Court Widens Restrictions On Obscenity

New Definition Is Established

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Paving the way for crackdowns on "the crass commercial exploitation of sex," the Supreme Court yesterday gave states and the federal government broad new powers in obscenity cases.

In a series of 5-to-4 decisions the court established a new definition of obscenity, rejected arguments that a "national" rather than local standard should govern and flatly refused to carve out exemptions for obscene films, magazines and books on grounds that they are aimed at "consenting adults."

Following word of the court rulings, some area adult bookstores yesterday removed from their shelves some of their most brazen publications. Washington-area law enforcement officials, however, said they will study the decisions before taking any new action.

Chief Justice Warren E. Burger triumphantly delivered the rulings, noting that it was "the first time" in 16 years that "a majority of this court has agreed on concrete guidelines to isolate 'hard core' pornography from expression protected by the First Amendment."

The majority, which supplanted an amalgam of justices who have decided obscenity cases without a unifying constitutional rule since 1957, consisted of the four appointees of President Nixon—Burger and Justices Harry A. Blackmun, Lewis F. Powell Jr. and William H. Rehnquist—with Justice Byron R. White supplying the fifth vote.

Dissenting were Justice William O. Douglas, who predicted "raids on libraries," and Justices William J. Brennan Jr., Potter Stewart and Thurgood Marshall, who called for scrapping obscenity laws "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults."

Burger spurned what he called "the alarm of repression" sounded by the dissenters, saying they demeaned the First Amendment by equating "the free and robust exchange of ideas and political debate with commercial exploitation of obscene material."

Of all the new tools handed to prosecutors across the country, the most useful appeared to be the discarding of an obscenity definition which gave constitutional protection to forms of expression unless

See OBSCENITY, A10, Col. 1

OBSCENITY, From A1

they were "utterly without redeeming social value."

In its place, Burger announced that the test will be whether the work, "taken as a whole, does not have serious literary, artistic, political or scientific value."

Prosecutors and censors had been hard-pressed to prove that any material was utterly lacking in some redeeming features, and Burger said they will no longer be required to carry that heavy burden.

In addition to the test of "serious" value, the court said authorities must independently prove that the work, "taken as a whole, appeals to the prurient interest in sex" and that it "portrays, in a patently offensive way, sexual conduct specifically defined by the applicable law."

Spelling out examples of patently offensive displays that would sustain prosecutions or civil suppression proceedings, Burger listed "patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated," and descriptions of "masturbation, excretory functions, and lewd exhibition of the genitals."

The court made clear that the "community standards" of decency may be those of a

locality and not a national community, so that the same film may be banned in one city but shown freely in another. States are free to establish statewide standards but may also permit local option.

In addition, Burger said, the states are free to follow a "laissez-faire" policy "and drop all controls on commercialized obscenity, if that is what they prefer, just as they can ignore consumer protection in the marketplace, but nothing in the Constitution compels the states to do so."

Even if a state should drop all obscenity controls, Burger indicated that federal controls might apply, even to an individual transporting sexy materials for his personal use, since that might involve injecting the materials into "the stream of commerce."

Although Burger did not mention it, that means his view has changed. When he joined the court in 1969, he expressed agreement with the late Justice John Marshall Harlan that the federal government should have little or no role in policing pornography.

Several times in the course of the five majority opinions, Burger referred to the views often expressed by his predecessor, Earl Warren, who usually voted to uphold First Amendment claims but frequently denounced smut peddlers and rejected the drive for one "national" standard.

Althought the Constitution applies nationwide, the question of offensiveness and appeal to prurient interest "are essentially questions of fact" which local judges and juries can decide, Burger said.

"Our nation is simply too big and too diverse," Burger said, "for this court to reasonably expect that such standards could be articulated for all 50 states in a single formulation, even assuming the prerequisite consensus exists."

People in different states vary in their tastes and attitudes, he said, "and this diversity is not to be strangled by the absolutism of imposed uniformity."

Over the strong dissent of the noted environmentalist Douglas, Burger likened the regulation of obscenity to efforts to protect the environment and safeguard "the quality of life" for all citizens.

But Douglas, although he condemned most of the allegedly obscene materials before the court as probably "trash," nevertheless contended—as he has for three decades on the court—that prosecutors and courts have no power to restrict free expression.

"To give the power to the censor, as we do today, is to make a sharp and radical break with the traditions of a free society," Douglas argued. He added:

"We deal with tastes and standards of literature. What shocks me may be sustenance for my neighbor. What causes one person to boil up in rage over one pamphlet or movie may reflect only his neurosis, not shared by others. We deal here with problems of censorship which, if adopted, should be done by constitutional amendment after full debate by the people."

The five cases involved films, books and other materials from California and Virginia and federal cases from California and Wisconsin. In one case, Burger emphasized that the prosecution is not required, as many publishers have contended, to bolster its case with "expert" witnesses on the issue of community standards.

In a bid to allay concern over supression of ideas, Burger said there was "no evidence, empirical or historical, that the stern 19th century American censorship of public distribution and display of material relating to sex . . . in any way limited or affected expression of serious literary, artistic, political or scientific ideas."