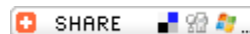




Opinion



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Buttman is on Trial. What about the rest of us?

By: [Jason Kuznicki](#)

Special to The Examiner

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It's probably best to deal with the snickering up front, so here goes.

John Stagliano is a pornographer. You might know him by his nickname, Buttman. Even if you don't, you can probably imagine how he got that nickname. Your imagination will be pretty much correct. Stagliano has made dozens of adult films. No one disputes that his actors all *are* adults, and that all are consenting. He is not accused of selling anything to children. He appears by all accounts to have complied with federal and state regulations governing the production and distribution of pornography. He has even won critical acclaim in the mainstream press, improbably enough, for an erotic musical on the Las Vegas strip. (Full disclosure: Stagliano is also a former donor to the Cato Institute, where I am a research fellow.)

What, then, is he accused of? Stagliano is on trial for a variety of obscenity charges. But these charges become very puzzling the longer one thinks about them. Pornography, after all, is a regulated, above-ground business. The adult industry sells access to websites, DVDs, and other media of a sexual nature, and along the way, it's closely watched by the government. Which I agree it should be.

Yet among all of the adult producers and studios, only one has lately been called in for obscenity charges. That would be Stagliano and his studio, Evil Angel, which also just happens to be the most profitable of them all. (Stop me if you see a trend here.)

Some porn, the government would apparently have us believe, isn't obscene at all. Otherwise, many regulations on porn would be utterly inexplicable -- laws declaring that actors undergo regular STD tests, that studios keep proof of age, and the like. If it was all obscene, there would be no need, and no justification, for these provisions.

Obscenity has always been a somewhat dubious charge, famously leveled against everyone from Gustave Flaubert and James Joyce to the 2 Live Crew. Which is to say, everyone from the immortals to the has-beens. Even in the clearest of cases, obscenity lies more in the eye of the beholder than in any objective standard.

That's why Justice Potter Stewart -- author of the famous phrase "I know it when I see it" -- actually used that very quip to argue *against* a conviction under an obscenity law. Far from finding it a definitive test, Stewart clearly thought "I know it when I see it" was unacceptably arbitrary as a standard, and he found that [even hard-core pornography "may be indefinable."](#)

Today we hear it argued that the line between the acceptable and the legally obscene runs *right down the middle* of the porn industry. And we're supposed to get to work on sorting it all out, somehow. Stewart would surely feel vindicated, and he would probably laugh at us for setting up still more exacting tasks than the ones he didn't dare undertake.

The charge of obscenity also makes less sense than ever in today's Internet-connected world. Is it really possible that, deprived of Buttman's unique talents, the desperate obscenity-seekers will be hindered in the slightest? Will taking Buttman off the streets do anything at all to clean up the online world, where porn is overwhelmingly made and consumed non-commercially? (Adult) FriendFinder claims 20 million accounts; Xtube has 8.3 million users; and YouPorn recently claimed 15 million new users *each month*. We could easily add to the litany of adult sites, but the chances are that you already know all about them, so we won't.

Stagliano, however, faces prison for perhaps the rest of his life. Will putting him there save even a single pair of innocent eyeballs? And for how many milliseconds? Is that a trade-off we're happy about making?

Perhaps Stagliano really has violated federal obscenity statutes. I can't say that I'm wise enough to know. But obscenity laws were never on sound constitutional footing to begin with, and they have never been rigorously enforced. It's probably best that they haven't. We don't have enough judges, we don't have enough juries, and we certainly don't have enough prison cells to do the work that a conviction in this case implies.

A far better course would be to acquit him, to reaffirm the central place of the First Amendment in our society, and to accept that merely because something disturbs you, there shouldn't necessarily be a law against it.

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