

SALMON P. CHASE INN OF COURT
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Monthly Membership Meeting - January 26, 2016
Metropolitan Club - Covington, Kentucky

Program:

25 Years Later – Legal Reflections on the Mapplethorpe Prosecution

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Panelist Biographies

Marc Mezibov

Marc Mezibov is a partner in the Cincinnati, Ohio, Law Office of Mezibov Butler. He has over 35 years of experience in successfully litigating matters at all levels of state and federal courts. Mr. Mezibov largely focuses his practice on employment, civil rights and class action litigation, having successfully represented clients against the world's largest corporations and government entities. He has also represented individuals in several high-profile criminal prosecutions and death penalty appeals. He also represents a number of local academic faculty and staff in employment matters.

Mr. Mezibov has been listed in Best Lawyers in America in two categories: Labor/ Employment and First Amendment Litigation and has been recognized by the Ohio Lawyers Weekly as one of the top ten lawyers for the year 2000; by Cincinnati Magazine as one of Cincinnati's top 50 lawyers in 1995; and as an Ohio "Super-Lawyer" since 2003. Mr. Mezibov has served as general counsel of the Cincinnati Chapter of the American Civil Liberties Union and as chair of the Civil Rights Committee of the Cincinnati Bar Association. In 2003, Mr. Mezibov was selected as a member of the subcommittee of the Ohio Judicial Conference, responsible for drafting pattern jury instructions to be used throughout Ohio courts in cases of defamation, libel and slander. Mr. Mezibov holds an AV rating in the Martindale-Hubbell Legal Directory.

Mr. Mezibov is a graduate of the Boston University School of Law and American University. He is admitted to practice in Ohio and New Jersey, United States District Courts in the Southern and Northern Ohio as well as the Eastern District of Kentucky, the Sixth Circuit Court of Appeals, the Seventh Circuit Court of Appeals and the United States Supreme Court.

Among Mr. Mezibov's significant cases are the *City of Cincinnati v. Contemporary Arts Center*, (Ohio Mun. 1990), 566 N.E.2d 214 (successfully defended arts center director criminally charged for displaying Mapplethorpe exhibit); *City of Cincinnati v. Discovery Network, Inc.* (1993), 507 U.S. 410 (successfully argued to U.S. Supreme Court to strike city ordinance banning commercial handbill news racks); *State ex rel. Miami Student v. Miami University* (1997), 680 N.E.2d 956, 79 Ohio St.3d 168 (successfully argued to Ohio Supreme Court to compel release of student disciplinary records to track campus crime); and *Estep v. J. Kenneth Blackwell, Secretary of State* (S.D. Ohio 2006), U.S. Dist. Ct. No. 06-106 (settled class action against Ohio Secretary of State for internet disclosure of thousands of individuals' Social Security numbers).

Melanie J. Reising

Melanie Reising is a Senior Assistant Prosecuting Attorney with the City of Cincinnati, where she has prosecuted cases for over 27 years, with extensive bench, jury and appellate

experience. In addition to prosecuting criminal offenses that occur within the City of Cincinnati, she has represented the City as a party in civil cases, both as a plaintiff and a defendant. She has represented the City in civil nuisance actions, liquor permit objections before the Ohio Liquor Control Board, and served as the Community Prosecutor. She has instructed at the Cincinnati Police Academy and Ohio Municipal Attorney Association, and has trained and mentored new prosecutors. Ms. Reising has obtained grant funding for projects such as a gun violence reduction video and a mental health diversion program for the severely mentally ill. She also serves as a Magistrate presiding over Mayor's Courts in a variety of villages and townships.

Ms. Reising received her J.D. degree from the University of Cincinnati College of Law, and her B.A. in Economics from the University of Cincinnati. She is admitted to practice in Ohio and the United States District Court for the Southern District of Ohio.

H. Louis Sirkin

H. Louis Sirkin is of counsel at Santen & Hughes in Cincinnati, Ohio. He has more than 45 years of practice experience, defending the free speech and constitutional rights of individuals and businesses, including adult entertainment establishments, museums, artists, activists, and ordinary citizens in all types of cases.

Mr. Sirkin received his undergraduate and law degrees from the University of Cincinnati. He is admitted to practice in all courts in Ohio and before the U.S. Supreme Court; the U.S. Tax Court; the U.S. Court of Appeals for the Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits; the U.S. District Courts for the Southern and Northern Districts of Ohio, the District of Colorado, the Eastern District of Kentucky, and the Eastern District of Michigan.

Among Mr. Sirkin's significant cases are *Ashcroft v. Free Speech Coalition* (2002), in which the U.S. Supreme Court declared the Child Pornography Prevention Act unconstitutional, and *City of Cincinnati v. Contemporary Arts Center* (Ohio Mun. 1990), where he successfully defended the Contemporary Arts Center and its director against obscenity charges for displaying nude artwork of Robert Mapplethorpe. He has also defended on appeal numerous individuals on Ohio's and Georgia's death rows.

For the past decade, Mr. Sirkin has served as an Adjunct Professor of Law at the University of Cincinnati, where he has taught habeas corpus law and a First Amendment seminar. Mr. Sirkin is a Fellow of the American College of Trial Lawyers and a Fellow of the American Board of Criminal Lawyers. His awards include the Nicholas Longworth III Alumni Achievement Award for Distinguished Professional Service from the UC College of Law, the Southwestern Ohio Chapter of the American Civil Liberties Union Award for his commitment to the First Amendment, and the District Award from the Ohio State Bar Association for his outstanding contributions to the profession of law.

The Mapplethorpe Obscenity Trial

by Marc Mezibov

Only the most prescient of lawyers (or perhaps the most cynical) could have anticipated that legal history would be made on a Saturday morning at an art museum. At approximately 10:30 A.M. on Saturday, April 7, 1990, grand jurors were summoned to the Hamilton County Courthouse in Cincinnati, Ohio, and from there marched approximately six blocks south to join several hundred people already waiting in line at the Contemporary Art Center (CAC), one of Cincinnati's premier museums. On public display for the first time that day was *The Perfect Moment*, a retrospective of the works of the late photographer Robert Mapplethorpe, who died of AIDS in 1989.

The Perfect Moment comprised approximately 175 of Mapplethorpe's photographs and surveyed the photographer's view of, among other things, flora, portraiture, and homoerotica, all of which were presented in the "formalist" or "classical" mode of visual art. Not surprisingly, only the homoerotica category engaged the attention of the grand jurors. They were sufficiently offended by several of the images—form, lighting, and composition notwithstanding—that shortly after noon that same day they returned a two-count indictment against the CAC and its director, Dennis Barrie. Barrie and the CAC were each charged by the grand jurors with pandering obscenity and displaying photographs of minors in a state of nudity. The former charge, a misdemeanor carrying a maximum jail term of six months and a fine of \$1,000, related specifically to five images contained in Mapplethorpe's *X* portfolio, which has as its thematic core sexual acts and practices prevalent in the homosexual subculture of Greenwich Village during the 1970s. The other charge, also a misdemeanor, involved two pictures of children: "Jessie," a boy approximately five years old, and "Rosie," a three-year-old girl. Both photographs are similar to those in most family albums.

Never before that Saturday had a legitimate cultural institution or a director of such an institution been charged with

violating state obscenity laws stemming from the mere display of ostensibly serious works of art. That one morning brought the collapse of long-held, if not culturally ingrained, assumptions about the invulnerability of certain segments of our society to the application of obscenity laws. Nonprofit institutions such as museums, galleries, and schools, as well as their staff and governing boards, suddenly were subject to criminal prosecution if their aesthetic, cultural, and educational decisions concerning what was appropriate for public exhibition were perceived by some to offend local sensibilities.

In this new frontier of obscenity prosecution, the challenge to the defense was twofold: first, to pick a jury from an array of potential jurors whose lives revealed an amazing dearth of experience with museums, to say nothing of art museums, much less contemporary art museums displaying photographs of sadomasochistic acts; and second, to creatively adapt a body of case law developed over several decades that dealt primarily with the sort of sexually explicit forms of expression typically available in adult bookstores and cinema.

The law, of course, came first. It was effectively synthesized in *Miller v. California*, 413 U.S. 15 (1973). But the unprecedented Mapplethorpe indictment raised questions about that case's continued utility.

Under *Miller*, states may regulate materials that depict or describe sexual conduct only if (1) the work, taken as a whole, appeals to a prurient interest under contemporary community standards, (2) the work is patently offensive, and (3) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Early in our preparations we determined that a successful defense would hinge on the third prong of *Miller*. Unlike the first and second, it is not subject to a local community standard. The Supreme Court made clear in *Pape v. Illinois*, 481 U.S. 465 (1987), that serious artistic value is to be determined by a reasonable-person standard, which transcends local or provincial borders. Unlikely though it may seem, under the third prong of *Miller* what passes for serious art in Los Angeles may and

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should pass for serious art in Cincinnati and for the same aesthetic reasons.

Our emphasis in voir dire, therefore, was primarily on the third prong of the *Miller* test and on the artistic value of *The Perfect Moment* exhibition and the individual images in it. Rather than attempt to sell the jurors on the beauty of the photographs, we offered them the notion that to be valued, art need not—indeed sometimes should not—please the eye. Early in the jury selection process, to underscore our argument that art need not be beautiful and to desensitize the jurors to what they would be shown once the trial began, we described in graphic detail the photographs listed in the indictment. We told the jurors that the photographs included a picture of a man urinating into the mouth of another, a self-portrait of Robert Mapplethorpe with a bull whip protruding from his rectum, a photograph of a man's forearm inserted into the rectum of another man, and a photograph of a man's finger placed in the head of his penis. In describing the photographs, we sought not only to bolster the defense's theory of the case but to defuse the prosecution's theory, which relied heavily on the traditional strategy of shocking the jurors. The prosecutor would seek to display the controversial materials in a vacuum, totally unaccompanied by explanation and completely disconnected from the greater context and dignified setting in which the photographs were displayed at the CAC. We also explained to prospective jurors that trying an obscenity case involving the three elements of *Miller* is much like making an apple pie: If any one of the essential ingredients is missing, it isn't apple pie. Similarly, if the prosecution cannot provide all the ingredients required for an obscenity conviction, the photographs cannot be deemed obscene. The jurors remembered well this lesson in law and baking.

Jury selection took four complete days and involved not only desensitization but a penetrating inquiry into the potential jurors' attitudes toward a variety of topics not necessarily associated with artistic themes. For example, we were especially interested in the jurors' views on choice and privacy issues, clearly subthemes in our defense. To elicit what we hoped would be meaningful responses, we asked open-ended questions about such subjects as abortion rights and legal rights for homosexuals. We also asked each juror's opinion about whether adults should be restricted in what they may see, read, or hear. Most interesting was the uniformity of the jurors' liberalism, or seeming libertarianism, in their response to such general questions as, Do you think adults should be prevented or restricted from seeing movies of their choice? Curiously, the very jurors who answered no invariably responded yes to the more pointed question of whether adults should be restricted from viewing films involving acts of oral sex or group sex. Our exchanges with jurors on those points demonstrated the wisdom of an in-depth inquiry, especially when a case involves the fundamental values to which most Americans give all-too-easy lip service.

A second line of questioning dealt specifically with the jurors' attitudes toward individuals whom we would present as expert witnesses in the fields of museum exhibitions, art, and photography. We were initially disheartened to learn that no more than a half-dozen of about 60 prospective jurors had ever visited any type of museum other than the local natural history museum and that they had been there only during an

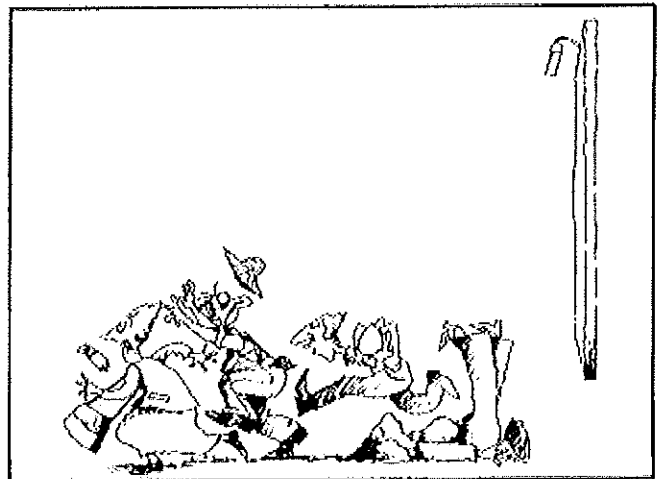
elementary school field trip. As the selection process continued, however, we were impressed by the sincerity of those individuals. Notwithstanding their limited exposure to art, they were willing and, as we later learned, eager to hear and consider the views of experts in the art field. We were concerned with the reception our out-of-town experts might receive from those jurors, who were hardly cosmopolitan. Indeed, we had given considerable thought not only to the type of expert the case required but to the type of individual best able to communicate with eight Cincinnatians with no apparent affinity for people from the art world.

Fortunately, we were approached by a seemingly unlimited number of the nation's most respected experts—artists, scholars, and critics, all with impeccable credentials—who offered their services to the defense. Our task was to choose three or four who could attract the attention and gain the trust of an intensely Cincinnati-centered jury.

We sought to balance our experts in terms of both gender and geography. All the men and women who finally testified at trial had midwestern connections or at least midwestern manners and appearances. They included a West Coast museum director with a professorial manner; a curator from the Eastman Kodak Institute of Photography (renowned for the "Brownie" camera), which is located in the innocuous-sounding city of Rochester, New York (as opposed to New York City, which has threatening connotations for many Cincinnatians); and a museum director from Berkeley, California, who was born and educated in Michigan but looked as if she had stepped off a midwestern college campus. To further cement a bond between the jurors and the defense, we subpoenaed as expert witnesses the longtime art critics for Cincinnati's two daily newspapers, both of whom had approved of the exhibition.

The groundwork we laid during voir dire to legitimize our experts proved to be invaluable if not pivotal. In a conservative forum, the prosecutor's best weapons (after shock) are resentment and fear of outsiders and their ideas. Even before the opening statements, the prosecution previewed this theme: Are we going to let people from outside this community tell us what is art? The answer in this case was yes. We had properly conditioned and educated the jurors about the credentials and even the exotic opinions of carefully chosen people who looked and sounded much like the jurors themselves.

Some legal observers were surprised by the prosecution's



failure to call even a single expert in the arts to rebut the testimony of the defense's experts. Indeed, after the trial, a representative of the prosecution's legal team lamented that the outcome of the case would likely have been different if the prosecution had had the financial wherewithal to present expert testimony challenging the serious artistic value of the Mapplethorpe exhibition as a whole or any one of the photographs named in the indictment. The prosecution's failure to call an expert in the art field could probably be attributed to its inability to muster an expert with the credentials and the temerity to knock heads with the likes of the director of the prestigious Getty Museum in Los Angeles, the curator of photography from Eastman in Rochester, New York, or the director of the museum at the University of California at Berkeley. In fact, we would not have been disappointed had the prosecution presented a legitimate art expert to support its theory of the case. Unquestionably, any such expert would have vouched for our defense experts' credentials and reputations, bolstering their credibility. Furthermore, the defense would hardly have been damaged if two or more experts had disagreed about the artistic value of the photographs. In fact, testimony reflecting competing schools of thought would have made it difficult, if not impossible, for a responsible juror to be convinced beyond a reasonable doubt that the exhibition lacked artistic value.

The prosecution did not present an art expert, but it did manage to find and pay for a "communications expert" to testify about the count in the indictment that concerned the photographs of the two children. The expert was Judith Riesman, Ph.D., who included among her professional accomplishments a stint as a children's songwriter on the "Captain Kangaroo" television show and a federally funded study (which the Department of Justice refused to publish)

concerning the putative, deleterious effects of pornographic cartoons appearing in certain popular magazines. Dr. Riesman opined that the photographs of the children were rife with sexual innuendo, if not downright obscene. Unfortunately for the prosecution, Dr. Riesman's expertise in art was wanting, and her credibility as an objective witness was substantially undermined by her admission that she had been a paid essayist for and consultant to the American Family Association, a national organization in the forefront of virtually every recent antipornography battle. Clearly, if the Mapplethorpe trial boiled down to a war of experts, the prosecution was poorly armed.

Our Model Juror

Although expert witnesses played a central role in our defense strategy, we did not use jury selection experts, despite the many who offered assistance. Our decision did not result entirely from a professional bias against expert-assisted jury selection. In part, we were skeptical about whether we could take advantage of expert assistance. Because we would not receive the panel lists until immediately before trial, we would not be able to analyze and factor into our selection process the sparse background information about the jurors. And the trial judge refused to use questionnaires prepared by counsel. Moreover, in the weeks before trial, while the propriety of the Mapplethorpe exhibition was a topic of unprecedented public debate in Cincinnati, the CAC commissioned a survey to assess community attitudes on this issue. Going into trial, we felt that that survey would give us a useful frame of reference in choosing a jury. As it turned out, the results of the survey were more interesting than practical. On the basis of the survey, our model juror was a single black male living within the boundaries of the city of Cincinnati. Out of a jury array of approximately 60 persons, only one fit the model profile. In the end we were forced to rely on our experience, our instincts, and the considerable knowledge we acquired through intensive questioning of prospective jurors.

In voir dire another major theme that we emphasized was the "human factor." We frequently referred to the men and women who, either as paid staff or as volunteers, operate the CAC along with Barrie. We sought not only to humanize our corporate client but to divert the jurors' attention from the controversial photographs toward the people who, as we viewed it, were being held accountable for their principled fidelity to the CAC's cultural and educational mission. To accomplish these twin goals, we asked many of the potential jurors about their familiarity with the CAC, its purpose, and the various community-based programs for implementing that purpose. We wanted to disabuse the jurors of any notion planted by the prosecution that our clients were "panderers" in the worst sense of the word. During the defense's case in chief, we presented, in addition to Barrie, both the CAC's assistant director and a member of its governing board who also serves as the museum's legal counsel. Through the attorney we explained to the jury the nature, purpose, and significance of the CAC's not-for-profit status. That was simply another way of establishing that when it came to the Mapplethorpe exhibition, the case was motivated not by money but by "art for art's sake."

The manner in which prospective jurors are selected in Hamilton County gave us considerable cause for concern.



The names of prospective jurors are taken from the lists of registered voters on file with the county elections board. Historically, Hamilton County, which is in the southwest corner of Ohio, is a bastion of conservatism. Traditional values for the most part go unquestioned. Free speech battles are rare. In the last 20 years a community-wide understanding has developed of acceptable forms and means of expression, largely the result of rigorous law enforcement. X-rated movies are not acceptable, nor are adult bookstores. Neither type of establishment exists any longer in Hamilton County.

In Search of Diversity

The Hamilton County voters retain in office political leaders who perpetuate a climate hostile to a diversity of opinion and alternative lifestyles. We were concerned about selecting a jury from among those voters. In Ohio, as in many other states, the law authorizes driver's license registration lists as a source for jury empanelment. Therefore, we moved that the court strike the entire array of jurors in favor of a panel chosen from driver's license registration lists. We believed that jurors selected from that pool would be more urban and diverse, reflecting a wider spectrum of opinion on social issues in general and on free speech and choice issues in particular. To our disappointment, but not our surprise, the court overruled our motion on the ground that there was no evidence of irregularity in the way this particular group of prospective jurors had been assembled.

In a case as emotionally and politically charged as ours, it was not surprising to find individuals with their own agendas in this politically conservative community. They gave our painstakingly planned and exhaustive jury selection process some peak moments. Perhaps the most memorable occurred during the questioning of a Mrs. Murphy. Her jury questionnaire said she was employed as an administrative secretary to a well-known local clergyman who also happened to be a leader not only locally but nationally in a crusade against pornography. We were confident that because of her professional and personal affiliations, Mrs. Murphy would be excused for cause. That would obviate the need for additional questions of this woman, who we feared would want to educate the jurors about her cause in much the same way we were seeking to educate them about ours. The judge disagreed. Further questioning revealed that Mrs. Murphy's personal involvement and interest in the antiporn movement was such that when *The Perfect Moment* was first announced in the press, she had gone out of her way to be shown photocopies of the two images of the children listed in the indictment. She also acknowledged that she had already formed an opinion about those photographs. In Mrs. Murphy's view, the photographs of the two children were "not morally decent" and should not have been shown in a museum. The following exchange between Mrs. Murphy and defense counsel ensued:

Q: Is it your opinion that the pictures should not be shown for any purpose?

A: Yes.

Q: Anywhere?

A: Yes.

Q: Anytime?

A: Yes.

Q: To anyone?

A: Yes.

We asked again that Mrs. Murphy be excused for cause. Rather than rule immediately on our request, the judge proceeded to serve up a softball, underhanded. He asked Mrs. Murphy whether she could set aside her convictions and be fair to both sides. In dutiful response to whatever cause greater than the truth that Mrs. Murphy served, she hit the judge's pitch a mile. Mrs. Murphy's impartiality having been assured to his satisfaction, the judge ruled that although she might be opinionated, she had given him the impression she could follow the law. When the groans of disbelief from the gallery subsided, we exercised our final preemptory challenge to keep Mrs. Murphy off the jury.

Our jury consisted of eight persons, four men and four women, all from rather conventional Cincinnati backgrounds. All were employed. Two had some college education, and one had a college degree. Not one of the jurors had attended the Mapplethorpe exhibition; nor, for that matter, had any ever visited the CAC.

Because the long, involved jury selection process addressed virtually all the legal issues and themes in the case, the evidentiary portion of the trial provided little that was new to the jurors. By design, the testimony of our witnesses dovetailed in all important respects with the voir dire. And imagine our professional satisfaction when we learned that in explaining the verdict to the media after the trial, more than one of the jurors hearkened back to our presentation during voir dire. Biases notwithstanding, it became clear by the case's end that those jurors finally selected were willing to hold themselves open to a broad range of human experiences, as well as the appropriateness of those experiences, as subjects for artistic inquiry. Despite the graphic nature of the

In Hamilton County, X-rated movies are not acceptable, nor are adult bookstores.

photographs, which some jurors described as gross and disgusting, the jury concluded that the prosecution had not made its case because, like a poorly baked apple pie, "it was missing an ingredient. [The exhibition] had artistic value, and that's what kept it from being obscene."

Because of the jury's verdict, the legal issues raised by the prosecution of the CAC and Barrie were never resolved. Challenging questions about the application of *Miller v. California* remain. For example, the prosecution contended and the trial judge agreed that a single photograph excerpted from a greater thematic exhibition of many photographs is in itself an artistic "whole." According to this legal and aesthetic theory, a single photograph, unlike a chapter or a page torn from a book, can be deemed obscene regardless of the context displayed. No previous case has raised this precise issue.

Similarly intriguing is the question of whether the third prong of *Miller* requires an expert to establish that a piece of art or a performance lacks serious artistic value. On this

(please turn to page 71)

Mapplethorpe Trial

(continued from page 15)

point we argued unsuccessfully that a layperson whose life experience may not have provided specialized training in the realm of art cannot be presumed to have an innate capability to make a sophisticated determination of what constitutes serious artistic value. And the yet more fundamental question of whether legitimate cultural institutions are or should be entitled to qualified or absolute immunity from obscenity prosecutions remains to be answered.

A Critical Role

The jury's verdict did show how critical the lawyer's role is in jury selection. In many jurisdictions, especially in federal courts, lawyers are losing the opportunity to participate meaningfully in jury selection. We have little doubt that if our role in voir dire had been less than it was, we would now be before an appellate court.

Despite the unequivocal nature of the courtroom triumph, the victory for the defense was tempered by an appreciation of the real price of any free speech battle, including this one, which had been heralded by one legal commentator as the modern equivalent of the Scopes trial. Although the Mapplethorpe trial proved that First Amendment freedoms do, in fact, exist, it also demonstrated that these freedoms exist only when and because people such as our clients are willing to fight for them. Our clients became financially strapped to meet the financial burdens of contemporary litigation. The elation brought by the verdict could not counteract the chill on free expression and thought that even now lingers over the art world. As a result of this unprecedented indictment against a museum and its director, artists, museum directors, and others in the business of making choices about what art is created, what art is shown, and how and where art is displayed will probably be more inhibited in exercising discretion and less innovative in their leadership roles. From this perspective, the taste of victory resulting from the jury's verdict was bittersweet. □

drunk as some are, nor wastin' his time at the shovelboard, but always at his work. But in my sickness—you see, sir, I were a long time sick after my last baby, and I thought I saw my husband somewhat turning from me. And this girl—*She turns to Abigail.*

DANFORTH: Look at me.

ELIZABETH: Aye, sir. Abigail Williams—*She breaks off.*

DANFORTH: What of Abigail Williams?

ELIZABETH: I came to think he fancied her. And so one night I lost my wits, I think, and put her out on the high-road.

DANFORTH: Your husband—did he indeed turn from you?

ELIZABETH, *in agony*: My husband—is a goodly man, sir.

DANFORTH: Then he did not turn from you.

ELIZABETH, *starting to glance at Proctor*: He—

DANFORTH, *reaches out and holds her face, then*: Look at me! To your own knowledge, has John Proctor ever committed the crime of lechery? *In a crisis of indecision she cannot speak.* Answer my question! Is your husband a lecher!

ELIZABETH, *faintly*: No, sir.

DANFORTH: Remove her, Marshal.

PROCTOR: Elizabeth, tell the truth!

DANFORTH: She has spoken. Remove her!

PROCTOR, *crying out*: Elizabeth, I have confessed it!

ELIZABETH: Oh, God! *The door closes behind her.*

PROCTOR: She only thought to save my name!

HALE: Excellency, it is a natural lie to tell; I beg you, stop now before another is condemned! I may shut my conscience to it no more—private vengeance is working through this testimony! From the beginning this man has struck me true. By my oath to Heaven, I believe him now, and I pray you call back his wife before we—

DANFORTH: She spoke nothing of lechery, and this man has lied!

HALE: I believe him! *Pointing at Abigail*: This girl has always struck me false! She has—

Abigail, with a weird, wild, chilling cry, screams up to the ceiling.

ABIGAIL: You will not! Begone! Begone, I say!

DANFORTH: What is it, child? *But Abigail, pointing with fear, is now raising up her frightened eyes, her*

awed face, toward the ceiling—the girls are doing the same—and now Hathorne, Hale, Putnam, Cheever, Herrick, and Danforth do the same. What's there? *He lowers his eyes from the ceiling, and now he is frightened; there is real tension in his voice.* Child! *She is transfixed—with all the girls, she is whimpering open-mouthed, agape at the ceiling.* Girls! Why do you—?

MERCY LEWIS, *pointing*: It's on the beam! Behind the rafter!

DANFORTH, *looking up*: Where!

ABIGAIL: Why—? *she gulps.* Why do you come, yellow bird?

PROCTOR: Where a bird? I see no bird!

ABIGAIL, *to the ceiling*: My face? My face?

PROCTOR: Mr. Hale—

DANFORTH: Be quiet!

PROCTOR, *to Hale*: Do you see a bird?

DANFORTH: Be quiet!!

ABIGAIL, *to the ceiling, in a genuine conversation with the "bird," as though trying to talk it out of attacking her*: But God made my face; you cannot want to tear my face. Envy is a deadly sin, Mary.

MARY WARREN, *on her feet with a spring, and horrified, pleading*: Abby!

ABIGAIL, *unperturbed, continuing to the "bird"*: Oh, Mary, this is a black art to change your shape. No, I cannot, I cannot stop my mouth; it's God's work I do.

MARY WARREN: Abby, I'm here!

PROCTOR, *frantically*: They're pretending, Mr. Danforth!

ABIGAIL—*now she takes a backward step, as though in fear the bird will swoop down momentarily*: Oh, please, Mary! Don't come down.

SUSANNA WALCOTT: Her claws, she's stretching her claws!

PROCTOR: Lies, lies.

ABIGAIL, *backing further, eyes still fixed above*: Mary, please don't hurt me!

MARY WARREN, *to Danforth*: I'm not hurting her!

DANFORTH, *to Mary Warren*: Why does she see this vision?

MARY WARREN: She sees nothin'!

ABIGAIL, *now staring full front as though hypnotized, and mimicking the exact tone of Mary Warren's cry*: She sees nothin'!

MARY WARREN, *pleading*: Abby, you mustn't!

ABIGAIL AND ALL THE GIRLS, *all transfixed*: Abby, you mustn't! . . . □

Mapplethorpe Photos on Trial

Jury acquits museum of obscenity despite defense pretrial losses

A Cincinnati jury of mostly working-class churchgoers in October acquitted the city's Contemporary Arts Center and its director of illegally displaying photographs of nude juveniles and pandering to obscenity for exhibiting the works of the late artist Robert Mapplethorpe.

The trial focused on only seven of 175 photographs displayed. Five of those cited images depicted adult males engaged in homoerotic, sado-masochistic acts and two wore of children with their genitalia exposed. (*Cincinnati v. Contemporary Arts Center*, No. 90 CRB 11699 ANB and 90 CRB 91700 ANB.)

Jurors told reporters after the trial that expert testimony convinced them the photographs labeled as obscene by prosecutors possessed serious artistic value and were the work of a highly respected artist. The four men and four women, who had never before viewed the Mapplethorpe exhibit, deliberated for only two hours.

A conviction of the arts center could have brought a fine of up to \$10,000, while a guilty finding for museum director Dennis Barrie could have brought him up to a year in jail and a fine of \$2,000.

A Sympathetic Jury

Some observers had speculated that in Cincinnati, a city that has no adult book stores, nude dancing establishments or X-rated cable television stations, it would be difficult to find jurors sympathetic to Mapplethorpe's work.

"As it turned out, the national press had made a lot of unfair assumptions about potential jurors," said Marc D. Mezibov, who represented the museum. "At the conclusion of the voir dire process, we were satisfied that we had selected people who would be willing to listen to experts of the art world and consider their opinions."

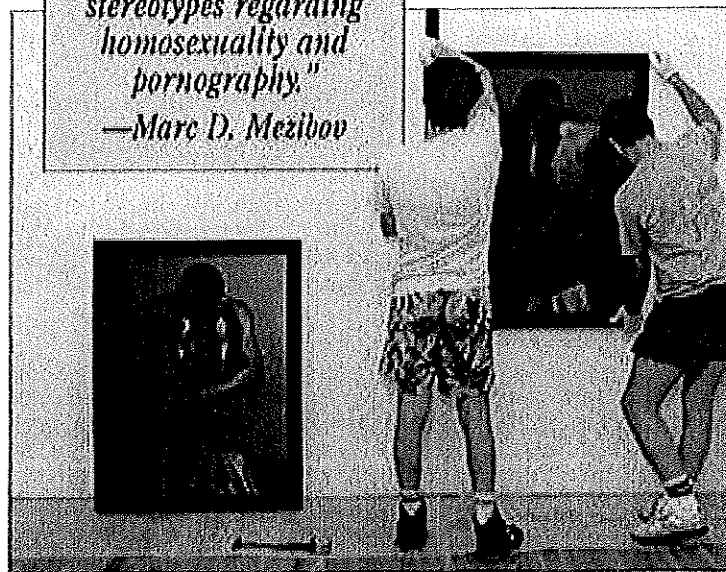
Before voir dire, Mezibov and H. Louis Sirkin, who represented Barrie, were not so confident. They filed a pretrial motion asking Judge David F. Albanese to restrict the

"This case should never have been brought. It was prompted by a lot of homophobia in politicians and stereotypes regarding homosexuality and pornography."

—Marc D. Mezibov

look at the world around us, which is not always pretty. ... And I think the jury understood that."

Mezibov said the testimony of the half-dozen museum directors called by the defense as art experts was a major factor contributing to the outcome of the case. "That testi-



Workers hang photographs by controversial artist Robert Mapplethorpe in Boston.

jury panel to persons residing inside the city limits of Cincinnati since, the lawyers contended, suburban or rural residents were too strongly biased against pornography. The motion was denied.

The attorneys also lost their bid to have the jury view the entire exhibit so that Mapplethorpe's "whole artistic retrospective" could be weighed.

During the two-week trial, the defense sought to "to convey to the jury that art is not always beautiful," Sirkin said. "Sometimes an artist shows his torture. For example, Van Gogh cut off his ear to make a social statement.

"Mapplethorpe, through his photographs, was showing us something about himself and something about the lifestyle of open human sexuality that he lived and that was prevalent in the United States during the 1970s.

"The photographs were intended to make us look inside ourselves and

mony, we have learned from statements made by the jurors, is what most convinced them that the photographs had serious artistic value."

Saying the cited photographs spoke for themselves, prosecutor Frank Prouty rested his case after showing the pictures to the jury and eliciting testimony from police officers confirming that the works were on display at the museum.

In commenting on the verdict, Mezibov said: "This case should never have been brought. It was prompted by a lot of homophobia in politicians who sought to play on the public's emotions and stereotypes regarding homosexuality and pornography.

"But the verdict shows that when most people have an opportunity to hear something about art, they are interested and willing to listen before making a judgment."

Prouty's only comment was, "It's unfortunate that we lost."

—Charles-Edward Anderson

THE CINCINNATI ENQUIRER

APRIL 6, 1990

FRIDAY

FINAL/35c

A GANNETT-NEWSPAPER

Crowd booked for art show

CAC members snap up 3,000 tickets for debut tonight

BY JANE PRENDERGAST
The Cincinnati Enquirer

This won't be the usual sip-a-drink-and-mill-around art opening.

With almost 3,000 tickets sold for tonight's members-only opening of the Robert Mapplethorpe photography exhibit at the Contemporary Arts Center, the crowd might have to look quickly, not gaze.

"That's a lot more people than usual," Roger Ach II, CAC president, said. "And I think a lot of members haven't made their reservations yet. We're going to have a full house."

A CAC opening usually attracts 500 to 600 members. And the members, usually

admitted to openings free, are paying \$10 each for the three-hour Mapplethorpe opening.

The general admission price for the show, scheduled to open to the public Saturday and run through May 26, has been increased from \$2 to \$4, and the CAC is asking for an additional \$1 donation.

A hearing has been scheduled for this afternoon in Hamilton County Municipal Court on a suit filed by the CAC to prevent a threatened closing of the exhibit. Cincinnati-area law enforcement officials have said some of the photos appear to violate community obscenity standards.

Assuming the show does open, the crowd

expected tonight will be "probably the largest the CAC has ever seen," Ach said.

Tom Creahan of Mount Washington goes to most of the CAC's openings for members. "I've been planning to go since I first heard about it. Then, when the controversy started, I was a little bit alarmed that Cincinnati might disappoint me" by forcing the show's cancellation.

Susan Gartin of Hyde Park plans to go early tonight to avoid some of the crowd.

(Please see OPENING, back page, this section)

■ Hearing today, Page A-16.

■ Review, Page C-19.



The Cincinnati Enquirer/Mary Annette Pember

A sign behind security guard Todd Baskin, hired by the Contemporary Arts Center for the Mapplethorpe exhibit, warns viewers of explicit images.

3 options for judge at hearing today in arts center suit

BY DAVID WELLS

The Cincinnati Enquirer

Hamilton County Municipal Judge Edward Donnellon has three options today in a hearing on the Contemporary Arts Center's suit to ensure that Robert Mapplethorpe's photography can be displayed:

■ Rule that the pictures do not violate obscenity standards.

■ Rule that a jury should make that decision.

■ Dismiss the CAC's suit. "My feeling is the only way he could grant the state's motion to dismiss is if the state says it isn't going to do anything about the exhibit," CAC attorney H. Louis Sirkin said Thursday.

Sirkin filed the suit March 27 against Cincinnati City Solicitor Richard Castellini, Hamilton County Prosecutor Arthur M. Ney Jr., Sheriff Simon L. Leis Jr. and Police Chief Lawrence Whalen to try to prevent law enforcement intervention with the show. A hearing is scheduled at 1:30 p.m. today.

The show "Robert Mapplethorpe: The Perfect Moment," opens to the public at 10 a.m. Saturday. Several photographs depict homosexual and sado-masochistic acts and have been called obscene by Leis and some critics.

Assistant City Solicitor Karl Kadon, who viewed the pictures

with members of the Cincinnati vice squad earlier, disagreed with some of Sirkin's analysis.

Donnellon could simply decide no controversy exists and dismiss the suit, Kadon argued. If the judge rules that way, "everything is back to square one," which means the police would not be barred from investigating the show, he said.

"I am not saying they would or they wouldn't, but everything would be back the way it was before the suit was filed," Kadon said.

Kadon said he agreed with Sirkin that the judge could decide to set the case for trial and let a jury decide the obscenity question, but he does not think the judge has jurisdiction to issue an advisory opinion that the show has artistic merit and therefore is immune from prosecution.

Setting the case for a jury trial would not affect the opening or the show's scheduled run through May 26, Sirkin said. Ordering the show closed before it can open would be unconstitutional prior restraint, and an immediate appeal would be filed, he said.

If an obscenity trial took place and a jury ruled the pictures obscene, criminal charges could be filed against the CAC even though the show might be long over, Sirkin said.

Opening

CONTINUED FROM PAGE A-1

She hasn't attended many openings in recent years but said she wouldn't miss this one "because of the controversy that's evolved and to show support for the CAC."

Anne Jones Weiler, also of Mount Washington, has tickets for tonight, and her husband wants to go. But he has a broken knee, and "being on crutches around 3,000 people doesn't sound too good," she said.

Weiler saw the exhibit Wednesday night during the preview for

Lightborne Communications, the company that financed the exhibit. She liked Mapplethorpe's work, she said—and added that she had a heated discussion with her manicurist, who didn't understand why anyone would want to see such controversial photographs.

"First of all, the pictures everyone's talking about are so small that I couldn't even tell what half of them were," Weiler said. Mapplethorpe "is definitely weird, but he's also obviously a marvelous photographer."

4,000 pack photo exhibit



Jack Sawyer, curator of the Contemporary Arts Center, leads a tour of the Robert Mapplethorpe photo exhibit Friday night.

The Cincinnati Enquirer/Steve Perez

Show's run uncertain after ruling

BY JANE PRENDERGAST
The Cincinnati Enquirer

Friday night's opening of the Robert Mapplethorpe photography exhibit drew 4,000 to the Contemporary Arts Center for what the museum's preparator feared "might be their only chance to see it."

CAC preparator Bob Swaney was referring to the possibility that local law enforcement officials may decide to confiscate some of Mapplethorpe's controversial works after a judge earlier in the day dismissed a CAC request that the exhibit be declared not obscene.

The show at the gallery on Fifth Street opens to the public at 40 a.m. today.

The exhibit of 175 photographs includes images of homoerotic acts and of children whose genitals are exposed. Law enforcement officials say some of the photographs are obscene and have viewed the exhibit. The controversy has stirred interest in the exhibit, protests and debates on the issue of First Amendment rights.

About 500 people have joined the CAC in the last two weeks, paying \$25 each, specifically to be able to attend the members-only showing, center officials said.

As members waited in lines which led out the doors and down the block in 40° temperatures Friday, Swaney assured them "we're committed to staying here until everyone who wants to see the show sees the show."

Within 15 minutes of the show's 7 p.m. opening, 450 CAC members and their guests filled the gallery to capacity. By midnight, only a few hundred people were still in the gallery.

Painter Cynthia Cukla was in the crowd and said she would return this morning when the exhibit opens to the public "just to show my support."

Waiting in line is "definitely worth it," Mike Fraser of Hyde Park said while standing at Fifth and Walnut streets. He was the last person in line as of 7:25 p.m. "It's an opening."

Two minutes later, the line had lengthened by 29 people and stretched from the intersection halfway down Walnut Street.

Lisa and Jeff Stegman, two organizers of the new Voice Against Censorship group formed after Cit-

(Please see CAC, back page, this section)

Prosecutors quiet about next move

Judge dismisses Mapplethorpe suit

BY DAVID WELLS
The Cincinnati Enquirer

Prosecutors declined to say what — if any — action they would take against the Contemporary Arts Center after a judge Friday dismissed a lawsuit brought by the CAC to have an exhibit which includes explicit photographs declared not obscene.

Judge Edward Donnellon of Hamilton County Municipal Court dismissed without explanation a lawsuit which had sought a jury trial to determine whether an exhibit of 175 photographs by Robert Mapplethorpe is obscene. It includes homoerotic images and photographs of nude children.

Hamilton County Sheriff Simon Leis Jr. has said he thinks some of the pictures are "criminally obscene."

After the hearing, County Prosecutor Arthur Ney said: "We can do a lot of things. I'm not going to tell you what we're going to do. I can't discuss anything that I may, could, should or might do."

Under Ohio law, police could get a search warrant and seize photographs if they think there is reason to believe the photographs are obscene.

CAC attorneys said they presumed that the city and county police would have stated their intentions Friday in court if they intend to interfere with the show.

"The fact that the court dismissed (the lawsuit) indicates there is no justiciable controversy. The show will go on," attorney Marc Mezibov said.

"Fear of possible police action against the exhibit prompted arts center attorneys to file suit in Hamilton County Municipal Court March 27 against city and county officials.

The suit asked the court to declare that a legal dispute existed and to let a jury decide whether the pictures were obscene.

Donnellon dismissed the suit without comment. The judge told

(Please see LAWSUIT, back page, this section)



The Cincinnati Enquirer/John Curley

About 500 anti-Mapplethorpe demonstrators protest outside the Hamilton County Courthouse during a hearing.

when I was selling drugs, I'd go come's over \$75,000 or under we're still going to be talking about this 10 years from now."

Lawsuit

CONTINUED FROM PAGE A-1

lawyers for the arts center that he would not comment on the legal arguments "because I am not going to identify any one here that you might be able to go with to the Court of Appeals."

Assistant Cincinnati Solicitor Karl Kadon insisted during the hearing that city police, while they had viewed the photographs, had not made any decision about whether exhibiting them would result in criminal charges. "Since when is an investigation a conclusion?" Kadon asked the court.

Kadon said the arts center was trying to paint Police Chief Lawrence Whalen, Ney and Eels as "Neanderthal barbarians" because they investigated complaints.

Assistant County Prosecutor Robert Taylor, representing the county, also blasted the arts center for trying to pre-empt action by the police. "We're not going to let the CAC or anybody from New York come into Hamilton County and dictate to our elected officials

what we will and will not do," Taylor said.

Nine of the 175 photographs in the exhibit show explicit homoerotic or sadomasochistic images; one shows a nude child and one shows a child's genitals. The rest of the show consists of portraits, nudes and still lifes.

While the hearing went on inside the courthouse, supporters and opponents of the exhibit demonstrated on the building's steps.

About 50 chanting, sign-carrying arts center supporters marched at 1 p.m. from Mountain Square to the courthouse, waiting for them were another 50 backers and about 500 anti-Mapplethorpe demonstrators with their signs and banners.

A dozen sheriff's deputies kept the two groups apart for more than two hours, as the crowd dwindled to a few dozen individuals.

Reporter Ben L. Kaufman contributed to this report.

CAC

CONTINUED FROM PAGE A-1

zens of Community Values spoke out about several of the photographs were in the line.

They were told before 7:50 p.m. that it would be at least an hour before they got inside the building and probably another two hours before they could see the exhibit.

"After all that's happened," Jeff Stegman said, "of course we'll wait."

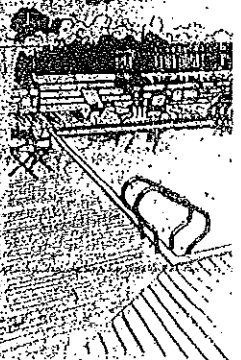
University of Cincinnati professor of design Gordon Salehow said "I think the controversy is a good thing. It's got people all over the city talking about art."

After viewing some of the most controversial photographs, he said "There is a fascinating contrast between the negative aspect of the subject matter and the fine quality of the design. Certainly, there's nothing that could be considered titillating."

Owen Lindsen contributed to this report.

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Obscenity on the editorial page

BY ROBERT J. LERER

Guest Columnist

Who are Drs. Vester, Gerhardt and Snyder and editorial page editor Thomas Gephardt to invade my home with the filth printed in the doctors' guest column of March 24 ("Mapplethorpe in Cincinnati")? Now that I've read the vivid description of some of Robert Mapplethorpe's photographs right there in the

most conservative newspapers, of what use is it for me to become infuriated that "The Perfect Moment" is coming to the Contemporary Arts Center (CAC)? I felt as if I had already viewed the pornography!

What makes the well-meaning physicians believe that their written depiction of the more controversial of Mapplethorpe's photographs is less pornographic than the photos themselves? What makes Gephardt, who must have read the guest column and approved its final form, believe that the community standard that he professes to speak of in his column of the following day, was not violated by the doctors' graphic essay of the sexual themes of the photos?

Reading and viewing

Is reading descriptions of the objectionable photos less obscene than viewing the photos? I think not. In fact, I believe the opposite to be true. *The Cincinnati Enquirer* engaged in the setting of my community standard by lowering itself to print such filth in the editorial page. Shame on you! There were those ugly depictions right there in the editorial page for my children to read. Where was the warning on your front page that the *Saturday Enquirer* contained in its editorial page some obscene materials that would henceforth become the community standard. I for one found the materials objectionable.

Whether they realized it or not, Gephardt and the doctors were in fact supporting the notion that no one must tamper with freedom of speech as it pertains to art. I want to retain my right to be affected by some of Mapplethorpe's more objectionable photos. I want the right to decide for myself, if I care enough to go to the CAC exhibit, whether or not any of it is art. I want to retain the right to be revolted, angered or even aroused by individual works. For what is art if not something that affects the senses of the patron and elicits a feeling or a response? Nothing says that art has to be "nice" or that it may elicit only "good" feelings for the spectator.

Ballet goes stormed out of Stravinsky's "Firebird" when it was first per-

“ Is reading descriptions of the objectionable photos less obscene than viewing the photos? ”

formed. It was an assault on the conservative sensitivities of the public back then. Now, it's just cacophonous, not even avant garde!

Picasso's "Guernica," a painting in muted blacks, whites and grays depicts the horrors of war and fascism, yet was greeted with disdain by the public. When I saw it at the Museum of Modern Art years ago, before it returned to Europe, it brought tears to my eyes because I felt I understood what the artist was trying to tell me about the inhumanity of man toward man. But a young couple standing next to me were more amused than moved by the work. Such is art. It affects us differently.

There may be times when art that depicts no sexual material may be deemed obscene, but if this is so, I've never seen nor heard of public reaction against the other kind. Why is it that our society is so obsessed by sex and things sexual that they have become the standards for what obscenity stands for?

Years ago, during the Vietnam War, there was a now-famous photo of a young naked girl running away from her napalmed village. There was true terror and pain in her face. The photo has been a prize-winner and was recently selected by the editors of *Time-Life* as one of the best ever taken since the camera was invented. Why is a happy girl with her genitalia exposed more pornographic than a sad girl with her genitalia showing? It's all in the mind of the beholder, isn't it, in the final analysis?

Some may believe that the killing and maiming of children caught in the cross fire of war is acceptable and the theme, not pornographic although the photographic depiction of such an occurrence may revolt the sensitivities of others. Still others may see pornography in the depiction of a young girl, dressed, but with her genitalia exposed. It may bring to mind exploitation of children, abuse of children and may even provide prurient thoughts to a few crazies out there. Yet there are those who feel such depiction brings to mind innocence. And surely there will be those that see emerging seductiveness as a theme in such a photo. Who knows? Art affects our emotions differently.

One last point I'd like to make. While I

was reading the guest column in question, my young children were watching some of their favorite cartoons. They depicted all of the following: decapitation, torture, malice, dishonesty, killing, burning someone alive, cruelty. And all this was taking place in the Disney channel. Do I worry about what all this violence is teaching my children? Of course I do, yet I do recall watching similar stuff when I was their age, and did not turn out so bad after all (in fact, I detest violence). Nevertheless, I do reserve the right to decide for my children, what they may view, and I do not plan to take them to see Robert Mapplethorpe's photos, should I elect to go.

Given proper warning, most adults can make intelligent choices about what experiences to participate in and which to forgo. Certainly most of us require no censorship. Totalitarian regimes in Eastern Europe and Latin America traditionally censor the press. Many also censor artists. Freedom was at the root of the unrest behind the Iron Curtain; ultimately freedom won and communism was defeated.

Joining totalitarians

By condoning censorship, even of materials that many may find objectionable, is *The Enquirer* joining forces with totalitarians and Communists? Make no mistake about it: Once Mapplethorpe's work is censored you will next censor plays, music, paintings, dance. Does this bring back memories of Russia only a few years ago? Do we want this in America?

I want to reassure you of something. Even though I found that the March 24 guest column by the three doctors contained materials that I felt were in very poor taste (as they attempted to tell us what they found objectionable in the Mapplethorpe opus), my attempts to call Cincinnati police to ask them to confiscate all unsold copies of *The Enquirer* fell on deaf ears. Police may yet stop portions of the Mapplethorpe exhibit they view as pornographic; I guess they were too late to stop your presses or your distribution of papers on March 24. For surely if the photos themselves are pornography, so was your editorial page.

Such filth! So much freedom! Too much freedom? You decide, Cincinnati!

Robert J. Lerer, M.D., is a pediatrician practicing in Fairfield, Hamilton and West Chester. He is also commissioner of health in Butler County and an assistant clinical professor at the University of Cincinnati College of Medicine and the Children's Hospital Medical Center.

The costs of the bill

Mapplethorpe in Cincinnati

BY JOHN W. VESTER,
WILLIAM J. GERHARDT
& MARK SNYDER

Guest Columnists

In April, Cincinnati's Contemporary Arts Center (CAC) plans to display "The Perfect Moment," a collection of photographs by Robert Mapplethorpe. CAC director Dennis Barrie booked the show last spring after he viewed it in New York and found the show to be "stunning."

In the summer of 1989, "The Perfect Moment" ran smack into controversy. The National Endowment for the Arts (NEA) underwrote the show's display at the Corcoran Gallery of Art in Washington. When a number of U.S. senators learned of the content of some of the pictures that were being federally funded, "The Perfect Moment" was criticized, and the Corcoran gallery canceled the show. Why? It was art, right? CAC has compared the photos to the works of Michelangelo's frescos in the Sistine Chapel. Chad Wick of Central Trust, former chairman of CAC's board, thinks Cincinnati is mature enough for "The Perfect Moment." And why wouldn't it be?

Some different photos

While most of Mapplethorpe's works are still lifes, portraits and nudes, which few would find offensive, a number of pictures are decidedly different. The following photographs, which were part of the NEA-funded exhibit, have caused the controversy:

- A self-portrait of Mapplethorpe with a bullwhip protruding from his rectum.
- A man hanging upside down, nude, with the arms and legs chained while another man is fondling the nude man's genitals.
- One man holding his penis and urinating into another man's open mouth.
- A man sticking a large cylinder up his own rectum.
- A closeup of a man sticking a finger up his penis.
- A man's fist and arm (to the forearm) in another man's rectum.
- Pictures of prepubescent children focusing on or displaying their genitals.

At the New York exhibit there was also a sequential frame photograph of a man masturbating and a man apparently performing cunnilingus with his head be-

“Civilized society cannot afford to remain neutral in the face of such an assault.”

tween the legs of a woman who is nude except for high heels and hose. It's no wonder that CAC has felt it necessary to work for months promoting the show.

CAC curator Jack Sawyer, in *Cincinnati* magazine, said the pictures of nude children are not exploitive, and that one picture of a little girl with her dress pulled up so that her vagina is exposed alludes to the Greek myth of innocence in the world. Where has Sawyer been? Children are abused sexually at an alarming rate. Child molesters persuade children to engage in sex or to pose for them by showing the children explicit pictures of other children, which is meant to lower their inhibitions to do what was in the pictures. Children should never be made the focus of sexual attention or interest. Not for a moment; not as entertainment; not as art.

The picture of a man's hand and arm inside another man's rectum shows "fisting." This is a dangerous sex act which can lead to irreparable damage to the intestinal tract and occasionally to death. CAC curator Sawyer has stated that this and other "pictures document sexual practices that are passe because of AIDS." Sawyer's understanding of AIDS transmission is incorrect, and he represents himself as an authority on sexual practices that are not passe. CAC's display of such pictures implies that these practices are acceptable, which is hardly responsible.

What message is conveyed by the other photographs? Who was having "a perfect moment" in the picture of one man urinating into another's mouth, in the picture of a cylinder being inserted into a man's rectum, or in sadomasochistic photographs? What perception of life is advocated? Love and mutual respect are not portrayed. On the contrary, sex, which is meant to be an intimate private expression of life, has been cheapened and degraded. Human beings are treated

as animals to be abused for a moment's fun. Nothing is noble or personal. Instead, we are invited to be voyeurs and call it art.

Civilized society cannot afford to remain neutral in the face of such an assault. Civilized society promotes love, fidelity, responsible sexual relationships, marriage, family and human dignity. Urinating on people, sticking whips and cylinders up rectums, and engaging in sadomasochistic sex are degrading activities that diminish us all, particularly when these are spread out in public view.

Condemnation deserved

CAC is afraid to admit that some of Mapplethorpe's "perfect moments" ought to be condemned. As Alexander Pope once said, "Of all the causes which conspire to blind a man's erring judgment... is pride, the never-ending voice of fools." CAC admits that had the controversy over "The Perfect Moment" erupted before it was booked, they would have thought twice about it. CAC is too fearful to back down now because they feel they will look like they are not progressive.

Most distressing is that CAC did not realize "The Perfect Moment" had some less than perfect aspects before booking it. Leo Tolstoy wrote that "art is a human activity having for its purpose the transmission to others of the highest and best feelings to which men have risen." Saul Bellow wrote that art seeks "what is fundamental, enduring, essential." John F. Kennedy said that "art establishes the basic human truths which must serve as the touchstone of our judgment."

CAC serves the Cincinnati community best when it follows these great men, but serves us worst when it forces upon us a bizarre sexual vision that it cannot even criticize or mollify for fear of being called a rube.

John W. Vester, M.D., is director of research at the Good Samaritan Hospital; William J. Gerhardt, M.D., is director of the Department of Pediatrics at the Christ Hospital, and Mark Snyder, M.D., is an orthopedic surgeon in private practice and orthopedic consultant to the Cincinnati Ballet.

CAC supporters to face charges



Michael Snyder for The Cincinnati Enquirer

ABOVE: Art Academy students protesting on Monday are, from left, Zoli Faltay, Andy Agee, Nathan Coats and Aaron Cowan.



The Cincinnati Enquirer/Jim Callaway

Dennis Barrie, director of the Contemporary Arts Center, surveys spectators entering a Hamilton County courtroom Monday.

Angry crowd takes to streets

BY FREDERICK BERMUDEZ
The Cincinnati Enquirer

Nearly 200 chanting demonstrators paraded through downtown Cincinnati on Monday afternoon in support of Dennis Barrie, the Contemporary Arts Center (CAC), and for homosexual rights.

Cincinnati police videotaped much of the protest. Edward Ammann, assistant police chief, promised arrests will be made on charges of disorderly conduct and parading without a permit.

Ammann said no arrests were made Monday because police feared they might rile the crowd.

The 30-minute parade capped a four-hour demonstration at the Hamilton County Courthouse.

Monday was the first day of trial for Barrie and the CAC, on charges of pandering obscenity and using minors in nudity-related

material. The charges are based on five pictures of homoerotic acts and two pictures of children with their genitals exposed. The pictures were part of an exhibition by photographer Robert Mapplethorpe displayed at CAC in April and May.

As the protest began many of the 30 Hamilton County Sheriff's deputies standing guard outside the courthouse pulled on the latex gloves they had been issued.

Catherine Adams, a lawyer for Gay-Lesbian March Activists, said she told city and county authorities last week that some members of the group had AIDS.

Frank Weikel, spokesman for the sheriff's department, said the latex gloves are issued to all deputies as a precaution against AIDS, but the decision to wear them is left to the individual officer.

The demonstrators stopped traffic as they swept from the courthouse to Fountain

Square and back. The crowd marched against traffic and zig-zagged around cars.

Activists from Cincinnati, New York City and Columbus, Ohio, shouted pro-homosexual chants and obscenities about Sheriff Simon L. Leis Jr. and Hamilton County Prosecutor Arthur M. Ney.

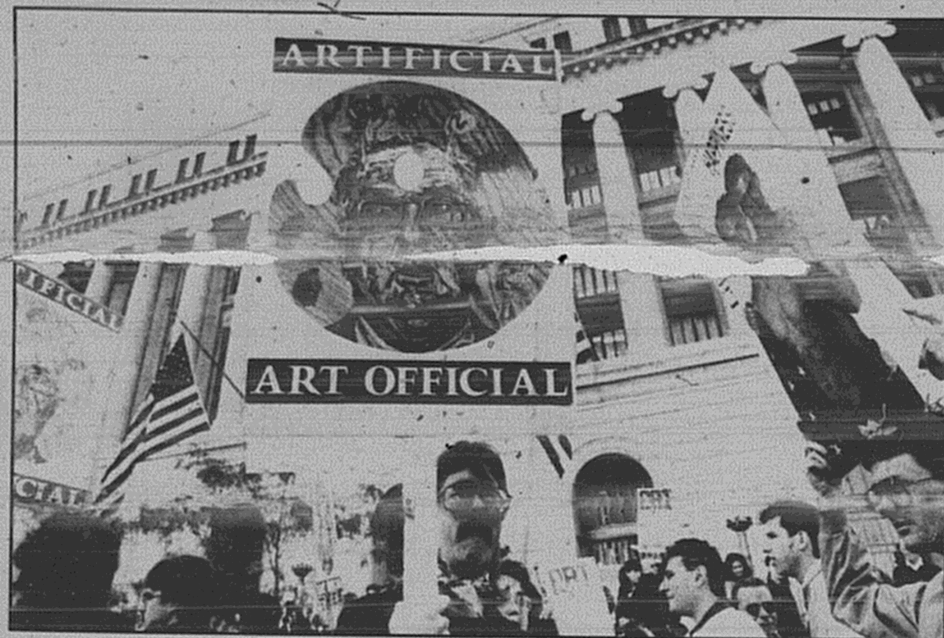
Barrymore Tebbs, a 31-year-old writer and actor, said he joined the protest because he felt action was needed.

"Our art museum has been raided, the First Amendment has been raided, my rights have been raided," he said.

The march began shortly after noon outside the courthouse, where several homosexual couples embraced and kissed. Men simulated sex acts with one another to applause

(Please see **TEST**, back page, this section)

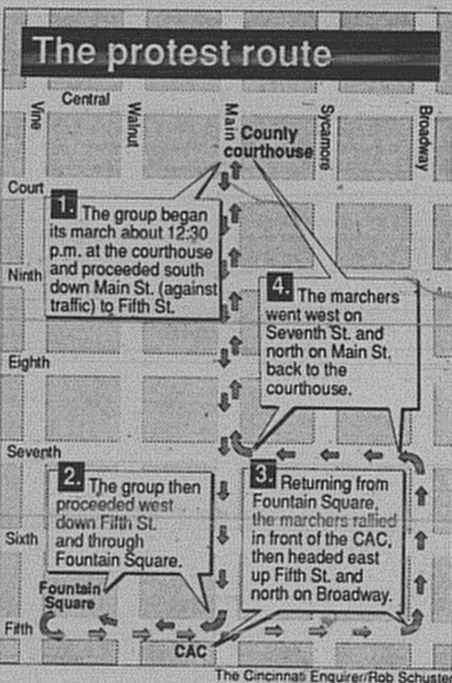
■ Jury selection begins, Page A-10.



ABOVE: Protesters gather outside the Hamilton County Courthouse to rally in support of Dennis Barrie and the Contemporary Arts Center, and for homosexual rights.

RIGHT: The crowd of protesters marched to Fountain Square and gathered outside the CAC on Fifth Street. The group then returned to the courthouse. Activists from Cincinnati, New York City and Columbus, Ohio, joined the rally.

The Cincinnati Enquirer
Jim Callaway



Protest

CONTINUED FROM PAGE A-1

and chants.

The crowd then marched to Fountain Square and gathered outside the CAC on Fifth Street and continued chanting before it returned to the courthouse.

Police on motorcycles scrambled to stop traffic and clear streets for the demonstrators.

Arrests planned

Ammann said arrests would be made within "a couple of days," after police and prosecutors have reviewed the videotapes.

Protest organizers met with police last week to set ground rules for the demonstration, which originally was not supposed to include a march, Ammann said. Those organizers know to police will be subject to charges, he said.

"We'll meet with prosecutors to ensure the proper charges and execute warrants," Ammann said. "There were violations of the law."

One organizer, Carol Lippman of Northside, a member of Act Up Cincinnati, an AIDS-awareness and gay-rights advocacy group, said she considered the demonstration both "orderly" and "successful." She also said she had been told by police to expect an arrest warrant with her name on it.

Enquirer reporter Kevin O'Hanlon contributed to this story.

Judge rejects four defense challenges to jury choices

BY BEN L. KAUFMAN

The Cincinnati Enquirer

Jury selection for the obscenity trial of the Contemporary Arts Center (CAC) and its director, Dennis Barrie, began Monday with four quick setbacks for the defense.

Hamilton County Municipal Judge David Albanese refused to:

- Limit jurors to residents of the city of Cincinnati.

- Grant extra juror challenges.

- Replace the initial panel of 50 prospective jurors with new ones who had not heard the prosecutor's remarks about child pornography.

- Declare a mistrial because such remarks "contaminated" all 50 prospective jurors who heard them.

When court recessed at 3:45 p.m., attorneys were halfway through questioning the first eight prospective jurors.

"I wish I had a pithy comment," Barrie said before trial. "Everyone's nervous when they walk in court, but I feel fine."

Photo exhibit

The trial arises from the exhibition, "Robert Mapplethorpe: The Perfect Moment," which ran from April 7 through May 26 at CAC and drew record crowds. After

jurors handed up identical misdemeanor indictments against Barrie and CAC.

Count 1 charged them with using minors in nudity-related ma-

terial because two pictures showed children with their genitals exposed.

Count 2 charged them with pandering obscenity because five other photos showed homoerotic or sadomasochistic aspects of Mapplethorpe's life.

The seven controversial pictures were among 175 photographs in the exhibition. The others were portraits, still lifes and nudes.

If convicted, Barrie faces a \$1,000 fine and six months in jail on each count; CAC could be fined \$5,000 on each count.

Defense attorneys Marc Mezibov and H. Louis Sirkin tried to limit the jurors to city residents, saying they had different community standards than suburbanites.

Since CAC was in downtown Cincinnati and the court requires jurors to apply contemporary community standards when judging obscenity, letting suburbanites sit in judgment would be wrong, Mezibov argued.

"That would require those jurors to guess perhaps what the standards are in the city of Cincinnati," Mezibov said.

Instead, Albanese agreed with Assistant Municipal Prosecutor Frank H. Prouty Jr., who said that jurors need only be registered Hamilton County voters and that

jurors have countywide jurisdiction.

"We weren't pleased with the judge's ruling," Mezibov said later.

Having lost that point, Sirkin and Mezibov sought more than the

traditional three peremptory challenges — in which attorneys need give no reason for rejecting a prospective juror.

Together, the defense has six, as does Prouty. The prosecutor could have extra challenges, too, defense lawyers said, but Albanese said no.

After prospective jurors left the courtroom for lunch, Sirkin and Mezibov accused Prouty of prejudicing the jury by making repeated references to "child pornography" and what they said were other prejudicial remarks.

If Albanese would not start fresh with another 50 jurors, the defense said, they wanted him to declare a mistrial.

Again, Albanese said no.

Under questioning by Prouty and Mezibov, one prospective juror said her church had an anti-obscenity viewpoint and she conceded that "God's law" came before "man's law."

She also was one of the prospective jurors from the suburbs who said city dwellers and suburbanites have different standards and that's why they live outside Cincinnati.

Another prospective juror who doesn't go to museums and didn't see the Mapplethorpe show, was content to let others see whatever they wanted to see.

"I don't want to see anything get some satisfaction out of looking at that," the prospective juror said.

Jury selection resumes today. Eventually, eight jurors and two alternates will be chosen.

Mapplethorpe 'not obscene'

Jury took 2 hours to decide

BY LEW MOORES
The Cincinnati Enquirer

A Hamilton County jury Friday took little more than two hours to settle a controversy that has rattled Cincinnati and the nation's art world for six months:

The Robert Mapplethorpe photo exhibit was not obscene.

The four-man, four-woman jury acquitted the Contemporary Arts Center, where the exhibit was shown, and Dennis Barrie, its director, of all charges in their unprecedented obscenity trial.

"It was a long, hard time in there," Barrie said afterward in the glare of television lights, sweat beading on his brow.

"But this is a great day for this city, a great day for America. They (jurors) knew what freedom was all about. This was something important. A major battle was fought here, for the arts, for creativity. I'm glad the system does work."

The trial was the first time an arts center in this country had been indicted for obscenity. Its outcome was closely watched by museum directors and legal scholars nationwide.

"I am truly astounded," said David Ross, director of the Institute of Contemporary Art in Boston, where the traveling Mapplethorpe exhibit closed Friday. "I had expected the jury to convict. I am more proud to be an American today."

In Tupelo, Miss., the head of the American Family Association said the acquittal does not end efforts to stop the National Endowment for the Arts from using tax dollars to finance artwork the group considers pornographic and religiously offensive.

"Obscenity is obscenity, regardless of where it comes from," said the executive director, the Rev. Donald Wildmon. "It doesn't absolve them of a thing in the world. We will go on fighting obscenity."

Barrie and the arts center were indicted April 7 on misdemeanor

(Please see OBSCENE



The Cincinnati Enquirer/Mary Annette Pember

Lawyer H. Louis Sirkin hugs client Dennis Barrie, director of the Contemporary Arts Center, after he and the center were acquitted Friday on obscenity charges. Barrie proclaimed it a victory for all but urged supporters to "stay strong, be vigilant and don't let this ever happen again."

Verdict seen as vindication for the arts

BY PATRICIA LOPEZ BADEN
The Cincinnati Enquirer

Across the country, the arts community rejoiced in the acquittal of the first U.S. arts center to be tried on obscenity charges.

"The artistic community wasn't at risk — America was at risk," said Anne Murphy, executive director of the American Arts Alliance. "What was at stake was the concept of free expression, and that is the very cornerstone of the American way of life." Murphy and others said they had

feared the outcome of the trial because the jury had been prevented from viewing all 175 photos in the exhibit "Robert Mapplethorpe: The Perfect Moment" at the Contemporary Arts Center (CAC).

"It seemed as if all the preliminary judgments were against us," she said. "But the jury spoke quite clearly. If something is of true artistic value, it cannot be obscene."

John Walsh, director of the J. Paul Getty Museum in Malibu, Calif., called the verdict "a huge relief for

museums and artists.

"We are grateful to Dennis Barrie and the CAC for showing that the First Amendment applies everywhere," he said. "Let's hope prosecutors everywhere get the message."

Alene Valkanas, executive director of the Illinois Arts Alliance, said she was ecstatic about the decision and "very proud of Cincinnati."

Valkanas said the artistic community was "extremely nervous" about

Inside/A-7

- Chronology
- Analysis: Chilling effect to outlast trial
- Dennis Barrie after the verdict
- Supporters applaud acquittal

(Please see A-10, page A-7)

page A-7

The Mapplethorpe verdict

Experts say trial could bring fear of prosecution

BY PATRICIA LOPEZ BADEN
The Cincinnati Enquirer

Legal experts say that while Friday's acquittal of Dennis Barrie and the Contemporary Arts Center (CAC) on obscenity charges is a vindication for the arts community, there may be fallout from the original decision to prosecute.

"Simply putting them on trial has had some chilling effect," said Robert O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression, based in Virginia.

O'Neil, a national expert on First Amendment issues, said that "while an acquittal certainly does mitigate the scope of the chilling effect," the risk now is self-censorship.

"I imagine someone like Barrie — even

if pleased at the outcome — must have felt this a painful, difficult and costly experience," O'Neil said. "The issue now is, to what degree will artists and those who exhibit now be more cautious simply because this possibility exists?"

Barrie, as director of the center, was instrumental in the decision to exhibit a 175-photo retrospective of photographer Robert Mapplethorpe in April. Included in the exhibit were five pictures that portrayed men in a variety of homoerotic poses and two that showed children with their genitals exposed.

The prosecution of Barrie and the arts center marked the first time in American history that an arts center was tried for obscenity over the content of an exhibit.

Bruce Cohen, with the American Coun-

Analysis

cil for the Arts in New York, also said the art world would feel the repercussions of the case.

"Everyone has to look over their shoulders now, and that will continue as long as some people find the arts to be an easy target to attack to promote their own political issues and fund-raising ambitions," he said.

Allen Brown, a Cincinnati lawyer who has defended other obscenity cases, said that is the part of the goal of such prosecutions.

"That is the secret of clean Cincinnati," he said Friday. "You make it so onerous, you make the threat of prosecution so

great, that those type of exhibits won't come here."

O'Neil said that he was a little surprised at Friday's verdict.

"Putting myself in the position of a juror who is not an expert in First Amendment rights, not an expert on art, I thought they might have been persuaded to convict."

O'Neil, who lived in Cincinnati during the early '70s, said he hopes Friday's verdict vindicates the city as well as Barrie.

"One of the things I have regretted in recent weeks is that the case has reflected unfairly on a community which has a long and deep devotion to the arts and culture and support of creative activity," he said.

"To those who don't know Cincinnati,

the impression has been that of an unenlightened, illiterate, censorious community, when I know that's not true."

The verdict is expected to bring in new support for the Fine Arts Fund, said Lee A. Carter, president and chairman of the sponsoring Fine Arts Institute.

In the midst of the Mapplethorpe furor, the 1990 fund drive raised \$5,150,000, with 2,000 new donors for a total of more than 39,000.

Carter said those numbers should rise when the 1991 drive begins in February, with the CAC back in the fold.

The CAC voluntarily withdrew from the 1990 general fund drive after its indictment, although donors could designate their contributions to the CAC.

Barrie: Constitution the real winner

Verdict signals a change

BY LEW MOORES
The Cincinnati Enquirer

Dennis Barrie stood in the entrance to the Contemporary Arts Center and accepted the congratulations of supporters.

"We're delighted," he was saying.

Handshakes and hugs.

"Congratulations!" they were saying.

"This is the moment — make this town free!" Barrie said to one supporter.

His suit jacket was off, his voice hoarse. It had been a long two weeks. The director of the arts center had faced the prospect of having a criminal record just an hour earlier, until a jury in a Hamilton County municipal courtroom acquitted him of charges that he pandered obscenity and used minors in nudity-related materials.

Because it was his decision to bring the photographic exhibition, "Robert Mapplethorpe: The Perfect Moment," to the center, he had found himself and the center indicted by a Hamilton County grand jury April 7.

During the two weeks of the trial he had been impeccably dressed, not a hair out of place, never showing any of the wearying signs a criminal trial could induce. He could have been jailed for a year and fined \$2,000.

"It's everybody's fight," he was saying Friday. "It's not just a gay issue, it's not just an art issue. They (jurors) honestly believe in a thing called the Constitution."



Dennis Barrie hugs Ann Mezibov, wife of attorney Marc Mezibov, as he hears the jury return a verdict of not guilty in his trial on two counts of obscenity Friday afternoon.

He had seen a Mapplethorpe exhibition at the Whitney Museum of American Art in New York in the summer of 1988 and said he was stunned by its beauty. When he learned that the

Institute of Contemporary Art in Philadelphia was organizing another Mapplethorpe exhibition, "The Perfect Moment," he began making arrangements to have it brought to Cincinnati.

He said he never considered it anything but art.

Barrie, 43, said he had no intention of leaving Cincinnati, not after the message he felt the community, speaking through a

jury, sent about the First Amendment. He said there was once a "current of repression" here. "I think now the people have stood up to this," he added. "I think it means change."

Supporters applaud acquittal

Arts community says 'justice was done'

BY MIKE TURMELL
The Cincinnati Enquirer

Two people who were cited for disorderly conduct during a protest at the opening of the Mapplethorpe trial were thrilled about the acquittal Friday of the Contemporary Arts Center and its director, Dennis Barrie.

Michael Blankenship, 27, of Evanston and Carol Lippmann, 27, of Northside joined others at a rally after the verdict outside the arts center.

"It's wonderful. It's a great day in Cincinnati history," Blankenship said. "The jury worked despite efforts of the prosecutor and the judge."

Lippmann, who was in the courtroom when the verdict was read, said she was shocked. "I didn't have any faith in our jury system. I think Judge (David) Albanese might have been relieved at the not guilty verdict because there were so many points that could have been challenged."

Ruth Meyer, director of the Taft Museum and former curator of the arts center, said she was relieved that the trial was over and said "justice was done."

She reiterated her "total admiration" for Barrie and said the CAC's position throughout the case was "courageous."

Craig Lloyd, board member of Cincinnati Artist's Support Group, said he was surprised that the jury reached a verdict in about two hours.

"(It) gives me faith in the people of Cincinnati to form their own opinion," he said. "It's a tremendous relief for everybody to see the thing is over finally. It tells the rest of the country that we have similar views as elsewhere, and we're not particularly conservative."

Enquirer reporter Ben L. Kaufman contributed to this report.

Obscene

CONTINUED FROM PAGE A-1

charges of pandering obscenity for displaying five photographs depicting sadomasochistic homosexual acts. They were also charged with using minors in nudity-related material for showing two photographs of children with their genitals exposed.

The photographs were in the exhibition "Robert Mapplethorpe: The Perfect Moment" at the downtown center. The seven photographs were among 175 in the show, which drew nearly 80,000 people before it closed May 26.

Supporters cheer verdict

Some arts center supporters and staff members cheered and applauded when the last count of the verdict was read, finding Barrie innocent of pandering obscenity. Judge David J. Albanese, angered by the outburst because he had warned spectators to be quiet, asked Roger Ach, chairman of the arts center's board of trustees, to leave the courtroom.

"I've been thrown out of better places," Ach joked afterward.

"It's real terrific," said H. Louis Sirkin, one of the defense lawyers. This is a signal for everybody — they better realize there's protection out there. It's sad that it was a battle that even had to be fought."

Marc Mezibov, also a lawyer for the defense, said the indictments and trial of the arts center were not a waste of taxpayer money.

"I'm glad to be out of this. What came out of a message, a priceless message — yes, we have a Bill of Rights."

Monty Lobb Jr., president of the Cincinnati-based Citizens for Community Values, said he was disappointed with the verdict but was glad the case went to trial. Lobb's group vigorously opposed the Mapplethorpe showing.

"By being prosecuted, they were held accountable. They had

to say why was it wasn't obscene. That's all that we asked. They should not be the ones to determine community standards. But neither should we. That's what the legal process is there for," Lobb said.

Frank H. Prouty Jr., the assistant city prosecutor who tried the case, said only: "It's been to the jury, and the decision's been made."

David Ross, director of the Institute of Contemporary Art in Boston, where the "Perfect Moment" exhibit went after appearing here, said he was delighted.

"I'm extremely gratified that even a jury not familiar with contemporary art saw through Judge Albanese's naked ploy to persecute a museum for doing what museums are supposed to do — show works of art they believe in," Ross said.

Friday was the last day of the Mapplethorpe exhibit in Boston, where it ran without incident and drew more than 100,000 people.

National museum directors had been critical of Albanese for ruling that the arts center was not a museum and for refusing to allow jurors to see the seven photographs in the context of all 175 in the exhibit.

"I want people to know that this city has been unfairly painted," said Barrie. "This is a good city, this is a tolerant city — but for some elected political officials doing this for their own political ends. They (jurors) were not museumgoers, they weren't artists. They were Cincinnatians."

Arthur Ney, who announced the indictments, could not be reached for comment. Nor could Sheriff Simon Leis and Police Chief Lawrence Whalen.

The jurors were given the case at 1:05 p.m., then spent an hour at lunch, returning to the jury room at 2 p.m. At 4:10 p.m., they told the bailiff they had a verdict.

Friday began with closing state-

ments, with Sirkin and Mezibov reiterating their position that the photographs had serious artistic value.

Prouty told the jurors, "You tell what is and what is not art."

Sirkin stood in the main lobby of the courthouse as the crowd of arts center supporters and national media began to thin.

Verdict lawyer's 'dream'

"It's everything, everything," he said. "It's a dream. Our niche in history."

At the arts center, at Fifth and Walnut streets, congratulatory faxes from other museums and professional associations came in. The faxes were taped on the wall behind the ticket counter.

"Congratulations! We applaud your courage and admire your fortitude," read one from the High Museum of Art in Atlanta.

As six packs of Michelob beer were placed on counters, Ach said he thought from the start that a jury would never convict the arts center on obscenity charges.

"We had a chance to show the system works," he said. "While we all had moments of doubt at times, we were always confident in the people."

About 50 people stood outside the Fifth Street entrance to the arts center and chanted, "Barrie, Barrie, Barrie!"

When Barrie appeared, he said it was great they were showing "They're proud to be Cincinnatians, they're proud of what happened."

He told them he had just about lost his voice, but he wanted to say a few words. It was a victory for everyone, he told them, "gay people, straight people — I don't care who you are."

As he left, he told them to "Stay strong; be vigilant and don't let this ever happen again."

"Never again, never again, never again," the crowd chanted.

Arts

CONTINUED FROM PAGE A-1

the Barrie trial.

"It wasn't just Dennis Barrie on trial," she said. "It was every museum in America and the arts as a whole. Just as the scientific community has professionals whose knowledge we respect, so we have professionals who go through extensive training and are acknowledged by their peers."

To have that leadership attacked, she said, "is difficult for the arts community to deal with."

Valkanas said the verdict renewed her faith in the public's endorsement of artistic freedom.

"They obviously understood that these pictures were not meant to be titillating," she said. "They were meant to represent the way of me or a group of people. For us to grow, we have to understand the whole world, not just pieces of it. No one has the right to rob us of that."

In Cincinnati, Kathleen Norris, managing director of Playhouse in the Park, said the verdict had left her giddy. "I'm here in my kitchen bouncing up and down," she said, laughing. "I'm just thrilled."

Norris said that if the jury had returned a guilty verdict, "It would have caricatured the entire city in a very negative way."

That joy, however, was tempered by the long, costly battle by Barrie and the CAC to gain vindication. If found guilty, Barrie faced up to a year in jail.

"I hope that in similar circumstances, we would be as brave as Dennis Barrie and Roger Ach (CAC chairman)," she said. "That's asking a lot. We in the arts know that we risk a great many things for the sake of art — poverty, isolation, sometimes embarrassment."

"Prison usually is not among those."

Mapplethorpe chronology

Key moments in the Mapplethorpe controversy:

■ **July, 1989:** Contemporary Arts Center announces it will show "Robert Mapplethorpe: The Perfect Moment" in April, 1990.

■ **February, 1990:** The local Citizens for Community Values sends a mass mailing calling for "action to prevent this pornographic art from being shown in our city." The arts center, its board members and companies that employ the board members receive protesting letters and calls.

■ **March 22:** Chad Wick, chairman of the arts center, resigns.

■ **March 25:** The arts center voluntarily withdraws from the Fine Arts Fund, fearing its inclusion might damage the 1990 fund drive. Donors are permitted to target their donations to the arts center.

■ **April 7:** 3,000 visitors see the show on opening day. Among them: nine members of a Hamilton County grand jury, who indict the arts center and its director, Dennis Barrie, for two misdemeanor accounts of pandering obscenity and illegal use of a child in nudity-related materials. Police temporarily close the exhibit while making a videotape of photographs. Hundreds of demonstrators gather outside to protest the police action. Attorneys for the arts center file suit against Hamilton County Sheriff Simon Leis and County Prosecutor Arthur M. Ney for bad-faith prosecution and violating First Amendment rights.

■ **April 8:** U.S. District Judge Carl B. Rubin issues a temporary restraining order barring law

enforcement officials from shutting down the exhibition. The Association of Art Museum Directors offers to pay any fines levied against Barrie and the center.

■ **April 13:** Prosecution given to city solicitor's office.

■ **April 30:** Defense lawyers H. Louis Sirkin and Marc D. Mezibov submit affidavits from the parents of the two children in the photographs, saying Mapplethorpe was asked or allowed to take the pictures and permitted to display them.

■ **May 2:** Rubin rules the defense lawyers cannot interview county officials.

■ **May 7:** Defense lawyers ask Common Pleas Judge Gilbert Bettman to let them read transcripts of the grand jury proceedings that indicted the center.

■ **May 9:** Bettman rules grand jury transcripts are secret.

■ **May 26:** The exhibition closes after a record attendance of 79,893.

■ **June 20:** Judge David J. Albanese rules the arts center is not a museum, but an art gallery. The distinction is important: Under Ohio law, an art museum is allowed to exhibit even obscene art if it is for bona fide educational purposes.

■ **Sept. 6:** Albanese rejects the defense argument that the photos should be viewed as part of the exhibit of 175 photographs. The judge says each photo stands on its own.

■ **Sept. 24:** Jury selection begins; nearly 200 protesters demonstrate against the prosecution.

■ **Oct. 5:** The jury acquits Barrie and the center on both charges.