

further defined as any sexual entertainment which would put at risk the model, the actor, the person or class described as causing shame, humiliation, anger, fear and especially possible physical harm”.

Mr Ellis put it to Dr Court that: “the methodology had been first to create your own definitions, sadosexual, child magnet, etc, then to instruct your coders to look for the elements so defined, not to instruct the coders to look for any positive elements and then simply to analyse the material on the basis of the elements ... found by those definitions”. Dr Court agreed: “We didn’t instruct them to look for the good qualities in the magazines because the brief that we had was to address ourselves to the New Zealand publication laws that refer to things like indecency and harm, etc. We weren’t attempting to quantify the positive qualities of the magazines”.

Mr Ellis reminded Dr Court that the Act requires the Tribunal to look at “the dominant effect” of the magazines. Ms Hulme stated her concern that nowhere in Dr Court’s submission could she find a distinction between an advertisement which would constitute a child magnet and one that wouldn’t. Mr Hastings shared Ms Hulme’s concern about some of the emotive language used in Dr Court’s report. Sadosexual was one of them, toxic was also a word which was used quite often. Dr Court replied that these words although “descriptive” were not “emotive”. Dr Middleton asked Dr Court what criteria were given to the coders for the categorisation of images as “violent”. He replied that violent general circulation advertisements were not included. The ‘reading’ of images in *Penthouse* raised considerable debate during the hearing on specific images, such as the picture gargoyles in the September 1988 issue of *Penthouse* — they were the subject of cross-examination and questioning by several counsel and Tribunal members which explored the existence of a connection between them and sexually violent effects.

We have serious doubts as to the credibility of the Reisman study arising out of apparently biased instructions and categories given to the coders. We comment that the coining of new terms is not in itself a ground for rejection of the study — social scientists need to devise new concepts all the time as the social world, and the theories used to study it, change. It is not the fact that new terms were coined which concerns us but rather the slanted nature of the categories. In our view the coders were looking for negative, not negative and positive messages.

Mr Akel questioned the bias of the “7 adult female Caucasian coders” employed by Dr Reisman. It was noted that they were all her regular employees. Professor Linz (who gave evidence immediately after Dr Court) explained in detail under cross-examination how he checks for “coder-bias” in his own content analysis studies. Psychological tests are given to see which applicants for coding jobs have strong opinions on the issue. These people are not employed. Only those who do not have such biases are selected. Reliability indices are devised to determine “the percentage of agreement among coders about a particular category”. Apparently steps such as these were not taken to ensure coders impartiality in the Reisman study. In our view the fact that the coders were all employees of Dr Reisman would not have mattered if the precautions described by Professor Linz had been carried out. That there is no evidence that they were so tested is implicit in Dr Court’s response to Mr Akel (page 25 of the transcript): “I don’t know anything about their personal biases or inclinations to the data.” This must cast further doubt on the scientific credibility of the Reisman study.

Mr Akel questioned Dr Court about the nature and funding of his and Dr Reisman’s employing bodies. It was noted that Dr Reisman was self-employed. The fact that Dr Reisman is self-employed does not in itself discredit the quality of her work. The fact that her Institute can find enough work may, rather, testify to its quality. No association between Dr Court’s institution and particular groups or “moralist organisations”

was established. This was not particularly relevant, in any case, since the report itself was what was at issue.

Professor Daniel Linz concluded that Dr Reisman’s report was seriously flawed for a number of reasons. First he said there was no control set of material against which the American *Penthouse* editions were evaluated (e.g. a comparison of *Penthouse* presently available in New Zealand against American *Penthouse* would have been an excellent test). Secondly there was no evidence to determine whether the coders were pre-disposed to particular points of view. Thirdly the content categories were not clearly identified, nor was there any corresponding index of reliability. There were no examples of the coding instruments used in the report. Fourthly content analysis, of itself, can tell us absolutely nothing about the effects of material on human behaviour. Finally he said that the report presumes a view of human information processing which is now discredited. What humans do is to organise material within context. This report presumes that the basis of information processing is either that of a completely reactive individual who just responds to stimuli, or that the general ambience of a magazine produces a psychological effect.

Dr Linz outlined a number of findings based on his own research. In his view levels of aggression after exposure to mild erotica (e.g. *Penthouse (U.S.)*) decrease relative to control material. With respect to case studies it has not been established if the materials presented caused that person to be violent, or that an already violent individual is drawn to violent materials that reaffirm existing attitudes or pre-depositions. In fact many studies have found, Dr Linz explained, that following prolonged exposure to extremely sexually exciting stimuli there are lowered levels of aggression and there is the corollary that the individual with less exposure actually behaves in a more violent fashion than the person with more exposure. Professor Linz conceded that people who are exposed to slasher films can become desensitised to violence against women. But correspondingly people exposed to sexually explicit materials (of a non-violent nature) for extended periods of time are unaffected in their judgments about women, he said. The same effects have been found from written stimuli rather than pictorial, and from audio-visual material rather than pictorial, Professor Linz explained. With respect to the various elements in the tripartite test Professor Linz stated that research is not clear on the effects of depictions of multiple actors and whether such depictions suggest a greater level of coercion. In his view it was questionable that the number of, or the relative number of, male/female actors, was in itself an index of implied coercion. And, Professor Linz concluded, he had never been able to get coders to agree on whether the number of actors was a factor in the assessment of a depiction as being coercive.

In summary, from the evidence of Professors Mullen, Donnerstein and Linz we conclude that a combination of violence and sexuality has considerable potential for harm. The evidence of these 3 witnesses has satisfied us that single and multiple model sexual explicitness, by itself, in the manner pictorially depicted in the subject publications, will assist us in the final analysis to classify them as indecent only in the hands of persons under a specified age. Conversely we conclude that the evidence presented by Dr Court does not justify the classification of the subject publications as unconditionally indecent.

Affidavit/Written Statement Evidence

A large number of affidavits and written statements were filed in support of Mr Akel’s submissions that these magazines be given an age restriction classification and serial restriction order pursuant to section 15A of the Act. With the exception of the evidence given by Inspector Kerr, Dr Court and Professors’ Mullen, Donnerstein and Linz, there was no cross-examination. In summarising the affidavits and statements, albeit briefly, we