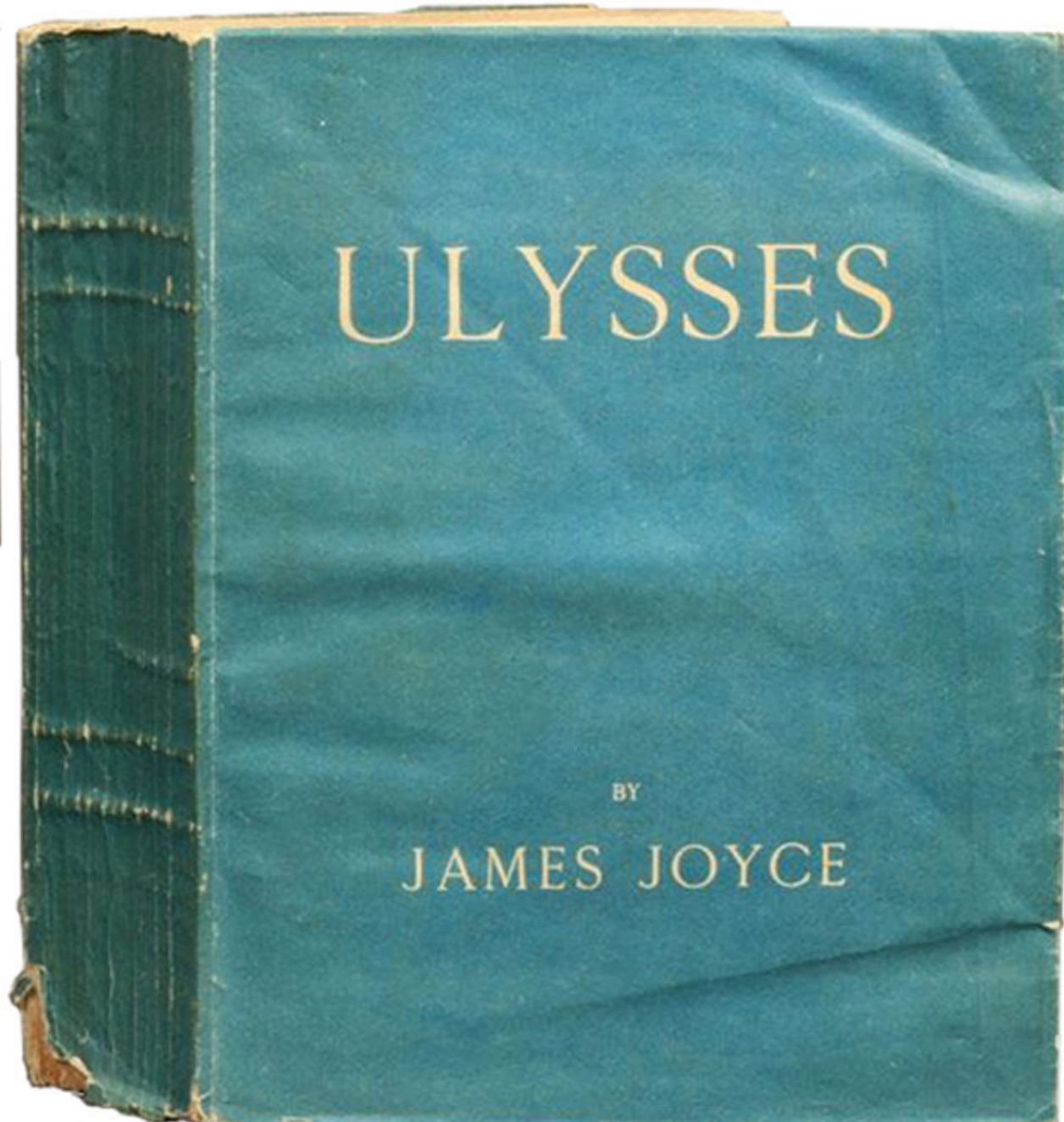


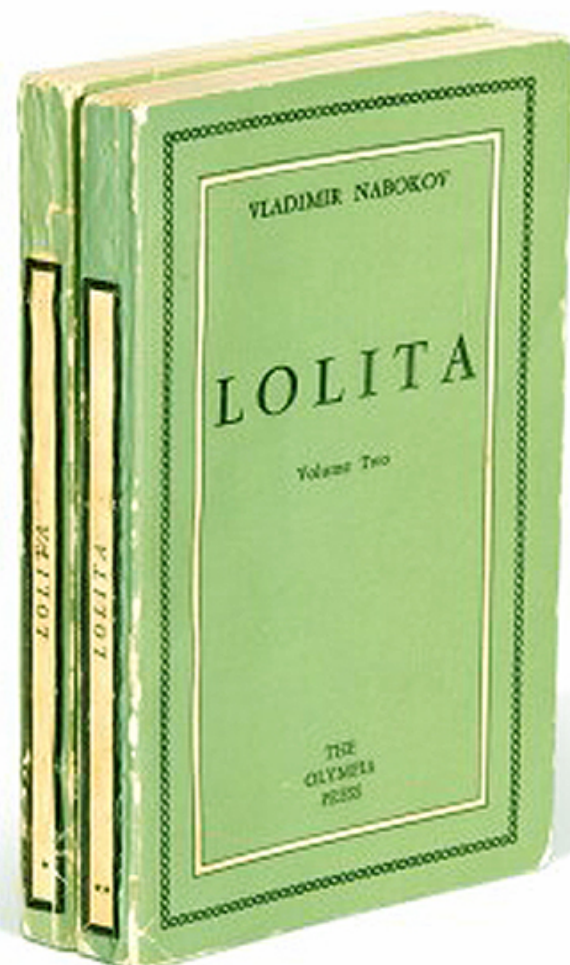
BANNED



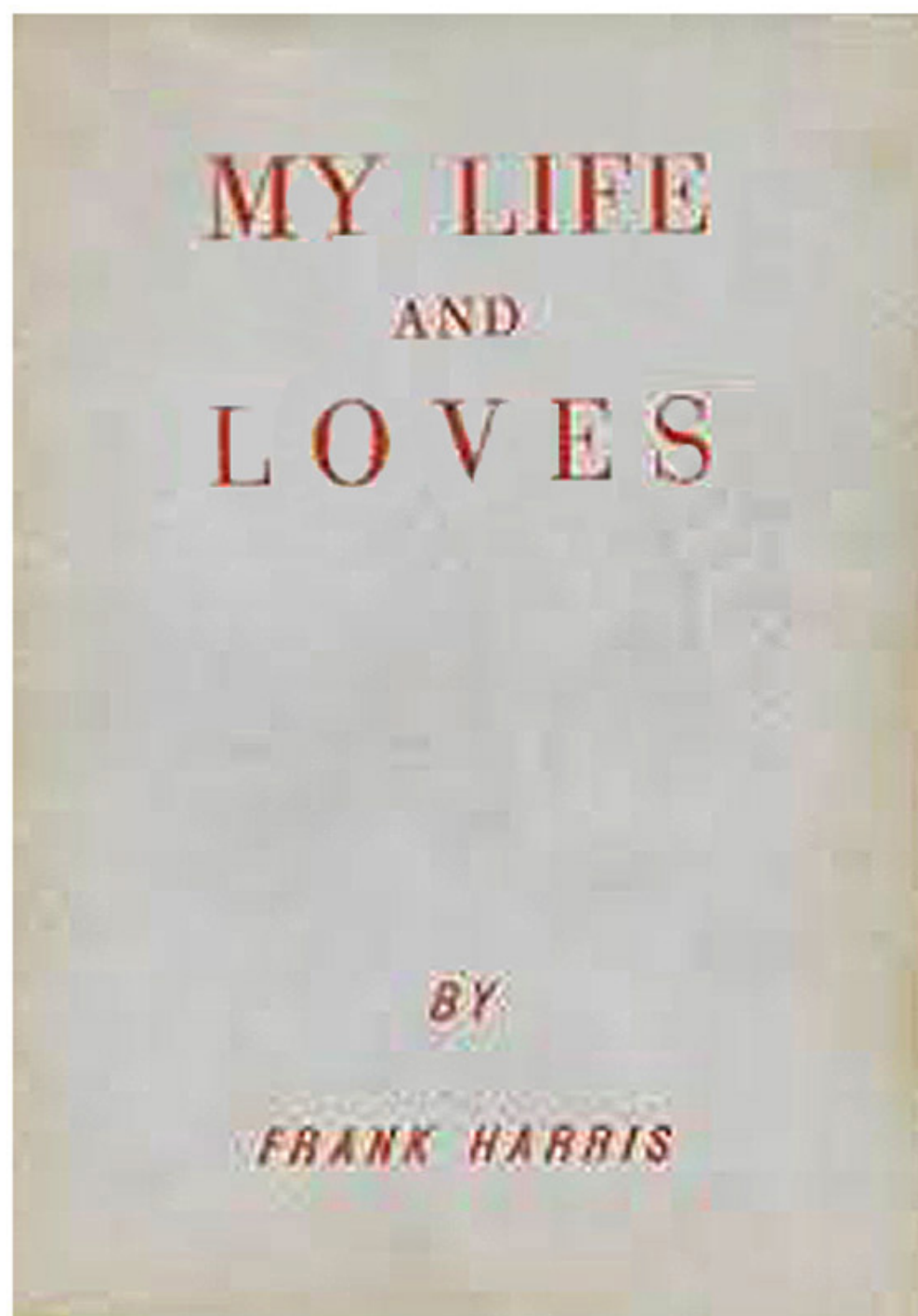
Despite the fact that *Fanny Hill*, when published in Massachusetts in 1821, became the first reported case in the United States of prosecution for obscene literature, its present publication did not raise as many eyebrows as might have been expected. Censorship barriers had been going down steadily since 1933, when U. S. District Court Judge John M. Woolsey removed the ban on James Joyce's *Ulysses*, which had been in effect ever since its publication in Paris nine years earlier. Till 1933, standards of propriety were the first yardstick applied to written material—evidence of the Victorians' fierce intolerance of any free discussion of sexual relationships and morality. The test of obscenity had been "whether the tendency of the matter is to deprave and corrupt," regardless of the social value of the rest of the book.

Judge Woolsey laid down a new test. Writing of this decision in a book called *Obscenity and the Law*, Norman St. John-Stevias says: "The judge held that the first question to be decided was the intent with which the book was written. If that was pornographic, then the book should be condemned; if not, the court should go on to consider the book itself.

"Said Judge Woolsey: 'In *Ulysses* in spite of its unusual frankness, I do not detect anywhere the leer of



BANNED



the sensualist. I hold therefore that it is not pornographic.'

"The judge having declared that he had found nothing which could be described as 'dirt for dirt's sake,' went on to apply an objective test to decide whether the book should be considered obscene."

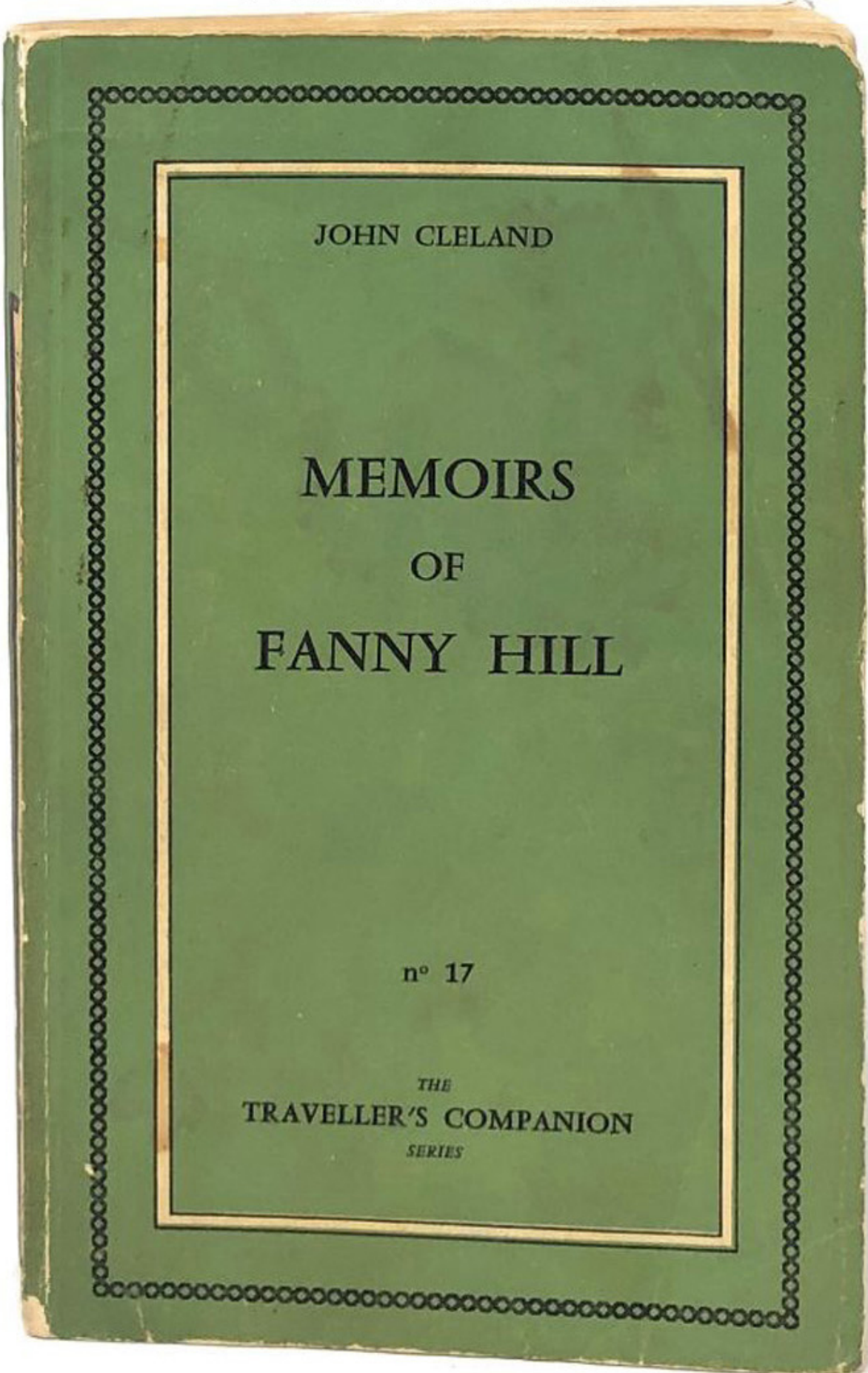
Holding that obscenity, as legally defined by the courts, is "tending to stir the sex impulses or to lead to sexually impure or lustful thoughts," the judge estimated the effect of questionable passages on the average man. If the average man was not so affected, then the book was not obscene. The judge stated that while *Ulysses* was strong, "nowhere does it tend to be aphrodisiac."

Woolsey's decision was upheld in a higher court. The same year, Erskine Caldwell's *God's Little Acre* also was cleared, though it was not until the late 40's and 50's that the inexpensive Signet edition in paperback blossomed forth with a sale of 10 million copies.

With Judge Woolsey thus having opened the door, authors began to venture through. Books which earlier could never have seen the light of day in this country were written and published. The war, with its consequent relaxation of old standards, gave censorship another rap and led to the publication of works filled with candid sex scenes and the standard, real-life talk of soldiers, books like James Jones' *From Here to Eternity* and Norman Mailer's *The Naked and the Dead*.

But these books, like *Ulysses*, were "sincere and honest" depictions of some phases of real life. Genuine pornography and semi-pornography continued to flourish underground.

4 BANNED



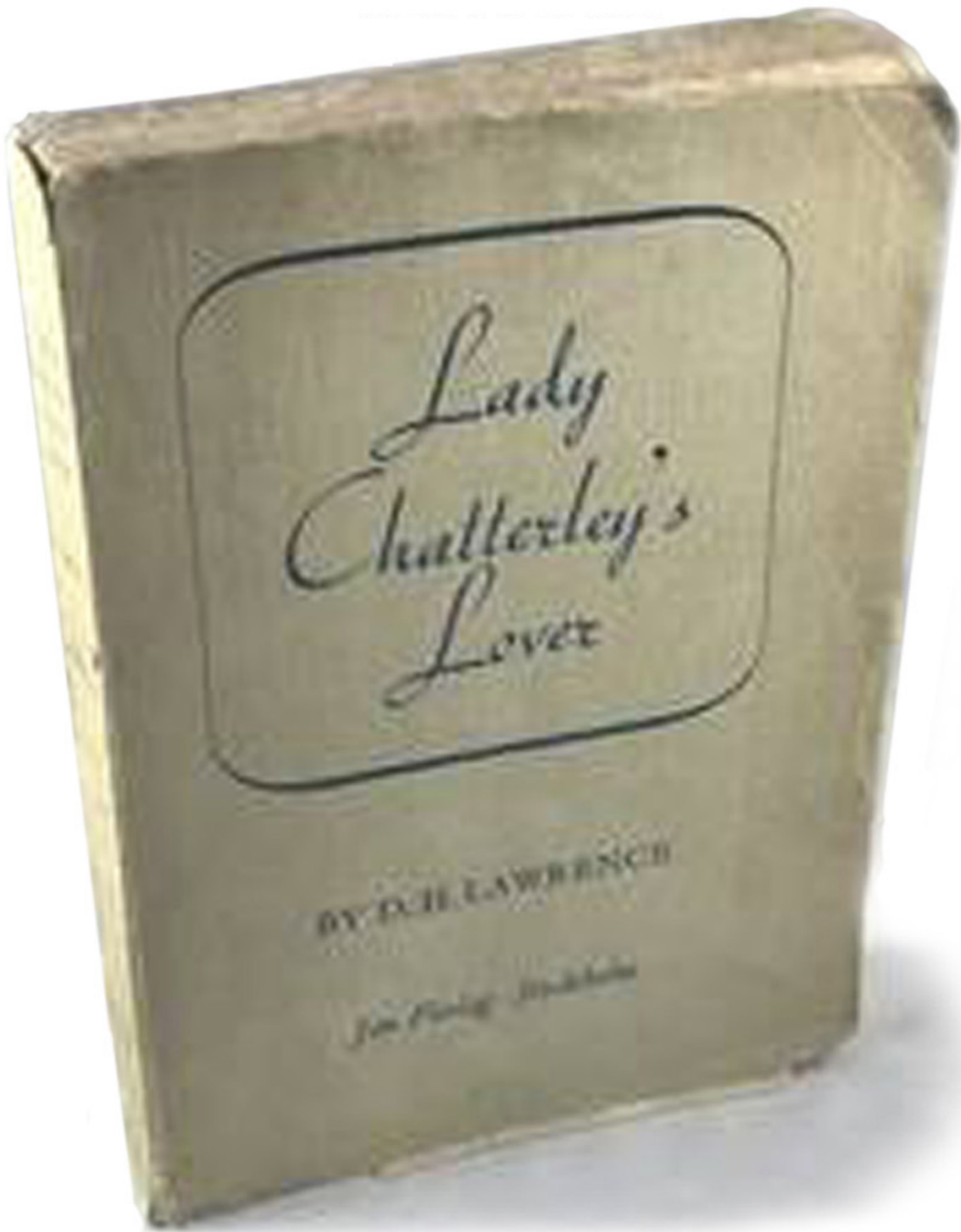
Ironically, a man named Sam Roth, a New York publisher and mail-order salesman who has served several prison terms for publishing and selling obscene matter, led the way toward battering censorship down still further, and he did it by losing a case.

In 1956, Roth was sentenced to five years and a \$5,000 fine for sending obscene matter through the mails. He took the case to the U. S. Circuit Court of Appeals and he lost, but there was a strong dissent from Judge Jerome Frank. Judge Frank doubted the constitutionality of the law and said that sending a man to prison for doing nothing but selling books or pictures which *might* "evoke thoughts" was going too far. He added that nobody had proved that "lustful thoughts" necessarily led to bad conduct, thus paraphrasing New York's former Mayor Jimmy Walker who said, "I never knew of a girl who was seduced by a book."

Roth appealed to the Supreme Court of the United States, arguing that his rights of free speech under the First Amendment were being violated. Four members of the Court agreed, including Justices Black and Douglas, who held that the First Amendment is unqualified and, therefore, all obscenity laws are unconstitutional. They said that, while the stuff Roth had published was trash, any "test that suppresses a cheap tract today can suppress a literary gem tomorrow."

But five justices disagreed. The majority wrote a very cautious decision, hedging with numerous quali-

BANNED



tion, so he lost five to four.

The majority laid down this additional guide to what is legally obscene:

“Whether to the *average* person, applying contemporary standards, the material taken as a whole appeals to prurient interest.”

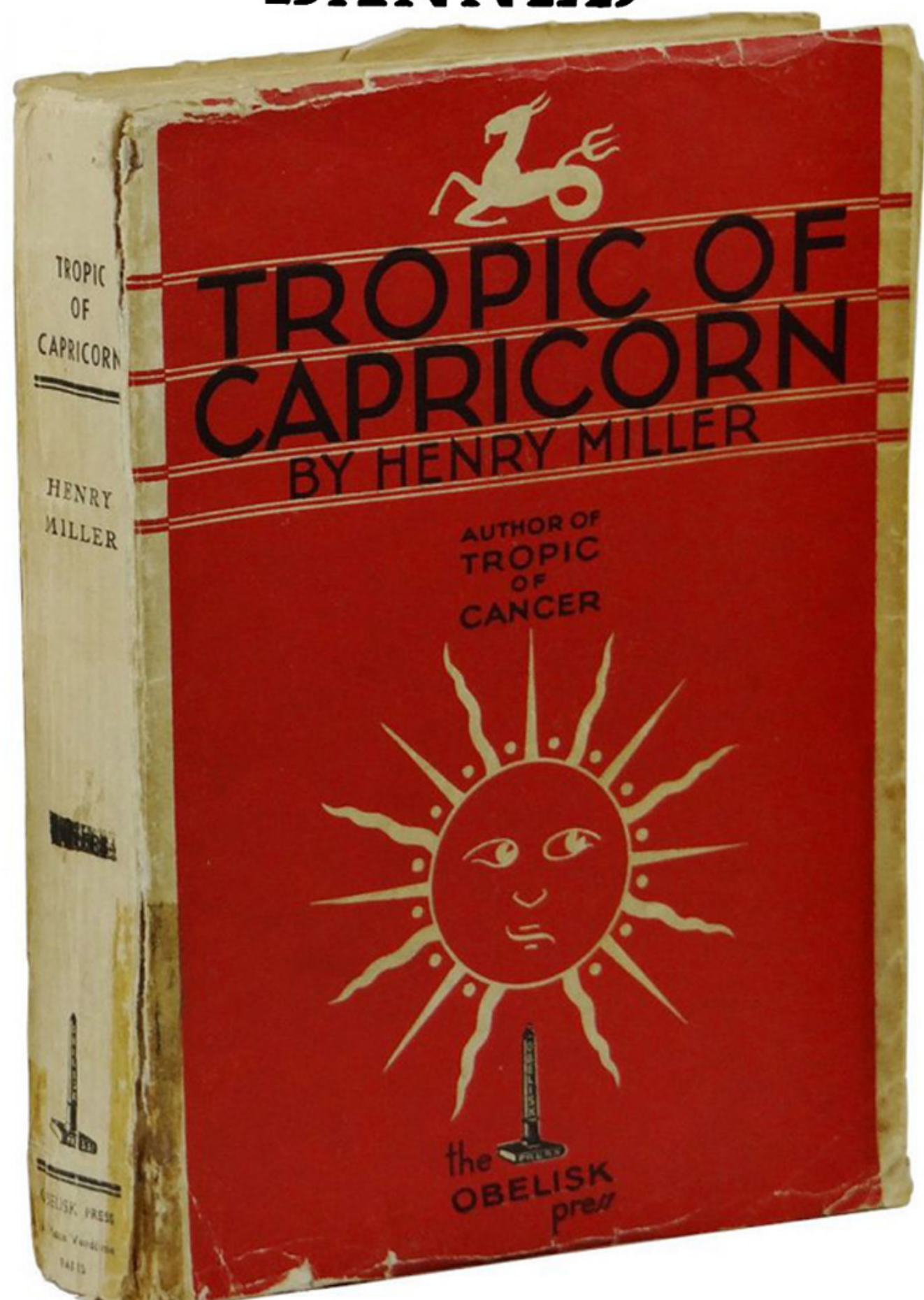
But if Roth's books couldn't meet the test, a lot of others which had long been banned could meet it. Quite slowly at first, publishers began to consider the list of forbidden material. They were slow, because they knew that in many cases they would be attacked in the courts, and it costs a lot of money to fight a law case, even if you win it.

Grove Press led the way with the unexpurgated *Lady Chatterley's Lover*. Under the Court's ruling, they had a good case. The literary stature of the author, D. H. Lawrence, was assured; further, he had some penetrating things to say about sex and society in England, so the book clearly was not without “redeeming social importance.” And, while it contained details of a lively frolic in the forest, it could hardly be said that *taken as a whole* it appealed to “prurient interest.”

Grove did have to make several court fights for *Lady Chatterley* and its victories made other publishers less timid in following Grove. Each book's emergence let down the bars a little more.

Grove has since published such long-banned books as Henry Miller's *Tropic of Cancer*, *Tropic of Capricorn* and *Black Spring*. Along with *Fanny Hill*, the Henry Miller books

6
BANNED



had been the most popular items muggled into the country. Thousands of these books had been consecrated by the customs people until their publication in America last year concluded the lively business in black market Miller books.

Finally, Grove Press brought out one of the most "scandalous" books of all time, *My Life and Loves* by Frank Harris. Harris was a truly extraordinary man, writer, editor, newspaperman and friend—or enemy—of almost every well-known person in the world at the beginning of the 20th century. In his old age he wrote his autobiography, firing at everyone he disliked with terrifying candor and detailing his sexual experiences with equal frankness. He believed that sex was one of the most important, if not *the* most important, part of a man's life, occupying a great part of his time and thought (Aldous Huxley has said, "I've never met anyone who was not obsessed with sex") and he tried to write an utterly truthful autobiography. His book alienated many friends, caused uproars all around the world, badly damaged the sale of his other books and nearly put him in prison.

Today you can buy a copy almost anywhere (five volumes in one, complete and unexpurgated, nearly 1,000 pages) for \$12.50.

Nearly all the top authors have at one time felt the lash of censorship. Theodore Dreiser's *American Tragedy*, read today in college literature courses, was condemned by a Massachusetts court in 1930. In 1948, Philadelphia police began seizing

7 BANNED



books from publishers as well as booksellers and subsequently started criminal proceedings against them. Nine books which had been indicted, including *Sanctuary* and *Wild Palms* by William Faulkner and the *Studs Lonigan Trilogy* and *A World I Never Made* by James T. Farrell, were reviewed by the court.

In his decision against the police, presiding Judge Curtis Bok ruled that police might exercise their power against a writing only when it was pornographic, and then only when there was cause to believe a crime had been or was about to be committed *as a result of the writing*.

Faulkner and Farrel rejoiced, naturally, but they were really licking old wounds. Both had been banned in the 30's, only to find fame and fortune in the 40's. Today these authors are so respected that most college students are puzzled to learn of the trouble that greeted these books when originally published.

James T. Farrell has this to say of *Studs Lonigan*: "When the book first came out it didn't sell very well. Actually, it wasn't even considered a book but a sociological text. It took a long time until the book was accepted for what it was—a slice of life experienced by a young man."

The trilogy is now considered a masterpiece; the highly critical San Francisco Chronicle says, "James T. Farrell is surely one of the greatest of all novelists."

More recently, Vladimir Nabokov's book *Lolita*, on its initial Paris publication, was reviewed here by *The New Yorker* magazine, which predicted it would never be published

BANNED

in this country. But it was published by Putnam in 1958, spent over a year on the best seller list, went into paperback and sold well, and subsequently was made into a movie—without being challenged in our courts. Twenty years ago, this would not have been likely.

Literary tastes have changed from generation to generation. “The ‘dirt’ of today,” says Sir Alan P. Herbert, noted English author and Member of Parliament, “may be the art of tomorrow.” And Morris L. Ernst comments, “I have never met a human being who felt he could be corrupted by any concept—blasphemous, seditious, or obscene. The censorious are worried only about the souls of others than themselves.”

But perhaps Associate Justice William O. Douglas of the Supreme Court of the U. S. best sums up the “new” approach to sex and society. Opposing the banning of a book because postal officials or “some purity league” considers it obscene, the Justice has written: “Should a publication whose main impact is the arousal of sexual desires be banned? A goodly part of life is the arousal of sexual desires. . . . The real purpose is to make the public live up to the censor’s code of morality. . . . Sex cannot be suppressed in life. Should it be attempted in literature?”



Jay Nelson Tuck