

Argus is Obscene

Cheryl McCall

1970

“It’s what you call having your words and eating it too,” said the accused in reference to the penis in the councilman’s hand.

The accused, Ken Kelley, wild-maned editor of the Ann Arbor *Argus* was charged last August with “distributing an obscene newspaper” when he published a picture of Ann Arbor councilman James Stephenson holding a superimposed object that appeared to be an extremely large male cock. The councilman was grinning broadly.

According to Kelley, the picture was prompted by the councilman himself. At a council meeting, Stephenson fumed about the *Argus*, saying that “A typical picture in the *Argus* shows the male genital in a discernibly turgid state.”

Kelley’s account of the events leading up to the publication:

“Well, we combed our files, and damned if we could come up with any male genital in a turgid state. But we think we know what Mr. Stephenson meant, since he obviously couldn’t say ‘penis’ at a council meeting. With the number of eunuchs on the council, they wouldn’t know what he was referring to.”

“Anyway, not wishing Mr. Stephenson to be guilty of persiflage, since we couldn’t even find a picture of an erect penis in our files, we honored Mr. Stephenson’s remarks. It’s what you call having your words and eating it too.”

After the City Attorney Jerold Lax refused to issue an arrest warrant, believing the picture “may be regarded as a political statement,” Stephenson carried his complaint higher up. The County Prosecutor was then persuaded to issue an arrest authorization citing a state obscenity law.

District Court Judge S.J. Elden examined the charge last October. In the august arena of justice, the prosecutor, after calling six state witnesses to the stand (who were required to view the turgid member) contended the picture was obscene. Kelley, as owner and editor, he charged, was criminally liable for its publication and distribution.

Also, the picture implied that the member in question was Mr. Stephenson’s; with a glance at the councilman, he said it was obvious the *Argus* was stretching it (the point?).

Defense attorneys, Mark Stickgold and Frank Munger, argued that the prosecutor had failed to prove:

1. that Kelley was responsible for distributing the paper, and
2. that the picture was obscene by the U.S. Supreme Court criteria.

Judge Elden adjourned the case until January 7, 1970, when he would announce his decision.

In the meantime, former Ann Arbor Mayor Hathaway filed a civil suit charging the University of Michigan Regents (including President Robben Fleming), Mayor Robert Harris, City Attorney Jerold Lax, County Prosecutor William Delhey, and Ken Kelley with insufficiently attempting to stop the underground paper from publishing.

“I offered to act as official press liaison for the ‘Ann Arbor Five’ and hire a joint attorney, but they declined,” Kelley remembers.

This suit was eventually thrown out of court.

On January 7, Judge Elden pronounced the *Argus* as “obscene and without value.”

“The obscenity is unrelated to the balance of the publication and therefore the defendant cannot hide under the cloak of a possible redeeming social value...” he further stated.

“All the (prosecutor’s) evidence points strongly toward the proposition that the defendant was at least one primarily responsible for the Ann Arbor Argus and its existence,” Judge Elden said.

In essence, Elden’s opinion was:

1. The photograph of Stephenson with the superimposed penis as published in the Ann Arbor *Argus* was obscene.
2. But the State failed to prove that Ken Kelley distributed the newspaper in question.

Due to the lack of proof on the part of the prosecuting attorney that Kelley has, in fact, distributed that edition of the *Argus*, Judge Elden ordered the criminal charge dismissed.

After the dismissal, Kelley commented, “Actually, what happened is that we bribed Judge Elden. He was always complaining that we never ran pictures of him in the Argus. So we made a deal that we would put a picture of him in our next issue if he would dismiss the case.”

“Wait ‘til you see what we do with it!”

fifth Estate

Cheryl McCall
Argus is Obscene
1970

<https://www.fiftheestate.org/archive/97-january-22-february-4-1970/argus-is-obscene>
Fifth Estate #97, January 22-February 4, 1970

[fiftheestate.anarchistlibraries.net](https://www.fiftheestate.org)