

A RULING INSPIRED BY U.S. ANTI-PORNOGRAPHY ACTIVISTS IS USED TO RESTRICT LESBIAN AND GAY PUBLICATIONS IN CANADA

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INTRODUCTION

A campaign to curb pornography has backfired dangerously in Canada, leading not toward its ostensible goal of gender equality but to a weakening of fundamental liberties for women and gay men. The cornerstone of this campaign is *R. v. Butler*, an antipornography decision issued by the Canadian Supreme Court on February 27, 1992.¹ Ostensibly an advance for women's rights and a recognition that violence and discrimination against women are serious problems, *Butler* sets forth a litmus test for determining obscenity, or what constitutes an "undue exploitation of sex." Significantly, *Butler* adopts the controversial viewpoint that sexually explicit materials may degrade women and present a risk of harm to society by virtue of their very existence.

Rather than improving the lives of women, however, *Butler* has been used to prosecute a lesbian magazine, to destroy books intended for gay consumers and to confiscate an array of political and erotic works. The experience provides an ominous lesson for those in the United States who would sacrifice free expression to achieve equality between the sexes.²

¹ (1992), R.C.S. 452.

² For a general discussion of *Butler* and censorship in Canada, see Sarah Lyall, "Canada's Moral Police: Serious Books at Risk?" *New York Times*, December 13, 1993, p.8.

THE BUTLER DECISION'S ORIGINS IN THE UNITED STATES

The politics of *Butler* originate from the United States, where some antipornography feminist activists have made sexually explicit materials an issue of civil rights. Led by law professor Catherine MacKinnon and writer Andrea Dworkin, they assert that pornography is not speech entitled to protection under the First Amendment, but a form of sex discrimination, the degradation of women, practiced and supported by men. In MacKinnon's view, "[Pornography] is more like saying 'kill' to a trained guard dog, and the training process itself."³

Numerous attempts to enact this kind of anti-pornography legislation in the United States have failed.⁴ A civil law bill, the PVCA would have made producers and distributors of sexually explicit materials potentially liable for crimes against women, provided the women could prove a connection between the materials and the crime.⁵ Many experts feared this would have a chilling effect on filmmakers and artists. Although the PVCA did not survive, the Senate Judiciary Committee this summer approved the new Violence Against Women Act, a bill that provides judges and court personnel with special training which may include "current information on the impact of pornography on crimes against women or data on other activities that tend to degrade women."⁶

THE DEVELOPMENT OF CANADA'S OBSCENITY LAW

The *Butler* case involved an adult-video store operator in Winnipeg who was charged with 173 counts relating to the sale of material deemed by local police to be obscene under section 163 of the Criminal Code. Ruling that obscene material is not protected expression under the Canadian Charter of Rights and Freedom, the Manitoba Court of Appeal convicted Mr. Butler on all counts. The Supreme Court disagreed, ruling on appeal that obscene material is a protected freedom under section 2(b) of the Charter, which guarantees the right to freedom of expression. The Court went on to hold, however, that per the 1986 case *R. v. Oakes*, prohibition of obscene material is a "reasonable limit" on expression and, in light of its potential harm to women, a justifiable content restriction under Canadian law.⁷ In many respects, however, *Butler* is not so much a new standard for obscenity as it is a clarification of earlier definitions.

³ Catherine MacKinnon. *Toward a Feminist Theory of the State* (Harvard University Press), 1989.

⁴ The most famous of these efforts was the Indianapolis ordinance that created a civil action for those harmed by the creation or dissemination and use of pornographic materials. The ordinance, authored by MacKinnon and Dworkin, was declared unconstitutional in a decision written by Judge Easterbrook of the Seventh Circuit Court of Appeals; the Supreme Court affirmed this ruling. *American Booksellers' Association v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff'd mem.*, 475 U.S. 1001 (1986).

Anti-pornography legislation was also defeated in Minneapolis, Minnesota in 1984 (ordinance vetoed by mayor) and in Bellingham, Washington in 1989 (ordinance declared unconstitutional); proposed legislation in Massachusetts failed in 1992 (proposed bill died in the joint Judiciary Committee).

⁵ S. 1521.

⁶ S. 11/H.R. 1133.

⁷ (1986), 1 S.C.R. 103 at 136.

As in the United States, modern obscenity law in Canada evolved from the British case of *R. v. Hicklin*, decided in 1868. Mr. Hicklin was prosecuted under the Obscene Publications Act of 1857 for his book *The Confessional Unmasked*, an account of priests and the erotic confessions of their female penitents. In convicting Hicklin, Lord Cockburn sought for the first time under the law to define obscenity. It was, he thought, the "tendency to deprave or corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall."⁸

More than seventy-five years passed before courts in Canada began to build upon Lord Cockburn's decision. In 1944, the *Hicklin* analysis was extended to include a test for "*mens rea*"⁹ A 1954 case added a requirement that books must be evaluated for obscenity in their entirety, rather than from isolated passages.¹⁰ Both decisions followed the substantial lead of American precedent.

In the 1957 case of *R. v. American News Company, Ltd.*, the Court criticized the *Hicklin* test for being too vague and too difficult to apply objectively.¹¹ The Court also took issue with the earlier conclusion that books should be examined for obscenity in their entirety, since it seemed reasonable that some readers might be harmed by individual passages only. Finally, in 1959, at the recommendation of a special committee of the Senate, the Canadian Criminal Code was amended to include a statutory definition of obscenity that is now section 168(b)(8). The language of that section has never been altered:

For the purposes of the Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely crime, horror, cruelty and violence, shall be deemed to be obscene.

Unfortunately, interpretation of the statutory amendment led to even more confusion than before, and three years later *Brodie v. The Queen* became the first obscenity case to ever reach the Canadian Supreme Court. An opinion that cleared D.H. Lawrence's novel *Lady Chatterly's Lover* of obscenity, *Brodie* is known principally for introducing the "community standard of acceptance" test as a means for determining "undue exploitation of sex."¹² This was a national test that focused not on what Canadians might tolerate for themselves, but on what they might tolerate for their fellow Canadians. It proved all but impossible to apply given the ethnic diversity and vast geographical size of Canada.¹³

⁸ L.R. 3 Q. B. 360, 371 (1868).

⁹ *Conway v. The King* (1944), 2 D.L.R. 530. Roughly translated as "guilty mind," the element of *mens rea* requires proof that the defendant intended to engage in wrongdoing.

¹⁰ *R. v. Martin Secker Warburg Ltd. and Others* (1954), 2 A11E.R.683.

¹¹ (1957), 118 C.C.C. 152.

¹² (1962), S.C.R. 681, 132, C.C.C. 161, 32, D.L.R. 507.

¹³ Obscenity law in the United States has developed somewhat differently. Unlike Canada, jurisdiction over most criminal law relating to "pornography" rests with the individual states. With regard to community standards, the operative case is *Miller v. California* 413 U.S. 15 (1973), which, in contrast to *Brodie*, allows states to limit the "community" to specific local regions. Unlike Canadians, U.S. citizens also enjoy strong protection under the First Amendment against prior restraint of speech. Thus, regulation at the Federal level focuses on the use of mail or interstate commerce, or on the abuse of children.

Nonetheless, by 1992 a range of lower court opinions had come to a conclusion that material which was "degrading" or "dehumanizing" would necessarily fail the community tolerance test.¹⁴ It was toward this conclusion that Justice Spinoka tailored his analysis in *Butler*. Writing for the majority, he adopted the MacKinnon-Dworkin harm analysis that had been studied earlier by the country's Special Committee on Pornography and Prostitution and was pushed strongly in the brief filed by the Women's Legal Education and Action Fund. "Among other things, degrading or dehumanizing materials place women (and sometimes men) in positions of subordination, servile submission or humiliation," concluded Justice Spinoka. "They run against the principles of equality and dignity of all human beings."¹⁵

Upholding both the government's right to restrict materials it finds obscene and the availability of criminal sanctions in such cases, Justice Spinoka introduced a three-part test that is now the operative test for obscenity in Canada. The test defines material as pornographic if it: (1) involves explicit sex coupled with violence; (2) involves explicit sex that is "degrading" or "dehumanizing," or (3) displays explicit sex that is non-violent and neither degrading nor dehumanizing but involves children. Justice Spinoka cautioned that each judge should determine a finding of "degrading" or "dehumanizing" on the basis of community standards. In addition, he warned that the artistic merit defense, which protects expression of seriously presented sexual themes involving social, political or cultural value, was not an absolute defense to obscenity but rather should be applied in light of community standards. According to Spinoka, actual harm need not be proven, but rather may be inferred by a judge from the mere existence of the pornography in question.¹⁶

IN THE WAKE OF BUTLER

In her praise for the *Butler* decision, MacKinnon saluted Canada as "the first place in the world that says what is obscene is what harms women, not what offends our values."¹⁷ Yet *Butler* was first used to prosecute a lesbian magazine, then to condemn consensual sex between gay men. It has been used to delay delivery of feminist books and videos and political books and journals. These applications of *Butler* express hostility toward minority lifestyles and alternative opinions.

The case of Glad Day Bookshop in Toronto is a particularly egregious example of how language from the *Butler* decision was used by a court to justify the suppression of minority expression. One of just a handful of gay and lesbian bookstores in Canada, Glad Day was charged with obscenity based on material that was seized at the border. Giving only a cursory analysis of the materials seized, the appellate court found them all to be degrading, dehumanizing and obscene, in some cases merely for depicting "a sexual encounter without any real meaningful human relationship."¹⁸

¹⁴ See *R. v. Doug Rankine Co.* (1983), 9 C.C.C. (3d) 53 (Ont. Co. Ct.), *R. v. Ramsingh* (1984), 14 C.C.C. (3d) 230 (Man. Q.B.), *R. v. Wagner* (1985), 43 C.R. (3d) 318 (Atla. Q.B.), and *R. v. Ross Wise and 294555 Ontario Ltd.* (1990), No.1416 (Ont. Dist. Ct.). See also *Towne Cinema Theaters Ltd. v. The Queen* (1985) 1 S.C.R. 494.

¹⁵ *Butler* at 479.

¹⁶ *Butler* at 484.

¹⁷ Tamar Lewin, "Canada Court Says Pornography Harms Women." *The New York Times*, February 28, 1992, p. B7.

¹⁸ *Glad Day Bookshop Inc. and Jerald Moldenhouer v. Deputy Minister of National Revenue for Customs and Excise* (1992), No.619/90 (Ont.Co.Ct.).

Despite criticism from feminist scholars and sex workers alike, neither MacKinnon nor Dworkin believe that consent can mitigate a finding of pornography. *Butler* has furthered this view. In prosecution of *Bad Attitude*, a lesbian fiction magazine targeted immediately after *Butler* was decided, the court focused on a fantasy passage in which one woman follows another to a locker room shower stall, blindfolds and handcuffs her, and engages in rough sex. The victim is aroused by these acts and becomes a willing participant. The court found that the combination of sex and violence met the requirements of obscenity despite the appearance of consent. Citing *Butler*, the judge concluded that "far from redeeming the material, [the consent] makes it degrading and dehumanizing."¹⁹

THE ROLE OF CUSTOMS AGENTS

Unlike United States law, the Canadian Charter on Rights and Freedoms does not prohibit prior restraint of free expression. As a result, Customs Agents of the Prohibited Importations Directorate have the power to seize books, tapes and other incoming written or visual materials that in their opinions violate the national obscenity standards.²⁰ Those standards are codified in Memorandum D9-1-1, a departmental document that sets forth a description of what materials may enter the country and what may not or, in other words, what materials fall under Criminal Code Section 163.

As applied, these standards are both arbitrary and capricious. One title marked for prohibition during the customs check was *The Story of O*, a title that has been available in Canada for at least two decades. Customs has censored Oscar Wilde, Langston Hughes and the political journal *Lies of Our Times*. It has barred *Weird Smut Comics*, a publication dealing with the evils of censorship and *Black Looks: race and representations* by Professor bell hooks, a well-known black feminist. It has even stopped two books written by Andrea Dworkin on grounds of "degradation" and "dehumanization."²¹ Madonna's widely controversial book *Sex*, however, a book that includes a photograph of a school yard rape scene, sells freely.²² Another explicit book, *American Psycho*, by Bret Easton Ellis, sells widely in Canada despite its extremely violent, sexually explicit account of the mutilation of women.

Canadian writer Robin Metcalfe had his own work seized by Customs when he ordered copies of *Flesh and the Word: An Anthology of Erotic Writing* through his New York publisher Plume, part of the Penguin USA operation. The anthology had already been available through bookstores in Canada and had been published by the Canadian Penguin operation. His official notification cited "anal penetration, bondage and degradation" as the reasons for seizure.²³ This prohibition stood despite the fact that in 1987,

¹⁹ *Regina v. John Bruce Scythes* (1993) Ont.Ct. (Provincial District).

²⁰ Little Sisters Book and Art Emporium, in Vancouver and the British Columbia Civil Liberties Association are challenging the constitutionality of Customs censoring. *See infra* p.8.

²¹ Dworkin's *Women Hating and Pornography: Men Possessing Women* were both later released.

²² Time-Warner retained the large Canadian law firm of Osler, Hoskin and Harcourt to draft a preliminary opinion for Customs explaining why *Sex* was neither degrading nor dehumanizing.

²³ H.J. Kirchhoff, "Customs Seizes Anthology of Gay Erotica," *The Globe and Mail* (Toronto), June 27, 1992.

the Canadian Committee Against Customs Censorship had successfully appealed a ruling that *The Joy of Gay Sex* could be banned because of the depiction of anal intercourse. "To write about homosexual practices without dealing with anal intercourse," wrote Judge Bruce Hawkins then, "would be equivalent to writing a history of music and omitting Mozart."²⁴

Small booksellers and their distributors weather a disproportionate number of "routine inspections" compared to mainstream booksellers who carry the same titles. One Canadian newspaper estimated that roughly 75 percent of shipments to Glad Day and similar booksellers are "opened, delayed, lost, forgotten and occasionally sent back without more than a handful of Canadian citizens even knowing about it."²⁵ In the view of one U.S. distributor, doing business with Canada is a burden that translates into lost time and money. One San Francisco company has been forced to demand pre-payment as a condition to shipping into Canada, a difficulty for small stores.

Indeed, what Canada Customs calls "just a routine check" translated into a costly delay for thirty-six retail businesses awaiting an estimated \$8,200 worth of books and magazines from Inland, a small Connecticut-based distributor, making the magazines too dated to sell by the time they reached the retailers. Les Fowles, chairman of the Book and Periodical Council's Freedom of Expression Committee, called the mass detention "suppression of minority viewpoints." Glad Day in Toronto, L'Androgyne in Montreal, and Little Sisters in Vancouver are among the few bookstores in Canada that offer consumers materials focused on gay and lesbian sexuality, but they have been the subjects of interference by customs since the mid-1980s.²⁶

David Rimmer, owner of the Ottawa-based bookstore After Stonewall, has been a recent target. "I just had *Leather Folk* seized despite the fact that it has been cleared for entry and is selling already at other bookstores," he said. "Mine is an extremely marginal operation. I can't afford to have things seized and delayed, so I watch what I order. Still, I've had three or four shipments seized in the last two months. If that's not harassment I don't know what it is."²⁷

According to Janine Fuller, book buyer for Little Sisters in Vancouver, one has no way of knowing that books even have been delayed. On September 10, she received a Notice of Detention for two boxes of books shipped on August 10, but even then it was only because she called and complained. Customs admitted having one box; the other box apparently is lost. "The irony of the whole thing," explained Ms. Fuller, "is that I only ordered books that I knew had been stopped and cleared, they had been let go by Customs in the past." While in her opinion *Butler* has "tightened the lid on censorship in Canada," she also believes that recent abuse of the law outside the gay and lesbian community has led to increased interest from the media. "Now that seizures have spilled over into university books, art books and the occasional

²⁴ ***The Glad Day Bookshop Inc. v. The Deputy Minister of the Department of National Revenue* (1987), No.300/86 (Dist.Ct. Ont.).**

²⁵ **Editorial, "Reading Between the Borderlines," *The Globe and Mail* (Toronto), June 30, 1992.**

²⁶ **Lucinda Johnston, "Censorshipping and Receiving," *Fuse*, May/June 1993. See also, "Canadian Booksellers Battle Customs, Gay and Lesbian Bookselling," *ABA*, Vol. 1, Issue 2, November 1992, p. 5.**

²⁷ **Interview, September 10, 1993.**

mainstream store," she explained, "more people are concerned about censorship."²⁸

Nancy Flemming of the Books and Periodicals Council agrees that, since *Butler*, Customs has expanded its scope from purely gay and lesbian bookstores to political shops and women's shops as well.²⁹ The percentage of women's bookstores in Canada that have been affected by recent censorship activities has been estimated to be as high as one in four.³⁰ One woman in Canada ordered the female-produced videotape "Sluts and Goddesses," only to have it seized at the border and classified as "degrading" by customs agents. The tape was produced by New York performance artist Annie Sprinkle and video-maker Maria Beatty as a tool for women exploring their sexual fulfillment. Ironically, the purchaser had ordered the tape after listening to an interview with Sprinkle on the government's official Canadian Broadcasting Company.³¹

Little Sisters Book and Art Emporium in Vancouver and the British Columbia Civil Liberties Association (BCCLA) are challenging the constitutionality of Customs' censorship practices. Serious problems began for Little Sisters in 1986, when Canada Customs seized a number of shipments of books and magazines, including widely available books such as Oscar Wilde's *Teleny*, Jean Genet's *Querelle*, and Gelsey Kirkland's *Dancing on My Grave*. The following year, Little Sisters and the BCCLA initiated a federal suit against Customs, challenging a particular ruling that two issues of the gay and lesbian newspaper *The Advocate* were obscene. The goal of the suit was to provoke a judicial review of Customs' censorship powers. The government avoided this, however, by conceding shortly before trial that the material at issue was not obscene. The BCCLA and Little Sisters then sued Customs for monetary losses caused by the confiscation of *The Advocate*. The government again avoided legal scrutiny of its censorship powers and practices, choosing instead to settle the suit before trial.

The current case, filed in 1990, is a direct challenge to Canada Customs' censorship powers. It asks the Court to declare: (1) that Customs' power of prior restraint (detaining material prior to a final determination that it is obscene) violates the right to freedom of expression as guaranteed by section 2(b) of the Canadian Charter of Rights and Freedoms; (2) that Customs has discriminated in the exercise of this power by targeting gay and lesbian materials and materials sent to gay and lesbian distributors, and that this discrimination violates the right to equality under the law as guaranteed by section 15 of the Charter; and (3) that these violations are not legally justifiable under Canadian law.³²

A trial date of September 1992 was delayed by government motion until October 1993; it was then delayed a second time, also at the initiative of the government. A forty day trial is currently scheduled to

²⁸ Interview, September 10, 1993.

²⁹ Dan Robins, "Canada Customs, Andrea Dworkin and You," *McGill Daily Culture*, February 4, 1993, p.9.

³⁰ Johnston, *supra note* 26, at 11.

³¹ Robert Atkins, "Porn Flakery," *The Village Voice* (New York), March 30, 1993, p. 90.

³² Specifically, the suit asks for a declaration that the alleged violations of the *Charter* are not justified by section 1 of the *Charter*, which states that "[t]he *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

begin in October 1994. It will be the first broad legal challenge to Canada Customs' censorship powers.

CONFORMING BEHAVIOR

The Canadian free expression group CENSORSTOP believes that that both Customs and the police are using *Butler* as an economic weapon against gay expression.³³ The indirect effect of daily customs seizures and police raids is self-censorship by the bookstores, video stores and private citizens who for financial reasons cannot afford to mount legal challenges. Oxford University Press refused to distribute *Gay Ideas: Outing and Other Controversies*, a Beacon Press book by Canadian philosopher Richard Mohr, rather than incur the wrath of Customs. Many publishers send page proofs to the Prohibited Importations Unit in Ottawa prior to printing their Canadian editions. The Unit's staff go through the various magazines, whiting out text and replacing offending photos with black dots.³⁴ Customs has even deleted safe-sex information in U.S. publications imported for Canadian gay men.³⁵

The discriminatory pattern that allows entire inventories to be seized and held for weeks means these businesses cannot sell their books and cannot pay their distributors. Books often arrive in damaged condition, a consequence of inspection for which Customs accepts no responsibility. A bureaucratic appeals process often deters even the most committed challengers. Rather than face costly delay and interference, retailers censor their own orders of books and videos, limiting anything remotely suspect. In doing so they limit their consumers' access to alternative viewpoints. "I'm afraid to order," said one book buyer. "I don't buy anything by John Preston or with the word 'leather' in the title." Little Sisters now separates its orders into "those books that should be completely problem-free and those that may be delayed." Even though magazines are supposed to be reviewed on an issue-by-issue basis, they no longer buy the magazines that have been the subject of litigation or publicity. "*Bad Attitude* and *On Our Back* have effectively been banned in Canada," said Janine Fuller. Insidiously, *Butler* has also affected the number of titles bookstores order. "Where I used to buy thirty-six copies by a famous lesbian author," said Fuller, "I now order maybe two."

Such wholesale condemnation of sexual imagery creates a chilling climate of ignorance, fear and shame for individuals who wish to explore sexual expression. Dr. Leonore Tiefer, a clinical and research psychologist who specializes in human sexuality, believes that it is the suppression rather than the expression of sexually explicit materials that most harms women.³⁶ Dr. Tiefer's research shows that women's sexuality is an under-funded issue in the sciences as well as in the arts, and that pornography can be extremely important to women who want to explore the workings of their imaginations. Indeed, reports show that increasing numbers of women are themselves becoming consumers of sexually-explicit videos and books.

³³ Interview with Toshiya Kuwabara, August 31, 1993.

³⁴ Bill Andriette, "Censorship: A Canadian Custom," *The Guide* (Boston), July 1993.

³⁵ Jeffrey Moore, "Blind to Sexuality's Other Images," *The Globe and Mail* (Toronto), April 2, 1991. See also, "Unsafe Customs Practices," *Xtra!*, September 4, 1992.

³⁶ "Toward Safety, Freedom and Equality," *The Sex Panic: A Conference on Women, Censorship and Pornography*, (New York: National Coalition Against Censorship). May 7, 1993.

CONCLUSION

One of the assumptions of the MacKinnon-Dworkin theory is that the link between pornography and increased violence is clear. But there is no research that proves this nexus. Rather, research on viewers of pornography measures attitudes and perceptions only.³⁷ Judith Becker, a professor of psychiatry and psychology and a dissenting member of the Meese Commission on Pornography, wrote last year that because social science research has not been designed to evaluate the relationship between exposure to pornography and the commission of sexual crimes, "efforts to interpret the current data into proof of a causal link between these acts cannot be accepted."³⁸

Nevertheless, MacKinnon and Dworkin are working to export their campaign to other countries, particularly those countries that have significantly less free expression protection than the United States. Through the United Nations, they are working to include the term "degrading representation" in the proposed declaration on violence against women.³⁹

Violence and discrimination all too often mar women's lives. But censorship is not the answer. *Butler* demonstrates that, good intentions notwithstanding, laws permitting censorship of sexual expression are likely to be directed against those who are already marginalized and discriminated against — women, lesbians and gay men. This chilling lesson should serve as a useful reminder to those in the United States and elsewhere who may be tempted to turn to censorship in their struggle for equality and freedom.

The Fund for Free Expression urges that Canada Customs halt the exercise of prior restraint over information and literary materials coming into the country. At a minimum, Customs should stop targeting gay and lesbian materials and bookstores, a discriminatory practice that violates the right to equality before the law. To the extent that Canada Customs continues to inspect and halt the importation of informational and literary materials, it should institute procedures that demonstrate and safeguard respect for due process, including prompt notification to distributors whose materials are detained and a streamlined appeals process.

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This report was researched and written by Maria Pallante, Executive Director of the National Writers Union. Lee Tucker, the Free Expression Project's Bradford Wiley Fellow, also provided valuable research and writing assistance.

³⁷ See generally, "Proceedings of a National Coalition Against Censorship Public Briefing on the Attorney General's Commission on Pornography," *The Meese Commission Exposed*, (New York: National Coalition Against Censorship), January 16, 1986.

³⁸ Leanne Katz, "Same Old Censorship," *Censorship News*, (New York: National Coalition Against Censorship) 1993 Issue 1, Number 47. Nor do the experiences of other countries support a nexus. Denmark, West Germany and Sweden experienced no sustained increase of violence following their legalization of sexually explicit materials. *The Globe and Mail*, April 2, 1991.

³⁹ Johnston, *supra note 26* at 14. See also Carol Vance, "Pornography, Politics and Panic: Thinking About the Past Decade," *The Sex Panic. Supra note 36*.

The Human Rights Watch Free Expression Project, formerly the Fund for Free Expression, was created in 1975 to monitor and combat censorship around the world and in the United States. The Chair is Roland Algrant; Vice Chairs, Aryeh Neier and Peter Osnos; Executive Director, Gara LaMarche; Bradford Wiley Fellow, Lee Tucker; Program Associate, Marcia Allina; Associate, Lydda Ragasa. The members are Alice Arlen, Robert L. Bernstein, Tom A. Bernstein, Hortense Calisher, Geoffrey Cowan, Dorothy Cullman, Patricia Derian, Adrian DeWind, Irene Diamond, E.L. Doctorow, Norman Dorsen, Alan Finberg, Francis FitzGerald, Jack Greenberg, Vartan Gregorian, S. Miller Harris, Alice H. Henkin, Pam Hill, Joseph Hofheimer, Lawrence Hughes, Ellen Hume, Mark Kaplan, Stephen Kass, William Koshland, Judith F. Krug, Jeri Laber, Anthony Lewis, William Loverd, Wendy Luers, John Macrae, III, Kati Marton, Michael Massing, Nancy Meiselas, Arthur Miller, The Rt. Rev. Paul Moore, Jr., Toni Morrison, Bruce Rabb, Geoffrey Cobb Ryan, John G. Ryden, Steven R. Shapiro, Jerome Shestack, Nadine Strossen, Rose Styron, Hector Timerman, John Updike, Luisa Valenzuela, Nicholas A. Veliotis, Kurt Vonnegut, Jr., Gregory Wallance, Deborah Wiley, Roger Wilkins and Wendy Wolf.