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Kanowitz, Poem is a Four-letter Wor

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Poem Is A Four-letter Word

By
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The apparent cleverness of the title of Professor Kanowitz's book, *Poem is a Four-Letter Word,* tends to detract from its significance. Uncleverly—but with calculation—the title suggests that the filth of a four-letter word inheres not in the word but in the reader. While that conclusion has often been reached by thoughtful students of literature, as well as by many of the little gentlemen who explicate poetry, it has not been expressly recognized by the courts. The public, of course, is beyond reproach.

Poem is a book about a controversy which raged in the State of New Mexico during the Spring months of 1969—through "controversy" is perhaps inaccurate: It was a religious war of sorts and as such tacitly continues. It happened that a Freshman English instructor used a presumably dirty poem (Lenore Kandel's "Love Lust," which, *inter alia,* praises the timely combination of cunnilingus and felatio) in his class, in an effort, presumably, to explore the question of "whether an intimate expression of desire would be wrong in the sense that communicating it (would) cause evil in the community." As a visiting lecturer in the same class, another graduate assistant discussed homosexuality and hypocrisy, reading from a suspicious article with a rather remarkable title. A Vietnam veteran (it turned out he wasn't a Nam veteran, but it is interesting to note that the news media made him one in an unbiased effort to illuminate his self-righteousness) was apparently upset by the poem and the visiting lecturer's discussion, as too was the father of a young and blossoming student. The veteran, a timely hero, and the father, a self-declared champion of perpetual innocence, made prompt reports to the news media and the President of the University.

On the same day that the "Love Lust" scandal hit the news, the New Mexico House of Representatives adopted a memorial directing the Regents of the University of New Mexico to fire the instructor who introduced the poem. The sponsors of the memorial tried to include a provision calling for a special legislative session to reduce the University appropriations to $1.00 if the Regents didn't do as ordered, but in a brief moment of sobriety the House failed to approve the provision. The President, though, immediately suspended both instructors, and the religious war was under way.

The local newspaper monopoly added fuel to the fire, as did other objective reporters in the media. There were hundreds of letters-to-the-editor, a few marches and speeches, strikes and threatened strikes, television editorials, *ad hoc* meetings of concerned citizens, crusades, sit-ins, and sundry other expressions of local interest. The State's political opportunists eagerly jumped on the bandwagon in order to persuade the public of their own moral integrity; needless to say, there was considerable debate. Shortly, the state legislature re-appropriated $50,000 of higher education money and began investigating the University. And Kanowitz, who earlier had been appointed academic counsel to the suspended instructors, suddenly found himself in the middle of the Inquisition.

Kanowitz's account of the whole affair is essentially documentary, but the style is engaging and allows the reader to get involved in the course of events. More importantly, though, the book provides a readable and dramatized version of a variety of socio-legal problems and the political underpinnings of the legal process in general.

As the fire began to spread, people ran in different directions. The instructor who had introduced the poem was black and by a short stretch of the President's white imagination was accused of "verbal sexual assault." The other instructor was a Jew whose wit and sarcasm were not necessarily endearing. The issues were couched in terms of First Amendment rights, procedural due process, the moral propriety of four-letter words, academic freedom and the unfettered pursuit of Truth, University autonomy, political reactionism, and, of course, racism.

The reaction in New Mexico to the "Love Lust" poem was unthinking and sophomoric, though decidedly enthusiastic. It might be suggested that even those trained in the rigors of legal thinking were as quixotic as those who, by legal definition, were still reasonable men (and women). Virtually no one had both feet on the ground. A letter from five of Professor Kanowitz's Law School colleagues provides a typical example.

The President of the University had summarily suspended the two instructors on the basis of section 7 of the University's Policy on Academic Freedom and Tenure, which states that "suspension of a faculty member . . . shall be justified only if harm to himself or others is threatened by his continuance. . . ." Just after the nasty events had occurred, a committee had been set up to advise the President. The President testified at one of the committee's hearings and introduced the letter from the Law School. At this point in the hearing, the committee was trying to elicit what threatened harm had allegedly justified the suspensions. The day before, the committee

had had an audience with all but four of the students involved. At that meeting the students not only applauded the performance of their ex-instructors, but expressed a sense of gratitude few teachers could imagine.

Now, however, with the question of threatened harm before the committee, the President was on the stand. The committee members had pursued a line of questioning which suggested that the President's decision might not have been based on section 7 at all, but rather on outside pressures emanating from such scattered sources as the Senate Finance Committee and the publicly expressed opinion of an Albuquerque dentist. In an effort to keep his foot out of his mouth, the President introduced the letter.

Disassociating themselves from Kanowitz's position on the controversy, the five Law Faculty signers of the letter mentioned "standards of propriety which govern all civilized society," and went on to try, convict, and condemn the suspended instructors. Regarding the question at hand, the letter said, "We believe that you are justified in interpreting [section 7] to include more than physical harm;" in other words, unsubstantiated intimidation would do the trick.

Kanowitz's Law School colleagues weren't content with that, though. Referring to the State's salubrious sodomy statute (N.M. Stats. sec 40A-9-6) and the poem—which "appears to relish (these) acts"—the letter stated that "certainly the state university and its faculty should not place itself or themselves in a position which might suggest approbation of such acts to any class of students, particularly a freshman class of teenagers." Attempting to focus the issue, the letter concluded:

> . . . we suggest that perhaps the basic question is one of the proper content of, and materials for, a University course, and of the extent to which the regular faculty of each department should be responsible for determining content and materials for supervising teaching assistants.*

Kanowitz was quick to point out that the use of a particular item in class hardly "suggest(s) approbation" of its contents, though he didn't point out that his colleagues knew little about the poem *qua* poem. And if they really had any faith in "standards of propriety which govern all civilized society" and in New Mexico's grand old

*In attempting to come to grips with the *one* issue, the authors came up with two: 1) the proper content of a course, and 2) the determination of materials for supervising teaching assistants. Instead of "for" they meant "while."

sodomy statute, they had evidently not read, forgotten, or repressed much of the world's classic literature, which, one might hope, they had had occasion to read. Departing from the pretended ignorance of Socrates which is traditionally espoused in our law schools, Kanowitz's colleagues had themselves summarily determined that "Love Lust" wasn't the classroom's cup of tea.

In the middle of all this, New Mexico's Governor, an attorney, had said to hell with the instructors: "they'll get their due process later." While many New Mexicans looked at the University, Kanowitz chose instead to deal with the controversy's legal entanglements. Accordingly, Chapter 6 is entitled "Obscenity and the Law," and while it, too, attempts to focus the issues, it does so with refreshing success. At the outset, though, it should be noted that the style of this chapter is not unlike that of the other twenty narrative chapters. It was written for regular folks and has no pretensions of being an appellate brief, though it deals with some technical aspects of constitutional law.

After reviewing some of the Supreme Court's earlier attempts to define obscenity, Kanowitz states that "(his) own view is that attempts to compromise the absolute command of the First Amendment as applied to so-called obscenity renders the Amendment meaningless in that area." Maintaining that view, Kanowitz keeps company with Justices Black and Douglas. But despite the viability of that conclusion today, it might be suggested that, historically, the First Amendment had nothing to do with obscenity, but rather was designed to protect the expression of limited political dissatisfaction. A similar statement could be made with regard to racial discrimination, though. No historian in his right mind would contend that the Constitution was not an overtly bigoted document, yet today it has somehow become the font of equality and justice. Wisely, Kanowitz makes no historical argument.*

He does point out that the absolute command of the First Amendment is not really absolute, *e.g.*, one doesn't properly yell "Fire!" in a crowded theatre. While it might be suggested that yelling "Fire!" in a crowded theatre also has nothing to do with the First Amendment, Kanowitz notes "that if serious harm can be discerned as emanating from the fact of speech itself, it may be curbed by the state or federal governments." The problem, of course, is whether any serious

*The confusion wrought by the Supreme Court in predicating many of its decisions on the historical significance of the Amendments is often amusing. For instance, the Court has recounted the historical origin of the Fourth Amendment in roughly 200 cases, never once admitting that it was prompted by colonial merchants busily engaged in smuggling rum.

harm can be discerned as emanating from the use of four-letter words [in particular contexts.]

Drawing from the Court's 1969 decision in *Stanley v. Georgia,* Kanowitz points out that the private possession of matter admittedly obscene is not a crime, nor can its possession be made a crime within the confines of the Constitution. Mr. Justice Marshall, speaking for the majority, had said that the defendant "was asserting the right to read or observe what he pleases–the right to satisfy his intellectual and emotional needs in the privacy of his own home." After momentarily treading on the edge of history, Marshall concluded that "there seems to be little empirical basis for (the) assertion" that "exposure to obscenity may lead to deviant sexual behavior" or antisocial conduct. "(M)ere private possession of obscene matter," stated the Court, "cannot constitutionally be made a crime."

On the basis of *Stanley,* Kanowitz decided that there's nothing wrong with using obscene material in a college classroom, at least as it was used here, the students having been forewarned that this kind of material might be examined. He concluded that if, according to *Stanley,* a state may not interfere with one's right to acquire knowledge–obscene or otherwise–in the privacy of his home, "then, *a fortiori,* the university classroom, whose only reason for existence is to provide a place for the acquisition of knowledge, should be subject to the same protection." With that conclusion, I disagree: to put it simply, the reason offered for the existence of the classroom does not magically mold one's privacy into the matrix of a larger arena.

In support of his conclusion, Kanowitz quotes from *Tinker v. Des Moines Independent Community School District,* a non-obscenity case, which stated that:

> in our system, state-operated schools may not be enclaves of totalitarianism. . . . students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expressions of those sentiments that are officially approved.

While this (and other) language in the *Tinker* decision lends itself to a preclusion of state interference, the Court in *Stanley* was concerned with the expression of an unusual kind of knowledge, and the Court predicated its imprimatur on the *private* acquisition of that knowledge. In getting from the absolute privacy of one's home to the classroom, Kanowitz asserts that the underlying rationale of the *Stanley* opinion was the "inviolability of the right to acquire knowledge." In doing so, I think, he leaves behind the Court's stamp of approval.

My basic disagreement with Kanowitz's conclusion, though, is that it departs from the suggestion of the book's title, and he *appears* to be satisfied—as was the majority in the *Stanley* decision—that old Stanley really was (in his case) watching *dirty* movies. The *Stanley* decision, in effect, avoids the issue of obscenity by saying that people can do what they want when they're alone. Lord knows, we all learned that lesson long ago. But the decision does more than avoid the issue: it further confuses it. While allowing a person to possess whatever trash he wants as long as he's alone, the Court hasn't seen fit to let the guy buy the stuff and take it home. But because old Stanley was sneaky, he came out smelling like a four-letter rose.

That the *Stanley* decision is not on all fours with the "Love Lust" controversy, Professor Kanowitz is aware. Kanowitz is also an astute legal realist, and his ability to get beneath the rationalizations of court decisions is at times uncanny. It is apparent to anyone who has read many of the Court's obscenity decisions that they are unusually inconsistent and often self-contradictory. Unlike Kanowitz, though, I don't think that the classroom obscenity problem can be solved by piecing together various decisions or by trying to elicit a common rationale. The criticism, though, is not addressed to Kanowitz, but rather to the sloppiness of the Court.

The Court's basic failure, in my opinion, has been its reluctance to talk about "obscene" matter solely within the context in which it appears. It took a step in that direction in *Stanley*, but it was a short and deceptive step. The Court could have said that old Stanley's movies *were not obscene* as far as he was concerned (note that the Court did concede that the movies didn't hurt him any), even though they might have been termed obscene in the context of a Surprise Preview at a local D.A.R. meeting. The same thing could be said about the "Love Lust" controversy.

As the book reveals, "Love Lust" was *not* obscene to anyone who remained in the class. Needless to say, the House of Representatives is a different place. In New Mexico's case, the final irony is perhaps revealed by the legislators' seeming lethargy the following Spring when Lenore Kandel read "Love Lust" at the University's Popejoy Hall—2,500 people jammed the place, and the reading ended with thunderous applause and a standing ovation. How's that for poetic justice?

At any rate, too much discussion of a comparatively short chapter in Professor Kanowitz's book shouldn't be allowed to detract from the book's personalized and dramatic account of the sordid and lovely aspects of the whole affair. The book is excellently written,

and in my opinion, its subject matter is a prime and appropriately rank candidate for Hollywood. As a movie it would return a sizeable profit, and by then, hopefully, old Stanley might be able to eat his popcorn and buy it too.

I'm reminded of an earlier and remarkably similar uproar. When Socrates was tried for corrupting the Athenian youth, his prime accuser charged that the old goat had ridiculed the poets, who, at the time, were regarded as the true source of wisdom. The validity of the charge was questioned—as was the charge in the "Love Lust" controversy—and as one commentator said then, "there was hardly a shred of legality to it."

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