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A First Amendment Junkie

By: Susan Jacoby

Susan Jacoby (b. 1946), a journalist since the age of seventeen, is well known for her feminist writings. "A First Amendment Junkie" (our title) appeared in the Hers column in the New York Times in 1978.

It is no news that many women are defecting from the ranks of civil libertarians on the issue of obscenity. The conviction of Larry Flynt, publisher of *Hustler* magazine—before his metamorphosis into a born-again Christian—was greeted with unabashed feminist approval. Harry Reems, the unknown actor who was convicted by a Memphis jury for conspiring to distribute the movie *Deep Throat*, has carried on his legal battles with almost no support from women who ordinarily regard themselves as supporters of the First Amendment. Feminist writers and scholars have even discussed the possibility of making common cause against pornography with adversaries of the women's movement—including opponents of the equal rights amendment and "right-to-life" forces.

All of this is deeply disturbing to a woman writer who believes, as I always have and still do, in an absolute interpretation of the First Amendment. Nothing in Larry Flynt's garbage convinces me that the late Justice Hugo L. Black was wrong in his opinion that "the Federal Government is without any power whatsoever under the Constitution to put any type of burden on free speech and expression of ideas of any kind (as distinguished from conduct)." Many women I like and respect tell me I am wrong; I cannot remember having become involved in so many heated discussions of a public issue since the end of the Vietnam War. A feminist writer described my views as those of a "First Amendment junkie."

Many feminist arguments for controls on pornography carry the implicit conviction that porn books, magazines, and movies pose a greater threat to women than similarly repulsive exercises of free speech pose to other offended groups. This conviction has, of course, been shared by everyone—regardless of race, creed, or sex—who has ever argued in favor of abridging the First Amendment. It is the argument used by some Jews who have withdrawn their support from the American Civil Liberties Union because it has defended the right of American Nazis to march through a community inhabited by survivors of Hitler's concentration camps.

If feminists want to argue that the protection of the Constitution should not be extended to any particularly odious or threatening form of speech, they have a reasonable argument (although I don't agree with it). But it is ridiculous to suggest that the porn shops on 42nd Street are more disgusting to women than a march of neo-Nazis is to survivors of the extermination camps.

The arguments over pornography also blur the vital distinction between expression of ideas and conduct. When I say I believe unreservedly in the First Amendment, someone always comes back at me with the issue of "kiddie porn." But kiddie porn is not a First Amendment issue. It is an issue of the abuse of power—the power adults have over children—and not of obscenity. Parents and promoters have no more right to use their children to make porn movies than they do to send them to work in

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