

Decency debate indecent

By Carol Corgan

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Howard Stern finally offended politicians and the Federal Communications Commission enough that they were moved to act. Janet Jackson did too. I wonder what finally got the Commission's attention? How did they select two moments of "indecent" from the thousands of hours broadcast daily?

Every hour of every day and every hour of every night, radio and television stations broadcast hate speech against women. This hate speech is the song that uses every expletive synonym for female. This hate speech is the movie, drama, sit-com, soap opera, talk show and website that portrays women as objects, that uses women for entertainment through public sexual degradation. This hate speech is Stern and his crew leering at women who perform sexual acts at Stern's bidding, who are taunted by him, goaded by him, verbally abused by him. This hate speech includes every print, audio and visual image of women being verbally and physically exploited simply because they are women.

And even when a politician or government official is jolted awake by this daily horror, they miss the point. They act to remove Stern's voice, or another voice from the air, and they do it in the name of decency. They label this conduct simply "indecent," rather than exploitive, harassing, abusive. As if the words and pictures only offend. As if the words and pictures do not harm the women they are directed at – and in fact, all women.

The assertion of free speech rights and the equivocating over decency and obscenity are the prevailing responses to this daily oppression of women. Yet, the real issue is neither decency nor obscenity. The real issue is civil rights, just as it always has been and just as Andrea Dworkin and Catherine Mackinnon defined it two decades ago.

These feminist pioneers broke new ground in the pornography wars by reframing the argument as a matter of harm, rather than free speech. They drafted an ordinance to create a cause of action that would allow women to sue pornographers for injuries inflicted by pornography. Their theory upholds free speech – you can speak what you want. However, if harm is inflicted by your speech, you could now be held accountable. Is this really any different than the court holding that speech is not protected if someone falsely shouts “fire” in a crowded theatre, causing panic?

The Dworkin/Mackinnon ordinance introduced in three U.S. communities, would have given the same opportunity to those harmed by the production or distribution of pornography. But, though the ordinance prompted much debate, those harmed by pornography lost. Though the ordinance became law in one city, it was overturned by the courts.

The pornography industry has continued, unchecked, to churn out its daily degradation and violation of women. As with any profitable business supported by an abundance of raw material (exploited women and children) and a voracious market (male consumers) the industry of pornography has continued to flourish and expand. In 2001, pornography generated revenues totaling at least \$12 billion dollars. These profits – the currency of abusing women – are obscene. Still, the issue is not obscenity. The issue is exploitation of women by men, who have more power, more money and consequently more

control of the legal system. The fact is that the laws and customs of this country protect those who harm women.

The remedy is not to debate, one more tired time, what is ‘decent’ and what is ‘obscene’. That debate ends up with right pitted against left; conservative battling liberal, religious leaders squared off with secular academics. That is because we frame the issue as a matter of morality, and it is hard to achieve consensus on moral issues. Yet, we may achieve consensus if we pay attention to the harms inflicted by the words and pictures that exploit and degrade women. We might find common ground if we listened to women and girls tell their stories – of being harassed in the school hallway by a boy imitating Justin Timberlake ripping off Janet Jackson’s clothing; of being coerced into demeaning, sexual acts by a husband who just watched Howard Stern on television; of being the economic or physical captive of a pornographer.

The remedy is to pay attention to the truth: women are harmed – physically, emotionally, mentally, economically, spiritually – by the hate speech fired at them daily. The remedy is to recognize that a culture of daily hate speech constitutes victimization of women. The remedy is to accept that a culture that spends billions per year on sexual exploitation of women is a culture that does not value women, that does not promote equality of women, that denies women opportunities, that keeps women subordinate, that promotes sexual harassment, rape, battery and every other covert and overt form of violence against women. The remedy is to act on all that knowledge – to quit misusing free speech arguments and loopholes provided by the decency framework. The remedy is to provide recourse for the harms inflicted by a culture of pervasive, gender-based exploitation and abuse.

The remedy is to try out the Dworkin/Mackinnon ordinance again. And again. Until we succeed. Granting a cause of action to women harmed by pornography is not censorship. It is simply acknowledgement that the use of women, their body parts and their sexuality to create degrading, violent words and pictures harms those women. Daily exposure to those words and pictures increases the vulnerability of all women by modeling the abuse of women for every listener and viewer thereby approval to the conduct causing the harm. A premier foundation of the legal system is to give those harmed an avenue (i.e. a cause of action) to make their case and to be made as whole as possible through damages. Women deserve no less. The law should permit women injured by the continuous stream of degradation that permeates the culture a chance to hold the offenders accountable.

What do we have to lose? If a woman were to win damages against a media outlet, that corporation might curtail its abuse of women. That does not deprive anyone of free speech. It merely suggests that corporations trafficking in the sexual exploitation and victimization of women may need to compensate those harmed by the production and distribution of that material. That would be the decent thing.