

DETAINED
AT
CUSTOMS

*Jane Rule testifies
at the
Little Sister's trial*

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In December 1986, Canada Customs detained the first books and magazines destined for Little Sisters Book and Art Emporium in Vancouver, British Columbia. In 1990, the bookstore, B.C. Civil Liberties and owners Jim Deva and Bruce Smyth filed their Statement of Claim in B.C. Supreme Court instigating a constitutional challenge to Canada Customs' practice of seizing materials destined specifically for a gay and lesbian bookstore. The case would tackle the federal government on the issue of freedom of expression. It also challenged Canada Custom's power to seize a book at the border and force the bookstore that was ordering it to prove that the publication was not "obscene." In October of 1994, after many adjournments, all precipitated by the government, the trial between Little Sisters and Canada Customs finally began.

The following pages are the testimony of Jane Rule in the Supreme Court of British Columbia on October 24, 1994 at the trial. The transcript has been edited for grammar and sense in order to make it easier to read. The initial questions, establishing Jane Rule's credibility as an expert witness by listing the titles of her books and her academic credentials, have been deleted. The questions are asked by Little Sister's lawyer Joseph Arvay, and answered by Jane Rule.

The Court: Then I rule that Ms. Rule is qualified to express opinions in the field as you've described . . .

Q: Before we turn to the books, Ms. Rule, can you tell his lordship the criteria that you consider to be important if one is going to judge a book, and particularly if the ultimate result might be that the book is to be judged banned from circulation in Canada?

A: It seems to me that there is no set of rules that you can apply generally in a circumstance of this sort because literature is so various. As scholars and critics, we try to read a book and let the book dictate how we will deal with it. That is, we do not deal with what is said to be a stage drama as if it is a novel. We read it as a script for a play. If the writer makes it clear to us that it's a comedy, we don't treat it like a tragedy. We try to ascertain the intent of the novelist if we're dealing with a novel, not only the artistic intent, but often the social intent, the insights that the novelist calls to our attention. Therefore, we don't, if we're good critics, fault Jane Austen for not dealing with the French Revolution.

We, on top of that, have to be very good at reading tone because writers are notorious, if you like, in delivering their message in various tones, and irony is one of the most difficult ones to deal with. It is, however, a favourite of writers. Swift's *Modest Proposal* to cook Irish babies to deal with a famine is a book, or a proposal that some people thought he was offering seriously.

I think great errors in judgement can be made when a person who is judging a work for perhaps banning reasons is missing the cultural context of the book because books are not born out of nothing. They live inside the traditions of our culture and our culture is not only a North American culture, a contemporary culture, but it also reaches back into the literatures that we have studied and modeled our own upon.

Therefore, if we were going to deal with questions of humiliation, of sexual explicitness, we would have to know that we are dealing with Dante's *Inferno*, the Marquis de Sade's work as well as dealing with writers of our own time, recognizing that there have always been writers who have been preoccupied with the darker sides of human experience, who are perhaps best equipped to give us insights into those very troubling and often horrifying things that go on in the world today where in Bosnia women are routinely raped and children are molested, where in almost every case there is a sexual component which, if we don't finally come to understand in all its complexity, we are in great danger of not knowing how to live our lives.

Q: I want to bring you back to the question of what skills you would bring in assessing and judging a book or what qualities or criteria you would consider to be important.

As a reviewer, what qualities and criteria you would apply to a book in considering whether it has merit. You've considered a couple of matters. You've talked about tone, and talked about an understanding of the cultural context in which a book arises. Is there anything else you want to add along those lines?

A: I think in our training and our experience, we learn how to read the different elements in balance. For instance, it's common for me to say plot is the moral agent of a book. So you could assume that anybody who got killed was a bad guy and anybody who lived was a good guy, if the writer's morality is functioning in terms of plot. But of course most of our writers use plot ironically, sometimes with tragic irony, so you'll end up with all the good guys dead. So you cannot simply have a formula for a plot as a moral statement and not read it with a subtlety of the climate of the book.

Q: As a writer and a literary critic, do you draw distinctions between the artistic purpose or intent of a book and its merit and value?

A: I think it's quite easy to draw a distinction between the artistic purpose and the artistic merit. Let me give you an example of *Moby Dick*. It is probably the worst built novel ever written in terms of what [Melville] should have done. He started out to write a novel, he ends up writing a play, and then he's writing an essay; he's all over the map. It's probably one of the greatest failures of our inheritance, and [at the same time] a better book than most well-made books.

Q: And so that would be a book that you would say failed insofar as artistic merit is concerned?

A: On certain levels, yes. As a structure it fails, but it's a brilliant brilliant book. It breaks all the rules.

Q: And just to stay on *Moby Dick* for a moment. Since Herman Melville I don't think is with us any more, you can speak freely. If it failed with respect to artistic quality or merit, what does it do with respect to artistic purpose or intent?

A: The intent is so enormous. To understand and manifest even in the words and to do it, to come at it from every angle you can think of, is revelatory.

Q: I see. Thank you. Now, have you had any personal experience, Ms. Rule, with the Customs process, or the training that Customs officials might have had prior to assuming the responsibilities in deciding whether books should be allowed entry into the country?

A: I don't know the process by which they're selected, and I don't know in detail the training that they're given. I have had the experience of knowing one Customs officer because he was in a class of mine at UBC, English 100, the freshman English class.

I had been assigned a special class, a particularly small class of students, all of whom had failed English 100 once and some of them had failed it twice, and as many of you may know, if you fail English 100 three times, you're out of the university. So these were fairly desperate students. Some of them were foreign students doing brilliantly

well in other courses, a few were simply marginal students, possibly because they weren't terribly bright, but also because they were shingling off into the fog. The young man in question had failed it twice, and if he was going to fail again, then he was out of the university. He did marginal work, and I think if he had worked very hard he might have gotten a gentleman's C and gotten through, but he only did half of his assignments. In the spring, he came to me and said, "I'm really being frivolous. It's time for me to go out in the real world and earn a living and stop being a silly child." I thought that was a very sensible decision for him to come to.

Shortly after that, he came to me, and asked me if I would give him a letter of recommendation to be a Customs official for Canada Customs. I thought at that time that he was a personable young man, he's good with people and probably he would make a good Customs officer, so I was perfectly willing to give him a letter of recommendation. I was not aware at that time that such a person would be given the responsibility of censoring books coming into Canada.

Q: In preparing for your testimony, Ms. Rule, I asked you to compare two books, one which was entitled, *Tell Me What You Like*, by Kate Allen, which I advised you had been detained by Customs but ultimately released, and another was a book entitled *Bushfire* [edited] by Karen Barber which had been detained at Canada Customs and prohibited entry into Canada. First of all, tell [his lordship] something about *Tell Me What You Like*, and whether you can see any principled reason for releasing one book and prohibiting the other.

A: The first book, which was allowed through, is a book in which S and M relationships are explored by a curious and rather titillated female policeman. The [plot revolves around the fact that] some of the people who are involved in the sex trade and involved in sado-masochistic behaviour are being killed, and they're trying to pin the murders on someone inside the field. Finally it turns out that the person who is doing the harm is a young man who has been raised to be a bigot, and so there is a kind of moral twist to the plot; it is the bigot, the homophobic person who is the murderer, not any of the people involve in S and M.

It's, I suppose, an entertaining enough book, a book even that has the mild virtue of turning the moral tables and saying that violence comes from those who are bigoted, rather than from those who are engaging in sexual fantasy. There is not a great deal of violence in the book, there's not a great deal of vivid description. You do get some passages of it. It would certainly not occur to me that it would be a book to ban.

Q: Is it in fact a book that may find a place in any curriculum?

A: Yes. I think it could. Its literary quality isn't high, but I think the moral problems that it poses would be interesting in the debate about cultural pressures that produce judgemental attitudes.

Q: So you're not in disagreement with the Customs' ultimate assessment that the book should be released.

A: No.

Q: How do you then compare that book, and the decision with respect to that book, to the book *Bushfire*?

A: I was really startled and cannot figure how a Customs official could let the first book go, and prohibit *Bushfire*, which is a collection of short stories by lesbian writers, all of which focus on the erotic in one way or another. The blurb on the cover says this book is fun, this is fun sex, take this to bed with your girlfriend and you'll have a lovely time. It's offered as a masturbatory fantasy as a way of selling the book. I see nothing to object to in this. If there is some undue exploitation of sex involved, we would have to debate whether stories that take a lot of their time being erotic are unduly exploitive of sex.

But what I'd like to say about this book is that it may not be something as clearly understood for a heterosexual audience as it is to, say, a lesbian audience. A great many lesbians discovering that they are lesbians in this homophobic culture, feel bad enough about how they feel to think maybe they're the only person in the world who feels like this. They're young and coming into their own sexuality, or they find other people who are, they're all ashamed together, and sex is not a happy or fun thing, but a thing that is hungered after and shamed. [The audience is] people who are very ambivalent about their own sexuality [and this book is] a series of stories which deal not only positively with eroticism for lesbians, but bring up a lot of the issues that trouble lesbians in their sexual lives.

For instance, there is a story of the seduction of a woman who up to now has refused to play a passive part in her sexual experience. She will only give pleasure to others. ["A True Story."] In this story, it seems it would give insight to a fairly inexperienced lesbian about one of

the myths about the butch-fem [relationship], the stone butch, the woman who never ever gets involved in sexual feelings but only controls another. This is a myth and it is a repression.

There is another story which is called "Sweat." It is about a woman who has just had breast surgery for cancer, and she's feeling perfectly awful about her body and feeling that perhaps, she will never get a sense again of being erotically alive, and so the erotic experience she goes through in this story is an enormously life-affirming assertion for her.

Q: Can you refer to some of the other stories?

A: "Past Lives" is a story that deals with an older and a younger woman. The younger woman has been sexually abused, and is very fearful of being in a relationship. The older, wiser woman is able, through erotic behaviour, to teach that young woman to trust her body and to celebrate her own sexuality with the older woman.

Over and over again we deal with circumstances that lesbians actually go through. [In "A True Story"] there is a woman who is living in a very small town and she knows that everyone knows that she's a lesbian. She's ostracized, and so the erotic experience that she has is an affirmation that she's maybe not the only one, maybe there is a life to be lived even in this very homophobic, very narrow place.

The last story is called "Spelunking." I didn't know what spelunking was; it's apparently a term for exploring caves which is used, as you might imagine, with erotic overtones. It's great fun to read. It is about a young woman who has not had much sexual experience and

every time she gets into a relationship with somebody, that somebody is politically totally correct. [One person says] "No penetration. No good lesbian ever gets involved in penetration. We don't do that." No this, no that. So she goes through one relationship after another feeling that she is just confined by rules when she really thinks that she probably is a spelunker and finally finds someone who is, too. It's fun. It's also, I think, very healthy in the exploration of sex as a creative and exploring and loving activity between women rather than a rigid exercise proving you're a real this or a real that or a real anything. I would be really, really glad to have this book around, particularly for quite young lesbians who know very little in their own experience.

There are black people in this book, there are working-class people, handicapped people, there are overweight people. It's interesting to me how often in the book the characters are said to be not really beautiful, and I think this is a kind of affirmation of women saying, "You do not have to be a poster, a male-imagined woman, to be attractive and to have these wonderful adventures." It seems to me from the sweep of the book [that I can't imagine] anyone not wanting to read it. Except, I suppose, if you were heterosexual, you might find the specific details of lesbians making love to each other not to your taste, though the sexual acts are not all that different. But I can imagine people being offended as we all are offended in our tastes by our narrow definition of appetite.

Q: Just before we leave this book, can you tell his lordship a little bit about some of the other stories. I don't believe you've referred to "Underground Fame."

A: "Underground Fame" is a more complex story, and certainly one that gives a kind of added power to the book because it is exploring a relationship which is obsessive and which must come to an end. It has to do with damaging people in an ego circumstance, and the resolution of the story is that this couple acknowledges the damage they're doing to each other and they separate.

Q: What about "Down-Home Blues"? You mentioned race earlier.

A: The exercise in the story is very simple. The exercise is to incorporate those we associate with Bessie Smith and the great lesbian singer of the blues, Ma Rainey, into the culture of black women at this time. The story itself is of a woman recovering from the death of an older lover, attached to a woman that she isn't really interested in. She comes out of that relationship into another one that's going to be much more fully realized and loving, so that it's a happy ending story. But all the way through it there are refrains to call up the whole tradition of the blues. And this again is a wonderful way to give lesbians, and particularly black lesbians, a sense of their culture because it hasn't been said out loud that Ma Rainey and Bessie Smith were lesbians, as they were.

Q: I see. If this was a film, you'd obviously give it two thumbs up, but I have to ask you the question in legal terms. What is your opinion with respect to whether the portrayal of sex in the book is designed to advance serious literary or artistic or similar purpose?

A: I think it has a very strong purpose of making a positive statement about lesbian sex and lesbian experience, and this seems to me to be good. And the calibre of the stories is quite good. They're not all equally good, but many of the writers here are writers who are well-established and who publish novels and short stories; some of them are academics. The standard of writing is quite high.

Q: The third novel I asked you to look at was the novel, *Doc and Fluff* by Pat Califia. Can you tell his lordship what your assessment of that novel was?

A: This I found a much more difficult book to deal with. It is a dystopia futuristic book about the world being taken over by violent bikers and of women trying to protect themselves against these violent bikers by setting up rather dubious camps to protect themselves. There's a great deal of violence, there's a great deal of degradation, and it seems to me finally you have to look at this book, and this is a book where the whole notion of purpose must be concentrated on.

I think it is a moral book. I think if we do not come to terms with power, if we do not come to terms with hatred, if we do not come to terms with our murderous blundering, we will in fact end up slaughtering each other, and this is not a book that is prophetic in any way that should baffle us. All around us we see this going on in the world as it is. I think the purpose that Pat Califia has in writing the book is to make this very moral point, and if I talk about plot as moral, this is a very vengeful book. We really do get the bad guy, he really does get murdered in a quite disgusting way, and nobody could be

unclear that the worst of these people has been destroyed and has paid the debt. Whether or not this is a resolution that satisfies some of us who have other solutions than vengeance, certainly vengeance is a morality that we all understand and a morality that has functioned from the time of the Greeks through Shakespeare.

I don't think there's any question that this book has serious intent in its moral vision of the world.

Q: Is that a legitimate literary or artistic purpose?

A: Yes.

Q: You mentioned earlier about the importance of knowing one's culture and literary history. Do those comments apply to the context of *Doc and Fluff*?

A: Yes. And for me, *The Story of O*, and a number of books that go back to the masochistic, sadistic explorations of sexual need and desire, the connection between pain and pleasure, Eros and Thanatos. These are the tensions that we have in our psyches from classical times to now. We have writers who are called to do this work, and some of them have great literary talent as well. In my opinion, Pat Califia is not a fine stylist, she's very crude. She can be sentimental, she can be over-simplistic. But she is asking all the right questions. She is asking about the nature of power, she is asking about the nature of bondage, she is asking us about the darkest things in ourselves. And if we don't agree with some of her answers, we have to admit that the questions are the right ones.

Q: Now, Ms. Rule, you mentioned that you were the author of two books. one is entitled *The Young in One Another's Arms*. I'd ask the registrar to show you that book. You can identify that as your book, I take it?

A: Yes, it is. Through and through all the way.

Q: Now, I understand that book was detained by Canada Customs in approximately 1990 and subsequently released?

A: Yes.

Q: And as well I'm going to show you a book which is called *Contract with the World* by Jane Rule. I take it that's your book as well.

A: Yes.

Q: With respect to *Contract with the World*, Ms. Rule, were you aware that the book was detained by Canada Customs and subsequently released in April or May of this year, or in 1993?

A: Not until yesterday.

Q: As a writer in Canada, and particularly one whose books have been detained — not prohibited, but certainly detained.— by Canada Customs, what are your concerns and what's the implication for you of having Canada Customs detain your work on the grounds that it may be obscene?

A: Some cynics have said, "Isn't it nice to get all that attention." But in fact it's the kind of attention that would, if it attracted readers, find readers who would be very disappointed in the books, since they aren't pornographic. It is a kind of attention that would very possibly cut me off from the general audience for whom I write. It is the kind of statement or implication that does not simply last for that week or that month, but labels me for the rest of my professional life as someone who is probably a pornographer because, you know, if they held the books, there must be something in them that they don't like.

Now there are quite a number of people in Canada who do know that *The Young in One Another's Arms* won the Canadian Author's Association Award for the best novel of 1978. There are a great many more people in Canada who know that *The Young in One Another's Arms* was detained by Customs. And that is what I have to carry. I have to carry a reputation created by this charge from which I have no way of defending myself. Every time this issue comes up, whether I were testifying in this trial or not, my name would come up over and over again as that woman whose books are seized at the border, and I have no defence against it. And I bitterly resent the attempt to marginalize, trivialize and even criminalize what I have to say because I happen to be a lesbian, I happen to be a novelist, I happen to have bookstores and publishers who are dedicated to producing my work. The assumption is that there must be something pornographic [in my writing] because of my sexual orientation is a shocking way to deal with my community.

Of course we have writers who are writing erotica, and so we should. I celebrate that. But we are not a community

churning out sex tracts. We are a community speaking with our passion and our humanity in a world that is so homophobic that it sees us as nothing but sexual creatures instead of good Canadian citizens, fine artists, and brave people trying to make Canada a better place for everybody to speak freely and honestly about who they are.

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– JANE RULE

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