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Porn and Commercial Sexual Exploitation

By Cheryl George - Lincoln Memorial University-Duncan School of Law

Human Trafficking is a violation against humanity and a contradiction to the notion that all people are born free and have rights that are equal.¹ This global crime is a part of practically every country in the world. No nation is immune from its reaches.² Every year thousands of women, men and children fall prey to human commercial exploitation and are trapped in a criminal enterprise that profits in the billions. Human trafficking is defined as, “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”³

Slavery is a component of our society and is weaved into our daily lives as consumers of goods. We use slave labor when we purchase certain chocolates, diamonds, energy and produce. We may not be aware of the origins and production costs of the products that we purchase. Many times, slave labor has been used in the product’s supply chain.⁴ (<http://www.enoughproject.org/publications/taking-conflict-out-consumer-gadgets-company-rankings-conflict-minerals-2012>). Slave labor is used rampantly and companies make it a point to not disclose its use of slave labor in the making of consumer goods. Such notification would not be good for business. We are more comfortable, as consumers, not being aware of the forced labor that went into the making of the products we use and most of us would be surprised to know that slavery is not running rampant worlds away. “49% of the profit made from trafficked labor comes from industrialized countries like the United States of America.”⁵

Slaves come in many different forms and can be males or females, adults or children. Slaves could be made to work in seamstress shops, or as agricultural workers, domestic workers who cleans homes and care for children, fisherman, child soldiers or even as sex slaves.⁶ Though the jobs may differ, there is a common denominator and that is that the individual has been forced into this exploitive situation through force, fraud or coercion. A conservative estimation shows that approximately 12 million people around

¹ Declaration of the Rights of Man and of the Citizen, Art.1, Approved by the National Assembly of France, Aug. 26, 1789, <http://www.hrcr.org/docs/frenchdec.html> (last viewed Dec. 18, 2012).

² John D. Sutter, *Slavery’s Last Stronghold*, CNN (Mauritania did not officially end slavery until 1981 and create legal penalties for owning another human being until 2007), <http://edition.cnn.com/interactive/2012/03/world/mauritania.slaverys.last.stronghold/index.html> (last visited Dec. 18, 2012).

³ United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Dec. 18, 2012).

⁴ Alexandra Hellmuth & Sasha Lezhnev, *Taking Conflict Out of Consumer Gadgets: Company Rankings on Conflict Minerals 2012*, EnoughProject.org (Aug. 16, 2012), <http://www.enoughproject.org/publications/taking-conflict-out-consumer-gadgets-company-rankings-conflict-minerals-2012>.

⁵ <https://www.facebook.com/?ref=hp#!/photo.php?fbid=458267744223821&set=a.258664337517497.7790.6.235085629875368&type=1&theater>; or <http://slaveryfootprint.org/>

⁶ National Underground Railroad Freedom Center, <http://freedomcenter.org/slavery-today/> (last visited Dec. 18, 2012).

the world are in some form of forced servitude and serve as slaves.⁷ Other estimates are as high as 27 million slaves globally. That number is more than twice the amount of slaves stolen from the continent of Africa during the entire duration of the trans-Atlantic slave trade.⁸

Slaves, in whatever industry or field in which we find them, are dehumanized, abused, mistreated and viewed as less than human. Many times, the labor of these individuals is unknown or overlooked as “as part of life.” Slaves that make up a “part of our lives” could work as miners in Congo, brick carriers in Nepal, Himalayan children forced to tote stones from quarries, in the textile industry in India, in agriculture in fields picking the grapes we enjoy as a snack, in restaurants, as domestic servants, perhaps as your dentist’s nanny. And of course a slave could come in the form of a child (boy or girl) as young as seven being forced to “entertain” a male client in whatever sexual manner the client sees fit.

One has to wonder what could drive a human being to be able to abuse and dehumanize another human being for pleasure or for gratification. Pornography has the ability to create in the minds of certain people, the baseness needed in order to exploit a person. Pornography is not easily defined and was once spoken of by one judge when he famously said “I can’t define pornography, but I know it when I see it.”⁹ Pornography is unquestionably “exploitative and oppressive of women, treating them as objects of male control.”¹⁰ Some have argued that laws should be enacted to protect the civil rights of women as pornography is a form of violence.¹¹ Still others have gone to great lengths to argue that the current definitions of pornography that exist fail to cover all forms of pornography.¹² For purposes of this article, I am going to employ and reference the definition of pornography as defined by Catherin McKinnon and co-authored by Andrea

⁷ *Id.*

⁸ Lisa Kristine, *Glimpses of Modern day Slavery*, TED (Aug. 2012), http://www.ted.com/talks/lisa_kristine_glimpses_of_modern_day_slavery.html.

⁹ *Jacobellis v. Ohio*, 378 US 184, 197 (1964) (Stewart, J., concurring).

¹⁰ David E. Guinn, *Pornography, Prostitution and International Sex Trafficking: Mapping the Terrain*, in *Pornography: Driving the Demand in International Sex Trafficking*, 16 (David E. Guinn ed., Captive Daughters Media 2007).

¹¹ *Id.*

¹² Michael C. Rea, *What Is Pornography?*, 35:1 *Noûs* 118, 123-34 (2001); or <http://nd.edu/~mrea/papers/What%20is%20Pornography.pdf> (Jon Huer defines pornography as “any object mass produced and distributed with the purpose of marketing it for profit by appealing to our sexual interests.” This definition is lacking as it implies lingerie, vibrators, flavored condoms and other sex toys/aides as pornography while not including strip shows, peep shows, amateur stag videos. Fred Berger defines pornography as “art or literature which explicitly depicts sexual activity or arousal in a manner having little or no artistic or literary value.” The problem with this definition is a lot of what actually counts as pornography is not at all art. Sex calls and peep shows are clearly not art but are widely accepted as pornographic. Margaret Smith and Barbara Waisberg define pornography as “sexual imagery which presents the human subjects as only sexual objects for the use of the viewer.” This definition fails to give necessary conditions for something’s being pornography, for example, there would be no way for a photo or a video to portray a human being as only or only as a sexual being. Catharine MacKinnon and Andrea Dworkin defined pornography as “the graphic sexually explicit subordination of women through pictures or words that also includes women dehumanized as sexual objects, things, or commodities.” The main problem with this is something counts as pornography on this definition only if it is a depiction that subordinates somebody but it is not clear what it takes for a depiction to do this).

Dworkin. Some have called this type of definition, an “oppression” definition,¹³ but it is one that most feminists agree with and use in this discourse.

Dworkin defined pornography as:

women turned into sub-humans, beaver, pussy, body parts, genitals exposed, buttocks, breasts, mouths opened and throats penetrated, covered in semen, pissed on, shitted on, hung from light fixtures, tortured, maimed, bleeding, disemboweled, killed. It is scissors poised at the vagina and objects stuck in it, a smile on a woman’s face, her tongue hanging out. It is a woman being fucked by dogs, horses, snakes. It is every torture in every prison cell in the world, done to women and sold as sexual entertainment. It is rape and gang rape and anal rape and throat rape: and it is the woman raped asking for more. It is the woman in the picture to whom it is really happening and the woman against whom the picture is used, to make them do what the woman in the picture is doing. It is the power men have over women turned into sexual acts men do to women. It sexualizes inequality and in doing so creates discrimination as a sex-based practice. It is women, kept as a sexual underclass, kept available for rape and battery and incest and prostitution. It is the heretofore hidden system of subordination that women have been told is just life. Under male supremacy, it is the synonym for what being a woman is.¹⁴

Prof. MacKinnon emphasizes that the characteristics of pornography give rise to violent sexual assault, prostitution, and numerous abuses of the female body.¹⁵ (see my “Jailing the Johns” article

http://works.bepress.com/cgi/viewcontent.cgi?article=1007&context=cheryl_george).

This school of thought looks at the complete brutalization of the human psyche as is illustrated in pornography. Pornography is in a sense, rape and sodomy and a host of crimes that are being depicted and shown repeatedly in the privacy of one’s home. Pornography glamorizes, legitimizes and authorizes violent sexual acts and makes the mistreatment and debasement of those victimized look as if the victim is desirous of such actions. This industry is a multi-billion dollar a year business and began with an idea by Hugh Hefner to bring a magazine for the upwardly mobile, Caucasian male.¹⁶ The magazine began in the early 1950’s and clearly “struck a nerve with American men.”¹⁷ The magazine marketed itself as anything but a magazine for families.¹⁸ This publication was specifically marketed to introduce the white American male to the

¹³ Rea, *supra* note 12, at 129.

¹⁴ Andrea Dworkin, *Against the Male Flood: Censorship, Pornography and Equality*, 8 Harv. Women’s L.J. 19, 26-27 (1985).

¹⁵ See Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 Fla. Coastal L. Rev. 293, 321 (2012).

¹⁶ Gail Dines, *Pornland: How Porn Has Hijacked Our Sexuality*, 2 (Beacon Press 2010).

¹⁷ *Id.*

¹⁸ *Id.* at 2-3.

concept of being a “Playboy.” It portrayed women as “crippers of American masculinity” who were only trying to trap men into marriages that would thus end the man’s days of freedom and independence. Women were seen as being conniving, ruthless, freeloaders. The lead off article in the first edition of *Playboy*, was entitled, “Miss Gold-Digger of 1953.” That was the essence of how women were portrayed in Hefner’s newly imagined world of powerful men dominating over-bearing women who needed to be taught to be submissive. During an age when many single men were seen as being sociopathic or homosexual, Hefner understood that he needed to craft an image that depicted the single man as a hard working man, who was “actively heterosexual” and continuously surrounded by numerous, sexy women and attractive women.

Playboy was able to be as successful at the time due to the lack of competition. Most other publications at this period were focusing on war related issues (guns, fighting, and death). Hefner realized that the majority of “pin-up” magazines that were sold conspicuously were not the kinds of magazines that most men felt proud of or ones that they would easily display on their living room tables. He knew that most of the American public would shun a full blown pornographic magazine. He instead, offered a neatly packaged, literary publication that contained “articles, fiction, pictures, stories, stories, cartoons, humor and special features...”¹⁹ In this benign description, the “pictures” were simply included as a part of the magazine and not the centerpiece of the magazine. Hefner sold the magazine as a way for regular, ordinary, everyday “Joe’s” to become a part of the cultural elite. He showed the reader, via this magazine, that they could be a part of the upper crust of society. It was just a matter of following the ways of *Playboy*’s instructions. The message was to enjoy the literary pieces included in the magazine, feast on the culinary articles, laugh along with the cartoons and, also view and delight in the “soft core” pornographic images of the lovely ladies as well.

Hefner’s photographs of the women depicted in *Playboy*, would be considered docile by today’s standards of what is pornographic. The images did not show genitals or pubic hair. They were “dreamy” images of women in sexually provocative poses but nowhere near the provocation shown in the photographs that were to come when *Penthouse* and *Hustler* entered the market. And while *Playboy* attempted to introduce certain taboo topics (such as rape as pleasant, stimulating activity) the advertisers were not ready to allow their names to be placed in magazines that showed raped as sexual entertainment.²⁰

Penthouse and *Hustler* ushered in a new era of pornography. These publications took what *Playboy* had started and went to another level. *Penthouse* entered the market and directly attempted to compete with the market enjoyed by *Playboy*. They knew that they had to make the photographs of the women in the magazine much more sexually explicit in order to grab that “niche” market. *Penthouse* boldly used photography that exposed pubic hair as well genitals. These women were posed in sexually provocative ways and used in clearly subservient, and many times in clearly physically abusive roles than had been seen by *Playboy*. *Penthouse*’s articles too, were much more edgier and erotic than were the articles used in *Playboy*. *Penthouse* offered women in simulated

¹⁹ Dines, *supra* note 16, at 7.

²⁰ Dines, *supra* note 16, at 11-12 (Story in a July 1962 issue of *Playboy* that focuses on the rape of a seventeen year-old by an older man. Advertisers threatened to cancel contracts with *Playboy* and some newsstands refused to carry the issue).

sexual acts, group sex acts as well as sexual violence. In practically every way, Penthouse attempted to push the envelope on sexual content and consumer consumption.

Eventually the much more provocative Penthouse photos proved to be too much for Playboy to ignore and Playboy began to respond to the gauntlet being thrown down, by making their photos much more sexually explicit as well. Playboy dropped the façade of being a “soft-core” porn magazine and began to have images that were more erotic and raw than those previously offered. That gamble paid off as Playboy’s circulation was three times the amount of Penthouse.²¹

Hustler soon came on the scene as the publication that promised to deliver true porn. This magazine pushed the boundaries of sexually explicit imagery farther than had ever been done before. Because of the foundation that had been laid by Playboy and Penthouse, the advent of Hustler came easier as consumers were now much more accustomed to porn as “normal.” Hustler benefitted greatly from the work done by the two previous publications and made their entering the industry easier. Unlike Playboy and Penthouse, Hustler did not attempt to masquerade their sexually explicit photographs behind articles, cartoons, literature or other materials. Hustler was on the scene to show women in sexually provocative, demeaning, degrading, ways and they did not attempt to do anything other than that. Hustler’s advertisers were even industries that focused mainly on sexual products and services.²² Hustler made the bulk of its money not from advertisers but from the individuals that subscribed to the magazine (subscription financed revenue) and that bet paid off handsomely for Hustler. Of the three magazines, Hustler is the most financially successful. Hustler has been referred to as being “the most ‘vulgar’ of “all three sexual publications²³ and their choice of portraying women in sexually explicit and provocative ways that had never been seen before was a financially beneficial decision. The gist of what these publications were able to do was to sanitize and popularize material that had heretofore been socially inappropriate and made it “fun, edgy, sexy and hot.”²⁴

Given the evolution and vast expansion of pornography, it is not surprising to see how porn has become a part of the fabric of our society. Porn has become a component of pop culture in a myriad of ways. Pornography has infested practically every aspect of our lives. It is seen in numerous mainstream media outlets as safe, ordinary and a given. It is just another facet of every day life. Porn stars are now considered mainstream idols and people to emulate. Many porn stars now star in movies that are considered mainstream. Many get their big break by having been known as porn stars.²⁵ Some stars employ social websites to gather a following of fans and then attempt to catapult themselves into the Hollywood spotlight.²⁶ These porn stars interact one-on-one with

²¹ Dines, *supra* note 16, at 14 (Playboy had a circulation of 3.5 million and Penthouse had a circulation of a little more than 1 million).

²² Dines, *supra* note 16, at 15 (Industries that offered services and products like sex toys, sexual devices, sexual enhancers and even telephone sex).

²³ Dines, *supra* note 16, at 19.

²⁴ Beauty Redefined, *Porn and Pop Culture: A Deadly Combination*, Beauty Redefined Blog (Mar. 2, 2011), <http://www.beautyredefined.net/porn-pop-culture-a-deadly-combination/> .

²⁵ Jim Spellman, *Porn Stars Use Twitter to Go Mainstream*, CNN (Jul. 19, 2012, 9:29 AM), <http://www.cnn.com/2012/07/19/showbiz/porn-stars-twitter/index.html>.

²⁶ *Id.* (estimated that 90 percent of porn actors use Twitter in an effort to build their Brand” and establish a name for themselves in mainstream media.)

their followers and usually discuss innocuous things like hobbies, likes and dislikes. This shallow banter allows the porn star to display a side of them that is not often seen when acting in pornographic movie. Scholars believe that sites like Facebook and Twitter have the power to alter the way a person views a porn actor thereby allowing the porn star to recreate their image directly with fans. This renewing of their self identification may allow porn to be even more accepted in our society.

Another way that porn has infiltrated our society is through a phenomenon known as “Girls Gone Wild.” This industry began with a few men with cheap, plastic beads and t-shirts being given to young, intoxicated females away on spring break to show their breasts on camera. GGW is marketed as real, innocent young looking women who are not porn stars showing their breasts and having fun on camera. Many of the girls are paid a nominal fee to kiss and fondle other girls (most of whom are intoxicated) while being videotaped. They have signed a “release” for their images to be used in video production and dissemination thereby releasing GGW producers from any liability. Many students feel that women who appear in the GGW videos have chosen to do so. No one forces them to expose their body parts and no one twists their arms to make them do what they do. One student is quoted as saying: “I wouldn’t say exploiting is the right word; I’d say it’s disrespectful,” a college junior said. “It’s fine if women want to be in them, but after enough of that stuff happens, it does begin to objectify women. But I wouldn’t look down upon a woman who wanted to do it or (women who) are part of it.”²⁷ The producers of the show justify their actions by saying that they simply “look for women who are confident in their bodies and excited to be on camera.”²⁸ The fact that young women would be willing to allow their breasts to be viewed publicly and recorded for posterity, is an indication of how certain standards of what is appropriate and what is inappropriate have evolved over time. The boundaries of what is socially acceptable sexually and what is not have changed as a result of the vast exposure and proliferation of sexually explicit material. Given the amount of full and partial nudity seen in prime time television, magazine publications as well as other media outlets, young impressionable women may think it appropriate to expose their breasts and see such activity as “just having fun and living life.”

Porn has become an accepted way of life and that is discernible in the craze that accompanies the latest release of the Sport’s Illustrated Swimsuit Edition. This magazine purports to show off the latest in swim suit wear, but the magazine is marketed to males. Many of the models of the swimsuit wear double as porn star actors as well. These same models also appear in the Victoria Secret’s models. These women wear little clothing but these publications are sold as everyday, acceptable, safe publications. Many men and women look forward each year to the Victoria’s Secret Fashion Show and view it as women simply modeling lingerie. The lingerie is so skimpy and the women are so scantily clad that one could hardly call it a fashion show, but such productions are a part of our mainstream society. Before publications like Playboy, Penthouse and Hustler, some of the materials we are being exposed to as a society were unheard of and would not have been tolerated in our society. But because of the

²⁷ Whitney Biber, *The Naked Truth About Girls Gone Wild*, Weekend (Mar. 5, 2008), <http://www.idsnews.com/news/weekend/story.aspx?id=12016> .

²⁸ *Id.*

inundation of sexuality, promiscuity and sexualization of women, we have now grown accustomed to such instances of blatant sexual exploitation of women.

When one thinks of the commodification of women and girls, one may not think of television programming for children, but there is evidence that even in children's television programming, there is bias. Studies have been done that show 18% of female characters are "wearing sexy attire."²⁹ This is compared to a little more than 10% of male characters dressed in "sex attire."³⁰ When the study looked at characters "with exposed skin," the numbers showed that 17.2% for female characters and 12.4% for males. The disparity in numbers is greatest when one looks at characters being portrayed "with thin bodies." There the numbers are males at 18.7% and females at 37.4%.³¹ In "family films" women are portrayed with a thin body 34.3% of the time whereas men are portrayed with thin bodies 10.7% of the time. The bottom line is that children are being exposed to certain sexualized images at a tender age where they are most impressionable and subject to their thoughts being molded for a lifetime.

A parent should never have to worry about their children watching pornographic images while watching a station dedicated to children's programming, but that is exactly what happened to one North Carolina family. A mother pre-recorded a cartoon for her children (ages 2, 3 and 5) to watch and while they were watching it, the show inadvertently switched to porn for six minutes.³² The mother was in another room and heard the noise and assumed that the children had switched the television to another station. When she later went back to check the tape, after the children swore they had not turned the channel, the mother saw six minutes of pornography that had indeed been aired on live television. Neither Dish Network, nor the Disney Channel have been able to explain the "mix up." But the children were traumatized by the incident as is shown in the fact that the 3 and 5 year old now, according to the mom, "mimic[ed] the action and sound of a couple having sex." This is an indication of the power of pornography on a developing mind. This short introduction, six minutes worth, has infiltrated these children's minds and changed how they think and has reformatted what they think.

Officially what happened, when the children saw the six minutes of the pornographic movie, is called "signal bleed." Signal bleed is where a signal from a cable channel that a subscriber does not have authority to view "bleeds" through and becomes viewable to that subscriber.³³ Cable companies encrypt or scramble these particular channels and restrict access to them for customers that have not paid for the channel's content. In the case of this North Carolina family, they had no authority (because they had not requested and paid for the channel) to view the channel that "bled" through to their television and thus the "mix up." The Government has created laws that stipulate to cable companies that provide adult programming that they must restrict the adult programming to certain hours where, presumably, children are asleep.

²⁹ Stacy L. Smith, Marc Choueiti, Ashley Prescott & Katherine Pieper, *Gender Roles & Occupations: A Look at Character Attributes and Job-Related Aspirations in Film and Television*, SeeJane.org, http://seejane.org/downloads/KeyFindings_GenderRoles.pdf (last viewed Dec. 18, 2012).

³⁰ *Id.*

³¹ *Id.*

³² Phil Vinter, *Six Minutes of Porn Interrupts Kids Program Lilo and Stitch*, Engineering Evil (Sept 19, 2012, 3:45 AM), <http://engineeringevil.com/2012/09/19/six-minutes-of-porn-interrupts-kids-program-lilo-and-stitch/>.

³³ FCC, <http://transition.fcc.gov/cgb/consumerfacts/objectionabletv.pdf>, (last viewed Dec. 18, 2012).

The hours are between 10:00 p.m. and 6:00 a.m. Between these hours, cable companies are restricted from playing the adult content movies.

It is estimated by government experts that twenty-nine million children are potentially exposed to a harmful phenomenon known as audio and video “signal bleed” from sexually explicit adult programming on cable television.³⁴ Some theorize that such exposure is not accidental or unintentional. Some believe that this kind of “teasing” plays a major role in opening the doors for juveniles to explore pornography and sexually charged images of sex.

The Psychology of Watching Porn

Experts believe that by watching porn, a chemical change begins to happen in the brain. That chemical change is akin to changes that occur when a person ingests an intoxicant. What has made this understanding of the changes that can occur when one watches pornography, is the vast availability and access to these sexually explicit materials. The largest consumers of pornography are men. Men are much more visual creatures than women. Men are no longer viewing rudimentary, basic figures on a wall in a cave but have access to a myriad of sexual images (still as well as video) in the comforts of their homes and at the push of a button. When a man has an encounter with pornography and the hormones that bring pleasure, these “encounters” create new wiring of the brain and each additional “encounter” re-affirms that wiring making it stronger and stronger.³⁵ This then causes the desire for more “encounters” to increase and for the individual to seek out and find more instances where they can view pornography. It is like a drug addict. The same thought process and pattern is formed in those addicted to drugs as those addicted to pornography. It is the same basic premise. Similar to drug addicts, enough never becomes enough. Just as with a person who is addicted to drugs gets to the point where the high is no longer sustainable nor sufficient enough, they will then resort to more drugs or a stronger kind of drug. Whatever action it takes to the next, better “high.” Drug users have abused narcotics to the point that they lose spouses. Drug addictions more times than not lead to criminal activity, and so too with porn addictions. Marriages end because of porn addictions. People are murdered because of porn addictions.³⁶ Addictions to pornography can and have led to criminal activities.

In many pornographic movies, women are brutalized and subjected to inhumane treatment. Bondage and bestiality videos show women being treated in ways that an animal should not be treated. These kinds of images and videos are being viewed by men in many countries in the world. These same men are subjected to the same phenomenon just described as an addiction.

One of the aspects of pornography that is most damaging to the real world, is that it had the ability to make the viewer believe that what is being acted out on the screen can and should be acted out in real life. What the viewer sees on the screen, which is highly scripted and directed, is what the viewer begins to believe should happens in his life and with the women that he has sexual contact with. One of the things that prostitutes note is that ____% of the acts that they are requested to perform are some form of imitative act

³⁴ *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 839 (2000).

³⁵ William M. Struthers, *Wired for Intimacy: How Pornography Hijacks the Male Brain*, 85 (InterVarsity Press 2009).

³⁶ Michael Stone, *Necrophilia: Pastor Kills Fiance's Daughter in Sadistic Sex Fantasy*, Examiner (Nov. 2, 2012), <http://www.examiner.com/article/necrophilia-pastor-kills-fiance-s-daughter-sadistic-sex-fantasy> .

that the john has seen in a pornographic movie. Johns have seen certain acts performed on women, men and children so long that they now think that these acts can be replicated on people who are not employed in the adult film industry. They have a sort of “disconnect” with reality in that they want to have done to them what they have seen on camera and well as them doing to others acts that have been performed on actors.

Make Love Not Porn is a book where the author addresses depictions that take place in the world of pornography and how those acts are perceived to be what is expected to happen in the real world. The book details the account of a young man who has just ejaculated on his sexual partner’s breasts. As she is wiping the ejaculation off of her chest, she quietly tells him that she did not like when he ejaculated on her in that way. He asked her why she had previously told him that he could and she said she only allowed it because it made him happy. The young man then took it upon himself to conduct an unscientific experiment by calling up a few prior sexual partners to see why they had allowed him to ejaculate on their faces, stomachs, buttocks or practically anywhere he chose. Every single one of the ladies said they allowed it because it made him happy. He then began an introspective look into himself to see why that particular act brought him happiness and he soon realized that it was because that is what he learned as a young boy watching pornography. When he watched it in pornographic movies, the ladies all enjoyed that act and seemed very happy. The viewing of that act while watching porn and seeing what he did not understand was a scripted, rehearsed and crafted depiction, created a desire in this young man to do exactly what he saw acted out on the screen. The pornography taught him a false reality.

But pornography has the same ability to set up a false sense of reality in women just as much as men. Pornography teaches women “how to act” during the sex acts. It shows women how to moan, when to moan, when to appear sad, and even when to scream for joyous pleasure. This and so much more are shown to women on what the appropriate way is to please the man. This is shown by the preceding example of the young women that allowed the young man to ejaculate on their body parts even though they were clearly uncomfortable and unhappy with that act. They allowed him to do it because the pornographic movies said that women enjoy it. So, they pretended to enjoy it, thus perpetuating the damage that can be done by pornographic movies.

A contrived reality is a by-product of living in a world filled and overflowing with pornography. These falsified realities rewire the brain’s understanding of what sex, love, attraction and sexual desire is supposed to be in a meaningful and lasting relationship. Pornography has a way of creating an “alternate sexual universe” in the minds of those that view on a regular, systematic basis. It then establishes a reality that makes it difficult for a person to function in a healthy sexual relationship because what is portrayed in the pornographic movie is very different from what happens in a real-life sexual relationship. This then makes those actors in the sex act more likely to behave in less satisfying, unnatural, non-genuine ways as a result of this pseudo reality. As said by the author of “Make Love not Porn,” “Sex is a fundamental part of who we are. And yet it’s the part of who we are that often occasions the most angst, insecurity, guilt and unhappiness and when it does, it can have a profound negative impact on our quality of life.” It is also not a shock when one hears the producers and users of porn as the

Part of the manufactured reality fostered in pornographic movies is the degrading, dehumanizing and debased ways in which women are portrayed. Women are, many

times, shown in ways that strip away all manner of humanity and shown to viewers as nothing more than a piece of meat.

How These Laws Came To Be

A. History

Trafficking

The first laws dealing with trafficking were put into effect in 1948. Some of the laws dealt with fraud and misuse of visas³⁷, peonage³⁸, sale into involuntary servitude³⁹, and transportation of minors.⁴⁰ Fifty years later, the Trafficking Victims Protection Act of 2000 was passed. In the act, Congress found that slavery was continuing in the world today in the form trafficking. Around the world, at least 700,000 persons were trafficked annually with around 50,000 being trafficking into the United States, the majority being women and children.⁴¹ According to the Polaris Project⁴², the law provided a three-pronged approach:

- a. Prevention through public awareness programs overseas and a State Department-led monitoring and sanctions program;
- b. Protection through a new T-Visa and services for foreign national victims; and
- c. Prosecution through new federal crimes.

Since 2000, there have been several revisions of the Trafficking Victims Protection Act. In 2003, the act authorized more than \$200 million over two years to combat human trafficking and it created a federal civil cause of action for trafficking victims to sue their traffickers.⁴³ A 2005 revision authorized \$300 million over two years for combating trafficking, addressed sex tourism with prevention programs, and expanded federal criminal jurisdiction to trafficking offenses committed by U.S. government personnel and contractors while abroad.⁴⁴

A 2008 revision created a database that integrated data on human trafficking from all federal agencies.⁴⁵ It also authorized a new program for providing services to U.S. citizen survivors of human trafficking.⁴⁶ The act also expanded criminal liability of financially benefiting from human trafficking crimes, as well as obstruction and conspiracy.⁴⁷ The law was also expanded to give federal criminal jurisdiction to U.S. citizens and permanent residents who travel abroad to commit, attempt, or conspire to commit human trafficking crimes.⁴⁸

Pornography

³⁷ 18 U.S.C.A. 1546 (2012).

³⁸ 18 U.S.C.A. 1581 (2012).

³⁹ 18 U.S.C.A. 1584 (2012).

⁴⁰ 18 U.S.C.A. 2423 (2012).

⁴¹ 22 U.S.C.A. 7101(b)(1) (2012).

⁴² Polaris Project – Trafficking Victims’ Protection Act (TVPA) – Fact Sheet. Go to:

<http://www.polarisproject.org/resources/resources-by-topic/anti-trafficking-efforts>

Click on Trafficking Victims Protection Act Summary Resource Pack. Last viewed 3/7/13.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

Basic pornography law began with obscenity laws in the nineteenth century. Early efforts of prohibiting came through the work of Anthony Comstock. In 1873 he successfully lobbied Congress to pass an anti-obscenity statute known as the Comstock Act. The act made it a crime to distribute obscene material through the mail.⁴⁹ The law fell short in defining obscenity and courts were left with the burden of determining what was and was not obscenity.

Through the years, the Supreme Court adopted different tests for defining obscenity. The first was *Rosen v. United States*,⁵⁰ in which the Court adopted the same obscenity standard used in a British case, *Regina v. Hicklin*.⁵¹ The *Hicklin* test defined material as obscene if it tended “to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.”⁵² The Court ruled in *Roth v. United States* that the *Hicklin* test was inappropriate and instead replaced it with obscenity as “whether to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to the prurient interest.”⁵³ In *Jacobellis v. Ohio*, the Court expanded the community standards to mean national and not local standards.⁵⁴ It was also found that obscenity material would be “utterly without redeeming social importance.”⁵⁵ It was until 1973 when the Supreme Court decided *Miller v. California* that the current test for obscenity was solidified.⁵⁶

From the *Miller* test, pornography has been found to generally be protected speech with the exception of child pornography. The 1982 Supreme Court case of *New York v. Ferber* held that child pornography, even if not obscene is not protected speech justifying this by the government’s compelling interest in safeguarding the physical and psychological well being of minors.⁵⁷ The first statutes involving child pornography were passed in 1978. These laws have been further tweaked by further laws and rulings by the Supreme Court.

B. How the Laws are Practiced Trafficking

According to the Polaris Project, not all cases with trafficking victims are prosecuted using trafficking statutes.⁵⁸ Prosecutors, on a case by case basis, consider several factors indetermining what charges to bring, including the specific situation, victim status, the condition of available witnesses, and applicable laws in order to get the most successful

⁴⁹ Michael J. Rosenfeld, “The Age of Independence: Interracial Unions, Same-Sex Unions, and the Changing American Family,” 28 Harvard University Press (2007). Last viewed 3/8/13 <http://books.google.com/books?id=dpSlkT2loyUC&pg=PA28#v=onepage&q&f=false>.

⁵⁰ *Rosen v. United States*, 161 U.S. 29, 43 (1896).

⁵¹ *Regina v. Hicklin*, L.R. 3 Q.B. 360 (1868).

⁵² *Id.*

⁵³ *Roth v. United States*, 354 U.S. 476, 489 (1957).

⁵⁴ *Jacobellis v. Ohio*, 378 U.S. 184 (1964).

⁵⁵ *Id.*

⁵⁶ *Miller v. California*, 413 U.S. 15, 24 (1973).

⁵⁷ *New York v. Ferber*, 458 U.S. 747 (1982).

⁵⁸ Polaris Project – Federal Labor Trafficking/Forced Labor and Sex Trafficking Cases in the United States 2000-2008, <http://www.polarisproject.org/resources/resources-by-topic/human-trafficking>, Click on either Federal Labor Trafficking/Forced Labor Cases in the United States 2000-2008 at the bottom of page (last visited Mar. 4, 2013).

conviction.⁵⁹ Many times, even with a human trafficking offense, the defendant is prosecuted through other crimes committed.⁶⁰

Pornography

When the *Miller* test became law, there were but few ways to view pornography: darkened movie theaters and magazines. Since *Miller*, pornography has since moved onto cable and hotel pay-per-view TV, home video players and especially onto the Internet.⁶¹ The late 1980's saw the last of the aggressively pursued obscenity cases, in which seven of the nation's largest pornography distributors were put out of business.⁶²

The mid-90's saw a change of focus for the DOJ from obscenity cases to child pornography cases.⁶³ It was also during this time period in which internet use exploded and with it internet pornography. Jason Krause puts things in perspective when he says, ". . .the Internet happened to arise at a time when the number of prosecutions for obscenity fell toward zero, which means a dearth of court guidance on what a community standard is on the Web."⁶⁴ Thus far, the case *United States v. Thomas*, has tested whether *Miller* can be applied to Internet businesses. The *Thomas* court determined that whether the material on the defendant's electronic bulletin board is harmful must be judged by the standards of each individual community where the disputed material was received, even if the standards in each of the recipient communities varied one from the next, and even if the material was acceptable in the community from which it was sent.⁶⁵

There does not seem to have been any switch back from prosecuting child pornography to obscenity. And while prosecution of child pornography is a noble cause, lack of obscenity prosecutions are having an effect. Some statistics point out that ninety percent of children between the ages of eight and sixteen have been exposed to Internet pornography.⁶⁶ How many children were exposed to pornography before pornography was available at the click of a mouse? In the 1980's the mail was the primary means of supplying child pornography.⁶⁷ Over the past two decades, the dramatic increase in Internet availability has provided a relatively anonymous opportunity for immediate exchange of pornographic images that more easily thwart authorities.⁶⁸

The Effectiveness of These Laws

Talk about effectiveness articles then

A. Trafficking Prosecution Statistics

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Jason Krause, The End of the Net Porn Wars, ABA J. (Feb. 1, 2008, 10:01 AM), http://www.abajournal.com/magazine/article/the_end_of_the_net_porn_wars/.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ *United States v. Thomas*, 74 F.3d 701, 711 (6th Cir., 1996).

⁶⁶ Family Safe Media – Pornography Statistics,

http://familysafemedia.com/pornography_statistics.html#anchor4 (last visited 3/5/13).

⁶⁷ Mark Motivans & Tracey Kyckelhahn, *Federal Prosecution of Child Sex Exploitation Offenders, 2006*, Bureau of Just. Stat. Bulletin (Dec. 2007), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fpcseo06.pdf>.

⁶⁸ Id.

The data on trafficking prosecution comes from the Bureau of Justice Statistics data brief on Federal prosecution of human trafficking from 2001-2005.⁶⁹ Of the 555 human trafficking suspect in matters opened by U.S. attorneys between 2001 and 2005, peonage and involuntary servitude represented eleven percent, sale into involuntary servitude represented twenty-eight percent, transportation for slavery represented three percent, forced labor represented twenty-four percent, trafficking slaves represented nine percent, and twenty-three percent represented sex trafficking of children. Almost half of the human trafficking matters opened by U.S. attorneys were in Federal judicial districts in four states: California, Florida, Texas, and New York.⁷⁰ Thirty-seven percent of sex trafficking of children matters were referred by U.S. attorneys in California.⁷¹ There were seventy-eight defendants adjudicated in Federal courts for a human trafficking offense.⁷² Of those seventy-eight defendants, fifty-seven pleaded guilty and eighteen were found guilty at trial.⁷³ Those convicted defendants received prison sentences eighty-five percent of the time, probation seven percent of the time, and other sanctions eight percent of the time.⁷⁴ The median prison sentence was seventy months.⁷⁵

Another report from the Bureau of Justice Statistics in 2008-2010 featured the characteristics from suspected human trafficking incidents.⁷⁶ Sixty-two percent of the confirmed labor trafficking victims were age twenty-five or older, compared to thirteen percent of confirmed sex trafficking victims.⁷⁷ Confirmed sex trafficking victims were more likely to be white (26%) or black (40%), compared to labor trafficking victims, who were more likely to be Hispanic (63%) or Asian (17%).⁷⁸ Eighty percent of victims in confirmed sex trafficking incidents were identified as U.S. citizens while most labor trafficking victims were identified as undocumented aliens (67%) or qualified aliens (28%).⁷⁹

B. Pornography Prosecution Statistics

The data on child pornography prosecution comes from the Bureau of Justice Statistics bulletin on Federal prosecution of child sex exploitation offenders from 2006.⁸⁰ From 1994 to 2006, there was an eighty-two point one percent growth in suspects referred to U.S. attorneys for child pornography.⁸¹ In 2006, of the 2,376 suspects of child pornography, fifty-eight point five percent of those were prosecuted.⁸² Thirty-seven

⁶⁹ Mark Motivans & Tracey Kyckelhahn, *Federal Prosecution of Human Trafficking, 2001-2006*, Bureau of Just. Stat. Data Brief (Oct. 2006), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fph05.pdf>.

⁷⁰ Motivans, *supra* note 30.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Duren Banks & Tracey Kyckelhahn, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010*, Bureau of Just. Stat. Special Report (April 2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti0810.pdf>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Motivans, *supra* note 28.

⁸¹ Motivans, *supra* note 28.

point eight percent of the 2,376 suspects were declined for prosecution with twenty-four percent of that number being declined because of weak evidence.⁸³

The demographics of the defendants involved in child pornography are these.⁸⁴ Ninety-eight point seven percent were male with a median age of forty-two years old.⁸⁵ The main race of those defendants was white at eighty-eight point nine percent with the next highest category being Hispanics at six point six percent.⁸⁶ Most defendants (seventy-nine point nine percent) had no prior felony conviction.⁸⁷ Two in three child pornography defendants were sentenced for having ten or more items, such as books, magazines, or films.⁸⁸ Ninety-five percent were sentenced for materials depicting a minor under age 12, and ninety-seven percent were sentenced for the use of a computer in the offense.⁸⁹

Pornography can have grave, negative impacts on those that watch it and on those that are affected by the detrimental behaviors of those that are addicted to it. Pornography has the ability to warp a person's mind to such a degree that they are more able to harm others in the process of acting out the pornographic acts that they have seen. This can easily translate into innocent victims being abused by those people whose minds have been warped by pornography. Those individuals that watch pornography and believe that they can act out what they see on unwitting victims, are predators and should be prosecuted to the fullest extent of the law, where appropriate. Pornography has the ability to create an environment (in the minds of those that do not have the capability to discern reality from a highly scripted act) that they can act out what they have seen. It also can make the viewer not see the victim as a human being with feelings, emotions and a voice (especially when many pornographic movies show the victim's mouth taped, covered or stuffed with items). Once a person is aware of the mental hold that pornography can have on the viewer, then that an individual can make a more intelligent and informed choice in watching (recognizing the potential for harm that can occur).

Parents also must recognize the fragile and impressionable states of mind their young child experiences at certain ages of their lives. They can then watch what they children are viewing on television, in print media as well as on computers. When a child is exposed to pornographic images at certain points in their growth, the exposure can taint and scar a child's mind for life. It is crucial that children's minds be guarded so as to not cause this kind of life-long permanent damage.

In addition to the damage that can occur in children, the damage is just as real for teenagers and adults. Pornography can cause a chemical imbalance in the brain and create an unstable mentality in the brain of the viewer. Pornography has the same effects on certain people as drugs on drug addicts. They lose their ability to curb or monitor their viewing. They, in effect, become addicted. It is these people that have a great opportunity to participate in the trafficking of women and children. Pornography's reach can be that wide reaching and pervasive.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

