

remain president and approve of his public performance in office. The schemas advocated by politicians, including the president, along with media elites, all correspond to various means of bringing dissonant attitudes into harmony. Adopting certain schemas may have enabled the public to separate Clinton's behavior from his job performance or see him as an innocent victim of a right wing conspiracy. Clearly, the public's reaction to this long and harrowing political drama demonstrates a complex relationship between attitudes, real-world variables, public perceptions, and the messages of media and political elites. In the end, whatever the mechanism, the public rallied to the president's defense, and ultimately the public will was served.

#### Notes

<sup>1</sup> John Zaller. "Monica Lewinsky's Contribution to Political Science," *PS: Political Science and Politics*, (June 1998): 182.

<sup>2</sup> Zaller 344.

<sup>3</sup> Zaller 345.

<sup>4</sup> Donald Kinder, "Presidents, Prosperity, and Public Opinion," *Public Opinion Quarterly* 45:187.

<sup>5</sup> Charles Ostrom and Dennis Simon, "Promise and Performance: A Dynamic Model of Presidential Popularity," *American Political Science Review* 79.2: 336.

<sup>6</sup> Ostrom and Simon 345.

<sup>7</sup> Glynn, *Public Opinion* (Colorado: West View Press, 1999) 286.

<sup>8</sup> Glynn 286.

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## Legal Challenges to the Distribution of Popular Music

By Yonina Halpern, BC '00

The First Amendment of the United States Constitution guarantees that, "Congress shall make no law ... abridging the freedom of speech or of the press."<sup>1</sup> In a letter to Mr. A. Coray, Thomas Jefferson expressed that this principle, among others, is "vitaly essential to the protection of the life, liberty, property, and safety of the citizen."<sup>2</sup> However, the civil right of freedom of speech is not absolute. The courts have ruled that "all speech ... is not entitled to the same degree of protection at all times and in all circumstances."<sup>3</sup> Speech constituting slander, libel, "fighting words," or obscenity does not receive First Amendment protection.<sup>4</sup>

### THE HISTORY OF ATTEMPTS TO RESTRICT ARTISTIC EXPRESSION

When rock-and-roll was introduced in the 1950s white, adult Americans immediately feared its possible effects on American society.<sup>5</sup> Sensing a "link between rock-and-roll and teenage rebellion," many Americans began censorship campaigns to prevent the corruption of the American teenage population by the devil's music.<sup>6</sup> Censorship efforts included the sanitation of lyrics and the prohibition of rock-and-roll parties.<sup>7</sup>

In the 1960s, American censorship groups targeted, "socially conscious songs and drug-oriented lyrics."<sup>8</sup> There were those who wanted to silence music groups like "Peter, Paul, and Mary" who snag out against the Vietnam War and called attention to the serious problem of poverty and America.<sup>9</sup> Then, during the late 1960s and continuing through the 1970s, other censorship groups advocated the removal of the "dope menace."<sup>10</sup> They were disgusted with songs like "Don't Step on the Grass" and "Cocaine Blues," which promoted substance abuse." These individuals succeeded in pressuring radio stations to refuse airing records with lyrics promoting drug use.<sup>12</sup> This in turn compelled many record companies to change the lyrics of such songs.<sup>13</sup> Additionally, local governments were encouraged to, and did use, zoning laws and ordinances to prohibit rock concerts.<sup>14</sup>

With the release of rock videos in the 1980s, rock music became a medium that one not only listened to, but one also watched. This new phenomenon, with videos like Madonna's "Like a Virgin," inspired another wave of censorship endeavors.<sup>15</sup> Censorship groups began to fight for a

system of regulation restricting access to certain recordings.<sup>16</sup> The organization to achieve the most success in this endeavor was the Parents Music Resource Center.

#### THE PMRC AND THE WARNING LABEL SYSTEM

In May of 1985, Pamela Howar, Sally Nevius, Susan Baker, and Tipper Gore joined forces and organized the Parents Music Resource Center (PMRC). These four women were disgusted with contemporary music lyrics and appalled to discover that mainstream popular artists, such as Prince, produced songs with obscene lyrics.<sup>17</sup> They were deeply concerned about the problem facing uninformed customers. Many parents, including Tipper Gore, responded to their children's requests to purchase Prince's cassette "Purple Rain."<sup>18</sup> They were unaware that the cassette included the song "Darling Nikki" with the following obscene lyrics:

I knew a girl named Nikki.  
I guess you could say she was a sex fiend.  
I met her in a hotel lobby masturbating with a magazine.<sup>19</sup>

Prior to purchase, there was no way for the parents who did not normally listen to this music to know about these explicit lyrics.

Initially, the objective of the PMRC, "was to focus public attention, and outrage if possible, on the subject matter and explicitness of rock-and-roll."<sup>20</sup> Then together with the National Conference of Parents and Teachers Association and other concerned entities, the PMRC called for the labeling of records containing, "porn rock, songs with sexually explicit lyrics and lyrics allegedly glorifying the occult, violence, drugs, and alcohol."<sup>21</sup> Although they raised legitimate concerns, the PMRC received a great deal of criticism. One critic noted that the PMRC portrayed fans as, "passive, unable to resist the pernicious message of heavy metal... dupes without agency or subjectivity, without social experiences and perceptions that might inform their interactions with mass-mediated texts."<sup>22</sup> Critics also question the PMRC for placing the blame for society's ills on musicians.<sup>23</sup> Despite these and other such criticisms the "Washington Wives" of the PMRC were taken seriously.

In September of 1985 the Senate Commerce Committee decided to hold a hearing, "to investigate the subversive tendencies of rock music."<sup>24</sup> The PMRC hoped the hearing would result in the implementation of a labeling system under which 'S' would indicate sexually explicit lyrics, 'V' would indicate violent lyrics, etc. These stickers, like movie ratings, would

provide parents with some idea of the content of music recordings.<sup>25</sup> Susan Baker testified before the Senate Commerce Committee; she argued that unlike the music complaints of previous generations, the music in question was of legitimate concern and desired review. Baker explained that, "The material we are concerned about cannot be compared with Louie Louie, Cole Porter, Billie Holiday, etc. Cole Porter's "the bees do it, the birds do it," can hardly be compared with WASP's "I F-U-C-K like a beast."<sup>26</sup> The hearing proved a semi-victory for the PMRC. The Recording Industry Association of America (RIAA) agreed to promote the use of warning labels by its member companies on recordings containing explicit lyrics; however, it would not adopt the letter code proposed by the PMRC.<sup>27</sup>

Although the RIAA had conceded to the notion of self-regulation, their efforts at encouraging affixation of warning labels were ineffective. In 1989, sixteen state legislatures decided to address the situation. In each of these legislatures bills were introduced to require the placement of warning labels on music recordings.<sup>28</sup> Legislation considered in New Jersey mandated that all musical recordings:

Containing lyrics which explicitly describe, advocate or encourage suicide, incest, bestiality, rape, or involuntary sexual penetration, or which advocate or encourage murder, ethnic, racial, or religious intimidation, the use of illegal drugs or the excessive or the illegal use of alcohol<sup>29</sup>

necessitated a warning label. The language of the New Jersey bill and similar proposed state legislation was problematic. It was too broad in scope and did not effectively define "advocacy" or encouragement.<sup>30</sup> However, by 1990 eighteen state legislatures were considering proposals similar to the New Jersey bill.<sup>31</sup>

The recording industry felt threatened by these state attempts at mandating warning labels on music recordings containing explicit lyrics. In an effort to prevent government regulation, the RIAA decided to review the effects of its 1985 decision. The RIAA concluded that its efforts at promoting the use of warning labels were an insufficient solution to the problem at hand.<sup>32</sup> So, in 1990 the RIAA introduced the "Parental Advisory/Explicit Lyrics" label, which would be distributed to individual production companies.<sup>33</sup> Within a year nearly every major recording label utilized the RIAA warning logo.<sup>34</sup> However, the concerned parties were still not satisfied. One PMRC leader claimed that, "major labels aren't labeling enough of their dirty music, and, of course, most independent labels - home to underground bands... have never bothered with the stickers at all."<sup>35</sup>

## "HARMFUL TO MINOR" LEGISLATION

In an effort to restrict the distribution of recordings with explicit lyrics the PMRC and other critics have focused their attention on minors. In the 1944 case of *Prince v. Massachusetts* the Court opined that the, "state has a recognized interest in the welfare of children, giving it a broader authority over the activities of children than over similar activities of adults."<sup>36</sup> This decision provides a legal foundation for the enactment of state legislation exerting control over children's activities. Laws prohibiting the sale of cigarettes and alcohol to minors serve as examples. The PMRC extrapolates from this the following argument: "We don't sell alcohol, tobacco, or Playboy, or any of those to young people... if music is advocating what those things promote, then why are we letting out children have it?"<sup>37</sup> Those in agreement with the PMRC have worked for the creation of "harmful to minor" legislation that would restrict the sale to minors of recordings bearing the "Parental Advisory/Explicit Lyrics" warning labels.

Proponents of such "harmful to minor" legislation argue that the state has the right to protect children from the obscenity found in explicit lyrics. In *Ginsberg v. New York* (1966) the Supreme Court provided the state with a means to limit children's access to indecent material. The Court explained that the state has an, "independent interest in protecting the welfare of children and in seeing that they are safeguarded from abuses which might inhibit their free, independent, well developed growth."<sup>38</sup> Under the obscenity test established for minors, "material has to appeal to the 'prurient interest' of minors, lack serious value for minors, and be 'patently offensive,' according to prevailing standards among adults what's fit for minors," to be considered obscene.<sup>39</sup> Currently, many state legislatures are attempting to enact "harmful to minor" legislation. The Louisiana State legislature considered a bill that would make it illegal to sell minors any recording:

Which has its basic theme the advocacy [sic] or encouragement of rape, incest, bestiality, sadomasochism, prostitution, homicide, unlawful ritualistic acts, suicide, the commission, of a crime upon the person or property of another because of his sex, race, color, religion, or natural origin, the use of any controlled dangerous substance ... or the unlawful use of alcohol and which contains thereon a label or other indicator suggesting that its lyrics may be explicit.<sup>40</sup>

## PROBLEMS WITH "HARMFUL TO MINOR" LEGISLATION

The Louisiana Legislation violates the vagueness and over-broad doctrines established by the Supreme Court as cautionary measures to limit the regulation of speech. These doctrines mandate the obscenity legislation, "cannot prohibit or require an action in terms so vague that people of common intelligence must necessarily guess as to its meaning and differ as to its application."<sup>41</sup> Furthermore, "neither can a statute be so over-broad so that it includes protected speech along with the unprotected."<sup>42</sup> Use of the ambiguous terms "advocation" and "encouragement" causes the bill to be "void for vagueness." Additionally, by including substance abuse and criminal activity in this "harmful to minor" legislation, which is reserved for obscenity law, the bill becomes overly broad. One might think that this bill would never have been brought to vote. Nevertheless, the Louisiana bill passed the state legislature two years in a row, but was vetoed by the governor.<sup>43</sup>

This bill and other similar "harmful to minor" legislation pose at least two constitutional challenges. First, state legislature have the right to, "bar the sale of some artistic expression with sexual themes, but talk or art about violence, drugs, suicide, and the occult have full constitutional protection."<sup>44</sup> The second constitutional challenge arises from the findings of the Meese Commission was charged with the task of gathering empirical evidence of the harmful effects of pornography on children. The Commission concluded that:

Issues of human dignity and human decency, no less real for their lack of scientific measurability, are for many of us central to thinking about the question of harm... For children to be taught by these materials that sex is public, that sex is commercial, and that sex can be divorced from any degree of affection, love, commitment, or marriage is for us the wrong message at the wrong time.<sup>45</sup>

In other words, there is no empirical evidence detailing the harm exposure to pornography has on minors. As Marjorie Heins explains, "the perceived harm to minors from sexual speech is fundamentally moral."<sup>46</sup> The problems associated with "harmful to minor" legislation prevent it from being a viable solution to the problem of protecting children from obscenity in explicit lyrics.<sup>47</sup>

## CONCLUSION

Senator Sam Brownback, the man partially responsible for the 1997 Senate hearing "The Social Impact of Music Violence", once said, "we should allow both honorable and offensive forms of speech ... we should honor that which is honorable, and criticize that which is not. If we, as a society, come to place where we think anything goes, the first to go will be freedom."<sup>48</sup>

The existing self-regulation by the recording industry is flawed. However, the proposed "harmful to minor" legislation is too extreme a solution. What is needed is a more comprehensive process by which the consumer can become informed. To that end, the proposal for enhanced warning labels, as originally proposed by the PMRC, should be reviewed. A labeling standard denoting the specificity of content should be enacted. In this manner the consumer would understand that a CD/cassette with a 'V' contains violent lyrics, with an 'S' contains sexually explicit lyrics, etc. This would empower parents to make informed decisions as to whether a CD/cassette would be "harmful" to their minors.

The alternative of increased government regulation of music recordings is not the answer; freedoms guaranteed by the First amendment must be carefully preserved. Supreme Court Justice Sandra Day O'Connor explains that, "at the heart of liberty is the right to define one's own concept of existence."<sup>49</sup> Information is necessary in order to achieve one's own definition in an ever-changing environment. Informed individuals can make their own free choice as consumers. As Senator Brownback concludes, "May rock-and-roll and freedom ring."<sup>50</sup>

### Notes

<sup>1</sup> *United States Constitution*, First Amendment.

<sup>2</sup> Thomas Jefferson to A. Coray (1823).

<sup>3</sup> Maryilyn J. Flood, "Lyrics and the Law: Censorship of Rock-and-Roll in the United States and Great Britain," (Westlaw. Online. Internet. 12 N.Y.L. Sch. J. Int'l & Comp. L399, 1999) 3.

<sup>4</sup> Majorie Heins, "Indecency: The Ongoing American Debate Over Sex, Children, Free Speech and Dirty Words," (Online. Internet, available at <http://www.warholfoundation.org/article7.htm>) 1993:3.

<sup>5</sup> Flood 2.

<sup>6</sup> Flood 2.

<sup>7</sup> Flood 2.

<sup>8</sup> Flood 3.

<sup>9</sup> Flood 3.

<sup>10</sup> Flood 3.

<sup>11</sup> Flood FN 56.

<sup>12</sup> Flood 3.

<sup>13</sup> Flood 3.

<sup>14</sup> Flood 3.

<sup>15</sup> Flood 3.

<sup>16</sup> Flood 3.

<sup>17</sup> Heins (1993) 83.

<sup>18</sup> Heins (1993) 83.

<sup>19</sup> *Senate Hearing on Record Labeling* (1985).

<sup>20</sup> Heins 82.

<sup>21</sup> Flood 7.

<sup>22</sup> Walser 144.

<sup>23</sup> Walser 144.

<sup>24</sup> Heins (1993) 83.

<sup>25</sup> Heins (1993) 83.

<sup>26</sup> *Senate Hearing on Record Labeling* (1985).

<sup>27</sup> Heins (1993) 84.

<sup>28</sup> Heins (1993) 87.

<sup>29</sup> Heins (1993) 87-88.

<sup>30</sup> Heins (1993) 87-88.

<sup>31</sup> Alaska Arizona, Delaware, Florida, Illinois, Iowa, Kansas, Maryland, Minnesota, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, Tennessee, West Virginia, and Louisiana. See Flood FN 174.

<sup>32</sup> Heins (1993) 88.

<sup>33</sup> Heins (1993) 88.

<sup>34</sup> Heins (1993) 89.

<sup>35</sup> Eddie Dean, "Lyrics, Liberty and License," (Online. Internet, available online at <http://www.theroc.org/roc-mag/textarc/roc-20/roc20.02.htm>) 1996: 7.

<sup>36</sup> Cecelie Berry and David Wolen, "Regulating Rock Lyrics." *Cambridge Harvard Journal on Legislation* 1986: 599.

<sup>37</sup> Dean 3.

<sup>38</sup> Berry and Wolen 600.

<sup>39</sup> Heins (1993) 24.

<sup>40</sup> Heins 89.

<sup>41</sup> Flood 4.

<sup>42</sup> Flood 4.

<sup>43</sup> Heins (1993) 90.

<sup>44</sup> Heins (1993) 87.

<sup>45</sup> Heins (1997) 12.

<sup>46</sup> Heins (1997) 12.

<sup>47</sup> Heins (1997) 13.

<sup>48</sup> Sam Brownback, "Lyrics, Liberty and License," (Online. Internet, available online at <http://www.senate.gov/~brownback/music/lyrics.html>) 23 March 1998: 5.

<sup>49</sup> Heins (1993) 6.

<sup>50</sup> Brownback 6.