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MOVIES UNDER THE STARS: A HISTORY OF THE DRIVE-IN THEATRE INDUSTRY, 1933-1983

By

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ABSTRACT

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When Richard Milton Hollingshead, Jr. opened the world's first drive-in theatre in Camden, New Jersey, on June 6, 1933, he probably had no idea that his "invention" would cause the reaction that it did. Less than 100 drive-ins existed in the 1930s and 1940s due to the Depression and the Second World War, but by 1958, 4,063 drive-in theatres were operating around the country. A rise in automobile registrations, the general prosperity of the times and the unique features of drive-in theatres all accounted for this expansion. Despite this success, drive-in theatres were not welcomed in every community and some operators went to court to have their theatres declared legitimate businesses.

By the early 1960s the shortage of good films and the competition from television caused some drive-in operators to feature R and X-rated movies. As a result, some drive-in operators were arrested when police raided their theatres and confiscated their films. Curfews, licensing ordinances and prosecutions under state obscenity statutues also were

used to stop drive-in operators from showing explicit films. A number of cities attempted to protect their children through local ordinances prohibiting drive-in operators from showing explicit films viewable from the street.

At the same time, the number of drive-in theatres began to decline. Rising land costs, higher taxes, and increasing operating expenditures all were contributing factors. As well, drive-in operators faced increased competiton from the rise in multiplex theatres and to some extent, from the popularity of movie channels on cable television and the videocassette phenomenon.

As the drive-in theatre industry celebrated its fiftieth anniversary in 1983, its future appeared in doubt. Some operators felt drive-ins had outlived their usefulness and many were selling their land or building multiplex theatres on it. Other operators refused to admit that drive-ins were becoming extinct and pointed to their continued popularity, particularly in the Sun Belt states.

Whatever its future, the drive-in theatre industry deserves to be remembered as a unique chapter in the history of American culture in the mid-twentieth century.

Dedication

To Libby, Sara, and Katie

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CHAPTER I

THE MAN WHO INVENTED DRIVE-INS

Like many Americans in 1932, Richard Milton Hollingshead, Jr. suddenly found himself out of work. Until that time, he had been plant manager of R. M. Hollingshead Corporation in Camden, New Jersey. His father had started the company in 1888 when at the age of 20, the elder Hollingshead moved to Camden from Millville, New Jersey, with a small amount of money and a formula for making saddle soap. From that humble beginning, the company grew, soon adding a complete line of chemical products for the harness trade. When the automobile became popular at the turn of the century, the company switched its emphasis and began producing "Whiz" automotive products. Later, it began to produce airplane products and chemical compounds for the home.[1]

At 18, young Hollingshead entered the family business in 1918 and went to Canada in 1927 to organize a subsidiary plant there.[2] By 1932 the public had stopped buying the company's products, the banks had taken over the business temporarily, and young Hollingshead found himself unemployed. With extra time on his hands, he started to think about the effects of the Depression and the fate of other people.

Finally, he reached the conclusion that while people might be prepared to make sacrifices because of hard economic times, they would be unwilling to give up luxuries such as driving their automobiles and attending movies. Working from that premise Hollingshead then considered how

the two could accommodate each other. He recalled years later in a newspaper interview that he had first envisioned a "meeting place" that would have "gas pumps in the shape of palm trees" and where people could watch outdoor movies while waiting for their friends.[3] However, as his ideas began to take shape, plans for the outdoor movies took precedence over the "deluxe" gas station. One reason may have been because of complaints by Hollingshead's mother that the seats at conventional theatres were so uncomfortable she had stopped going to the movies.[4]

At the same time, Hollingshead's idea for an open-air theatre really wasn't new. Open theatres dated back to Ancient Greece where actors performed morality plays for their audiences. With the development of the motion picture industry at the turn of the twentieth century, some hopefuls experimented with outdoor movies. In 1908, city officials in Newark, New Jersey, lured nearly 3,000 persons to a neighborhood park to watch a motion picture outdoors. This prompted one official to say he believed these showings, which later became known as "airdomes" or "airdromes," gave more pleasure to "a greater number of persons than open-air concerts."[5] Marcus Loew, an early motion picture entrepreneur, attracted 21,000 people to Ebbets Field in Brooklyn, New York just before the First World War to see a vaudeville show followed by Thomas Ince's film, "Wrath of the Gods." Loew tried a similar show at a Boston baseball

park, but problems with the weather persuaded him to abandon his experiments.[6]

During the 1920s, several people traveled the countryside showing movies to farmers and their families. Patrons would sit on wooden benches or seats in schoolyards or large barnyards and watch the old-time, jumpy films.[7] One of these traveling projectionists was J. Henry Meloy, who installed a 35-millimeter Acme projector and a lighting plant on his Model T Ford in 1921 and traveled the backroads of Shelby County, Indiana. He projected on his portable screen films he had borrowed from the U.S. Department of Agriculture. Meloy also offered advertising at his shows, and for only $8 a month, a local merchant could have his message flashed on the screen each night.[8]

Theatre operators had discussed the idea of watching movies in the privacy of one's car in the past. In 1925, for instance, members of the Motion Picture Theatre Owners of America held an informal discussion on the possibility of erecting outdoor theatres, but the proposal did not meet with much enthusiasm. Theatre operators argued that since most cars of that era were open models, patrons could not sit for elongated periods exposed to winds and drafts.[9]

Hollingshead became the first individual to successfully combine outdoor movies and automobiles. He conducted his first experiments at his home in Riverton, New Jersey. Mounting a small screen on a tree in his yard, he placed a

Kodak projector on the hood of his car. He and his family then sat in his automobile and watched a film.[10] He was trying to determine how the combination of the angle of the screen and that of the projector could be manipulated in order that vehicles could be accommodated.[11] Hollingshead even used his lawn sprinkler to see if he and his family could watch a movie when the windshield of the car was wet as though with rain.

As months passed, Hollingshead's plans became more elaborate. He built a scale model of his planned theatre to prove out his engineering ideas and to demonstrate his concept. He also hired Leonard L. Kalish, a Philadelphia attorney, who helped him to write the description and to secure the drawings that accompanied his application to the U.S. Patent Office, filed on August 6, 1932.[12]

In his application, Hollingshead commented that customers would enter his drive-in theatre through a "gateway" that would form part of a tree-lined enclosure he envisioned surrounding the theatre. (More than 200 trees, ranging from 12 to 20 feet were planted around the perimeter of the theatre.) After paying an admission fee, the patrons would drive their cars into one of the seven "driveways" or aisles and then park in one of the 400 "stallways" or seats that were to be arranged in arcs around the screen.[13] The stallways were to be 15 or 16 feet wide. For those who didn't want to sit in their cars, Hollingshead planned rows

of steamer chairs between the screen and the first driveway. The 30 by 40 foot screen itself was to be housed in a "screen house" containing a top, side and back walls. It would be set into the screen house at a distance sufficient to shield it from foreign sources of light.

The front portion of each stallway was to be inclined five percent so the angle of vision between a car and the screen was clear of any car in front of it. Each stallway was to be constructed slightly below the stallway behind it. The front boundaries of the stallways were to be retained by "suitable bracings or plankings" which would project slightly above the front of the stallway and form an abutment to limit the forward movement of the car in the stall. Hollingshead later sought to modify his patent by replacing this stallway design with a drive-over ramp, but he was unsuccessful.[14] Hollingshead also claimed that drivers could roll their cars out of a stallway and into a 35-foot wide driveway without starting their engines and thus they would not disturb the other patrons.[15]

Hollingshead envisioned that his projection booth would be constructed a suitable distance from the screen (Hollingshead's booth was 137 feet from the screen), yet would be below the angle of vision of the cars behind it. Three six-foot square sound speakers were to be placed at the top of the screen tower. To eliminate insects that might get in the path of light coming from the motion picture projector,

Hollingshead proposed that a funnel-shaped guard be placed in front of the projector. He thought a fan or blower could then be attached so a clean stream of air could pass through the funnel, preventing insects from gathering there.[16]

Since he was out of work and had little money of his own for the project, Hollingshead decided to enlist some help. He turned to Willis Warren Smith, his cousin, who owned a garage in Gladwyne, Pennsylvania. Smith agreed to put up the $25,000 that was needed to construct the theatre.[17] Hollingshead recalled year later that the two men first discussed the partnership in March, 1933, just after President Franklin Roosevelt had closed all the banks. They had paid for their lunch in Camden scrip, the local substitute for currency.[18]

Hollingshead and Smith first thought of locating their drive-in near Philadelphia but abandoned that plan in early 1933 when voters in Camden ratified a state amendment which permitted Sunday sports and amusements by local option.[19] The two men finally chose a 10-acre site along Crescent Boulevard (later called Admiral Wilson Boulevard) in Pennsauken Township. The property was located between the old Central Airport and the Franklin Bridge, just outside the Camden city limits.

In April, 1933, work on the drive-in theatre began. However, a protest soon arose among representatives of Camden's labor unions who complained that Hollingshead and

Smith had hired twenty-five unemployed non-union men from Pennsauken Township to build the theatre. On April 28, several hundred union members carrying picket signs marched on the theatre site.[20] The following day, Loyal D. Odhner, executive secretary of the Camden County Chamber of Commerce, brought Hollingshead, Smith and the union representatives together to work out the dispute. Following a one-hour meeting, Smith emerged to say he was now willing to increase the pay of the "mechanics" at the site from 40 to 60 cents an hour and that of the laborers from 20 to 30 cents, but he emphasized that he could not afford to pay the wages the unions were demanding. They were seeking a wage of $1.25 an hour for the electricians, $1 an hour for carpenters and 40 cents an hour for laborers.[21]

Work at the theatre site reached an impasse. Pickets continued to appear and members of the Pennsauken Township Police Department were called in to prevent any violence. On May 8, however, a fight broke out between union members and men who had been working at the site when the latter group discovered that Smith apparently now had agreed to hire the union workers to finish the project and was willing to pay them the wages they sought. Two men, one of whom was Ernest R. Lewis, president of the Camden County Building Trades Council, were injured in the fight, but no arrests were made.[22]

Hiring the union workers brought to an end the controversy and construction went ahead. A week later, Hollingshead learned that the patent office formally had approved his drive-in theatre design and had granted him a patent, No. 1,909,537.[23] All that remained now was to rent a film and begin publicizing the theatre's opening, planned for June 6.

Securing a motion picture was not as easy as Hollingshead and Smith might first have thought. Local film distributors were unfamiliar with the two men and were reluctant to rent them films. The men realized that the film distributors thought the drive-in would provide stiff competition to regular theatres. As a result, Hollingshead remembered being charged "ridiculously high" rates and added that he was not allowed a chance to rent new films. "The first film used at the drive-in was three years old and cost us $400 for four days," Hollingshead recalled.[24] "The last time the film had run was in a little south Camden movie house that paid $20 a week for it." That first film, Wife Beware, starred Adolphe Menjou.

Publicizing the drive-in proved a little easier. Hollingshead and Smith bought advertisements in the Camden and Philadelphia newspapers and invited film critics from Philadelphia to preview the opening. One ad in the Philadelphia Inquirer proudly boasted that "Even Kate Smith would have no trouble getting a seat in the world's first automobile movie

theatre where you can see and hear talkies without leaving your car."[25] A writer for the Philadelphia Daily News, noting how the promoters saw the drive-in theatre as a family affair, predicted, nevertheless, "the joy with which such a project will be received by the younger generation which for years has been obliged to suppress those desires of emulating the actions of the hero and heroine on the screen."[26]

The back wall of Hollingshead's screen house, which stood 60 feet high and was 150 feet wide, also was used to advertise the theatre. A huge sign on the wall, which had been built of structural asbestos lumber so as to look like limestone blocks,[27] proclaimed: "Drive-In Theatre. World's First. Sit in Your Car. See and Hear Movies. 25 cents per car, 25 cents per person. 3 or more persons one dollar." At the entrance to the drive-in stood two wooden-framed pillars with the words "Drive-In" written on them. On each side of the pillars, billboards told of "tonight's feature" and of "coming attractions."

Everything was now ready for the opening and finally June 6 arrived. The weather along the East Coast of the country had been hot and humid for a week or more prior to the opening and temperatures had topped the 90 degree mark. As the 8:30 p.m. opening approached, cars began streaming into the Drive-In Theatre. A new form of mass entertainment had been born.

J. Borton Weeks, president of the Keystone Automobile Club in Philadelphia, attended the opening night. In a letter to Hollingshead, Weeks said that he had "nothing to offer but words of praise" about his experience at the drive--in. "The project has been finely conceived and splendly executed for the convenience, comfort, and enter- tainment of the motiring (sic) public," he added.[28] An article in Motion Picture Daily, commented that the "Romeos who lost out in the back seats of picture houses when West Point ushers and super-service came into the deluxe houses are waking up in a new world."[29] And, the entertainment weekly, Variety, reported that "business was very good at the public opening last Tuesday, although during some of the sweltering evenings later in the week, there was a marked drop off in attendance."[30]

Hollingshead and Smith were not discouraged. In fact as the theatre's first season wore on, employees were instructed to keep track of all of the cars that entered the theatre for one of the two shows each night and to record their license numbers.[31] By the end of the season, they found forty-three states had been represented and repeaters accounted for 75 percent of the patrons. "Then we knew we had something," Hollingshead recalled.[32] "We weren't interested in the curiosity seekers who only came once, and we soon found that thousands of people would come back again and again."

Who were these people and what was attracting them to this drive-in theatre? "Inveterate smokers enjoyed the (drive-in) movies because of the strictly enforced smoking prohibition," Hollingshead later told an interviewer.[33] "In the drive-in theatre they could smoke without offending others. Also, people could chat, or even partake of refreshments brought to their cars without disturbing those who preferred silence."

Hollingshead often said that his drive-in idea virtually transformed an ordinary car "into a private theatre box." He also claimed that prior to his drive-in theatre, young people were either not allowed to--or were discouraged from--attending motion pictures in the evening. "The drive-in, of course, welcomed the entire family regardless of the number of children," Hollingshead said. "This insured the safety of the youngsters as they were under the watchful eyes of their parents and in the confines of the family car."[34]

Hollingshead also discovered that the aged and infirmed found his drive-in to their liking and he recalled how an Elizabeth, New Jersey man, crippled with arthritis, would come to the theatre nearly every week. "The man had never seen a movie before. He was hopelessly crippled, and he couldn't go to the indoor movies," Hollingshead recalled.[35] "But he would be driven down nearly every week in his Cadil-

lac, park in the fourth row, and lie in the back of the car and watch the film."

NOTES

[1]"R. M. Hollingshead, industrialist, dies," New York Times, 16 May 1945, p. 19.

[2]R. M. Hollingshead Dies at Age 75," Camden Courier-Post, 14 May 1975. The Canadian plant was located in Bowmanville, Ontario.

[3]Ronald DeGraw, "Drive-In Theaters Got Start With Villanova Man's Idea," Philadelphia Inquirer, 6 June 1965.

[4]Richard M. Hollingshead, III, personal letter, 13 July 1983. Hollingshead's mother was said to have stood six feet tall and weighed 200 pounds. The English spelling of the word "theatre" will be used throughout the text when talking of drive-ins because it was the spelling Hollingshead used in describing his drive-in. The American version of the word, "theater," will be used when it is spelled that way in the name of drive-in corporations.

[5]"Flock To See Free Pictures," New York Times, 19 October 1908, p. 16. See also, Victor Appleton, The Motion Picture Chums' Outdoor Exhibition (New York: Grossett & Dunlap, 1914).

[6]Kenneth Macgown, Behind The Screen, (New York: Delacorte Press, 1965), p. 10.

[7]Wayne Guthrie, "Outdoor Movies New? Just Ask Grandpa," Indianapolis News, 24 June 1955, p. 11.

[8]Bernard M. Sleeth, "Indiana's First Drive-In Movie," Indianapolis Star Magazine, 15 November 1964, p. 16. See also, Madge D. Stiefel, "Honk if you love drive-ins," Indianapolis Express, 13-26 August 1982, p. 8.

[9]Al Steen, "$250 Million Grossed Annually by Drive-ins--Equipment and Concessions Big Business," Greater Amusements, March 1968, p. 8.

[10]Harry M. Potter, "The World's First Drive-In Theatre," South Jersey Magazine, October, November, December 1974, p. 2.

[11]Hollingshead, personal letter, 13 July 1983.

[12]U. S. Patent Office. Patent No. 1,909,537. Drive-In Theatre. Granted R. M. Hollingshead, Jr., Riverton, New Jersey, 16 May 1933.

[13]There is some discrepancy about the actual number of driveways at Hollingshead's drive-in. The drawings that accompanied his patent application only showed six

driveways, but most newspaper and magazine accounts mention seven driveways. A few accounts mention eight driveways.

[14]Hollingshead, personal letter, 13 July 1983. In his patent application, Hollingshead said he might provide front wheel lifts or risers at the front of each stallway that could be adjusted "to permit each car to be inclined to a greater or lesser degree, at the will of the driver or occupant." It is not known whether Hollingshead ever followed through on this part of his drive-in design.

[15]U. S. Patent Office. Patent No. 1,909,537. Some reports have placed the width of the driveways at 50 feet.

[16]Ibid.

[17]There also is some discrepancy about how much the theatre cost. The DeGraw interview with Hollingshead puts the figure at $25,000, but other reports suggest that the cost was closer to $60,000.

[18]DeGraw interview.

[19]"Camden Bans Blue Law," New York Times, 19 May 1933, p. 19.

[20]"Pay Boost Offered At Movie Project," Camden Courier-Post, 29 April 1933.

[21]Ibid.

[22]"2 Injured In Fight Over Employment," Camden Courier-Post, 8 May 1933. See also, "Union Wins 'Battle' At Open-Air Theatre," Camden Courier-Post, 9 May 1933.

[23]U. S. Patent Office. Patent No. 1,909,537.

[24]DeGraw interview.

[25]Advertisement, Philadelphia Inquirer, 7 June 1933, p. 12.

[26]"Auto Movie Theater Next Step in Shows," Philadelphia Daily News, no date given. Clipping obtained from Lewis Beale, Philadelphia, Pa., 21 June 1983.

[27]Dennis Sharp, The Picture Palace, (New York: Frederick A. Praeger, Publishers, 1969), p. 178.

[28]J. Borton Weeks to R. M. Hollingshead, Jr., 23 June 1933. Theatre Collection, The Free Library of Philadelphia, Philadelphia, Pa.

[29]"So There's Nothing New!" Motion Picture Daily, 10 June 1933, pp. 1, 15.

[30]"Open Air 'Drive-In' Theatre for Cars," Variety, 13 July 1933, p. 5. A number of other articles also noted the opening of Hollingshead's drive-in, including, "Drive-in theatre," Business Week, 5 August 1933, p. 19; "Camden's drive-in theatre," Literary Digest, 22 July 1933, p. 19; "Drive-in movie holds 400 cars," Popular Mechanics, September 1933, p. 326 and "Movie theatre lets cars drive right in," Popular Science, August 1933, p. 19.

[31]Newspaper advertisements prior to the opening for Hollingshead's drive-in speak of three shows nightly at 8:30, 10 and 11:30 p.m., but this policy apparently soon changed as an advertisement in the Philadelphia Inquirer, 8 June 1933, p. 12 lists only two shows nightly at 8:45 and 10:15 p.m.

[32]DeGraw interview.

[33]Potter interview.

[34]Ibid.

[35]DeGraw interview.

CHAPTER II
PROBLEMS FOR HOLLINGSHEAD

With the success of their own drive-in now apparently assured, Hollingshead and Smith began to make plans during the summer of 1933 to interest others in their drive-in invention. But the road to success was not without its roadblocks, as the two men quickly discovered.

One major problem: what to do with the sound system at their drive-in theatre. Radio Corporation of America engineers from the company's headquarters in Camden had designed and patterned it after the system that they had been installed at the Radio City Music Hall in New York City.[1] The engineers had perfected a way of projecting sound through a directional loudspeaker system which was made up of three six-foot speakers placed on top of the screen tower and that projected the sound to the rows of cars in Hollingshead's drive-in. The only problem was that the sound system worked too well!

Hollingshead recalled years later that "when the wind was blowing in the right direction, you could hear the sound track all the way to Merchantville."[2] Complaints from nearby residents forced Hollingshead and Smith to seek an alternative sound system. They eventually installed a series of underground speakers set up along each of the stallways. Customers simply drove up beside one of the speakers when they entered the theatre, but this system also proved less than satisfactory.

Hollingshead and Smith were not the only early drive-in operators to experience problems with their speakers. In 1943, the Supreme Court of Pennsylvania ordered the Guerrein Sky-Way Amusement Company of Erie, Pennsylvania, to close its drive-in after neighbors complained that the theatre's four large amplifying horns were disturbing their rest and forcing them to close their windows on hot summer nights. The company argued unsuccessfully that it had tried to purchase some "parkway" cable to install in-ground speakers and reduce the noise, but said it was unable to obtain a preference rating from the War Production Board for the material.[3] In 1945, the Supreme Court in Washington ordered the Northwest Motor-In Theatre near Seattle to be closed until an individual speaker system could be installed.[4] And, in Laurel, Mississippi, the Chancery Court awarded a couple $467 in damages for enduring the noise emanating from the nearby Laurel Drive-In Theatre.[5]

The noisy loudspeakers also created another problem for Hollingshead and Smith. The noise often attracted "poachers" who tried to view the movie without paying. The men were forced to construct an enclosure around their theatre to keep the freeloaders out.[6] The problem of noisy loudspeakers for Hollingshead and the others was allievated somewhat in 1941 when RCA engineers introduced a series of in-car speakers.[7]

As time went on the securing of current films, a problem from the start, failed to improve. Finally, in 1935, Hollingshead and his partners decided to sell out. "It was a real success in Camden," Hollingshead recalled years later, "but the high film rental rates continued to plague us. We probably would never had sold it otherwise. The man in Union (New Jersey) who bought it had several indoor theatres in North Jersey, and so he could easily get films."[8]

Hollingshead and his partners were not discouraged by the closing. In the summer of 1933, Hollingshead, Smith and Edward H. Ellis, a general contractor from Merchantville, New Jersey, formed Park-In Theatres, Incorporated.[9] It was set up to handle licensing agreements the men hoped to arrange with other individuals interested in starting drive-in theatres. Now, with their own theatre closed, the men turned their full attention to licensing other theatres around the country.

Under terms of their licensing agreements, Park-In Theatres would grant a prospective drive-in operator an exclusive area and would make available, free of charge, engineering plans and specifications for "economically building a representative drive-in theatre suitable for the licensee's ground." In return, the drive-in owner had to agree to an initial licensing fee of $1,000, plus a 5 percent royalty payment based on the theatre's gross weekly receipts.[10] Park-In signed the first license agreement with

a Los Angeles theatre owner who opened the country's second drive-in at the corner of Pico and Westwood in that city in 1934.[11]

The growth of drive-ins remained slow throughout the 1930s, largely due to the Depression. But among the early pioneers was Philip Smith of Boston, who built his first drive-in in Detroit in 1935. He later added theatres in other Midwestern cities and along the East Coast.[12] There was some discrepancy in those early days over how fast the industry actually was growing. A Time magazine survey in 1941, for instance, showed that the drive-in theatre industry had become a $3 million business with fifty-two theatres operating around the country.[13] However, an International Motion Picture Almanac survey the previous year placed the number at nearly 100 theatres with a total investment of nearly $4 million. The Almanac survey also noted that a number of Paramount affiliates were among the first regular theatre circuits to become interested in developing their own drive-in theatres.[14]

Drive-ins were also expanding in size. Among the largest outdoor theatre at the time was one located near Evanston, Illinois. It sat on a 20-acre site and could accommodate up to 1,500 cars. Owner Nate Barger, who owned burlesque houses in Chicago, estimated that he had spent $165,000 on his theatre and expected to gross between $15,000 and $20,000 a week.[15]

When the United States entered the Second World War in 1941, the federal government imposed restrictions that prevented many theatre owners from acquiring materials they needed to build their drive-ins. When entrepreneurs were able to start their theatres, many were reluctant to pay a licensing fee to Park-In Theatres. As a result, Hollingshead and his partners found themselves involved in a number of litigations as they tried to protect their patented drive-in theatre design.

The first of these lawsuits involved M. A. Rogers, a California drive-in owner who had not paid his royalties. Park-In took Rogers to court in the early 1940s, but a U.S. District Court judge in California, in a summary judgment, threw out the theatre company's claims. The judge said the drive-in theatre described in Hollingshead's patent application was really an "architectural design" and was not "an art, machine, manufacture or composition of matter," the only categories then allowed under the patent laws. Park-In appealed the decision and the U.S. Circuit Court of Appeals for the Ninth Circuit ruled in September, 1942 that the lower court had erred. The appeals court said the tilting of the stallways in Hollingshead's drawings were enough to convince it that "the outdoor theater comes under a patentable classification, as a manufacture or machine."[16]

As the number of drive-ins began to expand rapidly after the war, Park-In Theatres had problems trying to keep

track of all the new theatres. A case in point occurred in 1947 when it tried to bring a patent infringement suit against two Ohio drive-in operators. The District Court for the Southern District of Ohio threw out the case after the defendants pointed out that the Dayton, Ohio drive-in theatre named in the complaint, while similar in name, did not belong to them. Their theatre was located in Cleveland, Ohio.[17] Park-In tried to have the decision delayed until the jurisdictional questions raised by the two Cleveland drive-in operators could be clarified, but the District Court refused.[18]

Probably the most protracted litigations that Hollingshead and his company encountered came against larger motion picture companies. Paramount-Richards Theatres, Inc., operators of a chain of drive-ins in Alabama, Florida, Louisiana, Mississippi and Texas, for one, brought suit in 1948, challenging Park-In's patent monopoly. The two companies had first entered into a licensing agreement in 1940, but Paramount-Richards now challenged the exclusive territory provision of that agreement. In effect, the U.S. District Court in Delaware ruled that the term "drive-in theatre" in the licensing agreement was really a generic term and, as a result, the licensing agreement could not keep any theatre owner from setting up a drive-in in an area where Park-In Theatres already had assigned a license. "I find that Paragraph 3 (which described the exclusive terri-

tory provision) constitutes an unwarranted attempt to extend the plaintiff's patent monopoly," the court said, adding, "...this is a suppression of competition which is injurious to the public interest under our system of competition."[19]

This decision did not end the dispute between the two companies as Park-In Theatres next launched a lawsuit in 1950 against Paramount-Richards Theatres, claiming that the theatre chain had been part of a conspiracy to damage Hollingshead's company. Specifically, Park-In Theatres charged Paramount-Richards, through two of its affiliates--Paramount Pictures, Inc. and Paramount Film Distributors--with conspiring with conventional theatre operators in the Camden-Philadelphia area to practice a film boycott and to apply economic duress by "refusing to supply new and appropriate film and by charging rental for film substantially in excess of that charged to other theatres in the area." Park-In Theatres also claimed that because of this "economic duress" it was forced in 1940 to grant Paramount-Richards territorially exclusive licenses at inadequate royalty rates. The U.S. District Court in Delaware rejected both claims, pointing out that the three-year statute of limitations for bringing such suits had expired since the conspiracy against Hollingshead's theatre was alleged to have occurred in 1933 and the licensing agreement was signed in 1940.[20]

Park-In Theatres also tried to collect royalty payments against Paramount-Richards, but the U.S. District Court in Delaware, citing the earlier case where the licensing agreements were ruled an unfair patent monopoly, threw out the case.[21] Park-In Theatres appealed both decisions to the Third Circuit of the U.S. Court of Appeals, but they refused to hear the cases.[22] The U.S. Supreme Court followed suit in June, 1951, refusing a writ of certiorari.[23]

Park-In Theatres also came out on the losing end of a protracted lawsuit with Loew's Drive-In Theatres, Inc.[24] The two companies had first entered into an agreement on July, 21, 1937 whereby Loew's was to operate a drive-in theatre in Providence, Rhode Island, and was to pay royalties to Park-In for that exclusive territory. Loew's made royalty payments at regular intervals through its first season which ended in November, 1937, but it then refused to make any further payments on the $29,065.75 it had collected in admissions during that time. Park-In Theatres took Loew's to court. Through a series of legal maneuvers, the case was held up in the courts for nearly ten years. Finally, on March 11, 1947, the U.S. District Court in Rhode Island ruled in favor of Park-In Theatres.[25] Loew's appealed the decision to the U.S. Court of Appeals, and on April 8, 1949, that court reversed the lower court decision. The appeals court ruled that the drive-in theatre idea was not patentable.[26] Park-In made one last appeal to the U.S. Supreme

Court, but the high court, on December 5, 1949,[27] less than a year before the Hollingshead patent would have expired, refused to hear the appeal. As a result, Hollingshead's hopes of collecting any additional royalties for his drive-in theatre invention were lost.[28]

Hollingshead estimated years later that he had spent more than $250,000 in legal fees to fight the patent infringements, but he had collected only about $50,000 in licensing fees from the 100 or so theatres that he and his company actually were able to license. But Hollingshead told his interviewer that he was not embittered by the result. "It seems a shame that a person who creates and develops a new idea and goes through a procedure set down by law to obtain a patent cannot obtain remuneration when his patent gives everyone else profits," said Hollingshead, who then added, "If I were not independently fixed, I might feel bitter."[29]

Hollingshead remained active in Park-In Theatres, although Smith and his two sons, William and V.C., handled the day-to-day operations of the company.[30] A 1949 advertisement for the company, which changed its name to the Drive-In Theatre Service Company after the patent lawsuits, said it was now offering its "broad experience" in the drive-in business and claimed that such help "can reduce your original investment and produce a more profitable operation."[31]

Despite the setbacks, Hollingshead remained interested in his drive-in invention until his death on May 13, 1975 at his home in Villanova, Pennsylvania.[32] He often remarked on the lack of recognition given him for his invention. "There ought to be an award in the industry for ideas which build it, like the Oscars," he told a New York Times reporter in 1958, adding, "It might stimulate the industry."[33] Hollingshead did take pleasure in the accomplishments of drive-ins and the concession business that went with it. In a 1973 interview, he noted that "the drive-in industry is now a $500 million business and the concessions make about the same amount." He also recalled how he was often criticized by parents who claimed that drive-ins bred immorality. "We always had a lot of criticism about kids necking," Hollingshead said, "But I've always said I'd rather see my daughter in a drive-in than parked in a dark alley somewhere."[34]

The drive-in inventor also admitted in the interview that he and his wife, Pauline, still attended the Main Line Drive-In near their home. When asked what type of movies he preferred, Hollingshead replied, with a droll laugh, "Well, I like dirty movies the best."[35]

NOTES

[1]For an excellent discussion of the technical problems associated with early drive-in theatre speakers, see, Edward W. Kellogg, "History of Sound Motion Pictures," Journal of SMPTE 64 (August 1955): 422-437.

[2]Ronald DeGraw, "Drive-in Theaters Got Start With Villanova Man's Idea," Philadelphia Inquirer, 6 June 1965.

[3]Anderson et al. v. Guerrein Sky-Way Amusement Co., et al. 346 Pa. 80 (1943).

[4]Payne et ux. v. Johnson, 145 P. 2d 552 (1944).

[5]Jenner et al. v. Collins et ux. 52 So. 2d 638 (1951).

[6]Richard M. Hollingshead III, personal letter, 13 July 1983.

[7]Kellogg article, p. 432.

[8]DeGraw interview.

[9]Hollingshead transferred his drive-in patent to Park-In Theatres in August, 1933.

[10]The details of the contractual arrangements made between Park-In Theatres, Incorporated and prospective drive-in theatre operators are mentioned in Park-In Theatres, Inc. v. Rogers, et al. 130 F. 2d 745 (9th Cir. 1942).

[11]David Gebhard and Harriette Von Breton, L.A. in the Thirties, 1931-1941 (Salt Lake City: Peregrine Smith, Inc., 1975), p. 44.

[12]"Richard A. Smith: Like Father, Like Son," Forbes, 15 April 1968, p. 71. See, also, Gene Gladson, Indianapolis Theaters From A to Z, (Indianapolis: Gladson Publications, 1976), p. 33.

[13]"Drive-ins," Time, 14 July 1941, p. 66.

[14]"Drive-In Theaters," 1941 International Motion Picture Almanac, (New York: Quigley Publishing Co., Inc., 1941, p. 854.

[15]The "Drive-ins" article, p. 66.

[16]Park-In Theatres, Inc. v. Rogers et al. 130 F. 2d 745 (9th Cir. 1942).

[17]Park-In Theatres, Inc. v. Ochs et al. 75 F. Supp. 504 (1947).

[18]Park-In Theatres, Inc. v. Ochs et al. 75 F. Supp. 506 (1947).

[19]Park-In Theatres, Inc. v. Paramount-Richards Theatres, Inc., et al. 81 F. Supp. 466 (1948).

[20]Park-In Theatres, Inc. v. Paramount-Richards Theatres, Inc., et al. 90 F. Supp. 727 (1950).

[21]Park-In Theatres, Inc. v. Paramount-Richards Theatres,Inc., et al. 90 F. Supp. 730 (1950).

[22]Park-In Theatres, Inc. v. Paramount-Richards Theatres, Inc., et al. 185 F. 2d 407 (3rd Cir. 1950).

[23]Park-In Theatres, Inc. v. Paramount-Richards Theatres, Inc., et al. 71 S. Ct. 1017 (1951).

[24]Park-In Theatres, Inc. v. Loew's Drive-In Theatres, Inc., 70 F. Supp. 880 (1947).

[25]Ibid.

[26]Loew's Drive-In Theatres, Inc. v. Park-In Theatres, Inc., 171 F. 2d 547 (1st Cir. 1949).

[27]Park-In Theatres, Inc. v. Loew's Drive-In Theatres, Inc., 338 U.S. 822 (1949) certiorari denied and 338 U.S. 896 (1949) rehearing denied.

[28]Two other legal actions involving Park-In Theatres were heard following the U.S. Supreme Court decision in 1949. In Park-In Theatres, Inc. v. Waters et al. 185 F. 2d 193 (5th Cir. 1950), the appeals court ruled that the trial court had erred in not making an independent determination of the validity of Hollingshead's patent and had relied on the Loew's decision. In Park-In Theatres, Inc. v. Perkins et al. 190 F. 2d 137 (9th Cir. 1951), the appeals court ruled that a drive-in theatre was not an invention within the patent law and that the claim was not litigated in bad faith.

[29]DeGraw interview.

[30]When the elder Hollingshead died in 1945, the younger Hollingshead became the chairman of the board of the family business. He had a lifelong interest in aviation, and in 1961 he also assumed the board chairmanship of the Kellett Aircraft Corporation in Willow Grove, Pennsylvania. "Hol-

lingshead Name Aircraft Firm Head," Camden Courier-Post, 24 February 1961.

[31]Advertisement, Theatre Catalog 1949-50, p. 328. Hollingshead's son, Richard, served as a director of the company from 1947 to 1953. The company remained in business until the 1960s. Hollingshead, personal letter, 13 July 1983.

[32]"Richard M. Hollingshead, Jr.," Variety, 21 May 1975, p. 79. In addition to his drive-in theatre design, Hollingshead continued to invent devices throughout his life. One invention was a movable median divider so traffic inbound to work could have more lanes available and the reverse at night. He also developed a security box system for hotel locker rooms where the lock combinations could be changed constantly, thus allowing the locks to be used over and over again. Hollingshead, personal letter, 13 July 1983.

[33]Leonard Spinrad, "Keeping Pace With the Drive-Ins," New York Times, 25 May 1958, Sec. II, p. 5.

[34]Kathy Begley, "Somehow, the Drive-In Just Ain't What It Used To Be," Phildelphia Inquirer, 19 August 1973.

[35]Ibid.

CHAPTER III

GROWING PAINS

A movie mogul famous for his malapropisms was asked in 1950 what he thought of the drive-in theatre industry. His response: "They are sweeping the country like wildflowers."[1] That same year, an annual survey of the motion picture industry proudly proclaimed of drive-ins: "The exhibition plant has seen no such expansion since the rise of the nickelodeon."[2] Even the usually reserved New York Times was moved to say: "It is no exaggeration to say that the invention of the drive-in theatre has been, to a great extent, the salvation of the grassroots motion pix business."[3]

Whether the drive-in theatre was as popular as nickelodeons or was the savior of Hollywood certainly is debatable, but there is no denying that the drive-in theatre industry made significant gains after the Second World War. In 1947-1948, one survey listed 191 drive-in theatres in thirty-six states with Ohio at the top of the list with thirty-two theatres.[4] Two years later, the same annual survey reported that there were now 1,250 drive-ins, and added that they were opening at "an average of two a week."[5]

By 1951 and 1952, the average weekly attendance at drive-ins grew to approximately four million people and gross receipts exceeded $300 million, which the surveys said represented about 20 percent of the gross receipts for the entire motion picture industry.[6] Looked at it another way, Rodney Luther observed that the public now spent as much on

drive-ins as "it spent on the legitimate theatre, opera, professional football, hockey, baseball, college football, horse and dog tracks, and other amateur sports combined."[7]

The expansion was not without its problems as some drive-in operators suddenly found themselves at odds with public officials in several parts of the country. As far back as Hollingshead's first drive-in, some people complained about the excessive noise that came from drive-in loudspeakers. Others viewed drive-ins as breeding grounds for immorality. Sometimes there was little drive-in operators could or wanted to do to solve these problems. Wartime restrictions had made it difficult for them to convert from noisy loudspeakers to an in-car speaker systems. As for the young lovers, owners often were reluctant to chase away what represented the majority of their audience.

As drive-in theatres began to expand, public officials began to complain not only about noise, but also traffic problems they associated with the theatres. Some communities sought laws to limit a drive-in theatre's access to major highways. In January, 1950, for instance, the Huntington, Long Island Town Board rejected an application for a drive-in at West Hills Road and Jericho Turnpike because of its proximity to South Huntington High School and a heavily traveled road.[8] Still other officials and residents saw drive-ins as a public nuisance and sought to restrict them to commercial or industrial zoning districts and away from

residential areas. Some went even further and tried to keep drive-in theatres out of their communities completely.

The increase in automobiles and drive-ins after the war troubled many public officials who worried about acute traffic congestion. J. E. Johnston of the Nebraska Department of Roads and Irrigation, for one, told a 1949 meeting of the Institute of Traffic Engineers in Washington, D. C. that supervisory measures were needed to regulate the movement of cars in and out of amusement areas like drive-ins.[9] In Pennsylvania, Col. C. M. Wilhelm, head of the state's highway department, called for an intensive survey of drive-ins, particularly to determine "what hazards exist in the areas where motorists enter and leave the theatre grounds."[10] That same year, the traffic committee of the American Association of State Highway Officials released recommendations for communities to follow in regulating drive-ins. It suggested that they should not be located along major state highways and that traffic officers should be employed to handle theatre traffic.[11]

Officials in New York City were quick to recognize these traffic problems in April, 1950, when they gave the city's Planning Commission jurisdiction over drive-ins. The commission wasted little time. In October, it rejected an application for a drive-in in Brooklyn because of the potential for serious traffic congestion. Jerry Finkelstein, the commission chairman, said that the sudden movement of 1,700

automobiles in and out of the planned drive-in along the Belt Parkway would cause congestion for many miles. "Traffic congestion under normal circumstances is bad enough in New York City without a project that would further aggravate the situation," Finkelstein said.[12]

Most communities, however, were slower than New York City in reacting to drive-in expansion. As the editors of Theatre Catalog observed in 1949, "the advance of the drive-in has been so rapid that the clanking machinery of the law has not been able to keep pace with it."[13] Indeed, a 1949 survey prepared by the Planning Advisory Service of the American Society of Planning Officials found that there was no consensus among public officials it questioned on how best to control drive-ins.[14]

One method was through building codes. In New York state, for instance, the state's Standard Building Code for Places of Public Assembly required drive-in exits to be arranged so lines of incoming and outgoing traffic did not cross. Movies screens had to be constructed of incombustible materials and designed to withstand a wind pressure of at least 25 pounds per square foot. Fire extinguishers were required to be centrally located in case a parked car caught fire.[15] In Missouri, the state adopted highway-access agreements with drive-in operators, who agreed to build and maintain at their own expense "approach roads" from their theatres to state highways.[16]

By far the most popular means of regulating drive-in theatres was through a zoning ordinance. But, as the Skokie Amusement Corporation discovered on August 15, 1949, when it applied for a permit to construct a drive-in in Skokie, Illinois, this method was far from fair. The corporation had leased an 18-acre tract of land from the Trust Company of Chicago. The land was located within an industrial area previously used as an excavation site in manufacturing bricks. An electrical products factory, brick manufacturing plant, large baseball field and riding stable were now situated adjacent or near the property.

The day after the corporation's application, the Skokie Village Board of Trustees met and denied the application, giving no reasons for its action. Three weeks later, the board met again and this time adopted an amendment to its zoning ordinance excluding drive-in theatres in industrial districts.

Both the Chicago bank and the amusement corporation were outraged by the village board's action and they filed suit in Cook County Superior Court. They claimed the board's refusal to allow the drive-in theatre was "arbitrary, capricious and wilful." The board maintained that under its police powers it had the right to reject the drive-in application and to amend its zoning ordinance. The board also said it based its decision on "considerations of public welfare, safety, health and morals."

The Superior Court disagreed and the village board appealed to the Illinois Supreme Court, which affirmed the lower court's decision. It said it was "led to the unescapable conclusion that suddenly and without any reasonable explanation the amendment was adopted for the express purpose of outlawing the proposed theatre, an admittedly lawful business....We conclude that the passage of the amendment to the zoning ordinance of the village of Skokie was unreasonable, arbitrary and had no firm basis in, or relation to, the public health, morals, safety or public welfare."[17]

Skokie was not the only community where drive-in operators were not welcomed. In 1947, the Ohio Court of Appeals ruled that the village of Wickcliffe, Ohio, could not, by enacting an emergency ordinance, give retroactive effect to a pending zoning ordinance that would deprive a property owner from building a drive-in theatre.[18] And, in Brunswick, New York, the town board passed a zoning ordinance prohibiting the construction of drive-in theatres. When James H. Connell and James Giordino then purchased land within the town to build a drive-in, the town board rescinded its first ordinance and passed a second one listing further restrictions against any drive-ins. Connell and Giordino brought suit, and the Appellate Division of the New York Supreme Court held that the board was trying to have the benefits of a zoning ordinance without its liabilities. "We are therefore constrained to hold that the ordinance in question is

invalid and an attempt to zone the town against certain structures without following the requirements of the zoning statute," the judges said.[19]

Each of these cases helped to establish the principle that a drive-in operator had the right to build a theatre in a community, and no requirements could be so restrictive that they kept a person from operating a theatre.

In spite of these zoning difficulties, the drive-in theatre industry continued to expand rapidly and by 1954, the U.S. Census Bureau now estimated that there were 3,775 drive-ins, or ozoners as they sometimes were called, around the country. Texas now led all states with 388 drive-ins, followed by North Carolina, Pennsylvania, Ohio and California.[20]

Anthony Downs attributes the rapid growth of drive-ins to three factors: the rise in automobile ownership and use; the high level of general prosperity, which reflected itself in continuing good times in the entertainment industry; and the particular features of drive-in theatres.[21] During the war, restrictions on building materials and gasoline rationing restricted both the number of drive-ins and the people who could attend them. But when restrictions were lifted, the general public took to the roads in record numbers. Between 1946 and 1952, motor vehicle registrations increased by 15.6 million[22]and gasoline consumption was up 63 percent.[23]

The post-war prosperty also brought with it a population migration from cities to developing suburbs.[24] In 1960, the U.S. Census Bureau reported that 112.8 million people lived in standard metropolitan statistical areas which it defined as urbanized areas of 50,000 or more people. Of that number, 54.8 million, an increase of 19.7 million people, moved to the suburbs in the past decade.[25] This population migration made drive-in operators happy since most of their theatres already were located in outlying areas because of the 15 to 20 acres of land they needed. The operators found land in these outlying areas was cheaper, damage to their physical plant was minimal and high concession sales were possible.[26]

At the same time that drive-ins were expanding, the television industry also was developing quickly. Commercial television operations began July 1, 1941, but a wartime freeze on stations and receiving sets was imposed the following year. Six of the ten original TV stations remained on the air during the next three years, but broadcast only about four hours a week to about 7,000 TV sets in existence. The freeze was lifted in 1945, and by 1947, sales of TV sets began to soar. Television applications began to flood into the Federal Communications Commission, the federal agency charged with regulating the broadcasting industry. In 1948, the commission ordered a freeze on applications until a logical system of station assignments could be worked out. The

freeze originally was supposed to last six to nine months, but it ended up being in effect for forty-two months, or, until April 14, 1952, when the FCC lifted it and again began processing new station applications.[27]

During the TV freeze, drive-in constructions surpassed the 3,000 mark with at least two new ones reported opening every week.[28] One reason for this is that until the TV freeze was lifted in 1952, most TV stations were located in the northeastern section of the country. These stations represented more competition to conventional downtown theatres than to drive-ins. As a result, in communities where few TV stations existed, the drive-in theatre was often considered the main attraction in town. A 1957 motion picture survey showed that in New England the number of drive-ins had increased by 139 between 1948 and 1954, but 645 were built in the South Atlantic states and 459 in Arkansas, Louisiana, Oklahoma and Texas during the same time span.[29]

The expansion of the drive-in theatre industry attracted hundreds of entrepreneurs from around the country who were drawn into the business by the tremendous profit potential that seemed to exist. One report in 1951 estimated that yearly profits of successful drive-ins sometimes reached 30 percent of invested capital, and significant numbers of drive-ins were earning net profits of 15 to 20 percent.[30]

The drive-in expansion also was not limited to the United States. By 1950, forty drive-ins were operating in

the Canadian provinces of Ontario, Alberta and British Columbia.[31] A year earlier, the first Mexican drive-in, a 650-car theatre, opened in Ciudad Juarez and showed both U.S. and Mexican films three times a night.[32] Even members of the Associated British Picture Corporation discussed drive-ins at their 1949 meeting. They viewed them as insurance against boxoffice losses in the summer.[33]

With the drive-in expansion, a number of audience studies were being done to find out exactly who was being attracted to the theatres. One of the earliest found that the privacy of sitting in one's car was "unquestionably responsible" for drawing a large portion of the people who normally would not attend regular movie theatres. In this category, the study said, were families with young children; old, infirm or overweight people who were uncomfortable in conventional theatre seats; lovers who wanted relative privacy and movies too; and workers and their wives who did not want to dress up to go to the movies.[34]

Of all the studies that were done, Rodney Luther and his assistants probably conducted the most scientific one.[35] In August and September, 1949, they set out to discover the characteristics of an average drive-in audience by interviewing 1,624 people at five suburban drive-ins in metropolitan Minneapolis-St. Paul. They discovered that drive-ins were not drawing most of their audience from "regular theatre" fans, but instead, they attracted a new type of

moviegoer. Luther and his assistants found that 55 percent of the cars they surveyed contained family groups and the average patron traveled a total of fifteen miles in driving to and from the theatre. They also found at least half of the audience attended a drive-in most of the time and one-third said they attended no other type of theatre in the summer. One-half of the patrons had not attended a drive-in before 1949.

Luther concluded that drive-in theatres offered a type of entertainment which "is considered by patrons to be more of a supplement to, than a substitute for, the entertainment offered by conventional theatres." He said the future of drive-ins seemed comparatively bright since "drive-ins achieved their present status with largely subsequent-run product offerings; it seems apparent that they can progress considerably further if given first and second-run products."[36] At least one major movie company survey at the time supported Luther's findings, concluding that, "by and large, the majority of people attending drive-ins are not those attending regular theatres."[37] A later study of nearly 10,000 individuals who attended drive-ins found that the audience was noticeably different from the general population. The study noted that drive-in audiences generally had "better jobs, higher incomes, more education, more children, more home ownership, more cars, more major appliances and more conveniences."[38]

All of this optimism about drive-ins also brought with it talk about larger structures, and of drive-ins becoming part of elaborate entertainment and recreational centers in the future. In 1950, architect Lewis Eugene Wilson unveiled drawings for a four-way drive-in, with a screen in each corner of a rectangular plot and a three-level concession building in the center.[39] George Petersen, a drive-in consultant and designer, suggested in 1952 that drive-ins of the future might be built in connection with dance floors, swimming pools, ice skating rinks, cocktail lounges, restaurants and other popular forms of entertainment.[40]

Wallace Agey went even further. He proposed that future drive-ins would be incorporated with a shopping center and recreational facilities such as a swimming pool and tennis courts and the entire facility would be housed in a covered, two-story structure. "The roofed drive-in could operate from noon to midnight, and in all weather," said Agey, a vice-president of sales for the Drive-In Theatre Manufacturing Company. Such a structure, Agey estimated, would cost between $3 and $4 million to build, exclusive of the land, and would be feasible in areas of a concentrated population of 500,000 or more people.[41]

Amid all this talk about expansion and the future of the drive-in theatre, however, regular theatre owners were watching their own businesses go into a nosedive. Part of the reason was the court-ordered breakup of the motion pic-

ture industry. Rather than sell their theatres to independent operators, some motion picture studios simply closed their conventional theatres. Between 1948 and 1954, the U.S. Census Bureau estimated that regular movie theatres declined from 17,689 to 14,761, or 17 percent of the regular theatre establishments.[42] One report argued that downtown theatres were being closed because they simply had outlived their usefulness. "Their acoustics are poor, their Byzantine elegance is out of place, and their overhead is out of sight," the report said, adding, "Perhaps here is the place for euthanasia, where in the blaze of civic glory, the hallowed ground might be dedicated to a parking lot."[43]

By the early 1950s, the message to regular theatre owners who remained in business was clear: if they did not start operating their own drive-ins, they might end up out of business. One exhibition association advised its members "to get in there yourself and keep the operation of drive-ins, as far as possible, in the regular theatre hands rather than in the hands of people who don't know how or where to buy a reel of film."[44]

NOTES

[1]John Durant, "The Movies Take To The Pastures," Saturday Evening Post, 14 October 1950, pp. 24-25, 85, 89-90.

[2]1950-51 International Motion Picture Almanac (New York: Quigley Publishing Co., Inc., 1950-51), p. 8.

[3]Leonard Spinrad, "Keeping Pace With the Drive-ins," New York Times, 25 May 1958, Sec. II, p. 5.

[4]1947-48 International Motion Picture Almanac (New York: Quigley Publishing Co., Inc., 1947-48), p. 8. Discrepancies exist about the actual number of drive-ins after the Second World War. For instance, in Rodney Luther, "Drive-in Theatres: Rags to Riches in Five Years," Hollywood Quarterly 5 (Summer 1951):401, the author estimates that there were sixty drive-in theatres. In contrast, Sindlinger and Company, Inc., A Study and Analysis of the Motion Picture Industry 1946-1953, Vol. 1 and cited in Bruce A. Austin, "The Development and Decline of the Drive-In Movie Theater," in Current Research in Film: Audiences, Economics and Law, Vol. 1 (Norwood, N.J.: Ablex Publishing Corp., forthcoming), puts the number at 300 drive-ins.

[5]1951-52 International Motion Picture Almanac (New York: Quigley Publishing Co., Inc., 1951-52), p. 5.

[6]Ibid., p. 5.

[7]Rodney Luther, "The Changing Economic Structure of the Post-War Motion Picture Industry," Western Economic Association Proceedings (1951), pp. 49-53.

[8]"Drive-In Theatre Plan Fails," New York Times, 29 January 1950, p. 53. Similarly, in August, 1950, the Middletown, New Jersey Township Committee voted to adopt an amendment to its township zoning ordinance that would ban drive-ins along part of State Highway 35. See, "Would Ban Drive-In Shows," New York Times, 20 August 1950, p. 42.

[9]"Parking Meters Hit as Congestion Spur," New York Times, 28 September 1949, p. 29.

[10]"Drive-Ins as 'Highway Hazards' Probed by Pensy Commission," Variety, 6 June 1949, p. 25.

[11]"Drive-Ins Seen Highway Menace By State Groups," Variety, 12 July 1950, p. 7.

[12]"Drive-In Theatre Is Rejected Here," New York Times, 12 October 1950, p. 43.

[13]"Zoning Regulations and Legal Decisions," Theatre Catalog 1949-50, pp. 242-247.

[14]"Drive-in Theatres and their regulation," American City, February 1950, p. 122.

[15]"Zoning Regulations and Legal Decisions" article, p. 245.

[16]Ibid., p. 245.

[17]People ex rel. Trust Co. of Chicago et al. v. Village of Skokie et al., 97 N.E. 2d 310 (1951). When the ordinance was declared unconstitutional, the amusement company went ahead and opened up a 2,200-car drive-in theatre. The village board, meanwhile, passed a new ordinance making it virtually impossible for further drive-in constructions in their village. See, "2,200-Car Ozoner Launched in Chi.," Variety, 30 August 1950, p. 14.

[18]State ex Castle National Inc., et al. v. Wickcliffe (Village) et al., 50 Ohio Law Abstract 529 (1947).

[19]Connell v. Town of Brunswick, 172 N.Y.S. 2d 266 (1958).

[20]U.S. Census of Business: 1954, Vol. V, Selected Services Trades--Summary Statistics (Washington, D.C.: U.S. Government Printing Office, 1957), p. 16. To avoid confusion about the actual number of drive-ins, only U.S. Census Bureau figures will be used from now on in the belief that they are likely to be the most accurate. A colloquial definition of the word "ozone" refers to it as "clear, invigorating, fresh air." It is not known when or where this word became a substitute for drive-in theatres.

[21]Anthony Downs, "Drive-Ins Have Arrived," Journal of Property Management 18 (March 1953), pp. 149-162.

[22]U.S. Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Bicentennial Edition, Part 2, (Washington, D.C.: U.S. Government Printing Office, 1975,) p. 716.

[23]The Sindlinger study is cited in Austin.

[24]This idea is given support in Dana L. Thomas, "Flicker of Hope? Things May Be Looking Up for the Movie Theatre," Barron's, 23 June 1958, pp. 3, 17-19.

[25]U.S. Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Bicentennial Edition, Part 1,(Washington, D.C.: U.S. Government Printing Office, 1975,) p. 40.

[26]This opinion is offered in "Drive-In Film Business Burns Up the Prairies," Life, 24 September 1951, pp. 104-106, 108.

[27]F. Leslie Smith, Perspectives on Radio and Television: An Introduction to Broadcasting in the United States (New York: Harper & Row, 1979), passim.

[28]The Sindlinger study found that from 1946 to April, 1953--when television was first being adopted--5,038 theatres closed, of which 4,696 were hardtops (23.8 percent of all four-wallers) and 342 were drive-ins (11.4 percent of all drive-ins).

[29]1957 International Motion Picture Almanac (New York: Quigley Publishing Co., Inc., 1957), passim. The idea of drive-in theatres being more popular in less urbanized areas was borne out in a 1976 study conducted by the Morton Research Corporation. See, Mortion Research Corporation, The Movie Entertainment Industry: An Economic, Marketing, and Financial Study of the Motion Picture and Movie Theatre Market (Merrick, N.Y.: Morton Research Corporation, 1976).

[30]Rodney Luther, "Drive-In Theaters: Rags to Riches in Five Years," passim.

[31]1950-51 International Motion Picture Almanac, p. 8. In one Canadian province, Quebec, drive-in theatres were outlawed until sometime in the Sixties. See, Garth Jowett, Film: The Democratic Art (Boston: Little, Brown, 1976), pp. 352-353.

[32]"Mexico Into Drive-In Field," Variety, 16 November 1949, p. 34.

[33]"ABPC Told Drive-Ins Would Help Its Gate," Variety, 10 August 1949, p. 22.

[34]Anthony Downs, "Drive-Ins Have Arrived." See also, Leo A. Handel, Hollywood Looks at its Audience: A Report of Film Audience Research (Urbana: The University of Illinois Press, 1950), pp. 208, 210-211.

[35]Rodney Luther, "Marketing Aspects of Drive-In Theaters." See also, Rodney F. Luther, "Who Are the Drive-In Patrons?" Theatre Catalog 1949-50, pp. 196-200.

[36]Ibid., p. 46.

[37]"Drive-Ins Creating New Audiences For Pictures, Says Bill Rodgers," Variety, 20 July 1949, p. 18.

[38]Steuart Henderson Britt, "What is the Nature of the Drive-in Theater Audience?" Media/scope 4 June 1960, pp. 100-102, 104.

[39]"Four-way movie for autocine's parkers," Architectural Forum February 1950, p. 129.

[40]George M. Petersen, "Drive-In Theatres of Today and Tomorrow," Theatre Catalog 1949-50, pp. 233-236.

[41]Wallace Agey, "Indoor Drive-In--An Idea for the Future," Theatre Catalog 1952, pp. 146-149.

[42]"U.S. Film Theatres Show Drop," New York Times, 23 May 1956, p. 38.

[43]Rodney Luther, "Changing Economic Structure," p. 52.

[44]"Aver Drive-Ins Up Indoorers," Variety, 14 December 1949, p. 3.

CHAPTER IV

ENTREPRENEURS AND THEIR GIMMICKS

"Fad! Let me tell you the drive-in theatre is no fad," Harvey Elliott told an interviewer in 1949.[1] "This is a country on wheels. We like to eat on wheels, telephone on wheels, and listen to the radio on wheels. Why not see movies on wheels?"

Elliott was manager of the 900-car Whitestone Bridge Drive-In in the Bronx, New York, and he was right. America in the early 1950s was a nation on wheels and many of those who owned automobiles did enjoy watching movies at drive-ins. Some of them claimed to be driving up to fifteen miles at a time to attend a drive-in, bypassing more conventional theatres along the way.[2] But Harvey Elliott's observation doesn't tell the whole story. Americans may have loved driving to drive-ins, but certainly a large part of the credit for getting them there in the first place has to go to the drive-in operators.

In the early years, most drive-ins were operated by independent operators who brought to their jobs a liberal dose of enthusiasm and showmanship that went a long way in making their drive-ins a success.[3] Such enthusiasm prompted the keynote speaker at a 1956 meeting of the National Allied Drive-In convention in Cleveland to remark that these operators brought "new blood" to the motion picture industry. "They have done things differently than the conventional theatre operator and, I firmly believe have added new spice,

zest, vigor and intelligence to the exhibition field," Horace Adams, the speaker, said.[4]

Stanford Kohlberg was typical of the new breed of drive-in entrepreneur. He had gone broke managing movie theatres before the war and ended up working in a war plant. There he brooded over his plight and that of his fellow workers and dreamed of a new kind of amusement for the average family.

"I learned what it was to work all day at a greasy machine job, doing the same thing over and over," Kohlberg recalled. "I was frantic for relaxation. I know what it is for the man with four or five kids to have to dig into his pocket for an evening out. I thought, if a father and mother and all the kids could go to one place and have a good time together, that would be the greatest thing in the world." In 1948 Kohlberg's dream came true. With the financial backing of two Chicago businessmen, he purchased an 87-acre tract of land in suburban Oak Lawn, Illinois, and opened a 1,200-car drive-in. By 1953, Kohlberg had enlarged his theatre to accommodate 1,875 cars, plus 1,000 seats for walk-in patrons and had installed electric in-car heaters so he could stay open all year.[5]

Kohlberg was not the only success story. Walt Saunders and Bob Johnson, two enterprising Air Force majors from the Washington, D.C. area, started their first drive-in in 1949 with only $2,000. By 1956, the pair owned eight drive-ins

valued at more than a million dollars.[6] William Warnken and Bill Mitchell of Oneonta, New York, turned a potato field into a 544-car drive-in that featured a minature golf course and a driving range and was valued at $75,000. In their second year of operation, the pair told an interviewer in 1950 that they were grossing between $3,000 and $4,000 a week and expected to pay off their loan within another year.[7] In Southern California, Robert L. Lippert opened his first drive-in in 1944 and by 1956 he had parlayed his investment into a chain of twenty-three drive-ins stretching from El Centro, California, near the Mexican border, to Medford, Oregon.[8]

Drive-in operators always were conscious of their image, particularly since their theatres acquired an early reputation as a place for backseat romance. Variety once labeled them "passion pits with pixs"[9] and a former president of a Texas drive-in theatre group freely admitted that "couples used to pay a fee just to park and get protection."[10]

When drive-ins began to expand in the early 1950s, most operators quickly realized that families with young children made up most of their audience and they began to do all they could to win that business and downplay the "passion" reputation.

In Armonk Village, New York, for instance, W. Grant Hague, president of a syndicate interested in building a

drive-in there, denied his theatre would mean more traffic and "an influx of necking couples." Hague said drive-ins attracted respectable family groups, and added, "Babysitters have become an expensive luxury and drive-in patrons have solved the problem by putting their youngsters to sleep on the rear seats of their cars."[11]

Leon Rosen, a manager for Fabian Theatres, a Mid-Atlantic states chain, admitted that a fellow might put his arm around a girl at a drive-in, but he added, "there's one thing you don't get in the drive-ins that you get inside. That's the guy on the prowl, the seat changer who molests lone women. There's none of that in the drive-in."[12]

Harvey Elliott also told his interviewer that the only thing that slowed his business was an "ugly rumor" that drive-ins were perfect for neckers. He denied that this happened at his theatre. "I had a police officer check the cars one night and he reported that no one was paying the least bit of attention to anyone else," said Elliott, who added, "Of course, we were showing an exceptionally good movie that night." Elliott estimated that couples with young children accounted for 86 percent of his business. "Children under twelve are admitted free, and we've got a bottle-warming service for babies," he said.[13]

The services Elliott offered were only two of many that most drive-in operators had for their customers. For adult patrons, there were such diversions as shuffleboard, horse-

shoe pitching, golf ranges and dance floors. Playgrounds, complete with merry-go-rounds and slides, wading or swimming pools and sometimes free pony rides, were common sights at most drive-ins, but the attractions for children didn't end there. In 1949, Claude Ezell and Associates built monkey villages at nine of their Texas drive-ins. Each village had fifteen to twenty monkeys and one, in Austin, also featured a miniature train ride for children. The villages became instant hits, and the owners felt that many patrons might not have normally visited their theatres otherwise.[14]

Some drive-ins offered services to attract female members of the family. In Memphis, Tennessee, Barney Woolner operated a laundry service at his drive-in. A housewife could drop off her laundry as she entered the theatre and pick it up, laundered and dried, when the movie ended.[15] Other drive-ins offered free diaper services[16] while attendants at one California drive-in took your shopping list as you entered the theatre and later delivered the groceries to your car while the movie was in progress.[17]

The Westbury Drive-In in Nassau County, Long Island, in addition to its playground and supervised nursery, provided a personal telephone service for professional people.[18] But the Woodbridge Drive-In in Woodbridge, New Jersey, probably had the most unusual personal service. Walter Reade, who owned forty-four theatres in New York and New Jersey, let his drive-in patrons set up charge accounts in 1949. Custom-

ers, many of whom had been negatively affected by strikes and production cutbacks, were given credit books and told they could pay back what they owed within a reasonable time.[19] A year later Reade dropped the idea, claiming too few patrons took advantage of the charge-it plan to merit the headaches and expense of accounting and collection.[20]

Insects were always a problem for drive-in operators, but Jack Farr, manager of the Trail Drive-In in Houston, Texas, claimed to have an answer. Instead of playing up the pictures at his theatre, Farr's newspaper ads stressed a "swing fog" device that killed mosquitoes and other insect pests that preyed on patrons. The ads featured a drawing of the device, "a pulse-jet item that atomizes a liquid insecticide into a dense, clinging fog," and patrons were invited to come out and "see this machine work."[21]

Many drive-in services were geared to the family's automobile. The Gratiot Drive-In in suburban Detroit, for instance, hired attendants who roamed the theatre grounds cleaning dirty windshields.[22] One California drive-in was said to rub a patron's windshield on a rainy night with a wet sack of Bull Durham in order to eliminate any distortion caused by the rain.[23] Other drive-ins had tow trucks on hand in case a patron's car developed a flat tire or a dead battery after the movie.

One drive-in operator in Rochester, New York, told potential customers through radio commercials that they did

not need to own a car to see a picture at his theatre. "We have fifty cars for customers just like you," the commercial said. "Just take a bus to the drive-in. You can buy a ticket on the bus. When you get there, we'll place you in one of our cars which is parked in the drive-in theatre."[24] And, for those in Texas without cars, some drive-ins installed rails behind the last ramp where horses could be tethered and riders could watch the pictures. These "gallop-ins" became so popular that a few northern operators borrowed the idea.[25]

Services were not the only devices drive-in operators used to attract customers. A number of drive-ins featured novelties, some of them quite unusual. For instance, the Oasis Drive-In in Bensenville, Illinois, featured a desert motif. A turbaned "Arab" greeted customers at the entrance and directed them under a neo-Taj Mahal archway and past waving palms and a burbling waterfall.[26]

Near Asbury Park, New Jersey, Edward Brown, Jr., a former Navy flier, opened what he called the "world's first fly-in, drive-in" in 1948. Planes could land at the airstrip adjoining Brown's 500-car drive-in, then taxi to a ramp facing the screen where individual speakers permitted the pilot and passengers to enjoy the show from their plane. When the plane's occupants were ready to leave, a jeep hauled the plane back to the landing strip for a take-off.[27] Brown's

idea caught on elsewhere and fly-in, drive-ins were established in Belmar, New Jersey[28] and St. Ansgar, Iowa.[29]

James Beach, manager of a drive-in theatre near Winter Haven, Florida, discovered that his patrons often brought their fishing equipment to his drive-in and, instead of watching the movie, they fished for speckled perch and black bass in Lake Hartridge, which adjoined the theatre. Beach decided to advertise when the fish were biting and they were often given top billing on the marquee outside the theatre. As a result, Beach became one of the most successful drive-in operators in Florida.[30]

And in Urbana, Missouri, patrons at the Multiscope Drive-In had no trouble seeing the picture because they had their own screen. Patrons entered the theatre and parked on the rim of a circle, measuring 320 feet in diameter. The projection booth located at the center of the circle projected the picture onto forty-two individual transparent plastic screens, each measuring 30 by 40 inches and positioned on the circumference of the circle. The only drawback was that the drive-in could accommodate only forty-two cars, but theatre owner Tom Smith hoped eventually to enlarge his theatre and then sell or franchise his idea to others.[31]

Perhaps the most unusual novelty belonged to Norman Bonneau of Brattleboro, Vermont. Customers at his theatre could spend 75 cents each and watch the movie from their car, or, for $16 a couple, they could retire to Bonneau's

Theatre Motel, where each room looked out on a 100-foot wide movie screen. With a loudspeaker in each room, the customers could simply lie back and enjoy the movie.[32]

Live entertainment often was used to attract customers. Local disc jockeys sometimes played records before and after movies. In Los Angeles, Pacific Drive-In Theatres presented vaudeville acts one night a week at its theatres as a way to increase summer business.[33] In Ohio, Nashville country and western singer Bradley Kincaid performed on the roof of one drive-in concession stand, and he found an enthusiastic audience that showed its appreciation by honking car horns.[34] In Kenosha, Wisconsin, a drive-in owner hired a strongman to pull an auto through the main part of town as part of a promotion for one of his movies.[35]

Not every theatre owner believed services or novelties were the best way to attract drive-in customers. One veteran manager told a reporter for the Saturday Evening Post in 1950 that he thought "this carnival stuff cheapens the business." He said the biggest mistake was in letting children into the drive-in free of charge. "They (the children) can't go to the indoor houses for nothing, so a lot of people think we show only rotten pictures and they stay away," the manager complained.[36]

But, as Anthony Downs found in 1953, most drive-in operators favored the "carnival stuff."[37] Downs said bank nights, scrip for free gas at nearby service stations, nylon

stocking giveaways, dollar-a-car nights, speedometer Bingo, free dishes and other come-ons often were used to liven up otherwise dull mid-week evenings.

"They (the drive-in operators) get patrons accustomed to attending the drive-in and give it an air of activity, even if they do not always produce direct profits," Downs said. "These 'rackets' as they are known in the movie-world, have been connected with movie theatres for a long time, and they fitted naturally into the drive-in promotion pattern."[38]

Sometimes, however, a promotion could backfire. That's what happened when Associated Drive-In Theatres of Pittsburgh announced they would begin to distribute, free of charge, calendars of Marilyn Monroe in a nude pose. The plan proved so popular that the theatres soon ran out of the "nude" calendars and began passing out substitute calendars showing the actress in a normal pose. The excitement created by the calendars soon came to the attention of law enforcement officials and, in particular, Allegheny County District Attorney James F. Malone, who promptly issued an order banning distribution of the calendars. He also threatened to seek a jail sentence for anyone capitalizing on the calendars. Malone's actions also came to the attention of Darryl F. Zanuck of Twentieth Century-Fox who commended the district attorney. "We feel sure other law enforcement officials will also take summary action against those who,

for their mercenary purposes, have continued to traffic in these reproductions," said Zanuck, adding, "Miss Monroe shares our gratitude for the action you have taken."[39]

In Indianapolis, Indiana, a drive-in operator had to admit 137 Purdue University students after they showed up in an old school bus for the theatre's dollar-a-carload night promotion.[40]

Certainly one of the most profitable aspects of any drive-in operation was the concession business. Rodney Luther found that 30 to 40 percent of a drive-in's total admission receipts were made up of concession stand sales.[41] Another survey estimated that sales of candy, soft drinks, hamburgers, cigarettes and other refreshments accounted for 28 to 40 cents of each admission dollar.[42] Most drive-ins had a centrally located concession stand instead of food vendors selling goods among rows of cars. At some large drive-ins, the rush to the refreshment stand during an intermission posed a real problem. But Samson Berman designed a cafeteria plan at the 110 Drive-In between Melville and Huntington, Long Island, that could serve as many as 3,000 people during an 18-minute intermission. Berman had eight traffic lanes leading to food tables. At the beginning of each lane, customers picked up a cardboard tray that could hold a full meal. All the food was served in disposable containers.[43]

The popularity of drive-in concession stands did not go unnoticed in Hollywood. One film executive is said to have approached a drive-in operator to suggest that the movie company get a percentage of refreshment sales since it was the movie that brought in customers. The operator set the executive straight: "The worse the pictures are, the more stuff we sell."[44]

At the same time, operators could not rely solely on gimmicks, novelties or even concession stand sales to be successful. The movie had to be one customers wanted to see. In the days prior to the Paramount decision, this was a real problem for drive-in operators. They often had to put all of their showmanship abilities to work in promoting what movies they could get from distributors.

Pearce Parkhurst, managing director of the Lansing Drive-In Theatre in Lansing, Michigan, explained how this process sometimes worked. For a post-Labor Day promotion he planned Parkhurst booked the film, Mom and Dad, from Hygiene Productions of Wilmington, Ohio, and put his promotional ideas to work.[45] Prior to the film's debut Parkhurst placed labels on 700 speakers at his drive-in which read: "Mom and Dad coming soon to the Lansing Drive-In Theatre." Concession stand employees wore silk badges announcing the show. Two rubber stamps with teaser copy were used to imprint all out-going mail, including a 500-piece weekly mailing list. The

stamps also were used on paper bags in grocery, candy and drug stores in the city.

Twenty days before the opening, Parkhurst had carhops pass out books of matches advertising the film. Special copy on the picture was inserted on the theatre's neon-sign clock. Six "coming soon" banners hung in front of the theatre and flagpole-type banners were displayed at the entrance and exit to the theatre. A special boxoffice was erected in front of the theatre to handle advance ticket sales and to give out information on the picture. Teaser ads were run in local newspapers, and a four-page tabloid newspaper with features about the film was delivered door-to-door two weeks before the opening. Handbills also were made and distributed in local stores.

Parkhurst invited the governor of Michigan, U.S. Senator Arthur Vandenburg and President Truman to the opening, but each cancelled; the senator because he was ill, and the governor and President due to other commitments.

On opening day, Parkhurst pursuaded the mayor of Lansing to present the keys of the city to the film's producer, who was flown in from Hollywood that afternoon. Following that ceremony, a buffet meal for sixty people was held at a local restaurant. After the meal, a parade, featuring an infantry band, marched to the theatre where a ribbon-cutting ceremony was held before the movie began.

Parkhurst said he broke all boxoffice and attendance records during the two weeks the film was shown. He also estimated that he received 133 inches of free newspaper space during the film's showing. "Publicity must build goodwill as well as curiosity," said Parkhurst, who added, "all publicity must be honest in that it does not disappoint."[46]

Drive-in operators like Parkhurst always were looking for ways to increase their earnings potential, either by getting local merchants to advertise products and services on the movie screen during intermissions or by creating goodwill by making their drive-ins available for community activities. It therefore did not come as too much of a surprise to Carl Ezell and Associates when Aaron Kruger, a member of the board of directors of the Austin, Texas, symphony, suggested that the orchestra perform the world's first drive-in symphony concert at the Chief Drive-In. Some 1,600 people in approximately 400 cars showed up for the Sunday afternoon concert and heard the 65-piece, demin-clad orchestra perform works by Bizet, de Falla and Strauss. A spotcheck of the audience revealed that 58 percent of them had never attended a concert.

Ezra Rachlin, the symphony's music director, was pleased with the public response, but he said he was somewhat nonplussed when a sustained blast of 400 horns greeted the orchestra after its first number. "For a moment I had the crazy idea it was an air-raid alarm," Rachlin said. "Then I

thought maybe there was a fire and then I got the horrible idea that maybe they didn't like our music. The truth finally dawned on me, but I must say, I was a bit unnerved."[47]

Religious denominations often rented drive-in theatres, particularly in the summertime when they found that many in their congregations were suffering from "protestantitus." Among the most famous drive-in preacher was the Rev. Robert Schuller, who started his first drive-in church in 1955 when he stood on the roof of a snack bar at an Orange County, California, drive-in and began to preach. Schuller continued to preach at the drive-in for several years, even after his congregation built him a regular church.[48] By 1967, at least seventy drive-in churches were reported around the country.[49] Most were located in California and Florida,[50] but others existed in Massachusetts[51] and New Jersey.[52]

"The genius of these churches is not just that the people sit in their cars," Harold Hakken, head of development for the Western Synod of the Reformed Church of America, said in 1973. "Drive-in churches offer a total program, many of them more full blown than the traditional church."[53] The mechanics of most drive-in churches were similar. Ushers distributed printed hymns as the cars rolled in, helped plug in speakers, took car-to-car collection during service or requested worshippers to place donations in a bin on the way out. Some drive-ins also passed out, car-to-car, wafers and grape juice for communion.[54]

Most drive-in ministers agreed that the services attracted the sick and disabled, parents with small children who could not be left home alone, celebrities trying to shun crowds and many unchurched Christians who just liked to meditate by themselves.

Gloria Henning, who attended church services at the Paramus, New Jersey Drive-In, told an interviewer in 1973 why she thought people attended open-air services.

"A lot of people feel like hypocrites by getting dressed up to go inside a church," Henning explained. "But here you can just drive in, hear God's word and drive out."[55]

NOTES

[1]"Moon-Washed," New Yorker, 1 October 1949, pp. 20-21.

[2]Rodney Luther, "Marketing Aspects of Drive-In Theatres," Journal of Marketing 15 (July 1950), p. 45.

[3]A census of drive-in theatres prepared by the Motion Picture Association of America, Inc. in 1948 showed that only 32 percent of all drive-ins, containing 40 percent of total car capacity, were operated by circuits of four or more theatres. This information is contained in the Luther article, p. 44.

[4]"Drive-Ins Revive Live Talent," Variety, 7 March 1956, p. 1.

[5]Frank J. Taylor, "Big Boom in Outdoor Movies," Saturday Evening Post, 15 September 1956, pp. 31, 100-102.

[6]Ibid., p.100.

[7]John Durant, "The Movies Take to the Pastures," Saturday Evening Post, 14 October 1950, pp. 24-25, 85, 89-90.

[8]Taylor article, p. 31.

[9]This label is quoted in the Durant article. The only reference in Variety that the author found was, "Dusk-to-Dawn Ozoners (Passion Pits With Pixs) K.O.d by San Antone Clergy," Variety, 1 April 1953, p. 1.

[10]Renata Adler, "Drive-Ins, Surreal and Successful," New York Times, 7 April 1968, Sec. II, p. 1.

[11]"$7,000,000 Business Development Is Planned on Armonk Airport Site," New York Times, 6 February 1954, p. 21.

[12]Durant article.

[13]"Moon-Washed" article.

[14]Albert H. Reynolds, "Monkey Villages as Promotional Aids," Theatre Catalog 1949-50, pp. 300-302. Operators of the Whitstone Bridge Drive-In Theatre in the Bronx, New York, found out what a problem it could be to have playground equipment at their drive-in. In 1961, the appellate division of the New York Supreme Court ordered to obtain a license for its power-driven playground and amusement equipment even though it did not charge patrons a fee to use

the rides. See, Whitestone Bridge Drive-In Theatre v. O'Connell, 217 N.Y.S. 2d 371 (1961).

[15]"Movies Under the Stars," Reader's Digest, September 1948, pp. 117-119. See also, Katharine Best and Katharine Hillyer, "Movies Under the Stars," Cue, 19 June 1948, pp. 18-19.

[16]Taylor article, p. 100.

[17]Thomas M. Pryor, "Movie Novelty Develops into Big Business," New York Times, 4 September 1949, Sec. II, p. 3.

[18]"New Drive-In Theatre," New York Times, 25 July 1954, Sec. VIII, p. 4.

[19]"Jersey Moviegoers can say 'charge it,'" New York Times, 2 September 1949, p. 14.

[20]"Reade Drops Ozoner Charge Account Plan; Finds Few Takers," Variety, 23 August 1950, p. 3.

[21]"Bugs Get Billing," Variety, 24 June 1953, p. 4.

[22]"What Makes a Drive-in Successful?" Theatre Catalog 1952, pp. 156-160.

[23]"Twice As Many Drive-In Theaters?" Business Week, 1 January 1949, p. 44.

[24]"Ozoners 'Take Bus Here, We'll Supply Your Car,'" Variety, 29 July 1953, p. 1.

[25]Taylor article, p. 100.

[26]"The Drive-In Lie-in," Newsweek, 8 July 1963, p. 78.

[27]"Fly-In, Drive-In Theatre Is Opened in New Jersey," New York Times, 4 June 1948, p. 13 and "Fly-In Theatre," Science Digest, September 1948, p. 94.

[28]"Drive-In Film Business Burns Up the Prairies," Life, 24 September 1951, pp. 104-106, 108.

[29]"Fly-In Movie Planned in Iowa," New York Times, 4 July 1953, p. 25.

[30]"Fish and Films," American Magazine, July 1953, p. 57.

[31]"New Drive-In With 42 Individual Film Screens Stirs Midwest Exhibs," Variety, 12 August 1953, p. 1.

[32]"The Drive-in Lie-in," article, p. 78.

[33]"Vaude Bills Added Lure For Summer Drive-Ins," Variety, 18 May 1949, p. 44.

[34]"New Kinds of Applause; Audience at Drive-Ins Give Acts the Klaxons," Variety, 17 August 1949, p. 2.

[35]"Drive-Ins Dominate Chi B.O., Seattle, Steady at '48 Level; Hartford Sound," Variety, 24 August 1949, p. 6.

[36]Durant article.

[37]Anthony Downs, "Drive-Ins Have Arrived," Journal of Property Management 18 (March 1953): 149-162.

[38]Ibid., p. 151. The Theatre Owners of America distributed a 14-page booklet detailing "ticket-selling ideas for drive-in theatre showmen" in 1958; 59 individual ideas "for promotion and exploitation" were detailed. This information is mentioned in, Bruce A. Austin, "The Development and Decline of the Drive-In Movie Theatre," in Current Research in Film: Audiences, Economics and Law, Vol. 1 (Norwood, N.J.: Ablex Publishing Corp., forthcoming).

[39]"Ozoners Cuffo Marilyn Photos (Nude or Draped) Bring Pitt Jail Threat," Variety, 29 July 1953, p. 1.

[40]Madge D. Stiefel, "Honk if you love drive-ins," Indianapolis Express, 13-26 August 1982, p. 8.

[41]Rodney Luther article, p. 42.

[42]"Twice As Many Drive-In Theatres?" article pp. 44-45.

[43]"Drive-In Theatre Extends Horizon," New York Times, 9 June 1957, Sec. VIII, p. 1.

[44]"The Colossal Drive-In," Newsweek, 23 July 1957, pp. 85-87.

[45]This film told the story of a small-town high school girl who had not been told the facts of life by her squeamish mother and got into "trouble." The mother blames herself for her puritanical attitudes and takes her daughter east to await the birth of the child. At this point in the film, an intermission occurred during which Elliot Forbes, a "famous hygiene commentator," gave a small lecture on hygiene and sold copies of a pamphlet entitled "Secrets of Sensible Sex." The film then resumed with scenes of the actual birth, followed by a few segments of school hygiene

sessions concerning the ravages of venereal disease. Because of its frank subject matter, the film ran into some legal difficulties. In 1948, the director of public safety in Newark, New Jersey, threatened to revoke the license of a theatre showing the film, but a superior court judge ruled that the director did not have this power. When the film was re-released in 1957, the New York State censorship board refused to license the film because it considered the scene showing the human birth to be obscene. On appeal, the state's supreme court ordered the film licensed. And, in 1958, a federal district court upheld the action of the Chicago police chief who refused the film a permit without reason. The U.S. Court of Appeals later said "the absence of any reasons by the censors for their classification is a foreboding guise for arbitrary censorship running afoul of the First and Fourteenth Amendments." For a fuller explanation of the legal difficulties this film encountered, see, Edward de Grazia and Roger K. Newman, Banned Films: Movies, Censors and the First Amendment (New York: R. R. Bowker Company, 1982), pp. 228-229. See also, Hallmark Productions, Inc. v. Mosley et al., 190 F. 2d 904 (8th Cir. 1951).

[46]Pearce Parkhurst, "Special Advertising of the Drive-In," Theatre Catalog 1949-50, pp. 303-309.

[47]"Drive-In Concerts for Prestige and Profit," Theatre Catalog 1952, pp. 200-201.

[48]"Park and Pray," Newsweek, 10 May 1976, pp. 103-104. See also, Jeffrey K. Hadden and Charles E. Swann, Prime Time Preachers: The Rising Power of Televangelism (Reading, Mass.: Addison-Wesley Publishing Company, Inc., 1981), pp. 20-30 and "Drive-In Devotion," Time, 3 November 1967, pp. 83-84. At his new $3 million Crystal Cathedral in Garden Grove, California, Schuller can push a button which opens two, 25 feet high sections of glass wall before him, leaving only open air between himself and nearly 1,500 worshippers in 500 cars parked below him.

[49]"Drive-In Devotion" article, pp. 83-84.

[50]"Reformed Church in America Emphasizes Drive-In Services," New York Times, 22 July 1973, p. 44.

[51]"Drive-In Theatre Serves as Church on Sunday," New York Times, 13 August 1951, p. 12.

[52]"Church to Expand Drive-In Services," New York Times, 9 September 1973, p. 75.

[53]"Reformed Church in America Emphasizes Drive-In Services," p. 44.

[54]Ibid., p. 44.

[55]"Church to Expand Drive-In Services," p. 75.

CHAPTER V

BATTLING THE MOVIE ESTABLISHMENT

On October 19, 1949, David E. Milgram opened his 900-car Boulevard Drive-In on a major highway between Allentown and Bethlehem, Pennsylvania. Milgram was an experienced theatre operator who knew it was the wrong time of the year to be opening a drive-in, particularly in the northeastern part of the country. But Milgram planned to show only old pictures during the five-week "dress rehearsal" and then run first-run motion pictures when he reopened in the spring. During that fall, Milgram contacted district managers of eight major film distributors to seek permission to bid on first-run films. Six of the managers refused Milgram first-run status but did offer to rent him films twenty-eight days after they ran at conventional theatres in Allentown and Bethlehem. Milgram had already spent $260,000 on his theatre and he was not about to settle for showing only second-run or "B" movies. He decided to sue the distributors, believing he was the victim of a conspiracy.

During the trial, representatives for each distributor testified that they had arrived independently at their decisions not to grant first-run status to Milgram and there had been no agreements among them. They claimed that their denials were because the drawing power of a conventional downtown theatre was greater than that of a drive-in, and that the former could have afternoon and early evening performances, while the latter was limited to hours of

darkness. The distributors also mentioned the possibilities of Saturday matinees at regular theatres, the shorter drive-in season and weather conditions as reasons for denying first-run status.

The distributors added that showing a first-run movie at a drive-in reduced the income derived from subsequent runs. The distributors asserted that first-run showings were, in a sense, showcases for subsequent runs in that first-run showings at a downtown theatre gave a picture prestige which was important in "establishing" it in neighborhood areas.

The district court judge, noting the "consciously parallel" practices of each distributor in the case, concluded that a conspiracy did exist in violation of Section 1 of the Sherman Antitrust Act.[1] The distributors appealed to the U.S. Court of Appeals, Third Circuit, and were joined by the Hamilton Street Realty Company and others who operated conventional theatres in Allentown and Bethlehem. They argued the evidence was insufficient to justify "an inference of agreement" among them.

The appeals court, however, said it believed the district film distribution managers were putting into effect in Allentown a general program adopted and adhered to by the directing heads of each distributor to relegate drive-ins to second-run status. "We add that each distributor refuses to license features on first-run to a drive-in even if a higher

rental is offered," the court said. "This strengthens considerably the inference of conspiracy, for the conduct of the distributors is, in the absence of a valid explanation, inconsistent with decisions independently arrived at."

The appeals court went on to note similarities between the Milgram and Paramount cases and said that even though none of the distributors operated one of the conventional theatres in this case, "the denial of first runs to the Boulevard, a purely local situation, was thus merely a condition resulting from the nationwide policy (of denial)."

In dismissing the claims of the intervenors, the court said that while the decision might injure them economically, "they can hardly contend that they have a legal right to be free from competition."[2]

Milgram was not alone in taking legal action to gain a better deal from film distributors. Drive-in operators in Chicago; Philadelphia; Buffalo; South Bend, Indiana; Rochester, New York; and Ridge Pike, Pennsylvania, also were threatening in 1949 to sue distributors for the right to bid on first-run films.[3] In April, 1953, seven major film distributors agreed to a $150,000 out-of-court settlement in a case involving two California drive-in companies, the Skyline Drive-In Theatre Corporation and California Drive-In Theatre Corporation. The theatre companies originally had sought $1.7 million in damages, claiming that distributors had shown favoritism to conventional theatres in bidding for

first-run pictures.[4] A year later, owners of the Maple Drive-In Theatre in Circleville, Pennsylvania, named the major Hollywood studios in a $1.5 million antitrust suit alleging that a "national conspiracy" existed among studios to deny drive-ins first-run showings.[5] Another Pennsylvania theatre operator, Basle Theatres, Incorporated, owners of the Mount Lebanon Drive-In Theatre at Donaldson's Crossroads, succeeded in convincing at U.S. District Court judge that defendant film distributors had, since 1934, maintained a rigid system of runs, clearances and availabilities of films in the Pittsburgh area that relegated them to third-run movies.[6]

In at least two instances, drive-in operators came out on the losing end in their antitrust suits. The first of these cases occurred in 1953 when the Seventh Circuit of the U.S. Court of Appeals ruled that six Chicago area drive-in operators had conspired to fix prices at their theatres by agreeing to a uniform per customer admission price and by doing away with group admission prices based on a fixed charge per automobile.[7] Six years later, the U.S. Court of Appeals, Second Circuit, held that film distributors had not conspired in renting films to the Peekskill Theatre in Peekskill, New York, especially after the drive-in won the right to competitive bidding.[8]

The problem of trying to get a better deal from film distributors had plagued drive-in operators and other inde-

pendent exhibitors for years. The federal government's attempts to break up the motion picture monopoly had begun as early as 1925, but the first major court decision did not come until November, 1940. That decision, which became known as the first Paramount decree decision,[9] attempted to break up "block booking" practices among five of the major motion picture producers. The decision also tried, through its recommendations for trade showings and an arbitration process, to create a more equitable system of runs and clearances for exhibitors. But, as theatre owners and government officials soon found, the court's provisions did little to change the vertical integration pattern of the motion picture industry.

In August, 1944, the Department of Justice again went after the motion picture companies, this time forcing them to divorce their production and distribution branches from their exhibition branches.

Rodney Luther believes drive-in operators were helped in two ways by this U.S. Supreme Court order, which was finally approved in 1948.[10] Luther says the decision eliminated much of the "tender paternalism" which film producers had showered on their own theatres to the exclusion of others, and it rejuvenated competition among theatres. "One net effect of the Paramount decree has been that drive-in theatres have had the opportunity to develop in an atmosphere and in a manner far different from what might have

been the case ten or fifteen years ago," said Luther, who added, "And although most drive-in exhibitors emphatically deny that they have been shown any degree of largesse by the industry since 1948, it is nevertheless true that they have benefited greatly by the decree."[11]

For most drive-in operators, the Paramount decision could not have come at a better time. In the summer of 1949, drive-in operators could boast of a 10 percent increase in their business,[12] while Variety was reporting a 20 percent drop for indoor exhibitors.[13] In California, theatre circuits were considering a price-cutting war to protect regular theatres against inroads from drive-in film rentals.[14] Film distributors in 1950 were estimating that 10 percent of all their business--about $35 million--was now coming from drive-in film rentals.[15]

Drive-in operators also could point out that where they had been allowed to compete on an equal basis with conventional theatres they had been quite successful. A case in point was in Denver, Colorado, where the world premiere of Warner's Colorado Territory opened simultaneously in June, 1949, at the downtown Broadway Theatre and at the West Drive-in. An estimated 7,000 people in 1,500 cars waited two hours in a heavy rain to see the premiere at the drive-in, and by week's end the drive-in owner reported that his gross receipts nearly matched those of the regular theatre.[16]

Despite all these glowing reports, however, the vast majority of exhibitors, including drive-in theatre operators, believed in 1953 that the second Paramount decree decision, instead of alleviating their problems, had created a series of new ones.

Simon N. Whitney says one consequence of the Paramount decision was that Hollywood studios began making fewer films.[17] A tabulation of features shows that in 1946 the number of feature films totaled 397, but by 1953 that number had fallen to 290 films a year.[18] A survey of exhibitors found that divorcing production and exhibition removed the incentive Hollywood once had to occupy the screen time of affiliated theatres with a steady flow of films.[19]

Related to product shortages was the problem of film rentals. Whitney says one reason for higher rentals was the trend in Hollywood for spectacular pictures which raised the price of each film because fewer were being made and those that were had become more expensive to produce. Competitive bidding among exhibitors, including some drive-in operators, also was inflating the price of films.[20]

By 1953, motion picture exhibitors had turned to Congress for help. After receiving hundreds of letters from exhibitors, a U.S. Senate select committee on small business agreed to open public hearings on the status of the motion picture industry.[21] The first of the public hearings began in Los Angeles on April 2, 1953. Among the first witnesses

was Guy William Meek, who owned the Palo Alto Drive-In Theatre in Palo Alto, California, and had interests in two other California drive-ins. Meek claimed that film distributors had denied his request for competitive bidding and one, MGM, had refused to rent him films less than a year old for any of his dollar-night promotions.

Meek also charged that his distributors in San Francisco often changed their booking arrangements with him. He thought most drive-in operators would accept any run that ultimately was considered proper for them, "provided that the price of the product was based upon the run."[22]

Ruben Shor, operator of the Twin Drive-In Theatre in Cincinnati, Ohio, complained about RKO Radio Pictures, Inc., a film distributor, and Walt Disney Productions. Shor said Disney Productions had sent him a strongly worded telegram threatening legal action because it learned he was not going to change his free admissions policy for children and start charging fifty cents for each child. Shor claimed Disney was not part of the film rental agreement he had with RKO.

The film was shown without incident, but when Shor later tried to sign a contract with RKO to show Hans Christian Andersen, he said the distributor now insisted on "a stipulated sum of money for each adult and for each child admitted to see the picture." Shor claimed this contract, which he refused to sign, was a "mere subterfuge to evade the court order against price fixing."[23]

William Zimmerman, an assistant to the RKO domestic sales manager, told the committee that some exhibitors tried to use top quality film products as a "loss leader" to make goodwill for themselves and to sell concession merchandise, especially at drive-ins.

In response to Shor's testimony, Zimmerman claimed that Disney found itself in a position where its picture was being used "as a lure, without compensation to Disney of any kind, to attract children into Mr. Shor's drive-in so that he could make a killing in candy, popcorn another concession sales."[24]

The committee also listened to testimony in Washington, D. C., from other exhibitors and motion picture executives before making its findings available in August, 1953.[25] In its report, the committee said the testimony clearly indicated that the motion picture exhibitors were operating in a "sick" industry. The committee recommended two courses of action: a voluntary system of arbitration and a more forceful and more vigilant policy by the Antitrust Division of the Department of Justice to assure compliance with the Paramount decree.

The committee said that while arbitration was not a "panacea," it would provide an inexpensive and expeditious means for settling many exhibitor complaints, such as clearances and runs, prereleases and competitive bidding. However, the committee stopped short of recommending that film

rentals be subject to arbitration. "The distributor of a motion picture is entitled to receive the best possible price for his product and the exhibitor cannot dictate the price he will pay," the committee report said, noting, "It is evident that exhibitors would never agree to make whole a producer or distributor who lost money on a picture. Conversely, neither should a distributor be required to insure a profit to every exhibitor."[26]

Attempts had been made prior to the committee's hearings to try to resolve disputes through an arbitration system. In 1952, for instance, representatives of the Allied States Association of Motion Picture Exhibitors walked out of negotiations on an arbitration system because distributors refused to include rentals on the list of topics to be arbitrated.[27] Members of the industry's largest exhibitor association, the Theatre Owners of America, at first rejected the idea of arbitrating film rentals, but they later agreed to lobby for it when Allied decided to go along with TOA's proposal to finance independent film productions.[28]

By 1956, a new spirit of cooperation existed between the two major exhibitor associations, but the problems that confronted them had not substantially improved. A Variety survey, for example, showed that as many as 400 antitrust suits had been brought against film distributors seeking total damages in excess of $400 million.[29]

With these concerns in mind, the Senate subcommittee agreed to re-examine the problems of the motion picture industry, and in March, 1956, it ordered a new round of public hearings.[30]

Trueman T. Rembusch, former president of Allied States, was one of several drive-in operators to appear before the committee. He argued that a new philosophy had developed within the motion picture industry that was aimed at changing it from a mass to a class entertainment medium. Rembusch, who owned a small chain of conventional and drive-in theatres in Indiana, said producer-distributors had learned an important bargaining advantage during the wartime shortage of pictures: namely, that as the picture supply diminished, the bargaining power of theatre operators diminished in direct proportion to that supply. "It is my opinion," Rembusch said, "that 60 percent of the decline in the theater's boxoffice and attendance could have been avoided had sufficient pictures been available to the theaters so that a wide choice of selection of pictures could have been offered to theater patrons."[31]

Rembusch recommended to the committee that the Justice Department do more to enforce provisions of the Paramount decree that dealt with fixing admission prices and creating unreasonable and unlawful clearances. He also proposed that a governmental agency, like the Federal Trade Commission,

was needed to impose limits on the percentage of rentals distributors could charge for pictures.

Film rentals continued to be a major concern for most drive-in operators who testified before the committee. In a series of affidavits from drive-in operators associated with Allied States, the message was the same: increasing film rentals were hurting their businesses.

L. C. Tidball, a veteran of twenty five years in the motion picture business, owned the New Isis Theatre and the Parkaire Drive-In Theater in Fort Worth, Texas. Tidball conceded that television was a serious competitor and undoubtedly was responsible for the attendance decline at his theatre. "But as in the case of radio," Tidball added, "I could have coped with this competition and greatly reduced my losses had I had a continuous flow of pictures acceptable to my patrons at film rentals I could afford to pay."

Tidball complained that between 1952 and 1955 his film rental rate had gone from 30 to 38.5 percent. He said this resulted in a net loss for his operation.

"This drastic situation is accentuated by the fact that the very high terms demanded by practically every film company on first-class productions, has necessarily resulted in my refusing to stand for their terms and thus being deprived of the picture or having it dated so late that its value had greatly diminished, if not disappeared," Tidball concluded.[32]

C. D. Jarrett, who owned the Trail Drive-In Theatre in Nevada, Missouri, also complained about film-rental increases and added that demands were increasing for more second-runs on percentage. "This past season one company insisted on percentage for a second run and two weeks before I was to play the picture they booked it into the downtown B house," Jarrett complained, "and the records will probably show this was sold to them flat."

Jarrett said the only reason his theater had been able to continue operation under these circumstances was through revenue from the snack bar.[33]

J. S. Groves, who operated the Post Oak Drive-In Theatre in Houston, Texas, said distributors were still operating an unfair pricing system despite the Paramount decision. He said this system amounted to immense discounts to large, former wholly-owned chain theatres.

He also complained of the practice "of playing a big picture to death downtown" and then forcing independent exhibitors like himself to pay ridiculous terms for these pictures in subsequent runs. "These long holdovers deny the subsequent-run theaters of any good motion picture for their patrons and make it necessary for them to play the picture after it has been milked in the first run."

Groves proposed that a bill be created to regulate film rentals in subsequent runs. The bill would make it unlawful to sell a film to "subrun" exhibitors for a greater percent-

age of their gross than the lowest percentage of gross received from the first-run key theatre in the area of the "subrun" exhibitor.[34]

David C. Forbes, owner of the Ozark Drive-In Theater in Crocker, Missouri, agreed that relief from exhorbitant film rentals was the greatest need of independent exhibitors like himself. "It is disheartening to have to lose all the money I have put into this investment," Forbes said. "I am told by some of the film salesmen that my account is not desirable, but I must first crawl before I am able to walk, and I am investing continually, trying to make my theater a real asset to Crocker."[35]

After hearing all the testimony, the committee released a series of recommendations. As it had done in 1953, the committee insisted that the best method to resolve film rental problems was to leave it to industry members to work out. Similarly, the committee rejected a plan to have Congress establish a Fair Trade Practices Commission that would adopt and enforce rules of fair competition in the motion picture industry. The committee said such a commission was not needed since problems could be more easily handled and settled by exhibitors and distributors.

The committee did support the idea that the Small Business Administrtion, through its Loan Policy Board, consider making loans to theatres so they could install newer sound and projection equipment.

The committee concluded its report by saying that large film companies should do everything in their power to make it possible for independent motion picture exhibitors to continue in business and to realize a fair and reasonable profit. "The time is at hand for a mature and objective appraisal by the industry of all the factors involved in the exhibition of pictures with the goal in mind of rendering assistance to independent theatre owners so that they may be able to thrive and prosper," the committee concluded.[36]

Many independent exhibitors, including drive-in operators, felt that the time for assistance was too late.

NOTES

[1]Milgram et al. v. Loew's, Inc., et al., 192 F. 2d 579 (1951).

[2]Ibid., p. 586.

[3]"Drive-Ins Talk Of Suing For Better Film Clearances," Variety, 17 August 1949, p. 4.

[4]"Drive-In Theatres Settle Film Action," New York Times, 18 April 1953, p. 17.

[5]"Drive-in Theatre Sues Movie Trust," New York Times, 10 October 1954, p. 82.

[6]Basle Theatres, Inc. v. Warner Bros. Pictures Dist. Corp., 168 F. Supp. 553 (1959).

[7]United States v. Starlite Drive-In Theatre Inc., et al., 204 F. 2d 419 (7th Cir. 1953).

[8]Royster Drive-In Theatres v. American Broadcast, Etc., 268 F. 2d 246 (2nd Cir. 1959).

[9]U.S. v. Paramount Pictures, Inc., Commerce Clearing House, 1940-1943 Trade Cases, No. 56072.

[10]U.S. v. Paramount Pictures, Inc. 334 U.S. 131 (1948).

[11]Rodney Luther, "Drive-in Theatres: Rags to Riches in Five Years," Hollywood Quarterly 5 (Summer 1951):401.

[12]Rodney Luther, "Marketing Aspects of Drive-In Theaters," Journal of Marketing, 15 (July 1950):41-47.

[13]Ibid., p. 42.

[14]"Price-Cutting Battle Looms on Drive-Ins," Variety, 15 June 1949.

[15]"See $35,000,000 in 1950 Rentals from Drive-Ins," Variety, 14 June 1950, p. 1.

[16]"Drive-ins Day-Dater Wither Denver 1st Run," Variety, 8 June 1949, p. 9. See also, "All This, and Movies Too," Time 20 June 1949, p. 84.

[17]Simon N. Whitney, "Antitrust Policies and the Motion Picture Industry," in The American Movie Industry: The Business of Motion Pictures, edited by Gorham Kindem (Carbondale: Southern Illinois University Press, 1982), pp. 161-204.

[18]Ibid., p. 176.

[19]Whitney sent out questionnaires to 221 exhibitors and received 41 responses.

[20]Ibid., p. 180.

[21]Motion Picture Distribution Trade Practices, Hearings Before a Subcommittee of the Senate Small Business Committee, 83d Cong., 1st session, 1953 (Cited hereafter as Senate Hearings, 1953).

[22]Guy William Meek, Senate Hearings, 1953, pp. 223-238.

[23]Ruben Shor, Senate Hearings, 1953, pp. 455-465.

[24]"Senate Group Preps Fast Windup of Exhib-Distrib. Hassle in 5 Weeks," Variety, 6 May 1953, p. 7.

[25]Problems of Independent Motion Picture Exhibitors. Report of the Select Committee on Small Business. U.S. Senate, 83d Congress, 1st Session, Report No. 835 (August 3, 1953).

[26]Ibid., p. 17.

[27]Whitney article, p. 183.

[28]"Exhibs Orgs Present Solid Front As D.C. Probe Opens Today (Wed.)," Variety, 21 March 1956, p. 14.

[29]"400 Trust Suits, But Dipping," Variety, 21 March 1956, p. 5.

[30]Motion Picture Distribution Trade Practices -- 1956 Hearings Before a Subcommittee of the Senate Small Business Committee S. Rept. 2818, 84th Cong. 2d sess., 1956. (Cited hereafter as Senate Hearings, 1956).

[31]Trueman T. Rembusch, Senate Hearings, 1956, pp. 70-84.

[32]L.C. Tidball, Senate Hearings, 1956, pp. 559-561.

[33]C.D. Jarrett, Senate Hearings, 1956, pp. 517-518.

[34]J.S. Groves, Senate Hearings, 1956, pp. 569-570.

[35]David C. Forbes, Senate Hearings, 1956, pp. 506-507.

[36]Motion Picture Distribution Trade Practices -- 1956 Senate Report, 84th Cong., 2nd sess., 1956, pp. 52-57.

CHAPTER VI

A FEELING OF PERMANENCE

By 1958, the drive-in theatre industry had reached its highest level of popularity. Statistics compiled by the U.S. Census Bureau that year show that while the number of drive-in theatres declined slightly in thirteen states, the losses were more than offset by significant increases in California, Massachusetts, Michigan, Minnesota, New York and Ohio. In fact, about 290 more theatres were built between 1954 and 1958. This brought the total number of drive-ins to 4,063, the highest number ever built. Texas continued to lead all states with 382 drive-ins. Conventional theatres, meanwhile, continued their downward spiral as 2,425 more indoor theatres closed during the same time period.[1]

The popularity of drive-ins was not confined to the United States. In Canada, as many as 230 drive-ins now were reported in that country.[2] The first drive-in in Italy, the Metro Drive-In Cine, located just outside of Rome, opened in 1957. It had room for 800 cars and was the first drive-in in Europe to offer a bilingual sound system.[3] The theatre was owned by Loew's, who also opened two Australian drive-ins in 1957, a 1,400-car twin screen in Sydney and a 1,000-car theatre in Perth.[4] Drive-ins also were reported in Puerto Rico and parts of Africa.[5]

The drive-in theatre industry also continued to show healthy profit margins in 1958. Total receipts for the industry reached nearly $234 million, an increase of $7 mil-

lion from 1954. Concession sales, which accounted for nearly 22 percent of a theatre's total receipts in 1954, improved in 1958 with drive-ins reporting sales of nearly $52 million at their candy and popcorn counters. And, at least 572 drive-ins, or about 14 percent of the total, reported annual total receipts in excess of $100,000 or more a year.[6]

But, by 1958, concerns also were being raised that the drive-in theatre industry had reached a saturation point. One veteran manager predicted to a Holiday magazine reporter that "a lot of poor fellows are going to lose their shirts" because drive-ins were essentially a fad and too many people were getting into the business. "It's got so every farmer who has a piece of land near a highway thinks all he needs is a bulldozer to grade it, and a bank to put up some money for a screen and a sound system and he's in business," complained the manager. "They'll find out different."[7]

One theatre operators group cautioned its members that "drive-ins theatres in or near small towns are in serious trouble of folding up."[8] And, an earlier Theatre Catalog survey of the drive-in industry found that in the case of fifteen "closed" 35-millimeter drive-ins, most had less than the average car capacity.[9] The survey concluded that "as larger theatres are established in any particular area the 'cow pasture' ozoners cannot compete and fold up unless they are enlarged and improved." One drive-in consultant was predicting that the "real money-makers" would be the 500 to

700-car drive-ins in communities of from 35,000 to 50,000 people.[10]

All of this concern came at a time when, as Anthony Downs has observed, the drive-in theatre industry was moving into a second stage of development. In its first stage, Downs said, a fairly plain drive-in operation holding more than 200 cars could be build for around $50,000. "As long as the novelty of drive-ins endured," Downs said, "small operators could erect their theatres at low cost, show ancient pictures on a low fixed rental basis and take out sizable profits." But two forces, patrons demanding better pictures and more services and increased competition among drive-in theatres themselves, were causing drive-in operators to change their ways.

Downs said operators were beginning to realize that their business had some permanence and many were trying to improve by getting better pictures and adopting technological improvements within the industry. Even with these added improvement costs, Downs said drive-ins were still less expensive than conventional theatres. "A brick and mortar theatre showing the same class of pictures as a good-sized drive-in ususally costs about $250 a seat--and only one customer fits in a theatre seat, whereas distributors estimate that the mythical average car entering a drive-in carried 2 1/2 paying customers and .9 children under twelve," Downs said.[11]

Downs's observations were echoed by drive-in consultant George M. Petersen, who noted that drive-in exhibitors had begun to realize that the surest way to eliminate competition was to erect a first-class drive-in theatre that would discourage "quick dollar boys" from trying to crowd into that particular location.[12]

One way of doing this was for operators to begin to pay more attention to the physical appearance of their theatres. This might include constructing elaborate neon signs and transparent changeable letter marquees or attraction boards. It also might mean stabilizing their ramp surfacing, creating larger and better equipped concession stands, tiling their restrooms, installing a proper drainage system for their theatres or spending money to landscape their properties. Some operators even hired architects to help design their theatres.[13] The average car capacity was now 550, but a number of drive-ins had room for 1,000 or more cars, as well as hundreds of seats for walk-in customers.[14] In Dayton, Ohio, Sam Levin planned a $1.3 million project that would include a 3,150-car drive-in with twin screens, a motel, bowling alley and restaurant.[15]

At the same time, the drive-in theatre industry was moving away from individual owners and toward more corporate and multiple ownership. In 1958, the Census Bureau reported that corporations, many with interests in regular movie theatres, now owned at least 2,110 drive-ins, or 51 percent

of those in existence. And, at least 20 percent of all drive-ins were part of a chain operation.[16] This type of ownership concentration is not unusual in American business, and it usually coincides with a period of technological innovation with the result that generally only those with sufficient financial resources are able to continue to operate. Such a pattern was well developed within the drive-in theatre industry by 1958.

During the early expansion years, drive-in theatres often were criticized for being traffic hazards. Many theatres were built near major highways and public officials complained about the buildup of traffic along these roads. By the mid-1950s, drive-in operators tried to solve these problems by building screen towers and admission counters further back from the road. This created a "holding area" between the screen tower and highway where cars could park safely before entering the theatre.[17] The owner of the Joy Drive-In Theatre in Texarkana, Texas, went a step further. Instead of a holding area, his theatre entrance was designed so patrons could drive off the highway to a small boxoffice placed under the 60-foot screen tower. Patrons could proceed in two lanes through a tunnel cut through the center of the tower base, and drive out onto the parking area via a paved road which lead to the ramps.[18]

Once inside the theatre grounds, patrons found a number of changes had taken place to add to their convenience and

enjoyment. Many early theatres lacked adequate lighting which, no doubt, added to the "passion pits" reputation that drive-in theatres acquired. But, when families became the primary audience in the early 1950s, many operators began to install large lights, suspended high atop posts located at the rear of their theatres.[19] These provided patrons with sufficient light to travel safely from their automobiles to concession stands or restroom facilities.

Cold weather restricted many early drive-in theatres, particularly those in the northeastern and midwestern sections of the country, to operating on a seasonal basis. But, with the development of in-car heaters as early as 1951, drive-ins were able to stay open year round.[20] One enterprising drive-in operator, Nicholas George, who owned the Jolly Rogers Drive-In in Detroit, built a concrete-block furnace room containing two gas-fired furnaces next to his concession stand. Warm air was pumped from the furnace room through underground ducts to specially built posts at each car position. Using flexible tubing and nozzles, warm air was then enjoyed by passengers in their cars. George also planned to use the air ducts to supply cool air in the summertime.[21] Car heaters apparently became so popular that, by 1958, one report showed that nearly 97 percent of all drive-ins were open all year.[22]

One theatre, the Cinema Park Drive-In in Phoenix, Arizona, even tried to make warm summer nights more palable

for its patrons by installing an air-conditioning system. A series of propeller blades was mounted on 14-foot-high poles located throughout the drive-in. In front of each set of blades were water pipes containing tiny holes. Water was forced through the holes and out came a fine mist that helped to lower the temperature several degrees.[23]

Perhaps the most important consideration in the success of any drive-in operation was its speaker system. When early directional loudspeakers proved less than satisfactory, many drive-in operators tried underground speakers, then bi-car speakers before settling in the 1940s on a system of in-car speakers.[24] They were arranged on a series of posts scattered throughout the theatre. Patrons simply drove up beside one of these posts and attached the speaker to their car window in order to hear the actors' voices on the movie screen. This technological innovation remained virtually unchanged until 1954 when Ralph Heacock, an RCA engineer, applied for a patent for a stereophonic sound system for drive-ins.[25] Each car was to be equipped with two speakers, one on each side of the patron's front seat.

When Hollingshead built his movie screen, he enclosed it in a screenhouse made of structural asbestos lumber designed to look like limestone blocks. Most drive-ins of that era, while often not as elaborate as Hollingshead's design, generally were constructed of wood. One reason was that other materials, particularly steel, were not readily avail-

able.[26] But, when the Second World War ended, steel once again was in ready supply and many drive-in operators began building screen towers of this alloy. A steel- constructed screen was thought more likely to resist high tropical winds, especially the kind experienced in southern states.

Many drive-in operators during the early 1950s continued to enclose their screen towers. One reason was that they often were constructed parallel to the highway and by covering the steel girders, one could make the screen tower more attractive to passing motorists. Often these enclosures were constructed in such a way that an operator could use part of the space for either office or living accommodations or both.[27] As photographer John Margolies found, many operators also painted huge murals on the front of these screen towers since most faced onto nearby highways. Among the most attractive of these facades were those in California where brightly colored murals often reflected scenes of early Spanish settlers or local attractions. The Tri-City Drive-In Theatre in Loma Linda, California, for instance, featured skiers enjoying a nearby slope. The Star Vue Drive-In Theatre in Cape Giradeau, Missouri, used a series of neon stars and moon crescents to decorate its facade while the Airline Drive-In Theatre in Houston, Texas, featured a bright geometric design.[28]

Despite the attractiveness of these facades, a number of drive-in operators had moved away from boxing in their

screen towers by 1955.[29] One reason was because drive-in operators were enlarging their screens to accommodate the new wide screen movies being produced in Hollywood. The first of these new motion picture technologies--Cinerama--was introduced at the Broadway Theatre in New York in September, 1952. It became an instant hit and was followed a couple of months later by the premiere of 3-D movies and later Cinemascope movies.[30]

Drive-in operators knew that if they were going to stay competitive with regular movie houses showing these newer pictures, they would have to make changes at their own theatres. In the early days, drive-in screens, like the one Hollingshead used, measured 30 by 40 feet. One of the first drive-ins to show Cinemascope movies was at Eric Petersen's Romantic Motor-Vu Theatre in Salt Lake City, Utah. The movie screen there measured 48 feet high and was 102 feet long.[31] Other drive-in operators quickly followed suit and by 1955, most outdoor screens had been expanded to at least 100 feet in width and one in Somerville, New Jersey, was 120 feet in length.[32]

Expanding one's drive-in movie screen was not as easy as it might seem. As one group of drive-in operators discovered at a convention in 1954,[33] they had to be prepared to change their sound and light projection equipment as well. Operators were told that to spread a Cinemascope movie across a huge screen from a single projector, an operator

needed a tremendous amount of light. Since many drive-in projection booths were a distance from the screen, this meant projection booths would have to be relocated. Operators also found that without adopting a stereophonic sound system for Cinemascope movies, the single, in-car speakers were inadequate. Drive-in operators tried to get Hollywood producers to release Cinemascope films with a single soundtrack, but to no avail.[34]

To better enjoy the newer, wider motion pictures, screen manufacturers also began urging drive-in operators to purchase curved or tilted screens over flat, vertical models. They said research had shown that an increase in picture brightness, so important in outdoor wide screen presentations, was achieved by tilting and curving screen towers. Tilting the screen to an angle equal to the projection angle and curving it to a radius equal to the projection throw, the researchers said, reflected light to the area of maximum car density, rather than to the sky or to side areas.[35]

Drive-in operators also were realizing the importance of organizing to better promote their collective interests. As early as 1949, organizations had been formed in Philadelphia and in California. Typically, these groups collected statistics for drive-ins, served as a clearinghouse on the price of films, showed the ratio of flat rentals to percentage charges, issued information on tax and court matters and

reported on how well a particular picture was doing at a drive-in.[36] By 1956, drive-in organizations were reported in New England, North Carolina, Ohio, Pennsylvania and Texas.[37]

But, for all of their organization, there was sometimes little agreement among drive-in theatre operators about how best to run their businesses. At a meeting of the Texas Drive-In Owners Association in 1953, for instance, delegates debated how best to promote the "family trade." Some argued that dusk-to-dawn shows, $1 a carload promotions and free admissions for children were hurting business while others maintained that such gimmicks attracted audiences.[38]

There was agreement, however, that changes were needed within the automobile industry to aid the drive-in theatre industry. Specifically, groups agreed to lobby automobile manufacturers to get them to begin producing cars with untinted windshields, horns that could be silenced by turning off ignitions, cars with adjustable sun visors and windshield wipers that took their power from the car's battery.[39] A survey by one group found that tinted windshields reduced vision by 34 percent and were a detriment to drive-in movie attendance.[40]

NOTES

[1]U.S. Census of Business, 1958, Vol. V, Selected Services Trades--Summary of Findings, (Washington, D.C.: U.S. Government Printing Office, 1958), p. 23.

[2]1957 International Motion Picture Almanac (New York: Quigley Publishing Co. Inc., 1957), passim.

[3]"New Products," Journal of SMPTE 67 (March 1958): 210.

[4]R. E. Pulman, "Drive-In Theatre Operation," British Kinematography 32 (April 1958): 92-106.

[5]Leonard Spinrad, "Keeping Pace With the Drive-Ins," New York Times, 25 May 1958, Sec. II, p. 5.

[6]U.S. Census of Business, 1958, Vol. V, passim.

[7]Al Hine, "Drive-ins," Holiday July 1952, p. 6.

[8]"Short Season, Bad Weather Place Hamper on Drive-Ins in Mpls. Area," Variety, 10 August 1949, p. 22.

[9]"Drive-in Theatres of the 1952 Season," Theatre Catalog 1952, pp. 161-163.

[10]George M. Petersen, "Drive-In Theatres of Today and Tomorrow," Theatre Catalog 1949-50, pp. 233-236.

[11]Anthony Downs, "Drive-Ins Have Arrived," Journal of Property Management 18 (March 1951), pp. 49-53.

[12]George M. Petersen article.

[13]In "Drive-Ins: Building Types Study," Architectural Record 108 (August 1950): 140-45, the names of some architects are given. William Glenn Balch and Louis L. Bryan are credited with building several drive-ins in California, while Jack Corgan is credited with designing ozoners in New Mexico and Texas. Little else is known of these men. Architect Gale Santocono is credited with designing an amphitheater design which helped a drive-in theatre owned by Robert L. Lippert. Lippert thought the space he had could accommodate only 225 cars, but with Santocono's design, three million cubic feet of earth was moved to form a rising terrace for the theatre. As a result, the drive-in ended up holding 554 cars. See, "Drive-In with a Balcony," Business Week, 30 June 1951, p. 70.

[14]The All-Weather Drive-In Theatre in Copiague, Long Island, New York, opened in April, 1957. It sat on a 30-acre tract of land and could accommodate up to 3,000 cars. Besides the usual playground equipment, this complex also had an indoor theatre in case of rain. See, Rita Reif, "Drive-In Theatre Extends Horizon," New York Times, 9 June 1957, Sec. VIII, p. 1. The largest drive-in ever built is the E.M. Loew's Open-Air Theatre in Lynn, Massachusetts. It can accommodate 5,000 cars. See, International Motion Picture Almanac (New York: Quigley Publishing Co. Inc., 1979), pp. 669-687.

[15]"Motel, Bowling, Eatery, 3,150 Cars in Park," Variety, 4 April 1956, p. 2.

[16]U.S. Census of Business, 1958, Vol. V, passim.

[17]George M. Petersen, "Site Selection and Layout Planning," Theatre Catalog, 1949-50, pp. 237-241.

[18]"Possibilities of a Screen Tower Entrance," Theatre Catalog 1952, pp. 153-155.

[19]"Moon-Washed," New Yorker, 1 October 1949, pp. 20-21.

[20]"Auto Heater for Drive-Ins," New York Times, 6 February 1951, p. 20.

[21]See, "Drive-In Theater Goes First Class, Warm Air for Patrons, Heated by Gas," American Gas Journal, February 1961, p. 31 and "Drive-In Theater Adds 1,200 Car Central Warm Air Heating System," Air Conditioning, Heating and Refrigeration News, 19 December 1960, p. 3.

[22]U.S. Census of Business, 1958, Vol. V, passim.

[23]"Drive-Ins Steal the Show," Business Week, 15 August 1953, p. 114.

[24]David B. Wolf, "Bringing Sound Outdoors," Theatre Catalog 1955-56, pp. 158-160.

[25]U.S. Patent Office. Patent No. 2,956,129. Stereophonic Sound for Drive-In Theatres. Granted R.H. Heacock, Medford Lakes, New Jersey, 11 October 1960.

[26]Al Boudouris, "Building Drive-Ins During Metal Shortages," Theatre Catalog 1952, pp. 150-152.

[27]John Selby, "Screen Towers Come of Age," Theatre Catalog 1955-56, pp. 165-166.

[28]John Margolies, The End of the Road (New York: Penguin Books, 1981), passim.

[29]John Shelby article, p. 165.

[30]Charles S. Aaronson, "Evolution or Revolution--A Year of Transition," in 1953 International Motion Picture Almanac (New York: Quigley Publishing Co. Inc., 1953), pp. xvii-xviii.

[31]Jack Goodman, "A 'Robe' As Big As All Outdoors," New York Times, 4 April 1954, Sec. II, p. 5.

[32]"Drive-In Wide Screen Review," Theatre Catalog 1955-56, pp. 153-157.

[33]"3-D Drive-Ins," Business Week, 13 February 1954, p. 59. The meeting involved members of the Allied States Association of Motion Picture Exhibitors.

[34]Jack Goodman article, p. 5.

[35]"Drive-In Wide Screen Review," article, pp. 153-157.

[36]See, "Form Drive-In Theatre Institute," Variety, 12 October 1949, p. 20 and "Rosenblatt New England Drive-In Assn. Prexy," Variety, 4 February 1953, p. 23.

[37]See, The 1954 Film Daily Year Book of Motion Pictures, edited by Jack Alicoate (New York: Wid's Films and Film Folk Inc., 1954), pp. 933-963.

[38]"Drive-In Theaters: Happy But Griping," Business Week, 9 May 1953, p. 129.

[39]"Allied Likes the First Nat'l Drive-In Conv. So Much It'll Go One-a-Year," Variety, 1 April 1953, p. 7.

[40]"Int'l Drive-In Theatre's Survey Reveals Tinted Windshields Cut Vision," Variety, 15 April 1953, p. 20.

CHAPTER VII

LEGAL PROBLEMS PERSIST

Despite the appeal of drive-in theatres throughout much of the 1950s drive-in operators in several parts of the country still found themselves and their theatres being viewed with some suspicion. Court decisions had made it clear that a drive-in theatre was a legitimate business and could not be prohibited access to a community, but some public officials still wanted to keep them under control by limiting the sites available to them.

Daniel Bzovi found out what that could mean when he purchased 54 acres of land in November, 1954, to build a drive-in in Livonia, Michigan, a suburb of Detroit. The city rejected his application on the grounds that drive-ins were already prohibited under the city's zoning ordinance. Bzovi got a writ of mandamus to compel the city to issue him a building permit. He argued that the zoning ordinance was unconstitutional, and the zoning classification on his property was plainly "arbitrary and capricious" because the city had already allowed a large race track to be built adjacent to his property.

The circuit court rejected Bzovi's arguments and he appealed to the Michigan Supreme Court. The high court said a zoning ordinance could not be used to prohibit a legitimate business like a drive-in unless "the prohibition has a reasonable relationship to the health, morals or welfare of the community." While it recognized the unconstitutionality

of the Livonia zoning ordinance, the court, nevertheless, agreed with the city's contention that it had a right to set up a zoning pattern that took into account the probable future development of the community. "In this case," the court said, "there is ample evidence to indicate that the property in question can be effectively developed for residential use."[1]

In 1959, Bzovi again tried to construct a drive-in in Livonia. This time he purchased from Raymond Schreiber a 30-acre tract of land zoned for light industrial use in a different part of the city. A year earlier, Schreiber had applied for a permit to build a drive-in under the city's recently revised zoning ordinance. The Livonia Common Council approved a license for Schreiber, but the mayor vetoed it. When Bzovi applied he met with the same result: the council agreed to the license, but the mayor vetoed it.

Bzovi brought suit arguing that the veto was meant to apply only to legislative matters and that the license for the drive-in was merely an administrative action that required only the support of the council. The Michigan Supreme Court rejected the argument and Bzovi was out of luck again.[2]

In other parts of the country, the courts were more lenient. The Superior Court in Connecticut, for instance, ruled in 1956 that the Town of Berlin could not prohibit Lakeside Realty Company from building a drive-in "where much

of the general area was vacant, swamp land and unimproved, devoted in large measure to industrial and business uses."[3] In another Connecticut case, Elsie Berninger, a motel owner in New Haven County, lost out in her bid to stop a drive-in from being built next to her business because she feared the noise would disturb her guests.[4]

Robert Baronoff was allowed to build his drive-in in Bucks County, Pennsylvania, after the state's Supreme Court ruled in 1956 that a township ordinance was unconstitutional. Baronoff's property was situated in two townships. The largest part of his land was in the first township which allowed for a drive-in while the second township did not. The court said the portion of Baronoff's property in the second township could not be put to feasible or profitable use except in connection with that portion in the first township and to deny an exception was to deprive Baronoff of his rights to due process.[5] In at least two cases drive-in operators won their cases where the issue was whether they could change their zoning classifications.[6] A Minnesota drive-in operator won a special uses permit to operate his theatre[7] and, in Medford, Massachusetts, a drive-in theatre was allowed in an industrial area after the state's appeal court said council members could not challenge in court the decision made by the city's zoning board of appeals.[8] But a Jackson County, Missouri drive-in developer lost in his bid to construct his theatre when the Missouri Supreme Court

ruled in 1958 that the board of zoning adjustment had exceeded its authority in issuing a special use permit to the developer. The court said the planned theatre's screen, which was to be 74 feet high, exceeded the 35-foot limit on buildings in that particular zoning district.[9]

Being relegated to industrial, business or commercial zones did not end the problems that drive-in owners would face. In Panama City, Florida, John P. Reaver, owner of the Skyland Airport, sought injunctive relief in May, 1951 against Martin Theatres of Florida, Inc. because the group wanted to build a drive-in adjacent to his airport. The Supreme Court of Florida rejected Reaver's arguments, claiming the theatre's lights would not unreasonably interfere with the operation of the airport.[10]

In Du Page County near Chicago, however, two drive-in owners learned that they had to live with their neighbors, even if it might disrupt their theatre operations. In 1966, the Belmar Drive-In Theatre Company tried to recover damages it claimed to have suffered because of the bright lights emanating from a toll-road service center adjacent to its theatre. The Illinois Supreme Court, in dismissing the suit against the Illinois State Toll Highway Commission, said that while the toll road was adjacent to the drive-in, the general benefits inured from this public improvement outweighed any claim for damage made by the theatre owner.[11] Seven years later, the Illinois Court of Appeals told Arbor

Theatre Corporation, owners of the Cascade Drive-In, that it would not enjoin the compost producing operation on a mushroom farm owned by the Campbell Soup Company. The court said that Campbell's invasion of the rights of the theatre owner was neither substantial enough or unreasonable to such a degree to warrant the relief being sought.[12]

Operating in a business district did not mean that a drive-in operator was immune from complaints from residents living nearby. Such was the case in 1953 when owners of the Oak Theatre near Seattle, Washington, found themselves faced with a suit from homeowners who claimed that the theatre was a private nuisance. When the drive-in theatre opened in 1950 it was not allowed direct access to the nearby state highway. Instead it had to construct an access road near the homeowners' property. The homeowners argued that the noise created by cars turning onto the access road and noise from the drive-in sign located there "substantially disturbed their comfort and repose and the enjoyment of their property" and depreciated the market values of their properties. The Supreme Court of Washington agreed. It said that while the drive-in theatre was an established business and was situated in a legally zoned location, "they have conducted such business in such a manner as to create a private nuisance as defined by the statutes."[13]

However, by far the most contentious cases involving questions of zoning were those where a drive-in theatre was

being planned in or near a residential district. In addition to complaints about traffic and noise, residents often feared that a drive-in in their neighborhood would bring an accompanying loss in property values. Sometimes residents found themselves not only in a fight with drive-in developers, but also with local officials who often were ready to let a drive-in operate in or near a residential district. In these instances, the issue often was whether local officials had authority under existing zoning laws to make such decisions. This was the case in 1949 when Philip Stovall and some of his neighbors filed a writ of certiorari with the Texas Court of Civil Appeals against the Fort Worth Board of Adjustment. Stovall and the others argued that the board was without authority in granting a permit to Interstate Circuit, Inc. to operate a drive-in after the city's building commissioner had first denied the request. The court agreed with the residents and said that even a literal enforcement of the ordinance would not have resulted in any unnecessary hardship upon Interstate because it just as easily could have built houses on the tract of land in question.[14]

Two years later, the Rhode Island Supreme Court ruled the zoning board of review in the City of Warwick had acted improperly in granting an exception to the city's zoning ordinance which allowed a drive-in in a residential zone. The court said it could find "nothing in the present record

which in our judgment shows that the granted exception was reasonably necessary for the convenience and welfare of the public."[15] Similarly, courts in Illinois, Maryland, Massachusetts, New Hampshire, New York, Oklahoma, Pennsylvania and South Dakota ruled that zoning boards of adjustment or appeal had exceeded their authority in granting a variance for drive-ins in residential districts.[16]

Zoning boards were not the only governmental bodies that were found to have exceeded their authority in allowing drive-ins to be built in residential districts. In at least one case, an entire city council was taken to task. In 1950, the Independence, Missouri, City Council enacted a zoning ordinance which classified as a residential district a tract of land owned by Associated Theatres, Inc. In 1954, the city council reclassified the theatre's property as a general business district after Associated expressed an interest in building a drive-in on its 20-acre tract of land. The city's decision resulted in a suit by 248 people who lived near the rezoned land. They argued that the amended ordinance was invalid because it constituted "spot zoning." The Circuit Court agreed, and Associated sought relief from the Missouri Court of Appeals. This court, however, also agreed with the residents. The court said it seemed "incongrouous that such an establishment should be permitted in the midst of residences, schools, churches and similar community advantages;

and within six blocks of the principal, business district of a city having...a population of approximately 40,000."[17]

Not every court agreed that drive-ins should be prohibited in residential districts. In Somerset, Kentucky, for instance, a drive-in was allowed in a residential district after the state's Court of Appeals ruled in 1950 that residents could not enjoin a drive-in because the residents considered it a nuisance.[18] In 1951, Connecticut's highest court ruled that the Bloomfield Zoning Board of Appeals had not abused its discretion in allowing a temporary five-year permit to a drive-in operator to build a theatre on an unoccupied tract of land in a residential zone.[19] And in the Virgin Islands, a drive-in was allowed in a residential area after the U.S. Court of Appeals ruled the proposed drive-in met the island's criteria for a recreational use and could be granted a special exception.[20]

In at least two instances, drive-in operators also won the right to construct theatres where the issue was whether zoning restrictions extended into unincorporated areas. In Carmel, Indiana, for example, the town's planning commission had approved a petition and accepted zoning jurisdiction in adjoining Clay Township in 1961. The regulations had not yet taken effect when Northside Amusement Corporation announced plans to build a drive-in theatre in the township. Residents near the proposed theatre site formed a citizens group and sought a permanent injunction against the theatre. When

their suit reached the circuit court in December, 1961, the judge found in favor of the drive-in, saying, "I don't believe the Carmel board had jurisdiction over the theatre property prior to construction."[21] The Court of Chancery of Delaware similarly ruled in 1973 that zoning regulations in Kent County did not apply to incorporated towns within the county and residents could therefore not enjoin a drive-in planned near Cheswold.[22]

Rather than zoning ordinances to regulate drive-in theatres, some municipalities established licensing ordinances similar to one the city of Royal Oak, Michigan adopted in 1949. It assessed an annual $100 fee on a drive-in owner, imposed a 1:30 a.m. curfew, restricted give-aways and required drive-in attendants to patrol exits, entrances and parking spaces to see "that order is maintained, disorderly or immoral conduct prevented." The ordinance never took effect, however, because the Royal Oak City Council voted 2 to 1 a short time later to prohibit drive-ins in their community.[23]

Peter J. Marrone of Worcester, Massachusetts, found out in January, 1951, just how effective a licensing agreement could be when the city manager of Worcester revoked his drive-in license. Marrone first applied for the license in June, 1950, but was told he first would have to meet certain conditions for the construction and operation of his theatre and then post a surety bond. Marrone met the requirements

and received a license in November. Two months later, however, the city manager informed Marrone by letter that "in the public good" his license was being revoked. Marrone sued, but the state's Supreme Court upheld the action of the city manager. The court said that although the manager revoked the license because of "public opposition to establishment of a theatre, danger to the morals of the neighborhood, and danger due to increased traffic hazards," the decision was made at the manager's discretion and the evidence suggested he had not acted capriciously.[24]

The Central States Theatre Corporation fared much better in October, 1954, when the Iowa Supreme Court upheld an injunction against St. Charles Township officials who arrested the theatre's manager for operating a drive-in without a license. Central States had obtained a license in 1950 to operate a drive-in, but did not complete construction until June, 1952. When the corporation then applied for another license to operate its theatre, township officials denied the request. Central States went ahead and opened its theatre. The next day, the theatre manager was arrested and charged with operating a drive-in without a license. Central States applied again for a license and was rejected. It opened its theatre again and saw its manager arrested for a second time. At this point, Central States filed suit.

In its decision, the court said that while a township had the right to regulate drive-ins through licensing ordin-

ances, the statute gave them "unlimited" discretion and "so far as the record shows, that is the way they have exercised it...and likewise in so doing they have demonstrated the statute's offense against the due process clauses of the federal and state constitutions."[25]

When drive-in operators were not worrying about zoning or licensing ordinances, some found themselves involved in a variety of other legal suits. These could range anywhere from questions involving options on property to whether drive-in operators should have to pay for municipal services installed in front of their properties.[26]

One of the most troublesome problems for drive-in operators in the early 1950s was the federal tax on admissions. It was instituted in the 1940s and required that a certain portion of each admission be turned over to the federal government. The problem for drive-in operators arose for those who wanted to charge admissions by the carload rather than on a per-person basis. At first, the government did not want to make an exception and preferred to make drive-ins subject to the same per-person admissions policy as regular theatre owners. But, in 1954, the federal government relented and let drive-in operators charge by the carload.[27]

While drive-in operators met with some success with federal officials, many found themselves forced to pay local license or admission taxes to operate in their respective communities. Drive-in operators complained that such taxes

were arbitrary, unreasonable and an abuse of the taxing power. This is what three drive-in operators in St. Ann, Missouri, argued when they brought a suit against the city, challenging its annual license tax.

The ordinance levied a tax on either a graduated or a flat rate. Conventional theatres were taxed at a flat rate of $25 a year while drive-ins were expected to pay $1.50 per speaker per year. The drive-in operators said such a tax arrangement was "excessive and discriminatory" because they would have to pay taxes in excess of $3,800 each year for the 1,556 in-car speakers they owned among themselves. The Missouri Supreme Court agreed. It said the drive-ins were being taxed seventeen to thirty times greater than regular theatres in the same tax subclassification.[28]

Drive-in operators in Connecticut[29] and Maine[30] won their cases when courts ruled that they were being taxed unfairly on car heaters and concession sales respectively. A drive-in operator in New York City succeeded in 1954 in getting an injunction against the City Amusement Tax Law when the courts ruled that the tax people could not collect a full cent when the tax to be paid was less than a cent.[31]

Such arguments, however, did not help Durwood Coe and Louis Stuler, owners of the Waynesburg Drive-In in Green County, Pennsylvania. They brought a suit in 1958 against the local school district after its members adopted a resolution imposing an amusement tax on pinball machines and

admissions to their drive-in theatre. The men argued that if a tax was necessary, it should be imposed on all amusements equally and not just on their business. The Superior Court of Pennsylvania disagreed and upheld a lower court decision that ruled the school district was within its right to levy the tax.[32] Similarly, courts in California[33] and Mississippi[34] said municipalities could impose taxes on drive-in theatres.

Drive-in operators also found themselves involved in a growing number of personal liablity cases. Typical of these cases was one brought by the parents of Carol L. Montgomery. In 1958, they sued the Rodeo Drive-In Theatre of Phoenix, Arizona. The couple claimed their seven-year-old daughter suffered a ruptured spleen after she was struck by a car entering the drive-in. The child had been sitting on a blanket in front of her parent's car when the accident occurred. The Supreme Court of Arizona agreed with the parents and granted them a $6,000 judgment. The court said the theatre owner failed to exercise reasonable care in providing a safe place for patrons by not posting signs prohibiting people from sitting on the ground and by not installing sufficient lighting to improve visibility for drivers.[35]

The logic used by the court in this case similarly was applied in most of the personal liability cases. As a result, drive-in operators lost lawsuits where courts determined that they had not exercised reasonable care where a

boy's leg was severed by a power mower at a drive-in,[36] and where a drive-in employee, giving faulty directions, had been responsible for a traffic accident in front of a drive-in.[37] Operators also lost where patrons were hit by a car door,[38] a flying rock,[39] a firecracker[40] and where a patron fell into an unmarked ditch.[41]

In cases where drive-in operators won, the courts generally concluded that although patrons were injured, the circumstances were such that a drive-in operator reasonably could not have foreseen what was going to happen and thus could not have prevented the accident from occurring. Thus, drive-in operators were not held liable in cases where patrons were burned by a car heater,[42] burned at the concession stand,[43] hit by a speaker,[44] pushed off a set of "monkey bars,"[45] hit by a rock,[46] fell down avoiding an oncoming car,[47] stumbled over a beer can[48] or a rock,[49] and where three young boys claimed that they had been beaten up at a drive-in by a gang of men.[50]

NOTES

[1]Bzovi v. City of Livonia, 87 N.W. 2d 110 (1957).

[2]Livonia Drive-In Theatre Co. v. City of Livonia, 109 N.W. 2d 837 (1961).

[3]Lakeside Realty Company v. Town of Berlin, 129 A. 2d 628 (1956). In a similar case, the Supreme Court in Connecticut in 1956 allowed a drive-in to be built after noting that businesses allowed in a business zone were similar to those allowed in an industrial zone and, therefore, since a drive-in theatre was allowed in an business zone one should be allowed in an industrial zone. See, Dostmann v. Zoning Board of Appeals, 122 A. 2d 19 (1956). In Long et al. v. Board of Zoning Appeals, 134 Ind. App. 97 (1962), the appeals court said that where public convenience would be served by a drive-in theatre in a business district, an exception to permit such use should be allowed.

[4]Berninger v. Kelly, 110 A. 2d 487 (1954).

[5]Baronoff v. Zoning Board of Adjustment, 122 A. 2d 65 (1956). In Loew v. Falsey, 127 A. 2d 67 (1956), the Connecticut Supreme Court said a city building inspector in New Haven had no discretion to withhold a permit to construct a concession building at a drive-in theatre because the applicant had first not secured a certificate of approval of location from the state traffic commission.

[6]See, Bregar et al. v. Britton, 75 So. 2d 753 (1954) and Nelson v. Town of Camillus, 28 Misc. 2d 52 (1960).

[7]O'Neil v. Broadbent, 226 N.W. 2d 885 (1975).

[8]Carr v. Board of Appeals of Medford, 334 Mass. 77 (1956).

[9]State v. Randall, 308 S.W. 2d 637 (1958).

[10]Reaver et al. v. Martin Theatres of Florida, Inc., 52 So. 2d 682 (1951). Somewhat ironically, the maps of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce list drive-ins as landmarks for pilots wishing to fly at night.

[11]Belmar Drive-In Theatre v. Highway Commission, 34 Ill. 2d 543 (1966).

[12]Arbor Theatre Corp. v. Campbell Soup Co., 11 Ill. App. 3d 89 (1973).

[13]Bruskland et al. v. Oak Theater, Inc. et al., 254 P. 2d 1035 (1953). In a similar case but with a different result, the Commonwealth Court of Pennsylvania ruled in 1971 that to deny a drive-in operator of a right to use an access road adjacent to his property represented "an abuse of discretion." See, Taged Inc. v. Z. Bd. of Adj. of Monroeville, 2 Commonwealth Ct. 52 (1971).

[14]Board of Adjustment et al. v. Stovall et al., 218 S.W. 2d 286 (1949).

[15]Abbott et al. v. Zoning Board of Review of City of Warwick, 79 A. 2d 620 (1951).

[16]See, In Re East Maine Tp. Community Ass'n, 15 Ill. App. 2d 250 (1957); Quinn v. Tolle, 143 A. 2d 481 (1958); Spaulding v. Board of Appeals of Leicester, 138 N.E. 2d 367 (1956); Tremblay v. Town of Hudson, 355 A. 2d 431 (1976); Matter of Berg v. Michaelis, 37 Misc. 2d 1077 (1963); Shanbour v. Oklahoma City, 422 P. 2d 444 (1967); Schechter v. Zoning Bd. of Adjust., 395 Pa. 310 (1959) and Graves v. Johnson, 63 N.W. 2d 341 (1954).

[17]Allega v. Associated Theatres, 295 S.W. 2d 849 (1956).

[18]City of Somerset et al. v. Sears et al., 233 S.W. 2d 530 (1950). A similar judgment was rendered in, King et al. v. James et al., 97 N.E. 2d 235 (1950).

[19]Hertzsch v. Zoning Board of Appeals, 79 A. 2d 767 (1951).

[20]See, Kramer et al. v. Govt. of Virgin Islands, 453 F. 2d 1246 (3rd Cir. 1971) and Kramer v. Govt. of Virgin Islands, 479 F. 2d 350 (3rd Cir. 1973).

[21]"Judge Rules for Drive-Ins," Indianapolis Times, 29 December 1961, p. 2.

[22]Scarborough v. Mayor and Council of Town of Cheswold, 303 A. 2d 701 (1973).

[23]"Zoning Regulations and Legal Decisions," pp. 245-246.

[24]Marrone v. City Manager of Worcester, 329 Mass. 378 (1952).

[25]Central States Theatre Corporation v. Sar, 66 N.W. 2d 450 (1954).

[26]The cases involving drive-in theatre operators in a variety of business concerns include, Center Drive-In Theatre, Inc. v. Derby, 166 Conn. 460 (1974); Dozier v. Troy Drive-In Theatres, 89 So. 2d 537 (1956); Edmondson Village Theatre, Inc. v. Einbinder, 116 A. 2d 377 (1955); Evergreen Amusement Corp. v. Milstead, 112 A. 2d 901 (1955); Hunt v. Hammonds, 60 So. 355 (1952); Nichols v. Omega Amusements Co., 391 S.W. 2d 754 (1965); Storey v. Austin, 146 S.E. 2d 728 (1966); Township of Harborcreek v. Erie Drive-In Theatre Corp., 367 A. 2d 348 (1976); Warren v. Motion Picture Machine Operators, 118 A. 2d 168 (1955) and Wellman v. Lampros, 241 A. 2d 95 (1968).

[27]For a good discussion of this controversy, see, Gael Sullivan, "Drive-In Admission Tax Rulings," Theatre Catalog 1949-50, pp. 292-293.

[28]Airway Drive-In Theatre Co. v. City of St. Ann, 354 S.W. 2d 858 (1962).

[29]National Amusements, Inc. v. Brown, 368 A. 2d 1 (1976).

[30]Cumberland Amusement Corp. v. Johnson, 110 A. 2d 610 (1954).

[31]RKO-Keith-Orpheum Theatres v. City of New York, 133 N.Y.S. 2d 321 (1954).

[32]Coe v. Duffield, 138 A. 2d 303 (1958).

[33]Redwood Theatres v. City of Modesto, 196 P. 2d 119 (1948). In this case, the issue involved the city's right to impose a license tax on admissions.

[34]State v. Paramount-Gulf Theatres, 84 So. 2d 403 (1956). In this case, the theatre chain tried to have declared unconstitutional a "chain picture show tax" which imposed an additional three percent tax on each dollar of gross revenue derived from admissions to any moving picture show belonging to a chain or group of more than 10 theatres.

[35]M.G.A. Theaters, Inc., v. Montgomery, 321 P. 2d 1009 (1958).

[36]South Austin Drive-In Theatre v. Thomison, 421 S.W. 2d 933 (1967).

[37]Crescent Amusement Co. v. Knight, 82 So. 2d 919 (1955). A similar cases is reported in Nicollet Properties, Inc. v. St. Paul Mercury Insurance Co., 135 N.W. 2d 127 (1965).

[38]Johnson v. Thompson, 143 S.E. 2d 51 (1965).

[39]Leon v. Wilson, 326 S.W. 2d 588 (1959).

[40]Moran v. Valley Forge Drive-In Theater, Inc., 246 A. 2d 875 (1968).

[41]Video Independent Theatres, Inc. v. Cooper, 421 P. 2d 833 (1966).

[42]Post v. Alameda Amusement Co., 256 P. 2d 580 (1953).

[43]Timbrell v. Plainville Recreational Drive-In Theatre, Inc., 289 N.E. 2d 841 (1972).

[44]Byron v. Fresh Pond Open Air Theatre, 128 N.E. 2d 785 (1955).

[45]Elmore v. Sones, 140 So. 2d 59 (1962).

[46]Gold v. Heath, 392 S.W. 2d 298 (1965).

[47]Montgomery v. Marva Theaters, Inc., 218 F. 2d 221 (4th Cir. 1954).

[48]Jones v. West End Theatre Co., 94 S.E. 2d 135 (1956).

[49]Gonzalez v. Broussard, 274 S.W. 2d 737 (1954).

[50]Damon Napper et al. v. Kenwood Drive-In Theatre Co., 310 S.W. 2d 270 (1958).

CHAPTER VIII

LOW-BUDGET FILMS AND DAYLIGHT TIME

In 1963, a report on drive-in theatres prepared by the U.S. Census Bureau found that gross receipts for the industry had increased by more than $23 million since 1958. Normally, such news would make drive-in operators happy, but, for many, the Census Bureau report also revealed the disturbing news that 561 drive-ins had gone out of business during the same time period.[1] By 1967, the number declined even further, to 3,384 drive-ins.[2] It was becoming clear to drive-in operators that it was time for them to take stock of their industry and their own operations.

For many independent drive-in operators, there was the realization that without Congressional help, there appeared to be little they could do to assure themselves of more equitable film rental agreements with distributors. The situation became compounded in the 1950s when the major Hollywood studios embarked on a series of cinematic gimmicks (Cinerama, 3-D and Cinemascope) and began producing fewer, more expensive films of epic proportions in the belief that this would attract audiences back to conventional theatres.

These developments really had not concerned drive-in operators in the early 1950s as they knew audiences seemed as interested in the novelty of drive-ins as they were in the movies being shown. But, when audiences began to demand better pictures, many operators were forced to compete for first-run films and accept whatever agreements distributors

wished to make. This was a particular problem for drive-in operators who wanted to continue a double feature film policy and it often left operators with few alternatives. They could stay in business and try to survive on a smaller profit margin, close down or try to sell their operation to corporate or chain operators who often had more clout with distributors. As veteran drive-in owner Carl Lind observed, some independent drive-in operators, simply went out of business in the 1960s rather than try to meet the increasing demands of distributors.[3]

Another obvious difference between drive-ins in the 1960s and those in the early 1950s was the composition of their audience. Drive-in audiences in the 1950s were made up primarily of couples with young children who enjoyed the inexpensiveness and informality of an evening of watching movies under the stars. But by the 1960s family audiences no longer comprised the biggest part of drive-in audiences, largely due to the continued growth of the television industry. This new entertainment medium had not been a threat to drive-in theatres between 1948 and 1952 when the Federal Communications Commission imposed a freeze on new TV station applications while it worked out a system of UHF and VHF assignments. After 1952, though, both the number of TV stations and TV receivers expanded rapidly so that by 1958, 495 stations and approximately 27 million TV sets were in use around the country.[4] For drive-in operators, this meant that

if they wanted to stay in business, they had to differentiate their film product and offer something audiences could not readily find elsewhere.

Some drive-in operators found a way out of their film dilemma in the early 1960s by renting more films from independent producers. This proved a successful relationship for both parties as drive-in audiences increasingly were made up of teenagers and many independent filmmakers made films exclusively for that age group.

Perhaps the most successful independent producer was American International Pictures. Samuel Z. Arkoff and James Hartford Nicholson had pooled $3,000 and formed the company in 1955. They decided they could make films cheaper (most were made in 10 days for under $100,000 each) and distribute them (they developed their own distribution network) without the help of any major Hollywood studios. Among their best known early pictures was a 1957 production, I Was A Teenage Werewolf, starring Michael Landon.

Their greatest success, however, came in the early 1960s when they began producing a series of "beach movies" starring singing idol Frankie Avalon and television's most famous Mouseketeer, Annette Funicello. The first of these films, Beach Party, debuted in 1963 and was followed in rapid succession by Muscle Beach Party, Bikini Beach, Beach Blanket Bingo and How to Stuff a Wild Bikini.[5]

Nicholson admitted to an interviewer in 1965 that "70 percent of a picture's initial appeal to an audience is in the title."[6] His partner was even more frank about the way his company made its films. "We're making merchandise," Arkoff said. "So we've got to get the picture out. We can't let it sit. We can't dabble."[7]

The films followed a similar format. "There are no parents," Arkoff said, "no school, no church, no legal or government authorities, no rich kids or poor kids, no money problems--none of the things that plague young people today. For a kid who's been harangued by parents who's been told to put out the garbage or do the dishes before going out to the movies, this is Never-Never Land."[8]

William Asher, who directed the films, agreed. "The key to these pictures is lots of flesh but no sex. It's all good clean fun. No hearts are broken and virginity prevails."[9]

The films were aimed at 19-year-old white males, Louis "Deke" Heyward, a writer-producer for AIP, said because they were more likely to choose the movie they attended on dates. And it was for this reason, that the movies contained a bare minimum of physical contact. "Kids realize that sex play exists, but they don't like movies to get involved with it," explained Heyward, who added, "A boy watching a movie and sitting next to a girl with whom he's necking will be embarassed."[10]

In distributing the films, AIP aimed at a "saturation booking" whereby a film was premiered at several theatres in the same area, giving the illusion that it was "everywhere" and everyone was rushing to see it. This strategy offset any bad press or any bad word-of-mouth comments from patrons.[11]

Another low-budget pioneer was Roger Corman, who originally started with AIP before forming his own company, New World Pictures in 1970. Corman is best remembered as the producer of "Z" movies, those that were even cheaper to produce than B movies and among his best remembered films are Death Race 2000 and The Big Doll House," each of which grossed $4 million at the boxoffice. Corman is also remembered for giving some of Hollywood's most important directors, including Francis Ford Coppola, Peter Bogdanovich and Martin Scorsese, their directing starts in his films.[12]

Another of the independent producers was drive-in operator, Robert L. Lippert, who is credited with producing, co-financing and distributing more than 175 full-length motion pictures, including such memorable science fiction and horror classics as Rocketship XM and The Fly.[13]

While these low-budget films may have met the needs of drive-in operators and their audiences in the early 1960s, they also served to raise questions about a more permissive behavior that was thought to be taking place among drive-in patrons. Many of the films did not follow Hollywood's Production Code which was beginning to seem outdated. As a

result, some drive-in operators found themselves battling the "passion pits" image of earlier days and in at least two instances in the early 1960s, operators were charged with operating a public nuisance.

Leonard and Marjorie Bogart, operators of a drive-in theatre in Lackawanna County, Pennsylvania, were accused in 1962 of allowing too much noise to emanate from their theatre. The Pennsylvania Supreme Court, in agreeing with homeowners who complained of the noise, noted that the theatre still operated with a loudspeaker system that hung from trees. The court said such a system was outdated and added that installation of in-car speakers might have avoided much of the homeowners' complaints.[14] In the second incident, the Utah Supreme Court granted a $3,400 judgment to Russell and Helen Johnson who brought a suit against Mount Ogden Enterprises, operators of a drive-in in Pleasant View, Utah. The Johnsons complained the theatre was a nuisance because of its excessive noise and that the theatre's management was negligent in letting drive-in patrons trespass on their property to drink water from their well.[15] The number of cases against drive-in theatres would increase in the late 1960s as more of them began to feature R and X-rated films.

When drive-in operators were not worrying about films or complaints from the public, they found themselves involved in yet another controversy: daylight saving time. The

U.S. Congress had instituted nationwide observance of daylight saving time during the First and Second World Wars to conserve fuel and electricity by making daylight hours more nearly coincide with the urban work day. Following the wars, DST adoption became optional with states or local jurisdictions. But, by 1962, a number of transportation and communication groups around the country formed the Committee for Time Uniformity to lobby for an end to the time confusion that existed. These groups argued that lack of uniformity was inconvenient to travelers, and costly to railroad, air and bus lines who had to print different travel schedules. Broadcasters complained they had to resort to extensive videotaping of programs to maintain some continuity of time periods.[16]

Following nearly eighteen months of debate in Congress, President Lyndon Johnson signed the bill into law on April 13, 1966.[17] Beginning with the last Sunday in April, clocks were to be advanced one hour and remain that way until the last Sunday in October. State legislators could vote, however, to keep a state on standard time.

Drive-in operators had opposed daylight saving time as early as 1949 when a group of operators in California fought its adoption in that state.[18] In 1953, drive-in operators in Louisville, Kentucky, complained they were losing as much as $100,000 a year because DST meant that shows often did not end until past midnight.[19] This posed an additional problem

for drive-in operators in communities where public officials were trying to institute curfews.

Among the most ardent opponents of DST was the Theatre Owners of Indiana organization, which represented both conventional and drive-in theatre operators. When the law took effect, this group began a campaign to change it in their state. Indiana was divided down the middle into Eastern and Central time zones. The theatre owners, who wanted the entire state placed in the Central time zone, first presented a petition to the U.S. Department of Transportation, the government agency responsible for administering the law.[20] When that failed to change matters, theatre owners next went into U.S. District Court in March, 1968, seeking an injunction preventing the law from being enforced in Indiana.[21] At the same time, the owners began a statewide newspaper campaign. The public was asked to fill out a newspaper coupon that read in part: "I support the state of Indiana's petition to move the time zone line to the Indiana-Ohio border, thereby assuring no observance of Eastern double daylight time in Indiana," and then to mail it to the transportation department.[22]

In April, 1968, the transportation department introduced a plan to move the time zone to the Indiana-Illinois border and put the state on Eastern time, except for twelve counties in the extreme northwestern and southwestern portions of the state which would go on Central time. Theatre

owners opposed this plan as well, arguing that "the only persons favoring moving the time line to the Illinois border are the special interest groups (such as the TV broadcasters) who have strong economic ties to the Eastern Seaboard."[23] State legislators attempted a short time later to pass a law exempting Indiana from the new time rule, but the governor vetoed the plan.[24]

"It is my judgment that owners of drive-in theatres will lose about $3.5 million in receipts this year," Trueman T. Rembusch, chairman of the theatre owners' time committee said in 1969. "A lot of people just don't want to wait until 10 p.m. for the start of a movie at a drive-in after it gets dark."[25]

Another issue that bothered theatre owners, including some drive-in operators, was a Federal Communication Commission proposal in 1969 to license an additional 100 pay-TV stations around the country. Theatre owners felt this plan would further threaten their industry and they planned to darken their marquees for two hours in protest to the FCC order.[26] But, not everyone in the movie business agreed the protest was necessary. Barry B. Yellen, president of the Cinecom Corporation theatre chain, downplayed the pay-TV proposal in a speech to a group of Indiana theatre owners in 1969. Yellen said the plan would not affect theatres showing first-run films because TV executives knew they needed the exposure that theatres gave films before they appeared on

television. Yellen also predicted that pay TV "will not be able to show the sophisicated films today's adults want to see."[27]

NOTES

[1]U.S. Census of Business, 1963, Vol. VI, Selected Services Trades--Summary Statistics, (Washington, D.C.: U.S. Government Printing Office, 1963), p. 1.

[2]U.S. Census of Business, 1967, Selected Services--Motion Pictures, (Washington, D.C.: U.S. Government Printing Office, 1967), p. 4-1.

[3]Personal interview, Carl Lind, Indianapolis, Indiana, 8 June 1983. Lind and his wife operated the 220-car Basin Drive-In Theatre in Pleasant Valley, Utah, during the 1960s.

[4]See, F. Leslie Smith, Perspectives on Radio and Television: An Introduction to Broadcasting in the United States (New York: Harper & Row, 1979), passim.

[5]Alan Levy, "Peekaboo Sex, or How To Fill a Drive-In," Life 16 July 1965, pp. 81-84, 87-88.

[6]Ibid, p. 81.

[7]Ibid, p. 82.

[8]Ibid., p. 83.

[9]Peter Bart, "Hollywood Beach Bonanaza," New York Times, 13 December 1964, Sec. II, p. 9.

[10]Alan Levy article, p. 87.

[11]Ibid, p. 87. See, also, Aljean Harmetz, "The dime-store way to make moves and money," New York Times, 4 August 1974, Sec. VI, p. 12, 32-34.

[12]Bill Davidson, "King of Schlock," New York Times, 28 December 1975, Sec. VI, p. 13, 23.

[13]Personal letter, Robert L. Lippert, Jr., 14 April 1983.

[14]Guarina v. Bogart, 180 A. 2d 557 (1962).

[15]Johnson v. Mount Ogden Enterprises, Inc., 460 P. 2d 333 (1969).

[16]For a background article on the DST issue, see, "Uniform Observance of Daylight Saving Time," 1966 Congressional Quarterly Almanac, (Washington, D.C.: Congressional Quarterly, Inc. 1966), pp. 585-587.

[17]Uniform Time Act PL 89-387 (1966).

[18]"Cal. Drive-Ins Fight Daylight Times," Variety, 21 September 1949, p. 17.

[19]"Early L'ville Midnite Robs Ozoner of 100G," Variety, 5 August 1953, p. 4.

[20]"Theatre Groups Wants Central Time in State," Indianapolis Star, 24 March 1967, p. 10.

[21]"Theatres Seek Ban on Fast Time," Indianapolis Star, 21 March 1968, p. 1.

[22]"Double 'Fast Time' Fought," Indianapolis News, 17 February 1968, p. 1.

[23]"Governor Lauds Federal Ruling on Indiana Time," Indianapolis Star, 14 January 1969, p. 2.

[24]"Time Bill Veto Means Daylight Saving Plan Again," Indianapolis News, 15 March 1969, p. 3.

[25]"Theatres Say Fast Clocks Cut Profits," Indianapolis Star, 24 June 1969, p. 15.

[26]"Theatres To darken Marquees in Protest," Indianapolis Star, 25 April 1969, p. 17.

[27]Corbin Patrick, "Pay TV Won't Hurt Theatres, Hoosiers Hear," Indianapolis Star, 6 December 1969, p. 16.

CHAPTER IX

POLICE RAIDS

In August, 1963, Guy Brigido, owner of the Riverview Drive-in Theatre in Pittston, Pennsylvania, and his projectionist were arrested for showing the film Scanty Panties. Fourteen law officers entered the drive-in in unmarked cars and five minutes before the movie was to end, the officers arrested the two men and confiscated their film. They also searched other cars and found 30 juveniles among the 300 to 400 people in attendance. Two years later, police raided a drive-in in Grand Rapids, Michigan, that was showing a general audience film.[1]

These two incidents were fairly typical of the growing number of police raids against drive-in theatre operators in the 1960s. But this kind of police interference was not unique to the motion picture industry. Almost from the beginning, police and other public officials had sought some measure of control over the content of films. In 1915, the U.S. Supreme Court obliged by denying motion pictures protection under the First Amendment on the grounds that the industry was a "business, pure and simple."[2]

When a number of state legislatures began considering film censorship boards in the late 1920s, motion picture industry executives reacted by forming the Motion Picture Producers and Distributors of America trade association. Former Postmaster General Will Hays was hired to head the organization and the trade group created the Production Code

Administration to enforce its own standards of film censorship.[3] This system remained virtually intact until 1952 when the U.S. Supreme Court again entered the debate, this time ruling that the film industry was now a significant medium for the communication of ideas and it should be protected under the First Amendment.[4] As some commentators have observed, the court's decision did not eliminate film censorship boards entirely, but it did begin to limit their powers to exceptional cases, which came to mean those involving obscenity.[5]

Five years later, the U.S. Supreme Court handed down the landmark Roth decision.[6] The case has been seen as the high court's first definitive response to the question of obscenity.[7] In writing the decision, Justice William Brennan argued that obscenity was not protected by the First Amendment. He also pointed out that "sex and obscenity are not synonymous," and for the first time the court defined obscene material as matter "which deals with sex in a manner appealing to prurient interest." Brennan said the standard for judging obscenity was not to be the effect of an isolated passage upon the most susceptible person, but "whether to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest."

By the early 1960s, law enforcement officers were becoming increasingly more frustrated by subsequent court rul-

ings that were narrowing definitions of obscenity and limiting local censorship boards.[8] Citizens also were upset with what they perceived as a changing set of moral values in society. They wanted their elected officials to keep such behavior out of their communities. Public officials responded to this concern with curfews, licensing and taxing ordinances, many of these directed at drive-in theatre operators.

Arresting a drive-in theatre manager and confiscating his film became one of the most popular extralegal tactics that police used. Managers could usually post bond quickly but they sometimes found the police unwilling to return films until a court hearing could be scheduled. In the meantime, managers were left with several decisions. They could order another copy of the film, but there was always the risk the police might return to their theatres. Or, the managers could change their movie policy entirely and begin to show more "family-oriented" films. The problem with this latter option was that by the early 1960s, most drive-in operators knew that family audiences no longer were attracted to their theatres. Television was now keeping families at home.

For some drive-in operators, the only way to fight this competition was by showing more explicit films. The Commission on Obscenity and Pornography, for instance, found in 1970 that of the 880 full and part-time theatres showing

exploitation (R or X-rated) films, 229 of them were drive-ins.[8]

When a drive-in operator made this decision, it oftentimes meant he or she would have to seek judicial relief in the form of injunctions against law enforcement officials. For operators who took this course of action, the financial costs could sometimes be quite high, not to mention the amount of valuable time that could be lost.

By the time Sheriff Damon Huskey of Rutherford County, North Carolina raided the Midway Drive-In Theatre on June 19, 1969,[9] the federal courts already had voiced their objections to such raids. In 1961, for instance, the U.S. Supreme Court ruled that law enforcement officials could not lawfully seize an offending film without first conducting an adversary hearing with the burden of proof to rest with the prosecutor. At this hearing, the defendant also had the right to test the question of obscenity before a judicial officer.[10] Three years later, the high court ruled again, this time saying that any adversary hearing had to be conducted before the issuance of a warrant.[11] And, in 1968, the U.S. Court of Appeals, Seventh Circuit, ruled that state officers could not constitutionally seize prints of an allegedly obscene motion picture, I, A Woman, without a prior adversary hearing on the issue of obscenity and officers could not seize and retain the film as evidence in pending obscenity prosecutions. The case involved four

drive-in theatres in the greater Indianapolis, Indiana, area.[12]

These federal rulings apparently did not bother Sheriff Huskey when he arrested Susan Dantzic, owner of the Midway Drive-In, and her 16-year-old projectionist and confiscated two films, The Ramrodder and A Piece of Her Action. Dantzic faced four charges, including the exhibition of obscene movies for gain, exhibition of obscene movies to minors, contributing to the delinquency of minors, and interference with an officer who was executing his duties. On Saturday, August 16, Dantzic, through her attorney, entered a guilty plea to the charge of exhibiting an obscene movie for gain. She was fined $1,000 and sentenced to six months in jail, but the judge agreed to suspend the sentence three years if Dantzic promised not to show any obscene or even questionable movies at her drive-in.[13]

Two days later, Sheriff Huskey told a reporter for the Forest City Courier that as a result of the Dantzic judgment, he now was banning in the county all adult movies or other movies of a questionable rating. The sheriff approached J. W. Griffin, owner of the Griffin Theatre in Forest City, and told him not to show the film, Where Eagles Dare, which had an "M" rating. (In 1968, the Motion Picture Association of America, facing criticism from many quarters, introduced a new film rating system. Four classifications, G, M, R and X, were created. "M", which stood for mature

audiences only, was later changed to "PG" or parental guidance. It meant nobody under 16 could be admitted to a theatre unless accompanied by an adult.) The sheriff said he would visit Griffin's theatre and if he felt the film was obscene, he would close the theatre. The sheriff sent a deputy in his place and he reported later that the film was not obscene, "just bloody."[14]

The sheriff then told a reporter for This Week, a Rutherford County weekly, that he had requested that the Tri-City Drive-In Theatre not show the scheduled R-rated film, Candy, and the management had complied. "We've got to have a stopping place somewhere," the sheriff told the reporter. "The morals are getting so low...and we're just letting things go. The adults are just standing by...." The sheriff added that he planned to stop all adult films, "unless they stop themselves" in theatres across the country. The newspaper reported that "the ban is apparently in affect (sic) until the courts, or someone, declares otherwise."[15]

As a result of the sheriff's threats, Dantzic discontinued showing films with an "M, R or X" rating. She found, however, that with a steady diet of "G" movies, her customers now were staying away in large numbers. Faced with the prospect of going out of business, Dantzic decided to take action. She filed a suit in U.S. District Court to enjoin Sheriff Huskey from issuing or enforcing his ban.

On October 9, 1969, the court granted an injunction, ruling that the sheriff's statements about seizing or prosecuting exhibitors of all adult films labeled "R" or "X" were "statements of prejudgment based on a letter code devised in Hollywood or New York for material which Sheriff Huskey had never seen." The chilling effect of the defendant's utterances upon the plaintiff's freedom and pocketbook are fully and dramatically demonstrated by the evidence," the court added.[16]

Sheriff Huskey was not one to give up easily. He appealed to the U.S. Court of Appeals, Fourth Circuit, and a year later, this court said: "apparently the sheriff undertook the censorship activity in the belief that obscene movies are without constitutional protection and that he was himself authorized by law to make the determination of obscenity in any manner he saw fit, including reliance upon ratings of the motion picture industry. He is mistaken."[17]

Susan Dantzic's problems did not end with the appeals court decision. In October, 1969, Dantzic asked the state's court of appeal for permission to apply to the Rutherford County Superior Court for a writ of error coram nobis. She claimed her original plea of guilty to the charge of exhibiting an obscene film for gain was given involuntarily, and that both the conditions of her suspension and the statute used to indict her were unconstitutional. The appeals court granted her request, but the Superior Court judge who heard

the application of error, turned her down. He said her guilty plea was given voluntarily and her other grounds for attack should have been raised on a direct appeal of her conviction in August, 1969.[18] When Dantzic next tried to appeal the Superior Court judge's decision, some questions arose about who should hear that appeal. Finally, in July, 1971, the state's Supreme Court ruled that the state court of appeal could hear the appeal.[19]

Sheriff Huskey was not the only public official to raid drive-ins during the summer of 1969. On the evening of July 9, Alabama Governor Albert Brewer ordered state police officers to raid six theatres throughout the state, three of which were drive-ins, arrest the operators and confiscate their films. Among the theatres raided were the 80 Drive-In Theatre, Selma; Festival Cinema Theater, Birmingham; Auto Movies No. 1, Jefferson County; Etowah Art Cinema, Attalla; Jet Drive-In Theater, Montgomery and the Tide II Theater, Tuscaloosa.

Officers had been instructed to purchase tickets at the various theatres, view the entire film, and then determine whether the film was obscene. The arrests were made without search warrants and without any prior adversary hearings.

The operators brought suit before a three-judge U.S. District Court, seeking to enjoin the state from its prosecutions. In its ruling, the court ruled that the seizures were unconstitutional because they were "based solely on the

conclusions of the Alabama police officials." and were not subjected first to an adversary hearing.

The court then ruled the state's 1909 statute prohibiting display of nude pictures unconstitutional, arguing that it fell short of protecting freedom of expression already guaranteed under the first and fourteenth amendments. William Metcalfe, the Montgomery drive-in operator, also was charged with contributing to the delinquency of minors by showing an obscene film, but the court threw out this charge, arguing that the statute was too vague and imprecise. The court did, however, refuse to enjoin one charge brought against T. W. Tidmore, operator of the Birmingham theatre. In addition to the state charges, Tidmore had been charged under a city ordinance prohibiting the possession and exhibiting of obscene material.[20]

Two other cases in 1969 centered around the question of whether federal courts could interfere where state officials arrested a drive-in manager and seized his allegedly obscene film. In the first case, police in Westmoreland and Allegheny counties surrounding Pittsburgh, Pennsylvania, raided five drive-ins, arrested the managers and seized their copies of an Argentinian film, The Female. Cambist Films, Incorporated, the film's distributor, brought the suit.

In deciding the case, U.S. District Court Judge Edward Dunbauld ruled that police acted properly at the Westmore-

land County drive-in by first seeing the film in its entirety before seizing it and arresting the manager. However, at the four Allegheny County theatres, the judge ruled that officers did not witness the entire film as required by federal obscenity standards and therefore the arrests and seizures were invalid. The judge added that a federal court could enjoin a state prosecution where, in exceptional circumstances, "the mere existence of the litigation, apart from its merits, could 'chill' constitutional rights."[21]

Judge Dunbauld next launched into an unusual discussion about the motives of Allegheny County District Attorney Robert W. Duggan in seeking the prosecutions. Dunbauld said it was "common knowledge" that Duggan's "crusade was goaded by the stimulus of being prodded by the late Mr. Justice Michael A. Musmanno, and led to lengthy and still uncompleted litigation regarding another film, Therese and Isabelle."[22] Musmanno, a member of the state's Supreme Court, had been vocal in his disapproval of obscene films. In a 1959 case where the state's high court struck down the state's movie censor law, Musmanno, in a dissenting opinion, argued the ruling reduced the prosecution's machinery in obscene film cases "to a shambles" and added that Pennsylvania "may well be on the way to a cinematic Gomorrah."[23]

Judge Dunbauld noted that Duggan had admitted in testimony that he earlier had not raided a downtown theatre showing the same film because he did not know it was obscene

until a three-judge federal court in Kentucky had made such a ruling. "Herblock and Hungerford might draw an amusing cartoon of the district attorney's staff pouring over the advance sheets of the Federal Reporter and Federal Supplement for the dernier cri as to the appearance of questionable movies, rather than consulting advertisements in the Pittsburgh newspapers or trade journals such as Variety or Boxoffice."[24] The judge stopped short of drawing any conclusions about whether Duggan's actions in the "blitz" raids of the drive-ins were done in good faith or whether it "was vexatious institution of knowlingly unmeritorious proceedings doomed to futility but burdensome and harassing to the businessmen involved in the cinema industry."[25]

The Chambist Films case was decided in April, but five months later, a U.S. District Court judge in Georgia, in a similar case, ruled that federal courts did not have the right to enjoin state prosecutions of a drive-in operator accused of showing an obscene film. This case involved Weis Drive-In Theatre, Incorporated, owners of a drive-in in Macon, Georgia. In January, 1969, two sheriff's deputies entered the theatre, viewed about one-third of the film, then arrested the manager and projectionist and seized the X-rated film, The Vixen. The district court ruled that while it was illegal under federal law to seize a film without first holding an adversary hearing, there was no evidence in the present case to show that the district attorney had act-

ed in bad faith or had attempted to harass the theatre's owners by seeking the prosecution. For that reason, the court added, the request to enjoin the state prosecution was denied.[26]

This spate of decisions in 1969, particularly the Georgia ruling, appeared to leave unclear the issue of what role federal courts were to have in such cases. The situation remained that way until June, 1973, when the U.S. Supreme Court finally entered the debate in a case involving a Kentucky drive-in operator.[27]

Harry Roaden, manager of the Highway 27 Drive-In in Pulaski County, Kentucky, was arrested in September, 1970, for showing an allegedly obscene X-rated film, Cindy and Donna. The sheriff and district prosecutor purchased tickets to the theatre and viewed the film in its entirety before arresting Roaden and seizing his film. Roaden filed a motion to have the indictment dropped, arguing the film was "improperly, unlawfully and illegally seized." That motion was dismissed and Roaden was convicted of showing an obscene film. He was fined $1,000 and was sentenced to six months in jail.

The case went to the state's Court of Appeal, but that court, in affirming the conviction, argued the seizure did not exceed consititutional bounds in the absence of a prior judicial hearing.[28] However, Chief Justice Warren Burger and the rest of the U.S. Supreme Court saw the case differently.

Burger, who wrote the opinion, said the seizure was unreasonable not simply because it would have been easy to secure a warrant, "but rather because prior restraint of the right of expression, whether by books or films, calls for a higher hurdle in the evaluation of reasonableness." Burger added that "ordinary human experience should teach that the seizure of a movie film from a commercial theatre with regularly scheduled performances, where a film is being played and replayed to paid audiences, presents a very different situation from that in which contraband is changing hands or where a robbery or assault is perpetuated." The chief justice then added that where there are "exigent circumstances" in which police action literally must be "now or never" to preserve the evidence of the crime, "it is reasonable to permit action without prior judicial evaluation."[29]

The high court's decision did not mean that drive-in operators were now completely safe from having their films seized. That possibility still existed, but only after a judge first viewed the film to decide whether it was obscene.[30].

NOTES

[1]Both of these incidents are reported in, Richard S.Randall, Censorship of the Movies: The Social and Political Control of a Mass Medium (Madison: The University of Wisconsin Press, 1968), pp.151-152.

[2]Mutual Film Corp. v. Ohio, 236 U.S. 230, 244 (1915).

[3]For a good discussion of Hays and his office, see, "The Hays Office," in The American Film Industry, edited by Tino Balio (Madison: The University of Wisconsin Press, 1976), pp. 295-314.

[4]Burstyn v. Wilson, 343 U.S. 495, 501-02 (1952).

[5]See, Richard S. Randall, "Censorship: From The Miracle to Deep Throat," in The American Film Industry, edited by Tino Balio (Madison: The University of Wisconsin Press, 1976), pp. 432-457 and Douglas Ayer, et al. "Censorship in the Movie Industry: A Historical Perspective on Law and Social Change," in The American Movie Industry: The Business of Motion Pictures, edited by Gorham Kindem (Carbondale: Southern Illinois University Press, 1982), pp. 215-253.

[6]Athough this case is most often referred to as the Roth decision, it really involved two separate cases. Roth was a New York businessman who was charged with mailing obscene circulars and advertising, and an obscene book, in violation of the federal obscenity statute. Aberts, who conducted a mail-order business in Los Angeles, was charged with lewdly keeping for sale obscene and indecent books, and with writing, composing and publishing an obscene advertisement of them in violation of the California Penal Code. See, Roth v. United States, Alberts v. California, 354 U.S. 476 (1957).

[7]See Randall, "Censorship: From The Miracle to Deep Throat," p. 439.

[8]Technical Report of the President's Commission on Obscenity and Pornography, Vol. III, The Marketplace: The Industry (Washington, D.C.: U.S. Government Printing Office, 1970), p. 38.

[9]Drive In Theatres, Inc. v. Huskey, 305 F. Supp. 1232 (1969).

[10]Marcus v. Search Warrants, 367 U.S. 717 (1961).

[11]A Quantity of Copies of Books v. Kansas, 378 U.S. 205 (1964).

[12]Metzger v. Pearcy, 393 F. 2d 202, (7th Cir. 1968).

[13]Drive In Theatres, Inc. v. Huskey, at 1233.

[14]"Sheriff Proclaims All 'Adult' Films Obscene; Imposes Ban,"This Week, 20 August 1969. A copy of this story is exhibit B in Drive In Theatres, Inc. v. Huskey.

[15]Ibid., at 1237.

[16]Ibid., at 1236.

[17]Drive In Theatres, Inc. v. Huskey, 435 F. 2d 228 (4th Cir. 1970).

[18]Dantzic v. State, 178 S.E. 2d 790 (1971).

[19]Dantzic v. State, 279 N.C. 212 (1971).

[20]Entertainment Ventures, Inc. v. Brewer, 306 F. Supp. 802 (1969).

[21]Cambist Films, Inc. v. Duggan, 298 F. Supp. 1148 (1969).

[22]See, Commonwealth v. Guild Theatre, 432 Pa. 378 (1969) and Duggan v. Guild Theatre, 258 A. 2d 858 (1969).

[23]See, "Film Curb Voided in Pennsylvania," New York Times, 3 July 1959, p. 6.

[24]Cambist Films, Inc. v. Duggan at 1154.

[25]Ibid., at 1154.

[26]Carter v. Gautier, 305 F. Supp. 1098 (1969).

[27]Roaden v. Kentucky, 413 U.S. 496 (1973).

[28]Roaden v. Kentucky, 473 S.W. 2d 814 (1971).

[29]Roaden v. Kentucky, 413 U.S. 496 (1973) at 496.

[30]In 1972, the U.S. District Court in Northern Ohio ruled against an Allen County drive-in operator who argued that his civil rights had been violated in a police seizure of his film without a prior adversary hearing. The court ruled that the action of the police was done in "bad faith" without hope of ultimate success and for an improper purpose. However, the court also ruled that the defendants were immune from a lawsuit by reason of their official

positions and the quasi-judicial nature of their acts. See, Boyd v. Huffman, 342 F. Supp. 787 (1972).

CHAPTER X

COMMUNITIES FIGHT BACK

Police raids were not the only tactic police officials used in their fight against drive-in theatres in the late 1950s and throughout the 1960s. Police and public officials, oftentimes prompted by groups of outraged residents, also moved to institute and to enforce a variety of local ordinances and state obscenity statutes to control the content of films and to discourage immoral behavior they claimed occurred at drive-ins.

Some officials saw curfews as one way of controlling activities at a drive-in, but, in December, 1958, a New Jersey Superior Court judge set aside a Woodbridge Township law requiring drive-in theatres to close by 12:30 a.m. Judge John B. McGeehan said the ordinance "arbitrarily interferes with private business" and argued that township officials failed to prove that a large volume of traffic late at night affected the health of the community. The judge added that the fact a drive-in could be the scene of an immoral act was not sufficient grounds for such a severe regulation.[1]

This ruling, however, did not stop other public officials from trying to institute drive-in curfews. In 1959, for instance, Indiana State Senator Paul J. Bitz, a Democrat from Evansville, proposed a bill to force drive-ins to close by 1 a.m. Bitz said his bill was prompted by a survey that showed 80 percent of illegitimate children were the result of sex at drive-ins.[2] In Ohio, the state Senate's education

committee began hearings in 1965 on a bill to force drive-ins to close at 1:30 a.m. At the first hearing, a large delegation of teachers and parents from northeastern Ohio cities voiced their approval of the bill.[3] And, in 1972, both houses of the New Jersey Legislature approved a bill that would fine drive-in operators $100 if any patron's auto was still on the premises an hour after the movie ended. The bill's sponsor said the legislation was intended to prevent deaths from carbon monoxide fumes. In January, 1973, New Jersey Governor William T. Cahill asked legislators to reconsider the bill. Cahill said it failed to consider the possibility of mechanical breakdowns or accidents which would make removal of vehicles difficult.[4]

In Pennsylvania, drive-in operators were taken to task on three separate occasions for showing films on Sundays. In the first of these cases, the state Superior Court upheld the convictions of the cashier and projectionist at the Family Drive-In Theatre in Scott Township in Columbia County. The court ruled township residents had not yet legalized Sunday exhibition of motion pictures.[5] Similarly, the state's Superior Court upheld the 1956 conviction of the manager of the State Line Drive-In Theatre in Antrim Township, Franklin County, for the same offense.[6] And, in 1962, the district attorney in Lancaster, Pennsylvania, succeeded in stopping Sunday exhibition at three drive-ins by invoking the state's 1794 blue law. The three theatres had been show-

ing films on Sundays for six, seven and twelve years respectively. However, the district attorney reported that he had received "numerous" anonymous complaints against films being shown at two of the three drive-ins.[7]

Church groups often became involved in trying to force drive-in theatre operators to change their ways. In 1962, The Evangelist, a weekly publication of the Roman Catholic Diocese of Albany, New York, wrote an editorial critical of the film, Poor White Trash, being shown at several area drive-ins. "When responsible managers of drive-ins offer a bill of fare that is questionable in its moral standards or downright salacious, they bring into disrepute and odium a form of entertainment that strives to portray itself as ideal for family recreation," the editorial said, adding "...Theatres that prefer such questionable fare should be avoided by all who have a respect for moral standards and an appreciation of their worth as intelligent creatures of God."[8] A year later, the Roman Catholic Diocese in Santa Fe, New Mexico, announced that it was lifting a ban against the Route 25 Drive-In Theatre after the manager agreed to stop showing "nudie" films and agreed to go back to a more conventional film policy.[9]

Another popular means of controlling what was shown at drive-ins was through local licensing ordinances. They often contained provisions that allowed local officials to declare

a drive-in a "public nuisance" if the theatre's operators showed explicit films.

Floyd G. Bloss came up against such a licensing ordinance when he filed suit against officials of Paris Township near Grand Rapids, Michigan, after they refused to renew a license for his Stardust Drive-In Theatre. Bloss operated the drive-in in 1963 and 1964 under a township license agreement, but his request for a renewal in April, 1965, was denied. A circuit court judge dismissed the complaint and granted the township an injunction against Bloss. He appealed to the state court of appeals which agreed to pass the case along to the state's Supreme Court.[10] In its 1968 ruling, the Supreme Court said that the controlling question was whether the trial court properly had enjoined the drive-in because it was found to be a public nuisance. The court said it viewed a public nuisance as "an act which offends public decency" and added: "It is our judgment that the foisting off of a display of pictures not fit for children to see onto places within their view on public streets, on residential properties and in private homes, without the consent of the property owners and the parents, is a public nuisance."[11] The court said such behavior was not subject to protections under the First and Fourteenth Amendments. Justice Souris, who dissented, argued that the injunction permanently enjoined Bloss from operating his theatre in any

manner, as opposed to only enjoining him from operating the theatre in the manner found to constitute the nuisance.[12]

A year later, Bloss also lost in his bid to overturn a conviction for showing an obscene movie at his indoor Capri Theatre in Grand Rapids. Police officers and professors from two local colleges visited Bloss's theatre, watched the movie, A Woman's Urge, and then arrested the theatre's projectionist and later, Bloss himself. Bloss argued it was not lawful for officers to make an arrest for a claimed misdeamenor (showing an obscene movie) committed in their presence. The state court of appeals, however, rejected that argument, claiming the three police officers involved in the case "were faced with a situation in which they had probable cause to believe a crime was being committed in their presence. They were duty bound to act."[13] The appeals court also dismissed a $250,000 suit alleging a "conspiracy" on the part of Paris Township officials in trying to close Bloss's drive-in theatre.

Olympic Drive-In Theatres, Inc., operators of a drive-in in Pagedale, Missouri, fared better than Bloss when it challenged four local ordinances aimed at controlling its theatre. The company had operated its drive-in under a licensing agreement with the city of Pagedale since 1961, but in December, 1965, city officials, reacting to complaints from local residents, passed the first of four new ordinances aimed at regulating drive-in theatres in their

community. The first ordinance, an amendment to the original drive-in licensing agreement, stated that a drive-in theatre license could be revoked or suspended by the mayor, after notice and hearing, for several causes, including conducting a business "so as to constitute a nuisance by reason of noise or immoral activity on the premises." The second ordinance required drive-in theatre screens to be located so that "the pictures projected thereon are not visible from any public highway, street or thoroughfare" and required a wall or fence to be constructed around theatres to conceal explicit movies. The third ordinance levied a five percent tax on each drive-in admission, while the fourth ordinance prohibited drive-ins from operating when temperatures were 45 degrees or lower unless at least 75 percent of a drive-in's parking spaces had in-car heaters.

The trial court ruled that the first, second and fourth ordinances were valid, but dismissed the third ordinance. Olympic appealed the "valid" ordinances to the Missouri Supreme Court. This court said the first ordinance was too vague and indefinite. "The ordinance would permit the mayor to conclude that any particular movie or some portion thereof was a form of immoral activity on the premises and accordingly cause for revocation of the license."[14] The court said the second ordinance, requiring a fence around the theatre's property, was "unreasonable, oppressive and confiscatory." However, the court said the ordinance requir-

ing the in-car speakers was "more reasonable and one with which the plaintiff could live."[15]

In New York state, the appellate division of the state's Supreme Court was asked to rule in 1968 on whether a city of Tonawanda ordinance requiring drive-in theatres to be licensed was constitutional. The ordinance required a license fee of $1 for each car speaker and prohibited a drive-in from operating unless duly licensed by the city's mayor.

The court, in dismissing the ordinance, said there were "no standards, policies or rules set forth to control or guide the discretion of the mayor."[16]

Hooksett Drive-In Theatre, Inc., operators of a drive-in in Hooksett, New Hampshire, also succeeded in having a local ordinance ruled "invalid" and "unenforceable." City officials adopted an ordinance imposing a fee of $500 for each showing of a motion picture rated "X" at any open-air motion picture within the city limits. The New Hampshire Supreme Court ruled in 1970 that this fee did not bear any reasonable relationship to the cost of administering and enforcing the ordinance and it was thus "confiscatory."[17]

Another New England drive-in operator, Shipyard Drive-In Theatre, Inc. of Providence, Rhode Island, also succeeded in 1972 in preventing the city's licensing bureau from enjoining it for showing the film, "How to Succeed with

Love." The licensing bureau denied the theatre operators a license to show the film, charging it was "probably obscene." The state's Supreme Court said that if the licensing bureau wanted to enjoin the theatre it had to show that the film fell within the definitions of obscenity stated in the landmark Roth decision and subsequent rulings. The Rhode Island high court ruled the licensing bureau did not meet these conditions because the only way to prove violations of "contemporary community standards" was to present evidence of a violation of national standards and, the court said, the licensing bureau had not offered that proof.[18]

Local ordinances were not the only means public officials used in their fight against drive-ins. In some cases, drive-in operators were being charged under state obscenity statutes. But, as Pennsylvania state officials learned in 1959, such statutes had to be specific enough before they had a chance of succeeding.

Martin Blumenstein, operator of a drive-in theatre in Lackawanna County, was convicted in October, 1956, of exhibiting a lewd, obscene and indecent film under a 1939 state statute. The state's Supreme Court, in throwing out the conviction, said the statute was too vague in light of recent U.S. Supreme Court obscenity decisions.[19] This decision, and others like it, prompted state officials to begin to re-evaluate their state obscenity statutes and to bring

them more in line with the Supreme Court's definitions of obscenity.

In 1972, William Rabe, operator of the Park Y Drive-In Theatre in Richland, Washington, was convicted under a state obscenity statute for showing Carman Baby at his theatre. In affirming the conviction, the Washington Supreme Court did not hold that the film was obscene under the Roth standards, but, that it was obscene in "the context of its exhibition" at a drive-in.[20]

The U.S. Supreme Court, which agreed to hear the case, held a state could not criminally punish the exhibition of a motion picture at a drive-in theatre where the statute used to support the conviction did not give fair notice that the location of the exhibition was a vital element of the offense.

Chief Justice Warren Burger, joined by Justice William Rehnquist, concurred in the decision "solely on the ground that petitioner's conviction under Washington's general obscenity statute cannot, under the circumstances of this case, be sustained consistent with the fundamental notice requirements of the due process clause." However, the justices noted that public displays of explicit materials of the sort contained in the film in question "are not significantly different from any noxious public nuisance traditionally within the power of the states to regulate and prohibit, and, in my view, involve no significant counter-

vailing First Amendment considerations." The record thus showed "an offensive nuisance that could properly be prohibited," the Chief Justice concluded, "but the state statute and charge did not give the notice constitutionally required."[21]

This decision, however, did not help an Oregon drive-in operator who tried eight months later to use its reasoning in fighting his own conviction for disseminating an obscene movie, Southern Comforts, under Oregon's obscenity statute. In appealing his conviction to the state's court of appeal, Leroy Grauf, operator of a drive-in theatre in Sutherlin, Oregon, argued that the Oregon obscenity statute, like it Washington counterpart, did not give fair notice that the location was an essential element in the offense. The appeals court rejected the argument, claiming that in the Washington case, the courts had not determined that the film was obscene whereas Southern Comforts had been determined to be obscene at Grauf's trial. The court also said the argument was not valid because it had not been raised at the time of the trial.[22]

Two years later, the appeals court, using the same reasoning, upheld a similar conviction against Grauf's wife, June. Judge Tanzer, who dissented, argued that unless public display is expressly forbidden by the obscenity statute, "the foisting of such material upon children or upon an unseeking public is constitutionally permissible," the judge

said. "The problem of public display of objectional sexual images is one for legislative rather than judicial remedy."[23]

A state obscenity statute was used in a different way in a 1973 case involving BBS Productions, producers of the film, The Last Picture Show; J. M. Mayfield, manager of the Northern Drive-In Theatre in Phoenix, Arizona, and that city's chief counsel and city prosecutor.

On April 24, 1972, the prosecutor, advised Mayfield by mail that he had received several complaints about the film and it was his opinion that it violated both the "explicit terms" and the "spirit as well" of the state's criminal obscenity statute. The prosecutor requested Mayfield to cease showing the film and stated that continued exhibition of the film would result in prosecution. Mayfield stopped showing the film.

A month later, at a meeting of all the parties involved, the prosecutor demanded the deletion of a "four-second segment of total frontal nudity of a female swimmer." The film's producer and distributor brought suit, seeking injunctive relief from alleged infringements of the freedom of speech and press provisions of the First and Fourteenth Amendments. They also sought declaratory and equitable relief for the deprivations of their civil rights.

A special three-judge U.S. District Court heard the case and concluded that "clear and unequivocal threats" on

the part of the prosecutor caused the cessation of the exhibition of the film. "This was tantamount to an official suppression of BBS and Columbia's film (the distributors) resulting in injury with no opportunity to obtain a judicial test of the constitutional issues."

On the question of the film's nudity, the court said the challenged segment was "much reminiscent of the early twenty (sic) century household picture entitled, September Morn." "We find as an anatomical fact that such a portrayal is not a display of exterior female genitalia," the judges said, adding, that the segment did not violate the obscenity law. "Since no constitutional issue is now presented," the court said, "we concluded BBS and Columbia's motion for summary judgment on the alleged constitutional issue should be denied."

The judges, however, deemed it appropriate and expedient to remand the declaratory judgment and civil rights allegations to a single district judge for consideration.[24]

The showing of lewd motion pictures at a drive-in even became an issue in a U.S. Senate race in 1970. Former Nebraska Governor Frank B. Morrison, now the Democratic nominee, charged that Senator Roman L. Hruska was showing horror scenes in such films as The Blood Drinker and lewd situations in Catch-22 at five drive-ins he partly owned. "Can Roman Hruska deal effectively with drugs and violence

among youth while he glorifies them in his drive-in movies?" Morrison asked. Hruska, a member of the Senate Judicuary Committee and a staunch opponent of violence, filed a complaint against Morrison with the National Fair Campaign Practices Committee. Morrison's charges apparently did not bother voters as Hruska was easily re-elected.[25]

And, in at least one case, pressures brought by citizens and public officials did result in the closing in 1974 of the Sunset Drive-In Theatre in Fairfax County, Virginia. The controversy began eighteen months earlier with an anti-X-rated movie petition initiated by local clergymen. The theatre owners then were threatened on two occasions with criminal prosecutions unless they either stopped showing X-rated films or agreed to some type of fence around their property to shield their movie screen. "The children could sneak up and see through the wire mesh fence and no amount of patrolling could keep them away," complained Basil Kazitoris, the theatre's manager. "The drive-in was not a profitable operation unless you could run X movies."[26]

NOTES

[1]"Drive-In Curfew Upset," New York Times, 6 December 1959, p. 25. Of all the complaints about drive-ins being breeding grounds for immorality, only one case is known to exist where such behavior was the issue. In Kirwood v. McFarland, 47 So. 2d 74 (1950), James McFarland was accused of raping a young woman at an East Baton Rouge, Louisiana, drive-in in 1946. The state court of appeals, however, threw out the case, ruling that the evidence was insufficient to establish rape.

[2]"Bill Proposes Policing of Drive-In Movies," Indianapolis Star, 22 January 1959, p. 3. No record exists that this proposal ever became law. In, "Hoosier Drive-Ins Sweep Past Hardtops; Score Now 173 to 102," Variety, 31 August 1966, p. 18, it is suggested that the Indiana General Assembly was considering a bill that would require drive-ins to hire a security guard for every carload of patrons. Likewise, no evidence could be found to suggest that this proposal went beyond the talking stage.

[3]"Despite Late Start (9:45 p.m.) Ozoners Face Early-to-Bed Moral Frowners," Variety 7 April 1965, p. 18.

[4]See, "Bill Would Speed Up Drive-In Laggards," Camden Courier-Post, 28 May 1972; "No-No to Loiter After Show," Camden Courier-Post, 30 November 1972; and "Cahill Asks Bill Revision," Camden Courier-Post, 12 January 1973.

[5]Commonwealth v. Albano, 82 A. 2d 682 (1951).

[6]Commonwealth v. Grochowiak, 184 Pa. Superior Ct. 522 (1957).

[7]"Anonymous' Protests Force Sunday Closing of Two Pennsy Drive-Ins," Variety, 25 April 1962, p. 15.

[8]"Albany Diocese Raps Drive-Ins for Showing 'Poor White Trash' Pic," Variety, 5 September 1962, p. 4.

[9]"News From Nudies in Albuquerque," Variety, 23 October 1963, p. 20.

[10]Bloss v. Paris Township, 159 N.W. 2d 867 (1968).

[11]Bloss v. Paris Township, 157 N.W. 2d 260 (1968).

[12]Ibid., at 264.

[13]People v. Bloss, 171 N.W. 2d 455 (1969).

[14]Olympic Drive-In Theatre, Inc. v. City of Pagedale, 441 S.W. 2d 5 (1969) at 8.

[15]Ibid., at 10.

[16]City of Tonawanda v. Tonawanda Theater Corp., 287 N.Y.S. 2d 273 (1968).

[17]Hooksett Drive-In Theatre, Inc. v. Hooksett, 266 A. 2d 124 (1970).

[18]Scuncio v. Shipyard Drive-In Theatre, Inc., 292 A. 2d 873 (1972).

[19]Commonwealth v. Blumenstein, 153 A. 2d 227 (1959).

[20]State v. Rabe, 484 P. 2d 917 (1971).

[21]Rabe v. Washington, 405 U.S. 313 (1971).

[22]State v. Grauf, 501 P. 2d 345 (1972).

[23]State v. Grauf, 520 P. 2d 457 (1974).

[24]BBS Productions, Inc. v. Purcell, 360 F. Supp. 801 (1973).

[25]B. Drummond Ayres, "Rival Charges Hruska Peddles Smut," New York Times, 1 November 1970, p. 64.

[26]"Sun Sets on Drive-Ins' X-Rated Films," Washington Post, 13 March 1974, p. C-1. See, also, "2 Drive-Ins Will Stop Some Shows," Washington Post, 24 February 1973, p. A-15.

CHAPTER XI

BARE BREASTS AND BUTTOCKS

When police charges of showing an obscene movie were dismissed against Leroy Fisher and his wife in 1963, the residents of Grand Prairie, Texas, were angry. For months they had been trying to stop the Fishers from showing so-called "art pictures" on one of their two Twin Drive-In Theatre screens. This latest decision did not stop residents. They soon began circulating petitions asking the City of Grand Prairie to take the necessary action to stop the Fishers from showing "lewd, obscene, offensive pictures." Residents claimed such movies represented a "clear and present danger" to their community.

A short time later, members of the city council responded to the petitions by passing two ordinances, numbered 1621 and 1622. The ordinances were aimed at controlling obscene movies within the community. When this happened the Fishers, acting under their corporate name, Chemline, Incorporated, went to court to enjoin the city from enforcing the ordinances.[1]

At the district court hearing a police lieutenant told of a series of moral offenses at the drive-in theatre, including the forcible rape of a 14-year-old girl. He also spoke of teenagers being arrested for illegal possession of alcohol, for having lewd materials, and for being caught in the act of masturbation. Another police lieutenant testified that it was impossible to effectively enforce parking regul-

ations adjacent to the theatre. And, a psychiatrist, who testified, said youngsters watching obscene movies from the street could develop doubts about sex that might weaken the parental structure and encourage sexual fantasies. "Shall we say it might heat passions that were somewhat latent or not very active, to try and reproduce what was being shown on the screen," the psychiatrist added.[2]

After hearing the evidence, the district court decided to permanently enjoin the city from enforcing section VIII of Ordinance 1621 but it upheld remaining portions of 1621 and Ordinance 1622. Section VIII read in part that it was unlawful for any licensee to show or exhibit a film which was visible from any public street or highway in which "the bare buttocks or the bare female breasts of the human body" were shown or where "striptease, burlesque or nudist-type scenes constitute the main or primary material of such a movie." Both sides appealed.

The U.S. Court of Appeals, Fifth Circuit, in reversing the decision on Section VIII, argued that the district court had erred on the question of the harmful effects of such movies by limiting its consideration to the "average person" standard adopted in the landmark Roth decision. "Since Chemline admitted that the pictures were not suitable for viewing by children and undertook not to admit children," the court argued, "it seems not unreasonable for the city to require that one exhibiting such 'adult' films for profit

should do so on premises not accessible to the view of children."[3]

But did the appeals court reach the right decision? Some legal scholars have argued that the court incorrectly construed that Section VIII was designed for the protection of children, although the ordinance contained no specific references to an intent to prevent children from viewing obscene pictures from the highways.[4] The scholars also argue that the court ignored decisions where a "variable obscenity" approach had been used.[5] With this approach, the courts had ruled that while some obscenity might be harmful to children, it should not be prohibited from adults.[6]

Whatever its defects, a number of public officials in the middle 1960s began to view the Chemline ordinance and others like it as an effective way of protecting the rights of children from drive-ins that showed R and X-rated movies. That was certainly on the minds of the members of the Dallas City Council in November, 1965, when they created the nine-member Dallas Motion Picture Classification Board and Ordinance 11,284 to classify films within their city as either "suitable for young persons" or "not suitable for young persons" who were under the age of 16. An exhibitor had to be specially licensed to show "not suitable" films.

Twelve exhibitor organizations, led by Interstate Circuit, Inc. and representing thirty-two regular and outdoor theatres in Dallas, brought suit in U.S. District Court,

seeking an injunction against the ordinance. That court, however, ruled that such an ordinance was reasonable "in order to prevent the incitement or encouragement of crime, delinquency or sexual promiscuity on the part of the young person." The court did void a part of the ordinance relating to the revocation or suspension of an exhibitor's license for up to one year for showing a motion picture classified as "not suitable for young persons."[7]

Less than a year later, the exhibitors were back in court, this time before the Texas Court of Civil Appeals, seeking to overturn an injunction the city obtained that would force exhibitors to advertise that their films were "unsuitable for young persons." The civil appeals court, however, affirmed the district court decision, arguing that the advertisement requirement within the Dallas ordinance did not contravene free speech provisions of the federal constitution. The court also said that standards for judging the suitability of films were not too broad, vague, uncertain or indefinite to permit enforcement of the classification system.[8]

Still undaunted, the exhibitors next appealed the U.S. District Court decision to the U.S. Court of Appeals, Fifth Circuit, which agreed to rule on the constitutionality of the Dallas ordinance in August, 1966. This court held that the ordinance could classify as not suitable for young persons obscene films that described or portrayed certain

levels of brutality, criminal violence, depravity, nudity, sexual promiscuity and extramarital or abnormal sexual relations, but any classification that went beyond obscenity restrictions to regulate films depicting excessive brutality and criminal violence were invalid.[9]

In April, 1968, the U.S. Supreme Court finally agreed to enter the debate. Justice Thurgood Marshall, writing the majority opinion, reversed the lower court ruling, arguing the Dallas ordinance was invalid for want of narrowly drawn, reasonable and definite standards. Justice Marshall noted that only five of the nine-member classification board actually viewed the film in question, Viva Maria, but eight of them voted to classify it as "not suitable for young persons." "Vague standards, unless narrowed by interpretation, encourage erratic administration whether the censor be administrative or judicial; individual impressions become the yardstick of action, and result in regulation in accordance with the beliefs of the individual censor rather than regulation of law," Justice Marshall wrote.[10]

This Supreme Court decision did not deter local public officials in their fight against drive-in theatres. In Fort Worth, Texas, for example, the city council passed an ordinance "in the name of traffic safety" which prohibited the showing of "nudie" movies because they were allegedly traffic hazards.[11] In Victoria, Texas, some 150 citizens planned to boycott films they considered objectionable and to petit-

ion the city council to pass an ordinance regulating theatres that showed such films.[12] And, in Boston, the Rev. Jeremiah Minihan, auxiliary bishop of the Roman Catholic Archdiocese, supported an ordinance before the Boston City Council that would compel drive-in theatres to build screens to block X-rated films from the eyes of passing youths.[13]

In Pasedena, Texas, Councilman Roy D. Mease ordered local police to arrest Juanita Schreiner, manager of the local drive-in, in June, 1972, after the councilman said he got down on his knees near the drive-in and could clearly see an erotic movie on the screen. Mease said the fact that he could see the movie from a kneeling position proved that children also could see them.[14]

State legislatures also were stepping up their campaign against drive-ins and one report in 1970 indicated that as many as 26 states had legislative acts or pending legislation, making it illegal for any motion picture image to be visible outside the property boundaries of a drive-in theatre.[15] A bill before the Virginia legislature ordered drive-in owners to install some type of shield around their screens,[16] while a bill being considered before the Pennsylvania Senate would ban the showing of X-rated movies at drive-ins "to protect the public on highways and streets from accidents caused by distractions." The bill called for a fine of $100 and up to ten days in jail for each day of a

violation.[17] A similar bill also was being considered in New Jersey.[18]

Not every governor, however, was willing to go along with state legislators. A case in point was in New York where Governor Nelson Rockefeller vetoed a bill in 1970 that would have made it a felony to exhibit at a drive-in a motion picture that "depicts nudity, sexual conduct or sado-masochistic abuse which would be harmful to minors" and could be viewed from the street. Rockefeller said the bill was "too broad in its scope."[19]

But in Arizona, the state's court of appeals upheld that state's obscenity statute in 1971 against the Apache Drive-In Theatre in Tucson. The statute allowed police to enjoin, as a public nuisance, the exhibition of an allegedly obscene film at an outdoor theatre where it could be seen by nearby residents and children. The appeals court agreed drive-in theatres were capable of imposing pictures upon persons without their consent. "If the owner of land can be prohibited from polluting the community with noxious smoke and unpleasant odors, we conceive of no reason why he cannot be prohibited from polluting the neighborhood with visual material harmful to children," the court added.[20] Courts in Kansas[21] and North Carolina[22] also upheld similar ordinances, while, in at least one instance, such an ordinance was thrown out because of its vague wording.[23]

The problem of trying to prevent children and adults from viewing a drive-in movie screen from the street had not gone unnoticed among exhibitors. Members of the National Association of Theatre Owners realized that a high fence was not a practical answer to shield a large movie screen, so they called upon the Motion Picture and Television Research Center to find a solution. The scientists examined a number of alternatives, including fences, deep bowls in the earth, domes, multiple small screens and screens whose reflection pattern could be controlled. As the Center's chief scientist Petro Vlahos reported in 1972, the latter method appeared to be the most practical solution. He said such a screen could consist of about twelve million mirror-like lenticules. Each lenticule, being a curved mirror, would reflect only into the ramp area by virtue of the degree of its horizontal and vertical curvature and its orientation to the projector. Vlahos said the reflection pattern would result in a net screen brightness gain of about 300 percent and the direction of the plan also would be effective in excluding ambient light. A number of drive-in owners already had pledged approximately $100,000 to support a prototype of this containment screen, which was being planned for installation at a drive-in near Los Angeles International Airport.[24]

But before containment screens could go into mass production, the issue of whether a local ordinance could prohibit a drive-in from showing obscene films visible from the

street was back before the federal courts. This time the U.S. Court of Appeals for the Seventh Circuit agreed in September, 1972, to hear an appeal from Cinecom Theaters Midwest States, Incorporated, owners of two drive-ins theatres in Fort Wayne, Indiana. Cinecom maintained the city's ordinance was void by reasons of its overbreath. The city argued that it had the right to protect minors from harmful material and to protect neighbors or passersby from having offensive scenes unwillingly thrust upon them.

The appeals court, while conceding that the city had the right to protect children from theatres showing obscene films, said the Fort Wayne ordinance was too broad. "The prohibited presentations would include such innocuous and even culturally beneficial exhibitions as the art objects found in many museums, visual portrayals of underdeveloped or 'backward' cultures and serious movies such as Ulysses."

The court next raised the issue of whether the ordinance had gone too far in regulating the dissemination of "objectionable" material to juveniles. On this point, the court relied on the earlier Interstate Circuit case where the court had ruled that while an ordinance had attempted to curtail the viewing of obscene materials by juveniles, it had gone too far in also prohibiting scenes of excess brutality and criminal violence. The appeals court said such restrictions went beyond trying to protect children's rights.

The court also pointed out that the Fort Wayne ordinance referred to the showing of material only if it could be seen from a public street or highway, and made no mention of individual privacy or the sanctity of the home. As a result, the court concluded, the ordinance fell short of showing that it was curtailing expression in the public arena. "Passing motorists were able to see the screen for only a short moment," the court said, adding, "The disruption of traffic or traffic accidents were simply not problems. Nor was there any evidence to indicate that the visual presentations were so obnoxious to those walking in the area so as to preclude their avoidance simply by averting the eyes."[25]

This Cinecom decision and the earlier Chemline decision now left in doubt the issue of whether cities could prohibit drive-in theatres from showing obscene movies visible from the street. This situation continued until the U.S. Supreme Court agreed in 1975 to hear a case involving a Jacksonville, Florida, ordinance.

Richard Erznoznik, manager of the University Drive-In Theatre in Jacksonville, was arrested on March 13, 1971 and charged with violating the city's municipal code by exhibiting an R-rated motion picture, Class of '74, visible from public streets, in which "female buttocks and bare breasts were shown." The prosecutor agreed to stay Erznoznik's prosecution until the validity of the ordinance could be tested in a separate declaratory action. In that action, the city

introduced evidence to show that the screen of the theatre was visible from two adjacent public streets and a nearby church parking lot. Testimony also was given which indicated that people were observed watching films while sitting outside the theatre in parked cars and in the grass.

The trial court upheld the Jacksonville ordinance as a legitimate exercise of the city's police power, and ruled that it did not infringe upon the manager's First Amendment rights. The District Court of Appeal affirmed the decision, relying exclusively on the earlier Chemline decision.[26] When the Florida Supreme Court denied certiorari,[27] the U.S. Supreme Court agreed to hear the case.[28]

In reversing the lower court decision, the Supreme Court justices noted that the city's primary argument was that it was trying to protect its citizens against unwilling exposure to materials that may be offensive. "Jacksonville's ordinance, however, does not protect citizens from all movies that might offend; rather it singles out films containing nudity, presumably because the lawmakers considered them especially offensive to passersby," the court said. The justices then went on to note that the screen of a drive-in theatre is not "so obtrusive as to make it impossible for an unwilling individual to avoid exposure to it." As a result, the court argued that the limited privacy interest of persons on the public streets could not justify the cen-

sorship of otherwise protected speech on the basis of its content.[29]

The court next tackled the city's contention that its ordinance was a reasonable means of protecting minors from films that displayed nudity. The justices ruled the ordinance was too sweeping because it prohibited all films containing any uncovered buttocks or breasts, irrespective of context or pervasiveness. "Thus it would bar a film containing a picture of a baby's buttocks, the nude body of a war victim, or scenes from a culture in which nudity is indignenous," the justices said, adding, "Clearly, all nudity cannot be deemed obscene even as to minors."[30]

On the question of whether nudity on a drive-in movie screen distracted passing motorists, the court said the ordinance was "underinclusive" because "there is no reason to think that a wide variety of other scenes in the customary screen diet, ranging from soap opera to violence, would be any less distracting to the passing motorists."

The justices concluded by noting that the possibility of a narrowing construction of the ordinance appeared remote, particularly because city officials had offered several distinct justifications for it in its broadest terms. "We hold only that the present ordinance does not satisfy the rigorous constitutional standards that apply when government attempts to regulate expression," the court said.[31]

The decision was not unanimous. Three justices, Chief Justice Warren Burger, William Rehnquist and Bryon White, dissented. Burger and Rehnquist, in their dissenting opinion, argued that the screen of a drive-in movie theatre was a unique type of eye-catching display that could be highly intrusive and distracting, and public authorities had a legitimate interest in regulating such displays. "In sum," the two justices said, "the Jacksonville ordinance involved in this case, although no model of draftsmanship, is narrowly drawn to regulate only certain unique public exhibitions of nudity; it would be absurd to suggest that it operates to suppress expression of ideas."[32]

Justice White said he was not ready to go along with the majority's view that the limited privacy interest of persons on the public streets could not justify the censorship of otherwise protected speech on the basis of its content. "If this broadside is to be taken literally," Justice White said, "the State may not forbid 'expressive' nudity on the public streets, in the public parks, or any other public place since other persons in those places at that time have a 'limited privacy' and may merely look away."[33]

Editorial reaction to the Supreme Court's decision varied. The The Washington Post praised the decision, arguing that the court was totally correct in striking down an ordinance that, by its terms, "would have barred drive-in theatres from showing pictures on the frieze in the main

lobby of the local courthouse because that frieze contains a depiction of a bare-breasted woman."[34] But conservative columnist George F. Will took a different view. He argued the court's decision "has diminished what Brandeis called 'the right to be let alone,' which should include the right, even in public, to a kind of privacy--protection against the lasceration of feelings and bombardment of sensibilities to which everyone in compact modern communities is vulnerable."[35]

The decision also did not sit well with Jacksonville Councilman Joe Carlucci, who introduced the ordinance in 1972. He said it was not designed "to legislate morality" but to rid neighborhoods of a public nuisance where drive-in theatres were exhibiting obscene films. "I'm disappointed," the councilman said of the decision, adding, "Filth seems to prevail."[36]

NOTES

[1]Chemline, Inc. v. City of Grand Prairie, 364 F. 2d 721 (5th Cir. 1966).

[2]Ibid., at 725.

[3]Ibid., at 725.

[4]For a good discussion of this case, see, "The 'Clear and Present Danger' Test as Applied to Sexually Oriented Films--Some Pitfalls," Washington University Law Journal (Fall 1967), pp. 585-590.

[5]The "variable obscenity" test was first expressed in, Ginsberg v. New York, 390 U.S. 629 (1968), where the U.S. Supreme Court held that the state has the power to "protect" its children from material deemed harmful to them--in this case four "girlie" magazines--even though this same material would be constitutionally available to adults. It was the first time the court upheld a censorship law designed specifically to apply to minors.

[6]Such an approach was used in a Florida case where the manager of the Dragon Drive-In Theatre in Alachua County was arrested in February, 1970, and charged with "knowlingly exhibiting" a harmful motion picture to a minor. Evidence at the trial indicated that theatre attendants had allowed a 15-year-old boy to enter the theatre to see two films, The Daisy Chain and Kiss Me Quick and previews of The Secret Sex Lives of Romeo and Juliet. A special sheriff's department investigator testified that he had paid for the boy's admission and had then followed him into the theatre in another car. Two days later, the manager was arrested and prints of his films were seized. The Florida Supreme Court, on two separate occasions, upheld the conviction against the theatre manager, arguing that the state statute was constitutional as well as the arrest and seizure of the films. See, Davison v. State, 251 So. 2d 841 (1971), 288 So. 2d 483 (1973).

[7]Interstate Circuit, Inc. v. City of Dallas, 249 F. Supp. 19 (1965).

[8]Interstate Circuit, Inc. v. City of Dallas, 402 S.W. 2d 770 (1966).

[9]Interstate Circuit, Inc. v. City of Dallas, 366 F. 2d 590 (5th Cir. 1966).

[10]Interstate Circuit, Inc. v. City of Dallas, 88 S. Ct. 1298 (1968).

[11]"Drive-Ins Target of Censors," Censorship Today 2 (February/March 1969):47.

[12]Ibid., p. 47.

[13]"On the Marital Trial," New York Times, 25 September 1971, p. 36.

[14]"View of Movie Deemed Too Low," Camden Courier-Post, 29 June 1972.

[15]This figure is quoted in, Petro Vlahos, "Containment Screen for Drive-In Theatres," Journal of SMPTE 82 (February 1973):95.

[16]"Virginia Legislators Press for a Bill on 'Traffic Hazard' Movies," Washington Post, 22 February 1972, p. C-2.

[17]"Ban on X Movies Backed," New York Times, 21 July 1971, p. 70.

[18]"Ban Debated On Sex Films At Drive-Ins," Camden Courier-Post, 15 February 1973.

[19]"Rockefeller Vetoes Film Bill," New York Times, 22 May 1970, p. 40.

[20]Cactus Corporation v. State ex rel. Murphy, 480 P. 2d 375 (1971).

[21]See, Grove Press, Inc. v. State of Kansas, 304 F. Supp. 383 (1969) and 307 F. Supp. 711 (1969).

[22]Variety Theatres, Inc. v. Cleveland County, 190 S.E. 2d 227 (1972).

[23]State v. Furio, 148 S.E. 2d 275 (1966).

[24]Vlahos article, p. 95.

[25]Cinecom Theatres Midwest St., Inc. v. City of Fort Wayne, 473 F. 2d 1297 (1973). See, "Delaware Ozoners Battle Law Denying Them R-Rated Pics," Variety, 5 March 1975, p. 25, where a U.S. District Court judge in Delaware issued a temporary restraining order blocking enforcement of the state's new law prohibiting drive-ins from showing R and X-rated films "not suitable for minors."

[26]Erznoznik v. City of Jacksonville, 288 So. 2d 260 (1974).

[27]Erznoznik v. City of Jacksonville, 294 So. 2d 293 (1974).

[28]Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975).

[29]Ibid., at 212.

[30]Ibid., at 213.

[31]Ibid., at 217.

[32]Ibid., at 223.

[33]Ibid., at 224.

[34]"Nudes at Drive-In Movies," Washington Post, 27 June 1975, p. A-30.

[35]George F. Will, "Privacy and Drive-In Movies," Washington Post, 27 June 1975, p. A-31.

[36]"Anti-Nude Film Sponsor Will Pray For Justices," Washington Post, 24 June 1975, p. 18.

CHAPTER XII

THE OBSCENITY BATTLE CONTINUES

In the wake of the Erzonoznik decision in 1975, state and local officials around the county were asking themselves if there was still a way to stop drive-in theatres from showing X-rated movies. While the U.S. Supreme Court justices had ruled that the limited privacy interest of persons on public streets could not justify censorship of X-rated movies on a drive-in screen, public officials began to pay particular attention to two footnotes in the court's decision.

Footnote 13 read in full: "This is not to say that a narrowly drawn nondiscriminatory traffic regulation requiring screening of drive-in movie theatres from the view of motorists would not be a reasonable exercise of police power."[1] The other footnote, number 15, read: "The narrowing construction which occurs to us would be to limit the ordinance to movies that are obscene as to minors. Neither appellee nor the Florida courts have suggested such a limitation, perhaps because a rewriting of the ordinance would be necessary to reach that result."[2]

For some public officials, the wording of these footnotes seemed to imply that the U.S. Supreme Court would not be adverse to banning X-rated movies at drive-in theatres provided that any ordinance they devised followed the procedures the court seemed to be recommending. At the same time, the more conservative Burger Supreme Court had issued

a landmark ruling in obscenity that was being seen by some as affording more control to public officials in their fight to limit the amount of obscenity in their communities.

The case, which was decided in 1973, involved a California man accused of mailing pornographic illustrated books.[3] In its decision, the high court modified the requirement that proscribable obscenity must be "utterly without redeeming social importance," arguing that "at a minimum, prurient, patently offensive depiction or description of sexual conduct must have serious literary, artistic, political or scientific value to merit First Amendment protection." The court also better defined the "contemporary community standards" phrase taken from the Roth decision. The court said "community" did not refer to national standards, but rather applied to local or state standards. As a result of this decision and the footnotes in the Erznoznik case, a number of public officials began to see a more sympathic Supreme Court and many began re-examining their ordinances to find ways to make them more palpable to the high court.

In April, 1971, the Boston City Council asked its corporation counsel to draft an ordinance requiring drive-ins showing X-rated movies to properly shield their screens so neighborhood children would not be exposed to them. In May, the counsel replied that such an ordinance might not withstand a constitutional test. The counsel then submitted an

ordinance with a "somewhat different approach." It simply stated that no person could project a motion picture upon any screen in the open air if "such screen is open to view from a public or private way or an adjacent estate or from any part of a building or other structure in the vicinity."

The city council passed this ordinance in December, 1971, but in January, the mayor vetoed it. A short time later, the city council overrode the veto and the ordinance went into effect. The ordinance immediately brought cries of protest from Northeast Theatre Corporation, operators of the only three drive-ins in Boston. The corporation claimed that as early as 1971 it had agreed with the city not to show X-rated movies at its drive-ins, and yet, the city went ahead and passed the ordinance without giving the theatre corporation an opportunity to respond. Northeast officials said compliance with the ordinance at two of the three drive-ins still operating would cost more than $3 million.

For these reasons, Northeast filed for a preliminary injunction against the ordinance, and it was granted in June, 1972. Nearly six years later, the U.S. District Court agreed to rule on the constitutionality of the ordinance. In its ruling, the district court characterized the Boston ordinance as "even broader" in scope than the Jacksonville ordinance used against Erznoznik because it tried to restrict, not only X-rated movies, but any film at an unshielded open-air theatre. The court also said that because

the ordinance was not restricted to screens visible from roads or highways, the ordinance could not be sustained on the basis of the city's interest in protecting against the increased likelihood of traffic accidents. Likewise, the court ruled that the city's asserted interest in protecting rights of neighboring citizens from intrusions of images on drive-in screens was not sufficient to support the constitutionality of the ordinance as a reasonable restriction on the time, manner and place of exhibition.[4]

The Northeast decision helped to reinforce the idea that public officials were not going to have any success in getting courts to curtail X-rated movies at drive-ins until they came up with a carefully defined ordinance, one that could not be thrown out for its vagueness. Such exactness in wording was on the minds of the Cook County, Illinois Board of Commissioners, when they passed their Outdoor Movie Theatre Ordinance in July, 1978.[5]

This was not the county's first attempt at trying to deal with allegedly obscene movies at drive-in theatres. In 1975, county officials tried to enjoin the Route 53 Drive-In Theatre in Palatine from showing X-rated movies by having a circuit court judge rule that the theatre was a public nuisance. The circuit court judge complied with the county's request, but the appellate court of Illinois reversed the decision in December, 1976, concluding, "We find no statutory basis for the abatement of obscenity as a nuisance."[6]

Much of the credit for the new outdoor movie theatre ordinance really belonged to two suburban Chicago housewives who became upset about X-rated movies shown at the Starview Drive-In Theatre near their homes.

Sharon Tustin, one of the women, recalled driving home one night with her five-year-old daughter when the child looked out the car window and asked, "Mommy, why are those two ladies in the bathtub hugging each other?" The Elgin, Illinois woman remembered looking at the movie screen herself and then pushing her daughter's head down in the seat until they drove past the theatre. Mrs. Tustin said the idea of doing something about Starview's X-rated movies came after she saw a television program about pornography. "I believe it was the Lord's hand," she said. "I know people think that sounds cornball, but I believe the Lord was working through me."[7]

Mrs. Tustin met Delores Larson, president of Church Women United in Elgin and together they decided to circulate a petition against the theatre. After collecting nearly 2,000 signatures, the women approached Harold L. Tyrrell, a Republican county commissioner from LaGrange Park. He agreed in March, 1978, to take the womens' case before the board of commissioners. They agreed to the outdoor movie ordinance on July 10, 1978.

"If a person wants to see pornography," Tyrrell said when the ordinance was passed, "it is his right to do so,

but the ordinance extends those same constitutional rights to individuals who choose not to see such films or to have them thrust upon them."[8] The ordinance passed unanimously, but two board members, both lawyers, abstained, arguing that the ordinance posed some legal problems.[9]

The ordinance required drive-in theatre owners to obtain from the county board a license, renewable each year. It also set out provisions under which a license could be revoked. One portion of the ordinance, Section 14-53(3), said each license applicant had to agree to "desist from exhibiting any motion picture or film representation containing any scene or scenes of sexually explicit nudity including but not limited to acts or simulated acts of sexual intercourse, masturbation, oral copulation, actual or simulated touching, caressing or fondling of female breasts and male or female buttocks, anus or genitals; and actual or simulated display of erect male genitalia when such motion picture or film presentation is viewable from any private residence or any public street or walkway."[10]

Two days after the ordinance passed, L. Robert Artoe, an attorney representing Frank Marsico, owner of the Starview Drive-In Theatre, filed a suit in U.S. District Court claiming the Cook County ordinance was unconstitutional. The suit asked for an injunction to prevent the county from "maliciously" enforcing the ordinance and for $30,000 actual

and $1 million in punitive damages against the board of commissioners and Cook County Sheriff Richard J. Elrod.[11]

Two weeks later, sheriff's deputies entered the Starview Drive-In, watched the two films being shown, Black Silk Stockings and Femme de Sade, and then, at 2 a.m., arrested Marsico and his projectionist, William Graff, and charged them with two counts of obscenity and "two other offenses relating to the ordinance." Marsico challenged the propriety of the raid and the seizure of his films, but a Circuit Court judge held in September, 1978, that they were constitutional. At the same time, Marsico tried to have the U.S. District Court enter the controversy by claiming that the county was preventing him from showing sexually explicit movies. He also alleged that enforcement of the ordinance "is being carried out with the basic unlawful purpose and effect of intimidating and harassing and punishing plaintiffs and deterring them from the exercise of their constitutionally protected rights of freedom of speech, press association, property, due process and inquiry." The District Court, however, dismissed Marsico's suit on March 7, 1979, claiming that a federal court should abstain from entering cases where state criminal proceedings were still pending.[12]

Two months after that decision, Marsico received more encouraging news when Circuit Court Judge Reginald Holzer ruled the county's drive-in ordinance was unconstitutional.

In his four-page opinion, the judge said legal safeguards did not exist in the ordinance. "If the exhibitor's definition of sexually explicit nudity differs from that of the board president, who will resolve the difference?" the judge asked. "What procedure can the exhibitor take to safeguard his freedom of expression? What standards will govern the judgment of the (Cook County) board president?"[13]

The county was not deterred by this judicial setback. On September 4, 1979, the commissioners approved a revised ordinance which Commissioner Tyrrell said now contained the machinery for review the circuit court judge found missing in the original ordinance. Section 14-53(3) of the ordinance also was revised. It still said a drive-in owner had to desist from exhibiting motion pictures which had scenes depicting sexually explicit nudity and were viewable from a private residence or public street. But the revised ordinance now placed this nudity into clauses. Clause (A) referred to sexual intercourse, masturbation or oral copulation; Clause (B) covered touching, caressing or fondling of the bare female breast or bare male or female buttocks, anus, or genitals; and Clause (C) referred to the erect male genitalia or male ejaculation.

After the new ordinance passed, the state's attorney of Cook County filed an action in the circuit court seeking a declaratory judgment to have the amended ordinance ruled constitutional and to gain an injunction barring Marsico

from operating his theatre without a license. On May 23, 1980, the circuit court ruled the ordinance was constitutional and Marsico appealed. He continued to show X-rated movies at his theatre, much to the displeasure of Mrs. Larson and others. "We hope the sheriff will come out here shortly and report the violation," Mrs. Larson said. "It's hard-core pornography to the nth degree."[14]

John Dienner, an assistant state's attorney, said in a June, 1980 interview that his office was awaiting a formal complaint before asking sheriff's deputies to investigate. Dienner said if the theatre was still showing X-rated movies, the county board president would name a hearing officer to hear the complaint. "If his license is revoked," Dienner added, "then that's it. He won't be able to show any movies--not even Walt Disney."[15]

The complaint came a short time later and a hearing to revoke the theatre's license was held in September. The hearing officer postponed his decision until January, 1981, at which time he found the theatre in violation of the county ordinance and fined Marsico $2,500.

The Illinois Appellate Court did not hear Marsico's appeal challenging the constitutionality of the amended ordinance until September 8, 1981. The theatre owner maintained that Section 14-53(3) of the Cook County ordinance was unconstitutional because it imposed an impermissible prior restraint on materials protected by the First Amend-

ment and because it discriminated on the basis of a film's content in violation of the equal protection clause of the Fourteenth Amendment.

On the question of prior restraint, the appellate court noted in its fifteen-page opinion that neither side in the dispute offered a definition of what it viewed as prior restraint. The court said that after reviewing the pro- cedures outlined in the county's ordinance, it believed it "may be classified as a legislative prior restraint. This form of prior restraint, however, does not possess any of the objectionable features of executive or judicial prior restraints and should not be subject to the same scrutiny."[16]

The court then addressed the question of whether the ordinance was discriminatory on the basis of the film's content. The court noted a 1979 ruling that upheld the City of Detroit's right to classify "adult" movie theatres and to restrict their operations to certain sections of the city. The appellate court noted how the content of a film was used to classify the movies theatres in that case. "We hold that the Cook County Outdoor Movie Theater Ordinance is not unconstitutional solely because the regulations are based on the content of communication protected from total suppression by the First Amendment," the court said.

The appellate court then noted how the Supreme Court justices in the Erznoznik case made it clear that under any test of obscenity as to minors not all nudity would be pro-

scribed, but, rather, to be obscene "such expression must be, in some way, erotic." "We experience no difficulty in holding that scenes depicting sexual intercourse, masturbation or oral copulation (Section 14-53(3) Clause (A)) or erect male genitalia or male ejaculation (Clause (C)) are erotic," the court said. "Such scenes constitute the type of 'sexually explicit nudity' which Erznoznik suggested could be prohibited (as to minors) by a properly drawn ordinance."[17]

As for Clause (B), the appellate court said it would prohibit such scenes as a mother breastfeeding or bathing her baby, or of a parent caressing an infant. "We find that Clause (B) is overbroad," the court concluded.[18]

Marisco appeared before the Illinois Appellate Court again a couple of weeks later, this time to appeal his 1978 conviction for showing an obscene film, Femme de Sade, at his drive-in. The theatre owner argued that the trial court committed reversible error in giving a jury instruction which misstated the elements of obscenity. The appellate court agreed and ordered a new trial.[19]

In other parts of the country, public officials also were finding court rulings more sympathetic to their point of view.[20] In 1977, for instance, John Vassey and his sons, Michael and Robert, pleaded guilty to charges of exhibiting allegedly obscene movies at their South 29 Drive-In Theatre near Spartanburg, South Carolina. They were each sentenced

to three years, suspended to six months or a $2,000 fine and eighteen months probation.[21] In 1978, Ramon Ruenes lost his bid to have the Texas Court of Civil Appeals in Corpus Christi overturn a permanent injunction against his Gulf Drive-In Theatre. Officials in Nueces County sought the injunction, charging Ruenes under a common law nuisance theory.[22] That same year, a U.S. District Court judge dismissed a suit brought by Kerasotes Missouri Theatres, Inc., operators of the Family Drive-In Theater in Dexter, Missouri. The corporation sued the mayor, police chief, city attorney and a policeman, claiming its constitutional rights were violated when the policeman shut down the theatre for showing the film, Pleasure Is My Business. The court ruled that public officials were immune from prosecution and shutting down the theatre had not been done in bad faith.[23]

In 1982, officials of Texas National Theatres, Incorporated, lost their bid to overturn a permanent injunction prohibiting their 66 Drive-In Theatre in Albuquerque, New Mexico, from operating as an "adult theatre" until it was granted a special use permit from the city.[24] In 1983, Tim Hardin, manager of the Miami Cruise-In Theatre near Miamisburg, Ohio, was arrested for pandering obscenity by showing the X-rated film, Sexual Heights, at his theatre. The first-degree misdmeanor was punishible by up to six months in jail and a $1,000 fine.[25] And, in federal court decisions in Texas[26] and Washington state[27] in 1981 and 1982 respect-

ively, challenges to state obscenity statutes brought by conventional and drive-in theatre operators were denied.

At long last, public officials appeared to have won their battle against drive-in operators who showed sexually explicit movies.

NOTES

[1]Erznoznik v. City of Jacksonville, 422 U.S.205 (1975) at 215.

[2]Ibid., at 216

[3]Miller v. California, 413 U.S. 15 (1973).

[4]Northeast Theatre Corporation v. Jordan, 445 F. Supp. 744 (1978).

[5]"Curbs on drive-in movies past test," Chicago Tribune, 21 June 1978, sec. 1, p. 5.

[6]People ex rel. Carey v. Route 53 Drive-In, 358 N.E. 2d 1298 (1976).

[7]"Unintended views of pornography," Chicago Tribune, 23 July 1978, sec 1, p. 27.

[8]"Drive-In sex films curbed," Chicago Tribune, 11 July 1978, sec. 1, p. 3.

[9]Ibid., p.3.

[10]An abbreviated version of the ordinance is appended to, Marsico v. Elrod, 469 F. Supp. 825 (1979).

[11]"Drive-in sues for right to show explicit sex films," Chicago Tribune, 12 July 1978, sec. 1, p. 4.

[12]Marsico v. Elrod, supra.

[13]"Drive-in wins sex-ordinance challenge," Chicago Tribune, 30 May 1979, sec. 4, p. 1.

[14]"Drive-in still shows 'porn' despite ruling," Chicago Tribune, 12 June 1980, sec. 6, p.1.

[15]Ibid., p. 1.

[16]People ex rel. Carey v. Starview Drive-In, 100 Ill. App. 3d 624 (1981) at 633.

[17]Ibid., at 637.

[18]Ibid., at 638.

[19]People v. Marsico, 100 Ill. App. 3d 691 (1981).

[20]One exception was in a Michigan Court of Appeals ruling in 1979 that declared the Blue Sky Drive-In Theatre in Caseville could not be barred from showing an X-rated movie. The appeals court, noting that the film had not been screened first by a lower court, said to shut down the theatre without finding the film obscene would allow citizens "to ultiize an arm of the state, the court system, to impose censorship upon the free speech rights of others merely because they do not approve of the content of their messages." See, "Court Overturns X-Film Nuisance Ruling," Detroit News, 25 September 1979, p. 2-B.

[21]"Use 'Nuisance' and Probation on Dixie Ozoner," Variety, 15 June 1977, p. 38.

[22]Ruenes v. Nueces County, 574 S.W. 2d 854 (1978).

[23]Kerasotes Missouri Theatres, Inc. v. Conner, 459 F. Supp. 154 (1978).

[24]Texas National Theatres v. City of Albuquerque, 639 P. 2d 569 (1982).

[25]"Unshielded Ozoner Cues X-Rated Arrests," Variety, 20 July 1983, p. 24.

[26]Red Bluff Drive-In, Inc. v. Vance, 648 F. 1020 (5th Cir. 1981).

[27]Spokane Arcades, Inc. v. Eikenberry, 544 F. Supp. 1034 (1982).

CHAPTER XIII

DECLINE AND PROSPECTS

As the drive-in theatre industry entered the 1970s, the number of drive-ins continued to drop, although the Census Bureau reported in 1972 that the rate of decline (forty-two theatres) between that year and 1967, the last reporting period, was not as great as it was between its 1963 and 1967 reports.[1] This leveling off of drive-in theatres was short lived and by the time the Census Bureau issued its next report in 1977, an additional 460 drive-ins went out of business, leaving only 2,882 still operating.[2]

The reasons for these drive-in closings also came into sharper focus during the 1970s. One factor was rising land costs. When drive-ins were expanding in the early 1950s, most were built in outlying areas where land was cheap and few other developments existed. But, as early as 1963, drive-in owners, like the operators of the Skyline Drive-In Theatre near Sheridan, Wyoming, knew urban sprawl had caught up with them and it now threatened to devour them. The Skyline owners lost in their bid to persuade the Wyoming Supreme Court that they were forced to close their theatre because lights from cars on the new Interstate 90 Highway reflected on their theatre screen and made it impossible to show movies.[3]

With the rising land costs came higher taxes, and it was for this reason that General Cinema, one of the major drive-in theatre chains, decided in 1977 to close its Totowa

Cinema Drive-in along Route 46 in New Jersey. The 36-acre theatre site had an assessed valuation of $1.6 million and annual taxes of $45,000.[4]

Some drive-in operators like Harry Schwab were quite blunt in assessing blame for the demise of drive-ins. "Shopping malls destroyed the drive-in," said Schwab, who owned drive-ins in Springfield, Massachusetts.[5] Another Massachusetts drive-in owner, James Guarino of Weymouth, concurred. "The highest and best use of land was not for a drive-in," said Guarino, who operated a drive-in for nearly forty years. "Retail stores can pay more for the land than drive-ins."[6]

That ability to pay more for the land, Jerome Schlanger, vice-president of Budco Quality Theatres, admitted in 1982 was one reason why his company was selling eleven of its drive-ins in Delaware, New Jersey and Pennsylvania. "The drive-in business is still good," Schlanger said, "but you can often make more money selling the property."[7]

Preston Henn, operator of the Airport 9 Drive-In in Fort Lauderdale, Florida, found out how much money that could be in 1982 when he sold his 30-acre theatre site to Broward County officials. They paid Henn $4.6 million for the land which they planned to use to expand nearby Fort Lauderdale-Hollywood International Airport.[8] The year before, the owner of the Morris Plains Drive-In near Parsippany, New Jersey, sold his theatre to a developer for

$1.25 million. The drive-in owner paid $10,700 for the 14-acre site in 1947.[9]

Drive-in operators also were faced throughout the 1970s with mounting operating expenditures. These added costs could range from trying to keep up with rowdy patrons who stole or damaged in-car speakers to converting theatres to the new screen and sound technologies.

Gary Daniels, manager of five United Artist drive-ins in Indianapolis, estimated in 1976 that his theatres lost "about $1,000 a month in speaker damage." He predicted that more drive-ins would be forced to close because of the expense and damage suffered through vandalism. "We just can't write it off year after year," Daniels said. "Even with business being good, the theaters are only breaking even or losing money."[10]

When the much heralded containment screen was unveiled in 1974 at a drive-in near Long Beach, California, drive-in operators viewed it as a positive new development within their industry. Motion picture engineers had designed the nickel and chromium-plated screen, working under a grant from the National Association of Theatre Owners. Pichel Industries also helped to develop the screen.

Robert W. Selig, vice-president of Pacific Theatres and national chairman of NATO's drive-in committee, saw the new screen as a way to eliminate the perennial problem of screen brightness. "The new screen concentrates the light within

the periphery of the drive-in, gives vastly improved light and an earlier start during the peak of daylight saving time in the summer," Selig said.[11] The new screen also was being viewed as a way to eliminate complaints from public officials who viewed with alarm the spillover of movie images from more conventional drive-in screens.

Installing a new containment screen was estimated to cost about $30,000 or about $20,000 if an operator planned to convert an existing screen. Since 1974, the containment screen has been modified, with the result that more drive-ins today use the Protolite screen. It is made of stainless steel and is promoted as being long wearing, three to four times brighter and offering better contrast color and sharpness than present screens. Since a Protolite screen can confine an image to a designated section of a drive-in, it is possible to project as many as three different images on a large, single screen, creating a multiplex option for a drive-in operator without forcing him into the expense of building additional screens.[12]

Drive-in operators also viewed as positive innovations in drive-in sound systems in the 1970s. The major development was a low-power AM radio carrier current sound system that eliminated the need for in-car speakers and posts. These systems are marketed under a variety of product names, including Cine-fi International, Cinema Radio, Polecote Radio Sound, Radio Cine and Tune-a-Movie.

Theatres are wired with underground cables and patrons simply tune in the movie's soundtrack on their AM car radios. While this system virtually eliminates vandalism to in-car speakers, it is not without its own set of problems. One is the "spillover" effect that can cause interference with the radio and television reception of nearby residents. Unless a theatre's property has a high fence, non-paying customers can park their cars nearby and simply turn on their car radios. The elimination of speaker posts also creates the problem of patrons no longer parking in an orderly and efficient way.[13]

Being a successful drive-in operator in the 1970s was an uphill battle. Operators, who had not adopted a R or X-rated film policy, were trying to meet the challenge by featuring more first-run films. Others were moving to supplement their earnings potential by renting their premises for a variety of other purposes.

In at least two cities, Boston[14] and Dallas,[15] drive-in theatres were being used for public parking lots during the day. Other drive-ins were being used for such diverse purposes as skateboard parks and flea markets.[16] In Greenport, Long Island, the congregation of St. Peter's Lutheran Church bought a 450-car drive-in in 1975 that had formerly shown only X-rated movies. The church members changed the film policy to only family movies, and with receipts from the

theatre, they hoped to build a retirement village in nearby Southold.[17]

Veteran California drive-in operator Robert L. Lippert, Jr. predicted that the only successful drive-in today would exist in cities with a population of 100,000 or more people and would have "a first class, top quality 'flea' or 'penny' market operation."[18]

Perhaps the biggest change in the drive-in theatre industry in the 1970s came about from the increasing competition of multiplex theatres. Stanley H. Durwood built the first one, a twin-screen affair, at a Kansas City shopping mall in 1962,[19] but their growth remained slow throughout that decade. A Census Bureau report in 1972 showed that of the 11,670 theatres operating that year, only 798 were equipped with smaller, multiple screens.[20] Six years later, one report estimated that nearly 20 percent of the country's 12,275 theatres now had multiple screens.[21] Most of these screens were being built in suburban shopping malls and they offered a number of advantages that drive-in operators found hard to compete with on an equal basis.

The chief benefit of multi-screen theatres was that it offered moviegoers more viewing choices. And, as Jerry Sunshine, editor of the biweekly trade publication, Independent Film Journal, reported in 1977 this greatly aided theatre operators. "An owner could have a 1,500-seat theater and put in a picture that doesn't do very well at the box office,"

Sunshine explained. "But if, in fact, his 1,500-seat theater was two, 700-seat theaters, and if he had a substantial sort of grosser on the other side, he could come out very well. The one that is a success will make up what you're losing."[22]

Another advantage was comfort. Most were equipped with air conditioning and customers given a choice between watching a film at either an air-conditioned suburban theatre or at a drive-in where they might have to battle the heat and insects, were more likely to chose the former.

Operating a multiplex theatre offered a number of economic advantages that theatre owners liked. Most reports indicated that overhead expenses increased only slightly with additional screens and the expense per screen actually was cut substantially. One factor helping to reduce these costs was the development of automated projection equipment which reduced the number of projectionists needed to show films.[23]

For drive-in operators without multiple screens, it meant they now had to compete more vigorously to book top-drawing films and hope that these films would do well at the box office. This, of course, increased a drive-in operator's operating costs and increased the likelihood of failure should the blockbuster film prove a disaster with audiences. As veteran drive-in operator Joseph Cantor

observed, "if you book a turkey (a bad film), you can expect a week of bad box office."[24]

The drive-in theatre industry was slow in adapting to multiplex screens, perhaps because of the added costs involved in renovating existing facilities to accommodate additional screens. A primary consideration for operators in the Northeastern and Midwestern sections of the country was whether the changes would be cost effective, since most theatres there generally remained open only six to eight months a year.

Harris M. Plotkin found in 1983 that of the 2,855 drive-ins still operating,[25] only 212 had multiple screens. He reported, however, that where drive-ins moved to twin screens, revenues increased 30 to 50 percent. Adding a third screen increased revenues 10 to 20 percent, Plotkin observed.[26]

In Houston, Texas, Gordon McLendon built a six-screen drive-in in 1982 that can accommodate 3,000 cars. McLendon claims his "I-45" is the largest drive-in in existence.[27] But, more drive-in theatre companies were likely to follow the example of Northeast Theatre Corporation of Boston, which was busy in 1983 demolishing some of its old drive-in theatres and replacing them with multiplex theatres. Whitestone Cinemas, a $5 million, eleven-screen complex, opened in October of that year on the site of the former Whitestone Drive-In in Whitestone, Long Island. The company also owned

an eleven-screen multiplex on the site of an old drive-in in Valley Stream, Long Island, which the company president described as "the world's largest grossing theater complex."[28]

In addition to the multiplex theatres, drive-in operators in the late 1970s also faced increasing competition from cable television with its exclusive movie channels and from the expanding videocassette market which allows people to view movies in the privacy of their own homes.[29]

As the drive-in theatre industry celebrated its fiftieth anniversary in 1983, there was little agreement among those surveyed about the future of the industry. "They're obsolete," Harvard University historian Oscar Handlin replied when asked his opinion about the future of drive-in theatres. "Their decline is a sign that a certain stage in American life is over."[30] Handlin's was not the only pessimistic view being heard in 1983. Even some people within the drive-in theatre industry felt drive-ins were nearing their end.

"Drive-ins are rapidly becoming part of our nostalgic past," observed Sumner Redstone of Northeast Theatre Corporation. "I foresee their extinction by the end of the decade.[31]

"We don't have any major regard for drive-ins because they're such a small percentage of our profits," Sidney Ganis, vice-president of marketing for Lucasfilm Limited declared.[32]

Despite these comments, an almost equal number of drive-in operators were claiming in 1983 that the death knell was not ready to be sounded for their industry.

"Drive-ins were built for a need," said Dick Wilson, vice president of merchandising for SBC Management, operators of several drive-ins in New England. "One was the love of the automobile and another was the influx of families. There will be drive-ins, always--but the number is going to decrease each year."[33]

Steve Flynn of United Artists Eastern Theatres was equally as adamant about the future of drive-ins. "There will always be a drive-in audience. The successful ones will continue to be successful and those that aren't will become real estate."[34]

Remaining successful meant that drive-in operators might have to resort to some different tactics to keep audiences interested. In the Detroit area, for example, drive-in operators were taking part in an innovative cooperative advertising campaign to attract new customers. Popular local television celebrity Count Scary was being used to champion the advantages of drive-ins on his late-night movie program.

"We're trying to combat a certain kind of attitude toward drive-ins, the old 'I haven't been to the drive-in since I was a kid' thing," explained Gary Purece, director of promotions at Solomon and Associates, the firm respons-

ible for the advertising campaign. "When those people try it again, they find that it's still fun."[35]

In California, an official of Pacific Theatres reported that with the new radio sound technology at his chain's drive-ins, it was now possible to create channels in different languages. "Bilingual sound has a great potential," the official said, "in those areas that have a heavy ethnic population as we do in California or in Canada."[36]

Texas drive-in operators also reported that more Mexican-Americans were attracted to their theatres. Jose Ayala, manager of the 600-car Cowtown Drive-In in Fort Worth, said he showed mostly Mexican films. "We're number one attendance wise, in Fort Worth," Ayala said, "But this winter has been bad. Immigration clamped down, and many of our customers have been sent back to Mexico."[37]

More scientific surveys of drive-in audiences also revealed changes. For instance, a Leo Burnett advertising agency in 1978 found that drive-in patrons tended to be dissatisfied lonely blue collar workers with financial worries. Regular theatre patrons, the study found, were more socially active, confident, future-oriented, financially stable and career-minded.[38]

Bruce A. Austin interviewed 607 people at a Rochester, New York drive-in in 1981, and found they differed in terms of their occupation, education and the number of children they had from patrons surveyed in the 1950s and 1960s.

Austin found attendance was motivated by low cost, the comfort and privacy afforded by one's car, and the opportunity to socialize.

"For many," Austin concluded, "the motion picture being screened, it seems, serves as merely a backdrop and the drive-in a convenient meeting place."[39]

The qualities Austin described in his study were quite evident in the comments of drive-in patrons interviewed in articles marking the industry's fiftieth anniversary. Paul Bierle, a Southern California truck driver, for one, bragged that he had not patronized an indoor theatre for 10 years. "You can't smoke in walk-ins," he told his interviewer. "You can't put your feet up, and you can't talk."[40]

Roxanne Valentino of Warren, Michigan, a suburb of Detroit, said she would drive further to go to a drive-in than a regular theatre. "I like being outdoors. I like the comfort, and I like being able to smoke a cigarette or have a drink while I watch the movie."[41]

Jim Eavers of Detroit said he went to the movies at least once a week. "The picture is clearer and brighter in an indoor theater," Eavers said, "but for most movies I prefer drive-ins, particularly for dates. There's a better atmosphere; you can talk, stretch out and get to know each other."[42]

Nineteen-year-old Laurel Reed of Dallas, Texas, told her interviewer that she went to drive-ins because she was

too young to get into clubs. "Some of the best times, though, are when kids are tossing Frisbees or playing touch football around the speaker poles," Reed said, adding, "On a summer night it's like a three-ring circus."[43]

That "circus atmosphere" which early earned the drive-ins the nickname, "passion pits with pixs," appeared to be still in evidence at some drive-ins in 1983. "In contrast to the milk toast of the multiplex alternative, drive-in chic is a tortilla full of Mexican chili peppers washed down with a Lone Star beer and a shot of tequila," Toby Thompson observed in his article on drive-ins.[44]

That drive-in chic, the manager of one Texas drive-in had to admit, also meant that some patrons were "out there drinking beer and smoking that marijuana. Some of them come through the ticket booth with their clothes half off, just ready for love. Drive-in's a cheap motel, I guess," she said. "Somehow the fights will start. It got so crazy last summer we had to call out the SWAT team. They came, and now they're callin' us to see where the action is."[45]

Not every drive-in operator, however, was ready to concede that such behavior went on at his drive-in. Some, like Pacific Theatres, insisted that 72 percent of its clientele was made up of young married couples with two or more children who couldn't afford to go out and pay for a babysitter. Others being attracted to drive-ins included the handi-

capped, the elderly and those who simply don't want to get dressed up to go to an indoor show.[46]

Whatever the composition of the drive-in audience, most observers were of the opinion that if drive-ins continued to exist, they most likely would thrive in states with warmer temperatures. Dennis Giles found that to be the case when his study revealed that drive-ins in California were "relatively prosperous" when compared to the rest of the country, but he added, "it is probably only a matter of time until most owners sell or convert their real estate to other uses."[47]

"In the sun belt areas we see a continuing bright future for the drive-in theatre," Robert W. Selig predicted to an interviewer. "As long as we meet the public's requirements technologically, service-wise and with staff and patron services and accommodations."[48]

Drive-ins also were being remembered in a slightly different way in 1983 in Dallas, Texas, where Joe Bob Briggs, "the world's first drive-in movie critic," had become a cult figure to readers of the Dallas Times Herald.[49] Joe Bob's regular column first appeared in the newspaper's Friday "Weekend" entertainment tabloid on January 15, 1982.

Kerry Slagle, managing editor of the Times Herald, describes Joe Bob as "a redneck for the masses." His creator, John Bloom, the paper's regular movie critic, says Joe Bob

is "every Texan and southern cliche you ever heard all packed into one personality."

Although Joe Bob is billed as a drive-in movie critic, (his alltime favorite movie was "The Texas Chain Saw Massacre) he frequently rambles on about his own misadventures, his friends and life as he sees it.

Bloom says at least half the mail Joe Bob gets is from people who take the column seriously. "They don't necessarily believe all of the stories he tells in the paper, but they think he's just lying, telling tall tales. They still believe in the character. I think if we came out and told them who Joe Bob really is, they would be disappointed. It would be like telling a kid there is no Santa Claus."

In the fall of 1982, the Times Herald asked readers to nominate the best exploitation films in history and nearly 2,500 responses were received. The newspaper then enlisted the director of the USA Film Festival to help present the first annual Joe Bob Briggs World Drive-In Movie Festival and Custom Car Rally at the Gemini Drive-in Theatre. Roger Corman was given the Joe Bob Briggs Lifetime Achievement Award, engraved on a '57 Chevy hubcab.

Not everyone has appreciated Joe Bob's preoccupation with nudity, sex and violence. About 20 percent of the letters the newspaper receives about the column are from people who object to it. Often, these readers threaten to cancel their subcriptions. A Baptist minister in Tyler, Texas, pub-

licly declared Joe Bob a "sick mind" and urged his congregation to pray for the writer's immortal soul.

And, finally, as the drive-in theatre industry prepared to enter its second half century, Toby Thompson perhaps best summarized the fate of drive-in theatres when he observed the following about drive-ins: "The drive-in's mandate, if it possesses one, is to iluminate that view from behind the windshield that all Americans share. The closest most of us come to meditation, in the Eastern sense, is when we are driving our cars. The pilgrimage to a drive-in theater, then, is to confront on the screen the manifestation of our darkest and most violent nature--as induced by the automobile. It is all up there in color on the giant screen: the car crashes, mom guttings, pet beheadings, nurse spankings, midget beatings and monster slittings of America's rankest imagination."[50]

NOTES

[1]U.S. Census of Business, 1972. Vol. 1. Census of Selected Services--Summary and Subject Statistics, (Washington, D.C.: U.S. Government Printing Office, 1972), p. 6.

[2]U.S. Census of Business, 1977. Vol. 1. Census of Service Industries--Subject Statistics, (Washington, D.C.: U.S. Government Printing Office, 1977), pp.4-8.

[3]In its ruling, the Wyoming Supreme Court said that it could not rule in favor of the theatre owners because "on the whole, we fail to see anything but guesswork in plaintiff's attempt to show a lessened market value of its property, especially since no theatre business was conducted on the land after the highway was in use." See, Sheridan Drive-In Theatre, Inc. v. State, 384 P. 2d 597 (1963).

[4]Martin Gansberg, "Drive-in Movies Go Dark as Costs Rise," New York Times, 6 October 1977, p. 77.

[5]Michael Blowen, "The Drive-in: A Dwindling Bit of Americana That Deserves Preservation," New Orleans Times-Picayune, 4 September 1980, p. 3.

[6]Joanne D'Alcomo, "Land Values Drive Out Drive-in Theaters,"News Orleans Times-Picayune, 9 August, 1979, Sec. 4, p. 5.

[7]"Land Values, Short Year, Single Screen All Hamper Drive-Ins," Variety, 7 April 1982, p.29.

[8]"U.S. drive-in movie love affair is ebbing," Lansing (MI.) State Journal, 19 September 1983, p. 1.

[9]"The Disappearing Drive-In," Newsweek, 9 August 1982, p. 65.

[10]Gary Mikell, "Vandalism At Drive-In Movies Hurting Business, Owners Say," Indianapolis Star, 1 August 1976, Sec. 4, p. 2.

[11]"NATO Screen ($3ft.) Should Improve Technology, But DST Remains Foe of Drive-In Ops," Variety, 20 February 1974, p. 4.

[12]See, "Outdoor Technology Upcoming; Could Yield Film Biz Plus," Variety, 29 May 1974, pp. 4, 27 and Harris M. Plotkin, "Protolite Screen: Drive-In Breakthrough?" Boxoffice, 119, March 1983, pp. 64-65.

[13]See, Tony Francis, "Improving Drive-In Picture and Sound," Boxoffice, 118, March 1982, p. 56 and "Drive-In Broadcast Sound Systems," Boxoffice, 118, March 1982, pp. 54-55.

[14]"Unique Boston Experiment Uses Drive-Ins for Daytime Car Parks," Variety, 28 August 1963, p. 16. Passengers who used the drive-ins were reminded that if they didn't retrieve their cars before the movies started, they would have to pay the admission price to get them back.

[15]Barbara Slavin, "It's Technology to the Rescue of Drive-In Movie Theaters," New York Times, 8 August 1978, p. 12.

[16]"The Disappearing Drive-In," Newsweek, 9 August 1982, p. 65.

[17]Kim Lem, "Drive-In Theater Once Showing X-Rated Films Now Raising Funds For Church," New York Times, 27 July 1975, p. 65.

[18]Robert L. Lippert, Jr., personal letter, 14 April 1983.

[19]Nan Robertson, "Multiplexes Add 2,300 Movie Screens in 5 Years," New York Times, 7 November 1983, Sec. III, p. 13.

[20]1972 Business Census Report, p. 6.

[21]1977 Business Census Report, p. 4-8.

[22]Matthew L. Wald, "Cinemas, Like Cells, Survive in a Harsh World by Multiplying," New York Times, 30 October 1977, Sec. VIII, p. 1.

[23]Ibid., p.1.

[24]Rita Rose, "Drive-ins: On the way out?" Indianapolis Star, 11 April 1982, Sec.E, p. 1.

[25]No Census Bureau figure existed in 1983 listing the number of drive-ins still in business. As a result, those drive-ins listed in International Motion Picture Almanac, (New York: Quigley Publishing Co., Inc., 1983) were counted and that number was used here.

[26]Harris M. Plotkin article, pp. 65-66.

[27]Toby Thompson, "The Twilight of Drive-Ins," American Film, July-August 1983, p. 49.

[28]Nan Robertson article, p. 13.

[29]For a good discussion of the videocassette phenomenon, see, Aljean Harmetz, "Cassettes Are Changing Movie Audience Habits," New York Times, 11 July 1983, Sec. III, p. 11.

[30]"Dark Clouds over the Drive-Ins," Time, 8 August 1983, p. 64.

[31]"The Disappearing Drive-In" article, p. 65.

[32]"Dark Clouds over the Drive-Ins" article, p. 64.

[33]Keith Hammonds, "Drive-Ins, Like Cheap Gas, Fade Into Yesteryear," New York Times, 30 May 1982, Sec. III, p. 17.

[34]Harley W. Lond, "Drive-In Operations: Still in the Game," Boxoffice, 118 March 1982, p. 53.

[35]Peter Ross, "Cultural Dodos? Maybe elsewhere, but Detroit drive-ins refuse to play dead," Detroit News, 15 August 1983, pp. 1D, 10D.

[36]Barbara Slavin article, p. 12.

[37]Toby Thompson, "The Twilight of Drive-Ins," American Film, July-August 1983, p. 49.

[38]Steven Ginsberg, "Drive-Ins Rate Firstrun; Hardtop Sites Re-valued," Variety, 26 April 1978, p. 23.

[39]Bruce A. Austin, "The Development and Decline of the Drive-In Movie Theatre," in Current Research in Film: Audiences, Economics and Law, Vol. 1 (Norwood, N.J.: Ablex Publishing Corp., forthcoming).

[40]"Dark Clouds over the Drive-Ins" article, p. 64.

[41]Peter Ross article, p. 10D.

[42]Ibid., p. 10D.

[43]Toby Thompson article, p. 47.

[44]Ibid., p. 49.

[45]Ibid., p. 47.

[46]"Selig Nixes Drive-In Doomcriers: L.A. Ozoner Biz Hit Peak in '82," Variety, 22 June 1983, p. 23.

[47]Dennis Giles, "The Outdoor Economy: A Study of the Contemporary Drive-In," Journal of the University Film and Video Association, 35 (Spring 1983):66-76.

[48]"Selig Nixes Drive-In Doomcriers" article, p. 23.

[49]For details about the Joe Bob Briggs following, see, Dennis Holder, "Joe Bob Briggs: Drive-In Movie Critic," Washington Journalism Review, March 1984, pp. 30-35, 37; G. Christian Hill, "Aficionado of Trash At the Times Herald Is a Big Hit in Dallas," Wall Street Journal, 10 November 1982, p. 1; the Toby Thompson and the "Dark Clouds over the Drive-Ins" articles.

[50]Toby Thompson article, p. 49.

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