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The Trials of Lenny Bruce

by Douglas Linder

In the late 1950s and early 1960s, Lenny Bruce was the spirit of hipness and rebellion. His underdog, idealistic humor took on every American sacred cow, from capitalism to organized religion to sexual mores. Fans were attracted to Bruce's dark sexiness and brutal honesty. Kenneth Tyson described Bruce as "fully, quiveringly conscious."

Bruce's rise to the status of cultural icon began in the mid-1950s in the strip clubs of southern California where Bruce began to develop the iconoclastic edginess that would be his trademark. In his autobiography, *How to Talk Dirty and Influence People*, Bruce described the importance of the freedom that came from the burlesque circuit:

Four years working in clubs--that's what really made it for me--every night: doing it, doing it, doing it, getting bored and doing different ways, no pressure on you, and all the other comedians are drunken bums who don't show up, so I could try anything. On April 9, 1959, Bruce appeared on the nationally-televised *Steve Allen Show*. Allen introduced Bruce as "the most shocking comedian of our time, a young man who is skyrocketing to fame--Lenny Bruce!" Two years later, performing before a packed house at Carnegie Hall, Bruce delivered what biographer Albert Goldman called "the greatest performance of his career."

In the fall of 1961, however, Bruce's career would begin its downward spiral. Just a week after being arrested in Philadelphia on a narcotics charge, Bruce was charged in San Francisco with violating California obscenity law after a late night performance at the Jazz Workshop. Police found most troubling Bruce's use of the word "cocksucker," although his use of the phrase "to come" (in a sexual sense) also became a major focus of his Jazz Workshop trial. First Amendment lawyer Albert Bendich represented Bruce alone, after the co-counsel he hoped would help turned him down flat saying, "You can't win a case based on 'cocksucker.'" Win Bendich did, however. In his opening statement Bendich told the jury that Bruce's humor "was in the great tradition of social satire, related intimately to the kind of social satire found in the works of such great authors as Aristophanes and Jonathan Swift." Experts from jazz critics to literature professors were called to the stand to offer their opinions on the social importance of Bruce's iconoclastic humor. The jury heard both a tape of Bruce's full performance and Bruce's own testimony on his choice of words before voting to acquit.

Despite the acquittal in San Francisco, the arrests kept coming. In 1962, Bruce was charged again with violating California's obscenity law at a performance at the Troubadour in West Hollywood. Less than two weeks later he faced charges in Chicago following a show at the Gate of Horn. Then he was arrested in Los Angeles for a performance at the Unicorn. While the Troubadour and Unicorn trial ended in a deadlocked jury, Bruce was not so lucky in Illinois, where he was convicted and sentenced to a year in jail. By the summer of 1963, Bruce's troubles were mounting.

While free on bond pending appeal of his Chicago conviction, Bruce attempted to do a show in London, only to be taken to the airport and deported. In June, a California court ordered Bruce confined at the State Rehabilitation Center in Chico for treatment of his drug addiction. By March 1964, following yet another obscenity arrest in southern California, Bruce concluded the last refuge for his controversial brand of humor was New York City.

The Cafe Au Go Go Trial in New York City, 1964: Background

Lenny Bruce was no longer in his prime--either physically or artistically--in the spring of 1964. The lean and hip Bruce of the 1950s had become overweight and uninspired. The pointed satire of his earlier routines had turned to obsessing over his drug busts and obscenity arrests. More often than ever, his critics contended, he resorted to perverse shock to attract an audience. Columbia University English professor Albert Goldman complained, "In the last year, he had suffered a loss of inspiration--partly attributable to ill health and emotional distress--and his obscenity had begun to resemble the twitching of a damaged muscle."

In late March, Bruce began a run (for \$3500 a week) at Howard and Ella Solomon's Cafe Au Go Go in Greenwich Village. About 350 people a night entered under the red domed canopy and paid from \$3.50 to \$10 to catch Bruce's act in the French-styled coffeehouse. Bruce, wearing a cast for a recently sprained ankle, would perform for about an hour on small semi-circular stage.

On March 31, 1964, one of the persons in the audience, at a table one row from the stage, was a former CIA agent and now license inspector for the city of New York, Herbert Ruhe. According to Richard Kuh, the man who would later lead the prosecution against Bruce, Ruhe was blessed with a "phenomenally well-developed memory." As Bruce performed, Ruhe busily scribbled down terms including "jack me off," "nice tits," and "go come in a chicken." Ruhe added his own editorial comments, such as "philosophical claptrap on human nature."

In addition to his autobiographical musings about his legal and financial problems, Bruce's show on the night of March 31 included some of his old standards that had led to earlier arrests, including "To Come is a Preposition," "Thank You, Mask Man," and "Infidelity." The routine also included bits about two First Ladies. Bruce declared that "Eleanor Roosevelt has the nicest tits of any lady in office." Commenting on captions relating to photos of Jacqueline Kennedy crawling on to the trunk of the convertible in Dallas after her husband had been shot (which suggested she was trying to get help), Bruce called the captions "bullshit." In Bruce's opinion, Mrs. Kennedy "hauled ass to save her ass"--just what anyone would likely do under the circumstances. In another bit called "Red Hot Enema," Bruce argued that the prospect of "putting a funnel up his ass" containing "hot lead" would cause Gary Powers (the CIA spy pilot recently captured from his downed U-2 plane by the Soviets) to quickly lose his bravado. In "Pissing in the Sink," Bruce told the tale of a man with a bad leg trying to avoid a trek down the hall to the bathroom. He is caught urinating in the sink by his roommate, who suggests he use

the ledge instead. He does so, only to find himself the focus of a crowd of anxious onlookers and firemen who believe he's ready to commit suicide. The most outrageous of the bits that night was "Guys Are Carnal," in which Bruce suggested that men are oversexed creatures willing to have a one night stand with just about anything that moves, including a chicken.

The next day, Inspector Ruhe submitted his report on Bruce's performance to Richard Kuh, an assistant in the office of District Attorney Frank Hogan. Following Kuh's recommendation, Hogan sent a squad of four officers that night to the Cafe Au Go Go to record Bruce's routine. On April 2, a typed transcript of the show--or as much of the often unintelligible tape as could be made out--was presented to twenty-three grand jurors. The jury responded with an indictment of Bruce for violation of Penal Code 1140-A, which prohibited "obscene, indecent, immoral, and impure dram, play, exhibition, and entertainment...which would tend to the corruption of the morals of youth and others." For each of the three charges against him, Bruce faced a maximum punishment of three years in prison.

Shortly before Bruce's scheduled 10 P. M. performance at the Cafe Au Go Go on April 3, plainclothed officers arrested Bruce and Howard Solomon. The officers drove the two men to the Sixth Precinct headquarters, where they were booked and incarcerated. The next night, out on bail, Bruce returned to the Cafe Au Go Go for another performance.

The arrest of Bruce in New York sparked a firestorm of protest from the city's intellectual community. Poet Allen Ginsberg announced formation of an "Emergency Committee against the Harassment of Lenny Bruce." Over eighty prominent people, mostly entertainers and authors, signed a petition protesting the prosecution of Bruce: "Whether we regard Bruce as a moral spokesman or simply as an entertainer, we believe he should be allowed to perform free from censorship or harassment." Signers of the petition included Paul Newman, Bob Dylan, Elizabeth Taylor, Richard Burton, Norman Mailer, Susan Sontag, John Updike, James Baldwin, George Plimpton, Henry Miller, Joseph Heller, Gore Vidal, and Woody Allen.

The Trial

Bruce hired as his attorney Ephraim London, one of the nation's leading First Amendment lawyers, and a man who would argue successfully nine free speech cases before the United States Supreme Court. London landed an intense, young associate in the person of Martin Garbus, a fan of Bruce's work. Garbus saw the arrests of Bruce as "public exercises of hypocrisy." In Garbus's mind, Bruce faced prosecution because of "his attacks on religion and public figures, rather than because of his use of dirty words."

Prosecutor Richard Kuh saw things very differently. To Kuh, Bruce's show consisted of "cumulatively nauseating word pictures interspersed with all the three- and four-letter words and more acrid ten- and twelve-letter hyphenated ones, spewed directly at the audience." Kuh believed the performances were unredeemed by any artistry or cogent social criticism.

A largely beat audience turned up at the Criminal Courts Building for the opening of the Cafe Au Go Go trial on June 16, 1964. To accommodate the large crowd, the trial was moved to a larger courtroom with twenty-foot high ceilings. The trial would be before a three-judge court, not a jury. The presiding judge was John Murtagh, who "dominated his two colleagues and ran the trial as if they were not there."

The prosecution's key witness was Inspector Ruhe, who described what he had heard and seen during his visit to the Cafe Au Go Go. Ruhe perspired heavily and seemed nervous on the stand. At first, every time he repeated a "dirty word" he seemed embarrassed, but as his testimony went along he seemed more comfortable. Reading from notes taken at the nightclub, Ruhe delivered a sort of butchered performance of Bruce's routine as the comedian, dressed in a black tunic and sporting a new beard, suffered silently. Bruce worried, "I'm going to be judged by *his* bad timing, *his* ego, *his* garbled language." Most upsetting to Bruce was Ruhe's suggestion that he had slid his hands up and down the microphone in "a masturbatory gesture." "I would never do anything like that," Bruce protested to Garbus.

In addition to Inspector Ruhe, the prosecution called police officers who attended performances at the Cafe Au Go Go and talked to either Bruce or Solomon afterwards. Kuh also introduced audiotapes of Bruce's two performances on the night of April 7. After just three days of testimony, the prosecution rested.

The next day, Bruce was hospitalized with pleurisy and the defense was granted an adjournment. In the hospital, Bruce obsessed over his case. He read law books from cover to cover, sometimes complaining to his lawyers about their omitting from arguments cases he considered of special importance to his case. He also listened to tapes he had made of trial testimony, recorded on a device he smuggled into the courtroom in a gray attaché case.

When the trial reconvened on June 30, the defense moved to dismiss on the grounds that the prosecution had not presented sufficient evidence to prove a violation of Penal Code Section 1140. Defense lawyers strenuously contended that the prosecution's case rested largely on Bruce's coarse language, and that Supreme Court precedent required the prosecution to show that the defendant's words had inspired "lustful and lecherous thoughts." The Court denied the defense motion. Justice Randall Creel dissented, saying that although he found Bruce's performance "distasteful," he did not think it made "the grade as to hard-core pornography."

The defense's case rested heavily on the testimony of expert witnesses. The list of defense witnesses included psychiatric witnesses (who testified that Bruce's performance was not sexually arousing), New York media experts (who testified that the performance did not offend local community standards), and critics (who testified to the social importance of Bruce's brand of humor).

No defense witness made a stronger impression than did newspaper columnist and *What's My Line?* panelist Dorothy Kilgallen. Defense lawyers contacted Kilgallen because she

had previously written favorable reviews of Bruce's work, but was prim in manner and not a person associated with the avant-garde. Garbus thought Kilgallen's testimony would be especially persuasive because she was "considered by man to be a spokesperson for the more prudish elements of the entertainment world." Kilgallen appeared cool and unruffled on the stand as she testified that she had "enormous respect " for Bruce. Kilgallen described Bruce as "a brilliant satirist, perhaps the most brilliant that I have ever seen." She said his "social commentary, whether I agree with it or not, is extremely valid and important, and I have enjoyed his acts on several occasions." Garbus asked Kilgallen about Bruce's use of dirty words:

Garbus: Miss Kilgallen, in the transcripts the words "motherfucker," "cocksucker," "fuck," "shit," "ass" are found, isn't that correct?

Kilgallen: Yes.

Garbus: Is there an artistic purpose in the use of language as set forth in these transcripts in evidence?

Kilgallen: In my opinion there is.

Garbus: In what way?

Kilgallen: Well, I think that Lenny Bruce, as a nightclub performer, employs these words the way James Baldwin or Tennessee Williams or playwrights employ them on the Broadway stage--for emphasis or because that is the way that people in a given situation would talk. They would use those words.

Forrest Johnson, a Presbyterian minister who happened to attend Bruce's April 1 performance at the Cafe Au Go (and who denied that Bruce had made any "masturbatory gesture" with the microphone) also testified that he didn't consider the comedian's use of taboo words to be inappropriate. On cross-examination, Kuh asked Johnson whether he thought Bruce's might have violated a Biblical command:

Kuh: Would you say the phrase, and you'll excuse me, Reverend, for using this language, but the phrase "motherfucker" is in accord with that Commandment [the Fourth Commandment, "Honor thy Father and thy Mother"]?

Johnson: I don't think the term "motherfucker" has any relationship to that Commandment...

Kuh: To the uninitiated, to the unsophisticated, to persons other than reverends, Mr. Johnson, might someone understand the word "motherfucker" as having to do with mothers and fucking?

Village Voice entertainment critic Nat Hentoff, who had reviewed Bruce and seen him perform at least forty times, testified both as to the social value of Bruce's humor and its having little in the way of a titillating effect on audiences:

Garbus: Can you tell us if you were in any way titillated by Mr. Bruce's performances?

Hentoff: No....nor have the audiences that have been present...It's like a shock of recognition, very effective.

Garbus: Would it be fair to say Mr. Bruce's performances are primarily concerned with arousing sexual thoughts?

Hentoff: He is certainly concerned in making people think in sexual terms, I would say, in a rather snickering way.

Garbus: Is that the purpose of Mr. Bruce's performances?

Hentoff: That is absolutely not the purpose of Mr. Bruce's performances.

Two professors appeared as defense witnesses. Daniel Dodson, a professor of comparative literature at Columbia, described Bruce as having the "moral outrage" characteristic of all great satirists. Dodson testified that Bruce "very effectively" satirized "the pomposity, the ridiculousness, the hypocrisy of our society" in the great tradition of Swift and Rabelais. Dodson noted that Jonathan Swift, in his *Gulliver's Travels*, had an "excremental obsession...when he wrote the last section of *Gulliver's Travels*." The other academic expert for the defense was eminent sociologist Herbert Gans. Gans testified that the "dirty words" used by Bruce in his performance were in daily use-as words of anger or accusation--in many American communities, even in mixed company.

Prosecutor Richard Kuh complained of the difficulty in rounding up prosecution experts to counter those presented by the defense. According to Kuh, few of the many who privately condemned Bruce's performances had the moral courage "to declare themselves squares." One who was willing to do so, and who appeared as a rebuttal witness for the prosecution, was social critic and frequent *New Yorker* contributor, Marya Mannes. In her testimony, Mannes labeled the use of obscenities as "the last resort of the comedian" and distinguished Bruce's use of obscenities from the more appropriate use of those words by great authors such as Edward Albee in *Who's Afraid of Virginia Woolf?* In Mannes's opinion, Bruce's use of obscenities added none of the realism, drama, or insight into character that Albee's use did. Daniel Potter, executive director of the Protestant Council of New York, took the stand to speculate that Bruce's "offensive use of words and images would...if, anything, incite and increase the feelings of hostility toward others in the community." John Fischer, editor-in-chief of *Harpers*, echoed the opinion of other prosecution experts that Bruce's material had no social value and seemed, in fact, "rather incoherent." *New York Daily News* columnist Robert Sylvester called Bruce "unique" among comedians in the extent of his use of vulgar words.

The most extreme criticism of Bruce came from sociologist Ernst Van den Haag, who described Bruce's routines as a "sort of verbal diarrhea--instead of defecating on a stage in a literal sense, he does it through orality." Van den Haag suggested that the wards of a "mental hospital" might be the only community that would view Bruce's act as acceptable. On cross-examination, London called into question Van den Haag's credibility as an expert on contemporary community standards by forcing him to admit that he hadn't been to a nightclub in twenty years.

After Van den Haag left the stand and the people rested, Lenny Bruce stood up and announced, "Your honor, at this time, I would like to ask the court to allow me to speak." Bruce complained that "there is evidence withheld from the court" that he wanted to provide. Judge Murtagh called a short recess to allow London to discuss the matter with his client. London was determined to not let Bruce testify--to the point of packing his briefcase and preparing to leave the courtroom before Bruce finally gave up on his request.

Verdict and Sentencing

The court did not announce its verdict in the Bruce trial for another 99 days. Bruce spent some of the intervening period firing his lawyer and writing a bizarre letter to Judge Murtagh. The letter included Bruce's analysis of the "literal" and "contemporary" usage of his "purple vocabulary" condemned by the state. Bruce told the judge that "Ninety-eight percent of the words I used are correct words in *Webster's Third New International Dictionary*." Bruce ended his missive by claiming that his desire was not "contempt"-- "communication is my desire."

November 4, 1964 was decision day. With his dismissed lawyers absent, Bruce stood to ask the court to reopen his case. He told the judges that he wanted the chance to explain that the alleged "masturbatory gestures" were really "the gestures of benediction--I did a bit on Catholicism." He begged the court, "Please let me testify....Let me tell you what the show is about." He seemed increasingly desperate:

Don't finish me off in show business. Don't lock up these six thousand words. That's what you're doing, ...taking away my words, locking them up. These plays can never be said again. You are finishing me up in show business.

Judge Murtagh had had enough. "We must conclude now these proceedings," he said sternly. He announced the court's judgment, finding both Lenny Bruce and club owner Howard Solomon "guilty as charged." The court's per curiam opinion concluded that Bruce's act "appealed to prurient interest," was "patently offensive to the average person in the community," and lacked "redeeming social importance." One of the three judges, Judge Creel, dissented.

On December 16, Bruce, wearing a blue-striped T-shirt over worn blue dungarees, entered Courtroom 535 for the last time. Judge Murtagh asked the standard question, "Is there any reason why sentence should not now be imposed?" Bruce started to give his reasons--and the reasons continued for an hour and two minutes. He told Judge Murtagh he "might be a bit biased." He accused Richard Kuh of perjury for his distortion of his performance. He claimed to have new evidence that required his acquittal. He rambled on about Supreme Court obscenity decisions, even quoting Justice Holmes. Finally, he asked the judges to "just hear my act once."

Murtagh sentenced Bruce to "four months in the workhouse." Bruce remained free on bond during the appeal of his conviction. But Bruce would never see his final vindication from the appellate courts. As he obsessed over his legal problems and devoted most of his time to the filing of civil suits against his tormentors, prosecutors and judges, Bruce got heavier and sicker and more pathetic. On August 3, 1966, Bruce died of a morphine overdose in his home in Hollywood Hills, California. In 1970, New York's highest court affirmed a lower appellate court's reversal of Howard Solomon's conviction.

After Bruce's death, one of his New York prosecutors, Assistant District Attorney Vincent Cuccia, expressed regret over his role:

I feel terrible about Bruce. We drove him into poverty and bankruptcy and then murdered him. I watched him gradually fall apart. It's the only thing I did in Hogan's

office that I'm really ashamed of. We all knew what we were doing. We used the law to kill him.

POSTSCRIPT:

In May 2003, a group of persons concerned about the fact that Bruce's 1964 conviction in the Cafe Au Go Go trial remains on the books launched a campaign to convince New York Governor George Pataki to issue Bruce a posthumous pardon. The group includes scholars, lawyers, and entertainers such as Robin Williams, Dick Smothers, and Margaret Cho. In a letter to Pataki, the group argued that a pardon of Bruce would show the state's "commitment to freedom--free speech, free press, and free thinking." On December 23, 2003, Governor Pataki pardoned Bruce. It was the first posthumous pardon granted in the state's history. Governor Pataki described the pardon as "a declaration of New York's commitment to upholding the First Amendment."

The pardon effort is being spearheaded by two authors of the recent and comprehensive book on the Bruce trials (*The Trials of Lenny Bruce: The Fall and Rise of an American Icon*), Ronald Collins and David Skover.

<https://famous-trials.com/lennybruce>

The Trials of Lenny Bruce: The Fall and Rise of an American Icon by Ronald Collins and David Skover was the most important source for information contained in this account. Other books on which this account is based include *Ready for the Defense* by Martin Garbus, *Foolish Figleaves? Pornography in--and out of--Court* by Richard Kuh, *Lenny Bruce: The Making of a Prophet* by William Thomas, and Lenny Bruce's autobiography, *How to Talk Dirty and Influence People*.