

## Dillard v. the State of Georgia

*Dillard v. the State of Georgia* was an 1870 case tried before the Supreme Court of Georgia. It contemplated obscene language as defined by section 4306 of the Revised Code of Georgia. The decision of the court, and hence the interpretation of obscenity pursuant to the statute, pivoted on the intent of an offender in speaking certain words. The court held that a man uses obscene or vulgar language if, without provocation, and intending to propose sexual intercourse, he asks a female in his presence to "go to bed with him." The court's decision underscores a speaker's purpose or objective when issuing certain words to bring about certain results. It also implicates cultural notions of male chivalry and female virtue pertaining to language and obscenity. The justice of the peace of Oglethorpe County charged James T. Dillard with using obscene and vulgar language in the presence of Mary S. Sanders, William H. Sanders's wife. Apparently without provocation on the part of Mrs. Sanders, Dillard asked Mrs. Sanders to go to bed with him. Mrs. Sanders summoned her husband, in whose presence Dillard called Mrs. Sanders a "God-damned liar." At trial, Dillard waived indictment by a grand jury. His attorney argued that Dillard's words did not constitute obscene or vulgar language under section 4306. The justice of the peace disagreed, finding Dillard guilty and imposing a fine of \$100 plus costs, or three months in jail if Dillard did not pay the fines and costs.

Dillard's case reached the Supreme Court of Georgia on a claim of error in a motion in arrest of judgment. The Supreme Court upheld all lower court findings on the grounds that the legislature, in enacting section 4306, probably contemplated both words and their corresponding mental state as requisites for the crime. The court suggested that words are contingent and relational because their meaning is dependent upon context and circumstance. Therefore, few if any words are unconditionally and universally banned; the prosecution of particular words makes sense only in light of the vulgarity or obscenity of the ideas that they convey. In the case at hand, Dillard's words were prosecutable because they signified a state of mind deemed indecent according to the standards of society in

which the words were uttered. Concurring with the decision, Justice C. J. Brown approved of the principles of decorum underlying the statute but expressed reservations about prosecuting an individual for language that is obscene or vulgar if that individual takes no definite, physical steps toward carrying out the intent conveyed in such language. The concurrence recalls the long-standing principle in Anglo-American law that thoughts alone are not punishable. The question is whether the spoken word by itself constitutes an act and therefore satisfies the element of *actus reus*, or whether some physical act besides verbal articulation is necessary to prosecute an individual for a crime.

The *Dillard* case stands for the idea that the meaning of language—and, in particular, language deemed obscene—depends upon community consensus and prevailing moral standards. The majority and concurring opinions in *Dillard* refer to ideals about womanhood and gentlemanliness as criteria by which to review obscenity. Phrases such as "decent ideas," "public morals," "protecting females from insult," "female whose modesty has been unlawfully shocked," "virtuous woman," "moral decency," and "good breeding" signify cultural touchstones. The tendency of an utterance to become generally accepted or generally rejected determines its legal status as vulgar, obscene, or permissible. The judges in *Dillard* deemed that Dillard's words were not generally socially acceptable; therefore, his words were obscene.

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**See Also:** Obscenity; Obscenity Laws; Sexual Harassment.

### Further Readings

*Dillard v. the State of Georgia*, 41 Ga. 278 (1870).  
Friedman, Lawrence Meir. *Crime and Punishment in American History*. New York: Basic Books, 1993.

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## Dillinger, John

American outlaw John Dillinger (1903–34) was a controversial bank robber and desperado during