a preliminary injunction. The Board's injunction action will be brought under Pennsylvania Civil Procedure Rule 1531, which authorizes a five-day preliminary injunction without "written notice and hearing" if the court believes that "immediate and irreparable injury will be sustained before notice can be given or a hearing held." Thus, if a film which the Board has found to be obscene is scheduled to begin a three-day showing the day after the Board's complaint is filed, the court might very well issue a temporary injunction pending the hearing on the obscenity issue. During the preliminary injunction, exhibition of the film would be forbidden and the pressure on other exhibitors to find alternative films would be further increased.

Even though the Supreme Court has not passed on legislation of the type House Bill 1098 recommends, recent decisions in the censorship area provide considerable insight into the Court's probable response to the Bill. Over the past decade the Court has shown growing antagonism to all governmental prior restraints. As stated in *Bantam Books, Inc. v. Sullivan*,[16] "[a]ny system of prior restraint of expression comes to this Court bearing a heavy presumption against its constitutional validity."[17] The Court has demonstrated this hostility during the last five years by expressly forbidding any seizure of printed material prior to an adversary hearing, regardless of the grounds on which the seizure is based,[18] and by striking down, in *Freedman v. Maryland*,[19] a system which gave to a film censorship Board the final decision on obscenity.

Nevertheless the Court has not banned all systems which require prior submission of films to a censor, and such a ruling is unlikely in the near future. In fact, the Court's opinion in *Freedman*, its latest on this problem, spells out at length the procedural requirements for a system requiring prior submission. The problem with the *Freedman* opinion, however, is that the Maryland statute which the decision struck down failed to meet any of the requirements established in the opinion, thereby leaving the *Freedman* guidelines without any factual basis. Apparently sensing this problem, Justice Brennan expressly recommended, as a model for future legislation, a New York injunction statute directed at the sale and distribution of obscene books and magazines, which the Court held constitutional in 1957.[20] Expectations about the Court's response to House Bill 1098, therefore, are largely based on the *Freedman* opinion and the Court-approved New York statute.

16. 372 U.S. 58 (1962).

17. *Id.* at 70.

18. Marcus v. Search Warrant, 367 U.S. 717 (1960); A Quantity of Copies of Books v. Kansas, 378 U.S. 205 (1964).

19. 380 U.S. 51 (1965).

20. Kingsley Books, Inc. v. Brown, 354 U.S. 436 (1957).

Freedman established four procedural requirements, three of which the Bill clearly meets. First, the burden of proving obscenity "must rest on the censor."[21] There is no problem here, nor is there difficulty with the second requirement, that the censor must, "within a specified brief period, either issue a license or go to court to restrain showing the film."[22] The proposed Board will not actually license films, but if a preliminary injunction is not granted within three days, the film may be shown as if licensed. The third requirement of a "prompt final judicial determination"[23] of the obscenity issue is probably satisfied by the Bill's requirement that the "court shall make its determination within five days."

The fourth requirement, that "any restraint imposed in advance of a final judicial determination on the merits must similarly be limited to preservation of the status quo for the shortest fixed period compatible with sound judicial resolution,"[24] will, however, create a difficult problem. Although the *Freedman* language quoted above appears fairly permissive, other language in the opinion and Justice Brennan's express recommendation of the New York statute suggest that the proposed system may very possibly be held excessive, especially when the court issues a five-day preliminary injunction without a hearing on the obscenity issue.

The final test of constitutionality under *Freedman* is whether the total system sufficiently eliminates the "dangers of a censorship system."[25] Applying this test to the prior restraint issue, it is apparent that the proposed system has a significantly greater number of such dangers than the recommended New York statute. The New York system "postpones any restraint against sale until a judicial determination of obscenity following notice and an adversary hearing,"[26] whereas the proposed system authorizes a five-day preliminary injunction. This is a major difference between the two systems. Nor does the New York statute require prior submissions to a censor or impose an initial restraint before the first publication.

There are also more subtle differences which add to the "dangers" of the proposed system. First, the Bill gives a major part of the censoring job to a Board of professional censors, whereas the New York statute delegates the power to initiate injunction proceedings to city, town and village officials. The Court has emphasized on more than one occasion that "[t]he censor is part of the executive structure, and there is at least some danger that he will develop an institutionalized bias in favor of censorship

21. Freedman v. Maryland, *supra* note 14, at 58.
22. *Id.* at 59.
23. *Ibid.*
24. *Ibid.*
25. *Id.* at 58.
26. *Id.* at 60.

because of his particular responsibility."[27] Under the proposed system, it is reasonable to expect the Board's institutional bias to produce more frequent claims of obscenity against non-obscene films, with a resulting deterrent effect on their exhibition and distribution, than would be the case if the competence to initiate proceedings were placed in the hands of local government officials. Second, because the Board will be a State organ, acting with the approval of the legislature, and manned by gubernatorial appointees, presumably qualified to pass on questions of obscenity, its findings will have far greater authority and influence than those of a local governmental official. There is no question that a Board-finding of obscenity will increase local pressures throughout the state to initiate criminal prosecutions against exhibitors showing the allegedly obscene film. Third, because the Board is given competence to initiate proceedings anywhere in Pennsylvania, the statewide impact of an adverse Board decision will be further intensified. Since under the New York statute a local official has competence to act only against articles sold and distributed in his political subdivision, the "chilling effect" of his decision to initiate court proceedings is geographically far more limited.

Because an adverse Board decision will have such a substantial statewide deterrent effect on the leasing and exhibition of films which the Board finds obscene, it is possible that the Bill will be held unconstitutional on its face. It is even more probable that an application of the statute granting a five-day preliminary injunction (which would be in addition to the initial three-day initial restraint) will fail to meet the Court's requirements of a permissible censorship system. And without the five-day preliminary injunction, the Bill fails in its primary purpose of barring any exhibition of an allegedly obscene film pending judicial determination of the obscenity issue.

House Bill 1098 presents a further constitutional issue which has not been passed on by the court. By requiring that the court "shall make its determination on the obscenity question within five days" after the injunction action is begun by the Board, does the Bill afford the defendant a reasonable time to prepare his defense on the obscenity issue?[28] Assuming a two-day trial, the defendant is left with three days to prepare, and as presently drafted, the Bill gives the court no discretion to extend this time limit. The insufficiency of this time is suggested by Justice Harlan's recent statement that "it would be unrealistic to suppose that most persons who allegedly have or sell obscene materials will be able to prepare for such a hearing in four days."[29] He also advanced the opinion "[e]leven

27. A Quantity of Copies of Books v. Kansas, 378 U.S. 205, 223 (1964); Freedman v. Maryland, *supra* note 14, at 57-58.

28. See, Powell v. Alabama, 287 U.S. 45, 58 (1932); Commonwealth v. O'Keefe, 298 Pa. 169, 148 Atl. 73 (1929).

29. A Quantity of Copies of Books v. Kansas, *supra* note 26, at 220.

days is certainly not an undue delay; indeed, it is difficult to imagine a defense being prepared in less time."[30]

The defendant's difficulty in quickly preparing for trial has been increased by the Court's ruling in *Jacobellis v. Ohio*[31] that a "national standard" must be applied in determining whether a film is obscene. If the film in issue has been shown nationally, counsel must present evidence of nationwide public and professional reaction to the film. The record in *Jacobellis* reflects the amount of work this requirement creates. If the film has not been extensively reviewed, counsel will probably be required to obtain expert opinions on the film's compatibility with national standards. Defense counsel's disadvantage in this regard is further increased by the Board's freedom to select its targets well in advance, thereby giving itself ample time to prepare. Even if these inequities are not fatal to the Bill, they will further dispose the Court to hold the Bill unconstitutional as an excessive prior restraint.

Pennsylvania Constitution

The constitutional difficulties awaiting House Bill 1098 will begin, however, before the first case reaches the United States Supreme Court. The Pennsylvania Supreme Court's opinion in *W. Goldman Theatres v. Dana*,[32] which struck down Pennsylvania's old censorship Board, clearly suggests that the proposed Bill fails to meet the requirements of Pennsylvania's Constitution. In *Goldman* the Court held that, on its face, the earlier act was a prior restraint in violation of Article I, § 7 of the state constitution.[33] Two restraining features of the system were found objectionable: (a) "the Act expressly restrains the initial showing of a film for 48 hours after notice to the Board of its intended exhibition," and (b) it forbid exhibition of a film solely upon disapproval of the Board.[34] Although House Bill 1098 clearly corrects the second defect, it intensifies the first deficiency by increasing the initial prior restraint from forty-eight to seventy-two hours. Because the Pennsylvania Constitution provides greater freedom of expression than the United States Constitution, it is probable that the seventy-two hour prior restraint and the restraining features of the Bill discussed earlier will lead the Court to hold that the Bill violates Article I, § 7 of the Pennsylvania Constitution.

Goldman also held the old system incompatible with Article I, §§ 6 & 9, which guarantee trial by jury. The former statute expressly forbid any

30. *Id.* at 221.

31. 378 U.S. 184 (1964).

32. 405 Pa. 83, 173 A.2d 59 (1961).

33. The material provision of Article I, § 7 reads as follows: ". . . The free communication of thoughts and opinions is one of the invaluable rights of men, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. . . ."

34. W. Goldman Theatres v. Dana, 405 Pa. 83, 92-93, 173 A.2d 59, 64 (1961).

exhibition in violation of the Board's order. Consequently in prosecutions, under the statute, the only issue before the jury was whether the defendant had shown the film after the Board's order. The Court held this procedure to be a denial of the right to a jury trial.

> Since one accused cannot constitutionally be punished for the utterance of alleged obscene matter except upon a *finding by an impartial jury* of the vicinage *that the matter was in fact obscene*, such result cannot be achieved by the artful device of granting to administrative officials the power to disapprove the utterance . . . and impose a criminal penalty for a violation of their prohibition. Constitutionally protected rights are not to be so adroitly subverted.[35] (Emphasis added.)

House Bill 1098 substitutes a Common Pleas judge for the censorship Board as the decision maker on the obscenity issue. While this puts the decision in court, it does not place it with an "impartial jury." The only participation of a jury will be in a prosecution under the contempt statute. And in that proceeding the defendant will be entitled to a jury trial on the question of whether he showed the film in violation of the court's order, but not on the issue of whether the film "was in fact obscene." Because the Bill fails to provide a jury trial on the obscenity issue, it will almost certainly be struck down by the Pennsylvania Supreme Court.

HOUSE BILL 1098 AS PUBLIC POLICY

In the opinion of its sponsors, House Bill 1098 will provide for the people of Pennsylvania "the degree of care that we should have in the dissemination of films."[36] As presently drafted, the Bill is designed to protect the entire population, both adults and children, from exposure to legally obscene films whose public exhibition is not deterred by threat of prosecution under the anti-obscenity statute. The Bill provides no means of preventing showings to children of films which are not legally obscene but which are considered unsuitable for children. In the view of this writer, the Bill dwells exclusively on an insignificant problem at the expense of the one motion picture problem in Pennsylvania that deserves legislative attention.

The Bill is based on the assumption that in spite of the anti-obscenity penal statute, a large enough number of legally obscene motion pictures is exhibited in Pennsylvania each year to justify the cost, controversy and interference with constitutionally protected films which the proposed system will produce. But how many legally obscene films have been publicly exhibited in Pennsylvania since the former censorship act was held unconstitutional in 1961? A review of the official reports of judicial deci-

35. *Id.* at 95, 173 A.2d at 65.

36. *Sen. Jour.*, *supra* note 9, at 475 (remarks of Senator Johanson).

sions and opinions since that date does not reveal a single case. The reader is asked to recall, since that date, a conviction for public exhibition of an obscene film in Pennsylvania. The conclusion is inescapable that the penal statute forbidding the exhibition of obscene films does an effective job of deterring their exhibition in public theaters. Had the proposed system been in effect since 1961, what legally obscene films would it have kept from Pennsylvania movie screens? In fact, the experience in Pennsylvania since 1961 makes it difficult to see what function it will serve except to deter the exhibition and leasing of constitutionally protected films. Also, the insignificance of the social problem at which the Bill is directed will probably further dispose the Pennsylvania and United States Supreme Courts to find the system an unreasonable prior restraint.

Equally unfortunate is the Bill's failure to deal with the one motion picture problem worthy of legislative attention—the protection of children from films which may have a detrimental effect on their emotional, moral and social development. While scientific knowledge about the effect of motion pictures on children is definitely lacking, there is a widespread belief that certain types of motion pictures, which are not "legally" obscene, may have harmful effects on children.[37] The unconstitutional Motion Picture Control Act recognized this problem by empowering the Board to forbid "exhibition to children" of films which it considered "unsuitable for children."[38] Any injunction system should provide the same remedy.

A statute limited to the protection of children from obscene and "unsuitable" films would not only serve a useful purpose but also would eliminate most of the constitutional problems created by the present Bill. As the Pennsylvania legislature pointed out in its preamble to the Comic Book Act, "the danger of restricting freedom of the press is avoided by merely regulating the access of children under the age of eighteen to obscene publications."[39] Also on this point, the United States Supreme Court has suggested that "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 material to children, rather than at totally prohibiting its dissemination."[40]

A system designed exclusively to protect children from "obscene" and "unsuitable" films would, in certain cases, also act as a deterrent to the exhibition of obscene films to adults. After a court has expressly found a film to be legally obscene, as well as unsuitable for children, and has barred its exhibition to children, it is hard to imagine a responsible exhibitor who would thereafter exhibit the film to any audience.

37. See, W. Goldman Theatres v. Dana, *supra* note 33, at 106-112, 173 A.2d at 79-85.
38. PA. STAT. ANN. tit. 4, § 70.5 (1963).
39. PA. STAT. ANN. tit. 18, § 3831 (1963).
40. Jacobellis v. Ohio, *supra* note 30, at 195.

A further question about the proposed system is this: why should the exclusive competence to initiate injunction proceedings be centralized in a Board of gubernatorial appointees? Whether legislation is intended to protect children or the entire community, this objective would be better served if the power to initiate injunction proceedings were given to governmental officials in local communities. Executive officers of political subdivisions are certainly more sensitive to community attitudes and sensibilities than the proposed Board would be. A decentralization of this power to commence legal proceedings would not only be more consistent with democratic practices, but it would, through the political process, empower local communities to protect themselves from films they consider objectionable.

Because most local officials have neither the time nor the means to preview films prior to exhibition, the legislature should give local communities the option of deciding whether or not local exhibitors must give advance notice and advance showings to local officials. There is every reason to expect that neighborhood exhibitors would be willing to provide, for local officials, voluntary private showings early enough to ensure an orderly final disposition of the injunction proceedings before the scheduled exhibition date. Both film exhibitors and local officials share a common interest in seeing to it that a voluntary system of this type works, especially if the local government has the power to require advance notice and showings.

CONCLUSION

Legislation already on the books provides the framework for a constitutional and workable system along the lines suggested above. A few simple amendments to Pennsylvania's Comic Book Act will produce a less radical and a far more effective system than the one recommended by House Bill 1098.

The Comic Book Act authorizes the District Attorney to institute equity proceedings to enjoin sales to children under eighteen, of any book or publication "which is obscene or which teaches or advocates the use of narcotics."[41] First, the subject matter of the statute should be expanded to include motion pictures; this would create a comprehensive statute covering both films and publications. Second, the grounds for injunctive relief should be broadened to cover films which are "unsuitable for children." This change would create a remedy tailored to the real problem—the protection of children. Third, the injunctive power should be restricted to sales and exhibitions to children under eighteen years. This will eliminate the dangers of an unconstitutional prior restraint. Fourth, by eliminating the centralized "Preview Board" and placing the power to initiate injunctive proceedings with executive officials of political subdivisions,

41. PA. STAT. ANN. tit. 18, § 3832.1 (1963).

local communities will be able to act when their officials perceive a danger to community standards and values; this change should be made whether or not the system is restricted to the protection of children. Finally, by amending the Comic Book Act to provide a jury trial on the questions of obscenity and unsuitability for children, the legislature will avoid a significant danger of unconstitutionality in the Pennsylvania Supreme Court. In short, a few simple amendments to the Comic Book Act can produce a constitutional system that squarely meets the motion picture problem in Pennsylvania, whereas House Bill 1098 meets neither the problem nor the requirements of the constitution.