

# Publisher Larry Flynt Has a

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ATLANTA, March 24—Struggling against prosecutors armed with a tightly written obscenity law and a judge who has so far denied every defense attempt to show that Hustler magazine is generally accepted by Atlanta residents, attorneys for publisher Larry Flynt have had a bad week in court.

"We're still trying, heads bloodied, but unbowed," said Flynt's attorney, Herald Price Fahringer, of Buffalo. "This is unprecedented. We've never had a case where all evidence on community standards was excluded."

First, Fulton County State Judge Nick G. Lambros denied the Flynt public opinion poll that purported to show that 84 percent of Fulton County's 600,000 residents felt they had the "right to read and obtain any materials depicting nudity and sex" that they wanted.

Then, Friday, he upheld prosecution objections and ruled out defense testimony to show:

- Atlanta public libraries and commercial bookstores contain such ex-

plicit works as Hustler, "The Joys of Lesbian Sex," Erica Jong's novel, "Fear of Flying," "The Happy Hooker," and other sex manuals and novels that explicitly depict various kinds of sexual behavior.

- Fulton County residents spend a small fortune on explicit sexual literature.

Flynt publications and others like them enjoyed huge circulations in Atlanta during the summer and fall of 1977, when Flynt rented a bookstore on Peachtree Street, sold autographed copies of Hustler and dared Atlanta's anti-smut crusader, solicitor (county prosecutor) Hinson McCauliffe, to arrest him, which McCauliffe did.

The obscenity trial here is as much a clash of conflicting ambitions between a publisher and a prosecutor, who once told a staff Christmas party that "we're the front-line defense against the decay in our society," as it is a battle over First Amendment rights.

Now Flynt is paralyzed in the legs and confined to a wheelchair since being shot during the recess last year of a similar pornography case that ended

in mistrial in nearby Lawrenceville, Ga. He faces up to 11 years in prison and a \$55,000 fine if found guilty on the 11 misdemeanor obscenity charges.

Dressed in dark three-piece suits, Flynt, 36, who has parlayed his own brand of raunch and scatological humor into a magazine with a circulation of 3 million—just behind Playboy and Penthouse—sits in court with little expression, doing an occasional pushup in his wheelchair.

In court, his wife, Althea Leasure, who runs the magazine's day-to-day operations, sits with Flynt's mother and stepfather.

At a similar trial in Cincinnati, where Flynt was sentenced to 7 to 25 years in prison and a \$10,000 fine on an organized crime charge and a \$1,000 fine for obscenity, jurors were shown a life-size centerfold of Flynt's wife, with full frontal nudity. That case is under appeal.

In Atlanta, the jury has been limited to glimpses of an occasional silk vest with a plunging neckline, along with the seven copies of Hustler, three copies of Chic, another Flynt

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magazine and Flynt's anthology, "The Best of Hustler No. 2," which make up the state's exhibits in the 11 counts against the publisher.

Every morning before 9, a black Lincoln Continental, flanked by a green station wagon with Flynt's personal security agent hanging out the back, backs up on the curb outside the courthouse, where Flynt is helped into his wheelchair, surrounded by shotgun-toting deputies and personal security guards, and whisked into court.

Spectators are frisked and checked with an electronic metal detector.

The jury, which is expected to begin deliberations early next week, must decide whether Hustler and Chic appeal primarily to a "morbid or shameful" interest in sex.

Under Georgia law, the jurors must consider current community standards. Lawyer Fahringer told Judge Lambrose Friday that he was being barred from presenting any evidence of such standards. As a result, he said, Flynt's publications could wind up being judged "in a vacuum."

Lambrose denied Fahringer's attempts to introduce such magazines as Knave, Gallery, Oui and Penthouse as evidence of community standards.

Had jurors been allowed to read "comparable publications," which sold 1.3 million issues in Fulton County between June 1977 and January 1978, the period covered by the indictments against Flynt, they would say, "What are we getting all excited about Hustler for? This is the current community standard," Fahringer said.

Emory University sociology Professor Fred Crawford, a former education adviser to President Carter when he was governor, testified for the prosecution that Hustler appealed to "prurient interest" in matters of sex and excrement.

Crawford said, "Here is a person of national reputation who holds to the position that sex is the dominant aspect of life. To most of us sex is beautiful . . . sex is a part of life. But the predominant emphasis (of his magazines) is on sex . . . The idea of sex being the whole of life becomes prurient and alters our interest as human beings."

Under cross examination, Crawford said a monthly Hustler "Award" lampooning such public figures as the prosecutor who brought Flynt to trial, was prurient because it attacked "people who disagree with Mr. Flynt" on sexual matters.

Prosecutor McCauliffe has also charged Hugh Hefner of Palyboy, Oui publisher Daniel Filipacchi and Penthouse publisher Bob Guccione in separate obscenity cases.

In 1973 the U.S. Supreme Court altered the definition of obscenity, ruling that local judges were bound neither by a "national standard" nor the need to prove books and movies "utterly without redeeming social value." Using this standard, McCauliffe has shut down such films as "Last Tango in Paris" and the musical review "Oh Calcutta."

So far the defense in the Flynt trial has called such witnesses as Kinsey Report co-author Dr. Wardell Pomeroy and HeeHaw television star John Henry Faulk, a Texas humorist who testified that Hustler has "literary value to the 15 people who snap it up every month" in Madisonville, Tex., his hometown.