

The Danger of Seeing Movies Through a Censor's Eyes

By Alan M. Dershowitz

SINCE THE SHOOTINGS at schools in Littleton, Colo., and elsewhere, the government has focused on the media—particularly film, television, and computer games—as potentially troublesome influences on young minds. President Clinton recently directed the U.S. Department of Justice to “study” whether the movie industry was violating its own voluntary ratings code—the study’s implicit threat being that the code might become more than voluntary. The lightning-quick result: The National Association of Theater Owners promised to enforce the rating system more vigorously, by requiring proof of age for admission to R or NC-17 films.

Preliminary reports raise considerable doubt as to whether such enforcement will be possible, especially in multiplex theaters showing a number of films with various ratings (never mind trying to restrict what young people see on video). But even if it worked, would such enforcement have any discernible impact on teenage violence?

In our culture, we glorify guns, machismo, the military, and aggressive sport not only in film, but also in advertising, in music, on the news, and around the family dinner table. Even some religious leaders seem to preach the sanctity of the Second Amendment more rigorously than that of the Sixth Commandment. Take, for instance, the Rev. Willie Ramsey, a Kentucky preacher who pushed an amendment through the state’s General Assembly that allows members of the clergy to carry concealed weapons in their sanctuaries. “This idea that the Lord would never have a gun around him,” Ramsey told the Lexington Herald-Leader “Well, they didn’t have guns in those days, but his apostles had swords. Don’t you suppose they were for self-defense?” In a similar vein, the Rev. Jerry

Falwell wrote in a recent newsletter to pastors, “The left will not rest easy until they have disarmed every law-abiding citizen, leaving Americans with absolutely no means to protect themselves against the fierce acceleration of our culture of violence.”

Teenagers are probably influenced more by such mainstream representations of, and responses to, violence than they are by the extreme depictions on the big screen that are the object of the President’s wrath. Advocates of the rating system claim that it is effective and voluntary. There are reasons to question both claims. For censorship to be effective, it must be pervasive, as it was in Hitler’s Germany, Stalin’s Soviet Union, and Mao’s China. History shows that moderate censorship, such as that effected by the current rating system for movies, simply doesn’t work.

The rating system promulgated by the motion-picture industry has always been “voluntary” only in a sense. The self-imposed censorship arose from fear that the government would step in as the movies’ moral gatekeeper if the industry didn’t rein itself in. In 1922, censorial legislatures were starting to move toward imposing a regime of governmental control over what was quickly becoming a major source of mass entertainment. In response, the industry, under the leadership of William Harrison Hays—chairman of the Republican National Committee and a former U. S. Postmaster General—began its initial foray into self-censorship. The so-called Hays Office (which was formally called the Motion Picture Producers and Distributors of America), speaking on behalf of the movie moguls, told the legislatures, in effect, to “leave it to us.”

Beginning in 1927, with a list of “Don’ts and Be Carefuls” that served as guidelines for movie producers, and moving on to a comprehensive “Production Code” created in 1930, the Hays Office established a pervasive system of censorship, micromanaged by right-wing religious zealots with moralistic agendas.

Before a film could receive the Hays Office’s imprimatur, it had to prove that it did not “lower the moral standards of those who see it,” and that it did not throw the “sympathy of the audience to the side of crime, wrong-doing, evil or sin.” The code covered everything from how to handle issues of crime and “vulgarity” to details about location (“The treatment of bedrooms must be governed by good taste and delicacy”), as well as subjective factors as vague as “national feelings” (“The use of the flag shall be consistently respectful.”

Of course, there could be no suggestion of sex, blasphemy, or marital infidelity. When the screenwriters of *Gone With the Wind* drafted Clark Gable’s risqué line, “Frankly, my dear, I don’t give a damn,” they also came up with two softer alternatives designed to placate censors, including, “I wish I could care what you do or where you go—but frankly, my dear, I just don’t care.” That they were permitted to go with the first option marked a breakthrough that probably reflected the power of Selznick International Pictures more than it did changing mores.

But more than prohibitions defined the code. In its “Reasons” section—formally enacted along with the code as the governing parameters for movie production—the Hays Office elaborated on the code’s broader purposes. Film, because of its “mobility, popularity, accessibility, emotional appeal, vividness, [and] straightforward presenta-

tion of fact," "reaches *places* unpenetrated by other forms of art," and thus has "special **MORAL OBLIGATIONS**." A dichotomy exists between "helpful" and "harmful" entertainment, the document explained, and the Hays Office clearly advocated, even insisted on, the former. "Correct *entertainment raises* the whole standard of a nation" while "*wrong entertainment lowers* tie whole living conditions and moral ideas of a race." The Hays Office, in effect, enforced cinematographic correctness.

After World War II, censorship began to abate, and Hollywood began to push the envelope ever so slightly. Again, legislators responded by calling for official censorship. And again, the motion-picture industry acted preemptively. This time, the Motion Picture Association of America and the National Association of Theater Owners came up with a voluntary rating system, designed primarily to inform parents. In other words, the onus was to some degree transferred from filmmakers to film viewers. As Jack Valenti, since 1966 the president of the M.P.A.A., put it in 1990: "The purpose of the rating system, its only purpose, then as now was to offer cautionary warnings to parents to help them guide the movie-going of their young children."

There have been several problems with this approach from the very beginning. First, the ratings haven't given parents much information. An R rating could be given for "nudity within sensual scenes," "hard language," "tough violence," or any combination. Since legislative censors have always been more concerned with sex than with violence, the people who have determined the ratings have also, in my experience, been more likely to give an R to a film with substantial sexual content than to one that is quite violent. A parent more concerned with a child's seeing violence than with a child's seeing sex has not been able to determine from the rating whether a given film was suitable.

The system also has really been neither voluntary nor mainly informational. Many theaters have not shown X-rated films, so if a film did not qualify for an R rating, it was relegated to the small number of independent theaters willing to incur the wrath of community activists who did not want X-rated movie houses in their neighborhoods. Indeed, some communities have gone even further, placing restrictions in the leases of malls with theaters, since some of the malls have been financed with municipal bonds, tax breaks, and other governmental subsidies. The heavy thumb of government could be felt on the scales of public choice.

Those problems led to the addition, a decade ago, of the NC-17 rating, which was designed for films that were deemed too sexual for the R rating, but sufficiently artistic not to be tainted by an X rating. That symbol had come to be associated with "sexploitation" films, and X had become an advertising symbol for hard-core pornography. The motion-picture Rating Board—consisting of eight to 13 members who serve for periods of varying lengths had come to realize that there was a genre of film sufficiently sexual to be unsuitable for children—even if their parents approved—but not deserving of the damning X. The NC-17 rating—which excludes all children below the age of 17, regardless of parental wishes—was designed for that genre. NC-17 was, therefore, the first non-X rating that left parents no choice as to whether or not their children could see a given movie.

I urged the inclusion of an NC-17 category in the expectation that it would be treated by theaters and video stores more like an R than an X rating. When it became clear that the new rating was becoming an instrument of censorship, I fought against its imposition on films suited for teenagers.

One of the first films to challenge an NC-17 rating was *Clerks*, in 1994. I repre-

sented the film's co-producer Miramax Films on appeal before the M.P.A.A.'s internal appeals board, and we prevailed. The next major challenge involved the film *Kids* (1995), a provocative look at the world of male teenagers who sexually exploit younger female teenagers. The target audience for this film was teenagers, along with their parents. It sent a powerful message about the dangers of promiscuity, particularly among teenage girls. If I had had teenage daughters or sons, I would have wanted to be able to take them to see the film. But the NC-17 rating took that decision away from parents and placed it in the hands of censors. We lost the appeal on a divided vote.

THE HAYS OFFICE had it wrong as a matter of constitutional principle, but right as a matter of empirical fact: The only effective censorship is **complete** censorship, based on the content and moral message of a film. Ratings based on the presence or absence of specific words, acts, or images can easily be circumvented.

The problem is that our First Amendment prohibits pervasive governmental censorship. The solution is to answer bad speech with good speech, and to have the good speech prevail in the marketplace of ideas.

Persuading youngsters of the virtue of non-violence and the vice of violence is more challenging than simply censoring violent images. But it is also more enduring, more likely to succeed, and more consistent with our Bill of Rights.

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