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tecting its citizens against the dissemination of obscene material, the Court in effect says that proving the state of a man's mind is little more difficult than proving the state of his digestion, but also intimates that a relaxed standard of mens rea would satisfy constitutional requirements. This is for me too rough a balancing of the competing interests at stake. Such a balancing is unavoidably required in this kind of constitutional adjudication, notwithstanding that it arises in the domain of liberty of speech and press. A more critical appraisal of both sides of the constitutional balance, not possible on the meager material before us, seems to me required before the ordinance can be struck down on this ground. For, as the concurring opinions of my Brothers Black and Frankfurter show, the conclusion that this ordinance but not one embodying some element of scienter, is likely to restrict the dissemination of legitimate literature seems more dialectical than real.

I am also not persuaded that the ordinance in question was unconstitutionally applied in this instance merely because of the state court's refusal to admit expert testimony. I agree with my Brother Frankfurter that the trier of an obscenity case must take into account "contemporary community standards," Roth v United States, 354 US 476, 489, I L ed 2d 1498, 1509, 77 S Ct 1304. This means that, regardless of the elements of the offense under state law, the Fourteenth Amendment does not permit a conviction such as was obtained here unless the work complained of is found substantially to exceed the limits of candor set by contemporary community standards. The community cannot, where liberty of speech and press are at issue, condemn that which it generally tolerates. This being so it follows that due process — "using that term in its primary sense of an opportunity to be heard and to depend (a) . . . substantive right," Brinkerhoff-Faris Trust & Sav. Co. v Hill, 281 US 673, 678, 74 L ed 1107, 1112 50 S Ct 451 — requires a State to allow a litigant in some manner to introduce proof on this score. While a State is not debarred from regarding the trier of fact as the embodiment of community standards, competent to judge a challenged work against those standards, it is not privileged to rebuff *all* efforts to enlighten or persuade the trier.

However, I would not hold that any particular kind of evidence must be admitted, specifically, that the Constitution requires that oral opinion testimony by experts be heard. There are other ways in which proof can be made, as this very case demonstrates. Appellant attempted to compare the contents of the work with that of other allegedly similar publications which were openly published, sold and purchased, and which received wide general acceptance. Where there is a variety of means, even though it may be considered that expert testimony is the most convenient and practicable method of proof, I think it is going to far to say that such a method is constitutionally compelled, and that a State may not conclude, for reasons responsive to its traditional doctrines of evidence law, that the issue of community standards may not be the subject of expert testimony. I know of no case where this Court, on constitutional grounds, has required a State to sanction a particular mode of proof.

In my opinion this conviction is fatally defective in that the trial judge, as I read the record, turned aside *every* attempt by appellant to introduce evidence bearing on community standards. The exclusionary rulings were not limited to offered expert testimony. This had the effect of depriving appellant of the opportunity to offer any proof on a constitutionally relevant issue. On this ground I would reverse the judgment below, and remand the case for a new trial.

ACCUSED MAY REMAIN AT LIBERTY UNDER ORIGINAL BOND AFTER CONVICTION AND DURING APPEAL

In a precedent-provoking decision, Judge Jesus P. Morfe of the Court of First Instance of Lingayen, Pangasinan recently ruled that an accused may continue to remain at liberty under his original bail bond after the rendition of judgment of conviction and during the period of appeal.

In its effect, Judge Morfe's ruling departs from the standard judicial practice of placing the accused into the custody of the law immediately after the reading of the judgment of conviction to him, unless then and there he appeals the decision and files a new bail bond for his provisional release during the pendency of the appeal.

Judge Morfe made the ruling in a criminal case for estafa (People of the Phil. vs. Floro C. Garcia and Alfredo R. Balagtas, Crim. Case No. No. 21257) following the oral manifestation of the counsel for the two accused therein of their intention to file a motion for reconsideration of the decision of conviction that was read in open court to the accused, accompanied with the verbal motion that in the meantime the accused be allowed to remain at liberty under their original bail bond.

In granting said verbal motion of the accused, Judge Morfe reasoned out that "to send an accused to jail for custody within the reglementary fifteen day period within which he can appeal the decision provided in Section 6 of Rule 118 will be tantamount to making him serve the sentence before it becomes executory". But an accused, Judge Morfe pointed out, cannot be so committed "unless he waives in writing his right to appeal and forthwith surrenders himself for the execution of the sentence imposed on him, or his bondsman surrenders him to the Court before the lapse of the period to appeal."

He also pointed out that as the bondsman of the accused did not appear at the reading of the judgment of conviction and did not surrender the accused to the court pursuant to sec. 16 (a) of Rule 110, "the bondsman will continue under the obligation of its bail to see to it that the accused appear before the court after the fifteen-day period mentioned in section 6, Rule 118 if the accused neither perfect his appeal during said period nor voluntarily surrender himself to the court for execution of its decision."

Judge Morfe also said that the term "conviction" contemplated in Sec 4, Rule 110 which gives rise to the ineffectivity of the original bail bond and the detention of the accused after the reading of the judgment of conviction, is a "conviction" that has become ripe for execution by virtue of the lapse of the fifteen-day period provided in sec. 6 of Rule 110. This conclusion finds support in Sec. 1 of Rule 118, which provides that 'from all *final judgments* of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Court of Appeals or to the Supreme Court as hereinafter prescribed.' The use of the term 'final judgment' in sec. 1 of Rule 118 implies that the judgment therein contemplated is one that has become ripe for execution by reason of the lapse of the fifteen-day period provided in sec. 6 of the Rule 118. Consequently, a convicted accused must begin to serve his sentence on the 16th day following promulgation of judgment, unless he perfect his appeal before the close of office hours of the 15th day."