

TO C. ITT AWL OR NOT TO C. ITT AWL?

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Seminar: Mass Media and the Law

[Assignment: A city councilman has proposed an ordinance which would prohibit the showing of obscene movies on the local cable television system. Identify arguments in favor of passage of the ordinance. Identify arguments which would support the position of the cable system operator. Finally, take a position yourself.]

(1) Mayor: "This is a special meeting of the City Council of Paradiseville to which we have invited the Honorable Fair N. Wright, judge of the Paradiseville court, to hear and evaluate provisions of proposed Ordinance 746.39, which would prohibit the showing of obscene programming on cable television."

(2) Fair N. Wright: "Thank you. I ask Councilman E. Gerr Beever to introduce this ordinance."

(3) Beever: "Thank you, ma'am. I think it's fair to say that I am a respected city councilman here in Paradiseville, and I have been joined by 200 other citizens in signing a petition which proposes an ordinance to prohibit the showing of obscene movies on the local cable television system which is owned by Mr. C. Itt Awl. With my lawyer, Mr. Houdin Bloodthirsty, I plan to defend our position by relying on the First Amendment and morality."

(4) "Mr. Awl and his lawyer, Mr. Gimmy Abreaka, also rely on the First Amendment and morality to defend his right to show sexually oriented films on his proposed new premium channel, 'PlayAround'."

(5) Wright: "Thank you. Mr. Bloodthirsty, would you please present your arguments."

(6) Bloodthirsty: "Yes, ma'am. My client, Mr. Beever, feels that his First Amendment rights have been infringed. The First Amendment was not written to protect obscenity. However, it was written to protect the receivers of communication as well as the communicators. As Justice Holmes said, 'My right to swing my arm ends where your nose begins.' We think that showing obscene movies would extend Mr. Awl's rights to the point of crowding the public's rights."

(7) "Maybe at this time it would be beneficial to offer a working definition of obscenity. The Supreme Court of the United States has laid down three guidelines for expressions considered unprotected by the First Amendment: 1) If an average person, applying contemporary community standards, would find that the work, as a whole, appeals to prurient interest in sex; 2) If the

work depicts or describes in a patently offensive way, sexual conduct defined by applicable state law; and 3) If the work, taken as a whole, has no serious literary, artistic, political or social value, then it is obscene and not protected speech under the First Amendment.

(8) "Mr. Beever and 200 other concerned citizens feel that the showing of obscene movies via a cable system would epitomize this three-pronged guideline.

(9) "Granted, these movies may not be particularly offensive to adults like you and me, but what about our children? I want to protect my children from chancing upon an obscene movie and learning about sex before their time. To put high morals into our children, we must keep obscenity out of our houses."

(10) Wright: "Thank you, Mr. Bloodthirsty. Mr. Gimmy Abreaka, would you please present your arguments."

(11) Abreaka: "Yes, ma'am. My client, Mr. C. Itt Awl, also feels that his First Amendment right to freedom of expression has been infringed. The First Amendment states that ' . . . government shall make no law . . . abridging the freedom of speech . . . ' and that includes every man's right to create speech through the creating and showing of films. Also, a man has the right to view whatever he wishes in his own home. In the case of Stanley v. Georgia, the Supreme Court states, 'If the First Amendment means anything, it means that the State has no business telling a man, sitting alone in his home, what books he may read or what films he may watch.' If we invoke an ordinance to regulate what we view on television, then we are regressing, not progressing, our political system.

(12) "Another point I would like to emphasize is the fact that all three prongs of the guidelines for obscenity can be disproved. First, what is an average citizen? There is no 'Mr. Joe Average.' Everyone has different tastes and beliefs upon which to base decisions. Second, the movies we are discussing are not patently offensive to all people. If they were, Mr. Beever would have more than 200 signatures from a town with a population of 23,000. The sexually-oriented movie business is a growing enterprise due to public demand, not restraints. Finally, many of the movies do have social or artistic value. Viewers watch them to be entertained, and entertainment is a social value held in high regard in today's society.

(13) "Does democracy allow a mayor and council to decide what is valuable and valueless for a city of 23,000? If we tried to define and outlaw obscenity, we would be deciding and settling some of the citizens' morals and standards of good taste. As Harriet Pilpel said, 'I 'm all in favor of good taste, but I don't think it should be enshrined as a matter of constitutional law. . . . '

(14) "In conclusion, I would like to say that we cannot outlaw sex in our community, state or nation. After all, it is an institution from which life and generations evolve."

(15) Wright: "Thank you, counselors. I find that, in considering your arguments and weighing the concepts, I cannot encourage an ordinance which would outlaw what some call obscenity. It is not the right of government, including this city council, nor of me, to push what we feel is bad taste out of the private homes of other citizens."

(16) "Mr. Bloodthirsty, I would like to draw from your closing remarks, if I may. You stated your belief that to put proper morals into our children, we must keep obscenity out of our homes. Well, sir, I must agree with you that I would not want my children, or any children of Paradiseville, to view the movies which would be offered on the proposed PlayAround channel. However, it is not my place as a government official to regulate what is viewed, but it is my place as a parent to regulate what is watched in my own house. You see, as cable subscribers, we have the opportunity not to receive the movie in our homes. A subscriber may simply not order the premium channel, or obtain a lock box to exclude the channel when desired or simply change the channel when appropriate. In these ways, we as parents, can either keep obscenity out of the house, or keep our children from watching it."

(17) "We must keep in mind that cable television was called community television in its beginnings, and it must meet the needs of the individuals of the community. Therefore, a cable operator should show a variety of programs to satisfy the varied preferences within the viewing area. For those in the community who look for entertainment in sexually oriented movies, the cable operator should offer a premium channel which features such programming. With a premium channel, a viewer must choose to turn to the channel and pay an extra charge for the movie."

(18) "Outlawing what we think is obscenity will not protect our children or ourselves from the types of actions and ideas offered on such channels as PlayAround. Those actions and ideas, just by the nature of human beings, have existed since man began, and will continue to do so with or without individual or community acceptance. The First Amendment protects both Mr. Awl's right to present the programming he chooses and our right to C. Itt or not C. Itt. Thank you."