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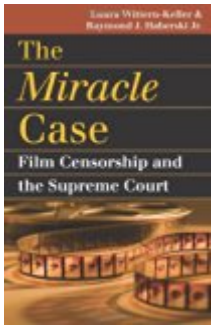
William Bruce Johnson. *Miracles and Sacrilege: Roberto Rossellini, the Church, and Film Censorship in Hollywood.* Toronto: University of Toronto Press, 2008. viii + 516 pp. $90.00 (cloth), ISBN 978-0-8020-9307-3; $35.00 (paper), ISBN 978-0-8020-9493-3.

Laura Wittern-Keller, Raymond J. Haberski. *The Miracle Case: Film Censorship and the Supreme Court.* Lawrence: University Press of Kansas, 2008. xiii + 233 pp. $35.00 (cloth), ISBN 978-0-7006-1618-3; $16.95 (paper), ISBN 978-0-7006-1619-0.



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Constitutional Miracles

Images of "miracles" dot the American constitutional landscape. The summer of 1787 produced, according to Catherine Drinker Bowen's 1966 classic, a "Miracle at Philadelphia." Scarcely a decade later, argues Bruce Ackerman's *The Failure of the Founding Fathers* (2005), political leaders performed the miraculous when defusing the constitutional crisis that followed the presidential election of 1800. Recently, two histories examine *The Miracle*, a 1948 movie directed by Roberto Rossellini, inspiring a U.S. Supreme Court decision, *Burstyn v. Wilson* (1952), which extended First Amendment protection to motion pictures. *The Miracle Case* and *Miracles and Sacrilege* also seek to link cinematic and constitutional matters surrounding *Burstyn* to changes in twentieth-century American culture.

The Supreme Court, in bringing what Budd Schulberg called the "canning business" within the First Amendment, explicitly renounced *Mutual Films v. Ohio* (1915), a decision that had denied commercial motion pictures *any* First Amendment protection.[1] In arguing that *Burstyn* showed the Supreme Court "acting upon a gradually expanding view of free speech and realizing that movies deserved to be included with works of art like books and plays," *The Miracle Case* invokes a familiar frame. More problematically, it hails *Burstyn* as "the single most important case in the jurisprudence surrounding motion picture expression" and the one "upon which all later cases were layered" (pp. 8, 9).

This collaboration between Laura Wittern-Keller and Raymond Haberski Jr. opens with a succinct cultural and constitutional prologue to the *Miracle* decision. The first two chapters recount a series of "challenges." There are the "origins and early challengers" to state and local "censorship" of movies, and Hollywood's system for self-regulating cinematic content as a means of holding off challenges to its cultural authority and legal interests. *The Miracle Case* also notes efforts to promote "movies as art," a project that supposedly helped to create, by the 1940s, "an alternative movie culture close enough to the mainstream in ideas and function to want to challenge Hollywood's dominance" (p. 54).

A third chapter follows Joseph Burstyn, an independent film distributor, who challenged New York's system of film regulation in order to screen Rossellini's *Miracle*. After joining this forty-one-minute film with two similarly brief French movies from the 1930s, Burstyn had seductively christened the resultant trifecta *The Ways of Love*. Following the lead of U.S. Customs, which had cleared *The Miracle* for importation, New York State's film

review board initially approved *The Ways of Love*, which opened for a run, beginning in December 1950, at the Paris Theater. Spurred by Bosley Crowther of the *Times*, New York City critics would subsequently anoint it as 1950's best foreign film.

By this time, however, *The Ways of Love* was garnering other citations. Disagreeing with Italian film critics, including those at the Vatican, prominent American Catholics denounced *The Miracle* as "sacrilegious." Ignoring Catholics who praised the movie, Francis Cardinal Spellman helped mobilize a campaign against it. The U.S. Catholic Church's film review body, the Legion of Decency, rated the movie "C," for "Condemned," and instructed American Catholics not to see it. In addition, a Catholic public official, who licensed entertainment venues in New York City, pledged to shutter any movie house, beginning with the Paris, that dared unspool Rossellini's movie.

Blessed by five hundred plus pages and liberated from the "landmark case" formula, William Bruce Johnson's history reaches this juncture by a far more circuitous route than *The Miracle Case*. Interweaving cultural and legal themes, *Miracles and Sacrilege* explores Rossellini's filmmaking career. An avowedly experimental movie, *The Miracle* imagines what happens to a woman (Anna Magnani) who claims a visitation by divine forces. It sympathetically portrays the consequences of her naming St. Joseph, rather than a drifter with whom she had slept (Federico Fellini), as the father of her child. Other members of her small community come to doubt the sanity of this unmarried peasant, a marginal person whom they had hitherto largely ignored. Johnson's book meticulously analyzes *The Miracle* and imaginatively links it to a wide range of larger cultural, religious, and legal themes. It examines, for example, *The Miracle*'s role in sparking cultural-doctrinal disputes among Catholics; Catholicism's place within American politics and culture; conflicting representations of the virgin birth; Hollywood motion pictures, such as *Miracle of the Bells* (1948), which also dealt with the miraculous; and the tangled history of the Anglo-American law of blasphemy.

The length of *Miracles and Sacrilege*, additionally, can permit a fuller account than in *The Miracle Case* of Rossellini's troubled relationship with postwar Hollywood. Film industry leaders, witnessing the fragmentation of their audience, saw movies from overseas, including the early neorealist offerings of Rossellini and Vittorio De Sica, as unwanted competition. They easily found other reasons for disliking Rossellini. His and Ingrid Bergman's adulterous affair had already temporarily "cost" Hollywood a valuable star property, and the couple's 1950 marriage, following the birth of a son, revived calls for legislation to rein in the "immoral" movie industry. With politicians and even some industry pundits continuing to pillory the pair as threats to the American Way of Life, the entertainment columnist Ed Sullivan refused to book Bergman for an appearance on his popular TV show.

Miracles and Sacrilege can also offer a more extended analysis of Hollywood's own "Production Code System" than that in *The Miracle Case*. Both accounts underscore the close ties between Joseph Breen, who headed the Production Code Administration (PCA) between 1934 and 1954, and other Catholic lay and clerical leaders. Breen and his loyal staff adroitly employed their oversight authority to help script, produce, edit, and even advertise–thus effectively "Breening"–the products of classical Hollywood. Johnson's history and *The Miracle Case* both acknowledge revisionist scholarship that views the PCA's role as "regulatory" than overtly "censorial." If *The Miracle Case*, at one point, finds Breen "controlling movie content with an iron fist," it also observes that the PCA "did not intend to censor films" but "to help producers make films that would not offend" pressure groups whose responses might complicate Hollywood's internal and external politics (pp. 47, 23).

Miracles and Sacrilege also provides greater detail than *The Miracle Case* about movie-related litigation other than that of Burstyn. An entire chapter, for example, discusses the Supreme Court's ruling in *U.S. v. Paramount Pictures* (1948), an antitrust case that targeted Hollywood's production and distribution system. Here, the majority opinion by Justice William O. Douglas, without mentioning *Mutual Films*, assumed that the First Amendment already did apply to commercial motion pictures.

Although both histories praise Burstyn's constitutional activism, *The Miracle Case* assigns the determined distributor–whose name would become "synonymous with film freedom" (p. 135)–a particularly heroic role. Burstyn had earlier challenged the PCA over its demand for slicing a brief scene, in which a young actor feigns urinating against a wall, before approving De Sica*'s The Bicycle Thief* (1948) for American distribution. Operating at the fringes of the Hollywood system, Burstyn could afford to defy Breen and distribute a version that lacked PCA approval but satisfied New York regulators. One of Burstyn's print ads tweaked Breen's office, which finally

did pressure De Sica into seeing his movie its way, by featuring the film's youthful costar pleading "Please don't let them cut me out of the Bicycle Thief." While preparing to market *The Ways of Love*, Burstyn never asked Breen's office to review *The Miracle*.

Shortly after *The Ways of Love* opened, Burstyn began running a gauntlet of New York regulators. Taking a second look at *The Miracle*, the state's film review board now detected the movie's sacrilegious qualities and revoked its earlier decision to license it for commercial showing. After raising any number of free speech claims and visiting almost as many New York courts, Burstyn and his lawyer, Ephraim London, ended up with more defeats than victories. Although the U.S. Supreme Court agreed to hear their appeal, from an adverse October 1951 ruling by the New York Court of Appeals, *The Miracle Case* hints that Burstyn's champions, including the American Civil Liberties Union (ACLU), might have sought some constitutional magic while preparing their arguments.

The Miracle Case tends to frame Burstyn's high court showdown as one of those *High Noon* (1952) constitutional moments. Burstyn and London had asked Hollywood to contribute an amicus brief, but Tinsel Town's leadership preferred to focus on its own challenge to state and local regulation. It showed scant interest in backing a despised director, a troublesome distributor, and an allegedly anti-Catholic movie never submitted for PCA review. In addition, the Supreme Court's ruling in *Dennis v. U.S.* (1951) seemed to suggest a tribunal hesitant to expand free-speech protections. And that Burstyn's challenge to New York's system of movie regulation coincided with "the height of the McCarthy era," *The Miracle Case* claims, supposedly made his effort "even more astonishing" (p. 136).

Moreover, the Supreme Court had recently refused to hear a case that involved a ruling by Atlanta's prosegregationist film regulator, Christine Smith. She had prohibited any showing, within her domain, of *Lost Boundaries* (1949), a PCA-approved movie about race-related matters. Produced by Louis De Rochemount, one of postwar Hollywood's prominent independents, *Lost Boundaries* joined a wider film-industry effort to produce more "problem-pictures." When challenging Smith's ban and appealing an adverse U.S. District Court ruling, De Rochemount's attorneys had invited a three-judge panel of Fifth U.S. Circuit to read the *Paramount* decision and recent "preferred freedom" cases as sufficient authority for ignoring *Mutual Films* and overturning Smith's ban against *Lost Boundaries*. The circuit court rejected their invitation and, for good measure, lauded the *Mutual Films* decision as a hallowed First Amendment precedent. The Supreme Court's refusal to hear this case, *RDDR Corporation v. Smith* (1950), seemed to confirm the clarity of the Fifth U.S. Circuit's crystal ball and–from a narrowly doctrinal perspective–its claim (endorsed by *The Miracle Case*) that *Paramount*'s reference to the First Amendment could be dismissed as "*dicta*."

Both of these *Miracle* histories, however, do see the final stop on Burstyn's New York litigation tour offering some hope. The New York Court of Appeals held that *Mutual Films* justified banning Rossellini's "sacrilegious" movie, but Justice Stanley Fuld's dissent became memorable enough to merit mention, many years later, in his *New York Times* obituary. It argued that *Paramount* and another 1948 U.S. Supreme Court decision, *Winters v. New York*, had implicitly overturned *Mutual Films*. If six Supreme Court justices could, in *Winters*, set aside New York's ban against pulp magazines with allegedly "obscene" crime stories, how could a tag of "sacrilegious" halt the screening of a movie that credentialed critics deemed a masterpiece? Fuld's dissent also stressed how Justice Stanley Reed's majority opinion in *Winters* had emphasized that the First Amendment prohibited any state regulation of expression based on drawing a bright constitutional "line between the informing and the entertaining," a task central to the jurisprudential logic of *Mutual Films*.

Justice Fuld's view proved prophetic: Burstyn and London triumphed in the U.S. Supreme Court. In explaining how the justices could reach a 9-0 decision in a supposedly difficult case, *The Miracle Case* and *Miracles and Sacrilege* follow familiar practice. They recount opposing briefs, parse oral arguments, and dissect the three opinions that the Court issued. But once Justice Tom Clark's opinion for the Court interred *Mutual Films*–completing a burial process that began during oral argument–it could steer an obvious constitutional course. Employing nautical metaphors, it insisted that when "seeking to apply the broad and all-inclusive definition of 'sacrilegious' given by the New York courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies." As a result, even a "careful and tolerant" regulator, facing such indefinite guidance, would likely take the safe course and ban unpopular viewpoints. Justice Clark's opinion also observed that it was "not the business of government" to suppress "real or imagined attacks upon a particular religious doctrine, whether they appear in publications,

speeches, or motion pictures."

These two histories, in line with their page-count differential, also tackle the concurring opinion of Felix Frankfurter. Beginning with a lengthy plot summary of *The Miracle*, the concurrence offered an exhaustive, Frankfurter-style history of the term "sacrilegious." *Miracles and Sacrilege* shows how research by Frankfurter's one time colleague at Harvard, Gregorio La Piana, bolstered the justice's examination of "sacrilegious," the word to which a majority of the New York Court of Appeals had anchored its opinion upholding the ban against *The Miracle*. Forty years earlier, La Piana's attraction to modernist culture had effectively forced him from Italy and the priesthood in favor of an academic career life in the United States. *Miracles and Sacrilege* thus sees *Burstyn* with helping to vindicate La Piana's Catholic modernism and to signal "that perhaps it was time" in America "for immigrant Catholicism to move forward" (p. 336). Johnson's book ends with Rossellini's final movies. One of these–prompted by a Catholic priest and financed by the Vatican Bank–portrayed the life of Jesus. *The Messiah* (1975), however, found neither its own Burstyn nor any play dates in the United States.

Wittern-Keller's and Haberski's history concludes, in contrast, by using *Burstyn* as a plot point for refocusing its final four chapters, roughly 40 percent of the book, on "Burstyn's Progeny" (p. 123). *Burstyn* the decision, rather than Burstyn the plaintiff (who succumbed to a heart attack shortly after his day at the Supreme Court), becomes the central character in an interpretive overview of movies and the First Amendment from the 1950s through the early years of this century. According to *The Miracle Case*, *Burstyn* "clearly" provided "the pivot point in the creation of a new discussion of individual speech rights versus the communal good in matters of art and entertainment" (p. 135). A recently published First Amendment casebook, which opens with a historical prologue, never mentions the *Burstyn* case, but *The Miracle Case* renders a different judgment. *Burstyn* not only merits inclusion in any First Amendment canon but also deserves credit for opening up "discussion over culture to a new and more constructive kind of scrutiny" and for signaling "the beginning of a great and active debate" over "controversial culture" in all forms (p. 196).

In far fewer pages than *Miracles and Sacrilege*, then, *The Miracle Case* makes considerably broader constitutional claims. Its final chapters survey a number of issues, including those raised by leading obscenity cases and a much-publicized wrongful death lawsuit involving *Natural Born Killers* (1994), another controversial Oliver Stone production. These discussions can help introduce undergraduates, likely the book's primary target, to various normative constitutional and cultural questions. And more advanced legal students, perhaps familiar with Pierre Schlag's "The Problem of the Subject," might ponder precisely how "the *Burstyn* case" could possibly perform all the legal and cultural work with which *The Miracle Case* credits it.[2]

In addition, these histories left me wondering how the Supreme Court came to employ *Burstyn*, rather than alternative causes, to sink the foundering *Mutual Films* precedent. Might greater attention than these case-focused books can understandably devote to the larger cinematic and constitutional politics of the late forties and early fifties suggest the outlines of another account? What if, for example, a study carefully compared the constitutional politics of *Burstyn* with those of other cases, such as *RD-DR v. Smith*, that also challenged *Mutual Films*? Focusing on how Rossellini's and Burstyn's fervent commitment to *The Miracle* helped change First Amendment law has yielded two useful books, with *The Miracle Case* winning an award from The American Book Sellers Foundation for Freedom of Expression. At the same time, of course, their focus on *Burstyn* can screen out alternative tales.

Unfolding within a "landmark decision" framework, for instance, *The Miracle Case* must rather quickly pass over other pre-1952 litigation in favor of spotlighting *Burstyn* and, then, what it supposedly inspired. After observing that other movie-related cases "had knocked on the Supreme Court's door within the previous three years," it argues that the justices "had not shown any interest" in confronting *Mutual Films*. In the spring of 1952, however, they were "ready" to rule, *The Miracle Case* argues (p. 111). Even if sudden readiness can count as an explanation for the Court's new course, might other forces have come into play when Burstyn appeared?

Without (hopefully) violating the politics and protocols of reviewing, I want to sketch, very briefly, the outlines of another possible story, one that seems worth someone's time to pursue. First, more than either of these books can quite admit, First Amendment watchers of the early 1950s saw *Mutual Films* as a "zombie precedent." As *The Miracle Case* acknowledges, virtually every law review article of the early 1950s that commented on *Burstyn* anticipated its own verdict: that the time for overturning *Mutual Films* was long overdue. As I pondered the precise timing of *Burstyn*, Scott Powe's whim-

sical claim about *Gideon v. Wainwright* (1964) came to mind. The result in this "landmark" ruling on the right to counsel now appears so overdetermined that, as his *The Warren Court and American Politics* (2000) observes, it is almost possible to imagine Clarence Earl Gideon arguing his way to a 9-0 victory. It seems tempting to view Burstyn (and London) enjoying a similar no-way-to-lose situation. Even *The Miracle Case* concludes, after all, that the Supreme Court was fully prepared to reconsider *Mutual Films*, which pointed toward a fairly obvious ruling in Burstyn's favor.

To return to the earlier question, then, how might *Burstyn*, rather than another case, have merited the spotlight for overturning *Mutual Films*? *The Miracle Case* observes, for instance, that the Court could have favored *Gelling v. Texas* (1952). Appealed to the Supreme Court shortly after *Burstyn*, the *Gelling* case represented Hollywood's own constitutional challenge to a ban (in Marshall, Texas) against another Hollywood movie with racial themes, *Pinky* (1949). *The Miracle Case* acknowledges that *Gelling* was "brewing" even as Burstyn's appeal was moving forward and that it possibly posed a "broader" challenge to *Mutual Films* (p. 89). It also claims, however, that the New York controversy "presented the justices with a whole lot more to sink their juridical teeth into," such as the religion clauses of the First Amendment (p. 81).

Replacing food and drink metaphors with the nautical ones of Justice Clark's opinion, though, may help to locate *Burstyn* within a larger armada of litigation sailing directly toward an already listing *Mutual Films*. By jumping on board the *Burstyn* case rather than either *RD-DR* or *Gelling*, the Supreme Court confronted fewer navigational problems, especially when monitoring the storms of constitutional politics. The Vinson Court's readiness to decide *Burstyn* might be contrasted, for example, with its hesitation in a far more prominent case that was percolating up through the federal courts in 1952, *Brown v. Board of Education*. The *RD-DR* and *Gelling* cases involved, though less directly and dramatically than *Brown*, the constitutional politics of civil rights. Placing these two media-related civil rights appeals alongside *Brown* and *Burstyn* can serve to identify the dispute over *The Miracle* as less troubling, especially from a political perspective, than the other three controversies, all of which involved Jim Crow.

Recent histories stress how Jim Crow's reach extended far beyond segregated public facilities. Important parts of this complicated machinery of racial subordination included mechanisms for the legal and extralegal silencing of critics, including media institutions from outside the South. The machinations of segregationist politicians and judges would eventually prompt the Supreme Court, in 1964, to bring common-law libel doctrines, previously seen as outside First Amendment bounds, under constitutional scrutiny in *New York Times v. Sullivan* (1964), for instance.

A decade or so earlier, *RD-DR* and *Gelling* also raised constitutional issues, which pro-segregationist courts in the South claimed involved nothing more sinister than the application of supposedly settled legal-constitutional doctrines that paralleled those in *Times v. Sullivan*. Producing problem pictures about racial issues required Hollywood to negotiate, locally, with Breen's PCA. Successfully placing these movies in southern theaters, however, meant challenging regulatory schemes, such as those of Smith in Atlanta and Lloyd T. Binford in Memphis, implicated in the maintenance of Jim Crow. If the Hollywood studios could anticipate that a direct association with Burstyn's appeal would offend portions of the Catholic Church, the convergence of the politics of civil rights and cinema left them little choice but to continue litigating a case such *Gelling v. Texas*. Even as the National Association for the Advancement of Colored People was pushing for school desegregation, it was pressing Hollywood to produce and distribute more movies such as *Lost Boundaries* and *Pinky*.

After apparently ducking *RD-DR* (and *Lost Boundaries*) in 1950, moreover, the Supreme Court faced a more complicated situation, two years later, with *Gelling* (and *Pinky*). In contrast to De Rochemount's independently produced film, *Pinky* came from a major studio, 20th Century Fox, and featured top-drawer cinematic and legal talent. Its cast included Ethel Waters and Ethel Barrymore. Apparently seeking additional cinematic pizzazz, *Pinky*'s producer, Darryl F. Zanuck had replaced his original director, John Ford, with Elia Kazan, already known for helming "problem pics." Similarly, Hollywood hired no less a constitutional advocate than Herbert Wechsler to direct its appeal of *Gelling* to the U.S. Supreme Court. By 1952, then, the Supreme Court was facing all manner of problems over the political-constitutional implications, large and small, of Jim Crow.

Gelling threatened to raise one of the most explosive of these issues. Had the spotlight fallen on an appeal involving *Pinky*, no matter how "tame" this movie might seem today, segregationist forces could have assailed the Court, only beginning to maneuver its way

through *Brown*, for tacitly approving a movie that they viewed as overt propaganda for "race-mixing." As one well-known story argues, of course, the justices would postpone confronting the constitutional implications of this matter until *Loving v. Virginia* (1967).

When Rossellini's *Miracle* suddenly appeared, the Court did not need to formally overrule *Mutual Films* in a case involving the kind of film that segregationists saw promoting miscegenation. Rebuffing segments of the Catholic Church over *The Miracle*, moreover, risked far less political blowback for the high court in Washington than, given the local power of Cardinal Spellman, it had for tribunals in New York State. As the politically attuned constitutional analysis in Stephen M. Feldman's *Free Expression and Democracy in America* (2008) suggests, several of the Court's post-1940 First Amendment rulings had already protected expression directly aimed at Catholics. Could *The Miracle*'s surrealistic imagery be seen as "worse" than the anti-Catholic epithets (and actions) on display in *Murdock v. Pennsylvania* (1943)? In short, the *RD-DR* and *Gelling* appeals could have confronted the Supreme Court, had it granted either of these cases a formal hearing, with more potent political issues than anything in *Burstyn*.

In addition, even a cursory look at the lower court opinions in these three cases involving movie regulation also point to *Burstyn* being the easiest for the Supreme Court to handle. Judge Fuld's dissent in the New York Court of Appeals, with its emphasis on the *Winters* precedent and the sacrilegious label, charted a route for dealing with both his own court's decision and with *Mutual Films*. In contrast, the opinion by the court of appeals panel in the earlier *RD-DR* case, which the Texas Court of Appeals virtually cloned for its ruling in *Gelling*, presented potentially rougher sailing for the nation's highest court.

The circumstances surrounding the 1950 circuit court opinion in *RD-DR* thus appears to deserve more attention than these two *Miracle* books or this review can provide. The opinion in *RD-DR*, for example, stoutly defended, on the authority of *Mutual Films*, the constitutionality of film regulation while revealing *nothing* about the movie at issue. Crafted by Joseph Hucheson Jr.–perhaps better known for a 1929 law review article suggesting a "hunch" approach to judging than for his own later judicial work–the *RD-DR* opinion arguably combined constitutional analysis with political gamesmanship. Franklin Roosevelt had considered Hutcheson as his first Supreme Court nominee until, following his own hunch, FDR guessed that this southerner could oppose New Deal measures almost as strongly as Willis Van Deventer, the retiring justice to be replaced. As the *Gelling* court's deference to his opinion in *RD-DR* might suggest, Hutcheson had come to enjoy, by the early 1950s, a prominent place in southern political and juridical circles. His judicial record displayed staunch, yet subtle, opposition to civil rights litigation, including that in *RD-DR*. Ignoring the movie at issue in that case represented only one of several ploys in an opinion arguably intended to cause maximum trouble for a Supreme Court on which, given different political contingencies, Hutcheson rather than Hugo Black might have still have been sitting.

Since the Supreme Court decided *Burstyn* prior to hearing oral arguments in *Gelling*, Justice Frankfurter (according to *Miracles and Sacrileges*) could suggest a quick, relatively quiet resolution to the Texas-brewed case. Without naming the movie or explaining the circumstances on which segregationists might have banned it, the Supreme Court disposed of *Gelling* with a *per curium* opinion announcing that "the judgment is reversed." This reversal relied on the authority of *Winters* as well as *Burstyn*.

Justices Douglas and Frankfurter, as had become almost customary, expressed their mutual animosity and differing constitutional preferences through separate concurrences. In another of the minor miscues that pop up throughout *The Miracle Case*, Douglas gets credit for issuing "a lone concurrence" in *Gelling* (p. 124). (Justice Robert Jackson apparently issued, a week later, a third concurring opinion, which does not appear in the official report of *Gelling*.) In Frankfurter's view, the "indefiniteness" of the local regulatory ordinance violated the due process clause of the Fourteenth Amendment. The key issue in Douglas's vision was the "evil of prior restraint" that "defeated" the "great purpose of the First Amendment," an "uncontrolled" freedom of expression. In light of Douglas's approach to First Amendment issues, his silence about the movie at issue, in a two-paragraph concurrence, is perhaps understandable. Yet Justice Frankfurter, whose concurrence in *Burstyn* had a great deal to say about *The Miracle*, made no mention of *Pinky*. His one paragraph contribution in *Gelling* merely noted that the "Board of Censors" in Marshall, Texas, had found a movie "prejudicial to the best interests of the people of said City."

Seen from the perspective of civil rights litigation, in short, the arrival of a case such as *Burstyn*, between *RD-DR* and *Gelling*, can appear, well, almost *miraculous*.

Notes

[1]. Budd Schulberg, *What Makes Sammy Run*, rev. ed. (New York: Random House, 1952), 273.

[2]. Pierre Schlag, "The Problem of the Subject," *Texas Law Review* 69 (1991): 1627-1723.