

SUBMISSIONS TO -

Special Committee
on
Pornography and Prostitution

RE -

Pornography and the Law

FROM -

Canadian Civil Liberties Association

DELEGATION -

A. Alan Borovoy
(General Counsel)
Professor Louise Arbour
(Board Member)

Ottawa

April 6, 1984

Rev. Robert G. Lindsey
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United Church of Canada)

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Introduction

The Canadian Civil Liberties Association is a national organization with more than 5500 individual members, nine affiliated chapters across the country, and some twenty associated group members which themselves represent several thousands of people. A wide variety of persons and occupations is represented in the ranks of our membership - lawyers, academics, homemakers, trade unionists, journalists, media performers, minority group leaders, etc.

One of our organization's key objectives is to protect the freedom and dignity of the individual against unreasonable encroachments. It is not hard to appreciate the relationship between this objective and the subject of pornography. On the one hand, pornographic material may be seen as an affront to the dignity of women it so unfairly portrays. On the other hand, the attempt legally to curtail pornography can be seen as an encroachment on the fundamental freedom of expression.

Not unexpectedly, the sympathies of civil libertarians lie on both sides of this thorny issue. In a world without absolutes, the idea is to strike the most reasonable balance possible between and among the goals we seek. It is to this end that the ensuing submissions are directed.

The Problem With Prohibiting Pornography

The Canadian Civil Liberties Association has no hesitation in joining the National Action Committee on the Status of Women in an unequivocal denunciation of the "new pornography". We refer to those publications and films which appear to celebrate the sexual abuse of women and children. It is hard to fathom how exposure to such material could elicit a reaction more positive than revulsion.

It is necessary to distinguish, however, between moral condemnation and legal prohibition. The former is easy; the latter is fraught with difficulty. The legal problem is one essentially of definition. How is the law to formulate a standard which will prohibit this vile pornography without simultaneously catching in the same net a lot of other material which it would be unconscionable to suppress? So often, our obscenity laws have wound up nailing the wrong material.

Within the last decade, for example, arguably artistic and educational works such as the film "Last Tango in Paris"¹ and the book "Show Me"² had to undergo prolonged and expensive court battles before they were ultimately vindicated. In the opinion at least of a number of prosecutors and police, these works fell within the Criminal Code definition of obscenity - "the undue exploitation of sex". But what in the world is an "undue" exploitation? Indeed, what is a "due" exploitation? The answer, we are told, is to be found in community standards. But how are they to be discerned? Not infrequently, numbers of experts have offered conflicting opinions as to whether a particular work violated community standards. How are the triers of fact supposed to choose? Indeed, our judges have often been at diametric odds with each other over the interpretation and application of this terminology.

Consider these cases. One trial judge, three appeal court judges, and four judges of the Supreme Court of Canada found that "Lady Chatterly's Lover"³ was obscene within the above definition. However, five judges of the Supreme Court of Canada carried the day in a declaration that the book was not obscene. Despite the acquittal, the judicial head count was eight to five in favour of a conviction. The book "Fanny Hill"⁴ was found to be obscene by a trial judge and two appeal court judges and not obscene by three other appeal court judges. Here the judicial head count

was three to three. In a case involving an art gallery,⁵ the trial judge and four appeal court judges held that the impugned pictures were obscene but one appeal court judge went the other way. While the judicial head count was five to one in favour of the conviction that was ultimately imposed, it is interesting that the dissenting judge, Bora Laskin, subsequently became the Chief Justice of the Supreme Court of Canada.

If the most eminent legal experts in the community disagree so sharply about what constitutes an "undue exploitation of sex", how is the lay citizen supposed to make such judgments? Unlike the situation with most other criminal laws, those who may be violating this law often have no way of determining in advance that they are doing so. A person who picks up a gun to rob a bank knows in advance that his conduct will run afoul of the criminal law. But a person who writes, publishes, distributes, or sells a particular book may not know that the book in question will ultimately be considered an "undue exploitation of sex". Thus, unless they were virtually to avoid material with realistic sexual content, publishers, film makers, authors, and booksellers would be in a state of constant insecurity as to whether they were in compliance with our obscenity laws.

Moreover, as a practical matter, it is often the police, not the courts, who make the effective judgments as to what constitutes "obscene" material. Faced with the possible threat of prosecution or arrest, few publishers, theatre owners, distributors, and booksellers are likely to defy police instructions to discontinue a film showing or remove certain literature. Thus, in great numbers of cases, decisions are made without the courts ever considering the matter. There are times also when the distributors of material feel obliged to withhold it even without the involvement of the police. This works an unfairness especially in the case of large scale magazine distributors. Although they bear no responsibility for what has been published, they may become criminally responsible if they are involved in the distribution. This has imposed upon innocent third parties an obligation to act as censors. The hardships are exacerbated by the difficulties of interpreting what is essentially such a vague and subjective definition.

Of course, one flawed definition does not invalidate the concept of legal prohibition. There is reason to fear, however, that dangerous imprecision is inherent in the very exercise of attempting to define pornography. It would be useful, therefore, to examine some of the more important of the latest proposals for improving upon the existing definition.

The Proposed New Definitions of Pornography

The most important of the proposed new definitions, of course, is the one emanating from the Government of Canada. In a Bill to amend the Criminal Code, Justice Minister Mark MacGuigan recommended that obscenity be defined so as to involve "the undue exploitation of any one or more of the following subjects, namely, sex, violence, crime, horror or cruelty, through degrading representations of a male or female person or in any other manner".

The essence of the government's proposal is to move the definition of obscenity beyond the subject matter of sex. This is likely to increase the dangers to legitimate communication. It is difficult to appreciate how the "undue exploitation of violence, crime, horror or cruelty" dissociated from an "undue exploitation of sex" will help to clarify anything. Why should the government suppose that the "undue exploitation" of all these other subject matters would be more discernible than the "undue exploitation of sex" in conjunction with these matters? The fact is that, instead of relieving the ambiguities in the existing law, this proposal would compound them.

Perhaps even more serious, this amendment is potentially broad enough to suppress the eleven o'clock news. To what extent, for example, might pictures of Vietnam war casualties and cult suicides be considered an "undue" exploitation of violence or horror? To what extent, therefore, might editors and commentators be subject to legal sanctions for the realistic portrayal of the news? Alternatively, how far might their perception of what is realistic be subject to the scrutiny of bureaucrats and police who exercise the power of prosecution? Even if charges are not laid, this amendment creates the risk that the coercive power of the state may be used as a vehicle of intimidation against our various media of communications.

And what varieties of interpretation might be placed upon the words "degrading representations of a male or female person"? Without the requirement of any sexual component, how far could this concept extend? What about pictures, descriptions, or commentary concerning executions, kidnappings, floggings, gas chambers, etc? This amendment could create a mandate for arbitrary proscription. By going so far beyond the subject matter of sex, it could commen-

surately increase the threats to some of the most fundamental freedoms in the democratic tradition - freedom of expression, freedom of the press, freedom to read, and the right to know.

The Canadian Civil Liberties Association very much appreciates the conscientious efforts which have been made by certain groups outside of government to devise a less dangerous definition of prohibitable pornography. One such proposal was made by the National Action Committee on the Status of Women. This group recommended a somewhat narrower definition. It would replace the existing concept of obscenity with the following definition of pornography "any printed, visual, audio or otherwise represented presentation, or part thereof, which seeks to sexually stimulate the viewer or consumer by the depiction of violence, including, but not limited to, the depiction of submission, coercion, lack of consent, or debasement of any human being". And, for the purpose of this definition, NAC would make the depiction of anyone as being under the age of sixteen as sufficient to stigmatize the material as pornographic.

In some respects, this definition creates fewer dangers than the one proposed by the government. It relies less on value-laden subjectivity and it attempts to narrow the subject matter to the issue of coercive sex.

While the NAC approach might improve the situation at least in some respects, it is nevertheless unduly flawed. If enacted into law, it could wind up suppressing a work of art such as the famous rape scene in Ingmar Bergman's classic "The Virgin Spring". The NAC definition seems capable of prohibiting even important political commentary. Suppose, for example, that a film maker wished to dramatize some of the sexual horrors which occurred in a place like Auschwitz? It is conceivable that such a portrayal would be very much in the public interest. By reviving and making vivid this despicable epoch in human history, it could help psychologically to fortify the viewer against the evils of racism. Yet, such a film arguably could fall within the NAC definition.

We realize, of course, that partisans of the NAC approach would likely argue that "The Virgin Spring" and our hypothetical film on Auschwitz do not seek "to sexually stimulate" and, therefore, would not be prohibited. What concerns us about this argument is that it relies excessively on the literary and cinematic judgment of

our courts. It reveals no disrespect for our judges to point out the fact that in matters of art, literature, and films, everyone's power of discernment is infected with subjectivity. What could appear to be a serious political statement to one viewer could well look like sexual exploitation to another. In this regard, it is well to note once again how diametrically our judges have disagreed with one another on this subject. And, even if some of the NAC leaders were disposed to place a higher level of trust in the courts with respect to such matters, would they feel the same way about the police who, as we have indicated, are most often the effective decision-makers in the area of obscenity?

An even narrower definition was proposed in the July 1983 draft report of the Metro Toronto Task Force on Public Violence Against Women and Children⁶. In addition to all of the components of the NAC definition, the draft Task Force report added a requirement that the sexual coercion "can be taken to be condoned". It is regrettable that the Task Force saw fit to delete this requirement and widen its proposed definition by the time it published its final report in March 1984.

But even the 1983 definition could wind up suppressing the wrong material. If this approach were to become law, the following works, for example, might be at risk.

- Robert Browning's My Last Duchess
In this celebrated poem, a man's ownership of a woman is so complete that he murders her out of sexual jealousy. Notwithstanding such a dastardly deed, he retains his social position and acquires another desirable woman as his next duchess.
- The Old Testament's Story of Esther
In order to save the Jewish people, the beautiful Esther was counselled by her wise old uncle to charm and marry the King of Syria. She successfully used sex to avert a pogrom and, for doing so, became a biblical heroine.
- Greek Mythology's Story of Zeus and Leda
Appearing in the form of a swan, the god Zeus rapes the beautiful Leda. The progeny of this coerced union is the even more beautiful Helen of Troy.
- Ayn Rand's The Fountainhead
The protagonist is represented as a hero partly because of his wilfull character which results in the rape of the heroine. This is depicted by the author, without apology, as an expression of his admirable individuality.

Each of these works contains a depiction of coerced sex which is ultimately rewarded. Because of the venerability which so often accompanies old age, some of this literature might be safe from suppression so long as it retained its printed form and/or archaic language. The situation might be completely different, however, if there were an attempt to update the format - modern language, drawings, or film. In less venerable form, there would be an increased risk of suppression. The material would thereby become much more vulnerable to the perception that its purpose was "sexual gratification".

These, of course, are only a few examples of what must be scores of works which could be caught by the 1983 Task Force definition. We don't necessarily suggest that everyone of them is a wonderful piece of work. Certainly, some are. But, whether wonderful or not, it would be repugnant for a democratic society to suppress any of them. Yet this is precisely the risk which is involved in the attempt to define prohibitable material.

In view of the fact that organizations with the talent and sensitivity of NAC and the Task Force have not produced a more risk-free definition, there is a lesson to be learned. It may be that our language simply lacks the precision to make the requisite distinctions. It is necessary, therefore, to face the crunch decision. In view of the inevitable dangers to some of the most fundamental values in a democratic social order, we must question how far the game is really worth the candle. How vital are the social interests served by the effort to control pornography? How far might such interests be served, in any event, by less dangerous means?

The Dangers Posed by Pornography

What dangers, then, would be involved if the law were to permit a continuing or even greater publication and distribution of the worst material at issue - that which depicts unredeemed decadence and sexual abuse?

On the basis of what was described as an exhaustive examination of the subject, the U.S. President's Commission on Obscenity and Pornography made the following statement in 1970.

"In sum, empirical research designed to clarify the question has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youth or adults. The Commission cannot conclude that exposure to erotic materials is a factor in the causation of sex crimes or sex delinquency."

Almost from the outset, these conclusions were seriously questioned. In addition to allegations of certain methodological shortcomings, the Commission Report was criticized for neglecting the "new pornography". Apparently, it had focused on old fashioned material which portrayed consensual erotica rather than the emerging new material which depicts sexual aggression.

In consequence, the last decade has witnessed an increase in research studies into the effects of the new pornography. On the basis of these studies, the claim is now being made that the material does cause social harm. As late as February 1984, for example, David A. Scott of the Action Group on Media Pornography said that the "portrayal of sexual violence leads to subsequent laboratory aggression toward women"⁸.

Even if Mr. Scott's summation of the evidence were accepted as unqualifiedly valid, what relevant conclusions would follow? How far could it be said that the pornography at issue creates a "clear and present danger" to the lives and limbs of women and children? How far, in any event, do the demonstrable harms of pornography outweigh the probable risks of prohibition? Just what legal conclusions are warranted by the research literature?

Virtually all of the research suffers from some very fundamental defects. Almost invariably, the subjects of the experiments have been college students. Of all the constituencies in the community, college students are one of the most likely to be "wise" to the experimenter's hypothesis. This likelihood was undoubtedly increased by the fact that a very large number of the experiments were conducted by the same people - Edward Donnerstein and Neil Malamuth.⁹ The sheer number of reported experiments bearing the names of these two psychologists makes it likely that their work and point of view would be rather well known, at least in social science and university circles. To what extent, therefore, might it be assumed that at least some of the experiment subjects might have distorted their responses in order to impress the experimenters? The importance of this factor is increased by the realization that, in many of the experiments, the subjects were asked for a self-report as to their attitudes and likely behaviour. Under the best of circumstances, there are credibility problems in self-reports about the propensity to commit such grotesque deeds as rape. How much less credible is the situation when the self-reporter may have a good idea as to what the researcher is expecting.

A number of experiments revealed various levels of sexual arousal in response to depictions of rape. According to Scott's summary of the research, "male subjects who indicate that there is some likelihood that they themselves would rape display increased sexual arousal to all forms of rape depictions, similar to the reactions of known rapists".¹⁰ Scott reports further that "researchers have suggested that this sexual arousal measure serves as an objective index of a proclivity to rape".¹¹ Is this a credible inference? Surely it is conceivable that there are all kinds of men who, despite being "turned on" by rape fantasies and portrayals, would never hurt a fly, let alone a woman or child? Indeed, isn't this just the point of the theories on catharsis? Psychological theories have suggested that a good number of men sublimate their aggressive impulses through harmless fantasy. In any event, how great is the alleged "proclivity to rape"? Is there any evidence that it is anything more than marginal?

A key defect in many of the experiments derives from the fact that they were conducted in the artificial circumstances of the laboratory. The propensity to commit aggressive acts was usually measured by the subjects' involvement in some

prescribed form of negative conduct. In many experiments, for example, the subjects were told that it was permissible in certain circumstances for them to administer varying levels of "shock" to another person!² Although the subjects would have understood that they were administering something unpleasant, it is hard to conclude from such conduct that they would have been willing to commit an act as intrusive and violent as rape. Couldn't these experiments be interpreted as nothing more than a propensity to commit socially approved aggression? When people play games, they often behave with more hostility and aggression than they would outside the game. There have been many cases, for example, where violent football or hockey players were nevertheless gentle in "real life".

It is significant also to note that in a number of these experiments the subjects were deliberately provoked to anger. Might not their willingness to administer the "shocks" be explained by the fact that in the artificial environment of the laboratory they had no other outlet for the anger they were experiencing?

Suppose, therefore, we were to concede that exposure to violent pornography predisposes a number of men to commit certain types of approved aggression against women in circumstances of the laboratory? This would hardly constitute much evidence, let alone proof, that the same men would commit disapproved aggression against women outside the laboratory. Between stimulus and response, there exists in all of us a wide variety of deeply entrenched inhibitions. Our years of socialization serve to moderate our aggressive impulses. Laboratory research, therefore, is an unreliable predictor of the behaviour we wish to curtail.

Another impediment which has plagued so many of the experiments is the fact that the time interval between stimulus and response was very short, often minutes - rarely more than hours. Again, this hardly simulates the conditions of the real world where people are exposed constantly to a wide variety of competing stimuli. A prime issue is how durable is the impact of the pornography. Does it linger for longer periods of time and does it counterract the other influences to which the consumers are exposed? In the main, the experiments did not address the issue of durability.

Perhaps the limitations of the research have been expressed most succinctly by two of those who have been heavily engaged in it, Neil M. Malamuth and James V.P. Check. The following is an excerpt from a 1981 article written by these two researchers.

"While these laboratory studies have generally yielded consistent findings, the implications of the data may be limited for two reasons. First, the data were obtained under conditions vulnerable to criticism in terms of 'demand characteristics' and laboratory artificiality. Second, the undesirable effects described above have been observed only immediately after exposure to violent pornography and may be limited in duration to a few minutes or hours. There clearly exists a need to assess the effects of mass media stimuli that fuse sexuality and violence outside of the laboratory context."¹³

Such considerations led to an experiment which was described by the most active researchers in the area, Donnerstein and Malamuth, as providing "perhaps the strongest evidence to date that depictions of sexual aggression with positive consequence can adversely affect attitudes".¹⁴ In this experiment, the subjects were exposed to a number of films during the course of a few days. Two of the films "Swept Away" and "The Getaway" were described by the authors as showing "women as victims of aggression within erotic as well as non erotic incidents".¹⁵ The other films were neutral feature length movies. A few days later, all of the film viewers were subjected to what was represented to them as an unrelated survey on sexual attitudes. According to the authors, those men who had been exposed to the target films showed a significantly increased "acceptance of inter personal violence against women".¹⁶

In view of the importance which Donnerstein and Malamuth have attached to this experiment, it is of some interest to examine a little further the dominant themes of the target films. In "Swept Away", the protagonist's sexual domination of the woman might be seen as a political metaphor representing a lower class revolt against the upper classes. While the couple are marooned on an isolated island, he becomes the dominant partner by virtue of his superior skills in practical living. When they return to civilization, however, she leaves him to return to her husband and her former upper class life. Because of the political message in the film, it may be that the protagonist is supposed to command the sympathy of the audience. In "The Getaway", the husband of the rape victim commits suicide after being taunted mercilessly by his wife and another woman.

Despite their stature as research psychologists, Donnerstein and Malamuth may not be as reliable in the role of film critics. The dominant message of the movies is not necessarily directed to sexual violence; the films produce a range of interactive messages on several levels. On that basis, the response of the male viewers to the films could have been influenced by any one of the messages, and the lack of any clear relationship between messages and responses makes it difficult to justify the clear conclusion which the authors have drawn. To the extent, therefore, that this experiment represents "the strongest evidence to date", there is good reason to question just what conclusions the research warrants. Moreover, even if it could be said that the films helped to create or reinforce acceptance of violence in the minds of male viewers, this hardly suggests that those viewers would be significantly more likely to commit an actual rape or assault.

On another aspect of the issue, however, Donnerstein and Malamuth have reached a conclusion which, if valid, could have some relevance to the question of legal prohibition. On the basis of their review of the literature, they have expressed the belief that "the combination of exposure to violent pornography that portrays rape myths and the presentation of a debriefing that specifically addresses the myths appears to be the most effective in reducing rape myth acceptance".¹⁷ If this is true, legal prohibition emerges as an undesirable solution. Instead we should muster as much ingenuity as possible in order to expose as many people as possible to both pornography and debriefings.

In any event, the evidence fails to demonstrate a direct causal link between exposure to pornography and the serious abuse of women and children. We are aware, of course, of the reports that on a number of occasions, those who have violated women and children were found with pornography in their possession. What is not known, however, is whether the pornography produced the violence or whether those violence prone people were attracted to pornography. Moreover, there has been no adequate measure of the number of people, otherwise violence prone, whose aggressive impulses may have been moderated by sublimation through pornography.

What about indirect causal links between exposure to pornography and the sexual abuse of women and children? Some commentators have argued that such exposure could

gradually erode the taboos against rape and crimes of sexual violence. Even if this were true, legal prohibition need not follow. There are all kinds of influences which in time could create harm. But such influences don't operate in a vacuum. They are subject to counter influences.

Couldn't it also be said, for example, that exposure to communist propaganda could gradually erode the taboos against totalitarianism? And don't some people say that exposure to certain feminist literature could gradually erode society's commitment to the family? Yet there are few advocates of legal prohibition in the case of such communist and feminist material even among its bitterest critics. As indicated earlier, one of the reasons for this is the virtual impossibility of defining with adequate precision what the critics would like to suppress. There is a widespread pragmatic realization that a legal prohibition could wind up nailing the wrong material. Moreover, many such critics believe that they can counter the material they don't like with material they do like.

Isn't a non palatable outcome one of the risks inherent in the very exercise of the democratic system? In general, democrats believe that the best antidote to harmful propaganda is not prohibition but helpful propaganda. If dangers are long term rather than short term, it is assumed that, in the context of the democratic marketplace, counteracting influences can be marshalled.

The short term, of course, may be different. If someone falsely shouts "fire" in a crowded theatre, for example, there is no opportunity for conflicting messages to be evaluated. There is likely to be an immediate panic. That is why such shouting can attract a legal sanction in those circumstances. In any event, the research literature provides an inadequate basis for treating aggressive pornography as a clear and present danger.

The Scope of Permissible Government Action

On the basis of all the foregoing, we believe that the present obscenity sections of the Criminal Code should be repealed. Moreover, it is crucial that they not be replaced by anything broader. Thus, the government's proposed new enactment warrants unequivocal rejection. To the extent that they are narrower, the foregoing recommendations of NAC and the draft Task Force report represent welcome steps in the right direction. But, for the reasons indicated, even they are likely to incur excessive risks.

Thus far, we have addressed ourselves to material in which there is simulated sexual abuse. The films or books simply depict the repugnant behaviour. In recent years, however, an even newer form of pornography has emerged which reportedly involves the actual, not simulated, abuse of real people. The "snuff" films are said to feature real tortures and killings. Certain "kiddie porn" is supposed to involve real children in actual sexual encounters.

To the extent that certain particularly repugnant crimes are committed for the purpose of titillating a potential audience or readership, there is an arguable case for legal prohibition against the resulting film or literature. Indeed, this may be a variant of the "clear and present danger" exception. The knowledge that the films or pictures will enjoy a legally accessible market might serve as an incentive to the commission of the initial crime. In that sense, there could be a direct relationship between the distribution of the material and the criminal assault on the particular individuals. When such assaults are committed for the purpose of producing distributable material, there is an argument for making it unlawful knowingly to engage in such distribution.

But, for the reasons indicated, it would be more dangerous to prohibit than to permit material involving simulated sexual abuse. Where such material is concerned, therefore, legal prohibition should not be attempted.

While much of the material at issue cannot be demonstrated as socially injurious, there is little difficulty in describing it as aesthetically offensive. It is common knowledge, of course, that many people are repelled by sexually explicit material. Since they have as much right to use the streets as those with stronger stomachs,

the law arguably might play some role. In this connection, we believe it might be useful to adopt the distinction between public and private obscenity which was recommended a few years ago by the Law Reform Commission of Canada.¹⁸ On this basis, the law might be more restrictive as to what is displayed in public than as to what is consumed in private. One of the most eloquent explications of this distinction appeared in an essay by U.S. literary critic Irving Howe.

"If you want to go into one of those joints for \$5 and see what you see and do what you do there, I don't propose to stop you. But I see no reason why I or my kids should be forced to look, when we walk along the streets, at the stuff which delights you and disgusts me. Go to the porn movie but don't oblige me to look at its stills just because I'm walking by. Get your Hustler in a brown paper wrapper, but don't oblige me to be hustled by it just because there's a newstand round my corner!"¹⁹

It is significant that, in the same essay, Professor Howe makes the following statement.

"At this point in history, after all we have tasted of the age of totalitarianism, how can anyone suppose that the possible benefits of censorship could outweigh the probable dangers?"²⁰

In this regard, we note the attempt by some municipalities to regulate how allegedly pornographic material is displayed in the various retail outlets. In some cases, there have been requirements to put the material in places high enough from ground level so that it could not readily be accessible to under age children. In other places, bylaws have required that such material not be on public display and that it be sold in wrapping paper which renders some of the pictures and images less readily visible. Subject to certain definitional problems, the Canadian Civil Liberties Association is not opposed to such regulatory efforts.

Similar considerations apply to the controversy over pay T.V. This involved not a general prohibition against certain communications but the public licencing of limited facilities. It is not inappropriate, therefore, to require that privileged licencees comply with certain standards regarding the material they are to carry. Thus they might be required to maximize the time they give to some matters and

minimize the time for other matters. Where facilities are at a premium, there is a stronger argument for some kind of regulations over the mix of things which can be shown, whether it be sexual, religious, nationalistic, or athletic. As always, of course, the articulation of the standards is a contentious exercise. Suffice it to say, however, that this exercise is not as contentious in the context of granting special licences as it is in the context of restricting general freedoms.

Despite the limited nature of legislative responses which are appropriate, it would behove government to explore alternate mechanisms for reducing the influence of pornography. If pornography can be seen as weakening the taboos on violence against women, there are certain activities which can be seen as strengthening such taboos. In this regard, consider the myriad of feminist activities in our society - the counselling of rape victims to charge their assailants, the provision of shelter and assistance for battered women, the campaigns for better laws against sexual discrimination, the lobbies for improved day care facilities, etc. The combined effect of all of this is to impress the dignity of women on the psyche of society. This Committee should recommend, as strongly as possible, therefore, increased governmental efforts in support of such activities.

APPENDIX

Statement of Professor Jonathan Freedman
Chairman, Department of Psychology, University of Toronto

The question of whether or not to ban pornographic material obviously involves many considerations. Presumably government has the right to pass laws restricting individual freedom for the common good, as long as these laws do not conflict with higher laws such as the constitution. The arguments for and against laws against freedom of expression are complex and highly political, and many of the arguments against such censorship have been detailed in the CCLA brief. Although I have my own opinions on this matter, they are not relevant here. What is relevant is that those who are in favor of censoring pornographic material appear to justify such an act at least in part on the basis that pornography is harmful. In particular, they claim that scientific evidence has proven that pornography increases the likelihood of people committing sexual offences. Since this has been offered as a partial justification of a very serious legislative act, it is legitimate, indeed essential, to determine what the scientific evidence shows.

The CCLA brief deals with this question and makes two major arguments: 1. the evidence from laboratory studies should be given little weight because the studies are flawed in a variety of ways; and 2. even if we accept them, the studies do not prove that exposure to pornographic material has the harmful effects that have been claimed. Although it would be possible to write at great length about both of these points, I shall confine myself to stating merely that I think both are well taken. The laboratory research is quite limited with respect to this issue. I am a firm believer in the efficacy of laboratory research in psychology. It has great value and can be extremely illuminating. But the particular work that has been done on the effects of pornography is fraught with problems and, in my opinion, tells us little about how exposure to pornography affects aggression or sexual crimes in the world outside the laboratory.

If one were to accept the laboratory research entirely, it still would not provide convincing evidence that pornography is harmful even inside the laboratory, much less outside it. In the first place, there has been little work done on this problem and even less on the effects of particular kinds of pornography, such as violent pornography. Moreover, the work that has been done has produced quite inconsistent results. Much of the work shows that mild pornography or erotica is actually

beneficial rather than harmful. Other research finds some evidence that certain kinds of violent pornography increase aggression, but only under certain limited conditions. The basic situation is that we do not have sufficient scientific evidence to draw any clear conclusions. Perhaps additional research will reveal what the actual effects of pornography are, and perhaps they will turn out to be negative, but for now, we do not have enough research to know.

I suppose I should note that none of this has anything to do with my personal feelings about pornography. These feelings are irrelevant to an objective view of the research. However, for the record, I find most pornography that I have seen (which is not much) either boring or outright offensive; and the violent pornography is sickening, disgusting, and essentially unwatchable. I can easily understand why women find it objectionable and would like it eliminated. I feel the same way about it. Indeed, I feel that way about most of the sit-coms and commercials on television, which are demeaning especially to women but to our species in general. But just as with this television material, there is no evidence that pornography is harmful to women or to our society. If the decision to ban it is made on aesthetic grounds or in terms of fairness or any other such abstract principle, I would not argue with it as a psychologist (though I would not like it as a citizen); but I strongly object to any decision to ban it that is based on the belief that there is scientific evidence to justify such a decision. The evidence does not justify such a decision.

NOTES

1. R. v. Odeon Morton Theatres Ltd. and United Artists Corp. (1974) 16 CCC (2d) 185 (Man. C.A.).
2. R. v. MacMillan of Canada Ltd. (1977) 13 OR (2d) 630(Co. Ct.).
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