Pornography and Community Standards in Hawaii: Comparisons with Other States

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This first statewide study, using random phone interviews, found a community standard for the acceptance of sexually explicit material. Research shows respondents are conservative in voting for the death penalty and against the legalization of those drugs presently illegal, even marijuana. In other regards, Hawaiians think abortion should be only for the women to decide and that adults should not be denied access to explicit material that shows other adults in consensual sexual acts. The majority of those interviewed had themselves seen erotically explicit materials, often obtaining it themselves. Only a minority found the material offensive. A review of studies on sexually explicit material elsewhere in the country shows these findings to be consistent with all other communities investigated; none would restrict adults from access to sexually explicit material.

KEY WORDS: pornography; community standards; Hawaii; sexually explicit.

INTRODUCTION

Many popular media, partisan groups, and political entities (e.g., Attorney General’s Commission on Pornography, 1986) assert that most communities in the United States oppose the availability of sexually explicit materials. These claims have never been tested.

In 1973, the Miller v. California decision of the U.S. Supreme Court established that individual communities had the right to determine for them-
selves what sexually explicit material would be considered legally obscene and barred from availability if so ruled. Despite the fact that no geographic or political entity was defined as the appropriate community, the ruling set the stage for having so-called "community standards" become central to the prosecution and defense of material under review. Prosecutors argued the item surpassed community acceptance while the defense argued it did not. Surprisingly, few jurisdictions actually ascertained what their community would accept or what should be its standard. In general, prosecutors and defense attorneys let juries or judges decide. Rarely has this been challenged.

Any definition of a community standard raises practical as well as theoretical issues. In most democracies it is the majority that carries. But this is not necessarily the same as a "community standard" as defined sociologically (Bell, 1977). By the most restrictive measure, a community standard—consensus—exists if 75% or more of the community is in agreement on a particular issue. If 100% of the community agree, there is perfect consensus; if 50% agree and 50% disagree there is perfect "dissensus." Using this definition, more than three of four voters would have to find any material in question obscene. A majority or plurality, however, might also be selected as the criteria for establishing a community standard.

In 1978, the prosecutor's office of the City and County of Honolulu, in response to what it thought was a popular cause and community desire, began to call for the arrest of sellers of sexually explicit material. Following several indictments for pornography against their clients, we advised the Hawaii law firm of Shirley and Jordan to ascertain where the community, the Hawaiian island of Oahu, actually stood on this issue. Until 1983 (Herrman and Bordner), no study of a community standard toward explicitly sexual material had appeared. We drafted the survey questions and analyzed the data.

Prompted again by courtroom needs in collaboration with the legal firm of J. Schweigert and Associates, similar surveys were commissioned and conducted in June and October of 1985. These studies were similar to that of 1978 except that the wording of several of the questions was changed to better reflect the wording of the applicable state laws and, for the latest study, the scope of the survey was expanded to cover all the islands of the state.

With the ongoing national controversy regarding sexually explicit material and the pronouncements of the Attorney General's Commission on Pornography (1986) again calling for the recognition of community standards, these findings seem particularly relevant for national consideration. This is emphasized by the added feature that our studies also asked about the community's feelings on other issues strongly debated; the death penalty (not allowed in Hawaii), abortion (Hawaii was the first state in the nation to legalize the procedure), and the status of drugs such as marijuana and alcohol. We can thus report on the feelings of the community on several is-