

# MAXIMUM ROCKNROLL

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## THIS IS ART! JELLO IS FREE!

By Ruth Schwartz.

The reality of the courtroom, the reality of the legal system is not like any other reality anywhere or for anyone. It is still incredible to me that these officers of the court train in this reality for so many years. I think that all of us who walked in there blind, with a sense of justice and anger over this disruption of our lives and liberty learned a big lesson in logic, law, and reason.

When we started this trial..... (continued inside)



PHANTOM RECORDS

o that constantly, ink we're getting a lot better, we work really well these days. We practice a lot, and we've gotten a lot of new songs so we've branched out as far as our style ed, but without getting mellow or anything. started out not knowing what the fuck we g so we played a lot of fucked up shows at us humble. you feel any pressure between what you e artistically and what you can get paid to much do profits enter into what you do with low do you feel about bands that are y the dollar? ad question. Firstly, we never get paid shit. fine with me. That's the way I want it to be. profit is of no concern, but then I have a so that's where my money comes from. no equipment so I don't have to pay for o get fixed, replaced, repaired, etc. and I r drive to practice or any of our shows so I sly need gas money. Bands that are by the dollar... GET THE FUCK OUT!! money must be available for bands to ast in this fascist day and age of Amerika. doesn't need to be made, that's bullshit. A id be a labor of love. That way it can be a st band. don't ever get paid. I'd like to, because I most fucked-up equipment, and I need lots work. I break my guitars all the fuckin' time, so the bread, I really hate bands who are in

GNP



FREE SPEECH



NIEUWE KOEKRAN



BARBIE ARMY



FIRE PARTY



S.D.T.



ATOMIC GODS



HENRY ROLLINS



M.S.I.

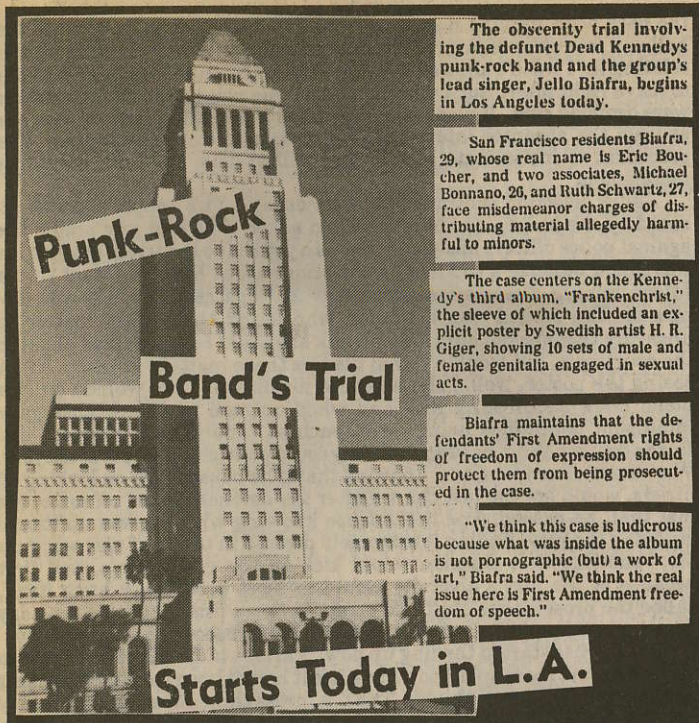


JEFF BALE



SACRED DENIAL





The obscenity trial involving the defunct Dead Kennedys punk-rock band and the group's lead singer, Jello Biafra, begins in Los Angeles today.

San Francisco residents Biafra, 29, whose real name is Eric Bou-cher, and two associates, Michael Bonnano, 26, and Ruth Schwartz, 27, face misdemeanor charges of distributing material allegedly harmful to minors.

The case centers on the Kennedy's third album, "Frankenchrist," the sleeve of which included an explicit poster by Swedish artist H. R. Giger, showing 10 sets of male and female genitalia engaged in sexual acts.

Biafra maintains that the defendants' First Amendment rights of freedom of expression should protect them from being prosecuted in the case.

"We think this case is ludicrous because what was inside the album is not pornographic (but) a work of art," Biafra said. "We think the real issue here is First Amendment freedom of speech."

one who masterminded all the searches) was present as the assistant to the prosecutor throughout the trial. Typical cop. In a nutshell, Guarino is a sarcastic, annoying kind of a guy. Our attorneys still claim him to be intelligent. Maybe this is what makes him seem like such a snake. There was constant banter between the defense and prosecutor's tables. Our lawyers did a good job of egging him. The best illustration of this was during a break when Schnayerson was telling the judge about a poll taken in the L.A. area where, when asked after reading an untitled list of the Bill of Rights and whether people thought they should be in our constitution or not, the overwhelming majority said no. She got wide eyed and asked where this poll was taken and Schnayerson said, "Right here in L.A." And Guarino said something to the effect of "Oh that's great!" The room went cold.

We didn't end up getting to jury selection that week. It was a constant argument concerning jury instructions, evidence and stipulations (those items permissible and how presentable to the jury). The main elements in jury instructions consisted of first defining the terms of the law. "Distributor" and "distribution", "harmful", and even "minor". Outside of the stuff that every jury sees, the argument seemed to center around the case "People vs Carl" which also tested this law. But that judge's summation of this case was extremely vague. So, the argument between sides concerned one, whether the concept of "thematic unity"



Biafra said he also believes his band was singled out for prosecution because the Dead Kennedys were politically oriented and because they were not affiliated with a major record company.

He argued that the Dead Kennedys, generally regarded as a socially conscious band, had put the poster in the album to shock society out of its apathy and to symbolize how people "screw each other over" in modern society.

(continued from front cover) .....there were five defendants. Salvatore Alberti (of Alberti Record Manufacturing), Steve Boudreau (ex-president of the now defunct Greenworld Distribution), Microwave (ex-general manager of Alternative Tentacles), Biafra, and myself (as owner of Mordam Records). There were five defense attorneys: (respectively) Michael Mayock, Paul Herbert, Richard Burda, Phil Schnayerson, and Gary Mandinach. And also present initially was Carol Sobel of the ACLU. The first day, all attorneys were present and Biafra, Micro and myself, having been told to attend, were expecting to enter directly into jury selection. We went to the Criminal Court building in downtown L.A., Division 57. (That's right across from the famed L.A. city hall... Joe Friday and Perry Mason beware.) This is the court of Judge Susan Isacoff. She is attractive and young (by judge standards) and to set the stage she was very relaxed when off the record, liked jokes and ate M&Ms after lunch. Keeping in mind that the judge is the boss in a courtroom, I think that the relaxed atmosphere and the professionalism and poker face that she maintained when on the record ultimately was helpful, especially when you consider the outcome of this case. I personally had no problem with Isacoff. I remember her first day words were to acknowledge the presence of the defendants (asking about the missing two) and to comment: "Are you all attorneys for the defense?" and shake her head. I will say now, that the defense team was sharp. They got along well, and all came across like young, "good liberal" aspiring lawyers. We had an excellent team, all interested in the cause. Boudreau was determined "on call", and Mayock pled ill health for Alberti who had an aneurysm within the year.

Now for the villain. Micheal Guarino is short, skinny, and looks like a slimy turtle in his ill fitting suits and glasses. Detective Carter (the

(i.e. the entire record), and two, "reasonable precaution" (i.e. the sticker) were going to be permissible in the court—and how this would be stipulated. In addition, there was an endless list of legal definitions to be argued and not being a lawyer made it a struggle to follow and hard to explain in detail here. There was even an argument concerning how Alberti's illness could be presented to the jury. Guarino was concerned about this. Half of this time was spent in the cafeteria, the defense narrowing down their instructions, meetings in the judge's chambers, and meetings between defense and prosecution. The judge wanted everyone to decide as much as possible amongst themselves so that she wouldn't have too much to decide. But she got a loadful anyway as there was much that couldn't be agreed upon.

Biafra, Micro and I were dressed to the hilt. Micro outscaled even the attorneys in his suit, Biafra was instructed to dress down (no sharkskin). We spent most of these first days wandering around downtown, eating bad food and sitting in the gallery listening and whispering comments to each other. (When the judge kept saying that she hated the word "prurient" and would they use another word, I asked Micro what they decided to use instead and he said "eggplant". I wish they had.)

By day two, Guarino dropped the charges against Alberti. It was explained to us that he just wasn't certain if he had the right person as the company is family run and there are three Albertis. And since it was late in date, it was better to drop him. It's my guess that he didn't think this older guy with health troubles would help his case any. By lunch this day the attorneys told us we weren't required to be there as the arguments would continue through the week. Micro hung around a bit and Biafra and I got the hell out of there.

On Thursday the judge made her biggest decision on our behalf (keeping in mind that she stayed very middle of the road by giving a little to each side). She decided that the entire record was allowable as evidence to prove "thematic unity". This opened the door for our defense to utilize the words and other graphics to the "Frankenchrist" record to prove that the poster was not, as Guarino was trying to claim, meant to pander sales, an advertising gimmick, or sold alone as a poster—that in fact it was a part of a political statement protected by the first amendment. With this on our side, and with the burden of proof on the prosecution, (since we pled not-guilty this is true in all criminal cases) it was now up to Guarino to prove that the whole record was distributed and that it is harmful to minors. "Harmful" in a nutshell had already been defined legally as: "a predominant appeal is to a prurient (i.e. shameful or morbid interest in sex, nudity, or excretion) interest", "that the material is patently offensive to contemporary community standards", and "utterly without any social redeeming value or importance to minors".



The defense team, the D.A. (the one with no sense of humor), and Her Honor the judge



There was also the behind-the-scenes bantering regarding myself and Boudreau being dropped as well as the ongoing debate on whether it would hurt or help our case by having us testify on our own behalf.

When we returned on Monday, Boudreau had joined the ranks of attending defendants and again we were under the belief that jury selection would begin. But this day ended up in some humorous episodes as the "evidence" was attended to piece by piece. So many of the pieces of paper were really trite invoices, freight bills and accounting sheets (especially in the case of myself and Boudreau) proving sales and distribution. A lot was thrown out because so much of what they had wasn't in the "relevant time period" (October '85—release of record, and December '85—date of complaint sale) and others because it had nothing to do with "Frankenchrist". But the fun arguments came when they got to Biafra's "evidence". What Guarino needed to prove was that Biafra distributed or had knowledge of distribution. He had confiscated lots of stuff from Biafra's house including, for one, a list of our distributors which was read in the court room and as they got to companies with names such as Rough Trade, Toxic Shock, and Electric Fetus the whole room was giggling. (Biafra the loudest, I think). Then the prosecution got to a handwritten list of the Alternative Tentacles catalog (proof that Biafra knew his label and wasn't an absentee owner and that he distributes a whole catalog of harmful material). Schnayerson immediately jumped up objecting that this list would prejudice a jury and that their other records and bands shouldn't be on trial, etc. So they started reading the list aloud in the room. **THE FARTZ, THE CRUCIFUCKS, BUTT-HOLE SURFERS, THE DICKS, GRONG GRONG**, all went in the record as well as "Plastic Surgery Disasters", "In God We Trust Inc.", "Nazi Punks F\*\*k Off", "Murder in a Foreign Place", and "Lets Wreck the Party". But as soon as they got to "Too Drunk To Fuck" nobody would read this aloud and after an uncomfortable moment they took it to the bench for the judge to read. She snickered. We were busting up. She stipulated that the two sides would decide which could stay and agreeing with Schnayerson, which should go. Ultimately, all but the catalog numbers and the words "Frankenchrist" (for record and cassette) were whited out. Much of Mirco's evidence incriminated me because it referred to me as their distributor. The judge decided that those items couldn't be used and all those references were also whited out. (Lots of stuff was eliminated in whole). And by the way, there were copies of MRR, xeroxed in full, that never got entered but it was quite interesting that they were there. (The ish with the "What the Fuck" column and Giger re-print)

After lunch, Boudreau was dismissed. Once again Guarino must have not been sure if they had the right person as he has some corporate protection and in a criminal case you have to get the right person, not just an officer of the company. Plus, they didn't have much on him. They issued a subpoena for him to testify for the prosecution. He and his attorney left. The "evidence" continued.

## Jury Selection Starts

### In Jello Biafra Porn Trial

Los Angeles

Jury selection began yesterday in the obscenity trial of San Francisco singer Jello Biafra and two associates charged with distributing a pornographic poster in an album made by the punk rocker's band, the Dead Kennedys.

D.A. Guarino and his art books

Tuesday started jury selection. Now from what I can tell, picking juries in this country is like a game of Risk. The number of defendants determines the amount of armies, the prosecution gets to roll first but players can pass and the judge gets to be the boss over everything. We were given fifty people to pick a panel from. When they came in the judge let the hardship cases go and anyone who knew us, the DEAD KENNEDYS, or lawyers.. She described the case briefly: the law, what we are accused of, that we plead not guilty, and the burden of proof. "Does everyone understand and does anyone think they have a particular problem with this?" the judge asks. One man (who did end up on the jury) says "I'm not sure I understand this law." So she explained again. His comment then was "Is that against the law?" Oh, the fun was really starting.

Before it got much further it was lunch and directly after, before the jury entered, I was dismissed. This had been bantered about between defense and prosecution and the end result was not only my being subpoenaed, but having to be interviewed by Guarino and Carter that evening so that I wouldn't go on cold to testify. (Hey, that was a gas.) They also knew that because of my being left out of all Mirco's evidence that they didn't have much on me and that I'd be of greater help on the stand making clear Biafra's role in his label and distribution. I was ushered out

the back door, into the next court room, and told not to leave until the hallway was clear of jurors. From here on out the story is from others' relating it. I wasn't allowed back into the room until I testified and had to leave right after. But I want to add at this point that all distributors were dropped now. It was truly becoming a "harmful matter" case and at least the absentee intermediate distributors were eliminated. The precedent to incriminate artists (etc) still exists, but not necessarily middlemen.

Jury selection continued on Wednesday. Two people were eliminated by the judge—one because when asked if he had any prejudices against police officers answered that as a youth (he is currently 40ish) he was jailed because a cop lied on the stand about him. He went into a fifteen minute dissertation about how all cops are liars. He was dismissed. The second was a woman who found the subject matter so unsavory that she not only didn't think she could hear it talked about in the courtroom, but wouldn't even discuss these matters at home. As for seeing the poster, well... she was also dismissed. Two women on this panel knew about punk rock and when quizzed by the defense gave intelligent definitions using terms such as "anarchist", "protest", etc. Burda quizzed them hard so that they could politicize the rest of the jury. Wise move. Then Guarino, knowing that if he passed first on kicking off jurists, would get the last chance after the defense kicked off some, did just that, he passed. And the defense knowing what he was up to and studying the jury, finding it extremely diverse in terms of age, sex, race etc, knowing that Guarino would kick off the good jurists, and that because of the jury's diversity would in most probability hang itself, called the prosecutor's bluff and accepted these first 12 people. The day was dismissed and trial would start with the prosecution the next day.

The press started turning up now. Various individuals had come to sit in the court room up till now but since it hadn't been very exciting most weren't hanging around much. The L.A. press came out on this Thursday to interview Biafra. But in regards to press and watchers, it had been very quiet till now. There had been a struggle all along with the judge regarding the press because she wouldn't allow any type of electronic media into the court room. Finally, she decided that video cameras without sound would be admitted before court started and during questioning with the permission of the witnesses. An argument regarding tape recorders ensued with the press stating that she was out of line because there is a ruling that press were allowed in courts with tape recorders as long as it was for their own personal use. She asked them to prove it and they did.

The scene was set. Defendants present. Mandinach was taken on as Biafra's co-counsel with Schnayerson. The jury was picked. John Alberti Jr., Steve Bourdeau, and myself were all there on subpoenas. The prosecution began with his opening statement. Short and sweet. Then it was the defense with Schnayerson taking the opening responsibilities. Then it was time for the prosecution's witnesses. Tammy Scharwath, 14 year old purchaser of said record was called first. This testimony lasted ten minutes. She admitted that she did in fact purchase this record on the said date, at the said store, and that she showed the poster to her mother. Next up was Mom. Mary Thomson stated that her daughter showed her the poster separate from the record and confirmed the daughter's story. Later, the L.A. Times interviewed Tammy and was quoted as saying "I thought it—the poster—was gross, not harmful". Mom was quoted as saying "I thought I'd just have to complain and it would be over. I didn't realize it would go to court and be a big to-do." That was the last we saw of them.

Then it was Detective Carter's turn. This seemed endless, especially to those of us waiting in the hall. All his evidence was being admitted. This consisted of all the admissible pieces of paper confiscated from us, his recounting of each search and what everyone said then. He "white-lied" his way through it. Details were changed, like, how Biafra bragged and laughed about the Giger poster during the search of his house. Keeping in mind that Carter alone is a big guy, plus there were eight others, they had a way of scaring the hell out of everyone, including Biafra. And he said that there were only two cops on the searches, instead of the nine. (Earlier, during the arguments over evidence, he and Guarino tried to enter a photo of a poster said to be hanging over Micro's



NMCDf stalwarts  
Suzanne Stefanac,  
Dirk Dirksen (ex-Mab  
wise guy) and  
Jello's dad



desk at AT. It was quickly determined that this photo was a set up as one of the cops had picked up a poster, tacked it up, and took a picture. They withdrew the photo without further argument.) There was heavy cross-examination.

After lunch, Alberti spent a couple minutes on the stand, identifying freight bills, discussing drop shipments, etc. Then I was called for an hour and a half examination. Supposedly until this point, Guarino had been as sweet as possible (for him). Now he took the opportunity to show his true nature. Since I know Biafra's work habits, he needed me to confirm his role in distribution (among other things). I was determined a hostile witness. The interview I'd had with him was considered a "statement" and this too was all confused. He has a way of talking down to people and asking multiple choice questions and asking for a yes or no. It took a while to follow what he was trying to say. Schnayerson did a brilliant job of cross-examination. Letting me make it clear why I may be a "hostile witness", what the business relationship between the two companies is, (Guarino had this weird idea that Biafra started AT only because he was being ripped off by Greenworld and other distributors) and primarily the fact that the Giger poster was never considered as a ploy or gimmick to increase sales (Guarino's pandering concept). During the time I was in the courtroom, it seemed to me that the jury was extremely bored. Since they hadn't seen the poster yet, all these business transactions must have proven pretty tiring as I noticed a few yawns. Since I had to try to remember every conversation I'd had with Biafra in November and December 1985 (which I didn't), hopefully some of them saw how ridiculous this was.

Boudreau went next also identifying evidence and claiming he had indeed purchased these records. Then Doobe, an officer from the Warehouse, took the stand. Schnayerson and Burda had talked to him before this point and he had told them that sometimes they examine questionable material before they send it out to their stores, especially if it has a warning sticker. When he got on the stand he denied this, saying that The Warehouse has no policy for checking records. The cross examination made it clear that there was a discrepancy in the story and there was a discussion of Schnayerson testifying as to Doobe's lack of credibility. This was dropped because of the time involved and because the defense thought it was pretty clear to the jury that the story had changed. The prosecution "rested".

As a group of us were waiting in the hallway after adjourning (this included Micro, Steve Boudreau and wife and even my Dad), Guarino approached me, extended a limp paw and said "Thanks you for your time. You're a much nicer person than I ever had any reason to suspect you'd be". Of course I was dumbfounded and lost all ability to say witty remarks. What a geek.

The following Tuesday started the defense testimony but first came the rest of the "evidence". Each juror received a copy of both the poster and the record. Half of the jury originally looked at the poster upside down. Some took a glance at the poster and quickly folded it up and shoved the posters as far away from themselves as possible. Some took a nice hard look. There were various faces but no sound at all from the

jury. Some took the opportunity various times during the day to look again. Burda had taken the lyrics and blown them up to a 4 x 4 foot poster size and displayed them along side the jury box for the rest of the trial. Not only did this allow the jury to read them at their leisure for the rest of the trial but it added a lot of weight to the fact that the poster, other graphics, and especially the words had "thematic unity". This made indisputable the politics of the entire package. Then came the experts.

Harvey Kubernick (NMC Fund's L.A. person) found an art historian relocated to S. Cal. from the University of Pennsylvania named Joan Weinstein who first took the stand. She was calm and collected and obviously well versed in her field. Her credentials were never questioned. On direct examination she claimed that she didn't really care for Giger's work but since she's not a critic but an historian she couldn't deny the respectable place Giger holds in the art world. She discussed his description of "mechanization" and his typical sexual/social critique. Then Guarino got his chance to show his evil side again. In his demeaning, confused and downright insulting way he eventually gave her some Art-Com books and asked her to find a more sexually explicit Giger painting. She pointed a couple out and explained why. He grilled her about how she could only find a couple. And she pointed to the defense table and claimed that there was a better, more thorough book of his work there that she might find more in. He didn't let her.

Dennis Eroken and Griel Marcus of BAM magazine took their turns next, saying that they weren't huge DKs fans (Oh, surprise from BAM!) but described their knowledge of the DEAD KENNEDYS as a leftist, political band, who were known for strong graphics and that punk rock in general was known for shocking material. In fact, Marcus stated that he didn't consider the Giger poster the most shocking of the DKs graphics at all, but that certainly the band was known for its strong lyrics and stance.

Guarino was constantly objecting all day during these testimonies. In fact, more time was spent between arguing lawyers at the bench than in actual testifying. Guarino kept trying to drive a wedge in between the poster and the lyrics and finally got his objection sustained in one form later in the testimony.

This day was finished with the illusion that the best was left to come and certainly the part Guarino was waiting for—namely Micro and especially Biafra hitting the stand. Giger's publicist was flown in from New York and there was a lengthy defense meeting that night regarding what the defense thought would be the best for the next day. Ultimately, the decision was to rest the case as they felt Giger and the DKs had been discussed in enough detail (more might be overkill) and as a tactic it would hurt the prosecution by catching him off guard, as they suspected that Guarino was saving up for Biafra.

So that's how it happened. The defense walked in Wednesday and rested their case, leaving only the closing statements. Guarino did seem to have been caught off guard as he tried to get a number of the jury instructions changed and as the judge was deliberating, was quickly scratching out his closing statement. He had to rely on the poster to speak for itself. Guarino waved around the poster (and unknowingly showing it to many "minors" in the gallery), losing his place, and generally confusing everyone with his remarks. Turning and waving at Biafra, he accused him of saying that he (Guarino) was only interested in running for political office. (We'll see...), and claiming that Giger was the Richard Ramirez of the artworld and that Biafra and Micro should be seen in the same light.

Burda took the defense closing first and very eloquently discussed "thematic unity", the politics of the band, and the first amendment. Schnayerson only spoke briefly to re-iterate Burda's account. He asked

## Dead Kennedys' Art Defended

Los Angeles

A poster packaged in an album by the punk rock band the Dead Kennedys decries the mechanization of sex and is not intended as a sexual "turn-on," an art historian testified yesterday at the obscenity trial of singer Jello Biafra.

Joan Weinstein, a professor of art history at the University of Pittsburgh, said the poster, a reproduction of the painting "Penis Landscape" by Swiss surrealist artist H.R. Giger, "has to do with the mechanization of sexuality, the exploitation of sexual imagery in modern society, for purposes of selling products or even political ideologies."

"I think the imagery is clearly about sex, but I don't think it's a turn-on," said Weinstein, the first defense witness. "It's a turn-off."

The poster, packaged with the "Frankenchrist" album by the now-defunct San Francisco band, depicts 10 sets of copulating male and female genitals.

Weinstein testified that Giger, who won an Academy Award for designing the visual effects for the

1979 science-fiction movie "Alien," is a member of the "Fantastic Art" school, an offshoot of surrealism, and an artistic descendant of such painters as Pablo Picasso, Salvador Dali and Paul Klee.

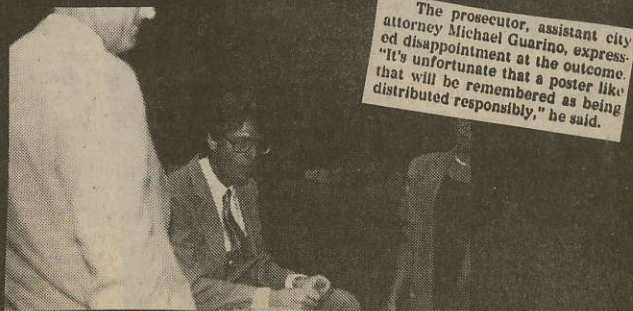
She said many of Giger's other works, which depict sexual organs fused with machines, are more explicit than "Penis Landscape."

Weinstein also said she believes there is a "correlation" between the poster and the lyrics to such songs on the album as "Soup Is Good Food" and "MTV Get Off the Air," which address social issues.

The second defense witness, nationally known rock critic Greil Marcus, characterized the Dead Kennedys as a left-wing, politically oriented band that would "definitely not" have included the poster in the album to boost its sales by exploiting sex.

"I think it's a very puritanical band, one very suspicious of pleasure," said Marcus, who now writes for Artforum magazine. They have always taken a satirical, left-wing point of view of the world. It's a band with a critical perspective."

## Charges Dismissed In Sex Poster Trial



D.A. Guarino after getting the bad news

The prosecutor, assistant city attorney Michael Guarino, expressed disappointment at the outcome. "It's unfortunate that a poster like that will be remembered as being distributed responsibly," he said.



Guarino to hold up the poster for him to point to, which he did, and that got all the jurors laughing.

And so the jury adjourned to decide.

They spent the rest of the following day in deliberation and came out to request a few things. They wanted the terms "harmful" and "average adult in community" clarified, and they wanted a record player. The story is that when they played the record in the jury room, one of the women went into the bathroom and wouldn't come out until it stopped.

The jurors, who represented a wide cross-section of occupations and backgrounds, said they split along age lines, with older jurors favoring conviction while the younger ones — some of them punk-rock fans — were for acquittal.

The seven who favored Biafra asked for copies of the poster to take home. Biafra did better than that. He gave each one a copy of the "Frankenchrist" record album and stood in the hallway autographing the albums.

Some of the jurors talking after the decision



But according to jurors' stories later, they just wanted to tell if you could hear the lyrics. I guess they only had to hear a little to know that you can. (Lucky thing, I guess)

When they came back later that afternoon, they had in fact hung or deadlocked themselves, unable to decide. It was seven voting innocent and five for guilty. The defense motioned for a dismissal. Guarino made a motion for a re-trial giving a little speech about how they had been confused about the definition of "harmful" and "average adult in community" so that on re-trial he could give better testimony. The judge gave him a lecture about how this is not a trial by error and that he should have done that the first time and that she didn't think, when viewing the diversity of this jury, that any other would have better results. Then she accepted the motion to dismiss and promptly gave Micro and Biafra a lecture about being more careful in the future. Biafra jumped up in excitement yelling, "We Won!" and raced from the court room with the judge almost chasing him yelling, "But I can still fine you for contempt of court."

Nine of the jurors approached Biafra asking for copies of the poster. He did better than that and gave them autographed copies of the entire record. When asked, one of the jurors said they had voted innocent because they didn't understand the law and definitions. But two voted guilty for the same reason. It's also interesting to note that two of those who voted guilty also asked for the poster. The majority of the jurors who voted innocent said they did so because of vagueness of the law and/or first amendment considerations. And of those who commented on a guilty verdict, they said they did so because it was obviously "harmful".

Guarino tried to shake Biafra's hand but was refused. But later Biafra took that hand and then slipped him a copy of BIG BLACK's latest 12" (the limited edition gruesome cover). Guarino didn't appreciate this at all and promptly threw it down and left the building.

We all are absolutely ecstatic about this end. However, later, Guarino told Schnayerson that he would definitely continue this crusade. Schnayerson told him to consider his choices more carefully in the future and seems to believe that Guarino didn't realize the political nature of the band or our ability to defend ourselves. But irregardless, the prospect of seeing this happen to others again definitely exists. It seems that this law was meant to prosecute shop sellers against selling pornography to minors, not this type of material. This is obviously a misuse of the law. But none of us feel so confident as to think that it can't happen again. No precedent is set by this victory. None for the prosecution or for artists. And this is only California. What about other States? Countries?

But anyway...whew. We all are thankful for this and we are all thankful to every-



Jello signing Penis Poster for jury foreperson Jane Yuen

one who has been of any help to us and the defense fund. It has made this fight possible and the year livable. Everyone who communicated with the Fund in any way, watch your post box as you'll be getting some stuff soon. On the following page is as current an update as possible at this writing on the No More Censorship Defense Fund. At this point, it is deeply in the hole and we still need your help to pay for the court costs, but if we do eventually end up with money left over we will keep a watchful eye and keep fighting in any way we can. Thanks again from all of us.

## Punk Rocker Is Off the Hook

### Pornography Charges Dropped as Jury Deadlocks

By PAUL FELDMAN, Times Staff Writer

LOS ANGELES—Pornography charges against Dead Kennedys lead singer Jello Biafra and a co-defendant were dismissed Thursday after a Los Angeles Municipal judge declared a mistrial when jurors reported that they were hopelessly deadlocked, 7 to 5 in favor of acquittal.

"Ha-Ha. Y-y-y-e-e-s. We got it," screamed the punk-rock singer, dressed in a three-piece suit, as he triumphantly ran from the courtroom after the decision by Judge Susan E. Isacoff.

"There is such a thing as contempt, however," noted the judge, half-grimacing and half-smiling, before she left the bench.

Biafra, 29, and Michael Bonanno, 27, the general manager of Biafra's Alternative Tentacles Records firm, had been charged with distributing harmful material to minors for having inserted a graphic poster in the now-defunct Dead Kennedys' 1985 "Frankenchrist" album. Similar charges against three co-defendants were dropped before the four-day trial.

#### Reproduction of Painting

The poster, a reproduction of a surrealist painting titled "Penile Landscape" by well-known Swiss artist H.R. Giger, depicts 10 sets of male and female genitals engaged in sexual acts.

The jurors, who began their deliberations late Wednesday afternoon, told Isacoff they were solidly split on the two ballots they took before she asked them how they were progressing.

Jurors told reporters that they had been perplexed by complicated jury instructions concerning the definition of harmful material. They added that the vote appeared to have gone primarily along age lines—with the younger jurors favoring acquittal.

After the dismissal, Deputy City Atty. Michael Guarino, who prosecuted the case, told reporters that he could not refile the charges because they were misdemeanor counts.

Guarino had asked Isacoff to

permit him to retry the case, in which event he said he would call expert witnesses to define such terms as obscenity and community standards. But Isacoff replied, "I am not interested in developing a trial-and-error procedure" for the prosecution.

#### Regard Toward Children

Isacoff added that she did believe that the case deserved to have been heard by a jury and that she also hoped that in the future, Biafra would heed the message of his music and act with more regard toward others, particularly children.

A moment later, after she officially dismissed the case, Biafra bolted from his chair, his arms raised above his head as he screamed his victory howls. Guarino later termed the behavior "the same kind of irresponsibility that we've seen from Day 1 from him as an artist, an individual and a defendant."

As he signed autographs on album jackets and Giger posters for several jury members, Biafra, whose real name is Eric Boucher, said: "The judge had more of a conscience than Mr. Guarino. The judge knew a waste of time when she saw it."

#### No Expert Witnesses

Guarino, who called no expert witnesses during his one-day presentation of evidence, had contended to jurors that they could see with their own eyes that the poster, in and of itself, clearly appealed to prurient interests.

Defense attorneys countered that Biafra, who came in fourth in a 1979 race for San Francisco mayor, was a socially conscious musician who has sought, often through shock methods, to make statements against sexism, racism and man's inhumanity to man. Three art and rock music experts called by the defense testified that the painting by Giger was legitimate art. They also said that even if the poster was ugly, it was meant to complement the lyrics on the "Frankenchrist"

album.

The defense also noted that the cover of the album, which has sold about 50,000 copies, contained a warning that the poster inside might be viewed by some as "shocking, repulsive or offensive." Since Biafra's arrest last year, the album no longer contains the poster.

The dismissal was termed a victory for "freedom of expression" by Danny Goldberg, who heads a group called the Musical Majority that has fought against censorship of rock albums. "Probably up in heaven," Goldberg said in a telephone interview, "Elvis Presley, John Lennon, Thomas Jefferson and George Washington are celebrating together that rock and roll and freedom of expression are still alive in America."

The swift mistrial ruling and dismissal came as a surprise to participants, since the jury had never formally indicated that it was deadlocked. Instead, foreman Jane Yuen, 23, told Isacoff it appeared so only after the judge called the panelists into her courtroom at day's end and asked how they were progressing.

Earlier, jurors had asked the court for a further definition of the term "harmful material" and for a copy of the "Frankenchrist" album. After privately discussing this with the lawyers, Isacoff gave jurors a cassette and a tape player but no further instructions.

#### 'Pretty Heated'

After the dismissal, juror Brenda Haynes, 21, of Los Angeles, who works in a dress shop, said several older jurors had termed the recording "loud and hard to decipher. . . . It was pretty heated" in the jury room.

Indeed, Haynes noted, one juror threatened to sit in the bathroom until the recording had concluded because of the abrasiveness of its sounds. The woman agreed to continue deliberating only after she was assured that the volume would be turned down.



# NO MORE CENSORSHIP!

## DEFEND FREE SPEECH

**AUGUST 11, 1987—JELLO BIAFRA**, ex-singer of the Dead Kennedys, his independent label, Alternative Tentacles, their distributor, Mordam Records and pressing plant go on trial in Los Angeles, accused of "distributing harmful matter to minors". This is the big one, the first full-media criminal prosecution of the alternative/independent recording industry and one of its major artists to be generated by the much publicized religious/political crusade against Rock Music. In this case, the so called "harmful matter" is a poster of a painting by Oscar-winning artist H.R. Giger, included in the DKs 1985 album "Frankenchrist". A clearly visible sticker on the outside of the album jacket warns potential buyers that it contains a poster "some people might find shocking, repulsive or offensive". Nobody, of any age and capable of buying a record, could or would buy this Dead Kennedys album by mistake and be unwittingly harmed by the poster, the original painting of which has been displayed in many art galleries. What the anti-Rock forces really fear and want to censor is Jello Biafra's articulate brand of provocative, think-for-yourself, topical, satirical and anti-system Rock. Using the fig-leaf of allegedly protecting children from "harmful matter" the anti-Rock crusaders are attempting to cover-up their real

objective which is to destroy the indie record industry and thus eliminate a source of ideas, music and art they don't like. Their attack on the U.S. Constitution's guarantee of Free Speech is only the first of a flood of prosecutions pending against independent artists, record companies, distributors, pressing plants and promoters. Win, lose or draw the independent Rock industry is in trouble. The well-connected, well-financed censorship forces are going after the fragile economic roots that keep alternative music alive. They have launched a strategy aimed at bankrupting their sonic enemies with endless expensive prosecutions and lawsuits. Even if, Jello Biafra and Alternative Tentacles win their current court battle, the projected \$70,000 defense of this case would represent the fiscal end of most alternative/independent recording groups and associated enterprises. Unlike the major record companies and record chains (so far spared this kind of prosecution) who have the financial resources to fight back in court, the indies are virtually defenseless. The anti-Rock, pro-censorship forces hope to use Jello Biafra's persecution to drive independent music and ideas from the record racks. They believe expensive and multiple legal defenses will destroy the financial base of indie music while the possibility of jail time, a year in this case, will intimidate and inhibit outspoken artists and companies. This strategy has worked for them before. Over 20 years ago, this month, another religious/political witchhunt was able to silence a guy called Lenny Bruce.

**AUGUST 3, 1966—LENNY BRUCE** died. Deprived of his oxygen, Free Speech, Lenny and the America he believed in, suffocated. Lenny Bruce was a stand-up comedian who became one of the most successful, innovative and influential performers of his time. He consistently sold-out venues of all types, including Carnegie Hall several times, earning in excess of \$100,000.00 per year. Lenny's unvarnished, uncomfortable observations and corrosive satire exploded the sacred social myths of the not so Fabulous Fifties and made him a legend. No subject was taboo, politics, racism, sexual behaviour, religious hypocrisy and the abuses of authority were the meat of Lenny's routines. His passionate anti-establishment humour was a cold acid bath that probed and offended the sensibilities of powerful targets and their complacent public. Lenny fed the fires burning at the heart of many hopeful, early 60s movements. He was one of America's best... But, like too many others, he became the victim of a well-financed campaign, fronted by publicity seeking politicians and prosecutors. Afraid of his Free Speech, they forced him out of work and into poverty using the police, courts and the burden of legal costs as their clubs. Lenny's use of Free Speech and "gestures" was termed "Sick Humour". He was made to label his concerts "For Adults Only", he was subjected to endless prosecutions on "obscenity" and drug related charges, most of which concluded with Not Guilty verdicts. However, the fear of further police action and the high cost of legal defenses left him without a venue to earn a living at or publicly express his views. Lenny was legally declared a pauper in 1965, his total income for the year was \$2,000, his legal expenses were \$18,000. Lenny was broken economically. His last performance was a legal fund raiser, June 25, 1966 at San Francisco's Fillmore Auditorium, featuring a new group: Frank Zappa's Mothers of Invention. Lenny passed Liberty's torch, bridging one generation to the next. He died on August 3, 1966, in mid-sentence, while typing one of the hundreds of legal briefs he wrote arguing for his right to live and speak freely in America. They got him. They turned off his oxygen while

those who could have done something looked on passively. In another time they might have said Lenny Bruce died for our sins.

**AUGUST 3 - 11, 1987—**In the days following the 21st anniversary of Lenny Bruce's death and the beginning of Jello Biafra's trial, the NO MORE CENSORSHIP DEFENSE FUND is calling on everybody, fans, artists and musical groups, media and professional organizations, concert promoters, club operators, record labels and record stores, to reflect on, publicize and fight back against the anti-Rock attackers and let people know what a victory by the pro-censorship forces would mean for the independent music industry. After August 11, during the weeks of Biafra's trial in Los Angeles, the Defense Fund is urgently asking everyone to dig deep and make a donation. Performers and promoters could put on benefits, record and book shops could set-up anti-censorship displays and contribution jars, radio stations and video programs could feature material likely to be censored, carry news of and solicit donation pledges, individuals, could organize house parties and potluck dinners to raise money. Those of us who are concerned about this issue have to prove through our donations that we will not let the music and the freedom of expression it represents die. The anti-Rock, pro-censorship forces are out to cut off our cultural oxygen and void the right to Free Speech and they have the resources, money, media control and personal political connections to make their strategy work, unless we can mobilize enough people power to counter their attacks dollar for dollar, debate by debate, argument against argument. We can no longer remain spectators as individual artists, record companies, promoters and stores come under fire. In the present case, it is not even necessary for you to like Jello Biafra and the Dead Kennedys' brand of music to know it is time to join the fight. Biafra and Alternative Tentacles are only a lightning rod currently catching the full fury of the anti-Rock storm. If they are done in by the law or, more likely, the lack of funds to fully defend their rights and remain in business, the anti-Rock forces will have won their first major victory. After tasting blood, they will strike again and again until they feel the world has been morally sanitized to their standards. If we want freedom and the music we care about to survive we must take an active role, no matter how small. When they try to shut off our music and destroy the independent roots it needs to survive and grow, we just have to say, "NO MORE CENSORSHIP!"

For more information on the Jello Biafra case, background on the anti-Rock crusade and related issues, more ideas or suggestions write or call the NO MORE CENSORSHIP Defense Fund, P.O. Box 11458, San Francisco, CA, U.S.A.—Phone: (415) 474-1926. Make all donations payable to: NO MORE CENSORSHIP Defense Fund.

Feel free to reprint any part of this appeal. Use it for handbills or benefit posters. Note: Any money collected by the Fund not used on the present case will be used to defend future victims of Anti-Rock and Censorship attacks. Now is the time to start the fight back!

To date, the NMCFD has taken in \$55,000 and spent \$55,000. At this point, another \$15,000 is needed to clear up past debts, including postage, xeroxing, printing and phone bills. In all, about 1300 individuals donated to the fund, and out of 2500 people who wrote in, only 3 were negative (2 unsigned). The fund is still answering letters received during the trial dates, and will be meeting to decide whether to continue or whether to donate any remaining monies to the A.C.L.U. Please send in what you can in order to get the remaining bills paid off. More later.

