

View from The Overlook

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Obscene History in the Heights:

The Case of Nico Jacobellis and *Les Amants*

By Sven H. Dubie

The idea of fostering civility in Cleveland Heights has a more checkered history than one might expect. Long before the city launched its current Civility Project, Cleveland Heights briefly served as a focal point in the national debate over attempts to define community standards, particularly with regard to the concept of obscenity. As long-time residents of our community may recall, the controversy involved the former Heights Art Theater, now the Centrum, and the provocative—for its time—film, *Les Amants* (The Lovers). Before the matter was finally settled, the U.S. Supreme Court took up the case and Justice Potter Stewart provided one of the most frequently quoted judicial aphorisms in American history.

Les Amants (1958) was an award-winning film by the

legendary French director Louis Malle. It told the story of Jeanne, a 30-year-old French woman trapped in an unhappy marriage. Encouraged by a friend, Jeanne takes a lover in Paris, but finds no happiness in the affair. Finally, she has a chance encounter with a young intellectual when her car breaks down. Jeanne and her new friend eventually spend a passionate evening together,

and the next morning, transformed by the night of lovemaking, Jeanne finds herself unable to face the prospect of returning to her former life. She abandons her family and friends and leaves with her new lover to begin life anew.

Although the plot line of the film itself was quite provocative, it was the “explicit” three minute “sex scene” involving Jeanne and her young lover that became the focal point in the controversy. (Indeed, an ad for the film that ran in the *Sun Press* titillatingly proclaimed,

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The Cleveland Heights Historical Society



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The Cleveland Heights Historical Society,
founded in 1983, is a state-chartered,
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Our Mission

The Cleveland Heights Historical Society
is dedicated to preserving and promoting
the diverse character and traditions of Cleve-
land Heights.

As a community-based historic organization,
the Society encourages and facilitates greater
knowledge, understanding and awareness
of the heritage of Cleveland Heights.



Save the Date

Lots of historical happenings coming your way this Fall:
Call 216-321-9141 for more information, or dial the phone
numbers below to make reservations.

Tuesday, August 28 at 7:00 p.m.
at the Superior Schoolhouse:

Shaker Lakes and the People Who Claimed it.

Our speaker is Sabine Kretzschmar,
Executive Director, Shaker Heights Historical Museum.
(Call 216-291-4878)

Thursday, Sept 27, 2007 at 7:00 p.m.
at the Superior Schoolhouse:

Barometers of Change: Congregations and Houses of Worship in Cleveland Heights.

Our speaker is Marian Morton,
Local Author and Professor of History at John Carroll University.
(Call 216-291-4878)

Sunday, November 4, 2007 at 7:00 p.m.
at Judson Park (Annual CHHS Fundraiser):

Classical Music in Cleveland: The Cleveland Heights Connection.

Our speaker is Klaus G. Roy,
Composer, Lecturer and Former Program Annotator
for the Cleveland Orchestra.
(Call 216-932-2571)

Les Amants

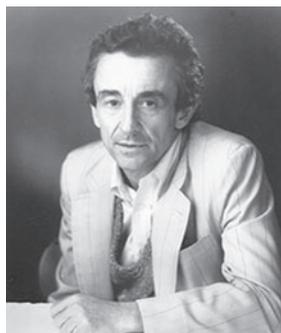
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“When all conventions explode... in the most daring love story ever filmed!”) *Les Amants* was released in the United States in 1959, where it played in dozens of art theaters around the country, generally without incident. In several locations, however, including Boston and Memphis, sanitized versions of the film were shown. Like other states, Ohio had an obscenity law that, among other things, prohibited the possession and exhibition of obscene films. Thus, when the manager of the Heights Art Theater, Nico Jacobellis, decided to show the film in its entirety, he risked running afoul of state law.

Jacobellis was a 37 year-old immigrant from Italy who had once aspired to become a film director. Prior to coming to the United States in 1948, he had pursued cinema studies in Rome. After attending Western Reserve University on a foreign student scholarship, where he supported himself by handling movie publicity for the school, he was hired to manage the Heights Art Theater in 1952. Jacobellis was a devotee of art films. As he noted in an interview, however, he had no interest in deliberately creating controversy and “honestly felt there would be no concern over the film.” He simply wanted to show films to mature audiences “who take their entertainment seriously and wish to think.” A further measure of Jacobellis’s commitment to serious art was his establishment of a gallery in the lobby of the Heights Art Theater in which he planned to exhibit a collection of works of contemporary Italian artists that he had recently imported. Ironically, the grand opening of the new gallery was slated to coincide with the Northeast Ohio premier of *Les Amants* in November 1959, which, as events unfolded, no doubt cast a pall over the gala.

Advance publicity for the film aroused the attention of Cleveland Heights Police Chief, Edward Gaffney, who suspected the film might

violate state obscenity laws. As he had done on several occasions in the past, Chief Gaffney ordered several of his deputies to attend the first showing of the film on November 13 to determine if it was obscene. The men concluded that it was and, as the second screening of that evening began, Cleveland Heights police, accompanied by Gaffney, raided the theater, seized the film, and arrested Jacobellis. Within days he was indicted by a Cuyahoga County grand jury and charged with violating state obscenity laws—a felony in Ohio. In the wake of his arrest and indictment,



Louis Malle

Cleveland police raided Jacobellis’ home after an anonymous tipster told police that the theater manager had other obscene films in his possession. No such materials were ever found.

Local sentiment was divided over the case. One Cleveland Heights resident commended the actions of the police

for taking action “to protect us from filth spewing forth from a tarnished screen.” The individual went on to declare that such “foreign film garbage” was “demoralizing and degrading to our community,” and, touching upon one of the salient issues in setting obscenity standards, insisted that simply because “a certain film is being shown in other sections of the state and nation is no excuse for our accepting it in Cleveland Heights.”

By contrast, the Cleveland Civil Liberties Union criticized the police for over-stepping their authority, noting that under state law, only a duly constituted jury, not the police, had the power to declare a motion picture to be obscene. And Sun Press publisher and editor Harry Volk, in the first of several of his “Top of the Hill” columns, conceded that while such films ought to be strictly limited to adults—a restriction already

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Les Amants

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scrupulously enforced by Jacobellis—the question of whether something should be deemed art or obscenity was ageless and, ultimately, best left to individual determination.

In June 1960, a trio of judges in the Cuyahoga County Common Pleas Court found Jacobellis guilty of possessing and exhibiting an obscene film and fined him \$2,500. Both a county appeals court and the Ohio Supreme Court upheld the conviction, with the state supreme court declaring that the film lacked redeeming social importance according to local community standards—which was the contemporary test for determining whether a work of art could be declared obscene.

For Jacobellis, the case had potentially serious ramifications beyond the question of obscenity. At the time of the controversy, Jacobellis was in the final stages of completing the process of becoming a U.S. citizen. His application was held in abeyance pending final resolution of the case. He had also recently married a young Italian woman from the area and, within a year, a son would be born to the couple. If the conviction stood, his efforts to become a naturalized citizen and the integrity of his family would be imperiled.

Supported by a team of lawyers from New York, Jacobellis doggedly appealed his case to the United States Supreme Court, which issued its ruling in June 1964. By a 6-2 margin, the Court reversed the convictions, although there were divergences of opinion among the justices. Most members of the Court sought to clarify the definition of obscenity, holding that national community standards of decency trumped those of local communities.¹ And since locales that found the film objectionable, such as Cleveland Heights, were in the minority, the tastes of the majority of theater managers nationwide, including Jacobellis, must prevail.

Nevertheless, it was the folksy concurring opinion of Justice Potter Stewart for which this case may best be remembered. Like his peers in the majority, Stewart struggled to precisely identify what it meant for something to be obscene. He acknowledged that laws could prohibit such obscene material as “hard core pornography” but demurred to identify specific types of works which might fall into that category. Nevertheless, Stewart concluded, “I know [pornography] when I see it, and the motion picture involved in this case is not that.”

Three nights later, Les Amants resumed its run at the Heights Art Theater. A large ad for the film triumphantly proclaimed: “Thanks to the U.S. Supreme Court you can now see Louis Malle’s *The Lovers* and, in accordance with your constitutional rights, enjoy your freedom of opinion and expression!” Ironically, within a decade the Jacobellis ruling was overturned. Reflecting the nascent backlash against the perceived cultural excesses of the 1960s, the Court ruled that the idea of nationwide community standards was untenable. As a result, the Court reverted to a more restrictive position, declaring that any measure of community standards must reflect local sentiments.²

Today, the explicit material in *Les Amants* would not create much of a stir. Indeed, it might easily be passed off as a “wardrobe malfunction” or a rather sedate music video. But in 1960s America, standards were very much in flux, and one person’s art house film was another’s pornography. As the times have changed, so have the grounds upon which struggles over civility are waged. Yet the fact that people continue to care about such issues reflects the vitality of, and passion for, the community in which we make our homes.

¹ Several years earlier, in *Roth v. U.S.* (1957) the Court held that a work could be declared obscene if it was determined to lack any redeeming social value as determined by local community standards.

² *Miller v. California* (1973)

Cleveland Heights and the National Preservation Movement

By Ken Goldberg

What is Cleveland's—and Cleveland Heights'—place within the Historic Preservation Movement in the US?

Architectural preservation and conservation efforts took off in Greater Cleveland later than in many cities and, once established, tended to concentrate mostly on structures built between 1890 and 1930, when Cleveland flourished as one of America's fastest growing, progressive and glamorous cities. Cleveland's shops featuring architectural salvage, first appearing in the Flats and on Lorain Avenue in Cleveland around 1980, are largely from these same decades.

The American version of the Movement began in the 19th century in communities or regions considered to have national historical significance—mainly along the East Coast. Landmarks were the focus—structures deemed worth saving (typically by societies formed for just that purpose) by virtue of their association with prominent persons or events. This phase spread to districts and individual buildings thought to have particular architectural significance. Eventually the Movement spread across the country and, by the late 1970s, when wholesale urban renewal had fizzled out, more ordinary buildings and districts were determined to be worth saving if they were integral to a community's fabric. Vital to our local efforts, somewhat newer structures—those from the early 20th century—took on new importance.

Expansion of the Movement's coverage, decade by decade, was reflected in books and periodicals which, in addition to dealing with 18th and 19th century buildings, began discussing later examples, including more common building types. *Old-House Journal* appeared in 1973 and by the mid-1980s expanded its historical discussion all the way to 1939. Publication of very detailed

city architectural guidebooks, such as American Institute of Architects, Cleveland Chapter's, two editions of the *Guide to Cleveland Architecture* coincided with that of New York City's in 1968. Numerous communities followed, stimulating much public appreciation toward buildings of all periods.

The National Trust for Historic Preservation's *America's Forgotten Architecture* (1976) includes material on conservation of basic buildings and discusses early 20th century industrial structures. 1980 saw the publication of Carole Rifkind's *Field Guide to American Architecture*. In 1986 McAllister's *Field Guide to American Houses* was published, covering styles from the earliest colonial to the most contemporary. Alan Gowans' *The Comfortable House: American Suburban Architecture 1890-1930* also was released around this time.

Anyone with a desire to restore a property in the Cleveland Heights area can find worthy 19th century examples in Ohio City, Tremont, Chagrin Falls or Hudson. However, much of the most interesting preservation/conservation activity is already taking place in the later—and extremely architecturally attractive—neighborhoods of Cleveland Heights, Shaker Heights, Lakewood and their bordering Cleveland districts. Greater Clevelanders, with so many of our excellent, earlier examples lost, are concentrating on highly developed and exuberant early 20th century structures—arguably Greater Cleveland's greatest contribution to the nation's architecture and its preservation efforts. We need not apologize for focusing on this period, particularly since much of it has already disappeared over the past four decades. Cleveland Heights, regrettably, has already lost dozens of good early 20th century houses and commercial buildings.

M.M. Brown Tells of Mayfield Heights

Editor's note: Most of Cleveland Heights' developers—Deming, Calhoun, et. al.—were gifted entrepreneurs. But none were blessed with the talent for hyperbole possessed by M.M. Brown, the Father of Mayfield Heights (Somerton, Cadwell, Wilton, Radnor, Middlehurst and Hampshire Roads). Consider the following tome he wrote for the March 25, 1900 edition of The Plain Dealer.

Mayfield Heights in time passed has suffered its full share from public non-appreciation, but this is not surprising.

It sometimes requires careful examination and much study to distinguish superior natural conditions from the ordinary. It is the same in the world of investments as in the realm of letters.

It is given only to the discriminating few to discover the excellent from the ordinary, at first. Many unappreciated authors have been the mightiest of the past and the worthiest of the present.

Among the rejected manuscripts of the publishing houses for a time was "Paradise Lost," Thackeray's "Vanity Fair," "Vestiges of Creation," "Uncle Tom's Cabin," and Shakespeare himself was comparatively unknown in his own country until Germany proclaimed her appreciation of the greatest dramatist the world has ever seen.

To discern the advantages of Mayfield Heights you are simply asked to behold and examine for yourself.

What has been the history of investments made upon Mayfield Heights during the part three years? It is a history of having doubled the money once each year for three successive years.

Lots that then sold for \$10 per foot now bring \$30 per foot, and \$30,000 worth of the property has been sold at this rate in the past few months. If you question this, the company's books are open to your inspection.



M.M. Brown

It is not probable that the future advance in value will be as great in proportion as it has been, but the character and future development of the land is now an absolute certainty, and still the lots will not be extravagantly high priced when they sell for three times the present prices.

As an investment advances in certainty it grows less in profits, until the greatest certainty is reached in a government bond, when the profits have shriveled up to 2 percent.

We have never counseled hazardous or blind investment with the diseased hope of fabulous returns, but we have persistently maintained for three years past that buying a lot on Mayfield Heights was like buying a young and growing horse, or other animal, that was well bred, with a healthful and vigorous constitution, which in all probability would develop into twice its weight and value.

So with the land on Mayfield Heights. It has pre-eminent location; it has a commanding tableland; it has perfect drainage. All these advantages it had when the lots sold for \$10 per foot. Now that the lots sell for three time as much it has some artificial advantages. It has 10,000 feet of paved streets; it has 9,000 feet of sewer system; it has 7,000 feet of water main; it has 5,000 feet of gas main; it has 18,000 square feet of stone sidewalk.

It has about thirty beautiful homes recently built, costing from \$4,000 to \$25,000 each; it has direct Euclid Avenue cars every few minutes. It has a good community of Cleveland's cultured and best people.

We sell beautiful homes, or lots for investment, upon monthly payments without advance payment. Our lots will double in value in the coming three years in all probability. By paying a small sum, you can secure the rise on all the land you contract for, the greatest part to be paid out of profits when you sell.

— M.M. Brown, Garfield Building.

JOIN TODAY!

All members receive the benefit of knowing that their membership dues help advance historic preservation opportunities for Cleveland Heights. Memberships are tax deductible.

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Please accept my yearly membership fee for:

- \$ 15.00 – The Marcus M. Brown Membership
- \$ 25.00 – The Patrick Calhoun Membership
- \$ 50.00 – The Barton and Grant Deming Membership*
- \$100.00 – The John L. Severance Membership*

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**The Deming and Severance Memberships include one free admission to the Historical Society's annual fundraiser and periodic acknowledgement in "View from The Overlook."*

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