

LETTERS

We welcome responses from our readers. Letters should be typed (double spaced) if possible, and must include the writer's name, address, and a telephone number where he or she can be reached during business hours for verification. The writer's name and position or town will be published, but these may be withheld for good reason.

Letters may be mailed to the Boston Phoenix, 126 Brookline Avenue, Boston 02215; faxed to (617) 859-8201; or e-mailed to letters@phx.com. All letters are subject to editing for considerations of space, fairness, and clarity.

ANGELI AND THE FIRST AMENDMENT

DA Tom Reilly might be disappointed with my "incorrect portrayal of the facts surrounding the case against Toni Marie Angeli," but his letter (February 23) slickly avoids pointing out a single fact that I got wrong, all the while taking me to task.

Of course the case is about Ms. Angeli's First Amendment rights, not to mention her parental rights. There is nothing in the photos to indicate the child is being abused, yet Ms. Angeli was subjected to a heavy-handed investigation. At most, a telephone call to Angeli would have uncovered the facts that Reilly says kept him from prosecuting her for child porn — it was her child, and the photos were for a Harvard course.

Reilly makes it sound as if the police innocuously and coincidentally arrived at Zona at the same time Angeli came to pick up her photos. As I pointed out in my article "No Excuse" (Freedom Watch, News, February 9), the police and Zona got together to do a sting on Angeli; that's why the police arrived when she showed up. Why a sting rather than a simple phone

call? Isn't such a procedure calculated to chill First Amendment rights?

Reilly makes it sound as if the photos had nothing to do with Angeli's arrest. Well, if the police did not feel the pictures were unlawful, why did they initiate the investigation? The photos obviously were what started the incident. Only when the DA looked at the photos and realized there was no criminal case were child-porn charges taken off the table.

Reilly says that police never threatened to have Angeli's child taken away. Well, then, would Reilly care to explain why one of the police officers contacted the Department of Social Services, which then initiated an investigation? What did the police have in mind?

Reilly admits that Judge Sragow sentenced Angeli to jail only after she refused a probationary sentence accompanied by restitution and community service. He appears to object only to my characterization that the judge "agree[d] to let Angeli off with 18 months probation" if she agreed to the conditions. My characterization is perfectly accurate and reasonable. Reilly is toying with semantics.

Reilly's most slippery accusation is that I was unfair in castigating Assistant DA Marilee Denelle for attempting to bully Angeli

by threatening to prosecute her with "tampering with a witness" because supporters of Angeli threatened to withdraw business from Zona. While acknowledging that members of the public have a right to boycott Zona for any reason they wish, Reilly then claims that there is something "wrong" in "attempting to use that threat as leverage to affect the outcome of a criminal case" by "trying to bully Zona into dropping the case." First of all, if it was merely "wrong," but not criminal, why did Reilly's assistant threaten a prosecution? Was it a bluff to intimidate Angeli's supporters into continuing to use Zona's services? Second, as Reilly well knows, this was a criminal case brought by the DA's office, not a civil case brought by Zona. Zona did not have the power to drop the case, and hence a boycott of Zona could not have been aimed at such a result. Artists, including my wife, simply felt uncomfortable patronizing such an organization.

Finally, one takes with a grain of salt Reilly's claim that we owe Judge Sragow "our praise" for "the soundness of her de-

judge, who perhaps felt that the dignity of her office prohibited her from defending herself. (Being a judge means never having to say you're sorry.) Reilly's letter, however, fails in this mission.

Harvey Silverglate
Cambridge

DISCRIMINATION AT THE MBTA

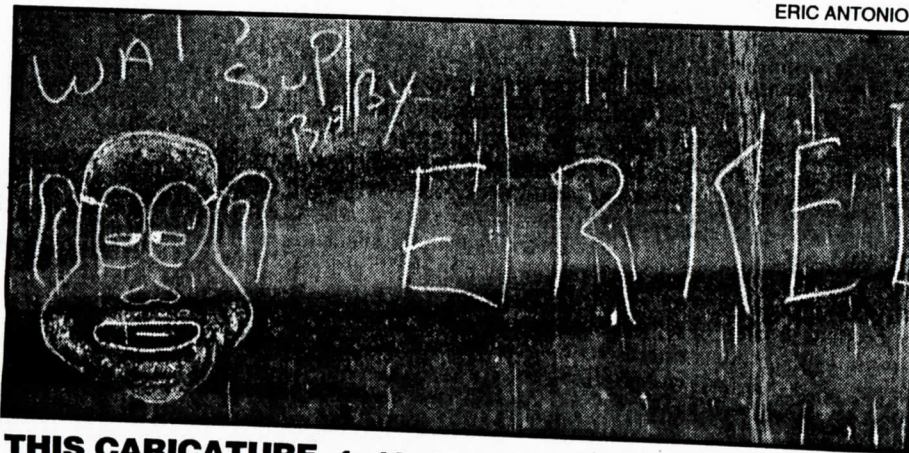
We are disturbed by Sarah McNaught's claim, in "Whitewashed" (Cityscape, News, February 16), that discriminatory practices are continuing at the Massachusetts Bay Transportation Authority, specifically in the Engineering and Maintenance Department. Particularly disturbing is her allegation that supervisory staff are either guilty of these practices or condone them.

These allegations are in complete contradiction to the MBTA's new non-discrimination policy, "Dignity in the Workplace," and to the articulated positions of chairman James Kerasiotes, the board of directors, and the general manager. I am enclosing a copy of the MBTA's new policy, which specifically addresses the role of MBTA managers in eliminating any discriminatory practices.

Also enclosed is a copy of the minutes of the October 25, 1995, board meeting, in which the general manager provided an overview of the new policy. It is abundantly clear from the board minutes and the MBTA's policy that the MBTA does not intend to allow discrimination of any nature in the workplace. It is also clear

that the board of directors and the managers at the MBTA will hold all supervisors responsible for establishing and maintaining a workplace free of actions which would offend a reasonable employee.

William A. Mitchell
General Counsel
MBTA



THIS CARICATURE of a black man was wiped off engineering-and-maintenance Building 12, Charlestown, right after the Cityscape report.

cision" and for acting with "great restraint." Yet Reilly does not deal with the fact that Judge Sragow would not even allow Angeli's lawyer to argue a point; she would not listen. Is this "restraint"? Reilly's effusive praise for a judge who handled herself quite poorly makes one suspect that Reilly wrote the letter largely to defend the

ERIC ANTONIOU

FREEDOM WATCH

No excuse

Zona Labs and its legal allies should have known better by Harvey Silverglate

The Cambridge Police detectives who arrested Toni Marie Angeli on suspicion of child abuse because of nude photographs she took of her

four-year-old son — and for the ruckus that resulted at the arrest scene — have been accorded an outsized portion of blame in this free-speech comic opera.

There is plenty of fault to find in the officers' conduct, but, at the risk of sounding cynical, I'd say the police acted the way police tend to act. Responding to

a tip from Zona Photography Labs in East Cambridge, where Angeli had taken her film for processing, they saw nude pictures of the child and immediately associated child nudity with child pornography and, in their lexicon, its close cousin, child abuse. They confronted Angeli, and, when she gave them some lip, they started to get rough. Nothing so surprising there.

What is surprising is how little criticism has been aimed at more subtle participants in the Angeli debacle: Rowena Oremba and Mary Osgood, co-owners of Zona Photographic Labs; Cambridge

District Court Judge Roanne Sragow, who got so personally involved that she lost her objectivity; assistant Middlesex County DA Marilee Denelle and her supporters at the DA's office, who allowed her to proceed with this ill-considered prosecution; and Harvard University, which didn't lift a finger to protect and support its student. As the case unfolded, suit that all piously claimed they wanted to avoid: namely, damage to Angeli's four-year-old child, Nico.

The story, broken December 29 by *Phoenix* reporter Sarah McNaught, involves Angeli's project, "Innocence in Nudity," for a Harvard Extension School photography course given by well-known local photographer/artist Jack E. Lueders-Booth. Angeli's portfolio included a number of pictures of her son, in some of which he was naked. I have examined all of these photographs, and, as an attorney experienced in the fields of free speech, obscenity, and child pornography, I can say that not a single one comes close to being pornographic. They perfectly illus-



TONI MARIE ANGELI

INNOCENCE in nudity, if not in conduct: with no evidence of lascivious intent, the DA couldn't prosecute Angeli for pornography.

trated Angeli's theme — that child nudity among the most innocent of human phenomena. (Her style is, in fact, obviously modeled on the family portrait of Sally Mann, one of the most respected photographers in the country.) And no pornography charges were brought because, according to Martin Murphy, first assistant Middlesex DA, the material didn't meet the "lascivious intent" test required for prosecution under Massachusetts law. But when Zona developed the roll of 35-mm film, an employee was reportedly

being defied that she decided to throw the book at Angeli, rather than withdraw in favor of a more dispassionate judge. Stragow went so far as to refuse to allow Angeli to remain free pending an appeal, meaning that, if Angeli wins her appeal (and she has very substantial legal issues on her side), she will have already served her sentence.

Perhaps the DA's position was predictable. The DA often depends on police cooperation and doesn't like to cross the department. But in a case where the police obviously overreacted on the basis of erroneous judgment (one detective testified that only a sick person would take such photographs), and where Angeli was reacting pretty much as most parents would under similar circumstances, the prosecutor's office should have resisted pressure to vindicate police conduct by prosecuting.

Harvard, for its part, was strikingly silent. After the trial, Angeli's instructor, Lueders-Booth, told the *Crimson* that he supported Angeli, that the case resulted from "a misjudgment on the part of the photo lab," and that "there was absolutely no question of anything being wrong with the pictures." But Harvard hasn't made a single public statement supporting its student or his instructor's contentions.

In 1989, the Massachusetts Supreme Judicial Court (SJC) acquitted a father charged with pornography for photographing his 15-year-old stepdaughter (bare-breasted). The court ruled that the pictures were "expressive" activity protected by the First Amendment's free-speech guarantee, and that to be constitutional, the state's child pornography statute could target nude child photography only if engaged in with lascivious intent. The fatal defect in the statute, in not requiring that such intent be proven, was illustrated by the court with the following observation:

The overbreadth of [the child-pornography] statute is substantial. It criminalizes conduct that virtually every person would regard as lawful. [It would], for example, make a criminal picture of a parent who takes a frontal view of his or her naked one-year-old running on a beach or romping in a wading pool. The artists who painted some of the world's greatest paintings engaged in behavior made unlawful under [this statute] if they used child models.

Subsequently, the statute was amended to require proof of lascivious intent before a prosecution could be brought. Both Zona and the police were obviously unaware that the SJC had bestowed First Amendment protection on these kinds of pictures. Even so, if Zona had simply telephoned his client rather than call the police and engage in a sting, the lab would have learned that the photo was of Angeli's son, and that she had taken the pictures for a project at Harvard. It's surprising that Zona didn't take this step, since, as the *New York Times* reported, "Mrs. Oremba says she had no way of knowing that the photographs were taken by the boy's mother or that [the] clothed man in the pictures was the boy's father" — suggesting that had she known Angeli was the boy's mother, none of this would have happened.

In 1990, the *Boston Globe* carried the following wire-service report, datelined Beijing, about a crackdown on kiddie porn in the People's Republic of China: *Students in an elementary school class, fired up but confused by the government's anti-pornography campaign, turned in their nude baby pictures to their teacher, a letter in a state-run newspaper said yesterday. The letter in the China Youth News from a "concerned citizen" cautioned that there is such a thing as too much propaganda and warned that bringing the anti-smut campaign to the elementary school level had created confusion among youngsters.*

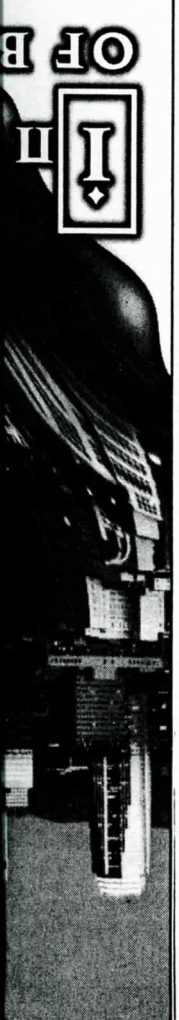
Zona, one of the best-known photo labs in the state, does work for professional photographers, including many with national reputations. (My wife, portrait photographer Elsa Dorfman, was a Zona client until this incident caused her to turn elsewhere.) Considering Zona's sophisticated photo-art customers, it is inconceivable that the lab has not processed thousands of these kinds of images over the years. Yet a written statement submitted to Stragow by co-owners Oremba and Osgood at Angeli's sentencing claimed that the folks at Zona "were deeply troubled by the images we saw on Ms. Angeli's film" and had "heartfelt concerns." As a result, they told the judge, "We chose to contact those who are experienced in investigating possible child abuse."

But Zona can't absolve itself so quickly of responsibility for "what occurred subsequently." For one thing, the uncontradicted testimony is that while Angeli was arguing with the police who had just arrested her and escorted him out of the room. The employee claimed that he did this in order to protect the child from exposure to the increasingly confrontational scene that was developing between his mother and the police. From Angeli's point of view, a total stranger was walking off with her child. A parent would have to be inhuman not to react with anger and fear in such a situation. So here again, Zona's expressed concern for the welfare of the boy boomerged.

At the sentencing, however, Zona stooped considerably lower in causing Angeli — and, consequently, her son — grief. In its written "victim impact statement" submitted to Judge Stragow, Zona lambasted Angeli for assaulting and injuring a Zona employee (despite Angeli's acquittal on the assault charge), and for damaging the lab's reputation and causing it to lose customers. "What cannot be so easily repaired," they wrote, "is the harm Ms. Angeli and her supporters have done and continue to do to the reputation and good name of Zona Photographic Labs." Since the supporters (including, by way of disclosure, my wife and me) who voiced their views on radio and television could not be punished, obviously it was Angeli who was to bear the full brunt of others' exercise of free speech.

And in an as-yet-unreported pre-trial incident, prosecutor Denelle threatened Angeli's chief trial lawyer, Boston's John G. Swomley, saying that she was considering changing Angeli with "tampering with a witness" — because some Zona customers, out of sympathy for Angeli, were threatening to take their business elsewhere. Swomley challenged her to go right ahead, and Denelle backed down. Since Angeli would have been within her constitutional rights if she'd urged a boycott of Zona, this was just another example of an effort to punish her for her supporters' legally protected actions. In a final insult to Angeli, Oremba and Osgood urged Judge Stragow "to make it clear to Ms. Angeli that her actions on November 2 were unconscionable" and to "require counseling therapy for Ms. Angeli" because "we believe she needs that help."

Stragow did indeed "make it clear." Over the objections of Swomley, she accepted the Oremba/Osgood statement as part of the sentencing proceeding. Next, Judge Stragow offered to let Angeli off with 18 months probation, rather than a prison sentence, if she would compensate Zona and perform 50 hours of community service. (The DA also demanded that Angeli apologize.) Angeli refused. In a fit of pique at such defiance of her authority,



disturbed by the nude images, and the lab called the police. Upon examining the negatives, the police prevailed upon Zona to join them in what can be reasonably described as a sting. Zona lured Angeli to the lab and kept her there until the police could swoop down to confront the suspected child pornographer and sexual abuser.

We have unusual photo... We seek a designer with an understated exp., including layout a...

That's to die for... We seek a designer with an understated exp., including layout a...

trudsetting ni... We seek a designer with an understated exp., including layout a...

cool world of... We seek a designer with an understated exp., including layout a...

to vampire love... We seek a designer with an understated exp., including layout a...

Grimson adds... We seek a designer with an understated exp., including layout a...

Nobody's perfe... We seek a designer with an understated exp., including layout a...

vampire with a... We seek a designer with an understated exp., including layout a...

But she happen... We seek a designer with an understated exp., including layout a...

strong and age... We seek a designer with an understated exp., including layout a...

Justine — bea... We seek a designer with an understated exp., including layout a...



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Given the puritanical zealots who have run rampant in our society in recent years, it is no wonder that the Cambridge Police detectives who arrested Toni Marie Angel were confused. However, the Middlesex District Attorney's office, Zona Photographic Labs, Judge Roanne Stragow, and Harvard University have no such excuse.

Dana M. Gurwitsch assisted in the research for this piece.

of our doing," they added.

"What occurred subsequently was not possible child abuse.

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Stragow compounded the insult and the injury by refusing to allow Swomley even to argue that Angel had suffered sufficient physical punishment and brutality at the hands of the police and that incarceration would be overkill. It is extraordinary for a judge to refuse to allow a lawyer to argue a point, yet the judge by this time was so personally offended at

Editoria

Grimson adds a new wrinkle to vampire lore and brings you into the hip, ultra-cool world of L.A.'s trendsetting nightlife. Gruesome into a thrilling story that's to die for.

STAINLESS, an Todd Grimson comes From author

Can't Remember Where Or Check It Out in the Phoenix/WFNX

We seek a designer with three to five years of professional design and design exp., including layout and design of We have unusual opportunities for entrepreneurial, non-bureaucratic, by technologies in companies ranging from Please fax or send resume with S. The Boston Phoenix, 126 Brookline