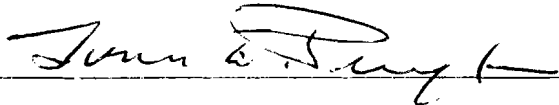


AN ABSTRACT OF THE THESIS OF

Linda K. Warner for the Master of Arts

in History presented on May 1, 1988

Title: Movie Censorship in Kansas: The Kansas State Board
of Review

Abstract approved: 

This thesis has provided a chronological overview of the Kansas State Board of Review from the events leading up to its inception in 1916, to those events bringing about its demise in 1966. A thorough examination has been made of the way in which the state agency functioned: the changes in the laws and rules governing the board, the decision making process used to censor films, the changing membership of the board and how this affected its ability to function. Also examined were the films the board reviewed, what was censored from them, and the criterion for this censorship. Included is a study of those factors which influenced the decisions of the Board of Review: the changing view of the citizens of Kansas toward the board and its work, the court cases which continued to narrow the ability of the state to censor films, and the way in which the entertainment industry reacted to censorship in Kansas. Finally, a brief look at the censorship efforts of other states is included; the similarities and differences in their opinions on what should be censored from the movies, and the way in which the boards worked together to disseminate information about the movies that they censored.

MOVIE CENSORSHIP IN KANSAS:
THE KANSAS STATE BOARD OF REVIEW

A Thesis
Presented to
the Division of Social Sciences
EMPORIA STATE UNIVERSITY

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
Linda K. Warner

May 1988


Approved for the Major Division


Approved for the Graduate Council

ACKNOWLEDGEMENTS

My sincere thanks to Professors Loren Pennington, Joe Fisher, and Samuel Dicks. The extent of their help in the completion of this thesis is immeasurable. I would also like to thank my husband, Doug, for his support; the staff of the Kansas State Historical Society, Jeanne Miller, for all her good input, and God for giving me the creativity and sustenance needed to see this project to its end.

CONTENTS

CHAPTER I: THE STATE CENSOR BOARD	1
CHAPTER II: BIRTH PANGS	7
CHAPTER III: GROWING PAINS	38
CHAPTER IV: A MID-LIFE CRISIS	58
CHAPTER V: DEATH SHUDDERS	77
BIBLIOGRAPHY	94

CHAPTER 1

THE STATE CENSOR BOARD

The Kansas State Board of Review, which became the state's agency for censoring movies, did not begin serving the people of Kansas until March of 1917. However, in order to understand the conditions which allowed movie censorship to prevail and flourish in Kansas, it is necessary to look first at the predecessor of the Review Board, the State Censor Board.

The State Censor Board was created by Chapter 294 of the Session Laws of Kansas of 1913. The law called for the examination and approval of all moving pictures by the state superintendent of public instruction. Section Four allowed for one or more additional clerks to be hired in order to assist in the work of censoring. Thus began the State Board of Censors, as its publications referred to it. Chapter 294 went on to require that the board be provided with each moving picture for examination by the individual or corporation intending to exhibit, sell, or lease it. The distributor was in turn required to pay a fee of two dollars per reel for each reel examined. The sole guideline given to the censors in their work was to "disapprove such moving picture films or reels as are sacrilegious, obscene, indecent, or immoral, or such as tend to corrupt morals." The law provided for a cash

penalty of twenty-five to one hundred dollars for the first offense, and not less than one hundred dollars for each subsequent offense, with each showing deemed a separate offense. In the event that a film was disapproved by the board, the decision could be appealed to a board consisting of the governor, attorney general, and secretary of state, the majority of whom would approve or disapprove the film for exhibition. The appeal board's decision was final.(1)

Almost immediately this law and a similar one in Ohio were challenged in the courts, and in 1915 the United States Supreme Court rendered a landmark decision in these two cases which would subject films to censorship for the next 40 years. In the Mutual Film Corporation v. Industrial Commission of Ohio, the Supreme Court ruled "the exhibition of moving pictures is a business pure and simple, originated and conducted for profit, like other spectacles, not to be regarded, by the Ohio Constitution, we think, as part of the press of the country or as organs of public opinion." Speaking for the Court, Justice Joseph McKenna went on to declare that it was impossible to specify exactly the general terms and application of censorship because furnishing no exact standard of requirements would allow for a more precise guideline to be developed from the sense and experience of men in reasoning and conduct. Until 1955, it was upon this sense and experience which the law would rely in the censoring of films in Kansas.(2)

The Court reiterated its decision in Mutual Film Corporation of Missouri v. Hodges, Governor of the State of Kansas. Justice McKenna found that the appellant lacked standing to sue because only film exhibitors were charged by Kansas law as responsible for censorship. The Mutual Film Corporation, which imported films into the state for exhibition, sought standing on the grounds that censorship imposed an unlawful burden on interstate commerce. Since the law did not prohibit the importation of films into Kansas, but instead regulated only the exhibition of films, the Court found that film censorship was a legitimate exercise of the police powers of the state.(3)

Having survived the court challenges, censorship in Kansas swung into high gear, although there was still work to be done strengthening the existing law. Justice John S. Dawson of the Kansas Supreme Court, in noting that the moving picture inspection law was upheld, wrote Charles Sessions, secretary to Governor George Hodges, to remind him that Chapter 294 lacked a specific appropriation of the inspection fees in order to carry out the act. The original law provided for the inspection costs to be paid out of the general revenue fund and appropriated one thousand dollars in order to administer the law. Dawson suggested an amendment to the effect that money derived from censor fees be appropriated for the express purpose of administering the act, if approved by the governor.(4) It

was in the area of fees and appropriations that the State Censor Board would face its final legal challenge.

In the State of Kansas ex rel. Brewster v. Ross, the state sought a writ of mandamus to direct the State Superintendent of Public Instruction, Edward Ross, to pay the state treasurer the fees collected from film inspection. Several film companies, contending the statute was invalid, asked for the return of the money they had paid in fees. Kansas required a two dollar per reel fee to be paid upon inspection, and from April 1915 to January 1917 the state took in \$35,295.00, while expenses ran \$11,018.23 for the same period. The film companies argued that as the fees collected exceeded the expenses of censorship enforcement, the law was in effect a revenue measure, and thus was unconstitutional according to the laws of Kansas. Speaking for the court, Justice Henry F. Mason stated that in order to render the state statute invalid, it must be proved that

either the discrepancy is so great that the court is forced to the conclusion that the legislature, in the first instance acted in bad faith and intended to produce a revenue under the pretext of requiring an inspection [of films], or else the law making body must have neglected an opportunity to revise the charges exacted after experience had demonstrated beyond controversy that as previously imposed [the fees] were unreasonably and unnecessarily high.

Finding no bad faith on the part of the legislature, and noting that the current legislature had revised the statute by adding a provision for the reduction of examination fees

should the returns outrun the cost of enforcement, Justice Mason concluded that the money paid in inspection fees should be turned over to the state treasurer.(5)

It was the revision of the state statutes (referred to by Justice Mason in his decision) which ended the State Censor Board and replaced it with the Kansas State Board of Review. One can only speculate as to the reasons why the state legislature found it necessary to overhaul so drastically its original vision of film censorship in Kansas. Perhaps it was three lawsuits in as many years that prompted the change. A better explanation may be found in a letter written by Governor Arthur Capper, who stated that in his opinion:

the most ridiculous laws a legislature ever enacted is that which makes the Governor, Attorney General and Secretary of State an appeal board. If these three officers should attempt to carry out the spirit of the law it would take most of their time to look at pictures. I do not believe the constitution of the state of Kansas contemplated anything of that sort. I have been obligated to ignore this law simply because it was a physical impossibility to comply with it. I shall insist that the next legislature repeal that provision of the censorship law.(6)

The new censorship law would give Kansans an institution that the public and lawmakers alike would praise and condemn, and that filmmakers would come to fear and hate: the Kansas State Board of Review.

CHAPTER I

NOTES

- (1) Sections 10774-81 of the General Statutes of Kansas, 1915.
- (2) Mutual Film Corporation v. Industrial Commission of Ohio, 236 U.S. 230, 240, 244-6 (1914).
- (3) Mutual Film Corporation of Missouri v. Hodges, Governor of the State of Kansas, 236 U.S. 248, 257-8 (1914).
- (4) John S. Dawson, Kansas Supreme Court Justice, to Charles Sessions, Secretary to Governor Arthur Capper, February 24, 1915, Capper Papers, Box 3, Folder 236, Kansas State Historical Society (hereafter cited as KSHS.)
- (5) State of Kansas ex rel. S.M. Brewster v. W.D. Ross, 101 KS 377, 379, 381-2 (1917).
- (6) Capper to Reverend Willis L. Goldsmith, Topeka, September 2, 1916, Capper Paper, Box 37, Folder 20, KSHS.

CHAPTER II

BIRTH PANGS

When the Kansas legislature redrafted the movie censorship law in 1917, it clearly had learned from the experience of previous attempts at film censoring. The state, now serious about long-term efforts at film review, provided for the appointment of a board which was a completely separate entity from the state superintendent of public instruction's offices. According to Chapter 308 of the Kansas Session law of 1917, the board was to consist of three members appointed by the governor, each to a term of one, two, and three years respectively. Board members could be removed by the governor for incompetency or neglect. Any vacancies on the board were to be filled by appointment of the governor for the unexpired term.

The immediate effect of having the governor appoint the members of the Board of Review, rather than have them elected by the public, was that of making the board subject to political influence and pressure, as well as a turnover in board membership nearly every time the political leadership in Kansas switched hands from the Republican to the Democratic party. Whether or not the politicization of film censorship was the intentional or incidental efforts of the legislature can only be the subject of speculation. It is probable that the lawmakers were merely seeking

competent, well qualified, educated persons whose experience would help them make sound judgements, as Section Three of the law called for, and appointment by the governor seemed more likely than popular election to achieve the desired results. Whatever the case, this method of supplying personnel to censor movies in Kansas would have significant long-term impact; because of the political nature of appointments they became a bone of contention between, as well as within, the major political parties. More importantly, the high turnover rate of board members, caused by the changing political climate, ultimately led to inconsistencies in judgement, which resulted in public opposition to the board.

One member of the censor board was to be designated by the governor as chairman, and that person became the administrative head responsible for money collected in censor fees. The chairman was paid an annual salary of \$1,800, while the two remaining members received \$1,500 each; all members received travel expenses as well. The salary proved to be too low to attract well-qualified men for these positions, and consequently all but one member in the board's fifty year history would be women.

The State Board of Review's main task, according to the new statutes, was to examine films and advertising material pertaining to films, and to disapprove of those items that were "cruel, obscene, indecent or immoral, or such as tend to debase or corrupt morals." Each board

member had one vote and the majority ruled, so two members could decide to approve or disapprove the film as a whole, or could require the elimination of certain scenes or words from a segment of the film. Upon approval, the film was to be stamped by the board with a certificate which read, "Approved by the Kansas State Board of Review," and this certificate was to be shown on the screen in approximately the first five feet of film. The board was required to keep written records of its work and report to the governor at his request.(1)

The new statute called for the Board of Review to have offices in Kansas City, Kansas. While it was necessary for the offices to be located in Kansas City instead of the state capitol in order to be near the film exchanges which would supplied the board with the film prints to be examined, working in Kansas City created problems for the board. Being near the film exchanges also meant that the board was in contact with the distribution representatives, who would try to sway the decisions of the board members through frequent visits to the board offices. The board offices were located downtown in the Old City Hall building, just across the river from Missouri, which had no film censorship. One continual complaint by board members was the difficulty of justifying their decisions to the public when Kansas citizens needed only to drive across the state line to view the unexpurgated versions of censored films.(2)

Suggestions were made at different points throughout the board's history to move it to Topeka in order to shield members from the pressure placed on them by film company representatives, but it was not physically possible to maintain the scheduled turnaround of films to be reviewed if the films had to be shipped to Topeka and then back again to Kansas City for distribution. There was one other important repercussion of locating the Board in Kansas City. Most of the board members appointed lived in the metro area, much to the chagrin of the rest of the state, particularly citizens from Wichita. Many of the members of the board were women from Wyandotte, Leavenworth, and Johnson counties, although there were some members from as far away as Shawnee and Lyon counties. The limited geographic area from which members were chosen came to be another point of contention within the political parties.

The review board was empowered to hire projectionists, clerks, film inspectors, and other employees, such as janitors, which it needed in order to function. Section 16 of the statute specifically empowered any member or designated inspector to prevent the unauthorized display or exhibition of any film or advertising material not approved by the board. The penalties were much the same as those of the previous censor board; unlawful exhibition of a film was a misdemeanor punishable by a fine not to exceed twenty-five dollars on the first offense, and not less than one hundred dollars nor more than five hundred dollars for

each succeeding offense, or imprisonment for thirty days in jail. Exhibition of unapproved advertising material was a misdemeanor punishable by not more than a fifty dollar fine or imprisonment in jail for not more than thirty days. The statute also replaced the appeal board which Governor Capper had found so ridiculous. Any person or company unhappy with the decision of the new review board had to seek redress of their grievances in Wyandotte County District Court. (3)

The most sweeping and dramatic change in the statute is found in Section 14, which stated that the board "may make and adopt such reasonable rules and regulations as it may deem necessary" for enforcing the provisions of the law. By 1948 the Kansas State Board of Review had adopted ten rules, most of them very mundane. A number dealt with the specific procedures that the board required to be followed in order to submit a film for examination; others broke films down into categories, and set accompanying fees for each type of film, be it a comedy, serial, full-length feature, educational feature, duplicate print, or advertising material. Rule Seven stated that if any part of the film was ordered eliminated or a film disapproved as a whole and the party submitting the film disagreed with the decision, the film or segment would be reexamined with the applicant or his representative and at least two members of the board present. This rule may have been made to placate the film representatives, or to work out any

problems before the matter went to court. The result of such reexaminations in the later stages of the board's history was greater flexibility in acceptance of films which the members had originally disapproved, as the board became fearful of the potential outcome of litigation. Even in the early stages, upon reexamination, pressure from the applicants could sway the board to change its collective mind, especially if its decision was split.(4)

The rule having greatest impact on censorship of films in Kansas was number ten, the standards adopted by the board as its guidelines for itself in the censoring of moving pictures. Ridicule, adverse criticism, or abuse of any religious sect, race, or public official or law enforcement officer would not be approved. Loose conduct between men and women, including all nudity, as well as barroom scenes, social drinking, and cigarette smoking were not allowed. Crime and violence with the use of guns and knives and criminal methods which gave instruction in the committing of crime by suggestion, were not to be approved, nor were prolonged and passionate love scenes when suggestive of immorality. Any evil suggestions in the dress of comedy characters were eliminated, and no ridicule or facetious remarks about motherhood or scenes pertaining to childbirth could be approved. Infidelity to marriage ties, themes of white slavery, and the allurements and betrayal of innocence were to be condemned. All prolonged scenes of roadhouses, dance halls, and houses of ill-repute

were to be eliminated. In short, the board required that pictures be clean and wholesome in nature, and anything tending to debase morals or influence the mind to improper conduct would be censored.(5)

With the statutes in place, Governor Capper, in March of 1917, appointed Mrs. J.M. Miller chairman of the Kansas State Board of Review. The other two members filling out the board were Mrs. B.L. (Grace) Short and Miss Carrie Simpson. Miller, described as the Women's Federation choice for the board, and Short, a clubwomen from Kansas City, were considered by the state exhibitors of moving pictures to be the conservative board members. Simpson, a former school teacher, was thought to be more liberal. All three were considered to be "well-educated Christian women of average intelligence." By April 1, 1917, the board was in full operation.(6)

The biggest problems the Board of Review faced in its first years of existence were those of consistency and enforcement. Governor Capper received letters complaining about films being shown in Kansas, such as the one from the president of the Federation of Parent-Teacher Associations of Kansas City, Kansas, which stated:

We were shocked to find that such pictures as Betty in Search of a Thrill and The Black Sheep had really been censored. Betty was censored early in the law, and we trust no more such demoralizing pictures are being passed. Pictures are being shown that are an open violation of the prohibition and anti-cigarette laws of our state, besides the demoralizing passionate hugging and

kissing promiscuously, with the bold actions which accompany this.(7)

Capper's secretary, Charles Sessions, replied that "the censors are trying to do the best they can. They are certainly cutting out a lot of filth and slime. Now and then they may reject a picture they ought not to reject and they may pass a picture that ought not be passed. On the whole they are doing the best they can with the light God gives them."(8)

Part of the problem encountered by the board was whether or not to follow the judgements of the National Censor Board. Sessions noted that Kansas censors deleted many scenes from films approved by the national board, which was made up of "the best known literary people, welfare workers and civic experts in the east." This was "probably due to our different standards of living. A picture that is so commonplace in New York as to cause no comment, nor to be questioned by the national board of censors, may cause indignation in Kansas, where we live in a different environment. The eastern censors poke fun at our censorship for the reason that they do not understand our code of living."(9) It is clear that Kansas did not accept the rulings of the national board, and probably would not have done so unless the board came around to the same values and ideas as the Kansas board.(10)

Enforcement of the new censorship law was an issue which concerned both the governor's office and the board.

Chairman Miller felt that the film exchanges intended to comply with the law, but that they were greatly handicapped in "securing competent help since so many of their employees are in military service." The enforcement problem was compounded when the board was advised by the attorney general to "pursue a policy of having the law enforced without prosecutions if possible." In order to follow this policy, the board subscribed to a number of state papers and watched the theater ads for uncensored or rejected films and advertising, notifying both the exhibitor and the film exchange if either were found.(11) Avoiding prosecution of film censorship violations obviously took the teeth out of the law and there were numerous reports from irate movie patrons of violations throughout the state, complaints that ranged from not showing the required certificate of inspection in the first five feet of film, to completely uncensored films slipping into the state from Missouri, Oklahoma, and Colorado. The most common complaint, however, was one received from the citizens of Salina, Kansas in May of 1918. The film, Cleopatra, starring Theda Bara, had been approved by the board with some eliminations, but when it was shown in Salina, it was with the censored footage included. Frequently the board viewed one print, then called for eliminations which were supposed to be made in all prints entering Kansas. These eliminations were not always made, perhaps because the exchanges thought they could evade the law as the state was

not prosecuting cases, or perhaps due to some individual's honest mistake of sending an uncensored copy into the state, or possibly because the turn around time from film exchange to exhibitor was so short as to make it impossible to eliminate the required scenes. Whatever the explanation, the slipping of uncensored films across the Kansas border was prevalent enough to make the board appear unable to enforce the law.

There was more to the complaints of the citizens of Salina than meets the eye. According to Miller, the board had it on good authority that Salina was "preparing to close all places of amusement, including motion picture houses, during the war for the reason that the time and money expended in such places should be given to worthier causes." In fact, the first World War was having a strong effect on movies and censorship. Miller complained that she did not know to "what lengths the motion picture business might go if there were no restraint [on them], for with the strenuous times brought about by the war, profanity and rough scenes highly objectionable are creeping into the films with alarming frequency." (12) Governor Capper received a letter complaining that the board had passed a film called The War Brides, "an emotional appeal for peace at any price," as described by the writer, Dr. Clarke Mangun, a Topeka physician. He protested the whole tone of the movie, particularly the characterization of women who bore children during wartime

as "brood mares" and "breeding machines," as well as the subtitle that proclaimed a list of war dead as "a great victory." Mangun stated that such films were "an insidious form of treason," and asked the governor to keep them out of Kansas.(13) While the board received criticism for not being stringent enough in its censoring of war films, exhibitors believed just the opposite. One exhibitor wrote the board stating, "frankly, the Germans cannot possibly commit greater atrocities upon human flesh than you well-meaning ladies frequently commit upon helpless celluloid."(14)

In its first year of operation, the Board of Review examined an average of 20 films each day they met. In its annual report to the governor, the members stated:

A majority of the films presented for censorship deal directly with crime, depicting all possible phases of it. The greatest harm to the young people doubtless comes through the serials which are a succession of crime and hold their interest and enthusiasm through the vivid portrayal of impossible feats. Another class of pictures which is a close rival of the Serial in its baneful effects, is the class dealing with sex relations and which depicts, in every walk of life, the betrayal of young girls and unsuspecting women. Another class of films that cause censors sorrow and vexation of spirit, is the so-called comedy, of the slap-stick variety. Much of it has been of such disgusting character, of vulgar situations and evil suggestiveness that we have protested long and loud against the production of it. We believe our work has met with the general approval of the better class of our people. At the same time, we have welcomed kindly criticism of some of our official acts.(15)

Indeed, there had been plenty of criticism of their first year's work, and by January 1918, the Kansas State Board of Review faced its first legal challenge under the new statute. The Mid-West Photo Play Corporation v. the Kansas State Board of Review concerned a film entitled The Easiest Way. The film was an adaption from a play by Eugene Walter about a fallen woman for whom "the easiest way" led from a luxurious existence and the gay night life of a city to an attempt to drown herself, and finally forgiveness and expiration in the arms of her true love. The Board of Review had denied approval of the film on the grounds that it was immoral. The Wyandotte County District Court reversed the board, and this action was followed by an appeal to the Kansas Supreme Court. Delivering the opinion of the court was Chief Justice William A. Johnston, who stated that "reexamination of the film to determine whether it is moral and fit for exhibition would be an exercise of administrative power, and that discretion and power was specially conferred upon the board." Therefore, "the court is not warranted in substituting its judgment for that of the board. If the board should act fraudulently, or so arbitrarily and capriciously as to amount to fraud, a resort to the courts may be had." The Photo Play Corporation alleged only that the board had "mistakenly but honestly determined that [the film] was immoral and unfit for exhibition, not that the board acted arbitrarily, capriciously or fraudulently, or

in excess of its powers;" consequently, it was assumed that the board's decision was made in good faith and should stand. The idea that films were protected by the First Amendment was not questioned in these proceedings.(16) The Board of Review had won a big victory in the Mid-West Photo Play case; now they were assured that their judgements would not be overturned by the court unless they acted with general disregard of the powers granted them by the state. Yet within five months the board would face another challenge in the State Supreme Court, and this involved one of the most controversial films in the history of motion pictures, The Birth of a Nation.

When Birth of a Nation appeared on the film scene in 1916, it caused an uproar throughout much of the country. The film was banned in Ohio, and in many cities such as Chicago, Boston, and Philadelphia it was required to undergo elimination of some scenes. Governor G.W. Clarke of Iowa wrote Governor Capper, asking him what was happening with the film in Kansas. Capper replied "I will do all in my power to bar it out of Kansas. We have a large negro population in Kansas. As a rule they are good citizens who are attending strictly to their own business, and I am opposed to exhibitions of this kind which excite race prejudice. We shall investigate carefully and unless the objectionable features have been entirely eliminated, I am of the opinion that the picture will be denied admission to our state."(17) Clearly, Governor Capper had made up

his mind about keeping this film out of Kansas, yet it was approved by the Board of Review. Why Birth of a Nation was accepted by the board is a story in itself.

On May 9, 1917, the Board of Review met to screen Birth of a Nation, and after viewing the film, Miller and Short were both opposed to approving the picture, while Simpson was very much in favor of the film being shown in its entirety. A film representative was also present, and he demanded a specific reason why the film was to be banned; otherwise he threatened to bring suit immediately. Having very carefully gone over the wording of the Kansas statute, the board members could find nothing to base their rejection on because the film was not, as they saw it, "indecent, obscene, or immoral," and the law, as Miller pointed out later, said "nothing about tending to excite the passions or prejudice of the people, or arraying one section against another, and for this reason I felt the court would reverse a rejected decision." (17) Reluctantly, the board approved the film. Miller and Short were immediately conscience-stricken and wrote the governor detailing what had taken place, and as allowed by Section 17 of Chapter 308 of the Laws of 1917, they ordered a reexamination of the film, clearly with the intent to change their decision. (18)

Governor Capper was both pleased and relieved at the board members' change of heart. He wrote Miller stating,

I am glad that your board has recalled The Birth of a Nation. In my humble opinion the only way to make that picture moral, in the sight of God and man, is to eliminate everything after the title. If it is not immoral and debasing to picture General Grant as a rough neck instead of a great patriot; to make him appear as a ward-heeler of a red-light district, compared to Lee, 'the dignified Southern soldier'; to picture Union soldiers as the rag-tag of creation, [and] at the same time picture rebels as 'the flower of the land'; to picture Thaddeus Stevens, one of the great men of his day and right hand man of Lincoln in the trying days of the Civil war, as a tyrant and habitue of negro hovels; to picture his daughter making love to a negro ward-heeler; to picture Stevens running a negro legislature; to do all this to Stevens, when he in fact was a single man and had no daughter and when he had been dead two years before any negro legislature was ever held anywhere; to picture the Klu Klux Klan, the worst cut-throats and murderers in all history, as a band of high minded patriots; to glorify the Southern rebels and traduce Lincoln's Union army; to make it appear that this nation had its real birth with the Klu Klux Klan cut-throats; to pervert history by saying the South was right and the North was wrong, impugning the motives of Lincoln and all others who fought to preserve the Union and free the slaves--if, I say, it is not immoral and debasing to picture all these things, then I must confess that I do not know what immorality and indecency is.

Capper concluded that "If there ever was a time when [we ought to] encourage our people in this country to stand together it is in the present crisis. To do anything that would tend to stir up race or class hatred, a thing the Kaiser, with his spies, is trying to do, borders on treason. . . . Kansas, of all states, ought to bar [The Birth of a Nation] out."(19)

This was exactly what the board intended to do, rescind their previous approval and bar The Birth of a

Nation from exhibition in Kansas. Unfortunately, the exhibitor of the film, knowing full well the outcome of a second viewing, was unwilling to return it to the board for reexamination and the board was forced to request a writ of mandamus to retrieve the film. In the State of Kansas, ex rel. S.M. Brewster v. L.M. Crawford, the board attempted to compel the producer of the film to deliver the film to the board for reexamination. The producer, Crawford, alleged that all the board members were satisfied with their decision until two of them were "adversely influenced by certain prominent and influential outside persons;" that there was no just reason why the film should be recalled; that the recall was not done in good faith, that it was not for reexamination, but for rejection. Speaking for the court, Justice Judson S. West concluded, "In view of the presumption that public officers will do their duty and act fairly, the evidence of opinions already formed by two members of the board, and of the pressure of views expressed to them by others, does not raise the counter presumption that in such reexamination such members will not act in good faith. Should bad faith be actually shown, relief may be had in the courts."(20) A little over one year after the controversy began, The Birth of a Nation was reexamined by the Board of Review and promptly banned from exhibition in Kansas.

In April of 1918, Short's one year term was set to expire. Governor Capper received a letter from the

president of the Kansas City Feature Film Company complimenting the work Short had done, and asking for her reappointment, which was eventually granted by the governor.(21) It is possible that what prompted such a letter was genuine pleasure with the quality of Short's work, or even fear on the part of the film company that someone with more stringent standards would be appointed. What is more likely is the idea that Short herself asked for such a recommendation, because she was fearful of losing her position. Since the board's inception in 1917, there had been infighting, suspicion, and jealousy between the members. In May of 1917, only one month after the board began work, Miller wrote the governor concerning her fears of job security. "A certain woman stopped here this morning on her way to Topeka with a view to being appointed to a vacancy if one is created. I trust this is mere gossip and unfounded and that there will not be any change made on this Board until I have had an opportunity to see you personally."(22) During The Birth of a Nation controversy, Short wrote the governor complaining that Miller had "done me an injustice" by inferring that she had stood with Simpson in approval of the film. "I do not think Mrs. Miller intentionally gave you the wrong impression," Short concluded, "and I am anxious that you should know the attitude I took on the question."(23) Indeed, it was not unusual for each member to write the

governor expressing the "attitude" they took on any decision.

The infighting continued and accelerated when Henry J. Allen became Governor of Kansas in 1919. Allen had come under pressure from the Kansas State Exhibitors Association to make some changes in the board. Stanley Chambers, head of the Legislative and Censorship committee and owner of one of the states largest movie houses, the Palace in Wichita, wrote Allen complaining that he must make good his election promises. He cited evidence of infighting by board members over the film Judy of Rogues' Harbor, a film which was rejected by the Board. He stated,

I have been advised this picture was killed for no other reason than the fact that it was released by a concern who has in their employ a brother of Miss Simpson, one of the members. I am confident the picture was killed by the remaining members for no other reason. I have positive proof that the Board is fighting among themselves and we, the exhibitors, are the "goats". There are many pictures brought before the Board in the course of the day's work that suffer very materially from the discord that now exists among the Board's members.(24)

Chambers' allegations were further substantiated in a letter from Lucille Dill Russell, a former stenographer for the board, who wrote the Governor.

You no doubt know of the jealousy which exists between the Board members. I actually had different members refuse to speak to me for a week, because one of the other members was talking in a confidential manner to me, and I will be quite candid, they would talk about each other to me. I have even heard a Member of the Board express her opinion of the other members in language quite unbecoming to a woman, especially

one who is supposed to be in a position working to UPLIFT humanity.

Russell also stated that Chairman Miller was secretive about incoming and outgoing correspondence, and that she used office resources to conduct personal business. She concluded that "each member tried her best to get ahead of the other members and to do something antagonistic."(25)

It appears that the board members, or at least Miller, sensed that perhaps their jobs were in real jeopardy. Miller felt obligated to explain to the governor the particulars of rejecting a film entitled Sex, starring Louise Glaum. The board found the film to be immoral, and a long argument ensued with the film's representatives, who finally threatened to take the matter up with the governor and the Exhibitors Association. While the board members wanted no trouble, they felt it was necessary to ban the picture, because it could not be improved by making eliminations.(26) The day was coming when the board would back down from such a fight. Miller complained:

The removal [of the board from Topeka] has separated this branch from every department of the State and has placed it in the midst of the enemies of censorship and every influence has been antagonistic to the work of the board. We have an earnest desire to make our work all that it should be and satisfactory to you and to this end we will welcome any suggestions you will make.(27)

The governor felt he had to get a better view of the working of the board. He appointed the Reverend M.S. Collins of the First Methodist Church of Burlingame to

observe the board for a month, to meet with exhibitors, and to offer his suggestions for improving censorship of films.(28) Allen wrote:

The irritation which exists in the Moving Picture Board is so patent that it even transmits itself to the patrons of the service. I am not surprised that [the board members] were worried about their jobs, because I have been rather frank in expressing my discontent with the manner in which they quarrel together. I am satisfied that the present board has too much to do--that is, that its members should not hold such long sessions with the pictures. They ought to have relief, and what we ought to build up is a better inspection system.(29)

Reverend Collins concluded that the location of the board at Kansas City gave the film representatives the "every-day opportunity to swarm over the line with their attorneys and browbeat and intimidate the women and get concessions and compromises out of them that should not be granted.(30)

Another recurring concern was that of enforcement. Under Capper, the board had lobbied unsuccessfully for more statewide inspection, particularly to check for uncensored films, and to make sure the exhibitors were complying with the law compelling them to show the board's approval tag in the first five feet of the first reel of film.(31) C.M. Reed, secretary to Governor Allen noted that this was still a major problem. "In fact," he stated, "the motion picture censorship law seems to be a dead letter, except that some of the films are being viewed by the Board. Neither the film companies, the exhibitors or the patrons have any respect for the law or the way it is being administered.

Probably more complaint has come to me over the state as regards motion picture censorship than any other single thing. (32)

By 1920 much pressure was coming to bear on Governor Allen to make some sort of change with the Review Board. N.W. Huston, owner of the Columbus Advocate, wrote the governor, advising him to "get rid of some of the petticoats. There is no reason why there should be three women on the board of censors. One would be a-plenty. And even that one would be superfluous, unless she was broad-minded enough to look at pictures with their entertainment value in mind, rather than their Biblical application." He added these insights about the board members: "I believe Miss Simpson is usually disposed to be fair in her criticisms. Mrs. Short is merely the 'me, too' member of the board,--voting with Mrs. Miller, always." Huston complained further:

Our present board carries the Puritan view to an extreme. They see indecency where none exists. They insist upon the wronged girls being all 'secretly married' in the first reel--even though it upsets the continuity of all the rest of the story. In Heart of Humanity, they cut out the wonderful scene where the dog rescues the nurse in No-Man's land, when a wounded Hun tried to grab her. I saw this picture in Joplin, [Missouri], and when the dog leaped at the man's throat, and apparently tore him to pieces, the audience stood up on chairs and cheered! Our dear lady censors (God bless them) said this scene was too 'shocking' so out it went. There are dozens of cuts this board made in war pictures, so much so that it was a common remark among picture men that the board was pro-German. (33)

Allen replied that he had been studying the situation and was looking for the right sort of man.

I don't mind telling you frankly and in confidence that I am going to put on one man. I find there is still a very strong sentiment that censoring pictures is a sort of woman's job, but if the change I am making does not bring the right results then I am going to do something more. I want the censorship law to be useful to the public without being harmful to any picture exhibitors who desire to do a clean and decent business.(34)

F.S. Roberts, who had been commissioned by the governor to do some work with the board, submitted his suggestions for changes to the governor, including that one man be appointed to the board and that the reviewing room be closed to all visitors, especially film agents and dealers, so that the decisions could be made confidentially.(35)

While the governor wanted to appoint a man to the board, he ran into a major problem, that of salary: "The difficulty of the past two years has been that, although I have made repeated efforts to get a man of sufficient caliber to be the chairman of this board, the salary, which is only \$2200 a year, has stopped me from securing anyone really worth while. I think the salary will be increased sufficient to enable me to re-organize the board with some good strong man at the head of it."(36) Finally the governor did find his man, but the events surrounding his addition to the board were highly unusual.

In June of 1921, Carrie H. Simpson either resigned or was fired from the Board of Review. Miller was asked to step down from her position as chairman to fill out the remaining term of Simpson. Dwight Thacher Harris was appointed as the new chairman. Only briefly, in two letters between Harris and Governor Allen can the mystery of Simpson's departure be examined. Harris wrote, "Miss Simpson turned over her key to me and departed shortly after I came. Not, however, without informing me that Senator Rolla Coleman had told her that he would 'make 'em pay the tax' at the next legislature. I interpreted the phrase as meaning that the senator sympathized with Miss Simpson."(37) Allen replied,

I don't think we need to fear Rolla Coleman, because he is a reasonable man, but I do believe that someday you ought to see him and tell him the truth about Miss Simpson. I am sending you a copy of the letters and telegrams she sent to the Paramount people. I interpreted that she meant to tell them that unless they followed her suggestions in reference to Nathanson, who turned out to be a crook, that she wouldn't be able to give the Paramount people impartial censorship. It was as rank an effort on the part of a person in a position of official power to use the stuffed club as I have ever witnessed. I did not make any announcement about the real reason for desiring an immediate cessation of her services, but there is no harm in having the material so that we may protect ourselves with our own friends against her malicious falsehoods."(38)

It seems that Simpson was involved in something as underhanded as extortion, the exact nature of which may never be clear. But one thing is certain: the governor was

finally supplied with the opportunity to appoint a man to the board.

One of Harris' first acts as board chair was to visibly toughen enforcement of the censorship law. He started sending a message to exhibitors by closing the Hippodrome theater in Leavenworth rather than allowing Man's Law, an unreviewed film, to be shown there.(39) "The really big problem of the Board," he wrote the Governor, "is the matter of compelling the [film] companies to abide by the censorship of the board, and showing the tags of the board on the films. The companies pass the buck to the distributors and the distributors promptly pass it back to the companies." He also complained that the board had to reissue a lot of tags because they had been "lost." "I can easily see how the tags might be used for pictures that have never come to this board." After having worked with Mrs. Miller and Short, Harris found them to be surprising. "I came here expecting to find them more or less inclined to be a bit narrow. But so far they have not been. Mrs. Miller doesn't like snakes and Mrs. Short doesn't like women smoking cigarettes, but outside of those two idiosyncrasies we seem to agree."(40)

By the close of 1920, the board's work would again take on some controversy. With the growing disenchantment of Americans over prohibition, the rise of labor unions, and the growth of socialism in America, it was only a matter of time before film was used to promote such causes.

One such film, The Marching Amazons of the Kansas Coal Fields, was rejected by the board because it tended to corrupt morals by depicting unlawful assembly, as well as workmen compelled to kiss the American flag and promise to quit work. A Fox News film was likewise rejected because the board felt it was "propaganda for the repeal of the Volstead Act." (41) Films such as Friends of Soviet Russia were labeled as Soviet propaganda, and Harris felt they should not be shown in Kansas City, particularly during a meat packing house strike then in progress at Hormel. (42) The film which caused the most controversy was entitled The Contrast. It depicted the differences in working conditions in major industrial centers when unions were organized. The board opposed the film because of its heavy socialist overtones, and rejected it, whereupon a suit was filed in Wyandotte District Court to have the film reviewed again. The court did not overturn the board's decision to reject the film, and this brought a flurry of angry letters and petitions to the board from labor unions all over Kansas. Unions from the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators to the International Association of Bridge, Structural and Ornamental Iron Workers wrote to complain that they could not see how this film could corrupt the moral welfare of anyone. (43) According to a letter from the International Brotherhood of Boiler Makers and Ship Builders, it was possible the film would, if anything,

"serve to enlighten the public on the true cause of labor disputes and industrial condition in industrial centers".(44) Despite the most concentrated letter writing campaign in the board's history, the decision to ban The Contrast stood.

In one of his final acts as governor, Allen decided to send Harris on a trip around the country to meet with other censor boards and share information and experience. Miller and Short, either out of petty jealousy or genuine concern for their jobs, wrote the governor as soon as they had heard of his decision, which they learned of from Harris. As Miller put it, "We gladly approve your plan but we think the suggestion would better come to us direct from yourself. How long should he be gone and about what should be allowed for expenses? In view of the fact that the incoming democratic administration will carefully investigate our expenditures we do not want our official acts subject to criticism."(45) Short worried, "I would like to know your opinion of Mr. Harris' proposed trip East to other Censor Boards. I am a little doubtful as to the policy of starting a precedent at this time. It might give the new governor a ground for removal if he so wished. I for one am very anxious to hold my place."(46) It seems that the board members did indeed have grounds to fear they would lose their jobs, because when incoming Democrat Jonathan Davis took over, a clean sweep was made of the

Kansas State Board of Review, and three new inexperienced people took over the task of censoring films in Kansas.

CHAPTER II

NOTES

- (1) Chapter 308 Sections 51-101 to 12 and 74-2201 to 8 of the Session Law of Kansas, 1917.
- (2) Governor Henry J. Allen to E.D. McKeever, Topeka, Allen papers, Box 15, Folder 21, KSHS.
- (3) Chapter 308 Section 51-101 to 12 of the Session Law of Kansas, 1917.
- (4) Annual Report of the Kansas State Board of Review, 1917-18, p.9, Uncataloged collection of the papers of the Kansas State Board of Review, (hereafter cited as Board Papers), Annual Reports Box, KSHS.
- (5) Ibid. pp.9-10
- (6) Allen to E.D. McKeever, Topeka, Allen papers, Box 15, Folder 21.
- (7) Dora Stanley, President of the Federation of Parent-Teacher Associations of Kansas City, Kansas to Governor Arthur Capper, March 31, 1916, Capper papers, Box 8, Folder 176, KSHS.
- (8) Charles Sessions, Secretary to Governor Capper to Stanley, April 4, 1916, Capper papers, Box 8, Folder 176.
- (9) Sessions to Juliet S. King, Emporia, March 3, 1916, Capper papers, Box 8, Folder 183.
- (10) Capper to J.W. Binder, Motion Picture Board of Trade, January 10, 1916, Capper papers, Box 7, Folder 24.
- (11) J.M. Miller, Chairman, Kansas State Board of Review to C.M. Reed, Secretary to Governor Allen, March 19, 1919, Allen papers, Box 15, Folder Motion Picture Board 1919.
- (12) Miller to Capper, May 27, 1918, Capper papers, Box 11, Folder 45.
- (13) Clarke W. Mangun, M.D., Topeka, to Capper, September 3, 1917, Capper Papers, Box 11, Folder 45.
- (14) Miller to Capper, May 27, 1918, Capper papers, Box 11, Folder 45.

(15) Annual Report of the Kansas State Board of Review, 1917-18, Capper papers, Box 11, Folder 45.

(16) Mid-West Photo Play Corporation v. J.M. Miller, et al., the Kansas State Board of Review, 102 KS 356, 358-61 (1918).

(17) Capper to G.W. Clarke, Governor of Iowa, January 13, 1916, Capper papers, Box 7, Folder 67.

(18) Miller to Sessions, May 9, 1917, B.L. Short to Sessions, May 10, 1917, both in Capper papers, Box 11, Folder 45.

(19) Capper to Miller, May 10, 1917, Capper Papers, Box 11, Folder 45.

(20) Kansas ex rel. S.M. Brewster v. L.M. Crawford, 103 KS 76, 78 (1918).

(21) A.G. Flinton, President of Kansas City Feature Film Company to Capper, February 11, 1918, Capper papers, Box 11, Folder 45.

(22) Miller to Sessions, May 14, 1917, Capper papers, Box 11, Folder 45.

(23) Short to Sessions, May 11, 1917, Capper papers, Box 11, Folder 45.

(24) Stanley N. Chambers, Chairman, Legislative and Censorship Committee of the Kansas State Exhibitors Association to Allen, February 26, 1920, Allen papers, Box 15, Folder 21.

(25) Lucille Dill Russell to Allen, January 27, 1920, Allen papers, Box 15, Folder 21.

(26) Miller to Allen, April 13, 1920, Allen papers, Box 15, Folder 21.

(27) Miller to Allen, March 27, 1919, Allen papers Box 15, Folder 71.

(28) Allen to Miller, September 20, 1919, Allen papers, Box 15, Folder 71.

(29) Allen to Mrs. J.F. Jarrell, Topeka, September 13, 1920, Allen papers, Box 15, Folder 21.

(30) F.S. Roberts, Publisher, the Oskaloosa Independent, to Allen, May 15, 1920, Allen papers, Box 15, Folder 21.

- (31) J.M. Miller to Capper, January 9, 1918, Capper papers, Box 11, Folder 45.
- (32) Reed to Miller, March 20, 1919, Allen papers, Box 15, Folder 71.
- (33) N.W. Huston, Owner, Columbus Advocate, to Allen, March 22, 1920, Allen papers, Box 15, Folder 21.
- (34) Allen to Huston, March 30, 1920, Allen papers, Box 15, Folder 21.
- (35) F.S. Roberts, Oskaloosa, to Allen, May 31, 1921, Allen papers, Box 15, Folder 21.
- (36) Allen to Dr. Sheldon, January 31, 1921, Allen papers, Box 15, Folder 21.
- (37) Dwight Thatcher Harris, Chairman, Kansas State Board of Review, to Allen, June 20, 1921, Allen papers, Box 15, Folder 21.
- (38) Allen to Harris, June 24, 1921, Allen papers, Box 15, Folder 21.
- (39) "Film War Just Ahead", Kansas City Kansan, June 26, 1921, Allen papers, Box 15, Folder 21.
- (40) Harris to Allen, July 1, 1921, Allen papers, Box 15, Folder 21.
- (41) Harris to Allen, January 27, 1922, Allen papers, Box 15, Folder 22.
- (42) Harris to Allen, December 19, 1921, Allen papers, Box 15, Folder 21.
- (43) Resolutions from the International Alliance of Theater Stage Employees and the Moving Picture Machine Operators Local No. 414 to Allen, January 25, 1922, and the International Association of Bridge, Structural and Ornamental Iron Workers to Allen, January 3, 1922, Allen papers, Box 15, Folder 21.
- (44) International Brotherhood of Boilermakers and Ship Builders to Allen, January 3, 1922, Allen papers, Box 15, Folder 21.
- (45) Miller to Allen, December 1, 1922, Allen papers, Box 15, Folder 21.

(46) Short to Allen, December 5, 1922, Allen papers, Box 15, Folder 21.

CHAPTER III

GROWING PAINS

Virtually nothing is known about the functions of the Board of Review that was run by Mrs. Gertrude A. Sawtell, Mrs. Luther Swenson, and Mrs. Eleanor Tripp from July 1923 to March 1925. The only existing record, the biennial report to Governor Jonathan M. Davis, is sparse in detail, but does note three important changes. The first change was the fact that Kansas began to correspond with the six other states which had motion picture censorship: New York, Pennsylvania, Maryland, Ohio, Florida, and Virginia.(1) The correspondence allowed the board to get some advance warning about what movies coming into the state might be particularly offensive and also provided the board with the opportunity to compare their judgements with those of other official censorship bodies. This allows for some interesting comparisons.

In the movie Why Be Good which was initially disapproved for exhibition in Kansas, the Board of Review asked for eliminations in seven of the eight reels of film. The eliminations were a combination of titles (written dialogue on silent films) and action within the film. Such titles as "Well, mama-now that I'm tea'd up-let's neck; Son, that girl has seen life and shows it," and "My own daughter accepting clothes from a man like a common

strumpet," were but a few of the titles required to be eliminated. Actions to be eliminated included any scene with liquor in it, scenes with a bed in a roadhouse suite, and scenes of a boy slipping his hand up a girl's leg. The state closest in its judgements to those of Kansas was Ohio, which requested eliminations in all eight reels of Why Be Good, and asked for approximately five more eliminations in action and titles than Kansas. The two other states which reported on this film, Maryland and New York, requested eliminations in three and five of the eight reels, respectively. Both of these states leaned heavily toward elimination of actions rather than the film dialogue; New York eliminated only two titles, Maryland none. Film censorship was anything but consistent throughout the United States. Moral judgements applied to movies seemed to be regional, with the East Coast a bit more liberal than the Midwest. Throughout its history of censorship, Kansas would be most like Ohio in its film censoring and would continue to have the closest working relationship with that state's board.(2)

The second change that the board made during this period was to change the tag that the board affixed to every film that it censored. The tag now bore the advertisement, "Kansas grows the best wheat in the world."(3) While the board noted that the new tag had received a great deal of favorable comment, they did not yet realize the long-term impact of the statement made by

the tag. Within two years of the addition, two things happened. First, there came requests for other such advertisements to appear. A.L. Scott, state president of the Izaak Walton League of America, requested that the phrase "Join the Izaak Walton League" be run on every reel. All requests had to be denied; it would not have been possible or even proper to meet the demands of such special interest groups. The second and most important effect of the wheat tag was that many were removed and destroyed by exhibitors in Missouri and Oklahoma, who objected to the tag's message, consequently the number of replacement tags issued during this period skyrocketed.(4) Eventually the message was removed by the board.

The third significant change during this period was a three-tier reduction of fees, made at the suggestion of the governor. The basis for the reduction is unclear; all that is known is that some reels screened at \$2.00 were lowered to \$1.50 and some to \$1.00, and 50 cent reels were eliminated, with these now receiving a 25 cent tag.(5)

In 1924 the Republican candidate for governor, Ben S. Paulen, defeated Davis, and again the Board of Review was swept out and replaced with persons deemed suitable for the task by the new governor. The choice for chairman was surprising. Miss Emma M. Viets had previously served for nearly one year as a censor, having been appointed by departing Governor Davis when he first entered office. Also appointed by Paulen to serve with her were Mrs. W.H.

Haskell and Mrs. Etta B. Beavers. The housecleaning was so thorough that even the secretary, stenographer, and inspector for the board were also asked for their resignations.(6)

The incoming censors were definitely more open-minded than their predecessors. When she received a complaint from the Salina Parent Teacher Association, Viets wryly noted, "At all times we will endeavor to give our very best to service but I fear if I eliminated all smoking and drinking scenes there would be little left but 'Approved. Kansas State Board of Review' and 'The End'."(7) While this board was more liberal, it was not without its own quirks. In censoring the movie Screen Snapshots, the board removed all frames containing pictures of Fatty Arbuckle, the comic actor who was indicted for manslaughter when a young actress was killed at one of his parties.(8) While Viets claimed just to be following the rulings of previous boards, it was well within her power to rescind such rules.

Two major issues were the focus of the board under the leadership of Viets, both of which were brought on by the advance of technology in the film industry. The first dealt with private organizations or individuals showing films. With the advent of sixteen-millimeter film and inexpensive film projectors, a film could be viewed just about anywhere. Was film censorship going to be limited to commercial, for-profit screening of shows, or was it to blanket all movie screenings? The board received

complaints that a guest at the Ellsworth Fire Department banquet showed two reels of authentic battle scenes of World War I and one reel of the Tunney-Dempsey fight. The reels were thought to have been the new sixteen-millimeter Bell-Howell film.

This was just the tip of the iceberg. Soon complaints poured in from across the state. The Young Womens Christian Association screened a film sponsored by the Better Health Club and took up an offering.(9) Was this to be considered a commercial endeavor? Reverend G. Charles Gray complained to the board that he was unable to pay the fee for showing movies to his church members, and asked for a concession on the price; it was disallowed by the board.(10) The coup-de-grace of the whole affair came when it was pointed out to the board that the state universities had several hundred uncensored films and had begun running a film exchange. After some investigation the board found 328 films without tags at the University of Kansas. Now the board members had to decide which were purely educational or religious films, to be tagged at 25 cents a reel, and which were feature films that the university was selling for exhibition at a profit--these were to be tagged at \$2.00 per reel. The university naturally wanted a concession in prices, but Viets noted that "If we give a concession to them, I know the various exchanges are waiting for an opportunity to ask for a reduction in fees."(11) The university's Bureau of Visual Instruction

found the fees unreasonable, and tried to convince board members that pictures like Uncle Tom's Cabin were purely educational films. The university was purchasing its films from a Chicago firm, and they were being shown without charge in the local parks, which of course had the film exhibitors up in arms over the loss of revenue.(12) Had this not been the case, the whole situation might never have come to the board's attention. The board finally came to a quite adamant conclusion: all films, regardless of who was showing them, whether for profit or not, were to be censored by the board and pay the appropriate fee.

The single most important issue since the advent of censorship came before the board in the innocuous form of a film called The Jazz Singer, starring Al Jolson. With the growth of technology was born the first "talkie," a movie which recreated the human voice. Could movie censors eliminate the spoken word from a movie in light of the First Amendment to the Constitution guaranteeing freedom of speech? By 1928 this very question was in the courts in Pennsylvania and New York.

The Kansas board, which did not even have the proper equipment to screen sound movies so that they could be heard, relied on silent prints of the films to understand the story lines, and with no sound available, could only censor action in the films. Ohio did much the same thing, as it waited for a court ruling. But by April of 1929, the Kansas board felt they could wait no longer, and sought an

opinion from Attorney General William A. Smith.(13) He concluded "nobody in the legislature [of 1917] had ever dreamed of the advances that the art was to make in the next twelve years and did not contemplate extending the censorship to any spoken word." Noting that the word film was used in the statute governing censorship in Kansas, and that the word film "simply meant an apparatus for reproducing photography and nothing else," Smith decided that "the powers conferred upon the board of moving picture censors by that act do not include the power to censor the spoken word, no matter how recorded."(14) This was indeed a serious blow to censorship of films in Kansas. But by 1930 there was a breakthrough in a lower court in Pennsylvania, which gave that board the right to censor talkies the same as silent films, and Kansas, acting on the belief of being upheld in court because of the similarity in the Kansas and Pennsylvania laws, began to censor the spoken word in films.(15)

When Republican Clyde M. Reed took office as Governor in 1929, he reappointed Emma Viets as chairman of the Board of Review. Also appointed were Mrs. L.S. Bearce and Miss Hazel W. Myers. Within one year of her reappointment, Viets died suddenly and unexpectedly. An assertive and competent individual, she had provided strong but liberal leadership for the board, and finding another person so equal to the task would be difficult. Nevertheless, Governor Reed appointed Myers to the position of chairman,

and added Mrs. Minnie L. Henderson as a member of the board. Whatever Myers lacked in ability she more than made up for in zeal. Over the course of the next three years, the board grew more conservative in its judgements. Scenes of women smoking were once again removed, and dancing was more closely censored, as seen in the required eliminations for Hit the Deck, where an excessively wriggling dance by chorus girls was cut, noting "especially [the part] showing the colored girl in front of chorus." Another example of unacceptable dancing was found in the movie Bright Lights, where two frontal views of Dorothy Mackaill's dance were cut because her "umbilicus shows." Titles and spoken words in film referring to sex or sensuality were removed; in the film Bride of the Regiment, the title "The bridal chamber for one night, even the revolution can wait," and in Hot For Paris the words "As hot as a bride's breath" were eliminated as well. Even nudity in art was banned; in the 1930 MGM film Fast Work, scenes of a life-sized nude statue were removed. (16)

Comedy was not spared from the censor's knife during this period of renewed conservatism. In the film Snappy Salesman, a scene in which a cow's udder was used to play a victrola was eliminated. Ladies of Leisure starring Marie Prevost required cutting a scene in which her legs were shaking as she stood in a reducing belt. Puns and double entendres were also taboo. The title "Coney Island, where many a person gets tanned on his week-end," cut from the

movie Sock and Run is just one of the more mundane examples. Slapstick humor was also censored. In Our Wife starring Stan Laurel and Oliver Hardy, the standard slapstick shtick of getting caught with one's trousers down was ordered removed. The return to a more conservative stance could also be seen in the removal of scenes containing alcohol, the mention of childbirth, and criminal acts, no matter how important they were to the continuity of the film.(17)

When Democratic candidate Harry H. Woodring took office as governor in 1931, he must have been fairly pleased with the work the board had been doing because he decided not to replace them. One disgruntled movie patron wrote the governor that there "must be something wrong with our 'Censor Board': From the pictures that are getting by the board, allow me to suggest that I am sure you have good democrats who have good eye sight and can hear well, and I think it is about time my republican colleagues who cannot see or hear be replaced."(18) On the whole, however, there were far fewer complaints about the board during the reign of Hazel Myer than any other chairman, but there is no way to be certain just why that was. It could be that self-imposed censorship of the movie industry by the Hayes Office did indeed clean up film before it ever reached the local censor. One could also speculate that after the relative decadence of the twenties, the effect was a wearing down the sensitivity of the movie patron. But what

is more likely is that there were simply greater concerns to be dealt with than an objectionable film; namely, the onset of the economic depression in America. Whatever the case there was little or no controversy under the leadership of Myers, that is until The Birth of a Nation reappeared on the scene.

Imagine the surprise of the censors when in June of 1931 a man claiming to own the talkie version of the film The Birth of a Nation submitted it for review. He called to the attention of the board members the fact that somehow, incredibly oblivious to all of the controversy in 1917, the Review Board headed by Mrs. Gertrude Sawtell in 1923 had passed the film with only one minor elimination, thus entitling the film to be tagged for exhibition in Kansas. A further wrinkle was added when it was discovered that this man, a Mr. Silverman, did not own the film, and a lawyer representing a party claiming to own the film asked the board not to tag Silverman's copy in order to prevent loss of revenue to his client.(19) The board was compelled to tag the film, which led to full-fledged controversy because the film was immediately booked into a Topeka movie house. Roy Wilkins, Assistant Secretary for the National Association for the Advancement of Colored People, brought pressure to bear on Governor Woodring with a series of letters and telegrams, and shortly thereafter the board recalled the film for re-examination and got a court injunction prohibiting its exhibition until the matter was

settled.(20) Just as it did in 1917, upon re-examination, the Board of Review barred Birth of a Nation from exhibition in the state of Kansas.

From 1930 to 1942, it is impossible to get a clear picture of the workings of the Board of Review because there are simply too few records available dealing with the board's work. Part of the problem lies in the fact that the membership of the Kansas State Board of Review changed so frequently during this period that there were six chairmen in the ten years from 1930 to 1940, compared with four chairman over the thirteen year period from the Board's inception in 1917 to 1930. This constant change in the board's makeup no doubt contributed to the sparseness of public records through lack of consistent leadership, as well as making it almost impossible to see any continuity in the work of censoring films from board to board. Clearly the work of censorship continued during this period, but there is also little evidence to be found in the correspondences of the governors. Indeed, all of the governors' files from Capper in 1917 to Woodring in 1931 are full of correspondence between governor and board. One would surmise that the records of Alf Landon would be much the same, perhaps even fuller due to his long stay in office, from 1933 to 1937. In fact during the period spanning from the beginning of Landon's gubernatorial stay in 1933 until 1948, few of the governors' records contain any correspondence with the Board of Review. The papers of

Walter A. Huxman, Payne H. Ratner, Andrew F. Schoepfel, and Frank Carlson contain few if any clues to the condition of the Board of Review and censorship in Kansas.

Beyond the obvious fact that there was a great deal of turn over in board membership contributing to the lack of public record, we can only speculate as to other factors involved. There can be no doubt that the Great Depression and World War II found Kansans preoccupied with weightier affairs. But if anything, during this period, film production and attendance actually increased and consequently the board's records should have also increased.

It is unclear how great a role self-censorship of films continued to play in the apparent lack of controversy during this period. Want of information on the board's activities may be in part a matter of not preserving the record for history, in throwing out old files of predecessors, in picking up the telephone to settle important matters rather than writing a letter. Or it may be that a premeditated sanitization of the records occurred and that is why little material remains from the board during this period, although this seems unlikely. It may be that as the Board of Review grew more established as a state agency, and as the citizenry grew more accustomed to censorship as a fact of life, there was less and less need to confer with the governor over matters pertaining to the board's work. The one place that an abundance of material

about the working of the board is found is in the files of the attorney generals, which is definitely a forshadowing of things to come. As the work of the board and the legalities binding it become more complicated, the attorney general played a far more important role than the governor. Any or all of these things in combination may have had the effect of diminishing material dealing with the workings of the board. The real question is: what do we know about the workings of the board during the period of 1930 to 1942?

We know that there were a lot of personalities involved, particularly during the period 1930 to 1940, when the chair of the Board of Review was swapped between three women: Mrs. Hazel W. Myers, Miss Mae Clausen, and Mrs. L.H. Chapman. The period 1940 to 1956 was more stable with only two chairmen: Mrs. Mary Numbers, and Mrs. Frances Vaughn, the latter having far and away more influence and power than any chairman during this period. Vaughn worked for the Board of Review from approximately April 1942 to February 1956, the longest tenure of any chairman; consequently her files are better preserved and her terms of office will be dealt with separately.

Most of the board's correspondence from 1930 to 1942 dealt with changes in the laws and rules under which the board worked. For example, in 1933 the Committee on State Affairs in the House of Representatives proposed a bill, which passed, that required the board to furnish a certificate of approval for the films or reels which it

approved. The form was a combination receipt for fees and approval slip. The board requested approval for a plan to stamp each film, be it an original or duplicate print, with an individual serial number for the purpose of preventing dishonesty in both the private sector where producers might try to slip a few prints by the board, as well as in government where an unscrupulous person might pocket the fees and make no record of the transaction.(21) This proposal came from Chairman Clausen, who took care of some other house work when she solicited an opinion from the attorney general regarding the interpretation of the law dealing with charges for censorship per reel. In the original act a reel was defined as one thousand feet of film, which was the most that could be fit on a film reel at the time. Then the film industry introduced a two thousand foot reel, creating a problem of what to charge, especially if the reel was a little over half full. Since the wording of the statute was that a reel was a thousand feet or a fraction thereof, the board was required to charge the price of second reel for the additional footage.(22)

Clausen also took up a rather delicate matter, one she wanted to overlook, but her conscience would not allow her to do so. It came to her attention that each time the board was audited (once a year), personnel were required to sign a statement saying that none of the equipment of the board was used by anyone for personal revenue, which was in

fact untrue. For many years, when eliminations were required in a film, the film operators for the Board of Review would take the film to a theatre, make the required eliminations, and return the film to the board for approval, and for that service they were paid by the film companies. They in effect drew a kind of double salary, which may seem a bit unethical, but perfectly within the law; that is, until the operators began to use the office equipment rather than going to a local theatre to do the film cutting.(23) Don E. Symes, the Budget Director for the state, proposed that the board offer to have the operators do the cutting for a fee which would be turned into the state. In turn a raise in the salary of the operators was negotiated for the difference between that fee and the cost of the use of the state's equipment, so that the effect of transaction was same, only now it was technically legal.(24) Clausen's other contribution to the board was the addition of Rule 10 in Section H of the Rules and Regulations of the board: that ridicule or facetious remarks about motherhood or scenes pertaining to childbirth would be disapproved.(25) This rule had in essence been enforced since the first actions of the board, but with the rise of several pictures dealing strictly with childbirth, the board needed to cover itself legally, and make its intentions known publicly.

Myers and Numbers also took care of some tasks dealing with rules and regulations governing the board. Myers

proposed that a signed acceptance form by film companies of the recommendations for elimination must be in possession of the board before eliminations were made in the pictures; this acceptance form closed all discussions on the film. If the film company did its own cutting, then the film and the cut pieces were to be returned to the board for inspection and disposal.(26) Myers also sought an opinion from the attorney general on an old issue: whether or not films owned by the University of Kansas and distributed by the Department of Visual Education should be exempt from censorship. In a surprising turnaround, Attorney General E.E. Steerman stated that property belonging to the state or some agency thereof would not be subject to inspection nor to the payment of fees which were required of all private distributing companies.(27) Numbers' contributions to the board's work both dealt with finances. She proposed to charge the sixteen-millimeter Nickelodian films in the same manner as feature films; that is by the reel.(28) Also proposed was the lowering of fees, original prints to be charged one dollar per reel, and duplicates charged at fifty cents per reel.(29) Both proposals were adopted by the board.

As to the board's work with the content of the pictures, one would think that the public was satisfied; there were virtually no complaints from upset citizens about the content of films. Eliminations of rather mild subject matter increased. For example, references to a

Negro bartender as "Snowball" were eliminated in You Bring the Ducks, references to a toilet were eliminated in Art Trouble, and references to dice were eliminated in a Merrie Melodies animation Goin' to Heaven on a Mule. But there were at least three major issue that were dealt with in the 1930's and early 40's. The first was prohibition. In April 1934, the Board of Review censored an entire episode of the March of the Years, a newsfilm, which showed President Franklin D. Roosevelt making a speech for the repeal of prohibition.(30) The rest of the nation may have been going "wet," but it was clear that Kansas censors would keep the state "dry" if it was within their power.

In the same year, the Board of Review decided to ban the showing of the Primo Carnera-Max Baer prizefight, on the grounds that prizefighting was cruel and immoral, and not that it was illegal in Kansas.(31) The decision to overlook the illegality of acts in films that were being censored as a reason for approval or disapproval was set aside in 1937 by Governor Walter A. Huxman, who noted that he had received several letters calling his attention to newsreels showing the winners of the Irish Sweepstakes. Gambling was illegal in the state and the governor felt strongly that the Irish Sweepstakes were just a big racket that took more money out of the country than they brought in; he wanted the board to bar such newsreel pictures, which it did.(32)

CHAPTER III

NOTES

- (1) Biennial Report of the Kansas State Board of Review, 1922-24, p.3, Board of Review papers, Annual Reports Box, KSHS. Emma Viets was originally appointed in 1923, and was replaced by Eleanor Tripp.
- (2) Memo on "Why Be Good" pp.2-3, Reed papers, Box 1, Folder Board of Review, KSHS.
- (3) Biennial Report of the Kansas State Board of Review, 1922-24, p.4, Board of Review papers, Annual Reports Box.
- (4) Emma Viets to Governor Ben S. Paulen, June 24, 1926, Paulen papers, Box 3, Folder 22, KSHS.
- (5) Biennial Report of the Kansas State Board of Review, 1922-24, p.4, Board of Review papers, Annual Reports Box.
- (6) Viets to Paulen, March 16, 1925, Paulen papers, Box 3, Folder 22.
- (7) Viets to Paulen, May 7, 1925, Paulen papers, Box 3, Folder 22.
- (8) Viets to Paulen, April 2, 1926, Paulen papers, Box 3, Folder 22.
- (9) Viets to Paulen, March 1, 1928, Paulen papers, Box 3, Folder 22.
- (10) Viets to Paulen, February 15, 1926, Paulen papers, Box 3, Folder 22.
- (11) Viets to Paulen, June 24, 1926, Paulen papers, Box 3, Folder 22.
- (12) Viets to Paulen, May 20, 1927, Paulen papers, Box 3, Folder 22.
- (13) Viets to Governor Clyde M. Reed, April 8, 1929, Reed papers, Box 9, Folder Board of Review.
- (14) Attorney General William A. Smith to Viets, April 25, 1929, File 115, Attorney General Opinions, KSHS.
- (15) Memo on Situation in other States having Censor Boards, File 115, Attorney General Opinions.

(16) List of Films Rejected and Approved as Rebuilt, January 1930 to April 1931, Reed papers, Box 9, Folder Board of Review.

(17) Ibid.

(18) Emery L. Wickizer to Governor Harold H. Woodring, February 15, 1931, Woodring papers, Box 16, Folder Board of Review, KSHS.

(19) Hazel W. Myers to Attorney General Roland Boyton, June 25, 1931, File 115, Attorney General Opinions.

(20) Woodring to Roy Wilkins, Assitant Secretary or the National Association for the Advancement of Colored People, October 30, 1931, Woodring papers, Box 16, Folder Board of Review.

(21) Mae Clausen to Boynton, March 31, 1933, File 115, Attorney General Opinions.

(22) Clausen to Attorney General Clarence V. Beck, August 25, 1937, File 115, Attorney General Opinions.

(23) Clausen to Don E. Symes, Kansas State Budget Director, September 3, 1937, File 115, Attorney General Opinions.

(24) Symes to Clausen, September 9, 1937, File 115, Attorney General Opinions.

(25) Board of Review Minutes of Meeting, April 28, 1939, Board of Review papers, Box 12.

(26) Myers to Attorney General E.E. Steerman, November 7, 1933, File 115, Attorney General Opinions.

(27) Steerman to Myers, September 7, 1934, File 115, Attorney General Opinions.

(28) Board of Review Minutes of Meeting, December 9, 1940, Board of Review papers, Box 12.

(29) Board of Review Minutes of Meeting, January 31, 1941, Board of Review papers, Box 12.

(30) List of Films Rejected and Approved as Rebuilt, April to November 1934, Landon papers, Box 13, KSHS.

(31) Steerman to Myers, June 15, 1934, File 115, Attorney General Opinions.

(32) Governor Walter A. Huxman to Clausen, November 30, 1937, Huxman papers, Box 1, Folder Board of Review, KSHS.

CHAPTER IV

A MID-LIFE CRISIS

In April of 1942, by declaration of Governor Payne Ratner, Mrs. Frances Vaughn became chairman of the Board of Review.(1) She was a native of Bonner Springs and had worked in the newspaper business for about 35 years.(2) Vaughn was well respected by those who knew her. She had many influential contacts throughout the state, which, no doubt, was a major factor in the length of her work with the board, approximately fourteen years. She had a no-nonsense, all-business attitude toward her work. This attitude would see her and the Board of Review through the two biggest crises of its history: Kansas' loss in a Supreme Court ruling over the film The Moon Is Blue, and the attempt to repeal the censorship statutes in Kansas, both in 1955. Vaughn's administration was really a bridge from the early period of censorship of films, when censorship was a fact that went largely unopposed and unchallenged, to the modern era of film censorship, one that was an open legal battleground where every move in censoring films was calculated in terms of its potential for litigation.

Vaughn's first moves in office indicates just how shrewd and competent an administrator she was. Within a year she increased the visibility of the film inspectors in

order to quell criticism that they did not work enough by carefully increasing their mileage, but keeping it low enough that the inspectors did not have to use state furnished cars, which would have drawn still further criticism. In making the proposition of extra work for no more pay a bit more palatable to the inspectors, she simply stated, "I am afraid that if we do not spread the work out so you are on the road at least two weeks a month, the inspectors might be taken off."(3)

There were few complaints in terms of the content of films passed in the middle to late 40's. One exception to this was a letter from the Reverend William R. McCormack of the First Methodist Church of Burlington. Reverend McCormack wrote Governor Andrew Schoeppel to complain about scenes of the drinking of hard liquor being portrayed in a film he had seen. While the Reverend understood that Kansas was no longer "bone dry," because it allowed 3.2% beer to be served in some counties, he felt that as hard liquor was still illegal in the state, it should be censored from films.(4) The governor, after noting that the Board of Review did not have the authority to ban something simply on the grounds that it was an illegal act in the state, directed his complaint to Vaughn.(5) Her only response was one that most future chairmen would make: if you don't like it, lobby against it. She stated to Reverend McCormack that he should write Warner Brothers and complain about the content of the film. His good-natured

reply was that he simply thought this film might have slipped unnoticed past the lady censors, and he had just wanted to do the administration a favor by calling attention to it.(6)

There were other people who were interested in the state of movie censorship in Kansas. In 1944 Look magazine wrote the board asking for the specific objections to certain films reviewed by the board, Vaughn sought the advice of Attorney General A.B. Mitchell as to whether or not the board could be forced to divulge such information if it did not want to. The whole point was rather a moot one: the Board of Review had long been publishing and sending out to theatre owners and distributing companies a monthly list of films reviewed, including a listing of those disapproved and in most cases on what grounds they were disapproved, as well as which scenes, if any, were eliminated.

If Look had simply done its homework, the whole matter need never have been broached. Vaughn felt that ethics prohibited the furnishing of the information, although she did not elaborate on why supplying the information would have been unethical. On the other hand she feared that if the information was not forthcoming, the board would be held up to ridicule with no way to defend itself.(7) Mitchell's reply was that the board was neither required nor prohibited from giving such information to publications such as Look, leaving the matter up to Vaughn, who chose to

deny the magazine's request.(8) This was the beginning of a blanket of secrecy which would cloak the workings of the board for the next 22 years. Most chairmen opted not to disclose information to the public or press when it could be expediently avoided, although later Vaughn would conclude that this policy did more harm than good.(9) She frequently felt her case was strong enough to "take it to the people," but most chairmen decided on secrecy for just the opposite reason.

Vaughn took good care of housekeeping chores, soliciting an opinion from the attorney general on how to censor foreign language films. Although the state statute fixed a maximum fee for reviewing and censoring films, in the case of film containing dialogue in a foreign language, the Board of Review required that the dialogue be translated into English, and that the applicant pay the cost of the translation.(10) It was also decided that Kansas would charge the standard reel fee on the new three-dimensional movies, despite the fact that it took two reels of the same footage running simultaneously to produce the 3-D effect. If a movie consisted of nine reels, it would be charged for only nine reels, instead of the eighteen reels required for the special effect.(11)

Kansas continued to correspond with other states in order to keep track of information on controversial films. In 1947 the Howard Hughes film The Outlaw, starring the newly discovered actress Jane Russell, arrived at the board

office to be censored. Advertisements for the film included the slogans, "How would you like to tussle with Russell?", and "What are the two great reasons for Jane Russell's rise to stardom?"(12) These statements were not only indicative of Hughes' sensationalization of the film, but also of the tough time the film and its advertising would receive with the State Board of Review. Kansas required eliminations of scenes in The Outlaw, including the partially exposed breasts of Russell (the "two reasons" she had risen to stardom), a scene in which she started to undress and get into bed with the outlaw, and the lines "You can bring the Minister in the morning if it will make you feel better and now get out." Other lines eliminated included "You are not going to die, I'll keep you warm," and "I don't want her. Cattle don't graze after sheep." When the board directed that these cuts be made, the distribution company refused, and hired ex-Governor Schoepel to represent it in court. Vaughn thought the company might be bluffing, but a suit was filed in Maryland, so she sought information from other state's censor boards. The film had been rejected as a whole in Maryland, approved with eliminations, but with approval later revoked in Ohio, and approved with minor eliminations in New York. In Virginia, the film passed with no cuts, and only in the state of Pennsylvania were more eliminations required than in Kansas.(13) This is but one example of the divergent moral views that governed the censorship of films in the United States on the verge of

the first court ruling affording film First Amendment protection.

In 1948 the suit United States v. Paramount Pictures was decided by the Supreme Court. While the case was of an anti-trust nature and did not pertain directly to censorship of films, in the decision written by Justice William O. Douglas, a dictum was set forth which would be further reinforced by later court judgements. He stated, "We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment." (14) It was the first time since the 1917 case of Mutual Film v. Industrial Commission which granted states the police power of censorship, that the Supreme Court had spoken for the protection of film under the First Amendment. Within three years it looked as though the walls of censorship would all come tumbling down.

The major breakthrough for the opponents of censorship came in 1952 with the Supreme Court's decision in the case of Joseph Burstyn v. Wilson, Commissioner of Education of New York. It involved The Miracle, an Italian film directed by Roberto Rossellini and written by Federico Fellini. The storyline was that of a peasant girl who imagines that a passing vagrant is Saint Joseph, and the stranger plys her with wine and seduces her. The girl believes that the child she conceives is a miracle, but when she tells the villagers, she is ridiculed and forced

to leave. She delivers her child in a remote church in the hills, still not doubting the miracle. The film was declared sacrilegious in New York City, which eventually banned the film. The case was argued by the renowned anti-film censorship lawyer, Ephraim S. London. His arguments took three forms: that any censorship of films was unconstitutional prior restraint of freedom of expression, that the New York statute violated constitutional guarantees of separation of church and state, and that the term "sacrilegious" was so vague as to deny freedom of expression without due process of law.(15) Justice Tom C. Clark delivered a narrow decision, addressing only the issue of whether or not the New York statute which permitted the banning of films on the ground that they were "sacrilegious" was constitutional. Clark stated "Since the term 'sacrilegious' is the sole standard under attack here, it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films." Clark did find that "expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments," thereby setting aside the Mutual film decision that films were not protected. While noting that the Constitution did not grant absolute freedom to exhibit every movie of any kind at all times and places,

the decision stated that prior restraint of film on such a broad term as sacrilege was not constitutional.(16)

The Burstyn decision was indeed the beginning of the end for film censorship nationwide. The Kansas board sought an opinion from Attorney General Harold R. Fatzer as to whether or not the Kansas statute was constitutional. Fatzer's opinion was that the board was authorized to censor films that were "cruel, obscene, indecent or immoral or . . . tend[ed] to debase and corrupt morals." Since sacrilegious films were not included in the statute, the Kansas law was not covered by the Burstyn decision, and remained constitutional. However, in the rules promulgated by the Board of Review under the authority of the statute, a portion of Rule 10 was illegal. It stated, "Ridicule, adverse criticism, or abuse of any religious sect, will not be approved." This portion would have to be removed.(17)

For a while it was business as usual for the board. Another film starring Jane Russell titled The French Line created controversy in the state. According to the board decision, "the song she sings in her dance scene, together with her too brief and revealing costume, portray deliberately and sexually immoral acts between male and female persons."(18) Eliminations were required and were forthcoming from the distributor, but the advertisements that ran throughout the state gave the illusion that the dance was still in the films when, in fact, a much more toned down version, complete with a new song, had been

inserted. The board ordered a special notice to be placed specifically on the movie page of the Topeka Daily Capital, telling patrons that the original dance was removed from the film. Somehow the ad ended up buried in another section of the paper. Vaughn was not one to pull punches. She wrote the paper stating that she realized that their "regular movie people are considered preferred customers" but complained that if the Capital would not do the ad as ordered, they should have turned it down, and she had no intention of paying the bill.(19)

The State Board of Review became embroiled in its greatest controversy under the leadership of Vaughn in 1953. The controversy was over the film, The Moon Is Blue, and led Kansas to the United States Supreme Court in 1955. Its last appearance over films had been in 1917 to uphold the censorship statute. The Moon Is Blue was produced by Otto Preminger, and was based on a Broadway play. The story is one of a chance meeting between a man and woman in the Empire State Building. She is invited to his apartment for dinner, unaware that he is engaged to another woman who lives with her family on the floor above. The father-in-law to be learns of the dinner and comes down to vent his rage, but he stays and makes his own pass at the woman. Besides this seemingly objectionable situation, the woman, who is obviously "innocent," is quite frank and curious concerning sexual matters, which leads to the use of such objectionable terms as "virgin," "seduce," and

"pregnant." The film industry's own censor organization, the Motion Picture Association of America, refused to give the film a seal of approval. The refusal was considered to be disastrous throughout the industry, but human nature being what it is, the film was a box office smash at the theaters which took the risk of showing it.(20)

When the board screened the film in June of 1953, they disapproved of the film as a whole, and in their letter to the film company cited as the reason, "Sex theme throughout, too frank bedroom dialogue: many sexy words; both dialogue and action have sex as their theme."(21) The film's representative, Holmby Productions, then proposed a compromise. If the board would pass the film, "the company would refuse to sell it to any theater which would not sign an agreement to show it to adults only."(22) The formal judgement from Attorney General Fatzer was that the statutes did not allow qualified or conditional approval; thus if the film was disapproved, that was the end of the matter.(23)

Holmby Productions filed suit in Wyandotte County Court seeking to have the decision reversed on the grounds that the action of the board was arbitrary, capricious, and unlawful. Attorney Arthur J. Stanley, Jr., acting as counsel for the board, suggested that it would be wise to call for a reexamination of the film, thus allowing several important members of the local government, including the Wyandotte County juvenile judge, the head of Family Welfare

Service, and representatives from the Police Department Youth Bureau and City Welfare Department to attend the showing. In doing so, they would be available as witnesses to testify on the probable effects of the film on children who might see it in neighborhood theaters. The reexamination would also take care of another problem. It was possible that Holmby Productions might claim that the letter of disapproval did not comply with the statute in its exact wording. The reexamination would allow the board to send another letter of disapproval which would follow the words of the statute, citing the film as obscene, indecent, and immoral, and tending to debase or corrupt morals, and thus remove this possible legal problem.(24)

The reexamination took place in September, 1953, and the issue came before the the Wyandotte County Court in June of 1954. Judge Harry G. Miller, Jr., determined that the board gave each of the words of the statute providing for censorship a meaning so broad and vague as to render the statute unconstitutional, because motion pictures were protected from unreasonable prior restraint by the First and Fourteenth Amendments.(25) An appeal was filed, and in January of 1955 the Kansas Supreme Court reversed the judgement of the lower court. The opinion delivered by Justice Clair E. Robb was a narrow one. He began by sighting the Photo Play ruling of 1919, that a court cannot substitute its opinion in place of the board's opinion. Only the legislature has power over the board unless there

is an abuse of power. The only question was whether or not the statute was unconstitutional because of vague and indefinite language. The court, citing Black's Law Dictionary and United States v. One Book Called Ulysses, ruled that there was indeed an accepted definite and clear meaning of the term obscene, and that the statute was constitutional as worded.(26)

The ball was now in Holmby's court. The producers appealed the Kansas ruling to the United States Supreme Court, and in October of 1955 the high court issued a per curiam reversal of the Kansas Supreme Court, citing only Burstyn v. Wilson, and another recent per curiam decision based on Burstyn, Superior Films v. Department of Education of Ohio.(27) This loss was a major blow against the Board of Review and indeed against any censorship of films by state governments.

Sentiment against movie censorship had been gaining ground in Kansas, and with the Burstyn ruling in place, it was only a matter of time before censorship would be struck down. Some Kansas legislators, who could read the handwriting on the wall, began an effort to repeal the censorship statute well before the Supreme Court decision in The Moon Is Blue case came down. Since censorship still was popular with most segments of the public, repeal would be a tricky maneuver with a potentially high political cost to the opponents of censorship. With this in mind, one can

understand how the effort that was supposed to bring an end to censorship became a debacle of major proportions.

When Senate Bill No. 222 was introduced by the Senate Committee on Judiciary, it called for the repeal of Section 1 of Chapter 82 of the Laws of Kansas of 1929 which dealt with a portion of the motor vehicle code for non-residents. The bill was sent to the House where the House Committee on Judiciary amended it by adding the repeal of Sections 74-2201 to 9 and 51-101 to 12, which were the statutes providing for censorship of motion pictures. This bill was sent back to the Senate, which approved the House amendments.(28) Then it came to Governor Fred Hall, who, as Vaughn noted "had the last word," and did not see fit to veto the bill. The last stage of the repeal was for the publication of the act of the legislature in the statute book. It looked to the board as though the end had come, but what came was an eleven-year reprieve. Attorney General Fatzer filed suit claiming that the repeal was unconstitutional. The case of Kansas ex rel. Fatzer v. Shanahan, Secretary of State of Kansas was heard in Wyandotte count court. Fatzer argued unsuccessfully that Article 2, Section 16 of the Kansas Constitution had been violated. It read in part, "No bill shall contain more than one subject, which shall be clearly expressed in its title." The defense argued that the subject was repeal and the joining of the motor vehicle code and the motion picture code was legal. But when the issue finally came

before the Kansas Supreme Court, Judge W.W. Harvey reversed the decision of the lower court. The Board of Review was still in business.(29)

The whole messy issue of the near demise of the board raises two questions, both of which have the same answer. First, why did not the legislature repeal the statute correctly rather than in the left-handed manner that it did? Secondly, why did not the legislature simply repeal the statute in the next term rather than allowing the board to continue to function for another eleven years? There are two possible scenarios to the first question. It is possible that the legislators mistakenly, but honestly, believed that the procedure that they used was correct. What is more likely was that the bill to repeal the censorship statute lacked enough support to pass on its own merit, and therefore one was joined to the other so that it might pass. It was generally assumed by the legislators involved that the censorship issue was too hot to be handled, so it was eased through on the coattail of something much less controversial, thus limiting political damage and publicity. In the case of the second question, the legislature did attempt to abolish the board in 1957, but the opponents of censorship lacked political and public support and were unwilling to risk their careers in order to do away with the statute. The board simply revised their rules to make more explicit the meaning of obscenity, and continued to work at censoring movies.(30) In February

of 1956, Vaughn left the Board of Review, but continued to be an outspoken proponent of censorship of films until her death.

In the final eleven years of the board's life, it had five chairmen, including Vaughn's replacement, Mrs. Mary Cook. Cook would herself be an outspoken proponent of censorship. In 1957, she took the Hays Daily News to task for their editorial titled "Movie Censors Useless," particularly attacking the claim that the board cost Kansas more than \$30,000 per year. She became the first chairman to promote censorship by pointing out that the board was entirely self-supporting, and contributed 10 to 20% of the fees collected to the General Fund, which in 1958 amounted to around \$10,000. Cook also noted that while American films were rated by the MPAA, foreign films were entirely without censorship. She indignantly asked, "I am wondering just what you would do with some French pictures that have been presented to us for our inspection? Would you rather have the pictures uncensored and then arrest the picture show manager after the picture has been shown to the adult public and to children?"(31) Cook did not back down from a fight, and she got right into the middle of controversy in trying to stave off another attempt at repealing the censorship statutes. Through personal appeals to members of the legislature and the governor, Cook tried to kill House Bill 334, by arguing that the need for censorship was greater than ever before. She illustrated her case with a

movie titled The Story of Bob and Sallie, which "had low moral theme throughout, too sexy, intimate relations, child birth, nudity, and the functions of male and female sex organs." Cook brought up again the money-making nature of the board, and punctuated her plea with the statement, "WE HAVE NO PAID LOBBYISTS WORKING FOR US AS THE MOTION PICTURE COMPANIES HAVE."(33) The board survived, but Cook did not. In May of 1958, she was replaced by Hazel Runyan as chairman of the Board of Review.

CHAPTER IV

NOTES

- (1) Board of Review Minutes of Meeting, Board of Review papers, Box 12, KSHS.
- (2) Francis Vaughn to Topeka Daily Capital, August 4, 1955, Board of Review papers, Box 18, Folder Correspondence 1951-55.
- (3) Vaughn to Bess Beebe, Film Inspector, April 30, 1943, Board of Review papers, Box 15, Folder State Film Inspectors.
- (4) William R. McCormack to Governor Andrew Schoeppel, July 25, 1944, Schoeppel papers, Box 29, Folder 2, KSHS.
- (5) Schoeppel to McCormack, July 27, 1944, Schoeppel papers, Box 29, Folder 2.
- (6) McCormack to Schoeppel, July 25, 1944, Schoeppel papers, Box 29, Folder 2.
- (7) Vaughn to Attorney General A.B. Mitchell, July 31, 1944, File 115, Attorney General Opinions, KSHS.
- (8) Mitchell to Vaughn, August 1, 1944, File 115, Attorney General Opinions.
- (9) Vaughn to Governor Ed Arn, March 15, 1951, Arn papers, Box 8, Folder 10, KSHS.
- (10) Mitchell to Robert R. Wilson, September 8, 1945, File 115, Attorney General Opinions.
- (11) Vaughn to R.R. Biechele, May 26, 1953, Board of Review papers, Box 18, Folder Correspondence 1951-55.
- (12) Edward De Grazia and Roger K. Newman, Banned Films Movies, Censors and the First Amendment, (New York & London, 1982), p. 66

(13) Vaughn to Attorney General Ed Arn, August 7, 1947;
Edna Carrol, Chairman, Pennsylvania Board of Censors to
Vaughn, July 25, 1947;
J.B. Beverly, Director, Virginia Board of Censors to
Vaughn, July 23, 1947;
Ward C. Bower, Director, New York Board of Censors to
Vaughn, July 22, 1947;
Benjamin Hance, Chairman, Maryland Board of Censors to
Vaughn, July 24, 1947;
Susannah Warfield, Supervisor, Ohio Board of Censors to
Vaughn, July 22, 1947, File 115, Attorney General Opinions.

(14) United States v. Paramount, 334 US 131, 166 (1947).

(15) De Grazia and Newman, Banned Films, pp. 79-80.

(16) Burstyn v. Wilson, 343 US 495, 502, 505-6 (1952).

(17) Attorney General Harold R. Fatzer to Vaughn, August 19, 1952, Board of Review papers, Box 18, Folder Mom and Dad.

(18) Vaughn to Jim Lewis, RKO Pictures, September 30, 1954, Board of Review papers, Box 18, Folder Correspondence 1951-55.

(19) Vaughn to Topeka Daily Capital, August 4, 1955, Board of Review papers, Box 18, Folder Correspondence 1951-55.

(20) De Grazia and Newman, Banned Films, pp. 86, 240.

(21) Holmby Productions Inc. v. Vaughn et al. 177 KS 728, 729 (1955).

(22) Vaughn to Fatzer, July 7, 1953, Board of Review papers, Box 16, Folder Correspondence.

(23) Fatzer to Vaughn, July 10, 1953, Board of Review papers, Box 16, Folder Correspondence.

(24) Arthur Stanley, Jr. to Vaughn, September 8, 1953, Board of Review papers, Box 18, Folder Correspondence 1951-55

(25) Holmby Productions Inc. v. Vaughn et al. 177 KS 728, 729-30 (1955).

(26) Ibid, pp. 731-33.

(27) Holmby Productions Inc. v. Vaughn et al. 350 U.S. 870 (1955).

(28) State ex. rel. Fatzer v. Shanahan Secretary of State, 178 KS 400, 401 (1955).

(29) Ibid, p. 404.

(30) Vaughn to Fred Wirt, October 28, 1955, Board of Review papers, Box 18, Folder Mom and Dad.

(31) Mary Cook to Hays Daily News, October 28, 1955, Board of Review papers, Box 18, Folder Mom and Dad.

(32) Cook to Governor George Docking, Board of Review papers, Box 15, and Cook to Clark Kuppinger, Board of Review papers, Box 18, Folder Mom and Dad.

CHAPTER V

DEATH SHUDDERS

In Runyan's brief stay as chairman of the Board of Review, she faced the two-edged sword of what censorship of films had become: the inability to censor distasteful material unless it was obscene, and the outrage of a public that saw increasingly questionable scenes on the big screen and did not understand the new constraints on censorship. An excellent example of this is the controversy over the film The Case of Dr. Laurent.

When the Board of Review examined the film, which involved scenes of nudity and childbirth, their natural inclination was to disapprove the film because of its subject matter; they determined that the film should be used for educational purposes only, and not for public entertainment.(1) The attorney for the film distributor, Joseph H. McDowell, wrote the board in order to smooth the way. He stated, "These recent decisions of the U.S. Supreme Court indicate to me that it is going to take a pretty bad film and a very clear set of rules before any censor board can censor any picture for any reason, and that about the only reason that any film can be censored is on the grounds that it is 'obscene'. I am firmly of the opinion that the mere showing of a nude body or childbirth is not 'obscene'." McDowell pointed out that the members

of the Board were on thin ice, and he was convinced (quite correctly) that "in every lawsuit from now on, the court is going to limit the power of censorship more and more, and the more court decisions there are restricting censorship, the stronger will be the demand to abolish the Board."

McDowell was not threatening the board. In fact, he thought that the board served a "very worthwhile function" so long as they confined their decisions to censoring only those films which were clearly obscene. As The Case of Dr. Laurent had already been approved in Chicago and New York, McDowell suggested that the Kansas board eliminate the provision in their rules that prohibited the showing of nudity, partial nudity, or actual human birth, so that when the film was examined the Board could pass it without conflicting with the law.(2)

With this letter in hand, the board contemplated The Case of Dr. Laurent. Runyan sought advice from the Attorney General John Anderson, Jr., who advised her that the censorship regulation dealing with the definition of obscenity needed to be reworded in order to fit the Supreme Court ruling handed down in Roth v. United States two years earlier. In the Roth case, Justice William Brennan formulated a test for obscenity which concluded that a film could be deemed obscene when "to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest."(3) The attorney general felt that this

segment of the decision, along with a description of prurient interest as "a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond contemporary limitations of candor or representation of such matters," needed to be written into the regulation on obscenity in order to bring the board within the law.(4)

The board accepted Anderson's opinion, and with this definition of obscenity in the rules and regulations of the board, the members were compelled to approve The Case of Dr. Laurent.

It was over a year before the film was shown in Kansas, but when it finally began playing in local theaters, the outcry was loud. The film was cancelled in Hays, where one movie patron wrote, "The preview alone was something no one but a married person should see. Your group must have a perverted sense of thinking as to what is filth and what isn't."(5) When the the Chanute Tribune ran an editorial defending the showing of the film, the Reverend Ray J. Hutchison, President of the Chanute Ministerial Alliance, attacked the paper for commending the picture: "This kind of picture usually arouses passions and appeals to the baser nature of man in giving a Hollywood background to such a setting." He concluded that the film was a danger to youth, tore down the moral standards of a community, and should not have been shown in public.(6) On this point the board was helpless, except to agree with him. Runyan wrote Hutchison and explained the board's

legal predicament, and declared that "If all parents, clergy, PTA groups and others like you who are interested in films that are being shown in the theaters would contact your representatives and Senators, perhaps our laws could be strengthened."(7)

Runyan was succeeded by Dorothy Frankovich, who worked for the board as chairman for less than a year. She and Runyan both had a run-in with Thomas R. Buckman, head of the Acquisitions Department of the library at the University of Kansas. In 1959 the banning of the Ingmar Bergman film Smiles of a Summer Night prompted a letter from Buckman asking the board to reconsider its decision. Stating that the New York Times and the New York Herald Tribune found the film to be in good taste, Buckman went on to make a case for academic freedom: "Those of us who teach at the University of Kansas feel strongly that students on this level be allowed free access to ideas and artistic expressions of all kinds, in the faith that they are developing critical standards of their own during their four years of college."(8) He reiterated his belief in freedom of expression in 1960, when Frankovich inquired about uncensored films that the University possessed:

Any effort on the part of the Board to use its power to infringe upon the free flow of educational and scholarly materials to institutions of higher learning would be a grave matter indeed. I think you should proceed very carefully in this matter, making quite sure that you are confining yourselves strictly to the exact meaning and spirit of not only the laws of

Kansas, but also to applicable sections of the U.S. Constitution.(9)

The question of whether or not the statute of censorship applied to schools, and civic and church groups seemed to be laid to rest once and for all in 1961 by an opinion of Attorney General William M. Ferguson who stated that the intent of the legislature was for the board to screen commercial motion pictures only.(10) Later opinions would also conclude that it was not within the duties of the board to screen films shown on military installations in the state of Kansas because they came under federal jurisdiction.(11)

But the educational question would not die. In 1963 Kitty McMahon, who succeeded Frankovich as chairman of the Board of Review, found that Richard Roahen, English Professor at Kansas State Teachers College at Emporia, was exhibiting two or three films a month at the Fox and Strand theaters in Emporia. The films were for English credit, and were held in the theaters because more students could be accommodated at one time. Fortunately, no admission fee was charged, so the films could not be construed as for commercial use, but a film inspector checked the screenings on a regular basis, just to see what was shown.(12) In the same year English Professor Charles J. Selden, of Baker University in Baldwin, wrote asking the board for information on censorship of films which he could use in a class discussion. A note scrawled

long hand at the bottom of the page read, "Board wishes at present to table this letter. This Prof. gave the board bad publicity."(13) While it was no longer possible to press the issue of films used for educational purposes, the board would not go out of its way to provide information about its activities to those who might use it to their detriment.

The atmosphere of secrecy surrounding the board's actions continued under the board's final chairman, Polly Kirk. In 1964 the Salina Journal requested permission of the board to print a report for the month of June. This request was denied when the board, acting on the decision from the attorney general's office, found that it was not required to release such information.(14) In August of the same year, the Hutchinson News published the same information which had been denied the Salina Journal, without asking permission of the Board.(15) The attorney general's office did a complete turn around on the issue. In the Kansas Biennial Report there appeared a statement that "Anyone wishing these reports will be put on our mailing list at no cost upon their request." Citing this statement, Assistant Attorney General Robert J. Lewis, Jr., felt that the board did not have the authority to prevent a newspaper from publishing the list.(16) Naturally this generous offer of free reports was rescinded by the board in order to keep its actions out of the public eye, and hopefully out of controversy.

As to the content of films shown in Kansas over the last six years of the board's existence, one can say honestly that the level of morality did deteriorate. Movies that would have been banned in the early fifties, ten years later played to the disgust and outrage of many Kansans. Films such as Unmarried Mothers, Sexmates, Girl of the Night, Necking Party, Reckless Girls, The Plunderers, Look in Any Window, Angel Baby, and Go Naked in the World, were just a few of the films which the board received complaints about, but were unable to ban.(17) Even relatively mild films such as Lover Come Back, starring Doris Day and Rock Hudson, drew criticism from the public. Some people who wrote wondered if the Board of Review still existed, and if so, why such films were being shown in Kansas.(18) One film patron stated that she did not know what to try to do about trashy films, but she would be glad to start a petition or take a survey if it would help.(19) The public simply did not understand that censorship of films was a dying cause, that the end of censorship was inevitable. The board tried to placate the public by lobbying whenever possible for stronger laws, and by involving community leaders in its cause, the board managed to stave off abolition of censorship at each legislative session. But this was only a self-serving measure for in no way was the legal premise for the censorship of films strengthened.

In fact, it is more than evident that the board lost power with every battle it fought. By this time, though, it did not take a court case to settle disputes, but merely a letter from an attorney threatening trouble to make the board change its collective mind. Tommy Noonan Productions, knowing the lay of the land, instructed its films distributor that "If there is any trouble with the censor board in Kansas, I hereby instruct you to hire a lawyer and have our picture re-reviewed under court order." (20) The distributor needed only to give a copy of the letter to the board to make his point clear: unless you are willing to fight it out in court, don't cross us.

Certainly the most intimidating of all the attorneys the board faced was Ephraim London, the defense lawyer in the Holmby case involving The Moon Is Blue. He had built a reputation as a skillful defender of First Amendment rights in the film industry. His dealings with the board over the film Boccaccio '70 shows his talent for making the Board of Review see things his way. In October of 1962, Kitty McMahon informed Embassy Pictures, the distributor of Boccaccio '70, that eliminations would have to be made in the film, and provided them a list. (21) The reply came from London. He stated that the distributor did not agree with the board's decision, and proceeded to discuss each passage in question, keeping the definition of obscenity in mind. The first elimination asked for was the term "animals in heat," from the statement "Behave

like men, not like animals in heat." London pointed out that the character making the statement, Dr. Antonio, in a symbolic fashion represented censors. His rebuking the men was seen as the same response the board had to the whole sequence, a response against lust. Therefore, London reasoned, "it is an error to label Dr. Antonio's statement obscene as it would be to apply that term to the judgment of the Kansas State Board of Review."

The next objection was to the word "whores" from the phrase "they build temples to whores." He pointed out that the Lord condemned such actions in Ezekiel 33, and the Lord's word could hardly be described as obscene. The next deletion was of "the extreme bobbling of the nearly bare breast on the billboard girl as she runs." London noted that the actress was "well endowed. The 'bobbling' when she runs is unavoidable. The movement of a part of her body cannot properly be the basis of objection." The next elimination was of a scene in which a countess stands nude in the background. Again London quoted from the Bible, asserting that the countess was seen literally "through a glass darkly" (Corinthians 13), and her reflection could hardly be said to arouse lust in the normal adult. Likewise, London noted the board's objection to a scene in which the countess was nude in the bathroom and bathtub, claiming it was not any more or less arousing than other scenes of partial nudity in the film. London concluded that he hoped the board would reconsider

and grant its approval of the film.(22) The board replied that it would drop its objections to all but the bathroom scene, a three hundred foot length of film, which they deemed obscene.(23) London replied to the board that it should again reexamine the film, keeping in mind the Roth decision which charged that in judging a film for obscenity, the censors must consider the theme and its dominant effect. The film did not exalt sex, but rather "disapproved of the Count's sensuality and his inability to accept his wife's love until it was offered under a venal arrangement."(24) The board finally narrowed their request to the deletion of two brief side views of the exposed breasts of the countess, and while it is unclear whether or not this elimination was ever made, the point is that Ephraim London had prevented substantial cuts in the film, not with the threat of a lawsuit, but with a letter. He continued to cause the board to rescind its decisions until the board was dissolved in 1966.

McMahon came to the point where she turned London's letters over to the attorney general to see if it was possible to fight him, as in the controversy over rough language in the film A Long Day's Journey into Night, based on a Eugene O'Neill play. Park McGee, Assistant Attorney General, concluded that London had been successful in getting the courts to allow films to be exhibited in which the language was more distasteful, and the "board would ultimately lose any case which develops

over such eliminations."(26) London's letters grew brief, often laying out only the dominant theme of the movie and providing information as to what cities and states had approved the films without eliminations, as he did with films such as The Silence, and The Pawnbroker.(27) The board continued to turn his objections over to the attorney general, who simply stated to the board members that the "dominate theme" was not obscene and if the films representatives would not accept the eliminations, then the film would have to be approved as it stood.(28)

The most devastating blow struck against censorship during the 1960's was not in Kansas but in Maryland. That state required films to be submitted for censorship prior to exhibition, just as Kansas did. In 1964 a Baltimore theater owner ran the uncensored film Revenge at Daybreak, in order to test the constitutionality of the Maryland statute. Freedman, the theater owner, was convicted of exhibiting a motion picture without submitting it for prior approval to the Maryland State Board of Censors. His conviction was upheld in the Maryland Court of Appeals. When Freedman v. Maryland was decided by the United States Supreme Court in March of 1965, it was a landmark case in the battle to free films from censorship. Working under the assumption set up in the Times Film v. City of Chicago decision, which declared that the requirement of prior submission of films to a censor board was not necessarily unconstitutional, Justice William

Brennan methodically set about the task of determining what procedural safeguards were necessary in order to assure that prior restraint of film exhibition did not violate the First Amendment.(29) He stated that the burden of proof that a film was an expression unprotected under the Constitution (obscenity was unprotected) must fall upon the censors. In addition, the censors' word could not be the final one; judicial review was the only way to ensure sensitivity to freedom of expression, with judicial determination being the final restraint on film exhibition. To that end, the decision required that any censorship procedure must allow for prompt judicial determination, to minimize the deterrent effect on the exhibition of film. Brennan declared that Maryland's procedures had not satisfied any of these criteria, thus rendering the state's requirement for approval before exhibition of films as invalid prior restraint.(30) From 1965 on, all state censor boards would have to operate under the conventions of Freedman v. Maryland.

The Kansas Board, with this new information in hand, was determined to succeed where the Maryland board had failed. They did what had been done in 1955 after the disastrous Holmby decision over The Moon Is Blue: they changed their rules and regulations to comply with the court decisions and went on about the business of censoring films. In this case, on April 26, 1965 the board inserted modifications in their rules placing a time

limitation on the approval or disapproval of a film, and provided a list of procedures taken by the board to restrain films that had been disapproved.(31) These measures, the board thought, would bring them into compliance with the law.

Within a few months of the Freedman decision, nearly every major film producer and distributor sent the State Board of Review letters proclaiming their decisions no longer to submit films for censorship in Kansas.(32) Such a direct challenge could not be avoided. When Columbia Pictures sent two uncensored films, The Bedford Incident and Bunny Lake Is Missing into the state for exhibition, the state sought an injunction prohibiting Columbia from further exhibition of uncensored films. Columbia filed a countersuit claiming that the Kansas system of prior review of motion pictures was unconstitutional prior restraint because it violated all of the requirements of the Freedman case. The question was posed once and for all. Was the Kansas motion picture statute constitutional?(33)

In July, 1966, speaking for the Kansas Supreme Court, Judge Harold Fatzer found that the statute authorizing the Kansas State Board of Review placed the burden of proof upon the exhibitor caused untimely delays in exhibition of films, and lacked the assurance of prompt judicial review; thus it violated all of the procedural safeguards set forth in Freedman. But what of the new rule changes the

board had instituted to bring their operation within the letter of the law? Fatzer stated that the Board's "power to adopt rules and regulations was administrative in nature, not legislative, and to be valid, must be within the authority conferred." The rules adopted clearly attempted to "cure constitutional defects" in the statute by superseding it. But, Fatzer added, if the legislature wanted to adopt policies in line with the Freedman decision, it could rewrite the censor law.(34)

Now the matter was in the hands of the legislature. Would they continue the 49-year-old policy of censorship of films for exhibition in the state of Kansas by rewriting the censorship statute? The answer was no. On August 1, 1966, Governor William H. Avery wrote Polly Kirk stating for the record that there was no longer a valid legal basis for the function of the Board of Review, and requested the termination of its affairs within 60 days.(35) Rather than repeal the censorship law, the legislature simply made no appropriations for the Board of Review for the following fiscal year. The censorship law stood on the books until 1968 when it was finally repealed.

CHAPTER V

NOTES

- (1) Hazel Runyan to Ray J. Hutchison, June 10, 1960, Board of Review papers, Box 15, Folder Newspaper and Magazine, KSHS.
- (2) Joseph H. McDowell to Board, January 20, 1959, Board of Review papers, Box 17, Folder Rules and Regulations.
- (3) Roth v. United States, 354 US 476, 488-9 (1957).
- (4) Attorney General John Anderson, Jr., to Runyan, January 31, 1959, Board of Review papers, Box 18, Folder Mom and Dad.
- (5) Scott Philip to Board, May 19, 1960, Board of Review papers, Box 18, Folder Mom and Dad.
- (6) Ray J. Hutchison to Chanute Tribune, May 24, 1960, Board of Review papers, Box 15, Folder Newspaper and Magazine.
- (7) Runyan to Hutchison, June 10, 1960, Board of Review papers, Box 15, Folder Newspaper and Magazine.
- (8) Thomas R. Buckman to Runyan, January 29, 1959, Board of Review papers, Box 14, Folder Students.
- (9) Buckman to Dorothy Frankovich, May 24, 1960, Board of Review papers, Box 15, Folder General Public Movies.
- (10) Attorney General Opinion 61-185, May 15, 1961, Board of Review papers, Box 18, Folder Attorney General Correspondence.
- (11) Attorney General Park McGee to Kitty McMahon, March 7, 1962, Board of Review papers, Box 18, Folder Attorney General Correspondence.
- (12) McMahon to McGee, February 26, 1963, Board of Review papers, Box 18, Folder Attorney General Correspondence.
- (13) Charles J. Selden to McMahon, November 4, 1963, Board of Review papers, Box 15, Folder Students.
- (14) Memo, July 28, 1964, Board of Review papers, Box 15, Folder Newspaper and Magazine.

- (15) Polly Kirk to Assistant Attorney General Robert J. Lewis, August 7, 1964, Board of Review papers, Box 17, Folder Rules and Regulations.
- (16) Lewis to Kirk, July 30, 1964, Board of Review papers, Box 17, Folder Rules and Regulations.
- (17) Statement to Board of Review, undated (Approx. March 1961), Board of Review papers, Box 14, Folder Parents.
- (18) Archie T. MacDonald to Governor John Anderson, July 3, 1962, Board of Review papers, Box 18, Folder Attorney General Correspondence.
- (19) Mrs. Alan Kiouss to Board, April 20, 1964, Board of Review papers, Box 15, Folder General Public Movies.
- (20) Tommy Noonan to Abbot Swartz, October 18, 1963, Board of Review papers, Box 10, Folder Independents.
- (21) McMahon to Embassy Pictures, October 18, 1962, Board of Review papers, Box 16, Folder Correspondence.
- (22) Ephraim London to McMahon, October 31, 1962, Board of Review papers, Box 16, Folder Correspondence.
- (23) McMahon to London, November 5, 1962, Board of Review papers, Box 16, Folder Correspondence.
- (24) London to McMahon, November 9, 1962, Board of Review papers, Box 16, Folder Correspondence.
- (25) McMahon to London, November 13, 1962, Board of Review papers, Box 16, Folder Correspondence.
- (26) McGee to McMahon, May 6, 1963, Board of Review papers, Box 14, Folder Parents.
- (27) London to McMahon, August 4, 1964 and August 9, 1964, Board of Review papers, Box 14, Folder Parents.
- (28) Assistant Attorney General Richard H. Seaton to Kirk, August 10, 1965, Board of Review papers, Box 14, Folder Parents.
- (29) Times Film Corporation v. City of Chicago, 365 US 43, 49 (1961).
- (30) Freedman v. Maryland, 380 US 51, 58-60 (1965).
- (31) State ex rel. Londerholm v. Columbia Pictures, 197 KS 448, 453 (1966).

(32) Universal to Board, January 21, 1966;
Warner Brothers to Board, February 1, 1966;
Parade Pictures to Board, February 1, 1966;
United Artist to Board, February 8, 1966;
20th Century Fox to Board, February 9, 1966;
Paramount Pictures to Board, February 9, 1966;
Metro-Goldwyn-Mayer to Board, February 24, 1966; all in
Board papers, Box 10.

(33) State ex rel. Londerholm v. Columbia Pictures, 197 KS
448, 449-50 (1966).

(34) Ibid, pp.451-2, 545-5.

(35) Governor William Avery to Kirk, August 1, 1966, Board
of Review papers, Box 17, Folder Governor.

BIBLIOGRAPHY

In writing this thesis, the bulk of the sources used have come from the uncatalogued collection of the papers of the Kansas State Board of Review. Also of invaluable assistance were the papers of the following Governors: Arthur Capper, Henry Allen, Ben Paulen, Clyde Reed, Harry Woodring, Alf Landon, Walter Huxman, Andrew Schoeppel, Edward Arn, and William Avery. The opinions of the Attorney General's office were equally helpful. All of these collections are stored at the Kansas State Historical Society in Topeka.

For purpose of background study on censorship of films throughout the United States, the following books are useful:

Carmen, Ira H., Movies, Censorship and the Law, University of Michigan, Ann Arbor, 1966.

De Grazia, Edward and Newman, Roger K., Banned Films Movies, Censors and the First Amendment, R.R. Bowker Company, New York & London, 1982.

Jacobs, Lewis, The Rise of the American Film, Teachers College Press, Columbia University, New York, 1939.

Randall, Richard S., Censorship of the Movies: The Social and Political Control of a Mass Medium, University of Wisconsin, Madison, 1968.

Schumach, Murray, The Face on the Cutting Room Floor, William Morrow Company, New York, New York, 1964.