

PORNOGRAPHY &

CIVIL RIGHTS

A New Day for Women's Equality

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Pornography and Civil Rights

A NEW DAY FOR WOMEN'S EQUALITY

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To all the people who have worked
to pass the Ordinance into law and
to all the people who need to use it.

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The Meaning of Civil Rights

Civil rights as we understand them are new, not old.

Equality was not a constitutional principle or legal imperative in 1776. The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution were passed in 1865, 1868, and 1870, not in 1776. They made slavery illegal, introduced the principle of equal protection under the law, and gave Black men the vote. The first civil-rights statutes were passed in the same period to help undo the effects of slavery. Still, the aftermath of slavery was segregation. The Supreme Court decided to outlaw segregation in public schooling in 1954, not in 1776 or 1868. Modern civil-rights acts to dismantle segregation and prohibit discrimination were passed in 1957, 1960, 1964, and 1968, not in 1776 or 1868. The Voting Rights Act was passed in 1965, not in 1776 or 1868. In the United States for most of its history, Black people were virtually excised from the body politic, first through the constitutionally protected slave trade, then through constitutionally protected segregation.

There were two kinds of segregation. *De jure* segregation was mandated by law, enacted by statute, enforced by the police. *De facto* segregation was separation of the races without the overt sanction of specific laws: Blacks had inferior status, worth, and resources.

In the South, there was *de jure* segregation. Laws forbade Blacks access to public accommodations, including toilets, restaurants, hotels, parks, and stores. Blacks were allowed only restricted access to public transportation. Jobs, housing, and education were marginal and often debased in quality. *De jure* segregation effectively kept Blacks from voting. *De jure* segregation implicitly sanctioned physical violence against Blacks. There was widespread police brutality and vigilante terrorism, including lynchings and castrations.

De jure segregation set the standard for the way Black people were treated throughout the United States. The degraded civil status and racial inferiority of Blacks were taken for granted. In

practice, segregation in housing and to a somewhat lesser extent in education was the rule. The use of the word *nigger* was commonplace. Unemployment and menial labor ensured that Blacks were economically dispossessed and politically disenfranchised. Narcotics, especially heroin, were dumped on Black urban ghettos, law enforcement collaborating in targeting a Black population for addiction and despair. White contempt for Blacks was expressed openly in humor, in street harassment, in condescension, in infantilizing or animalistic media stereotypes, and in physical violence. Until *de jure* segregation was dismantled, no Black person lived independent of it no matter where they lived, because *de jure* segregation meant that the authority of law applauded the debasing of Black people. Every Black person was affected adversely in their rights and dignity by *de jure* segregation, humiliated by its very existence. *De jure* segregation also had this deep and pernicious effect: it made *de facto* segregation look benign by comparison. Institutionalized racism had two ostensibly distinct, even opposite systems serving to validate it. In the South, this racism had the authority of law. In the rest of the country, the social inferiority of Blacks had the appearance of being natural, not imposed by force.

De jure segregation was destroyed over many years because vast numbers of Black people with some brave white allies fought it, sometimes at the cost of their lives.

De jure segregation was fought in the courts and in the streets. "The streets" included shops, restaurants, buses, hotels, parks, toilets, because of the high priority put by the movement on integrating public accommodations. Much of this activity was illegal. The courts and the streets were not separate arenas.

When the Supreme Court disavowed segregation in public education in 1954, it was left to Black children to desegregate the schools. They faced white mobs led by armed police and elected white officials. The children, not the Supreme Court, integrated the schools. When Rosa Parks refused to give up her seat to a white man on a bus in Montgomery, Alabama, on December 1, 1955, she was arrested and convicted for breaking a state segregation law. The Black community organized a boycott of the Montgomery buses that eventually led to their

desegregation. Endless acts of civil disobedience resulted in perhaps hundreds of thousands of arrests over a period of at least a decade; marches led to continuous confrontations with violent police; civil-rights activists used the courts, sometimes as litigants, sometimes charged as criminals.

The courts were the courts of segregation; north or south, federal or state, they had protected segregation. The streets were the streets of segregation. The police were the police of segregation. The vote was the vote that had kept segregation inviolate. Civil-rights activists confronted the institutions of segregation because they wanted to destroy segregation. They went to where the power and injury were and they confronted the power that was causing the injury. This power hurt them whether or not they fought it. In fighting it, however, they forced it to reveal itself—its cruelty and its sadism but also its premises, its dynamics, its structural strengths and weaknesses. Each confrontation led to another confrontation, more and worse social conflict, often more and worse police or mob violence. The courts led to the streets and the streets led to the courts. The good judicial decisions led to the armed police who did not accept those decisions, which led back to jail and back to the courts. There were also in time negotiations with two Presidents of the United States (Kennedy and Johnson) and the Justice Department; then back to the street, back to jail, back to court. There were battles and compromises with federal legislators; then demonstrations, marches, civil disobedience, jail. In the impoverished rural areas of the Deep South, civil-rights workers taught illiterate Blacks to read and write so they could pass the literacy tests that were being used to keep Blacks out of the voting booths. The civil-rights workers were met with white violence. So were the Blacks who tried to register to vote, throughout the South.

The social conflict was real. Many were hurt and some were killed. The conflict escalated with each confrontation, inside the courts or in the streets. Each confrontation became more costly, both to the civil-rights activists and to the white-supremacist society they were fighting. Each confrontation forced people throughout the society to ask at least these two fundamental questions of power and dignity: *Who is getting hurt*

and why? By attacking *de jure* segregation on every front, however dangerous or difficult, the civil-rights activists made the cost of maintaining the racial status quo higher and higher. Eventually it became too high. The Civil Rights Act of 1964 opened up public accommodations, first in the South, later everywhere, to Black people. The Voting Rights Act of 1965 opened up the voting booths.

The high cost of maintaining the status quo forced change; and so did the increasing moral authority of the protesters. They risked everything. Their bravery indisputably expressed the eloquence of their humanity to a nation that had denied the very existence of that humanity. Each assertion of rights enhanced the persuasive power of those who demanded equality. The moral authority of the protesters eventually exceeded the moral authority of the state that sought to crush them. They won access to public accommodations and to the voting booth; and they won the respect of a nation that had hated them. *De jure* segregation no longer set the standard for the contemptuous disregard of the rights of Black people; instead, Black people set the human standard for courage.

Principles:

1. Confront power by challenging it where it is strongest, meanest, and most entrenched. (For instance, white supremacy was strongest in the legally segregated South; meanest in the streets, including in public accommodations; and most entrenched in the courts.)
 2. Intensifying and escalating social conflict leads to social change.
 3. The status quo must become too costly for the dominant society to bear.
 4. The moral authority of those confronting entrenched power can be a force for change.
-

Our contemporary understanding of civil rights—what they are, what they mean—comes out of the Black experience: the human rights of Black people—their rights of citizenship and personhood—were violated in *de jure* and *de facto* systems of segregation. Civil-rights legislation grew out of the specific configurations of Black exclusion from society, dignity, and rights. Other groups were also afforded legal protection from discrimination. Where the patterns of discrimination experienced by those groups were analogous to patterns of Black exclusion under segregation, civil-rights laws remedied longstanding, systematic deprivations. For instance, the disabled, now protected under civil-rights legislation, have a right of equal access to public schooling and public accommodations.

The effort to stop racial discrimination in jobs, hiring practices, and housing has provided many stigmatized groups legal redress. Generally, discrimination on the basis of race, sex, religion, color, national origin, marital status, disability, or, in some cities and states, sexual or affectional preference, is banned. This broadening of civil-rights protection to many stigmatized groups was the result of political activism, legislative initiatives, and many, many lawsuits. It was not simply decreed one bright day because it was right and bigots had recognized the error of their bad ways.

It is especially important to understand that *Blacks* includes Black women and that *women* includes Black women. When Black people as a whole or women as a whole are discriminated against or hurt, Black women are denied rights. (For instance, when Blacks were given the vote, but women were excluded, Black women could not vote.)

Women have benefited greatly from civil-rights legislation and litigation when discrimination has taken the form of exclusion because of sex, especially in employment. When the patterns of sex discrimination resemble those of race discrimination, especially as they developed under segregation, civil-rights law offers remedies. But when injuries on the basis of sex are distinct and different—as, for instance, in systematic sexual abuse—there are no effective civil-rights remedies in law even though basic rights of citizenship and personhood are being denied or violated.

The legal history of women's rights in the United States is appalling.

Put in the simplest terms: women were the chattel property of men under law until the early part of the twentieth century. Married women could not own property because they were property. A woman's body, her children, and the clothes on her back belonged to her husband. When the husband died, another male, not the mother, became the legal guardian of the children. The body of a married woman belonged to her husband just as a slave's body belonged to the white master. A single woman was under the legally formidable authority of her father or other male relatives. Married women were what nineteenth-century feminists called "civilly dead." Single women sometimes paid taxes. No women had rights of citizenship. Women did not have a constitutionally protected right to vote until 1920.

The Fourteenth Amendment to the U.S. Constitution was ratified in 1868. The Fourteenth Amendment is unique in the Constitution. It is an equality-based amendment; it says that equality under the law is a right. The Fourteenth and the Fifteenth Amendments gave Black men the vote. The Fourteenth Amendment guaranteed citizens equal protection under the law. The Fourteenth Amendment intentionally excluded women.* Only in 1971 did the Supreme Court hold that women too were entitled to the equal protection under the law promised by the Fourteenth Amendment.

The banning of discrimination on the basis of sex in the Civil Rights Act of 1964 was a partial and mean affair. Trying to defeat the whole Civil Rights Act, racist Southern Congressmen proposed to add *sex* on a par with race to Title VII, the

* Section 2 of the Fourteenth Amendment includes the following: "But when the right to vote at any election for the choice of electors . . . is denied to any of the *male* inhabitants of such State, being twenty-one years of age . . . or in any way abridged . . . the basis of representation therein shall be reduced in proportion which the number of such *male* citizens shall bear to the whole number of *male* citizens twenty-one years of age in such State." (Emphasis added.) In other words, when states deny any man the right to vote in federal or state elections, the Fourteenth Amendment is violated. The Fourteenth Amendment, by express language, declined to extend this equality right, the right to vote, to any women. The Nineteenth Amendment, which extended the franchise to women, was passed in 1920.

part of the bill designed to prohibit race discrimination in hiring practices. (Women were not included in the public-accommodations protections in 1964 or 1968.) This segregationist amendment adding *sex* was passed only because the Civil Rights Act could not be passed without it.

The segregationist amendment was a serious effort to defeat the bill. It outraged liberal Congressmen who wanted the 1964 Civil Rights Act to pass. It was intended to be—and was taken as—a massive and foul insult to Black people and to those in Congress who favored integration. It was widely regarded as a moral obscenity that demeaned the whole concept of civil rights.

The insult of the amendment was: saying Blacks could be equal with whites was like saying women could be equal with men, a transparent absurdity. The insult was: the inequality between Blacks and whites and especially the incapacities of Blacks were as natural, as normal, as biologically inevitable, as divinely ordained, as the inequality between the sexes and especially the incapacities of women. The insult was: Blacks, like women, are by nature servile and infantile; trying to elevate Blacks to some other level would be like trying to elevate women (and, by inference, children)—ludicrous, deranged. On the gutter level, the segregationists had, in effect, gone from calling those who opposed segregation “niggers” and “nigger lovers” to calling them all “pussy.”

The conviction that women could have or should have any relief from civil inequality played no part in establishing this first legislative basis for sex discrimination as a violation of civil rights; and the conviction that women had a right to substantive and honest equality similarly played no role.

Most major advances in sex equality under civil-rights law—from affirmative action to redress for sexual harassment—have come from litigation, not legislation, though Congress subsequently affirmed a commitment to sex-discrimination law many times, especially in the 1970's.

Some of the legal rights that feminists regard as fundamental to women's civil equality have nothing at all to do with civil-rights law or sex discrimination. For instance, the right to

abortion is considered a right of privacy under law, not an equality right. A man's right to have and use pornography in his home is protected under the same right of privacy, and the pornographers have been active in (1) keeping the two rights legally linked and (2) persuading feminist groups not to pursue the right to abortion as an issue of sex equality in law.

Also, it is no surprise that civil-rights law has not killed racism. It wounded its most protected social expressions but, with segregationists having enormous power in Congress and nearly two centuries of racism saturating the society, no one asked Blacks to make social policy that would correct socially pervasive debasement. Instead, there was a *negotiation* with America's segregationists, world-class racists by any measure. It is not just that there are limits to what law can do; there were serious limits to what this society would even consider doing. There still are.

FACTS:

1. Women were chattel property until the early part of the twentieth century.
2. The Fourteenth Amendment, which guaranteed equal protection under the law and, with the Fifteenth Amendment, gave Black men the right to vote, intentionally excluded women.
3. Women did not have a constitutionally protected right to vote until 1920. In 1971, the Supreme Court said women had a right to equal protection under the law.
4. "Sex" was amended to the Civil Rights Act of 1964 in the section concerning hiring practices by segregationists to try to defeat the whole bill.
5. The right to choose abortion is a right of privacy under law, not a right of equality.
6. When discrimination against women takes place in the same ways as discrimination against Blacks, there are civil-

rights remedies. When the patterns of discrimination are different, having different origins and different dynamics, there are no such remedies, no matter how egregious the discrimination is or how violating the patterns of sex-based inequality are.

In the job market, women have been forcibly excluded and forcibly segregated. The low status of women has been partly created and partly maintained through the exclusion and the segregation. Civil-rights law is used to fight the exclusion and the segregation in themselves and to fight the continuing bad effects of past segregation.

In the common fabric of everyday life, women are, in a sense, forcibly integrated, intimately integrated, with society organized so that women's sexual and reproductive capacities have been controlled by men. Women have been kept out of the marketplace to be kept in the home, or kept in the bed, or kept in the kitchen, or kept pregnant. Social institutions, patterns, and practices force women to fulfill the sexual and reproductive imperatives of men.

Because so much of women's social inequality centers on forced sexual and reproductive compliance, the ways in which women are debased in rights and in personhood center on issues of bodily integrity, physical self-determination, and the social eradication of forced sex or sexual abuse. Systematic violations of women's rights to safety, dignity, and civil equality take the form of rape, battery, incest, prostitution, sexualized torture, and sexualized murder, all of which are endemic in this society now. These are acts of sex-based hate directed against a population presumed to be inferior in human worth. These are means of keeping women subjugated as a group with a low civil status and a degraded quality of life.

The second-class status of women is justified in the conviction that by nature women are sexually submissive, provoke and enjoy sexual aggression from men, and get sexual pleasure from pain. By nature women are servile and the servility itself is sexual. We are below men in a civil and sexual

hierarchy that mimics the sex act. It is our sexual nature to want to be used, exploited, or forced. Sex equality is seen to violate the very natures of men and women, presuming a sameness where none exists; and violations of women are seen to be part of normal human nature, not the result of a coercive social system that devalues women.

Women need laws that address the ways in which women are kept second-class: the institutional sanctions for violence and violation, *de jure* and *de facto*; the patterns of exploitation and debasement; the systematic injuries to integrity, freedom, equality, and self-esteem.

Principles:

1. Remedies for inequality must be derived from the specific kinds and patterns of inequality that exist. They must address the real ways in which people are hurt.
 2. Civil inferiority is socially coerced, not natural.
 3. To dismantle the coercion, you have to figure out how society organizes and maintains it.
 4. Those who are civilly inferior are presumed to have a nature that deserves the treatment they get.
 5. Women's human rights are violated through sexual exploitation and abuse. Rape, battery, incest, prostitution, sexualized torture, and sexualized murder express contempt for the human worth of women and keep women second-class.
 6. Sex-based violation can both express an attitude and be a material means of keeping women down.
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The Nature of Change

People seem to resist change and to defend the status quo whatever it is. Sometimes the defenses are bigoted and violent. Sometimes they are sophisticated and intellectual. If the status quo is endangered, both kinds of defenses are called into play.

Inequality is made to seem normal and natural, whatever social form it takes.

When some people have power and some people do not, creating equality means taking power from those who have too much and giving power to those who have too little. Social change requires the redistribution of power.

Those who have power over others tend to call their power "rights." When those they dominate want equality, those in power say that important rights will be violated if society changes.

In the segregated South, two kinds of "rights" were defended by white-supremacists. First, they defended states' rights. They said that the framers of the Constitution had given states the sovereign right to legislate social policy, including the separation of the races, and that the power of the federal government to intervene had been strictly and severely limited by the framers. What they said was true. In fact, the framers had constructed the Constitution so that the states had the power to protect slavery. Segregation could hardly have mattered a hill of beans to them. Second, those in power said that integration would take from them a precious civil liberty protected by the First Amendment: the right to freedom of association. Forced to integrate schools, parks, hotels, restaurants, toilets, and other public accommodations, whites lost the power to exclude Blacks. This they experienced as having lost the "right" to associate with whom they wanted, that is to say, exclusively with each other.

Wrongful power is often protected by law because law is the ordering of power. Law organizes power. In a society where women and Blacks have been legal chattel, the law is not premised on a sensitivity to their human worth. Law protects "rights"—but mostly it protects the "rights" of those who have

power. The United States is a particularly self-congratulatory nation. We say that we invented democracy and that our Constitution represents the highest principles of civilized governing. Yet our Constitution was designed to protect slavery and to keep women chattel. The “rights” guaranteed to white men were grants of freedom that established a civil and social dominance over Blacks and women. Change has not occurred because white men developed a passion for equality. (Had they, that passion would not have been constitutional.) Change has not occurred because those with power felt that they had too much and wanted to give some up. Change has come from sustained, often bitter rebellion against power disguised as “rights.” Highfalutin legal principles have masked and protected privilege, dominance, and exploitation.

Change is not easy, fast, or inevitable. The powerless are responsible for creating change. They have to, because those who have power will not. Why should they? This is not fair, but it is true. Power takes dominance for granted; dominance is like gravity, not felt as a force at all, simply accepted as the way things are, each thing being in its proper place. Dominance is dignified—sincerely, not cynically—as a “right” or a series of “rights.” If someone has power over you and you take that power away from him, he will say you are taking away his rights. Society will have given him a legitimate way—often a legal way—to claim that dominance is a right of his and that submission is a duty of yours.

Principles:

1. Equality requires the redistribution of power.
 2. Those who are socially dominant experience dominance as a right.
 3. Take away wrongful power and you will be accused of taking away rights. Often, this will be true because the law, under the guise of protecting rights, protects power.
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Authority and Resistance

Even though the framers gave the states the right (power) to protect slavery, and even though forced integration did diminish the scope, breadth, substance, and importance of the First Amendment right to freedom of association (for whites, of course), a time came when these tenets of constitutional law had to be reinterpreted. The authority of law could be maintained only if law sanctioned the equality that had been anathema to it.

The courts never said they had been wrong; and to this day it is a dicey business to impugn the more perfect Constitution of the framers. But law had to bend or break. The authority of the law always appears to be absolute but in fact it is never absolute or immutable. Resistance can force it to change its ground.

The authority of the law had been used to impose inequality. This inequality gave whites authority. The resistance to inequality had to confront, resist, and repudiate both the authority of the law and the authority of whites. To maintain itself, law changed. The authority of whites was pretty much destroyed. It had to be, because white authority carried the contagion of white supremacy beyond where law could go.

Male authority over women permeates every social institution and most intimate exchanges and practices. The state is one agent of male authority. The rapist is another. The husband is another. The pimp is another. The priest is another. The publisher is another. And so on. Resistance to male authority requires far more than resistance to the state or to the authority of the state. For women, the authority of the man extends into intimacy and privacy, inside the body in sex and in reproduction. In worshipping a male God, in conforming to social codes of dress and demeanor, even in using language, women defer to the authority of men.

The means of resistance to this ubiquitous and invasive authority have never been adequate. Sometimes they hardly

seem serious.^o Even when women resist inequality and the authority of the state that imposes inequality, women continue to capitulate to the authority of men, an authority premised on women's inequality. In a fight for freedom, such a capitulation is suicidal. Accepting male authority means accepting important elements of one's own social and sexual inferiority. Deference to male authority means deference to second-class status.

The authority of the law must be—and can be—forced to change its ground: to sanction equality. The authority of men has to be pretty much destroyed. It is probably impossible to repudiate women's inequality while accepting male authority.

So far, hostility to the authority of men appears to be a serious no-no, even though each act or attitude of deference further entrenches male dominance. It is likely that women's inequality—the habits and patterns of discrimination, prejudice, and debasement that injure women—can survive any political resistance so long as the authority of men remains, as it is now, both sacrosanct and intact.

Principles:

1. The authority of law, which has sanctioned inequality, can be forced to sanction equality if resistance is intense enough and if the stakes are high enough, for example, the viability of the law itself.
 2. The authority of those who dominate must also be resisted and destroyed.
 3. Deference to male authority means deference to second-class status.
 4. Resisting the authority of men is necessary.
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Equality as a Social Goal

Freedom of Association

Whites have freedom of association because whites have power. Whites use it to exclude Blacks. Blacks do not have freedom of association because they are forbidden from going many places under many circumstances. Whites say that if they are forced to integrate, they will be deprived of their right to freedom of association. They are in fact deprived of it so that this same right can be extended to Blacks. The mathematics of the situation are clear: as long as whites count as the humans who have a right to rights, making them integrate means taking away their absolute control of association in public and in private. As soon as Blacks count as humans who also have rights, freedom of association is in fact extended, increased, significantly multiplied, because Blacks can exercise it by going to the places whites had been able to forbid them to go.

Freedom of Speech

Women, who have lived in social, political, and legal silence, are told that freedom of speech is a sacrosanct right, and that any effort to diminish it for anyone diminishes it for women. Though women have been excluded from access to the means of communication, from the political dialogue, from education, from economic equity or political power; though women are forced into social silence by contempt and by terrorism; though women are excluded from participation in the institutions that articulate social policy; women are supposed to value speech rights by valuing the rights of those who have excluded them. In particular, if a pornographer takes a woman and hangs her bound and gagged and photographs her and publishes the photograph, *she*, that particular woman, is supposed to value his right to speech over her own; and if she should suggest that he must not be allowed to profit from her physically coerced silence, she will be told that her right

to freedom of speech depends on protecting his. If she says, But he gagged me and hung me and I couldn't talk so I did not have a right of speech that I could exercise, she will be told to solve her problem in some way that will not impinge on or diminish his right to express himself through his use of her body. If she recognizes that his so-called right is an exercise of power at the expense of her humanity, and if she wants rights of speech that are real in the world such that he cannot gag her and hang her and photograph her and publish her, she will be accused of wanting to take his rights from him. In fact, she wants to take his power over her from him. He has power disguised as rights protected by law that fosters inequality. The mathematics are simple: his diminished power will lead to an increase in her rights. The power of the pornographer is the power of men. The exploitation of the woman gagged, hung, photographed, and published is the sexualized inferiority and human worthlessness of women. If men cannot gag, hang, photograph, and publish women, men will have less power and women will have more rights.

Because the establishment of equality means taking power from those who have it, power protected by law, those who have wrongful power hate equality and resist it. They defend the status quo through bigotry and violence or sophistication and intellect. They find high and mighty principles and say how important rights are. They say that rights will be lost if society changes. They mean that power will be lost, by them. This is true.

The Constitution, including the Bill of Rights (the first ten amendments to the Constitution), has served to defend wrongful power and to protect inequality and exploitation. This is primarily because Blacks and women were not recognized as fully human and their inequality was built into the basic structure of constitutional law. We need to establish a legal imperative toward equality. Without equality as a fundamental value, "rights" is a euphemism for "power," and legally protected dominance will continue to preclude any real equality.

Principles:

1. Equality means that someone loses power; it is taken from him. He does not like this and fights it. He calls his power "rights" and so does the law.
 2. The mathematics are simple: taking power from exploiters extends and multiplies the rights of those they have been exploiting.
 3. The U.S. Constitution, including the Bill of Rights, has protected wrongful power disguised as rights. Strong equality law can change this. We need to put the highest social value on equality.
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Pornography and Civil Rights

Law has traditionally considered pornography to be a question of private virtue and public morality, not personal injury and collective abuse. The law on pornography has been the law of morals regulation, not the law of public safety, personal security, or civil equality. When pornography is debated, in or out of court, the issue has been whether government should be in the business of making sure only nice things are said and seen about sex, not whether government should remedy the exploitation of the powerless for the profit and enjoyment of the powerful. Whether pornography is detrimental to "the social fabric" has therefore been considered; whether particular individuals or definable groups are hurt by it has not been, not really.

Since, in this traditional view, pornography can only violate an idea of the society one wants to think one lives in, the question of pornography has not required looking into who can violate whom and get away with it. Once pornography is framed as concept rather than practice, more thought than act, more in the head than in the world, its effects also necessarily appear both insubstantial and unsubstantiated, more abstract than real. So both what pornography is and what it does have been seen to lie in the eye of the beholder, to be a matter of what one is thinking about when one looks at it, to be a question of point of view. And since the accepted solution for differing moral views has been mutual tolerance, one man's harm has been seen as another's social value as the pornography industry in the United States has doubled in the last ten years without effective interference from the courts.

The law has been wrong. Obscured beneath the legal fog of obscenity law and the shield of the law of privacy and the perversely cruel joke of the law against prostitution has been the real buying and selling of real individuals through coercion or entrapment, or through exploiting their powerlessness, social worthlessness and lack of choices and credibility, their despair

and sometimes their hope. Shielded from public view, in part through the collaboration of law, has been the manufacture from skin and blood and ruined lives of a vicious product by vicious people. Veiled as well has been the shameless profiteering in run-down parts of town, the pressure deals with unscrupulous politicians and judges, the arm-twisting of retailers, the takeovers of magazine distribution networks and underground control of legitimate entertainment businesses, the threats and sabotage of the personal, occupational, and public lives of anyone who gets in their way, and the outright buying of liberal credibility, which parades a traffic in human beings—this auction block on every newsstand in the country—as a principled means of sexual and expressive freedom, and stigmatizes doing or saying anything about it as censorship.

Equally clouded by specious media reports and outright lies has been the direct evidence of a causal relationship between the consumption of pornography and increases in social levels of violence, hostility, and discrimination.* So, few knew of those trapped in sexually toxic marriages or jobs to keep a roof over their heads and to feed their children. Few—except the many who did it or had it done to them—knew that the abuses of pornography's production are a mere prelude to the abuse mass-produced through pornography's mass distribution and mass consumption: the rapes, the battery, the sexual harassment, the sexual abuse of children, the forced sex, the forced

* This evidence is consistent across social studies (studies on real people or real data in the real world), laboratory studies (controlled exposure and response situations in isolated settings), and testimony by both professionals (for example, therapists who work with victims and offenders, police who observe evidence of sex crimes) and direct victims (women in all walks of life, such as prostitutes, daughters, wives, students, employees). The evidence is summarized in Diana E.H. Russell, "Pornography and Rape: A Causal Model," *Political Psychology* Vol. 9 No. 1 (March 1988):41-73. Most of the major social and laboratory studies are discussed in N. Malamuth and E. Donnerstein, eds., *Pornography and Sexual Aggression* (1984) and D. Zillman, *Connections Between Sex and Aggression* (1984). All the relevant studies, together with analysis of victim testimony, are listed in the Attorney General's Commission on Pornography, *Final Report* (July 1986), 299-349; 1885-1906. Women and men testified to their experience of the causal relation between pornography and harm to them in the hearings held by the Minneapolis City Council on the Ordinance, *Public Hearings on Ordinances to Add Pornography as Discrimination Against Women*, Committee on Government Operations, City Council, Minneapolis, Minn. (Dec. 12-13, 1983).

prostitution, the unwanted sexualization, the second-class status. And the increasing inability to tell the difference between all of that and sex—all of that and just what a woman is.

Those who do this are silent in order to protect their power, profits, and pleasure. Many who have this done to them are silent because they are ashamed, afraid, bought, or dead. But overwhelmingly they are silent because even when they speak no one listens. This makes them ashamed and afraid—and even, for all we know, bought or dead. For the rest, those who have known have not cared, and those who might have cared have not known—or were kept from knowing, or were not permitted to care, or thought they could not afford to know or care. Completely absent from most legal and political debate on the subject have been the twelve individual men whose names virtually never surface. These are the heads of large organized-crime families who own, control, and profit from the pornography industry, buying with terror whatever legitimacy and impunity they cannot buy with money, thriving while others pay the human cost. The entire debate over pornography is primarily for their benefit.

The legal conception of what pornography is has authoritatively shaped the social conception of what pornography does. Instead of recognizing the personal injuries and systemic harms of pornography, the law has told the society that pornography is a passive reflection or one-level-removed “representation” or symptomatic by-product or artifact of the real world. It thus becomes an idea analog to, a word or picture replay of, something else, which somehow makes what it presents, that something else, not real either. So its harms have not been seen as real. They have, in fact, been protected under the disguise of the name given that world of words and pictures which are not considered real: “speech.” This could happen because law is an instrument of social power first, and those who produce and consume pornography have social power. Pornography is made unreal to protect it, in order to protect the pleasure, sexual and financial, of those who derive its benefits. Those who are hurt by pornography—society’s powerless, its disregarded, its rejects, the invisible and voice-

less, mostly women and children—are made unreal in order to keep their abuse defined the way those who enjoy it define it: as sex. Particularly with women, whose social definition as inferior is a sexual one, victimization through pornography has been perceived as a natural state, not as victimization at all but as fitting and chosen. When they are thought to be paid for their exploitation, that both confirms that this is what they have to sell and, by making it a market transaction, makes it appear not to be exploitation at all.

Law is often thought to be a neutral instrument. But law has participated directly in making pornography a legal and social institution. Obscenity law misdefines the problem of pornography as offensive and immoral public displays of sex, evades the real harms, and is unworkable in design, while always making it seem that the problem could be solved with greater exercise of prosecutorial will. It is the seductiveness of obscenity law to seem potentially effective because its terms are so meaningless they could mean almost anything. As a result, they have meant almost nothing, being (actually) dependent upon the viewpoint of the observer. This makes obscenity law less useful the more pornography is a problem, because the more pornography is consumed, the more observers' views are shaped by it, and the more the world it makes confirms that view. Privacy law has further institutionalized pornography by shielding the sexual sphere, where so much of pornography's violence to women is done, including by outright guaranteeing the right to possess pornography in the home, the most violent place for women. Pornography has also been legally institutionalized through decrying but permitting pimping and prostitution (of which pornography is one form), making sure prostitutes are the ones who pay for doing what the entire social system has given them, as women, little choice but to do in one form or another.

The law has helped make pornography a social institution more indirectly as well. The law of rape makes the pornographic assumption that women may consent to forced sex. The law of child custody applies the pornographic definition of the female to mothers. Women who have sexual relations

with a man or men not the father of their children have long been considered loose women, hence not good mothers. Lesbian mothers have found that a woman who is not being sexually used by a man is considered an inadequate woman, hence also not a good mother. The frequent failures of attempts under sex-discrimination law to get women the same pay as men when they do different work of comparable value permits job definitions and pay scales to continue based on pornographic definitions of women's proper role as men's hierarchical subordinates, as sexually pleasing to men visually, and as servicers of male needs. It also keeps women so poor they need to sell sex to men to survive. The law of evidence pervasively permits a woman's credibility to be based upon the pornographic standard that what a woman is sexually and does sexually is the relevant measure of her word and her worth. If she has had sex, she is worthless as a human being and can neither be violated nor believed. If she has not had sex, she is worthless as a woman, hence is not worthy of belief. Pervasively, whether by the collaboration of ineffective or perverse action, or by the complicity of inaction, the legal system has supported the existence and burgeoning of this industry and its social propriety as well. Deep legal echos on all levels of the system support the existence of pornography in the world and make it seem right that the legal system condones it. What the law does, the law must undo.

Law in the United States provides a forum for airing disputes recognized as legitimate and an avenue for redressing grievances and harms considered worth redressing for people considered worth intervention. For individuals who are hurt by other individuals, civil court promises dignity to conflict, recognition to an arguable harm, some ground rules beyond overt force, an opportunity to fight for one's life, a chance for vindication, and the possibility of relief . . . maybe even a little change. Those whose harms the society takes seriously are permitted access to court; they are full citizens. Those whose harms the law refuses even to allow into court are not; they are victims, period. In this country, civil-rights law particularly has been an oppositional force for change. It has given

people dignity, self-respect, and hope, without which people cannot live. Ever since Black people demanded legal change as one means to social change, civil rights has stood for the principle that systematic social inequality—the legal and social institutionalization of group-based power and powerlessness—should and would be undone by law. Law would do this both because it had a shameful part in creating and maintaining social inequality and because it could do something about it. The fact that law had obscured or permitted inequality, had reflected and furthered it both, was seen not as a reason that law should be disregarded but as a reason it had to be used.

This was not done out of political naiveté or civics-class faith in the legal system's intrinsic justice. It was done out of determination to make this society's normal everyday mechanisms work for normal everyday people—all of them. Civil rights is a "Look, we live here, too" movement. It is not dedicated primarily to making the society more comfortable for outlaws or to lessening the stigma of marginality or to making powerlessness feel better. It is dedicated to changing basic norms so that what was outlaw and marginal and powerless no longer is. It aims to alter the mainstream. For civil-rights movements, then, the fact that law is an instrument of the powerful has never been an inert fact to be met with complacency or despair, far less a reason to leave its power in the hands of the powerful. It has been a reason that the law cannot afford to be ignored. The law's pretense at providing equal justice did not provide an occasion for cynicism, but a hypocrisy to be exposed and a promise to be delivered, not a radical reason to do nothing. The law of sex discrimination, aimed at altering the inequality of women to men, at eliminating the subordination of women to men *as a norm*, has been a part of this tradition, at least to some of us.

The civil-rights approach to pornography is an application of this tradition, this analysis, and this determination to the emergency of pornography and the condition of women. Accordingly, the antipornography civil-rights law ("the Ordinance") does not admonish or moralize or apologize or request. By making it possible for women who can prove harm

to sue pornographers, it draws a line by making action possible. In so doing, it defines a standard that tells the pornographers and their consumers that women are human beings, meaning that when they are hurt, something can be done about it. Unlike any prior approach to pornography, this law is based on proof of a harm, not a judgment about the permissibility of an idea. And, like all civil-rights legislation, it addresses a harm that derives its meaning and sting from group status.

The Ordinance

Statement of Policy

The statement of policy that begins the Minneapolis Ordinance capsulizes its legal approach:

Pornography is sex discrimination. It exists in Minneapolis posing a substantial threat to the health, safety, peace, welfare, and equality of citizens in the community. Existing state and federal laws are inadequate to solve these problems in Minneapolis.

Pornography is recognized as a practice of civil inequality on the basis of gender, posing the threats to its target population that all socially institutionalized inequalities do. This clause also recognizes the obvious fact that, while many of the acts that make up the distinctive harms of pornography are formally illegal, no existing laws are effective against them. If they were, pornography would not flourish as it does, and its victims would not be victimized through it as they are. Lawyers seeking to protect pornography often become extremely ingenious in inventing legal theories that they insist already cover all serious harms of pornography—legal theories they seldom intend to try to make work, by the way.

In fact, no laws now permit those victimized by pornography to sue the pornographers for the pornography. So long as the pornography can be made and sold, the harms of its making and use will continue, and the incentive to make it and sell it will continue. Obscenity laws have proven essentially unworkable against the industry—even with all the power at the disposal of federal, state, and local law enforcement, even in the hands of expert and committed lawyers. Zoning laws move some of the harms of pornography from one district to another, but do nothing to address them. Criminal laws exist against rape, battery, assault, kidnapping, sexual molestation of children, and many other acts that are standard practice in the pornography

industry. The problem is, police and prosecutors and judges and juries view the women in the materials the way the pornography does: because of what they are doing, they are not hurt by it. Consider also that the women in pornography are prostitutes, hence unlikely to find the criminal-justice system hospitable to their claims. Privacy laws also exist against commercial exploitation of image in some states. In theory, these would seem to protect some coerced models; in practice, they have proven virtually useless. Some states provide special laws restricting the use of a person's image after they are dead—small consolation to the victim, one imagines. Attempts are being made through sexual-harassment law to address pornography in the workplace; results are extremely mixed. Nothing addresses pornography forced on victims at home.

It is not unusual for civil-rights violations to include many acts that the dominant group has previously recognized as injurious, just not in a way that is workable for the subordinate group. For instance, the acts comprising lynching and much sexual harassment were formally illegal before they were recognized as abuses of civil rights, but until they were so recognized, nothing was done about them. Moreover, if laws currently addressed pornography through its harms to victims, such laws would be precedent for the Ordinance, not necessarily a reason it should not exist. This is only to say that the Ordinance cannot be both unconstitutional and legally redundant. But, in the real world, women who are abused through pornography have essentially made the same realistic assessment of their chances in the legal system that the legislatures who pass the Ordinance make: no laws now on the books are likely to work because they have not worked. Defending the legal status quo at a point like this is nothing but complacency and complicity with human suffering.

Findings

When legislatures pass a law, they often tell courts what they have learned and decided and why they are concerned about the subject. Hearings, constituent letters, and documents usu-

ally substantiate these conclusions of fact and statements of intent, called “findings.” Findings provide the factual basis for a law; they show the need and grounds for it. They also communicate to the courts that will apply it what the legislature saw and wanted, and the spirit in which the law is to be interpreted. Courts, as a result, often look at findings to see what the legislature was trying to accomplish, taking findings as authoritative evidence of legislative intent. Here are findings similar to those passed by the Minneapolis and Indianapolis city councils:*

Pornography is a systematic practice of exploitation and subordination based on sex that differentially harms women. The harm of pornography includes dehumanization, sexual exploitation, forced sex, forced prostitution, physical injury, and social and sexual terrorism and inferiority presented as entertainment. The bigotry and contempt pornography promotes, with the acts of aggression it fosters, diminish opportunities for equality of rights in employment, education, property, public accommodations, and public services; create public and private harassment, persecution, and denigration; expose individuals who appear in pornography against their will to contempt, ridicule, hatred, humiliation, and embarrassment and target such women in particular for abuse and physical aggression; demean the reputations and diminish the occupational opportunities of individuals and groups on the basis of sex; promote injury and degradation such as rape, battery, child sexual abuse, and prostitution and inhibit just enforcement of laws against these acts; contribute significantly to restricting women in particular from full exercise of citizenship and participation in public life, including in neighborhoods; damage relations between the sexes; and undermine women’s

* For the exact text of both Ordinances, see Appendix A (Minneapolis) and Appendix B (Indianapolis). Note that the findings here that support a claim for defamation through pornography had not yet been included in either Ordinance.

equal exercise of rights to speech and action guaranteed to all citizens under the Constitutions and laws of the United States and [place].

In Minneapolis, where the Ordinance was first introduced in late 1983, the City Council held public hearings to inquire into the effects of pornography and to provide the basis for a civil-rights law against it. Based on these hearings, and expanded and reconfirmed through the efforts of people in many communities, the Ordinance's findings outline a range of harms from the individual and intimate to the social and anonymous. In the hearings, women and men spoke in public for the first time in the history of the world about the devastating impact pornography has had on their lives. They spoke of being coerced into sex so that pornography could be made of it. They spoke of pornography being forced on them in ways that gave them no choice about seeing the pornography or later performing the sex. They spoke of rapes patterned on specific pornography that was read to them during the rape, repeated like a mantra throughout the rape; they spoke of being turned over as the pages were turned over. They spoke of the sexual harassment of living or working in neighborhoods or job sites saturated with pornography. A young man spoke of growing up gay, learning from heterosexual pornography that to be loved by a man meant to accept his violence, and as a result accepting the destructive brutality of his first male lover. Another young man spoke of his struggle to reject the thrill of sexual dominance he learned from pornography and to find a way of loving a woman that was not part of it. A young woman spoke of her father using pornography on her mother, and using it to keep her quiet about her mother's screams at night, threatening to enact the scenes on the daughter as well if she told anyone. Another young woman spoke of the escalating use of pornography in her marriage, unraveling her self-respect, her belief in her future, the possibility of intimacy, and her physical integrity—and of finding the strength to leave. Another young woman spoke of being gang-raped by hunters who looked up from their pornography at her and said it all: "There's a live

one." Many spoke of self-revulsion, of the erosion of intimacy, of unbearable indignity, of shattered self, of shame, and also of anger and anguish and outrage and despair at living in a country in which their torture is enjoyed and their screams are only heard as the "speech" of their abusers.

Therapists spoke of battered women tied in front of video sets and forced to watch, then participate in, acts of sexual brutality. Former prostitutes spoke of being made to watch pornography and then duplicate the acts exactly, often starting as children. Psychologists who worked with survivors of incest spoke of sexual tortures with dogs and electric shocks involving the consumption of pornography. One study documented more rapes in which pornography was specifically implicated than the total number of rapes that were reported at the time in the city in which the study was done. Correlations showed increases in the rate of reported rape with increases in the consumption figures of major men's entertainment magazines. Laboratory studies showed that pornography portraying sexual aggression as pleasurable for the victim (as so much pornography does) increases the acceptance of the use of coercion in sexual relations; that acceptance of coercive sexuality appears related to sexual aggression; that exposure to violent pornography increases men's punishing behavior toward women in the laboratory. It increases men's perceptions that women want rape and are uninjured by rape. It increases their view that women are worthless, trivial, non-human, objectlike, and unequal to men.

No one claimed that these things never happen without pornography. They said that sometimes it was because of pornography that these things happened. No one claimed that these are the only things that happen because of pornography. They said only that no matter what else happens, this does. The Ordinance was written, as the pornography and its defenses have been, in the blood and the tears of these women and men, in the language of their violated childhoods and stolen possibilities. The Ordinance, unlike the pornography and its defenses, was written in the speech of what has been their silence.

Definition

The way a legal definition works is that someone who wants to use the law must prove that each part of it applies to their case. For example, anyone who wants to use the antipornography civil-rights law would have to prove first that whatever materials they want to attack *are* pornography, by proving that they fit this definition.

Pornography is the graphic sexually explicit subordination of women through pictures and/or words that also includes one or more of the following: (i) women are presented dehumanized as sexual objects, things, or commodities; or (ii) women are presented as sexual objects who enjoy pain or humiliation; or (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or (v) women are presented in postures or positions of sexual submission, servility, or display; or (vi) women's body parts—including but not limited to vaginas, breasts, or buttocks—are exhibited such that women are reduced to those parts; or (vii) women are presented as whores by nature; or (viii) women are presented being penetrated by objects or animals; or (ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

The use of men, children, or transsexuals in the place of women in [the paragraph] above is also pornography.

Pornography is an industry. It exists in the world. No pornographer has any trouble knowing what to make. No distributor has any trouble knowing what to carry. No retailer has any trouble knowing what to order. No consumer has any trouble knowing what to buy. But before the Ordinance, the indefinability of pornography had become the key to its defi-

nition. Men had decided that the bottom line of pornography was that it was sexually arousing. Therefore, they were unwilling to have other men define it, or even to admit it could be defined, because that would be a step toward giving up what they like, which they were unwilling to do. Once the pornographic is synonymous with the sexually arousing, anything that is sexually arousing might be pornographic. But so many things produce that definite stirring between the legs, including the violence against women and violation of women and objectification of women in R-rated movies or *Vogue* magazine or Calvin Klein commercials or Yeats' "Leda and the Swan." So a definition of pornography with a core of meaning—far less one with limits that do not depend on whether the viewer is turned on or not—was pronounced intrinsically impossible.

The Ordinance adopts a simple if novel strategy for definition. It looks at the existing universe of the pornography industry and simply describes what is there, including what must be there for it to work in the way that it, and only it, works. It is true that pornography exists on a larger social continuum with other materials that objectify and demean women and set the stage for and reflect women's social devaluation. It is true that many materials (such as some religious works and sociobiology texts) express the same message as pornography and are vehicles for the same values. This does not mean either that pornography cannot be defined or that it does not operate in a distinctive way.

Pornography is *not* what pornography says. If it were, the Ordinance's definition of pornography would be itself pornography, because it says exactly what pornography is. In other words, the Ordinance does not restrict pornography on the basis of its message. The same message of sexualized misogyny pervades the culture—indeed, it does so more and more because pornography exists. But that does not make "Dallas" and "Dynasty" into pornography, however close they come. Indicators of the difference are that no one is coerced into performing for Calvin Klein commercials; no one is tied up in front of "The Secret Storm" and forced to enact its scenes later; no rapist or john we have heard of has read

Masters and Johnson or *Ulysses* aloud to his victim and demanded she perform its contents. Nor are these materials peddled on New York City's 42nd Street by organized crime. These indicators are no substitute for a definition. But they do show that, in the world, a lot of people know the difference between pornography on the one hand and art, literature, mainstream media, advertisements, and sex education on the other. This remains the case even though all these materials are definitely part of a world that one might call pornographic in the political sense: a world in which women are visual objects for sexual use. Such materials are not pornography—and, frankly, everyone knows they are not. The definitional task is merely to capture in words something that is commonly known and acted upon but not already totally defined in the world. This is hardly a unique problem in legal definitions.

Basically, for pornography to work sexually with its major market, which is heterosexual men, it must excite the penis. From the evidence of the material itself, its common denominator is the use or abuse of a woman in an expressly sexual way. To accomplish its end, it must show sex and subordinate a woman at the same time. Other people are sometimes used in similar ways, sometimes in exactly the ways women are, but always exploiting their gender. This is the reason that the definition covers everyone regardless of sex, yet covers each person as a member of their sex: that is the way the pornographers use them.

Under the Ordinance, pornography is what pornography *does*. What it does is subordinate women, usually, through sexually explicit pictures and words. Of all pictures and words, only sexually explicit pictures and words enter into sexual experience to become part of sexual reality on the deep and formative level where rapes are subliminally fantasized, planned, and executed; where violence is made into a form of sex; where women are reduced to subhuman dimension to the point where they cannot be perceived as fully human. But not all sexually explicit pictures and words do this in the same way. For this reason, the Ordinance restricts its definition only to those sexually explicit pictures and words that actually can be proven to sub-

ordinate women in their making or use. Too, many materials show women being subordinated, sometimes violently, including much mainstream media and feminist critique of violence against women. Some of this is sexually explicit, some is not. Not even all sexually explicit material that shows women being subordinated is itself a vehicle for the subordination of women; some of it, like the transcript of the Minneapolis hearings on pornography, expressly counters that subordination.

Subordination is an active practice of placing someone in an unequal position or in a position of loss of power. To be a subordinate is the opposite of being an equal. Prisoner/guard, teacher/student, boss/worker define subordinate relations. The simple notion on which the Ordinance is based, on account of which it has taken much criticism, is that man/woman not be such a relation, even though many people apparently cannot imagine sex any other way. Subordination is at the core of every systematic social inequality. It includes the practices that enforce second-class status. Subordination includes objectification, hierarchy, forced submission, and violence. Anyone who brought a case under the Ordinance would have to *prove* that the challenged materials actually subordinated women in their making or use in order to show that the materials were pornography. In other words, the fact that a legislature finds that pornography subordinates women enough to pass a law does not mean that all materials that someone might think are pornography are automatically illegal. It only gives women a chance to try to prove in court that specific materials are pornography because they actively subordinate women (and meet the other requirements), therefore fit the definition.

The definition is closed, concrete, and descriptive, not open-ended, conceptual, or moral. It takes the risk that all damaging materials might not be covered in order to try to avoid misuse of the law as much as possible. Some of the enumerated subparts specify presentations of women that show express violence; some focus on acts of submission, degradation, humiliation, and objectification that have been more difficult to see as violation because these acts are most distinctively done to women and called sex. Most of the public debate on the

enumerated subparts revolves around defenses of materials that individuals enjoy and feel they can get away with defending in public. Few are willing to defend violent pornography in public, even though the nonviolent materials are also known to be harmful, if in different ways—for instance, in their use by rapists and child molesters, in increasing the acceptability of forced sex, and in diminishing men's vision of the desirability and possibility of sex equality. Ignoring these similarities, some would limit the definition of pornography to violent materials, saying pornography is violence but not sex. This is unrealistic because pornography practices violence as sex. It would be unrealistic to limit a definition of pornography to conventional coital sex, since the pornographers do not, and just as impractical to exonerate everything in pornography that someone feels to be sex. Everything in pornography is sex to someone, or it would not be there.

The Ordinance makes the society have to choose whether some woman—usually poor and without options and formerly abused if not overtly coerced or tricked into being there—must be used or abused in these ways and bought and sold by pimps so that some segment of the buying audience can have its sex life the way it wants it. This is essentially what is at stake in debates over which specific presentations of women should be included on the list. What is not at stake is which sexual acts one enjoys or practices or prefers or morally approves. Whatever one's moral judgments, the presentations in the definition are there because there is material evidence that they do harm, and the decision has been made that the harm they do to some people is not worth the sexual pleasure they give to other people—not because the people making the laws do not like these acts sexually or disapprove of them morally.

The Indianapolis definition is restricted to sexual violence. If violence occurs in the making or use of the material, the material itself need not show violence. But violence *must* be shown *in the material itself* for a trafficking claim to be made. The Indianapolis definition allows a victim of coercion or assault to sue if the materials—in addition to being graphic, sexually explicit, and subordinating to women—present

women “as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of submission, servility, or display.” Often, individuals are coerced through violence into sexually explicit and subordinating performances, but the coercion itself is not shown in the film. Often the gun at the head is off stage. When it comes to the trafficking provision, however, this subpart of the definition provides the so-called “*Playboy* defense,” meaning that the Indianapolis legislature wished to exempt from trafficking actions materials that, in its view, did not actually show violence. So, in this version of the Ordinance, materials that show women as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility, submission, or display could be reached only by those who are coerced into them or assaulted because of them, but not by women generally.

Causes of Action

People hurt other people in many ways that are not against the law. To have a “cause of action” means that there is a law against what happened, so one can sue. The victims do not have to first fight about whether they are permitted to sue or not, the way women now, without the Ordinance, have to fight when they want to stop being hurt by pornography. With a cause of action, one only has to prove that what the law provides for has happened to you. The Ordinance provides five such possibilities for suit: for coercion into pornography, for having pornography forced on you, for being assaulted because of particular pornography, for defamation through pornography, and for trafficking in pornography.

Coercion

Coercion into pornography: It shall be sex discrimination to coerce, intimidate, or fraudulently induce (hereafter, “coerce”) any person, including transsexual, into performing for pornography, which injury may date from any appearance or sale of any product(s) of

such performance(s). The maker(s), seller(s), exhibitor(s), and/or distributor(s) of said pornography may be sued for damages and for an injunction, including to eliminate the product(s) of the performance(s) from the public view.

None of the following facts shall, without more, negate a finding of coercion: (i) the person is a woman; or (ii) the person is or has been a prostitute; or (iii) the person has attained the age of majority; or (iv) the person is connected by blood or marriage to anyone involved in or related to the making of the pornography; or (v) the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; or (vi) the person has previously posed for sexually explicit pictures with or for anyone, including anyone involved in or related to the pornography at issue; or (vii) anyone else, including a spouse or other relative, has given or purported to give permission on the person's behalf; or (viii) the person actually consented to a use of a performance that is later changed into pornography; or (ix) the person knew that the purpose of the acts or events in question was to make pornography; or (x) the person showed no resistance or appeared to cooperate actively in the photographic sessions or in the events that produced the pornography; or (xi) the person signed a contract, or made statements affirming a willingness to cooperate in the production of pornography; or (xii) no physical force, threats, or weapons were used in the making of the pornography; or (xiii) the person was paid or otherwise compensated.

The first victims of pornography are those in it. Pornography indelibly makes those it uses into its presentation of them, so that no matter who they are or what they say about how they really felt, to those who have seen them in pornography, they are pornography for life. Pornography is not like

other forms of acting or modeling. The viewers have a sexual stake in believing that the women in pornography are not models or actors but truly feel and want what the script calls for. That they are having a wonderful time seems essential to the sexual pleasure of the largest segment of the audience, although for many it is pleasurable to believe that the woman is being forced. Either way, the consumer believes that the woman in the material *belongs* there, that she is fulfilled in her nature by the acts performed on her. This is the bedrock to the scepticism that women are coerced into pornography.

Pornographers promote an image of free consent because it is good for business. But most women in pornography are poor, were sexually abused as children, and have reached the end of this society's options for them, options that were biased against them as women in the first place. This alone does not make them coerced for purposes of the Ordinance; but the fact that some women may "choose" pornography from a stacked deck of life pursuits (if you call a loaded choice a choice, like the "choice" of those with brown skin to pick cabbages or the "choice" of those with black skin to clean toilets) and the fact that some women in pornography say they made a free choice do not mean that women who are coerced into pornography are *not coerced*. Pimps roam bus stations to entrap young girls who left incestuous homes thinking nothing could be worse. Pornographers advertise for lingerie or art or acting models they then bind, assault, and photograph, demanding a smile as the price for sparing their life. Men roam the highways with penises and cameras in hand, raping women with both at once. Husbands force their wives to pose as part of coerced sex, often enforced by threats to the lives of their children. Women are abducted by pimps from shopping centers and streets at random, sometimes never to return. Young women are tricked or pressured into posing for boyfriends and told that the pictures are just "for us," only to find themselves in this month's *Hustler*.

Girls are enticed into posing for the photographer next door, confused at their feelings of uncomfortableness, shame, and affirmation. He makes them feel beautiful, with his approval, admiration, solicitude, presents, molestation. Fathers

sell pictures of sex acts with their own children to international pornography rings. Aspiring actresses and models are fraudulently induced into posing for nude or seminude shots, told the genitals will not show or it will be a silhouette or they will not be recognized—until they see themselves fully exposed and fully identified in *Penthouse*. Or they are told it will be their ticket to the top, only to find that most legitimate avenues are then closed to them *because* they appeared nude, so it is their ticket to the bottom. Until women are socially equal to men, it will be impossible to know whether any women are in pornography freely. And until women can bring an effective action for coercion into pornography, and get the product of their abuse off the market, it will be impossible even to begin to know how many of them are coerced.

Law has an elaborate tradition of reasons for believing that women lie about sexual force, reasons that duplicate pornography's view of women. The Ordinance's list of conditions that do not alone mean a woman is not coerced is a summary of these reasons. One or several of these facts—for example, that the woman signed a contract—may, with other circumstances, lead a trier of fact (a judge or a jury) to believe that she was not coerced. But the simple fact that a contract was signed may not mean that the woman was not coerced. If a woman can be coerced into having sex with a dog, she can be coerced into signing a contract. The point of this provision in the Ordinance is to prevent the *mere fact* of, say, a contract existing from being used to preclude inquiry into the coercion that may have produced it. This list is also intended to sensitize courts to the kinds of facts routinely used to undermine women's credibility.

Trafficking

Trafficking in pornography: It shall be sex discrimination to produce, sell, exhibit, or distribute pornography, including through private clubs.

(i) City, state, and federally funded public libraries or private and public university and college libraries in which pornography is available for study, including

on open shelves but excluding special display presentations, shall not be construed to be trafficking in pornography.

(ii) Isolated passages or isolated parts shall not be actionable under this section.

(iii) Any woman may file a complaint hereunder as a woman acting against the subordination of women.

Any man, child, or transsexual who alleges injury by pornography in the way women are injured by it may also file a complaint.

The trafficking provision makes it possible for any woman to bring a complaint against pornographers for subordinating women. It is not necessary for an individual woman to show that she has been harmed more than all other women have by pornography. It is definitely necessary for her to prove that the materials meet the definition of pornography, for which it is necessary to prove that they do the harm of subordinating women. A trafficking complaint would provide the opportunity for women to attempt to prove to the satisfaction of a trier of fact that there is a direct connection between the pornography and harm to women as a class. Such harm could include being targeted for rape, sexual harassment, battery, sexual abuse as children, and forced prostitution. It would include the harm of being seen and treated as a sexual thing rather than as a human being—the harm of second-class citizenship on the basis of gender. Sources of proof would be the same as those used as the factual basis for passing the Ordinance: the testimony of direct victims and other authorities and the materials themselves. The argument would be that pornography demonstrably makes women's lives dangerous and second class, that pornography sets the standard for the way any woman can be treated, that so long as it is protected women will not be. So long as it can be done, it will continue to be done—to a woman. Which woman is only a matter of roulette.

Women in pornography are bound, battered, tortured, harassed, raped, and sometimes killed. Or, in the glossy men's entertainment magazines, they are "merely" humiliated,

molested, objectified, and used. In all pornography, they are prostituted. This is done because it means sexual pleasure to pornography's consumers and profits to its providers. But to the women and children who are exploited through its making or use, it means being bound, battered, tortured, harassed, raped, and sometimes killed, or merely humiliated, molested, objectified, and used, because someone who has more power than they do, someone who matters, someone with rights, a full human being and a full citizen, gets pleasure from seeing it, or doing it, or seeing it as a form of doing it. In a case under the Ordinance, it could be shown at trial that in the hundreds and hundreds of magazines and pictures and films and videocassettes and so-called books now available in outlets from adult stores to corner groceries, women's legs are splayed in postures of sexual submission, display, and access. We are named after men's insults to parts of our bodies and mated with animals. We are hung like meat. Children are presented as adult women; adult women are presented as children, fusing the vulnerability of a child with the sluttish eagerness to be fucked said to be natural to the female of every age. Racial hatred is sexualized by making every racial stereotype into a sexual fetish. Asian women are presented so passive they cannot be said to be alive, bound so they are not recognizably human, hanging from trees and light fixtures and clothes hooks in closets. Black women are presented as animalistic bitches, bruised and bleeding, struggling against their bonds. Jewish women orgasm in re-enactments of death-camp tortures. In so-called lesbian pornography, women do what men imagine women do when men are not around, so men can watch. Pregnant women and nursing mothers, amputees and other disabled or ill women and retarded girls are used for sexual excitement. In some pornography called "snuff," women or children are tortured to death, murdered, to make a sex film.

Through its production, pornography is a traffic in female sexual slavery. Through its consumption, pornography further institutionalizes a subhuman, victimized, second-class status for women by conditioning orgasm to sex inequality. When men use pornography, they experience in their bodies

that one-sided sex—sex between a person and a thing—is sex, that sexual use is sex, sexual abuse is sex, sexual domination is sex. This is the sexuality they then demand, practice, and purchase. Pornography makes sexism sexy. It is a major way that gender hierarchy is enjoyed and practiced. Pornography is a sacred, secret codebook that has both obscured and determined women's lives. There laid bare is misogyny's cold heart: sexual violation enjoyed, power and powerlessness as sex. Pornography links sexual use and abuse with gender inequality by equating them: the inequality between women and men is both what is sexy about pornography and what is sex discriminatory about it.

In the hearings in Minneapolis, the harm of pornography was extensively documented in proceedings one observer, a member of the city's Civil Rights Commission, likened to the Nuremberg trials. Researchers and clinicians documented what women know from life: pornography increases attitudes and behaviors of aggression and other discrimination by men against women. Women testified that pornography was used to break their self-esteem, to train them to sexual submission, to season them to forced sex, to intimidate them out of job opportunities, to blackmail them into prostitution and keep them there, to terrorize and humiliate them into sexual compliance, and to silence their dissent. They told how it takes coercion to make pornography, how pornography is forced on women and children in ways that give them no choice about viewing the pornography or performing the sex. They told how pornography stimulates and condones rape, battery, sexual harassment, sexual abuse of children, and forced prostitution. We learned from the testimony that the more pornography men see, the more abusive and violent they want it to be; the more abusive and violent it becomes, the more they enjoy it, the more abusive and violent they become, and the less harm they see in it. In other words, pornography's consumers become unable to see its harm because they are enjoying it sexually. Men often think that they use pornography but do not do these things. But the evidence makes clear that pornography makes it impossible for them to tell when sex is forced, that women are

human, and that rape is rape. Evidence of a direct correlation between the rate of reported rape and consumption figures of major men's-entertainment magazines supports this. Pornography makes men hostile and aggressive toward women, and it makes women silent. Anyone who does not believe this should speak out against pornography in public some time.

Pornography also engenders sex discrimination. By making a public spectacle and a public celebration of the worthlessness of women, by valuing women as sluts, by defining women according to our availability for sexual use, pornography makes all women's social worthlessness into a public standard. Do you think such a being is likely to become Chairman of the Board? Vice President of the United States? Would you hire a "cunt" to represent you? Perform surgery on you? Run your university? Edit your broadcast? Would you promote one above a man? Pornography's consumers make decisions every day over women's employment and educational opportunities. They decide how women will be hired, advanced, what we are worth being paid, what our grades are, whether to give us credit, whether to publish our work. They also decide whether or not to sexually harass us, and whether other pornography consumers have sexually harassed us when we say they have. They raise and teach our children and man our police forces and speak from our pulpits and write our news and our songs and our laws, telling us what women are and what girls can be. Pornography is their Dr. Spock, their Bible, their Constitution. It is so basic it is a habit, their standard for what they "know" without knowing they know it. It simply makes up how they see the world, a world in which women, in order to be treated as equals, must try to convince them that we are exceptions among women, that is, that we, although female, are just as human as they are. In creating pervasive and invisible bigotry, in addition to constituting sex discrimination in itself, pornography is utterly inconsistent with any real progress toward sex equality for women.

Although the social position of men, children, and transsexuals is not absolutely defined by pornography in the way

women's is, they are often used in pornography in ways similar to the ways women are used. The Ordinance makes it possible for them to sue. The Ordinance also permits civil suits against the use of children in pornography. Specific subgroups of men, particularly gay men and Black men, would also have strong potential cases. For both, their civil status is made lower by their sexualization in pornography and in society. For both, one can see a direct relation between their use in pornography and their low social status. Gay men are often used literally in the same ways women are in pornography; their status being lowered to that of a woman is part of the sex. Abuse of gay men is also eroticized in pornography, promoting self-hatred of an oppressed group as its pleasure and identity. Black men in heterosexual pornography are presented through the same sexual stereotypes that have pervaded the racist use of the rape charge and that have arguably increased the likelihood that Blacks will receive the death penalty when they commit a crime against a white. Pornography sexualizes racism against them. Black men are reduced to the racist view of their sex: the oversized rapist penis, the color of the colonized and the chain gang. They are animalized, huge and promiscuous and amoral and out of control. Black men are also shown in chains, in sexualized slavery. The connection between violence against such men in pornography and violence against them in the world has not yet been fully documented, but would be possible to attempt under the Ordinance.

Force

Forcing pornography on a person: It shall be sex discrimination to force pornography on a person, including child or transsexual, in any place of employment, education, home, or public place. Only the perpetrator of the force or institution responsible for the force may be sued.

Pornography conditions the working environment of countless offices, construction sites, shipyards, hospitals, and homes. It pervades hierarchical arrangements. Doctors use it

on patients in therapy or in gynecologists' offices; men use it on wives and children in homes; teachers use it on students in schools; males use it on females in factories, nursing homes, day-care centers, everywhere. Sometimes the pornography is "just there," but escape is impossible short of being deprived of a job or a class. As is sometimes recognized in cases of sexual harassment, being deprived of a setting you have a right to be in can be a form of force in itself. Other times pornography is overtly forced on victims by physical or psychological terrorism. The Ordinance is designed to make possible suits against those who force pornography on others, but not against the pornographers themselves.

Assault

Assault or physical attack due to pornography: It shall be sex discrimination to assault, physically attack, or injure any person, including child or transsexual, in a way that is directly caused by specific pornography. Complaint(s) may be made against the perpetrator of the assault or attack and/or against the maker(s), distributor(s), seller(s), and/or exhibitor(s) of the specific pornography.

The debate over the relationship between pornography and violence against women has been haunted by a specter of absurdity: the man who rapes with a pornographic book in his back pocket. As it turns out, these specters are real. The assault section of the Ordinance does not resolve the debate on the relationship between pornography and rape. It does make it possible for an individual woman to sue a man who rapes her with a pornographic book in his back pocket—and its maker, distributor, and seller too. It gives her a chance *to try to prove* that there is a direct causal relationship between an act of violence against her and a specific piece of pornography.

Sometimes men rape or maim women sexually while telling them that they know they like it because they saw women like them in pornography who liked it. Sometimes they bring the pornography and force the women to open their legs, position

their arms, adjust their facial expressions, and say the exact words from the pornography. Sometimes they use specific pornography to decide what “type” of woman to rape, to get themselves ready for rape, to reduce their inhibitions to rape. Sometimes young boys murder themselves accidentally by strangulation because they are engaging in sexual play promoted in pornography. Under this provision, no one could sue pornographers for the general contribution pornography makes to a rape culture, a culture that equates sex with death. Specific pornographers could, however, be sued in an attempt to prove the causal contribution of specific pornography to the specific physical injury. Claims under this section would be very difficult to prove, but anyone who could prove causality by this standard should be able to keep the same pornography from causing other injuries, as well as receive damages.

Defamation*

Defamation through pornography: It shall be sex discrimination to defame any person through the unauthorized use in pornography of their proper name, image, or recognizable personal likeness. For purposes of this section, public figures shall be treated as private persons. Authorization once given can be revoked in writing at any time prior to any publication.

Some pornography simply turns individual women into pornography against their will, sexualizes them. A favorite tactic of the pornographers is to reduce specific women who are in the public eye to “cunt.” Whatever else a woman may have accomplished, whoever else she may be, particularly if she is successful, self-respecting, and/or feminist, she can be sold to any man for his personal sexual access and use for the price of a monthly magazine. This practice is particularly common in the case of prominent movie stars, many of whom had to do nude modeling for some part of their life, and promi-

* This provision was not proposed or included in either the Minneapolis or the Indianapolis Ordinance.

nent feminists, especially those who oppose pornography, whose heads are cut and spliced onto other women's bodies and genitals, or who are viciously caricatured in pornographic cartoons.

All pornography defames women as a class by devaluing them in the eyes of those who consume the material. It links women's reputation and women's sexuality by degrading both, and thus limits the possibilities for individual women. But some pornography goes further against specific individuals by undermining their individual reputations and destroying their standing in the community and their work possibilities. Defamation through pornography is a form of public rape that multiplies humiliation as it broadcasts it, takes away a woman's integrity, violates her personal boundaries, shatters her own self-respect in the mirror of the world around her, making an image of her that she walks into irrevocably whenever she walks down the street, suffocating her in her own bed at night. It undermines her authority. By lowering the floor for acceptable treatment of her, it makes possible virtually anything to be said about her and targets her for physical abuse as well. Those who are singled out for this exemplary form of public hanging are selected *because* they are women who are visibly self-possessed, effective, articulate, successful, feminist, or beautiful in a way the pornographers *must* defile, use, own, steal, sell.

Defenses

It shall not be a defense that the defendant in an action under this law did not know or intend that the materials were pornography or sex discrimination, except that in an action for damages for trafficking and in an action for damages against a publisher, seller, exhibitor, or distributor for assault, it shall be a defense that the defendant did not know or have reason to know that the materials were pornography.

Either pornography does harm or it does not. If it does, it does not stop doing so because the pornographers do not know

that it is pornography or that it does harm. But pornographers know exactly what they are doing and to whom; they just do not care. The problem is, the more they know what they are doing, the more difficult it becomes to *prove* that they know, because they are far better at covering up what they do than are those who act unconsciously or inadvertently. As a result, requiring victims to prove that perpetrators like pornographers know or intend their acts against them is an invitation to cover-ups that would make the Ordinance a dead letter.

The main practical purposes of the Ordinance are to stop the harm of pornography from continuing and to compensate direct victims in a way that both helps them and provides some deterrent to future abuse. In light of these purposes, this provision recognizes the difference between major pornography distributors and the legitimate booksellers who sell an occasional item of pornography. Women and children are not being bought and sold in this country so that legitimate booksellers can sell the occasional copy of the Marquis de Sade's *120 Days of Sodom*. But women and children are being raped because they are doing this. Therefore, they can be sued for selling materials that cause assault. If they were sued for damages for trafficking, they could argue that they did not know or intend what they sold to be pornography. They might win and they might not.

A big producer or distributor of pornography would have a difficult time credibly denying that he knew or had reason to know that he was in the pornography business. Often it is so advertised. Plaintiffs could attempt to prove compensatory damages against such big traffickers for all the sexual assault, forced prostitution, street harassment, and civil denigration they arguably cause. Punitive damages (money paid to victims to punish perpetrators) could be requested as well. But it might well be more difficult to show that a legitimate bookseller being sued for trafficking, or for assault due to specific pornography, knew or had reason to know he was selling pornography. This provision thus protects legitimate booksellers from damages for truly inadvertent violations while retaining the ability to stop all of them.

Enforcement

Civil Action

Any person aggrieved by violations of this law may enforce its provisions by means of a civil action filed in a court of competent jurisdiction. No criminal penalties shall attach for any violation of this law.

The evidence that supports the Ordinance might well justify criminal penalties under existing legal standards, and some may be appropriate. In order to empower women, however, the Ordinance as currently designed operates civilly. This means that no police seize materials and impound them while legal proceedings drag on. No prosecutors decide whether or not a woman's case is valid. While it might be advantageous at some point to engage the help of the state apparatus against the pornographers, it is clear that the entire structure of state, federal, and local government, with all the resources and power at its disposal, has not managed to do anything significant about the pornography industry.

It is time to place the power to remedy the harm in the hands of those who are hurt, rather than to enhance the power of those who have done so little with so much for so long. Currently, there are laws against rape, domestic battery, and sexual abuse of children, and prosecutors and police do virtually nothing effective about these problems. Too, pornographers are in the pornography business largely to make money. After a rare conviction for obscenity, many continue to run their businesses from jail. They cannot, on our analysis, continue their business without hurting women and children. Therefore, empowering those that the pornographers must hurt to do business by making it possible for their victims to target a reason the pornographers do that business seems like the most obvious, best, perhaps only chance of ultimately eliminating them.

Damages

Any person who has a cause of action, or their estate, may seek nominal, compensatory and/or punitive

damages without limitation, including for loss, pain; suffering, reduced enjoyment of life, and special damages, as well as for reasonable costs, including attorneys' fees and costs of investigation.

In claims for trafficking or against traffickers under the assault provision, no damages or compensation for losses shall be recoverable against maker(s) for pornography made, against distributor(s) for pornography distributed, against seller(s) for pornography sold, or against exhibitor(s) for pornography exhibited, prior to the effective date of this law.

The purpose of money damages in lawsuits is to compensate the victim for the injury. While it is impossible truly to compensate anyone for the harm of pornography, it is also impossible truly to compensate for the injury of libel, wrongful death, dismemberment, medical malpractice, and most other personal injuries that are compensated all the time. The particular point of damages under this civil-rights law is twofold: to recognize that something that belonged to the victim was wrongly taken from her, and to provide restitution in the same terms that provided the pornographers with an incentive to take it in the first place. Pornographers are in the pornography business to make money. As a matter of policy, any scheme to stop them must recognize that a major motivation to abuse is financial.

Injunctions

Any person who violates this law may be enjoined, except that (a) no temporary or permanent injunction shall issue prior to a final judicial determination that the challenged activities constitute a violation of this law, and (b) no temporary or permanent injunction shall extend beyond such materials that, having been described with reasonable specificity by the injunction, have been determined to be validly proscribed under this law.

The civil-rights injunction is a recognized tool for relieving

civil-rights abuses in schools, housing, employment, prisons, mental-health facilities, and countless other settings. Yet, applied to pornography, this provision is often mischaracterized as a "ban." It works the same way all civil-rights injunctions work: once a practice is shown to injure its victims, a court can issue an order to stop it. In a case of coercion, the court could stop the coerced materials from being sold. In a case of force, the court could stop the forcing of pornography from continuing. In a case of assault, the court could stop the material proven to have caused the assault from being distributed or sold further. In a case of trafficking, the court could stop materials proven to subordinate on the basis of sex from being made, circulated, sold, or shown. None of these steps could be taken until all the appeals in the case were through, and it could be taken only against materials that have been specifically described.

Technicalities

Severability

Should any part(s) of this law be found legally invalid, the remaining part(s) remain valid, if consistent with the overall intent of this law.

Most laws have a provision that invites courts to uphold some parts of the law even if it finds other parts of it invalid. The Indianapolis Ordinance was particularly careful to permit a reviewing court to uphold the law against actual presentations of a woman being subordinated, even if other parts of the law were invalidated.

Limitation of Action

Complaints under this law must be filed within six years of the discriminatory acts alleged.

Abuse through pornography often occurs over a long period of time, ending only when the victim can find the resources or means or self-respect to escape. The impact of the abusive process, coupled with the fact that the society protects

and defends the abuser and ignores and stigmatizes the abused, undermines the victim's sense of personal efficacy, trust, belief in political action, and faith in the legal process. By the time individuals recover sufficiently to act, the time period within which they must complain before the injury expires has long elapsed. Discrimination laws customarily allow a disgracefully and uniquely short several-month period within which to complain. The six-year period provided by the Ordinance is more like the usual period allowed for personal injuries the law takes seriously. The time period would start to run from the last date the injury was done, except when it was argued that there was a good reason to start it later—for example, because the victim was a child when the abuse ended, or because an adult victim remained under duress or threat although the forced pornographic performances had ended.

Civil Rights and Speech

The Ordinance takes power from some of the most powerful people in society—those who can buy and sell other human beings for intimate gratification—and gives it to some of the most powerless people in society—those who, as a class, have previously been intimately violated with impunity. Given the way the law has framed the pornography question to benefit the powerful, one could expect that the first judicial response to this redistribution would be negative. It was. In 1985, in a lawsuit brought by a media group (some pornographers, most not) against the City of Indianapolis for passing the Ordinance, the U.S. Court of Appeals for the Seventh Circuit found that the Ordinance violated the First Amendment guarantee of freedom of speech. The decision conceded that pornography does the harm we say it does, and the legislature said it did: contributing materially to rape and other sexual violence, constituting a form of subordination in itself, and being partly responsible for second-class citizenship in many forms, including economic ones. But the decision held the pornography was more important—indeed, that one could tell how important the pornography was by the harm that it did.

Miscasting the Ordinance into obscenity's old drama of ideas, the decision assumed that the Ordinance restricted ideas even though the Indianapolis Ordinance was confined to four practices: coercion into pornography, forcing pornography on a person, assault due to specific pornography, and trafficking in materials that subordinate women. So far as the Ordinance is concerned, all the ideas pornography expresses can be expressed—so long as coercion, force, assault, or trafficking in subordination is not involved. These are acts, not viewpoints or ideas. Coercion is not a fantasy. Force is not a symbol. Assault is not a representation. Trafficking in subordination is an activity two times over—once as trafficking and once as subordination—not just a mental event.

Under United States law, speech interests are regularly found less important than other interests when courts decide that pictures and words are false, obscene, indecent, racist, coercive, threatening, intrusive, or even inconvenient or inaesthetic. Using a child to make sex pictures, or distributing or receiving such pictures—whether or not the child is forced, whether or not one knows that the child is a child, and whatever the sex pictures show—is a crime for which one can be put in jail. Yet the Seventh Circuit decision on the Ordinance tells women that because pornography expresses a viewpoint about women, it does not matter if it is also coerced, assaultive, or discriminatory. Because a picture of a coerced woman might be artistic or scientific or educational, she is told she should have no action for coercion that reaches the pictures. Because films of women being raped and enjoying it express a point of view about women and sex, the fact that they cause assaults of other women—conceded by the court—is not legally important.

The Ordinance, a law against sex-based discrimination, was thus itself held to be discrimination on the basis of “viewpoint.” This was apparently because the Ordinance takes a stand for sex equality, not against it. This was because the Ordinance is not neutral on the subject of sex-based exploitation, abuse, and discrimination. Every practice expresses a point of view; acts express ideas. Yet acts and practices are legally restricted anyway, and they do not have to be proven expressionless first. Segregation expresses the view that Blacks are inferior to whites and should be kept separate from them. Segregation is often enforced with pure speech, like signs that read “Whites Only.” Segregation is not therefore protected speech. Such a sign is not a defense to a civil-rights violation but evidence of it. Laws against segregation are not discrimination on the basis of viewpoint, although they absolutely prohibit the view that Blacks should not mix with whites from being expressed in this way. This is true even though deinstitutionalizing segregation as a practice in the world does a great deal to undermine the point of view it expresses.

Indeed, most discrimination revolves around words, words that are clear vehicles for an ideology of exclusion or access

and use—words like “You’re fired, we have enough of your kind around here,” “Sleep with me and I’ll give you an A,” or “Constituent interests dictate that the understudy to my administrative assistant be a man.” Discrimination in employment or housing or through sexual harassment could not be addressed by law, far less be proven to have happened, if their speech elements rendered the entire cycle of abuse protected because the words so central to their actualization express a point of view.

Lynching expresses a clear point of view about Blacks, one it is difficult to express as effectively any other way. One point of lynching is that other Blacks *see* the body. The idea expressed by the body being hung on view in public is that all Blacks belong in a subordinate position and should stay there or they will be horribly brutalized, maimed, and murdered like this one was. Another point of lynching is that whites see the body. Its display teaches them that they are superior and this was done for them. Photographs were sometimes taken of lynchings and made available for 50 cents apiece. Compare such a photograph with a 1984 *Penthouse* spread in which Asian women were bound, trussed, and hung from trees. One cannot tell if they are dead or alive. In both cases, individuals are hung from trees; often the genitals were displayed. In both cases, they are people of color. In both cases, sexual humiliation is involved. But because the victim of the lynching is a man, the photograph is seen to document an atrocity against him and an entire people, while, because the victim of the pornography is a woman, it is considered entertainment and experienced as sex and called speech and protected as a constitutional right.

If lynchings were done *in order to* make photographs, on a ten-billion-dollar-a-year scale, would that make them protected speech? The issue here is not whether the acts of lynching are illegal or not. (As with the acts surrounding pornography, on paper they mostly were illegal, while in reality they mostly were not—not until a specific law, a civil-rights law, was passed against them.) The issue is also not whether lynchings or sexual atrocities can be visually documented. The issue is

rather, given the fact that someone must be lynched to make a picture of a lynching, how is a picture of a lynching regarded, socially and legally. If it takes a lynching to show a lynching, what is the social difference, really, between seeing a lynching and seeing a picture of one? What would it say about the seriousness with which society regards lynching if actual lynching is illegal but pictures of actual lynching are protected and highly profitable and defended as a form of freedom and a constitutional right? What would it say about the seriousness and effectiveness of laws against lynching if people paid good money to see it and the law looked the other way, so long as they saw it in mass-produced form? What would it say about one's status if the society permits one to be hung from trees and calls it entertainment—calls it what it is to those who enjoy it, rather than what it is to those to whom it is done?

Courts have often sided with those who would lose power if equality were taken seriously. One way courts have done this is by invalidating effective measures against discrimination by calling them discrimination in reverse, or reverse discrimination. The Court of Appeals did exactly this in its decision in the legal challenge to the Ordinance: it called legislative action against discrimination itself a form of discrimination. The court thus actively supported discrimination by blocking legal action against it. In other words, the court acted as if state-sanctioned sex inequality were state neutrality on the subject by holding that allowing citizens to pursue sex equality was state-sanctioned discrimination. In this way, acting against discrimination was made indistinguishable from discrimination itself, and inequality was made indistinguishable from equality as a state policy goal. Although the court did not for a moment question that pornography is a form of sex discrimination, it seemed not to understand that in protecting the pornographers, the court *embraced admitted sex discrimination as state policy*. In perhaps its final conceptual perversity, the Seventh Circuit elevated the law against obscenity—and obscenity is *nothing but an idea* that depends on moral and value judgments, which themselves depend entirely on point of

view—as a standard by which to find the Ordinance, which restricts bigoted *acts*, unconstitutional as a form of “thought control.”

Yes, pornography is propaganda; yes, it is an expression of male ideology; yes, it is hate literature; yes, it is the documentation of a crime; yes, it is an argument for sexual fascism; yes, it is a symbol, a representation, an artifact, a symptom of male dominance; yes, it conveys ideas as any systematic social practice does. It is also often immoral, tasteless, ugly, and boring. But none of this is what pornography distinctively is, how it works, what is particularly harmful about it, or why we have to stop it. Was the evil of the Holocaust what it *said* about Jews? Was ending it a form of thought control? If Dachau had been required to make anti-Semitic propaganda, should it have been protected speech? Pornography is a systematic act against women on every level of its social existence. It takes a rape culture to require and permit it. It takes acts against women to make it; selling it is a series of acts (transactions) that provide the incentive to make it and mass-produce the abuse; consuming it is an act against women and spawns more acts that make many more women’s actual lives dangerous, meaningless, and unequal. It is therefore an act against women to protect and defend it.

Women, it is said, should be loyal to pornography because our freedom and equality depend on protecting it. This is because pornography, it is said, is freedom and equality, so doing anything about it is repression, fascism, and censorship. In practice, this has meant that whatever the pornographers do is “speech,” and whatever those who oppose them do is censorship. Actually, this is a matter of point of view. Whoever takes the point of view that pornography is “speech” takes the officially protected viewpoint, hence is uttering “speech” that is protected as such.

Whoever takes the point of view that pornography is a practice of censorship and silence and institutionalized deprivation of liberty is, in this view, practicing censorship, even if only words are used. This point of view can be silenced in the name of speech. Women screaming in pain in a pornography

film is "speech." Women screaming in the audiences to express their pain and dissent is breach of the peace and interferes with "speech." "Snuff" is "speech." Demonstrators who use strong language to protest "Snuff" are arrested for obscenity. When *Penthouse* hangs Asian women from trees, it is "speech." When antipornography activist Nikki Craft leaflets with the same photographs in protest, she is threatened with arrest for public lewdness. When B. Dalton sells pornography in a shopping mall displayed at a child's eye level, that is "speech." When Nikki Craft holds up the same pornography in the same shopping mall in protest, she is detained in a back room of B. Dalton's by the police for contributing to the delinquency of minors. When pornographers make pornography of feminists, that is "speech." When publishers refuse to publish feminist work, saying that publishing Andrea Dworkin is bad for freedom of speech because of her opposition to pornography, that is the way freedom of "speech" is supposed to work. Nor could she get an article published discussing these examples.

When the Attorney General's Commission on Pornography wrote a letter to solicit information on pornography sales, the Commission was sued by pornographers saying that these *words* were intimidating, and a court enjoined *publication* of the results. Now, the pornographers censor the government in the name of freedom of speech, while those who *speak* of women's rights against pornographers are called censors for trying to do something about it.

When the Seventh Circuit's decision on the constitutionality of the Ordinance was appealed to the U.S. Supreme Court, a new kind of silence enveloped it: the silence of the powerful. The Court disposed of the case by a procedure called summary affirmance, meaning no written briefs, no oral arguments, and no reasons. This procedure, designed primarily for cases that prior law has clearly resolved, was highly unusual for the Court to use in this sort of case, one in which a federal Court of Appeals invalidated a local ordinance on a U.S. constitutional ground on a theory the Supreme Court had never heard before. The Supreme Court (with three dis-

sents) summarily affirmed the Court of Appeals decision, bare of supporting authority, presumably because there is none. In this arrogant way, the Indianapolis Ordinance was in effect found unconstitutional.

Technically, a summary affirmance upholds only the result and whatever is essential to it; no view is expressed on the reasoning the court below used. So there is no way of knowing what the Supreme Court really thinks about the civil-rights approach, because it said nothing about its reasons. The Seventh Circuit's decision remains a precedent until another case on the Ordinance is heard. But the Supreme Court could take another case on the Ordinance at any time without being bound either by the logic of the Seventh Circuit decision or by its own prior summary action. So the ultimate constitutionality of the civil-rights approach has not yet been determined. The current barriers to its reenactment and use are political, not legal—or, rather, they are politics disguised as law.

The truth is, a revised Ordinance taking the civil-rights approach could be passed today and ultimately receive new scrutiny before the Supreme Court. In a test of the constitutionality of such an Ordinance—perhaps in a real case brought by a victim of pornography, rather than by a media plaintiff—the role of the Seventh Circuit decision and the Supreme Court's summary affirmance would be one matter to be argued. The summary affirmance would not mean that such an argument could not happen or that its outcome was already decided in advance. If this was any problem other than pornography, any problem power wanted to solve—especially given the virtual invitation to try again provided by the three Supreme Court dissents—state, local, and federal legislators and their legal counsel would be falling all over themselves and each other to be the first to devise an antipornography civil-rights ordinance that would solve the problem yet be found constitutional. Instead, in a capitulation to authority, it is widely supposed that nothing more can be done. Media lies have been widely believed that because of the summary affirmance, the civil-rights approach to pornography is constitutionally dead. As with slavery and segregation, which the U.S.

Supreme Court once held constitutional, what the courts say is accepted and the truth is not. And, as with the pornography itself, what the media says is believed and the truth is not.

Where we stand now is that *protecting and defending pornography is the official state position*. The courts have decided that an entire class of women will be treated in these ways so that others can have what they call freedom of speech: freedom meaning free access to women's bodies, free use of women's lives, speech meaning women's bodies as a medium for those others' expression. As Black people were once white men's property under the U.S. Constitution, women are now men's "speech." It seems that our pain, humiliation, torture, and use is something they want to say.

The complicity of law with the harm of pornography to women has now gone a full step beyond tacit inaction, bungling, waffling, evasion, ineptitude, deceptiveness, or lack of will. Now, the law has expressly lined up on the side of the pornographers; now, the law has affirmatively decided that pornography is more important than the women admittedly harmed. This the law has done. This the law can and must undo.

Questions and Answers

Q: What is the difference between hard-core and soft-core pornography?

A: Before pornography became an above-ground industry, the distinction was pretty simple. "Hard-core" was pornography in which an erect penis was shown. The penis could belong to a man or to an animal. For this reason, the pornography of bestiality, which usually showed a male animal penetrating a woman, was considered to be "hard-core." There was a real taboo against showing the erect penis on the screen or in magazines. Police were more likely to make arrests and to confiscate material if the erect penis was graphically shown.

As pornography became more mainstream, with more legal protection, people inside and outside the pornography industry began to obfuscate the meaning of "hard-core." People outside the pornography industry, many of whom were not consumers of pornography but felt that they knew what was in it, began to use "hard-core" to refer to explicitly debasing or violent material and "soft-core" to refer to material they thought was purely sexual. "Hard-core" came to mean the worst pornography, "soft-core" the most benign.

Because *Playboy* and *Penthouse*, for instance, were the most available and most legitimate pornography, they became the standard for "soft-core," material that was supposedly purely sexual, not misogynist or violent. Currently in popular usage, "soft-core" is virtually a synonym for *Playboy* and *Penthouse*. In one sense, both magazines are "soft-core": neither shows the erect penis; in fact, with rare exception, neither shows nude men. But in a more important sense, "soft-core" is a misnomer, because both magazines show violent and violating uses of women's bodies; both magazines include overtly violent material; both magazines have material that promotes rape and child sexual abuse.

As used by most people, the two terms are fairly meaningless. Most often, "soft-core" means pornography that some-

one thinks is okay; “hard-core” is pornography that someone thinks is the real stuff, dirty, mean, and at least a little abusive and repulsive. “Hard-core” has the aura of breaking taboos around it and pornographers use it in advertising as a point of pride.

The terms tell us nothing about how women are used in pornography and nothing about how the pornography itself is then used on women or children.

Q: How can you object to *Playboy*?

A: *Playboy* is a bona fide part of the trade in women.

The format of *Playboy* was developed to protect the magazine from prosecution under obscenity law. Writing from recognized writers was published to meet a standard of worth that would get the magazine First Amendment protection. The First Amendment was then used by *Playboy* to protect its sexual exploitation of women. *Playboy* sells women.

The use of women as objects in *Playboy* is part of how *Playboy* helps to create second-class status for women. Women in *Playboy* are dehumanized by being used as sexual objects and commodities, their bodies fetishized and sold. The term “bunny” is used to characterize the woman as less than human—little animals that want sex all the time, animals that are kept in hutches.

The women in *Playboy* are presented in postures of submission and sexual servility. Constant access to the throat, the anus, and the vagina is the purpose of the ways in which the women are posed.

Playboy has made a specialty of targeting women for sexual harassment: working women, including nurses, police, and military personnel; and presumptively educated women, including university students and lawyers.

Underlying all of *Playboy*’s pictorials is the basic theme of all pornography: that all women are whores by nature, born wanting to be sexually accessible to all men at all times. *Playboy* particularly centers on sexual display as what women naturally do to demonstrate this nature.

Playboy, in both text and pictures, promotes rape.

Playboy, especially in its cartoons, promotes both rape and child sexual abuse.

There is also some amount of overtly violent material in *Playboy*. The text often enthusiastically promotes various acts of violence against women, including gang-rape. The pictures usually include some pictures that show sadomasochism: women are hurt in them or are in some physical danger. (For example, a woman is naked with acupuncture needles all over her body, including in her breasts; or a woman is chained to a pole and surrounded by laser beams.)

Hugh Hefner founded *Playboy* in 1953. An early issue used an employee as a centerfold; as her employer, Hefner had sex with her too. This has remained the pattern, the women who work for *Playboy*, especially the centerfolds, being Hefner's own primary preserve of women. As the *Playboy* empire has increased in power and wealth, Hefner's personal use of the women in the magazine has continued and expanded. He uses them and he sells them. Now the women are brought to him by lesser pimps; he need not do the recruiting himself. For instance, Linda Marchiano, known as Linda Lovelace in the pornographic film "Deep Throat," was pimped to Hefner by her then-husband, Chuck Traynor. Hefner sodomized her and tried to have her have intercourse with a dog. Dorothy Stratten, a *Playboy* centerfold who was sodomized, tortured, murdered, then raped after she was dead by her pimp-husband, Paul Snider, was tricked and intimidated into photo sessions by Snider, who then sold the photos and access to Dorothy herself to Hefner. Ms. Stratten said she was sexually molested by Hefner. After her death, Hefner was made aware that Ms. Stratten had hated the pornography made of her and had hated posing for it. He responded by issuing more videotapes of Ms. Stratten posing. Dorothy Stratten's estate entered a brief in her behalf in support of the Indianapolis Ordinance. The brief outlined how Ms. Stratten had been pressured into pornography. The hope of her estate was that the Ordinance could be used to recover and destroy videotapes and photographs (primarily in back issues of *Playboy*) that are still being trafficked in.

The women used by Hefner personally and in the magazine are rarely much over eighteen. Ms. Stratten was underage when she was initially pimped to Hefner.

The sexual exploitation of women is what the magazine is, what it does, what it sells, and how it is produced.

Q: Pornography is the fault of the women who pose for it. Why don't they just stop posing?

A: The women in pornography are most often victims of child sexual abuse. Some studies show that 65 to 75 percent of the current population of women in prostitution and pornography (overlapping experiences for the same pool of women) have been abused as children, usually in the home. People who work with women who are in pornography and prostitution to provide social services or counselling, some of whom have been in pornography or prostitution themselves, believe the percentage is much, much higher. Children run away from home, from the sexual abuse, to cities where they are picked up by pimps, raped, beaten, drugged, and forced into prostitution or pornography.

Women in pornography are poor women, usually uneducated. Pornography exists in a society in which women are economically disadvantaged. The only professions in which women make more money than men are modeling and prostitution—and in prostitution, the pimps keep most if not all of it. Women's economic value is determined largely by sexual value: how much the woman's body is worth in the marketplace as a commodity.

Many women are forced into pornography as children by fathers who sexually abuse them; pornography is made of them as part of the sexual abuse they experience as children. Many women are forced into pornography by husbands, many of whom are violent (battery of married women being the most commonly committed violent crime in the country). Many women are photographed by lovers and find the photographs published as pornography in revenge or retaliation. Aspiring actresses and models are photographed nude, almost a trade practice, and find the photographs published against their will and without their knowledge in pornography.

When a woman has been forced into pornography, the pornography itself is used to keep her in a life of sexual exploitation and abuse. Think of what happens when a battered wife asks for help. She is doing what society says women should do: she is married, and the sustained battery is proof that she has been loyal to her husband, she has stayed with him, the way women are supposed to. She may be badly hurt over a period of years. When she leaves home, she is often treated as a pariah, told the brutality is her own fault. Now think of the woman forced into prostitution. She is without the so-called protections of a respectable life. She has been abandoned, if not injured in the first place, by her family. Society has no place for her and despises her for what she has been doing. The photographs of her engaging in violating sex acts—violating of *her*—usually show her smiling, as if she enjoyed being used or hurt. Where can she turn? Where can she run? Who will believe her? Who will help her? Will you? (If you won't, don't assume anyone else will.)

The pimp or pornographer will come after her. If he is her husband or her father, he will have a legal right to her. He will be violent toward her and toward anyone who tries to help her. She will be terribly hurt from the life she has been leading: she will be injured from the pornography and prostitution; she may be addicted to many drugs; she will be filled with anger and self-hate and despair.

Battered women's shelters, of which there are not enough, many of which are understaffed, will probably not offer her shelter. They are afraid of the pimps and they are afraid of the host of antisocial behaviors that the woman herself may demonstrate. Rape crisis centers do not have resources to offer shelter at all but they are also not prepared to counsel prostitutes, even though most have been raped many times and suffer the trauma of multiple rape.

The women in pornography are the first victims of pornography. The pornographers, not the women they hurt, are responsible for pornography. The men who buy and use the pornography are responsible for pornography, not the women who are violated to make the product they so enjoy.

And the society that protects the pornography is responsible for pornography: the courts that value the so-called rights of the pornographers over the humanity, the dignity, the civil equality of women; the publishers and writers who keep protecting the trafficking in women as if the commercial violation of women were a basic right of publishing; the lawyers, the politicians, the media, who congregate to chant self-righteous litanies in worship of the Constitution while women are raped for fun and profit under its protection.

Q: Isn't pornography just a symptom, not a cause, of misogyny? Pornography didn't *cause* patriarchy, did it? It's not really important, is it?

A: An incredible double standard is always applied to thinking about or doing anything about pornography.

If pornography hurts women now, doesn't something need to be done about it? If women are hurt in making pornography, doesn't something need to be done? If pornography is used to choreograph and execute rape, incest, battery, and forcing women into prostitution, doesn't something need to be done? If pornography actually creates attitudes and behaviors of bigotry and aggression against women, as many laboratory studies demonstrate, doesn't something need to be done? If pornography causes rape, or sexualized torture, or increases sadism against women, or plays a role in serial murders, or contributes substantially to legitimizing violence against women, isn't it important to do something about pornography? If pornography spreads woman hating and rape as mass entertainment, how can feminists ignore or be indifferent to it as a political issue of equality? Think about the maxim "Equal pay for equal work." We understand that women are hurt by being paid less than men for doing the same work. Lower pay keeps us poorer, which debases the quality of our lives, and keeps us dependent, which does the same. Pay discrimination did not cause patriarchy. Pay discrimination is a symptom of women's lower status. It is a result of misogyny, not a cause. At the same time, pay discrimination perpetuates women's lower status (by

keeping us poor) and confirms men in their misogyny (the conviction that women are worth less than men). No one would suggest that feminists abandon the fight, including the legal fight, for equal pay because it is “only a symptom,” not a cause, of patriarchy itself.

Now, in fact, feminists want equal pay for work of comparable worth. Because the job market is still highly sex-segregated and the jobs women do are economically devalued because women do them, feminists are proposing that men and women should be paid the same if their jobs, though different, have similar economic and social value. We have gotten legislation passed in some places mandating equal pay for comparable work. We have claimed economic equity as a right and we want society to be reorganized so that we can realize that right. The economic disparity between men and women is a symptom of male supremacy, but, however symptomatic it is, it injures women, so we want to stop it. In getting rid of this symptom of male supremacy, we also know that we would make male supremacy a little less supreme.

Have you ever had a very high fever—104° or 105°—just the symptom of a serious, underlying disease or infection? You had better believe that the first order of business is to reduce the fever because, even though it is a symptom, it may well jeopardize your life and on its own can irreparably damage your health. And you will feel very sick with the fever and less sick without it.

Some symptoms are pretty terrible, and it is important to try to get rid of them.

With pornography, there is massive evidence that pornography is not only a symptom of misogyny but an active agent in generating woman-hating acts and second-class status for women. Pornography sexualizes inequality and the hatred of women so that men get sexual pleasure from hurting women and putting women down. It creates bigotry and aggression. It desensitizes men to rape and other forms of sexual violence against women so that they do not recognize the violence as violence, or they believe the woman provoked and enjoyed it. Pornography is used as a blueprint for sadism, rape, and torture. It is used to force women and children into prostitution.

It is used to coerce children into sex. Sex offenders use it to plan their crimes and to prime themselves to commit their crimes. It is implicated in the biographies of serial murderers and in the commissions of the murders themselves. It is more than a very high fever. It does as much damage as low pay. How can we justify not doing something about it, whether it is a symptom or a cause?

Some people claim that pornography is irrelevant to violence against women. They say that pornography is new and contemporary and that rape, battery, and prostitution are old. They say that pornography cannot be a cause of violence against women because violence against women existed long before pornography.

This is not true, but suppose it were.

Even if pornography is a cause now, and never was before, we would have to do something about it now. Think about environmental pollution. It causes various kinds of cancer (though those who make the pollution don't think so). Cancer existed long before the kinds of environmental pollution that come from highly industrialized societies. But this does not mean that pollution in our society does not cause cancer in our society.

In fact, pornography has a long history in Western civilization (and in Asian and other civilizations too). Its history is as long as the documented history of rape and prostitution (the so-called oldest profession, the misogynist meaning being that as long as there have been women, women have prostituted themselves). We can trace pornography without any difficulty back as far as ancient Greece in the West. Pornography is a Greek word. It means the graphic depiction of women as the lowest, most vile whores. It refers to writing, etching, or drawing of women who, in real life, were kept in female sexual slavery in ancient Greece. Pornography has always, as far back as we can go, had to do with exploiting, debasing, and violating women in forced sex. Drawings, etchings, and writings were made of or about the female sex slaves performing forced sex acts. Women were used in brothels to create live pornography for men.

The invention of the camera changed the social reality of pornography. First, it created a bigger market for live women be-

cause live women were required to make the photographs. Someone could make a drawing out of his imagination or memory. A photograph turned a living woman into an exploited pornographic commodity. Pornography less and less existed in the realm of drawing, contiguous with art and imagination, and more and more it existed in the purposeful and exciting realm of documented sexual violation. Photographs acquired commercial primacy, and this meant that pornography required the sexual exploitation and violation of real women to exist in a world redefined by the camera. Second, mass means of producing the photographs democratized pornography. As writing, etching, or drawing, or as live shows in brothels, it had been the domain of rich men, aristocrats. Now the technology made it available to all men. Video has remarkably furthered this trend, bringing pornography into the home, both the product itself and the video camera that allows the man to make his own pornography of his wife or lover or child.

The role of written or drawn pornography in sexual abuse before the invention of the camera was not studied. The rights of women did not matter. The rights of women in brothels were not an issue. Violence against women did not matter. The use of women in live pornographic scenarios or as models for pornographic drawings did not matter to the men who used them or to the society that allowed these uses of women. If written or drawn pornography was used in the sexual abuse of women, prostitutes, or children, it did not matter. None of them had any legal rights of personhood.

The proliferation of pornography in our society, its use in sexual assault, its widespread legitimacy, its legal impunity, its accessibility, the need for real women to make the product in a market constantly expanding in size and sadism, have presented the contemporary women's movement with an emergency of staggering proportions: sexual sadism against women is mass entertainment; sexual exploitation of women is protected as and widely understood to be a civil liberty of men; the sexual violation of women in the pornography itself is protected by the courts as "speech."

It's a hell of a symptom, isn't it?

Q: Okay, we try to dismiss pornography by saying it's a symptom, not a cause, and we fight for pay equity even though low pay is a symptom. What other evidence is there of a double standard?

A: In opposing pornography, feminists have been accused of being essentially right-wing, or giving aid and comfort to the political Right, or being in an alliance with the Right. These charges were made long before the existence of the Ordinance. They were made as soon as feminists began to speak out about the woman hating in pornography and as soon as feminists began to organize pickets and demonstrations to protest the production and distribution of pornography. In 1970, feminists committed civil disobedience by sitting in at the offices of Grove Press to protest the publication of pornography there and the way Grove treated its women employees. The super-radical-leftist publisher/owner of Grove Press not only had the feminists arrested by the then very brutal New York City Police Department for criminal trespass on his private property—he also accused them of working for the C.I.A. You can't get a bigger charge of collusion than that one; who cares that the man who made it was defending his profits, his pornography, his mistreatment of women workers (a/k/a "workers")? Certainly, the Left saw him as a radical, not as a capitalist. The Left continues to see pornographers as radicals, not as capitalists. With the emergence of Jerry Falwell on the national scene, feminists who opposed pornography were likened to Mr. Falwell. Feminist leaders were characterized as demagogues and puritanical opportunists in ongoing campaigns of character assassination. Mr. Falwell came to represent all that the Left detested in religion and politics and feminists who opposed pornography were robbed of their own political identities and convictions and caricatured as having his. Since Mr. Falwell had supported segregation in the 1960's, had supported the Viet Nam War, currently does support the regime in South Africa and the militarism of Cold War anticommunism, opposes abortion rights and gay rights, and since the feminist leaders of the an-

tipornography movement hold opposite views on each and every issue, this was an extraordinary slander. But it was repeated as fact in mainstream newspaper articles and in the feminist press.

We don't believe that this is done to people on other issues. Take, for example, the often vituperative debate on the existence of the state of Israel. One of the women most active in calling feminists who oppose pornography right-wing has written eloquently in behalf of the continued existence of the state of Israel. Mr. Falwell also supports the continued existence of the state of Israel. We know that the reasons of this particular woman are different in kind and in quality from Mr. Falwell's reasons. Since Mr. Falwell's expressions of support for Israel sometimes have an anti-Semitic edge and always have a Cold War rationale, it would be slanderous to say the same position, broadly construed, means the same politics, or that her position does not exist independent of his. *The New York Times*, which repeatedly denounces feminists who oppose pornography and repeatedly links us with Mr. Falwell or his Moral Majority, also supports the existence of the state of Israel. We know their reasons are not Mr. Falwell's. We know their politics are not Mr. Falwell's. We do not liken Nobel Peace Prize winner Elie Wiesel to Mr. Falwell because both support the state of Israel, or Natan Sharansky, or Jacobo Timmerman. The New Jewish Agenda, a leftist group, supports the existence of the state of Israel, but its politics are opposed to, not the same as, Mr. Falwell's.

Specious analogizing is ludicrous, no less on pornography than on Israel. It is fair to say that there are many issues that can be articulated broadly enough—pro or con—so that a strange spectrum of folks seem to be on the same side. Supporting Israel is one; opposing pornography is another. But this has only been done to those of us who oppose pornography from a feminist perspective of radical equality. We have had to try to survive in an environment saturated with this kind of intellectual lie and political slander. We never expected feminist media to fall for this propagandistic nonsense, but they did, repeating it over a period of years. We never ex-

pected the Left to descend to this gutter level of intellectual corruption but they did, apparently without a second thought and with no remorse. Ultimately the effect was to erase our political identities. Women, of course, are used to being erased from political dialogue and history but not by folks who apply the word *feminist* to themselves.

The double standard was also alive and well when feminists who opposed pornography were told to shut up to protect free speech. Again, from the very beginning, before feminists created or endorsed any legal strategies against pornography, we were told repeatedly that anything we said or did against pornography would endanger free speech. For instance, when we were protesting the film "Snuff" in New York City in February 1976, one civil-liberties stalwart wrote in his regular newspaper column that we should stop picketing the film because our picketing endangered free speech. His reasoning was that in response to the pickets a theater manager might decide not to show "Snuff." This was the danger our picketing created. Picketing, of course, is a quintessential exercise of free speech. The whole idea of free speech is that someone might change their mind and their behavior. At least, this is the whole idea of picketing. Picketing is not usually friendly and compliant and supportive speech. Usually it is speech in opposition to what is going on, and it is speech that wants results. This civil libertarian believed that the showing of "Snuff" was vital to free speech and our picketing was not. Over a period of years, in newspaper articles, on editorial pages, in debates, we were told, usually with polite condescension, sometimes in a holy rage, that we were endangering free speech by talking about pornography: that is, by articulating a political opposition to it. A *New York Times* reporter was told by a chief editor that *The New York Times* would no longer carry news stories about the feminist political opposition to pornography. This occurred in 1978, after the reporter had published a superb news story objectively describing a major conference on pornography at New York University Law School. The chief editor said that such news stories created a feeling against pornography that threatened the First Amendment. *The New York*

Times itself published an editorial denouncing the feminists reported on in the news story, characterizing our positions as “shrill” and “hysterical.” News stories disappeared from those pages for many years. When impossible to suppress, such stories have been carried, usually slanted against us. Feminist authors writing on pornography have been repeatedly told that such books would not be published because they endangered First Amendment rights. Magazine editors have rejected numerous articles by feminist authors opposing pornography on the same grounds: that to publish the articles would jeopardize the First Amendment. The same people who say the pornographers must be protected because everything must be published and protected are the first to say that feminist work opposing pornography must not be published in order to protect free speech.

The feminist version of this pernicious nonsense has been the insistence on having a propornography side represented whenever antipornography politics are expressed, in published or spoken forums. There are feminist right-to-life activists, but no one in the women’s movement has been insisting that they get equal time, let alone that they speak wherever and whenever prochoice politics are expressed. These feminist right-to-life groups began on the radical Left, in fact, in the nonviolence movement. Now there are also more politically moderate feminists who are prolife and at the same time for the Equal Rights Amendment and the rest of the feminist agenda. Not only is their participation not required at feminist events; they are not allowed in the door. It is only on the issue of pornography that those who support the pornography industry in the name of what they call feminism must speak whenever those who oppose pornography speak. Since pornography is a distillation of woman hating, linked in women’s experience to rape, battery, incest, and forced prostitution, it is impossible to understand how the moral and political imperative developed to have so-called feminists speak in behalf of pornography. This can only be understood as the feminist version of shut up.

The mainstream says: shut up to protect free speech. Feminists say shut up because if you speak we will have other women

here calling themselves feminists to defend this exploitation of women. In this way, we will wipe out what you have said. We don't do this to anyone else who stands up for the rights of women, but we will do this to you because we want you to shut up. You make us feel bad. We can't stand up to the pornographers. They are too mean, too real, and too powerful. We want to celebrate women. We don't want to have to face how powerless we are in the face of organized, profit-making male cruelty. It has been hard enough for us to face rape, incest, and battery. So we are having these women in here who say they are feminists but enjoy calling themselves "girls," and they want us to have fun having sex now, and they say pornography is just part of liberated sex, and if they say so it must be true for them so you aren't even right when you say pornography hurts women because it doesn't hurt all women (it doesn't hurt these "girl"-women), and if we listen to them we don't have to listen to you, which means, shut up.

And that is the sad consequence of yet another double standard. Large numbers of feminists listened with serious and honorable attention to women who exposed rape, incest, and battery; but not as many feminists have listened with serious and honorable attention to women who have been exploited in pornography or raped or tortured or violated because of it.

Finally, feminist lawyers are responsible for yet another double standard, this one cynical in the extreme. Feminist lawyers especially seem not to want to do anything real about pornography. They tell audiences of feminists that law isn't the answer, that law can do nothing, and that women should not go to the male state. These women spend their lives and make their livings (substantial for women) going to the male state. These women take other sex-discrimination issues to the male state. These feminists have clients who must think the law is some of the answer. These feminists who appear on behalf of their clients in court must have empirical proof that law can do something. They win sometimes. It is not just that they oppose a specific legal remedy—for instance, the Ordinance. It is that they say as political truth that law is useless and make women feel like fools for doing something as ridiculous as contemplating "going to the male state."

Either these women lie to their clients or they lie to their audiences. If they are lawyers and they practice sex-discrimination law and they go into court, how dare they tell other feminists it is silly to do any of the above? They have used these broad and basically indefensible arguments to undercut support for the Ordinance in particular, but they do not have the courage to say that (1) they use male law, (2) they use sex-discrimination law, (3) they make money practicing law in the male courts, (4) law is essential to social change, which is partly why they practice it; *but* they do not believe that women hurt by pornography should have legal remedies. Instead they breeze through debates speaking as lawyers making anarchist arguments and speaking as female functionaries of the male courts making separatist arguments. What they say and what they do never meet on the plane of reality. They are especially dishonorable in the double standard they apply to pornography because they are specially qualified to help women who have been hurt by it.

All of these various applications of a double standard to pornography happen sometimes, not all the time. Small numbers of people, their voices and arguments enhanced by the purposeful support of the pornographers, manipulate everyone's sense of reality or sense of justice.

Most women hate pornography; all pornography hates women; and the masses of feminists here and in other countries are not confounded by these strategic uses of the double standard in defense of pornography. We note when a double standard is used and try to understand how it works politically. The acceptance of a double standard for pornography is particularly painful when it happens within the scope of the women's movement. But the real political damage is done when a double-standard tactic is used by those who have real power: media, politicians, lawyers, publishers.

Q: Why are you dividing the women's movement? The pornography issue is too divisive.

A: There have been many angry splits in the women's movement over the years. The arguments and antagonisms have

been aired, often in what seems like perpetuity, in the feminist press. What is different about pornography is that the pornographers have used the so-called feminists who defend pornography to defend it in mainstream forums and in mainstream media. Feminists who oppose pornography are under constant attack from the pornographers, who have their own magazines, of course, and also tremendous influence with newspapers, other periodicals, and radio and television producers. Women who defend pornography are picked up by the pornographers and spotlighted. Often, they find that their careers, including academic careers, are advanced. They suddenly have available to them many public forums in which to express propornography politics usefully (for the pornographers) disguised as a mutation of feminism. Some of them take the vast sums of money the pornographers offer and publish attacks on feminists fighting pornography in the pornography itself. They attack feminists opposing pornography for the pornographers in forums opened up to them by the pornographers. They have allowed themselves to become the chicks-up-front through choices they have made.

There are hundreds of thousands of us, only a tiny number of them. But the tiny number of them tend to be privileged and well-placed: lawyers, academics, journalists. The hundreds of thousands of us are women in all walks of life, but not particularly well-placed. We tend to be poorer. Some of us have been prostitutes or in pornography or have suffered some other form of egregious sexual violation.

We wish that they would stop, of course. One reason is that the pornographers get so much political mileage out of them. But another reason is that we feel ashamed for them. They dishonor women.

The so-called feminist split on pornography would have the quality of a tempest in a teapot if not for the media exposure choreographed by the pornographers. We fight the pornographers. Propornography women, calling themselves "feminists," fight us. In and of itself, this is suspect as a practice of feminism.

Since 1968, feminists have been fighting the way the male world objectifies women and turns women into sexual com-

modities. Since 1970, we have been fighting pornography. There is no viable propornography feminism. Our legitimate differences center on *how* to fight pornography. Without the active interference of the pornographers, we would have been able to resolve these differences—or we might have agreed to let a thousand flowers bloom. Because of the complicity of the propornography women with the pornographers, feminism itself stands in danger of being irrevocably compromised and the rights of women being hurt by pornography taking second place to public spectacles of what appears to be internecine conflict. The pornographers love it.

Q: What is the role of the American Civil Liberties Union?

A: The ACLU has been very active in defending the pornographers in the media. The ACLU has been very active in defending pornography as a genre of expression that must have absolute constitutional protection: this they have done in the courts.

The ACLU has taken money for a long time from the pornographers. Some money has been raised by showing pornography. The ACLU's economic ties with the pornographers take many different forms, ranging from taking money from the Playboy Foundation to being housed for a nominal rent (\$1 per year) in a building owned by pornographers. Sometimes lawyers represent the ACLU in public debate and as individuals work for pornographers in private. Their personal incomes, then, are largely dependent on being retained by the pornographers. In public they are spokesmen for high-and-mighty principles; in private, they do whatever the pornographers need done. For instance, one such lawyer represented the ACLU in many debates with feminists on pornography. He talked about the importance of free speech with serious elegance and would brook no exceptions to what must be protected because, he said repeatedly, if any exceptions were made, "feminist and gay" speech would suffer. Then, as the private lawyer for a pornographer, he sued Women Against Pornography for libel because on television a member de-

nounced the pornographer for publishing cartoons that pornographized children. This is one way the ACLU helps pornographers wage war on feminists: high-toned in public; political destruction in private by use of money, power, and ACLU lawyers. The ACLU itself also has a record of defending child pornography by opposing any laws against it as constitutionally prohibited incursions on free speech.

The ACLU has also provided money and office space for FACT, a group that calls itself feminist, opposes the Ordinance, and defends pornography as a significant expression of women's free sexuality. One ACLU staff person was instrumental in founding FACT and often represents FACT in public while continuing to rise on the ACLU staff. Perhaps the most telling detail, a picture to hold in your mind, is this one: ACLU men and FACT women sat with representatives of *Penthouse* at a meeting of the Attorney General's Commission on Pornography in New York City in 1986. All three factions together heckled a feminist speaker whose subject was the sexual abuse of women.

The ACLU's stated commitment is to protect the Bill of Rights, the first ten amendments to the Constitution, not pornography as such, though it's hard to tell sometimes. Without a commitment to real equality of the same magnitude as its commitment to those first ten amendments, the ACLU defends power, not rights. No matter how notorious the exploitation, as for instance in child pornography, the ACLU ends up substantively defending those who exploit the powerless. The ACLU demands a literal reading of those first ten amendments, especially the First Amendment, especially its speech provision. This is an exceptionally conservative position both philosophically and politically and it has a conservative political outcome: it keeps already established patterns of inequality intact.

The ACLU has refused to consider the role of sexual abuse in keeping women silent, or how poverty keeps women, Blacks, and other minorities from having access to the means of communication. The ACLU refuses to accept responsibility for the fact that in the United States speech has to be paid for in money. The ACLU defends the power of corporations who

own and control the means of speech against the aspirations of dissidents who have been excluded from the circle of protected speech by sex or race.

We also frankly abhor the ACLU's defenses of Klan and Nazi groups. The ACLU has a long history of protecting the most virulent racism. In protecting pornography, this purposeful policy continues. Pornography sexualizes racist hatred. It uses racially motivated violation, torture, and murder as sex acts that lead to orgasm. We believe that racist pornography is one source of the violence against Blacks and other minorities that is ongoing in this society. We believe that it is a *dynamic* source of racist violence.

The pornographers rank with Nazis and Klansmen in promoting hatred and violence. Their targets are always sex-based and sometimes race-based. Like the Nazis and the Klansmen, they commit the acts of violence they promote. They conduct a war against women that spreads terror.

We have asked the ACLU repeatedly over many years to protect the rights enumerated in the Bill of Rights by taking the cases of powerless or disenfranchised people, not exploiters, abusers, or purveyors of genocide. The ACLU has remained indifferent to this idea.

Q: But, under the Ordinance, won't gay and lesbian materials be the first to go?

A: In some places, under obscenity laws, graphic sexually explicit materials presenting homosexual sex acts are made illegal *per se*. The Ordinance does not do this. The Ordinance requires proof of actual harm before any materials can be found illegal. The harm cannot be a moral one—say, that someone is offended by the materials or believes they are not proper family entertainment or finds that they violate their religious beliefs. The harm proven must be a harm of coercion, assault, defamation, or trafficking in sex-based subordination. The fact that the participants in the sex acts shown are of the same sex is not itself a form of sex-based subordination. Only materials that can be *proven harmful* can be reached, and only by

their victims, not by the government. The particular question of lesbian and gay materials under the Ordinance then becomes: if any lesbian or gay material can be proven to do harm to direct victims, is there a good reason that it ought to be exempt under the Ordinance simply *because* the materials show gay or lesbian sex?

All pornography, from *Playboy* to "Snuff," is part of somebody's sexuality, their authentic sexuality as they understand it. Their pornography is a sexual experience; it is sex to them. Not surprisingly, these same people want to be reassured that their favorite pornography is exempt from the Ordinance. For example, when men say, You can't mean *Playboy*! they are saying, I use it, I enjoy it, I have a right to it, you are not going to take it away from me, I don't care whom it hurts. This simply means, because I like it, nobody should be able to do anything about it. It is special pleading pure and simple. There is necessarily someone who feels this way about every part of the Ordinance's definition of pornography.

The broader question the Ordinance poses, then, is, Does *anyone* have a right to materials that are produced through coercion, that will be forced on others, that are the cause of assaults, that defame individuals, and that are integral to the second-class status of half the population? Is *anyone's* sexuality—however conventional or unconventional, however sincere—more important than the lives that must be, will be, ground up and spit out in little pieces in the making and use of the pornography so that the consumer's sexuality can be provided with what it needs, wants, or enjoys? Is the sexuality of the pedophile more important than the freedom from sexual exploitation of the child? Is the sexuality of the woman hater more important than the freedom from sexual slavery of the woman coerced to model for sadomasochistic pornography? for forced fellatio? Is the sexuality of the nice but lonely guy more important than the unequal life chances of all the women whose lives are endangered, made hollow, reduced a little or reduced a lot, because what he wants he gets? Is some gay men's access to pictures of subordinating gay sex more important than the right of men or boys not to be raped

or violated so that pictures can be made of them, or the desire of other gay men to shape a community free of eroticized self-hatred? The point of considering all these questions at once is this: if harm is done, and it is based on gender, neither the particular sex acts performed nor the gender of those who get hurt should determine whether their civil rights are protected or not.

Because the particular acts do not change the damage done, and because harm is still harm when done by women to women and by men to men, there is no special exemption in the Ordinance for gay and lesbian materials. We are frankly mystified as well as anguished that there are lesbians who identify with and defend the pornographers' woman-hating so-called lesbian sexuality. All lesbians have necessarily suffered from the pornographers' definition of lesbian that is so central to the violence, hatred, contempt, and discrimination directed against lesbians in society. All lesbians in societies saturated with pornography must live with the fact that the pornographers have made lesbianism into a pornographic spectacle in the eyes of men.

The Ordinance does not direct itself specifically against same-sex materials as obscenity law has (with very little effect in the United States). As a matter of fact, it may be difficult to persuade courts to apply the Ordinance to same-sex materials for the same reason that sex-discrimination law has been so useless to advancing the civil rights of gay men and lesbians: sex-discrimination law, of which the Ordinance is a part, has been largely obsessed with what it calls "the gender difference" as defining its concerns. This implicit heterosexual bias to its definition of gender means that it has been difficult for courts to see sex discrimination in a same-sex context. If the attempt to apply the Ordinance to harmful gay and lesbian pornography succeeds, it would provide a precedent that could be used to apply sex-discrimination prohibitions to other civil-rights violations of gay men and lesbians. It would become part of a sexual politics and a civil-rights law that connects a feminist critique of male supremacy with a politics of gay and lesbian liberation.

Q: What do the American people think?

A: First, we have to tell you that a lot of people haven't been asked or haven't been listened to. The women and children who have been hurt through pornography—used to make it or had it used on them in sexual assault—are still a largely unidentified population, in part because the pornographers retaliate. We will give you just one example. In Minneapolis, women went before the City Council to say how they had been hurt in or by pornography. The experiences were horrible. They included rape, gang-rape, battery, torture, rape by animals, and more. Subsequently, one nationally distributed pornography magazine published an article that identified the women by name and used direct quotes from their testimony—quotes highlighted and chosen to emphasize graphic sexual violence. As a result of this article, the women without exception were harassed by obscene phone calls, followed, spied on, tormented by anonymous notes and phone calls, threatened over the phone and by notes and letters. One woman had to move because her tormentor clearly followed all her movements, including inside her own house. Those who have the most to tell have good reason never to speak in public.

Polls tell us that most Americans believe that there is a causal link between pornography and sexual violence. In a *Newsweek* poll conducted in March 1985, 73 percent of those polled believed that “sexually explicit” material (the euphemism of choice in mainstream media for pornography) leads some people to commit rape or sexual violence; 76 percent said that this same material leads some people to lose respect for women.

Time magazine conducted a similar poll in July 1986. We found the questions more confusing, with more vague or double meanings, than those reported in the *Newsweek* poll; but still the results are startling: 56 percent of all those polled, and 63 percent of the women polled, believed that “sexually explicit movies, magazines, and books” lead people to commit rape; 54 percent of all those polled, and 64 percent of the women polled, believed that sexually explicit material leads people to commit acts of sexual violence (apparently as dis-

tinct from rape). The *Time* poll found that pornography was much more troubling to women than to men: 50 percent of women were "very concerned"; only 27 percent of men figured in this category of highest concern. A total of 61 percent of the people polled believed pornography encourages people to consider women as sex objects: 50 percent of men thought this was true, 71 percent of women.

A survey conducted by the American Bar Association in September 1984 (in response to the Indianapolis Ordinance) and published in the *ABA Journal* in March 1985 queried 600 lawyers, half of whom were ABA members, half of whom were not. 66 percent of the total, and 82 percent of the women, thought that some pornography contributes to violent crimes against women; 70 percent of the total, and 89 percent of the women, thought that some pornography is discrimination against women.

The most astonishing and important survey was done by a mainstream women's magazine geared largely to homemakers, *Woman's Day*, in January 1986. 90 percent of the 6,100 respondents believed that pornography encourages violence against women. 25 percent said that they had been sexually abused by someone they knew as a direct result of his access to pornography. This 25 percent did not represent those who had been sexually abused in ways not involving pornography; nor did it represent those who had been abused, even if pornography were involved, by a stranger. This is a staggering percentage of pornography-caused abuse to come out of this or any other population of women.

80 percent of the *Woman's Day* respondents wanted all pornography outlawed. Less than 2 percent of this pool of people thought that freedom of speech was more important than the violence against women generated by pornography. In the *Time* poll, 72 percent wanted the government to crack down harder on pornography (no separate figure is given for women). Asked if magazines with nude pictures should be outlawed in local stores, 59 percent said yes—49 percent of men, 67 percent of women. In the *Newsweek* poll, 73 percent thought that magazines that show sexual violence should be totally banned (as compared, for in-

stance, with 21 percent who thought that showing nudity should be totally banned). 68 percent wanted a total ban on movies that depict sexual violence. 63 percent thought that the sale or rental of videos featuring sexual violence should be totally banned.

The ABA did not ask lawyers any questions about total bans. Instead, lawyers were asked about the Indianapolis Ordinance. Only 24 percent of those polled thought that the Ordinance constituted any form of censorship. 30 percent thought it was overbroad and 25 percent thought it was too vague. Both overbreadth and vagueness would be legal grounds for finding the Ordinance unconstitutional, but neither has anything to do with the basic principles of the Ordinance itself—so that, for instance, a redrafted version might not elicit these same objections from these same people. (In fact, the Seventh Circuit did not find the Ordinance to be either vague or overbroad.) 26 percent of all the lawyers polled thought the Indianapolis Ordinance was constitutional as drafted. 30 percent said it would be constitutional as drafted if studies proved conclusively that pornography leads to violence against women. (Presumably, then it would not be “overbroad” or “too vague.”) 42 percent of the lawyers fifty-five or older were in favor of the Ordinance.

All of these polls and surveys have one element overwhelmingly in common: people, and especially women (whether, for instance, in the sample of women lawyers or readers of *Woman's Day*) believe, know, understand, that commercially available pornography causes sexual violence against women.

Q: Why is the Ordinance so important?

A: The Ordinance puts power in the hands of those who have been hurt by pornography. It recognizes pornography as sex discrimination: as a source of sexual abuse and second-class status, especially for women.

The Ordinance brings the harm of pornography into the light where everyone has to see it and society must deal with it. It allows those hurt by the bigotry, hostility, and aggression caused by pornography to seek legal remedies that are fair. The Ordinance allows people to collect money damages from

the pornographers. The Ordinance allows injunctions against pornography that has caused social and sexual harm to women, children, men, and transsexuals. We have to stop the trafficking and the profits in order to stop the whole system of abuse and exploitation called pornography. Injunctions narrowly directed against the material that does the harm (causes second-class status, causes sexual violence, is made from coercion in the first place) and money damages will go a long way toward stopping the pornographers from destroying lives for profit. The industry, we believe, cannot survive the Ordinance. Those who defend pornography and oppose the Ordinance also believe that the pornography industry cannot survive the Ordinance. Pornographers especially understand this, because they know they cannot create pornography without hurting women and they know that the pornography is used to sexually violate women and children. They even know that pornography keeps women's civil status low, because they know how much contempt for women is necessary to view violation as entertainment. If they are held accountable for the harm they do, including the harm to women's civil status, they cannot continue to produce or distribute their product.

Because the pornography industry cannot survive the Ordinance, you will hear the Ordinance called "censorship." People who say this mean that to them a society without pornography is one in which freedom is by definition restricted. In a free society, they maintain, there is pornography. We think that a society without pornography would be one in which women especially would have more freedom, not less. We think that the Ordinance does not take "rights" from anyone; we think it takes the power to hurt women away from pornographers. We think that the freedom to exploit and hurt women is no freedom at all for women. We believe that it is wrong to talk about freedom as if everyone has it when women are being violated for purposes of profit and entertainment. We think we have a right to freedom from second-class status and sexual abuse. We think that the Ordinance will force real social change. We think the Ordinance will help us toward social and sexual equality by stopping an industry built on our pain. We think the Ordi-

nance is a restrained means of achieving this end. It does not expand police power. It expands the rights of actual people: people who want human dignity and civil equality.

The Ordinance challenges the legal system in this country to recognize the human worth of women.

The Ordinance gives women a forum of authority—the courts—in which to make arguments in behalf of equality. The Ordinance gives women a forum of authority—the courts—in which to articulate the injuries of sexual inequality: what they are, how they operate, why they must be disavowed.

Finally, the Ordinance gives women who have been treated like slaves—the women in pornography and the women on whom pornography is used in rape, torture, battery, and other sexual abuse—real rights of citizenship. If one's human rights are violated and one has no recourse, one has no viable rights of citizenship. Pornography violates the human rights of women purposefully and systematically. The Ordinance provides a remedy that gives women the dignity of citizenship.

Q: How can we pass the Ordinance?

A: The Ordinance can be passed as an amendment to an already existing civil-rights law. Or the Ordinance can be passed as a freestanding statute. If the Ordinance is amended to a civil-rights law, complaints would initially be made to a civil-rights board. If the Ordinance is freestanding, a person would go directly into court.

There are basically two ways to get the Ordinance passed into law. One is through legislative bodies: city councils, state legislatures, or Congress. The second is by direct initiative of the voters, popularly called a "referendum." In many states and cities, voters can initiate legislation. First, signatures are collected on petitions to put the law on the ballot in the forthcoming election. Once the law is on the ballot, there is a direct popular vote.

Working with legislative bodies, we have found that the power of the pornographers is both massive and secret. In many cities, they own big hunks of important real estate and exercise economic power in municipal governments by manipulating

real estate, both buildings and land. Newspapers take their side. They have many legitimate friends with influence, especially lawyers. They also threaten and bribe politicians.

Working with direct popular voting, we have found that the pornographers pour money into defeating the legislation and that newspapers take their side and that they have many legitimate friends with influence, especially lawyers. But they cannot threaten and bribe the whole population. They have less power the more democratic the process itself is.

In Cambridge, Massachusetts, in 1985, the Women's Alliance Against Pornography (WAAP) conducted a campaign to pass the Ordinance by the referendum process of placing it on the ballot to be voted on in the next election. These activists collected 5,252 certified signatures of registered voters—over 1,500 more than were needed under Cambridge's laws. Even though every legal requirement for having the Ordinance on the ballot had been met, the Cambridge City Council voted twice to keep it off the ballot. (Two years before, the City Council had similarly refused to place a "Nuclear Free Cambridge" proposal on the ballot.) In trying to fight this illegal act by lawmakers, WAAP contacted virtually every politically active human-rights law firm in the Cambridge-Boston area. Not one would act to protect the rights of women for access to the ballot. Finally, legal representation was found in Springfield, Massachusetts, 90 miles away, by an all-women law firm. A member of WAAP, as a registered voter, sued the members of the Cambridge City Council for an injunction to put the Ordinance on the ballot. She won, and the City was ordered to comply with the law and to honor her rights as a citizen. Unlike the legislative process, the referendum process provides ordinary citizens with some legal protections.

You can pass the Ordinance either by getting your elected officials to vote it into law or by putting it on the ballot so that all the people in your city or state can vote on it.

Because the pornographers fight dirty, many people are afraid to challenge them by initiating this legislation. Politicians are certainly afraid, but so are regular citizens. Many women will find themselves having to talk publicly about por-

nography-caused sexual abuse they have experienced. Organizers will be threatened and harassed. Money is hard to come by for those who want to stop the pornographers while the pornographers themselves have unlimited funds. Those who defend pornography are verbally abusive in public dialogue. Once the law is passed, it will be challenged immediately in court by the pornographers or those who front for them. This means a protracted legal struggle, again without the legal or economic resources that the pornographers take for granted. Every cent they use to try to defeat the Ordinance from being passed or in court they made off of women's exploited bodies. This makes it especially painful to be poor.

The Ordinance will never be law unless you decide to make it law. If you won't, don't assume that someone else will. If you believe that women have a right to equality and dignity, you will probably find the Ordinance a pretty good idea. Then you have to start working for it. This is not a movement that has top-down leadership; it is a grass-roots movement, a decentralized movement, a movement that depends on everyone's courage and commitment. It is a movement that will succeed or fail depending on you, on what you do or do not do. The Ordinance represents integrity for the women's movement and it is the only source of hope for women hurt by pornography. The Ordinance is a new way of approaching civil and sexual equality. It is rooted in a recognition of the ways in which women are really hurt; it challenges real power. The Ordinance is the real thing, a legal tool with which feminists can redistribute power and radically alter social policy.

Feminists have been fighting pornography for eighteen years. Pickets, demonstrations, slide shows, debates, leaflets, civil disobedience, all must continue. In fact, political dissent from the world created by the pornographers and their friends must intensify and escalate. In these eighteen years, feminists have confronted pornography in cities and towns and villages and in theaters and grocery stores and adult bookstores everywhere in this country. Passing the Ordinance *does not mean* stopping direct action; it means more of it. We are not asking women to cool out and calm down and grow up and talk nice

to your Congresspeople. On the contrary: we are saying, make demands. Make them loud. Make them strong. Make them persistently. Make the Ordinance one of your demands.

Q: Can we win?

A: The Ordinance was passed twice in Minneapolis by two different city councils (an election occurred between the two votes). Both times, the mayor vetoed it. The Ordinance was passed in Indianapolis and signed into law by the mayor. The city was sued for passing the law within one hour after it was signed by the mayor. The Ordinance was on the ballot for popular vote in Cambridge, Massachusetts, where 42 percent of the voters voted for it. We did not win, but we got a higher percentage of the votes than feminists did on the first referendum ever held on women's suffrage.

The Ordinance has already transformed the way people think about pornography. It is no longer a question of "dirty" books; it is now a question of women's rights. For the first time, the women in the pornography are counted among the women who must have rights.

This is a long struggle for equality and dignity against a very nasty enemy. It is a longterm struggle against sexual exploitation and entrenched inequality. We have to win, because the alternative is to give in to systematic sexual abuse of women as entertainment; we cannot agree to live in a society that enjoys sexual sadism against us. We have a right to live in a world premised on our equality and our human dignity.

This is truth time. Do women's rights really matter? Do they really matter to you? Are you prepared to fight for them? Are you prepared to make this society change so that your integrity and sense of justice are respected in the real world? How much does the life of the woman in the pornography matter to you? How much does the woman who has been abused because of the pornography matter to you? How much does your own life matter to you?

This is truth time. We can win if you care enough. Winning depends on you.

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Appendix A

AN ORDINANCE OF THE CITY OF MINNEAPOLIS

Amending Title 7, Chapter 139 of the Minneapolis Code of Ordinances relating to Civil Rights: In General.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 139.10 of the above-entitled ordinance be amended to read as follows:

139.10 Findings, declaration of policy and purpose.

(a) Findings. The council finds that discrimination in employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment AND PORNOGRAPHY, affectional preference, disability, age, marital status, or status with regard to public assistance or in housing accommodations based on familial status adversely affects the health, welfare, peace and safety of the community. Such discriminatory practices degrade individuals, foster intolerance and hate, and create and intensify unemployment, sub-standard housing, under-education, ill health, lawlessness and poverty, thereby injuring the public welfare.

(1) SPECIAL FINDINGS ON PORNOGRAPHY: THE COUNCIL FINDS THAT PORNOGRAPHY IS CENTRAL IN CREATING AND MAINTAINING THE CIVIL INEQUALITY OF THE SEXES. 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, PROPERTY RIGHTS, PUBLIC ACCOMMODATIONS AND PUBLIC SERVICES; CREATE PUBLIC HARASSMENT AND PRIVATE DENIGRATION; PROMOTE INJURY AND DEGRADATION SUCH AS RAPE, BATTERY AND PROSTITUTION AND INHIBIT JUST ENFORCEMENT OF LAWS AGAINST THESE ACTS; CONTRIBUTE SIGNIFICANTLY TO RESTRICTING WOMEN FROM FULL EXERCISE OF CITIZENSHIP AND

PARTICIPATION IN PUBLIC LIFE, INCLUDING IN NEIGHBORHOODS; DAMAGE RELATIONS BETWEEN THE SEXES; AND UNDERMINE WOMEN'S EQUAL EXERCISE OF RIGHTS TO SPEECH AND ACTION GUARANTEED TO ALL CITIZENS UNDER THE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE STATE OF MINNESOTA.

(b) Declaration of policy and purpose. It is the public policy of the City of Minneapolis and the purpose of this title:

(1) To recognize and declare that the opportunity to obtain employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services without discrimination based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment AND PORNOGRAPHY, affectional preference, disability, age, marital status, or status with regard to public assistance or to obtain housing accommodations without discrimination based on familial status is a civil right;

(2) To prevent and prohibit all discriminatory practices based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment AND PORNOGRAPHY, affectional preference, disability, age, marital status, or status with regard to public assistance with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations or public services;

(3) To prevent and prohibit all discriminatory practices based on familial status with respect to housing accommodations;

(4) TO PREVENT AND PROHIBIT ALL DISCRIMINATORY PRACTICES OF SEXUAL SUBORDINATION OR INEQUALITY THROUGH PORNOGRAPHY;

(5) To protect all persons from unfounded charges of discriminatory practices;

(6) To eliminate existing and the development of any ghettos in the community; and

(7) To effectuate the foregoing policy by means of public information and education, mediation and conciliation, and enforcement.

Section 3. That Section 139.20 of the above-entitled ordinance be amended by adding thereto a new subsection (gg) to read as

follows:

(gg) **Pornography.** Pornography is a form of discrimination on the basis of sex.

(1) Pornography is the sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following:

- (i) women are presented dehumanized as sexual objects, things or commodities; or
- (ii) women are presented as sexual objects who enjoy pain or humiliation; or
- (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or
- (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or
- (v) women are presented in postures of sexual submission; or
- (vi) women's body parts - including but not limited to vaginas, breasts, and buttocks - are exhibited, such that women are reduced to those parts; or
- (vii) women are presented as whores by nature; or
- (viii) women are presented being penetrated by objects or animals; or
- (ix) 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.

(2) The use of men, children, or transsexuals in the place of women in (1) (i-ix) above is pornography for purposes of subsections (l) - (p) of this statute.

Section 4. That section 139.40 of the above-mentioned ordinance be amended by adding thereto new subsections (l), (m), (n), (o), (p), (q), (r) and (s) to read as follows:

(l) **Discrimination by trafficking in pornography.** The production, sale, exhibition, or distribution of pornography is discrimination against women by means of trafficking in pornography:

- (1) City, state, and federally funded public libraries or private and public university and college libraries in which pornography is available for study, including on open shelves, shall not be construed to be trafficking in pornography but

special display presentations of pornography in said places is sex discrimination.

(2) The formation of private clubs or associations for purposes of trafficking in pornography is illegal and shall be considered a conspiracy to violate the civil rights of women.

(3) Any woman has a cause of action hereunder as a woman acting against the subordination of women. Any man or transsexual who alleges injury by pornography in the way women are injured by it shall also have a cause of action.

(m) Coercion into pornographic performances. Any person, including transsexual, who is coerced, intimidated, or fraudulently induced (hereafter "coerced") into performing for pornography shall have a cause of action against the maker(s), seller(s), exhibitor(s) or distributor(s) of said pornography for damages and for the elimination of the products of the performance(s) from the public view.

(1) Limitation of action. This claim shall not expire before five years have elapsed from the date of the coerced performance(s) or from the last appearance or sale of any product of the performance(s), whichever date is later;

(2) Proof of one or more of the following facts or conditions shall not, without more, negate a finding of coercion;

(i) that the person is a woman; or

(ii) that the person is or has been a prostitute; or

(iii) that the person has attained the age of majority; or

(iv) that the person is connected by blood or marriage to anyone involved in or related to the making of the pornography; or

(v) that the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; or

(vi) that the person has previously posed for sexually explicit pictures for or with anyone, including anyone involved in or related to the making of the pornography at issue; or

(vii) that anyone else, including a spouse or other relative, has given permission on the person's behalf; or

(viii) that the person actually consented to a use of the performance that is changed into pornography; or

- (ix) that the person knew that the purpose of the acts or events in question was to make pornography; or
- (x) that the person showed no resistance or appeared to cooperate actively in the photographic sessions or in the sexual events that produced the pornography; or
- (xi) that the person signed a contract, or made statements affirming a willingness to cooperate in the production of pornography; or
- (xii) that no physical force, threats, or weapons were used in the making of the pornography; or
- (xiii) that the person was paid or otherwise compensated.

(n) Forcing pornography on a person. Any woman, man, child, or transsexual who has pornography forced on him/her in any place of employment, in education, in a home, or in any public place has a cause of action against the perpetrator and/or institution.

(o) Assault or physical attack due to pornography. Any woman, man, child, or transsexual who is assaulted, physically attacked or injured in a way that is directly caused by specific pornography has a claim for damages against the perpetrator, the maker(s), distributor(s), seller(s), and/or exhibitor(s), and for an injunction against the specific pornography's further exhibition, distribution, or sale. No damages shall be assessed (A) against maker(s) for pornography made, (B) against distributor(s) for pornography distributed, (C) against seller(s) for pornography sold, or (D) against exhibitors for pornography exhibited prior to the enforcement date of this act.

(p) Defenses. Where the materials which are the subject matter of a cause of action under subsections (l), (m), (n), or (o) of this section are pornography, it shall not be a defense that the defendants did not know or intend that the materials were pornography or sex discrimination.

(q) Severability. Should any part(s) of this ordinance be found legally invalid, the remaining part(s) remain valid.

(r) Subsections (l), (m), (n), and (o) of this section are exceptions to the second clause of Section 141.90 of this title.

(s) Effective date. Enforcement of this ordinance of December 30, 1983, shall be suspended until July 1, 1984 ("enforcement date") to facilitate training, education, voluntary compliance, and implementation taking into consideration the opinions of the City Attorney and the Civil Rights Commission. No liability shall attach under (l) or as specifically provided in the second sentence of (o)

until the enforcement date. Liability under all other sections of this act shall attach as of December 30, 1983.

Amending Title 7, Chapter 141 of the Minneapolis Code of Ordinances relating to Civil Rights: Administration and Enforcement.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 141.50 (l) of the above-entitled ordinance be amended by adding thereto a new subsection (3) to read as follows:

(3) **Pornography:** The hearing committee or court may order relief, including the removal of violative material, permanent injunction against the sale, exhibition or distribution of violative material, or any other relief deemed just and equitable, including reasonable attorney's fees.

Section 2. That Section 141.60 of the above-entitled ordinance be amended as follows:

141.60 Civil action, judicial review and enforcement.

(a) Civil actions.

(1) AN INDIVIDUAL ALLEGING A VIOLATION OF THIS ORDINANCE MAY BRING A CIVIL ACTION DIRECTLY IN COURT.

(2) A complainant may bring a civil action at the following times:

(i) Within forty-five (45) days after the director, a review committee or a hearing committee has dismissed a complaint for reasons other than a conciliation agreement to which the complainant is a signator; or

(ii) After forty-five (45) days from the filing of a verified complaint if a hearing has not been held pursuant to Section 141.50 or the department has not entered into a conciliation agreement to which the complainant is a signator. The complainant shall notify the department of his/her intention to bring a civil action, which shall be commenced within ninety (90) days of giving the notice. A complainant bringing a civil action shall mail, by registered or certified mail, a copy of the summons and complaint to the department and upon receipt of same, the director shall terminate all proceedings before the department relating to the complaint and shall dismiss the complaint.

No complaint shall be filed or reinstituted with the department after a civil action relating to the same unfair discriminatory practice has been brought unless the civil action has been dismissed without prejudice.

GOVT OPS - Your Committee, to whom was referred ordinances amending Title 7 of the Minneapolis Code of Ordinances, to add pornography as discrimination against women and provide just and equitable relief upon finding of discrimination by hearing committee of the Civil Rights Commission, and having held public hearings thereon, recommends that the following ordinances be given their second readings for amendment and passage:

a. Ordinance amending Chap 139 relating to Civil Rights: In General;

b. Ordinance amending Chap 141 relating to Civil Rights: Administration and Enforcement.

Appendix B

CODE OF INDIANAPOLIS AND MARION COUNTY INDIANA

Chapter 16

HUMAN RELATIONS; EQUAL OPPORTUNITY*

Sec. 16-1. Findings, policies and purposes.

(a) *Findings.* The city-county council hereby makes the following findings:

(1) The council finds that the practice of denying equal opportunities in employment, education, access to and use of public accommodations, and acquisition of real estate based on race, color, religion, ancestry, national origin, handicap, or sex is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the policies contained herein and shall be considered discriminatory practices.

(2) Pornography is a discriminatory practice based on sex which denies 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; promote rape, battery, child abuse, kidnapping and prostitution and inhibit just enforcement of laws against such acts; and contribute significantly to restricting women in particular from full exercise of citizenship and participation in public life, including in neighborhoods.

(b) It is the purpose of this chapter to carry out the following policies of the City of Indianapolis and Marion County:

(1) To provide equal employment opportunity in all city and county jobs without regard to race, color, religion,

* This is the complete civil-rights law of the City of Indianapolis and Marion County. All language relating specifically to pornography is underlined. Spelling has been corrected.

handicap, national origin, ancestry, age, sex, disabled veteran, or Vietnam era veteran status;

(2) To encourage the hiring of the handicapped in both the public and the private sectors and to provide equal access to the handicapped to public accommodations;

(3) To utilize minority-owned businesses, securing goods and services for the city and county in a dollar amount equal to at least ten (10) per cent of monies spent by the City of Indianapolis and Marion County;

(4) To utilize women-owned businesses and encourage the utilization of women in construction and industry;

(5) To protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, lending institutions, governmental and educational agencies and other persons from unfounded charges of discrimination;

(6) To provide all citizens of the City of Indianapolis and Marion County equal opportunity for education, employment, access to public accommodations without regard to race, religion, color, handicap, sex, national origin, ancestry, age, or disabled veteran or Vietnam era veteran status;

(7) To provide all citizens of the City of Indianapolis and Marion County equal opportunity for acquisition through purchase or rental of real property including, but not limited to, housing without regard to race, sex, religion or national origin; and

(8) To prevent and prohibit all discriminatory practices of sexual subordination or inequality through pornography.

Sec. 16-2. Nondiscrimination clauses.

(1) Every contract to which one of the parties is the city or the county, or any board, department or office of either the city or county, including franchises granted to public utilities, shall contain a provision requiring the governmental contractor and subcontractors not to discriminate against any employee or applicant for employment in the performance of the contract, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, religion, color, national origin, ancestry, age, handicap, disabled veteran status and Vietnam era veteran status. Breach of this provision may be

regarded as a material breach of the contract.

(2) All applications, postings, announcements, and advertisements recruiting applicants for employment with the city or county shall conspicuously post in the bottom margin of such recruiting bids a clause as follows: "An Affirmative Action Equal Employment Opportunity Employer."

Sec. 16-3. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

(a) *Acquisition of real estate* shall mean the sale, rental, lease, sublease, construction or financing, including negotiations and any other activities or procedures incident thereto, of:

(1) Any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or single individuals;

(2) Any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;

(3) Any vacant or unimproved land offered for sale or lease for any purpose whatsoever.

(b) *Appointing authorities* shall mean and include the mayor, city-county council and such other person or agency as may be entitled to appoint any member of the equal opportunity advisory board created in this chapter.

(c) *Appraiser* shall mean any person who, for a fee or in relation to his/her employment or usual occupation, establishes a value for any kind of real estate, the acquisition of which is defined in this section.

(d) *Board* shall mean the equal opportunity advisory board.

(e) *Complainant* shall mean any person who signs a complaint on his/her own behalf alleging that he/she has been aggrieved by a discriminatory practice.

(f) *Complaint* shall mean a written grievance filed with the office of equal opportunity, either by a complainant or by the board or office, which meets all the requirements of sections 16-18 and 16-19.

(g) *Discriminatory practice* shall mean and include the following:

(1) The exclusion from or failure or refusal to extend to any person equal opportunities or any difference in the treatment of any person by reason of race, sex, religion, color, national origin or ancestry, handicap, age, disabled veteran or Vietnam era veteran status.

(2) The exclusion from or failure or refusal to extend to any person equal opportunities or any difference in the treatment of any person, because the person filed a complaint alleging a violation of this chapter, testified in a hearing before any members of the board or otherwise cooperated with the office or board in the performance of its duties and functions under this chapter, or requested assistance from the board in connection with any alleged discriminatory practice, whether or not such discriminatory practice was in violation of this chapter.

(3) In the case of a real estate broker or real estate salesperson or agent, acting in such a capacity in the ordinary course of his/her business or occupation, who does any of the following:

a. Any attempt to prevent, dissuade or discourage any prospective purchaser, lessee or tenant of real estate from viewing, buying, leasing or renting the real estate because of the race, sex, religion or national origin of:

1. Students, pupils or faculty of any school or school district;

2. Owners or occupants, or prospective owners or occupants, of real estate in any neighborhood or on any street or block; provided, however, this clause shall not be construed to prohibit disclosure in response to inquiry by any prospective purchaser, lessee or tenant of:

(i) Information reasonably believed to be accurate regarding such race, sex, religion or national origin; or

(ii) The honest professional opinion or belief of the broker, salesperson or agent regarding factors which may affect the value or desirability of property available for purchase or lease.

b. Any solicitation, promotion or attempt to influence or induce any owner to sell, lease or list for sale or

lease any real estate, which solicitation, promotion or attempted inducement includes representations concerning:

1. Race, sex, religion or national origin or present, prospective or possible purchasers or occupants of real estate in any area, neighborhood or particular street or block;
2. Present, prospective or possible neighborhood unrest, tension or change in the race, sex, religion or national origin of occupants or prospective occupants of real estate in any neighborhood or any street or block;
3. Present, prospective or possible decline in market value of any real estate by reason of the present, prospective or possible entry into any neighborhood, street or block of persons of a particular race, sex, religion or national origin;
4. Present, prospective or possible decline in the quality of education offered in any school or school district by reason of any change in the race, sex, religion or national origin of the students, pupils or faculty of such school or district.

(4) Trafficking in pornography: The production, sale, exhibition, or distribution of pornography.

a. City, state, and federally funded public libraries or private and public university and college libraries in which pornography is available for study, including on open shelves, shall not be construed to be trafficking in pornography, but special display presentations of pornography in said places is sex discrimination.

b. The formation of private clubs or associations for purposes of trafficking in pornography is illegal and shall be considered a conspiracy to violate the civil rights of women.

c. This paragraph (4) shall not be construed to make isolated passages or isolated parts actionable.

(5) Coercion into pornographic performance: Coercing, intimidating or fraudulently inducing any person, including a man, child or transsexual, into performing

for pornography, which injury may date from any appearance or sale of any products of such performance.

a. Proof of the following facts or conditions shall not constitute a defense:

1. That the person is a woman; or
2. That the person is or has been a prostitute; or
3. That the person has attained the age of majority; or
4. That the person is connected by blood or marriage to anyone involved in or related to the making of the pornography; or
5. That the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; or
6. That the person has previously posed for sexually explicit pictures for or with anyone, including anyone involved in or related to the making of the pornography at issue; or
7. That anyone else, including a spouse or other relative, has given permission on the person's behalf; or
8. That the person actually consented to a use of the performance that is changed into pornography; or
9. That the person knew that the purpose of the acts or events in question was to make pornography; or
10. That the person demonstrated no resistance or appeared to cooperate actively in the photographic sessions or in the sexual events that produced the pornography; or
11. That the person signed a contract, or made statements affirming a willingness to cooperate in the production of pornography; or
12. That no physical force, threats, or weapons were used in the making of the pornography; or
13. That the person was paid or otherwise compensated.

(6) Forcing pornography on a person: The forcing of pornography on any woman, man, child or transsexual in any place of employment, in education, in a home, or in any public place.

(7) Assault or physical attack due to pornography: The assault, physical attack, or injury of any woman, man, child, or transsexual in a way that is directly caused by specific pornography.

(8) Defenses: Where the materials which are the subject matter of a complaint under paragraphs (4), (5), or (7) of this subsection (g) are pornography, it shall not be a defense that the respondent did not know or intend that the materials were pornography or sex discrimination: provided, however, that in the cases under paragraph (g)(4) of section 16-3 or against a seller, exhibitor or distributor under paragraph (g)(7) of section 16-3, no damages or compensation for losses shall be recoverable unless the complainant proves that the respondent knew or had reason to know that the materials were pornography. Provided, further, that it shall be a defense to a complaint under paragraph (g)(4) of section 16-3 that the materials complained of are those covered only by paragraph (q)(6) of section 16-3.

(h) *Education* shall mean the construction, maintenance or operation of any school or educational facility utilized or intended to be utilized for the education or training of persons residing within the territorial jurisdiction of the office and controlled by a public governmental board or agency which operates one or more elementary or secondary schools.

(i) *Employer* shall mean:

(1) Any political subdivision within the county, not represented by the corporation counsel, pursuant to IC 18-4-7-5, and any separate municipal corporation which has territorial jurisdiction primarily within the county; and

(2) Any person who employs at the time of any alleged violation six (6) or more employees within the territorial jurisdiction of the office.

(j) *Employment* shall mean a service performed by an individual for compensation on behalf of an employer, except that such services shall not include the following:

(1) Services performed by an individual who in fact is engaged in an independently established trade, occupation, business or profession, and who has been and will continue to be free from direction or control over the manner of performance of such services;

(2) Services performed by an agent who receives compensation solely upon a commission basis and who controls his/her own time and efforts; or

(3) Services performed by an individual in the employ of his/her spouse, child or parent.

(k) *Employment agency* shall mean and include any person undertaking, with or without compensation, to procure, recruit, refer or place any individual for employment.

(l) *Labor organization* shall mean and include any organization which exists for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

(m) *Lending institution* shall mean any bank, building and loan association, insurance company or other corporation, association, firm or enterprise, the business of which consists in whole or in part in making or guaranteeing loans, secured by real estate or any interest therein.

(n) *Office* shall mean the office of equal opportunity created by this chapter.

(o) *Owner* shall mean and include the title holder of record, a contract purchaser, lessee, sublessee, managing agent or other person having rights of ownership or possession, or the right to sell, rent or lease real estate.

(p) *Person* shall mean and include one or more individuals, partnerships, associations, organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, governmental agencies and other organized groups of persons.

(q) *Pornography* shall mean the graphic sexually explicit subordination of women, whether in pictures or in words, that also 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; [or]

(6) Women are presented as sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission or display.

The use of men, children, or transsexuals in the place of women in paragraphs (1) through (6) above shall also constitute pornography under this section.

(r) *Public accommodation* shall mean an establishment which caters to or offers its services, facilities or goods to the general public.

(s) *Public facility* shall mean any facility or establishment, other than an educational institution, which is owned, operated or managed by or on behalf of a governmental agency.

(t) *Real estate broker* shall mean any person who, for a fee or other valuable consideration, sells, purchases, rents, leases or exchanges, or negotiates or offers or attempts to negotiate the sale, purchase, rental, lease or exchange of real property owned by another person; or a person who is licensed and holds himself/herself out to be engaged in the business of selling, purchasing, renting, leasing or exchanging real property for other persons, or who manages and collects rents for the real property of another.

(u) *Real estate salesperson or agent* shall mean any person employed by a real estate broker to perform or assist in performing any or all of the functions of the real estate broker.

(v) *Respondent* shall mean one or more persons against whom a complaint is filed under this chapter, and who the complaint alleges has committed or is committing a

discriminatory practice.

Sec. 16-4. Office of equal opportunity — Created; purpose.

There is hereby created a section of the legal division of the department of administration entitled the office of equal opportunity. This office and its board are empowered as provided in this chapter to carry out the public policy of the state as stated in section 2 of the Indiana Civil Rights Act, within the territorial boundaries of Marion County.

Sec. 16-5. Same — Composition of office; functions.

The office shall be directed by a chief officer who shall also be the affirmative action officer for the city and county. The chief officer shall be appointed by and serve at the pleasure of the mayor and shall be responsible for performing the following functions:

- (1) To monitor internal employment practices as follows:
 - a. By ensuring that city and county government offers equal employment opportunities to persons regardless of race, religion, color, sex, national origin, ancestry, age, handicap, or disabled veteran or Vietnam era veteran status;
 - b. By providing a vehicle through which employees may seek redress for alleged discriminatory acts by city and county government and/or retaliatory acts by city or county government for filing or assisting in the discrimination complaint process;
 - c. By establishing affirmative action goals for city and county government;
 - d. By complying with federal reporting requirements concerning affirmative action and equal opportunity; and
 - e. By reviewing policies and procedures of the city and the county to eliminate discriminatory practices.
- (2) To monitor contract compliance as follows:
 - a. By ensuring compliance with federal grant requirements respective to the utilization of minority business enterprises (MBE) and women business enterprises (WBE);
 - b. By reviewing city-county contracts to assure compliance with relevant federal, state and local laws and regulations on affirmative action and equal employment;
 - c. By functioning as a liaison between the city-county and its contractors by providing technical assistance in developing affirmative action goals and monitoring these compliance

efforts to meet established goals; and

d. By managing and implementing the MBE/WBE programs, and by monitoring city and county purchasing as specified in section 16-1(3).

(3) To receive, investigate and adjudicate community complaints as specified in sections 16-18 through 16-28.

Section 16-6. Same — General powers and duties.

In addition to the functions previously mentioned in section 16-5, the office shall have the following powers and duties:

(1) To gather and distribute information for the purpose of improving human relations and removing inequities to protected groups in the areas of housing, recreation, education, employment, law enforcement, vocational guidance and related matters.

(2) To assist other governmental and private agencies, groups and individuals in reducing community tensions and preventing conflicts between persons of different racial, ethnic and religious groups.

(3) To discourage persons from engaging in discriminatory practices through informal methods of persuasion and conciliation and through programs of public information and education.

(4) To furnish technical assistance upon request to persons to assist them in eliminating discriminatory practices or otherwise implementing the policy and purposes of the Indiana Civil Rights Act.

(5) To make such general investigations, studies and surveys as the office shall deem necessary for the performance of its duties.

(6) To prepare and submit at least annually a report of its activities to the mayor and to the public, which report shall describe the investigations and proceedings conducted by the office, the outcome thereof and the progress and the achievements of the office and the community toward elimination of discriminatory practices.

(7) To cooperate with the Indiana State Civil Rights Commission, any appropriate federal, state or local agencies, and with private organizations, individuals and neighborhood associations in order to effectuate the purposes of this chapter and to further compliance with federal, state and local laws and ordinances prohibiting discriminatory practices.

(8) To perform any other duties assigned by ordinance or the mayor.

Sec. 16-7. Equal opportunity advisory board — Created; purpose.

There is hereby created an equal opportunity advisory board empowered as provided in this chapter to carry out the public policy of the state as stated in section 2 of the Indiana Civil Rights Act, within the territorial boundaries of Marion County.

Sec. 16-8. Same — Composition of board; appointment and terms of members.

(1) The board shall consist of twenty-two (22) members. Fourteen (14) members shall be appointed by the mayor and eight (8) members shall be appointed by the city-county council. In addition, the chief officer shall be an ex officio member of the board. In making appointments, the mayor and the city-county council shall consider the following:

(a) No more than seven (7) members of the board appointed by the mayor shall be from any one political party. No more than four (4) members of the board appointed by the city-county council shall be from any one political party.

(b) In making appointments to the board, the mayor and the city-county council shall take into consideration all interests in the community, including but not limited to age, racial, ethnic, sexual, religious and economic groups, business, labor, the handicapped and the general public.

(2) A board member may be removed for just cause, including nonattendance, by a two-thirds (2/3) vote of the board.

(3) In the event of the death, resignation or removal of any member of the board prior to the expiration of his/her term, the appointing authority shall make an appointment to fill the vacancy for the unexpired term of the member.

(4) In making the original appointments to the board, the mayor shall designate five (5) appointees to serve three-year terms; five (5) appointees to serve two-year terms and four (4) appointees to serve one-year terms; and the city-county council shall designate three (3) appointees to serve three-year terms; three (3) appointees to serve two-year terms and two (2) appointees to serve one-year terms. Subsequent appointments shall be for three-year terms beginning on the first day of January and ending three (3) years later on the last day of

December. Any member of the board whose term has expired may continue in office until a successor has been appointed.

(5) The mayor shall appoint from the membership of the board, a chairperson who shall serve a one-year term and until his/her successor is appointed and qualified, but serves at the pleasure of the mayor.

(6) The chairperson shall appoint a vice-chairperson and a secretary to serve during his/her term of office.

Sec. 16-9. Same — Meetings; vote required for board action.

The board shall hold regular meetings every two (2) months on a day agreed upon by the board. The board shall hold special meetings as may be called by two-thirds (2/3) of the membership. One-half (1/2) of the members of the board, excluding vacancies, shall constitute a quorum at any meeting. A majority vote of those in attendance shall be necessary for action, except in the case of a determination after hearing provided in section 16-26, when a majority of the members of the board not disqualified from participation in such determination shall be required. The chief officer shall not be allowed to vote, except in case of a tie, when the chief officer may cast the deciding vote.

Sec. 16-10. Same — General powers and duties.

The board shall have the following powers and duties:

(1) To appoint an executive committee, a majority of which shall constitute a quorum, which committee shall be authorized to act upon emergency matters between meetings of the board; provided, however, the executive committee shall not take any action inconsistent with action previously taken or policies adopted by the board, and the executive committee shall not exercise any of the powers or functions of the board under sections 16-17 through 16-27. All officers of any executive committee appointed by the board must be members of the board.

(2) To establish three (3) standing committees, composed of seven (7) board members each, to deal with the following subject matter:

- a. Internal employment practices,
- b. Contract compliance,
- c. Complaint adjudication.

The chairperson shall appoint the board members to each committee. No board member shall serve on more than one

committee. The chairperson shall be an ex officio member of each committee but have voting privileges only in case of a tie, when he/she may cast the deciding vote. The board may establish any additional committees as in its judgment will aid the board in effectuating the purposes of this chapter.

(3) To advise the office in formulating policies designed to effectuate the purposes of this chapter and to make such recommendations to the mayor and the city-county council as the board shall deem appropriate to implement such policies.

(4) To adopt, amend and rescind procedural and substantive rules and regulations for the conduct of its affairs, not inconsistent with the provisions or intent and purposes of this chapter, as the board shall deem necessary or appropriate. The rules or regulations shall be adopted only after notice is given and a hearing is held thereon in the manner provided by state law relating to rule-making by state agencies. Any rule or regulation adopted by the board shall be submitted to the corporation counsel for approval as to legality. Upon approval by the corporation counsel, the board shall cause the rule or regulation to be printed or duplicated in such a manner as to be readily available to interested persons and the public, and shall thereupon file the original approved copy and one duplicate with the clerk and the clerk of any other city or town which has adopted this chapter. The rule or regulation shall be effective as of the date and time of filing the original approved copy with the clerk.

(5) To exercise shall additional powers or functions as may be delegated to the board by ordinance or by executive order validly adopted and promulgated by the mayor of the consolidated city.

(6) To generally advise the office in the area of equal opportunity which shall include but not be limited to recommending new programs and program objectives, reviewing problem areas and recommending changes in existing programs.

Sec. 16-11. Same — Internal employment practices committee; duties.

(1) A committee on internal employment practices is hereby established. The committee shall be composed of seven (7) members of the board appointed by the chairperson of the board. The committee shall meet quarterly and at such other times as its members deem necessary. The committee shall have

the power to establish and adopt rules for the conduct of its affairs.

(2) The duties of the internal employment practices committee shall include:

(a) To review employment policies and procedures of the city and county and make recommendations to eliminate discriminatory employment practices.

(b) To review internal employment programs in the area of equal employment opportunity and affirmative action and make recommendations concerning their effective and efficient operation.

(c) To provide recommendations for establishing and achieving affirmative action goals.

Sec. 16-12. Same — Contract compliance committee; duties.

(1) A committee on contract compliance is hereby established. The committee shall be composed of seven (7) members of the board. The committee shall meet quarterly and at such other times as the members of the committee shall deem necessary. The committee shall have the power to establish and adopt rules for the conduct of its affairs.

(2) The duties of the contract compliance committee shall include:

(a) To review contract compliance procedures and make recommendations concerning their effective and efficient operation.

(b) To make recommendations for improving the utilization of minority and women businesses by the city and county.

Sec. 16-13. Complaint adjudication; territorial application.

This chapter shall apply within the territorial limits of the consolidated city and within the territorial limits of the county, with respect to any discriminatory practice occurring within such territorial limits and which relates to:

(1) Acquisition of real estate; or

(2) Employment; or

(3) Education controlled by any public board or agency; or

(4) Public accommodations; or

(5) Pornography

Sec. 16-14. Unlawful acts other than discriminatory practices; penalty.

(a) It shall be unlawful for any person to discharge, expel or otherwise discriminate against any other person because that person:

(1) Has filed a complaint alleging a violation of section 16-15;

(2) Has testified in a hearing before the board or any committee thereof;

(3) Has otherwise cooperated with the board or office in the performance of their duties and functions;

(4) Has requested assistance from the board or office in connection with any alleged discriminatory practice, whether or not the discriminatory practice was in violation of section 16-15.

(b) It shall be unlawful for any person willfully to file a complaint alleging a violation of section 16-15 with knowledge that the complaint is false in any material respect.

(c) Any person who violates any of the provisions of this section shall, upon conviction, be subject to fine in an amount not less than ten dollars (\$10.00) nor more than three hundred dollars (\$300.00); provided, however, no such fine shall be imposed upon any person against whom the board or office has proceedings under this chapter with respect to any violation of subsection (a), which violation is also a discriminatory practice. Any proceeding to impose a penalty under this section shall be commenced within six (6) months after the date the violation occurred.

Sec. 16-15. Discriminatory practices declared unlawful.

Each discriminatory practice as defined in section 16-3 shall be considered unlawful unless it is specifically exempted by this chapter.

Sec. 16-16. Persons and activities to which sections 16-14 and 16-15 do not apply.

(a) Sections 16-14 and 16-15 shall not apply to employment performed for the consolidated city and department or agency thereof, or any employment performed for the county or agency thereof which is represented by the corporation counsel pursuant to IC 18-4-7-5.

(b) Subject to the provisions of section 16-3(g)(4), the

provisions of sections 16-14 and 16-15 shall not include any not-for-profit corporation or association organized exclusively for fraternal or religious purposes, nor any school, education, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution, nor any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public.

(c) Sections 16-14 and 16-15 shall not apply to the rental of rooms in a boardinghouse or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his/her residence and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

(d) The following shall not be discrimination on the basis of sex:

(1) For any person to maintain separate restrooms or dressing rooms for the exclusive use of either sex;

(2) For an employer to hire and employ employees; for an employment agency to classify or refer for employment any individual; for a labor organization to classify its membership or to classify or refer for employment any individual; or for an employer, labor organization or joint labor-management committee, controlling apprenticeship or other training or retraining programs, to admit or employ any individual in any such program; on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

Sec. 16-17. Grounds for complaint; persons who may file; persons against whom complaint may be made.

(a) A complaint charging that any person has engaged in or is engaging in a discriminatory practice prohibited by sections 16-14 and/or 16-15 may be filed with the office by any person claiming to be aggrieved by the practice, or by one or more members of the board of employees of the office who have reasonable cause to believe that a violation of sections 16-14 and 16-15 has occurred, in any of the following circumstances:

(1) In the case of the acquisition of real estate, against the owner of the real estate, a real estate broker, real estate salesperson or agent, or a lending institution or appraiser;

(2) In the case of education, against the governing board of

any public school district which operates schools within the territorial limits of the consolidated city or of the county;

(3) In the case of a public accommodation, against the owner or person in charge of any such establishment, or both;

(4) In the case of a public facility, against the governmental body which operates or has jurisdiction over the facility;

(5) In the case of employment, against any employer, employment agency or labor organization;

(6) In the cases of trafficking in pornography, coercion into pornographic performances, and assault or physical attack due to pornography (as provided in section 16-3(g)(7) against the perpetrator(s), maker(s), seller(s), exhibitor(s), or distributor(s).

(7) In the case of forcing pornography on a person, against the perpetrator(s) and/or institution.

(b) In the case of trafficking in pornography, any woman may file a complaint as a woman acting against the subordination of women and any man, child, or transsexual may file a complaint but must prove injury in the same way that a woman is injured in order to obtain relief under this chapter.

(c) In the case of assault or physical attack due to pornography, compensation for losses or an award of damages shall not be assessed against:

(1) Maker(s), for pornography made.

(2) Distributor(s), for pornography distributed.

(3) Seller(s), for pornography sold, or

(4) Exhibitor(s) for pornography exhibited, prior to the effective date of this act.

Sec. 16-18. Contents of complaint.

To be acceptable by the office, a complaint shall be sufficiently complete so as to reflect properly the full name and address of the complainant or other aggrieved person or persons; the full name and address of the person against whom the complaint is made; the alleged discriminatory practice and a statement of particulars thereof; the date or dates of the alleged discriminatory practice; if the alleged discriminatory practice is of a continuing nature, the dates between which the continuing discriminatory practices are alleged to have occurred; a statement as to any other action, civil or criminal, instituted before any other administrative agency,

commission, department or court, whether state or federal, based upon the same grievance alleged in the complaint, with a statement as to the status or disposition of any such other action; and in the case of alleged employment discrimination a statement that the employer employs six (6) or more employees in the territorial jurisdiction of the office.

Sec. 16-19. Execution and verification of complaint.

The original complaint shall be signed and verified before a notary public or other person duly authorized by law to administer oaths and take acknowledgements. Notarial services shall be furnished by the office without charge.

Sec. 16-20. Timeliness of complaint.

No complaint shall be valid unless filed within ninety (90) calendar days from the date of occurrence of the alleged discriminatory practice or, in the case of a continuing discriminatory practice, during the time of the occurrence of the alleged practice; but not more than ninety (90) calendar days from the date of the most recent alleged discriminatory act.

Sec. 16-21. Referral of complaint to Indiana State Civil Rights Commission.

The chief officer may, in his/her discretion, prior to scheduling of the complaint for hearing under section 16-26, refer any complaint to the Indiana State Civil Rights Commission for proceedings in accordance with the Indiana Civil Rights Act.

Sec. 16-22. Receipt of complaint from Indiana State Civil Rights Commission.

The office is hereby authorized to receive any complaint referred to it by the Indiana State Civil Rights Commission pursuant to section 11a of the Indiana State Civil Rights Act, and to take such action with respect to any such complaint as is authorized or required in the case of a complaint filed under section 16-17.

Sec. 16-23. Service of complaint on respondent; answer.

The chief officer shall cause a copy of the complaint to be served by certified mail upon the respondent, who may file a written response to the complaint at any time prior to the close of proceedings with respect thereto, except as otherwise provided in section 16-26. The complaint and any response received shall not be made public by the chief officer, the board or any member thereof or any agent or employee of the office, unless and until a public hearing is scheduled thereon as provided in section 16-26.

Sec. 16-24. Investigation and conciliation.

(1) *Investigation.* Within ten (10) working days after the receipt of a complaint filed pursuant to this chapter, the chief officer shall initiate an investigation of the alleged discriminatory practice charged in the complaint. All such investigations shall be made by the office at the direction of the chief officer and may include informal conferences or discussions with any party to the complaint for the purpose of obtaining additional information or attempting to resolve or eliminate the alleged discriminatory practice by conciliation or persuasion. The office shall have the authority to initiate discovery, including but not limited to interrogatories, request for production of documents and subpoenas, on approval of the chief officer at any time within ten (10) working days after filing of a complaint. Any request by the office to compel discovery may be by appropriate petition to the Marion County circuit or superior courts.

(2) *Report of investigation; determination by panel.* Unless the complaint has been satisfactorily resolved prior thereto, the chief officer shall, within thirty (30) working days after the date of filing of a complaint pursuant to section 16-17, report the results of the investigation made pursuant to subsection (1) to a panel of three (3) members of the board designated by the chairperson or vice-chairperson or pursuant to the rules of the board, which panel shall not include any member of the board who initiated the complaint, who might have participated in the investigation of the complaint, or who is a member of the complaint adjudication committee. The chief officer shall make a recommendation as to whether there is reasonable cause to believe that the respondent has violated sections 16-14 and/or 16-15. The chairperson, vice-chairperson or such other member of the panel so designated may, for good cause shown, extend the time for making such report. Such extension thereof shall be evidenced in writing, and the office shall serve a copy of the extension on both the complainant and the respondent. The panel shall then determine by majority vote whether reasonable cause exists to believe that any respondent has violated sections 16-14 and/or 16-15. In making such a determination, the panel shall consider only the complaint, the response, if any, and the chief officer's report; provided, however, the panel may request the chief officer to make a supplemental investigation and report with respect to any matter which it deems material to such determination.

(3) *Action when violation found.* If the panel, pursuant to subsection (2) determines that reasonable cause exists to believe that any respondent has violated sections 16-14 and/or 16-15, it may direct the chief officer to endeavor to eliminate the alleged discriminatory practice through a conciliation conference. At least one panel member shall be present at any conciliation conference at which both the complainant and respondent are present or represented. If the complaint is satisfactorily resolved through conciliation, the terms of any agreement reached or undertaking given by any party shall be reduced to writing and signed by the complainant, respondent and the chief officer. Any disagreement between the respondent and the chief officer in regard to the terms or conditions of a proposed conciliation agreement may be referred to the panel which considered the complaint, and the decision of the panel with respect to such terms or conditions shall be final for purposes of conciliation proceedings under this subsection, but shall not be binding upon the respondent without his written consent thereto. No action taken or statement made in connection with any proceedings under this subsection, and no written conciliation agreement or any of the terms thereof, shall be made public by the board or any member thereof, or any agent or employee of the officer, without the written consent of the parties, nor shall any such action, statement or agreement be admissible in evidence in any subsequent proceedings; provided, however, the board or officer may institute legal proceedings under this chapter for enforcement of any written agreement or undertaking executed in accordance with this subsection.

Sec. 16-25. Complaint adjudication committee; duties.

A complaint adjudication committee is hereby established. The committee shall be composed of seven (7) members of the board. The committee shall meet for the purpose of holding public hearings on citizen's complaints, which shall be at such times as its members deem necessary.

Sec. 16-26. Hearings, findings and recommendations when conciliation not effected.

(a) *Hearing to be held; notice.* If a complaint filed pursuant to this article has not been satisfactorily resolved within a reasonable time through informal proceedings pursuant to section 16-24, or if the panel investigating the complaint determines that a conciliation conference is inappropriate under the circumstances surrounding the complaint, the complaint

adjudication committee may hold a public hearing thereon upon not less than ten (10) working days' written notice to the complainant or other aggrieved person, and to the respondent. If the respondent has not previously filed a written response to the complaint, he/she may file such response and serve a copy thereof upon the complainant and the office not later than five (5) working days prior to the date of the hearing.

(b) *Powers; rights of parties at hearing.* In connection with a hearing held pursuant to subsection (a), the complaint adjudication committee shall have power, upon any matter pertinent to the complaint or response thereto, to subpoena witnesses and compel their attendance; to require the production of pertinent books, papers or other documents; and to administer oaths. The complainant shall have the right to be represented by the chief officer or any attorney of his/her choice. The respondent shall have the right to be represented by an attorney or any other person of his/her choice. The complainant and respondent shall have the right to appear in person at the hearing, to be represented by an attorney or any other person, to subpoena and compel the attendance of witnesses, and to examine and cross-examine witnesses. The complaint adjudication committee may adopt appropriate rules for the issuance of subpoenas and the conduct of hearings under this section. The complaint adjudication committee and the board shall have the power to enforce discovery and subpoenas by appropriate petition to the Marion County circuit or superior courts.

(c) *Statement of evidence; exceptions; arguments.* Within thirty (30) working days from the close of the hearing, the complaint adjudication committee shall prepare a report containing written recommended findings of fact and conclusions and file such report with the office. A copy of the report shall be furnished to the complainant and respondent, each of whom shall have an opportunity to submit written exceptions within such time as the rules of the complaint adjudication committee shall permit. The complaint adjudication committee may, in its discretion, upon notice to each interested party hear further evidence or argument upon the issues presented by the report and exceptions, if any.

(d) *Findings of fact; sustaining or dismissing complaint.* If, upon the preponderance of the evidence, the committee shall be of the opinion that any respondent has engaged or is engaging in a discriminatory practice in violation of the chapter, it shall

state its findings of fact and conclusions and serve a copy thereof upon the complainant and the respondent. In addition, the committee may cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power to restore complainant's losses incurred as a result of discriminatory treatment, as the committee may deem necessary to assure justice; to require the posting of notice setting forth the public policy of Marion County concerning equal opportunity and respondent's compliance with said policy in places of public accommodations; to require proof of compliance to be filed by respondent at periodic intervals; to require a person who has been found to be in violation of this chapter and who is licensed by a city or county agency authorized to grant a license, to show cause to the licensing agency why his license should not be revoked or suspended. If, upon the preponderance of the evidence, the committee shall be of the opinion that any respondent has not engaged in a discriminatory practice in violation of this chapter it shall state its findings of fact and conclusions and serve a copy thereof upon the complainant and the respondent, and dismiss the complaint. Findings and conclusions made by the committee shall be based solely upon the record of the evidence presented at the hearing.

(e) *Appeal to the board.* Within thirty (30) working days after the issuance of findings and conclusions by the committee, either the complainant or the respondent may file a written appeal of the decision of the committee to the board; however, in the event that the committee requires the respondent to correct or eliminate a discriminatory practice within a time period less than thirty (30) working days, then that respondent must file his/her appeal within that time period. After considering the record of the evidence presented at the hearing and the findings and conclusions of the committee, the board may affirm the decision of the committee and adopt the findings and conclusions of the committee, or it may affirm the decision of the committee and make supplemental findings and conclusions of its own, or it may reverse the decision of the committee and make findings of fact and conclusions to support its decision. The board may also adopt, modify or reverse any relief ordered by the committee. The board must take any of the above actions within thirty (30) working days

after the appeal is filed.

(f) *Members of Board who are ineligible to participate.* No member of the board who initiated a complaint under this chapter or who participated in the investigation thereof shall participate in any hearing or determination under this section as a member of either a hearing panel, the complaint adjudication committee or of the board.

(g) *Applicability of state law; judicial review.* Except as otherwise specifically provided in this section or in rules adopted by the board or the complaint adjudication committee under this chapter, the applicable provisions of the Administrative Adjudication Act, IC 4-22-1, shall govern the conduct of hearings and determinations under this section, and findings of the board hereunder shall be subject to judicial review as provided in that act.

Sec. 16-27. Court Enforcement.

(a) *Institution of action.* In any case where the board or the committee has found that a respondent has engaged in or is engaging in a discriminatory practice in violation of sections 16-14 and/or 16-15, and such respondent has failed to correct or eliminate such discriminatory practice within the time limit prescribed by the board or the committee and the time limit for appeal to the board has elapsed, the board may file in its own name in the Marion County circuit or superior courts a complaint against the respondent for the enforcement of section 16-26. Such complaint may request such temporary or permanent injunctive relief as may be appropriate and such additional affirmative relief or orders as will effectuate the purposes of this chapter and as may be equitable, within the powers and jurisdiction of the court.

(b) *Record of hearing; evidentiary value.* In any action filed pursuant to this section, the board may file with the court a record of the hearing held by the complaint adjudication committee pursuant to section 16-26, which record shall be certified by the secretary of the board as a true, correct and complete record of the proceedings upon which the findings of the complaint adjudication committee and/or the board were based. The court may, in its discretion, admit any evidence contained in the record as evidence in the action filed under subsection (a), to the extent such evidence would be admissible in court under the rules of evidence if the witness or witnesses were present in court, without limitation upon the right of any party to offer such additional evidence as may be pertinent to

the issues and as the court shall, in its discretion, permit.

(c) *Temporary judicial relief upon filing of complaint.* Upon the filing of a complaint pursuant to section 16-17 by a person claiming to be aggrieved, the chief officer, in the name of the board and in accordance with such procedures as the board shall establish by rule, may seek temporary orders for injunctions in the Marion County circuit or superior courts to prevent irreparable harm to the complainant, pending resolution of the complaint by the office, complaint adjudication committee and the board.

(d) *Enforcement of conciliating agreements.* If the board determines that any party to a conciliation agreement approved by the chief officer under section 16-24 has failed or refused to comply with the terms of the agreement, it may file a complaint in the name of the board in the Marion County circuit or superior courts seeking an appropriate decree for the enforcement of the agreement.

(e) Trial de novo upon finding of sex discrimination related to pornography. In complaints involving discrimination through pornography, judicial review shall be de novo. Notwithstanding any other provision to the contrary, whenever the board or committee has found that a respondent has engaged in or is engaging in one of the discriminatory practices set forth in paragraph (g)(4) of section 16-3 or as against a seller, exhibitor or distributor under paragraph (g)(7) of section 16-3, the board shall, within ten (10) days after making such finding, file in its own name in the Marion County circuit or superior court an action for declaratory and/or injunctive relief. The board shall have the burden of proving that the actions of the respondent were in violation of this chapter.

Provided, however, that in any complaint under paragraph (g)(4) of section 16-3 or against a seller, exhibitor or distributor under paragraph (g)(7) of section 16-3 no temporary or permanent injunction shall issue prior to a final judicial determination that said activities of respondent do constitute a discriminatory practice under this chapter.

Provided further, that no temporary or permanent injunction under paragraph (g)(4) of section 16-3 or against a seller, exhibitor or distributor under paragraph (g)(7) of section 16-3 shall extend beyond such material(s) that, having been described with reasonable specificity by the injunction, have been determined to be validly proscribed under the chapter.

Sec. 16-28. Other remedies.

Nothing in this chapter shall affect any person's right to pursue any and all rights and remedies available in any other local, state or federal forum.

INDIANAPOLIS CITY-COUNTY COUNCIL

GENERAL ORDINANCE NO. 35, 1984,

SECTION 7 & SECTION 8*

SECTION 7. (a) Because this ordinance amends certain provisions adopted in General Ordinance No. 24, 1984, the effective date of that ordinance is postponed until the effective date of this ordinance. (b) The expressed or implied repeal or amendment, by General Ordinance No. 24, 1984, or by this ordinance, of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance or General Ordinance No. 24, 1984, had not been adopted. (c) An offense, committed before the effective date of this ordinance, under any ordinance expressly or impliedly repealed or amended by this ordinance shall be prosecuted and remains punishable under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 8. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions shall not be affected unless such remaining provisions clearly cannot, without the invalid provision or provisions, be given the effect intended by the council in adopting this ordinance. It is further declared to be the intent of the City-County Council that the ordinance be upheld as applied to the graphic depiction of actual sexual subordination whether or not upheld as applied to material produced without the participation of human subjects nor shall a judicial declaration that

* These sections were not included in the codification of Indianapolis City-County General Ordinance No. 35, 1984 in the Code of Indianapolis and Marion County, Indiana, Chapter 16. It is a policy of the Indianapolis City-County Council not to codify sections of ordinances regarding effective dates and severability. [Footnote in original.]

any provision (section, paragraph, sentence, clause or any other portion) of this ordinance cannot validly be applied in a particular manner or to a particular case or category of cases affect the validity of that provision (section, paragraph, sentence, clause or any other portion) as applied in other ways or to other categories of cases unless such remaining application would clearly frustrate the Council's intent in adopting this ordinance. To this end, the provisions of this ordinance are severable.

Appendix C

CITY OF CAMBRIDGE

In the Year One Thousand, Nine Hundred 85

AN ORDINANCE

In amendment to an ordinance formerly entitled "the General Ordinances of the City of Cambridge" as revised in 1972 and now designated as "The Code of the City of Cambridge."

Be it ordained by the City Council of the City of Cambridge as follows:

Inasmuch, as pornography, a systematic practice of exploitation and subordination based on sex which differentially harms women, exists in the City of Cambridge, posing a substantial threat to the health, safety, welfare and equality of citizens in the community, and existing state and federal laws are inadequate to solve these problems;

There shall be enacted amendments to the Human Rights Code, Revised Ordinance No. 1016 (Aug. 23, 1984), in recognition that pornography: promotes bigotry and contempt and fosters acts of aggression, which diminish opportunities for equality of rights in employment, education, property, public accommodations and public services; creates public and private harassment, persecution and denigration; promotes injury and degradation such as rape, battery, sexual abuse of children, and prostitution and inhibits just enforcement of laws against these acts; contributes significantly to restricting women in particular from full exercise of citizenship and participation in public life, including in neighborhoods; damages relations between the sexes; and undermines women's equal exercise of rights to speech and action guaranteed to all citizens under the Constitutions and laws of the United States, the State of Massachusetts, and the City of Cambridge.

The Code of the City of Cambridge is hereby amended by adding to Chapter 25, "Human Rights," the following amendments entitled 'Anti-Pornography Amendments.'

CHAPTER 25

HUMAN RIGHTS

ANTI-PORNOGRAPHY AMENDMENTS

A BILL TO AMEND CHAPTER 25, "HUMAN RIGHTS," OF THE CITY OF CAMBRIDGE BY ADDING PORNOGRAPHY

AS SEX DISCRIMINATION

Section 1: DEFINITION: §E of Chapter 25, "Human Rights," shall be amended to add:

(15)(a) Pornography is the graphic sexually explicit subordination of women through pictures and/or words that also includes one or more of the following: (i) women are presented dehumanized as sexual objects, things or commodities; or (ii) women are presented as sexual objects who enjoy pain or humiliation; or (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or (v) women are presented in postures of sexual submission, servility, or display; or (vi) women's body parts - including but not limited to vaginas, breasts, or buttocks - are exhibited such that women are reduced to those parts; or (vii) women are presented as whores by nature; or (viii) women are presented as being penetrated by objects or animals; or (ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual.

(b) The use of men, children, or transsexuals in the place of women in (a) above is also pornography for purposes of this ordinance.

Section 2: HARMFUL ACTS; §8A of Chapter 25, "Human Rights," shall be amended to add:

(18.) It shall be sex discrimination through pornography to engage in any of the following activities:

a. Coercion into pornography: To coerce, intimidate, or fraudulently induce (hereafter, "coerce") any person, including transsexual, into performing for pornography, which injury may date from any appearance or sale of any product(s) of such performance(s). Complaint(s) may be made against the maker(s), seller(s), exhibitor(s) and/or distributor(s) of said pornography, including to eliminate the product(s) of the

performance(s) from the public view.

Proof of one or more of the following facts or conditions shall not, without more, negate a finding of coercion:

- (i) that the person is a woman; or
- (ii) that the person is or has been a prostitute; or
- (iii) that the person has attained the age of majority; or
- (iv) that the person is connected by blood or marriage to anyone involved in or related to the making of the pornography; or
- (v) that the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; or
- (vi) that the person has previously posed for sexually explicit pictures with or for anyone, including anyone involved in or related to the making of the pornography at issue; or
- (vii) that anyone else, including a spouse or other relative, has given permission on the person's behalf; or
- (viii) that the person actually consented to a use of the performance that is changed into pornography; or
- (ix) that the person knew that the purpose of the acts or events in question was to make pornography; or
- (x) that the person showed no resistance or appeared to cooperate actively in the photographic sessions or in the events that produced the pornography; or
- (xi) that the person signed a contract, or made statements affirming a willingness to cooperate in the production of pornography; or
- (xii) that no physical force, threats, or weapons were used in the making of the pornography; or
- (xiii) that the person was paid or otherwise compensated.

b. Trafficking in pornography: To produce, sell, exhibit, or distribute pornography, including through private clubs.

- (i) City, state, and federally funded public libraries or private and public university and college libraries in which pornography is available for study, including on open shelves but excluding special display presentations, shall not be construed to be trafficking in pornography.

(ii) Isolated passages or isolated parts shall not be actionable under this section.

(iii) Any woman has a claim hereunder as a woman acting against the subordination of women. Any man, child, or transsexual who alleges injury by pornography in the way women are injured by it also has a claim.

c. Forcing pornography on a person: To force pornography on a person, including child or transsexual, in any place of employment, education, home, or public place. Complaint(s) may be made against the perpetrator of the force and/or institution responsible for the force only.

d. Assault or physical attack due to pornography: To assault, physically attack, or injure any person, including child or transsexual, in a way that is directly caused by specific pornography. Complaint(s) may be made against the perpetrator of the assault or attack and/or against the maker(s), distributor(s), seller(s), and/or exhibitor(s) of the specific pornography.

e. Defenses: It shall not be a defense to an action under (18)a-d that the defendant did not know or intend that the materials were pornography or sex discrimination.

No damages or compensation for losses shall be recoverable under 18(b), or other than against the perpetrator of the assault or attack under 18(d), unless the defendant knew or had reason to know that the materials were pornography.

In actions under 18(b) or other than against the perpetrator of the assault or attack under 18(d), no damages or compensation or losses shall be recoverable against maker(s) for pornography made, against distributor(s) for pornography distributed, against seller(s) for pornography sold, or against exhibitor(s) for pornography exhibited, prior to the effective date of this law.

Section 3: RELIEF: §D.(4.) of Chapter 25, "Human Rights," shall be amended to add:

c. (i) In actions under Sec. 18(b), and other than against the perpetrator of the assault or attack under 18(d), no temporary or permanent injunction shall issue prior to a final judicial determination that the challenged activities constitute a violation of this ordinance.

(ii) No temporary or permanent injunction shall extend beyond such material(s) that, having been described with

reasonable specificity by the injunction, have been determined to be validly proscribed under this law.

f. Civil damages, including punitive and compensatory, as well as reasonable attorneys' fees, costs, and disbursements, shall be available as relief for violations of Sections 18 (a-d), notwithstanding any limitations as may be imposed or implied by Sections 4 (a) (b) or (c) herein.

Appendix D

MODEL ANTIPORNOGRAPHY CIVIL-RIGHTS ORDINANCE

Section 1. STATEMENT OF POLICY

1. Pornography is a practice of sex discrimination. It exists in [place], threatening the health, safety, peace, welfare, and equality of citizens in our community. Existing laws are inadequate to solve these problems in [place].

2. Pornography is a systematic practice of exploitation and subordination based on sex that differentially harms and disadvantages women. The harm of pornography includes dehumanization, psychic assault, sexual exploitation, forced sex, forced prostitution, physical injury, and social and sexual terrorism and inferiority presented as entertainment. The bigotry and contempt pornography promotes, with the acts of aggression it fosters, diminish opportunities for equality of rights in employment, education, property, public accommodations, and public services; create public and private harassment, persecution, and denigration; promote injury and degradation such as rape, battery, sexual abuse of children, and prostitution, and inhibit just enforcement of laws against these acts; expose individuals who appear in pornography against their will to contempt, ridicule, hatred, humiliation, and embarrassment and target such women in particular for abuse and physical aggression; demean the reputations and diminish the occupational opportunities of individuals and groups on the basis of sex; contribute significantly to restricting women in particular from full exercise of citizenship and participation in the life of the community; lower the human dignity, worth, and civil status of women and damage mutual respect between the sexes; and undermine women's equal exercise of rights to speech and action guaranteed to all citizens under the [Constitutions] and [laws] of [place].

Section 2. DEFINITIONS

1. "Pornography" means the graphic sexually explicit subordination of women through pictures and/or words that also includes one or more of the following:

- a. women are presented dehumanized as sexual objects, things or commodities; or
- b. women are presented as sexual objects who enjoy humiliation or pain; or

- c. women are presented as sexual objects experiencing sexual pleasure in rape, incest, or other sexual assault; or
- d. women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or
- e. women are presented in postures or positions of sexual submission, servility, or display; or
- f. women's body parts—including but not limited to vaginas, breasts, or buttocks—are exhibited such that women are reduced to those parts; or
- g. women are presented being penetrated by objects or animals; or
- h. women are presented in scenarios of degradation, humiliation, injury, torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual.

- 2. The use of men, children, or transsexuals in the place of women in (a) of this definition is also pornography for purposes of this law.
- 3. "Person" shall include child or transsexual.

Section 3. CAUSES OF ACTION

1. *Coercion into pornography.* It is sex discrimination to coerce, intimidate, or fraudulently induce (hereafter, "coerce") any person into performing for pornography, which injury may date from any appearance or sale of any product(s) of such performance(s). The maker(s), seller(s), exhibitor(s) and/or distributor(s) of said pornography may be sued for damages and for an injunction, including to eliminate the product(s) of the performance(s) from the public view.

Proof of one or more of the following facts or conditions shall not, without more, preclude a finding of coercion:

- a. that the person is a woman; or
- b. that the person is or has been a prostitute; or
- c. that the person has attained the age of majority; or
- d. that the person is connected by blood or marriage to anyone involved in or related to the making of the pornography; or
- e. that the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; or
- f. that the person has previously posed for sexually explicit pictures with or for anyone, including anyone involved in or

related to the making of the pornography; or

g. that anyone else, including a spouse or other relative, has given permission on the person's behalf; or

h. that the person actually consented to a use of a performance that is then changed into pornography; or

i. that the person knew that the purpose of the acts or events in question was to make pornography; or

j. that the person showed no resistance or appeared to cooperate actively in the photographic sessions or events that produced the pornography; or

k. that the person signed a contract, or made statements affirming a willingness to cooperate in the production of the pornography; or

l. that no physical force, threats, or weapons were used in the making of the pornography; or

m. that the person was paid or otherwise compensated.

2. *Forcing pornography on a person.* It is sex discrimination to force pornography on a person in any place of employment, education, home, or any public place. Complaints may be brought only against the perpetrator of the force and/or the entity or institution responsible for the force.

3. *Assault or physical attack due to pornography.* It is sex discrimination to assault, physically attack, or injure any person in a way that is directly caused by specific pornography. Complaints may be brought against the perpetrator of the assault or attack, and/or against the maker(s), distributor(s), seller(s), and/or exhibitor(s) of the specific pornography.

4. *Defamation through pornography.* It is sex discrimination to defame any person through the unauthorized use in pornography of their proper name, image, and/or recognizable personal likeness. For purposes of this section, public figures shall be treated as private persons. Authorization once given can be revoked in writing any time prior to any publication.

5. *Trafficking in pornography.* It is sex discrimination to produce, sell, exhibit, or distribute pornography, including through private clubs.

a. Municipal, state, and federally funded public libraries or private and public university and college libraries in which pornography is available for study, including on open shelves but excluding special display presentations, shall not be

construed to be trafficking in pornography.

b. Isolated passages or isolated parts shall not be the sole basis for complaints under this section.

c. Any woman may bring a complaint hereunder as a woman acting against the subordination of women. Any man, child, or transsexual who alleges injury by pornography in the way women are injured by it may also complain.

Section 4. DEFENSES

1. It shall not be a defense to a complaint under this law that the respondent did not know or intend that the materials at issue were pornography or sex discrimination.

2. No damages or compensation for losses shall be recoverable under Sec. 3(5) or other than against the perpetrator of the assault or attack in Sec. 3(3) unless the defendant knew or had reason to know that the materials were pornography.

3. In actions under Sec. 3(5) or other than against the perpetrator of the assault or attack in Sec. 3(3), no damages or compensation for losses shall be recoverable against maker(s) for pornography made, against distributor(s) for pornography distributed, against seller(s) for pornography sold, or against exhibitor(s) for pornography exhibited, prior to the effective date of this law.

Section 5. ENFORCEMENT*

1. *Civil Action.* Any person who has a cause of action under this law may complain directly to a court of competent jurisdiction for relief.

2. *Damages.*

a. Any person who has a cause of action under this law, or their estate, may seek nominal, compensatory, and/or punitive damages without limitation, including for loss, pain, suffering, reduced enjoyment of life, and special damages, as well as for reasonable costs, including attorneys' fees and costs of investigation.

b. In claims under Sec. 3(5), or other than against the perpetrator of the assault or attack under Sec. 3(3), no

* In the event that this law is amended to an existing human-rights law, the complaint would first be made to a Civil Rights Commission, or the complainant could choose whether to go to the Commission or directly to court. Any injunction issued by a Commission under Sec. 3(5), the trafficking provision, would require a trial *de novo*, that is, a full court trial after the administrative hearing. See the Indianapolis Ordinance for these provisions.

damages or compensation for losses shall be recoverable against maker(s) for pornography made, against distributor(s) for pornography distributed, against seller(s) for pornography sold, or against exhibitor(s) for pornography exhibited, prior to the effective date of this law.

3. *Injunctions.* Any person who violates this law may be enjoined except that:

a. In actions under Sec. 3(5), and other than against the perpetrator of the assault or attack under Sec. 3(3), no temporary or permanent injunction shall issue prior to a final judicial determination that the challenged activities constitute a violation of this law.

b. No temporary or permanent injunction shall extend beyond such pornography that, having been described with reasonable specificity by said order(s), is determined to be validly proscribed under this law.

5. *Other Remedies.* The availability of relief under this law is not intended to be exclusive and shall not preclude, or be precluded by, the seeking of any other relief, whether civil or criminal.

6. *Limitation of Action.* Complaints under this law shall be brought within six years of the accrual of the cause of action or from when the complainant reaches the age of majority, whichever is later.

7. *Severability.* Should any part(s) of this law be found legally invalid, the remaining part(s) remain valid. A judicial declaration that any part(s) of this law cannot be applied validly in a particular manner or to a particular case or category of cases shall not affect the validity of that part or parts as otherwise applied, unless such other application would clearly frustrate the [legislative body's] intent in adopting this law.

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Pornography and Civil Rights: A New Day for Women's Equality

"Pornography is central in creating and maintaining the civil inequality of the sexes. Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women. . . ."

With those bold words began the groundbreaking local anti-pornography law drafted by writer Andrea Dworkin and lawyer Catharine A. MacKinnon. Their completely new legal approach—in which pornography is defined as sex discrimination and therefore a violation of civil rights—would allow anyone injured by pornography to fight back by filing a civil lawsuit against pornographers. First passed in December 1983 in Minneapolis, where it was supported by a grass-roots coalition of women, people of color, neighborhood groups, and the city's welfare poor and working poor, this new law has already transformed the way people of conscience understand the devastating impact of pornography on women's right to equality. This new law also offers hope: an effective legal tool for making sex equality real.

In this comprehensive and easy-to-read guidebook, the coauthors of the antipornography civil-rights ordinance explain:

- How pornography hurts women and how and why the civil-rights ordinance would make a difference
- Why the pornography issue is so important to women's equality
- The truth about the antipornography civil-rights ordinance—what it is, what it does, what it means, how it works
- Answers to the lies about it—lies that the media have spread to protect the pornography industry
- What you can do to stop the pornographers and further women's equality

"The Ordinance does not take 'rights' away from anyone; . . . it takes the power to hurt women away from pornographers."

—from *Pornography and Civil Rights*

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