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Sex Censorship: The Assumptions of Anti-Obscenity Laws and the Empirical Evidence†

In the following Article, a lawyer and two behavioral scientists explore the consequences of exposure to obscenity. Their main purpose is to summarize the empirically demonstrated effects of psychosexual stimuli. In doing so, the authors examine and analyze the behavioral science investigations in this area. The Article points out that the effects of sexual stimuli have rarely been studied in adequately controlled experimental investigations. This situation, of course, makes definite conclusions impossible. The authors, however, do evaluate that which is available and these evaluations will provide the reader with further insight into the problem at hand.

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While concepts of "obscenity" may be very old, albeit ambiguous, most English and American laws on the subject are comparatively recent: they are of Nineteenth Century origin, and they

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appear to be a by-product of the development of mass literacy and mass communication.¹ For one reason or another men have come to fear the consequences of permitting any man to read, see and even think about sexual activity, sexual feelings and, sometimes, the nudity of others. The law of obscenity has been fashioned to control mass communication which may produce that result. New laws and new techniques to suppress have been devised to keep pace with new techniques of creation and distribution.²

collaborated in several Law School courses on various aspects of law and the social sciences. This particular work grew out of his participation with Professor Paul on a seminar in the field of law and mass communications. Professor Cairns (then at Pennsylvania) was invited to make the initial canvass of relevant literature, which he did during the summer of 1961. Needless to say, all of the authors share joint responsibility for our final digest of the material reported here.

The authors would like to express their thanks to Dr. Wardell B. Pomeroy, Director of Field Research, Institute for Sex Research, Indiana University, and to the Institute's Trustees for permission to use materials in the Institute's library. Professor Paul owes a continuing, happy debt to Professor Murray L. Schwartz for all his past collaboration in developing ideas which are reflected in this paper.

1. See PAUL & SCHWARTZ, *FEDERAL CENSORSHIP: OBSCENITY IN THE MAIL* 9-24 (1961) [hereinafter cited as PAUL & SCHWARTZ].

2. Consider, for example, the evolution of federal anti-obscenity jurisdiction, including federal censorship powers. It all started with the Tariff Act of 1842, ch. 270, § 28, 5 Stat. 566, prohibiting importation of obscene "prints" (apparently only pictorial matter). This statute was amended, ch. 63, 11 Stat. 168 (1857), to keep pace with the new technology of photography. The first federal criminal law dealing with the domestic mails was enacted in 1865; the ostensible purpose being to stop mailings to men in the army. Ch. 89, 13 Stat. 504 (1865). In 1873, Anthony Comstock and others were able to persuade Congress to broaden federal jurisdiction. The "Comstock Act," ch. 258, 17 Stat. 598 (1873), broadened the tariff prohibition by including printed as well as pictorial matter (the present tariff statute was again amended in 1930 and is now codified as 19 U.S.C. § 1305(a) (1958)) and enlarged the coverage of the domestic mail statute to include, *inter alia*, mail order advertisements for obscenity and abortifacients, contraceptives and information about them. An Act of 1876, now codified as 18 U.S.C. § 1461 (1958), amended the Act of 1873 and, read literally, created a censorship power in the Post Office—the power to confiscate any obscene matter found in the mails—though it is somewhat doubtful if this was in fact, the legislative purpose. See Paul, *The Post Office and Non-Mailability of Obscenity: An Historical Note*, 8 U.C.L.A.L. REV. 44, 57-61 (1961). The Comstock Act was again amended, ch. 1039, 25 Stat. 187, 496 (1888), 18 U.S.C. § 1463 (1958), to penalize and authorize the non-delivery, *inter alia*, of obscene and indecent postcards and envelopes (matter which on its face was obscene). The Post Office later built an elaborate system of administrative censorship on these statutes. See Paul, *supra* at 64-66; *cf.* 39 C.F.R. § 201 (1962). In 1950 Congress enlarged the Post Office's anti-obscenity powers to include authority to stop all incoming mail addressed to persons using the mails to advertise and sell obscene materials. Ch. 721, 64 Stat. 451 (1950), 39 U.S.C. § 4006 (Supp. II, 1961). Congress asserted jurisdiction over obscenity in interstate commerce in ch. 172, 29 Stat. 512 (1897), and has continuously enlarged it. See 69 Stat. 183 (1955), 18 U.S.C. §§

The precise function of these laws has never been too clear.³ Their value has long been questioned by people who are concerned with their inhibiting effect on thought and expression in a free society. In the last decade courts have struggled, with increasing difficulty, to rationalize their constitutionality.⁴ Unquestionably the courts have given men more freedom today than they enjoyed even ten years ago,⁵ and perhaps most Americans believe the Constitu-

1461-65 (1958). By 64 Stat. 194 (1950), 18 U.S.C. § 1462 (1958), Congress included phonograph records within the interstate commerce statute. Compare *United States v. Alpers*, 338 U.S. 680 (1950). By § 326 of the Communications Act of 1934, ch. 652, § 326, 48 Stat. 1091 (now 18 U.S.C. § 1464 (1958)), Congress prohibited the broadcasting of obscene matter. Cumulatively, it may thus be seen that the federal government has consistently expanded its efforts to develop effective controls. The same pattern can be traced in many states, and some state legislatures are still quite busy. See, e.g., N.Y. STATE JT. LEGIS. COMM. REP. STUDYING PUBLICATION AND DISSEMINATION OF OFFENSIVE AND OBSCENE MATERIAL for the years 1949, 1953-1959. Each of these contains a number of bills proposing various new statutes on obscenity. See *Kingsley Books, Inc. v. Brown*, 354 U.S. 436 (1957), dealing with the validity of one of these laws, N.Y. CRIM. PROC. § 22-a, which authorizes municipal officials to enjoin the sale of obscene books. For the evolution of state motion picture censorship laws, see Note, *Motion Pictures and the First Amendment*, 60 YALE L.J. 696 (1951). On the evolution of the industry codes in response to public fear and anger, see generally INGLIS, *FREEDOM OF THE MOVIES* (1947).

3. See PAUL & SCHWARTZ 191-213. Cf. Lockhart & McClure, *Literature, the Law of Obscenity and the Constitution*, 38 MINN. L. REV. 295 (1954); Lockhart & McClure, *Censorship of Obscenity: The Developing Constitutional Standards*, 45 MINN. L. REV. 5, 49-68 (1960); MODEL PENAL CODE § 207.10, at 29-31, comment (Tent. Draft No. 6, 1957).

4. Cf. *Roth v. United States*, 354 U.S. 476 (1957). Compare the criticism of this decision in Lockhart & McClure, *Censorship of Obscenity: The Developing Constitutional Standards*, 45 MINN. L. REV. 5, 49-57, 72-73, 120-21 (1960); KALVEN, *The Metaphysics of the Law of Obscenity*, in THE SUPREME COURT REVIEW 1960; PAUL & SCHWARTZ 143-51. Compare Mr. Justice Brennan (the writer of the majority decision in *Roth*) 354 U.S. 476, 485 (1957) (obscenity is not protected speech), with Mr. Justice Brennan writing for the Court in *Smith v. California*, 361 U.S. 147, 150-55 (1959) (some sort of scienter required to assure protection to "protected" speech), and for himself, dissenting, in *Kingsley Books v. Brown*, 354 U.S. 436, 447 (1957) (jury trial required to assure protection to "protected" speech). Cf. *State v. Jackson*, 224 Ore. 337, 356 P.2d 495 (1960) (the court divided 4 to 3 on the constitutionality of the state's criminal statute; the minority apparently would hold laws incorporating the Model Penal Code test unconstitutional on grounds of vagueness and lack of evidence of danger justifying suppression of speech). For earlier judicial soul searching to find a constitutional justification, see the opinions of Judge Frank in *Roth v. Goldman*, 172 F.2d 788, 790, 791 (2d Cir. 1949), and *United States v. Roth*, 237 F.2d 796, 801, 806 (2d Cir. 1956), and Judge Bok in *Commonwealth v. Gordon*, 66 D. & C. 101 (Pa. C.P. 1949). Both judges favored some form of a clear and present danger. Cf. CHAFEE, *GOVERNMENT AND MASS COMMUNICATIONS* 59-60 (1947).

5. Cf. *Butler v. Michigan*, 352 U.S. 380 (1957) ("Hicklin Standard" unconstitutional); *Roth v. United States*, 354 U.S. 476 (1957) (Model Penal

tion should require that tolerance; but the belief that law should still outlaw *some* depictions of nudity or sexual experience will not down. Quite the contrary, precisely because the law now is more tolerant and uncertain, some writers, publishers, movie producers and others appear to seize the occasion to augment, by design, the "sex" put in works for popular consumption. Because this material seems now to have widespread appeal and circulation, an articulate segment of the public has been stridently demanding stricter law,⁶ even as another segment asserts a right to be rid of all restrictions. The disagreements, fears and recriminations generated by this state of affairs may reflect the need for a continuing hard look at the rationale of sex censorship. Why do we have it? What are the assumptions underlying it?

I.

Some may justify anti-obscenity laws simply on the ground that immodesty of expression in books or pictures is morally wrong no matter what effect the material may have on behavior or personality; thus (the argument may run), when expression becomes patently immoral, according to the tenets of an overwhelming majority, the wrongness of the act of producing or contemplating it becomes so serious that the state is justified in acting to suppress the work and punish those who utter it.⁷ Others might argue that obscenity, as legally defined, is so devoid of idea content or other utility as to be worthless to our culture; it is not the kind of communication protected by the first amendment. Therefore its prohibition should pose no first amendment problems; government, in punishing obscenity, is not restricting "speech."⁸

Code test introduced); *Smith v. California*, 361 U.S. 147 (1959) (*mens rea* of some sort required); *Grove Press v. Christenberry*, 175 F. Supp. 488 (S.D. N.Y.), *aff'd*, 276 F.2d 433 (2d Cir. 1960) (*Lady Chatterly*); *Sunshine Book Co. v. Summerfield*, 355 U.S. 372, *reversing* 249 F.2d 114 (D.C. Cir. 1958) (nudist magazines); *Excelsior Pictures Corp. v. Regents*, 3 N.Y.2d 237, 165 N.Y.S.2d 42 (Ct. App. 1957) (nudist films); *William Goldman Theaters, Inc. v. Dana*, 173 A.2d 59 (Pa. 1961) (motion picture censorship violates state constitutional guarantee of freedom of press); see also PAUL & SCHWARTZ 163-64, 169-84 (changing Postal and Customs Standards).

6. Consider, for example, the extent of congressional activity concerned with obscenity in the last decade. See sources cited in note 12 *infra*.

7. See, *e.g.*, *State v. Lerner*, 81 N.E.2d 282, 289 (Ohio C.P. 1948): It goes without saying that public opinion, community concepts condemn sexually nasty, pervasive publications, prints, pictures, drawings or photographs as "obscene," not because they might excite sexually impure ideas in minds susceptible . . . because that is a mere matter of conjecture, but because they offend the moral concepts of the people as a whole, and the people have a right to establish codes of right conduct for literature as well as for other forms of community conduct.

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

These arguments have been asserted by the courts, but they hardly seem persuasive,⁹ at least in the absence of other justification, to support laws authorizing suppression of communication. With all due deference, there are surely some obscene creations which do have to some members of society idea content or some sort of cultural interest or value as expression. This, it would seem, is clearly demonstrated by the history of anti-obscenity enforcement. Further, the current legal definition of obscenity hardly excludes material which may have some intellectual significance.¹⁰ The free speech issue cannot be dissipated just by insisting that speech—the communication of thought, feelings, and experience—is never suppressed by obscenity law enforcement.

Nor is it enough to damn obscenity as immoral. Bad it may be, but badness in the abstract is not the test of speech we may suppress. Whatever the view of earlier times, our government today is not—cannot be—concerned *simply* with enforcing widely held religious precepts which inveigh against portrayal or contemplation in communication of sex stimuli on the ground that, purely as an intellectual abstraction, such stimuli are evil.¹¹ The consequences of obscenity exposure must entail something more than mere elicitation of a thought which one is not supposed to think.

Those who debate the need for legal controls usually have tacitly accepted the proposition that we must be concerned with the effects of the communication we would outlaw.¹² The issue

9. Cf. sources cited note 4 *supra*.

10. See Lockhart & McClure, *supra* note 4, 45 MINN. L. REV. at 95-99; PAUL & SCHWARTZ 150-51, 200-02.

11. Cf. *Kingsley Int'l Pictures Corp. v. Regents*, 360 U.S. 684, 688-89 (1959); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 500 (1952).

12. Cf. *Hearings on H.R. 11454 Before the Subcommittee on Special Education of the Committee on Education and Labor House of Representatives*, 86th Cong., 2d Sess. (1960). This was a bill to create a Presidential Commission to

conduct a scientific investigation of the relationship between the . . . reading or viewing of noxious printed or pictured material dealing with acts or suggestive acts of sexuality, and sexual deviations or perversions, and the commission by the readers or viewers thereof of criminal, delinquent, or other antisocial acts

Id. at 3. The bill was supported in principle by such diverse groups as the American Civil Liberties Union and the National Organization for Decent Literature. Cf. S. REP. NO. 3325, 86th Cong., 2d Sess. (1960), a companion bill which passed the Senate. For evidence of continuing legislative efforts to justify anti-obscenity legislation on the grounds that it causes criminal behavior, see, e.g., N.Y. STATE JT. LEGIS. COMM. REP., *supra* note 2, for the years 1949, 1953-1956; *Report of the Select Committee of House of Representatives on Current Pornographic Material*, H.R. REP. NO. 2510, 82d Cong., 2d Sess. (1952); S. REP. NO. 1064, 83d Cong., 2d Sess. (1954); *Committee on Judiciary, Juvenile Delinquency*, S. REP.

is commonly framed in terms of whether exposure, or repeated exposure, to obscenity (at least obscenity in some kinds of media, such as movies) causes overt misconduct (at least among some kinds of people) or some other discernible behavior which the state may properly prevent because it is harmful to others, or to vital community interests. While there seems to be much discussion of these questions, there has been surprisingly little effort to synthesize relevant empirical research which may help us to discover the answers.¹³

No. 61, 84th Cong., 1st Sess. (1956). See S. REP. NO. 2055, 84th Cong., 2d Sess. (1956); S. REP. NO. 2381, 84th Cong., 2d Sess. (1956); S. REP. NO. 130, 85th Cong., 1st Sess. (1957); *Hearing on Obscene Matter Sent Through the Mail Before the Subcommittee on Postal Operations of the House Committee on Post Office and Civil Service*, 86th Cong., 1st Sess. (1959).

13. Adler, in *Art and Prudence* (1937), reviewed, quite critically, several studies, particularly the Payne Foundation Studies of the early 1930's, and offered some interesting speculations on the meaning of obscenity. Marie Jahoda, and associates in *The Impact of Literature: A Psychological Discussion of Some Assumptions in the Censorship Debate*, Research Center for Human Relations, New York University (1954), surveyed various behavioral science studies in an effort to answer this question for the American Book Publishers Council: "Whether so-called 'obscene' reading matter has a detrimental effect on young people in the sense of inducing socially or individually harmful habits and actions." The questions actually reviewed are phrased in various ways in the report—with emphasis shifting from the "impact" of "obscene" to "bad" books and "comics" on children. Discussion ranges broadly from a critique of the theories of Dr. Frederick Wertham (see, e.g., his *Seduction of the Innocent* (1955)) and the loose assertions of the "Gatherings Committee," (see H.R. REP. NO. 2510, 82d Cong., 2d Sess. (1952), note 12 *supra*, to a brief analysis of various theories of the causes of "anti-social behavior," to a cursory survey of research on the "effect" in general which "the written word" has "on the mind of the reader." Perhaps the clearest statement of Dr. Jahoda's conclusions (essentially saying that there is no evidence) can be found in the statement which she furnished to Judge Frank for his opinion in *United States v. Roth*, 237 F.2d 796, 815-16 (2d Cir. 1956). Most of the immediately relevant material discussed in this report is "opinion evidence" inasmuch as few empirical investigations were available in 1954 and only a few of them are analyzed. Some interesting areas for future research were discussed. Jahoda's work in turn has been cited extensively by a number of legal writers. See, e.g., MODEL PENAL CODE § 207.10, at 24-27, comment (Tent. Draft No. 6, 1957); PAUL & SCHWARTZ 294.

A more recent "survey" is set out in KRONHAUSEN, *PORNOGRAPHY AND THE LAW* (1959). This work appears to rely heavily on Jahoda and on the opinions of various psychiatrists. While offering a number of insights into the nature of "pornography," the work does not systematically review much empirical research. The legislative reports cited in note 12 *supra*, while asserting various kinds of cause and effect relationships, would seem to be predicated on opinions of what the facts are—if they are predicated on anything in particular. They do not attempt to review any relevant empirical investigations. There also have been several public statements by social scientists purporting to say what the empirical research indicates (see, e.g., Levy, Lippsitt & Rosenblith, *Brown University Psychologists Report*

Our purpose here is to attempt a summary of the *empirically demonstrated* effects of psychosexual stimuli, to speculate whether this evidence supports any possible justification, and to suggest some areas for further research.

We deal only with sex stimuli—the portrayal of nudity or sexual activity—and not with other, possibly analogous and allegedly dangerous communication such as the depiction of physical violence or cruelty. Of course, much material of concern today combines both sex and violence in liberal terms, but the research we have surveyed seems to have focused on material which is mostly just erotic, if it is anything. Nor is it necessary to wrestle with the meaning or lack of meaning in the legal definition of obscenity. A *sine qua non*, as we have said, is a sex stimulus; the question we ask is whether there is any empirical evidence to support any assumption about the effects of any form of communication of that character, be it legally obscene or not.

Let it be re-emphasized, too, that our self-assigned task here is limited to reviewing findings developed through empirical investigation. We do not consider, let alone catalogue, all the opinions, assumptions, or naked assertions of fact about the effect—or lack of effect—of obscene communication. Of course, we do not mean to deprecate the importance of getting the responsible opinions of responsible people. The law in this field, as in many others, is probably going to operate on intuition if it cannot operate on science. Expert conjecture is perhaps the only present way we can secure answers to the critical questions we must ask when we seek justifications for the sex censorship laws which society seems to demand and which the courts, thus far, constitutionally condone. So the opinions of psychiatrists, law enforcement officers and other people who have had contact with some consumers of obscenity may well be a controlling consideration. But there is no substitute for reliable, factual information; the opinions of experts should at least be consistent with what scientific knowledge we have; and understanding the scientific evidence should be a matter of concern to those who would preach on what the law ought to say about sex expression.

II.

We turn then to a survey of the reported behavioral science investigations which seem immediately relevant. To the interested layman and the serious investigator alike, this material is frus-

on Censorship, Censorship Bulletin, Aug. 1958, p. 1). These authorities do not indicate many of the sources studied and relied upon for their views.

trating; the big questions remain unanswered. Indeed, the data stop short just at the point where they suggest new and interesting hypotheses or problems for more research. But a survey of these materials—an attempt to understand the findings we have—may show how complex is our subject, and it may supply a lesson in humility to those who are opinionated and to those who demand opinions from others.¹⁴

Early in the present work it became evident that the effects of sexual stimuli have rarely been studied in adequately controlled experimental investigations. Materials are not totally lacking, however. In the study of other substantive psychological issues (e.g., somatic response patterns, effects of guilt, conflict measured physiologically and cognitive effects of sexual identity), various types of sexual stimuli, usually photographs of nude females have been assessed. In this review we cover a potpourri of sociological, physiological, and psychological research; the common element, for us is the empirical data each yields on the effects of sexual stimuli.

Subjective reports of sexual arousal: Perhaps the simplest method to ascertain the effects of sexual material is to ask people who have observed it to give an introspective account of their immediate, resultant feelings. The techniques of self-report may range from the use of a brief questionnaire to lengthy, intensive interviews. Some limitations of this technique are well known.¹⁵ Distorted re-

14. First, a note regarding the procedure followed in the review of the empirical studies seems relevant. Our initial step was a search of the volumes of the *Psychological Abstracts* from 1925 to June 1961. The *Psychological Abstracts* provide a brief resume of scientific reports relevant to the study of behavior. The coverage is excellent: in 1960, 564 journals, foreign and domestic, were reviewed regularly. It is important to emphasize again that only a few of the studies which we found and discussed were designed to investigate the effects of "obscenity"; thus, in many, the subject was *not* told that he was being assessed for arousal upon viewing erotic or obscene materials. There may be a lot in a label. Perhaps if subjects are told that they are viewing "obscene" or "sexy" pictures, their responses would be stronger.

From this preliminary survey approximately 250 articles were selected for further study. The bibliographies of these articles were perused to locate additional research reports. After this material had been collected, we searched the files of the library of the Institute for Sex Research, one of the most extensive repositories of literature related to sex. Finally, we made contact with some other investigators who have been recently active in research in the areas of study covered by this article.

15. A good discussion of the issues involved in the use of this means of gathering data about sexual behavior can be found in KINSEY, POMEROY & MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* (1948), and more general evaluations of reliability and validity of the self-report method are found in ANASTASI, *PSYCHOLOGICAL TESTING* (1954), and YOUNG, *SCIENTIFIC SOCIAL SURVEYS AND RESEARCH* (2d ed. 1949).

sults may be caused by conscious dissimulation, or because the technique presumes a self-knowledge on the part of the interviewee that is seldom justified, or because one cannot be confident that the subjective evaluations of interviewees can be equated one with another. Other limitations include interviewer bias, selective forgetting by the interviewee, and unwillingness to cooperate or over-willingness to comply. The last may result in invention, sometimes unconscious, in an attempt to maintain the interest of the interviewer. Some researchers, notably Kinsey and his associates, recognize and attempt to compensate for these limitations. Others, unfortunately, have not.

The early interview studies, though sometimes cited in communications research, tend to be unsophisticated with respect to such issues. Moreover, a variety of moral predilections frequently permeated the research design. Among the results reported in the pioneer work of Blumer and Hauser, in 1933, are the following: "Of a sample of 110 inmates of a penal institution 12 per cent stated that the movies stirred them sexually; 19 per cent indicated that an exciting picture makes them want to make love to a girl; while 35 per cent indicated that the movies have taught them how to attract girls, how to flirt, kiss or make love. . . . Of a sample of 252 delinquent girls in a state training school, 121, or 48 per cent acknowledge that they usually 'felt like having a man make love to them' after they had seen a passionate love picture. . . ." Twenty-five per cent of females in this sample were said to have "acknowledged engaging in sexual relations after becoming sexually aroused at a movie."¹⁶

What can be made of these conclusions? A formidable catalogue of the methodological shortcomings underlying them can be found in Adler's *Art and Prudence*. The investigators, in the very design of many questions (such as: "How important do you think movies were in getting you into trouble?"), seemed to be inviting negative evaluations of the effects of motion pictures, and they appeared to attach highly pejorative connotations to being "stirred sexually." No attempt was made to discover whether noninstitutionalized, normal males had similar reactions which might destroy any implication of a causal connection between being stirred sexually and crime or criminals. Cumulatively these criticisms weaken confidence in the authors' data; we cannot rely on them alone.

A similar study by Haines, in 1955, raised similar problems. One

16. BLUMER & HAUSER, MOVIES, DELINQUENCY AND CRIME 73-74, 83, 86 (1933). See also BLUMER, MOVIES AND CONDUCT (1933).

hundred inmates of the Cook County (Illinois) prison between the ages of 16 and 21 were interviewed to determine the role that "pornography" plays in the delinquency of juveniles. According to Haines, "each inmate interviewed was told that Senator Kefauver was interested in the effects of television, movies and radio on teenagers, and would like to know his reaction as to the role these mediums played in his committing an offense, or offenses, which resulted in his incarceration." The prisoners all agreed to cooperate, and they were interviewed in private, "out of the hearing of other inmates." Concerning the type and extent of query, Haines indicates only that "questions were asked regarding television, radio, movies, pornography, and sex." Ninety-four per cent of Haines' sample reported that they had seen "eight pagers" or "sixteen pagers" which depicted sexual acts. Of this group, 14 per cent indicated that they were habitually sexually excited by these materials. (This figure seems rather small compared to results of other investigators.) Haines reports: "Some stated that, after looking at the booklets, they sought sexual relief on the streets, through their girl friends, or through self-abuse." But interestingly, none of the subjects who had been charged with criminal sexual behavior reported that his crime was linked to the viewing of these materials. Nevertheless, Haines concluded that "television, pornography, and movies play a distinct role in the creation of antisocial behavior in susceptible teenagers."¹⁷

As in the case of Blumer and Hauser's study, the experimental controls were absent. No attempt was made to obtain responses from a matched non-criminal group; whatever safeguards, if any, taken to minimize the operations of experimenter bias are not reported; the statistical analysis is totally inadequate. Furthermore, the explanations given to the subjects about the study (*e.g.*, "Senator Kefauver was interested") might well inspire a distorted subjective report. Again, we must look for more persuasive evidence before we can begin to generalize from these findings.

In view of the public's special interest in the effects of sexual stimuli in mass communication on children and adolescents, studies of these groups were particularly sought for this paper. Unfortunately, only one additional study of relevance to our topic seems worthy of consideration. Ramsey, in 1943, interviewed 280 boys in early (ages 11-14) and late (ages 15-18) adolescence, and administered questionnaires to obtain information about their sexual development.¹⁸ Among other things, Ramsey asked his sub-

17. Haines, *Juvenile Delinquency and TV*, 1 J. SOCIAL THERAPY (1955).

18. Ramsey, *The Sexual Development of Boys*, 56 AMER. J. PSYCHOLOGY 217 (1943). Another study, Lorang, *The Effect of Reading on Moral*

jects to rank order 15 "erotic stimuli" in terms of the extent to which each leads to sexual arousal.¹⁹ The results indicate that the younger group considered the following three experiences to have the strongest potential for sexual arousal: "sex conversation," "female nudity," and "obscene pictures" (the type is not given). For the older adolescents, the ordering was: "female nudity," "daydreaming," and "obscene pictures." Least likely to lead to sexual arousal were male nudity, dancing and music for the younger boys; and literature, male nudity and music for the older adolescents. These data suggest that adolescent males often require overt sexual stimuli for sexual arousal to occur. Age changes, at least within the restricted range that Ramsey studied, seem for the most part unimportant. The only age-trend which may be significant is that internal cognitive cues ("daydreaming") play an increasingly important role in the sexual arousal of males.

Without doubt, the most comprehensive and meaningful studies on the subjective effects of sexual stimuli were those undertaken by Kinsey and his associates.²⁰

Included in their interview schedule was a set of questions (the exact form was not specified) which dealt with the association between various classes of psychosexual cues and reports of sexual arousal. Of particular relevance to the present paper is the extent to which cues involving nudity and the depiction of sexual activity lead to sexual arousal. Reproduced in Table 1 is a summary of the reported effects of the following stimuli: portrayals of nude figures, genitalia of the opposite sex, commercial motion pictures, burlesque and floor shows, portrayals of sexual action, romantic literary materials, and erotic stories.

Conduct and Emotional Experience, Studies in Psychology and Psychiatry, March, 1945, appears to compound some of the errors of the interview studies already considered in the context of a rather naive experimental design.

19. "Sexual arousal" is used in a technical sense throughout this paper. "Arousal" refers to a perceptible increase in emotional tone, however slight, and "sexual" refers to the content of the emotion. The content may be inferred from direct introspection, various kinds of verbal or written reports, appropriate physiological measures, or overt behavior.

20. KINSEY, *op. cit. supra* note 14. See chapter 18 for reports on the methodology. For further analyses and evaluations, see COCHRAN, MOSTELLER & TUKEY, STATISTICAL PROBLEMS OF THE KINSEY REPORT ON SEXUAL BEHAVIOR IN THE HUMAN MALE (1954).

Table 1

| | | Sexual Response | | | N |
|----------------------------|--------|-------------------|-----------|-------|------|
| | | Definite frequent | Sometimes | Never | |
| Portrayals of nudes | male | 18% | 36% | 46% | 4191 |
| | female | 3% | 9% | 88% | 5698 |
| Observing genitalia | male * | “many” | “many” | “few” | 617 |
| | female | 21% | 27% | 52% | |
| Commercial films | male | 6% | 30% | 64% | 3231 |
| | female | 9% | 39% | 52% | 5411 |
| Burlesques and floor | male | 28% | 34% | 38% | 3377 |
| | female | 4% | 10% | 86% | 2550 |
| Observing sex acts | male | 42% | 35% | 23% | 3868 |
| | female | 14% | 18% | 68% | 2242 |
| Reading literary materials | male | 21% | 38% | 41% | 3952 |
| | female | 16% | 44% | 40% | 5699 |
| Reading erotic stories | male | 16% | 31% | 53% | 4202 |
| | female | 2% | 12% | 86% | 5523 |

* Percentages not reported

Certain trends reported here seem noteworthy. In the first place, a sizeable proportion of the sample, both male and female, report that they experience sexual arousal from some form of written or pictorial communication portraying sexual behavior or nudity. The data provided do not permit, however, an estimation of the generality of sexual arousal within a single individual, *e.g.*, whether the person who reports sexual arousal by pictures of nudes also reports that erotic stories have a similar effect.

Second, males and females differ significantly in terms of the materials they report to be sexually arousing. The more direct and unambiguous the sexual cue, the more probable the masculine sex arousal. On the other hand, the indirect, romantic psychosexual cues appear to be an effective source of sexual arousal for females. This difference between the sexes is also reflected in the finding that males develop stronger preferences for particular types of sexual activity, and that they react sexually, in some sense, to a greater variety of objects which have been associated with their sexual activities.

An important consideration in the evaluation of the Kinsey reports is the absence of moral prejudgments in the design of their interview techniques or of sermonizing on the results. These investigators simply set out to discover facts concerning sexual behavior and attitudes. While the general weaknesses attributed to self-report techniques must necessarily apply to Kinsey's work, it continues to be classic of this type of study, and the facts reported merit careful consideration.

Summing up thus far: the self-report method of ascertaining the effect of exposure to psychosexual stimuli is one way, a frontal assault as it were, of investigating the question: does this material affect in any way the thought and behavior of persons who view it? The method is difficult for a number of reasons. Questions can be loaded and answers prejudged. Sampling and statistical procedures are often difficult. In the studies of Blumer and Hauser, Haines and others can be found all these difficulties, and their results therefore lead to no definite conclusions. However, the findings reviewed in this section all tend to support the following generalizations: (1) depictions of nudes and unambiguous descriptions of blatant sexual activity are associated with subjective reports of sexual arousal in most males—adult and adolescent; (2) romantic, "love" oriented descriptions of human heterosexual behavior are associated with subjective reports of sexual arousal in many females;²¹ (3) each of the studies reflects considerable difference among individuals in response to sexually relevant material. Some males fail to report sexual arousal after exposure to the most detailed descriptions of sexual activity; some females report intense sexual arousal by viewing pictures of sexual intercourse as well as by other sets of cues that are even remotely concerned with heterosexual behavior. Above all, the data reviewed in this section point to the existence of a wide range of variation among persons in their reported response to psychosexual cues.

Preference for psychosexual stimuli: Other investigations of possible relevance have explored factors which determine individual preference for viewing sexually related stimuli. Although few

21. A more speculative finding suggested by BLUMER & HAUSER, *op. cit. supra* note 16, and Haines, *supra* note 17, is that males who have been apprehended for crimes tend, as a group, to be less responsive to sex stimuli than "normal" males. Since there have been no studies in which the sexual responsiveness of various anti-social groups has been contrasted to a group of "normal" males who were matched with respect to intelligence, age, or social class, this generalization must be considered with caution. KINSEY, *op. cit. supra* note 14, suggests that factors such as intelligence and social class may be significant in determining an individual's response to psychosexual cues.

studies have provided data on determinants of this preference, the work that has been undertaken leads to some provocative questions.

An unpublished study by Professor A. M. Buchwald indicates that there are marked differences between men and women in their choice of viewing psychosexual materials.²² In Buchwald's experiment, college students were introduced to procedures which, they were told, assessed extra-sensory perception. The subject's task was to guess whether each successive card of a deck held face down was blank or had a picture on the reverse side; the cards being randomly drawn from a deck that contained an equal number of blank and pictorial cards. If the subject responded "picture," he was shown the reverse side of the card; if the subject said "blank," he was told whether his response was correct or incorrect but he was not shown the card. Thus, the subject who consistently guessed "picture" would view all the cards; the subject who invariably guessed "blank" would see none of the pictures.

Twelve groups of male and female subjects were tested in Buchwald's study, and each same-sex group viewed a different class of objects on the cards. Depictions of food, children, animals, extreme violence (highway accidents, murder photographs drawn from police files), and nudes (taken from "Playboy" type publications) constituted the five classes of stimuli. The control groups were shown a circus scene produced by a rubber stamp from a child's stamping set. The results indicate that only in a single subgroup, the one in which male subjects observed nude females, did the proportion of "picture" responses exceed that obtained in the control group. Not unsurprisingly, then, college men tended to maximize the likelihood of their viewing nude females while female subjects and men who viewed non-sexual pictures demonstrated no consistent preference for viewing the cards. Reports from other investigations in which subjects had an opportunity to observe clothed male or female models yielded similar results: men show a stronger preference for viewing female models than do women for viewing male models.²³

Further study by Zamansky²⁴ indicates, however, that all men are not equally attracted to photographs of the opposite sex. Com-

22. Personal communication with Dr. A. M. Buchwald of Indiana University.

23. Brandt, *Your Eyes Reveal the Secrets of Your Interests*, 51 IOWA ACADEMY OF SCIENCE PROCEEDINGS 361 (1944); Maccoby, Wilson & Burton, *Differential Movie-Viewing Behavior of Male and Female Viewers*, 26 J. PERSONALITY 259 (1958).

24. Zamansky, *A Technique for Assessing Homosexual Tendencies*, 24 J. PERSONALITY 436 (1956).

paring a group of 20 adult homosexual males with a control sample of 20 "normal," heterosexual men, he found that the homosexuals spent a significantly longer time than did the normal subjects in viewing pictures of men in preference to pictures of women, when photographs of both were presented simultaneously. The homosexual subjects, in fact, avoided viewing pictures of females, even when these were paired with neutral pastoral scenes. Since pictures of nude females (or nude males) were not used in this study, Zamansky's findings provide only suggestive evidence for the issues considered in this paper. It seems probable, however, that problems of sexual identity, as reflected in predominant homosexuality or heterosexuality, play an important role in determining an individual's preference for or avoidance of various classes of sexual material.

What occurs when sexually conflicted males are required to view pictures of female nudity? Miller and Swanson²⁵ devised an experimental situation where three groups of college men, of varying strengths of masculine identification, were requested to peruse photographs of attractive female nudes. Before and after the presentation of the photographs, each subject completed a set of equivalent incomplete story tests²⁶ which were designed to assess his ability to solve problems of interpersonal relationships. The results indicated that the less masculine subjects (men in the "effeminate" and "unconsciously feminine" groups) tended to reflect considerable disorganization in their fantasy problem solving behavior following the presentation of the nude pictures. The masculine group, on the other hand, performed as effectively after viewing the photographs as they had prior to the presentation of this material.

One further study, quite early but still relevant to this analysis of preference deserves notice. Two European investigators (Bracken and Schafers)²⁷ investigated the question: does there exist a relationship between the choice of reading matter and the nature of crime for which a sample of male prisoners had been committed? According to their report, murderers display a preference for high-grade information books and adventure stories; swindlers prefer light novels, thieves tend to choose books on "practical culture," and sexual offenders show a preference for "sex books."

25. MILLER & SWANSON, *INNER CONFLICT AND DEFENSE* (1960).

26. *I.e.*, the subject is given the beginning of a story and asked to complete it. The responses may be evaluated in many ways—in this case they were measured for their degree of organization and clarity.

27. Von Bracken & Schafers, *Ueber die Haltung von Straffenfangenen zur Literature*, 49 *ZEITSCHRIFT FUR ANGEWANDTE PSYCHOLOGIE* 169 (1935).

The results, however, need to be replicated before confidence can be placed in these findings.²⁸

Apart from the proposition, hardly surprising, that men typically demonstrate a strong preference for viewing portrayals of nude members of the opposite sex, the studies discussed in this section suggest the following generalizations: (1) males who have not achieved an adequate masculine identification avoid and, presumably, are threatened by, portrayals of female nudity; (2) non-voluntary exposure to pictures of nude members of the opposite sex leads to measurable cognitive disorganization in sexually conflicted men. The predispositional patterns that determine a strong preference for such portrayals have yet to be studied systematically. Although there is some indication that certain persons are strongly attracted to depictions of nudity the personality and motivational factors that account for this attraction have not been identified reliably.

Fantasy measures of sexual arousal: The studies in this section are concerned with the effects of sexual stimuli of one aspect of an individual's actual behavior. Unlike the self-report technique, these investigators are not interested in what the subject *says* he does under such and such conditions, *which do not exist at the moment*; rather, they *create* a certain condition, *e.g.*, show pictures of nudes, and then they *observe* some aspect of the subject's behavior, in this case, a fantasy production.

One technique is to have a subject tell or write a story about the picture he has seen. Another technique is to show the picture and give a Thematic Apperception Test (TAT) which also calls upon the subject to tell a story. Various qualities of the story may be analyzed for content, and this is taken to reflect the current thinking of the subject. These stories may be considered as reactions to the particular qualities of the picture (*e.g.*, female nudity) or they may be a function of environmental conditions before or during the subject's reaction, or, more usually, they may be construed to be the result of an interaction of qualities of the subject, picture, and current situation.

One series of investigations used the analysis of creative stories as a means of assessing the subject's sexual arousal²⁹ following the presentation of pictures of nude females. Thus, Clark tested the hypothesis that sexual arousal would occur only if the nude

28. Goldhirsh, *Manifest Content of Dreams of Convicted Sex Offenders*, 63 J. ABNORMAL & SOCIAL PSYCHOLOGY 643-45 (1961), reports that men imprisoned for sex crimes reported significantly more dreams of sex crimes than men imprisoned for other crimes. The relationship of dreams to reading preferences does not appear to have been investigated.

29. See note 21 *supra*.

pictures were presented in a permissive, guilt-free situation.³⁰ Reasoning from Conger's notion that guilt is lessened under the influence of alcohol,³¹ Clark expected that greater sexual arousal would occur when the subjects were intoxicated than when they were sober. To test this general hypothesis, he presented the nude pictures under two conditions: (1) in a group testing situation in a university classroom, and (2) at a fraternity beer party. Following each condition, a second experimenter administered a group Thematic Apperception Test (TAT) which required each subject to create short stories for eight pictures of relatively ambiguous interpersonal situations. The stories were then scored for the presence or absence of sexual content, and Clark found more sexual content in the stories obtained in the party situation than in the university setting. Indeed, when experiments were made in a formal, classroom setting, there were fewer stories containing references to sex following a showing of nudes than were produced following the presentation of ordinary pictures selected for their apparent lack of sexual qualities.

Thus, the conditions under which observations of nude photographs occur seem to affect the extent to which subsequently obtained TAT stories are concerned with sex; but it is not clear that the study has shown that equally strong sexual arousal was not present in both settings. That is, the circumstances of testing in the university might tend to inhibit the expression of sexual content on the TAT, while participation in a beer party might facilitate the production of such stories. Both groups may have been equally aroused by the pictures, but the classroom setting may have inhibited direct sexual expression. Indeed, in a later discussion of this study, Clark adopts this alternative interpretation:

[T]hese results seem to indicate that under normal (non-alcohol) conditions the sexual arousal causes sufficient anxiety to lead to the inhibition of manifest sexual imagery whereas, under the influence of alcohol this anxiety or guilt is sufficiently reduced to permit increased expression of manifest sexuality reflecting directly the heightened state of arousal.³²

Similar problems of interpretation are apparent in an interesting

30. Clark, *The Projective Measurement of Experimentally Induced Levels of Sexual Motivation*, 12 J. EXP. PSYCHOLOGY 44 (1952).

31. Conger, *The Effects of Alcohol on Conflict Behavior in the Albino Rat*, 12 Q.J. STUDIES ON ALCOHOL 1 (1951).

32. CLARK, *The Effects of Sexual Motivation on Phantasy*, in STUDIES IN MOTIVATION 44, 48 (McClelland ed. 1955).

study by Mussen and Scodel.³³ Following a procedure similar to that of Clark, they studied the effect of varying the formality of the laboratory situation in which the arousal stimuli were presented. Male college students, presumably volunteers, were presented with pictures of nude females and were given instructions to rate each picture on a dimension of attractiveness. The slides were presented to one group by a "formal, professorial, and somewhat stern man in his sixties." A young, informal, permissive graduate student administered the same slides to a second group, and TAT cards were administered to all, immediately following the pictures, by a third experimenter. The results showed that the informal group produced more thematic stories containing direct reference to sex than did the formal group. These results were offered as support for the hypothesis that the arousal of socially disapproved needs in the presence of an authority figure leads to the inhibition of that need.

All this suggests that the potential effect of a sexual stimulus is affected by the situation in which the material is presented, as well as the erotic content of the material observed. In neither study is it clear whether no sexual fantasies were aroused in the non-permissive situations, or whether sexual fantasies were in fact aroused and their report inhibited. The Mussen and Scodel work suggests the latter, but their experiment does not allow exclusion of the former possibility. The distinction between failure to arouse sexual ideation and inhibition of expression may be important to the analysis of the effects of reading or viewing obscene material.

A recent study by Lieman and Epstein³⁴ provides further clarification of the role of sexual guilt in determining an individual's fantasy responses to sexually relevant stimuli. Sixty unmarried college men were tested as a group with a specially constructed thematic test, and were subsequently given a questionnaire designed to obtain information on guilt over sex. The thematic test pictures were arranged along a dimension of "sexual relevance," e.g., one picture depicted a man lying on a bed, embracing a woman and being kissed by her as she was leaning over him (high relevance); another picture showed a young man sitting at a desk and writing a letter (low relevance). Included in the sex guilt inventory were such statements as: "I avoid sexy shows when I can"; "It is wrong to indulge in sex strictly for pleasure"; "I feel guilty

33. Mussen & Scodel, *The Effects of Sexual Stimulation Under Varying Conditions on TAT Sexual Responsiveness*, 19 J. CONSULTING PSYCHOLOGY 90 (1955).

34. Lieman & Epstein, *Thematic Sexual Responses as Related to Sexual Drive and Guilt*, 63 J. ABNORMAL & SOCIAL PSYCHOLOGY 169 (1961).

about my sexual behavior"; "I find discussions about sex slightly annoying." Lieman and Epstein's results indicate, among other things, that subjects who reflect very little guilt on the inventory tend to produce more "thematic sexual responses," *i.e.*, stories which contain direct sexual references, than do the men who indicate considerable sex guilt on the inventory. This difference between "low sex guilt" and "high sex guilt" subjects was greatest on pictures of high sex relevance. Although the generality of these findings to our present study is limited by the fact that even the "high sex relevant" pictures probably could not be considered even mildly obscene, these findings support the results of Clark and of Mussen and Scodel which were obtained in entirely different contexts.

To sum up this section: experimenters have sought to determine the conditions under which men who view pictures of nude women will, shortly thereafter, produce fantasies with sexual themes. Under some circumstances—in a permissive "guilt-free" setting—there is evidence that they do produce such fantasies. However, where the environment is formal and stern, these fantasies are not aroused, or at least not verbalized. Similarly, individuals who report that they are generally inhibited in their sexual behavior, and who experience guilt over sexual conduct, fail to produce sexual responses, even in fantasy, in a situation where such a response would be appropriate. Thus, there is some support for the hypothesis that men with considerable sex guilt fail to become aroused by sex stimuli of a type prevalent in obscene communication.

Physiological assessment of sexual arousal: Another group of studies has investigated physiological indices of an individual's response to portrayals of love, nudity and sexual activity. The particular measures utilized ranged from estimates of prostate gland activity to the galvanic skin response (GSR), blood volume, and respiratory rate. It should be noted that these indices are sensitive to any emotional arousal, as well as sexual arousal. Thus, the sexual content of the arousal must be inferred from the stimulus situation to which the subject appears to be responding. Similarly, if the subject experiences strong emotion that has been previously associated with sexual arousal, *e.g.*, guilt or anxiety, these too may be reflected physiologically.

In contrast to the response measures of sexual arousal considered up to this point (self-report, preference, fantasy), somatic response patterns are, for the most part, uninfluenced by the subject's attempts to dissimulate or voluntarily inhibit his behavior. This relative invulnerability to individual control is a desirable at-

tribute which compensates, in part, for some of the problems of interpretation.

The earlier investigations of Dysinger and Ruckmick used GSR as a measure of sexual arousal.³⁵ Studying groups of children and adults in both a laboratory and a theater situation, Dysinger and Ruckmick related the subjects' GSR to scenes during a motion picture at which the most extreme responses occurred. Although subjects observed three types of films (comedy, adventure, and "love/erotic"), the findings most pertinent to the present paper are those which were obtained with films containing mild sex stimuli. The results suggest that the various age groups respond in markedly different ways to different scenes. Thus the authors state: "In scenes of love and in scenes suggestive of sex, the greatest . . . reaction was produced in the group near 16 years of age; adults gave an average response that was less intense; children under 12 years of age gave less . . . responses than adults." Female subjects, as a group, tended to register somewhat higher GSR's than males during the love and romance situations, whereas the males as a group responded most intensely to the danger and adventure scenes. However, all the differences were slight and tests of statistical significance were not provided in the report. It is therefore uncertain whether these trends can be accepted as reliable.³⁶

35. DYSINGER & RUCKMICK, *THE EMOTIONAL RESPONSES OF CHILDREN TO THE MOTION PICTURE SITUATION* (1933). GSR measures changes in palmar sweating and is usually regarded as an indication of changes in the emotional state of the subject, inasmuch as increased palmar sweating may be interpreted as preparation for emergencies in the environment.

36. It seems relevant to add two additional comments regarding the methodology of this study. In the first place, the GSR was considered indicative of a heightened *sexual* ideation only because the change occurred while the subject was presumed to be attending to the scenes which might induce that ideation. However, it is entirely possible that a sizeable proportion of the subjects could have interpreted the scene differently than the experimenter expected or otherwise misperceived the setting of the film at the moment the GSR was being recorded. Indeed, Dysinger and Ruckmick indicated that this occurred in several instances, particularly in the case of the younger children. Secondly, and perhaps more important, the films depicted scenes which were only "suggestive of sex." Indeed, an examination of the author's description of the film indicates that the scenes could scarcely be considered as "erotic" unless a very broad meaning is given to that term. It would thus be hazardous to conclude that more blatant sexual scenes would be similarly non-stimulating for adult audiences in general. Conversely, such films might or might not increase the reaction of an adolescent group. At the same time, it is interesting to note that the findings (showing heightened female response) agree with Kinsey's data.

Driserens and Woods³⁷ investigated the effects of mildly erotic literature on respiration rate and blood volume. The subjects were instructed to read "First Night," the saga of a timid bridegroom drawn from the magazine (apparently commercial, "over the counter"), *Honeymoon Tales*. During the reading, the pulse rate and inspiration/expiration ratio (measure of respiratory functioning) were recorded for each subject. Even though a total of only 10 male (college and graduate) students were studied, the subjects were separated into three groups of constitutional types on the basis of their responses to the physiological measures. The authors assert several "tentatively made" conclusions: "[I]ndividuals who represent in high degree the physiologically active type are most frequently and easily influenced by sex literature"; "the abstract thinking type of individual is not readily influenced by sex literature." However, the reported data provide little support for these conclusions, with no statistical tests of significance reported.

Probably the most adequate exploration of somatic response patterns elicited by sexually relevant cues was that of Davis and Buchwald.³⁸ To investigate the question, "Is it possible to produce different kinds of somatic (*i.e.*, autonomic and skeletal muscle) response in the same individual by administering qualitatively different stimuli?", male and female subjects were presented with pictures of various objects and situations. The stimuli ranged from depictions of nude females, to a "photograph of a smiling Japanese decapitating an Australian prisoner," and to cartoons. By recording a number of somatic response measures simultaneously with the presentation of the pictures, it was possible to compare the effects of the different stimuli, and to explore the differential response patterns of the two sexes. A total of 12 somatic response

37. Diserens & Wood, *Psychophysiological Behavior Under Various Types of Literature*, 30 *J. ABNORMAL & SOCIAL PSYCHOLOGY* 484 (1936).

38. Davis & Buchwald, *An Exploration of Somatic Response Patterns: Stimulus and Sex Differences*, 50 *J. COMPARATIVE & PHYSIOLOGICAL PSYCHOLOGY* 44 (1957). The authors express certain reservations in the interpretation of their results:

[O]ne may be tempted to name the pictures fear, horror, sex, *etc.*, and enumerate the somatic consequences of each, but we feel the temptation ought to be resisted. Although the psychological intermediates would then be defined only by the pictures, they would seem to speak of all the common incidents which people call by such names. Incidents and situations which people have come to call by the same name need not share an essence, and the wisdom of the ages provides untrustworthy landmarks for scientific categories.

Id. at 52. Obviously we have succumbed to the temptation. However, the comments by Davis and Buchwald are highly relevant here in that they suggest one of the fallacies inherent in arbitrarily choosing such a concept as "pornography" or "obscenity" as the basis for categorizing stimuli.

variables were recorded, including measures of GSR, respiratory rate, and several circulatory system indices.

Davis and Buchwald's results indicate that the male subjects did, in fact, produce different response patterns as they observed the various pictures; *e.g.*, the somatic responses of the men during the viewing of the nudes was discernibly different from the responses elicited by the geometrical figures.³⁹ Female subjects did not show a similar differentiation in their responses. Furthermore, Davis and Buchwald note that the stimuli in which nudes are depicted, as compared to the other stimuli, elicit the most intense somatic responses in the male subjects. A similar but statistically nonsignificant trend was found in the analyses of the female sample. In summary, Davis and Buchwald have presented some persuasive evidence that: (1) male college students show consistent and strong somatic responses when observing pictures of nudes; (2) male responses to sexual stimuli are discernibly different from responses to other scenes; (3) female response to the nudes is not unlike their response to other scenes.

In one of the few studies whose purpose was to investigate effects of "pornography," Clark and Triechler⁴⁰ investigated the influence of sexual films on the activity of the prostate gland, which secretes the hormone acid phosphatase during sexual arousal. Five males and two females watched "two or three short 'pornographic' movies and one 'non-sexual' stress," in individual sessions. Urine samples collected before, during and after the motion pictures, were analyzed for quantity of acid phosphatase. Of the seven subjects who took part in the study, four men showed increased acid secretion directly following the observations of the films. Both females, and one of the five males studied, showed a

39. It is of some interest that a sample of men were eliminated from the experiment because of their atypical response to the complex stimuli. Davis and Buchwald note:

Data from another 24 Ss were actually collected, but 12 of these, men who were for the most part athletic coaches in a summer class in physical education, gave reports which differed conspicuously from those of the other Ss. There was notably a lack of understanding of the cartoons, and frequent strong denials of interest in the nudes. (It was the Es' impression that the somatic responses agreed with this denial.) Being unable for the present to pursue the question of group differences, the Es thought it best to exclude this group of records altogether: they were not measured.

Id. at 44. This denial and lack of responsivity raises some important questions not only as to the generalizability of these results to populations other than undergraduate college students but, in addition, to the possible operation of such factors as age, sexual experience and "sophistication," masculinity, *etc.*, in determining response to psychosexual stimuli.

40. Clark & Triechler, *Psychic Stimulation of Prostatic Secretion*, 12 *PSYCHOSOMATIC MEDICINE* 261 (1950).

decrease in acid phosphatase activity. According to the investigators, the one male reported that he was "quite embarrassed, almost repulsed, by the movies."

The Clark-Triechler results, however, must be interpreted with caution since the index of prostate activity used, acid phosphatase in the urine, is influenced by the operation of other glands as well. Furthermore, prostatic fluid is secreted at times other than during sexual arousal. In this latter regard the data reported indicate that the subject who decreased in acid phosphatase during presentation of the sexual stimuli also showed a decrease during the non-sexual stress situation. Also, two of the subjects who were placed in a non-sexual stress situation showed an increase in acid phosphatase in "very much the way as they responded to the pornographic movies."⁴¹ Thus, it does not necessarily follow that the sexual material caused the decrease. Finally, there was considerable variability in the measures used, even in the limited sample that was studied. Since statistical evaluation of the data were not reported in the paper, it seems most appropriate, at present, to consider these results to be only suggestive of a relationship, and deserving of further study. The results are, however, consistent with Kinsey's findings on sex arousal and with the studies indicating that sexual guilt tends to inhibit arousal and with the other reports considered in this section.

To sum up the study of somatic response patterns, it seems clear that strong, measurable somatic responses occur when some men are presented with sexual stimuli such as pictures of nude females. Women tend not to be as reactive, or at least, do not produce somatic responses of the same general pattern as do male subjects. Men who report that (1) they are not affected by the stimuli or that (2) they are repulsed by the depictions of sexual behavior, appear to produce somatic responses that are consistent with these subjective reports. In fact, many of the findings that have been reviewed here seem highly consistent with those of the self-report studies, notably the results of Kinsey and his associates. The determinants of somatic response to sexual stimuli by males have yet to be systematically explored. However, preliminary data suggest that such variables as masculinity and age may prove to be highly relevant for the process of sexual arousal.

III.

It is possible to synthesize most of this material, to formulate some generalizations, and to speculate about some further, un-

41. *Id.* at 262.

proven hypotheses which might justify some controls on the dissemination of communication freighted with sex stimuli.

Despite the inadequacies of some of the investigations, we believe the results are consistent enough to suggest the following—which are offered, not as empirical laws, but as propositions which, thus far, appear to emerge from the evidence:

1. A significant proportion of our society is sexually aroused to some extent by some form of sex stimuli in pictures and probably in books.

2. Portrayals of female nudity and of sexual activity lead to sexual arousal in many males—adolescents as well as adults. These materials arouse females far less frequently.

3. Females, on the other hand, are more frequently sexually aroused than men by complex stimuli which portray “romantic” or “love” relationships and which constitute, in general, less direct sexual cues.

4. Males differ among each other in terms of preference for and response to various types of sex stimuli. Factors which account for different preferences among males for viewing sexually relevant materials include: adequacy of masculine sexual identity, strong guilt with respect to sexual behavior, physical maturity and intellectual ability.

5. The environmental circumstances under which the sex stimuli are viewed may influence the extent to which the viewers will show evidence of sexual arousal. It is not clear, however, whether the failure to observe evidence of sexual arousal is due to the fact that no arousal occurred or that the overt expression of the arousal was inhibited.

6. Exposure to certain types of sex stimuli is, for some persons, both males and females, a distinctly aversive experience. Sexual guilt appears to be an important determinant of the extent to which viewing sexually relevant material will be considered an unpleasant event.

Put more in “lay” terms, we think the studies show that exposure to certain kinds of erotic materials may often cause “arousal” in many people. Females are probably more often aroused by less direct, more subtle depictions—material which we do not call “obscene,” which no free society presumably could legally condemn. Many men are more likely aroused, or at least more aroused, by material depicting nudity or sexual relations—material which is more likely to be “obscene” in the legal sense. Possibly, the more obscene the material, (at least up to a point) the more its arousal potential for most men. But men may differ

in their reactions to various kinds of sex stimuli. Some stimuli may be both attractive and arousing to some while perhaps unattractive and neutral in effect on others. We know only a little about what may account for these differences.

Arousal is a condition with both psychological and physiological concomitants. It may occur in many contexts. The strength of the psychological and physiological concomitants may vary. We, of course, are speaking of the condition in a sexual context. In the sense used here, the condition of arousal may include an increase in emotional tone, an intensification of concentration, an increase in thoughts, fantasies, perhaps desires of a sexual nature, an increase in blood pressure, palmar sweating and perhaps prostate gland activity. But all of these things may occur in varying degrees of intensity.

While the phenomena may often occur when males view nude females, (and probably when males view or read about sexual activity between males and females) there are a number of qualifying factors. The setting—the environment—of the viewing may be quite important. Where the individual feels inhibited by his surroundings, he may try to avoid the stimulus, or he may try to suppress—to the extent he can—his feelings, or at least any outward expression of them. Conversely, where the setting is thought to be “permissive” the conditions of arousal seem expressed in a more overt way. Alcohol probably reduces inhibitions and may augment expression of arousal. Again, the physiological and psychological makeup of the subject may be an important variable. Persons who feel strong guilt about sex, or about the experience of being stimulated by viewing erotic material may seek to avoid the experience or seek to repress the feelings evoked. Homosexuals may, in fact, experience feelings of disgust or revulsion when they view stimuli seen as erotic by heterosexuals. But homosexuals may experience erotic arousal from other types of materials.⁴² There is thus a complex of factors—and we have only given examples of some—which may determine whether arousal will result and which may affect the strength and perhaps the consequences of that stimulation.

Many discussions of sex censorship seem to assume that obscenity evokes a direct, immediate response of the individual reflected

42. Cf. *Manual Enterprises, Inc. v. Day*, 289 F.2d 455 (D.C. Cir.), cert. granted, 368 U.S. 809 (1961) (photos of nude males held obscene and non-mailable when used for sale to homosexuals; psychiatric testimony admitted to support contention that pictures, while having no harmful effect on “normal” audience, would excite homosexuals). See PAUL & SCHWARTZ 301-02 for discussion of this and other cases.

in a state of heightened sexual arousal.⁴³ But many also assume, or speculate, about a second kind of effect. That is, in contrast to the immediate effects of stimulation, it has frequently been suggested that exposure to obscene materials also influences the individual in more enduring ways and in a fashion that is not immediately observable, *i.e.*, that his attitudes, values and habits relevant to sexual behavior are altered.⁴⁴ The distinction between the immediate and long-term effects of stimuli in communication has been suggested by psychological theorists in other contexts.⁴⁵ The studies reviewed here have yielded information primarily about the first class of effects—the immediate, transient responses of the individual to various stimuli. The second class of effects has hardly been studied; the data is only suggestive.

Unfortunately, most justifications for censorship laws are predicated upon the presumed influence of obscenity on the subsequent sexual behavior and morals of the viewer. Thus, granting that many obscene materials do arouse under many circumstances, we need to know more. We need to know how long the conditions of arousal last and how this stimulation might affect overt behavior, attitudes governing behavior and mental health.

We cannot offer empirical evidence to answer such questions because no such evidence exists. The data simply stops short at the critical point. Yet it is possible, and perhaps helpful, to speculate on some hypotheses which may be relevant to the law.

IV.

It may be well to emphasize again a point which sometimes seems obscured in the theorizing and argument about the possible harmful consequences of obscenity. The point is simply that these materials may affect different people in different ways, and the effect, if any, may also vary with the circumstances under which exposure took place. There possibly are many variables and thus it may be that many seemingly conflicting hypotheses can eventually be demonstrated by empirical investigation. We turn then to some of the possibilities.

Obscenity as a cause of sexual misbehavior or crime: One possible rationale for censorship laws is based on the assumption that persons who view obscene materials will be instigated to perform

43. *Cf.* United States v. One Book Called "Ulysses," 5 F. Supp. 182 (S.D.N.Y. 1933), *aff'd*, 72 F.2d 705 (2d Cir. 1934) (test is whether dominant effect is the "promotion of lust" or libidinous feelings).

44. *Cf.* Brief for United States, Roth v. United States, 354 U.S. 476 (1957), discussed in text accompanying note 52 *infra*.

45. *Cf.* HULL, A BEHAVIOR SYSTEM (1952).

sexual acts which the state can or does legitimately prohibit. This assumption seems to involve two subsidiary propositions: sexual cues elicit sexual thoughts and emotions, and the direction of expression of such arousal will be similar to the cues observed. While there is strong support in the empirical literature for the first proposition, we have located no research that has provided a direct test of the second. Investigations that have dealt with this process in terms of another behavior system, *i.e.*, aggression, indicate that, under particular, rather narrowly defined experimental conditions, identification with observed behavior can be demonstrated.⁴⁶ Obviously it would be hazardous to apply these results to the issue of sexual stimulation. It may be possible to test the proposition that, under some circumstances, some persons modify some aspects of their sexual behavior. But until the phenomenon is reliably demonstrated, we can hardly assume that the observation of illicit sex practices will lead to *criminal* sexual behavior. Indeed, common experience contradicts this hypothesis for most people.

Further, it has been speculated that the observation of obscene material leads to the performance of criminal acts that are not necessarily sexual in nature. This speculation seems to assume that the state of sexual arousal created by the pornographic material is relieved by non-sexual, antisocial behavior. Again, there is no evidence to confirm or deny this proposition. Indeed, because of the multidimensionality of the concept "antisocial behavior," this would be an exceedingly difficult proposition to test experimentally.⁴⁷

Other propositions to support sex censorship are similarly speculative. Possibly some sex stimuli may have more of an impact on some immature males, at least adolescents who lack well-developed internalized controls, and thus may be more influential on their behavior; but even among this group there is no satisfactory empirical evidence. Perhaps obscene materials influence some persons who are already prone to sexual misbehavior. But even

46. Cf. Bandura & Ross, *Imitation of Film-Mediated Aggressive Models*, 1962 (unpublished manuscript).

47. Compare the difficulties encompassed in studies of the etiological roots of delinquency, such as GLUECK & GLUECK, *UNRAVELING JUVENILE DELINQUENCY* (1950); BANDURA & WALTERS, *ADOLESCENT AGGRESSION: A STUDY OF THE INFLUENCE OF CHILD-TRAINING PRACTICES AND FAMILY INTERRELATIONSHIPS* (1959). These studies have been cited to contradict the proposition that obscenity is a causal factor. But obscenity is probably not discussed in these studies because the investigators were primarily concerned with other more discernible causative factors. In general, these studies show how a complex of determinants influence the development of delinquency. But they can hardly be cited to rule out obscenity as one possible influence.

without an "obscenity" stimulus it may well be that these people—or some of them—would engage in illegal actions; they might find their stimulus in some other permissible form of sex expression. And, with the empirical evidence we do have, a quite different thesis is also possible: obscene materials provide a way of releasing strong sexual urges without doing harm to others. Intuitively, all these propositions—contradictory though they appear—may seem to have some merit; and for all we now know, all, some or none of them could be true.

Obscenity and "Psychosexual Tension": Recently the draftsmen of the American Law Institute's Model Penal Code suggested that the viewing of obscene materials may create undesirable "psychosexual" or "emotional" "tensions."⁴⁸ To the extent that the results obtained from the study of persons who reflect considerable sexual guilt and sexual-identification problems are pertinent, it seems clear that the presentation of sexual materials, for some persons, is an aversive or disruptive experience. The extent and generality of this description has yet to be explored systematically. On the other hand, it may also be that other persons who do not evidence strong sexual guilt and who are otherwise "normally" adjusted in terms of sexual behavior may experience considerable relief by observing sexual material. Thus, the same stimulus may have directly contrasting effects, according to the response predispositions of the viewer, and even in the same viewer at different times.

Obscenity as an "obsession": One might also speculate that some of those who are most aroused by whatever form of erotic material operates most effectively to stimulate them may consume more of this material than other people. There is some suggestion in the research reviewed (and it seems to be supported (1) by evidence reflecting the marketing of obscene material in the mails,⁴⁹ and (2) by communication research in other fields)⁵⁰ that some people may spend considerably more time, energy and money to secure the chance to read or view erotic depictions. It may be that the obscene material is simply used in place of other material to satisfy a desire for sexual stimulation—a desire which will be fulfilled in any event. Thus, it may be that with some of these people obscenity operates as a safety valve for release of feelings. But the evidence hardly negates other possibilities as well—including the hypothesis that the obscene material is both an

48. See note 3 *supra*.

49. See, e.g., PAUL & SCHWARTZ 111-14, 280-81.

50. Cf. KLAPPER, THE EFFECTS OF MASS COMMUNICATIONS 190-97 (1960).

artifact and a causative influence creating, in some, a stronger desire to view more obscenity. If, in fact, the seeking for obscenity becomes a "compulsive" activity to some, this behavior may affect the individual's personality or his values and his attitudes towards sexual conduct or his health, happiness or efficiency. As yet, we cannot evaluate these hypotheses adequately. The data we have merely suggest that this may be an important and researchable area of investigation.

Obscenity in the formation and change of attitudes: Regrettably the research reviewed here has been concerned primarily with the immediate emotional effects of psychosexual stimuli. But what of the impact on articulated attitudes, beliefs and moral values of communication freighted with portrayals of nudity or sex action? Does exposure or repeated exposure change one's concept of desirable sexual relationships and sexual conduct?

Paradoxically, it may be that at heart most men fear obscenity more for what it will do to norms of morality than for any other reason. The earlier cases, insofar as they argue any rationale for anti-obscenity law, seem to urge this thinking. The Supreme Court once wrote:

The foundation of a republic is the virtue of its citizens. They are at once sovereigns and subjects. As the foundation is undermined, the structure is weakened. When it is destroyed, the fabric must fall. Such is the voice of universal history.⁵¹

In 1957, the United States Government, defending the constitutionality of its power to punish use of the mails to disseminate obscene communication, quoted this statement and argued at great length the general proposition that "public morality would be seriously affected by the distribution of obscene material" and declared:

The distribution of obscenity creates a substantial risk of inducing immoral sexual conduct over a period of time by breaking down the concept of morality as well as moral standards.

* * *

The common circulation of such material could hardly help but induce many to believe that their moral code was out of date and that they should do what, they suppose, others are doing.

The conduct with which we are concerned need not be that which would immediately follow the reading of one book, the seeing of one pornographic moving picture, or the study of a set of photographs. Just as in the *Dennis* case, the feared conduct may be the result of repeated indoctrination. . . . Once moral standards have been corrupted, one's conduct is no longer guided by them. It requires little

51. *Trist v. Child*, 88 U.S. (21 Wall.) 441, 450 (1874).

judicial notice to know that one whose morals have been corrupted is likely to engage in sex conduct which society has a right to prohibit. In this slower, but no less serious way, obscenity brings about immoral conduct.

* * *

The collective public conscience pushes the individual in the direction of being honest, fair, law-abiding, and decent. While separate elements may sometimes be singled out, public morality is really indivisible, in the sense that one aspect of it cannot be corrupted and leave the rest unaffected.

* * *

The man who finds that the Government will or can do nothing to stop the distribution of pornography to his family will be less willing to abide by society's demands on him, whether it be as to gambling, distribution of narcotics, or the candor with which he fills out his income tax. Similarly, the corruption of moral standards in the realm of sexual conduct cannot help but corrupt other aspects of moral life. Morality, like morale, cannot be undercut at one point without affecting all conduct.⁵²

This line of argument, we repeat, is frequently asserted—particularly in legislative forums. The old analogy, whether based on fiction or fact, to the decline of Rome is invoked; and, it is implied that obscenity, for some reason, exerts some undefined yet powerful appeal and insidious influence on those who contemplate it, and this influence apparently cannot be counteracted by ordinary appeals to reason. Thus, for purposes of defining freedom, expressions reflecting moral heresy cannot be treated as expressions of political heresy. The latter can be routed by argument, the former apparently cannot, and therefore, such expressions must be quelled by the state.

Plausible research to undergird such views is yet to be developed—indeed, the precise questions for investigation are probably yet to be formulated. The most usual effect of communication in such fields as politics, so the research indicates, is to reinforce or to modify slightly existing attitudes and values, rather than to invoke new beliefs or produce sudden change. Research in other, possibly analogous fields—the effect on children of exposure to crime and violence in the media, the effects on adults and children of “escapist” TV and radio programs—suggests that ordinarily those kinds of communication do not act like “hypodermics” to inject forthwith some new belief or motivation in the audience.⁵³ It may well be that the frequent exposure to various forms of por-

52. Brief for United States, pp. 59, 60, 64-65, *Roth v. United States*, 354 U.S. 476 (1957).

53. See KLAPPER, *op. cit. supra* note 50, at 150-59, 165, 195-96, 198, 205.

trayed sexual activity would lead to significant changes in some viewer's attitudes regarding this behavior. This does not indicate, however, that the change would necessarily be toward greater acceptance of the behavior depicted. On the contrary, the shift in attitude might be in the direction of greater rejection or of greater acceptance, according to the nature and the strength of the pre-existing attitudes that the viewer holds.⁵⁴ Where no strong sexual attitudes exist a priori, either because of a person's youth or his sexual naiveté, one would expect that the exposure to sexual stimuli would have its strongest effect.⁵⁵ Furthermore, some children may be more susceptible than others to sexual stimuli. There are indications in the empirical literature that certain children, namely those functioning at a borderline intellectual level, and those who present signs of behavioral maladjustment, show adverse effects after repeated exposure to "escapist communication" or to depictions of violence.⁵⁶ By analogy, some kinds of obscenity might strengthen a socially undesirable orientation towards sex and sexual relationships. But these speculations have to be submitted to direct empirical test.

V.

If one insisted on supporting empirical evidence it would be hard to find a rationale for our anti-obscenity laws which squares with first amendment theory. But proponents of controls have never accepted this burden. Nor is it clear they must. Legislative committees have accepted opinions, including opinions concerning facts and, sometimes unfortunately, opinions couched in extreme and therefore doubtful terms or opinions which are not carefully labeled as opinions. In more recent times, the courts have usually eschewed discussion of these treacherous questions (what is it that is supposed to make obscenity bad, and how do we know that this is so?). The Supreme Court in its recent first amendment forays has thus far been able (to the satisfaction of most of the Justices) to avoid such issues by treating them as more or less irrelevant. Unfortunately the questions cannot be so neatly turned away. We should continue to seek the answers. If the social sciences cannot

54. FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957); THURSTONE & PETERSON, THE EFFECT OF MOTION-PICTURE FILMS ON CHILDREN'S ATTITUDES TOWARDS GERMANS (1932).

55. Siegel, *The Influence of Violence in the Mass Media Upon Small Children's Role Expectations*, 29 CHILD DEVELOPMENT 35 (1958), has recently shown that children develop some attitudes via the radio, but this is most striking in areas where the children have little information.

56. See KLAPPER, *op. cit. supra* note 53; Maccoby, *Why Do Children Watch Television?*, 18 PUBLIC OPINION Q. 239 (1954).

give us ultimate answers, at least, given systematic, inter-disciplinary efforts they can move us closer to a more certain knowledge.

Many more pages could be written to attempt to group and synthesize some of the clinical observations and opinion-type assertions which have been set forth to support or refute the need for obscenity laws. But, whatever the value of that exercise, it is not our present purpose. We would caution, however, that claims based on empirical knowledge must be modest: the temptation to generalize from the data is dangerous. While experts in behavior have every right to speak, they do disservice if they confuse personal theory with scientific fact.

The behavioral science side of our joint-author team does not feel it is their province to render judgment. The lawyer-author, after mulling the meagre data and its implications, is willing to stick, for the time being, to guns he mounted in other publications with another co-author.⁵⁷

The gist of that thought is: obscenity (as legally defined—and circumscribed—by recent Supreme Court decisions) is quite often (but of course not always) qualitatively different from other “speech”; its idea-content is different and often of negligible intellectual value (though not always and not to all men). Obscenity *may* (we do not know) exert a peculiarly strong and socially undesirable influence (in terms of inducing a strong immediate response, or in terms of influencing overt conduct, personality, attitudes, or all of these) on some people, perhaps notably, people who are in some ways sexually immature. Quite possibly this is not a large group percentage-wise, but numerically it may still be of significant size. Obscenity also seems to be an outrage to some people. They rebel not simply at its open availability but at commercial efforts to exploit it and to foster its wide circulation among youths and others; and the strength of these feelings—especially among parents—must be accommodated to some extent as a matter of *Realpolitik*. For these and other reasons, and until we know more, perhaps we should accept legal controls which seek to prevent that kind of commercial distribution which in essence multiplies the risks we may incur when obscenity falls frequently and easily into the hands of the immature. Thus, we might condemn commercial distribution which exploits obscenity and which is either intentionally aimed at youth (and perhaps others with an obvious obsessive interest) or which is carried on with reckless disregard of the quality of the audience whose patronage

57. PAUL & SCHWARTZ 191–220. See also Paul & Schwartz, *Obscenity in the Mails; A Comment on Some Problems of Federal Censorship*, 106 U. PA. L. REV. 214, 239–44 (1957).

is solicited. Controls of this kind have been discussed elsewhere.⁵⁸ They seem to have some basis in reality, yet they hardly impinge on any man's freedom to read or create.

58. PAUL & SCHWARTZ 191-220. We also argued that "intentional use of obscene expression to shock people or subject them to emotional distress against their consent, without justification and under circumstances transcending community standards" should be prohibited. *Id.* at 214. This type of conduct is probably rare, except in the use of the mails. Compare the analogous arguments—favoring a concept of "variable obscenity"—so persuasively stated by Lockhart & McClure, *supra* note 4, at 45 MINN. L. REV. 5.

