

earlier report. Subsequently Dr Court said that the earlier report was revised and published as a book in 1990 by Huntington House, a publishing house in Louisiana. It may be noted that no application was made by Mr Ford to recall Dr Court to dispute Professor Linz's ascertain that the manner of presentation of the earlier report in its 1990 published form was a cleverly disguised attempt to pass it off as an official document sanctioned by the U.S. Department of Justice (which quite clearly from the evidence we conclude it was not).

(i) **The Values in *Penthouse***—Dr Court described *Penthouse* as “on a collision course with national heterosexual values of committed, marital, private, human love”. He argued that the 14 subject issues provided “examples of sex, exploitation and violence towards women and children and other undesirables”. He said *Penthouse* implicitly claims that women's public exhibition of their genitals and buttocks or anus to millions of unknown children and adults is an expression of normal female sexuality.

Dr Court described *Penthouse* as denigrating marriage, the family and heterosexuality. As an example he referred to a cartoon in the November 1988 edition as offering a rare picture of what appeared to be a married couple in an often repeated theme of “marriage is related to the blind and crippled”.

Penthouse was described by Dr Court as encouraging sodomy. He said that in the Reisman Report 175 buttock displays were counted. Dr Court argued that this encouraged sodomy and the resulting spread of sexually transmitted diseases: “Since AIDS has emerged as a fatal disease, any shift from the ... whole human focus to an anal focus may be defined as a toxic endorsement” (page 10 of transcript).

Under questioning by Dr Middleton (page 54 of transcript) Dr Court stated that the researchers had coined the term “heterophobic” to mean “espousing a fear and resentment towards family, religion, children, male/female love ...”.

he continued (page 54 of transcript): “... we don't find significant numbers of representations of heterosexual intimacy ...”.

In our view the above statements suggest that Dr Court's criticisms are based on a personal moral stance. They appear to be based on an overall disapproval of sexual promiscuity, homosexuality and any sexual behaviour which deviates from monogamy within heterosexual marriage. Depictions of moral codes which differ from those of an individual or group cannot in a western-style democracy be used as the basis for the prohibition of materials. Moreover distaste in itself, is an insufficient ground to classify *Penthouse (U.S.)* as unconditionally indecent.

(ii) ***Penthouse* as a Picture Book**—*Penthouse* was described by Dr Court as a “picture book” on the grounds that only 1 page “out of the whole lot boasted a 2-page only eyespan with text only on both sides ... *Penthouse* resembles a child's picture book more than it may be said to resemble an adult book”. We believe this assertion fails to take into account the difference between books and magazines. It would be difficult to find any adult magazine with a 2-page spread without pictures. A perusal of several issues of the following showed: *New Zealand Womens Weekly* (no 2-page pictureless spreads); *Vogue* (1 pictureless 2-page spread—the “shopping guide” at the back); *Cosmopolitan* (none). Using Dr Reisman's and Dr Court's criteria, all adult “glossy” magazines are more like children's picture books than adult books. In our view this contention is not valid.

(iii) **Availability to Children**—Dr Court argued that erotic magazines are easily purchased by children—by subscription and in second-hand book sales. In our view this argument is unrealistic. The high cost of a subscription to *Penthouse* would make it well beyond the price-range of most New Zealand children. The subterfuge involved in having a magazine come

through the mail would also deter most children from subscribing.

(iv) **The Fusion of Sex and Violence**—Dr Court described the neurological manner in which pictures are processed by the brain. He argued that: “The consumer experiences a rush from the viewing of sadosexual photos, illustrations and cartoons. Such a rush has been compared to a drug high”. Under cross-examination Dr Court elaborated: “perhaps 50 percent, namely the male population, who, I hope, are not potentially criminal by definition, but a large percentage of men are potentially in this direction because of the nature of the sexual arousal mechanism of the male towards combining sexuality and aggression. But it will normally be held in check under all reasonable circumstances”. (Page 16 transcript). On the other hand Professor Mullen under cross-examination by Mr Ford disagreed with Dr Court's statements on “arousal”: “If you wanted to couple those images, you really would have to go from one to the other. I mean you would have to flick back from one to another”. Professor Mullen said that his answer was based on his own research using “electrical measurements from the brain”. It is our assessment that the evidence of “fused images of sex and violence” does not hold unless both messages are combined in the one image.

Dr Court agreed that a magazine could not in itself form a person's sexual attitudes, since these were established at a young age. Under cross-examination by Ms Goddard, Dr Court said that “explicit sexual material on its own is associated with increased levels of aggression ... women are battered by men using non-aggression pornographic materials.” However, later, under cross-examination by Mr Akel, he said:

Akel: “Do you say that there is no causal or link between non-violent erotica and sexual crimes?”

Dr Court said: “No, I don't say that ... what I am saying is that we do not have evidence that there is such a causal link. I cannot sustain it from my data and I don't know anybody who can.”

Under questioning by Mr Hastings, Dr Court admitted that a “copy-cat” argument underlay his submissions.

We find Dr Court's statements on links and causation very confused. He does not present evidence that *Penthouse (U.S.)* is in itself a cause of sexually violent behaviour. Dr Court's contention that *Penthouse* fuses images of sex and violence, and that this fusion is a cause of sexually violent behaviour, on the evidence before us, is unfounded.

(v) **The Impact on the Models**—Dr Court argued that the *Penthouse* models are vulnerable “to family and community ridicule and contempt”. He said that they are often coerced by photographers into participation in “lesbian scenes”. Such coercion may take the form of promises that such work “is a necessary stepping-stone to stardom of the centrefold”. Dr Court argued that such participation can lead heterosexual women to have “later problems with homosexuality and other dysfunctional activity”. He argued under questioning by Mr Hastings that “one of the elements in this presentation of sexuality is men looking at women being ashamed and embarrassed”. The impact on the models is an issue which the members of the Tribunal consider that they must take into account. We must be vigilant to ensure that our decisions in no way condone the exploitation of models. We do not have any evidence that *Penthouse* models have done anything other than choose their occupations freely. The voluntary performance of sexual acts for money is a kind of prostitution. This may offend some people's sense of morality, but it is not illegal.

(vi) **The Methodology and Credibility of Dr Reisman's Report**—Dr Court agreed that 2 terms were “invented for the purpose of the study”: “Sadosexual” and “child magnets”. Sadosexual was defined by Dr Court as:

“A body of imagery and text which uses a class of people as sexual entertainment for another class of people ... [it] is