

“IF THE TRUMPET SOUNDS AN UNCERTAIN NOTE . . .”*

HERALD PRICE FAHRINGER

Recently a small faction of feminists veered away from that movement and launched a campaign against pornography under the makeshift banner of “Women Against Violence in Pornography and Media.” This most unfortunate diversion is an embarrassment to the feminist cause and prompted this lawyer to speak out against those insurgents.

I am opposed to all forms of censorship because I believe the American people are capable of reading and seeing anything without being morally corrupted. The President’s Commission on Obscenity, the largest task force of social scientists ever assembled anywhere in the world to investigate the influence of sexually explicit material on human behavior, reached the inescapable conclusion that even the hardest core pornography does not alter our sexual desires nor does it contribute in any way to sexual offenses.

More recently, a study conducted in the Times Square area under the leadership of Dr. Charles Winick of the City University’s Graduate School, and funded by the Ford Foundation, reached the same conclusion. This remarkable investigation confirmed that people who buy films and books involving hard core pornography are not interested in any physical contact with the opposite or same sex. If anything, sex materials tend to sublimate sexual desires rather than provoke any form of overt action.

No scientific investigation of this social curiosity has ever reached a different conclusion. The famous Kinsey Institute’s significant study of sexual offenders, one of the most comprehensive collection of interviews of convicted sex offenders ever published, revealed that pornography did not play any part in their misbehavior.

I find much of the sexually explicit material available today personally distasteful, and I recognize that some of it degrades women. The prevalence in our society today of triple-X-rated movies, smut books, peep shows, underground newspapers, and live sex performances is distressing to many. But this phenomenon apparently proves that a nation gets the kind of art and entertainment it wants and is willing to pay for. However, those who believe that this country’s new breed of publishers and filmmakers should have their mouths washed out with soap for using four-letter words or publishing pictures of nude women in obstetric poses must remember that no one is compelled to either see or read what is repulsive to him or her. Those who are appalled by these materials can ignore them. And the few who gain some satisfaction from them should be allowed that small comfort.

* “. . . who shall prepare for battle?” 1 Corinthians 14:8.

As a first amendment absolutist, I am unalterably committed to the principle that people should be allowed to read and see whatever they please. Since a free press safeguards all our other liberties, it has always enjoyed a preferred place in our hierarchy of constitutional values. Simply put, a democracy is a government of popular choice. The fulfillment of our ideals, aspirations, and notions of self-worth, in politics, religion, sex, and a host of other human concerns, depends directly upon our having access to the greatest possible amount of information. When our forefathers granted to each of us the right to speak freely on all subjects, they recognized that its use would not always be in good taste or pleasing to those in positions of power. This important right was intended for all of us because they knew of no other way that a free people could conduct a representative form of government.

Under a democratic system, it is imperative that all new and unconventional ideas, no matter how offensive, be heard or read in order that we may discover the few that may be truly enlightening. Literature dealing with sex should not be excluded from this constitutional sanctuary because it affects our perceptions and social relationships. Films and magazines that do no more than provide sexual pleasure should be available to those who derive satisfaction from them. They fulfill a need—they do not create one. And whether those publications are successful in their objective has to be left to the reader and not some public official. The freedom to write about sex, as with political subjects, must include the freedom to write about it badly.

I find the literature distributed by the American Nazi Party and the Ku Klux Klan much more obscene than the sex materials that are sold on newsstands today. But we are committed to a philosophy in this country that allows the dissemination of all types of reading material no matter how repulsive it may be to others. It was Oliver Wendell Holmes who said that freedom of speech does not mean only free thought for those who agree with us, but freedom for the thought we hate. If the law suppressed that which sizeable minorities in our society disliked, our cultural store would be sparsely stocked.

Mr. Justice Stewart of the United States Supreme Court said that “[c]ensorship reflects a society’s lack of confidence in itself.”¹ He expressed my view perfectly in that one simple sentence. Implicit in any delegation of authority to others to decide what the rest of us may read is an awful acknowledgement that we are incapable of making that judgment for ourselves. I, for one, find that degrading proposition unacceptable. The choice of what we shall read is an individual one and cannot be left to the government.

What is offensive to one community may have value to another. Five years ago, the Academy Award winning film “Carnal Knowledge” was suppressed in Georgia;² seven years ago, the popular musical “Hair” was condemned in Boston; fifteen years ago, books by D. H. Lawrence and Henry Miller were censored;³ and before that, the writings of Edmund Wilson, John O’Hara, Lillian Hellman, William Faulkner, Sinclair Lewis, Theodore Dreiser,

1. *Ginzburg v. United States*, 383 U.S. 463, 497 (1966) (Stewart, J., dissenting).

2. *Jenkins v. Georgia*, 418 U.S. 153 (1973).

3. *Grove Press, Inc. v. Gerstein*, 378 U.S. 577 (1964).

George Bernard Shaw, and James Joyce were attacked. I do not equate *Hustler* or *Screw* with these literary works. But times are changing and so are our values. We are all agreed that the state must not be allowed to control our thoughts, but by censoring our sexual fantasies the government does just that. It is basic to a free society that the public should be left to pick and choose among these competing offerings, for to hold otherwise would be a discredit to this nation's ability to decide what is good or bad. The control of obscenity should be left to the self-regulating force of a society's taste. Gresham's Law has never prevailed in the world of entertainment; that is, the bad does not drive out the good. The right to read and see what we choose must include every book, film, magazine, and newspaper, or in the long run, it may include none.

With the high level of social disorder raging in this country today, such as drug abuse and an alarming increase in violent crime, one cannot help but wonder how much of our public resources should be devoted to keeping our thoughts pure. The enormous energy of the feminist movement would be better spent in pursuing its quest for economic and social equality in all walks of life.

We must never lose hope that the day will come in this country when the witchcraft of pornography will no longer be feared. Obscenity breeds and multiplies in the dark crevices of a frightened society preoccupied with a sense of self-censorship. Once pornography is exposed to the strong sunlight of a completely free and uninhibited people, its appeal will surely diminish. And if that assumption proves to be wrong, then we must learn to live with the level and variety of tastes which the marketplace theory of the first amendment encourages and protects.

We must never forget that eighty-one per cent of the people of this world have lost their freedom. We are a distinct minority. Eighty-six per cent of the literature suppressed in the Soviet Union is condemned under an obscenity statute, not a law that prevents political speech. Those startling statistics should impress upon each of us how dangerous movements designed to control what the rest of us may read can be.

In this day and age when we have reached the edge of the moon, I find it hard to believe that our people cannot tolerate magazines like *Hustler*, *Penthouse*, and *Screw*. If our faith in freedom is not strong enough to bear the words and pictures contained in these unseemly publications, then it is not really very durable. But of one thing I am sure. Freedom of speech is indivisible. We cannot deny it to one person and save it for another. It must exist for all of us, or someday it may not exist for any of us.

