

THE MAD WORLD OF WILLIAM M. GAINES PART V

(Continued from page 75)

Or this parody I wrote for "Songs of Space and the Atom:"

ALBERT EINSTEIN

A rousing ovation for a Pep Rally of Physicists.
Sung to the tune of: "Oklahoma!"

AAAAAlbert Einstein
Found the law of relativity!
Yes, he paved the way,
And now today
We have got atomic energy!

AAAAAlbert Einstein
Was the man behind it all, you see!
'Cause his law declared
That MC^2
Could be counted on to equal E!

His theory is tough, that is true,
And it's just understood by a few!

But when we cry:
Ee-ow! A-yip-i-o-e-il
There's no denyin'

You did just fine, Albert Einstein—
Albert Einstein, E-I-N-S-T-E-I-N
Albert Einstein!

There were others. "Easter Parade" became "Beauty parade," a spoof of beauty pageants. "Hello, Young Lovers" became "Hello, Young Doctors," a paean of how to make money in medicine. "Cheek to Cheek" became "Sheik to Sheik," a commentary on oil-rich desert potentates. "The Last Time I saw Paris" became "The First Time I Saw Maris," an account of the baseball slugger's success endorsing products.

The twenty-page songbook was published and was well received by MAD's readers. It was not well received, however, by the Music Publishers Protective Association, which felt that twelve of its member publishers had suffered copyright infringement. MAD, the association charged, had marketed versions of songs, without any authorization, which "caused substantial and irreparable damage" to the publishers.

The plaintiffs were not small-fry. Among them were

such corporations as Irving Berlin, Chappell, T.B. Harms and Leo Feist.

Twenty-five of their songs had been parodied — songs by such greats as Jerome Kern, Cole Porter, Richard Rodgers, Lorenz Hart, Oscar Hammerstein II, and, of course, Irving Berlin. The association sued Gaines and everyone connected with writing, illustrating, editing and distributing the song book for one dollar per song per each copy of More Trash From MAD #4 sold. More than one million copies had been sold, which meant that Gaines and his codefendants were being sued

to the tune of \$25 million.

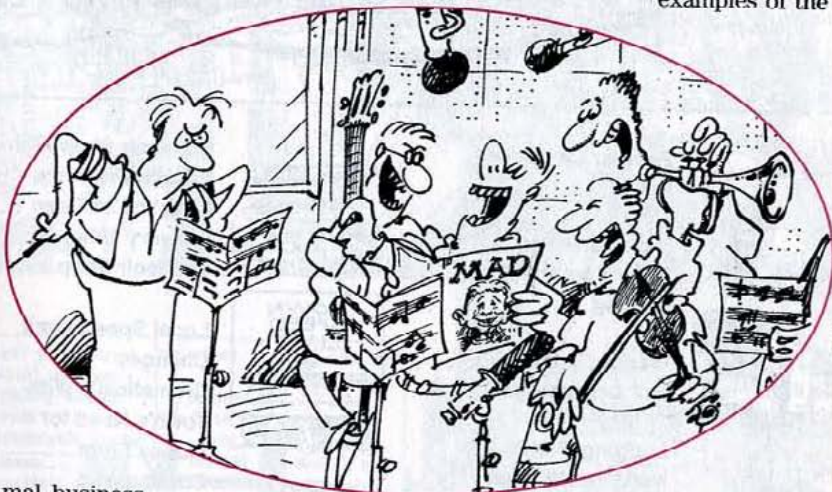
MAD, in lawsuits at least, had hit the big time. During the three years it took to decide the case, Gaines went about his nor-

ing wrong.

The case came to trial in the United States District Court in 1963. The publishers association complained that the MAD parodies had the same meter as the original songs and were "counterparts," because readers were informed that the parodies could be "sung to the tune of" the originals. MAD, it was further charged, "substantially copied" the original lyrics.

MAD's attorneys, Martin Scheiman and Jack Albert, countered that MAD was not a music magazine and that neither the original lyrics nor the music were printed in "Sing Along with MAD." The parodies were not copies; only the titles of the original songs were printed. There was no "sinister or insidious intent." If anything, the mention of the original titles glorified the popularity of the original songs.

Confidently, both sides submitted examples of the



mal business.

He knew that even though he no longer was the owner of MAD, losing the suit could create some thorny financial problems. He was also aware that losing the case would close off a fertile field of parody and satire. But in the main he was unconcerned, if for no other reason than he was convinced he had done noth-

two sets of lyrics — the originals and the parodies. Each side believed that a hard look at the differences, or similarities, would prove its argument. Judge Charles M. Metzner handed down his decision in June, 1963. *Variety* headlined it:

**PUBS LOSE PIRACY SUIT
VS. 'MAD' MAG**



MAD had won, at least temporarily. Judge Metzner ruled that the subject matter of the MAD lyrics was "completely different" from that of the originals. "For example," he stated, "to the tune of 'I've Got You Under My Skin,' defendants have written a lyric about fraternity hazing entitled 'I Swat You Hard on the Skin.' To the tune of 'A Pretty Girl Is Like a Melody,' the defendants have written 'Louella Schwartz describes Her Malady.'"

The judge viewed the battle with a fresh eye. He decided that the MAD lyrics were not parodies but satires "in original words and thought" of "several aspects of modern life." He said the new lyrics had "little in common" with those of the music publishers, then tossed a bouquet MAD's way by describing the new lyrics as "original" and "ingenious."

However, Judge Metzner ruled against MAD on two of the twenty-

five songs. One was "Always," sung to the tune of "always," which I turned from a love ballad into an anthem for a psychiatrist. The judge felt that both lyrics allowed the word "always" to constitute the theme of the song. The other nixed number was "There's No Business Like No Business," sung to the tune of "there's No Business Like Show Business," which I wrote as a "ballad for small businessmen during recessions." Judge Metzner deemed the titles too similar, remarking that both lyrics revolved around the word "business."

The music publishers, apparently after all or nothing, did not give up. They appealed the case, and a year later it reached the United States Court of Appeals. There, three judges took another look. Shouted *Variety*:

**'MAD' MAG'S PARODY WIN
NO LAUGHING MATTER
TO PUBLISHERS:
THEY'LL APPEAL**

The words of Tin Pan Alley's most venerable standards can now be freely parodied as a result of a decision handed down by the U.S. Court of Appeals, which upheld the right of MAD Magazine to satirize the lyrics of popular songs. Judge Irving R. Kaufman, writing the opinion for the three-man court, said the satirical take-offs deserve "substantial freedom both as entertainment and as a form of social and literary criticism."

Judge Kaufman wrote at length about a celebrated case in 1955, when Jack Benny was taken to court by Loew's Inc., which runs MGM, after the comedian performed a TV satire of the movie "Gaslight." Benny lost the case because the court found that he took more material from the film than was needed to create an effective satire. In MAD's case, Judge Kaufman found no such taking. The magazine used only the meter of the

original lyrics and thrust them into a "totally incongruous setting." "We doubt," he said, "that even so eminent a composer as Irving Berlin should be permitted to claim a property interest in iambic pentameter."

Judge Kaufman was not bowled over by the quality of the MAD lyrics, commenting that "our individual tastes may prefer a more subtle brand of humor." But subtle or not, MAD had won again.

The music publishers fought on, taking the case to the United States Supreme Court, which also upheld the early decision. It was a landmark case, and Scheiman and Albert had good reason to feel proud. The right to publish parody lyrics or satir-



The MAD gang dresses up for a salute to MAD Art Director John Putnam. From left to right: (top row) Nick Meglin, Frank Jacobs, Dave Berg, Arnaldo Franchioni, Bob Clarke, Lou Silverstone, Antonio Prohias, (third row) Al Jaffee, David Frazier, Jack Albert, Al Feldstein, Dick DeBartolo, Jerry DeFuccio, Irving Schild, Sid Gwartzman, (second row) Bill Gaines, Angelo Torres, Sergio Aragones, Paul Peter Porges, George Woodbridge, (bottom row) Jack Rickard, Lenny Brenner, and, is that Lester and Willie Tyler?





ILLUSTRATION BY SERGIO ARAGONES

ical lyrics or whatever one wished to call them had become the law of the land.

William M. Gaines rarely sues anyone. He is, essentially, a defensive person who wants to be protected from people who sue him. He will, however, attack when he feels that the life of his magazine is being threatened. At such times, Gaines defends MAD much like a determined mother shielding her precocious son from the town bully.

In April, 1961, a woman reader in Oklahoma City wrote Gaines that she was having difficulty finding MAD in local outlets. The woman maintained there was a campaign afoot to keep the magazine off the stands because it was considered Communistic. She said that the problem stemmed from comments by an Oklahoma City attorney, Clyde J. Watts, which linked MAD and the Red menace. The allegations by Watts, a retired Army brigadier general, were apparently taken at face value by several drugstores and supermarkets, who refused to sell the magazine. Compounding the problem, an Oklahoma

City women's group, Mothers United for Decency, had created a Smutmobile, a

28-foot-long trailer containing an assortment of books and magazines rated by the mothers as lewd, obscene and otherwise unfit for youthful consumption. Among the periodicals in the Smutmobile, which carried the crusade to all sections of the city, was MAD.

The woman reader, who described herself as an arch-conservative republican, was angry. To her, MAD didn't look the least pro-Communist, and she was concerned that the magazine might soon be banned throughout the entire city. It was time, she declared, for MAD to make a stand for freedom of the press.

Gaines made inquiries and found that the distributors in Oklahoma

cited MAD as an example of magazines that "ridicule all of America's traditional heroes and will tear down the loyalties and moral fiber of American youth." In an earlier speech at the University of Oklahoma, Watts objected to MAD, reported the school's newspaper, the Oklahoma Daily, as "the most insidious Communist propaganda in the United States today."

Gaines became aroused. His child was under attack. Sales of MAD had dropped sharply throughout Oklahoma, and he feared the crusade might spread to other states. He called Martin Scheiman. They weighed what to do. In the end they decided to sue Watts on a libel-slander charge for \$1.5 million.

Because the case would be tried in Oklahoma City, there was the need to obtain the services of a law firm there to work with Scheiman. Firm after firm was contacted, but not one would touch the case. Finally, Scheiman found one that would. "It was a kind of maverick law firm," says Gaines, "its partnership consisting of a Protestant, a Catholic, and a Jew."

Gaines, Feldstein, and Scheiman first confronted the other side at a pre-trial hearing. Both Gaines and Feldstein were examined by the

Gaines defends MAD much like a determined mother shielding her precocious son from the town bully.

City were indeed feeling the effects of the crusade. Stacks of MADs were being returned unopened by retailers. Gaines learned that Watts had testified before an Oklahoma State Senate committee investigating obscene literature. Watts, reported The Daily Oklahoman,

defense, with Gaines getting most of the scrutiny. It was an uncomfortable time for Gaines. Although he was the plaintiff, he began to feel like the defendant. "They kept asking me questions about Communist ideology," he recalls. "I'm no Communist and I'm no egghead and I



didn't know what the hell the questions meant." For example, this exchange between one of the defense attorneys, John Cantrell, and Gaines:

CANTRELL: Now, Mr. Gaines, are you, yourself, familiar with the Communist ideologies and objectives, and I mean by that the Communist Party and its forerunners?

GAINES: I am certainly not an expert on it. I have the knowledge of a layman, I guess.

CANTRELL: Do you know anything about the psychopolitical objectives of the Communist Party, particularly in America?

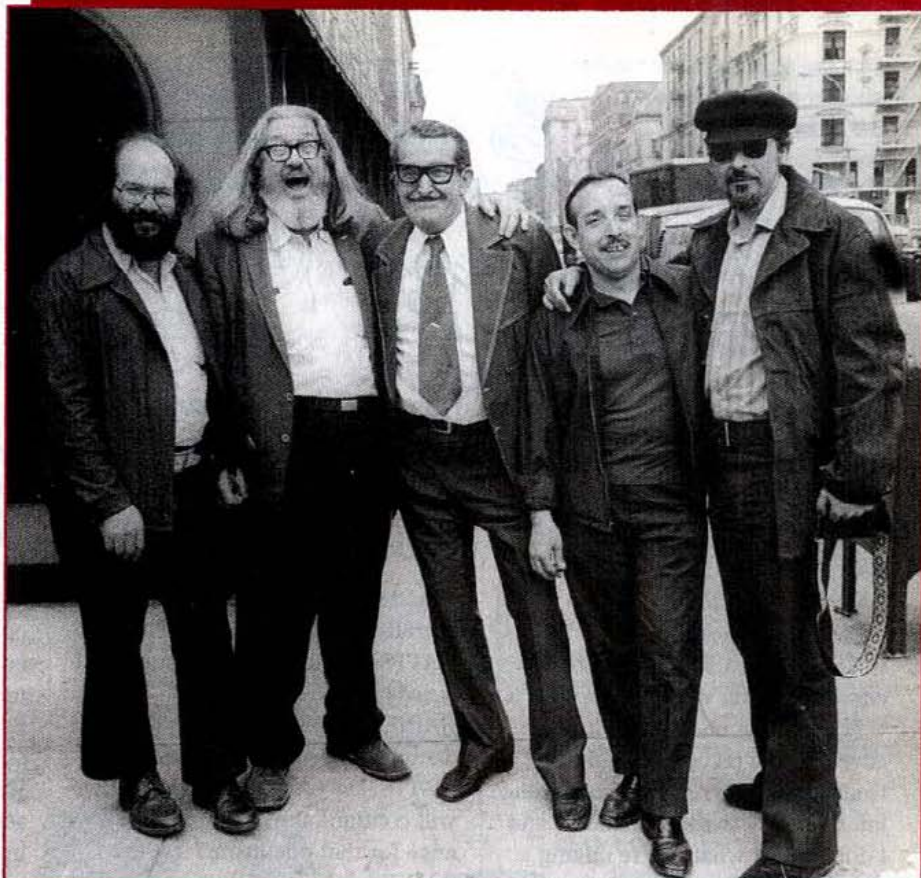
GAINES: What was the term?

CANTRELL: The psychopolitical objectives?

GAINES: Psychopolitical?

CANTRELL: Yes, sir.

GAINES: I am afraid I don't know what that is.



How The Village People got started? A day on the town with (L-R) Lenny Brenner, Bill Gaines, Antonio Prohias, Angelo Torres and Nick Meglin.

As he fended the questions, Gaines became aware of a gnawing sensation that he had felt only once before — when he defended his horror comics before the United States Senate subcommittee eight years earlier. The quizzing continued, being interrupted occasionally by comments from Scheiman and LeRoy A. Powers, a member of the Oklahoma City law firm working with Scheiman.

CANTRELL: All right, let me ask you this question. Did you know and do you subscribe to this statement as a statement of the objectives of the Communist Party, "To destroy loyalty to the State, all manner of forbiddings for youth must be put into effect so as to disenfranchise them as members of the Capitalist State and by policies of a better lot under Communism to gain their loyalty to the

Communist Movement." Do you subscribe to that and did you so understand that that was one of their objectives?

GAINES: Mr. Cantrell, I want to say that I don't understand that. Can you put it into clearer language?

POWERS: Would you give the title or whatever it is you are reading that from?

CANTRELL: Well, no. You may do so if you wish. (TO GAINES) Do you subscribe to this statement and did you know that this was one of the objectives of the Communist Party, "By these means the patriotism of youth for their capitalistic flag —"

GAINES: Excuse me, Mr. Cantrell, by what means?

CANTRELL: Let me finish and then I will try to clarify it for you.

GAINES: All right.

CANTRELL: "By these means the patriotism of youth for their capital-

istic flag can be dulled to a point where they are no longer dangerous as soldiers. While this might require many decades to effect, capitalism's short-term view will never envision the length across which we can plan." And that refers to destroying the youth of the State. That's the method. Do you subscribe to that statement?

SCHEIMAN: By subscribe to that statement, what do you mean, Mr. Cantrell?

CANTRELL: Does he believe that is true that that was the objective?

SCHEIMAN: Objective of whom?

CANTRELL: Of the Communist Party.

SCHEIMAN: Aren't you asking an opinion of this witness?

CANTRELL: Yes, I'm asking him for his understanding of



what the objectives were and whether or not he believes that those were objectives.

SCHEIMAN: Well, hasn't the witness already indicated on the record that he has a limited knowledge of the Communist ideologies and objectives?

CANTRELL: Well, he can refuse to answer these questions, Mr. Scheiman, if he wishes, but I'm going to ask him. (TO GAINES) Now do you wish to answer that question?

GAINES: I would be happy to answer it if you will put it in such a way that I can understand it. You gave it to me piecemeal with the front part at the rear and something interjected between the middle and I don't know what you're talking about.

Later in the hearing, Gaines was questioned by Watts himself. In criticizing MAD, Watts had been especially offended by a "Cool School" version of the Gettysburg Address, in which writer Paul Laiken parodies Lincoln's words into jive talk ("Fourscore and like seven years ago our old daddies came on this scene with a new group, grooved in free kicks, and hip to the jazz that all cats make it the same.")

WATTS: Do you consider Lincoln's Gettysburg Address as a sacred-type document in the traditions of our country?

GAINES: Well, I



would want your definition of sacred. I don't—

WATTS: You use your definition as it strikes you.

GAINES: It is a very fine and revered document of Americana, yes.

WATTS: Do you feel that that article will continue the concept of reverence for that document?

GAINES: I don't think the article will continue or interrupt. I don't

GAINES: No, not at all.

WATTS: What then, from your concept as a publisher, is the sum total of the impact of that article on a youngster?

GAINES: To make them laugh.

WATTS: And to make them laugh at Lincoln's Gettysburg Address?

GAINES: No, to make them laugh at the hip language.

WATTS: And you have used Lincoln's Gettysburg Address associated with the so-called hip language for the sole purpose of making youngsters laugh, is that it?

GAINES: That is correct.

WATTS: And is that, as I understand, the objective of the publisher in presenting to the youngsters that type of feature?

GAINES: You are being pretty general, General. It is the purpose of MAD Magazine to evoke laughter from its readers. That's what they pay their quarter for.



Former MAD Art Director Lenny Brenner stands out in this photo from a 1970s spoof on tokenism.

think it has anything to do with the feeling of reverence for Lincoln's Gettysburg Address.

WATTS: Do you feel that it will downgrade the basic feeling of reverence that a youngster would have at all?

The preliminaries over, both sides prepared for the main event. Jerry DeFuccio put together a dossier of friendly letters MAD had received from readers. Penpals included a Methodist minister, an Anglican editor in Canada, the Catholic Review, the crew of the U.S.S. Bushnell (a submarine), members of Air Force Fighter Squadron 141 and the National Office for Decent Literature. DeFuccio also dug up a note from a juvenile court psychologist at



a rehabilitation center for delinquent boys and girls in Tulsa County, Oklahoma. The psychologist asked for a complimentary subscription to MAD for his youths gone astray, noting that "for reasons I can't quite express, I feel the magazine is good for them."

Scheiman and his colleagues tried to get the judge, Stephen S. Chandler, to disqualify himself on the grounds that he and Watts were close personal friends and that there was a risk of the judge showing personal bias in favor of Watts. The judge refused. This disturbed Scheiman. The judge told Scheiman that the case would receive "Oklahoma justice." This disturbed Scheiman even more.

The day of the trial, September 24, 1962, put MAD on the front page of the *Oklahoma City Times*:

CITY 'MAD' TRIAL PITS BITTER FOES

Amidst issues so packed with emotion that few can discuss them calmly, the stage was set Monday for a bitter showdown between opposing self-styled American patriots, each claiming the other is serving, wittingly or unwittingly, the cause of Communism.

The contestants are, on one side, affiliates of MAD magazine, an increasingly popular periodical which through grotesque, malformed cartoon characters satirizes such time-honored American institutions as the White House and the home.

On the other side is Clyde Jefferson Watts, a vocal Oklahoma City attorney who zealously preaches the dangers of world Communism and warns Americans to develop an almost military-like composure in what he terms a "Strategy for survival."

"It is the purpose of MAD Magazine to evoke laughter from its readers."

The article was sprinkled with quotes from the key participants:

"They offered to dismiss it [the lawsuit] if I apologized," Watts said. "But I'm going to gamble even if they take every dime I have. If MAD continues and becomes the literary standard of our young people, there's nothing left to fight for, nothing to live for."

"The issue isn't whether we're Communists," retorts MAD attorney Martin Scheiman. "It's whether Clyde Watts's tactics are American."

"We're not interested in the money," said MAD editor Al Feldstein. "We're just trying to protect ourselves."

"We are a bunch of nutty non-conformists," says rotund William Gaines, publisher of MAD. "We're not interested in politics. We just want to entertain."

"I didn't go quite so far in the Army as Gen. Watts did," says Gaines. "But if they're going to call him General at the trial, I think I'll insist on them calling me Private First Class."

For all of Gaines's attempts at humor, he was not in a jovial frame of mind. Coming back to Oklahoma City for the trial was an unsettling, often terrifying experience. He saw it as a latter-day version of the sensational Monkey Trial in *Inherit The Wind*:

"remember the part where Spencer Tracy hits the little town in Tennessee? That's the kind of reception we got in Oklahoma. A barber threatened Marty Scheiman when he asked for a haircut. In the courtroom the people waiting to be chosen as jurors glared at us like we were some kind of undesirable aliens. I was damn glad when it was all over and we were able to get back to New York."

Everyone — the prosecution, the defense, the press, the local citizenry — expected a spectacular trial, a gavel-pounding wingding of cross-examinations, surprise witnesses



The MAD "Straight Jacket" has become the rarest of MAD collectibles, with some selling for as much as \$4,000. (modeled here by Jerry DeFuccio and Lenny Brenner)





Ruler of all he surveys: His legal troubles behind him, Bill Gaines feels on top of the world in a vacation to Haiti. It is not true that moments later, the balcony collapsed under the strain of Gaines' massive weight.

and all of the other stock-in-trade ingredients of an emotional courtroom battle. At 9 A.M., before the trial was to start, both sides met in Judge Chandler's chamber. Attempts were made at a settlement, but neither side could make headway.

"We were at a stalemate," says Gaines. "I had a feeling that Watts was as nervous as I was. He wasn't a wealthy man and here was a tremendous lawsuit coming his way. I was nervous because I was in Oklahoma, his territory, and I was wondering if I was going to be able to get out of town without being lynched. I could see what was going to happen when we went out in the courtroom. It would be a circus. We'd probably lose, then we'd appeal, and we'd probably win."

Some inner voice kept whispering, "There has to be a better way." Prompted by this voice, or by his aversion to emotional scenes, or heaven knows what, Gaines walked to where Watts was sitting, leaned down and said:

"Let's not let the lawyers screw this

up. All I want from you is a statement that you do not believe MAD is Communist, that you never meant to imply that MAD is Communist, and that the whole thing is a misunderstanding. If you do that, I will be content."

Watts looked up. "Okay," he said.

The General drew up a paper agreeable to both sides. At 1:30 P.M., Watts, reading from his hand-written statement, announced in open court:

"At the time of trial, it appeared MAD Magazine and its staff were under the impression that I, Clyde J. Watts, had stated or inferred that MAD Magazine was a Communist publication and that the editors, staff and owners were Communist sympathizers, Communist dupes or promoting Communist causes."

"I publicly state I never referred to the magazine as a Communist-inspired and motivated publication or to its editors as Communists, Communist sympathizers or Communist dupes. If any person or persons so construed my remarks, they were mistaken."

The case was closed. All cash claims were dropped and each side paid its own legal expenses. Within a

few days, MAD could be found in all of the outlets in Oklahoma that had refused to sell it. It was also removed from the Smutmobile or, at least, placed under the counter.

There was a postscript. During the pre-trial examination, much was made by Watts's lawyers of Gaines's contributions to the American Civil Liberties Union. A few days after returning to New York, Gaines read a newspaper report that the ACLU had stood behind efforts by Watts to get his old friend, General Edwin A. Walker, released from

a prison mental hospital. Gaines clipped out the report and sent it to Watts, noting that the ACLU protected everyone's civil liberties, including Walker's.

Watts replied. In a letter signed "Clyde," he thanked Gaines for the clipping and expressed the hope that their encounter in Oklahoma City had done both of them some good. Watts said that the affair had improved his sense of humor and that he hoped Gaines had become aware of Watts's concern for the future of the country.

There was no further correspondence.

COMING UP NEXT!

We look at Gaines' persona — his disdain of fashion and dislike of shaving, his adoration of zeppelins and King Kong, his disregard for speed limits and seatbelts, his incredible penny-pinching and outlandish extravagances. We then travel around the world with Gaines and his MADmen as they invade Kenya, Italy, the Soviet Union and other unsuspecting locales.

