

WHAT IS THE BEARD CASE?

Resumé of a case history from B.C.C.L.A.

The Beard is a play by American poet and playwright Michael McClure. It has two characters, the ghosts of Jean Harlow and Billy the Kid, historical figures who have become myths, one as the goddess of sex, the other as the outlaw symbol of violence. In an effort to communicate to each other, they resort to four-letter expletives, and the play ends in a symbolic act of simulated intercourse. Hence the "shock" quality and controversy attendant on its production.

The literary and theatrical stature of the play, and the essential role that the language plays in the drama, have both been acknowledged by critics and members of the theatre-going public.

The Beard was first produced in San Francisco in 1965. Following the fifth performance the actors were charged with "obscenity", then "conspiracy to commit a felony", and finally with "lewd and dissolute conduct in a public place".

"Twelve days later, *The Beard*, represented by the American Civil Liberties Union, was presented in Berkeley to a capacity crowd which included more than one hundred expert witnesses. The witnesses included Lawrence Ferlinghetti, Alan Watts, members of the academic community and of the clergy, as well as technical personnel who recorded the police filming and taping.

After five months of litigations, the ACLU persuaded the San Francisco Superior Court that the charges were inappropriate, and the case was dropped from court. An important legal precedent having been set, the Berkeley court withdrew its charges.

Production in the U.S. continued, and subsequently *The Beard* was presented at the Royal Court Theatre in London with Sir John Gielgud, Vanessa Redgrave and Kenneth Tynan in attendance at the opening. The London production was widely praised by critics.

In the summer of 1969 the Gallimaufry Players presented *The Beard* at the Arts Club in Vancouver 13 times without incident with Angela Slater as Jean Harlow and Wayne Robson as Billy the Kid. A different production, directed by John Juliani, was presented at Vancouver Art Gallery also without incident.

There were other reasons to believe that Theatre Censorship was a thing of the past in Vancouver. Earlier in the year, plans by Vancouver Playhouse to sponsor a road company's presentation of *Hair* were cancelled in the face of threats by Chief Licence Inspector Milt Harrel to revoke the theatre's license. The Gallimaufry Company was forced to withdraw *Camera obscura* for the same reason. The company accepted BCCLA's offer of legal counsel and after a demonstration performance the Vancouver City Council removed the license inspector's censorship powers.

Against this background the Gallimaufry in November revived its production of *The Beard* at the Riverqueen Coffee House. The proprietors of the Coffee House Mr. and Mrs. Small, Miss Slater and Mr. Robson and a fifth

person were subsequently arrested and charged with unlawfully presenting an obscene performance.

The police court trial in the spring of '71 ended in convictions and fines. The appeal to the county court the following November ended in a lifting of the fines and of the conviction of the fifth person, but not of the four principals accused.

The BCCLA is now in the process of appealing the convictions before the B.C. Court of Appeal, both to defend the principle of free expression in the arts, and to erase the criminal records involved.

At the county court hearing all the witnesses, except for the police detective recounting the facts of the production, were called by Josiah Wood, counsel for the appellants. Their testimony constituted the only commentary as to whether the presentation of the play was an "obscene performance".

The two actors involved contended that the four-letter words were essential to the play's goal of ritualistically portraying the dominant violence and sexuality of North American culture, and the resulting inability of people to communicate honestly.

Miss Slater told Mr. Justice Graham Ladner that *The Beard's* version of Jean Harlow was a frustrated inexpressive character who used four-letter words as weapons against others.

Actor Wayne Robson testified that Billy the Kid used four-letter words and sought a sexual encounter with Harlow in order to break through her psychological defences and to prove that all people—even Hollywood stars—are capable of human communication.

Robson said elimination of the four-letter words would have destroyed the impact and credibility of the two characters.

"*Vancouver Sun*" drama critic Christopher Dafoe concurred, testifying that the words were effectively used as "blunt instruments—explosive words shorn of their meaning." Dafoe said the kind of individual attracted to such a play would be someone interested in new and experimental kinds of theatre and not someone expecting to be amused by an evening of light entertainment.

On the simulated sexual act which ended the play, Dafoe said the sexual encounter under strobe lights was absolutely essential to the text—it was not handled in a sensationalist way. Dafoe contended that the use of the sexual medium in anything pertaining to life is legitimate in the theatre; that the conclusion of the performance was highly balletic and not a realistic performance.

John Juliani contended that there was no way any aspect of *The Beard* could be removed without damaging the play, and that because of the strobe lights the ending looked like a dance.

Drama critic and broadcaster Jurgen Hesse testified that unbearable tensions were released in this, and that it was a logical way of terminating the tension. He

described *The Beard* as a morality play.

In his judgment, Mr. Justice Ladner stated:

"I accept the defence evidence that copies of the play can be bought freely in the stores in the City of Vancouver. I accept the evidence that there are plays performed and moving pictures shown in the City of Vancouver portraying various sexual acts realistically. I accept the evidence of the appellant Slater that the act of cunnilingus was simulated.

"I find that the ending of the play was performed in such a manner that the audience would not know that the female player wore a G-string and that the act of cunnilingus was simulated."

After citing several cases of precedent dealing with changing community standards, with a judge's personal responsibility to apply such contemporary standards without projecting his own notions of what is tolerable, with the inadmissibility of allowing "artistic merit" in a work of art to put it beyond the law governing obscenity, and with other matters, he proceeded:

"The witnesses were of a certain segment of the community and while due consideration must and has been given to their evidence, their opinions cannot be accepted as representative of community standards. I have also noted in the evidence of these witnesses that, except as to Barber, none of them had previously witnessed the act of cunnilingus portrayed nor indeed did they testify as to having seen any other sexual act of an unusual type portrayed at any performance.

"I find that the standards of decency and measure of tolerance in the Canadian community at this time could not but be offended by the realistic simulation of such an act on a stage as directed.... and I find that the dominant characteristic of the performance in question was an undue exploitation of sex."

The complete judgment can be found in *Western Weekly Reports*, Vol. 2, 1972, pp.730-744.

Because of the proceedings being launched before the B.C. Court of Appeal, the case is *sub judice*, so we cannot comment on the merits of the judgment. But there are some disturbing questions that can nevertheless be asked now.

First if there were objective grounds for laying charges, why weren't the charges laid following the first two or three performances at the Arts Club or against the Juliani production at the Art Gallery?

Is there one law for the Arts Club, and another for the Riverqueen Coffe House, considered by the police to be a hang-out of disrepute? Was the city prosecutor trying to fill the censorship gap left by the removal of the licence inspector from the scene? Whatever the answer, the result among other things, was that two professional actors ended up needlessly with criminal records.

There is the much larger question of whether the obscenity laws in the Criminal Code as interpreted by the courts, are really in the public interest, in the light of what has happened with the Gallimaufry production of *The Beard* and other cases.

THE CANADIAN FEDERATION OF CIVIL LIBERTIES AND HUMAN RIGHTS ASSOCIATIONS

P.O. Box 4376, Stat. E. Ottawa, Ontario K1S 5B4

President: Gary Carlson, Sask. Assoc. on Human Rights.
P.O. Box 570—Saskatoon, Sask.

Vice-President: Louis Godin, Comité des droits de l'homme
du Nord-Est du Nouveau-Brunswick,
C.P. 540, Bathurst, N.B.

Secretary/Treasurer: Don Whiteside, Civ. Liberties Assoc.
National Capital Region, 4 Newgale Street, Ottawa, K2H 5R2,
613-829-4180

NATIONAL NEWSLETTER

Editor: Birte Herneth Howie, 238 Dale Ave., Ottawa, K1G 0H5, 613-733-5272

Editorial Board: Sidney Shadbolt, Constance Woloschuk and Ed. De Long

Translation: Jeanne Oulette