

The Sexuality of Inequality: The Minneapolis Pornography Ordinance*

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On December 30, 1983, the Minneapolis City Council amended its municipal civil rights ordinance to include pornography¹ as a form of sex discrimination.² The amendments were

* Portions of this argument appeared in *Pornography: More Than a Fantasy*, The Hennepin Lawyer, Mar.-Apr. 1984, at 8.

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For the women who testified, and for all of us whose testimony is yet to be heard.

Andrea Dworkin and Catharine MacKinnon were my teachers. What I have learned about pornography and its feminist critique is inseparable from what they have taught me. Catharine MacKinnon and I have worked together on many projects including this one. I am deeply indebted to her for her teachership, inspiration, and unwavering support. Minneapolis Council Member Charlee Hoyt made this all possible with great political courage, intelligence, and integrity, as did the many women who organized and struggled for the passage of this ordinance.

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1. Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139 (1982) relating to Civil Rights In General, and ch. 141 (1982) relating to Administration and Enforcement.

2. The text of the ordinance appends this article. This ordinance was drafted by Catharine MacKinnon and Andrea Dworkin, acting as consultants to the Minneapolis City Attorney's Office. The Minneapolis Zoning and Planning Committee had announced a public hearing on a proposed zoning ordinance restricting "adult bookstores" to certain geographical locations. Members of the committee and the public expressed dismay at the apparent necessity to permit these stores to do business in any of the proposed locations, or anywhere else. Dworkin and MacKinnon both spoke at the public hearing in opposition to the proposed zoning ordinance. Dworkin first identified the root issues raised by the zoning approach to pornography.

I think that underneath this cosmeticized rendering of what you are going to do here [under the zoning ordinance], you are responsible for asking questions. Why does this hate literature exist? What does it mean to the City of Minneapolis? Why is it sexual entertainment? How does it become sexual entertainment? Whose right is it to have it? Who does it hurt?

MacKinnon then suggested that a civil rights approach to pornography, later embodied in this ordinance, could provide an alternative legal basis for restric-

subsequently vetoed by the mayor of Minneapolis and reintroduced to the council by its sponsors for later reconsideration.³ The ordinance seeks to redress injuries demonstrably suffered by women as a class through the production and consumption of pornography. The city council found "that pornography is central in creating and maintaining the civil inequality of the sexes" and is a "systematic practice of exploitation and subordination based on sex which differentially harms women."⁴ Pornography is an infringement on the civil rights of women, much like, for example, segregation is an infringement on the civil rights of Blacks.⁵ The remedies afforded by the ordinance derive from specific practices which exploit and subordinate women through pornography. Any person who has had pornography forced on her, has been assaulted or attacked in a way connected to a particular piece of pornography, or has been coerced into a pornographic performance is granted a cause of action.⁶ Further, any woman can bring suit against traffickers in pornography on behalf of all women.⁷

This article briefly summarizes the factual basis and legal theory underlying both the city council's findings and the relief

tions on pornography which specifically addressed those issues. Public Testimony, Minneapolis Zoning and Planning Committee, October 18, 1983. Dworkin and MacKinnon were subsequently retained as experts by the city to develop the language of a civil rights based ordinance and to hold public hearings to create an evidentiary record in its support. See *infra* note 10.

3. Vetoed by Mayor Fraser January 5, 1984. Letter to the Minneapolis City Council from Mayor Donald Fraser (January 5, 1984); reintroduced January 13, 1984. The Minneapolis City Council passed an amended version of the ordinance on July 13, 1984, which was vetoed by the mayor on the same day. Letter to the Minneapolis City Council from Mayor Donald Fraser (July 13, 1984) (vetoing the amended version of the ordinance). The City of Indianapolis and the County of Marion, Indiana also passed the amended version on June 11, 1984. City-County General Ordinance No. 35, 1984, amending the Code of Indianapolis and Marion County, Indiana, Ch. 16, Human Relations, Equal Opportunity. See *infra* notes 63 and 68 for an explanation of the major amendments. Appendix II sets forth the amended definition section.

4. See Appendix I, Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139 § 1, amending § 139.10 adding (1) *Special Findings on Pornography*.

5. See, e.g., *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *Turner v. City of Memphis*, 369 U.S. 350 (1962); *Johnson v. Virginia*, 373 U.S. 61 (1963).

6. See Appendix I, Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139 § 4, amending § 139.4 adding new subsections (m) *Coercion into pornographic performances*, (n) *Forcing pornography on a person*, (o) *Assault or physical attack due to pornography*.

7. See Appendix I, Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139 § 4, amending § 139.4 adding new subsection (l) *Discrimination by trafficking in pornography*. All of these provisions are discussed more fully at *infra* notes 62-69 and accompanying text.

afforded by the ordinance.⁸ This article will first discuss the substance of pornography itself,⁹ together with the reasons why obscenity law is legally inadequate to reach the sex-based injuries fostered by pornography. The nature of those injuries will then be described in some detail. Finally, the article delineates the links between those injuries and the remedies afforded by the ordinance.¹⁰

In pornography,¹¹ the world is a balanced and harmonious

8. Given the necessarily confined scope of this article, I have been faced with difficult choices in defining the issues to be treated here. The harm to women caused by pornography is virtually unknown to many readers, particularly men, while the substance of pornography is similarly unknown, particularly to women. I have therefore chosen to focus on those issues as they contribute to an understanding of this ordinance. I do not mean to imply that the injuries I specifically refer to are the only ones suffered by women through pornography; they are merely the only ones the ordinance itself seeks to redress. Moreover, the issues relating to the first amendment also require a thorough treatment which simply cannot be fairly treated here. The decision to hold those issues for another forum was made because the silence concerning the harms to women was considered more deafening than that surrounding first amendment doctrine. For a treatment of the first amendment theory of this ordinance, see Catharine MacKinnon, *Pornography, Equality and the First Amendment*, Harv. C.R.-C.L. L. Rev. (forthcoming, 1984).

9. Andrea Dworkin's analysis of the substance and import of pornography which is both comprehensive and brilliant, inspired this one. See Andrea Dworkin, *Pornography: Men Possessing Women* (1981).

10. The government operations committee of the city council conducted extensive hearings on pornography on December 12 and 13, 1983. *Public Hearings on an Ordinance to Add Pornography As Discrimination Against Women, Before the Minneapolis City Council Government Operations Committee*. All of the empirical data cited in this article, as well as women's own testimony and the testimony of other experts, were introduced as evidence in the hearings. A sample of additional empirical data introduced but not cited here includes: Diana Russell, *Pornography and Violence: What Does the New Research Say?* in *Take Back the Night: Women on Pornography* 218 (Laura Lederer ed. 1980) [hereinafter cited as *Take Back the Night*]; Pauline Bart & Margaret Jozsa, *Dirty Books, Dirty Films and Dirty Data*, *Take Back the Night*, *supra*, at 204; Pauline Bart, Linda Freeman & Peter Kimball, *The Different Worlds of Women and Men: Attitudes Towards Pornography and Responses to "Not a Love Story," A Film about Pornography*, *Women's Stud. Int'l F.* (special issue of papers presented at the International Interdisciplinary Congress on Women, Groningen, The Netherlands, April 17-24, 1984) (forthcoming, 1985). John Briere & Neil Malamuth, *Self-Reported Likelihood of Sexually Aggressive Behavior: Attitudinal Versus Sexual Explanations*, 17 *J. of Res. in Personality* 315 (1983) [hereinafter cited as *Self-Reported Likelihood of Sexually Aggressive Behavior*]; Neil Malamuth, *Factors Associated with Rape as Predictors of Laboratory Aggression Against Women*, 43 *J. of Personality and Soc. Psych.* 432 (1983); Neil Malamuth, *Rape Proclivity Among Males*, 37 *J. of Soc. Issues* 138 (1981) [hereinafter cited as *Rape Proclivity*].

11. Authority for this synopsis was gleaned from pornography readily available at this time in Minneapolis. The so-called "slick" pornographic magazines cited below contain no page numbers, dates or publication information, except as indicated. See, e.g., animals: Hustler, Oct. 1983, at 91 (woman depicted having her genitals licked by a bear and being aroused by it); being bound: Play-

place. The sexual requirements of women and men are perfectly congruent, symbiotic in relation and polar in definition: women live to be fucked,¹² men inevitably fuck. Women especially love to be fucked by animals, dildoes, fists, and penises, especially while being bound, beaten, cut, mutilated and killed. Women love this always, no less when we are children, than when we are adolescent, than when we are adult; no less when we are pregnant than when we ourselves are born. On the rare occasions that we don't like it, we deserve it. Men inevitably fuck. Fortunately for us, they love to fuck us in all the ways we love to be fucked. This is the version of sexual equality that is in the mouths of the pornographers who tell us they love women.¹³

boy, July 1983 (page number unavailable) (woman bound by her wrists, tied up in a closet), Hustler, March 1984, at 50-57 (woman chained, riveted to the floor), Orientals in Bondage (women tied up, hung from door frames, rafters, ceilings, gagged); fist fucking: Hustler, Feb. 1984, at 157 (full fist inside woman's anus); cut: Hustler, Mar. 1984, at 53 (woman draped in chains, ring through genitals, cutting self with fingernails); killed: Snuff (film, woman's arms, toes cut off with saw, eviscerated while man has orgasm); children: Little Girl Blew (girl dressed to look like a twelve-year-old "gratefully" initiated into sex by an adult man), Missy Maidens (girls fucked by the "Dean" of their school), Tender Teasers, Nov. 1981, at 36 ("Sex comes easily to some young girls. They seem to be born into a life of action and they know no other way."), Playboy, July 1983, at 146-147 (she is "never quite a woman, still a little girl"; "Here, rigorous looks natural, naturalness looks like a young girl; and the young girl looks like a caress."); adolescents: Hustler, Feb. 1984, at 58-65 (drive-in movie pictorial), Chic, Aug. 1984, at 56-65 (two young girls in childish clothing in purportedly lesbian poses); older adults: Hustler, Oct. 1982, at 62-71, ("Shirley, 50 Year Old Centerfold"); Willing Housewives, Dec. 1981 (mature women, one woman characterized as lesbian aggressor); pregnant: Poppin Mommas (spread shots, etc. of women in late stages of pregnancy).

12. This attribute of ours is represented in pornography in at least two ways. First, it is our sole role in the pornography. Second, the pornography itself promotes our status as fuck objects as being a natural and wholesome fact. See, e.g., the "audience participation" features in Playboy such as "Permanent Vacation," Playboy, Oct. 1983, at 74, "The Women of Aspen," Playboy, Feb. 1983, at 124, and Hustler's monthly "Beaver Hunt," in which intentionally amateurish photographs allegedly submitted by women are published along with "personal" descriptions of their jobs, hobbies, and sexual fantasies. Researchers have speculated that Playboy in particular has a greater impact on male conceptions of women than other pornography because it communicates false information about women's reactions to sex more subtly than other, more plainly staged pornography depictions. Neil Malamuth, *Aggression Against Women: Cultural and Individual Causes*, Pornography and Sexual Aggression 33-34 (Edward Donnerstein & Neil Malamuth eds. forthcoming, 1984).

13. Larry Flynt on equal rights for women in Playgirl magazine: "You know, women should never have had to fight for equal rights. They should always have had them from day one. . . . And they've got a lot more on the ball than we are willing to give them credit for." Cf. Hugh Hefner's memo to his staff regarding an article on women's liberation: "These chicks are our natural enemy. . . . It is time we do battle with them." These quotations are taken from material collected by women for the purpose of anti-pornography activ-

The pornographic version of sexual equality also constructs the two distinct and apparently conflicting assumptions underlying the doctrine of obscenity law.¹⁴ One view holds that obscene materials are harmful because they degrade and enfeeble the moral sensibilities of consumers.¹⁵ The other view holds that obscene materials are not in themselves harmful, and in fact may enrich the sexual imagination.¹⁶ Under this view, however, obscenity regulation is justified to avoid interference with the privacy interests of bystanders, or to protect children.¹⁷ Despite these surface disagreements, the two camps, the moralists and the sexual liberationists, concur as to what both men and women love to do, crave doing. They merely disagree about *what it all means*. Moralists view the sexual scenarios portrayed in pornography sacramentally,¹⁸

ism, not with a view towards publication. The full Playgirl interview and the memo are available from the *Law & Inequality Journal*.

14. Included in this body of law are those cases cited in William Lockhart & Robert McClure, *Literature, The Law of Obscenity, and the Constitution*, 38 Minn. L. Rev. 295 (1954), and *Censorship of Obscenity*, 45 Minn. L. Rev. 5 (1960). More recent cases include: *Stanley v. Georgia*, 394 U.S. 557 (1969); *Miller v. California*, 413 U.S. 15 (1973); *Paris Adult Theater I v. Slaton*, 413 U.S. 49 (1973); and *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975). My analysis of obscenity law derives substantially from a theory of obscenity law developed by Andrea Dworkin and Catharine MacKinnon in their course on pornography taught in 1983 at the University of Minnesota Law School. The analysis was first advanced, to my knowledge, in Andrea Dworkin, *Why So-Called Radical Men Love and Need Pornography*, *Take Back the Night*, *supra* note 10 at 148. Catharine MacKinnon elaborates the relationship between obscenity law and pornography in *Not A Moral Issue*, *Yale Law & Pol'y Rev.* (forthcoming 1984).

15. See, e.g., the classic obscenity case of *Regina v. Hicklin*, 3 Q.B. 360 (1868) (obscurity characterized by its "tendency to deprave and corrupt those whose minds are open to such immoral influences"). The not so vestigial remnant of this notion supports the "prurient interest" prong of the Court's standard for obscenity developed from *Roth v. United States*, 354 U.S. 476, 489 (1957) through *Miller v. California*, 413 U.S. 15, 24 (1973). The *Roth* Court defined prurience as the "[q]uality of being prurient; lascivious desire or thought." 354 U.S. at 487 n.20 (quoting Webster's New International Dictionary (unabridged 2d ed. 1949)). The prurient interest requirement is supportable, in Justice Harlan's view, by the reasonable inference that "the indiscriminate dissemination of materials, the essential character of which is to degrade sex, will have an eroding effect on moral standards." 354 U.S. at 502 (Harlan, J., dissenting on other grounds).

16. See, e.g., *Paris Adult Theater I*, 413 U.S. at 108 n.26 (Brennan, J., dissenting) (citing Report of the Commission on Obscenity and Pornography 53 (1970): "[O]n the positive side, explicit sexual materials are sought as a source of entertainment and information by substantial numbers of American adults [sic]. At times, these materials also appear to serve to increase and facilitate constructive communication about sexual matters within marriage.").

17. *Stanley*, 394 U.S. at 567; *Paris Adult Theater I*, 413 U.S. at 74 (Brennan, J., dissenting); *Erznoznik*, 422 U.S. at 212.

18. See, e.g., Justice Brennan's visionary language in *Roth*, describing sex as that "great and mysterious motive force in human life. . . ." *Roth*, 354 U.S. at

sexual liberationists view them therapeutically.¹⁹ For moralists the goals of good sex are transubstantiation and orgasms, love the necessary precondition. For sexual liberationists, the goals are derepression and orgasms, assumed mutual consent the precondition. For moralists, sex is dirty if the mind is lecherous.²⁰ For sexual liberationists, sex is bad if the mind is engaged.²¹ For both, however, the significance of sex arises from an attitude of mind toward a unitary sexuality—neutrally, objectively, and inevitably defined. The central debate of the obscenity law thus fixates on whether the material does (the moralists) or does not (the sexual liberationists) injure the “normal” sexuality of its consumers. Just like the pornography itself, obscenity law proceeds from the assumption that in sex there is no sexism, only the natural and necessary expression of “human desire.”

The two traditional approaches thus render unavailable to analysis how women experience pornography and the social context in which it exists.²² That experience and that context show that pornographic equality has defined and perpetuated the subordinate condition of women. The devices the law has used to mask that reality, love and consent, are precisely the twin stars which women have identified as the central mystifications of male dominance which alternatively obscure and legitimize as willed our very real oppression in the class system of sex. Without a critique of consent, rape is very nearly impossible to prove.²³ Without a critique of love, women’s “will-ingness” to remain in intimate abusive relationships makes

487. See generally, Louis Henkin, *Morals and the Constitution: The Sin of Obscenity*, 63 Colum. L. Rev. 391 (1963).

19. See *supra* note 16. Justice Douglas has gone so far as to state that one of the reasons why ascertaining a workable standard for obscenity has proved so difficult lies in “the neuroses of judges, lawmakers, and of the so-called ‘experts’ who have taken the place of Anthony Comstock.” *United States v. 12 200-Ft. Reels of Super 8mm Film*, 413 U.S. 123, 137 (1973) (emphasis added).

20. See, e.g., the ‘prurient interest’ requirement in *Miller*, 413 U.S. at 24.

21. This notion is most apparent in the pandering cases which hold that nonobscene depictions may be regulated if they are packaged to encourage readers to view them as prurient. The assumption is that it is the *interpretive* component which makes the material obscene, not the content. See, e.g., *Ginzburg v. United States*, 383 U.S. 463, 470 (1966) (nonobscene materials may subject purveyors to prosecution for pandering, when the hapless reader is “stimulated . . . to accept them as prurient”); *Hamling v. United States*, 418 U.S. 87, 130 (1974) (relying on *Ginzburg*); *Splawn v. California*, 431 U.S. 595, 598-599 (1977) (relying on *Ginzburg* and *Hamling*).

22. Current research suggests that pornography itself renders women’s experience of pornography not unthinkable, but *imperceptible*. See *infra* notes 52-56 and accompanying text.

23. For feminist critique of consent, and rape law generally, see Catharine

domestic battery invisible.²⁴ What the feminist critique of love and consent makes possible in those areas of the law, the civil rights approach contained in this ordinance makes possible in the area of pornography. By situating pornography as a form of sex discrimination, the injurious impact of pornography on women as a class emerges for the first time in a legal context. The portrayal and use of women in pornography is in fact as "normal" for all women as the pornographers would have us believe: pornography centrally constructs that norm as legitimate and real. This connection between the pornography and the continued, enforced subordination of women will be outlined in what follows.

In pornography, rape is virtually nonexistent. The woman either consents to the use of force against her by enjoying it, or simply deserves it because she *is* a woman. In San Francisco, forty-four percent of women in a random sample report having been victimized by rape or attempted rape at least once.²⁵ Only 7.8% of all women will never experience a sexual assault.²⁶ In absolute numbers, between 300,000 and 500,000 women are raped each year outside of marriage, and perhaps one million a year in marriage.²⁷ These are the numbers. Most people believe the pornography. For example, over fifty percent of a statistical sample of Minnesota residents agreed with the statement that "in the majority of rapes, the victim was promiscuous or had a bad reputation," and that the majority of rapes were reported only because "the woman was trying to get back at the man she was angry with or was trying to cover up an ille-

MacKinnon, *Feminism, Marxism, Method, and the State: Toward A Feminist Jurisprudence*, 8 Signs 635 (1983) and sources cited therein.

24. For a feminist critique of love, especially in the context of the abuse of women, see Linda Lovelace, *Ordeal* (1980); *Against Sado-Masochism: A Feminist Analysis* (Robin Linden, Darlene Pagano, Diana Russell, & Susan Leigh Star eds. 1982); Andrea Dworkin, *The Bruise That Doesn't Heal*, 3 Mother Jones, July 1978, at 36; *Voices in the Night: Women Speaking About Incest* (Toni McNaron & Yarrow Morgan eds. 1982). Nonfeminist literature has been making similar observations about the connection between love and the abuse of women for centuries. For example, in Shakespeare's *Othello*, Flaubert's *Madame Bovary*, and Goethe's *Elective Affinities*, the conjunction of love and dead women is of paramount interest.

25. Diana Russell, *Rape in Marriage* 64 (1982).

26. "Sexual assault" here includes rape, sexual harassment, child sexual abuse, forced prostitution and battery. Study reported in Diana Russell, *Rape in Marriage* (1982); figure calculated from data base National Institute of Mental Health Grant R01MH28960 at the request of Catharine MacKinnon, cited in Brief of Linda Marchiano Amicus Curiae at 26, *American Booksellers Association, Inc. v. Hudnut*, Cause No. IP 84-791C (S.D. Ind. 1984).

27. Timothy Benke, *Men on Rape 2* (1982) (based on conversations with Diana Russell).

gitimate pregnancy."²⁸ Among high school males, more than one half of the subjects believed it acceptable "for a guy to hold a girl down and force her to have intercourse" if she "gets him sexually excited" or "says she is going to have sex with him and changes her mind."²⁹ The woman either deserved it, or wanted it.

Most people also generally believe that women who participate in the production of pornography are there because they want to be. Investigations of the pornography industry³⁰ and the testimony of women's own experiences of pornography have revealed otherwise. Women are coerced into pornographic performances under conditions which are fairly described as enslavement.³¹ We know less than we might about these women because they cannot speak for themselves. When they do speak, however, it is the pornography that is believed. Linda Marchiano, held captive for two and one half years as "Linda Lovelace," is routinely disbelieved when she describes the systematic battery, sexual torture, and imprisonment which made *Deep Throat* possible.³² Seventy minutes of film in which she appears as an actress is considered more persuasive on the issue of her consent than her own story of the beatings, rapes, and forced prostitution necessary to make the film, even when she bears the marks of that treatment on her body. She herself

28. Martha Burt, *Cultural Myths and Supports for Rape*, 38 J. of Personality and Soc. Psych. 217, 229 (1980).

29. *Rape Proclivity*, *supra* note 10, at 152 (citing R. Giarusso, P. Johnson, J. Goodchilds, & G. Zollman, *Adolescents' Cues and Signals: Sex and Assault*, (April 1, 1979) (paper presented at the annual meeting of the Western Psychiatric Association in San Diego, California)). For all the denial of the existence of rape, however, men admit to a chilling willingness to commit them. In a recent survey of college age males, 58% reported some likelihood of forcing sex on a woman if they knew in advance that they would not be caught. *Self-Reported Likelihood of Sexually Aggressive Behavior*, *supra* note 10, at 318. Presumably, they would do it because they think it might be fun. Twenty-three percent of men "could not stop [themselves] even though the woman didn't want to." Mary Koss & Cheryl Oros, *Sexual Experiences Survey: A Research Instrument Investigating Sexual Aggression and Victimization*, 50 J. Consulting and Clinical Psych. 455, 456 (June 1982).

30. Kathleen Barry, *Female Sexual Slavery* (1979); U.N. Economic and Social Council, *Activities for the Advancement of Women: Equality, Development and Peace*, Report of Jean Fernand-Laurent, Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others (March 17, 1983); Linda Lovelace, *Ordeal* (1980).

31. The ordinance provides a legal claim for relief for women who have been coerced into pornographic performances. See *infra* note 68 and accompanying text.

32. Ms. Marchiano's account of her experience in the pornography industry is crucial to an understanding of its operation. See Linda Lovelace, *Ordeal* (1980).

fully appreciates that she is presumed a liar. Linda Marchiano was the only person to testify at the city council hearings who felt it necessary to submit the results of a lie detector test to confirm the credibility of her testimony.

Pornography does not lie about what these women are forced to do. For any picture to be taken of a woman being fucked, beaten, tied and hung from rafters, shaved and spread, an actual woman had to be fucked, beaten, tied and hung from rafters, shaved and spread. As one woman testified at the city council hearings, "every single thing you see in pornography is happening to a real woman right now."³³ We can see them in the pornography. There is a picture of a woman in a magazine purchased in the Twin Cities.³⁴ She is tied up with heavy knots and thick ropes. She is Black.³⁵ There are deep bruises and broken blood vessels covering her face and breasts. She did not testify at the city council hearings.³⁶

33. Testimony, *Public Hearings on an Ordinance to Add Pornography As Discrimination Against Women, Before the Minneapolis City Council Government Operations Committee*, Session II, (Dec. 12, 1983) at 75 [hereinafter cited as Testimony].

34. Bound & Tied, cover photo (slick magazine).

35. The racism of both the portrayal and the consumption of women in the pornography industry is, as in all else, profound. See Alice Walker, *Coming Apart* in Take Back the Night, *supra* note 10, at 95; and Andrea Dworkin, *Pornography: Men Possessing Women* (1981) for description and analysis of this issue. As in the magazine, Bound and Tied, in a pictorial entitled "Black Jack and the Queen of Spades," depictions of Black women bound and gagged are accompanied by text extolling the all-American virtues of slaveholding and its "eroticism." ("Integration is ruining my fucking business and my fun because I really go for black women. . . . Only out of the ghetto can you find many of them with spirit like that and it was that kind of soul that my customer wanted. He requires spirit as well as looks because he is the kind of traditionalist who made this country what it is. No deviation from the old customs and folkways for him. That's why I make sure every slave I get for him is black.") The treatment of Asian women in pornography is almost beyond description. One woman who testified at the city council hearings had had considerable exposure to pornography depicting mostly Asian women. She described it as follows: "[I]t depicted women as animals and had women having sex with animals in it. It has women in cages. . . . Women were led around with collars. . . . They showed more gang rapes. . . . They were portrayed more as slaves." Testimony, Session II, at 68 (Dec. 12, 1983).

36. Two women who had been forced to perform in public pornography were able to testify at the city council hearings because their circumstances were in some way extraordinary. Linda Marchiano, whose name Linda Lovelace was known by millions, testified that she was able to break out of her own imprisonment principally because of the protection that name gave her.

The name, Linda Lovelace, gave me a great deal of courage and notoriety. Had Linda Borman been shot dead in a hotel room, no questions would be asked. If Linda Lovelace was shot dead in Los Angeles, questions would have been asked.

Testimony, Session I, at 48 (Dec. 12, 1983). Another woman testified that she had been drugged, stripped, and forced to "perform" in a strip joint. She was

The picture of her, however, and thousands like it, create a *standard* for what women are for and what we should want and be. We know this because men force pornography on women to show us that as women we all want to be hurt, all want to be fucked by anybody or anything, that if we were "real" women we would want this and since we are women we do.³⁷ The pornography is used to create an atmosphere of sexual force and terror which then becomes a condition of women's lives, at home, at work, on the street.³⁸

One woman reported this process in detail:

During the second year of our marriage he started reading more and more pornography. He started out reading *Playboy* and started picking up magazines like *Penthouse* and *Forum* and as I would come home [for] dinner . . . he would read excerpts from the magazines. Some of them were articles and some of them were letters to the editor, ranging from group sex, wife swapping, anal intercourse and bondage, to mention a few. I was really repulsed at the things he was reading me and I was really in disbelief. . . . He bought more and more magazines to prove to me that people weren't making it up, that all of these people were saying how wonderful these things were.

. . . .
We would meet together as a group [at] pornographic adult theatres or live sex shows. Initially I started arguing that the women on stage looked very devastated like they were disgusted and hated it. I felt disgusted and devastated watching it. I was told by those men if I wasn't as smart as I was and if I would be more sexually liberated and more sexy, that I would get along a lot better in the world and that they and a lot of other men would like me more.

. . . .
About this time when things were getting really terrible and I was feeling very suicidal and very worthless as a person, at that time any dreams that I had of a career in medicine was just totally washed away. I could not think of myself any more as a human being.³⁹

Another woman testified about her experience of having

sexually assaulted, punched, was probably photographed. She was able to speak because she was coerced as a "prank" by "friends." They were apparently not interested in making money off of her. Testimony, Session II, at 49-51 (Dec. 12, 1983). No other woman in those circumstances has had the protection of being "Linda Lovelace," many women's "friends" don't coerce them for a joke, they do it for money. Those women we do not hear from.

37. This view also emerges in the common implication that women who fight pornography are just jealous of pornography models.

38. The ordinance gives rise to a claim for relief for women who have had pornography forced on them. See *infra* note 67 and accompanying text.

39. Testimony, Session II, at 61-64 (Dec. 12, 1983).

pornography forced on her at her job. She worked in a male occupation, as an apprentice plumber. When she arrived on one job and walked into the lunch shack, "three of the four walls in the room were completely decorated with pictures out of various magazines, *Hustler*, *Playboy*, *Penthouse*, *Oui*, all of those."⁴⁰ She reported to the council the sexual humiliation she experienced:

It was very uncomfortable for me to go down there and have dinner and lunch with about 20 men and here is me facing all these pictures.

...

I put up with it for about a week and it finally got to the point where I could no longer tolerate sitting there and realizing that all of these men were there, I felt totally naked in front of these men.⁴¹

That woman took action and was punished for it. She took the pictures down. The men responded by putting them up again, calling her a bitch, and boycotting her on the job. Her car door was bashed in at work. She suspects one of her co-workers was responsible. She later transferred to a less desirable job.⁴² Yet another woman, the victim of repeated sexual assaults linked with pornography describes her daily, routine, and unavoidable contact with pornography in these terms:

Every time I walked into a neighborhood grocery store or drug store I am reminded that if I don't watch my step, do what I'm told, keep silent or stay in my place, that I could end up like one of the women in that pornographic material being sold in those stores.

...

I believe what those magazines say because it has happened to me.⁴³

That woman's understanding of the threat of immediate physical harm posed by pornography is one many women share, because many women like her have suffered it. Pornography informs a man of what it is in his power to do to women, then is used as a textbook in which the woman is the experiment. Women repeatedly testified to the use of pornography to suggest sex acts to the men which the women were then forced to perform.

Over a period of 18 years the woman was regularly raped by this man. He would bring pornographic magazines, books, and paraphernalia into the bedroom with him and

40. *Id.* at 85.

41. *Id.* at 86.

42. *Id.* at 88-89.

43. Testimony, Session III, at 16-17 (Dec. 13, 1983).

tell her that if she did not perform the sexual acts that were being done in the 'dirty' books and magazines he would beat and kill her.⁴⁴

I was attacked by two white men and from the beginning they let me know they hated my people. . . . And they let me know that the rape of a 'squaw' by white men was practically honored by white society. In fact, it has been made into a video game called 'Custer's Last Stand.' And that's what they screamed in my face as they threw me to the ground, 'This is more fun than Custer's Last Stand.'⁴⁵

Women were forced constantly to enact specific scenes that men had witnessed in pornography. They would direct women to copy postures and poses of things they had seen in magazines and then they would take their own pictures of the women.⁴⁶

He would read from the pornography like a textbook, like a journal. In fact, when he asked me to be bound, when he finally convinced me to do it, he read in the magazine how to tie the knots and how to bind me in a way that I couldn't get out.⁴⁷

Staff members of women's shelters,⁴⁸ sexual assault centers,⁴⁹ and mental health facilities⁵⁰ all testified to the direct use of pornography in inspiring and instructing men in how, exactly, to rape and otherwise physically harm and terrorize women.⁵¹ The experience of women exposes that the production, use, and reproduction of pornography coerces women into lives in which we are shamed, degraded, imprisoned, and forced to endure.

Pornography also reinforces the existing subordination of women as a *class*. Pornography legitimates and normalizes the subordination of women, rendering that subordination invisible as subordination. Empirical studies demonstrate that pornography, especially "nonviolent" pornography, destroys men's ability to *perceive* either the existence of sexual force and degradation, or the harm of it. The use of force and degradation becomes fused with their perceptions of what women are for and what men may legitimately do to us. For example, after only six hours of exposure to nonviolent pornography over a six week period, normal men were both less repulsed by the

44. Testimony, woman's roommate, Session III, at 14 (Dec. 13, 1983).

45. *Id.* at 18-19.

46. Testimony, Session II, at 73 (Dec. 12, 1983).

47. *Id.* at 68.

48. Testimony, Session III, at 21-26 (Dec. 13, 1983).

49. *Id.* at 27-36, 75-78.

50. *Id.* at 69-74, 44-45, 46-55.

51. The ordinance gives rise to a claim for women who have been assaulted or otherwise physically harmed in a way connected with specific pornography. See *infra* note 66 and accompanying text.

material and enjoyed it more. At the same time, they demonstrated a 100% increase in sexual callousness toward women, and a substantially increased trivialization of rape.⁵² In a similar experiment conducted over a two week period, normal male subjects exposed to such films as "Debbie Does Dallas" saw rape victims as five times more worthless than men who hadn't seen the films. They also saw less than half the amount of injury to the victim.⁵³ These films did not depict violent rapes, rather they showed women as sexually objectified or in unequal power relationships with men. Depictions of sexual objectification and power imbalance in a sexual context alone led to the men's drastically reduced ability to perceive violence and degradation, and greatly enhanced hostility towards women. Exposure to violent pornography yields similar results. Normal, "healthy" male subjects, after five minutes of exposure to pornography, say that twenty-five percent of the women *they know* would enjoy being raped, and that thirty percent of the women they know would enjoy being aggressively forced into sexual intercourse.⁵⁴

Pornography then fuses men's diminished capacity to perceive our subordination as injury with their sexual pleasure. Pornography renders our subordination not only legitimate and invisible as subordination; pornography makes it sexy. As men's perceptions of our degradation evaporate over time with exposure to nonviolent pornography, their enjoyment of our depiction as objects or sexual commodities increases.⁵⁵ As men come to see the use of force and degradation as what women want, as natural to women, they become more aroused by the force and the degradation. For example, a man is as aroused by depictions of rapes in which the woman is ultimately aroused as he is by depictions of consensual sex.⁵⁶ At the same time, violent pornography conditions men to become sex-

52. Dolf Zillman & Jennings Bryant, *Pornography, Sexual Callousness and the Trivialization of Rape*, 32 J. of Communication 10 (1981). "Normal" men in this context means that these subjects manifested fewer indices of aggression, hostility, and psychosis than the mean of the general male population.

53. Edward Donnerstein, *Erotica and Human Aggression* (ongoing study) (data available from the Minneapolis Municipal Information Library).

54. Testimony, Edward Donnerstein, Session I, at 22-23 (Dec. 12, 1983).

55. Dolf Zillman & Jennings Bryant, *Effects of Massive Exposure to Pornography* 18, in *Pornography and Sexual Aggression* (Neil Malamuth & Edward Donnerstein, eds., forthcoming 1984) (data available from the Minneapolis City Council).

56. Neil Malamuth, Maggie Heim, & Seymour Feshback, *Sexual Responsiveness of College Students to Rape Depictions: Inhibitory and Disinhibitory Effects*, 38 J. of Personality and Soc. Psych. 432 (1980).

ually excited by rape and violence against women which even the men characterize as such.⁵⁷ A single exposure to violent pornography can result in self-generated rape fantasies.⁵⁸ Exposure to pornography connects the sexual objectification of women with a powerful behavioral stimulus in men. It makes them come.⁵⁹

The availability of pornography itself, then, constitutes an injury to women as a class. Even if we are not one of the women who know we have already been directly harmed through the use of specific pornography, pornography constructs a world in which all women are appropriate victims of such treatment. Pornography makes us all presumptively willing pornography models, fit and happy to be spread, raped, beaten up and cut up. The assignment of this status to women has two overlapping consequences for us. First, it determines how we are actually treated at work and in the ordinary transactions of life. Pornography makes *all* of us willing whores when we try to apply for jobs, keep them, look for apartments to live in, try to buy a car.⁶⁰ Whores are not treated the same as men. Whores are treated worse than men.⁶¹ Second, pornography determines how all women are forced to live our daily lives. Women live lives substantially determined by sexual terrorism. Women do not have to be sexually attacked to know that it could happen to us anytime, anywhere, by anyone. It happens to us because we are women, no more and no less. It is by this knowledge that our freedom to live where, how, and with whom we choose is substantially constrained. This is not a life lived by men; it is lived by us because we are women and because the pornography legitimizes and enforces our condition as

57. Neil Malamuth & James Check, *Penile Tumescence and Perceptual Responses to Rape as a Function of Victims' Perceived Reactions*, 10 J. of Applied Soc. Psych. 528 (1980).

58. Neil Malamuth, *Rape Fantasies as a Function of Exposure to Violent Sexual Stimuli*, 10 Archives of Sexual Behavior 33 (1981).

59. Professionals who treat sex offenders routinely seek to reorient orgasmic responses away from pornographic stimulus, having found that sexual aggression towards women is significantly enhanced when connected with orgasmic rewards. G.G. Abel, D. Barlow, E. Blanchard, & J.V. Becker, *Psychological Treatment of Rapists in Sexual Assault: The Victim and the Rapist* (Marion Walker & Stanley Brodsky eds. 1976).

60. This is not to imply that prostitutes are *properly* treated in a discriminatory fashion, and the injury is only to *other* women who are misperceived as prostitutes.

61. Former prostitutes submitted testimony anonymously to the city council, for fear of losing their jobs if their employers knew what they had done for a living. Testimony, Session II, at 69-70 (Dec. 12, 1983).

subordinate sexual objects.⁶²

The Minneapolis ordinance provides women with a legal means to redress the injury demonstrably done to us as a class by pornography. The definition of pornography brings within the ordinance that material which has been shown to contribute to our subordinate status by defining us as fit for the treatment we actually receive. Any material must meet three requirements to form the basis for an actionable claim. It must be sexually explicit, it must subordinate women, and do so through at least one of the nine enumerated means of depiction.⁶³ Each of these elements was shown in the legislative record to contribute to women's subordinated status. The definition thus excludes erotica premised on sexual equality, or sex education materials. It excludes material which does contain scenes of sexual degradation, but not in a manner which subordinates women.

The ordinance gives rise to four distinct claims each describing a particular type of injury sustained by women through pornography. Women who have been coerced into por-

62. The ordinance provides a claim for any woman, acting against the subordination of women, against traffickers in pornography. See *infra* note 68 and accompanying text.

63. Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139 § 3, subd. (gg)(1), amending § 139.20. "Sexual explicitness" has a legal meaning developed in obscenity and related law. See, e.g., *Erznoznik*, 422 U.S. at 213; *Young v. American Mini Theatres*, 427 U.S. 50 (1976). For the purposes of this ordinance, the term should be construed to mean depictions in which the conduct depicted is explicitly *sexualized*. The term should not be construed as referring to depictions of certain enumerated body parts, as statutory definitions of sexually explicit typically do. Such definitions ignore what pornographers have already managed to sexualize, like the dismemberment scenes in "Snuff" which only show the woman's breasts accidentally, bondage in which the woman's genitals and breasts are obscured by ropes, depictions of women eating excrement, etc. The subordination of women as yet has no legal definition. Courts, however, could be guided by related concepts developed in the law of the thirteenth amendment, *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), and a strand of race discrimination law under the fourteenth amendment epitomized in *Loving v. Virginia*, 388 U.S. 1 (1967) which takes as its principal perspective the goal of dismantling "measures designed to maintain White Supremacy." *Loving*, 388 U.S. at 11 (Stewart, J., concurring).

The amended version of the ordinance, enacted in Indianapolis, contains a slightly altered definitional provision. The amendments compress the definitional provisions contained in the original ordinance. The original nine means of depiction are reduced to six. Subsections (gg)(1)(i) and (v) are combined, and subsection (gg)(1)(vi) is combined with subsection (iv). Subsection (gg)(1)(vii) is deleted, since that category is necessarily included in the other provisions.

The amended definitional section was also contained in the proposed ordinance passed and vetoed in Minneapolis on July 13, 1984, and is set forth in the appendix following the original ordinance.

nographic performances may bring actions against the makers, sellers, exhibitors or distributors of the pornography both for damages and the elimination of the products of the performance from the public view.⁶⁴ To make a claim under this provision, the woman must first establish that the material is pornographic under the statutory definition. She must then show that her performance was coerced, fraudulently induced, or brought about by intimidation. Proof of coercion is rebuttable only by a showing that the woman in fact *meaningfully* consented to the performance. The ordinance explicitly sets forth factors which, taken alone, may not be used to negate a finding of coercion.⁶⁵

A woman who has been assaulted, physically attacked, or injured in a way directly caused by specific pornography may bring a claim for damages against the perpetrator as well as the maker, distributor, and exhibitor of the material.⁶⁶ An injunction may also issue against the further exhibition, distribution, or sale of the pornography. The woman again must show that the material is legally pornographic. She must also show a causal relationship between her assault and *specific* pornography. Such a claim does not, of course, extinguish the right of the state to prosecute the perpetrator in a criminal action. It does, however, expand the class of potential defendants compared to a civil rape or assault action. The remedy also may include injunctive relief against future sales and distribution of the material, which is unlikely to be available in a civil tort claim.

Forcing pornography on a woman also gives rise to liability under the ordinance. Any woman who has pornography forced on her at home or in any public place may bring actions

64. Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139, § 4 subd. (m) *Coercion into pornographic performances*. Any person, including transsexuals, may bring a claim under this provision. The term "woman" is used in the text because it is overwhelmingly women who are in fact injured in this way. For examples of women who could bring a claim under this section see *supra* note 36 and accompanying text.

65. Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139, § 4 subd. (m)(2). These exclusions are crucial to the integrity of legal proceedings under this section. See *supra* notes 23-30 and accompanying text. The widely publicized New Bedford rape trial is evidence that similar exclusions should properly be included in legislative reform of rape laws. See also Andrea Dworkin, *supra* note 24, for an examination of the same issues in the context of wife beating.

66. Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139, § 4, subd. (o) *Assault or physical attack due to pornography*. Again, any person may bring such a suit who has been injured in this way.

against the perpetrator, and the institution in which the act takes place.⁶⁷ The woman must establish that the material was legally pornographic, and was forced on her. The ordinance does not expressly allow equitable relief against the *material* under this provision; damages are clearly countenanced.

Finally, any woman may bring a claim against traffickers in pornography as a woman acting against the subordination of women.⁶⁸ Trafficking is defined as the production, sale, exhibition, or distribution of pornography, and is construed as an act of discrimination against women. Thus, any woman has a claim against traffickers in material within the legal definition of pornography. This provision is aimed at the harm to women posed by the availability of pornography in and of itself.⁶⁹

Plaintiffs have a choice of forum in which to raise their claims. They may either proceed directly to state district court, or employ the administrative procedures provided them by the civil rights commission of the city.⁷⁰ This is a purely civil remedy, available to private litigants. No police enforcement or criminal penalty is available or imposed.

For those who do not understand either the outrage or the seriousness of women's struggle against pornography, the evi-

67. Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139, § 4, subd. (n) *Forcing pornography on a person*. Any person may sue under this provision. Examples of "forcing pornography" are contained at *supra* notes 36-38 and accompanying text.

68. Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139, § 4, subd. (l)(3) *Discriminatory trafficking in pornography*. This provision permits any woman to seek relief, as well as "[a]ny man or transsexual who alleges injury by pornography in the way women are injured. . . ." Since the injury done by trafficking was demonstrated to run to women as a class, this cause of action gives rise to a claim for men and transsexuals only if they are injured as women. This provision thus rejects the view that men are harmed by pornography in the same way that women are harmed, but adopts the view that in some circumstances men may be treated like women and thus harmed in the same way.

The most significant modification contained in the Indianapolis ordinance creates a defense to claims brought under the trafficking provision that the material "only" presents women as "sexual objects for domination, conquest, violation, exploitation, possession or use, or through postures or positions of servility or submission or display," the so-called "Playboy exception." While this exception is not justified by the record, it was considered necessary for political reasons. This also suggests that the term "political," in conjunction with issues of sexual access to women, is more accurately understood as "what we men can keep."

69. See *supra* notes 60-62 and accompanying text.

70. The complainant must, however, first file a complaint with the city civil rights department before proceeding to court. She may pursue a remedy in court if the department fails to hold a hearing pursuant to the complaint, or dismisses the complaint, unless a conciliation agreement is entered into to which the complainant is a signator. Minneapolis, Minn., Code of Ordinances, Title 7, ch. 139, § 2, amending § 141.60.

dence of the harm to women attributable to pornography may clarify what is at stake for women. In addition to all of those known injuries, there is the added, overwhelming knowledge that women's lives, security and integrity are routinely and systematically sacrificed for the sole purpose of making men come. Men's ejaculations support a seven billion dollar a year industry⁷¹ which imperils women daily. That a man's orgasms are considered more valuable in this society than a woman's life is a simple and true indication both of how entrenched women's subordinate status is, and how subordinate it is. Andrea Dworkin has said, "We will know that we are free when the pornography no longer exists."⁷² It would at least be a beginning.

It is often argued that the law is the last and least reliable ally in the struggle for social equality. The activist's credo, that the law can only and should only be a shield and not a sword, lest the sword be turned against us, assumes that women have both a shield and a sword to spare. In the struggle against pornography, women have precious few strategies and very little to lose. As a condition of our sexual and social inequality, much of the direct harm we endure we generally endure one by one, alone, isolated, separated from other women, in bedrooms. As a condition of our inequality, when we find ourselves in bondage, in conditions of sexual and psychological battery, in a life of prostitution, we often have no place to go, no way to get there, and no one to believe that we don't want to be where we are. Often we believe we *do* deserve it. These conditions have constrained the possibilities of organizing on a scale that, at least historically, has been necessary for extra-legal change.⁷³ In the meantime, while women struggle to keep our movement alive, our sisters are beaten, force-fucked, prostituted, impoverished and enslaved. This ordinance may relieve some of that suffering and help us name it for what it is.

71. Martha Lagelan, *The Political Economy of Pornography*, Aegis: Magazine on Ending Violence Against Women, Autumn 1981, at 5.

72. Andrea Dworkin, *Pornography: Men Possessing Women* 224 (1981).

73. This is not to underestimate the effective and continuous organizing which women have accomplished to combat pornography around the country for at least the last ten years. The massive organizing to compel theatres to withdraw the film "Snuff" is only one example. The work of the Preying Mantis Women's Brigade has been inspiration to us all. But, as the steering committee for Women Against Pornography, one of the largest anti-pornography groups in the country, explained to the Minneapolis City Council, a movement fueled on volunteer time and little money combatting a seven billion dollar a year industry is faced with more than an uphill climb. It's a vertical ascent with no ropes.

Appendix I**An Ordinance of the City of Minneapolis
(As passed by the City Council and Vetoed by the Mayor)**

**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 *Finding, 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 THE 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-entitled 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 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 findings 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 in-

volved 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 defendant 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 De-

cember 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 (1) 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.

Appendix II

**City-County General Ordinance No. 35, 1984, § 2,
amending the Code of Indianapolis and Marion County,
Indiana, Ch. 16, Human Relations; Equal Opportunity, § 16-3,
Definitions, subd. (q):**

(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 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;
- (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.

