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Administrative Law—Other Aspects of the *Miracle* Case

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lengthy concurring opinion of Justices Frankfurter, Jackson and Burton, in the U. S. Supreme Court decision of the *Miracle* case,[16] is devoted entirely to showing the inherent vagueness of the word "sacrilegious". Besides tracing historically the various meanings ascribed to the word and the resulting confusion, the appendix to the opinion contains quotations from over thirty dictionaries, which show that dictionary definitions of the word differ and that no clear meaning may be derived therefrom.

Other Aspects of the Miracle *Case*

Because of the importance of, and intense interest in, the case now under consideration, further issues in the case will be discussed at this point. Petitioner advanced the contention that EDUCATION LAW §122 is unconstitutional as a violation of the First and Fourteenth Amendments of the Federal Constitution, in that the licensing scheme interferes with religious liberty. In refutation, the Court of Appeals relied on the proposition that freedom of religion is not an absolute right. It pointed out that a statute which has a legitimate objective within the police power of the state is not unconstitutional though it constitutes some restraint on the free exercise of religion.[17] The statute promotes the public welfare, morals, peace and order. "These are the traditionally recognized objects of the exercise of police power," said the court.[18] Further, a state may protect religious beliefs from private or commercial attacks and prevent offenses to decency and morals even though there be incidental benefit to religion, or a religion, if this be the case here.[19]

The other major issue in the case arose through the objection that the statute is unconstitutional *in toto* as a prior restraint on the freedoms of speech and press; that films should be included within the protection of the First and Fourteenth Amendments as a means of expression of ideas. The Court of Appeals relied squarely upon the *Mutual Film* case, and refused to accept the contention that technical developments have changed the essential nature of movies since the time of the *Mutual Film* decision. The rationale of this position is that movies are primarily a form of commercial entertainment, rather than a means of expression, and as such can be regulated.

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16. 343 U. S. 495 (1952).

17. *Cantwell v. Connecticut*, 310 U. S. 296 (1940).

18. 303 N. Y. 242, 259, 101 N. E. 2d 665, 672.

19. *Everson v. Board of Education of Ewing Township*, 330 U. S. 1 (1947).

It was upon this last issue that the Supreme Court of the United States reversed the decision of the *Miracle* case;[20] in fact, it was the only issue considered by the majority. The Supreme Court explicitly overruled the *Mutual Film* case, saying:

> It cannot be doubted that motion pictures are a significant medium for the communication of ideas . . . The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform.[21]

The Supreme Court went on to state that the fact that exhibition of films is carried on for profit does not alter their status, pointing out that newspapers and magazines are likewise operated for a profit.

Thus, the New York State statute requiring a license to be acquired before a film may be publicly exhibited constitutes a prior restraint on the freedoms of speech and press, and, as such, is unconstitutional.[22] The Supreme Court went on to point out that it was dealing specifically with the statutory authority to deny a license on the determination that a film is "sacrilegious" and held that a state has no interest in the protection of any or all religions from adverse views sufficient to justify prior restraint upon the expression of those views. Whether or not a carefully drawn statute prohibiting the exhibition of "obscene" films is unconstitutional was expressly excluded from the holding of this case.

The ultimate fact of the over-all New York State system of licensing films before exhibition remains undecided. That the Motion Picture Division may no longer deny a license to a film because it is deemed "sacrilegious" is certain. Whether the other grounds for denial of a license, namely, that the film is "obscene", "indecent", "immoral", "inhuman" or "of such a character that its exhibition would tend to corrupt morals or incite crime", will withstand constitutional objection remains to be seen.[23]

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20. *Supra* n. 16.

21. 72 S. Ct. 777, 780.

22. *Near v. Minnesota*, 283 U. S. 697 (1931).

23. On June 13, 1952, the Appellate Division affirmed (3-2) a denial of a license for the film "La Ronde" on the grounds that it was "immoral" and "would tend to corrupt morals." *Commercial Pictures Corp. v. Regents*, ___ App. Div. ___, 114 N. Y. S. 2d 561 (3rd Dep't 1952).