INTERVIEW/TALK WITH EDWARD de GRAZIA,
AUTHOR OF GIRLS LEAN BACK EVERYWHERE,
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(Studio apartment in the Village, one big room with bed, two tables piled with books, books stacked up hip-high on the floors: The Power of Images, Purity in Print, others related to his work. He's got longish gray hair, strong features, wearing jeans, blue and beige striped turtleneck, blue blazer. Has taught at Cardozo Law School for 13 years. Now working on book about suppression of political speech under Woodrow Wilson.

(Book is dedicated to William Brennan--was he to your mind the most important factor in liberalizing obscenity laws?) Brennan was the angel of free speech on the Supreme Court. He worked very quietly, brilliantly and effectively at marshalling the Court behind a series of decisions and opinions, which he wrote, which liberated the novel and motion pictures from censorship of the criminal type and also, with respect to movies, from the kind of censorship that was done by motion picture censorship boards which for many years decided what could be seen on the movie screens of this country. So Brennan never took an absolute position on the First Amendment in the way that Black and later Douglas did, which is to the effect that the First Amendment says in essence that Congress shall make no law abridging freedom of speech or of the press, and no law means no law; and that absolute ban on federal laws was extended in the 1920s to the states. Brennan, who began his work in what has

been referred to as the metaphysics of the law of obscenity in 1957, in the Roth case, began his work of liberation in an extremely unobtrusive way -- by holding that obscenity was not protected by the First Amendment but that literature and art were. And from that decision, which at the time pleased both would-be censors and advocates of freedom for literature and art, he gradually liberalized the law so that it became by the mid and late 1960s a rule or principle that if expression had, was not utterly without, any social importance or social value -- any literary, artistic, scientific, or other social value was how he put it -- it was protected by the free speech guarantees against suppression as obscene. Which in effect meant that even if a movie or a book were otherwise obscene according to the test which he helped the Court to develop, if the publisher, bookseller, or author could show that his book or movie or magazine had even the slightest -- however small -- literary or artistic or other social importance, then any prosecution would be struck down and any suppression would be vitiated by the Court. I say that he did this almost imperceptibly, because he first did this in the Tropic of Cancer case, which I took up to the Supreme Court, and another case which was heard at the same time, a motion picture case involving Louis Malle's movie Les Amants. Brennan announced this doctrine, which basically said that anything that could call itself, or was recognizable as, literature or art was freed absolutely.

(Was he more effective because he wasn't an absolutist?) As well as being a genius and being a master at crafting

constitutional doctrine, which is really what all law is made up of, he was a master politician on the Court and was able to assemble to his view enough of the so-called Brethren -- they were all male in those days -- so that his doctrine, his liberating jurisprudence, became law. And it was then applied by all the lower courts, state and federal, and was used by lawyers in raising cases. By the time a few years after the Tropic of Cancer case, when the Court came to decide Fanny Hill, the dissenters -- there were always some dissenters, most notably Tom Clark -- claimed that they had never realized the force of the Brennan language stating that if the expression had even the slightest or was not utterly without social importance, then it had to be freed. They hadn't realized what the results would be.

(In his mind, Brennan was the one who engineered these decisions?) Yes. He's the hero of the struggle of authors and artists to get real freedom of speech in this country. In essence, he revolutionized freedom of speech for authors and writers. He's gone now, and ... I am not discouraged because he resigned, although it was a surprise, because I think -- and maybe it is wishful thinking -- that his doctrine was so well constructed that not even the politicized Burger-Rehnquist Court could destroy it.

(Does he still think that?) Yes. The doctrine that Brennan constructed to liberate literature and art was tampered with by Chief Justice Burger when he took over the Court; at that time, in 1973, Burger made a big point of denouncing the Brennan doctrine. But he was only able to modify it, in the sense that instead of

material being freed if it is not utterly without social importance, he changed the standard to: does the material have any "serious" scientific, political, artistic, or literary value? He tried to tighten the rule, but he didn't greatly change the way the rule has been enforced especially regarding literature and the printed word. Since then, what Chief Justice Rehnquist and pro-censorship groups seem mainly to have been doing is trying to go around the constitutional law of obscenity that Brennan created, in areas such as photography, movies, video, cable television, broadcasting, and the graphic and performing arts, by enacting and by upholding laws that are based not on obscenity but instead on the concepts of "indecency" and "pornography." For example, in the nude dancing case that came down last year, Rehnquist led the court in a decision that allowed the state of Indiana to entirely ban concededly non-obscene nude dancing of the so-called barroom kind, not under an obscenity statute but under an enormously broad and vague public indecency statute; this allows policemen to decide how much covering nude dancers must wear.

(Has the battleground shifted away from printed word to performance and visuals?) This began with the liberation of the printed word, a liberation so close to absolute with Brennan and the Warren Court that even a majority of the Meese Commission recommended that obscenity laws not be enforced as to the printed word alone. What happened is that with the liberation of literature, movies and entertainment, pornography -- let's say pictorial, graphic images of sex as explicit as those described by

the printed word -- began appearing in public, and the Warren Court -- still under Brennan's leadership but with so-called centrist Justice Stewart and liberal Justices Goldberg and Fortas joining in -- moved to free graphic sexually explicit expression as well, whether or not it had any literary or artistic importance. That happened in the famous Redrup case. So the battleground shifted from literature and the printed word to graphic, illustrated sexual activity and then it shifted to the arts, to Mapplethorpe, 2 Live Crew, Andres Serrano, Karen Finley -- and in part that's because, I think, artists like Mapplethorpe have always been intrigued by what is sometimes called hard-core pornography, very explicit representations of sexual activity, and tried to create artistically valid pornography. That's what Mapplethorpe brought in, and no wonder people like Jesse Helms were uproared. The average gallery goer was not disturbed even by Mapplethorpe's most "indecent" images -- for example, elderly women looking at "The Man In the Polyester Suit," with his large dong hanging out -- they were peacefully lining up to see ~~his~~ exhibitions until Helms got hold of the ~~pictures.~~

(Given that the average gallery goer didn't care, why were there these prosecutions?) It's this extreme right-wing fringe of fundamentalists, who are aligned to the Republican Party and through the Party are exerting influence not alone on President Bush but on the justices on the Supreme Court, those who were appointed by Reagan and Bush and Nixon. Many of them are those so-called born-again Christians -- Helms is, so is Donald Wildmon, the

head of the American Family Association; they are terrorizing everyone from chain bookstores to television and magazine advertisers to commissioners on the Federal Communications Commission; and bull-dozing congress into enacting laws which threaten to generate federal censorship of all electronic mass media, the NEA, and even the corporation for Public Broadcasting. And Helms and Wildmon tried to terrorize and intimidate John Frohnmayer, the chairman of the National Endowment for the Arts, who refused to be intimidated enough and was sacked by George Bush in March because of this. It was a really craven act on Bush's part; the man has no ideological backbone. Frohnmayer came in supposedly as an expert on freedom of art and freedom of speech, he's a lawyer; he also has a degree in theology, so I think he is himself a religious man. But he'd never been in Washington, up against the monsters of politicians. So he found himself caught in a vise between the arts constituency on the one hand and the politicians like Helms on the other. And at first he tried to please them both persuade everyone of them he was on their side. He was embroiled in controversy ever since. I don't think that Frohnmayer's a strong man, one can imagine someone stronger, but politics on Capital Hill is murder, and I don't think it's surprising that he should go under -- although I think it's tragic that he should be put under by Bush, who put him in the job, because it shows how weak Bush is -- caving in to the Helmses and the Wildmons and the Pat Buchanans. Especially the White House was running scared that Pat Buchanan was going to make an issue of the

way the administration has supported Frohnmayer's basically decent attempt to disavow censorship in the NEA; Bush didn't know how he was going to defend Frohnmayer or himself, because he doesn't understand the meaning of the First Amendment as it applies to art. Frohnmayer learned the meaning of it, which was manifested by his action some months ago in giving Karen Finley a grant, although he knew that he would be attacked for it by the Helmses and the rest of that gang that had attacked her and had attacked the NEA for giving her a grant -- maligning her as a chocolate-smeared woman -- this is a real serious artist. So when Frohnmayer gave her a grant not long ago the right wing realized that he was not going to do their bidding any longer however much he had in the past and was going to stop behaving like he should be making moral and political judgments on what art should be supported. And he did it again, even more strongly -- and this triggered Bush's dismissal of him -- with respect to a grant to an organization that published a collection of poetry called Queer City in which there was a so-called blasphemous poem in which Jesus was portrayed in some kind of sexual situation. The White House and Congress were deluged with letters of protest and copies of extracts from the poem, but Frohnmayer said he read the entire poem, the entire volume, and defended what they had done. That was the last straw, and so the legions of people who do whatever their leaders tell them to do, who scream and yell and when their leaders tell them to, did scream and yell frightened Bush into axing Frohnmayer in a legally very questionable move -- since Frohnmayer was appointed for a fixed

term of years and Bush couldn't legally fire him. So he forced him to resign.

(Does it seem to him that the Supreme Court, rather than trying to roll back the obscenity law, is going to toss it all back to the states?) Well, there's certainly a very real danger that the Rehnquist Court with its solid conservative majority is going to roll back the freedom that was awarded by the Warren Court to artists and writers and entertainers such as nude dancers, and the people who put them on or circulate their work. But as has been demonstrated more than once, for example by Hugo Black, if a person who becomes a justice has real integrity, service on the Court can bring it out. This could happen with Souter and maybe O'Conner and Thomas. I don't have much hope for Scalia or Kennedy. But it's not easy to tell in the early years of their tenure whether people appointed to the Court have that kind of integrity that made the Warren Court into a supreme judicial organ for the protection of constitutional rights of individuals and institutions.

(What was his goal in writing the history of censorship?) I wanted to write the story of the struggle for freedom of expression in literature and art. And I wanted to do it dramatically and to say as much as I could about the people who were the actors in this struggle, and the victims of censorship -- particularly the authors, but also the publishers -- and I wanted to do it as much as possible in their own words. So the book is rather unique in the amount of material that is out of the mouths of the people involved. This also serves to bring the narrative story alive; I

wanted the reader to experience almost as if it were happening today what authors like James Joyce, Theodore Dreiser, D.H. Lawrence, and Edmund Wilson experienced, and what publishers like Henry Vizetelly, Margaret Anderson and Jane Heap, Boni and Liveright, Barney Rosset, and even Roger Straus and Jason Epstein experienced, and how they felt when the works that they had authored or were seeking to publish were attacked and suppressed. No one has ever written a book about the law of obscenity that paid attention to how the people involved felt when the law was brought against them and against their creations; I tried to do that. Although the book is dedicated to Justice Brennan, in a way it is also silently dedicated to the authors and publishers and artists who fought for the freedom that we are experiencing today, however precarious it may seem because of recent political developments. I think that was the foremost thing I tried to do, and I think I succeeded. If people aren't frightened by the size of the book, which is long -- because it takes time to tell the human side of the story of censorship -- I think they will find that I succeeded in bringing to life these people who were fighting for, and to some extent also those who were fighting against, artistic and literary freedom. The other important motive for me was to reveal the importance, the heroic dimensions, of the work that Justice Brennan did in liberating literature and art, because this is not known at all. Brennan succeeded so well in doing his job without exciting or inciting opposition and reaction from the forces of censorship that almost no one knows what he did. I only found out when I

discovered among his private court papers in the course of research I was doing for an earlier book, Banned Films: Movies, Censors and the First Amendment, that Brennan was the one who decided that Tropic of Cancer ought to be free under our constitution, was entitled to be free for the entire country, and that its publisher, Grove Press -- that is, Barney Rosset, of the old Grove Press, another truly heroic figure -- had a right to publish Henry Miller's great novel. Brennan worked very quietly and unobtrusively, because the deliberations of the Supreme Court -- the meeting, the conflicts, the transactions and communications going on in chambers or in the corridors -- are not visible. How a decision is reached, how it gets written, requires the alignment of a sufficient number of very different minds and spirits to join in one particular view, and that whole process is totally invisible.

(How did he uncover this process?) The material I used is known in the academic world as the private court papers of the justices, and it is lodged in libraries and archives by the justices themselves, and it consists of the justices' private correspondence, notes, and most importantly their unpublished judicial opinions and memoranda, that is, the drafts and memoranda that they circulate to each other in trying to reach a decision. There's a lot of evidence of the real judicial process in the private court papers of the justices. They're not government papers, they belong to the justices, and the justices have the right to destroy them -- as Justice Black did with many of his

papers -- and to place those that they see fit into library archives. Normally, these papers are not open to scholars or the public until after the death of the justice involved -- that's simply by custom. Brennan decided to make his papers available during his lifetime to scholars and other interested persons; he placed much of his private papers in the Library of Congress, where they are open to scholars, journalists and anyone who has Brennan's permission; but he grants it to anyone who has an interest. I also looked at Harlan's papers at Princeton and Douglas' at the Library of Congress; Harvard also has some Frankfurter papers, a library in Texas has Tom Clark's papers; they're scattered around, but they are available. Now, this doesn't include recent cases; where you have to go by what's published or, if the justice is willing to talk to you, from what he or she may say. But they almost never talk for attribution about cases that they have worked on. As you know, in Woodward and Bernstein's book The Brethren, they got their information not so much from these private court papers but from interviews with former clerks of the justices. This engendered a lot of criticism, because there's no way of verifying what was reported having been said, and there has been an unwritten understanding that a Justice's clerk should not talk or write about how the Justice went about reaching a decision, or collecting a majority vote, and so on. But I think it's a great book, because it was the first book that I knew of, and certainly the first book for the general reader -- which is what I see my book as -- to expose to the people generally how the Supreme Court really works.

(How did he get involved in First Amendment cases?) The first factor was my favorite professor at the University of Chicago Law School, the late Harry Kalven Jr., who was a brilliant man. Harry had one of the finest legal minds in the country, and he was especially interested in freedom of speech. His posthumously published book A Worthy Tradition is the best work published on freedom of expression since Zechariah Chafee's classic Free Speech in the United States. When I was at the law school he taught a seminar on civil liberties which included a big section on obscenity law -- this was in the early 50s. That was the first time that I realized that judges and courts of law were intimately involved in the censorship of literature -- that's something else I think people don't realize -- and Brennan tried to change this -- that state and federal judges themselves have been acting as super censors, have been upholding these prosecutions of publishers and authors and artists without regard for the censorship that is involved. That dawned on me in the course of Harry's seminar. Then I started practicing with the Washington branch of what was then the largest firm in Chicago: Kirkland, Fleming, Green, Martin & Ellis. They represented not only the Chicago Tribune -- not exactly a left-wing newspaper -- and the Tribune's radio station; they also represented the Chicago diocese of the Catholic Church. Well, after I won the Lysistrata case in Washington D.C. -- freeing an illustrated rare-edition copy of the book from Post Office seizure -- this was as a volunteer lawyer for the ACLU --

and made most of the newspapers around the county, I was called to Chicago by the head partner, Howard Ellis, a wonderful man. He asked me, since I was doing pro bono work for the ACLU freeing obscenity, if I wouldn't prefer working pro bono for the Catholic Church, on obscenity. I went into the Washington office because I was interested in mass communications and in the constitutional problem of freedom of communications. The Washington office was dealing with FCC administration, which involved the allocation and renewal of licenses to broadcast over radio and TV. So that was the kind of speech I was interested in -- and this partly because my brother Sebastion I'd, who last year got a Pulitzer for a biography called Machiavelli in Hell, was teaching then at the University of Chicago and he was teaching a course in mass communications. So I was interested in that and went to this Washington office and got into radio and television law, which turned out to be horrible: horribly boring and horribly demoralizing, because I learned that the FCC was in effect a censor and that the nature of lawyers and the FCC being what it was, the legal proceedings to decide who should get an FCC license turned on which side could throw the most dirt at the other side, which side could persuade the Commission that it was holier than thou. It was a completely corrupt regulatory system, in my opinion, that mocked the First Amendment. It was while I was with that firm in Washington that the ACLU established its first office there, and somehow I got to meet the guy who was the head of it, Irving Ferman. He called me up one day, he had learned I was interested

in freedom of expression, and he asked me if I'd like to take up a case against the Post Office which had seized en route from England to Beverly Hills a rare edition copy of Aristophanes' Lysistrata. I said I couldn't think of anything I'd rather do, so I took over the case and prepared a very large brief -- not, however, as large as my new book -- seeking to persuade the court to declare unconstitutional, to strike down, the federal law under which the Post Office was stopping material that went through the mail, material that it thought was obscene; they would take it out of the mail and refuse to deliver it. This was clearly, to my mind, censorship so I drew up a Brandeis-like brief in which I quoted everyone from Shakespeare to Freud to John Dewey to show that Aristophanes indeed may have been creating obscene plays but that there was no way under our constitution in which the government could be allowed to suppress that. Anyway, I was doing this not so much in my office but at home -- it was ~~pro bono work~~ at a time when lawyers in private practice rarely did pro bono work -- and it was being typed in the office of the American Books Publishers Council, which was very sympathetic to what I was trying to do, and one night the typist took it home to work on and her husband was a UP correspondent. He saw the manuscript, got interested and read it and asked if he could do a story about it before I filed. I said yes, and the story went out over the wire -- it was a really nice story -- and newspapers all over the country and national magazines picked up the story. Papers all over the country ridiculed the Postmaster General, Arthur Summerfield, who they were

quick to point out was a former auto salesman, trying to censor the laughter of genius. There were editorials across the country condemning what the Postmaster General had done. He was represented by the US Attorney's office in Washington, they called me up and said, "Can't we have a hearing to see if this is really obscene or not?" I said, "No way, I don't want to get involved in a hearing because you've already violated constitutional rights by stopping this shipment." But I made the mistake to let them come over to talk to me anyway, and the Solicitor, he was the highest legal officer of the Post Office, came in with a big plain brown envelope under his arm that contained this wonderful edition of Lysistrata, and he gave it to me along with a copy of a motion to dismiss my action as moot -- because they'd given up the book. Well, I didn't like this because I wanted to have to have the statute struck down and the Post Office censorship permanently eliminated, but I couldn't persuade the court that the case wasn't moot, so that was how it ended. That case was very exciting to me, the Post Office suffered a lot; it was ridiculed, and that was the beginning of the end of this practice of the Post Office's stopping shipments in the mail and censoring them. They no longer do it, but it was never struck down by the courts; the government just saw the handwriting on the wall. Then, as a result of the Post Office case I was asked by the ACLU and the Maryland CLU to help them prepare an amicus curae brief on their behalf in defending a Maryland bookseller, Samuel Yudkin, who was prosecuted for selling Tropic of Cancer. Just before that happened, again because of my

involvement with Lysistrata and also because after that case I wrote an article in a journal called Law and Contemporary Problems about Post Office censorship of literature, the ACLU asked me informally to consult with them and help them adopt a national policy for the defense of so-called obscene books. The national union had never officially gotten involved on behalf of obscene books. Anyway, in the Maryland case the bookseller was ultimately vindicated by the Maryland Supreme Court, which reversed his conviction, but by then he'd lost his franchise to sell books in the Washington National Airport and his store in Maryland went out of business. I'd prepared another Brandeis-type brief urging the Maryland Supreme Court to recognize that the First Amendment protected and had to protect the novel, as an artistic form, from censorship under the obscenity law, and this brief was widely circulated by the ACLU. It came to the attention of a guy named Barney Rosset, who was then the head of Grove, the publisher of Tropic of Cancer. So Barney then asked me if I would take up a lost Tropic of Cancer case in Florida, which I did, and that was the case which we won in the Supreme Court, that in a sense liberated literature and inferentially art in the culture. After Barney read that Maryland brief, he asked me to represent him with respect to other books that he was afraid to sell because of the nationwide assault on Tropic of Cancer being undertaken by local and state prosecutors. Grove was an embattled company during the Tropic of Cancer litigation, which went on for years until the Supreme Court ended it. Barney had in the warehouse William

Burroughs' Naked Lunch, and he was hesitating to bring it out, because he was afraid that booksellers would be embroiled by police and prosecutors, and he couldn't defend them. In the Tropic of Cancer case, he had offered to defend any bookseller who was prosecuted for selling the book, and he did provide counsel, and the ACLU also got involved. Barney asked me if I was willing to defend Naked Lunch, Jean Genet's Thief's Journal, Henry Miller's Tropic of Capricorn and several other books; I said I would. A case did arise against Naked Lunch in Boston; I handled the trial there and also the appeal to Supreme Court of Massachusetts, which freed the book largely on the basis of the U.S. Supreme Court's decision in the Tropic of Cancer case that I brought to them. Then, after that, Barney asked me to defend I Am Curious-Yellow, and I said sure. That was another terrifically important case, which I won after a trial in the highest federal appellate court for the second circuit in NY, again on the Brennan doctrine, which had just been established in Tropic of Cancer case. We won. Grove Press was the distributor of I Am Curious-Yellow, so Grove then proceeded to distribute the film in the United States, but cases arose all over the country and this despite the prestigious second circuit court's decision. That was a customs seizure case, which meant it was the federal government's burden to have the film declared obscene, and after they lost in NY they didn't appeal it to the Supreme Court because they were afraid of getting a Supreme Court decision giving constitutional protection to a film as sexually explicit as I Am Curious-Yellow.

(Had he done other obscenity cases as well?) After practicing in Washington for a while, I got sick at heart with this FCC work, didn't have enough Lysistrata - type cases to nourish my spirit, and also was finding it hideous to live in Washington under McCarthyism. So I decided to leave and I was offered a job with the office of the director general of UNESCO, where I thought I might also be able to advance freedom of culture and art. I went there for 2½ years, and within UNESCO's program I did work for freedom of culture, but not on legal cases. Then after I came back I got involved with the Maryland Tropic of Cancer case. But before that started working for General Electric, for their atomic power equipment department; a law school friend of mine, Fritz Heimann, was in charge of the legal office, and I wanted to go to California, so I went there, then later to International GE in NY -- that's where I was when I wrote the brief, out of my closest, for the ACLU in the Maryland case; all of this was pro bono work. After the Maryland case, which was when I met Barney Rosset, I also began to write absurdist plays -- one of which Barney Rosset published in The Evergreen Review. So Barney helped launch my playwriting career; I wrote plays all through the 60s, and they were performed at Gene Frankel's Workshop Theatre and at Ellen Stewart's La Mama Experimental Theatre, Etc., in New York, and at Zelda Fichandler's Arena Stage in Washington. When Barney asked me to get involved in defending these books for him, which became more-or-less a half-time job, I quit GE and entered practice on my own -- Barney was my only client! Then when I Am Curious came

along, which was made in Sweden by director Vilgot Sjoman, I made some money; because I got a small retainer, just enough to keep my head above water, but Barney promised me a small royalty on every copy of Naked Lunch that was sold and every ticket of I Am Curious that was sold in a city or state where I was involved with the defense. Morris Ernst invented this defense scheme with Bennett Cerf when he defended Ulysses for Random House back in 1934. After the nationwide struggle over the freedom of I Am Curious ended -- Barney made about 7 million dollars on it and spent it wildly -- Grove started going down the tubes, in about 1970, after the Burger Court stonewalled us in an I Am Curious- Yellow case. In the only case that went to the Supreme Court on its merits, a Maryland case which I did not handle in which the film had been found obscene by the highest court of Maryland, Burger waited until he had an equally divided bench, and with a divided case the Court automatically affirms the lower court case. so when I took the case up to the Supreme Court it divided 4 to 4 when Justice Douglas was forced to disqualify himself because his publisher, also Random House, had sold an excerpt from his book Points of Rebellion to The Evergreen Review which was a Grove publication, for something like $250. Douglas didn't even know about it, but his legal advisors told him to disqualify himself from the case. When the Burger Court succeeded to suppress the film in that way this demoralized both me Barney, and Barney just gave up on distributing the film anymore. It wasn't just the decision, but what it signified, because this was the Nixon era, the Burger Court rollback on

freedom, and the beginnings of heightened attempts at cultural suppression. That was when I went over to help an other brother, Alfred, start the University of the New World in Switzerland because as a family we have strong ties to Europe. My father was born in Sicily; he was a musician and the story goes that as a boy he was persuaded to leave the country and come to America when his uncle, who was the mayor of the little town that he lived in, got disturbed because my father threw his clarinet at him when he told my father that he couldn't parade through the village on May Day! Anyway, I went to the University of the New World; at that point I had begun to live on the royalties from I Am Curious-Yellow, so going over to teach at my brother's university was also more or less pro bono. There I met the young woman who became my second wife, Liz Good, and we came back to the States and I decided at that point that maybe what I ought to do was teach and write, so I went to Yale Law School and enrolled in a postdoctoral program and began research for a thesis and a book on the origins of the criminal justice system. That book was never finished, because I had to go back to work to earn a living because Grove Press was going down the tubes financially and couldn't pay me what it owed. So I began teaching, my first full time teaching assignment was at University of Connecticut Law School, then Cardozo Law School was founded by Yeshiva University and the first dean of that school, a wonderful man named Monrad Paulsen, knew of me and my writing because I had done a certain amount of writing, in law journals, and he invited be to help start this law school in the late 1970s. Now I teach

constitutional law there, especially the First Amendment; also courses on the Supreme Court and Brennan. I'm pretty happy there, I have time to write. This book is big because I've been working on it for eight years. It's also big because the original scheme did not contemplate all the attempted censorship of art that took place during the last three years. There's been an explosion of artistic censorship in the last three years.

(Why is that?) I think artists were encouraged to be brave in their expression by the liberation of the printed word, they took courage, got bold and when that happened they were met by the forces of reaction and conservatism.

(Are printed word battles over?) It could come back. There are two ways. One because there are many more books today being published that have illustrations. For example, Random House is bringing out a Mapplethorpe book, which contains some of his alleged child pornography. It's impossible to say that that book and Random House won't be attacked, because the book as I believe at least those two images of nude children that were involved in two of the counts in the Cincinnati case where Dennis Barrie, the curator of the Modern Art Museum was indicted. Equally, even though the Meese Commission didn't recommend any further censorship of printed word obscenity, Donald Wildmon discovered that a company called Blue Moon Books, which happens to be run by Barney Rosset, was publishing printed word books which depicted what he called

child pornography -- now, this is a typical example of the censors corrupting the legal terminology. Child pornography can only consist of photographic or filmed works where actual children have been involved in the creation. But he claimed Blue Moon Books was publishing child pornography through the printed word because some of the heroines were described as under 18 years of age, in the fiction. As absurd as that may seem, it was not treated lightly by Waldenbooks or B. Dalton, who stopped distributing Blue Moon Books and thus allowed Wildmon practically to put Barney out of business. I think at least Dalton is again handling the books, which of course they should because a lot of people want to buy and read them. Here's an example of a form of censorship which you cannot attack in court because it doesn't involve the government. I'm a member of the board of governors of a group founded by my friend and colleague at Cardozo Law School, Richard Weisberg, called The Law and Humanities Institute, and this is a group of mostly academic lawyers and teachers who are very interested in the humanities in general and literature in particular and in how law relates to literature both as subject matter and externally. Since I've joined the Institute they have gotten involved in two Supreme Court cases in which we filed amicus curae briefs, the first on behalf of Larry Flynt, the publisher of Hustler magazine in his defense against Jerry Falwell's suit, which was won in the Supreme Court, and later in a child pornography case from Massachusetts, urging the Court to strike down as unconstitutional a Massachusetts law which has since been amended but which they made it criminal to

take any picture or make of any film or to distribute any picture or film which showed children in conditions of nudity, including in the case of a pubescent teenager, showing her breasts. There is a good deal of photographic art which involves exactly that kind of depiction, and the upholding of the validity of such a law would have been a serious threat to the freedom of photographers and filmmakers, as well to artists who use models. That case ultimately was won in the Supreme Court in the sense that a majority of the court held that the law was unconstitutionally overbroad, but a different majority held that the case had to be remanded on technical grounds in such a way that the lower courts were permitted to affirm the conviction of the man in question, who had taken the pictures in question, of his stepdaughter -- who had lived with him since she was a child -- pictures that involved her dressed only in bikini underpants and a scarf. She was an aspiring beauty queen and model, a mature teenager, and these were typical pinup pictures. The child pornography laws are becoming a greater and greater threat to photographic and film art, and unfortunately the Supreme Court has upheld them with Brennan dissenting in the last one, out of Ohio, a horrible one in which the Rehnquist Court decided people did not have the right, even in the privacy of their home, to possess alleged child pornography which, as I said, might easily be just a couple of those Mapplethorpe pictures of children with their genital or pubic area in focus. Not only are they a threat to the creators and distributors of art, but now they are a danger to the liberty of any person who may have in his possession

photographs or films that meet the definitions of child pornography -- which are being widened all the time. It is now a federal crime to receive or even posses child pornography, and child pornography is described as including anything which shows or focuses on a child's genital area, whatever that means.

(Why are children such a flashpoint for obscenity cases?) I think that the people today who censor need to have something to latch onto, and they have not been getting much success in court or on the street against adult pornography; you go to Times Square and find anything you can imagine, and things you might never unaided imagine, being shown in pictures and films, being sold freely -- but involving adults, not children. I think what happened is, historically, when graphic depictions of sexual activity began to appear commercially after the liberation of literature and art, an industry began to develop somewhat clandestinely, after the Burger Court refused to do what Brennan and three other members of the Warren Court said they should do, which was to completely free all sexual expression from the obscenity laws as far as adults were concerned because such laws are unconstitutionally vague and chilling of expression. So this commercial industry for the production of graphic sexually oriented material was developed during the 70s, it included graphic material depicting children. When this was discovered by pro-censorship groups, they got to work at the legislative level and had child pornography laws passed; there were no laws specifically about child pornography before the

mid-1970s. And although those laws have very stiff penalties, originally at least they were fairly specific in being aimed only at the use of actual children engaged in specifically described sexual activities. Originally limited to that scope, those laws had very heavy penalties, with the support of public opinion, which felt that as opposed to adult pornography this was really bad stuff. And child pornography was virtually wiped out as a commercial enterprise by these laws; the trouble is that since then the laws have been extended by those who feel the need for censorship to include even private non-commercial distribution or possession of merely nude depictions of children. In a recent case a graduate student in Pennsylvania was convicted and sentenced to five years for receiving through the mails a videotape of young girls in bathing suits, because the film showed exposed flesh on her inner thighs -- and the judge interpreted the federal law to proscribe even that as a focus on the pubic area. The people who are behind these laws and their broadening want to obliterate the image of the child nude, to obliterate the idea that children are sensual creatures.

(How bad are things right now? What's been won by the landmark cases of 50s and 60s, and what are we losing?) I think the printed word is free, certainly of government restraint, and that's an enormous achievement, although in a society and culture as full of images as ours, the achievement may not seem so great. That artists are not free and are still in danger is clearly shown

by the prosecutions which took place with respect to Mapplethorpe's work and to members of 2 Live Crew and the owner of a record store in Florida who was convicted of selling their album. The judges and prosecutors who went after 2 Live Crew and the record store owner are getting their permission to do that from their interpretation of the scope that the 1973 Miller case, the Burger doctrine, gives to people that use the decision to go after even serious artists and entertainers like Robert Mapplethorpe and Karen Finley. Nude dancing, is defined under these laws as any exhibition of genitals or of the breasts uncovered, if the nipples show; these laws now can be enforced anywhere in the country, and that's a situation which is really a serious inroad on the freedom of popular culture, and that's the latest doing of the Rehnquist Court. In the area of child pornography, the fact that five photographers, like Sally Mann of Virginia, and filmmakers cannot safely take pictures of nude children, even if they're their own children, is also a chilling fault in the fabric of freedom of culture in this county. The ACLU has as a matter of policy announced that they are going to shift their efforts to defend the freedom of publishers and artists from the federal courts and the U.S. Constitution to the state courts under state constitutions. You see, the ACLU is so dismayed at the reactionary political complexion of the Supreme Court today that they are shifting their energies to the state courts and state constitutions. I personally believe that even the people who sit on the Supreme Court today, or enough of them, can be persuaded to see the light. It may be

wishful thinking, but I find myself thinking that way. For my part, I'm not daunted by even these atrocious opinions handed down by the Rehnquist Court in support of these draconian laws. I'm not completely discouraged by them and I'm not out of the fight; I'm not that discouraged that I've stopped fighting. My hope is that enough of the justices now sitting on the Supreme Court can be educated -- it's our business as teachers and writers and lawyers to educate them -- that's what I mean by fighting. I don't think there's any kind of a silent majority in favor of censorship; the far right is very effective and organized in terms of putting pressure on our courts and our legislators. But they are a fringe group as I'm concerned, a small minority, but they're very vocal and very effective and very dangerous. On the other hand, artists and the defenders of artists are equally -- well, I can't say they're equally fervent; I was shocked at how little protest was made when the nude-dancing suppression was upheld by the Supreme Court. I suppose because many people, even liberals, think of nude dancers somehow as shameful, rather than as performing artists in their own right, which of course they are. But nevertheless, even as intellectuals are loathe to defend wholeheartedly some of the expression that's being attacked by the right wing, there are voices in the country that are still putting a lot of energy into the struggle.

(Where does the general public fall on this issue?) I think once you set aside the involvement of children, I think the great

majority of people are against censorship of anything from nude dancing to Mapplethorpe' work and 2 Live Crew, in part because they like it, they enjoy it, it appeals to them emotionally, in part because they believe that they as Americans are entitled to be free to see and feel what they want to see and feel and in part because they think people ought to be free to say and write and express whatever they want to.

You know there recently was a story in the New York Times that said a poll was taken about issues in this area which showed that a majority of Americans believe that the government should support the work of artists and art, the way the NEA does, and also, more significantly, that government should at the same time not try to restrain or limit what American artists want to say. So that gives the lie to people in Congress like Jesse Helms.