

US judge rules *The Tin Drum* is not child pornography

David Walsh
23 October 1998

A federal judge in Oklahoma City, Oklahoma ruled Tuesday that the 1979 German film *The Tin Drum* does not contain child pornography as had been charged by city authorities. Oklahoma City police confiscated copies of the film from video stores, the public library system and the homes of several individuals in June 1997 after complaints from a Christian fundamentalist group, Oklahomans for Children and Families (OCAF).

The film, directed by Volker Schlöndorff, uses the allegorical device of a child in Germany at the time of the Nazi rise to power who refuses to grow up as a means of examining moral and social issues. In three brief scenes the actor playing the lead character, physically a child while mentally an adult, engages in or observes simulated sexual activity.

Judge Ralph Thompson ruled on a lawsuit filed by Oklahoma County District Attorney Bob Macy seeking confirmation of the original action against the film. The judge declared that *The Tin Drum* as a work of art was protected under state and federal law. Two other lawsuits, filed by the American Civil Liberties Union and the Video Software Dealers Association, remain to be decided. They involve broader issues of alleged violation of civil rights, including free speech and protection against illegal search and seizure. The ACLU and the video dealers also claim the authorities broke the Federal Video Privacy Protection Act by forcing store managers to give police the names and addresses of those who had rented the film.

Lee Brawner, executive director of the Oklahoma County Metropolitan Library System, told a reporter, 'We will be ordering many additional copies [of *The Tin Drum*]--with great delight.'

Macy defended the city's actions. 'We did nothing wrong,' he told *The Oklahoman*. 'Regardless of the ruling, the police department and our office acted in

good faith in everything we did.' Apparently, the district attorney's office is not planning to appeal. On Tuesday evening Macy was quoted on the local news as saying that we can 'get this all behind us now.' For one thing, officials are involved in preparing the state case against right-wing bomber Timothy McVeigh.

In his ruling, Thompson noted that *The Tin Drum*, 'an Academy Award and Cannes International Film Festival prize winning film, has been in public circulation throughout the world for 20 years without ever having been subjected to any known governmental sanctions or censorship.'

He commented that while state law prohibits material in which minors engage in sexual activity or conduct, it excepts material which ' (1) does not have as its dominant theme an appeal to prurient interest and (2) is a bona fide work of art.' The federal judge therefore determined that the film did not violate the law as authorities had claimed.

Thompson did not, however, rule on the constitutionality of the Oklahoma anti-child pornography laws. He wrote that because the statute's exception with reference to artistic merit applied, the court was not obliged to rule on whether the law was 'unconstitutionally over broad.' The judge maintained that applying the exception 'on a case-by-case basis will cure defendants' concerns about the statute's potential prohibition of material otherwise protected by the First Amendment.' The Oklahoma law, which threatens an entire category of works, thus remains on the books.

'We're happy!,' Bill Young of the Oklahoma Department of Libraries told me. 'We expected it,' he went on, because of the judge's ruling in December 1997 declaring the manner in which the videos had been confiscated to be unconstitutional. 'We're getting our tapes back from another library system and they

will be available.' Young views the decision as a victory for intellectual freedom.

While Thompson's ruling is a setback for the OCAF and similar organizations, it does not provide any grounds for complacency. These forces, modern-day book burners, will pursue their attacks on democratic rights.

The Oklahoma Department of Libraries' web site can be accessed at:
<http://www.state.ok.us/~odl/fyi/ifreedom.htm>

See Also:

The Tin Drum under attack in Oklahoma City:
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