

## FIRST AMENDMENT WATCH

NAT HENTOFF

### **'Deep Throat' comes to Harvard**

ONE OF THE MORE EDUCATIONALLY illuminating events of the 1979–80 Harvard academic year was not part of a credit course. It was the arrest of two male students—instigated by two feminist students. The charge, which could result in five-year jail terms, is: disseminating obscene material. More specifically, the showing by the Quincy House Film Society—headed by the two defendants—of the movie *Deep Throat*.

The arrests have triggered a fierce debate at Harvard, as have other feminist campaigns against pornography throughout the country ("The new legions of erotic decency," December 10, 1979). As we shall see in this cautionary tale, not all feminists, by any means, believe in kneeling the First Amendment to get at pornographers. But those who do, claim to be acting on a "realistic" approach to the First Amendment that is shared by what might be called other self-defense groups.

As former Supreme Court Justice Arthur Goldberg once said, in justifying arbitrary police arrests during a massive May Day antiwar demonstration in Washington, "While the Constitution protects against the invasion of individual rights, it is not a suicide pact."

Abraham Lincoln made a similar point when he suspended habeas corpus during the Civil War. So have more recent administrations, invoking the imperative priorities of national security against the printing of the Pentagon Papers, *The Progressive* magazine's article on the H-bomb, and Frank Snapp's

book on the CIA because he did not first show it to that agency. Linking all these censoring actions is the argument that the First Amendment is not absolute, and therefore there are times when it must be curbed in order to protect the existence of the very governmental system of which it is a part.

Other variants on this theme were heard in fervent abundance during the conflict over the ACLU's support of the right of Nazis to demonstrate in Skokie, Illinois. As a letter writer to the *Washington Post* distilled the "suicide pact" argument at that time: "Freedom of expression has no meaning when it defends those who would end this right for others."

Certain women against pornography have adapted this "clear and present danger" thesis to argue that it is suicidal for women to allow the continuation of pornography because "adult" books and films cause real—not fantasy—violence to women, from battery to rape, by men incited by these materials.

ACCORDING TO THIS REASONING, the First Amendment is not only not absolute but probably sexist. As Andrea Dworkin declared at a New York University Law School colloquium on the subject: "The concept of 'civil liberties' in this country has not ever, and does not now, embody principles and behaviors that respect the sexual rights of women."

To which Susan Brownmiller added, at the same colloquium: "We feminists now find ourselves in the curious situation of having the sexual intimidation of women actually buttressed by some free-speech advocates—the so-called absolutists."

If you defend the enemy's right to speak, then you must be the enemy.

On the other hand, there are feminists against pornography who see the ultimate enemy as censorship itself. Susan Sontag, for instance: "I'm appalled and disgusted by the content of pornography because it is an invitation to a lynching, for the most part. It would be very nice to get . . . this obscene propaganda against women off the streets, out of the movie theaters, out of the bookstores, and so on. But it's simply a precedent for

other kinds of censorship—and pornography will only go underground."

So far, much of this battle over the "absolute" nature of the First Amendment, when it comes to pornography as an invitation to a lynching, has been in the abstract. What makes the coming of *Deep Throat* to Harvard so intriguing a chronicle is that, for once, feminists on both sides had to deal with the concrete: the placing in criminal jeopardy of two young men who, by showing a pornographic film, qualified, in one feminist's terms, as "fellow travelers of the pornographers."

Quincy House is a Harvard residence hall in which both male and female students live. The house has a film society

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that had been running a deficit, so the society's copresidents, Harvard juniors Carl Stork and Nathan Hagen, decided to show the "classic" porno film, *Deep Throat*, as a way of balancing the books.

Somewhat more than half the women in residence at Quincy House protested on the grounds that the showing of so degradingly sexist a movie invaded their private space. This was not a public theater, after all. It was where they lived. However, three-quarters of the students living in Quincy House approved of the plan to screen the film. The showing was, after all, to be in a public part of the residence hall. No one was forced to come see it. After much backing and filling by university officials, Charles Dunn, the master of Quincy House, decided it would be up to the students. And so *Deep Throat* was scheduled for May 16.

At this point, two anonymous female residents of Quincy House complained to Middlesex County District Attorney John Droney. An elderly survivor of the endless hardball games of Massachusetts politics, Droney was quick to act on the complaint. The majority of his constituents are not in the academic community and tend to deplore "permissiveness" in all things, especially *this* thing.

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**D**RONEY WENT TO MASSACHUSETTS Superior Court, where Justice Charles Alberti disappointed him. Alberti noted that he was not basing his decision on any "prior restraint" theory or on any William O. Douglas sort of notion that all expression is protected by the First Amendment. The film simply did not qualify as obscene under the laws of Massachusetts—even though it was "degrading to both men and women" and, worse yet, "very dull."

Droney was undaunted. Under certain circumstances, as any experienced district attorney knows, there is more than one way to get authority to make an arrest. He persuaded a district court clerk to issue an order against *Deep Throat*. And then, in view of the philosophical importance of the impending arrests, Droney, according to the *Boston Globe*, pulled state police detectives off murder investigations to move in on the devil's workers in Quincy House.

While the state was mustering its fearsome resources, an ad hoc committee of feminist protesters against *Deep Throat* had organized an informational picket line, urging students to boycott the movie, as well as a slide show portraying in appalling detail just how pornography does indeed debase women. Furthermore, at Quincy House, before the showing of the film on May 16, a leader of the protest—student Kristen Manos—debated First Amendment paladin Alan Dershowitz, a Harvard law professor and a volunteer attorney, through the ACLU, for the two heads of the film society about to be arrested.

It was a spirited debate. Dershowitz said afterwards that Manos had made a number of instructive points about why some women so fundamentally object to pornography. He himself stressed, during the exchanges, that it was dangerous to call in the state to suppress *any* expression because the state traditionally exercises its censorship powers indiscriminately. "In the same way the state closes down this movie," he said, "it can claim the power to prohibit distribution of information about birth control and abortion."

Feminist Manos agreed. Her group was wholly against censoring *Deep Throat*. They were present to expose the harm the film both contained and represented. They were present to persuade, not to suppress.

At show time, about 150 students went to see *Deep Throat* in the Quincy House dining hall, while 75 watched the anti-pornography slide show elsewhere

in the house. Among the viewers upstairs were two law-enforcement officers who, when the film was over, collared Carl Stork and Nathan Hagen. Among those protesting the arrests were the organizers of the feminist picket line and slide show.

**A**S FOR THE FEMINISTS WHO had fingered the two students, nobody knew their names. Stork and Hagen may never be able to face their accusers since the district attorney's office has ruled that they are "confidential informants," and so their identities are privileged. Should this faceless approach to nailing pornographers (and their "fellow travelers") become epidemic, the nation might revert to the climate of the McCarthy years when all sorts of helpful patriots quietly targeted all sorts of "subversives." Except now the quarry would be dirty sexists. I doubt, however, that anything like this will come to pass because one of the strengths of feminism has been that its advocates are boldly up front and don't slither around corners.

With regard to the defendants, after a certain amount of legal maneuvering—Dershowitz is an expert tactician as well as a formidable constitutional lawyer—they will probably not serve any time. But each will have an arrest record. Furthermore, had it not been for ACLU inter-

teer lawyers who also are sometimes few in number. Moreover, at any affiliate, other cases may have priority at any particular time, so pornography defendants may often have to look for a private attorney; not many private lawyers are that well versed in First Amendment law. It also helped Stork and Hagen, of course, that they are Harvard students and that around the corner, so to speak, was a law professor whose specialties include exactly this kind of litigation. Faceless feminists elsewhere may yet put some polluted souls in jail.

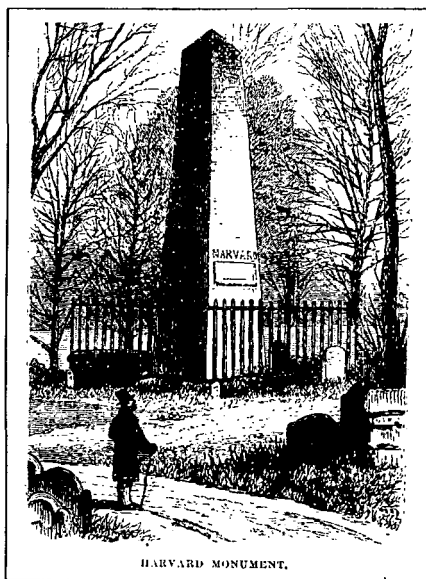
Another aspect of the case has to do with the role of Harvard University. Archie C. Epps III, dean of students, has told the *Harvard Crimson* that "Harvard will not help in the students' defense." This infuriates Dershowitz: "It seems to me that the university has a moral obligation to defend any students exercising their First Amendment rights. Yet, although Stork and Hagen were faced with possible jail terms, Harvard would not even file a friend-of-the-court brief."

Apparently, Harvard University does not take an "absolutist" view of the First Amendment, at least not where certain "adult" films are concerned.

**W**HAT OF THE INDIGENOUS press at Harvard? That is, the justly respected *Crimson*. Its editorial board had a hell of a time dealing with the issue, and after three hours of debate, couldn't come up with an editorial expressing a majority decision. Instead, there were three separate editorials signed by factions of the eighteen-member board.

Three women and two men declared that *Deep Throat* should not have been shown on moral grounds. Hagen and Stork had "displayed—in a manner far more obscene than anything on the celluloid—their contempt and indifference to those who would be hurt by the screening." However, once those clods did decide to go ahead and show the movie, they and it were protected by the First Amendment. But they shouldn't have let this become a legal issue. They should have been sensitive and moral enough to back off.

Eight men (and no women) took a straight-ahead First Amendment position. It did not matter, they said, how many or how few residents of Quincy House wanted the film to be shown. "The First Amendment is absolutely drawn and guarantees the rights of even the smallest minorities. If one student wants to show *Deep Throat*, he should have that freedom without the fear of



vention, both would be in grave debt. Dershowitz estimates that the total defense costs in the case—to be borne by the ACLU—will come to between \$25,000 and \$30,000.

Not every future defendant in this kind of case will be so fortunate as to get free legal help. Many ACLU affiliates have limited staffs and depend on volun-

legal prosecution. And if challenged, he or she should go ahead and show the film—to uphold the First Amendment for others.”

Finally, four women and one man refused to “excuse” the showing of *Deep Throat* “as a test of First Amendment rights.” Having decided to “support the pornographic industry and the violence against women which is its main expression,” these two defendants “relinquish their claims to our sympathy on grounds of unfair censorship.”

Then, and this is worth pondering, the third cadre also proclaimed that “while the students had the right to test their constitutional safeguard of free expression, *they were wrong to use it.*” (Emphasis added.)

I had thought this kind of choice was up to the individual citizen, and that those committed to free speech would help protect that choice, however much they were repelled by it. Or, as Oliver Wendell Holmes used to say: “If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free only for those who agree with us, but freedom for the thought we hate.”

It is somewhat dismaying to find that only a minority of the *Harvard Crimson’s* editorial board understands this rather basic principle of how we govern ourselves. I would suggest that next term, the *Crimson* and, for that matter, the Harvard community as a whole, might invite Wendy Kaminer for a series of guest lectures on these matters. She is a feminist, a lawyer, and author of the forthcoming book, *Take Back the Night* (Morrow), in which she says, among many other illuminating things:

“Legislative or judicial control of pornography is simply not possible without breaking down the legal principles and procedures that are essential to our own right to speak and, ultimately, to control our own lives. We must continue to organize against pornography and the degradation and abuse of women, but we cannot ask the government to take up the struggle for us. The power it would assume in order to do so would be far more dangerous to us all than the ‘power’ of pornography.”

Of all the memories of the *Deep Throat* bust at Harvard, it is Alan Dershowitz’s hope that the most lasting and troubling will be the actual sight of the raw power of the state coming into Quincy House, choking off expression, and arresting people for what they say (or help others say)—not for what they do. □

## THE THERAPEUTIC STATE

DICK ANTHONY &  
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### A demonology of cults

THE MASSACRE AT JONESTOWN precipitated an intense media assault on new religious and therapeutic movements characterized by the application of the pejorative label “cult” and the claim that cults tend to perpetrate atrocities. In a *New York Times* op-ed essay in November 1979, a year after the incident, Jim Siegelman and Flo Conway, authors of *Snapping: America’s Epidemic of Sudden Personality Change*, deplored the failure of authorities to absorb the lessons of Jonestown and crack down on “America’s other cults.” And in a similar vein, Jonathan Hirsch argued in the pages of *New West* that the First Amendment barrier to religious deprogramming could at one time “be explained in the glib vocabulary of human rights.” But after Jonestown, “it is a law that ignores certain grotesque truths that have become self-evident.”

Such charges tend to be self-fulfilling prophecies since any ideological entity whose members commit violent acts is likely to be subsequently labeled a cult. The Peoples Temple and Synanon were not commonly referred to as cults before late 1978, nor did they often receive the attention of deprogrammers and crusaders against “mind control.” By 1979 both groups had been classed as cults, along with such notable organizations as the Unification Church, Hare Krishna, and the Children of God. Thus even the older groups have been implicitly held responsible for the sins of Jim Jones and Synanon’s Chuck Dederich. If tomorrow a vegetarian commune killed a

man—perhaps crushing his head with a giant cabbage—the commune would be immediately labeled a cult and would provide another reason for cracking down on Moonies.

Because the term *cult* has no clear meaning, it promises more than it can deliver. People assume that the term is precise and that all groups to which it is applied share basic traits. This mystification would be dispelled if a more traditional term like *sect* were employed. Most people are aware that there are many different kinds of sects.

The history of sectarianism illuminates other pertinent considerations. Today’s deviant sects are tomorrow’s conventional denominations: Quakers, Methodists, Mormons, and First Century Christians were originally controversial, stigmatized sects denounced for their intolerance and lack of respect for community values. Our civil libertarian tradition owes much to the struggles of these relatively authoritarian groups for their “freedom of conscience” against the power of a state proposing to intervene on behalf of community standards. Religious liberty and freedom of conscience, which are sometimes thought to apply only to tolerant, nondogmatic groups, were in fact initially developed through the claims of groups such as the Puritans and the Jehovah’s Witnesses. Controversial sects have contributed substantially to the building of America. In the light of Jonestown it may seem ominous for a rigorously disciplined group to obey the Biblical injunction to “go ye out and be ye separate” and seek a haven in the wilderness; yet was this not precisely the enterprise of the original settlers landing at Plymouth Rock?

As events in Iran indicate, politico-religious fanaticism is a surging force in modern life. Yet because we haven’t seen as much of this in twentieth-century America—or because we may not always recognize fanaticism when we see it, e.g., people wanting to “Nuke Iran”—we tend to assume that anyone who subordinates himself to a fervent, authoritarian, and intolerant sect must have “snapped” or have been “brainwashed.” But these metaphors and the speculative psychology that often accompanies them really add little to our

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