



The Phyllis Schlafly Report

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New Weapons in the Battle Against Pornography

The Child Protection Act

President Ronald Reagan signed the Child Protection Act into law on May 21, 1984 — a new Federal law designed to wipe out the evil of child pornography. This was a great day for all those who believe in fundamental decency, and a rewarding day for Eagle Forum which has been working for the passage of this law since the opportunity was opened up by the Supreme Court decision in *New York v. Ferber* on July 2, 1982.

As the President said that day in the Rose Garden, "There is no one lower or more vicious than a person who would profit from the abuse of children, whether by using them in pornographic material or by encouraging their sexual abuse by distributing this material." The 1982 *Ferber* decision combined with the 1984 statute constitute a stunning affirmation by our society that there is NO First Amendment right to take pictures of children in pornographic poses.

Child pornography is the use of children under age 18 in pictures, books or films to perform sex acts, or to pose in lewd positions or circumstances. The new Federal statute increases penalties on offenders tenfold, and gives prosecutors additional law enforcement powers such as the power to get wiretaps and to seize the profits, pictures and equipment of the pornographers.

Far more important than the raising of the penalties, however, is the way the new bill eliminates the reason why, for the last 15 years, police have seldom bothered to arrest porn-peddlers, and prosecuting attorneys have seldom bothered to prosecute. That reason has been their belief that their work will be for naught because the courts will reverse all convictions after the porn lawyers wrap the smut-peddlers in the First Amendment.

Beginning in the mid-1960s, the Supreme Court tied the hands of the police and the prosecutors by requiring any conviction to meet a highly-contrived and almost impossible definition of obscenity. Under the Supreme Court rulings, nothing could be judged "obscene" unless it was "utterly without redeeming social value."

So, the high-priced porn lawyers outdid themselves in arguing that a shred of "social value" on a half-page of a book, or in fleeting episodes in a movie, should justify a full-length book or movie of shocking depravity. If the porn lawyers could argue that the material had one iota

of "serious" literary, artistic or political content, then the pornography and its peddlers would be protected by the First Amendment.

The Supreme Court opened up a real opportunity for effective prosecution and conviction in *New York v. Ferber*. The Court unanimously held that "the prevention of the sexual exploitation and abuse of children constitutes a governmental objective of surpassing importance" and that child pornography is *not* protected by the First Amendment.

The New York law upheld in the *Ferber* decision prohibits *any* pictures of children in sexual conduct or in lewd positions or circumstances. To obtain a conviction, prosecuting attorneys now need show only that the materials portray under-age children in sexual poses.

At the time of the decision, only 20 states had the strong New York-type law upheld in the *Ferber* case. The remaining 30 states and the Federal Government had weaker laws that were virtually unenforceable because the child pornography convictions were forced to meet the difficult legal definition of "obscenity."

Once the Supreme Court gave the green light, Eagle Forum lobbied strong child porn bills through many state legislatures and city councils. The public demand became overwhelming; the Child Protection Act passed the U.S. House by 400 to 1.

One of the most interesting features of this national debate over the last years is the line-up of players in the legislative battles to pass stronger laws. Contrary to what one might expect, the chief witnesses against the child pornography bill were not the pornographers (who were hiding somewhere under a rock), but the American Civil Liberties Union (which always litigates in behalf of a radical interpretation of the First Amendment) and the librarians (who asked for a privileged exemption from laws against child pornography).

The so-called intellectual self-proclaimed "civil libertarians" thus rushed to the rescue of those dregs of humanity who deliberately lead children into lives of sin and depravity. The intellectuals minimized and trivialized the horror of the crime by labeling it merely "kiddie porn." The liberal lawyers wove a web of "freedom of press" and "civil liberties" slogans under which the children were exposed naked to the commercial cameras filming their private little parts and unnatural acts, while their exploiters were clothed in the sacred mantle of the First Amendment.

The exploitation of children is such a hideous variety of child abuse that the strongest laws against child pornography should be written and enforced against everyone, including bookstores, theaters, schools, and libraries. The selling or displaying of children in sexual acts or lewd positions cannot be tolerated by a civilized society. Prosecutions should be vigorously pushed by all the U.S. District Attorneys under the new statute.

Pornography and Civil Rights

The definition of words makes a tremendous difference in how things are perceived, understood, and litigated. A rose by any other name may indeed smell as sweet, but giving pornography another name may produce very different legal consequences.

Since a score of landmark Supreme Court decisions in the mid-1960's, pornography has been effectively defined as a "right" of free speech and press under the First Amendment. Highly-paid porn lawyers have wrapped porn-peddlers in the Constitution, and local law enforcement officials have been unable to convince the Federal courts that the pornographers should be stripped of that clothing.

Pornography really should be defined as the degradation of women. Nearly all porn involves the use of women in subordinate, degrading poses for the sexual, exploitative, and even sadistic and violent pleasures of men. Sex-role stereotyping is essential to the production and profiteering of pornography.

On May 1, 1984, the Mayor of Indianapolis signed into law an ordinance sponsored by Councilwoman Beulah Coughenour to give that city a new "civil rights" weapon for dealing with the old problem of pornography. The ordinance defines pornography as "the sexually explicit subordination of women" and classifies it as "a discriminatory practice based on sex."

The ordinance is not based on obscenity, zoning, or public nuisance laws. It is based on civil rights legislation. Its purpose is to eliminate the sale of pornographic books and materials, and the showing of pornographic films, by allowing private female citizens to sue on the legal theory that pornography violates their civil rights.

The uniqueness of the Indianapolis ordinance shepherded to passage by pro-family leader Mrs. Coughenour is its "finding" about the nature and effect of pornography: "Pornography is a discriminatory practice based on sex because its effect is to deny women equal opportunities in society. Pornography is central in creating and maintaining sex as a basis for discrimination. Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women. The bigotry and contempt it promotes, with the acts of aggression it fosters, harm women's opportunities for equality of rights in employment, education, access to and use of public accommodations, and acquisition of real property, and contribute significantly to restricting women in particular from full exercise of citizenship and participation in public life, including in neighborhoods."

Here is how the Indianapolis ordinance defines pornography: "The sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that includes one or more of the following: (1) Women are presented as sexual objects who enjoy pain or humiliation; or (2) Women are presented as sexual

objects who experience sexual pleasure in being raped; or (3) Women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt, or as dismembered or truncated or fragmented or severed into body parts; or (4) Women are presented being penetrated by objects or animals; or (5) Women are presented in scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual."

Hustler (sold in many drugstores) is a good example of pornography on the newsstands. A recent issue featured a cover that shows a woman going head first into a meat grinder. *Hustler* publisher Larry Flynt has announced that he plans to use hard-core sex scenes in television ads, too.

Instead of putting the enforcement burden on the city attorney or police, the Indianapolis ordinance simply opens wide the courtroom doors so that women can bring lawsuits based on it. There will be no trouble finding women to bring suits under the ordinance, since women are increasingly outraged at the accelerating offensiveness of pornography, combined with its easy availability in supermarkets and other places patronized by those who never go to an "adult" bookstore or theater.

An hour after the Indianapolis ordinance became law, a Federal district judge issued a preliminary injunction prohibiting its enforcement until the lawsuit is resolved. The American Civil Liberties Union can be expected to bring its considerable litigating resources to defend the free speech of pornographers to degrade women as much as they choose.

Pornography Causes Domestic Violence

While waiting in a hotel room for my friends to arrive, I turned on the television. I watched in horror for five long minutes while a sadistic, retarded man beat, struck and terrorized a frightened, helpless woman. The prolonged violence was physical and mental, irrational and cunning.

I couldn't help but wonder how such a vivid dramatization might affect a man who is already prone to violence against women. He could easily want to act out the images he watched on the screen, perhaps even on his wife or girl friend.

In the United States, it is liberal chic to deny there is any proof that television or movie violence induces violent behavior. But the most successful businesses in the country are spending hundreds of millions of dollars a year on their belief that 30 seconds of images in a TV commercial will induce viewers to imitate the behavior of the actors and purchase their products. So why wouldn't five minutes of violent, lustful behavior also induce imitation?

In Canada, the Alberta Federation of Women United for Families has issued a 1984 report asserting that pornography is a significant cause of the increased violence toward women and children. The Federation urged the Special Committee on Pornography and Prostitution to work to strengthen inadequate laws and to increase penalties for violations.

The report quotes a "content analysis" which Neil Malamuth of the Psychology Department of the University of Manitoba made of two popular "soft-core"

magazines available in Canada. This analysis showed that the sexual violence in these periodicals increased during the 1970s, and that the one-fifth increase in the number of sexual offenses in Canada between 1976 and 1980 appears to track the increase of sexual violence in "soft" and "hard" porn during the same period.

Malamuth also concluded from an experiment on a group of Winnipeg University students, "first, that mass media violent sexuality has undesirable effects on both attitudes and behavior, and, second, that repeatedly exposing male adults to violent pornography, resulted in self-generated rape fantasies."

A Vancouver doctor, Susan Penfold, reported last year that there was a large amount of pornography in the homes of most of the father-daughter incest cases she has treated. "Commonly," she told the Annual Meeting of the Canadian Psychiatrist Association, "the father shows the material to his adolescent or pre-adolescent daughter, or leaves it around somewhere in the hope she will see it."

Dr. Penfold explained that the father's intent seems to be to try to vindicate himself by sexually stimulating her, or by inducing her to simulate the females in the pictures, or by getting her to allow him to photograph her in poses like those in the pictures.

Take Back the Night — Women on Pornography edited by Laura Lederer quoted contributor Irene Diamond of Purdue University whose study of police reports indicates that wife batterers are frequently devotees of pornography. She also quotes Dr. James Bannon of the Detroit Police Department as telling her that "often we find that the man is trying to enact a scene in some pornographic pictures."

The May 1982 Report on Violence in the Family by the Canadian Standing Committee on Health Welfare and Social Affairs noted similarities between wife beating and certain forms of pornography. Many witnesses presented oral and written evidence that pornography contributes to the frequency of battered women.

The idea that a woman is just a possession to be used any way a man desires was mentioned repeatedly as part of the problem of battered women. This attitude is promoted in pornographic material, even in the non-violent, "soft" kind.

The report shows that, even in its "mild" forms, pornography is harmful because "it fosters the mentality which considers the human being, not as a person, but as an object which exists to gratify the selfish interests of someone else. Even when there is, or appears to be, consent on the part of the participants, it is still harmful because it encourages mutual exploitation." Pornography is not a victimless crime.

Victims of domestic violence clearly need emergency help. But, the Alberta Federation's report concluded, "more effective laws on pornography are at least as important because we are working to prevent problems, rather than just trying to pick up the pieces afterwards." Why not go after a major cause of domestic violence — pornography?

Cable Pornography

Cable pornography has a lot of people confused as to whose rights must be respected. The pornographers seem to think that they have some sort of exclusive right to the benefits of the First Amendment at the expense of the public and of people in the privacy of their homes.

Most people would admit that you don't have a right to expose yourself on the public street. The notion that an exhibitionist could force his way into your home and expose himself to your children while you are not there would be ridiculous.

But that's the kind of "right" demanded by the pushers of cable TV porn. They demand the "right" to come into your home and not only expose their unclad bodies on your TV set, but expose action films showing every kind of sexual and violent depravity.

They say you have your right to switch the channel? That's not good enough. Your children may be watching the tube while you are not home — or while you are in the kitchen getting dinner. Furthermore, in many areas cable porn channels can "bleed" onto your television set even though you don't want it and didn't pay for it.

Some cable TV stations are showing explicit hard-R and unrated sex films. The porn-peddlers plan to push harder and harder-core pornographic films on the American public as fast as they can get by with it.

Their arrogance is amazing. Al Goldstein, owner of the cableporn series "Midnight Blue," stated publicly, "Escapade/Playboy is going to open the door for guys like me. Me, I'm into decadence and debauched excess. And so are a lot of other people." By 1990 he plans to have triple X on the home screen.

Hugh Hefner, owner of Playboy Channel, has declared that "the cable market is where home entertainment is going." He promises original programming that will be "hotter and more erotic than ever."

HBO has started original "adult" programming with a series entitled "Eros America." Bluemax Channel has begun the first uncensored, X-rated satellite movie service. ON-TV Service is getting around the no-X policy by showing unrated films and editing X films only very slightly.

Public Access TV in New York was heralded as the first opportunity to use the medium of television for the benefit of the community. Today it is full of sex and sadism, with some of the vilest and most revolting performances ever shown.

"It's just a matter of time before that product [deviant acts] becomes available on cable television," warns Sgt. Don Smith of the Los Angeles Police Department who has followed the progression of pornographic magazines from nude girls down to those featuring bondage, torture, sado-masochism and bestiality.

Where is the law? Indeed, that is a good question. We have federal, state and local laws against obscenity. The Supreme Court in 1973 in *Miller v. California* ruled that "obscene material is *not* protected by the First Amendment," and that something is obscene if it appeals to the prurient interest, portrays sexual conduct in a patently offensive way, and lacks serious social value taken as a whole.

The public expects television standards to be higher than those of newsstands and "adult" movie houses. The Court ruled in 1978 in *FCC v. Pacifica* that "indecent

language in broadcasting can be prohibited," and it defined "indecency" as "nonconformance with accepted standards of morality." This case established that regular television may not broadcast the obscene, the indecent or the profane.

Unfortunately, this rule has never been applied to cable TV, and the Justice Department has decided that cable TV is not governed by the Federal broadcast law. The Federal Communications Commission is simply closing its eyes to the problem of cable TV porn.

Several states have tried without success to pass a cable TV law. Two important test cases are now being appealed to higher courts after the anti-porn law was declared unconstitutional by lower courts: the Utah Cable Television Programming Decency Act and the Miami (FL) Cable TV Obscenity Ordinance.

The opinions and interpretations which treat cable TV differently from broadcast TV for purposes of pornography are specious and unpersuasive. If we don't have at least as much regulation on cable TV as on conventional TV, our homes will be inundated by unwelcome porn, and there will be no way to keep it away from children.

Victory Over Local Pornography

Barbara Hattemer of Naples, Florida, has provided new proof of the old slogan, "never underestimate the power of a woman." The president of a local chapter of Morality in Media, a media watchdog civic organization, this pro-family leader closed down the hard-core pornography in her area after being told that "it couldn't be done."

A Collier County (FL) grand jury figuratively held its nose and personally examined 34 porn magazines bought from the shelves of local stores by a 17-year-old boy. The grand jury found them "substantially beyond the customary limits of candor within this community." The eleven-page report established community standards for what is considered obscene in that county. Meanwhile, the judge ruled that some portions of the report, which described the content of some of the magazines, were too graphic to read aloud in court.

The grand jury apologized for polluting the public records with a description of the magazine contents in order to document its conclusions, but declared "these magazines are legally obscene" and "of no value to our community." The report concluded, "We demand that the law enforcement agencies within Collier County vigorously enforce the state statutes prohibiting such sales."

The 34 magazines listed as obscene and therefore not permitted to be sold in Collier County included *Hustler*, *Club*, *Club International*, *Swank*, *High Society*, *Velvet*, *Companion*, *Expose*, *Pub*, *Chic*, *Sir*, and others with more explicit titles. In addition, the grand jury reminded law enforcement officials to enforce the law which requires retail establishments "to cover photographs of nudity on books and magazines" and to place all soft-core porn magazines in such a location "as to keep them from the convenient reach of persons under the age of 18."

The grand jury stated that it was "mindful of our nation's cherished First Amendment rights," and then said, "The rights guaranteed by the First Amendment should permit a free flow of 'ideas' — not act as a conduit through which obscenity is allowed to permeate our community." The grand jury called on all merchants to comply with the law, adding, "There is no reason why each individual within this County should not do his or her part to maintain a wholesome environment and moral climate in which our young people may thrive and prosper."

The 18 Collier County citizens based their unusual action as grand jury members on three U.S. Supreme Court decisions. In *Roth v. United States* in 1957, the Court declared, "We hold that obscenity is not within the area of constitutionally protected speech or press." In *Miller v. California* in 1973, the Court ruled that the obscene material can be judged as a whole to determine whether it lacks serious literary, artistic, political or scientific value. In *Hamling v. United States* in 1974, the Court ruled that juries can judge obscenity by local community standards rather than by a national standard.

The grand jury report also dealt with video tapes, some of which showed rape, bondage, sodomy and incest. The grand jury found these videos obscene "in vivid color and punctuated by the most grossly offensive sound-tracks." The rental of video porn has become big business in many communities.

Addressing itself to one of today's liberal myths, the grand jury report said, "It is a popular misconception that it is legal to distribute obscene material to a consenting adult. There are absolutely no circumstances under which legally obscene material can legally be disseminated."

Phyllis Schlafly has her B.A. from Washington University, her M.A. from Harvard University, her J.D. from Washington University Law School, and an honorary LL.D. from Niagara University. She is the author of nine books and over 1,000 network television and radio commentaries. Before her marriage, she was a librarian. She taught all her six children to read before they entered school. Two are lawyers, one is an orthopedic surgeon, one has his Ph.D. in mathematics and is the author of a book on Rubik's Cube, one is an electrical engineer, and the youngest is in college.

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